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Appendix A

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

No. 21-1370

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

*Plaintiffs-Counter-
Defendants-Appellants,*

v.

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

*Defendants-Counter-
Claimants-Appellees.*[†]

Argued: September 19, 2022

Decided: May 25, 2023

Before RAGGI, WESLEY, and LOHIER, *Circuit
Judges.*

OPINION

Plaintiffs-Counter-Defendants-Appellants Syntel
Sterling Best Shores Mauritius Limited and Syntel,
Inc. (collectively, “Syntel”) appeal from a final

[†] The Clerk of the Court is directed to amend the official caption
as set forth above.

judgment entered in favor of Defendants-Counter-Claimants-Appellees The TriZetto Group, Inc. and Cognizant Technology Solutions Corporation (collectively, “TriZetto”) after a jury trial in the United States District Court for Southern District of New York (Schofield, *J.*). Relevant here, the district court ordered and entered judgment that (1) Syntel misappropriated 104 of TriZetto’s trade secrets in violation of the Defend Trade Secrets Act (“DTSA”) and New York law; and (2) TriZetto’s \$284,855,192 compensatory damages award was proper under the DTSA.

On appeal, Syntel challenges the district court’s judgment with respect to liability and damages. Regarding liability, Syntel advances two related arguments. First, Syntel argues TriZetto failed to identify any trade secret with the requisite specificity at trial. Second, Syntel argues there was no misappropriation as a matter of law because TriZetto authorized Syntel’s use of the trade secrets. Both arguments fail. With respect to damages, Syntel argues upholding a compensatory damages award based on avoided development costs is impermissible under the DTSA in this case. Under these specific facts, we agree. Accordingly, we **AFFIRM IN PART** and **VACATE IN PART** the judgment of the district court and **REMAND** the case for further proceedings consistent with this opinion.

KANNON K. SHANMUGAM, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Washington, DC
(Jaren Janghorbani, Nicholas P. Groombridge,

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Crystal L. Parker, Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, NY; J. Steven Baughman, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Washington, DC, *on the brief*), for *Plaintiffs-Counter-Defendants-Appellants*.

JOHN C. O'QUINN, Kirkland & Ellis LLP, Washington, DC (Jason M. Wilcox, Hannah L. Bedard, Kirkland & Ellis LLP, Washington, DC; Michael W. De Vries, Kirkland & Ellis LLP, Los Angeles, CA; Adam R. Alper, Kirkland & Ellis LLP, San Francisco, CA; Leslie Schmidt, Kirkland & Ellis LLP, New York, NY, *on the brief*), for *Defendants-Counter-Claimants-Appellees*.

WESLEY, *Circuit Judge*:

This is a tale of trade secrets.¹ The TriZetto Group, Inc. and Cognizant Technology Solutions Corporation (collectively, “TriZetto”) develop software used by healthcare insurance companies. One software product is Facets®, a platform which automates and manages common healthcare administrative tasks such as claim processing, claim adjudication, and billing. TriZetto licenses its Facets software to healthcare insurance companies to manage services for over 170 million people in America. But installing, upgrading, and customizing

¹ Citations to “App’x” refer to the Appendix, citations to “Special App’x” refer to Plaintiffs-Counter-Defendants-Appellants’ Special Appendix, and citations to “Trial Tr.” refer to portions of the trial transcript that do not appear in the Appendices.

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Facets to fit a client's specific needs requires a significant amount of time and skilled personnel. As a part of its business, TriZetto also provides Facets customization and implementation consulting services to clients. TriZetto competes in this services market with third-party companies because it permits Facets customers to choose their service provider.²

Although TriZetto performs much of its own Facets related services, sometimes it utilizes subcontractors. One such subcontractor was Syntel Sterling Best Shores Mauritius Limited ("Syntel"). In 2010, TriZetto and Syntel entered into a Master Services Agreement ("MSA"). In exchange for a guaranteed annual payment from TriZetto, Syntel agreed to support Facets customers on TriZetto's behalf instead of competing with TriZetto for Facets services contracts. Under the MSA, TriZetto treated Syntel as a trusted business partner and gave Syntel's employees access to its trade secrets to perform Facets-related services for TriZetto.

TriZetto and Syntel enjoyed a cooperative relationship for much of their partnership, working together to outperform the Facets services competition. The relationship remained cooperative even after the parties' 2012 amendment to the MSA,

² Depending on the terms of TriZetto's contract with each customer, a third-party provider can either (1) freely access TriZetto's materials through the customer or (2) enter into a separate contract directly with TriZetto—a so-called "third-party access agreement"—to gain access to TriZetto's materials for purposes of servicing the customer. In each case, the service provider is allowed to use TriZetto's guides, manuals, and other Facets materials for free.

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which allowed Syntel to compete directly with TriZetto in the consulting services market (“Amended MSA”).³

However, things began to sour in 2014 when Cognizant—Syntel’s competitor—acquired TriZetto. As was its right, Syntel terminated the MSA and requested payment of rebates owed under the contract. In response, TriZetto refused to pay the rebates and raised concerns about Syntel continuing to use its confidential trade secrets post-termination.

Syntel filed suit against TriZetto in the Southern District of New York. Syntel’s amended complaint alleged breach of the MSA, misappropriation of confidential information, and intentional interference with contractual relations, stemming from Cognizant hiring several Syntel employees to perform Facets work for TriZetto. TriZetto counterclaimed, alleging, as relevant here, that Syntel misappropriated trade secrets related to Facets in violation of the Defend Trade Secrets Act (“DTSA”), 18 U.S.C. § 1836, *et seq.*, and New York law. TriZetto also asserted that Syntel infringed its copyrights.

During discovery, Syntel destroyed documents and computers. As a result, the district court ordered a neutral forensic examination of Syntel’s digital electronic devices and files, which revealed that “Syntel was actively creating a repository of [TriZetto’s] trade secrets on its own or of its own to be

³ In exchange for lowering TriZetto’s payment commitment, the parties deleted a provision barring Syntel from competing for Facets services contracts and “any other provision in the [MSA] related to [Syntel] being restricted from competing with TriZetto.” App’x 613–14.

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used in future work.” App’x 336. Based on those findings, the district court entered a preclusion order to sanction Syntel for continued discovery misconduct (“Preclusion Order”).⁴ Citing the Preclusion Order, the district court instructed the jury that Syntel had misappropriated 2 of the 104 claimed trade secrets—TriZetto’s so-called “test cases” and “automation scripts.” App’x 2131. Syntel does not appeal the Preclusion Order.

At trial, TriZetto elected to proceed with misappropriation counterclaims on its Facets trade secrets, which TriZetto characterized as falling into three categories: (1) software; (2) tools; and (3) guides and manuals. Syntel did not contest that it downloaded and used the trade secrets. It instead framed the entire case as about “what use was proper or improper.” App’x 387. Its central theme was that the Amended MSA authorized Syntel to compete for Facets services business while using TriZetto’s trade secrets.

With respect to damages, TriZetto presented expert testimony indicating Syntel avoided expending roughly \$285 million in research and development costs through its misappropriation. This is not the full amount that TriZetto spent on research and development to make Facets; that is over \$500 million. As TriZetto’s damages expert testified at trial, the

⁴ “The Preclusion Order barred Syntel from (1) ‘offering or presenting any evidence that it did not misappropriate and unlawfully copy TriZetto’s Facets test cases and automation scripts’ and (2) ‘offering or presenting any evidence that it independently developed any of the Platform Management Tools at issue in this case.’” Special App’x 3.

\$285 million figure represented a portion of the overall research and development costs, specifically, those costs for the period between 2004 to 2014, excluding client-funded research and development. The record does not reflect the reason that the \$285 million figure was so limited. The expert also testified that TriZetto lost \$8.5 million in profits, based on a Facets software upgrade Syntel performed for United Health Group (“UHG”) using TriZetto’s trade secrets.

The district court charged the jury on “several types of compensatory damages that could be available to TriZetto for its trade secret misappropriation claims:” (1) TriZetto’s lost profits, (2) Syntel’s unjust enrichment, and (3) “reasonable royalty” damages, which were available “[a]s an alternative to lost profits or unjust enrichment.” Trial Tr. 867:17–19, 869:8–9. As to unjust enrichment, the district court instructed:

Unjust enrichment is the amount that Syntel benefited as a result of any misappropriation. One form of unjust enrichment can be measured by accounting for the infringer’s profits earned by using the trade secrets, when such profits can be proven. An alternative form of unjust enrichment is called *avoided costs*. Avoided costs may be considered only for TriZetto’s federal misappropriation claim, and not for its state misappropriation claim. Avoided costs are the amount that Syntel would have incurred to achieve the same result without the use of the appropriated trade secret.

App’x 529 (868:13–23) (emphasis added).

In summation, TriZetto’s lawyer noted that it had introduced an expert avoided costs estimate of roughly \$285 million, while Syntel had offered none. TriZetto’s lawyer emphasized that this amount was “much less than the overall price of the development” and was “only a tiny fraction of the overall money that [Syntel] hoped to make.” Trial Tr. 907:2–6. TriZetto’s lawyer was referring to evidence suggesting Syntel’s goal was to make \$1 billion with TriZetto’s trade secrets.

Meanwhile, Syntel’s lawyer characterized TriZetto’s avoided costs request as an effort to “crush[] a potential competitor” that bore no rational relation to actual damages. *Id.* at 938:21. Syntel’s lawyer repeatedly emphasized the lack of causal connection between the “actual infringing conduct” and TriZetto’s avoided costs demand. *Id.* at 939:10–41:22. Syntel’s lawyer argued several reasons why “[a]voided costs make no sense here:” (1) Syntel did not take or destroy the value of Facets; (2) Syntel could have used the same material for “free” by obtaining a third-party access agreement from TriZetto; (3) “TriZetto still has the product” and “makes hundreds of millions of dollars a year licensing [it] out;” and (4) Syntel was just a competing services company—not a software company. *Id.* at 940:5–41:10.

In rebuttal, TriZetto’s lawyer again emphasized that Syntel had offered no alternative to the \$285 million figure and argued—incorrectly (though without objection)—that avoided costs damages are “what needs to be paid under the law when you violate the United States trade secret law.” *Id.* at 954:7–10.

The jury returned a verdict for TriZetto on all counts. It found Syntel misappropriated TriZetto’s

trade secrets, violating both the DTSA and New York law, and that it infringed TriZetto's copyrights. To compensate for Syntel's misappropriation, the jury awarded TriZetto \$284,855,192 in avoided development costs under the DTSA and \$142,427,596 (one half that amount) as a "reasonable royalty" under New York law.⁵ *Id.* at 907:14–17. The jury ultimately limited its award to \$284,855,192 in compensatory damages and double that amount—\$569,710,384—in punitive damages.⁶

After trial, Syntel renewed a motion for judgment as a matter of law under Federal Rule of Civil Procedure 50(b) and moved in the alternative for a new trial or remittitur under Federal Rule of Civil Procedure 59. Syntel made three arguments relevant to this appeal. First, it argued that TriZetto failed to identify any trade secrets with the requisite specificity at trial. Second, it argued that there was no misappropriation because the Amended MSA authorized Syntel to use 102 of the 104 TriZetto trade

⁵ The jury separately awarded TriZetto \$59,100,000 for copyright infringement, unchallenged on appeal.

⁶ The jury limited its compensatory damages award in response to Question 11 on the verdict form: "Being mindful of not awarding damages that result in double or multiple recovery for the same injury, what is the total amount of compensatory damages, if any, TriZetto is entitled to receive from Syntel in light of your answers to the previous three questions?" App'x 2254. With respect to the \$8.5 million in lost profits, TriZetto took the view that awarding lost profits and avoided costs would constitute "double counting" under the DTSA; the district court accepted that view. Special App'x 15. As a result, the verdict form that TriZetto proposed and the district court accepted did not ask the jury to determine if (and to what amount) TriZetto was entitled to lost profit damages.

secrets at issue. Third, it argued that DTSA avoided costs damages were improper in this case as a matter of law.

The district court denied Syntel's post-trial motions but remitted the punitive damages award to \$284,855,192, which TriZetto accepted. The district court also entered a permanent injunction that, with two exceptions not relevant here, enjoins Syntel from using any of the 104 trade secrets going forward. Syntel does not challenge the injunction. This appeal followed.

DISCUSSION

Syntel challenges the judgment's liability finding in two ways. First, it argues the district court applied the wrong legal standard for identifying a trade secret with specificity. Syntel contends that had the court applied the correct standard, no reasonable jury could have found the existence of any trade secret on the evidence TriZetto presented at trial. Second, Syntel argues that even if TriZetto adequately identified the alleged trade secrets, the district court erred in its understanding of the Amended MSA. To Syntel, the Amended MSA unambiguously authorized its use of 102 of the 104 alleged trade secrets, such that there is no misappropriation as a matter of law. Syntel separately challenges the damages award, arguing the district court erred in allowing avoided costs as permissible unjust enrichment damages under the DTSA in this specific case.

I. Standard of Review.

We review the denial of a Rule 50(b) motion *de novo*, "considering the evidence in the light most favorable to the non-moving party and giving that

party the benefit of all reasonable inferences that the jury might have drawn in that party's favor.”⁷ *Triolo v. Nassau Cnty.*, 24 F.4th 98, 105 (2d Cir. 2022). In other words, we apply the same standard as the district court. *See id.*

A district court may grant judgment as a matter of law only if it finds that “a reasonable jury would not have a legally sufficient evidentiary basis to find for the [non-moving] party.” FED. R. CIV. P. 50(a)(1). We affirm the denial of a Rule 50(b) motion “unless there is such a complete absence of evidence supporting the verdict that the jury’s findings could only have been the result of sheer surmise and conjecture, or the evidence in favor of the movant is so overwhelming that reasonable and fair minded persons could not arrive at a verdict against it.” *Ashley v. City of New York*, 992 F.3d 128, 138–39 (2d Cir. 2021). This standard presents a “particularly heavy” burden for Syntel, where, as here, “the jury has deliberated in the case and actually returned its verdict” in favor of the non-movant. *Triolo*, 24 F.4th at 105. Further, “[i]t is an axiom of appellate procedure that we review legal questions *de novo* and questions of fact for clear error.” *United States v. Rajaratnam*, 719 F.3d 139, 153 (2d Cir. 2013).

II. Liability.

Syntel first argues no reasonable jury could have found for TriZetto on the trade secret misappropriation claims because TriZetto

⁷ Unless otherwise indicated, in quoting cases, all internal quotation marks, alterations, emphases, footnotes, and citations are omitted.

inadequately specified each asserted trade secret as a matter of law. But whether TriZetto's trade secrets were adequately identified (and proved) was ultimately a question for the jury. While presented as a legal challenge, Syntel's argument really attacks the sufficiency of the evidence supporting the jury's verdict. Because Syntel cannot show a "complete absence of evidence supporting" the jury's findings, they survive the challenge. *Ashley*, 992 F.3d at 138–39.

Syntel separately argues that the Amended MSA unambiguously authorized Syntel to use 102 of the 104 TriZetto trade secrets at issue.⁸ Whether framed as a legal issue regarding the contract's interpretation or a factual issue based on extrinsic evidence, we conclude Syntel's argument comes up short.

A. TriZetto Adequately Identified its Trade Secrets at Trial.

Under both the DTSA and New York law, a claimant bears the burden of identifying a purported trade secret with sufficient specificity.⁹ *See*

⁸ As mentioned above, the two remaining claimed trade secrets were the subject of the district court's Preclusion Order; as a result, the jury was directed to find misappropriation as to those alleged secrets.

⁹ Although this Court "has not squarely articulated the precise contours of the specificity requirement in the context of trade secrets," *Next Commc'ns*, 758 F. App'x at 49 n.3, we decline to do so here. Our review in this appeal is limited to examining the sufficiency of the evidence supporting the jury's verdict. Syntel does not argue that the district court's instruction or verdict sheet were deficient but instead elects to bring a sufficiency challenge. *See* Oral Arg. at 3:38–4:16. *See generally* Syntel Br. at 18–37 (nowhere arguing error in jury instructions or verdict sheet).

InteliClear, LLC v. ETC Glob. Holdings, Inc., 978 F.3d 653, 657–58 (9th Cir. 2020) (DTSA); *Next Commc'ns, Inc. v. Viber Media, Inc.*, 758 F. App'x 46, 48–49 (2d Cir. 2018) (New York law). The specificity requirement “place[s] a defendant on notice of the bases for the claim being made against it,” *Oakwood Labs. LLC v. Thanoo*, 999 F.3d 892, 906 (3d Cir. 2021), and allows a factfinder to determine whether certain information is, in fact, a trade secret. *See* Restatement (Third) of Unfair Competition § 39 cmt. d (characterizing purpose of specificity requirement as permitting determination of “fact of an appropriation”); *IDX Sys. Corp. v. Epic Sys. Corp.*, 285 F.3d 581, 583–84 (7th Cir. 2002) (observing that, if plaintiff fails to separate “trade secrets from the other information that goes into any software package,” the court “cannot do its job” at summary judgment). The existence of a trade secret, including whether it was adequately identified, is “a fact-specific question to be decided on a case-by-case basis.” *Oakwood Labs.*, 999 F.3d at 906; *see Speedry Chem. Prods., Inc. v. Carter's Ink Co.*, 306 F.2d 328, 331 (2d Cir. 1962) (“An exact definition of a trade secret is not possible.”) (quoting Restatement (First) of Torts § 757 cmt. b). Thus,

Although Syntel has not requested that we do so, we may review jury instructions and verdict sheets for “fundamental error” in accordance with FED. R. CIV. P. 51. *See Kotler v. Jubert*, 986 F.3d 147, 158 n.38 (2d Cir. 2021). “Fundamental error” is “so serious and flagrant that it goes to the very integrity of the trial.” *Anderson Grp., LLC v. City of Saratoga Springs*, 805 F.3d 34, 49 (2d Cir. 2015). Because the precise contours of the specificity requirement in the context of trade secrets is “unsettled,” we conclude that the jury charges and verdict sheet in this case did not compromise “the very integrity of the trial” and thus were not fundamental error. *See id.* at 49–50.

although the parties press for a general specificity rule, we need not and do not articulate such a rule today.

Viewing the evidence adduced at trial in the light most favorable to TriZetto, a reasonable jury could have determined the asserted trade secrets were in fact trade secrets. TriZetto's witnesses, including its fact witness Mr. Noonan and its technical expert Dr. Bergeron, provided extensive testimony identifying and describing the trade secrets. For each trade secret, Noonan explained (1) what the secret was, (2) how the secret was developed, (3) the value of the secret to TriZetto, and (4) that the secret was maintained as confidential. The jury was provided, for its viewing, a court exhibit—jointly submitted by the parties—listing each asserted trade secret by name. Moreover, Dr. Bergeron presented several demonstratives linking the title of each individual trade secret to specific exhibits. These demonstratives listed the name, exhibit numbers, and general category for each asserted trade secret. Finally, the jury received the documents or source code tied to the asserted trade secrets.

1. Software Trade Secrets (Nos. 1–3).

We begin with TriZetto's three asserted software trade secrets: (1) the Facets software code, (2) TriZetto's DBBLD scripts, and (3) the framework for updating the Facets database.

After providing the jury a thorough overview of Facets' functionality, Noonan discussed the database tables and claim data model at "the heart of Facets." App'x 247 (88:16–19). At a high level, these tables and the data model convey the architecture of the Facets

software. Noonan showed the jury depictions of TriZetto's claim tables and confirmed to the jury that the data model and the rest of Facets' internal computer architecture is "ke[pt] confidential." App'x 246 (87:5–24). He then described the DBBLD scripts and upgrade framework software. Noonan detailed what each software application does, the "necessary and very important" competitive advantage each piece of software provides to its customers' businesses, App'x 254–56 (115:6–117:15), and the steps TriZetto takes to keep the applications confidential. TriZetto then introduced the source code for all three of the software trade secrets into evidence.

Viewing the evidence in the light most favorable to TriZetto, a reasonable jury could have determined that the asserted software trade secrets were in fact trade secrets. Noonan identified the trade secrets by name, described them in detail, tied them to specific documents or source code, and communicated that TriZetto kept them confidential.

2. Tools Trade Secrets (Nos. 4, 102–104).

For the same reasons, we find TriZetto presented sufficient detail about its four asserted tools trade secrets: the (1) Data Dictionary, (2) Custom Code Impact Tool, (3) test cases, and (4) automation scripts. Noonan also identified TriZetto's tools trade secrets by name, described them in detail, tied them to specific documents or source code, and testified that TriZetto kept them confidential.

For example, Noonan not only described how the Data Dictionary operates, but also the confidential window it opens into "th[e] data structure that

[TriZetto] built at the heart of Facets.”¹⁰ App’x 259 (120:4–7). Further, the jury heard it “would be damaging” to TriZetto if “the Data Dictionary was copied by a competitor and used for an unauthorized purpose.” App’x 261 (122:11–17).

With respect to the Custom Code Impact Tool, Noonan described what the tool does, explained how it benefits customers, and confirmed TriZetto keeps its source code confidential “as a trade secret.” App’x 261–63 (122:22–124:19). The source code for both the Data Dictionary and the Custom Code Impact Tool were admitted into evidence.

Noonan separately addressed the test cases and automation scripts trade secrets.¹¹ Those trade secrets, he explained, contain detailed instructions about how to test Facets after an installation or upgrade. The jury also heard that these trade secrets are not generic items generally known in the field—Noonan testified that TriZetto has “been building these with Facets [] over the course of Facets’ life” and that they are completely confidential.¹² App’x 266–67

¹⁰ Unlike situations where significant aspects of the trade secrets are publicly known or where versions of the trade secrets are used by others in the industry, the jury heard that Noonan, in his 30 years of experience, has never “seen anything like the Facets Data Dictionary out in the world” and would not “expect to see the Data Dictionary software code or the documents describing it out in the public” domain. App’x 261 (122:1–10).

¹¹ The Preclusion Order did not relieve TriZetto of its burden of proving that both of the items were, in fact, trade secrets.

¹² While showing the jury a cover page for a Facets test, TriZetto’s lawyer asked Noonan if there was “anything in [the] document that shows that TriZetto keeps this document confidential and that it believes it’s its trade secret information.”

(127:24–128:2). Noonan then illustrated a test case—showing the jury a specific case for processing a claim and explaining the steps it performs. The test cases and automation scripts were also admitted into evidence as confidential exhibits.

As before, viewing the above evidence in the light most favorable to TriZetto, we conclude that a jury could have reasonably determined that the asserted tools trade secrets were in fact trade secrets.

3. Manuals and Guides Trade Secrets (Nos. 5–101).

Syntel takes special aim at the jury’s finding that TriZetto sufficiently identified its 97 asserted manuals and guides trade secrets. In the procedural context before us, TriZetto produced sufficient evidence at trial to affirm the jury’s findings.

For example, the jury heard testimony that TriZetto’s manuals and guides differ meaningfully from those accompanying “off-the-shelf software.” App’x 267 (128:12–15). Noonan testified that each manual and guide—in similar amounts of detail—dives deeply into “the inner workings of Facets” and the software’s internal architecture. App’x 268 (129:6–17). He used the Data Model Guide as a representative example, showing the jury detailed architectural information on several of its pages.

Noonan also used the Data Model Guide as a representative example to demonstrate that all 97 manuals and guides comprise commercially valuable

App’x 264 (124:1–18). Noonan alerted the jury to a copyright notice on the page reading: “confidential and proprietary.” *Id.* at 124:19–23.

information that TriZetto keeps confidential.¹³ Based on these identifications themselves, a jury could have reasonably determined that the contents of each manual and guide amounted to protected trade secrets.

The parties also provided the jury with a jointly submitted list of TriZetto's 104 proposed trade secrets, which included the corresponding trade secret number and title for each. Dr. Bergeron presented several demonstratives linking the title of each individual manual or guide to specific exhibits. These demonstratives listed the name, exhibit numbers, and general category (*i.e.*, "Billing" or "Commissions") for each asserted manual or guide trade secret. TriZetto also submitted all 97 manuals and guides into evidence.

When all the above evidence, along with all the reasonable inferences that may be drawn from it, is viewed in the light most favorable to TriZetto, it constitutes sufficient support for the jury's determination that the asserted manuals and guides trade secrets were in fact trade secrets as well.

* * *

¹³ For example, Noonan told the jury that TriZetto guards the Data Model Guide as "confidential [] property" because it "contains TriZetto's trade secrets." App'x 247 (88:9–12); 246 (87:18–22). The jury later learned that TriZetto keeps the other 96 manuals and guides confidential for similar reasons. Noonan then described the commercial value of TriZetto's manuals and guides—explaining they are "very important" materials whose unauthorized use "would be damaging" to TriZetto's service business. App'x 268–69 (129:19–130:18).

Accordingly, we affirm the district court's denial of Syntel's Rule 50(b) motion on this issue.

B. The Amended MSA Did Not Authorize Syntel to Use 102 of the 104 Claimed Trade Secrets.

Syntel separately argues that even if TriZetto met its burden to specify its 104 trade secrets, the district court erred in denying Syntel's Rule 50(b) motion for an independent reason: the Amended MSA unambiguously authorized Syntel's use of 102 of the 104 claimed trade secrets. We disagree.

The district court rejected Syntel's interpretation of the Amended MSA for two separate and independent reasons: (1) it is at odds with the unambiguous terms of the parties' agreements as a matter of law, and (2) even if the agreements were ambiguous, the jury considered and rejected Syntel's interpretation. According to Syntel, the district court improperly deferred to the jury on the legal issue of the interpretation of an unambiguous contract. Whether Syntel's argument is framed as a legal issue regarding the contract's interpretation or a factual issue based on extrinsic evidence, there is no basis to overturn the jury's findings that Syntel misappropriated TriZetto's trade secrets.

1. Applicable Law.

"New York law applies pursuant to the MSA." Special App'x 5 n.1. Under New York law, "[w]hether a contract is ambiguous is a question of law, and courts may not resort to extrinsic evidence to aid in interpretation unless the document is ambiguous." *Banos v. Rhea*, 25 N.Y.3d 266, 276 (N.Y. 2015); see also, e.g., *L. Debenture Tr. Co. of N.Y. v. Maverick Tube*

Corp., 595 F.3d 458, 465, 467 (2d Cir. 2010). On the other hand, “[t]he resolution of an ambiguous provision, for which extrinsic evidence may be used, is for the trier of fact.” *Rhoda v. Rhoda*, 175 A.D.3d 1572, 1573 (2d Dep’t 2019).

2. Relevant Contractual Provisions.

Three provisions in the original MSA are relevant here. Sections 13.01 and 19.01 both impose confidentiality obligations on Syntel, preventing the use of any TriZetto trade secret without TriZetto’s permission.

Under Section 13.01, Syntel agreed *not* to “use[]” TriZetto’s intellectual property “other than in connection with providing the Services” under the agreement. App’x 659 (§13.01); 651 (§1.01(125)). “Services” is defined in the MSA to include certain enumerated categories of services and “any new services agreed to by the Parties to be provided by [Syntel] pursuant to this Agreement.” App’x 650 (§1.01(99)) (“Services”); 653 (§3.02) (“Designated Services”). Those “Services” are only ones that TriZetto subcontracted with Syntel to provide. Syntel similarly agreed in Section 19.01 not to “use” or “disclose Confidential Information” without TriZetto’s “prior consent.” App’x 661–62 (§19.01); 647 (§1.01(13)) (defining “Confidential Information”). The third relevant provision is Section 29.17, a non-compete provision that prohibited Syntel from, among other things, competing with TriZetto for Facets services contracts.¹⁴ App’x 604 (§29.17).

¹⁴ Specifically, “to prevent any misuse or disclosure of Confidential Information,” Section 29.17 prohibited Syntel from

In 2012, the parties agreed to amend the MSA— Syntel lost its right to guaranteed revenue from TriZetto but gained the right to compete with TriZetto by billing directly for servicing Facets customers. To effect that change, the parties removed the non-compete provision in “Section 29.17 and any other provision in the Agreement related to [Syntel] being restricted from *competing* with TriZetto.” App’x 613–14 (Art. 2(2)) (emphasis added).

3. Analysis.

The parties’ dispute boils down to whether the deletion of the MSA’s non-competition provision authorized Syntel to use TriZetto’s confidential information to compete with TriZetto. The district court correctly concluded the Amended MSA did no such thing. Syntel’s view of the MSA in its altered format is that the agreement authorized Syntel to compete with TriZetto while TriZetto waived the *very thing* it values most.

The Amended MSA is unambiguous; Syntel was free to compete with TriZetto, but it was still obligated to abide by the MSA’s confidentiality provisions. In the 2012 Amendment, the parties deleted the non-compete provisions in the MSA only so that Syntel could offer its own consulting services like any TriZetto competitor.

Syntel offers a rationale for the Amendment. Syntel first contends that by eliminating Section 29.17’s restriction on competition, the Amended MSA

“provid[ing] any products or services” that required “technical, design, process or architectural knowledge of TriZetto’s products or services relating to TriZetto’s products.” App’x 604 (§29.17).

“effectively expanded” the definition of “Services” to encompass any services Syntel performed “for third parties in competition with TriZetto.” Syntel Br. 41–42. While Syntel’s position finds no support in the Amendment’s express provisions, Syntel argues no amendment to the definition of “Services” itself was necessary because the original MSA defined “Services” to include “any new services agreed to by the Parties.” Syntel Rep. Br. 20 (citing App’x 550 (§1.01(99))). Accordingly, Syntel contends the new “Services” the Amended MSA authorized were those that could leverage TriZetto’s confidential trade secrets under Sections 13.01 and 19.01. *See id.* at 20–21 (citing App’x 577, 584). Syntel’s reasoning—that the parties made an implied change to the definition of “Services”—is plainly inconsistent with the Amendment’s actual changes to the MSA.

While the 2012 Amendment made numerous edits to specific provisions of the MSA, it made no change to the definition of “Services.” When the Amendment states that Section 29.17 and any other “related” non-compete provisions are deleted in their entirety, it identifies the definitions impacted.¹⁵ “Services” is not on that list and is not referenced anywhere in the Amendment.

Even if the Amended MSA had somehow implicitly changed the definition of “Services,” Syntel unequivocally still could not use TriZetto’s trade secrets to offer competing Facets services. The Amended MSA separately prohibits Syntel from

¹⁵ The list includes “Noncompetition Services,” “Restricted Period,” and “TriZetto Products.” App’x 614 (Art. 2(1)); 648–49 (§§1.01(58), (73)); 652 (§1.01(132)).

“commercially exploit[ing]” any “TriZetto Data.” App’x 659 (§13.01(3)). Modifying the definition of “Services” (implicitly or otherwise), would not remove that restriction.¹⁶

Syntel’s alternative argument, that the 2012 Amendment “deleted Sections 13.01 and 19.01 in their entirety,” is equally divorced from the agreement’s language and common sense. Syntel Br. 40, 42–43. Syntel contends both provisions fall within the catch-all phrase deleting “any [] provision in the Agreement related to [Syntel] being restricted from competing with TriZetto,” App’x 635 (Art. 2(2)), but that interpretation finds no support in the MSA’s language. Sections 13.01 and 19.01 recite *confidentiality* protections, not *non-compete* provisions. We find it fanciful to suggest that TriZetto would authorize Syntel to use its trade secrets to compete for business without saying so. Further, we

¹⁶ Further to the point, “Syntel’s post-hoc re-definition of ‘Services’ is also inconsistent” with other relevant MSA terms. TriZetto Br. 52. For example, for all “Services,” Syntel needed to provide reports to TriZetto, which included tracking against project plans, estimates, budgets, and staff recruitment and retention—precisely because it was acting as a subcontractor, not a competitor. Those requirements would not make sense if “Services” included competing services. The MSA also defines “Service Delivery Organizations” as “the personnel of Service Provider [Syntel Mauritius] and Service Provider Agents who provide the Services,” App’x 649 (§1.01(77)), and requires that “[a]ll members of the Service Delivery Organization shall be dedicated on a full time basis to the TriZetto account.” App’x 657 (§10.03(13)). In our view, by definition, “Services” would not encompass Syntel’s competitive efforts because everyone performing Services seemingly needed to be dedicated full time to TriZetto’s account, not another Syntel customer’s.

are unpersuaded that the parties—both sophisticated, multi-billion-dollar enterprises—would alter fundamental aspects of their contractual relationship in vague terms or through catch-all provisions.

Even if we considered the Amended MSA to be ambiguous, there is no basis for reweighing the extrinsic evidence that Syntel claims supports its interpretation.¹⁷ Syntel’s assertion that extrinsic evidence showed it was authorized to use TriZetto’s trade secrets raised factual issues for the jury, which was free to reject those arguments, especially in light of Syntel’s lead witness’s curious testimony that it would be “flat wrong” to interpret the Amended MSA as authorizing Syntel to freely use TriZetto’s trade secrets to compete. *See* App’x 464–66 (514:6–516:1); 489–90 (620:22–24, 630:1–21). Because Syntel cannot show a “complete absence of evidence supporting the verdict” rejecting Syntel’s interpretation, we will not overturn it.¹⁸ *Ashley*, 992 F.3d at 138–39.

¹⁷ Syntel principally relied on two pieces of extrinsic evidence. First was the testimony of Mr. Murlidhar Reddy—the man in charge of Syntel’s competing services and Syntel’s relationship with TriZetto. At trial, Mr. Reddy testified that TriZetto congratulated Syntel on winning Capitol District Physicians Health Plan’s (“CDPHP”) business. To Syntel, TriZetto’s gesture supported its view that the Amended MSA authorized Syntel to use TriZetto’s confidential information while servicing Facets customers. Second, Syntel cites testimony from TriZetto’s witnesses stating that TriZetto’s confidential materials were necessary for Syntel to provide “complex” consulting services to third parties, such as software upgrades.

¹⁸ The jury apparently gave both pieces of Syntel’s extrinsic evidence little weight. First, there was no evidence corroborating Mr. Reddy’s testimony that TriZetto congratulated Syntel on winning CDPHP business, and the jury was not required to

In sum, the unambiguous terms of the Amended MSA are clear and so is the extrinsic evidence: TriZetto did not authorize Syntel to use TriZetto's trade secrets to compete with TriZetto. Thus, Syntel misappropriated TriZetto's intellectual property in violation of the DTSA and New York law.

* * *

Accordingly, we affirm the district court's denial of Syntel's Rule 50(b) motion on this issue, too.

III. Damages.

Syntel separately contends the district court erred by upholding the jury's \$285 million compensatory damages award under the DTSA.¹⁹ The primary question presented is whether the DTSA permits recovery of avoided costs as unjust enrichment damages in this specific case. It does not. Accordingly, we vacate the district court's DTSA damages

accept it as true. TriZetto also supposedly offered its congratulations in 2013, years before discovering Syntel's misappropriation of its trade secrets. Second, undisputed evidence established Syntel could compete for "less complex" and "low-end" consulting work without using TriZetto's trade secrets, as could many other service providers. *See* App'x 403 (387:1–17); 319 (215:3–6). Even for the "complex" work that required use of the types of tools TriZetto's trade secrets protect, Syntel had options other than misappropriation: independent development at its own expense.

¹⁹ Syntel does not directly challenge the legality of the district court's permanent injunction or its punitive damages award. That said, it asks this Court to "direct the district court on remand" to "adjust[] [the] punitive damages award" should we vacate the district court's DTSA compensatory damages judgment. Syntel Br. 59–60.

judgment and remand the case for further proceedings consistent with this opinion.²⁰

A. Standard of Review.

“[T]he amount of recoverable damages is a question of fact” reviewed for clear error, but the district court’s understanding of whether avoided costs damages are proper under the DTSA in this specific case—*i.e.*, “the applicable damages measurement”—is a legal question reviewed *de novo*.²¹

²⁰ Syntel argues the district court made two independent errors in upholding the jury’s \$285 million avoided costs award. The first, Syntel says, was determining that avoided costs damages are available as unjust enrichment damages under the DTSA in *this* specific case. Under the particular facts before us, we agree. Therefore, we need not consider Syntel’s second argument: that no reasonable jury could have found that a causal link existed between the \$285 million award and any misappropriation alleged by TriZetto after the DTSA’s enactment.

²¹ TriZetto contends we must review the district court’s DTSA damages judgment under the more deferential abuse of discretion standard. TriZetto frames Syntel’s argument on appeal as challenging the excessiveness of the jury’s award. To be sure, when assessing whether a damages award is excessive, we have held that damages calculations are “generally within the province of the jury, and a district court’s refusal to set aside a jury award will be overturned only for abuse of discretion.” TriZetto Br. 25–26 (citing *Paolitto v. John Brown E. & C.*, 151 F.3d 60, 66 (2d Cir. 1998)). But even if we accept TriZetto’s framing of Syntel’s arguments, we functionally review *de novo* the district court’s decision to uphold the jury’s award of avoided costs as unjust enrichment. The jury award fails as a matter of law because the district court’s decision to uphold the award is itself “premised on a legal error [and] is necessarily an abuse of discretion.” *See, e.g., Fund Liquidation Holdings LLC v. Bank of Am. Corp.*, 991 F.3d 370, 380 (2d Cir. 2021), *cert. denied*, 142 S. Ct. 757 (2022) (functionally reviewing *de novo* denials of motions

Bessemer Tr. Co., N.A. v. Branin, 618 F.3d 76, 85 (2d Cir. 2010).

B. The DTSA’s Remedial Scheme.

Before the DTSA’s enactment, trade secret plaintiffs claiming misappropriation had to pursue remedies governed by state law. The Uniform Trade Secrets Act (“UTSA”) served as a model statute for trade secret laws in forty-eight states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.²² See David S. Levine & Christopher B. Seaman, *The DTSA at One: An Empirical Study of the First Year of Litigation Under the Defend Trade Secrets Act*, 53 WAKE FOREST L. REV. 105, 113 (2018). One of the DTSA’s main intended benefits was that it would provide a “single, national standard for trade secret misappropriation with clear rules and predictability for everyone involved.” H.R. Rep. No. 114-529, at 6 (2016); S. Rep. No. 114-220, at 14 (2016); 162 Cong. Rec. H2032 (Rep. Conyers supporting the bill because it “would foster uniformity among the States”). Accordingly, the DTSA’s language and its remedial

for leave to amend, to substitute into an action under Rule 17(a), and to approve a class action settlement agreement).

²² Despite its name, the UTSA did not induce a uniform set of laws. Although many states have adopted variations of the UTSA, “the state laws vary in a number of ways . . .” H.R. Rep. No. 114-529, at 4 (2016). The Senate Committee on the Judiciary observed in their consideration of the DTSA that, “[a]lthough the differences between State laws and the UTSA are generally relatively minor, they can prove case-dispositive . . .” S. Rep. No. 114-220, at 2–3 (2016). Congress thus sought to harmonize the differences in state trade secret law by enacting the DTSA. See *id.* at 14 (“This narrowly drawn legislation will provide a single, national standard for trade secret misappropriation . . .”).

scheme dictate the analysis when considering the monetary remedies available under the statute.

To be clear, though, the DTSA does not preempt or displace state trade secret law remedies.²³ Indeed, the federal statute directly incorporates certain provisions from the UTSA—for example, the DTSA’s compensatory damages provision is “drawn directly” from § 3 of the UTSA.²⁴ H.R. Rep. No. 114-529, at 13 (2016). There are, as a result, several cases examining state enactments of the UTSA’s compensatory damages provision that, in doing so, analyze identical language found in the DTSA.²⁵

²³ See 18 U.S.C. § 1838 (“[T]his chapter shall not be construed to preempt or displace any other remedies, whether civil or criminal, provided by United States Federal, State, commonwealth, possession, or territory law for the misappropriation of a trade secret”); see also H.R. Rep. No. 114-529, at 6, 14, 25 (2016).

²⁴ The UTSA provides that “actual loss caused by misappropriation and the unjust enrichment that is caused by misappropriation that is not taken into account in computing actual loss” can all be included as a measure for trade secret compensatory damages. Unif. Trade Secrets Act § 3(a) (amended 1985).

²⁵ Federal courts have expressed views about the availability of avoided costs damages in misappropriation cases arising under state law. In the cases pre-dating the DTSA, the state law claims made their way into federal court due to diversity jurisdiction or supplemental jurisdiction. See, e.g., *Salsbury Labs., Inc. v. Merieux Labs., Inc.*, 908 F.2d 706, 707, 710 (11th Cir. 1990) (applying Georgia trade secret law while sitting in diversity). The same is true for state-law-based claims filed after the DTSA’s enactment. See, e.g., *Epic Systems Corp. v. Tata Consultancy Servs., Ltd.*, 980 F.3d 1117, 1123, 1128 (7th Cir. 2020) (applying Wisconsin’s UTSA on two bases, diversity and supplemental jurisdiction); see also *PPG Industries, Inc. v. Jiangsu Tie Mao*

The DTSA’s enactment created a federal civil cause of action for the misappropriation of trade secrets occurring on or after May 11, 2016.²⁶ Defend Trade Secrets Act of 2016, Pub. L. No. 114-153, § 2(e), 130 Stat. 376, 381–82 (2016). The remedies available under the DTSA include both equitable relief and monetary damages. For example, the DTSA empowers a federal court to grant an injunction to prevent actual or threatened misappropriation of trade secrets. *See* 18 U.S.C. §1836(b)(3)(A)(i). Additionally, upon the finding of liability, the DTSA permits the recovery of compensatory damages,²⁷ punitive damages,²⁸ and attorney’s fees.²⁹ *See* 18 U.S.C. §§ 1836(b)(3)(B–D).

The DTSA’s broad compensatory damages provision allows a court to award: (1) “damages for

Glass Co., Ltd., 47 F.4th 156, 160 n.10 (3d Cir. 2022) (applying Pennsylvania’s UTSA based on supplemental jurisdiction).

²⁶ Although some claims of misappropriation occurred prior to the DTSA’s effective date, the parties agree that the profits and losses at issue here arise from misappropriation occurring after May 11, 2016. Syntel’s use of TriZetto’s trade secrets to conduct UHG’s Facets upgrade occurred in November 2016. Accordingly, the application of the DTSA to this controversy is not in question.

²⁷ *See* 18 U.S.C. § 1836(b)(3)(B).

²⁸ *See* 18 U.S.C. § 1836(b)(3)(C) (“[I]f the trade secret is willfully and maliciously misappropriated, award exemplary damages in an amount not more than 2 times the amount of the [compensatory] damages awarded under subparagraph (B).”).

²⁹ *See* 18 U.S.C. § 1836(b)(3)(D) (“[I]f a claim of the misappropriation is made in bad faith, which may be established by circumstantial evidence, a motion to terminate an injunction is made or opposed in bad faith, or the trade secret was willfully and maliciously misappropriated, award reasonable attorney’s fees to the prevailing party.”).

actual loss caused by the misappropriation;”³⁰ and (2) “*damages for any unjust enrichment caused by the misappropriation . . . that is not addressed in computing damages for actual loss;*”³¹ or (3) “in lieu of damages measured by any other methods . . . a reasonable royalty for the misappropriator’s unauthorized disclosure or use of the trade secret.”³² 18 U.S.C. § 1836(b)(3)(B) (emphasis added). The statute thus permits a plaintiff to recover both its actual losses and a misappropriator’s unjust benefit caused by misappropriation, so long as there is no double counting. *See* 18 U.S.C. § 1836(b)(3)(B)(i).

Deciding what constitutes unjust enrichment is a fact-intensive endeavor. Because courts take a “flexible and imaginative approach to damages calculation in trade secret misappropriation cases,” unjust enrichment can take several forms and cover a broad array of activity.³³ *GlobeRanger Corp. v. Software AG U.S. of Am., Inc.*, 836 F.3d 477, 499 (5th Cir. 2016). In some instances, unjust enrichment can

³⁰ 18 U.S.C. § 1836(b)(3)(B)(i)(I).

³¹ 18 U.S.C. § 1836(b)(3)(B)(i)(II).

³² 18 U.S.C. § 1836(b)(3)(B)(ii).

³³ For example, unjust enrichment can include a “defendant’s increased profits derived from its use of a misappropriated trade secret.” David S. Almeling *et al.*, *Disputed Issues in Awarding Unjust Enrichment Damages in Trade Secret Cases*, 19 SEDONA CONF. J. 667, 687 (2018). Unjust enrichment “may also include any increased business value to [a] defendant that is attributable to the [trade secret] misappropriation, such as the company’s potentially lucrative (though difficult to quantify) ‘first mover advantage’ achieved by acceleration of its product or business to market before that of any other competitor (including the plaintiff).” *Id.*

include “avoided costs”—*i.e.*, the costs a trade secret holder had to spend in research and development that a trade secret misappropriator saves by avoiding development of its own trade secret. *See, e.g., id.*; *see also* Restatement (Third) of Unfair Competition § 45 cmt. f (1995). The parties concede that avoided costs are recoverable as damages for unjust enrichment under the DTSA. They dispute, however, whether avoided costs are available under the particular facts of this case.

To answer that question, one needs to consider the entirety of the DTSA’s remedial scheme, not each provision in isolation. *See Auburn Hous. Auth. v. Martinez*, 277 F.3d 138, 144 (2d Cir. 2002) (stating that the “meaning of a particular section in a statute can be understood in context with and by reference to the whole statutory scheme”). Section 1836(b)(3)(B)(i)(II) awards compensatory damages to aggrieved trade secret holders whose injuries are not adequately addressed by lost profits. It provides a tool to make trade secret holders whole by further awarding “damages for any unjust enrichment caused by the misappropriation . . . not addressed in computing damages for [their] actual loss”—*i.e.*, in instances where the value of the secret is damaged, or worse yet—destroyed. 18 U.S.C. § 1836(b)(3)(B)(i)(II).

The origins of “unjust enrichment,” which is “a basis of civil liability involving a claim for recovery that sometimes also goes by the name *restitution*,” *Unjust Enrichment*, BLACK’S LAW DICTIONARY (11th ed. 2019), also inform our review of § 1836(b)(3)(B)(i)(II). *See* Restatement (Third) of Restitution and Unjust Enrichment § 1 cmt. c (“In

short, most of the law of restitution might more helpfully be called the law of unjust or unjustified enrichment.”); *see also* Restatement (Third) of Unfair Competition § 45 cmt. c (“The restitution remedy awards to the plaintiff the enrichment unjustly acquired by the defendant as a result of the appropriation of the plaintiff’s trade secret.”).

Restitution may consist of “a return or restoration of what the defendant has gained in a transaction,” which “may be a return of a specific thing or . . . a money substitute for that thing.” 1 Dan B. Dobbs, *Law of Remedies* § 4.1(1) (1993); *see also* Restatement (Third) of Restitution and Unjust Enrichment § 1 cmt. e(1) (describing “specific restitution” as a “remedy” that may “restore[] the identical asset that the claimant has lost”). To the extent that TriZetto’s trade secrets were “specific thing[s]” that TriZetto sought to recover from Syntel, the district court’s remedial order accomplished that restitutionary goal by ordering Syntel to “remove from its possession and quarantine” the 104 trade secrets at issue. App’x 2325.

The remedy of restitution can sometimes require more than the return of specific things. Indeed, “there are significant instances of liability based on unjust enrichment that do not involve the restoration of anything the claimant previously possessed.” Restatement (Third) of Restitution and Unjust Enrichment § 1 cmt. c. Such instances can arise in cases where a defendant profits from the plaintiff’s property. Under such circumstances, an “accounting of the defendant’s profits on sales attributable to the use of the trade secret” may serve as one available remedy

for trade secret misappropriation. Restatement (Third) of Unfair Competition § 45 cmt. f.

In still other circumstances, restitution can require a defendant to return the costs it saved through the misappropriation of a plaintiff's property. The Third Restatement of Unfair Competition explains that "[i]n some situations the defendant's enrichment is represented by profits from sales made possible by the appropriation," while in others it is represented "by savings achieved through the use of the trade secret in the defendant's business." Restatement (Third) of Unfair Competition § 45 cmt. c. Under the common law, in other words, "[a] saved expenditure . . . is no less beneficial to the recipient than a direct transfer." Restatement (Third) of Restitution and Unjust Enrichment § 1 cmt. d. But the amount of avoided costs damages recoverable must still derive from "a comparative appraisal of all the factors of the case," among which are "the nature and extent of the appropriation" and "the relative adequacy to the plaintiff of other remedies." Restatement (Third) of Unfair Competition § 45(2).³⁴ Awarding avoided costs in the absence of such a comparative appraisal risks producing an unjust windfall for trade secret holders.³⁵

³⁴ Such an appraisal might well support an avoided costs award where misappropriation effectively destroys a trade secret, precluding both the secret's restitution to its owner and a reliable measure of the owner's future lost profits. The example is merely illustrative, not exhaustive.

³⁵ These common law principles are consistent with the language and the structure of the DTSA.

Accordingly, for purposes of deciding whether unjust enrichment in the form of avoided costs was permissibly awarded in this case, the relevant question is: did Syntel's misappropriation injure TriZetto *beyond* its actual loss of \$8.5 million in lost profits? The answer to that legal question turns on several important facts—for example, TriZetto retaining the use and value of its trade secrets and the district court permanently enjoining Syntel from using TriZetto's secrets. These facts matter; the DTSA's equitable remedies work as a powerful tonic to reduce the harm a trade secret holder suffers beyond its lost business. The DTSA allows district courts to enjoin the misappropriation of a trade secret to prevent its continued use and/or its diminution in value. *See* 18 U.S.C. § 1836(b)(3)(A)(i).

Reading the statute's compensatory damages provision otherwise—as focusing *exclusively* on Syntel's saved expenses to award avoided costs—ignores the extent to which Syntel's misappropriation injured TriZetto and impermissibly discounts the comparative appraisal that governs equitable trade secret remedial determinations. *See* Restatement (Third) of Unfair Competition § 45(2). Under that reading, avoided costs would be available as unjust enrichment damages in any case of misappropriation, even where a trade secret owner suffers *no compensable harm* beyond its lost profits or profit opportunities. If accepted, that view would permit avoided costs awards that are more punitive than

compensatory.³⁶ That would be a curious distortion of the DTSA's remedial scheme and would ignore the significance and the reach of a district court's permanent injunction power.

C. Analysis.

There is no dispute that Syntel unjustly benefitted from misappropriating TriZetto's trade secrets to service UHG (*i.e.*, earning \$27 million in revenue, corresponding to \$823,899 in profits). But critically, those profits were the only enrichment Syntel unjustly gained at TriZetto's expense, and they were "addressed in computing damages for [TriZetto's] actual loss." 18 U.S.C. § 1836(b)(3)(B)(i)(II). TriZetto's expert testified that the actual loss TriZetto suffered post-DTSA from Syntel using its trade secrets to service UHG was \$8.5 million in lost profits. *See* App'x 412 (396:9–12); 433 (419:4–8). Thus, through its misappropriation, Syntel realized \$823,899 in unjust profits "at the expense of" TriZetto's \$8.5 million profit opportunity.³⁷ *Kaye v. Grossman*, 202 F.3d 611, 616 (2d Cir. 2000).

³⁶ The policy of punishing wrongdoers is already served by the DTSA's separate provision for punitive damages. *See* 18 U.S.C. § 1836(b)(3)(C).

³⁷ As noted above, TriZetto's expert (Britven) presented three damages theories to the jury at trial. TriZetto's principal theory was unjust enrichment based on avoided development costs. As a first alternative, Britven presented a reasonable royalty theory that set damages at 50% of TriZetto's relevant development costs, or \$142 million. As a second alternative, he suggested that TriZetto's damages should be the \$8.5 million in TriZetto lost profits. TriZetto was of the view that an award of lost profits (\$8.5 million) and avoided costs damages (\$285 million) would constitute impermissible double recovery under the DTSA. The

Beyond its lost profits, however, TriZetto suffered no compensable harm supporting an unjust enrichment award of avoided costs. The district court's permanent injunction ended Syntel's use of TriZetto's trade secrets, and, therefore, its ability to profit from any avoided costs. Further, Syntel's misappropriation did not diminish, much less destroy, the secrets' continued commercial value to TriZetto. In fact, TriZetto has retained the profitable use of its trade secrets; Facets is worth even more today than it was when the misappropriation occurred. Accordingly, TriZetto is not entitled to avoided costs as a form of unjust enrichment damages in this specific case.

To be sure, future cases may present a range of factual scenarios concerning a defendant who has realized only modest profits from its misappropriation of trade secrets but has, nevertheless, been enriched by avoided costs in a larger amount at the expense of the secret holder. This might depend on, for example, the extent to which the defendant has used the secret in developing its own competing product, the extent to which the defendant's misappropriation has destroyed the secret's value for its original owner, or the extent to which the defendant can be stopped from profiting further from its misappropriation into the future. But in this case, perhaps unusually, none of those

jury was therefore not asked to specify the source of its compensatory damages award under the DTSA. Because the jury awarded TriZetto avoided costs damages, the jury did not specifically decide to award TriZetto lost profits damages. We do not need to decide the extent to which an award of lost profits and avoided costs may (or did) overlap under the DTSA, as the question before us is limited to whether avoided costs are recoverable as a matter of law under these facts.

circumstances supports awarding TriZetto \$285 million of the costs it spent in developing the misappropriated secrets. TriZetto's valuable trade secrets are still that—valuable and secret.

Most of the cases TriZetto and the district court employ to support awarding avoided costs concern claimants who, at least to some degree, lost the value of their misappropriated trade secrets.³⁸ Avoided costs compensated for that loss. For example, in *GlobeRanger Corp. v. Software AG U.S. of Am., Inc.*, the defendant “used the [claimant’s trade secrets] in developing its own product,” thereby diminishing the value of the trade secret to the claimant. 836 F.3d 477, 499 (5th Cir. 2016). In *Salsbury Laboratories, Inc. v. Merieux Laboratories, Inc.*, too, the defendant destroyed the value of a claimant manufacturer’s trade secret when it adopted and used the manufacturer’s vaccine production process to create its own competing vaccine.³⁹ 908 F.2d 706, 712, 714–15 (11th Cir. 1990). But again, this case is different: TriZetto offered no proof that Syntel’s misappropriation diminished the value of its trade secrets to any degree.

Syntel never developed or sold a competing software product using TriZetto’s trade secrets. Syntel competed for services in a market in which Syntel and other third parties were routinely granted permission to use TriZetto’s trade secrets, often for free. TriZetto

³⁸ We need not consider the unpublished out-of-circuit decisions that TriZetto cites.

³⁹ The Eleventh Circuit “enjoined defendants from disclosing Salsbury’s trade secrets and from using Stabilizer H but not from producing or selling the competing vaccine.” *Id.* at 708.

contends that there is no difference from an avoided costs perspective when the trade secrets relate to competing services as opposed to a competing product. Even if that were so—a point we need not decide—that argument misses the point. Syntel might have had to turn over avoided costs (or some portion of avoided costs) for using TriZetto’s trade secrets to gain a significant head start into the market for Facets-related services if, for example, it either diminished the value of, or publicly disclosed, TriZetto’s trade secrets while advertising or providing Facets services to third parties. But TriZetto offered no proof that is what happened here.

Our holding might appear in some tension with *Epic Systems Corp. v. Tata Consultancy Services, Ltd.*, a Seventh Circuit decision applying Wisconsin’s Uniform Trade Secrets Act.⁴⁰ 980 F.3d 1117 (7th Cir. 2020). There, the Seventh Circuit upheld a \$140 million avoided costs award based on the “significant head start” in operations TCS gained through misappropriation.⁴¹ *See id.* at 1130, 1132–33.

⁴⁰ As discussed *supra* at 25 n.25, the Wisconsin UTSA’s compensatory damages provision mirrors the DTSA’s. *Compare* Wis. Stat. § 134.90(4)(a) (“A court may award [compensatory] damages in addition to, or in lieu of, injunctive relief under sub. (3). Damages may include both the actual loss caused by the violation and unjust enrichment caused by the violation that is not taken into account in computing actual loss.”), *with* 18 U.S.C. § 1836(b)(3)(B)(i) (“A court may . . . award . . . [compensatory] damages for any unjust enrichment caused by the misappropriation . . . that is not addressed in computing damages for actual loss.”).

⁴¹ TCS used Epic’s trade secrets to create a “comparative analysis”—a spreadsheet comparing TCS’s health-record-software (called “Med Mantra”) to Epic’s software. *Id.* at 1123.

Importantly, however, Epic suffered no economic harm from TCS's misappropriation, *id.* at 1144 n.5, and the "district court entered an injunction prohibiting TCS from using, possessing, or retaining any of Epic's trade secrets." *Id.* at 1127. We disagree with the court's reasoning insofar as it can be seen to endorse a view that avoided costs are available as compensatory damages under the DTSA *whenever* there is misappropriation of any trade secret relating to an owner's product. To the extent no corresponding harm to the trade secret owner would be necessary, such a view unhinges avoided costs from the DTSA's compensatory moorings and overlooks the remedial benefits, as here, of a timely injunction that prevents the dissemination and use of a trade secret.⁴² *Cf.* 4

TCS used the comparative analysis in "an attempt to enter the United States health-record-software market, [in an unsuccessful attempt] to steal Epic's client, and [to] address key gaps in TCS's own Med Mantra Software." *Id.*

⁴² TriZetto and the district court also cite *Steves & Sons, Inc. v. JELD-WEN, Inc.* to support awarding avoided costs. No. 16-cv-545-(REP), 2018 WL 2172502 (E.D. Va. May 10, 2018). There, the district court denied Steves' motion for summary judgment on JELD-WEN's trade secret misappropriation damages claims arising under the DTSA and Texas's UTSA. *Id.* at *1. In the court's view, JELD-WEN presented enough evidence on its unjust enrichment claim to avoid summary judgment. *Id.* at *7. It reasoned avoided costs could be available where the defendant used doorskin manufacturing trade secrets to assess the feasibility of building a competing manufacturing plant. *Id.* The avoided costs theory went: Steves' possession of trade secrets about important manufacturing components would allow it to "increase the plant's profitability through a reduction in its per skin costs." *Id.* at *3. Critically, however, Steves did not build the plant—it only took limited steps towards doing so, such as negotiating with potential business partners. *Id.* at **5, 7.

Roger M. Milgrim, *Milgrim on Trade Secrets* § 15.02 (measuring an unjust enrichment award “by the value of the misappropriated trade secret . . . may preclude an award of injunctive relief on the theory that having received the full value of its trade secret, the owner is not entitled to further relief”).

Here, as well, the district court effectively awarded punitive damages under the guise of compensatory damages. TriZetto presented evidence of the actual financial impact of Syntel’s actions on both parties. Yet rather than focusing on that evidence, the district court reasoned that avoided costs that have no correlation to Syntel’s gain at TriZetto’s expense were appropriate because Syntel “should bear the business risk” of its misappropriation

Moreover, JELD-WEN suffered minimal harm from the actual misappropriation, and the injunctive relief it requested would have precluded Steves’ future use of the trade secrets. *Id.* at **4, 10.

TriZetto never referenced *PPG Industries, Inc. v. Jiangsu Tie Mao Glass Co., Ltd.* in support of its argument to uphold the district court’s avoided costs award. 47 F.4th 156 (3d Cir. 2022). There, the Third Circuit affirmed an \$8.8 million avoided costs award under Pennsylvania’s UTSA even though the claimant “did not demonstrate actual loss from [the defendant’s] misappropriation,” and a permanent injunction prevented the defendant from any further misappropriation of the claimant’s secrets. *Id.* at 161, 163; *compare* 12 Pa. Cons. Stat. Ann. § 5304(a), *with* 18 U.S.C. § 1836(b)(3)(B)(i). As with *Epic Systems Corp.*, we decline to follow the reasoning of these two decisions. They denied summary judgment on/affirmed avoided costs awards based *solely* on the defendant’s cost savings, despite no corresponding harm to the trade secret holder. That result is inconsistent with our view of when avoided costs are available as unjust enrichment damages under the DTSA. *See* 18 U.S.C. § 1836(b)(3)(B)(i)(II).

regardless of its temporal length. Special App'x 16. To the extent the district court deemed it necessary to punish Syntel for any unrealized potential profits or “business risk” it took, that punishment is appropriately considered in the context of punitive damages under the DTSA. *See* 18 U.S.C. § 1836(b)(3)(C).

Accordingly, we conclude that, as a matter of law, an unjust enrichment award of avoided costs was unavailable under the specific facts of this case. Syntel's unjust gain was fully “addressed in computing damages for [TriZetto's] actual loss,” and TriZetto suffered *no compensable harm* beyond that actual loss. *See* 18 U.S.C. § 1836(b)(3)(B)(i)(II). Syntel's onetime use of the trade secrets to service UHG did not jeopardize their continued value to TriZetto. TriZetto—*not Syntel*—currently retains their profitable use, and a permanent injunction prohibits Syntel from using them in the future. Awarding TriZetto \$285 million of the costs it incurred to develop its trade secrets would be inconsistent with the purpose of avoided costs in trade secret cases and with the DTSA's remedial scheme. Under these facts, upholding the avoided costs award would entitle TriZetto to a windfall. The district court's DTSA damages judgment is vacated.

D. Disposition.

We remand the case for the district court to address the propriety of the two jury awards based on TriZetto's damages theory of awarding a reasonable royalty: (1) the \$142,427,596 New York trade secret misappropriation award and (2) the \$59,100,000 copyright infringement award. Although the parties

addressed the propriety of these awards in their motion papers below,⁴³ there was nothing to appeal here since the jury, to avoid double counting, did not factor them into their total compensatory damages award, instead relying exclusively on the \$284,855,192 damages in avoided costs for the DTSA claim.⁴⁴ *See* Special App’x 12 n.3; App’x 2254.

Of note, we *do not* remand for the court to determine if TriZetto is entitled to lost profit damages under § 1836(b)(3)(B)(i)(I) of the DTSA. To be sure, TriZetto’s expert testified that the company suffered \$8.5 million in lost profits through Syntel’s misappropriation, and the district court instructed the jury that TriZetto could recover those lost profits as damages under the DTSA. But at trial, TriZetto took the view that awarding lost profits and avoided costs would constitute “double counting” under the DTSA;

⁴³ In its Rule 50(a) and Rule 50(b) motions, Syntel objected to the jury’s reasonable royalty awards of \$142 million for trade secret misappropriation under New York law and \$59 million for copyright infringement because: (1) both were based on avoided costs that are inapplicable in this case; and (2) both were based on a 50/50 split methodology between TriZetto and Syntel for avoided costs that is improper as a matter of law. As mentioned, the district court did not resolve the challenge to either award because it awarded avoided costs under the DTSA.

⁴⁴ Both Syntel and TriZetto waived consideration by this Court of the propriety of the \$142 million reasonable royalty award under New York law. Syntel waived the argument that the award was improper by raising it only in a footnote on appeal. *See U.S. v. Restrepo*, 986 F.2d 1462, 1463 (2d Cir. 1993). And the same is true for TriZetto, who also addressed the award’s propriety only in a footnote. *See TriZetto Br. 75–76 n.3* (“[E]ven if Syntel were to prevail on its avoided-cost argument, TriZetto is at least entitled to a \$142 million reasonable royalty.”).

the district court accepted that view. Special App'x 15. As a result, the verdict form that TriZetto proposed and the district court accepted did not ask the jury to determine if (and to what amount) TriZetto was entitled to lost profit damages. Because TriZetto does not argue on appeal that it is entitled to its lost profits if we vacate the avoided costs award, we do not instruct the district court to consider the issue on remand.

CONCLUSION

For the foregoing reasons, we **AFFIRM IN PART** and **VACATE IN PART** the judgment of the district court and **REMAND** the case for further proceedings consistent with this opinion.

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Appendix B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

No. 15-cv-211

SYNTEL STERLING BEST SHORES MAURITIUS LIMITED,
et al.,

*Plaintiffs and
Counterclaim-
Defendants,*

v.

THE TRIZETTO GROUP, INC., et al.,

*Defendants and
Counterclaim-
Plaintiffs.*

Filed: Apr. 20, 2021

OPINON AND ORDER

LORNA G. SCHOFIELD, District Judge:

This decision follows a six-day jury trial held in October 2020. The jury found in favor of The TriZetto Group, Inc. and Cognizant Technology Solutions Corporation (collectively, “TriZetto”) on all claims and counterclaims that were tried. These included TriZetto’s claims for trade secret misappropriation under the Defend Trade Secrets Act (“DTSA”) and New York law, and a copyright infringement claim

against Syntel Sterling Best Shores Mauritius Limited and Syntel Inc. (collectively, “Syntel”). The jury also considered claims that Syntel brought against TriZetto. The jury awarded TriZetto \$284,855,192 in compensatory damages and \$569,710,384 in punitive damages.

This Opinion addresses several motions. Before the case was submitted to the jury, both Syntel and TriZetto moved for judgment as a matter of law on all claims and counterclaims under Federal Rule of Civil Procedure (“Rule”) 50(a). The Court reserved ruling on the motions. After the jury’s verdict, Syntel renewed its motion for judgment as a matter of law under Rule 50(b), or in the alternative, a new trial or remittitur under Rule 59. TriZetto moved for a permanent injunction and pre- and post-judgment interest on the jury award.

For the reasons that follow, Syntel’s motions are denied except its request for a new trial or remittitur on punitive damages. TriZetto’s motion for permanent injunction and post- judgment interest is granted, and the motion for pre-judgment interest is denied. TriZetto’s Rule 50(a) motion is denied as moot.

I. BACKGROUND

TriZetto develops software used by large health insurance companies. One software product is Facets, a healthcare administrative platform, which manages and automates processes for such companies, including the processing of claims. Installing, upgrading and customizing the software can take a significant amount of time and personnel. TriZetto created software tools to facilitate and improve Facets installation, customization and upgrade processes. As

a part of its business, TriZetto also provides Facets customization and implementation consulting services to clients.

Syntel provides information technology services. In 2010, Syntel and TriZetto entered into a Master Services Agreement (“MSA”), under which Syntel agreed to provide software development, consulting services and other support to TriZetto’s Facets customers, including Facets platform customization and management. In 2012, the parties amended the MSA and, among other things, deleted a provision that barred Syntel from competing with TriZetto. In 2014, TriZetto was acquired by Cognizant, a competitor of Syntel, and Syntel and TriZetto terminated the MSA and their relationship.

Syntel commenced this action on January 12, 2015, asserting breach of contract and other claims. TriZetto asserted counterclaims. Discovery was protracted. On January 31, 2017, the Court ordered a neutral forensic examination of Syntel’s digital electronic devices and files. On August 25, 2017, the Court entered a preclusion order to sanction Syntel for continued discovery misconduct (the “Preclusion Order”). The Preclusion Order barred Syntel from (1) “offering or presenting any evidence that it did not misappropriate and unlawfully copy TriZetto’s Facets test cases and automation scripts” and (2) “offering or presenting any evidence that it independently developed any of the Platform Management Tools at issue in this case.”

II. SYNTEL’S RULE 50 AND 59 MOTIONS

Syntel moves for judgment as a matter of law under Rule 50(b) on TriZetto’s copyright infringement

claim and trade secret claims under both the DTSA and New York law, and challenges the jury's damages award. Syntel alternatively moves for a new trial under Rule 59. As to damages, Syntel also asks the Court for remittitur or a new trial. Syntel's arguments regarding liability are addressed before damages.

A. LEGAL STANDARDS

Judgment as a matter of law under Rule 50(b) is appropriate “only if the court, viewing the evidence in the light most favorable to the non-movant, concludes that a reasonable juror would have been *compelled* to accept the view of the moving party.” *US Airways, Inc. v. Sabre Holdings Corp.*, 938 F.3d 43, 54 (2d Cir. 2019) (emphasis in original) (internal quotation marks omitted). “The court cannot assess the weight of conflicting evidence, pass on the credibility of witnesses, or substitute its judgment for that of the jury.” *Wiercinski v. Mangia 57, Inc.*, 787 F.3d 106, 113 (2d Cir. 2015) (internal quotation marks omitted). A Rule 50 motion may be granted only if “there exists such a complete absence of evidence supporting the verdict, that the jury’s findings could only have been the result of sheer surmise and conjecture, or the evidence in favor of the movant is so overwhelming that reasonable and fair minded [persons] could not arrive at a verdict against [it].” *Warren v. Pataki*, 823 F.3d 125, 139 (2d Cir. 2016) (alterations in original) (quoting *SEC v. Ginder*, 752 F.3d 569, 574 (2d Cir. 2014)).

Under Rule 59, “[a] trial court should not grant a motion for a new trial unless it is convinced that the jury . . . reached a seriously erroneous result or that the verdict is a miscarriage of justice.” *Ali v. Kipp*, 891

F.3d 59, 64 (2d Cir. 2018) (internal quotation marks omitted). “Remittiturs are a common procedure used by the courts to, in effect, reduce the amount of a damage award that the court concludes is impermissibly high.” *Turley v. ISG Lackawanna, Inc.*, 774 F.3d 140, 167 (2d Cir. 2014). Through this procedure, a court “compels a plaintiff to choose between reduction of an excessive verdict and a new trial.” *Anderson Grp., LLC v. City of Saratoga Springs*, 805 F.3d 34, 51 (2d Cir. 2015) (internal quotation marks omitted).

B. LIABILITY

Syntel seeks judgment as a matter of law or a new trial on the trade secret misappropriation and/or the copyright claims based on four arguments: (1) Syntel did not misappropriate 102 of the 104 asserted trade secrets because it was contractually authorized to use them; (2) TriZetto waived its rights to, and/or is estopped from, bringing trade secret misappropriation and copyright infringement claims; (3) the asserted trade secrets were inadequately specified as a matter of law and no reasonable jury could have determined whether any of them qualified as trade secrets; and (4) no reasonable jury could have found that Syntel engaged in trade secret misappropriation after May 11, 2016, the effective date of the DTSA. Under the rigorous standards of Rule 50(b) and Rule 59, these challenges are rejected.

1. 2012 Amendment

Syntel argues that it was authorized to use the 102 trade secrets not subject to the Preclusion Order - - *i.e.*, all but two of the trade secrets in this case -- following the 2012 Amendment to the parties’ MSA.

Specifically, Syntel argues that the amendment's deletion of the MSA's non-competition provision authorized Syntel to use TriZetto's confidential information. The jury heard the same argument at trial and rejected it. The jury's conclusion was not seriously erroneous or contrary to overwhelming evidence.

Syntel styles its argument as construction of an unambiguous contract, raising a question of law for the Court, and thus bypassing the jury. *Compare Banos v. Rhea*, 33 N.E.3d 471, 475 (N.Y. 2015) ("Whether a contract is ambiguous is a question of law, and courts may not resort to extrinsic evidence to aid in interpretation unless the document is ambiguous."), *with Rhoda v. Rhoda*, 110 N.Y.S.3d 35, 37 (2d Dep't 2019) ("The resolution of an ambiguous provision, for which extrinsic evidence may be used, is for the trier of fact.").¹ Syntel presumably makes this argument now because Syntel, represented by new counsel at trial, did not raise this issue at summary judgment. Syntel cites no case law in support of this novel approach, and post-trial motions pursuant to Rule 50 and Rule 59 focus on the sufficiency of the evidence supporting the jury's verdict. Whether viewed as a question of law for the Court, or the sufficiency of the evidence before the jury, Syntel's argument provides no basis to overturn the jury's findings that Syntel misappropriated TriZetto's trade secrets.

The MSA restricted Syntel's use of TriZetto's "Confidential Information." The MSA's non-competition provision, section 29.17, separately

¹ New York law applies pursuant to the MSA.

prohibited Syntel from competing with TriZetto under certain circumstances “to prevent any misuse or disclosure of Confidential Information.” PTX-27 at 62 (§ 29.17 (“Noncompetition”). In 2012, the parties agreed to amend the MSA to delete its non-competition provision and “any other provision in the [MSA] related to [Syntel] being restricted from competing with TriZetto.” PTX-162 at 2. The deletion of the non-competition provision did not authorize Syntel to use TriZetto’s asserted trade secrets in connection with providing competing services. The 2012 Amendment left undisturbed the MSA’s confidentiality provisions, sections 13.01 and 19.01, which unambiguously require that “TriZetto Data” not be used “[w]ithout TriZetto’s approval . . . other than in connection with [Syntel’s] providing the Services,” PTX-27 at 35 (§ 13.01), and also that Syntel “hold any such Confidential Information as confidential.” PTX-27 at 42 (§ 19.01). The 2012 Amendment did not amend the definition of “Services,” which in substance means services to be provided by Syntel pursuant to the MSA. PTX-27 at 8 (§ 1.01(99)). As amended in 2012, the MSA is unambiguous -- as a matter of law -- that Syntel was free to compete with TriZetto but that Syntel was still obligated by the MSA’s confidentiality provisions.

At trial, Syntel made the same argument to the jury -- that Syntel was authorized by the 2012 Amendment to compete with TriZetto’s confidential information. Syntel relied on the MSA and the 2012 Amendment, as well as extrinsic evidence, including the 2013 Third-Party Access Agreement (“TPAA”) that TriZetto signed as part of Syntel’s provision of Facets services to Capital District Physicians’ Health Plan

("CDPHP"). The jury evidently rejected Syntel's interpretation of the 2012 Amendment and the TPAA. The jury found on the verdict sheet that Syntel had misappropriated TriZetto's trade secrets in violation of federal and state law. Based on a plain reading of the MSA, including the 2012 Amendment, the jury's conclusion was not seriously erroneous or contrary to overwhelming evidence.

2. Waiver and Estoppel

Syntel argues that the trade secret misappropriation and copyright infringement claims are barred by its affirmative defenses of waiver and estoppel, reprising its interpretation of the 2012 Amendment and the TPAA discussed above. Both defenses were presented to the jury for binding verdict pursuant to the parties' agreement, even though these equitable defenses otherwise would have been decided by the Court. The jury on the verdict sheet expressly rejected each defense as to each claim. For the same reasons as discussed above, the jury's findings were not seriously erroneous or contrary to overwhelming evidence.

Syntel makes the additional argument that, even if it was not authorized to use TriZetto's information while servicing third parties, Syntel reasonably assumed that it could, and TriZetto's failure to alert Syntel "was an act of concealment" sufficient to support an estoppel defense. *See U.S. D.I.D. Corp. v. Windstream Commc'ns, Inc.*, 775 F.3d 128, 136 (2d Cir. 2014) (stating that under federal law, the defense of equitable estoppel requires *inter alia* a showing that the estopped party knowingly concealed or made a misrepresentation); *Gaia House Mezz LLC v. State St.*

Bank & Tr. Co., 720 F.3d 84, 90 (2d Cir. 2013) (same under New York law, citing *Nassau Tr. Co. v. Montrose Concrete Prods. Corp.*, 436 N.E.2d 1265, 1269 (N.Y. 1982)). Syntel points to trial testimony that TriZetto was aware that Syntel bid against TriZetto to service CDPHP, that TriZetto congratulated Syntel following the successful bid and that the parties subsequently signed the CDPHP TPAA, which authorized Syntel to use TriZetto Confidential Information to service CDPHP. The jury reasonably rejected Syntel's interpretation of events. The same facts reasonably support the contrary inference that TriZetto was unaware that Syntel intended to use TriZetto's trade secrets without authorization -- *i.e.*, including using trade secrets from the CDPHP project for *other* clients -- and therefore TriZetto concealed nothing. The jury's rejection of the estoppel defense was supported by ample evidence, even under Syntel's concealment theory.

Syntel makes the related argument that if TriZetto were estopped from bringing misappropriation claims involving TriZetto materials provided by and used for CDPHP, then a new trial is required on the misappropriation claims based on the general verdict rule. The general verdict rule requires a new trial where "there is no way to know that [an] invalid claim . . . was not the sole basis for [a] verdict." *Chowdhury v. WorldTel Bangl. Holding, Ltd.*, 746 F.3d 42, 50 (2d Cir. 2014) (internal quotation marks omitted). Syntel's argument is factually incorrect as the use of materials provided by CDPHP to service CDPHP was not "presented as adequate to prove liability" for trade secret misappropriation. *Morse v. Fusto*, 804 F.3d 538, 551 (2d Cir. 2015) (quoting *AIG*

Glob. Sec. Lending Corp. v. Banc of Am. Sec., LLC, 386 F. App'x 5, 7 (2d Cir. 2010) (summary order)). Instead, TriZetto offered testimony suggesting that Syntel misappropriated TriZetto trade secrets from the CDPHP project for use with other customers.²

3. Sufficiency of Trade Secret Identification

Syntel seeks judgment as a matter of law on the ground that no reasonable jury could have found for TriZetto on the trade secret misappropriation claims, because TriZetto failed to identify any of the 104 asserted trade secrets with the specificity required under the DTSA and New York law. This argument fails because Syntel has not shown a “complete absence of evidence” supporting the verdict and “that the jury’s findings could only have been the result of sheer surmise and conjecture.” *Warren*, 823 F.3d at 139.

“[T]he Second Circuit has not squarely articulated the precise contours of the specificity requirement in the context of trade secrets.” *Next Commc’ns, Inc. v. Viber Media, Inc.*, 758 F. App'x 46, 49 n.3 (2d Cir. 2018) (summary order). Courts in this District have required a trade secret to be described specifically

² This Opinion does not address Syntel’s remaining arguments that the general verdict rule requires a new trial on the misappropriation claims, because they are based on the premise that the trade secrets should not have been submitted to the jury either because (1) use of the trade secrets were authorized or (2) the trade secrets were not adequately specified. Because all of the asserted trade secrets were properly submitted to the jury -- as the Court rejects Syntel’s authorization and trade-secret specification arguments -- the general verdict rule does not apply.

enough, not only so that “the defendant can defend [itself] adequately against claims of trade secret misappropriation,” but also “so that a jury can render a verdict based on a discriminating analysis of the evidence of disclosure and misappropriation.” *Sit-Up Ltd. v. IAC/InterActiveCorp.*, No. 05 Civ. 9292, 2008 WL 463884, at *11 (S.D.N.Y. Feb. 20, 2008); *accord Medidata Sol., Inc. v. Veeva Sys., Inc.*, No. 17 Civ. 589, 2021 WL 467110, at *3 (S.D.N.Y. Feb. 9, 2021). TriZetto identified its trade secrets with enough specificity that the jury could assess the evidence of disclosure and misappropriation.

At trial, TriZetto asserted that 104 items constituted trade secrets, grouping them into three categories as software, guides and manuals, and tools. For each of the 104 asserted trade secrets, TriZetto linked the asserted trade secret to particular documents or source code alleged to be trade secrets and additionally identified the alleged trade secrets in connection with evidence of Syntel’s use. TriZetto’s witnesses, including its fact witness Mr. Noonan and technical expert Dr. Bergeron, provided extensive testimony identifying and describing the trade secrets. For the software and tools trade secrets, the jury heard testimony explaining the technology in detail. For the remaining asserted guides and manuals trade secrets, the jury heard testimony explaining that each contained material content regarding Facets data, configuration, user interface aspects or processing and heard in-depth testimony regarding one of the asserted guide trade secrets. There was limited cross-examination on the identification of the trade secrets. Moreover, the jury was expressly instructed on the requirement that TriZetto was required to prove what

each trade secret is, and was provided a court exhibit -- jointly submitted by the parties -- which listed each asserted trade secret. The documents or source code tied to the asserted trade secrets were in evidence, and there were no objections to their admission. The jury ultimately returned a verdict finding that TriZetto “possessed one or more trade secrets” that Syntel misappropriated. TriZetto thus proffered sufficient evidence to support the jury’s verdict.

Syntel largely argues that the software trade secrets and guides and manual trade secrets were insufficiently specified based on the magnitude of source code and pages, respectively, and because these materials included public information. Similarly, Syntel contends that TriZetto did not identify the “actual” trade secrets within the asserted trade secrets. Syntel made these arguments in their summation, and the jury rejected them. Whether the volume of material encompassing an asserted trade secret or the inclusion of public material in such material means a trade secret has been vaguely defined is context dependent. *See Motorola, Inc. v. Lemko Corp.*, No. 08 Civ. 5427, 2012 WL 74319, at *18 (N.D. Ill. Jan. 10, 2012) (applying Illinois Trade Secrets Act and denying summary judgment because “[a]lthough [the plaintiff] ha[d] identified a large number of items, it ha[d] referred to particular documents, files, inventions, and aspects of its technology, not simply general methods or areas of its business”); *compare PaySys Int’l, Inc. v. Atos Se*, No. 14 Civ. 10105, 2016 WL 7116132, at *10-11 (S.D.N.Y. Dec. 5, 2016) (finding inadequate specification of a trade secret where it was implausible that the entire software could be a trade secret because it was

comprised of millions of source code, and substantial portions were made public over thirty years of licensing), *with Harbor Software, Inc. v. Applied Sys., Inc.*, 887 F. Supp. 86, 89-90 (S.D.N.Y. 1995) (a software trade secret may exist in the “unique combination” of individual components that are publicly available); *Next Commc’ns, Inc.*, 758 F. App’x at 48 (“[C]omputer software programs that contain components that are generally not known by outsiders have received judicial recognition as trade secrets.” (emphasis added)). Based on the evidence adduced at trial, a reasonable juror could apply the relevant legal tests to each asserted trade secret, which as explained above, were named, described and tied to particular documents. Based on these identifications a juror could have reasonably determined the asserted trade secrets were in fact trade secrets even if they included public material. Syntel’s argument that the trade secrets were insufficiently specified is rejected.

4. Trade Secret Misappropriation After May 11, 2016

Syntel argues that judgment should be granted in its favor on the DTSA claim, arguing that TriZetto failed to identify any misappropriation after May 11, 2016, the DTSA’s effective date. *See* Defend Trade Secrets Act of 2016, Pub. L. No. 114-153, 130 Stat. 376, 376-382. The evidence presented at trial was sufficient to support the DTSA verdict.

The DTSA applies to pre-enactment conduct if the misappropriation continues after the enactment date. *See Zirvi v. Flatley*, 433 F. Supp. 3d 448, 463 n.9 (S.D.N.Y. 2020), *aff’d*, 2020 WL 7294559 (2d Cir. Dec. 11, 2020) (collecting cases). The jury heard evidence

from which it could reasonably conclude that Syntel continued to use TriZetto's asserted trade secrets after May 11, 2016. The evidence showed that Syntel used TriZetto's trade secrets in connection with its Facets consulting business and that this work continued from June 2012 to at least June 2018. The evidence showed that Syntel used TriZetto's confidential information to upgrade the Facets software of its client UnitedHealth Group ("UHG") and that the upgrade occurred in November 2016. One of TriZetto's experts testified that, based on his review of the record, he did not see any evidence that Syntel ever attempted to get rid of TriZetto's trade secrets in its possession.

In support of its motion Syntel attempts to refute this evidence -- as it did with the jury -- arguing that the evidence does not show misappropriation after May 11, 2016. The jury reasonably rejected these arguments. For example, Syntel highlights that trial testimony established that Facets was frequently upgraded, test cases and automation scripts were not reusable and that different versions of manuals were produced over time. The jury heard this testimony and reasonably could have determined that the particular versions at issue at trial were still in use after 2016 based primarily on the testimony of TriZetto's expert Dr. Bergeron and findings in the forensic examination report in evidence. The jury was instructed for the DTSA claim to consider acts of misappropriation that occurred or continued on or after May 11, 2016. On the verdict form, the jury answered "yes" that TriZetto had proved that it possessed trade secrets that were misappropriated by Syntel in violation of the DTSA "for the period May 11, 2016, to October 18, 2020." The evidence was sufficient to support this verdict.

Syntel's Rule 50 motion as to liability is rejected because Syntel has not shown "a complete absence of evidence supporting the verdict." *See Warren*, 823 F.3d at 139. Syntel's alternative request for a new trial on liability pursuant to Rule 59 is also denied because Syntel has not shown that the jury reached a seriously erroneous result or that the verdict is a miscarriage of justice.

C. DAMAGES

The jury determined that TriZetto is entitled to \$284,855,192 for the DTSA misappropriation claim, \$142,427,596 for the New York trade secret misappropriation claim and \$59,100,000 for copyright infringement. The jury was asked to award a single compensatory damages figure that would not result in multiple recoveries for the same injury and awarded \$284,855,192 in compensatory damages total. The jury also awarded punitive damages of \$569,710,384, double the amount of compensatory damages. Syntel challenges each part of the damages award, seeking judgment as a matter of law under Rule 50(b).³ Syntel alternatively seeks remittitur or a new trial under Rule 59 on both the DTSA damages and punitive damages.

³ The jury's awards on the New York trade secret misappropriation claim and the copyright claim were based on TriZetto's damages theory of awarding a reasonable royalty. Although the parties addressed the propriety of these awards in their motion papers, they are not addressed here since the jury, to avoid double counting, did not factor them into their total compensatory damages, and relied exclusively on the \$284,855,192 damages in avoided costs for the DTSA claim.

1. Avoided Costs

At trial, TriZetto sought \$284,855,192 in damages on the DTSA misappropriation claim. TriZetto argued that Syntel was unjustly enriched by this amount because Syntel avoided expending this amount in development costs by stealing and using TriZetto's trade secrets instead of incurring the cost of developing the trade secrets on its own. The jury accepted this argument and awarded \$284,855,192 in compensatory damages. Syntel argues that (1) avoided cost damages are an impermissible measure of damages as a matter of law and (2) no reasonable jury could find that the awarded damages are causally related to the misappropriation under the DTSA. Both arguments are rejected.

a) Avoided Costs Are a Proper Measure of Damages

The DTSA expressly permits unjust enrichment as damages. The DTSA permits a plaintiff to seek:

damages for actual loss caused by the misappropriation; and . . . *damages for any unjust enrichment* caused by the misappropriation . . . that is not addressed in computing damages for actual loss; or . . . in lieu of damages measured by [those] methods, the damages . . . measured by imposition of liability for a reasonable royalty for the misappropriator's unauthorized disclosure or use of the trade secret.

18 U.S.C. § 1836(b)(3)(B) (emphasis added). Unjust enrichment damages include what the parties call "avoided costs" -- *i.e.* the development costs that Syntel

avoided incurring when it misappropriated TriZetto's trade secrets. These avoided costs are recoverable as damages for unjust enrichment under the DTSA and its state law counterparts derived from the Uniform Trade Secrets Act ("UTSA") (Unif. Law Comm'n 1985). *See, e.g., Epic Sys. Corp. v. Tata Consultancy Servs. Ltd.*, 980 F.3d 1117, 1130 (7th Cir. 2020) (affirming avoided cost damages awarded under the Wisconsin UTSA as "head start" unjust enrichment damages); *Children's Broad. Corp. v. Walt Disney Co.*, 357 F.3d 860, 866 (8th Cir. 2004) (construing identical language under the Minnesota UTSA, and upholding a jury award where the evidence showed that defendants "accelerated their entry into the market by using [Plaintiff's] information"); *Motorola Sols., Inc. v. Hytera Comm'cns Corp.*, 2020 WL 6554645, at *12-15 (N.D. Ill. Oct. 19, 2020) (ratifying jury's award of defendant's avoided research and development costs as unjust enrichment under the DTSA); *Steves & Sons, Inc. v. JELD-WEN, Inc.*, 2018 WL 2172502, at *6 (E.D. Va. May 10, 2018) (explaining that avoided costs are "appropriately considered" a part of the trade secret plaintiff's "unjust enrichment damages" recoverable under the DTSA); *see generally* Restatement (Third) of Unfair Competition ("Restatement") § 45 cmt. c (1995) ("In some situations the defendant's enrichment is represented by profits from sales made possible by the appropriation; in others, by savings achieved through the use of the trade secret in the defendant's business.").

Syntel argues that a claimant is not entitled to recover the total value of a trade secret when the secret still has value to the claimant. While this proposition may be correct, *see Softel, Inc. v. Dragon*

Med. & Sci. Comm'cns, Inc., 118 F.3d 955, 969 (2d Cir. 1997) (construing New York law), it misconstrues the damages awarded here. As an initial matter, the DTSA expressly permits recovery of the loss to a claimant and/or the unjust enrichment to a wrongdoer, as long as there is no double counting. Damages characterized as the total value of the trade secret belong in the former category -- loss to a claimant -- and logically could not be awarded if the value in fact is not lost. However, avoided costs damages are in the latter category of unjust enrichment and represent the wrongful gain to the party that misappropriated the trade secret. There is no legal or conceptual limitation on these damages based on the continuing value of the trade secret to the claimant. Unjust enrichment damages derive from a policy of preventing wrongdoers from keeping ill-gotten gains, and therefore do not require a corresponding loss to the plaintiff. *See Russo v. Ballard Med. Prods.*, 550 F.3d 1004, 1021 (10th Cir. 2008) (construing identical damages language in the Utah UTSA and rejecting the view that unjust enrichment damages require the defendant to compete with the plaintiff because they allegedly serve as a proxy for the plaintiff's lost profits, as unjust enrichment damages instead reflect the "legislature's desire to ensure that misappropriators are not allowed to keep ill-gotten gains from their unlawful acts of misappropriation"); *Univ. Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 518, 536 (5th Cir. 1974) ("[T]he risk of defendants' venture, using the misappropriated secret, should not be placed on the injured plaintiff, but rather the defendants must bear the risk of failure themselves."). Here, TriZetto

did not seek the total value of the secret to TriZetto. Rather, TriZetto sought the amount that Syntel saved in development costs and used TriZetto's actual development costs as a proxy, which is a common way to determine a wrongdoer's avoided costs. See *GlobeRanger Corp. v. Software AG United States of Am., Inc.*, 836 F.3d 477, 499 (5th Cir. 2016) ("The costs a plaintiff spent in development . . . can be a proxy for the costs that the defendant saved.").

Syntel separately argues that avoided costs should not be awarded when TriZetto's actual loss -- in the form of lost profits -- and Syntel's unjust enrichment -- in the form of increased revenues -- can be easily measured. This argument is incorrect. First, that TriZetto's actual loss can be quantified does not preclude unjust enrichment damages. The DTSA expressly permits the award of both actual loss and unjust enrichment, as long as there is no double counting. See 18 U.S.C. § 1836(b)(3)(B). The award of one does not preclude the other. See, e.g., *Lightning Box Games Pty, Ltd. v. Plaor, Inc.*, 2017 WL 7310782, at *11 (N.D. Cal. Dec. 29, 2017), *report and recommendation adopted*, 2018 WL 3069296 (N.D. Cal. Feb. 27, 2018) (awarding both actual losses and unjust enrichment under the California UTSA and explaining that the DTSA authorizes the same damages but such award would result in double recovery); *LexMac Energy, L.P. v. Macquarie Bank Ltd.*, 2014 WL 12669718, at *38 (D.N.D. Feb. 19, 2014), *aff'd sub nom. Macquarie Bank Ltd. v. Knickel*, 793 F.3d 926 (8th Cir. 2015) (concluding that the trade secret plaintiff could recover both actual losses and unjust enrichment per the damages provision of the UTSA, and explaining that "[c]ourts applying

identical language from the uniform acts of other states have allowed for the recovery of damages for both actual loss and unjust enrichment to the extent that those damages are not duplicative”).

Second, that Syntel’s revenue from the misappropriation can be determined also does not preclude avoided costs as a measure of damages. Both are a form of unjust enrichment, but avoided costs may be a more appropriate measure of damages when the wrongdoer made only a modest profit -- as Syntel did here -- or no profit from the use of the trade secrets; the wrongdoer, not the aggrieved party, should bear the business risk that the wrongdoer’s use of purloined trade secrets will not be profitable. *See GlobeRanger*, 836 F.3d at 500 (affirming an award based on defendant’s cost savings; “the wrongdoer should not benefit from hindsight perspective that its gamble of misappropriating the trade secret turned out not to be so profitable.”); Restatement § 45 cmt. f (“If the benefit derived by the defendant consists primarily of cost savings, [damages] based on the savings achieved through the use of the trade secret may be the most appropriate measure of relief.”).

Avoided costs damages are proper under the DTSA as a matter of law.

b) The Evidence Was Sufficient for the Award of Avoided Costs

The DTSA allows “damages for any unjust enrichment caused by the misappropriation.” 18 U.S.C. § 1836(b)(3)(B). Syntel argues that no reasonable jury could find that the avoided costs were causally related to the misappropriation giving rise to liability under the DTSA. This argument is incorrect.

As discussed above, the evidence supports a DTSA violation by showing that Syntel used the trade secrets on the UHG upgrade after the DTSA effective date of May 11, 2016. Dr. Bergeron testified that an upgrade like the one Syntel conducted for UHG required the use of TriZetto trade secrets. He explained that the “upgrade was actually done in November 2016” and would require “all three [software trade secrets] . . . going from that early version to a later version is going to require two versions of Facets, also both versions of that upgrade tool, the database build tools as well as the upgrade framework tool.” Tr. 306:21-307:3.

Viewing the evidence in the light most favorable to TriZetto, the jury had a sufficient basis to determine that Syntel gained an unfair advantage by misappropriating TriZetto’s trade secrets -- Syntel could and did compete immediately with TriZetto to provide complex consulting services, including by performing the UHG upgrade. The jury heard Mr. Britven’s testimony that by using the TriZetto trade secrets, Syntel was able to go “right to market with the associated products,” which was “very advantageous.” Tr. 385:9-20. A reasonable juror could determine based on this testimony that Syntel gained an advantage by being able to enter the complex consulting market without having had to develop the necessary trade secrets required for such services. The jury saw an email that suggested that the UHG project was the “first kill” in entering the Facets consulting market and could infer from the same that Syntel was concerned it would not have access to TriZetto product documentation and manuals and would need to “[b]uild[] Syntel capabilities very strong around

TriZetto products.” DTX-5. There was circumstantial evidence from which a jury could determine that Syntel determined to enter the market with a plan to misappropriate TriZetto trade secret tools. A reasonable jury could therefore determine that through its misappropriation, Syntel benefited in the form of avoided costs.

2. Punitive Damages

The DTSA permits the recovery of punitive damages “if the trade secret is willfully and maliciously misappropriated,” and “in an amount not more than 2 times the amount of the [compensatory] damages awarded under subparagraph (B).” 18 U.S.C. § 1836(b)(3)(C). The jury awarded \$569,710,384 in punitive damages, twice the award of compensatory damages. Syntel argues that the jury’s punitive damages award violated due process, and the verdict should be reduced as a matter of law pursuant to Rule 50.⁴ Alternatively, if not constitutionally excessive, Syntel seeks remittitur, which offers the awardee a choice between a reduced award and a new trial. The Court finds that the punitive damages award is excessive -- warranting a new trial unless TriZetto accepts a lesser amount -- and that the constitutional question of whether it violated due process need not be reached.

An award of punitive damages must be fair, reasonable, predictable and proportionate. *Payne v. Jones*, 711 F.3d 85, 93 (2d Cir. 2013) (quotation marks

⁴ The Second Circuit has not yet decided whether a constitutionally excessive punitive award can be directly reduced by the Court rather than using remittitur. *Turley*, 774 F.3d at 168.

omitted). Under federal common law, a jury verdict is excessive when the award is “so high as to shock the judicial conscience and constitute a denial of justice.” *Id.* at 96 (quotation marks omitted). A jury award violates the Due Process Clause of the Fourteenth Amendment when the award is “grossly excessive.” *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 568 (1996); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416-17 (2003). An excessive jury award may be overturned and warrant remittitur as a matter of federal common law,⁵ even if the award is not so grossly excessive as to violate due process. *See Payne*, 711 F.3d at 97, 100. “The Supreme Court has articulated three ‘guideposts’ for reviewing punitive damages awards” for excessiveness. *Turley*, 774 F.3d at 165. The guideposts are: “(1) ‘the degree of reprehensibility’ associated with [the wrongdoer’s] actions; (2) ‘the disparity between the harm or potential harm suffered’ and the size of the punitive

⁵ Syntel was found liable under both federal law and New York law. The jury’s award covered all claims without distinction. A federal court in a case governed by state law must apply the state law standard for appropriateness of remittitur. *See Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 429-30 (1996); *Restivo v. Hessemann*, 846 F.3d 547, 587 (2d Cir. 2017). Neither party asserts that the state standard should apply. The award is reviewed under the federal standard, because “the successful plaintiff [should] be paid under the theory of liability that provides the most complete recovery.” *Singleton v. City of N.Y.*, 496 F.Supp.2d 390, 393 (S.D.N.Y. 2007) (quoting *Magee v. U.S. Lines, Inc.*, 976 F.2d 821, 822 (2d Cir. 1992)), *aff’d*, 308 F. App’x 521 (2d Cir. 2009). The applicable state standard, as compared to the federal standard, is less deferential to a jury verdict and requires a more stringent review. *See Duarte v. St. Barnabas Hosp.*, 341 F. Supp. 3d 306, 319 (S.D.N.Y. 2018).

award; and (3) the difference between the remedy in this case and the penalties imposed in comparable cases.” *Id.* (quoting *Gore*, 517 U.S. at 575).

a) First Guidepost: Degree of Reprehensibility

The first guidepost -- reprehensibility of the conduct -- is the most important. *See Gore*, 517 U.S. at 575. Five factors are relevant to this assessment: whether “[1] the harm caused was physical as opposed to economic; [2] the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; [3] the target of the conduct had financial vulnerability; [4] involved repeated actions or was an isolated incident; and [5] the harm was the result of intentional malice, trickery, or deceit, or mere accident.” *State Farm*, 538 U.S. at 419. “The existence of any one of these factors weighing in favor of a plaintiff may not be sufficient to sustain a punitive damages award; and the absence of all of them renders any award suspect.” *Id.* The parties agree that the first three “reprehensibility” factors do not apply here. Syntel’s conduct did not physically harm or kill anyone, and TriZetto -- acquired in 2014 by Cognizant for \$2.7 billion -- was not a financially vulnerable target.

The fourth factor -- repeated actions or an isolated incident -- weighs in favor of finding that Syntel engaged in reprehensible conduct. The evidence showed that Syntel engaged in a sustained course of illegal conduct against TriZetto over a period of years. For example, TriZetto produced evidence that Syntel misappropriated over 100 of Syntel’s trade secrets, including downloading more than 700 test cases and

automation scripts, pursuant to a long-term strategy. *See, e.g., Epic Sys.*, 980 F.3d at 1141 (finding the fourth factor weighed in favor of finding reprehensible conduct when the defendant’s wrongful conduct was directed repeatedly but solely against the plaintiff).⁶

The fifth factor -- whether the misconduct was intentional and deceitful or merely accidental -- is the most decisive factor in finding that Syntel’s conduct was reprehensible. TriZetto presented evidence that Syntel acted willfully, that it adopted a plan in 2012 “to go to war” with TriZetto, using an “arsenal” of TriZetto’s trade secrets to target TriZetto’s customers. For example, Syntel employees shared tools for use in servicing TriZetto customers with Syntel’s internal product consulting team. Also, TriZetto offered evidence showing that Syntel attempted to conceal possession or use of trade secrets, for example by using

⁶ It is unclear whether the fourth factor includes repeated misconduct against the plaintiff or is focused on misconduct against multiple victims. In *State Farm*, the Supreme Court seems to envision repeated unlawful conduct against others like the plaintiff. 538 U.S. at 409-410. The Second Circuit in *Lee v. Edwards*, 101 F.3d 805, 810 (2d Cir. 1996), appears to share that interpretation but does not definitely say so. District courts in this Circuit are split. *Compare Fernandez v. N. Shore Orthopedic Surgery & Sports Med., P.C.*, 79 F. Supp. 2d 197, 208 n.15 (E.D.N.Y. 2000) (“The phrase “repeated instances of misconduct,” as used by the Second Circuit in *Lee v. Edwards* . . . appears to refer to evidence of repeated misconduct with respect to other employees rather than repeated misconduct against the plaintiff.”) *with Allam v. Meyers*, 906 F. Supp. 2d 274, 292 (S.D.N.Y. 2012) (harm involved repeated, intentional acts of violence and threats of violence against a single victim). Regardless, repeated misconduct against a plaintiff is more egregious than a single incident.

references like “T\$Z” to thwart later email searches, or hiding marks identifying a document as TriZetto’s. TriZetto also offered evidence that, when the neutral forensic examiner attempted to examine Syntel’s computers for TriZetto trade secrets, seventeen of the computers could not be found and were later discovered apparently hidden in a closet in India. Although Syntel offered alternative innocent scenarios and evidence, they did not persuade the jury. In light of the evidence taken in the light most favorable to TriZetto, Syntel’s conduct was reprehensible, but not on a par with murderous or life-threatening conduct.

**b) Second Guidepost:
Relationship of Punitive
Damages to Harm**

The second guidepost is the relationship of punitive damages to “harm, or potential harm.” *See Gore*, 517 U.S. at 575. This typically means determining the ratio of punitive damages to compensatory damages, which are generally measured by the plaintiff’s loss. *See, e.g., Gore*, 517 U.S. at 559. However, as discussed above, the compensatory damages, in this case, are not based on TriZetto’s loss; instead, they are based on Syntel’s unjust enrichment. In the particular circumstances of this case, it is appropriate to use the jury’s compensatory damage award as the denominator in the ratio for several reasons.

First, the DTSA -- which is the basis for the compensatory award -- provides that the relevant ratio is based on the DTSA compensatory damages awarded. The statute permits compensatory damages

based on actual loss, unjust enrichment and a reasonable royalty. 18 U.S.C. 1836(b)(3)(B). The DTSA expressly permits exemplary damages based on a multiple “of the damages awarded under subparagraph (B),” *regardless* of which one. *Id.* at 1836(b)(3)(C). Thus the punitive damages ratio is based on the damages actually awarded and is limited to a ratio of 2:1, a relatively modest ratio in general terms.

Second, at least one Second Circuit case suggests that the amount of compensatory damages provides the proper denominator but that the measure of such damages affects the evaluation of the ratio. In *Turley v. ISG Lackawanna, Inc.*, the Second Circuit evaluated the relationship between “the compensatory award” and the punitive damages. 774 F.3d at 166. The compensatory damages were “emotional damages.” *Id.* at 165. These damages do not measure any kind of economic loss, and the Court described them as “intangible and therefore immeasurable.” *Id.* The Court found that the type of damages counseled a lower acceptable ratio of punitive damages to compensatory damages. On this basis, the Court rejected the 4:1 ratio and concluded that a 2:1 ratio was the maximum allowable based on “necessarily a largely arbitrary compensatory award.” *Id.* at 166. Although the compensatory damages, in this case, are not arbitrary, and in fact are very concrete, they similarly do not represent TriZetto’s “loss” and are a proxy -- TriZetto’s development costs -- to ascertain Syntel’s unjust enrichment. The approach in *Turley* thus suggests that the applicable ratio of damages awarded in this case is 2:1 and that a closer

relationship, *i.e.*, a smaller rather than larger ratio, is an appropriate limit on punitive damages.

Third, in a case similar to this one, the Seventh Circuit evaluated a punitive damages award on a claim of trade secret misappropriation, where the jury had awarded compensatory damages based on avoided costs. *See EpicSys.*, 980 F.3d at 1140- 45. In analyzing the second guidepost, the court used compensatory damages as the denominator in the ratio to evaluate the punitive damages award. *Id.* at 1143. The Court noted that the plaintiff's economic harm was significantly smaller than the avoided costs damages and if used "would in turn drastically change the relevant ratio." *Id.* at 1143. Although the Court held that the misappropriator had waived the argument that the compensatory award was the incorrect denominator, the Court also observed that at least "one other court had compared an unjust enrichment award to the punitive- damages award under this guidepost. . . ." *Id.* (citing *Rhone-Poulenc Agro, S.A. v. DeKalb Genetics Corp.*, 272 F.3d 1335, 1351 (Fed. Cir. 2001), *vacated sub nom. DeKalb Genetics Corp. v. Bayer CropScience, S.A.*, 538 U.S. 974, (2003), *opinion reinstated as modified*, 345 F.3d 1366 (Fed. Cir. 2003) (reaching the same result as to punitive damages). The Court accordingly determined the ratio of punitive and compensatory damages actually awarded to be 2:1, and held that a 1:1 ratio would yield the maximum permissible award. *Id.* at 1145.

In this case, as discussed above, the jury's compensatory damages award was roughly \$285 million, based on Syntel's unjust enrichment and not TriZetto's actual loss, which is much less. The jury's

punitive award was twice its compensatory award or approximately \$570 million, for a ratio of 2:1. As in *Epic*, and as suggested by the approach in *Turley*, this punitive damages award is excessive.

c) Third Guidepost: Civil Penalties

The third guidepost -- penalties imposed by law for the conduct giving rise to punitive damages -- is of little guidance here. There is no relevant civil penalty for comparison. The DTSA's punitive damages cap suggests that Congress believes any punitive award exceeding a 2:1 ratio would be inappropriate, but it does not suggest that Congress contemplated that all awards within this cap would be proportionate and not excessive.

d) Comparison to Similar Cases

In addition to the *Gore* guideposts, comparison with punitive damages awards in similar cases can also provide useful guidance. See *Payne*, 711 F.3d at 104. "The undertaking is precarious because the factual differences between cases can make it difficult to draw useful comparisons." *Id.* at 105. Nevertheless, this comparison shows that the punitive damages award is excessive. As referenced above, *Epic Systems* is a similar trade secret misappropriation action that involved an avoided costs damages award. The misappropriator's conduct was similarly reprehensible to the conduct here. The jury awarded \$240 million in avoided costs for Tata's misappropriation of information related to Epic's software and \$700 million in punitive damages. See *Epic Sys.*, 980 F.3d at 1136. The district court reduced both the compensatory damages and punitive

damages award to \$140 million and \$280 million respectively. *Id.* at 1124. The Seventh Circuit determined that this reduced punitive damages award was still excessive and violated due process -- even though the punitive award was within the Wisconsin law cap limiting punitive damages to two times compensatory damages. *Id.* at 1144. The Court held that the maximum permissible punitive award was “at most, \$140 million,” *i.e.*, a 1:1 ratio. *Id.* at 1145.

In *Motorola Solutions, Inc. v. Hytera Comm. Corp.*, a recent trade secret case under the DTSA, the district court determined that a punitive damages award of \$418 million was appropriate on a compensatory damages award of \$346 million. *Motorola*, 2020 WL 6554645 at *12, *15. This produces a ratio of punitive damages to compensatory damages of about 1.2:1. In *Motorola*, the court held that the punitive award was not so excessive as to violate due process because it was within the DTSA cap for exemplary damages and because it was warranted by the conduct discussed at trial. *See id.* at *15.

e) Totality of Factors

Considering the totality of factors, the \$570 million punitive damages award, in this case, is excessive under federal common law. Given the large compensatory damages award -- calculated based on Syntel’s benefit -- Syntel’s reprehensible but not egregious conduct, and in light of similar cases -- a 1:1 ratio relative to the compensatory award is the highest permissible award. Accordingly, the punitive damages award of \$569,710,384 is excessive and will be reduced to \$284,855,192 if TriZetto agrees to remittitur.

Otherwise, Syntel’s motion for a new trial on the issue of punitive damages is granted.

Because Syntel challenges the punitive damages award as unconstitutional and for the avoidance of doubt, the remitted award is constitutionally permissible. Based on the principle of constitutional avoidance, this Court need not address whether the original unremitted punitive damages award violates due process. *See Sony BMG Music Ent. v. Tenenbaum*, 660 F.3d 487, 508, 511-512 (1st Cir. 2011) (“Facing the constitutional question of whether the award violated due process was not inevitable. The district court should first have considered the non-constitutional issue of remittitur, which may have obviated any constitutional due process issue and attendant issues.”); *Payne*, 711 F.3d at 97 (citing a Seventh Circuit case for the proposition that “constitutional limits on punitive damages . . . come into play only after the assessment has been tested against statutory and common-law principles.” *See Perez v. Z Frank Oldsmobile, Inc.*, 223 F.3d 617, 625 (7th Cir. 2000)).

III. TRIZETTO’S MOTION FOR PERMANENT INJUNCTION AND INTEREST

A. Permanent Injunction

TriZetto seeks a permanent injunction under the DTSA and the Copyright Act.⁷ As a permanent

⁷ The parties appear to agree that federal law applies to determine whether to grant an injunctive remedy in this case and do not separately address any injunctive relief for the state misappropriation claim. Under the DTSA, a court may “grant an injunction . . . to prevent an actual or threatened misappropriation . . . on such terms as the court deems reasonable,” 18 U.S.C. § 1836(b)(3)(A), and under the Copyright

injunction is warranted, TriZetto's alternative request for an ongoing royalty need not be addressed.

"The decision to grant or deny permanent injunctive relief is an act of equitable discretion by the district court[.]" *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). To obtain a permanent injunction, TriZetto must demonstrate that (1) "irreparable injury," (2) the "remedies available at law, such as monetary damages, are inadequate to compensate for that injury," (3) "considering the balance of hardships between [TriZetto] and [Syntel], a remedy in equity is warranted," and (4) the "public interest would not be disserved by permanent injunction." *See eBay*, 547 U.S. at 391 (applying traditional four-factor test to a patent dispute).

The first and second factors -- irreparable harm and adequate remedies at law -- are related. The first factor asks whether TriZetto will be irreparably harmed in the absence of an injunction. In other words, the injunction must prevent or remedy the harm. *See Roach v. Morse*, 440 F.3d 53, 56 (2d Cir. 2006). "If an injury can be appropriately compensated by an award of monetary damages, then an adequate remedy at law exists, and no irreparable injury may be found to justify specific relief." *Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 404 (2d Cir. 2004); *accord CRP/Extell Parcel I, L.P. v. Cuomo*, 394 F. App'x 779, 781 (2d Cir. 2010) (summary order).⁸ "[A]n award of

Act, a court may "grant . . . final injunctions on such terms as it may deem reasonable to prevent or restraint infringement of a copyright." 17 U.S.C. § 502(a).

⁸ The Court declines to apply a presumption of irreparable harm as TriZetto suggests. It is inappropriate to presume

damages [may not] provide a complete remedy” if there is “a danger that, unless enjoined, a misappropriator of trade secrets will disseminate those secrets to a wider audience or otherwise irreparably impair the value of those secrets.” *See Faiveley*, 559 F.3d at 118.

TriZetto has demonstrated irreparable harm that cannot be adequately compensated by monetary damages, specifically the likelihood that, if not enjoined, Syntel will disseminate or impair the trade secrets by sharing them with unauthorized third parties. The evidence supporting liability for misappropriation suggests that Syntel widely shared TriZetto trade secrets among its own employees and also obtained TriZetto trade secrets from one customer for use in servicing *other* customers. Even though Syntel may “have the same incentive as the originator to maintain the confidentiality of the secret in order to profit,” *id.*, Syntel’s use risks disclosure to unauthorized third parties. *See, e.g., KCG Holdings*,

irreparable injury in a copyright case, and the movant must prove that it suffered irreparable injury. *See Salinger v. Colting*, 607 F.3d 68, 77 (2d Cir. 2010). The Second Circuit has not directly addressed the same issue in DTSA actions. In one case alleging misappropriation under state law, the Second Circuit found that the movant had not shown irreparable harm where the circumstances made it unlikely that the plaintiff’s proprietary information would be disclosed to third parties. The Court stated that no presumption of irreparable harm applied where the misappropriator seeks to use the trade secrets only internally and is unlikely to disseminate them. *See Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118-19 (2d Cir. 2009); *see also KCG Holdings, Inc. v. Khandekar*, No. 17 Civ. 3533, 2020 WL 1189302, at *16 (S.D.N.Y. Mar. 12, 2020), *reconsideration denied*, 2021 WL 517226 (S.D.N.Y. Feb. 11, 2021).

2020 WL 1189302 at *17 (irreparable harm where an individual “does not merely seek to use its trade secrets or keep them to himself” but could “resume[] producing [proprietary models] for another financial-services firm, [and thus] . . . disseminate the trade secrets he improperly acquired to a wider audience.”). This is not a situation where there is little risk of dissemination to a wider audience. *See, e.g., Faiveley*, 559 F.3d at 119 (trade secret technology that was a component of a product sold and not disseminated to third parties created little or no risk of irreparable harm through disclosure); *Passlogix, Inc. v. 2FA Tech., LLC*, No. 08 Civ. 10986, 2010 WL 2505628, at *10 (S.D.N.Y. June 21, 2010) (no irreparable harm where no allegations of disclosure to third parties and only allegations of maintenance of trade secret source code within the company). TriZetto has also shown that Syntel is likely to continue to use the trade secrets, as its marketing materials up to and even during the trial advertised the use of TriZetto’s trade secrets to perform services for customers.

Syntel asserts that an injunction is senseless here where the compensatory damages require Syntel to pay fully for the development of the trade secrets at issue. This is another way of saying, not only that TriZetto’s harm can be compensated with money damages, but also that the compensatory damage award fully compensates TriZetto for both past and future harm. This argument is incorrect because the purpose of the damages award is to compensate TriZetto for Syntel’s past misappropriation, *i.e.*, misconduct up to and concluding with the trial. An injunction is aimed at preventing harm from any future misappropriation. Even if Syntel would not

necessarily avoid further development costs in any future misappropriation, TriZetto could still suffer additional harm, including, as discussed above, irreparable injury by dissemination to third parties. Indeed, the DTSA -- in permitting recovery of both compensatory damages based on loss and unjust enrichment -- acknowledges that TriZetto's actual harm and Syntel's unjust enrichment are not necessarily mutually exclusive.

The remaining factors -- balance of hardships and public interest -- weigh in favor of the entry of a permanent injunction. As discussed, TriZetto risks the dissemination of its trade secrets as well as attendant competitive harm. Even though the latter is compensable through money damages, Syntel would be required to bring a new lawsuit to enforce its rights. Syntel asserts no countervailing hardship except to say that TriZetto's proposed injunction is overly broad and captures lawful activity.

An injunction is also in the public interest because it upholds the law that protects TriZetto's trade secrets and intellectual property rights, and thus encourages future investment in innovation. *See, e.g., Chadha v. Chadha*, 2020 WL 1031385, at *16 (E.D.N.Y. Mar. 2, 2020), *report and recommendation adopted*, 2020 WL 5228812 (E.D.N.Y. Sept. 2, 2020) (public interest in protecting copyrights, innovation and trade secret and proprietary information); *Intertek Testing Servs., N.A., Inc. v. Pennisi*, 2020 WL 1129773 (E.D.N.Y. Mar. 9, 2020) (public interest served by injunctive relief protecting secrecy of trade secrets and confidential information). Syntel argues that TriZetto's proposed injunction is overly broad and

against the public interest because it would exclude Syntel from the Facets services market and make consumers reliant on one company, TriZetto, for providing such services. This argument is belied by Syntel's own statement based on trial testimony that "TriZetto allows Facets customers to use third-party service providers and confirmed it currently faces services competition from companies besides Syntel."

Balancing the parties' interests as well as the public interest, and because of the likely irreparable harm to TriZetto without an injunction, a permanent injunction barring Syntel from the unauthorized use of TriZetto's trade secrets at issue in this case is warranted.

Syntel argues that, even if an injunction is appropriate, TriZetto's proposed form is overly broad and unspecific. Injunctive relief "should be 'narrowly tailored to fit specific legal violations' and avoid 'unnecessary burdens on lawful commercial activity.'" *Faiveley*, 559 F.3d at 119 (quoting *Waldman Pub. Corp. v. Landoll, Inc.*, 43 F.3d 775, 785 (2d Cir. 1994)). Rule 65 also requires that a permanent injunction be specific and "describe in reasonable detail" what is restrained. Fed. R. Civ. P. 65(d). It must be "possible to ascertain from the four corners of the order precisely what acts are forbidden without resorting to extrinsic documents." *Capstone Logistics Holdings, Inc. v. Navarrete*, 838 F. App'x 588, 590 (2d Cir. 2020) (summary order) (quotation marks omitted).

TriZetto has proposed a revised permanent injunction order, which was submitted with TriZetto's reply brief and responds to some of Syntel's objections. Those objections are resolved as follows:

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- Syntel objects that the trade secrets are not defined with the necessary specificity. TriZetto has addressed this objection by referencing in footnote 1 of the proposed order the 104 trade secrets at issue concerning Facets and appending the list of such secrets. The substance of the footnote is accepted. The language of the footnote and the list itself shall be included in the text of the Order.
- Syntel objects to the list of prohibited activities as including “otherwise misappropriating.” This language shall be omitted as impermissibly vague.
- Syntel objects that there is no carve-out for service work authorized by TriZetto. The language proposed by TriZetto in the last paragraph of section I shall be replaced with a paragraph that excludes from the injunction any previously authorized use of the trade secrets, and shall include a reference to the client and the agreement that authorizes such use. To the extent that Syntel is not a party to any such agreement, TriZetto shall identify the agreement and provide Syntel with the language from the relevant provisions.
- Syntel objects that the injunction bars TriZetto from using the misappropriated trade secrets anywhere on the ground that it constitutes an extraterritorial application of U.S. law and that TriZetto should be required to sue Syntel anywhere outside the United States where Syntel uses TriZetto’s misappropriated trade secrets. This argument is rejected. The DTSA expressly

provides for injunctive relief. 18 U.S.C. 1836(b)(3)(A). The DTSA also expressly “applies to conduct occurring outside the United States if . . . the offender is . . . an organization under the laws of the United States” or “an act in furtherance of the offense was committed in the United States.” 18 U.S.C. § 1837. Both conditions are satisfied here. It is undisputed that Syntel Inc. is a U.S. corporation (although the other Syntel party is not), and the evidence at trial showed acts in furtherance of the misappropriation that occurred in the United States. For example, Syntel employees, some of whom were located in the United States, downloaded TriZetto’s trade secrets in abnormally high volumes suggesting, according to TriZetto’s expert, that they were actively creating a repository. *See generally Motorola Sols.*, 436 F. Supp. 3d at 1157-68 (collecting cases analyzing the extraterritorial application of the DTSA).

The parties shall submit a proposed form of order for a permanent injunction consistent with this Opinion and Rule 65(d), Fed. R. Civ. P. The parties shall not make any other modifications to the proposed order at Dkt. No. 973 except as they both shall agree.

B. Pre- and Post-Judgment Interest

TriZetto seeks prejudgment interest for the DTSA damages. TriZetto’s request is denied.

“Prejudgment interest is generally not awarded, but it may be ordered in the district court’s discretion to ensure that a plaintiff is fully compensated or to meet the remedial purpose of the statute involved.” *Doe v. E. Lyme Bd. of Educ.*, 962 F.3d 649, 662 (2d Cir.

2020) (internal quotation marks omitted) (citing *Wickham Contracting Co., Inc. v. Local Union No. 3, IBEW*, 955 F.2d 831, 833-34 (2d Cir. 1992)); see *Jones v. UNUM Life Ins. Co. of Am.*, 223 F.3d 130, 139 (2d Cir. 2000) (citations and quotation marks omitted) (“In a suit to enforce [a federal right], the question of whether or not to award prejudgment interest is ordinarily left to the discretion of the district court.”). “The court must . . . explain and articulate its reasons for any decision regarding prejudgment interest.” *Henry v. Champlain Enters.*, 445 F.3d 610, 623 (2d Cir. 2006).

Prejudgment interest is not warranted here. Plaintiff obtained a judgment for \$285 million following a trial and jury verdict. The amount awarded was calculated based on Syntel’s gain and not its losses. Considering the evidence at trial, the Court finds this to be sufficient compensation, and there are no special circumstances warranting additional compensation. Moreover, TriZetto was awarded punitive damages, which suggests that prejudgment interest would likely result in overcompensation. See *Mori v. Saito*, No. 10 Civ. 6465, 2014 WL 3812326, at *3 (S.D.N.Y. Aug. 1, 2014) (“Because this Court has awarded punitive damages in the maximum amount presumptively allowed by the Constitution, awarding prejudgment interest is unnecessary to fully compensate plaintiffs.”).

TriZetto argues that the remedial purpose of the DTSA -- to deter misappropriation and provide recovery for trade secret owners -- warrants an award of prejudgment interest. The awarded compensatory and punitive damages adequately serve this purpose

without the addition of prejudgment interest. Contrary to TriZetto's contentions, this is also not a case where Syntel would be enjoying a windfall as a result of its wrongdoing or would be incentivized to violate the DTSA to "in effect . . . enjoy an interest-free loan for as long as they could delay paying out." *Donovan v. Sovereign Sec., Ltd.*, 726 F.2d 55, 58 (2d Cir. 1984). Accordingly, equitable considerations counsel against awarding prejudgment interest in this case.

Post-judgment interest, which is mandatory for any money judgment recovered in a civil case, *see* 28 U.S.C. § 1961, is granted.

IV. CONCLUSION

For the foregoing reasons, Syntel's motions for judgment as a matter of law, or in the alternative for a new trial or remittitur, pursuant to Rules 50 and 59 are DENIED, except that Syntel's request for a new trial or remittitur on punitive damages is GRANTED. The punitive damages award of \$569,710,384 will be reduced to \$284,855,192 if TriZetto agrees to remittitur. Otherwise, Syntel's motion for a new trial on the issue of punitive damages is granted. TriZetto shall advise the Court of its decision no later than May 4, 2021.

TriZetto's applications for permanent injunction and post-judgment interest are GRANTED and the request for prejudgment interest is DENIED. By May 4, 2021 the parties shall meet and confer and submit a proposed order for a permanent injunction consistent with this Opinion and Rule 65(d).

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TriZetto's Rule 50(a) motion and the parties' requests for oral argument on the motions are DENIED as moot.

The Clerk of Court is respectfully directed to close Dkt. Nos. 921, 928, 959, 965, 968, 974.

SO ORDERED

Dated: April 20, 2021

New York, New York

/s/ Lorna G. Schofield
Lorna G. Schofield
United States District Judge

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Appendix C

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

No. 1:15-CV-00211 (LGS) (SDA)

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

*Plaintiffs and
Counterclaim-
Defendants,*

v.

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

*Defendants and
Counterclaim-
Plaintiffs.*

Filed: May 18, 2021

FINAL JUDGMENT

A jury trial commenced in the above-captioned case on October 19, 2020, and on October 27, 2020, the jury reached and returned its unanimous verdict finding:

1. Plaintiffs and Counterclaim-Defendants Syntel Sterling Best Shores Mauritius Limited and Syntel, Inc. (collectively, "Syntel") misappropriated one or more of TriZetto's

trade secrets in violation of the Defend Trade Secrets Act (“DTSA”); Syntel misappropriated one or more of TriZetto’s trade secrets in violation of New York law; and Syntel infringed one or more of TriZetto’s copyrights.

2. TriZetto should be awarded \$284,855,192 for Syntel’s misappropriation of TriZetto’s trade secrets under the DTSA; \$142,427,596 for Syntel’s misappropriation of TriZetto’s trade secrets under New York law; \$59,100,000 for Syntel’s infringement of TriZetto’s copyrights; that the total amount of compensatory damages TriZetto is entitled to receive is \$284,855,192; and that TriZetto was entitled to punitive damages in the amount of \$569,710,384.
3. Syntel did not prove its affirmative defenses of laches, waiver, estoppel, or unclean hands.
4. TriZetto proved its defense of unclean hands.
5. TriZetto did not breach the Master Services Agreement; TriZetto and Cognizant did not misappropriate Syntel Mauritius’s confidential information; TriZetto and Cognizant did not intentionally interfere with Syntel Inc.’s contractual relations

On April 20, 2021, the Court entered an Opinion and Order, denying Syntel’s motion for judgment as a matter of law under Rule 50(b), or in the alternative, a new trial or remittitur under Rule 59, except its request for a new trial or remittitur on punitive damages. Pursuant to the Court’s Opinion and Order, TriZetto agreed to remittitur and accepted a reduced punitive damages award of \$284,855,192. The Court

also granted TriZetto's motion for permanent injunction and post-judgment interest, and denied TriZetto's motion for pre-judgment interest. TriZetto's Rule 50(a) motion was denied as moot. Per the parties' agreement, any motion for attorney's fees will be filed and briefed following entry of a final judgment on appeal.

Pursuant to Rule 58 of the Federal Rules of Civil Procedure, and in accordance with the jury's unanimous verdict and the Court's ruling on post-trial motions, the Court hereby ORDERS and ENTERS JUDGMENT as follows:

1. Syntel engaged in trade secret misappropriation in violation of the DTSA.
2. Syntel engaged in trade secret misappropriation in violation of New York law.
3. Syntel engaged in copyright infringement.
4. TriZetto did not breach the Master Services Agreement.
5. TriZetto and Cognizant did not misappropriate Syntel Mauritius's confidential information.
6. TriZetto and Cognizant did not intentionally interfere with Syntel Inc.'s contractual relations.
7. TriZetto is awarded \$284,855,192 in compensatory damages and \$284,855,192 in punitive damages.
8. TriZetto is awarded post-judgment interest on the entire award of \$569,710,384 pursuant to 28 U.S.C. § 1961.

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9. A permanent injunction shall be entered concurrently with this Judgment.

Dated: May 18, 2021

New York, New York

/s/ Lorna G. Schofield
Lorna G. Schofield
United States District Judge

Appendix D

RELEVANT STATUTORY PROVISIONS

18 U.S.C. §1836. Civil proceedings

(a) The Attorney General may, in a civil action, obtain appropriate injunctive relief against any violation of this chapter.

(b) PRIVATE CIVIL ACTIONS.—

(1) In General. —An owner of a trade secret that is misappropriated may bring a civil action under this subsection if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce.

(2) CIVIL SEIZURE.—

(A) IN GENERAL.—

(i) APPLICATION.—Based on an affidavit or verified complaint satisfying the requirements of this paragraph, the court may, upon ex parte application but only in extraordinary circumstances, issue an order providing for the seizure of property necessary to prevent the propagation or dissemination of the trade secret that is the subject of the action.

(ii) Requirements FOR ISSUING ORDER.—The court may not grant an application under clause (i) unless the court finds that it clearly appears from specific facts that—

(I) an order issued pursuant to Rule 65 of the Federal Rules of Civil Procedure or another form of equitable relief would be inadequate to achieve the

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purpose of this paragraph because the party to which the order would be issued would evade, avoid, or otherwise not comply with such an order;

(II) an immediate and irreparable injury will occur if such seizure is not ordered;

(III) the harm to the applicant of denying the application outweighs the harm to the legitimate interests of the person against whom seizure would be ordered of granting the application and substantially outweighs the harm to any third parties who may be harmed by such seizure;

(IV) the applicant is likely to succeed in showing that—

(aa) the information is a trade secret; and

(bb) the person against whom seizure would be ordered—

(AA) misappropriated the trade secret of the applicant by improper means; or

(BB) conspired to use improper means to misappropriate the trade secret of the applicant;

(V) the person against whom seizure would be ordered has actual possession of—

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(aa) the trade secret; and

(bb) any property to be seized;

(VI) the application describes with reasonable particularity the matter to be seized and, to the extent reasonable under the circumstances, identifies the location where the matter is to be seized;

(VII) the person against whom seizure would be ordered, or persons acting in concert with such person, would destroy, move, hide, or otherwise make such matter inaccessible to the court, if the applicant were to proceed on notice to such person; and

(VIII) the applicant has not publicized the requested seizure.

(B) ELEMENTS OF ORDER.—If an order is issued under subparagraph (A), it shall—

(i) set forth findings of fact and conclusions of law required for the order;

(ii) provide for the narrowest seizure of property necessary to achieve the purpose of this paragraph and direct that the seizure be conducted in a manner that minimizes any interruption of the business operations of third parties and, to the extent possible, does not interrupt the legitimate business operations of the person accused of misappropriating the trade secret;

(iii)

(I) be accompanied by an order protecting the seized property from disclosure by prohibiting access by the applicant or the person against whom the order is directed, and prohibiting any copies, in whole or in part, of the seized property, to prevent undue damage to the party against whom the order has issued or others, until such parties have an opportunity to be heard in court; and

(II) provide that if access is granted by the court to the applicant or the person against whom the order is directed, the access shall be consistent with subparagraph (D);

(iv) provide guidance to the law enforcement officials executing the seizure that clearly delineates the scope of the authority of the officials, including—

(I) the hours during which the seizure may be executed; and

(II) whether force may be used to access locked areas;

(v) set a date for a hearing described in subparagraph (F) at the earliest possible time, and not later than 7 days after the order has issued, unless the party against whom the order is directed and others harmed by the order consent to another date for the hearing, except that a party against whom the order has issued or any person harmed by the order may move the court at

any time to dissolve or modify the order after giving notice to the applicant who obtained the order; and

(vi) require the person obtaining the order to provide the security determined adequate by the court for the payment of the damages that any person may be entitled to recover as a result of a wrongful or excessive seizure or wrongful or excessive attempted seizure under this paragraph.

(C) PROTECTION FROM PUBLICITY.—The court shall take appropriate action to protect the person against whom an order under this paragraph is directed from publicity, by or at the behest of the person obtaining the order, about such order and any seizure under such order.

(D) MATERIALS IN CUSTODY OF COURT.—

(i) IN GENERAL.—Any materials seized under this paragraph shall be taken into the custody of the court. The court shall secure the seized material from physical and electronic access during the seizure and while in the custody of the court.

(ii) STORAGE MEDIUM.—If the seized material includes a storage medium, or if the seized material is stored on a storage medium, the court shall prohibit the medium from being connected to a network or the Internet without the consent of both parties, until the hearing required under subparagraph (B)(v) and described in subparagraph (F).

(iii) PROTECTION OF CONFIDENTIALITY.— The court shall take appropriate measures to protect the confidentiality of seized materials that are unrelated to the trade secret information ordered seized pursuant to this paragraph unless the person against whom the order is entered consents to disclosure of the material.

(iv) APPOINTMENT OF SPECIAL MASTER.— The court may appoint a special master to locate and isolate all misappropriated trade secret information and to facilitate the return of unrelated property and data to the person from whom the property was seized. The special master appointed by the court shall agree to be bound by a non-disclosure agreement approved by the court.

(E) SERVICE OF ORDER.—The court shall order that service of a copy of the order under this paragraph, and the submissions of the applicant to obtain the order, shall be made by a Federal law enforcement officer who, upon making service, shall carry out the seizure under the order. The court may allow State or local law enforcement officials to participate, but may not permit the applicant or any agent of the applicant to participate in the seizure. At the request of law enforcement officials, the court may allow a technical expert who is unaffiliated with the applicant and who is bound by a court-approved non-disclosure agreement to participate in the seizure if the court determines that the participation of the expert will aid the

efficient execution of and minimize the burden of the seizure.

(F) SEIZURE HEARING.—

(i) DATE.—A court that issues a seizure order shall hold a hearing on the date set by the court under subparagraph (B)(v).

(ii) BURDEN OF PROOF.—At a hearing held under this subparagraph, the party who obtained the order under subparagraph (A) shall have the burden to prove the facts supporting the findings of fact and conclusions of law necessary to support the order. If the party fails to meet that burden, the seizure order shall be dissolved or modified appropriately.

(iii) DISSOLUTION OR MODIFICATION OF ORDER.—A party against whom the order has been issued or any person harmed by the order may move the court at any time to dissolve or modify the order after giving notice to the party who obtained the order.

(iv) DISCOVERY TIME LIMITS.—The court may make such orders modifying the time limits for discovery under the Federal Rules of Civil Procedure as may be necessary to prevent the frustration of the purposes of a hearing under this subparagraph.

(G) ACTION FOR DAMAGE CAUSED BY WRONGFUL SEIZURE.—A person who suffers damage by reason of a wrongful or excessive seizure under this paragraph has a cause of action against the applicant for the order under which such seizure

was made, and shall be entitled to the same relief as is provided under section 34(d)(11) of the Trademark Act of 1946 (15 U.S.C. 1116(d)(11)). The security posted with the court under subparagraph (B)(vi) shall not limit the recovery of third parties for damages.

(H) MOTION FOR ENCRYPTION.—A party or a person who claims to have an interest in the subject matter seized may make a motion at any time, which may be heard ex parte, to encrypt any material seized or to be seized under this paragraph that is stored on a storage medium. The motion shall include, when possible, the desired encryption method.

(3) REMEDIES.—In a civil action brought under this subsection with respect to the misappropriation of a trade secret, a court may—

(A) grant an injunction—

(i) to prevent any actual or threatened misappropriation described in paragraph (1) on such terms as the court deems reasonable, provided the order does not—

(I) prevent a person from entering into an employment relationship, and that conditions placed on such employment shall be based on evidence of threatened misappropriation and not merely on the information the person knows; or

(II) otherwise conflict with an applicable State law prohibiting

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restraints on the practice of a lawful profession, trade, or business;

(ii) if determined appropriate by the court, requiring affirmative actions to be taken to protect the trade secret; and

(iii) in exceptional circumstances that render an injunction inequitable, that conditions future use of the trade secret upon payment of a reasonable royalty for no longer than the period of time for which such use could have been prohibited;

(B) award—

(i)

(I) damages for actual loss caused by the misappropriation of the trade secret; and

(II) damages for any unjust enrichment caused by the misappropriation of the trade secret that is not addressed in computing damages for actual loss; or

(ii) in lieu of damages measured by any other methods, the damages caused by the misappropriation measured by imposition of liability for a reasonable royalty for the misappropriator's unauthorized disclosure or use of the trade secret;

(C) if the trade secret is willfully and maliciously misappropriated, award exemplary damages in an amount not more than 2 times the amount of the damages awarded under subparagraph (B); and

(D) if a claim of the misappropriation is made in bad faith, which may be established by circumstantial evidence, a motion to terminate an injunction is made or opposed in bad faith, or the trade secret was willfully and maliciously misappropriated, award reasonable attorney's fees to the prevailing party.

(c) JURISDICTION.—The district courts of the United States shall have original jurisdiction of civil actions brought under this section.

(d) PERIOD OF LIMITATIONS.—A civil action under subsection (b) may not be commenced later than 3 years after the date on which the misappropriation with respect to which the action would relate is discovered or by the exercise of reasonable diligence should have been discovered. For purposes of this subsection, a continuing misappropriation constitutes a single claim of misappropriation.