APPENDIX

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APPENDIX A

United States Court of Appeals, Seventh Circuit.

No. 22-2420

EPIC SYSTEMS CORP.,

Plaintiff-Appellee,

v.

TATA CONSULTANCY SERVICES LTD. & Tata America International Corp. d/b/a TCS America,

Defendants-Appellants.

Argued February 22, 2023
Decided July 14, 2023

ORDER

This is the second time this case has come before the court. In the first appeal, we held, among other things, that a $280 million punitive damages award in favor of Epic Systems Corporation ("Epic") and against Tata Consultancy Services ("TCS")[1] exceeded the outermost limit of the Fourteenth Amendment's due process guarantee. We remanded for the district court to "reduce punitive damages to, at most, $140 million." *Epic Sys. Corp. v. Tata Consultancy Servs. Ltd.*, 971 F.3d 662, 688

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[1] Tata Consultancy Services Limited is an Indian company; Tata America International Corp. is a New York corporation that is wholly owned by Tata Consultancy Services. We refer to these companies collectively as "TCS."

(7th Cir. 2020), *as amended*, 980 F.3d 1117, 1145 (7th Cir. 2020). The district court did so, concluding that the case warranted a punitive damages award equal to that constitutional ceiling. No. 14-cv-748, 2022 WL 2390179 (W.D. Wis. 2022).

TCS now argues that the district court failed to follow this court's directives when it declined to further reduce the punitive damages award to an amount between $10 and $25 million. Because the district court properly justified the $140 million punitive damages award, we affirm.

Background

Epic and TCS are competitors in the electronic-health-record-software field. From 2012 to 2014, TCS employees accessed Epic's confidential customer web portal without authorization and downloaded thousands of documents containing Epic trade secrets. Armed with this stolen information, TCS created a "comparative analysis" outlining the differences between its software and Epic's. TCS then used this analysis to try to persuade one of Epic's largest customers to abandon Epic in favor of TCS. To make matters worse, when Epic filed suit, TCS failed to preserve relevant evidence, resulting in an adverse inference sanction at trial. The jury ruled for Epic on all counts, including multiple Wisconsin tort claims. The jury then awarded Epic $240 million in compensatory damages—$140 million for TCS's use of Epic's information to create the "comparative analysis" and $100 million for TCS's "other uses" of the confidential information—as well as $700 million in punitive damages.

Although the district court upheld the jury's liability verdict and the $140 million in compensatory damages based on TCS's use of Epic's confidential information in the "comparative analysis," it struck the $100 million compensatory award for "other uses" of Epic's information. The district court also reduced punitive damages to $280 million to comply with a Wisconsin law capping punitive awards at two times the amount of compensatory damages. Wis. Stat. § 895.043(6).

On the first appeal, we applied the guideposts established in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), to determine whether the $280 million punitive damages award entered by the district court was constitutionally sound. Considering "(1) the reprehensibility of the defendant's conduct; (2) the disparity between the actual harm suffered and the punitive award; and (3) the difference between the award authorized by the jury and the penalties imposed in comparable cases," *Rainey v. Taylor*, 941 F.3d 243, 254 (7th Cir. 2019) (citing *Gore*, 517 U.S. at 575), we concluded that $140 million—a 1:1 ratio relative to the compensatory award—was the maximum constitutionally permissible punitive award in this case. *Epic*, 980 F.3d at 1140–45. *See also Trinity Evangelical Lutheran Church v. Tower Ins. Co.*, 661 N.W.2d 789, 800 (Wis. 2003) (explaining that Wisconsin courts apply a "virtually identical test").

We reasoned that although TCS's conduct warranted punishment, it was not reprehensible "to an extreme degree." *Epic*, 980 F.3d at 1142. Courts apply five factors to evaluate reprehensibility, considering whether: (1) the harm caused was physical as opposed to economic; (2) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (3) the target of the conduct was financially vulnerable; (4) the conduct involved repeated actions or was an isolated incident; and (5) the harm was the result of intentional malice, trickery, or deceit, or merely an accident. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003). Here, three of these factors weighed against deeming TCS's conduct reprehensible. In particular, TCS caused financial, rather than physical, harm; its actions did not evince an indifference to or reckless disregard for the safety of others; and Epic was not a financially vulnerable victim. Looking to the remaining factors, however, we found that TCS's wrongdoing was not an isolated incident and the harm Epic suffered was a direct result of TCS's deceit.

We further agreed, upon examining *Gore*'s second guidepost, that the disparity between the $280 million punitive damages award and the harm suffered by Epic was too great. As for the third guidepost, we observed that the award entered by the district court complied with Wisconsin's statutory cap on damages, which implied that it was not an outlier in the state. Still, considered together, the *Gore* factors supported a finding that the $280 million award was unconstitutional. We remanded for the district court to reduce the punitive damages to, at most, $140 million.

On remand, the district court did precisely that. TCS now asserts that the court's analysis was insufficient because it simply rehashed the *Gore* factors already considered by this Court in the first appeal. We disagree.

Legal Standard

We review a district court's determination of the scope of remand de novo. *United States v. Purham*, 795 F.3d 761, 764 (7th Cir. 2015). We also review challenges to punitive damages de novo when constitutional issues are raised. *Cooper Indus. Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 436 (2001). If no constitutional issue is raised, our review of punitive damages is for abuse of discretion. *Gracia v. SigmaTron Int'l, Inc.*, 842 F.3d 1010, 1022 (7th Cir. 2016).

Analysis

When punitive damages arise out of state law claims, as the award in this case did, "the Constitution imposes the only federal restraint." *Beard v. Wexford Health Sources, Inc.*, 900 F.3d 951, 955 (7th Cir. 2018); *see also Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 430 n.12 (1996) ("For rights that are state created, state law governs the amount properly awarded as punitive damages, subject to an ultimate federal constitutional check for exorbitancy."). We have already identified the line over which a punitive damages award would be unconstitutionally excessive here: $140 million.

Still, as TCS notes, "the Constitution is not the most relevant limit to a federal court when assessing punitive damages, as it comes into play 'only after the assessment has been tested against statutory and common-law principles.'" *Saccameno v. U.S. Bank Nat'l Ass'n*, 943 F.3d 1071, 1086 (7th Cir. 2019) (quoting *Perez v. Z Frank Oldsmobile, Inc.*, 223 F.3d 617, 625 (7th Cir. 2000)). We are satisfied that the district court thoroughly assessed the relevant principles on remand and concluded that the award was sensible and justified. *See Perez*, 223 F.3d at 625 ("Federal judges may, and should, insist that the award be sensible and justified by a sound theory of deterrence.").

First, the court revisited the question of reprehensibility. It described how TCS employees—knowing full well that they were unauthorized to view Epic's web portal—deliberately and repeatedly accessed and downloaded confidential information that Epic had spent years developing, and then used that information to attempt to compete with Epic. The district court also described the steps TCS leadership took to conceal their scheme: disciplining an internal whistleblower, failing to preserve relevant documents, lying when questioned by Epic, and then lying again when questioned under oath. The court described this conduct as "repeated, deliberate, and cynical."

Turning to other considerations, the court noted that the punitive damages were proportional to the compensatory damages and the harm Epic suffered; that but for being caught, TCS would have gotten away with a massive gain; and that the cases TCS cited to support further reduction were "not at all comparable" to this one. The court emphasized that TCS is one of the largest companies in the world and, therefore, only a significant punishment would have a deterrent effect.

Now, on appeal, TCS repeats many of the same arguments that have already been considered by this court. It suggests that its conduct was not especially reprehensible and that the deterrent purpose of punitive damages was adequately served by the $140 million in compensatory damages.

Insisting that this case is an outlier for punitive damages, TCS cites various opinions ordering lower awards. Generally, however, these cases involved much smaller compensatory awards than the $140 million used as a denominator here. *See, e.g., Synergetics, Inc. v. Hurst*, 477 F.3d 949, 954, 959 (8th Cir. 2007) (awarding $1.75 million in compensatory damages and about $600,000 in punitive damages). As we noted in our earlier decision, TCS "waived any argument that the compensatory award is the incorrect denominator in the ratio analysis." *Epic*, 980 F.3d at 1143. TCS also cites cases in which courts applied the *Gore* guideposts to conclude that the Constitution mandated reducing the punitive damages to an amount lower than that awarded to Epic. *See, e.g., Inter Med. Supplies Ltd. v. EBI Med. Sys., Inc.*, 181 F.3d 446, 467 (3d Cir. 1999). But this court already determined that a $140 million award would be constitutional here. TCS does not ask us to overturn that decision and we see no reason to. Finally, TCS opines that it could find only two Wisconsin cases in which juries awarded more than $100 million in damages, both of which involved physical harm. Critically, neither of the defendants in those cases were nearly as large as TCS. When the goal of punitive damages is "to punish the defendant and deter outrageous conduct," *Welty v. Heggy*, 429 N.W.2d 546, 550 (Wis. 1988), such matters must be considered.

In sum, we agree with the district court that, given TCS's repeated and brazen misconduct, a $140 million punitive damages award is constitutional, as well as justified under Wisconsin law.

AFFIRMED.

APPENDIX B

United States Court of Appeals, Seventh Circuit.

Nos. 19-1528 & 19-1613

EPIC SYSTEMS CORP.,

Plaintiff / Counterclaim Defendant-Appellee / Cross-Appellant,

v.

TATA CONSULTANCY SERVICES LTD. & Tata America International Corp. d/b/a TCS America,

Defendants / Counterclaim Plaintiffs-Appellants / Cross-Appellees.

Argued January 16, 2020
Decided August 20, 2020

Rehearing and Rehearing En Banc Denied
November 19, 2020 and November 30, 2020

Opinion

Kanne, Circuit Judge.

Without permission from Epic Systems, Tata Consultancy Services ("TCS")[1] downloaded, from 2012

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[1] Tata Consultancy Services Limited is an Indian company; Tata America International Corp. is a New York corporation that is wholly owned by Tata Consultancy Services. We refer to these companies collectively as "TCS."

to 2014, thousands of documents containing Epic's confidential information and trade secrets. TCS used some of this information to create a "comparative analysis"—a spreadsheet comparing TCS's health-record software (called "Med Mantra") to Epic's software. TCS's internal communications show that TCS used this spreadsheet in an attempt to enter the United States health-record-software market, steal Epic's client, and address key gaps in TCS's own Med Mantra software.

Epic sued TCS, alleging that TCS unlawfully accessed and used Epic's confidential information and trade secrets. A jury ruled in Epic's favor on all claims, including multiple Wisconsin tort claims. The jury then awarded Epic $140 million in compensatory damages, for the benefit TCS received from using the comparative-analysis spreadsheet; $100 million for the benefit TCS received from using Epic's other confidential information; and $700 million in punitive damages for TCS's conduct.

Ruling on TCS's motions for judgment as a matter of law, the district court upheld the $140 million compensatory award and vacated the $100 million award. It then reduced the punitive-damages award to $280 million, reflecting Wisconsin's statutory punitive-damages cap. Both parties appealed different aspects of the district court's rulings.

We agree with the district court that there is sufficient evidence for the jury's $140 million verdict based on TCS's use of the comparative analysis, but not for the $100 million verdict for uses of "other information." We also agree with the district court that the jury could punish TCS by imposing punitive damages. But the $280 million punitive-damages award is constitutionally excessive, so we remand to the district court with instructions to reduce the punitive-damages award.

I. Background

Epic Systems is a leading developer of electronic-health-record software. This software aims to improve patients' quality of care by keeping relevant information about patients—like patient schedules and billing records—in a central location. Epic provides versions of this software to some of the top hospitals in the United States. Each customer licenses from Epic software applications (modules) to fit the customer's specific needs. The customer can then customize the software to ensure it operates properly within the customer's organizational structure.

The complexity of Epic's health-record system requires Epic's customers to consistently update and test their systems. To facilitate this process, Epic provides its customers with access to a web portal called "UserWeb." UserWeb provides various resources—including administrative guides, training materials, and software updates—and it also supplies an online forum where Epic's customers can share information.

Along with these helpful resources, UserWeb contains confidential information about Epic's health-record software. To protect this information, Epic restricts who can access the UserWeb portal. Epic's customers, who have access, are required to maintain the confidentiality of this information, and they are expected to allow specific individuals access to this sensitive information on a "need-to-know" basis only.

To guard this confidentiality, Epic allows only credentialed users to access UserWeb; to get credentialed, users must prove they are either a customer or a consultant. Customers get access to all features and documents related to the modules they license from Epic. Consultants—who are hired by customers to implement and test Epic's software—cannot access features like the discussion forum and training materials.

In 2003, Kaiser Permanente—the largest managed-healthcare organization in the United States—obtained a license from Epic to use KP HealthConnect, a Kaiser-specific version of Epic's electronic-health-record software. Because of Kaiser's size, implementation of KP HealthConnect is highly complex; testing and tweaking it after each update is complicated and time consuming.

For help with these tasks, Kaiser hired TCS in 2011. TCS provides information-technology services, like software testing and consulting, on a global basis. But TCS also has its own electronic-health-record software, Med Mantra, which at the time was predominately sold in India.

Epic was aware of this conflict of interest and was concerned about TCS's relationship with Kaiser. Still, Kaiser used TCS to test KP HealthConnect. But to fulfill its obligation of confidentiality to Epic, Kaiser imposed rules for TCS to follow while working on Kaiser's account.

First, TCS was required to perform all services related to KP HealthConnect at Kaiser offices in the United States or offshore development centers—approved facilities outside the United States

Second, TCS was required to follow strict security protocols at the offshore development centers. Desktop computers used to work on KP HealthConnect could be used only for Kaiser-related work. To ensure these computers could not access the internet or TCS's email system, a firewall was installed. Other computers at the offshore facilities could access TCS's network and email system but were not allowed to access KP HealthConnect material.

TCS, while operating under these strict requirements, provided testing and support services to Kaiser. But TCS employees claimed they could perform the required tasks more efficiently if they had full access to UserWeb. Kaiser repeatedly asked Epic to grant TCS this access; Epic repeatedly declined to do so.

Unsatisfied with this lack of access, in late 2011, TCS found a way to gain unfettered access to all the information available on UserWeb: the key was Ramesh Gajaram. TCS hired Gajaram to work on the Kaiser account from an offshore development center in Chennai, India. Before working for TCS, Gajaram worked for a different company that also helped Kaiser test KP HealthConnect. While working for that company, Gajaram falsely identified himself to Epic as a Kaiser employee, and Epic granted Gajaram full access to UserWeb.

Gajaram informed his superior at TCS, Mukesh Kumar, that he still had access to UserWeb. At Kumar's request, Gajaram accessed the UserWeb portal. Gajaram also shared his login credentials with other employees at the Chennai offshore development center. A few years later, Gajaram transferred to TCS's Portland, Oregon office; he again shared his UserWeb login credentials with at least one other TCS employee.

Thanks to Gajaram's actions, dozens of TCS employees gained unauthorized access to UserWeb. And from 2012 to 2014, TCS employees accessed UserWeb thousands of times and downloaded over 6,000 documents (1,600 unique documents) totaling over 150,000 pages. These documents contained Epic's confidential information, including some of its trade secrets. And not all of this information related to TCS's work for Kaiser; employees downloaded information related to a medical-laboratory module that Kaiser does not license from Epic.

This unauthorized access came to light in early 2014, when Philip Guionnet, a TCS employee, attended meetings concerning the Med Mantra software. At the first meeting, Guionnet observed a demonstration of Med Mantra for Kaiser executives. Guionnet was "astounded"; he had seen Med Mantra several times before and believed the software had dramatically improved.

After this meeting, Guionnet was concerned that "some of the information from Kaiser had been used to improve Med Mantra." So, Guionnet visited the Med Mantra product development team. During his visit, a TCS employee showed Guionnet a spreadsheet that compared Med Mantra to Epic's electronic-health-record software. The spreadsheet compared, in some detail, the functionalities of the two products. Guionnet believed this spreadsheet confirmed his suspicion that information regarding Kaiser's version of Epic's software had been used to improve Med Mantra. Guionnet then asked for a copy of this spreadsheet. What he received instead was a less-detailed document referred to as the "comparative analysis."

The comparative analysis—a key document in this appeal—was created as a part of TCS's effort to see if it could sell Med Mantra in the United States. Specifically, TCS wanted to sell Med Mantra directly to Kaiser, who was using Epic's software, and wanted to be sure that "key gaps" in Med Mantra were addressed before this attempted sale. So, TCS gave a consultant from the Med Mantra team the task of creating a comparison between Med Mantra and Epic's software. In doing so, this employee worked with "Subject Matter Experts"—employees who had experience with Epic's software—and created the comparative analysis that was ultimately sent to Guionnet.

The comparative analysis is an 11-page spreadsheet that compares Med Mantra to Epic's software. The first page lists 33 modules, and it notes whether the module is available in Med Mantra and Epic's software; the next 10 pages list Med Mantra's functions and note whether Epic's software contains the same functions. Multiple TCS employees confirmed that the information used in this comparative analysis is not publicly available.[2]

Guionnet—after attending these meetings and viewing the comparative analysis—reported his concerns in June 2014 to TCS, Kaiser, and Epic employees. Epic and Kaiser immediately investigated Guionnet's claim and discovered that TCS employees had gained unauthorized access to UserWeb. But TCS employees were less than forthcoming during Kaiser's investigation; multiple TCS employees lied to investigators about TCS's access to UserWeb.

A few months later, Epic filed suit against TCS, alleging that TCS used fraudulent means to access and steal Epic's trade secrets and other confidential information. During a contentious year-and-a-half discovery process, Epic learned that TCS had failed to preserve relevant evidence. The district court sanctioned TCS for its discovery failures by ultimately providing the jury with an adverse-inference instruction:

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[2] In fact, TCS was barred from arguing that the comparative analysis was created from information in publicly available sources because it failed to "direct the court to *any* evidence that the comparative analysis was created from such sources."

> If you find by a preponderance of the evidence that Epic has proven TCS both: (1) intentionally destroyed evidence (or intentionally caused evidence to be destroyed), and (2) caused the evidence to be destroyed in bad faith, then you may assume that this evidence contained information helpful to Epic and harmful to TCS.

The district court bifurcated proceedings into a liability phase and a damages phase. The liability phase began in April 2016. The jury returned a verdict in favor of Epic on all claims, including those under Wisconsin law for breach of contract, fraudulent misrepresentation, misappropriation of trade secrets, unfair competition, deprivation of property, and unjust enrichment.

Before the damages phase of trial, Epic presented the district court with evidence it sought to present to the jury regarding the benefit TCS received by using Epic's confidential information and trade secrets. Epic's expert, Thomas Britven, initially based his damages calculation on costs Epic incurred developing the modules underlying *all* the documents TCS stole. But the district court concluded that the evidence did not support Epic's broad claims of the use to which TCS put the stolen information. The district court accordingly rejected Epic's initial damages proffer but gave Epic another opportunity to present evidence of TCS's uses of the stolen information and the value of those uses to TCS.

Epic went back to the drawing board and returned to the district court with a new, more limited theory of damages. Britven based his new calculation on only the confidential information and trade secrets that were incorporated into the comparative analysis spreadsheet. This calculation still used a proxy for the benefit TCS received: the costs Epic incurred in developing these specific software modules—accounting for coding costs that did not benefit TCS and technology decay over time. The district court accepted this "ratchet[ed] back" damages theory, noting the new calculation "more approximates what was actually received and apparently used by [TCS] both in the comparative model but also what were ongoing discussions by marketing people within [TCS]."

During the damages trial, Epic presented two witnesses: Stirling Martin and Britven. Martin used a chart that both identified which Epic modules were reflected in TCS's downloads and identified, with a checkmark, which of these modules were reflected in the comparative analysis. Martin testified about what stolen information was incorporated into the comparative analysis. Britven then presented a calculation of the value TCS received by avoiding research and development costs they would have incurred without the stolen information. First, Britven identified how much it cost Epic to develop the modules related to the trade secrets and confidential information that made their way into the comparative analysis. Then, Britven adjusted this number based on certain coding costs (which conferred no benefit on TCS) and the decay in the value of technology over time. He reached an approximate benefit to TCS of about $200 million.

TCS called its damages expert—Brent Bersin—to testify about the value of the benefit TCS received related to the comparative analysis. Bersin testified that Epic was not entitled to an award of economic damages, but he also testified that Britven incorrectly calculated the damages. Specifically, Bersin pointed out that Britven's calculation failed to account for reduced labor costs in India; TCS could pay its India-based engineers about 30% to 40% less than Epic would have to pay its engineers to develop the same software.

At the end of the damages trial, the district court gave the jury a special-verdict form concerning compensatory damages. The jury was asked to determine the amount of damages, if any, to which Epic was entitled based on (a) the "Benefit of TCS's Use of [the] Comparative Analysis," and (b) the "Benefit of TCS's Use of Other Confidential Information." The jury was also asked to determine whether Epic should be awarded punitive damages, and if so, in what amount.

The jury returned a $940 million total damages award: $140 million for uses of the comparative analysis, $100 million for uses of "other" confidential information, and $700 million in punitive damages. The district court entered an injunction prohibiting TCS from using, possessing, or retaining any of Epic's trade secrets or confidential information.

The court then addressed several post-trial motions, including TCS's three motions for judgment as a matter of law on liability and damages. Fed. R. Civ. P. 50(a). The district court upheld the jury's liability verdict and its $140 million compensatory-damages award based on TCS's uses of the comparative analysis, which contained Epic's information. But the district court struck the $100 million compensatory award for "other uses" of Epic's confidential information and also reduced the punitive-damages award to $280 million based on a Wisconsin statutory cap on punitive damages. *See* Wis. Stat. § 895.043(6).

TCS then filed a post-judgment motion under Rules 50(b) and 59, again seeking judgment as a matter of law, or in the alternative, a new trial. But this motion "largely repeat[ed] the same arguments previously raised in [TCS's] Rule 50(a) motion." The district court denied this new motion, leaving intact the $140 million compensatory award based on the comparative analysis. It also upheld the previously reduced $280 million punitive-damages award, noting that its prior decision to vacate part of the compensatory-damages award "does not undermine the jury's award of punitive damages."

II. Analysis

Both parties appealed different aspects of the district court's post-trial rulings. TCS challenges the district court's decision to leave intact the $140 million compensatory award related to the comparative analysis. TCS also challenges the district court's punitive damages decisions. On cross-appeal, Epic challenges the district court's decision to vacate the $100 million compensatory award based on "other uses" of Epic's confidential information.

We first note what law applies to these appeals. Jurisdiction in this case is based on diversity of citizenship and a federal question (with supplemental jurisdiction over the state-law claims). When hearing state-law claims that arise under diversity jurisdiction, 28 U.S.C. § 1332, or supplemental jurisdiction, *id.* § 1367, federal courts are "obliged to follow state decisional law, as well as all other state law." *Houben v. Telular Corp.*, 309 F.3d 1028, 1032 (7th Cir. 2002). And when a federal jury awards compensatory damages based on a state-law claim, state law applies to our review of that damages award. *Kaiser v. Johnson & Johnson*, 947 F.3d 996, 1019 (7th Cir. 2020). Similarly, when state law provides the basis for liability, the punitive-damages award must be consistent with state law. *See Kapelanski v. Johnson*, 390 F.3d 525, 534 (7th Cir. 2004).

Epic's damages award for unjust enrichment was based on its claims under Wisconsin law for misappropriation of its trade secrets and confidential information. And its award of punitive damages had to be based on Epic's Wisconsin law "trade secrets, fraudulent misrepresentation[,] and unfair competition claims."

Wisconsin law therefore applies to the parties' substantive challenges of these damages awards. With that in mind, we address the parties' challenges to the district court's decisions regarding compensatory damages. We then turn to TCS's arguments concerning punitive damages.

A. "Comparative Analysis" Compensatory Award

The jury awarded Epic $140 million in compensatory damages based on the benefit TCS derived from using the comparative analysis, which contained some of Epic's confidential information. The district court upheld this award on two occasions: first, when ruling on TCS's post-trial motion for judgment as a matter of law, Fed. R. Civ. P. 50(a); and second, when ruling on TCS's renewed motion for judgment as a matter of law, *id.* 50(b), and motion for a new trial, *id.* 59.

We review a district court's denial of a motion for judgment as a matter of law *de novo*. *Empress Casino Joliet Corp. v. Balmoral Racing Club, Inc.*, 831 F.3d 815, 822 (7th Cir. 2016); *see also Abellan v. Lavelo Prop. Mgmt., LLC*, 948 F.3d 820, 827 (7th Cir. 2020) (applying Rule 50 and reviewing the district court's decision *de novo* when state substantive law applied). "Thus, like the district court, we decide whether the jury had 'a legally sufficient evidentiary basis' for its verdict." *May v. Chrysler Grp., LLC*, 716 F.3d 963, 971

(7th Cir. 2013) (per curiam) (quoting Fed. R. Civ. P. 50(a)(1)). In doing so, we construe all evidence in the record—and inferences that can be reasonably drawn from that evidence—in favor of the party that prevailed at trial on the issue; that party here is Epic. *May*, 716 F.3d at 971. This is a high burden for the moving party to satisfy: we reverse the verdict "only if no rational jury could have found in [Epic's] favor." *Andy Mohr Truck Ctr., Inc. v. Volvo Trucks N. Am.*, 869 F.3d 598, 602 (7th Cir. 2017). Additionally, we review a district court's denial of a motion for a new trial under Rule 59 for an abuse of discretion. *Abellan*, 948 F.3d at 830.

TCS argues it is entitled to judgment as a matter of law on this compensatory-damages award because there is no logical connection between the basis for liability and the jury's damages verdict. Specifically, TCS argues that a reasonable jury could not find that TCS received a $140 million benefit by incorporating Epic's confidential information and trade secrets into what TCS characterizes as a "stale marketing document."

Unjust enrichment damages are available as a remedy for a defendant's misappropriation of trade secrets, Wis. Stat. § 134.90, and are also available as a remedy for Wisconsin tort claims, *see Pro-Pac, Inc. v. WOW Logistics Co.*, 721 F.3d 781, 786 (7th Cir. 2013). An action for recovery seeking unjust enrichment damages 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." *Watts v. Watts*, 137 Wis.2d 506, 405 N.W.2d 303, 313 (1987).

Because the recovery of unjust enrichment damages is grounded in equitable principles, Wisconsin law limits the measure of unjust enrichment damages to the value of the "benefit conferred upon the defendant." *Mgmt. Comput. Servs., Inc. v. Hawkins, Ash, Baptie & Co.*, 206 Wis.2d 158, 557 N.W.2d 67, 79–80 (1996); *cf. Halverson v. River Falls Youth Hockey Ass'n*, 226 Wis.2d 105, 593 N.W.2d 895, 900 (Wis. Ct. App. 1999) ("Making improvements alone does not prove the [defendant] received any benefit from them."). Unjust enrichment damages must be proven with reasonable certainty, *Mgmt. Comput. Servs.*, 557 N.W.2d at 80, and any costs the plaintiff may have incurred are "generally irrelevant," *Lindquist Ford, Inc. v. Middleton Motors, Inc.*, 557 F.3d 469, 477 (7th Cir. 2009).

But the reasonable value of the benefit conferred on a defendant can be measured in a variety of ways. In ordinary unjust enrichment cases involving money or services, the amount of recovery "is the amount of money advanced or the reasonable value of the services rendered." *Shulse v. City of Mayville*, 223 Wis. 624, 271 N.W. 643, 647 (1937). In other cases, a benefit is conferred under circumstances in which the "benefactor reasonably believes that he will be paid," so the benefactor may be entitled to receive damages equaling "the market value of the benefit." *Cosgrove v. Bartolotta*, 150 F.3d 729, 734 (7th Cir. 1998). And the Restatement of Restitution and Unjust Enrichment—which Wisconsin courts treat as persuasive authority, *see, e.g.*, *Buckett v. Jante*, 316 Wis.2d 804, 767 N.W.2d 376, 382–83 (Wis. Ct. App. 2009)—provides many examples of how to calculate the benefit conferred on a defendant depending on the context in which that benefit is received. *See, e.g.*, Restatement (Third) of Restitution and Unjust Enrichment § 41 (2011) (providing guidance on how to calculate the benefit conferred on the defendant in cases involving the misappropriation of financial assets).

Simply put, there is no single way to measure the benefit conferred on a defendant; the measurement is context dependent. The important considerations are that a judge or jury calculates the benefit to the defendant—not the loss to the plaintiff—and that this calculation is done with reasonable certainty. *See, e.g.*, *Mgmt. Comput. Servs.*, 557 N.W.2d at 80 (holding that evidence of lost profits is insufficient for a "fair and reasonable approximation of unjust enrichment damages" because "unjust enrichment is not measured by the plaintiff's loss"); *W.H. Fuller Co. v. Seater*, 226 Wis.2d 381, 595 N.W.2d 96, 100 (Wis. Ct. App. 1999) (remanding with instructions for the trial court to first determine which of the plaintiff's services the defendant actually benefited from and then determine the value of that benefit).

Following this general approach, we have noted at least one way a plaintiff may prove the amount of benefit conferred on the defendant when the case involved misappropriation of trade secrets. In *3M v. Pribyl*, we upheld the jury's liability finding concerning the defendant's misappropriation of 3M's trade secret (operating procedures and manuals). 259 F.3d 587, 595–97 (7th Cir. 2001) (applying Wisconsin trade secret law). We found in the record sufficient evidence that the defendants used the misappropriated operating procedures and manuals to gain "a significant head start in their operation." *Id.* at 596. While this trade secret was not used directly to develop a new product and was not tied to any of the defendant's specific profits, we affirmed the jury's liability verdict, and also noted that damages were awarded based on "what it would have cost the defendants to independently develop the trade secrets at issue." *Id.* at 607.

So, avoided research and development costs have been awarded when the defendants gained a significant head start in their operations.

TCS believes that avoided research and development costs are not a reasonable proxy for the benefit it received from the comparative analysis. TCS assumes that Epic could prove only that the comparative analysis was used as a "stale marketing document." Additionally, TCS argues that Britven—Epic's damages expert—made a fundamental error under Wisconsin law: he based his unjust enrichment damages on Epic's *cost* rather than TCS's *benefit*. So, TCS reasons, the damages awarded based on this calculation must fail as a matter of law.

We disagree. Calculating the benefit conferred on a defendant to determine unjust enrichment damages is a context-specific analysis. Under Wisconsin law, the jury could award avoided research and development costs based on TCS gaining a "significant head start in [its] operation." *Id.* at 596. And, viewing the evidence in the light most favorable to Epic, the jury would have a sufficient basis to award Epic $140 million in compensatory damages based on the "head start" TCS gained in development and competition. That "head start," the jury could conclude, came from TCS's use of the comparative analysis and thus the stolen information incorporated into that analysis. Furthermore, the jury could base its award on the benefit TCS received from avoided research and development costs, not the cost Epic incurred when creating the same information.

Let's turn from the legal theory that supports the jury verdict to the evidence that supports the damages award. First, Epic presented evidence that TCS stole confidential information and trade secrets from Epic's

UserWeb. Gajaram, a TCS employee, testified that he improperly obtained credentials that allowed him to view UserWeb in its entirety. Gajaram also testified that he shared his credentials with other TCS employees. Stirling Martin, Epic's senior vice president, testified that he determined TCS employees downloaded at least 1,600 unique files from UserWeb in two years. Martin confirmed that these files contained confidential information, including trade secrets.

The jury also saw slides from a TCS PowerPoint presentation showing that TCS strategized as to how it could start selling electronic-health-record software in the United States. TCS noted in this PowerPoint, however, that there were "key gaps" in Med Mantra that TCS would need to address before selling it to United States companies. In a deposition played for the jury, a TCS employee confirmed that TCS wanted to "implement" Med Mantra at Kaiser, one of Epic's biggest customers, and that he was asked to create the comparative analysis to help achieve this goal. This employee also testified that he refused to create the comparative analysis because he did not want to get in trouble for disclosing Epic's confidential information. Still, the jury saw internal emails showing that TCS found a willing participant and the comparative analysis was created.

The jury also heard Guionnet testify that TCS wanted to find a way to implement "Med Mantra, either as a whole or in modules, in the U.S." To that end, Guionnet testified that TCS worked with DaVita to develop a lab module. And the PowerPoint slides shown to the jury show that TCS—as a part of its United States entry strategy—would use DaVita "as a reference site to promote Lab Management solution[s] to Hospitals and Independent Laboratories." This lab module was a success; an email shown to the jury indicated that TCS planned on "marketing the [l]ab product as a starter immediately to position [itself] in the Provider space."

Additionally, Epic presented evidence that, based on TCS's discovery violations, would allow it to draw an adverse inference against TCS. The jury heard evidence that TCS failed to preserve proxy logs that would have indicated who accessed UserWeb and when. It also heard that TCS failed to preserve the contents of its computer hard drives. So, the jury could conclude that TCS destroyed evidence of additional downloaded documents that "contained information helpful to Epic and harmful to TCS."

The jury could conclude, based on all the evidence we've described, that TCS used Epic's stolen confidential information, including trade secrets, to create the comparative analysis. Then, the jury could infer from the evidence that the comparative analysis was used for a variety of purposes. These purposes include: attempting to sell Med Mantra to Kaiser, one of Epic's largest customers; attempting to enter the United States market and compete directly with Epic; and addressing any key gaps in Med Mantra, potentially by improving the product. These findings are bolstered by the adverse inference against TCS—an inference that would allow the jury to conclude that more documents harmful to TCS existed.

The jury could therefore find that TCS's benefit, based on TCS's use of the comparative analysis, was a "head start" in competition and development. Indeed, the evidence allowed a jury to conclude that TCS used Epic's confidential information to thoroughly evaluate what it would take to compete in a new market. In other words, a jury could conclude that TCS had a free shot—using stolen information—to determine whether it would be profitable to improve Med Mantra and implement a variety of tactics to enter the United States electronic-health-record market. Based on these intermediate findings, a jury could determine that a reasonable valuation of this benefit is the cost TCS avoided by not having to develop this information by itself.

And the jury could value that benefit—avoided research and development costs—at $140 million. Martin testified that information taken from UserWeb was incorporated into the comparative analysis. He explained that the stolen information corresponded to specific modules of Epic's software; so, Martin broke down for the jury which information, corresponding to specific modules, had been embedded in the comparative analysis. Martin then showed the jury an exhibit on which he placed a checkmark by each module of Epic's software that he believed made its way into the comparative analysis.

Britven then calculated TCS's benefit from avoiding the cost of researching and developing the stolen modules that were incorporated into the comparative analysis. He started by calculating Epic's cost in developing all of the information taken by TCS; he then reduced that number to reflect only the cost Epic incurred from developing modules incorporated into the comparative analysis. A few more reductions were made: one subtracting the costs of Epic's coding that TCS did not receive, and one reflecting the decayed value of technology over time. Britven concluded, based on this calculation, that TCS received a $200 million benefit even though "Epic incurred [$]306 million to develop those same trade secrets and confidential information."

TCS's expert, Bersin, testified about what he believed to be missing from Britven's calculation: a labor-cost reduction. He explained that Med Mantra's development team is located in India, where labor costs are 30–40% less than in the United States, where Epic developed its software. So, he reasoned, TCS's avoided research and development costs should be 30–40% less than the $200 million Britven calculated. And applying a 30% reduction to Britven's $200 million benefit value leaves you with an estimated $140 million in avoided research and development costs—the exact amount of damages awarded by the jury.

In sum, the jury had a sufficient basis to reach the $140 million "comparative analysis" compensatory award. TCS's argument to the contrary relies on the assumption that the comparative analysis was used as nothing more than a stale marketing document. But the jury was presented with evidence that would allow it to conclude the comparative analysis was not just a stale marketing document; the comparative analysis—and therefore Epic's information—was used to help TCS evaluate its United States entry strategy and potentially even address key gaps in Med Mantra by improving the product. The evidence also allowed the jury to conclude that avoided research and development costs were a reasonable valuation of the benefit TCS received from using the comparative analysis, which contained stolen information. Likewise, using avoided research and development costs as the valuation of TCS's benefit, the jury could have reached a $140 million compensatory award. Importantly, it could do so without equating Epic's development costs ($306 million, by Britven's estimate) to TCS's benefit from using Epic's information in the comparative analysis. So, we agree with the district court's decisions to uphold this damages verdict and deny TCS's motion for a new trial.

TCS's next argument concerns the punitive-damages award. But before we shift to punitive damages, we address Epic's cross-appeal of the district court's decision to vacate the jury's $100 million compensatory-damages award for TCS's "other uses" of Epic's confidential information.

B. "Other Confidential Information" Compensatory Award

The district court presented the jury with a special-verdict form that allowed it to award damages based on (a) the benefit of TCS's use of the comparative analysis and (b) the benefit of TCS's use of other confidential information. The district court included "part b" of the verdict because "there was some evidence that other confidential information was disseminated 'out beyond the specific people who discussed the comparative analysis.'"

The jury initially awarded $100 million for "the benefit of TCS's use of other confidential information" in addition to the $140 million awarded for the "benefit of TCS's use of [the] comparative analysis." But, in partially granting TCS's Rule 50 motion for judgment as a matter of law, the district court held that this $100 million award for benefits from "other information" was too speculative and was "tied to no evidence of specific use at all."

We review a district court's decision to grant judgment as a matter of law *de novo*. *Passananti v. Cook County*, 689 F.3d 655, 659 (7th Cir. 2012). "Our job is to assure that the jury had a legally sufficient evidentiary basis for its verdict." *Filipovich v. K & R Express Sys., Inc.*, 391 F.3d 859, 863 (7th Cir. 2004). In deciding a Rule 50 motion, we "construe[ ] the evidence strictly in favor of the party who prevailed before the jury" and we do not make credibility determinations or reweigh the evidence. *Passananti*, 689 F.3d at 659. Still, "a verdict supported by no evidence or a mere scintilla of evidence will not stand." *Martin v. Milwaukee County*, 904 F.3d 544, 550 (7th Cir. 2018).

The specific verdict at issue here is the jury's award of compensatory damages apart from those based on the comparative analysis. Under Wisconsin law, compensatory damages must be "proved with reasonable certainty." *Novo Indus. Corp. v. Nissen*, 30 Wis.2d 123, 140 N.W.2d 280, 284 (1966). This does not require the plaintiff to prove damages with "mathematical precision; rather, evidence of damages is sufficient if it enables the jury to make a fair and reasonable approximation." *Mgmt. Comput. Servs.*, 557 N.W.2d at 80.

Epic—to prove it was entitled to unjust enrichment damages for TCS's use of other confidential information—needed to show that TCS used confidential information that was *not* incorporated into the comparative analysis. Epic says the jury heard evidence that would allow it to conclude that other confidential information—that was not incorporated into the comparative analysis—was used to improve Med Mantra. Epic points to Guionnet's testimony, testimony that TCS assigned a Med Mantra team member to the Kaiser account, testimony about TCS's downloading of information unrelated to its work for Kaiser, and the adverse-inference jury instruction in support of this theory. Epic also points to evidence it believes the jury could have used to reasonably determine that TCS received a $100 million benefit based on its use of this alleged other confidential information. But we believe the evidence isn't enough to support the jury's $100 million award.

Let's start with Guionnet's testimony. Guionnet—a TCS manager responsible for the Kaiser account—testified that he attended a meeting where Med Mantra was presented to Kaiser executives. He left the meeting "astounded"; Med Mantra had improved significantly since the last time he had seen the software, and he "was concerned that some of the information from Kaiser had been used to improve Med Mantra." Guionnet then met with members of the Med Mantra team. A TCS employee—introduced to Guionnet as the "interface between Med Mantra" and the Kaiser team—showed Guionnet a "comparison . . . between Med Mantra and Epic." Guionnet "basically . . . knew" at that point that TCS had improperly used Epic's information.

In a portion of Guionnet's deposition played for the jury, Guionnet confirmed that he more than suspected that Epic's information was used to improve Med Mantra: "it's knowledge." He stated that Epic's "workflow, data model, functionalities, [and] test scripts" were used in Med Mantra's development. But when pressed about how he knew Epic's information was used to improve Med Mantra, Guionnet consistently responded by saying "I don't remember," "I don't remember the details," or by saying he would have to go back and look at his emails.

Guionnet then confronted TCS's president with information about TCS's misconduct. But rather than initiating an investigation, TCS's president transitioned Guionnet away from the Kaiser account and told him that if he did not transition "peacefully," he would be "put . . . in a corner" and TCS would "make [his] life miserable."

This evidence is missing something: any proof that TCS used any confidential information besides the information incorporated into the comparative analysis. Guionnet testified that he knew TCS used Epic's information to improve Med Mantra, but the evidence indicated that his knowledge came from reviewing the comparative analysis, only. And when pressed at his deposition about how he knew that Med Mantra improved, Guionnet provided nothing but a lack of memory and some general statements that Med Mantra had improved. Basically, Guionnet was unable to tie what he perceived to be Med Mantra's significant improvements to any "other information" besides the comparative analysis.

Guionnet's testimony about his meeting with the Med Mantra team does not add any support for the verdict. Guionnet testified that at this meeting, he received a detailed rundown of Med Mantra's functionality. Additionally, a TCS employee showed him a spreadsheet comparing Med Mantra to Epic's software. But this information is related to TCS's use of the comparative analysis; it has nothing to do with Epic's other confidential information. Guionnet's testimony thus supports an inference that TCS used Epic's confidential information, but only the information that was incorporated into the comparative analysis.

Epic next points to evidence that TCS assigned members of the Med Mantra team to the Kaiser account. Guionnet testified that "DV" Prasad "was a member of the Med Mantra team who was planted in [the Kaiser] organization." And in a deposition played for the jury, Prasad stated that Reddy, a senior TCS executive, asked him to prepare a presentation comparing Med Mantra and Epic. Prasad then confirmed that he "never did" prepare the presentation because he knew it was "not right." But even without Prasad's compliance, Reddy found a willing employee and created the comparative analysis.

Guionnet testified that he later caught wind that Prasad—a member of the Med Mantra team—was planted in the Kaiser organization. Guionnet attempted to get rid of Prasad immediately; the head of TCS's healthcare unit denied this request, leaving this "plant" on the Kaiser team.

This evidence, contrary to Epic's argument, has nothing to do with TCS's uses of "other information." Reddy made his intentions clear: Prasad was to use Epic's confidential information to compare Med Mantra to Epic's software before attempting to sell Med Mantra to Kaiser. This evidence shows only that Epic's confidential information made its way into the comparative analysis, which was then used as part of an overall market-entry strategy. Rather than proving that "other information" was used, this evidence simply provides additional support for the jury's compensatory-damages award for TCS's use of the comparative analysis. So again, we see no evidence tying any of Epic's other stolen confidential information to any use outside of the comparative analysis.

In another attempt to show TCS used other confidential information to improve Med Mantra, Epic points to evidence regarding TCS's laboratory module. First, Epic points to TCS's PowerPoint, which acknowledges that there were key gaps in Med Mantra that needed to be addressed. And Martin testified that TCS employees stole information regarding Epic's laboratory product, Beaker. Guionnet testified that TCS had partnered with DaVita to create its own laboratory module. This project, however, fell behind and was described as "well below average" by an independent third party. Still, an email from a TCS employee showed that TCS was "very seriously thinking" about "marketing the Lab product as a starter immediately to position [TCS] in the Provider space." TCS later licensed the DaVita laboratory module to another United States company, Quest Diagnostics.

But this is where evidence concerning Beaker ends. Epic asserts that the mere fact that TCS downloaded information about Beaker shows that "TCS used [its] confidential information and trade secret information to improve the lab product it developed for DaVita." Yet Epic fails to provide any examples of how Epic's modules or information, including the Beaker module, could be tied to uses or improvements involving the DaVita project. So, Epic presented evidence only that TCS downloaded information concerning Beaker; but it does not present evidence that TCS *actually used* this information. Without a link from this information to any use, Epic's evidence does not support a finding that TCS used "other confidential information."

Epic attempts to plug the evidentiary holes described above by pointing to the adverse-inference instruction. It's true that—given the district court's instruction—the jury heard evidence supporting an inference that TCS destroyed documents that were harmful to TCS and helpful to Epic. But even with this inference, there is still no concrete evidence showing that TCS used Epic's "other information."

Epic is thus left asking a jury to award damages based solely on speculation as to what *might* be contained in the destroyed documents. And if this type of broad adverse inference based on the destruction of evidence—standing alone—were enough to support a jury's damages verdict, a jury could hypothetically award a plaintiff any amount of damages based on any theory of liability. This would be antithetical to the purpose of adverse-inference instructions: sanctioning misconduct while *leveling* the evidentiary playing field. *See Silvestri v. General Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001).

To be clear, evidence supporting an adverse inference, combined with other relevant circumstantial evidence, may be a sufficient evidentiary basis for a jury's verdict. *See Aspen Tech., Inc. v. M3 Tech., Inc.*, 569 F. App'x 259, 266 (5th Cir. 2014) (finding the jury had a legally sufficient basis for its verdict based on circumstantial evidence and two adverse-inference instructions); *cf. Kronisch v. United States*, 150 F.3d 112, 128 (2d Cir. 1998) ("[A]t the margin, where the innocent party has produced some (not insubstantial) evidence in support of his claim, the intentional destruction of relevant evidence ... may push a claim that might not otherwise survive summary judgment over the line."). But the destruction of evidence—by itself—is insufficient to support a jury's verdict as a matter of law. *Cf. Kronisch*, 150 F.3d at 128 ("We do not suggest that the destruction of evidence, standing alone, is enough to allow a party who has produced no evidence—or utterly inadequate evidence—in support of a given claim to survive summary judgment on that claim."). *See generally HK Sys., Inc. v. Eaton Corp.*, 553 F.3d 1086, 1088 (7th Cir. 2009) (noting that the standard is the same for summary judgment and for judgment as a matter of law).

So, if Epic were truly using the adverse inference to plug evidentiary holes, this verdict might survive. But the other evidence on which Epic relies provides "utterly inadequate" support for a finding that TCS used confidential information apart from that incorporated into the comparative analysis. *Kronisch,* 150

F.3d at 128. As a result, Epic seeks to use the adverse inference not just to plug evidentiary holes but to hold all the water for a finding that TCS used other confidential information. But Epic cannot rely on an adverse inference to do so much.

In sum, Epic has not provided more than a mere scintilla of evidence in support of its theory that TCS used any of its other confidential information. This portion of the jury's damages award cannot stand. With compensatory damages sorted out, we now turn to punitive damages.

C. Punitive Damages

In addition to the $240 million awarded in compensatory damages, the jury initially awarded Epic $700 million in punitive damages. The district court cut that award to $280 million based on a Wisconsin law capping statutory damages at two times the amount of compensatory damages, Wis. Stat. § 895.043(6).[3] The district court then denied TCS's renewed motion for judgment as a matter of law under Rule 50(b) and TCS's motion for a new trial under Rule 59; the court accordingly left the $280 million punitive-damages award intact, reasoning in part that its decision to vacate the jury's $100 million compensatory award for use of "other information" did not affect the jury's punitive damages verdict.

Whether the district court erred in denying TCS's Rule 50 motion is a question of law that we review *de novo*. *Valdivia v. Twp. High Sch. Dist. 214*, 942 F.3d 395, 396 (7th Cir. 2019). In reviewing this decision,

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[3] Recall that the district court also reduced the compensatory award by $100 million, leaving $140 million in compensatory damages and $280 million in punitive damages.

"[w]e view the facts and evidence in the light most favorable to [Epic], as the litigant who prevailed before the jury." *Id.* To the extent TCS asked the district court for a new trial regarding punitive damages under Rule 59, we review the district court's decision to deny this motion for an abuse of discretion. *Abellan*, 948 F.3d at 830. And because the punitive damages stand on Wisconsin causes of action, the punitive-damages award must be consistent with Wisconsin law. *See Kapelanski*, 390 F.3d at 534.

TCS presents four arguments challenging the $280 million punitive-damages award: First, TCS argues that, to receive punitive damages under Wisconsin law, the plaintiff must prove an actual injury—which Epic did not do. Second, TCS argues that the punitive-damages award here must be set aside because it may have been based on a claim that cannot support punitive damages as a matter of law. Third, TCS argues that the punitive-damages award must be vacated and retried in light of the district court's decision to vacate the $100 million compensatory-damages award. Finally, TCS argues the punitive-damages award is constitutionally excessive. We take each in turn.

1. "Actual Injury" Requirement

TCS argues that the punitive-damages award fails as a matter of law because Epic failed to prove an "actual injury." TCS contends that under Wisconsin law, an actual injury and a damages award reflecting redress for this injury are "threshold requirements before punitive damages may be awarded." TCS reasons that, because Epic did not suffer an actual injury and instead was awarded damages solely based on the benefit TCS received, Epic cannot receive punitive damages.

But Wisconsin law is not as exacting as TCS argues. Rather, Wisconsin law requires—for punitive damages to be awarded—the imposition of compensatory damages. TCS first cites to *Tucker v. Marcus* for the proposition that a plaintiff must prove "some actual injury *which would justify an award of actual or compensatory damages* before punitive damages may be awarded." 142 Wis.2d 425, 418 N.W.2d 818, 823 (1988) (quoting *Hanson v. Valdivia*, 51 Wis.2d 466, 187 N.W.2d 151, 155 (1971)). However, *Tucker* makes clear that the threshold requirement for punitive damages is an "'award' of actual or compensatory damages" rather than an injury to the plaintiff. *Tucker*, 418 N.W.2d at 827. In fact, the Wisconsin Supreme Court specifically held that—even though the jury found "there had been injury suffered"—"punitive damages were inappropriately allowed in this case" because the plaintiff could not recover "actual damages." *Id.* at 823.

In a more recent decision, the Wisconsin Supreme Court affirmed that compensatory damages are a sufficient predicate for punitive damages. "[W]e have held that 'where there exists a "cause of action," but the action is not one for which the *recovery of compensatory damages is justified*, punitive damages cannot be awarded.'" *Groshek v. Trewin*, 325 Wis.2d 250, 784 N.W.2d 163, 173 (2010) (emphasis added) (quoting *Tucker*, 418 N.W.2d at 824). *Groshek*, like *Tucker*, holds that the availability of punitive damages is governed by whether compensatory damages are recoverable, and not by whether an "actual injury" has been inflicted. *See Groshek*, 784 N.W.2d at 173; *cf. Tucker*, 418 N.W.2d at 830 (Heffernan, C.J., dissenting) ("Today's majority holds that [actual damages] should be defined in a manner that no punitive damages may be awarded in the absence of a recovery for compensatory damages.").

Since *Groshek*, we have further expounded on when punitive damages are appropriate under Wisconsin law. In *Pro-Pac, Inc. v. WOW Logistics Co.*, we stated that punitive damages are recoverable under Wisconsin law regardless of whether damages are based on "gain to [the defendant] (*i.e.*, restitutionary damages) or loss to [the plaintiff] (*i.e.*, compensatory damages)." 721 F.3d 781, 788 (7th Cir. 2013). This is true because Wisconsin law allows "awards of punitive damages when 'compensatory damages' are imposed," and Wisconsin defines compensatory damages to include compensation, indemnity, and restitution. *Id.*

So, TCS is incorrect that Wisconsin law requires Epic to prove an "actual injury" to obtain punitive damages. Instead, punitive damages are available when compensatory damages are imposed, as they were in this case. Epic is therefore not barred from recovering punitive damages simply because compensatory damages were awarded for TCS's benefit rather than any injury Epic sustained.

2. Claims that Support Punitive Damages

TCS next argues that the punitive-damages award must be set aside because it might have been based on one of Epic's claims that does not support punitive damages as a matter of law. Specifically, TCS points out that Epic's unjust enrichment claim does not support punitive damages, and there is no way to know—based on the generality of the jury's punitive-damages verdict—if that is the claim the jury used to support punitive damages.

We can quickly dispose of this argument. The jury was specifically instructed that it could only award punitive damages "with respect to Epic's trade secrets, fraudulent misrepresentation[,] and unfair competition claims." "Jurors are presumed to follow a court's instructions." *Seifert ex rel. Scoptur v. Balink*, 364 Wis.2d 692, 869 N.W.2d 493, 504 (Wis. Ct. App. 2015); *see also Schandelmeier-Bartels v. Chi. Park Dist.*, 634 F.3d 372, 388 (7th Cir. 2011) ("[W]e presume that juries follow the instructions they are given."). So we may presume that the jury based its punitive-damages award on these claims, and not on the unjust enrichment claim.

And Epic's claims for trade secrets, fraudulent misrepresentation, and unfair competition all allow recovery of damages on a theory of gain to the defendant. Wis. Stat. § 134.90(4) (damages for a violation of Wisconsin's trade secrets act include "unjust enrichment caused by the violation"); *Pro-Pac*, 721 F.3d at 786 (restitutionary damages, *i.e.* damages based on the defendant's benefit, are recoverable "as compensation for tort claims"). As discussed above, punitive damages can be awarded when compensatory damages—including damages based on a defendant's gain—are imposed. *Pro-Pac*, 721 F.3d at 788.

TCS does not dispute that Epic's trade secrets, fraudulent misrepresentation, and unfair competition claims support an award of punitive damages; in fact, it admits these claims "could support punitive damages." And because the jury was instructed to base punitive damages on these claims only, the punitive-damages award was not based on a claim that does not support punitive damages as a matter of law.

3. Conduct on which Punitive Award is Based

TCS next argues that the punitive-damages award must be vacated and retried in light of the district court's decision—which we affirm—to vacate the $100 million damages award for TCS's uses of other confidential information. TCS argues that when the jury determined punitive damages, it had in mind a broader range of conduct "than was legally sustainable." And because we cannot know whether the jury's punitive-damages decision was based on "a permissible or impermissible claim or theory," we must vacate the punitive award and remand for the issue to be retried.

But this argument fundamentally misunderstands punitive damages. Punitive damages are imposed to "punish[ ] unlawful *conduct* and deter[ ] its repetition." *Trinity Evangelical Lutheran Church v. Tower Ins. Co.*, 261 Wis.2d 333, 661 N.W.2d 789, 798 (2003) (emphasis added); *see also Kemezy v. Peters*, 79 F.3d 33, 34 (7th Cir. 1996) ("The standard judicial formulation of the purpose of punitive damages is that it is to punish the defendant for reprehensible conduct and to deter [the defendant] and others from engaging in similar conduct."). Stated differently, punitive damages are based on the defendant's conduct underlying a plaintiff's claims, not on the claims themselves.

And the cases TCS cites in support of its argument provide further support for this understanding of punitive damages. Take *Robertson Oil Co. v. Phillips Petroleum Co.*, 871 F.2d 1368 (8th Cir. 1989), as an example. The jury in that case found Phillips Petroleum liable for fraud, breach of the duty of good faith and fair dealing, tortious interference, and negligence. *Id.* at 1370. The jury also awarded Robertson Oil punitive damages. *Id.* But on appeal, the Eighth Circuit affirmed only the theory of tortious interference with a business relationship. *Id.* at 1375. And Phillips's conduct "relevant to an award of punitive damages necessarily differ[ed] according to the various theories of liability on which the jury based its verdict." *Id.* at 1376. So, because the court could not "ascertain what conduct of Phillips was determined by the jury to merit punitive damages," the Eighth Circuit ordered the district court to retry punitive damages. *Id.*

The Eighth Circuit in *Robertson Oil* did not require a retrial of punitive damages simply because it found that some of the theories of liability failed as a matter of law. Instead, the emphasis was on the *conduct* underlying these theories. Because the court could not be sure which of Phillips's conduct led the jury to believe punitive damages were necessary, and some of that conduct did not warrant damages as a matter of law, a new trial was necessary. This understanding of punitive damages holds true throughout the cases TCS cites in support of its argument. *See, e.g.*, *CGB Occupational Therapy, Inc. v. RHA Health Servs. Inc.*, 357 F.3d 375, 390 (3d Cir. 2004) (reversing punitive damages because it was unclear which act of tortious interference formed the basis of punitive damages when the plaintiff interfered with two distinct contracts); *Marrero v. Goya of P.R., Inc.*, 304 F.3d 7, 30 (1st Cir. 2002) (affirming a harassment claim, reversing a retaliation claim because there was no evidence of an adverse personnel action, and requiring a new trial on punitive damages because the court could not be sure if punitive damages were based on the erroneous retaliation finding).

So, a punitive-damages award requires a new trial only when (1) the claims of liability supporting punitive damages are based on different underlying conduct by the defendant, and (2) one of those claims (and therefore the conduct underlying that claim) is found to be unsupported as a matter of law. TCS argues that different conduct underlies the two separate compensatory-damages awards, and we cannot know which conduct led the jury to award punitive damages.

But the conduct underlying both compensatory-damages awards was the same. One compensatory-damages award was based on the "benefit of TCS's use of [the] comparative analysis" and the other was based on the "benefit of TCS's use of other confidential information." The key distinction between these two compensatory awards is *information*, not conduct. By awarding damages for TCS's uses of "other confidential information," the jury did not have to find any uses—or any conduct—that differed from the uses and conduct underlying the comparative-analysis portion of the compensatory award. Based on reasonable inferences drawn in Epic's favor, a jury could conclude that TCS used the comparative analysis (and therefore Epic's information incorporated into that analysis) to improve its marketing strategy, to try to enter the United States market, and to generally improve Med Mantra before attempting to sell it to Kaiser. And these are the only uses that can be found in the record; TCS does not point us to a single use of Epic's information that is not also a use that the jury could reasonably infer stemmed from the comparative analysis.

So, the overall conduct underlying these two verdicts is the same. TCS stole thousands of Epic's documents, lied about it, covered it up, and used Epic's information in a variety of ways. This course of conduct is the same regardless of whether the jury incorrectly found that this course of conduct included the use of a few more pieces of Epic's information. Whether the jury found that TCS received an additional benefit based on other confidential information does not affect the jury's assessment of TCS's overall conduct. So, our determination that TCS did not use "other confidential information" does not disturb the jury's punitive-damages award.

4. Constitutionality of the Punitive-Damages Award

TCS finally argues that the punitive-damages award of $280 million violates its due process rights under the federal constitution and Wisconsin law. We review these questions *de novo*. *Rainey v. Taylor*, 941 F.3d 243, 254 (7th Cir. 2019); *Trinity Evangelical Lutheran Church*, 661 N.W.2d at 799.

The Due Process Clause of the Fourteenth Amendment imposes constitutional limitations on punitive damages. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416–17, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003). Punitive damages may be imposed to further a state's legitimate interests in imposing punishment for and deterring illegal conduct, but punitive damages violate due process when the award is "'grossly excessive' in relation to these interests." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996). The Supreme Court, in testing awards of punitive damages for compliance with due process, has established three "guideposts": "(1) the reprehensibility of the defendant's conduct; (2) the disparity between the actual harm suffered and the punitive award; and (3) the difference between the award authorized by the jury and the penalties imposed in comparable cases." *Rainey*, 941 F.3d at 254 (citing *Gore*, 517 U.S. at 575, 116 S.Ct. 1589). Wisconsin courts apply a "virtually identical test." *Trinity Evangelical Lutheran Church*, 661 N.W.2d at 800.[4]

The Supreme Court's first guidepost—reprehensibility of the defendant's conduct—is the most important. *Gore,* 517 U.S. at 575, 116 S.Ct. 1589. In determining the reprehensibility of the defendant's conduct, we consider five factors: whether

> the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.

Campbell, 538 U.S. at 419, 123 S.Ct. 1513. If none of these factors weigh in favor of the plaintiff, the award is "suspect." *Id.* And even if one factor weighs in the plaintiff's favor, that may not be enough to sustain the punitive award. *Id.* And finally, since a plaintiff is presumed to be made whole by the compensatory award, punitive damages should be awarded only if the defendant's conduct is "so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence." *Id.*

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[4] Wisconsin courts consider the factors most relevant to the case at hand, with those factors coming from the following list: (1) the grievousness of the acts, (2) the degree of malicious intent, (3) whether the award bears a reasonable relationship to the award of compensatory damages, (4) the potential damage that might have been caused by the act, (5) the ration of the award to civil or criminal penalties that could be imposed for comparable misconduct, and (6) the wealth of the wrongdoer. *Trinity Evangelical Lutheran Church*, 661 N.W.2d at 800.

The first factor asks us to consider if the harm was physical as opposed to economic. *Id.* Conduct producing physical harm is more reprehensible than conduct producing economic harm. *See Gore*, 517 U.S. at 576, 116 S.Ct. 1589. Epic did not suffer physical harm as a result of TCS's conduct. So this factor weighs against finding TCS's conduct reprehensible.

Turning to the second factor, we do not believe that TCS's conduct evinced an indifference to or a reckless disregard of the safety of others. Epic does not attempt to persuade us otherwise. This factor also weighs against finding TCS's conduct reprehensible.

The third factor—the financial vulnerability of the target of the defendant's conduct—stands for the proposition that conduct is more reprehensible if it impacts financially vulnerable plaintiffs. *See, e.g.*, *Saccameno v. U. S. Bank Nat'l Ass'n*, 943 F.3d 1071, 1087 (7th Cir. 2019); *EEOC v. AutoZone, Inc.*, 707 F.3d 824, 839 (7th Cir. 2013). Epic, one of the largest producers of electronic-health-record software, is not financially vulnerable. This factor again weighs against finding TCS's conduct reprehensible.

Applying the fourth factor, TCS's conduct did involve a repeated course of wrongful acts. Epic presented evidence that TCS knew it lacked authority to access confidential information from UserWeb. Yet TCS employees still accessed and downloaded Epic's confidential information for years, downloading over 1,600 unique documents from UserWeb and gaining access to information that Epic specifically forbid TCS from accessing. This factor weighs in favor of finding TCS's conduct reprehensible and provides support for some award of punitive damages.

As for the last factor—whether the harm was the result of intentional malice, trickery or deceit, or mere accident—TCS argues that Epic suffered no harm. Specifically, TCS contends that because Epic was not deprived of the enjoyment of its software, did not lose business, and did not face any new competition, there could not have been any harm to Epic. But even though it is hard to quantify, Epic likely suffered a competitive harm; TCS, a potential competitor, had access to Epic's confidential information for years without Epic's knowledge. This gave TCS insight into the strengths and weaknesses of Epic's software, regardless of whether TCS was able to turn that knowledge into a direct economic harm to Epic. *Cf. United Tech. Corp. v. U.S. Dept. of Def.*, 601 F.3d 557, 564 (D.C. Cir. 2010) (discussing, for purposes of what constitutes "confidential information" under an exemption to the Freedom of Information Act, what constitutes substantial competitive harm). We can also think of at least one economic harm, albeit minor, that Epic suffered as a result of TCS's conduct. Epic, after it became aware of TCS's unlawful access to UserWeb, had to expend time and resources investigating the extent to which TCS had accessed Epic's confidential information and trade secrets.

And these harms were the result of TCS's repeated, intentional attempts to deceive Epic. *See Gore*, 517 U.S. at 576, 116 S.Ct. 1589 (noting that deceit is more reprehensible than negligence). Epic repeatedly denied Kaiser's and TCS's requests to allow TCS access to UserWeb. But TCS gained access to UserWeb through other means, using Gajaram's account, which he obtained by falsely identifying as a Kaiser employee. The jury heard testimony that Gajaram's account information was shared throughout TCS and was frequently used to download and share Epic's confidential information.

TCS employees also lied to prevent Kaiser and Epic from discovering that TCS had access to Epic's UserWeb. A TCS employee testified that his manager told him to hide the truth from investigators. This employee obeyed these instructions and lied to investigators, telling them that he had only accessed UserWeb one time when he knew he had accessed it more than once.

The harms to Epic resulted from TCS's deceitful conduct. This factor weighs in favor of finding TCS's conduct reprehensible and supports some award of punitive damages.

In sum, we agree with the district court that TCS's conduct warrants punishment. But TCS's conduct was not reprehensible "to an extreme degree." *Saccameno*, 943 F.3d at 1088. TCS caused no physical harm to Epic. TCS also did not recklessly disregard the safety of others. And Epic is not a financially vulnerable plaintiff. But TCS's conduct consisted of a repeated course of wrongful actions spanning multiple years. TCS's conduct was also intentional and deceitful, not negligent. We therefore conclude that TCS's conduct justifies punishment, though not in the amount of a $280 million punitive-damages award.

Turning to the Supreme Court's second guidepost, we analyze the ratio of punitive damages to the "harm, or potential harm" inflicted on the plaintiff. *Campbell*, 538 U.S. at 424, 123 S.Ct. 1513. In most cases, the compensatory-damages award approximates the plaintiff's harm. In those cases, identifying the ratio is straightforward: we compare compensatory and punitive-damages awards. *See, e.g.*, *Rainey*, 941 F.3d at 255. But in some cases, the jury's compensatory-damages award does not reflect the plaintiff's quantifiable harm. Still, we may account for that harm in the harm-to-punitive-damages ratio. *See Sommerfield v. Knasiak*, 967 F.3d 617, 624–25 (7th Cir. 2020).

The circumstances of this case, however, present an unusual issue in determining the amount of "harm" under this guidepost. The jury awarded $140 million in compensatory damages based on the benefit to TCS, not because of any harm suffered by Epic. This award, then, does not reflect Epic's harm. And if Epic suffered quantifiable economic harm, that harm is significantly smaller than $140 million, which would in turn drastically change the relevant ratio. If we had to quantify that harm to arrive at the appropriate ratio, applying the second due-process guidepost would pose a challenging task.

But TCS makes no argument here—and did not argue to the district court—that we should compare any number besides compensatory damages to the punitive-damages award. *See Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 718 (7th Cir. 2012) (underdeveloped arguments are waived). In fact, most of its argument under this guidepost emphasizes the size of the compensatory award as a reason the punitive-damages award violates due process. TCS has thus waived any argument that the compensatory award is the incorrect denominator in the ratio analysis. And at least one other court has compared an unjust enrichment award to the punitive-damages award under this guidepost when state law allowed punitive damages to be imposed for the underlying claim. *See Rhone-Poulenc Agro, S.A. v. DeKalb Genetics Corp.*, 272 F.3d 1335, 1351 (Fed. Cir. 2001) (concluding it is appropriate to base punitive damages on an unjust enrichment award when the defendant's gain "is logically related" to the plaintiff's "harm or potential harm"), *vacated*, 538 U.S. 974, 123 S.Ct. 1828, 155 L.Ed.2d 662 (2003), *remanded to* 345 F.3d 1366 (2003) (reaching the same result as to punitive damages). So, we will conduct the ratio analysis using the $140 million compensatory award as the denominator.

In conducting this analysis, the Supreme Court has declined to set a fixed ratio limiting punitive damages. *Campbell*, 538 U.S. at 425, 123 S.Ct. 1513 ("[T]here are no rigid benchmarks that a punitive damages award may not surpass. . . . "). The Supreme Court has, however, noted that "few awards exceeding a single-digit ratio between punitive and compensatory damages . . . will satisfy due process." *Id.*

The punitive award in this case—after the district court lowered it to comply with Wisconsin's statutory cap on punitive damages—is two times the ultimate compensatory award. Our court and Wisconsin courts have upheld significantly higher ratios. *See, e.g.*, *Rainey*, 941 F.3d at 255 (affirming a 6:1 ratio); *Mathias v. Accor Econ. Lodging, Inc.*, 347 F.3d 672, 676–78 (7th Cir. 2003) (affirming a 37:1 ratio); *Kimble v. Land Concepts, Inc.*, 353 Wis.2d 377, 845 N.W.2d 395, 412 (2014) (finding a 3:1 ratio appropriate and constitutional); *Trinity Evangelical Lutheran Church*, 661 N.W.2d at 803 (affirming a 7:1 ratio).

But the compensatory damages here are high. The Supreme Court has noted that "[w]hen compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee." *Campbell*, 538 U.S. at 425, 123 S.Ct. 1513. And the $140 million award in this case far exceeds what other courts have considered "substantial." *See Lompe v. Sunridge*

Partners, LLC, 818 F.3d 1041, 1069 (10th Cir. 2016) ("[I]n many cases, compensatory damages less than $1,000,000 have also been considered substantial."). In fact, neither party points us to any comparable cases in which any court has upheld a 2:1-or-higher ratio resulting in over $200 million in punitive damages.[5]

Many courts have instead found awards "substantial" and imposed a 1:1 ratio based on significantly lower compensatory awards. *See Saccameno*, 943 F.3d at 1090 (gathering cases where courts have imposed a 1:1 ratio when the compensatory award is less than $1 million); *cf. Estate of Moreland v. Dieter*, 395 F.3d 747, 756–57 (7th Cir. 2005) (affirming a $15 million punitive-damages award that was "a fraction of the underlying compensatory damages award" and was based on "truly reprehensible" conduct). Still, the precise award must be based on "the facts and circumstances of the defendant's conduct and the harm to the plaintiff." *Campbell*, 538 U.S. at 425, 123 S.Ct. 1513; *cf. Sommerfield*, 967 F.3d at 624–25 (noting that sanctions should be based on the wrong done rather than the defendant's wealth).

[5] Epic only cites to one case with a relatively comparable award, *Yung v. Grant Thornton, LLP*, 563 S.W.3d 22, 73 (Ky. 2018) (upholding $80 million in punitive damages, resulting in a 4:1 ratio). It's true that in *Yung*, like in this case, only the last two reprehensibility factors weighed in favor of allowing punitive damages. *Id.* at 67. But the economic harm suffered by the plaintiffs in *Yung* distinguishes that case from the circumstances here. In *Yung*, the plaintiffs suffered substantial, quantifiable economic harm, including millions of dollars in taxes, interest, and fees owed to the IRS. *Id.* at 57. Here, there is hardly evidence that Epic suffered any economic harm; the compensatory award was based on TCS's benefit. And any potential future economic harm has not been quantified.

The facts and circumstances of this case do not justify awarding $280 million in punitive damages. As noted above, three of the five reprehensibility factors weigh against the reprehensibility of TCS's conduct. TCS's conduct was reprehensible, but not to an extreme degree. *See, e.g.*, *Bridgeport Music, Inc. v. Justin Combs Publ'g*, 507 F.3d 470, 490 (6th Cir. 2007) (based on "the low level of reprehensibility of defendants' conduct, a ratio of closer to 1:1 or 2:1 is all that due process can tolerate in this case"). *But see, e.g.*, *Rainey*, 941 F.3d at 255 ("the truly egregious nature" of the defendant's acts of sexual objectification and assault justified "the size of [the] punitive award even with [a] significant compensatory award"); *Mathias*, 347 F.3d at 675–78 (affirming a 37:1 ratio in part because the motel company refused to have bed bugs in hotel rooms exterminated when it was aware of the risk to its customers).

And although TCS's actions did harm Epic, that harm does not support the size of the punitive-damages award. *Cf. Rainey*, 941 F.3d at 254–55 (affirming a punitive-damages award six times larger than the $1.13 million compensatory award in part because the plaintiff suffered "pain and humiliation" as a result of the defendant's groping and acts of sexual objectification); *In re Exxon Valdez*, 472 F.3d 600, 623–25 (9th Cir. 2006), *amended* 490 F.3d 1066, (reducing punitive damages to $2.5 billion, reflecting a 5:1 ratio with compensatory damages, where the plaintiff caused severe economic harm and emotional harm to thousands of people by spilling 11 million gallons of crude oil into United States waters).

We therefore conclude—based on the substantial compensatory award and the circumstances of this case—that a 2:1 ratio exceeds the outermost limit of the due process guarantee. *See Campbell*, 538 U.S. at 425, 123 S.Ct. 1513. Instead, the ratio relative to the $140 million compensatory award should not exceed 1:1.

We now turn to the final guidepost: the difference between the punitive award authorized by the jury and civil penalties imposed in comparable cases. Although "this guidepost generally deserves less weight than the other two," *Rainey*, 941 F.3d at 255, it serves an important purpose: to "allow[ ] courts to show 'substantial deference to legislative judgments concerning appropriate sanctions for the conduct at issue.'" *AutoZone*, 707 F.3d at 840 (7th Cir. 2013) (quoting *Gore*, 517 U.S. at 583, 116 S.Ct. 1589).

TCS has made no argument about this guidepost and has thus waived any argument that it points toward the award being unconstitutional. Although TCS has not pointed us to a single relevant civil penalty for comparison, we recognize that both the $280 million award the district court entered, and a $140 million award that would reflect a 1:1 ratio, comply with Wisconsin's statutory cap on punitive damages. That cap is one indication of what the Wisconsin legislature has judged to be an inappropriate sanction for reprehensible conduct: any punitive award exceeding a 2:1 ratio is inappropriate. Wis. Stat. § 895.043(6); *see AutoZone*, 707 F.3d at 840 ("We recognize that this statutory cap suggests that an award of damages at the capped maximum is not outlandish."). So, the final guidepost does not point toward a $280 million or $140 million punitive-damages award being unconstitutional.

In sum, we conclude that the federal constitution prohibits a punitive-damages award here exceeding a 1:1 ratio with the $140 million compensatory award.

And TCS only mentions Wisconsin law to point out that Wisconsin courts apply a test substantively identical to the federal test analyzed above. So, TCS has waived any argument that Wisconsin law might produce a different result. We therefore remand for the district court to amend its judgment and reduce punitive damages to, at most, $140 million.

III. CONCLUSION

The jury heard plenty of evidence that TCS stole Epic's confidential information and incorporated it into a comparative-analysis spreadsheet. And, drawing all inferences in favor of Epic, the jury could conclude that TCS used the comparative analysis for a variety of purposes, including the improvement of Med Mantra. However, the jury did not hear any evidence that would allow it to infer that any of Epic's other information was used by TCS.

Pursuant to the reasoning set forth above, the judgment of the district court upholding the jury's $140 million compensatory-damages award connected to the comparative analysis is AFFIRMED; and, the judgment of the district court vacating the jury's $100 million compensatory damages award for TCS's use of other information is also AFFIRMED.

Further, the judgment of the district court awarding $280 million in punitive damage is VACATED as it exceeds the outermost limit of the Due Process guarantee in the Constitution; and, the issue of the amount of punitive damages is REMANDED with instruction to the district court to reduce the punitive-damages award consistent with the analysis in this opinion.

APPENDIX C

United States Court of Appeals, Seventh Circuit.

Nos. 19-1528 & 19-1613

EPIC SYSTEMS CORP.,

Plaintiff / Counterclaim Defendant-Appellee / Cross-Appellant,

v.

TATA CONSULTANCY SERVICES LTD. & Tata America International Corp. d/b/a TCS America,

Defendants / Counterclaim Plaintiffs-Appellants / Cross-Appellees.

Argued January 16, 2020
Decided August 20, 2020
Amended November 19, 2020

Rehearing and Rehearing En Banc Denied
November 19, 2020 and November 30, 2020

Opinion

Kanne, Circuit Judge.

Without permission from Epic Systems, Tata Consultancy Services ("TCS")[1] downloaded, from 2012

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[1] Tata Consultancy Services Limited is an Indian company; Tata America International Corp. is a New York corporation that

to 2014, thousands of documents containing Epic's confidential information and trade secrets. TCS used some of this information to create a "comparative analysis"—a spreadsheet comparing TCS's health-record software (called "Med Mantra") to Epic's software. TCS's internal communications show that TCS used this spreadsheet in an attempt to enter the United States health-record-software market, steal Epic's client, and address key gaps in TCS's own Med Mantra software.

Epic sued TCS, alleging that TCS unlawfully accessed and used Epic's confidential information and trade secrets. A jury ruled in Epic's favor on all claims, including multiple Wisconsin tort claims. The jury then awarded Epic $140 million in compensatory damages, for the benefit TCS received from using the comparative-analysis spreadsheet; $100 million for the benefit TCS received from using Epic's other confidential information; and $700 million in punitive damages for TCS's conduct.

Ruling on TCS's motions for judgment as a matter of law, the district court upheld the $140 million compensatory award and vacated the $100 million award. It then reduced the punitive-damages award to $280 million, reflecting Wisconsin's statutory punitive-damages cap. Both parties appealed different aspects of the district court's rulings.

We agree with the district court that there is sufficient evidence for the jury's $140 million verdict based on TCS's use of the comparative analysis, but not for the $100 million verdict for uses of "other information." We also agree with the district court that

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is wholly owned by Tata Consultancy Services. We refer to these companies collectively as "TCS."

the jury could punish TCS by imposing punitive damages. But the $280 million punitive-damages award is constitutionally excessive, so we remand to the district court with instructions to reduce the punitive-damages award.

I. Background

Epic Systems is a leading developer of electronic-health-record software. This software aims to improve patients' quality of care by keeping relevant information about patients—like patient schedules and billing records—in a central location. Epic provides versions of this software to some of the top hospitals in the United States. Each customer licenses from Epic software applications (modules) to fit the customer's specific needs. The customer can then customize the software to ensure it operates properly within the customer's organizational structure.

The complexity of Epic's health-record system requires Epic's customers to consistently update and test their systems. To facilitate this process, Epic provides its customers with access to a web portal called "UserWeb." UserWeb provides various resources—including administrative guides, training materials, and software updates—and it also supplies an online forum where Epic's customers can share information.

Along with these helpful resources, UserWeb contains confidential information about Epic's health-record software. To protect this information, Epic restricts who can access the UserWeb portal. Epic's customers, who have access, are required to maintain the confidentiality of this information, and they are expected to allow specific individuals access to this sensitive information on a "need-to-know" basis only.

To guard this confidentiality, Epic allows only credentialed users to access UserWeb; to get credentialed, users must prove they are either a customer or a consultant. Customers get access to all features and documents related to the modules they license from Epic. Consultants—who are hired by customers to implement and test Epic's software—cannot access features like the discussion forum and training materials.

In 2003, Kaiser Permanente—the largest managed-healthcare organization in the United States—obtained a license from Epic to use KP HealthConnect, a Kaiser-specific version of Epic's electronic-health-record software. Because of Kaiser's size, implementation of KP HealthConnect is highly complex; testing and tweaking it after each update is complicated and time consuming.

For help with these tasks, Kaiser hired TCS in 2011. TCS provides information-technology services, like software testing and consulting, on a global basis. But TCS also has its own electronic-health-record software, Med Mantra, which at the time was predominately sold in India.

Epic was aware of this conflict of interest and was concerned about TCS's relationship with Kaiser. Still, Kaiser used TCS to test KP HealthConnect. But to fulfill its obligation of confidentiality to Epic, Kaiser imposed rules for TCS to follow while working on Kaiser's account.

First, TCS was required to perform all services related to KP HealthConnect at Kaiser offices in the United States or offshore development centers—approved facilities outside the United States.

Second, TCS was required to follow strict security protocols at the offshore development centers. Desktop computers used to work on KP HealthConnect could be used only for Kaiser-related work. To ensure these computers could not access the internet or TCS's email system, a firewall was installed. Other computers at the offshore facilities could access TCS's network and email system but were not allowed to access KP HealthConnect material.

TCS, while operating under these strict requirements, provided testing and support services to Kaiser. But TCS employees claimed they could perform the required tasks more efficiently if they had full access to UserWeb. Kaiser repeatedly asked Epic to grant TCS this access; Epic repeatedly declined to do so.

Unsatisfied with this lack of access, in late 2011, TCS found a way to gain unfettered access to all the information available on UserWeb: the key was Ramesh Gajaram. TCS hired Gajaram to work on the Kaiser account from an offshore development center in Chennai, India. Before working for TCS, Gajaram worked for a different company that also helped Kaiser test KP HealthConnect. While working for that company, Gajaram falsely identified himself to Epic as a Kaiser employee, and Epic granted Gajaram full access to UserWeb.

Gajaram informed his superior at TCS, Mukesh Kumar, that he still had access to UserWeb. At Kumar's request, Gajaram accessed the UserWeb portal. Gajaram also shared his login credentials with other employees at the Chennai offshore development center. A few years later, Gajaram transferred to TCS's Portland, Oregon office; he again shared his UserWeb login credentials with at least one other TCS employee.

Thanks to Gajaram's actions, dozens of TCS employees gained unauthorized access to UserWeb. And from 2012 to 2014, TCS employees accessed UserWeb thousands of times and downloaded over 6,000 documents (1,600 unique documents) totaling over 150,000 pages. These documents contained Epic's confidential information, including some of its trade secrets. And not all of this information related to TCS's work for Kaiser; employees downloaded information related to a medical-laboratory module that Kaiser does not license from Epic.

This unauthorized access came to light in early 2014, when Philip Guionnet, a TCS employee, attended meetings concerning the Med Mantra software. At the first meeting, Guionnet observed a demonstration of Med Mantra for Kaiser executives. Guionnet was "astounded"; he had seen Med Mantra several times before and believed the software had dramatically improved.

After this meeting, Guionnet was concerned that "some of the information from Kaiser had been used to improve Med Mantra." So, Guionnet visited the Med Mantra product development team. During his visit, a TCS employee showed Guionnet a spreadsheet that compared Med Mantra to Epic's electronic-health-record software. The spreadsheet compared, in some detail, the functionalities of the two products. Guionnet believed this spreadsheet confirmed his suspicion that information regarding Kaiser's version of Epic's software had been used to improve Med Mantra. Guionnet then asked for a copy of this spreadsheet. What he received instead was a less-detailed document referred to as the "comparative analysis."

The comparative analysis—a key document in this appeal—was created as a part of TCS's effort to see if it could sell Med Mantra in the United States. Specifically, TCS wanted to sell Med Mantra directly to Kaiser, who was using Epic's software, and wanted to be sure that "key gaps" in Med Mantra were addressed before this attempted sale. So, TCS gave a consultant from the Med Mantra team the task of creating a comparison between Med Mantra and Epic's software. In doing so, this employee worked with "Subject Matter Experts"—employees who had experience with Epic's software—and created the comparative analysis that was ultimately sent to Guionnet.

The comparative analysis is an 11-page spreadsheet that compares Med Mantra to Epic's software. The first page lists 33 modules, and it notes whether the module is available in Med Mantra and Epic's software; the next 10 pages list Med Mantra's functions and note whether Epic's software contains the same functions. Multiple TCS employees confirmed that the information used in this comparative analysis is not publicly available.[2]

Guionnet—after attending these meetings and viewing the comparative analysis—reported his concerns in June 2014 to TCS, Kaiser, and Epic employees. Epic and Kaiser immediately investigated Guionnet's claim and discovered that TCS employees had gained unauthorized access to UserWeb. But TCS employees were less than forthcoming during Kaiser's investigation; multiple TCS employees lied to investigators about TCS's access to UserWeb.

A few months later, Epic filed suit against TCS, alleging that TCS used fraudulent means to access and steal Epic's trade secrets and other confidential information. During a contentious year-and-a-half discovery process, Epic learned that TCS had failed to

[2] In fact, TCS was barred from arguing that the comparative analysis was created from information in publicly available sources because it failed to "direct the court to *any* evidence that the comparative analysis was created from such sources."

preserve relevant evidence. The district court sanctioned TCS for its discovery failures by ultimately providing the jury with an adverse-inference instruction:

> If you find by a preponderance of the evidence that Epic has proven TCS both: (1) intentionally destroyed evidence (or intentionally caused evidence to be destroyed), and (2) caused the evidence to be destroyed in bad faith, then you may assume that this evidence contained information helpful to Epic and harmful to TCS.

The district court bifurcated proceedings into a liability phase and a damages phase. The liability phase began in April 2016. The jury returned a verdict in favor of Epic on all claims, including those under Wisconsin law for breach of contract, fraudulent misrepresentation, misappropriation of trade secrets, unfair competition, deprivation of property, and unjust enrichment.

Before the damages phase of trial, Epic presented the district court with evidence it sought to present to the jury regarding the benefit TCS received by using Epic's confidential information and trade secrets. Epic's expert, Thomas Britven, initially based his damages calculation on costs Epic incurred developing the modules underlying *all* the documents TCS stole. But the district court concluded that the evidence did not support Epic's broad claims of the use to which TCS put the stolen information. The district court accordingly rejected Epic's initial damages proffer but gave Epic another opportunity to present evidence of TCS's uses of the stolen information and the value of those uses to TCS.

Epic went back to the drawing board and returned to the district court with a new, more limited theory of damages. Britven based his new calculation on only the confidential information and trade secrets that were incorporated into the comparative analysis spreadsheet. This calculation still used a proxy for the benefit TCS received: the costs Epic incurred in developing these specific software modules—accounting for coding costs that did not benefit TCS and technology decay over time. The district court accepted this "ratchet[ed] back" damages theory, noting the new calculation "more approximates what was actually received and apparently used by [TCS] both in the comparative model but also what were ongoing discussions by marketing people within [TCS]."

During the damages trial, Epic presented two witnesses: Stirling Martin and Britven. Martin used a chart that both identified which Epic modules were reflected in TCS's downloads and identified, with a checkmark, which of these modules were reflected in the comparative analysis. Martin testified about what stolen information was incorporated into the comparative analysis. Britven then presented a calculation of the value TCS received by avoiding research and development costs they would have incurred without the stolen information. First, Britven identified how much it cost Epic to develop the modules related to the trade secrets and confidential information that made their way into the comparative analysis. Then, Britven adjusted this number based on certain coding costs (which conferred no benefit on TCS) and the decay in the value of technology over time. He reached an approximate benefit to TCS of about $200 million.

TCS called its damages expert—Brent Bersin—to testify about the value of the benefit TCS received related to the comparative analysis. Bersin testified that Epic was not entitled to an award of economic damages, but he also testified that Britven incorrectly calculated the damages. Specifically, Bersin pointed out that Britven's calculation failed to account for reduced labor costs in India; TCS could pay its India-based engineers about 30% to 40% less than Epic would have to pay its engineers to develop the same software.

At the end of the damages trial, the district court gave the jury a special-verdict form concerning compensatory damages. The jury was asked to determine the amount of damages, if any, to which Epic was entitled based on (a) the "Benefit of TCS's Use of [the] Comparative Analysis," and (b) the "Benefit of TCS's Use of Other Confidential Information." The jury was also asked to determine whether Epic should be awarded punitive damages, and if so, in what amount.

The jury returned a $940 million total damages award: $140 million for uses of the comparative analysis, $100 million for uses of "other" confidential information, and $700 million in punitive damages. The district court entered an injunction prohibiting TCS from using, possessing, or retaining any of Epic's trade secrets or confidential information.

The court then addressed several post-trial motions, including TCS's three motions for judgment as a matter of law on liability and damages. Fed. R. Civ. P. 50(a). The district court upheld the jury's liability verdict and its $140 million compensatory-damages award based on TCS's uses of the comparative analysis, which contained Epic's information. But the district court struck the $100 million compensatory award for "other uses" of Epic's confidential information and also reduced the punitive-damages award to $280 million based on a Wisconsin statutory cap on punitive damages. *See* Wis. Stat. § 895.043(6).

TCS then filed a post-judgment motion under Rules 50(b) and 59, again seeking judgment as a matter of law, or in the alternative, a new trial. But this motion "largely repeat[ed] the same arguments previously raised in [TCS's] Rule 50(a) motion." The district court denied this new motion, leaving intact the $140 million compensatory award based on the comparative analysis. It also upheld the previously reduced $280 million punitive-damages award, noting that its prior decision to vacate part of the compensatory-damages award "does not undermine the jury's award of punitive damages."

II. Analysis

Both parties appealed different aspects of the district court's post-trial rulings. TCS challenges the district court's decision to leave intact the $140 million compensatory award related to the comparative analysis. TCS also challenges the district court's punitive damages decisions. On cross-appeal, Epic challenges the district court's decision to vacate the $100 million compensatory award based on "other uses" of Epic's confidential information.

We first note what law applies to these appeals. Jurisdiction in this case is based on diversity of citizenship and a federal question (with supplemental jurisdiction over the state-law claims). When hearing state-law claims that arise under diversity jurisdiction, 28 U.S.C. § 1332, or supplemental jurisdiction, *id.* § 1367, federal courts are "obliged to follow state decisional law, as well as all other state law." *Houben v. Telular Corp.*, 309 F.3d 1028, 1032 (7th Cir. 2002). And when a federal jury awards compensatory damages based on a state-law claim, state law applies to our review of that damages award. *Kaiser v. Johnson & Johnson*, 947 F.3d 996, 1019 (7th Cir. 2020).

Similarly, when state law provides the basis for liability, the punitive-damages award must be consistent with state law. *See Kapelanski v. Johnson*, 390 F.3d 525, 534 (7th Cir. 2004).

Epic's damages award for unjust enrichment was based on its claims under Wisconsin law for misappropriation of its trade secrets and confidential information. And its award of punitive damages had to be based on Epic's Wisconsin law "trade secrets, fraudulent misrepresentation[,] and unfair competition claims."

Wisconsin law therefore applies to the parties' substantive challenges of these damages awards. With that in mind, we address the parties' challenges to the district court's decisions regarding compensatory damages. We then turn to TCS's arguments concerning punitive damages.

A. "Comparative Analysis" Compensatory Award

The jury awarded Epic $140 million in compensatory damages based on the benefit TCS derived from using the comparative analysis, which contained some of Epic's confidential information. The district court upheld this award on two occasions: first, when ruling on TCS's post-trial motion for judgment as a matter of law, Fed. R. Civ. P. 50(a); and second, when ruling on TCS's renewed motion for judgment as a matter of law, *id.* 50(b), and motion for a new trial, *id.* 59.

We review a district court's denial of a motion for judgment as a matter of law *de novo*. *Empress Casino Joliet Corp. v. Balmoral Racing Club, Inc.*, 831 F.3d 815, 822 (7th Cir. 2016); *see also Abellan v. Lavelo Prop. Mgmt., LLC*, 948 F.3d 820, 827 (7th Cir. 2020) (applying Rule 50 and reviewing the district court's decision *de novo* when state substantive law applied).

"Thus, like the district court, we decide whether the jury had 'a legally sufficient evidentiary basis' for its verdict." *May v. Chrysler Grp., LLC*, 716 F.3d 963, 971 (7th Cir. 2013) (per curiam) (quoting Fed. R. Civ. P. 50(a)(1)). In doing so, we construe all evidence in the record—and inferences that can be reasonably drawn from that evidence—in favor of the party that prevailed at trial on the issue; that party here is Epic. *May*, 716 F.3d at 971. This is a high burden for the moving party to satisfy: we reverse the verdict "only if no rational jury could have found in [Epic's] favor." *Andy Mohr Truck Ctr., Inc. v. Volvo Trucks N. Am.*, 869 F.3d 598, 602 (7th Cir. 2017). Additionally, we review a district court's denial of a motion for a new trial under Rule 59 for an abuse of discretion. *Abellan*, 948 F.3d at 830.

TCS argues it is entitled to judgment as a matter of law on this compensatory-damages award because there is no logical connection between the basis for liability and the jury's damages verdict. Specifically, TCS argues that a reasonable jury could not find that TCS received a $140 million benefit by incorporating Epic's confidential information and trade secrets into what TCS characterizes as a "stale marketing document."

Unjust enrichment damages are available as a remedy for a defendant's misappropriation of trade secrets, Wis. Stat. § 134.90, and are also available as a remedy for Wisconsin tort claims, *see Pro-Pac, Inc. v. WOW Logistics Co.*, 721 F.3d 781, 786 (7th Cir. 2013). An action for recovery seeking unjust enrichment damages 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." *Watts v. Watts*, 137 Wis.2d 506, 405 N.W.2d 303, 313 (1987).

Because the recovery of unjust enrichment damages is grounded in equitable principles, Wisconsin law limits the measure of unjust enrichment damages to the value of the "benefit conferred upon the defendant." *Mgmt. Comput. Servs., Inc. v. Hawkins, Ash, Baptie & Co.*, 206 Wis.2d 158, 557 N.W.2d 67, 79–80 (1996); *cf. Halverson v. River Falls Youth Hockey Ass'n*, 226 Wis.2d 105, 593 N.W.2d 895, 900 (Ct. App. 1999) ("Making improvements alone does not prove the [defendant] received any benefit from them."). Unjust enrichment damages must be proven with reasonable certainty, *Mgmt. Comput. Servs.*, 557 N.W.2d at 80, and any costs the plaintiff may have incurred are "generally irrelevant," *Lindquist Ford, Inc. v. Middleton Motors, Inc.*, 557 F.3d 469, 477 (7th Cir. 2009).

But the reasonable value of the benefit conferred on a defendant can be measured in a variety of ways. In ordinary unjust enrichment cases involving money or services, the amount of recovery "is the amount of money advanced or the reasonable value of the services rendered." *Shulse v. City of Mayville*, 223 Wis. 624, 271 N.W. 643, 647 (1937). In other cases, a benefit is conferred under circumstances in which the "benefactor reasonably believes that he will be paid," so the benefactor may be entitled to receive damages equaling "the market value of the benefit." *Cosgrove v. Bartolotta*, 150 F.3d 729, 734 (7th Cir. 1998). And the Restatement of Restitution and Unjust Enrichment—which Wisconsin courts treat as persuasive authority, *see, e.g.*, *Buckett v. Jante*, 316 Wis.2d 804, 767 N.W.2d 376, 382–83 (Ct. App. 2009)—provides many examples of how to calculate the benefit conferred on a defendant depending on the context in which that benefit is received. *See, e.g.*, Restatement (Third) of Restitution and Unjust Enrichment § 41 (2011) (providing guidance on how to calculate the benefit conferred on the defendant in cases involving the misappropriation of financial assets).

Simply put, there is no single way to measure the benefit conferred on a defendant; the measurement is context dependent. The important considerations are that a judge or jury calculates the benefit to the defendant—not the loss to the plaintiff—and that this calculation is done with reasonable certainty. *See, e.g.*, *Mgmt. Comput. Servs.*, 557 N.W.2d at 80 (holding that evidence of lost profits is insufficient for a "fair and reasonable approximation of unjust enrichment damages" because "unjust enrichment is not measured by the plaintiff's loss"); *W.H. Fuller Co. v. Seater*, 226 Wis.2d 381, 595 N.W.2d 96, 100 (Ct. App. 1999) (remanding with instructions for the trial court to first determine which of the plaintiff's services the defendant actually benefited from and then determine the value of that benefit).

Following this general approach, we have noted at least one way a plaintiff may prove the amount of benefit conferred on the defendant when the case involved misappropriation of trade secrets. In *3M v. Pribyl*, we upheld the jury's liability finding concerning the defendant's misappropriation of 3M's trade secret (operating procedures and manuals). 259 F.3d 587, 595–97 (7th Cir. 2001) (applying Wisconsin trade secret law). We found in the record sufficient evidence that the defendants used the misappropriated operating procedures and manuals to gain "a significant head start in their operation." *Id.* at 596. While this trade secret was not used directly to develop a new product and was not tied to any of the defendant's specific profits, we affirmed the jury's liability verdict, and also noted that damages were awarded based on "what it would have cost the defendants to independently develop the trade secrets at issue." *Id.* at 607.

So, avoided research and development costs have been awarded when the defendants gained a significant head start in their operations.

TCS believes that avoided research and development costs are not a reasonable proxy for the benefit it received from the comparative analysis. TCS assumes that Epic could prove only that the comparative analysis was used as a "stale marketing document." Additionally, TCS argues that Britven—Epic's damages expert—made a fundamental error under Wisconsin law: he based his unjust enrichment damages on Epic's *cost* rather than TCS's *benefit*. So, TCS reasons, the damages awarded based on this calculation must fail as a matter of law.

We disagree. Calculating the benefit conferred on a defendant to determine unjust enrichment damages is a context-specific analysis. Under Wisconsin law, the jury could award avoided research and development costs based on TCS gaining a "significant head start in [its] operation." *Id.* at 596. And, viewing the evidence in the light most favorable to Epic, the jury would have a sufficient basis to award Epic $140 million in compensatory damages based on the "head start" TCS gained in development and competition. That "head start," the jury could conclude, came from TCS's use of the comparative analysis and thus the stolen information incorporated into that analysis. Furthermore, the jury could base its award on the benefit TCS received from avoided research and development costs, not the cost Epic incurred when creating the same information.

Let's turn from the legal theory that supports the jury verdict to the evidence that supports the damages award. First, Epic presented evidence that TCS stole confidential information and trade secrets from Epic's UserWeb. Gajaram, a TCS employee, testified that he improperly obtained credentials that allowed him to view UserWeb in its entirety. Gajaram also testified that he shared his credentials with other TCS employees. Stirling Martin, Epic's senior vice president, testified that he determined TCS employees downloaded at least 1,600 unique files from UserWeb in two years. Martin confirmed that these files contained confidential information, including trade secrets.

The jury also saw slides from a TCS PowerPoint presentation showing that TCS strategized as to how it could start selling electronic-health-record software in the United States. TCS noted in this PowerPoint, however, that there were "key gaps" in Med Mantra that TCS would need to address before selling it to United States companies. In a deposition played for the jury, a TCS employee confirmed that TCS wanted to "implement" Med Mantra at Kaiser, one of Epic's biggest customers, and that he was asked to create the comparative analysis to help achieve this goal. This employee also testified that he refused to create the comparative analysis because he did not want to get in trouble for disclosing Epic's confidential information. Still, the jury saw internal emails showing that TCS found a willing participant and the comparative analysis was created.

The jury also heard Guionnet testify that TCS wanted to find a way to implement "Med Mantra, either as a whole or in modules, in the U.S." To that end, Guionnet testified that TCS worked with DaVita to develop a lab module. And the PowerPoint slides shown to the jury show that TCS—as a part of its United States entry strategy—would use DaVita "as a reference site to promote Lab Management solution[s] to Hospitals and Independent Laboratories." This lab module was a success; an email shown to the jury indicated that TCS planned on "marketing the [l]ab product as a starter immediately to position [itself] in the Provider space."

Additionally, Epic presented evidence that, based on TCS's discovery violations, would allow it to draw an adverse inference against TCS. The jury heard evidence that TCS failed to preserve proxy logs that would have indicated who accessed UserWeb and when. It also heard that TCS failed to preserve the contents of its computer hard drives. So, the jury could conclude that TCS destroyed evidence of additional downloaded documents that "contained information helpful to Epic and harmful to TCS."

The jury could conclude, based on all the evidence we've described, that TCS used Epic's stolen confidential information, including trade secrets, to create the comparative analysis. Then, the jury could infer from the evidence that the comparative analysis was used for a variety of purposes. These purposes include: attempting to sell Med Mantra to Kaiser, one of Epic's largest customers; attempting to enter the United States market and compete directly with Epic; and addressing any key gaps in Med Mantra, potentially by improving the product. These findings are bolstered by the adverse inference against TCS—an inference that would allow the jury to conclude that more documents harmful to TCS existed.

The jury could therefore find that TCS's benefit, based on TCS's use of the comparative analysis, was a "head start" in competition and development. Indeed, the evidence allowed a jury to conclude that TCS used Epic's confidential information to thoroughly evaluate what it would take to compete in a new market. In other words, a jury could conclude that TCS had a free shot—using stolen information—to determine whether it would be profitable to improve Med Mantra and implement a variety of tactics to enter the United States electronic-health-record market. Based on these intermediate findings, a jury could determine that a reasonable valuation of this benefit is the cost TCS avoided by not having to develop this information by itself.

And the jury could value that benefit—avoided research and development costs—at $140 million. Martin testified that information taken from UserWeb was incorporated into the comparative analysis. He explained that the stolen information corresponded to specific modules of Epic's software; so, Martin broke down for the jury which information, corresponding to specific modules, had been embedded in the comparative analysis. Martin then showed the jury an exhibit on which he placed a checkmark by each module of Epic's software that he believed made its way into the comparative analysis.

Britven then calculated TCS's benefit from avoiding the cost of researching and developing the stolen modules that were incorporated into the comparative analysis. He started by calculating Epic's cost in developing all of the information taken by TCS; he then reduced that number to reflect only the cost Epic incurred from developing modules incorporated into the comparative analysis. A few more reductions were made: one subtracting the costs of Epic's coding that TCS did not receive, and one reflecting the decayed value of technology over time. Britven concluded, based on this calculation, that TCS received a $200 million benefit even though "Epic incurred [$]306 million to develop those same trade secrets and confidential information."

TCS's expert, Bersin, testified about what he believed to be missing from Britven's calculation: a labor-cost reduction. He explained that Med Mantra's development team is located in India, where labor costs are 30–40% less than in the United States, where Epic developed its software. So, he reasoned, TCS's avoided research and development costs should be 30–40% less than the $200 million Britven calculated. And applying a 30% reduction to Britven's $200 million benefit value leaves you with an estimated $140 million in avoided research and development costs—the exact amount of damages awarded by the jury.

In sum, the jury had a sufficient basis to reach the $140 million "comparative analysis" compensatory award. TCS's argument to the contrary relies on the assumption that the comparative analysis was used as nothing more than a stale marketing document. But the jury was presented with evidence that would allow it to conclude the comparative analysis was not just a stale marketing document; the comparative analysis—and therefore Epic's information—was used to help TCS evaluate its United States entry strategy and potentially even address key gaps in Med Mantra by improving the product. The evidence also allowed the jury to conclude that avoided research and development costs were a reasonable valuation of the benefit TCS received from using the comparative analysis, which contained stolen information. Likewise, using avoided research and development costs as the valuation of TCS's benefit, the jury could have reached a $140 million compensatory award. Importantly, it could do so without equating Epic's development costs ($306 million, by Britven's estimate) to TCS's benefit from using Epic's information in the comparative analysis. So, we agree with the district court's decisions to uphold this damages verdict and deny TCS's motion for a new trial.

TCS's next argument concerns the punitive-damages award. But before we shift to punitive damages, we address Epic's cross-appeal of the district court's decision to vacate the jury's $100 million compensatory-damages award for TCS's "other uses" of Epic's confidential information.

B. "Other Confidential Information" Compensatory Award

The district court presented the jury with a special-verdict form that allowed it to award damages based on (a) the benefit of TCS's use of the comparative analysis and (b) the benefit of TCS's use of other confidential information. The district court included "part b" of the verdict because "there was some evidence that other confidential information was disseminated 'out beyond the specific people who discussed the comparative analysis.' "

The jury initially awarded $100 million for "the benefit of TCS's use of other confidential information" in addition to the $140 million awarded for the "benefit of TCS's use of [the] comparative analysis." But, in partially granting TCS's Rule 50 motion for judgment as a matter of law, the district court held that this $100 million award for benefits from "other information" was too speculative and was "tied to no evidence of specific use at all."

We review a district court's decision to grant judgment as a matter of law *de novo*. *Passananti v.*

Cook County, 689 F.3d 655, 659 (7th Cir. 2012). "Our job is to assure that the jury had a legally sufficient evidentiary basis for its verdict." *Filipovich v. K & R Express Sys., Inc.*, 391 F.3d 859, 863 (7th Cir. 2004). In deciding a Rule 50 motion, we "construe[ ] the evidence strictly in favor of the party who prevailed before the jury" and we do not make credibility determinations or reweigh the evidence. *Passananti*, 689 F.3d at 659. Still, "a verdict supported by no evidence or a mere scintilla of evidence will not stand." *Martin v. Milwaukee County*, 904 F.3d 544, 550 (7th Cir. 2018).

The specific verdict at issue here is the jury's award of compensatory damages apart from those based on the comparative analysis. Under Wisconsin law, compensatory damages must be "proved with reasonable certainty." *Novo Indus. Corp. v. Nissen*, 30 Wis.2d 123, 140 N.W.2d 280, 284 (1966). This does not require the plaintiff to prove damages with "mathematical precision; rather, evidence of damages is sufficient if it enables the jury to make a fair and reasonable approximation." *Mgmt. Comput. Servs.*, 557 N.W.2d at 80.

Epic—to prove it was entitled to unjust enrichment damages for TCS's use of other confidential information—needed to show that TCS used confidential information that was *not* incorporated into the comparative analysis. Epic says the jury heard evidence that would allow it to conclude that other confidential information—that was not incorporated into the comparative analysis—was used to improve Med Mantra. Epic points to Guionnet's testimony, testimony that TCS assigned a Med Mantra team member to the Kaiser account, testimony about TCS's downloading of information unrelated to its work for Kaiser, and the adverse-inference jury instruction in support of this theory. Epic also points to evidence it believes the jury could have used to reasonably determine that TCS received a $100 million benefit based on its use of this alleged other confidential information. But we believe the evidence isn't enough to support the jury's $100 million award.

Let's start with Guionnet's testimony. Guionnet—a TCS manager responsible for the Kaiser account—testified that he attended a meeting where Med Mantra was presented to Kaiser executives. He left the meeting "astounded"; Med Mantra had improved significantly since the last time he had seen the software, and he "was concerned that some of the information from Kaiser had been used to improve Med Mantra." Guionnet then met with members of the Med Mantra team. A TCS employee—introduced to Guionnet as the "interface between Med Mantra" and the Kaiser team—showed Guionnet a "comparison ... between Med Mantra and Epic." Guionnet "basically ... knew" at that point that TCS had improperly used Epic's information.

In a portion of Guionnet's deposition played for the jury, Guionnet confirmed that he more than suspected that Epic's information was used to improve Med Mantra: "it's knowledge." He stated that Epic's "workflow, data model, functionalities, [and] test scripts" were used in Med Mantra's development. But when pressed about how he knew Epic's information was used to improve Med Mantra, Guionnet consistently responded by saying "I don't remember," "I don't remember the details," or by saying he would have to go back and look at his emails.

Guionnet then confronted TCS's president with information about TCS's misconduct. But rather than initiating an investigation, TCS's president transitioned Guionnet away from the Kaiser account and told him that if he did not transition "peacefully," he would be "put . . . in a corner" and TCS would "make [his] life miserable."

This evidence is missing something: any proof that TCS used any confidential information besides the information incorporated into the comparative analysis. Guionnet testified that he knew TCS used Epic's information to improve Med Mantra, but the evidence indicated that his knowledge came from reviewing the comparative analysis, only. And when pressed at his deposition about how he knew that Med Mantra improved, Guionnet provided nothing but a lack of memory and some general statements that Med Mantra had improved. Basically, Guionnet was unable to tie what he perceived to be Med Mantra's significant improvements to any "other information" besides the comparative analysis.

Guionnet's testimony about his meeting with the Med Mantra team does not add any support for the verdict. Guionnet testified that at this meeting, he received a detailed rundown of Med Mantra's functionality. Additionally, a TCS employee showed him a spreadsheet comparing Med Mantra to Epic's software. But this information is related to TCS's use of the comparative analysis; it has nothing to do with Epic's other confidential information. Guionnet's testimony thus supports an inference that TCS used Epic's confidential information, but only the information that was incorporated into the comparative analysis.

Epic next points to evidence that TCS assigned members of the Med Mantra team to the Kaiser account. Guionnet testified that "DV" Prasad "was a member of the Med Mantra team who was planted in [the Kaiser] organization." And in a deposition played for the jury, Prasad stated that Reddy, a senior TCS executive, asked him to prepare a presentation comparing Med Mantra and Epic. Prasad then confirmed that he "never did" prepare the presentation because he knew it was "not right." But even without Prasad's compliance, Reddy found a willing employee and created the comparative analysis.

Guionnet testified that he later caught wind that Prasad—a member of the Med Mantra team—was planted in the Kaiser organization. Guionnet attempted to get rid of Prasad immediately; the head of TCS's healthcare unit denied this request, leaving this "plant" on the Kaiser team.

This evidence, contrary to Epic's argument, has nothing to do with TCS's uses of "other information." Reddy made his intentions clear: Prasad was to use Epic's confidential information to compare Med Mantra to Epic's software before attempting to sell Med Mantra to Kaiser. This evidence shows only that Epic's confidential information made its way into the comparative analysis, which was then used as part of an overall market-entry strategy. Rather than proving that "other information" was used, this evidence simply provides additional support for the jury's compensatory-damages award for TCS's use of the comparative analysis. So again, we see no evidence tying any of Epic's other stolen confidential information to any use outside of the comparative analysis.

In another attempt to show TCS used other confidential information to improve Med Mantra, Epic points to evidence regarding TCS's laboratory module. First, Epic points to TCS's PowerPoint, which acknowledges that there were key gaps in Med Mantra that needed to be addressed. And Martin testified that TCS employees stole information regarding Epic's laboratory product, Beaker. Guionnet testified that TCS had partnered with DaVita to create its own laboratory module. This project, however, fell behind and was described as "well below average" by an independent third party. Still, an email from a TCS employee showed that TCS was "very seriously thinking" about "marketing the Lab product as a starter immediately to position [TCS] in the Provider space." TCS later licensed the DaVita laboratory module to another United States company, Quest Diagnostics.

But this is where evidence concerning Beaker ends. Epic asserts that the mere fact that TCS downloaded information about Beaker shows that "TCS used [its] confidential information and trade secret information to improve the lab product it developed for DaVita." Yet Epic fails to provide any examples of how Epic's modules or information, including the Beaker module, could be tied to uses or improvements involving the DaVita project. So, Epic presented evidence only that TCS downloaded information concerning Beaker; but it does not present evidence that TCS *actually used* this information. Without a link from this information to any use, Epic's evidence does not support a finding that TCS used "other confidential information."

Epic attempts to plug the evidentiary holes described above by pointing to the adverse-inference instruction. It's true that—given the district court's instruction—the jury heard evidence supporting an inference that TCS destroyed documents that were harmful to TCS and helpful to Epic. But even with this inference, there is still no concrete evidence showing that TCS used Epic's "other information."

Epic is thus left asking a jury to award damages based solely on speculation as to what *might* be contained in the destroyed documents. And if this type of broad adverse inference based on the destruction of evidence—standing alone—were enough to support a jury's damages verdict, a jury could hypothetically award a plaintiff any amount of damages based on any theory of liability. This would be antithetical to the purpose of adverse-inference instructions: sanctioning misconduct while *leveling* the evidentiary playing field. *See Silvestri v. General Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001).

To be clear, evidence supporting an adverse inference, combined with other relevant circumstantial evidence, may be a sufficient evidentiary basis for a jury's verdict. *See Aspen Tech., Inc. v. M3 Tech., Inc.*, 569 F. App'x 259, 266 (5th Cir. 2014) (finding the jury had a legally sufficient basis for its verdict based on circumstantial evidence and two adverse-inference instructions); *cf. Kronisch v. United States*, 150 F.3d 112, 128 (2d Cir. 1998) ("[A]t the margin, where the innocent party has produced some (not insubstantial) evidence in support of his claim, the intentional destruction of relevant evidence . . . may push a claim that might not otherwise survive summary judgment over the line."). But the destruction of evidence—by itself—is insufficient to support a jury's verdict as a matter of law. *Cf. Kronisch*, 150 F.3d at 128 ("We do not suggest that the destruction of evidence, standing alone, is enough to allow a party who has produced no evidence—or utterly inadequate evidence—in support of a given claim to survive summary judgment on that claim."). *See generally HK Sys., Inc. v. Eaton Corp.*, 553 F.3d 1086, 1088 (7th Cir. 2009) (noting that the standard is the same for summary judgment and for judgment as a matter of law).

So, if Epic were truly using the adverse inference to plug evidentiary holes, this verdict might survive. But the other evidence on which Epic relies provides "utterly inadequate" support for a finding that TCS used confidential information apart from that incorporated into the comparative analysis. *Kronisch,* 150 F.3d at 128. As a result, Epic seeks to use the adverse inference not just to plug evidentiary holes but to hold all the water for a finding that TCS used other confidential information. But Epic cannot rely on an adverse inference to do so much.

In sum, Epic has not provided more than a mere scintilla of evidence in support of its theory that TCS used any of its other confidential information. This portion of the jury's damages award cannot stand. With compensatory damages sorted out, we now turn to punitive damages.

C. Punitive Damages

In addition to the $240 million awarded in compensatory damages, the jury initially awarded Epic $700 million in punitive damages. The district court cut that award to $280 million based on a Wisconsin law capping statutory damages at two times the amount of compensatory damages, Wis. Stat. § 895.043(6).[3] The district court then denied TCS's renewed motion for judgment as a matter of law under Rule 50(b) and TCS's motion for a new trial under Rule 59; the court accordingly left the $280 million punitive-damages award intact, reasoning in part that its decision to vacate the jury's $100 million compensatory award for use of "other information" did not affect the jury's punitive damages verdict.

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[3] Recall that the district court also reduced the compensatory award by $100 million, leaving $140 million in compensatory damages and $280 million in punitive damages.

Whether the district court erred in denying TCS's Rule 50 motion is a question of law that we review *de novo*. *Valdivia v. Twp. High Sch. Dist. 214*, 942 F.3d 395, 396 (7th Cir. 2019). In reviewing this decision, "[w]e view the facts and evidence in the light most favorable to [Epic], as the litigant who prevailed before the jury." *Id.* To the extent TCS asked the district court for a new trial regarding punitive damages under Rule 59, we review the district court's decision to deny this motion for an abuse of discretion. *Abellan*, 948 F.3d at 830. And because the punitive damages stand on Wisconsin causes of action, the punitive-damages award must be consistent with Wisconsin law. *See Kapelanski*, 390 F.3d at 534.

TCS presents four arguments challenging the $280 million punitive-damages award: First, TCS argues that, to receive punitive damages under Wisconsin law, the plaintiff must prove an actual injury—which Epic did not do. Second, TCS argues that the punitive-damages award here must be set aside because it may have been based on a claim that cannot support punitive damages as a matter of law. Third, TCS argues that the punitive-damages award must be vacated and retried in light of the district court's decision to vacate the $100 million compensatory-damages award. Finally, TCS argues the punitive-damages award is constitutionally excessive. We take each in turn.

1. "Actual Injury" Requirement

TCS argues that the punitive-damages award fails as a matter of law because Epic failed to prove an "actual injury." TCS contends that under Wisconsin law, an actual injury and a damages award reflecting redress for this injury are "threshold requirements before punitive damages may be awarded." TCS reasons that, because Epic did not suffer an actual injury and instead was awarded damages solely based on the benefit TCS received, Epic cannot receive punitive damages.

But Wisconsin law is not as exacting as TCS argues. Rather, Wisconsin law requires—for punitive damages to be awarded—the imposition of compensatory damages. TCS first cites to *Tucker v. Marcus* for the proposition that a plaintiff must prove "some actual injury *which would justify an award of actual or compensatory damages* before punitive damages may be awarded." 142 Wis.2d 425, 418 N.W.2d 818, 823 (1988) (quoting *Hanson v. Valdivia*, 51 Wis.2d 466, 187 N.W.2d 151, 155 (1971)). However, *Tucker* makes clear that the threshold requirement for punitive damages is an "'award' of actual or compensatory damages" rather than an injury to the plaintiff. *Tucker*, 418 N.W.2d at 827. In fact, the Wisconsin Supreme Court specifically held that—even though the jury found "there had been injury suffered"—"punitive damages were inappropriately allowed in this case" because the plaintiff could not recover "actual damages." *Id.* at 823.

In a more recent decision, the Wisconsin Supreme Court affirmed that compensatory damages are a sufficient predicate for punitive damages. "[W]e have held that 'where there exists a "cause of action," but the action is not one for which the *recovery of compensatory damages is justified*, punitive damages cannot be awarded.'" *Groshek v. Trewin*, 325 Wis.2d 250, 784 N.W.2d 163, 173 (2010) (emphasis added) (quoting *Tucker*, 418 N.W.2d at 824). *Groshek*, like *Tucker*, holds that the availability of punitive damages is governed by whether compensatory damages are recoverable, and not by whether an "actual injury" has been inflicted. *See Groshek*, 784 N.W.2d at 173; *cf.*

Tucker, 418 N.W.2d at 830 (Heffernan, C.J., dissenting) ("Today's majority holds that [actual damages] should be defined in a manner that no punitive damages may be awarded in the absence of a recovery for compensatory damages.").

Since *Groshek*, we have further expounded on when punitive damages are appropriate under Wisconsin law. In *Pro-Pac, Inc. v. WOW Logistics Co.*, we stated that punitive damages are recoverable under Wisconsin law regardless of whether damages are based on "gain to [the defendant] (*i.e.*, restitutionary damages) or loss to [the plaintiff] (*i.e.*, compensatory damages)." 721 F.3d 781, 788 (7th Cir. 2013). This is true because Wisconsin law allows "awards of punitive damages when 'compensatory damages' are imposed," and Wisconsin defines compensatory damages to include compensation, indemnity, and restitution. *Id.*

So, TCS is incorrect that Wisconsin law requires Epic to prove an "actual injury" to obtain punitive damages. Instead, punitive damages are available when compensatory damages are imposed, as they were in this case. Epic is therefore not barred from recovering punitive damages simply because compensatory damages were awarded for TCS's benefit rather than any injury Epic sustained.

2. Claims that Support Punitive Damages

TCS next argues that the punitive-damages award must be set aside because it might have been based on one of Epic's claims that does not support punitive damages as a matter of law. Specifically, TCS points out that Epic's unjust enrichment claim does not support punitive damages, and there is no way to know—based on the generality of the jury's punitive-damages verdict—if that is the claim the jury used to support punitive damages.

We can quickly dispose of this argument. The jury was specifically instructed that it could only award punitive damages "with respect to Epic's trade secrets, fraudulent misrepresentation[,] and unfair competition claims." "Jurors are presumed to follow a court's instructions." *Seifert ex rel. Scoptur v. Balink*, 364 Wis.2d 692, 869 N.W.2d 493, 504 (Ct. App. 2015); *see also Schandelmeier-Bartels v. Chi. Park Dist.*, 634 F.3d 372, 388 (7th Cir. 2011) ("[W]e presume that juries follow the instructions they are given."). So we may presume that the jury based its punitive-damages award on these claims, and not on the unjust enrichment claim.

And Epic's claims for trade secrets, fraudulent misrepresentation, and unfair competition all allow recovery of damages on a theory of gain to the defendant. Wis. Stat. § 134.90(4) (damages for a violation of Wisconsin's trade secrets act include "unjust enrichment caused by the violation"); *Pro-Pac*, 721 F.3d at 786 (restitutionary damages, *i.e.* damages based on the defendant's benefit, are recoverable "as compensation for tort claims"). As discussed above, punitive damages can be awarded when compensatory damages—including damages based on a defendant's gain—are imposed. *Pro-Pac*, 721 F.3d at 788.

TCS does not dispute that Epic's trade secrets, fraudulent misrepresentation, and unfair competition claims support an award of punitive damages; in fact, it admits these claims "could support punitive damages." And because the jury was instructed to base punitive damages on these claims only, the punitive-damages award was not based on a claim that does not support punitive damages as a matter of law.

3. Conduct on which Punitive Award is Based

TCS next argues that the punitive-damages award must be vacated and retried in light of the district court's decision—which we affirm—to vacate the $100 million damages award for TCS's uses of other confidential information. TCS argues that when the jury determined punitive damages, it had in mind a broader range of conduct "than was legally sustainable." And because we cannot know whether the jury's punitive-damages decision was based on "a permissible or impermissible claim or theory," we must vacate the punitive award and remand for the issue to be retried.

But this argument fundamentally misunderstands punitive damages. Punitive damages are imposed to "punish[ ] unlawful *conduct* and deter[ ] its repetition." *Trinity Evangelical Lutheran Church v. Tower Ins. Co.*, 261 Wis.2d 333, 661 N.W.2d 789, 798 (2003) (emphasis added); *see also Kemezy v. Peters*, 79 F.3d 33, 34 (7th Cir. 1996) ("The standard judicial formulation of the purpose of punitive damages is that it is to punish the defendant for reprehensible conduct and to deter [the defendant] and others from engaging in similar conduct."). Stated differently, punitive damages are based on the defendant's conduct underlying a plaintiff's claims, not on the claims themselves.

And the cases TCS cites in support of its argument provide further support for this understanding of punitive damages. Take *Robertson Oil Co. v. Phillips Petroleum Co.*, 871 F.2d 1368 (8th Cir. 1989), as an example. The jury in that case found Phillips Petroleum liable for fraud, breach of the duty of good faith and fair dealing, tortious interference, and negligence. *Id.* at 1370. The jury also awarded Robertson Oil punitive damages. *Id.* But on appeal, the Eighth Circuit affirmed only the theory of tortious interference with a business relationship. *Id.* at 1375. And Phillips's conduct "relevant to an award of punitive damages necessarily differ[ed] according to the various theories of liability on which the jury based its verdict." *Id.* at 1376. So, because the court could not "ascertain what conduct of Phillips was determined by the jury to merit punitive damages," the Eighth Circuit ordered the district court to retry punitive damages. *Id.*

The Eighth Circuit in *Robertson Oil* did not require a retrial of punitive damages simply because it found that some of the theories of liability failed as a matter of law. Instead, the emphasis was on the *conduct* underlying these theories. Because the court could not be sure which of Phillips's conduct led the jury to believe punitive damages were necessary, and some of that conduct did not warrant damages as a matter of law, a new trial was necessary. This understanding of punitive damages holds true throughout the cases TCS cites in support of its argument. *See, e.g.*, *CGB Occupational Therapy, Inc. v. RHA Health Servs. Inc.*, 357 F.3d 375, 390 (3d Cir. 2004) (reversing punitive damages because it was unclear which act of tortious interference formed the basis of punitive damages when the plaintiff interfered with two distinct contracts); *Marrero v. Goya of P.R., Inc.*, 304 F.3d 7, 30 (1st Cir. 2002) (affirming a harassment claim, reversing a retaliation claim because there was no evidence of an adverse personnel action, and requiring a new trial on punitive damages because the court could not be sure if punitive damages were based on the erroneous retaliation finding).

So, a punitive-damages award requires a new trial only when (1) the claims of liability supporting punitive damages are based on different underlying conduct by the defendant, and (2) one of those claims (and therefore the conduct underlying that claim) is found to be unsupported as a matter of law. TCS argues that different conduct underlies the two separate compensatory-damages awards, and we cannot know which conduct led the jury to award punitive damages.

But the conduct underlying both compensatory-damages awards was the same. One compensatory-damages award was based on the "benefit of TCS's use of [the] comparative analysis" and the other was based on the "benefit of TCS's use of other confidential information." The key distinction between these two compensatory awards is *information*, not conduct. By awarding damages for TCS's uses of "other confidential information," the jury did not have to find any uses—or any conduct—that differed from the uses and conduct underlying the comparative-analysis portion of the compensatory award. Based on reasonable inferences drawn in Epic's favor, a jury could conclude that TCS used the comparative analysis (and therefore Epic's information incorporated into that analysis) to improve its marketing strategy, to try to enter the United States market, and to generally improve Med Mantra before attempting to sell it to Kaiser. And these are the only uses that can be found in the record; TCS does not point us to a single use of Epic's information that is not also a use that the jury could reasonably infer stemmed from the comparative analysis.

So, the overall conduct underlying these two verdicts is the same. TCS stole thousands of Epic's documents, lied about it, covered it up, and used Epic's information in a variety of ways. This course of conduct is the same regardless of whether the jury incorrectly found that this course of conduct included the use of a few more pieces of Epic's information. Whether the jury found that TCS received an additional benefit based on other confidential information does not affect the jury's assessment of TCS's overall conduct. So, our determination that TCS did not use "other confidential information" does not disturb the jury's punitive-damages award.

4. Constitutionality of the Punitive-Damages Award

TCS finally argues that the punitive-damages award of $280 million violates its due process rights under the federal constitution and Wisconsin law. We review these questions *de novo*. *Rainey v. Taylor*, 941 F.3d 243, 254 (7th Cir. 2019); *Trinity Evangelical Lutheran Church*, 661 N.W.2d at 799.

As we reminded the litigants in *Saccameno*, "the Constitution is not the most relevant limit to a federal court when assessing punitive damages, as it comes into play 'only after the assessment has been tested against statutory and common-law principles.'" *Saccameno v. U.S. Bank Nat'l Ass'n*, 943 F.3d 1071, 1086 (7th Cir. 2019) (quoting *Perez v. Z Frank Oldsmobile, Inc.*, 223 F.3d 617, 625 (7th Cir. 2000)). "The Constitution is the only federal restraint on a state court's award of punitive damages," but federal judges are not restricted to reducing punitive damages in a federal case. *Id.* (citing *Perez*, 223 F.3d at 625). Indeed, "[a] federal court . . . can (and should) reduce a punitive damages award sometime before it reaches the outermost limits of due process." *Id.* (citing *Perez*, 223 F.3d at 625; *Payne v. Jones*, 711 F.3d 85, 97–100 (2d Cir. 2013)).

The Due Process Clause of the Fourteenth Amendment imposes constitutional limitations on punitive damages. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416–17, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003). Punitive damages may be imposed to further a state's legitimate interests in imposing punishment for and deterring illegal conduct, but punitive damages violate due process when the award is "'grossly excessive' in relation to these interests." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996). The Supreme Court, in testing awards of punitive damages for compliance with due process, has established three "guideposts": "(1) the reprehensibility of the defendant's conduct; (2) the disparity between the actual harm suffered and the punitive award; and (3) the difference between the award authorized by the jury and the penalties imposed in comparable cases." *Rainey*, 941 F.3d at 254 (citing *Gore*, 517 U.S. at 575, 116 S.Ct. 1589). Wisconsin courts apply a "virtually identical test." *Trinity Evangelical Lutheran Church*, 661 N.W.2d at 800.[4]

The Supreme Court's first guidepost—reprehensibility of the defendant's conduct—is the most important. *Gore,* 517 U.S. at 575, 116 S.Ct. 1589. In determining the reprehensibility of the defendant's conduct, we consider five factors: whether

[4] Wisconsin courts consider the factors most relevant to the case at hand, with those factors coming from the following list: (1) the grievousness of the acts, (2) the degree of malicious intent, (3) whether the award bears a reasonable relationship to the award of compensatory damages, (4) the potential damage that might have been caused by the act, (5) the ration of the award to civil or criminal penalties that could be imposed for comparable misconduct, and (6) the wealth of the wrongdoer. *Trinity Evangelical Lutheran Church*, 661 N.W.2d at 800.

> the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.

Campbell, 538 U.S. at 419, 123 S.Ct. 1513. If none of these factors weigh in favor of the plaintiff, the award is "suspect." *Id.* And even if one factor weighs in the plaintiff's favor, that may not be enough to sustain the punitive award. *Id.* And finally, since a plaintiff is presumed to be made whole by the compensatory award, punitive damages should be awarded only if the defendant's conduct is "so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence." *Id.*

The first factor asks us to consider if the harm was physical as opposed to economic. *Id.* Conduct producing physical harm is more reprehensible than conduct producing economic harm. *See Gore*, 517 U.S. at 576, 116 S.Ct. 1589. Epic did not suffer physical harm as a result of TCS's conduct. So this factor weighs against finding TCS's conduct reprehensible.

Turning to the second factor, we do not believe that TCS's conduct evinced an indifference to or a reckless disregard of the safety of others. Epic does not attempt to persuade us otherwise. This factor also weighs against finding TCS's conduct reprehensible.

The third factor—the financial vulnerability of the target of the defendant's conduct—stands for the proposition that conduct is more reprehensible if it impacts financially vulnerable plaintiffs. *See, e.g.*, *Saccameno*, 943 F.3d at 1087; *EEOC v. AutoZone, Inc.*, 707 F.3d 824, 839 (7th Cir. 2013). Epic, one of the largest producers of electronic-health-record software, is not financially vulnerable. This factor again weighs against finding TCS's conduct reprehensible.

Applying the fourth factor, TCS's conduct did involve a repeated course of wrongful acts. Epic presented evidence that TCS knew it lacked authority to access confidential information from UserWeb. Yet TCS employees still accessed and downloaded Epic's confidential information for years, downloading over 1,600 unique documents from UserWeb and gaining access to information that Epic specifically forbid TCS from accessing. This factor weighs in favor of finding TCS's conduct reprehensible and provides support for some award of punitive damages.

As for the last factor—whether the harm was the result of intentional malice, trickery or deceit, or mere accident—TCS argues that Epic suffered no harm. Specifically, TCS contends that because Epic was not deprived of the enjoyment of its software, did not lose business, and did not face any new competition, there could not have been any harm to Epic. But even though it is hard to quantify, Epic likely suffered a competitive harm; TCS, a potential competitor, had access to Epic's confidential information for years without Epic's knowledge. This gave TCS insight into the strengths and weaknesses of Epic's software, regardless of whether TCS was able to turn that knowledge into a direct economic harm to Epic. *Cf. United Tech. Corp. v. U.S. Dept. of Def.*, 601 F.3d 557, 564 (D.C. Cir. 2010) (discussing, for purposes of what constitutes "confidential information" under an exemption to the Freedom of Information Act, what constitutes substantial competitive harm). We can also think of at least one economic harm, albeit minor, that Epic suffered as a result of TCS's conduct. Epic, after it became aware of TCS's unlawful access to UserWeb, had to expend time and resources investigating the extent to which TCS had accessed Epic's confidential information and trade secrets.

And these harms were the result of TCS's repeated, intentional attempts to deceive Epic. *See Gore*, 517 U.S. at 576, 116 S.Ct. 1589 (noting that deceit is more reprehensible than negligence). Epic repeatedly denied Kaiser's and TCS's requests to allow TCS access to UserWeb. But TCS gained access to UserWeb through other means, using Gajaram's account, which he obtained by falsely identifying as a Kaiser employee. The jury heard testimony that Gajaram's account information was shared throughout TCS and was frequently used to download and share Epic's confidential information.

TCS employees also lied to prevent Kaiser and Epic from discovering that TCS had access to Epic's UserWeb. A TCS employee testified that his manager told him to hide the truth from investigators. This employee obeyed these instructions and lied to investigators, telling them that he had only accessed UserWeb one time when he knew he had accessed it more than once.

The harms to Epic resulted from TCS's deceitful conduct. This factor weighs in favor of finding TCS's conduct reprehensible and supports some award of punitive damages.

In sum, we agree with the district court that TCS's conduct warrants punishment. But TCS's conduct was not reprehensible "to an extreme degree." *Saccameno*, 943 F.3d at 1088. TCS caused no physical harm to Epic. TCS also did not recklessly disregard the safety of others. And Epic is not a financially vulnerable plaintiff. But TCS's conduct consisted of a repeated course of wrongful actions spanning multiple years. TCS's conduct was also intentional and deceitful, not negligent. We therefore conclude that TCS's conduct justifies punishment, though not in the amount of a $280 million punitive-damages award.

Turning to the Supreme Court's second guidepost, we analyze the ratio of punitive damages to the "harm, or potential harm" inflicted on the plaintiff. *Campbell*, 538 U.S. at 424, 123 S.Ct. 1513. In most cases, the compensatory-damages award approximates the plaintiff's harm. In those cases, identifying the ratio is straightforward: we compare compensatory and punitive-damages awards. *See, e.g.*, *Rainey*, 941 F.3d at 255. But in some cases, the jury's compensatory-damages award does not reflect the plaintiff's quantifiable harm. Still, we may account for that harm in the harm-to-punitive-damages ratio. *See Sommerfield v. Knasiak*, 967 F.3d 617, 623–24 (7th Cir. 2020).

The circumstances of this case, however, present an unusual issue in determining the amount of "harm" under this guidepost. The jury awarded $140 million in compensatory damages based on the benefit to TCS, not because of any harm suffered by Epic. This award, then, does not reflect Epic's harm. And if Epic suffered quantifiable economic harm, that harm is significantly smaller than $140 million, which would in turn drastically change the relevant ratio. If we had to quantify that harm to arrive at the appropriate ratio, applying the second due-process guidepost would pose a challenging task.

But TCS makes no argument here—and did not argue to the district court—that we should compare any number besides compensatory damages to the punitive-damages award. *See Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 718 (7th Cir. 2012) (underdeveloped arguments are waived). In fact, most of its argument under this guidepost emphasizes the size of the compensatory award as a reason the punitive-damages award violates due process. TCS has thus waived any argument that the compensatory award is the incorrect denominator in the ratio analysis. And at least one other court has compared an unjust enrichment award to the punitive-damages award under this guidepost when state law allowed punitive damages to be imposed for the underlying claim. *See Rhone-Poulenc Agro, S.A. v. DeKalb Genetics Corp.*, 272 F.3d 1335, 1351 (Fed. Cir. 2001) (concluding it is appropriate to base punitive damages on an unjust enrichment award when the defendant's gain "is logically related" to the plaintiff's "harm or potential harm"), *vacated*, 538 U.S. 974, 123 S.Ct. 1828, 155 L.Ed.2d 662 (2003), *remanded to* 345 F.3d 1366 (2003) (reaching the same result as to punitive damages). So, we will conduct the ratio analysis using the $140 million compensatory award as the denominator.

In conducting this analysis, the Supreme Court has declined to set a fixed ratio limiting punitive damages. *Campbell*, 538 U.S. at 425, 123 S.Ct. 1513 ("[T]here are no rigid benchmarks that a punitive damages award may not surpass . . . ."). The Supreme Court has, however, noted that "few awards exceeding a single-digit ratio between punitive and compensatory damages . . . will satisfy due process." *Id.*

The punitive award in this case—after the district court lowered it to comply with Wisconsin's statutory cap on punitive damages—is two times the ultimate compensatory award. Our court and Wisconsin courts have upheld significantly higher ratios. *See, e.g.*, *Rainey*, 941 F.3d at 255 (affirming a 6:1 ratio); *Mathias v. Accor Econ. Lodging, Inc.*, 347 F.3d 672, 676–78 (7th Cir. 2003) (affirming a 37:1 ratio); *Kimble v. Land Concepts, Inc.*, 353 Wis.2d 377, 845 N.W.2d 395, 412 (2014) (finding a 3:1 ratio appropriate and constitutional); *Trinity Evangelical Lutheran Church*, 661 N.W.2d at 803 (affirming a 7:1 ratio).

But the compensatory damages here are high. The Supreme Court has noted that "[w]hen compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee." *Campbell*, 538 U.S. at 425, 123 S.Ct. 1513. And the $140 million award in this case far exceeds what other courts have considered "substantial." *See Lompe v. Sunridge Partners, LLC*, 818 F.3d 1041, 1069 (10th Cir. 2016) ("[I]n many cases, compensatory damages less than $1,000,000 have also been considered substantial."). In fact, neither party points us to any comparable cases in which any court has upheld a 2:1-or-higher ratio resulting in over $200 million in punitive damages.[5]

Many courts have instead found awards "substantial" and imposed a 1:1 ratio based on significantly lower

[5] Epic only cites to one case with a relatively comparable award, *Yung v. Grant Thornton, LLP*, 563 S.W.3d 22, 73 (Ky. 2018) (upholding $80 million in punitive damages, resulting in a 4:1 ratio). It's true that in *Yung*, like in this case, only the last two reprehensibility factors weighed in favor of allowing punitive damages. *Id.* at 67. But the economic harm suffered by the plaintiffs in *Yung* distinguishes that case from the circumstances here. In *Yung*, the plaintiffs suffered substantial, quantifiable economic harm, including millions of dollars in taxes, interest, and fees owed to the IRS. *Id.* at 57. Here, there is hardly evidence that Epic suffered any economic harm; the compensatory award was based on TCS's benefit. And any potential future economic harm has not been quantified.

compensatory awards. *See Saccameno*, 943 F.3d at 1090 (gathering cases where courts have imposed a 1:1 ratio when the compensatory award is less than $1 million); *cf. Estate of Moreland v. Dieter*, 395 F.3d 747, 756–57 (7th Cir. 2005) (affirming a $15 million punitive-damages award that was "a fraction of the underlying compensatory damages award" and was based on "truly reprehensible" conduct). Still, the precise award must be based on "the facts and circumstances of the defendant's conduct and the harm to the plaintiff." *Campbell*, 538 U.S. at 425, 123 S.Ct. 1513; *cf. Sommerfield*, 967 F.3d at 624–25 (noting that sanctions should be based on the wrong done rather than the defendant's wealth).

The facts and circumstances of this case do not justify awarding $280 million in punitive damages. As noted above, three of the five reprehensibility factors weigh against the reprehensibility of TCS's conduct. TCS's conduct was reprehensible, but not to an extreme degree. *See, e.g.*, *Bridgeport Music, Inc. v. Justin Combs Publ'g*, 507 F.3d 470, 490 (6th Cir. 2007) (based on "the low level of reprehensibility of defendants' conduct, a ratio of closer to 1:1 or 2:1 is all that due process can tolerate in this case"). *But see, e.g.*, *Rainey*, 941 F.3d at 255 ("the truly egregious nature" of the defendant's acts of sexual objectification and assault justified "the size of [the] punitive award even with [a] significant compensatory award"); *Mathias*, 347 F.3d at 675–78 (affirming a 37:1 ratio in part because the motel company refused to have bed bugs in hotel rooms exterminated when it was aware of the risk to its customers).

And although TCS's actions did harm Epic, that harm does not support the size of the punitive-damages award. *Cf. Rainey*, 941 F.3d at 254–55 (affirming a punitive-damages award six times larger than the $1.13 million compensatory award in part because the plaintiff suffered "pain and humiliation" as a result of the defendant's groping and acts of sexual objectification); *In re Exxon Valdez*, 472 F.3d 600, 623–25 (9th Cir. 2006), *amended* 490 F.3d 1066 (9th Cir. 2007), (reducing punitive damages to $2.5 billion, reflecting a 5:1 ratio with compensatory damages, where the plaintiff caused severe economic harm and emotional harm to thousands of people by spilling 11 million gallons of crude oil into United States waters).

We therefore conclude that a 2:1 ratio exceeds the outermost limit of the due process guarantee in this case because TCS's conduct, while reprehensible, was not egregious, and multiplying the substantial compensatory award—calculated on the basis of TCS's benefit rather than Epic's loss—is unnecessary to reflect Epic's uncertain economic harm. *See Campbell*, 538 U.S. at 425, 123 S.Ct. 1513; *Saccameno*, 943 F.3d at 1090. Instead, the ratio relative to the $140 million compensatory award should not exceed 1:1 in this case. *See Saccameno*, 943 F.3d at 1090 (concluding that the ratio "should not exceed 1:1" where the compensatory award was "substantial"). It should be noted, though, that "[w]hat counts as substantial depends on the facts of the case, and an award of this size (or larger) might not mandate a 1:1 ratio on another set of facts." *Id.*

We now turn to the final guidepost: the difference between the punitive award authorized by the jury and civil penalties imposed in comparable cases. Although "this guidepost generally deserves less weight than the other two," *Rainey*, 941 F.3d at 255, it serves an important purpose: to "allow[ ] courts to show 'substantial deference to legislative judgments concerning appropriate sanctions for the conduct at issue.'"

AutoZone, 707 F.3d at 840 (7th Cir. 2013) (quoting *Gore*, 517 U.S. at 583, 116 S.Ct. 1589).

TCS has made no argument about this guidepost and has thus waived any argument that it points toward the award being unconstitutional. Although TCS has not pointed us to a single relevant civil penalty for comparison, we recognize that both the $280 million award the district court entered, and a $140 million award that would reflect a 1:1 ratio, comply with Wisconsin's statutory cap on punitive damages. That cap is one indication of what the Wisconsin legislature has judged to be an inappropriate sanction for reprehensible conduct: any punitive award exceeding a 2:1 ratio is inappropriate. Wis. Stat. § 895.043(6); *see AutoZone*, 707 F.3d at 840 ("We recognize that this statutory cap suggests that an award of damages at the capped maximum is not outlandish.").[6] So, the final guidepost does not point toward a $280 million or $140 million punitive-damages award being unconstitutional.

In sum, considering the factors together, we conclude that the maximum permissible award of punitive damages in this case is $140 million—a 1:1 ratio relative to the compensatory award. And TCS only mentions Wisconsin law to point out that Wisconsin courts apply a test substantively identical to the federal test analyzed above. So, TCS has waived any

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[6] TCS does not challenge the constitutionality of the Wisconsin statute that sets this cap, and we do not question it either. The protections afforded by the Constitution are not fixed to a particular ratio. *See Campbell*, 538 U.S. at 425, 123 S.Ct. 1513. As such, the due-process guarantee may be more protective than a statutory cap in one case but less protective in another. Today, we hold only that, although the Wisconsin statute permits a 2:1 ratio, the constitutional protection under these circumstances goes further.

argument that Wisconsin law might produce a different result. We therefore remand for the district court to amend its judgment and reduce punitive damages to, at most, $140 million.

III. Conclusion

The jury heard plenty of evidence that TCS stole Epic's confidential information and incorporated it into a comparative-analysis spreadsheet. And, drawing all inferences in favor of Epic, the jury could conclude that TCS used the comparative analysis for a variety of purposes, including the improvement of Med Mantra. However, the jury did not hear any evidence that would allow it to infer that any of Epic's other information was used by TCS.

Pursuant to the reasoning set forth above, the judgment of the district court upholding the jury's $140 million compensatory-damages award connected to the comparative analysis is AFFIRMED; and, the judgment of the district court vacating the jury's $100 million compensatory damages award for TCS's use of other information is also AFFIRMED.

Further, the judgment of the district court awarding $280 million in punitive damage is VACATED as it exceeds the outermost limit of the Due Process guarantee in the Constitution; and, the issue of the amount of punitive damages is REMANDED with instruction to the district court to reduce the punitive-damages award consistent with the analysis in this opinion.

APPENDIX D

United States District Court, W.D. Wisconsin.

14-cv-748-wmc

EPIC SYSTEMS CORPORATION,

Plaintiff,

v.

TATA CONSULTANCY SERVICES LIMITED and Tata America International Corporation d/b/a TCA America,

Defendants.

Signed 09/29/2017

OPINION AND ORDER

WILLIAM M. CONLEY, District Judge

To date, this court has extensively addressed plaintiff Epic Systems Corporation's claims against defendants Tata Consultancy Services Limited ("TCS") and Tata America International Corporation ("TAIC"), including a jury trial on those claims. Over a year after plaintiff filed its complaint, however, defendants filed counterclaims for federal and state antitrust violations, tortious interference and misappropriation of trade secrets. The court severed those counterclaims and stayed all proceedings pending a decision on plaintiff's motion to dismiss. (Pl.'s Mot. (dkt. #326); 3/2/16 Op. & Order (dkt. #538) 65.) For the reasons that follow, the court will grant that motion in its entirety.

ALLEGATIONS OF FACT[1]

A. The EHR Market and Epic's Role in It

TCS alleges that Epic is the dominant supplier of Electronic Health Records ("EHR"), claiming to serve 54% of patients in the United States. Epic has over 300 customers, including large clients such as Kaiser Permanente, Mayo Clinic, and Partners Healthcare. In May 2015, most heath care providers in the United States were using Epic's system (approximately 185,000 providers).

The EHR market is concentrated. In March 2015, ten EHR vendors accounted for 90% of the United States hospital market. Epic was among the top three, which together have a market share of nearly 60%.

TCS also contends that there are significant barriers to entry and switching in the EHR market. Specifically, once physicians or hospitals purchase an EHR system and load patient date, a significant expense and effort is required to switch to another software provider. TCS further alleges that Epic has developed a "closed platform that discourages interoperability and encourages customers to use only Epic's systems." (Countercl. (dkt. #295) ¶ 58.) TCS further alleges that Epic falsely claims that the lack of interoperability is endemic to the industry, rather than specific to Epic's software. (*Id.* at ¶¶ 64-68.)

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[1] For purposes of this motion, the court will accept the factual allegations in defendants' counterclaims and other pleadings, including all permissible inferences in favor of defendants unless precluded by adverse factual findings by the jury or law of the case.

B. TCS's Healthcare Software

In 2006, TCS partnered with Apollo Hospitals, India's first corporate hospital, to develop a consistent, unified information management system for all of Apollo hospitals. First marketed in 2009, this system is named Med Mantra. Recently, TCS India has been developing a spin-off of Med Mantra called TCS-HIS. TCS-HIS is a more generic derivative of Med Mantra, with Apollo-specific functionality removed, making it more appealing to a broader range of Indian healthcare entities. TCS, however, alleges that "Med Mantra and TCS-HIS are not suitable for deployment in the United States EHR Market because of the very different nature of the U.S. healthcare system." (*Id.* at ¶ 86.)

Still, TCS "has explored customizing certain modules of Med Mantra to meet the specific requirements of clients in the U.S." (*Id.* at ¶ 92.) Specifically, TCS created a laboratory management software system for a U.S. client, DaVita. (*Id.* at ¶¶ 93-97.) "Although TCS does not actively market the DaVita product in the U.S., TCS would, of course, be willing to work with a U.S. customer to design and build a similar solution." (*Id.* at ¶ 98; *see also id.* at ¶ 82 ("TCS has also developed custom-built software solutions based on its clients' specifications.").) From this, TCS alleges that "Epic and TCS are each creating products for the U.S. healthcare marketplace, and those products are potential alternatives for each other, [making] TCS and Epic are [sic] competitors." (*Id.* at ¶ 100.)

C. Epic and TCS's Relationship with Kaiser

On or about February 3, 2003, Kaiser Permanente entered into an agreement wherein Epic licenses computer software to Kaiser. This agreement was and is an important contract for Epic, as Kaiser Permanente is the largest managed healthcare organization in the United States. In furtherance of their agreement, Epic provided Kaiser access to the its "UserWeb," as well as the internet portal that Epic maintains to provide training, software-related documents and data, and other materials to its customers and their consultants. The Epic-Kaiser agreement also include provisions allowing third-party access to the UserWeb under certain conditions by, for example, consultants to Kaiser.

TCS is also a service provider to Kaiser, including software. In 2011, Kaiser sought to expand TCS's role in testing required as part of Kaiser's implementation and ongoing maintenance of the its [sic] software. TCS's role was set forth in a scope of work statement that expressly contemplated TCS testing Kaiser's EHR Epic software. The end date of that work was April 30, 2014.

In or about May 2011, Kaiser and TCS executives traveled to Wisconsin to give a presentation to Epic on TCS's abilities. "Immediately after the May 2011 presentation by TCS, Epic's top-level executives decided to block TCS from effectively providing [testing] services to Kaiser, which Epic knew to be a very important engagement for TCS in the healthcare space." (*Id.* at ¶ 128.) At some point, Epic executives also became aware that TCS was a provider of an EHR product in India.

As a result, Epic determined it did not want to share any information with TCS, and Epic developed specific protocols to limit the information it would provide to its customers' off-shore consultants. TCS further contends that these protocols were "developed directly as a result of Kaiser's request that Epic work with TCS and allow TCS access to necessary information." (*Id.* at ¶ 131.) Indeed, even though TCS was a "minor competitive threat," TCS alleges that "Epic resolved to prevent competition from TCS in the EHR market by any means possible." (*Id.* at ¶ 132.)

"Epic's policy of refusing to allow off-shore consultants to access its purportedly confidential materials, while couched in terms of protecting Epic's intellectual property, is actually the means by which Epic excludes . . . those consultants it fears are (or might become) its competitors in the EHR Market." (*Id.* at ¶ 136.) In particular, TCS alleges that Epic denied access to information needed to conduct testing services "because [Epic] wanted to disrupt TCS's relationship with Kaiser and eliminate TCS as a potential competitive threat." (*Id.* at ¶ 140.)

In September and October 2011, Kaiser Permante continued to push for increased access for TCS, indicating that "the issue around TCS not having access to Epic documentation and training for our testing and Clarity work have become critical in terms of KP employee satisfaction and productivity." (*Id.* at ¶ 145.) In responding, Epic indicated that it wanted to discuss with Kaiser "plans to bring operations back onshore" and "plans [to] switch to another organization without competing product lines." (*Id.* at ¶ 148.) At the same time, TCS's Suresh Muthusami continued to make multiple overtures to meet with Epic to assuage their concerns. This situation continued into the following year, with Kaiser continuing to push for TCS's access, stating that TCS is "willing to sign anything, but Epic is not returning their calls." (*Id.* at ¶ 157.) Epic implied that Kaiser was "on thin ice" if it insisted on working with TCS. (*Id.* at ¶ 159.) In 2012, Kaiser nevertheless entered into an amended master service agreement with TCS, which continued its engagement generally through an end date of April 30,

2017. The amended agreement contemplated that the bulk of TCS's testing work would occur off-site in India.

In 2014, however, "Kaiser succumbed to Epic's demand that it enter into an agreement to terminate TCS's services" testing its Epic EHR software. (*Id.* at ¶ 161.) Kaiser then essentially allowed Epic to choose TCS's successor, with Epic selecting Accenture on August 6, 2014. "Epic approved of this choice because Accenture is not based in India and is not perceived as a company likely to enter the EHR market." (*Id.* at ¶ 164.) Since the termination of TCS's specific testing assignment, Kaiser has also terminated, declined to renew or refused to expand other TCS services it was providing or could have provided. TCS alleges that the loss of the Kaiser testing contract was significant. "Not only were these engagements lucrative, but TCS was in the process of expanding the relationship within Kaiser that could serve it in the future and allow it to market TCS's other products and services, potentially including healthcare-related software to Kaiser." (*Id.* at ¶ 166.)

D. Allegations of Spying

On February 6, 2015, Epic's CEO, Judith Faulkner sent an email to Epic team members in which she wrote that they were "trying to find people who can 'stop in' at the Apollo hospitals" and examine the Med Mantra software. (*Id.* at ¶ 170.) To that end, an Epic employee compiled a list of 19 individuals of Indian national origin from which Faulkner and her staff could determine "who would do the sleuthing." (*Id.* at ¶ 171.) "Upon information and belief, TCS alleges Epic employees traveled to India and gained competitive information about Med Mantra and other TCS systems under false pretenses, as directed by Ms. Faulkner." (*Id.* at ¶ 179.) In fact, a jury found at trial that Epic's fears were well-founded, as TCS had stolen and misused confidential, proprietary information from Epic in an effort to understand its features and to develop competing HER [sic] software.

E. Procedural Posture

Defendants filed their counterclaims on December 11, 2015, 14 months after this case was filed, and less than four months from the trial date, while the parties were briefing summary judgment and in the midst of significant discovery disputes regarding efforts by Epic to understand the scope of TCS's theft. Plaintiff promptly moved to dismiss or immediately sever and stay all counterclaim proceedings. The court granted that motion and stayed all proceedings on TCS's counterclaims until issuing its decision on Epic's motion to dismiss. (3/2/16 Op. & Order (dkt. #538) 65.)

After the court granted summary judgment to Epic on claims for breach of contract, failure to maintain the confidentiality of Epic information and documents, the first element of the Computer Fraud and Abuse Act, 19 U.S.C. § 1030(g), and the Wisconsin Computer Crimes Act, Wis. Stat § 943.70(2)(a), based on unauthorized access and sharing of password information, the rest of Epic's claims proceeded to a jury trial. (3/2/16 Op. & Order (dkt. #538).) The jury returned a verdict in favor of plaintiff on all claims, including claims for breach of contract, misappropriation of trade secrets and unjust enrichment, among other claims, based on TCS's unlawful access of Epic's UserWeb and unauthorized use of trade secrets, as well as other confidential information. (Dkt. #855.)

Defendants assert eight counterclaims, which roughly fall into three categories: (1) antitrust claims for unlawful monopolization and attempted monopolization, under Sections I and II of the Sherman Act and two corresponding Wisconsin antitrust claims(counts 1-5); (2) intentional interference with contract and intentional interference with prospective economic advantage under California common law (counts 6-7); and (3) misappropriation of trade secrets in violation of Wis. Stat. § 134.90 (count 8). Plaintiff seeks dismissal of all eight causes of action.

OPINION

I. Antitrust Claims

Epic raises several challenges to TCS's antitrust claims. The court need not address all of them, because Epic's argument that TCS fails to allege standing as a competitor is persuasive and a sufficient basis to dismiss counterclaims 1-5.[2] "Antitrust standing is limited in several ways . . . normally only customers or competitors have standing." *Illinois ex rel. Ryan v. Brown*, 227 F.3d 1042, 1046 (7th Cir. 2000). Here, except for a one-off product for a client, DaVita, TCS has not entered the United States market as an EHR software developer. To establish standing, TCS must allege "that it intended to enter *and* was prepared to do so within a reasonable time." *Grip-Pak, Inc. v. Ill. Tool Works, Inc.*, 694 F.2d 466, 475 (7th Cir. 1982) (emphasis added), *disapproved of on other grounds*,

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[2] TCS's Wisconsin antitrust claims rise and fall with TCS's federal claims. "Wis. Stat. § 133.01 was intended as a reenactment of the first two sections of the federal Sherman Antitrust Act of 1890, 15 U.S.C. §§ 1 and 2." *Eichenseer v. Madison-Dane Cty. Tavern League, Inc.,* 2008 WI 38, ¶ 74 n.23, 308 Wis. 2d 684, 748 N.W.2d 154. While Wisconsin's standing requirements are less strict in certain respects, namely, allowing indirect purchasers to assert state antitrust claims, that difference is not material to the claims at issue here. Even if they were, TCS's antitrust counterclaims also suffer from fatal deficiencies on the merits as set forth above.

Prof. Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc., 508 U.S. 49, 65 (1993); *Ohio-Sealy Mattress Mfg. Co. v. Kaplan*, 545 F. Supp. 765, 775 (N.D. Ill. 1982) ("[A] potential competitor who has reached an advanced stage of preparedness to enter a particular market and who has taken substantial steps directed toward that end may have suffered an injury to its business or property" within the antitrust context.); *see generally* 2 Julian O. von Kalinowski, *Antitrust Laws & Trade Regulation: Desk Edition* § 10.02[2][b] at 10-8 to 10-9 (2d ed. 2016) ("With respect to potential market participants, where the business is deemed far enough along in the planning stages and has the intent to, and is prepared to, commence operations, it has generally been found able to sustain injury to 'business' under the Clayton Act." (citing cases)).

In its pleading, TCS simply alleges that it "would, of course, be willing to work with a U.S. customer to design and build a similar solution" (Countercl. (dkt. #295) ¶ 98), not that it affirmatively intends to enter the market or has taken "substantial steps" to do so. Moreover, any such allegation would be contrary to the position TCS took in defending against Epic's claims. Indeed, in closing argument on damages during the trial on Epic's claims, TCS's counsel represented that the reference to a U.S.-entry strategy from a September 2012 document "never materialized. Neither the partnership with Epic nor any kind of large-scale entry into the U.S. market ever really got beyond this think piece stage." (Trial Tr. (dkt. #898) 139.) TCS further presented evidence and argued to the jury at trial that it was attempting to market healthcare management systems software *not* EHR software, therefore undermining any contention that it intended to compete with Epic or anyone else in the United

States' market for EHR software. (Trial Tr. (dkt. #898) 143-44.)

Although defendants [sic] failure to allege a sufficient factual basis for antitrust standing—and that TCS's representations in defending against Epic's claims would estop them from doing so—is enough to grant plaintiff's motion to dismiss counterclaim counts 1-5,[3] the antitrust allegations also do not "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Here, TCS does not even arguably allege facts supporting a claim Epic enjoys monopoly power, could plausibly attempt to achieve monopoly power or conspired with *anyone* to obtain monopoly power in the EHR market in violation of § 2 of the Sherman Act or its Wisconsin counterpart, Wis. Stat. § 133.03(2). *At most*, TCS alleges that Epic has market power, as one of the top three HER vendors

[3] Of course, reliance on TCS's representations to the jury to bolster TCS's lack of standing is potentially something of a two-edge sword for Epic in light of the jury nevertheless finding that TCS benefitted from unauthorized access to the features and architecture surrounding Epic's EHR software in the sum of $140 million dollars. However, that award was supported by the leg up TCS obtained in savings from not going down dead ends in the further development of its own EHR software that competes with Epic's in other countries, as well as savings in market research and strategy should TCS ever seriously turn itself to the U.S. market for this software. (9/29/17 Op. & Order (dkt. #976) 8-14.) Moreover, as noted above, TCS *affirmatively* pleads in its counterclaims that its current products "are not suitable for deployment in the United States EHR Market." (Countercl. (dkt. #295) ¶ 86.) As Epic points out, this allegation, as well as others in TCS's counterclaims, not only effectively pleads itself out of a claim to antitrust *standing*, but also antitrust *injury.* (Pl.'s Br. (dkt. #327) 13-14.)

accounting "for nearly 60%" of the U.S. "hospital market" and one of ten "account[ing] for 90%" of that market. (Countercl. (dkt. #295) ¶ 52.) Ignoring the upstream market power of the largest hospital groups for purposes of Epic's motion to dismiss, there is absolutely no facts suggesting that Epic's place in this ill-defined submarket for EHR software in the U.S. On the contrary, the overwhelming evidence at trial is that Epic grew organically and quite consciously from a small software design provider to a few hospitals into a vertically structured, closed software provider to an exclusive clientele comprised of hospital groups and other large, integrated health care providers.

Similarly, because there is *no* allegation of any horizontal agreements between Epic and its competitors, nor competing, downstream health providers, its vertical customer agreements could only be held unlawful "if an assessment of market effects, known as a rule-of-reason analysis, reveals that [Epic] unreasonably restrain[s] trade." *United States v. Apple, Inc.*, 791 F.3d 290, 313-14 (2nd Cir. 2015). More specifically, TCS would need to prove: (1) Epic's alleged anticompetitive conduct "is likely to keep at least one significant competitor . . . from doing business"; and (2) "the probable (not certain) effect of the exclusion will be to raise prices above . . . the competitive level, or otherwise injure competition." *Roland Mach. Co. v. Dresser Indus. Inc.*, 749 F.2d 380, 394 (7th Cir. 1984). While alleging an injury to itself, TCS fails to make any specific allegation of injury to another, significant competitor, much less to competition generally. Nor could it do so plausibly given the size of other competitors and those of many of its downstream customers, to say nothing of software behemoths far larger than even TCS, who certainly have the resources to enter the EHR market were supra-competitive profits to be had (e.g., Microsoft, Google and Apple). Even TCS's dubious claim to be a *possible* competitor fails for the reasons already explained above. Moreover, Epic's decision to operate its software in a closed system would appear without more to meets any reasonable application of the rule-of-reason test, beginning with the obviously pro-competitive benefits of maintaining the confidentiality and security of healthcare records. In short, TCS's Section 1 and Wis. Stat. § 133.03(1) claims are no more plausible than its monopoly claims, at least on the face of its pleading.

II. Tortious Interference Claims

In count six, defendants allege that TCS and Kaiser were parties to valid, binding and enforceable service contracts, including the statement of work, and that Epic interfered with those contracts by failing to provide access to information needed to perform the work. In count seven, TCS also alleges that Epic interfered with TCS's prospective economic relationship with Kaiser in the form of additional work. Both claims are asserted under California common law.

Epic seeks dismissal of both claims on the basis that its actions were justified or privileged. *See Sade Shoe Co. v. Oschin & Snyder*, 162 Cal. App. 3d 1174, 1180, 209 Cal. Rptr. 124, 127 (Ct. App. 1984) (dismissal based on justification defense appropriate if it appears on the face of the complaint); *United States v. Lewis*, 411 F.3d 838, 842 (7th Cir. 2005) (affirming dismissal of claim when "the allegations of the complaint itself set forth everything necessary to satisfy the affirmative defense"). Under California law, "One who has a financial interest in the business of another is privileged purposely to cause him not to enter into or continue a relation with a third person in that business if the actor [¶] (a) does not employ improper means, and [¶] (b) acts to protect his interest from being prejudiced by the relation." *Id.* at 1181, 209 Cal. Rptr. at 127 (citing Restatement of Torts, § 769); *see also Online Policy Grp. v. Diebold, Inc.*, 337 F. Supp. 2d 1195, 1205 (N.D. Cal. 2004) (same) (citing Restatement (Second) of Torts § 773).

Here, TCS alleges affirmatively in its counterclaims that Epic had its own contractual relationship with Kaiser. (Countercl. (dkt. #295) ¶¶ 101-11.) As such, Epic obviously had a financial interest in its business with Kaiser. Moreover, at summary judgment, this court concluded that: (1) *TCS* breached its contract with Epic; *and* (2) *TCS* violated computer crime statutes. At trial, the jury further found that TCS breached other terms in its contract with EPIC prohibiting unauthorized use of its confidential information, misappropriated its trade secrets, was unjustly enriched, and engaged in fraudulent misrepresentation and unfair completion, among other violations of law. (Jury Liability Verdict (dkt. #855).) Based on these liability findings, TCS cannot allege in good faith that Epic's actions were divorced from its own justified and privileged interests in protecting its business relationship with Kaiser, as well as its trade secrets and other confidential information.

Even in its counterclaims, TCS affirmatively alleges that Epic had a standing policy of limiting access to its confidential information by consultants performing work off-shore, including in India, and that Epic communicated to Kaiser its concerns about granting TCS access to the UserWeb (a concern that we now know was well-founded). (*Id.* at ¶¶ 134-34, 148-49.) While alleging that Epic's interference was improper, TCS stops short of alleging—and indeed cannot now allege in light of overwhelming evidence that Epic was not acting covertly to protect its intellectual property, but rather was upfront about its concerns with TCS's access to the UserWeb—that Epic neither used *improper means* to remove TCS from the Kaiser project, nor had an *improper motive* in limiting any prospective, additional injury.

Epic argues persuasively in its brief in support of its motion to dismiss that the facts alleged here are similar to those at issue in *State Farm Mut. Auto Ins. Co. v. Wier*, No. A101791, 2004 WL 2988429 (Cal. Ct. App. Dec. 27, 2004). In that case, the court similarly found interference with a contract justified or privileged. In that case, the plaintiff, an insurance company, asserted a claim of trade secret misappropriation against two of its former agents, and the agents counterclaimed for intentional inference with contract. *Id.* at *1. After the agents took the insurance company's customer list to a rival insurance company, the plaintiff sent its competitor a cease and desist letter; unsurprisingly this caused that competitor to terminate its contract with the two agents. *Id.* at *2, *15. The court rejected the intentional interference counterclaim, because "as a matter of law, a party is justified in interfering with a contract . . . [by] (1) informing the third party of a prior, valid, and inconsistent contractual commitment owed by the plaintiff to the interfering party and (2) threatening enforcement of that prior, valid contractual right." *Id.* at *16; *see also Planet Goalie, Inc. v. MonkeySports, Inc.*, No. CV 11-07263 RZ, 2013 WL 1729512, at *5 (C.D. Cal. Apr. 22, 2013) ("Even if [plaintiff] has stated a contractual interference tort, [defendants'] conduct was justified because it was seeking in good faith to protect its own business interests and relationship with [third party] by appropriate means despite the potential detriment to [plaintiff].").

So, too, here. Indeed, the evidence presented by the parties during the trial on Epic's claim, and the jury's finding of liability in Epic's favor, forecloses TCS's intentional interference with contract claim as a matter of law. Accordingly, the court will also dismiss counts 6 and 7.

III. Misappropriation of Trade Secrets Claim

Finally, TCS alleges a claim for misappropriation of trade secrets based on Epic's purported attempt to view TCS's Med Mantra software, as well as TCS's allegation "[u]pon information and belief," that Epic actually "gained competitive information about Med Mantra and other TCS systems." (Countercl. (dkt. #295) ¶ 179.) Epic seeks dismissal of this claim based on TCS's allegations that Epic employees, posing as patients, would simply have access to publicly-viewable material, more specifically, "the user interface and operating procedures of TCS's Med Mantra." (Pl.'s Opening Br. (dkt. #327) 22 (citing Countercl. (dkt. #295) ¶ 241).) Said otherwise, trade secret misappropriation cannot occur by use of publicly-accessible information. *Mobile Med. Int'l Corp. v. United* States, 95 Fed. Cl. 706, 734 (2010) ("Obtaining alleged trade secrets from . . . public displays are acceptable means of acquiring the information."); Uniform Trade Secrets Act § 1 cmt. ("Proper means include . . . Observation of the item in public use or on public display."); Wis. Stat. § 134.90 cmt. (same).

TCS's alternative argument that any public displays would constitute HIPAA violations is equally meritless for at least two reasons. First, it is not clear whether India has the same privacy protections as those available in the United States. Second, TCS is alleging that Epic was seeking Indian employees or other affiliated individuals to visit the Apollo hospital to view their own health records, and therefore any privacy considerations are irrelevant. Regardless, TCS's own allegations and the Epic emails cited in those allegations both undermine any trade secret claim based on public viewing of Med Mantra's user interface. Finding that TCS's allegations of trade secret misappropriation similarly fail as a matter of law, therefore, the court will grant Epic's motion to dismiss this final claim as well.

ORDER

IT IS ORDERED that plaintiff Epic Systems Corporation's motion to dismiss counterclaims (dkt. #326) is GRANTED. The clerk of court is directed to enter judgment accordingly and close this case.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Case No. 14-cv-748-wmc

EPIC SYSTEMS CORPORATION,

Plaintiff,

v.

TATA CONSULTANCY SERVICES LIMITED and
TATA AMERICA INTERNATIONAL CORPOATION [sic] d/b/a
TCA AMERICA,

Defendants.

JUDGMENT IN A CIVIL CASE

This action came for consideration before the court and a jury with District Judge William M. Conley presiding. Partial judgment was granted by the court. Other issues were tried to a jury, which rendered its verdict, and the court also entered injunctive relief. The court has now resolved all post-judgment issues and enters this judgment.

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of plaintiff Epic Systems Corporation against defendants Tata Consultancy Services Limited and Tata America International Corporation as to plaintiff's claims for breach of contract, violations of the Computer Fraud and Abuse Act, 19 U.S.C.

§ 1030(g) claims, violations of the Wisconsin Computer Crimes Act, Wis. Stat. § 943.70(2)(a), fraudulent misrepresentation, misappropriation of trade secrets, unfair competition, unjust enrichment and deprivation of property.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is entered in favor of defendants Tata Consultancy Services Limited and Tata America International Corporation against plaintiff Epic Systems Corporation as to plaintiff's conversion claim.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is entered in favor of plaintiff Epic Systems Corporation against defendants Tata Consultancy Services Limited and Tata America International Corporation dismissing defendants' counterclaims.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is entered in favor of plaintiff Epic Systems Corporation against defendants Tata Consultancy Services Limited and Tata America International Corporation in the amount of $420,000,000.00.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is entered in favor of plaintiff Epic Systems Corporation against defendants Tata Consultancy Services Limited and Tata America International Corporation, permanently enjoining defendants as follows:

1. This Permanent Injunction shall remain in full force and effect for four years from April 27, 2016, the date [sic] the effective date of the original Permanent Injunction.

2. For purposes of this Permanent Injunction, the following terms apply:

a. "Epic" shall mean plaintiff Epic Systems Corporation.

b. "TCS" shall mean Tata Consultancy Services Limited and Tata America International Corporation.

c. "Trade Secret" shall mean the documents contained in Trial Exhibit No. 1247, limited to those documents (or portions of such documents) that are a trade secret as defined in the Wisconsin Uniform Trade Secrets Act, Wis. Stat. § 134.90(1)(c).

d. "Confidential Information" shall mean the documents, including the content of the documents, contained in Trial Exhibit Nos. 2100 and 2101 that (i) are not trade secrets; and (ii) are "confidential information" as defined in the parties' Standard Consultant Agreement (Trial Ex. 3).

3. Except as expressly set forth in the opinion above, TCS and their respective affiliates, successors, officers, agents, servants, employees, and attorneys and any and all other persons who are in active concert or participation with any of them (all collectively referred to as "Enjoined Parties"), are permanently enjoined, anywhere in the world, from the following:

   a. using any Epic Trade Secret or Confidential Information for any reason, including but not limited in the design, development, enhancement, or marketing of any TCS software providing solutions in the areas of electronic health records, electronic medical records, and hospital management systems, or any other healthcare software solutions, including but not limited to Med Mantra (as most broadly defined, including but not limited to, TCS-HIS, Med Mantra in use at Apollo Hospitals in India, British American Hospital in Mauritius, Tata Cancer Hospital in India, Tata Cancer Institute in India, and Med Mantra modules in development at DaVita Healthcare Partners, Inc. and Quest Diagnostics, Inc.) (collectively, "TCS EHR Products");

b. possessing or retaining any Epic Trade Secret or Confidential Information in any form, including on any servers or other electronic computer systems of TCS or any other electronic or hard-copy media at TCS;

c. accessing or attempting to access any non-public Epic servers or systems, including Epic' [sic] internet portal known as UserWeb; and

d. permitting any TCS employee or consultant or agent who performed software testing on Epic's software in connection with TCS's work for Kaiser, directly supervised or managed such testing, or otherwise had access to any Epic Trade Secret or Confidential Information, including, but not limited to Naresh Yallapragada, Venugopal Reddy, and Madhavi Mukerji, to work on, or assist in, directly or indirectly, the design, development, enhancement, or marketing of any TCS EHR Products.

4. For the two years from April 27, 2016, unless extended by the court upon a showing of good cause, TCS shall not resist, hamper, delay, or otherwise interfere with the activities of a

monitor to be appointed consistent with the procedure outlined in the above opinion. The monitor shall be paid by Epic and have unfettered access at any time, to monitor TCS's development and implementation of any TCS EHR Products to ensure that TCS does not improperly use any of Epic's Trade Secrets or Confidential Information, as described below. In particular, TCS shall permit the monitor to:

a. Confirm that TCS employees, consultants, and agents do not have access to Epic's internet portal known as UserWeb or to any of Epic's Trade Secret or Confidential Information.

b. Confirm that TCS does not possess or retain any Epic Trade Secret or Confidential Information on any of its servers, shared drives, shared domains, or other places of electronic information storage.

c. Talk with any TCS employee who might be able to assist the monitor in determining whether Epic Trade Secret or Confidential Information was or is being used in the design, development, enhancement, or marketing of any TCS EHR Products. TCS shall provide the ombudsman or monitor with unfettered access to these TCS employees.

d. Examine, evaluate, and analyze TCS's electronic information, including TCS's proxy logs, domain logs, active directory logs, software, servers, shared drives, and shared domains, to determine whether any Epic Trade Secret or Confidential Information was or is being used or is intended to be used in the design, development, enhancement, or marketing of any TCS EHR Products. TCS shall provide the monitor with unfettered access to this electronic information.

5. Epic shall have the ability to confidentially provide the monitor with the type of information Epic deems necessary to monitor TCS's development and implementation of any TCS EHR Product to ensure that TCS does not improperly use any of Epic's Trade Secret or Confidential Information.

6. Except by leave of court, the monitor shall not disclose the substance or outcome of its ongoing investigation except for: (1) the procedures or tasks undertaken; and (2) specific evidence of a violation of the permanent injunction. To the extent the monitor may have only general evidence, he should disclose that evidence to the court, at which time the court will determine whether the monitor may disclose the evidence to Epic.

7. TCS shall provide written notice to all TCS employees who performed work for Kaiser Permanente and all employees who work (or worked during the relevant time period) on the design, development, enhancement, or marketing of any TCS EHR Products, that the Permanent Injunction has been issued and its terms.

8. Within 60 court days of the effective date of this Permanent Injunction, TCS shall file and serve a report in writing and under oath setting forth in detail the manner and form with which TCS has complied with the Permanent Injunction.

9. Violation of the Permanent Injunction shall be subject to all applicable penalties, including contempt of court and shifting the reasonable expenses that Epic has paid for the monitor to TCS.

10. This court shall retain continuing jurisdiction over Epic, TCS and the Enjoined Parties and the action for the purpose of enforcing or modifying the Permanent Injunction.

Approved as to form this 2nd day of October, 2017.

/s/ William M. Conley
William M. Conley
District Judge

/s/ Peter Oppeneer
Peter Oppeneer
Clerk of Court

10/3/17
Date

APPENDIX F

United States District Court, W.D. Wisconsin.

14-cv-748-wmc

EPIC SYSTEMS CORPORATION,

Plaintiff,

v.

TATA CONSULTANCY SERVICES LIMITED and Tata America International Corporation d/b/a TCA America,

Defendants.

Signed 03/22/2019

OPINION AND ORDER

WILLIAM M. CONLEY, District Judge

After summary judgment, a 10-day trial, an order entering an injunction, and an extensive opinion addressing remaining post-trial motions, the court entered judgment in favor of plaintiff Epic Systems Corporation in the amount of $420 million. In response, defendants Tata Consultancy Services Limited and Tata America International Corporation (collectively "TCS"), filed a sweeping motion pursuant to Federal Rules of Civil Procedure 50(b) and 59, largely repeating the same arguments previously raised in its Rule 50(a) motion and previously rejected by the court. (Dkt. #996.) In more cursory fashion, defendants also move for reconsideration of the court's order granting plaintiff's motion to dismiss defendants' counterclaims. For the reasons that follow, the court will deny both motions.

OPINION

I. Challenges to Liability Findings

Under Rule 50, judgment may be granted as a matter of law where there is no "legally sufficient evidentiary basis" to uphold the jury's verdict on that issue. Fed. R. Civ. P. 50(a). More specifically, the court is to "examine the evidence presented, combined with any reasonably drawn inferences, and determine whether that evidence sufficiently supports the verdict when viewed in the light most favorable to the non-moving party." *E.E.O.C. v. AutoZone, Inc.*, 707 F.3d 824, 835 (7th Cir. 2013). In doing so, the court is not to make credibility determinations or weigh the evidence. Rather, the court must assure that more than "a mere scintilla of evidence" supports the verdict, *Hossack v. Floor Covering Assocs. of Joliet, Inc.*, 492 F.3d 853, 859 (7th Cir. 2007), reversing "only if no rational jury could have found for the prevailing party," *AutoZone, Inc.*, 707 F.3d at 835. Moreover, "[b]ecause the Rule 50(b) motion is only a renewal of the preverdict motion, it can be granted only on grounds advanced in the preverdict motion." *Wallace v. McGlothan*, 606 F.3d 410, 418 (7th Cir. 2010); *see also Thompson v. Mem'l Hosp. of Carbondale*, 625 F.3d 394, 407 (7th Cir. 2010) (refusing to consider the defendant's argument that plaintiff failed to demonstrate that he suffered an adverse employment action, in part, because the defendant did not raise argument in Rule 50(a) motion); Fed. R. Civ. P. 50 cmt. 1991 Amendments ("A post-trial motion for judgment can be granted only on grounds advanced in the pre-verdict motion.").

Defendants also move for a new trial under Rule 59, which "may be granted only if the jury's verdict is against the manifest weight of the evidence." *King v. Harrington*, 447 F.3d 531, 534 (7th Cir. 2006) (citing *ABM Marking, Inc. v. Zanasi Fratelli, S.R.L.*, 353 F.3d 541, 545 (7th Cir. 2003)). To meet this standard, defendants must demonstrate that no rational jury could have rendered a verdict against them. *See King*, 447 F.3d at 534 (citing *Woodward v. Corr. Med. Servs. of Ill., Inc.*, 368 F.3d 917, 926 (7th Cir. 2004)). Here, again, the court must view the evidence in a light most favorable to plaintiff, leaving issues of credibility and weight of evidence to the jury. *King*, 447 F.3d at 534. "The court must sustain the verdict where a 'reasonable basis' exists in the record to support the outcome." *Id.* (quoting *Kapelanski v. Johnson*, 390 F.3d 525, 530 (7th Cir. 2004)).

As further context, during the course of this bifurcated trial, defendants moved for judgment as a matter of law under Rule 50(a). The court implicitly denied these motions by allowing both the liability and the damages phases to go to the jury. After the verdict, the parties extensively briefed defendants' arguments, with full knowledge of the jury's verdicts, and the court ruled on that motion before entering judgment. As such, it is odd for defendants to file another motion, largely repeating verbatim their prior arguments, without, for the most part, acknowledging the court's prior rulings. Rather than repeat its prior explanation for rejecting defendants' arguments, the court, for the most part, will simply refer to its Rule 50(a) opinion and order.

A. Proof of "Actual Damages"

Defendants argue that the court should enter judgment in their favor on any claims that require a showing that Epic suffered "actual damages" in the form of "losses or other comparable harm." (Defs.' Opening Br. (dkt. #997) 18.) Defendants contend that plaintiff's sole ground for compensatory damages was a disgorgement of benefit theory in connection with its unjust enrichment claim. As such, defendants argue, plaintiff failed to present evidence of actual damages to support its breach of contract, fraudulent misrepresentation, unfair competition, Computer Fraud and Abuse Act ("CFAA") and deprivation of property / civil theft claims.

As an initial matter, defendants continue to blur the distinction between a finding of injury, required for some but not all of the claims, and a finding and measurement of damages. *See United States v. Sapoznik*, 161 F.3d 1117, 1119 (7th Cir. 1998) ("But the question of causation is different, in criminal as in civil law, from the question of quantification. (In tort law the difference is between the fact of injury and the amount of damages.)"). For example, to prove a breach of contract claim under Wisconsin law, the plaintiff need not prove any injury, as this court previously explained. (*See* 3/2/16 Op. & Order (dkt. #538) 46 n.36.) The fact that the jury found defendants *liable* as to all of these claims does not mean the jury was obligated to award damages on all claims. Indeed, the actual damages award more likely reflects the finding of liability on the unjust enrichment claim, and, specifically, plaintiff's disgorgement of benefit theory. Regardless, as plaintiff points out in its response, none of these claims required proof of the *type* of damages defendants contend is necessary for a finding of liability.

As for proof of damages specifically, while defendants are correct that a plaintiff may recover out-of-pocket losses for its fraudulent misrepresentation and unfair competition claims, that is the not the *sole* available basis of recovery. Instead, a plaintiff may seek damages in the form of the value of the benefit received through the commission of the tort, which is essentially the same as the unjust enrichment disgorgement of benefits theory. *See Pro-Pac Inc. v. WOW Logistics Co.*, 721 F.3d 781, 786 (7th Cir. 2013) (damages for the "value of the benefit" unjustly received are available for tort claims regardless of whether the plaintiff formally alleged an unjust enrichment claim). Similarly, plaintiff's deprivation of property / civil theft claim under Wis. Stat. § 895.446 requires that a person suffer "damage or loss," but the statute provides that "actual damages" can include the retail value of stolen property, which is analogous with a damages claim premised on the value of the trade secrets and confidential information taken by defendants.

Defendants' challenge to an award on plaintiff's CFAA claim fails for an additional reason. While the CFAA requires that a civil plaintiff suffer "damage or loss," 18 U.S.C.A. § 1030(g), the term "loss" includes:

> any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service.

Id. at § 1030(e)(1). Here, defendants stipulated to plaintiff's evidence of a $9,277 loss. (Pl.'s Opp'n (dkt. #1007) 26 (citing Trial Tr. (dkt. #896) 89 (counsel for defendants stating that they are going to "drop the whole matter of . . . the loss" under CFAA claim and the court responding that it will delete the instruction)).)

Having stipulated to this loss, defendants cannot now challenge plaintiff's failure to prove "actual damages."

B. Failure to Instruct on "Actual Damages" Element

Closely related to the first challenge, defendants further argue that the court should grant judgment in their favor on the above-mentioned claims because the jury was never asked to find, and never found, that Epic suffered "actual damages." Because the court has rejected defendants' argument that such a finding was required as to each of these claims, however, the court similarly rejects any argument based on the court's failure to instruct the jury or the lack of a jury finding. Critically, with respect to the damages award, the jury was instructed properly that they could award damages for "the value of the benefits obtained by TCS because of TCS's wrongful conduct." (Damages Instr. (dkt. #872) 3.)

C. Misappropriation of Trade Secrets Claim

Next, defendants again challenge the jury's finding of liability as to the misappropriation of trade secrets claim, Wis. Stat. § 134.90, on the basis that plaintiff failed to demonstrate that it protected the secrecy of these alleged trade secrets. The court previously considered and rejected this argument, and defendants offer no meritorious basis for revisiting it. (*See* 9/29/17 Op. & Order (dkt. #976) 4-5.)

D. Unfair Competition and Unjust Enrichment Claims

Defendants offer three bases for judgment in their favor as to these claims. *First*, defendants contend that plaintiff's unjust enrichment claim fails as a matter of law because the contract between TCS and Epic bars such a claim. Plaintiff contends that this challenge has been waived, having failed to raise it in their original Rule 50(a) motion. However, where the challenge is purely a legal challenge – not a sufficiency of the evidence or a jury instruction challenge – the court agrees with defendants that it need not be raised in a Rule 50(a) motion. *See Havco Wood Prod., LLC v. Indus. Hardwood Prod., Inc.*, No. 10-CV-566-WMC, 2013 WL 1497429, at *3 (W.D. Wis. Apr. 11, 2013) (explaining that where a matter of law is raised as a basis for relief, there is no prejudice to the nonmovant) (citing *Warlick v. Cross*, 969 F.2d 303, 308 (7th Cir. 1992)).

Even so, this first challenge fails on its merits. The parties' contract did not govern TCS's impermissible access through the Epic UserWeb portal. Indeed, the record demonstrates that TCS was denied direct access to the UserWeb *despite* its repeated requests. (Trial Ex. 296 at 3 (TCS presentation explaining that because "TCS is not an Epic partner . . . they are not allowed to access Epic Systems Userweb Portal"); Trial Ex. 303 at 6 (TCS acknowledging that because it "could not reach an agreement with EPIC," TCS associates are not "allowed to connect to the EPIC User Web").) Because of this, not only did the contract not cover TCS's impermissible use, but there was no reason for Epic to negotiate away a contractual remedy for unjust enrichments arising out of a fundamental breach of that contract. Regardless, even if recovery were only available as a breach of contract damage, the jury found just such a breach and was entitled to find the benefit conferred on defendants as a result of that breach was the best measure of damages. (*See* Damages Instr. (dkt. #872) 3 (instructing the jury that they may award Epic "the value of the benefits obtained by TCS because of TCS's wrongful conduct," and specifically instructing them that "the appropriate remedy may be the benefits, profits, cost savings, or other advantages gained by TCS because of its use of Epic's confidential information or trade secrets").)

Second, defendants argue that there was insufficient evidence from which a reasonable jury could find a benefit conferred on defendants, namely that defendants used the information obtained to "develop competing software." (Defs.' Opening Br. (dkt. #997) 29.) In its prior order, the court extensively addressed both the evidence supporting a finding of improper use and what kind of use was required to support a finding of liability as to unjust enrichment and an award of damages on this claim or breach of contract. (9/29/17 Op. & Order (dkt. #976) 4-5 (detailing evidence to support a finding of improper use); 9-10 (explaining evidentiary basis for jury's award of compensatory damages based on the competitive analysis).) Defendants have advanced no reason for the court to revisit this analysis.

Third, with respect to the unfair competition claim, defendants argue that plaintiff failed to put forth any evidence of a competitive use to sustain the jury verdict on that claim. Here, too, as the court explained previously, there was ample evidence to support the jury's award of compensatory damages based on TCS's development of its comparative product analysis, which gave it a leg up in developing both an entry strategy into the U.S. health software market and improving the competitiveness of its Med Mantra software product. (*Id.* at 9-10.)

E. Fraud, CFAA and Deprivation of Property Claims

Defendants also raise various challenges to the jury's finding of liability on plaintiff's fraud, CFAA and deprivation of property claims. *First*, defendants challenge plaintiff's deprivation of property claims under Wis. Stat. § 895.446 because there was no "movable property" involved. The court previously considered this argument and rejected it, and again sees no grounds for revisiting it. (9/29/17 Op. & Order (dkt. #976) 6 (citing 4/1/16 Op. & Order (dkt. #776) 7-9).)

Second, with respect to the fraudulent misrepresentation claim, defendants argue that judgment should be entered in their favor because plaintiff failed to present evidence of their intent to induce Epic to do something that would cause it economic harm. In particular, defendants argue that the only evidence introduced was their intent to obtain information to help their customer Kaiser. The court previously addressed this argument as well, explaining that the test is whether Epic relied on the misrepresentation and whether its reliance was reasonable. Having already rejected defendants' framing of the legal requirements, defendants offer no further basis to challenge the jury's finding with respect to this claim. (*See* 9/29/17 Op. & Order (dkt. #976) 6-7 (rejecting same argument in Rule 50(a) motion).)

Third, and weakest of all, defendants argue that there is no evidence to support the jury's finding that TCS employees shared passwords with an intent to deceive in violation of the CFAA. Again, this is a well-worn ground, and defendants offer no new basis to challenge the court's previous finding of more than sufficient evidence to conclude that TCS employees were "specifically motivated to improperly use other's passwords for an improper purpose (*i.e.*, that TCS access UserWeb documents for a purpose other than to enable TCS employees to do their jobs for their mutual customer Kaiser)." (*Id.* at 7; *see also id.* at 18 (describing TCS employees' widespread, improper use).)

F. Adverse Inference Instruction

Next, defendants seek judgment as a matter of law on the basis that the court's adverse inference instruction was too broad.[1] Specifically, defendants argue that the adverse inference instruction was a "kind of wild card," invoked to "fill complete holes in the plaintiff's proof." (Defs.' Opening Br. (dkt. #997) 34.) There are several problems with defendants' argument. Initially, as the court previously explained, plaintiff submitted ample evidence to support the jury's findings even without the benefit of the adverse inference instruction. (9/29/17 Op. & Order (dkt. #977) 4-6 (describing evidence to support a jury finding as to the various claims).) More importantly, the jury was properly instructed as to the requirements before making any adverse inference, as well as the reasonable inference the jury may make based on that finding. (*See* Closing Instr. (dkt. #858) 3-4.) Third, plaintiff submitted an evidentiary basis for the jury to conclude that an adverse inference was appropriate (namely, evidence that defendants failed to timely preserve web proxy logs and other electronic data, coupled with evidence of defendants' own, deliberate failure to conduct its

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[1] Defendants also challenge the court's decision permitting an adverse inference instruction and allowing Sam Rubin to testify, since his testimony was premised on the adverse inference instruction. For the reasons previously provided, there were good grounds to provide the adverse inference instruction. (3/23/16 Op. & Order (dkt. #709).) Defendants' briefing provides no basis for reconsidering that decision.

own timely investigation) after being put on notice of possible breaches and acts of fraud by its client, Kaiser.

G. Impact on Liability of $100 Million Reduction in Damages Verdict

In its prior opinion and order, the court reduced the compensatory damages award by $100 million, finding that there was not a sufficient evidentiary basis to support the category of damages for defendants' use of "other information." (9/29/17 Op. & Order (dkt. #976) 10-12.) From this decision, defendants now argue that "if the jury found liability on the conduct that was insufficient to support the $100 million award, the underlying liability finding is invalid." (Defs.' Opening Br. (dkt. #997) 37.) This argument is frivolous. This case was bifurcated, with the jury determining liability *before* hearing any evidence or argument or being instructed on damages. As such, those liability findings stand alone, separate and apart from the subsequent determination to award Epic $140 million for use of the competitive analysis and $100 million for use of "other information." The court sees no basis for reconsidering the jury's liability determinations, simply because there was an insufficient basis to assess substantial monetary damages for use of "other information" wrongfully taken by the defendants.

H. New Trial

Alternatively, defendants seek a new trial on liability in a cursory fashion under Federal Rule of Evidence 59. Having found no merit to their arguments in support of judgment as a matter of law in defendants' favor, the court similarly finds no reason to grant a new trial.

II. Challenges to Damages Verdict[2]

A. Evidence of Use of Trade Secrets to Create Comparative Analysis

Defendants argue that to the extent the trade secrets claim was the basis for the jury's damages award, Epic failed to offer any evidence to support a finding that stolen trade secrets were used in making the comparative analysis. Specifically, defendants contend that the testimony of Epic's officer, Stirling Martin, and expert, Wes Rishel, was insufficient to establish a link between the downloaded UserWeb documents containing trade secrets and defendants' development of their comparative product analysis. The court disagrees. Martin testified credibly about the substantial value and importance of the Foundations documents, and in particular the configuration component of Foundations. This formed a sufficient basis for the jury to conclude that defendants used Epic trade secrets in developing their comparative analysis. (Trial Tr. (dkt. #907) 70-71; *see also* Trial Tr. (dkt. #900) 14-15, 27-28; Trial Tr. (dkt. #889) 140.)

While the Seventh Circuit in *IDX Systems Corp. v. Epic Systems Corp.*, 285 F.3d 581 (7th Cir. 2002), rejected the plaintiff's attempt to label its software *in its entirety* a trade secret, here, Epic identified specific documents containing closely guarded trade secrets that cost hundreds of millions to develop and protect, *and* it adequately tied defendants' unauthorized access to those documents to the development of an arguably

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[2] Defendants renew their argument that the damages case as a whole was unfair in light of the court's original decision to strike the damages phase of the case. The court already rejected this argument for reasons laid out in its prior opinion and order and will not revisit it again. (*See* 9/29/17 Op. & Order (dkt. #976) 8-9.)

valuable comparative analysis. Nothing more was required. Moreover, as this court has repeatedly explained, the compensatory damages award could extend beyond the value of the trade secrets to encompass the value of other confidential information obtained improperly. (9/29/17 Op. & Order (dkt. #976) 14.)[3]

B. Britven's R&D Theory

Defendants also challenge the jury's compensatory damages award, arguing that plaintiff's expert Thomas Britven's testimony relied on an assumption not borne out by the evidence – that defendants "actually used Epic's confidential information for competitive advantage." (Defs.' Opening Br. (dkt. #997) 49.) The court already addressed this argument above, as well as in prior opinions, and found an ample evidentiary basis for the jury to conclude that defendants used plaintiff's trade secrets and other confidential information to develop the comparative analysis, in addition to informing defendants' U.S. entry strategy and improving its Med Mantra product. (*See supra* Opinion § I.D (citing 9/29/17 Op. & Order (dkt. #976) 4-5, 9-10, 12).)

Nevertheless, defendants persist in arguing that Britven's testimony did not establish that the jury's award actually reflects defendants' cost savings in using plaintiff's confidential information. To the contrary, as explained in the court's prior opinion and

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[3] Defendants again challenge the court's decision to prevent defendants' last-minute introduction of evidence supposedly showing that the comparative analysis could have been compiled by publicly-available information. Having amply explained its reasoning for that decision, based primarily on defendants' repeated discovery violations, the court sees no reason to expound on this challenge further. (9/29/17 Op. & Order (dkt. #976) 13-14 (citing 3/23/16 Op. & Order (dkt. #703) 7-8).)

order, plaintiff provided an adequate evidentiary basis for the jury to award $140 million in compensatory damages under plaintiff's avoided R&D theory. (9/29/17 Op. & Order (dkt. #976) 9 (setting forth evidence that "the cost of developing this information was roughly $200 million, but crediting lower costs for IT work in India would still cost $130 to $140 million").) As this court has further, repeatedly explained, defendants need not have been successful or profitable in their use of Epic's confidential information to allow for this award. (*Id.* at 12-13 (citing Restatement (Third) of Restitution and Unjust Enrichment § 51 (2011); *Cosgrove v. Bartolotta*, 150 F.3d 729, 734 (7th Cir. 1998)).)

C. Curative Instruction

Next, defendants challenge the court's failure to give a curative instruction as requested by defendants after the closing arguments on liability. Defendants had requested that the court instruct the jury based on a reference made by plaintiff's counsel during the closing argument to the effect that defendants now had Epic trade secrets "just sitting . . . somewhere on a shelf" to be used in the future in developing products. (Defs.' Opening Br. (dkt. #997) 56 (citing Trial Tr. (dkt. #905 at 34)); *see also id.* at 98 ("Why would TCS think it's okay to hide Epic's information until this case is over and then take it off the shelf and aggressively pursue the U.S. market?").) Specifically, defendants proposed the following instruction:

> As you may recall, to prove its unjust enrichment claim, Epic must prove by a preponderance of the evidence that, among other things, it conferred a benefit upon TCS. If the thing that a plaintiff claims is a benefit in fact has no value until it is actually used by the defendant, then the defendant

> has not been unjustly enriched by mere possession of that thing.

(Defs.' Opening Br. (dkt. #997) 57 (citing Defs.' Request (dkt. #844) 2-3).)

In contrast, the liability instruction for the unjust enrichment claim correctly informed the jury that it had to find a "benefit conferred upon TCS by Epic's confidential non-trade secret information" and that "[a] loss to the plaintiff without an actual benefit to the defendant is *not* recoverable as an unjust enrichment." (Liability Closing Instr. (dkt. #858) 10-11.) As such, defendants' proposed curative instruction was not necessary. More critically – since this challenge really concerns the jury's award of *damages* – the jury was further and properly instructed in that phase of the trial that "the value or threat of *future* use, including future sales, does not serve as a basis for an award of compensatory damages, but is rather addressed by the court's injunction." (Suppl. Damages Instr. (dkt. #873) 1.) As such, the jury was appropriately instructed, and defendants were in no way prejudiced by the court's refusal to give the specific curative instruction they requested.

D. New Trial

Finally, as they did in challenging the liability verdict, defendants move in a cursory fashion for a new trial on compensatory damages. Having rejected the specific bases described above, the court similarly will deny that motion.

III. Challenges to Punitive Damages Award

A. No Waiver

With respect to the jury's punitive damages award, defendants initially contend that they did not waive any challenge because they objected to the punitive damages instruction in their pre-trial submissions, while acknowledging that they never moved for judgment as a matter of law. The court agrees that this early objection would preserve a general challenge to a punitive damages award, although any challenge specific to plaintiff's failure to meet its evidentiary burden would be waived by defendants' failure to bring a timely Rule 50(a) motion. Regardless, defendants' challenges have no merit, as the court explained in its prior opinion and order, and briefly summarizes below.

B. Availability of Punitive Damages

Defendants argue that punitive damages are not available because there are no "actual damages," essentially repeating the argument made at the beginning of their brief. For the reasons explained above, the court finds no merit in this argument (*see supra* Opinion § I.A) and, therefore, rejects it as a basis for challenging the punitive damages award.

Defendants also argue that a punitive damages award was only available if the compensatory damages award was premised on plaintiff's misappropriation of trade secrets, fraudulent misrepresentations and unfair competition claims because only those claims permit an award of punitive damages under Wisconsin law. As plaintiff explains in its opposition brief, Wisconsin law also allows for the possibility of an award of punitive damages in cases, such as here, where the *compensatory* damages award is restitutionary in nature, and a defendant's conduct merits such an award. (Pls.' Opp'n (dkt. #1007) 81 (discussing *Pro-Pac, Inc. v. WOW Logistics Co.*, 721 F.3d 781, 788 (7th Cir. 2013) ("Regardless of whether the bankruptcy court awards damages premised on gain to WOW (i.e., restitutionary damages) or loss to Pro–Pac (i.e., compensatory damages), punitive damages are also available, if otherwise appropriate.")).)

C. Legally Sufficient Basis

Defendants next argues that plaintiff failed to put forth evidence that their conduct was "willful and malicious," a necessary finding for any punitive damages award premised on misappropriation of trade secrets, or that they acted with an intentional disregard for Epic's rights, as required to support a finding of punitive damages under plaintiffs' common law claims.

Because defendants failed to raise either a challenge to the jury instruction or to the sufficiency of the evidence in a proper pre-verdict Rule 50(a) motion, however, the court agrees with plaintiff that this challenge has been waived. (*See* 9/29/17 Op. & Order (dkt. #976) 15.) For the reasons previously provided, there was nevertheless ample evidence for the jury to conclude that defendants acted with an intentional disregard of Epic's rights. (*Id.* at 16-17.)

D. Impact of Vacating $100 Million Award

Defendants further argue that the punitive damages award must be vacated because of the court's reduction of the compensatory damages award, reasoning that "we know that when the jury determined that punitive damages were warranted, it clearly had in mind a broader range of uses than that which was legally sustainable. And we cannot now know whether these additional (speculative) uses of the information were material to the jury's determination to award punitive damages or to the amount of those damages." (Defs.' Opening Br. (dkt. #997) 67.) Nonsense. The court's decision vacating a portion of the compensatory damages award does not undermine the jury's award of punitive damages, because the jury was not instructed to tie punitive damages to a particular type of use of Epic's trade secrets and confidential information, nor to defendants' use more generally. Moreover, the court previously applied the cap under Wis. Stat. § 134.09(4)(b) and § 893.043(6) to limit the punitive damages award to no more than two times the compensatory damages award. (9/29/17 Op. & Order (dkt. #976) 17.)

E. Grossly Excessive and Due Process Challenge

Finally, defendants contend that the punitive damages award is grossly excessive and in violation of federal and state law requirements. The court has already considered and rejected these concerns in depth in its prior opinion and order. (9/29/17 Op. & Order (dkt. #976) 17-22.)[4]

IV. Motion for Reconsideration of Order Dismissing Counterclaim

In addition to challenging the jury's verdict and entry of judgment on plaintiff's clams [sic], defendants seek relief from the court's dismissal of defendants' counterclaims, arguing that "[a]t a minimum, TCS should have been permitted to seek discovery on its counterclaims and put in evidence in support of them." (Defs.' Original Br. (dkt. #997) 83.) As set forth in its opinion and order on plaintiff's motion to dismiss defendants' counterclaims, the jury's finding of liability and defendants' own representations made during the trial on plaintiff's claims undermine defendants' ability to allege in good faith necessary elements of their counterclaims. (9/29/17 Op. & Order (dkt. #977) 12-14.) As such, the decision to dismiss these counterclaims

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[4] For these same reasons, the court also rejects defendants' request for remittitur.

was not based on any evidentiary failing – which would be an improper consideration at the pleading stage – but rather a defect in the pleadings themselves, as described in detail in that decision. (*Id.*) Defendants offer no reason to reconsider that ruling here.

ORDER

IT IS ORDERED that defendants Tata Consultancy Services Limited and Tata America International Corporation's motions for judgment as a matter of law pursuant to Fed. R. Civ. Proc. 50(b), for a new trial pursuant to Fed. R. Civ. Proc. 59 and for reconsideration of dismissal of counterclaims pursuant to Fed. R. Civ. Proc. 60 (dkt. #996) are DENIED.

APPENDIX G

Only the Westlaw citation is currently available.

United States District Court, W.D. Wisconsin.

14-cv-748-wmc

EPIC SYSTEMS CORPORATION,

Plaintiff,

v.

TATA CONSULTANCY SERVICES LIMITED and Tata America International Corporation d/b/a TCA America,

Defendants.

Signed June 30, 2022
Filed July 1, 2022

OPINION AND ORDER

WILLIAM M. CONLEY, District Judge

Following a multi-week, bifurcated jury trial, defendants Tata Consultancy Services Limited and Tata America International Corporation ("Tata") appealed this court's original entry of final judgment in plaintiff Epic System Corporation's favor in the amount of $420 million – consisting of $140 million in compensatory damages and $280 million in punitive damages – along with other forms of injunctive relief. (Judgment (dkt. #978).) On appeal, the Seventh Circuit affirmed that judgment in all respects except for the amount of punitive damages awarded, concluding that the amount of $280 million was "constitutionally excessive," even though reduced by 60% from the jury's award of $700 million to comport with the 2:1 monetary cap on a punitive award related to a compensatory damages award under Wisconsin law, Wis. Stat. § 895.043(6). *Epic Sys. Corp. v. Tata Consultancy Servs. Ltd.*, 980 F.3d 1117, 1124 (7th Cir. 2020), *cert. denied*, 142 S. Ct. 1400 (2022). Instead, after applying the evidence of record to "guideposts" articulated by the Supreme Court in *BMW of N. Am., Inc. v. Gore*, 517 U.S. 539, 575 (1996), the Seventh Circuit found that "the ratio relative to the $140 million compensatory award should not exceed 1:1" and remanded the case to this court to "amend its judgment and reduce punitive damages to, at most, $140 million." *Id.* at 1145.

Accordingly, on remand, this court directed the parties to brief "why the court should not award $140 million in punitive damages." (Dkt. #1036.) In their submissions, defendants present an exhaustive challenge, while largely ignoring that: (1) a civil jury awarded punitive damages in this case in the amount of $700 million; (2) this court already imposed a statutory cap of $240 million for punitive damages; (3) this court also considered TCS's multiple challenges to the jury award, *including* the punitive damages award in post-trial briefs; *and* (4) the Seventh Circuit similarly considered these same arguments, reversing only as to the court's consideration of Tata's constitutional challenge and even then, finding most of its arguments unpersuasive. For its part, plaintiff maintains that the Seventh Circuit effectively remanded for entry of punitive damages in the amount of $140 million, but opted not to amend the judgment itself given the complicated nature of that judgment as a whole, including an award of injunctive relief.

For these reasons, neither side's submissions are very helpful. The Seventh Circuit plainly charged this court to exercise its discretion on remand and enter an award up to a constitutional maximum of $140 million *in light of* the record in the case as a whole. Regardless, the court remains unconvinced by the great bulk of defendants' various arguments to reduce the punitive award further, and for the reasons that follow, will award plaintiff $140 million in punitive damages and enter an amended final judgment consistent with that award.

OPINION

After considering and rejecting defendants' arguments with respect to the availability of punitive damages in this case, as well as their statutory and common law challenges to this court's $280 million award, the Seventh Circuit turned to defendants' constitutional challenge to that award. Reviewing the *Gore* "guideposts," the Seventh Circuit concluded that "[t]he facts and circumstances of this case do not justify awarding $280 million in punitive damages," largely relying on the fact that (1) the "compensatory damages here are high," and (2) while "TCS's conduct was reprehensible," it was "not to an extreme degree." *Epic*, 980 F.3d at 1144. Based on this analysis, the court concluded that "the maximum permissible award of punitive damages in this case is $140 million – a 1:1 ratio relative to the compensatory damages award." *Id.* at 1145.

In their response to the court's order directing briefing on remand, defendants rehash the same arguments made previously to this court: Epic only suffered "uncertain, minor economic harm"; a $140 million punitive damages award would make this case an outlier in Wisconsin and other jurisdictions; and the court should consider the significant injunctive relief awarded in crafting a punitive damages award. (Defs.' Opening Br. (dkt. #1040).) Finally, ignoring altogether the ceiling suggested by the Seventh Circuit, defendants contend that an award of between $10 and $25 million would be appropriate.

As Epic points out in response, "TCS acts as if it is writing on a clean slate, and invites the Court to do the same." (Pl.'s Opp'n (dkt. #1041) 7.) Both this court and the Seventh Circuit considered and rejected defendants' arguments against an award of any punitive damages, as well as their arguments for significantly reducing the award to the amount of defendants' proposed range of $10 to $25 million. Specifically, this court concluded that: punitive damages were available; there was a legally sufficient basis for the jury's punitive damages award, albeit reducing it to reflect a reduction of the jury's compensatory damages award and to bring it into line with Wisconsin's 2:1 statutory cap and the *Gore* guideposts. (9/29/17 Op. & Order (dkt. #976) 15-22; 3/22/19 Op. & Order (dkt. #1022) 15-17.) While the Seventh Circuit reversed as to the court's constitutional analysis under *Gore* and *Rainey v. Taylor*, 941 F.3d 243 (7th Cir. 2019), it did not upset the remainder of this court's reasoning.

Even as to this last constitutional safeguard, the Seventh Circuit agreed that Epic had met its burden of proof under the first and most important *Gore* guidepost: establishing the reprehensibility of Tata's conduct. *Epic*, 980 F.3d at 1141. In particular, viewing the evidence as the jury obviously did, the Seventh Circuit found that: Tata knew it lacked authority to access much of Epic's confidential information; multiple Tata employees undertook a deliberate subterfuge to gain repeated, unauthorized access to, download and use extensive confidential information to shortcut years of Epic's painstaking testing and development of software to bring a product to the health care market that could effectively compete with Epic's suite of features; when one of Tata's own, senior officials became concerned that its sudden leap forward in healthcare software design and competitiveness was likely explained by a massive, cynical breach of safeguards established by Epic, he was told to stand down, ignored and ultimately disciplined; when Tata's and Epic's joint customer, Kaiser, as well as Epic. [sic] also began to question signs of this breach, Tata's employees lied repeatedly about what they had done and Tata repeatedly refused to investigate; and, even after Tata's misconduct had begun to come to light, it failed to preserve documents, allowed others to be destroyed, and continued to proffer employees who doubled down by continuing to lie about their actions under oath. The Seventh Circuit also credited that wholly apart from the jury's award of disgorgement, Epic had itself been injured by Tata's conduct, albeit by an amount difficult to quantify. *Epic*, 971 F.3d at 1141.

While the Seventh Circuit considered other factors that softened the reprehensibility of Tata's conduct – the fact that Epic suffered no "physical harm," that Tata's conduct was purely profit driven, rather than by "an indifference to or reckless disregard of" the safety of others, and that Epic was not financially vulnerable (albeit dwarfed by the size of Tata) – which justified a reduction of an award of 2:1 punitive to compensatory damages allowed by Wisconsin law down to a 1:1 ratio as capped by the Seventh Circuit's opinion, the court rejected an abandonment of *any* proportionality between the massive windfall Tata was required to disgorge of $140 million and the need to send a message to one of the largest company's [sic] in the world that its repeated, deliberate and cynical conduct, as well as repeated attempts to keep it from coming to light, will not be tolerated. As Epic rightly points out, "[w]ithout a substantial punitive damage award, the lesson of this case for [Tata] will be that even after "its wrongdoing [was] discovered," the only consequence is "merely [being] required to give back what it took." (Pl.'s Br. (dkt. #1041) 19.)

Said another way, without a meaningful punitive damages award relative to the massive gain Tata almost got away with, the message in this case is that the risk/reward calculation favors continuing that conduct. Having witnessed Tata's repeated efforts to stall discovery and the detailed record to Tata's actual breach of any semblance of business ethics and institutional safeguards in favor of ill-gotten gains at other's expense, this court readily understands the desire by the jury to try to send a message to Tata and other companies tempted to do the same about staying within the ethical lines of competition. To ignore that desire and reduce the punitive damages award down to 3 to 3.5% of the jury's original punitive damages award as Tata suggests would be a disservice to the lay persons that we regularly ask to play a key role in judging credibility and applying common sense in support of our system of justice, as well as undermine the deference due a civil jury under our Constitution. *See Lampley v. Onyx Acceptance Corp.*, 340 F.3d 478, 486 (7th Cir. 2003) ("Reflecting our general deference to jury verdicts, we have never required the district court to adjust a jury's punitive damages verdict so that it is proportional, in the court's view, to the defendant's wickedness. Such proportional adjustments are left to the jury itself.") (quoting *Caudle v. Bristow Optical Co.*, 224 F.3d 1014, 1028 (9th Cir. 2000)).

As for the second *Gore* guidepost, "harm or potential harm" inflicted on Epic, the Seventh Circuit's ruling that Tata has "waived any argument that the compensatory award is the incorrect denominator in the ratio analysis" is now law of the case, *Epic*, 971 F.3d at 1143, and Tata's late effort to suggest some other denominator based on a less quantifiable direct harm to Epic, rather than the $140 million disgorgement is too little, too late. Still, even working with that award, the Seventh Circuit acknowledged that "the compensatory damages here are high." *Id.* However, this court is again left with little to no principled basis to reduce the jury's original punitive damage award below the 1:1 ratio recognized as constitutionally sound by the Seventh Circuit.

The Seventh Circuit also held that Tata "waived any argument that [the final and least weighty guidepost] points toward the award being unconstitutional" by looking for comparison of punitive awards to "civil penalties imposed in comparable cases." *Epic*, 971 F.3d at 1145. Nevertheless, Tata cherry-picks Wisconsin cases not at all comparable to this one. Indeed, all of Tata's remaining arguments for a reduction below the constitutional cap established by the Seventh Circuit amount to arguments one might make to a jury, rather to a court only being asked to decide on remand whether a twice reduced award of $140 million is still constitutionally infirm. Since Tata's arguments are largely unmoored from the constitutional considerations articulated by the Supreme Court in *Gore* and already applied by the Seventh Circuit as outlined above, the court can find no principled, constitutional basis for a further reduction, and defendant has offered neither additional reasons on remand for this court to reconsider the jury's findings nor its own analysis that defendants acted willfully and reprehensibly with the expectation and determination that they would not be caught. Thus, Epic is entitled to a significant award of punitive damages commensurate with that conduct and proportional to the unlawful windfall it almost got away with keeping.

For all these reasons, the court concludes that the facts and circumstances of this case as a whole justify an award of $140 million in punitive damages, admittedly large as that amount may be.

ORDER

IT IS ORDERED that:

(1) The jury's award of punitive damages is reduced to $140 million.

(2) The clerk of court is directed to file an amended final judgment, replacing the fourth paragraph of the original judgment with the following language:

IT IS FURTHER ORDERED AND ADJUDGED that judgment is entered in favor of plaintiff Epic Systems Corporation against Tata Consultancy Services Limited and Tata America International Corporation in the amount of $280,000,000.00.

(3) In all other respects, the court's original, final judgment remains unchanged.

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Case No. 14-cv-748-wmc

EPIC SYSTEMS CORPORATION,

Plaintiff,

v.

TATA CONSULTANCY SERVICES LIMITED and
TATA AMERICA INTERNATIONAL CORPORATION D/B/A
TCA AMERICA,

Defendants.

AMENDED JUDGMENT IN A CIVIL CASE

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of plaintiff Epic Systems Corporation against defendants Tata Consultancy Services Limited and Tata America International Corporation as to plaintiff's claims for breach of contract, violations of the Computer Fraud and Abuse Act, 19 U.S.C. § 1030(g) claims, violations of the Wisconsin Computer Crimes Act, Wis. Stat. § 943.70(2)(a), fraudulent misrepresentation, misappropriation of trade secrets, unfair competition, unjust enrichment and deprivation of property.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is entered in favor of defendants Tata Consultancy Services Limited and Tata America International Corporation against plaintiff Epic Systems Corporation as to plaintiff's conversion claim.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is entered in favor of plaintiff Epic Systems Corporation against defendants Tata Consultancy Services Limited and Tata America International Corporation dismissing defendants' counterclaims.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is entered in favor of plaintiff Epic Systems Corporation against Tata Consultancy Services Limited and Tata America International Corporation in the amount of $280,000,000.00.

Approved as to form this 12th day of July, 2022.

s/ William M. Conley
William M. Conley
District Judge

s/ R. Swanson, Deputy Clerk
Joel Turner
Clerk of Court

7/12/2022
Date

APPENDIX I

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

Nos. 19-1528 & 19-1613
No. 14-cv-748

EPIC SYSTEMS CORP.,

Defendants / Counterclaim Plaintiffs-Appellants / Cross-Appellees,

v.

TATA CONSULTANCY SERVICES LTD. & TATA AMERICA INTERNATIONAL CORP. D/B/A TCS AMERICA,,

Defendants / Counterclaim Plaintiffs-Appellants / Cross-Appellees.

Appeal from the United States District Court
for the Western District of Wisconsin.

November 19, 2020

Before

JOEL M. FLAUM, *Circuit Judge*
DANIEL A. MANION, *Circuit Judge*
MICHAEL S. KANNE, *Circuit Judge*

William M. Conley, *Judge*.

ORDER

Epic Systems Corporation filed a petition for rehearing and rehearing en banc on September 3, 2020, and on October 2, 2020, Tata Consultancy Services Limited and Tata America International Corporation filed an answer to the petition. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all members of the original panel have voted to deny panel rehearing. The petition for rehearing is therefore DENIED.

APPENDIX J

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

Nos. 19-1528 & 19-1613
No. 14-cv-748

EPIC SYSTEMS CORP.,

Plaintiff / Counterclaim Defendant-Appellee / Cross-Appellant,

v.

TATA CONSULTANCY SERVICES LTD. & TATA AMERICA INTERNATIONAL CORP. D/B/A TCS AMERICA,,

Defendants / Counterclaim Plaintiffs-Appellants / Cross-Appellees.

Appeals from the United States District Court
for the Western District of Wisconsin.

November 30, 2020

Before

JOEL M. FLAUM, *Circuit Judge*
DANIEL A. MANION, *Circuit Judge*
MICHAEL S. KANNE, *Circuit Judge*

William M. Conley, *Judge*.

ORDER

Tata America International Corporation and Tata Consultancy Services Limited filed a petition for rehearing and rehearing en banc on September 3, 2020. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all members of the original panel have voted to deny panel rehearing. The petition for rehearing and rehearing en banc is therefore DENIED.

APPENDIX K

From: CN=P Guionnet/OU=AMER/O=TCS
Sent: Wednesday, April 29, 2015 8:55 PM
To: rrichmond@jenner.com, pguionnet@msn.com, CN=P Guionnet/OU=AMER/O=TCS@TCS
Subject: Fw EPIC and Cerner Product documentation
Attach: Epic-Med Mantra comparative analysis.xlsx

Philippe Guionnet
Client Partner,

Kaiser Permanente
Tata Consultancy Services
Cell:- 310-291-1553
Mailto: p.guionnet@tcs.com
Website: http.//www.tcs.com

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------Forwarded by P Guionnet/AMER/TCS on 04/29/2015 12.54 PM -----

From: P Guionnet/AMER/TCS
To: s.narasimhan@tcs.com
Cc: P Guionnet/AMER/TC@TCS
Date: 03/29/2015 05:49 PM
Subject: Fw: EPIC and Cemer Product documentation

Phillipe Guionnet
Client Partner,

Kaiser Permanente
Tata Consultancy Services Limited
Cell:- 310-291-1553
Mailto- p.guionnet@tcs.com
Website: http//www.tcs.com

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-----Forwarded by P Guionnet/AMER/TCS on 03/28/2015 09:51 AM-----

From: Naresh Yallapragada/HYD/TCS
To: Venugopall Reddy/HYD/TCS@TCS, P Guionnet/AMER/TCS@TCS
Cc: Ramareddy Baddam/HYD/TCS@TCS
Date: 04/01/2014 12:05 AM
Subject: Fw: EPIC and Cerner Product documentation

Dear Venu and Phil,

Please find attached the comparative analysis between Med Mantra and Epic.

Worksheet one has the module level comparison and worksheet two has the feature level analysis of Epic against a standard list of features.

The highlighted sections on worksheet one are the modules which Epic does not have (like Blood Bank) or which Kaiser Permanente (KP) has not implemented.

Warm Regards
Dr.Naresh Y.V.
Tata Consultancy Services
Cell:- 9642711179
Mailto: naresh.yallapragada@tcs.com
Website: http://www.tcs.com

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-----Forwarded by Naresh Yallapragada/HYD/TCS on 04/01/2014 12:28PM-----

To: Naresh Yallapragada/HYD/TCS
From: Mukeshm Kumar/CHN/TCS
Date: 03/31/2014 10:28AM
Subject: Fw: EPIC and Cerner Product documentation

Dear Naresh,

PFA Billing functionality details Updated below.

Thanks & Regards
Mukeshkumar
Delivery. Manager
Tata Consultancy Services
Ph:- 044-66l6-9317
Cell:- 8939318670
Mailto: mukeshm.kumar@tcs.com
Website: http://www.tcs.com

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-----Forwarded by Mukeshm Kumar/CHN/TCS on 03/28/2014 03:22 PM-----

From: Naresh Yallapragada/HYD/TCS
To: Mukeshm Kumar/CHN/TCS@TCS
Date: 03/28/2014 12:48 PM
Subject: Re: Fw: EPIC and Cerner Product documentation

Dear Mukesh,

Thanks for the excel.

PFA the updated sheet with the Billing functionality added (today's session)

Request Our team to update this section also.

Thanks

Warm Regards
Dr. Naresh Y.V.
Tata Consultancy Services
Cell:- 9641711179
Mailto: naresh.yallapragada@tcs.com
Website: http://www.tcs.com

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-----Mukeshm Kumar/CHN/TCS wrote: -----

To: Naresh Yellapragada/HYD/TCS
From: Mukeshm Kumar/CHN/TCS
Date: 03/28/2014 12:16PM
Subject: Re: Fw: EPIC and Cerner Product documentation

Hi Naresh,

PFA updated doc including the Opeartion theatre Module. (See attached file: Epic product analysis.xls)

Thanks & Regards
Mukeshkumar
Delivery Manager
Tata Consultancy Services
Ph:- 044-6616-9317
Cell:- 8939318670
Mailto: mukeshm.kumar@tcs.com
Website: http://www.tcs.com

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Naresh Yallapragada---03/27/2014 05:06:54 PM---Dear Mukesh, PFA the updated analysis sheet for today (27th March) with the addition of the Operatio

From: Naresh Yallapragada/HYD/TCS
To: Mukeshm Kumar/CHN/TCS@TCS
Date: 03/27/2014 05:06 PM
Subject: Re: Fw: EPIC and Cerner Product documentation

Dear Mukesh,

PFA the updated analysis sheet for today (27th March) with the addition of the Operation Theatre module (Optime in Epic).

Request your team to fill the availability of the master list of requirements in Epic and add if anything is missed.

Thanks

Warm Regards
Dr. Naresh Y.V.
Tata Consultancy Services
Cell:- 9642711179
Mailto: naresh.yallapragada@tcs.com
Website: http://www.tcs.com

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-----Mukeshm Kumar/CHN/TCS wrote: -----

To: vikram.vadamalai@kp.org
From: Mukeshm Kumar/CHN/TCS
Date: 03/24/2014 02:43PM
cc: Naresh Yallapragada/HYD/TCS
Subject: Fw: EPIC and Cerner Product documentation

fyia pls

Thanks & Regards
Mukeshkumar
Delivery Manager
Tata Consultancy Services
Ph:- 044-6616-9117
Cell:- 8939318670
Mailto: mukeshm.kumar@tcs.com
Website: http://www.tcs.com

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-----Forwarded by Mukeshm Kumar/CHN/TCS on 03/24/2014 02:41 PM-----

From: Mukeshm Kumar/CHN/TCS
To: vikram.vadamalai@kp.org
CC: Naresh Yallapragada/HYD/TCS
Date: 03/24/2014 02:39 PM
Subject: Fw: EPIC and Cerner Product documentation

Hi Vikram,

Pls have the SME's and Senior leads Connect with Naresh today around 4 PM.

Thanks & Regards
Mukeshkumar

Delivery Manager
Tata Consultancy Services
Ph:- 044-6616-9317
Cell:- 8939318670
Mailto: mukeshm.kumar@tcs.com
Website: http://www.tcs.com

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-----Forwarded by Mukeshm Kumar/CHN/TCS on 03/24/2014 02:38 PM-----

From: Naresh Yallapragada/HYD/TCS
To: Mukeshm Kumar/CHN/TCS@TCS
Date: 03/24/20.14 11:22 AM
Subject: Re: Fw: EPIC and Cerner Product documentation

Dear Mukesh,

Further to our discussion on Friday, please let me know at what time should we connect with your team today.

Warm Regards
Dr. Naresh Y.V.
Tata Consultancy Services
Cell:- 9642711179
Mailto: naresh.yallapragada@tcs.com
Website: http://www.tcs.com

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-----Mukeshm Kumar/CHN/TCS wrote: -----

To: Naresh Yallapragada/HYD/TCS
From: Mukeshm Kumar/CHN/TCS
Date: 03/20/2014 09:21AM
Subject: Re: Fw: EPIC and Cerner Product documentation

Naresh,

One of team member Passed away in an accident yesterday. We can discuss on Friday.

Thanks & Regards
Mukeshkumar
Delivery Manager
Tata Consultancy Services
Ph:- 044-6616-9317
Cell:- 8939318670
Mailto: mukeshm.kumar@tcs.com
Website: http://www.tcs.com

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Naresh Yallapragada---03/20/2014 09:15:25 AM---

Dear Mukesh, Thanks for the documents.

From: Naresh Yallapragada/HYD/TCS
To: Mukeshm Kumar/CHN/TCS@TCS
Date: 03/20/2014 09:15 AM
Subject: Re: Fw: EPIC and Cerner Product documentation

Dear Mukesh,

Thanks for the documents.

Will go through them and connect with you tomorrow evening.

Warm Regards
Dr. Naresh Y. V.
Tata Consultancy Services
Cell:- 9642711179
Mailto: naresh.yallapragada@tcs.com
Website: http://www.tcs.com

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-----Mukeshm Kumar/CHN/TCS wrote:-----

To: Naresh Yallapragada/HYD/TCS
From: Mukeshm Kumar/CHN/TCS
Date: 03/19/2014 10:48PM
Subject: Fw: EPIC and Cerner Product documentation

Thanks &-Regards

Mukeshkumar
Delivery Manager
Tata Consultancy Services
Ph:- 044-6616-9317
Cell:- 8939318670
Mailto: mukeshm.kumar@tcs.com
Website: http://www.tcs.com

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-----Forwarded by Mukeshm Kumar/CHN/TCS on 03/19/2014 06:21 PM-----

From: vikram.vadamalai@kp.org
To: mukeshm.kumar@tcs.com
Date: 03/19/2014 05:58 PM
Subject: EPIC and Cerner Product documentation

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[attachment "EPIC & Cerner Product Document.doc" removed by Naresh Yallapragada/HYD/TCS] [attachment "Epic product analysis_27thMarch.xlsx" deleted by Mukeshm Kumar/CHN/TCS]

[attachment "Epic product analysis.xls" removed by Naresh Yallapragada/HYD/TCS]

=====-----=====-----====Notice: The information contained in this e-mail message and/or attachments to it may contain confidential or privileged information. If you are not the intended recipient, any dissemination, use, review, distribution, printing or copying of the information contained in this e-mail message and/or attachments to it are strictly prohibited. If you have received this communication in error, please notify us by reply e-mail or telephone and immediately and permanently delete the message and any attachments. Thank you

[attachment "Epic product analysis_Mukesh.xls" removed by Srikanth X Telkapalli/CA/KAIPERM]

(See attached file: Epic product analysis.xls)

[attachment "Epic product analysis.xls" removed by Naresh Yallapragada/HYD/TCS]

Slno	Module	EPIC	MED MANTRA
1	ADT	Yes (KP)	Yes
2	Ambulance	No	Yes
3	Anaesthesia	Yes (KP)	Yes
4	Appointment booking	Yes (KP)	Yes
5	Billing	Yes (KP)	Yes
6	Blood Bank	No	Yes
7	Claims management	Yes (KP)	Yes
8	Clinical Decision Support	Yes (KP)	Yes
9	Customer relationship management	No	Yes
10	Dietary module	No	Yes
11	Dynamic forms	No	Yes
12	Emergency	Yes (KP)	Yes
13	EMR	Yes	Yes
14	Enterprise Scheduler	Yes (KP)	Yes
15	Human resources	No	Yes
16	IP Consultation	Yes (KP)	Yes
17	Laboratory	Yes	Yes
18	Laundry and House keeping	No	Yes
19	Leave management	No	Yes
20	Maintenance management	No	Yes
21	Material management	No	Yes
22	MIS reports	Yes (KP)	Yes
23	Mobility	Yes	Yes
24	Nurses	Yes (KP)	Yes
25	Oncology	Yes (KP)	Yes
26	OP Consultation	Yes (KP)	Yes
27	Operation theatre	Yes (KP)	Yes
28	Payroll	No	Yes
29	Pharmacy	Yes (KP)	Yes
30	Preventive Health Check	No	Yes
31	Radiology	Yes	Yes
32	Registration	Yes (KP)	Yes
33	Wards	Yes (KP)	Yes

Slno	Module name	Process name	Sub process	Availability in Epic	Remarks
1	Enterprise Scheduler	Booking appointment	Book a new walk-in appointment for a Patient	Yes	
2			Book a scheduled appointment for a Patient	Yes	
3		Canceling Appointment	Cancel a Booked Appointment	Yes	
4			Cancel group booking	Yes	
5			Cancel Multiresource (multiple bookings) Schedule	Yes	
6			Reschedule an Appointment with Equipment & Facility	Yes	
7		Rescheduling	Reschedule a single appointment	Yes	
8			Reschedule group booking	No	
9			Reschedule Multiresource Schedule	Yes	
10			All Appointments for the day	No	
11			Partial Appointments	No	
12		Delegate Appointments	Delegate the appointment to another Doctor	No	
13		Web Appointments	Patient can book his/her appointment from a portal	Yes	
14		Doctor's schedule information	Doctor can view his schedule from this screen	Yes	
15		Creating Calendar Template	Creation of a calendar for individual resource	Yes	
16		Cloning of Calendar		Yes	
17		Booking Doctor's Time		Yes	
18		Booking Facility & Equipment time	Booking Human and Non human resources	No	
19	Registration	Registration	New Patient Registration	Yes	
20			Emergency Registration	Yes	
21			Quick Registration	No	
22			Camp Registration	No	
23			Cancellation of Registration	No	
24			Create outpatient case	Yes	
25			Cancel outpatient case	No	
26			Close outpatient case	Yes	
27		Corporate	Employee Registration for corporate check ups	No	
28		Upload Files	Upload clinical information from external sources	No	
29		Transactions	Link UHIDs/MRN's	No	
30			De -Link UHIDs/MRN's	No	
31			Merge Records	Yes	
32			De -Merge Records	No	
33		Demographics	Modify Demographic Details	Yes	
34			Un-mapping of employee ID with UHID/MRN	No	
35		Patient Search	Re-Issue of UHID/MRN cards	No	
36		Transactions	Emergency Triage Process	No	We have "Emergency Triage Process" as Documentation and not in Transaction

EX. 0039_0010

Slno	Module name	Process name	Sub process	Availability in Epic	Remarks
37	Emergency		Medico-Legal Case Identification & Authorization	No	
38			Treatment process	No	We have " Treatment process" as Documentation and not in Transaction
39		Doctor Activities	Death Process	No	
40			Crash Cart Refill Process	No	
41			Pharmacy Request	Yes	
42			Raise request for Lab/Radiology/Blood Bank/Drugs	Yes	
43	Doctors activities	Doctor Activities	Patient Assessment (History & Physical exam)	Yes	
44			Investigation order	No	
45			Diagnosis	Yes	
46			Education Management	Yes	
47			Prescription order generation	No	
48			Cancel Prescription	No	
49			Progress Notes	Yes	
50			Patient Case Transfer Process	Yes	
51			Patient Referral Process	Yes	
52			Modification of case referral	Yes	
53			Consent for treatment	No	
54			Admission Note	Yes	
55			Therapy Request	No	
56			Patient Absconding	No	
57			Consultation Fee	No	
58			Disability Certificate	No	
59			Medical Certificate	No	
60			Injury Certificate	No	
61			Death Report/Certificate Preparation	No	
62			Setup Activities	No	
63	Jurse activities	Nurse Daily Activities	Drug Administration	Yes	
64			Nursing Assessment ad Clinical Charting	Yes	
65			CSSD Request	No	
66			Raise a Request for Blood Unit	No	
67			Cancel/Modify Request for Blood	No	
68			Special request for diet	Yes	
69			LAB – Raise Request	Yes	
70			Request for surgery for In-patients (Planned & Unplanned)	Yes	
71			Cancel/Modify Request	Yes	
72			Request Investigation Radiology	No	
73			Cancel / Modify Request – Radiology investigation	No	
74			Rehabilitation process	No	

Slno	Module name	Process name	Sub process	Availability in Epic	Remarks
75			Modify/Cancel Physiotherapy request for In-patients	No	
76			Laundry Services	No	
77			Patient Discharge Process	Yes	
78			Death Report/Certificate Preparation	No	
79			Patient Details	Yes	
80			View MR Requests	No	
81			Appointments	Yes	
82			Results	Yes	
83			Transfers	Yes	
84			Add Tasks	No	
85			Change status	No	
86			Discharges	Yes	
87		Store Management	Set Up Pharmacy (Foundation and Hierarchy for Stores Management)	No	
88			Deactivate/Activate a pharmacy	No	
89		Item Management	Modify ROL in Pharmacy	No	
90			Create Item Master (Includes Creating Item Substitution Details)	No	
91			Add New Items	No	
92			Edit/Modify Item Details	No	
93			Create Generic Master	No	
94			Modify Generic Master	No	
95			Search/View Items (Items Look Up)	No	
96		Indents	Create New Indent by User Department from IP Pharmacy	No	
97			(a) Create New Indent by User Department from OT Pharmacy, (b) Select Drug Profile, (c) Create Drug Profile and (d) Add/Delete/Save Drug Profile	No	
98			Create New Indent by OP/IP/OT Pharmacy for Pharmacy Items from Central Pharmacy	No	
99			View Indents and Status (Search and View), Cancel Indent, Modify Indent (Indenting Department/Users) Raised to OP Pharmacy	No	
100			View Indents/Prescriptions with Print options in OP Pharmacy	No	

Slno	Module name	Process name	Sub process	Availability in Epic	Remarks
101		Indents Tracking	View Indents and Status (Search and View), Cancel Indent, Modify Indent (Indenting Department/Users) Raised to IP Pharmacy	No	
102			View Indents and Status (Search and View), Cancel Indent, Modify Indent (Indenting Department/Users) Raised to OT Pharmacy	No	
103			View OP/IP/OT Indents and Status (Search and View), Cancel Indent, Modify Indent (Indenting Department/Users) Raised to Central Pharmacy	No	
104		Drug Receive	Receive Items against IP Indent	No	
105			Receive Items against OT Indent	No	
106			Receipt of Items in OP/OT/IP Pharmacy against raised Indent from Central Pharmacy	No	
107		Returns	Return of Items to IP Pharmacy	No	
108			Return of Items to OT Pharmacy	No	
109			Return of Medicines to Cathlab Pharmacy	No	
110			Return of Unused Consignment Items to Central Pharmacy from Cathlab Pharmacy	No	
111			Acknowledgement by Cathlab Pharmacy for returned Items	No	
112			Acknowledgement for returned Consignment Pharmacy Items to Central Pharmacy	No	
113		Issues	Issue of Pharmacy Items from OT/IP Pharmacies to User departments	No	
114			Issue of Pharmacy Items from Central Pharmacy to IP/OP/OT Pharmacy	No	
115			Issue of Consignment Pharmacy Items to indenting Pharmacies	No	
116			Issue of Medicines from Cathlab Pharmacy	No	
117		Return Acknowledgment	Returned Items Acknowledgement from OT/IP Pharmacy	No	

Slno	Module name	Process name	Sub process	Availability in Epic	Remarks
118	Pharmacy		Acknowledgement for receipt of Items Returned to Central Pharmacy	No	
119		OP Returns	Return of Medicines to OP Pharmacy and Cash Receipts	No	
120		Drug Return	Return of Items to Central Pharmacy from OP/OT/IP Pharmacy	No	
121			Create New Indent for consignment pharmacy Items by Cathlab Pharmacy from Central Pharmacy	No	
122		Receipts	View Consignment Indents and Status (Search and View), Cancel Indent, Modify Indent (Indenting Department/Users) Raised to Central Pharmacy	No	
123			Generation of Returnable Gate Pass	No	
124			Generation of Non - Returnable Gate Pass	No	
125			Goods Receipt Note (Add, Modify, Delete, View and Cancel)	No	
126			View GRN	No	
127			View SRV	No	
128			Generation of SRV against Purchase Order	No	
129			Generation of SRV without Purchase Order	No	
130			Generation of SRV for Consignment receipt	No	
131			Receipt of Consignment Items from Central Pharmacy against Indent Raised	No	
132			Consignment Stock Entry/Receipt	No	
133			Delivery Instructions Note	No	
134		Purchase Request	Create New Purchase Request	No	
135			View Purchase Request and Status (Search and View)	No	
136			Accept/Reject/Onhold Purchase Request	No	
137		Vendor Management	(a) Create Vendor Master (Pharmacy Stores Vendor Master), (b) Add vendors, (c) Modify Vendor Details and (d) Activate/Deactivate Vendor	No	
138			Request For Quotations from Vendors	No	

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Slno	Module name	Process name	Sub process	Availability in Epic	Remarks
139			Vendor Response and Comparative Statement	No	
140			Vendor Rating	No	
141			View Raised consignment Purchase order and Status (Search and View)	No	
142			Return of Unused Consignment Items to Vendor	No	
143		Manual PO (Purchase Order)	Automatic Purchase Order Generation from Purchase Request	No	
144		Purchase Order	Main Tab of Purchase Order (Modes of data entry: Add, Modify, Delete, View, Authorize, Validate, Forward, Shortclose, Suspend and Reopen)	No	
145			Blanket Purchase order (Rate Contract, Value Contract and Quantity Contract)	No	
146			Create New consignment Pharmacy Items Purchase Order	No	
147		PO Amendment	Amendment of Purchase Order (Modify, View, Authorise and Validate)	No	
148		Adjustments	Unloading of Stock Information (Add, Modify, Delete and View)	No	
149		Goods Return to	Return of Goods to vendor	No	
150		Adjustments	Loss and Breakage	No	
151			Defining cycle count plan in Physical Stock Verification	No	
152			Creating physical inventory master in Physical Stock Verification	No	
153			Creating Stock adjustments	No	
154			Creating Cycle count Sheets in Physical Stock Verification	No	
155			Create Pharmacy Item Recall Order list	No	
156			Acknowledgement of receipt of recalled item	No	
157			Create new Pharmacy Items recall Order for Condemnation	No	
158			Acknowledgement of condemned items Receipt (In stores)	No	

Slno	Module name	Process name	Sub process	Availability in Epic	Remarks
159		OP Issue	Issue of Medicines from OP Pharmacy (Including Home Delivery of Medicines and Receipt Generation)	No	
160			Direct Retail Issue Returns	No	
161		Issues/ Returns	Create Ward Stock Dispensing	No	
162			Modify Ward Stock Dispensing	No	
163			Sale to Doctor	No	
164			Elements Master	No	
165			Item-Elements Link	No	
166			Stock Group Master	No	
167			Drug Form Master	No	
168			Ancillary & Cautionary Master	No	
169			Unit of Measure Master	No	
170			Drug Type Master	No	
171			Manufacturer Master	No	
172			Dosage Instruction Master	No	
173			Pharmacological Group Master	No	
174			SHPA Master	No	
175			Interaction Parameter Master	No	
176			Receive request from Doctor/Nurse	yes	
177			View/Modify drug requests	yes	
178			Approve/Reject drug request	yes	
179	ADT	Bed Booking	Bed Booking	Yes	
180			Modify Bed Booking	Yes	
181		Admission	In-Patient Admission	Yes	
182		Cancel Booking/ Admission	Cancellation for Booking/Admission	Yes	
183		Transfer	Bed Transfer	Yes	
184			Category Transfer	No	
185			Location Transfer	Yes	
186			Cancel Transfer	Yes	
187		Bed Matrix	Bed Management	Yes	
188		Surgical Advice	Surgical Advice (WARDS PROCESS XXX- ADMISSION NOTE)	No	
189		Procedure Request	Request for Surgery/Procedure (Planned & Unplanned) (Wards Process XXX)	Yes	
190		Cancel	Cancel/Modify Surgery/OT Request (Wards Process XXX)	Yes	
191		Reschedule	Scheduling of OT/Resources	Yes	
192		Raise Blood Request	Request for Blood/Products (BB Process XXX)	No	

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Slno	Module name	Process name	Sub process	Availability in Epic	Remarks
193	Operation theatre	Raise request	Request for Medications (OT Pharmacy Process XXX)	No	
194			Request for Investigations (Lab & Wards Processes XXX)	No	
195		MM Indent	Request for Consumables (MM - OT and Cath Process XXX)	No	
196		Surgeon Preference	Surgeon Preference card template	No	
197			Service Template Creation	No	
198			Surgery plan (Preparation)	No	
199		PAC	Pre anesthetic assessment phase 1	Yes	
200		Pre-OP Opinion	Pre operative instructions	Yes	
201		Consents	Consents	Yes	
202		Time Out Details	Pre operative checklist	Yes	
203		Pre-OP Instructions	Pre anesthetic assessment phase 2	Yes	
204		Anesthesia Record	Intra Operative Anesthetist record	Yes	
205		IntraOT Activity	Intra operative surgical record	Yes	
206			Intra operative nursing record	Yes	
207		Post OP	Post operative Instructions	Yes	
208		ImmediatePost-Op SurgicalAssessment	Post operative anesthetic assessment	Yes	
209		Post operative Notes	Post operative Notes	Yes	
210		RecoveryRoomRecord	Recovery Room activities	Yes	
211			Assessment for transfer or discharge of patients from Recovery	No	
212		Pain Scale	Pain management	Yes	
213			Anesthetic assessment and induction for Radiology procedures	No	
214		Request Status	Surgery Status of the Patient	No	
215			OT Status request	No	
216		Pharmacy consumption declaration	Consumables/Pharmacy items – Consumption declaration	No	
217			Return of unused items	No	
218			Stock Management	No	
219			OT Maintenance	No	
220			Background process	No	
221			Create / Update Group	No	
222			Create / Update Room	No	
223			Create / Update Resource	No	
224			Create holidays NA - Picked up from HR system	No	
225			Create pre-requisites / non-eligibility	No	
226			Update pre-requisites / non-eligibility	No	
227			Attach Instructions to Procedures	No	

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Slno	Module name	Process name	Sub process	Availability in Epic	Remarks
228			Create Put facility on hold	No	
229			Update Put facility on hold	No	
230			Appointments Request	No	
231			Give Appointments	Yes	
232			Schedule resources	No	
233			Fetch Patient	No	
234			Show-up	No	
235			Register	No	
236			Move Appointment	No	
237			Cancel Appointment	Yes	
238			View patient's other appointments	Yes	
239			Room Calendar	No	
240			Resource Calendar	No	
241			View / Print Instructions	No	
242			Maintain pick-list Create	No	
243			Maintain pick-list Update	No	
244			Fill trolley using pick-list	No	
245			Print Periop Forms	No	
246			Intra-op processes Create	Yes	
247			Intra-op processes Update	Yes	
248			Create Record material used during surgery	No	
249			Cancel Record material used during surgery	No	
250			Create Post-op processes	Yes	
251			Update Post-op processes	No	
252			Create OT charge posting	No	
253			Cancel OT charge posting	No	
254			Authorize OT charges	No	
255	Billing	Payment	Online Payment of bills by the Patient	Yes	
256		Collect/ Deposit	Collect advance amount for Hospital services	No	
257		Billing Execution	Raise Services	Yes	
258			Bill preparation	Yes	
259			Future Date Room Rent	No	
260			Doctor Payment	Yes	
261			Match Services	Yes	
262			Update bill estimate data	No	
263			Bill estimate	No	
264			Create payment distribution	Yes	
265			Create deposit request	No	
266			Monitor further deposit	No	
267			Print credit note / debit note	Yes	
268		Bill Estimation	Estimation Calculator	Yes	
269		Modify Discount	Discounts on generated bill	Yes	
270		Refund	Refund	Yes	
271		Outstanding Bills	Partial Bill payment	Yes	
272		Interim Bill	Interagency Bill Generation	No	
273			Print test bill	Yes	
274		Patient Policy Management	Conversion of Patient billing account type (cash / credit)	Yes	

Slno	Module name	Process name	Sub process	Availability in Epic	Remarks
275		Cash Handling	Cash Handling	Yes	
276		Others	Customer Wise Inadmissable	No	
277			Transfer transactions to other folio	No	
278		Final Bill	Print final bill	Yes	
279		Reports	Manage folios	No	
280			Print collective bill	Yes	