

IN THE
Supreme Court of the United States

TATA CONSULTANCY SERVICES LIMITED;
TATA AMERICA INTERNATIONAL CORPORATION,
Petitioners,

v.

COMPUTER SCIENCES CORPORATION,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit**

PETITION FOR WRIT OF CERTIORARI

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March 19, 2026

QUESTIONS PRESENTED

1. Under the Defend Trade Secrets Act, 18 U.S.C. § 1836, can a plaintiff obtain a monetary award for unjust enrichment even if it suffered no harm beyond any actual loss from the defendant's misappropriation of its trade secrets?
2. Under *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), can a ratio of punitive damages to compensatory damages in excess of 1:1 violate due process when compensatory damages are substantial?

PARTIES TO THE PROCEEDING

Petitioners are Tata Consultancy Services Limited (TCS) and Tata America International Corporation, which were appellants below and defendants in the District Court.

Respondent is Computer Sciences Corporation (DXC), which was appellee below and plaintiff in the District Court.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner Tata Consultancy Services Limited (TCS) is a publicly traded company. Its shares are publicly traded on the National Stock Exchange of India and the Bombay Stock Exchange. A majority of its stock is owned by Tata Sons Private Limited, which is not a publicly traded company. No publicly traded company owns 10% or more of Tata Consultancy Services Limited's stock.

Petitioner Tata America International Corporation is a wholly owned subsidiary of Tata Consultancy Services Limited.

RELATED PROCEEDINGS

United States District Court (N.D. Tex.):

*Computer Sciences Corp. v. Tata Consultancy
Servs. Ltd.*, No. 3:19-cv-0970-X (June 13, 2024)

United States Court of Appeals (5th Cir.):

*Computer Sciences Corp. v. Tata Consultancy
Servs. Ltd.*, No. 24-10749, 159 F.4th 429 (Nov.
21, 2025)

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PETITION FOR WRIT OF CERTIORARI

Petitioners Tata Consultancy Services Ltd. and Tata America International Corp. respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

INTRODUCTION

In this nearly \$200 million trade-secret dispute, the court of appeals rendered two holdings that conflict with decisions of other courts of appeals on important, frequently recurring remedial questions.

First, the court of appeals acknowledged that it was adopting an interpretation of the damages provision of the Defend Trade Secrets Act (DTSA), 18 U.S.C. § 1836, that conflicts with a precedential decision of the Second Circuit. As the court of appeals explained, in *Syntel Sterling Best Shores Mauritius Ltd. v. The TriZetto Group, Inc.*, 68 F.4th 792 (2d Cir.), *cert. denied*, 144 S. Ct. 352 (2023), the Second Circuit “pronounce[d] the general rule that a secret holder can never be awarded unjust enrichment damages under the DTSA where it ‘suffers no compensable harm beyond its lost profits or profit opportunities,’” App. 32a (quoting *Syntel*, 68 F.4th at 811), an interpretation that the Seventh Circuit later adopted, *Motorola Sols., Inc. v. Hytera Commc’ns Corp. Ltd.*, 108 F.4th 458 (7th Cir. 2024), *cert. denied*, 145 S. Ct. 1182 (2025). In the decision below, however, the court of appeals rejected that interpretation of the statute, holding that “unjust enrichment damages under the DTSA” have “no compensable harm requirement.” App. 33a. That basic disagreement over a core provision of a 2016 statute that has accounted for an

increasing share of federal litigation—with over a thousand new cases filed each year—warrants resolution.

Second, the court of appeals rejected petitioner’s* interpretation of *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), as holding that a substantial award of compensatory damages will typically disfavor a punitive-damages award greater than the amount of compensatory damages. App. 39a. Petitioner’s view is not only compelled by the plain language of *Campbell*, but it has been adopted by at least six other circuits in precedential opinions. That conflict also warrants resolution, because the court of appeals’ minority view authorizes gargantuan punitive awards that exceed the limits of due process—such as the \$112 million award here in a routine trade-secret case.

This case presents a clean vehicle to resolve these important, purely legal questions. The court of appeals addressed both questions in a precedential decision. Lower courts and litigants alike would benefit from clear rules about the scope of potential damages in trade-secrets cases and other cases involving claims for punitive damages. The Court should grant review.

* Throughout this petition, the term “petitioner” refers only to Tata Consultancy Services Ltd. unless otherwise noted. The other petitioner, Tata America International Corp., is a party bound by the injunction entered by the district court and partially vacated by the court of appeals, but it is not otherwise liable for the judgment under review. App. 2a n.2, 55a.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-45a) is reported at 159 F.4th 429. The decision of the district court granting judgment to respondent (App. 54a-197a) is unreported but is available at 2024 WL 6909861.

JURISDICTION

The judgment of the court of appeals was entered on November 21, 2025. App. 1a. Petitions for rehearing were denied on December 19, 2025. App. 46a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are reproduced in the appendix to this petition.

STATEMENT

1. Enacted in 2016, the DTSA created the first federal cause of action for trade-secret misappropriation. 18 U.S.C. § 1836(b)(1). The statute provides that in such an action, “a court may * * * grant an injunction * * * (i) to prevent any actual or threatened misappropriation” and (ii) “if determined appropriate by the court, requiring affirmative actions to be taken to protect the trade secret.” *Id.* § 1836(b)(3)(A)(i) and (ii).

The DTSA also provides for monetary remedies. A court may award “damages for actual loss caused by the misappropriation of the trade secret” and “damages for any unjust enrichment caused by the

misappropriation of the trade secret that is not addressed in computing damages for actual loss.” 18 U.S.C. § 1836(b)(3)(B)(i). A court may also, “in lieu of damages measured by any other methods,” impose “a reasonable royalty for the misappropriator’s unauthorized disclosure or use of the trade secret.” *Id.* § 1836(b)(3)(B)(ii). That may include a reasonable royalty for future use “in exceptional circumstances that render an injunction inequitable.” *Id.* § 1836(b)(3)(A)(iii).

Finally, the DTSA provides that “if the trade secret is willfully and maliciously misappropriated,” a court may “award exemplary damages in an amount not more than 2 times the amount of the damages awarded” for actual loss and unjust enrichment or as a reasonable royalty. 18 U.S.C. § 1836(b)(3)(C).

2. Both petitioner and respondent sell software platforms. App. 2a-3a, 56a (¶¶ 3, 6). In the 1990s, respondent licensed two software platforms to the insurance company Transamerica. App. 3a, 57a (¶ 11). In 2016, Transamerica initiated a bid process to replace those platforms. App. 4a, 59a (¶ 22). Petitioner and respondent each submitted a bid. App. 4a. Petitioner won the contract and began transitioning Transamerica from respondent’s legacy systems to petitioner’s own software platform, called BaNCS. App. 4a, 60a (¶ 27).

In the course of developing its bid, and then transitioning Transamerica to the new platform, petitioner received from Transamerica certain information about respondent’s software systems. App. 4a-5a. After losing the bid, respondent sued petitioner under the DTSA for trade-secret misappropriation in federal court. App. 8a, 83a (¶ 137).

Respondent argued that petitioner had accessed respondent's confidential information in putting together its bid, developing a Transamerica-specific "customer layer" of BaNCS, and migrating Transamerica's data to the new platform. Resp. C.A. Br. 17-20. Petitioner maintained that Transamerica had authorized it to use respondent's information in the manner that it did and that respondent had contractually authorized Transamerica to do so. Pet. C.A. Br. 25-44.

Following a trial with an advisory jury, the district court held petitioner liable for willful and malicious trade-secret misappropriation after finding that respondent had not authorized Transamerica to share respondent's confidential information with petitioner for the purposes for which petitioner used the information. App. 8a, 47a. There was no finding that respondent had been monetarily harmed or that the value of its purported trade secrets had been diminished. The court awarded respondent roughly \$56 million in unjust-enrichment damages, 18 U.S.C. § 1836(b)(3)(B)(i)(II). App. 48a, 179a (¶ 43). That amount purported to represent the "research and design costs [petitioner] avoided by misappropriating [respondent's] trade secrets." App. 143a (¶ 460). The court also imposed a permanent injunction barring petitioner from possessing respondent's trade secrets or using any post-misappropriation versions of BaNCS. App. 8a-9a, 49a-51a, 192a (¶ 110). Finally, the court imposed approximately \$112 million in exemplary damages—the statutory maximum of twice compensatory damages, 18 U.S.C. § 1836(b)(3)(C). App. 8a, 48a, 182a (¶ 53).

3. The court of appeals affirmed the liability finding and the damages award and vacated the injunction in part.

As relevant here, the court of appeals concluded that the damages and injunction were duplicative insofar as the damages compensated respondent for petitioner's avoided costs in redeveloping BaNCS, while the injunction prohibited petitioner from using its redeveloped version of BaNCS going forward. App. 36a-38a. But instead of vacating the damages award, the court directed the district court to "remov[e] the bar on [petitioner's] future use of post-appropriation BaNCS material." App. 45a. The court declined to adopt the Second Circuit's holding that unjust-enrichment damages under the DTSA require proof that the plaintiff suffered harm beyond its actual loss in the form of lost profits or profit opportunities (which are compensable under a different subsection of the statute). *Syntel*, 68 F.4th at 810-11. Instead, it concluded that the DTSA authorizes unjust-enrichment damages based solely on the defendant's gain, including avoided costs, even where an injunction would suffice to erase that gain. App. 32a-33a, 37a.

The court of appeals also affirmed the maximum statutory exemplary-damages award of \$112 million, rejecting petitioner's arguments that the award was legally excessive and violated due process. App. 38a-41a. In particular, petitioner had argued that under this Court's decision in *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), a "ratio of exemplary damages to compensatory damages higher than 1:1 can exceed 'the outermost limit of the due process guarantee' when 'compensatory damages are substantial,'" and that the \$56 million

unjust-enrichment award here qualified as substantial. App. 39a (quoting *Campbell*, 538 U.S. at 425). The court dismissed that consideration as irrelevant, stating that petitioner’s argument rested on “a misreading of *Campbell*.” App. 39a. The court based that conclusion on the observations that *Campbell* had “rejected an exemplary damages award in the ratio of 145:1” and that this Court’s earlier decision in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), had “endorsed punitive damages in a 4:1 ratio.” App. 39a. In light of that understanding of precedent, the court declined to consider the “substantial” size of the \$56 million compensatory award in its analysis. App. 39a-41a.

The court of appeals denied rehearing. App. 46a.

REASONS FOR GRANTING THE PETITION

I. THE COURT OF APPEALS’ INTERPRETATION OF THE DTSA CONFLICTS WITH DECISIONS OF THE SECOND AND SEVENTH CIRCUITS ON AN EXCEPTIONALLY IMPORTANT QUESTION

The court of appeals’ interpretation of the DTSA’s unjust-enrichment provision, 18 U.S.C. § 1836(b)(3)(B)(i)(II), conflicts with the interpretation of the same provision adopted by the Second and Seventh Circuits. It is exceptionally important that this Court resolve that disagreement because it involves the damages provision of a major federal statute that has generated thousands of cases since its enactment a decade ago. This Court should grant certiorari to resolve the conflict and ensure a uniform understanding of the requirements to obtain monetary awards under the DTSA.

A. The Courts of Appeals Are Divided On the Proper Interpretation of the DTSA’s Unjust Enrichment Provision

1. The DTSA, enacted in 2016, created a federal cause of action for trade-secret misappropriation. It authorizes federal courts to award an injunction to prevent misappropriation, 18 U.S.C. § 1836(b)(3)(A), as well as compensatory damages, punitive damages, and attorney’s fees, *id.* § 1836(b)(3)(B)-(D).

With respect to compensatory damages, a court may award: (1) “damages for actual loss caused by the misappropriation,” (2) “damages for any unjust enrichment caused by the misappropriation * * * that is not addressed in computing damages for actual loss;” 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.” 18 U.S.C. § 1836(b)(3)(B). The DTSA therefore allows a court to award damages for “unjust enrichment” in addition to damages for a plaintiff’s actual losses, but it does not otherwise define the circumstances in which a court may award unjust-enrichment damages.

In *Syntel, supra*, the Second Circuit addressed that question. There, TriZetto had accused Syntel of misappropriating trade secrets related to software in violation of the DTSA. 68 F.4th at 796-97. The jury found Syntel liable for misappropriation and awarded roughly \$285 million in unjust-enrichment damages based on Syntel’s avoided development costs, *i.e.*, the costs that Syntel did not have to incur to develop its software because it had misappropriated TriZetto’s trade secrets. *Id.* at 799. The district court also

permanently enjoined Syntel from further use of Tri-Zetto's trade secrets. *Id.*

A unanimous panel of the Second Circuit affirmed the jury's liability finding but vacated the \$285 million unjust-enrichment award on the ground that Tri-Zetto had suffered no "compensable harm" from the misappropriation beyond its actual losses. 68 F.4th at 806-15. In support of that holding, the Second Circuit provided an extensive and scholarly analysis of the DTSA's unjust-enrichment provision.

The Second Circuit first explained that to determine when an unjust-enrichment award is available, including an avoided-costs award, "one needs to consider the entirety of the DTSA's remedial scheme." 68 F.4th at 809. That scheme "provides a tool to make trade secret holders whole" for injuries beyond actual losses, "*i.e.*, in instances where the value of the secret is damaged, or worse yet—destroyed." *Id.*

Further, the Second Circuit explained, "[t]he origins of 'unjust enrichment'" lie in the common law of restitution, which focuses on "a return or restoration of what the defendant has gained in a transaction." 68 F.4th at 809-10 (quotations omitted). Injunctive relief barring use of the trade secret, and thus returning that intellectual property to the trade-secret owner, often suffices to achieve that objective. *Id.* But "[t]he remedy of restitution can sometimes require more than the return of specific things," such as where the defendant profits off the trade secret or saves costs. *Id.* Critically, however, under the law of restitution, "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.” *Id.* (quoting RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 45(2)). “Such an appraisal might well support an avoided costs award where misappropriation effectively destroys a trade secret.” *Id.* at 810 n.34. But “[a]warding avoided costs in the absence of such a comparative appraisal risks producing an unjust windfall for trade secret holders.” *Id.* at 810.

Taking into account both the purpose of the DTSA’s compensatory-damages provision and the common-law origins of unjust enrichment, the Second Circuit adopted the following interpretation of the DTSA: “[F]or 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?” 68 F.4th at 810. The court found it significant that “TriZetto [had] retain[ed] the use and value of its trade secrets and the district court [had] permanently enjoin[ed] Syntel from using TriZetto’s trade secrets.” *Id.* That is because “the DTSA’s equitable remedies work as a powerful tonic to reduce the harm a trade secret holder suffers beyond its lost business.” *Id.*

The Second Circuit explained that “[r]eading the statute’s compensatory damages provision otherwise—as focusing *exclusively* on [the defendant’s] saved expenses to award avoided costs—ignores the extent to which [the defendant’s] misappropriation injured [the plaintiff] and impermissibly discounts the comparative appraisal that governs equitable trade secret remedial determinations.” 68 F.4th at 811. “Under that reading,” the court said, “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.” *Id.* “If accepted, that view would permit avoided costs awards that are more punitive than compensatory”—“a curious distortion of the DTSA’s remedial scheme” that “would ignore the significance and the reach of a district court’s permanent injunction power.” *Id.*

Applying its construction of the DTSA to the facts of the case, the Second Circuit held that TriZetto could be entitled to no more than the \$8.5 million in lost profits that its expert had calculated (which TriZetto had waived by failing to seek that form of relief). 68 F.4th at 811, 814-15. The court explained that “[b]eyond its lost profits * * * TriZetto suffered no compensable harm supporting an unjust enrichment award.” *Id.* at 811. “Syntel’s misappropriation did not diminish, much less destroy, the secrets’ continued commercial value to TriZetto,” and the “permanent injunction ended Syntel’s use of TriZetto’s trade secrets” going forward. *Id.* For that reason, “as a matter of law, an unjust enrichment award of avoided costs was unavailable” to TriZetto. *Id.* at 814.

In short, under the Second Circuit’s interpretation of the DTSA, unjust-enrichment damages are unavailable where the plaintiff retains full use and value of its trade secrets and the plaintiff has not proven that the misappropriation caused compensable harm beyond actual losses.

2. The Seventh Circuit has adopted the same construction of the DTSA. In *Motorola Solutions, supra*, the court reviewed an unjust-enrichment award arising out of the defendant’s unlawful incorporation of the plaintiff’s trade secrets into products sold to

consumers. 108 F.4th at 468, 470, 489-94. The Seventh Circuit “agree[d] with the Second Circuit that ‘avoided costs are recoverable as damages for unjust enrichment under the DTSA’ when the defendant’s ‘misappropriation injure[s plaintiff] *beyond* its actual loss.’” *Id.* at 490 n.10 (quoting *Syntel*, 68 F.4th at 809-10). Applying that rule, it concluded that the defendant’s “avoided [research and development] costs are recoverable as unjust enrichment in this case because its misappropriation injured [the plaintiff] beyond its actual losses.” *Id.* In particular, the defendant had “used the claimant’s trade secrets in developing its own product”—which was actually sold to consumers, thereby “diminishing the value of the trade secret to the claimant.” *Id.* (internal quotation marks omitted).

3. The decision below broke with those precedents by holding that a DTSA plaintiff may recover unjust-enrichment damages even where the plaintiff suffered no harm from the misappropriation beyond actual loss. The district court did not find that respondent suffered any harm at all from petitioner’s asserted misappropriation. And like the plaintiff in *Syntel* (but unlike the plaintiff in *Motorola Solutions*), respondent “offered no proof that [petitioner’s alleged] misappropriation diminished the value of its trade secrets to any degree.” *Syntel*, 68 F.4th at 812. Because injunctive relief suffices to prevent any possible future harm, there was no basis under the construction of the DTSA adopted by the Second and Seventh Circuits to award damages.

The court of appeals, however, expressly rejected that interpretation of the DTSA. The court acknowledged that *Syntel* “pronounces the general rule that a secret holder can never be awarded unjust enrichment

damages under the DTSA where it ‘suffers no compensable harm beyond its lost profits or profit opportunities.’” App. 32a (quoting *Syntel*, 68 F.4th at 811). “To the extent that this ‘compensable harm’ standard is intended to require proof of some quantifiable impact on the secret holder that goes beyond proof of the misappropriator’s unjust enrichment,” the court asserted, “that interpretation is divorced from the text of the DTSA and from traditional understandings of the ‘unjust enrichment’ remedy.” App. 32a. Recognizing the Second Circuit’s holding that an injunction serves to mitigate future harm and render an award of damages unnecessary, the court of appeals “decline[d] to adopt that approach.” App. 33a.

The court of appeals instead announced the blanket rule that “unjust enrichment damages under the DTSA” has “no compensable harm requirement.” App. 33a. On that view, petitioner was liable for the full extent of its avoided costs, despite that respondent suffered no harm at all. As the court of appeals conceded, its interpretation of the DTSA conflicts with the Second Circuit’s holding in *Syntel*, which “disagree[d]” with the 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,” 68 F.4th at 813.

The court of appeals claimed that its disposition could be reconciled with the “outcome” of *Syntel* insofar as the court of appeals agreed that an injunction barring petitioner from using the redeveloped BaNCS was incompatible with an award of avoided-costs damages. App. 35a-38a. But the court admitted that its actual interpretation of the DTSA is irreconcilable with the Second Circuit’s construction of the statute,

which *requires* proof of compensable harm beyond actual loss to support a further monetary award given the availability of injunctive relief to prevent future harm. And at any rate, the two cases reached totally inconsistent outcomes: Under the Second Circuit’s rule, the proper course here would have been to instead vacate the unjust-enrichment award and leave in place the injunction against possession of the appropriated trade secrets.

The court of appeals also noted that the injunction entered by the district court would not account for any “benefit that [petitioner] received before the imposition of the permanent injunction.” App. 37a (emphasis omitted). But under the Second Circuit’s rule, those benefits would not justify damages, because respondent did not attempt to prove that it had been harmed by that use, such as through the diminished value of its trade secrets.

In short, the circuits have adopted fundamentally inconsistent interpretations of the DTSA’s unjust-enrichment provision, with the Second and Seventh Circuits requiring proof of harm to the plaintiff beyond its actual losses before damages may be awarded and the Fifth Circuit disclaiming any such requirement. Granting review in this case would allow the Court to resolve that square conflict on a pure question of statutory interpretation.

B. This Case Presents A Suitable Vehicle To Resolve An Important Question

This Court should resolve the conflict over the meaning of the DTSA. Enacted in 2016 as the first federal law providing a civil cause of action for trade-secret misappropriation, the DTSA is now frequently

invoked in federal cases. In 2025, over 1500 new federal trade-secret cases were filed, and DTSA claims “appear in more than 80 percent of new trade-secret lawsuits in federal courts.” *Lex Machina 2026 Trade Secret Litigation Report: Federal Trade Secret Filings Hit an All-Time High in 2025*, LEXISNEXIS (Jan. 29, 2026), <https://tinyurl.com/5bnner2x>; see also *The US Defend Trade Secrets Act eight years on*, IAM TRADE SECRETS (May 14, 2024), <https://tinyurl.com/4j27ss8j> (noting that over 5,000 DTSA cases have been filed since its enactment). This case poses one of the most fundamental questions under the statute: When can a plaintiff obtain an unjust-enrichment award? This Court should resolve that straightforward question, which is cleanly presented in this case.

The question here will be important in virtually any cases in which a DTSA plaintiff seeks monetary relief. As parties litigate and consider settlement, they need certainty about the basic requirements to obtain damages awards under the statute. *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 470 (2017) (recognizing that legal uncertainty makes “settlement more difficult to achieve”). Clarity on whether harm is required for an unjust-enrichment award is critical.

Moreover, the rule adopted by the court of appeals will inevitably confer unjustifiable windfalls on DTSA plaintiffs—a result at odds with Congress’s objective of providing an “effective and efficient remedy for trade secret owners” while at the same time “avoid[ing] disruption of legitimate businesses.” H.R. Rep. No. 114-529, at 6 (2016). Treating the avoided-costs measure “as having no compensable harm requirement,” App. 33a, means that it authorizes awards that are, by definition, non-compensatory.

But the DTSA’s “policy of punishing wrongdoers is already served by the DTSA’s separate provision for punitive damages.” *Syntel*, 68 F.4th at 811 n.36 (citing 18 U.S.C. § 1836(b)(3)(C)). The decision below thus distorts the DTSA’s remedial scheme, making it far more punitive than Congress intended.

This case provides a suitable vehicle to resolve the question presented. The court of appeals addressed it in a published opinion. Although respondent argued below that petitioner had not sufficiently preserved the issue in the district court, Resp. C.A. Br. 50, the court of appeals did not endorse that position and reached the question on the merits. There is accordingly no impediment to this Court’s resolution of the question. *Ellingburg v. United States*, 607 U.S. ---, 146 S. Ct. 564, 567 n.2 (2026).

Any benefits of further percolation of the question in the courts of appeals would not outweigh the need for certainty on such a basic question about the scope of a frequently invoked cause of action. The question is purely legal; both the Second Circuit and the Fifth Circuit provided extensive analysis of the relevant interpretive considerations; and it is unlikely that future factual scenarios will shed meaningful light on whether the unjust-enrichment provision requires proof of harm, which does not depend on the facts of any given case. Nor is it likely that the conflict will resolve itself. All relevant decisions were unanimous. The Fifth Circuit denied en banc review without dissent in this case despite the acknowledged conflict with the Second Circuit. For its part, the Second Circuit rarely sits en banc. In short, the question is ripe for this Court’s resolution.

II. THE COURT OF APPEALS' EXEMPLARY-DAMAGES HOLDING DEEPENS A CIRCUIT CONFLICT ON THE MEANING OF *CAMPBELL*

The compensatory damages award in this case was roughly \$56 million, yet the district court imposed an exemplary-damages award of \$112-plus million on top of that award, resulting in a nearly \$200 million judgment in a case with no finding that the plaintiff was harmed. Petitioner argued in the district court and the court of appeals that under *Campbell, supra*, any ratio of exemplary damages to compensatory damages higher than 1:1 typically “exceed[s] ‘the outermost limit of the due process guarantee’ when ‘compensatory damages are substantial,’” as they clearly are here. App. 39a (quoting *Campbell*, 538 U.S. at 425). But the court of appeals held that “[t]his is a misreading of *Campbell*” and gave no weight to the fact that the unjust-enrichment award here was enormous. *Id.*

It is the court of appeals, however, that clearly misread *Campbell*, and its holding conflicts with the settled view of at least six other circuits. Only the Ninth and Eleventh Circuits have essentially treated the relevant discussion in *Campbell* as optional, and even they have not gone as far as the Fifth Circuit in casting aside the Court’s guidance entirely. This Court should grant review to resolve that division of authority over the meaning of one of the foundational decisions on the due process limits of punitive damages.

A. The Decision Below Misreads This Court's Decision In *Campbell*

In *Campbell, supra*, this Court considered whether a punitive-damages award of \$145 million in an action against an insurance company for bad-faith failure to settle violated due process. The Court applied the three “guideposts” set out in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996)—reprehensibility of the defendant’s conduct, the ratio between punitive damages and the harm to the plaintiff, and any disparity between the punitive-damages award and authorized civil penalties in comparable cases. 538 U.S. at 418-29.

With respect to the second factor, the Court made clear that where compensatory damages are large, punitive damages exceeding a 1:1 ratio raise serious due process concerns:

Single-digit multipliers are more likely to comport with due process, while still achieving the State’s goals of deterrence and retribution, than awards with ratios in range of 500 to 1, [*Gore*, 517 U.S. at 582], or, in this case, of 145 to 1.

Nonetheless, because there are no rigid benchmarks that a punitive damages award may not surpass, ratios greater than those we have previously upheld may comport with due process where “a particularly egregious act has resulted in only a small amount of economic damages.” *Ibid.*; * * *. The converse is also true, however. ***When compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory***

damages, can reach the outermost limit of the due process guarantee.

Campbell, 538 U.S. at 425 (emphasis added).

The decision below simply cannot be reconciled with that straightforward discussion. The court of appeals asserted with no support that *Campbell* does not say what it so clearly does.

The panel principally justified its reading of *Campbell* on the ground that the facts of the case involved a 145-to-1 ratio. App. 39a. But that does not change the rule that the Court’s opinion laid down. That rule states that a punitive-damages award can violate due process when it exceeds a large compensatory award. That the ratio in *Campbell* was far larger does not detract from the Court’s articulated framework.

The court of appeals also stated that “the Court in *Campbell* built on the holding in [*Gore*], which endorsed punitive damages in a 4:1 ratio.” App. 39a (citing *Gore*, 517 U.S. at 581, and *Campbell*, 538 U.S. at 425). The court of appeals was referring to *Gore*’s discussion of an earlier precedent, *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1 (1991) (*Haslip*), that held that a ratio of 4:1 did not “cross the line into the area of constitutional impropriety” in that case. *Gore*, 517 U.S. at 581 (quoting *Haslip*, 499 U.S. at 23-24). But in *Haslip*, the compensatory damages were \$200,000—280 times less than the \$56 million here. Nothing in *Haslip* or *Gore* casts doubt on *Campbell*’s more recent guidance that where the compensatory-damages award is substantial, a 1:1 ratio “can reach the outermost limit of the due process guarantee,” *Campbell*, 538 U.S. at 425.

While what qualifies as a substantial compensatory award may pose a close question in some cases, it does not here. The award of \$56 million is obviously large. Moreover, this case implicates *Campbell's* animating concern about the relationship between a punitive award and harm to the plaintiff in an especially direct way because the unjust-enrichment award itself was not based on any harm to respondent. As explained above, respondent was not required to prove harm and did not do so. The unjust-enrichment award was based entirely on petitioner's putative gain from the challenged conduct. The \$112 million exemplary-damages award thus has quite literally an infinite ratio to any harm to respondent.

B. The Decision Below Conflicts With Decisions Of Other Courts Of Appeals

Given the clarity of *Campbell*, it should come as little surprise that the court of appeals' holding conflicts with numerous circuit court decisions. As the Tenth Circuit has explained, "since the Supreme Court's decision in [*Campbell*], many federal appellate courts have imposed a 1:1 ratio where * * * the compensatory damages exceed \$1 million." *Lompe v. Sunrise Partners, LLC*, 818 F.3d 1041, 1073 (10th Cir. 2016). The unjust-enrichment damages here were 56 times that threshold.

Several circuits have relied on *Campbell's* discussion of large compensatory awards to justify the reduction of punitive awards to 1:1 ratios where compensatory damages were far lower than \$56 million:

First Circuit: In *Méndez-Matos v. Municipality of Guaynabo*, 557 F.3d 36 (1st Cir. 2009), the First

Circuit affirmed the district court’s reduction of punitive damages to a 1:1 ratio under *Campbell*, explaining that the jury’s compensatory award of \$35,000 “amply compensate[d]” the plaintiff for his emotional distress and “supports the one-to-one ratio.” *Id.* at 45-46, 55.

Second Circuit: In *Thomas v. iStar Financial, Inc.*, 652 F.3d 141 (2d Cir.), *cert. denied*, 565 U.S. 1094 (2011), the Second Circuit deemed a compensatory award of roughly \$280,000 to be “very substantial” and held that this “factor weighs heavily in favor of a punitive damages award equal to or less than the remitted compensatory damages award.” *Id.* at 149. The Court affirmed the district court’s conditional reduction of punitive damages from \$1.6 million to \$190,000. *Id.* at 149-50; *see also Cole v. Foxmar, Inc.*, 2024 WL 74902, at *2 (2d Cir.), *cert. denied*, 144 S. Ct. 2528 (2024) (deeming \$216,000 award substantial under *Campbell*).

Sixth Circuit: In *Bach v. First Union National Bank*, 486 F.3d 150 (6th Cir. 2007), the Sixth Circuit held that a compensatory award of \$400,000 was substantial under *Campbell* and reduced a \$2.2 million punitive-damages award to \$400,000. *Id.* at 152, 155-56. In conflict with the decision below, the Sixth Circuit stated that *Campbell* recognizes “the general principle that a plaintiff who receives a considerable compensatory damages award ought not also receive a sizeable punitive damages award absent special circumstances.” *Id.* at 156; *see also Morgan v. New York Life Ins. Co.*, 559 F.3d 425, 442-43 (6th Cir. 2009) (deeming \$6 million award substantial under *Campbell*).

Seventh Circuit: In *Saccameno v. U.S. Bank National Ass’n*, 943 F.3d 1071 (7th Cir. 2019), *cert. denied*, 590 U.S. 906 (2020), the Seventh Circuit explained that “*Campbell* instructs that a ‘substantial’ award merits a ratio closer to 1:1,” and it identified as “substantial” the \$582,000 compensatory award in that case, as well as a \$400,000 award in another case. *Id.* at 1090. It vacated the \$3 million punitive-damages award and instructed the district court to impose a \$582,000 punitive-damages award.

Eighth Circuit: In *Williams v. ConAgra Poultry Co.*, 378 F.3d 790 (8th Cir. 2004), the Eighth Circuit deemed a \$600,000 compensatory award for a workplace-harassment claim to be substantial and to support the conclusion that “due process requires that the punitive damages award * * * be remitted to \$600,000.” *Id.* at 799; *see also Boerner v. Brown & Williamson Tobacco Co.*, 394 F.3d 594, 603 (8th Cir. 2005) (deeming a \$4 million award substantial under *Campbell*).

Tenth Circuit: In *Lompe, supra*, the Tenth Circuit, applying its understanding that any award over \$1 million is substantial under *Campbell*, held that a compensatory award of \$1.95 million was substantial. 818 F.3d at 1073. “Because we have concluded that the amount of the compensatory damages awarded to [the plaintiff] is substantial,” the Court held, “an award of punitive damages equal to the compensatory award—\$1,950,000—may represent the outermost limit of the due process guarantee.” *Id.* It accordingly reduced the punitive-damages award from \$22.5 million to \$1.95 million, “reflecting a reduction from a ratio of 11.5:1 to a 1:1 ratio.” *Id.* at 1075.

In addition to these precedential decisions from the First, Second, Sixth, Seventh, Eighth, and Tenth Circuits, the Third Circuit has applied *Campbell* in an unpublished decision to deem a compensatory award of \$2 million to be substantial and therefore “reduce[d] the [punitive] award to reflect a 1:1 ratio.” *Jurinko v. Med. Protective Co.*, 305 F. App’x 13, 27-30 (3d Cir. 2008).

These circuits all read *Campbell* the same way: When compensatory damages are substantial, a 1:1 ratio is the maximum punitive award consistent with due process, absent unique circumstances. But the decision below inexplicably rejected that clearly correct reading of *Campbell*.

In addition, the Ninth and Eleventh Circuits, while not outright rejecting the plain meaning of *Campbell*’s discussion, have treated the discussion as optional guidance that lower courts are free to ignore. The Ninth Circuit, for example, has held that *Campbell*’s “1:1 compensatory to punitive damages ratio is not binding.” *Hardeman v. Monsanto Co.*, 997 F.3d 941, 975 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 2834 (2022) (quoting *Hangarter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998, 1014 (9th Cir. 2004)). Instead, the Court has adopted the rule that “[i]n cases where there are significant economic damages and punitive damages are warranted but behavior is not particularly egregious, a ratio of up to 4 to 1 serves as a good proxy for the limits of constitutionality.” *Id.* (quoting *Planned Parenthood of Columbia/Willamette Inc. v. Am. Coal. of Life Activists*, 422 F.3d 949, 962 (9th Cir. 2005), *cert. denied*, 547 U.S. 1111 (2006)). That is inconsistent with the rule in the other circuits discussed above.

Likewise, the Eleventh Circuit has characterized *Campbell*'s discussion as “dicta” that lower courts may disregard, *Cote v. Philip Morris USA, Inc.*, 985 F.3d 840, 849 (11th Cir. 2021), and has “upheld ratios substantially greater than 1:1 in cases with large compensatory damages awards,” *McGinnis v. Am. Home Mortg. Servicing, Inc.*, 901 F.3d 1282, 1290 (11th Cir. 2018) (citing cases).

This 6-3 division of authority cries out for this Court’s resolution, especially since it turns on the meaning of an opinion of the Court on a question of constitutional law. Such a deep division of authority will not resolve itself, and no further percolation is necessary for this Court to clarify what it meant in *Campbell*.

C. The Proper Understanding Of *Campbell* Is An Important Question Squarely Presented Here

The question of whether punitive damages in excess of a 1:1 ratio to substantial compensatory damages are consistent with due process has considerable national importance. As the Court has explained, “[j]udicial review of the size of punitive damages awards has been a safeguard against excessive verdicts for as long as punitive damages have been awarded.” *Honda Motor Co. v. Oberg*, 512 U.S. 415, 421 (1994). “To the extent an award is grossly excessive,” the Court has concluded, “it furthers no legitimate purpose and constitutes an arbitrary deprivation of property.” *Campbell*, 538 U.S. at 417. That is particularly true where a tortfeasor is already subject to a massive non-punitive award—especially

where, as here, there was no proof of harm to the plaintiff.

Despite the constitutional guardrails that this Court has put in place, punitive-damages awards have ballooned in recent years. As one study found, “[t]he median punitive award * * * varied from \$35 million in 2017 to more than \$87 million in 2022, with the mean topping \$690 million that same year.” *Unfinished Business: Curbing Excessive Punitive Damages Awards*, U.S. CHAMBER OF COMMERCE INSTITUTE FOR LEGAL REFORM 11 (Sept. 21, 2023), <https://tinurl.com/5jak68mk>.

Uniformity is also critical in this area. The maximum size of punitive damages in cases involving large compensatory damages is not a trivial issue. As here, awards in such cases often exceed \$100 million, and plaintiffs seek punitive damages in a wide variety of actions. When certain circuits adopt insufficiently rigorous constitutional standards, that can impose billions of dollars of unnecessary costs on parties and readily drive forum-shopping. It can also impact where enterprises choose to locate and do business. For those reasons, the constitutional limits on punitive awards should not vary so starkly based on geography.

The question of *Campbell's* meaning is cleanly presented here. The court of appeals adopted its view in a precedential opinion, and it applied that interpretation in affirming the \$112 million exemplary-damages award. App. 39a. To be sure, in applying this Court’s three-factor test, the court of appeals also weighed other considerations, such as the perceived reprehensibility of the conduct here and the fact that Congress has authorized punitive damages of up to

twice unjust-enrichment damages in the DTSA. App. 39a-41a. But the court of appeals did not hold that those factors alone would have been sufficient to render the award here constitutional even if petitioner's understanding of *Campbell* were correct. Were this Court to grant review and correct the court of appeals' misapprehension about the role of large compensatory awards in the due-process analysis, it would be open to the Court to either apply the three-factor standard itself or to remand for the lower courts to reapply that standard under the correct understanding in the first instance.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 19, 2026

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APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Filed: November 21, 2025]

No. 24-10749

COMPUTER SCIENCES CORPORATION,
Plaintiff—Appellee,
versus

TATA CONSULTANCY SERVICES LIMITED; TATA AMERICA
INTERNATIONAL CORPORATION,
Defendants—Appellants.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CV-970

Before HIGGINSON, HO, and WILSON, *Circuit Judges.*

STEPHEN A. HIGGINSON, *Circuit Judge:*

Appellee Computer Sciences Corporation (“CSC”) sued Appellant Tata Consultancy Services Limited (“TCS”) for trade secret misappropriation under the Defend Trade Secrets Act of 2016, Pub. L. No. 114-153, § 2(a), 130 Stat. 376, 376–80 (codified at 18 U.S.C. § 1836). CSC alleged that TCS had used CSC’s trade secrets to win a \$2.6 billion contract with non-party Transamerica and to develop TCS’s own software platform BaNCS. Following an eight-day trial with an advisory jury, the district court found TCS liable,

ordered TCS to pay \$56 million in compensatory damages and \$112 million in exemplary damages, and imposed a permanent injunction, barring TCS from using CSC's trade secrets or the version of BaNCS that TCS developed using CSC's trade secrets.

TCS raises six issues on appeal: (1) whether the relevant contracts authorized TCS's use of CSC's confidential information¹; (2) whether TCS acted with the requisite mens rea for misappropriation; (3) whether CSC defined its alleged trade secrets with sufficient specificity at trial; (4) whether the district court erred in awarding both unjust enrichment damages and a permanent injunction; (5) whether the exemplary damages award was excessive; and (6) whether the district court erred in imposing the injunction on non-parties. For the reasons below, we vacate the injunction and remand to the district court with instructions to issue a revised injunction, but we otherwise affirm the district court's holdings.

I.

A.

Plaintiff-Appellee CSC, an American multinational corporation, "provides information technology services and business solutions software to its customers, including customers in the life, wealth, and annuities industry." Defendant-Appellant² TCS is a "global

¹ Because TCS challenges the district court's trade secrets finding on appeal, we generally refer to this material as CSC's "confidential information" when referencing the same material that the district court referred to as CSC's "Trade Secrets" in the Findings of Fact and Conclusions of Law.

² The district court held that "CSC did not present adequate proof of liability against" TCS's co-defendant Tata America International Corp., a TCS subsidiary.

company offering technology and consulting services to its customers, including customers in the insurance industry.” This case concerns two of CSC’s software platforms, Vantage and CyberLife, and one of TCS’s software platforms, BaNCS.

As summarized by the district court, Transamerica provides, through its subsidiaries, “life insurance, long-term care insurance, voluntary benefits, retirement plans, recordkeeping and advisory services, annuities, mutual funds, and other long-term savings and investment products to its customers.” In 1994, CSC entered into an agreement with a subsidiary of Transamerica, under which CSC licensed certain software to Transamerica. In 1999, CSC and Transamerica amended that licensing agreement to include CyberLife (the “CyberLife Agreement”). Similarly, in 1998, CSC entered into an agreement with Transamerica’s predecessor, under which CSC licensed certain software, and in 2005, CSC and Transamerica amended that licensing agreement to include Vantage (the “Vantage Agreement”). Both agreements authorize Transamerica to use and modify the software programs to benefit Transamerica. Both agreements also provide that CSC retains ownership over the software platforms and the confidential information therein, and that Transamerica may not use CSC’s confidential information to reverse engineer a platform for itself.

In 2013, TCS and Transamerica entered into a Master Services Agreement (the “2013 Master Services Agreement”). Pursuant to that Agreement, Transamerica engaged TSC as a third-party consultant to provide maintenance services for Vantage and CyberLife. To facilitate this and other third-party work, Transamerica and CSC executed a Third-Party Access Addendum (the “Third-Party Addendum”) in February 2014. The

Third-Party Addendum served as an addendum to existing licensing agreements and generally allowed Transamerica to authorize its consultants to access, copy, execute, use and modify CSC's software "solely for the benefit" of Transamerica. TCS was one of the contractors that were specifically named in the Third-Party Addendum.

While providing maintenance services for Transamerica, TCS was also interested in finding an "anchor client" to facilitate its entrance into the U.S. insurance industry with its own software platform BaNCS. TCS describes BaNCS as having four "layers": (1) the core layer, which "consists of foundational elements shared across all TCS BaNCS customers"; (2) the business layer, which "extends the data definitions for specific market segments"; (3) the geography layer, which "contains business processes for country- and state-specific rules and regulations, and product templates that provide insurers with a foundation for fully-compliant product launches"; and (4) the customer layer, which "acts as a repository for modifications specific to a single organization or business unit," and is specifically at issue in TCS's claims on appeal. *See infra* Section III.A.1.

In 2016, Transamerica "decided its software needed a refresh, so it initiated a vendor-selection process." Multiple vendors, including both TCS and CSC, submitted bids and conducted due diligence. At the time, TCS's BaNCS software was not ready for use in the U.S. market as TCS was still building its U.S. "geography layer," but TCS hoped that "landing Transamerica as an anchor client would create an opportunity to adapt BaNCS for the U.S. market." In August 2017, TCS and Transamerica entered into Service Agreement No. 75 ("Service Agreement 75") to

the August 2013 Master Services Agreement to enable TCS's due diligence. Service Agreement 75 required TCS to undertake a number of specific activities, including requiring TCS to: "[u]nderstand and validate [Transamerica's] operational landscape, which includes its software"; "[v]alidate the Transition Plan for each line of business"; and produce a "Comprehensive Due Diligence Report," a "[t]arget operating model for Transition Services and TPA Services," and "[c]omplete and accurate Transition Plans for each line of business." To facilitate this work, Service Agreement 75 obliged Transamerica to furnish TCS with "data" and other "required information." The agreement did not assign TCS any role in assuring that information could be disclosed.

TCS won the contract with its \$2.6 billion bid. However, until TCS finished developing BaNCS for the U.S. market, it would continue to provide maintenance services for Transamerica's policies on CSC's platforms. In January 2018, TCS and Transamerica entered into a series of agreements "to, among other things, administer Transamerica's United States life insurance and annuity business lines using the TCS BaNCS™ platform." As most relevant here, the January 2018 agreements between TCS and Transamerica include an Amended and Restated Master Services Agreement (the "2018 Master Services Agreement").³ As part of the 2018 agreements, TCS "hired over 2,200 people who were formerly employed by Transamerica,"

³ The 2018 agreements also include: TCS Service Agreement No. 2 – 2018 MSA for TCS BaNCS Technology Platform, Application Development and IT Maintenance Services ("Service Agreement 2"); TCS Service Agreement No. 4 – 2018 MSA for Migration Services ("Service Agreement 4"); and a Core Administration System License Agreement.

including “former Transamerica employees who maintained Vantage and CyberLife at Transamerica.” The parties and the district court refer to these people as the “rebadged employees.” BaNCS was developed by TCS’s separate software development team, based mostly in India.

Soon, CSC began to reach out to Transamerica, and later TCS, to express concerns about the treatment of CSC’s intellectual property. CSC sent Transamerica a letter in February 2018, requesting confirmation that its intellectual property would be protected from improper disclosure to, or use by, TCS. In April, CSC reiterated its concerns and reminded Transamerica that TCS’s “permitted access [to] and use of [CSC’s] confidential proprietary information [was] limited to only [TCS’s] performance of certain services for [Transamerica] and for no other purpose.” About a week later, Transamerica’s in-house counsel told TCS that, after “diligently” reviewing Transamerica’s communications with third-party vendors and “proactively following up with some” vendors, “Transamerica feels very confident that we ourselves and TCS are able to move forward with the planned transition.”

In June 2018, CSC began including TCS in its correspondence with Transamerica. It asserted that TCS’s “receipt or use of [CSC] technology or information constitutes” a “misappropriation of trade secrets under both federal and state law, among other things,” and noted that the CSC-Transamerica agreements did not contemplate using the shift from CSC’s platforms to TCS’s BaNCS “as an improper vehicle for [TCS] to leverage [CSC] technology and information” to “develop a competing platform.” Transamerica responded, stating that it was “in full compliance with the [Third-Party] Addendum” and “ha[d] done every-

thing reasonably possible to evidence that compliance.” A month later, Transamerica again wrote to CSC, stating that, “[CSC] must understand that TCS’s confidentiality obligations to Transamerica are embedded in documents which are confidential to the parties, including TCS” but also that it had “seen no indication from TCS that they have any other intentions” beyond “using [CSC’s] software . . . for the limited purpose of serving Transamerica and to fulfill its obligations to Transamerica.” In an August 2018 letter, CSC told Transamerica and TCS that Transamerica’s purported grant of a license to TCS “violates the 1994 and 1998 License Agreements as well as the 2014 Addendum.” TCS later represented to Transamerica it was not using CSC’s “intellectual property or proprietary information to build requirements and/or functionality” for BaNCS.

In February 2019, Transamerica reaffirmed that it would indemnify TCS in the CSC matter, but only if TCS was “compliant with its obligations under the [2018 Master Services Agreement] and related agreements, [and] if [Transamerica] has indemnity obligations.” Transamerica also told TCS that the matter with CSC “does not provide a basis for TCS to withhold services.” The next month, a CSC employee who supported Transamerica—and thus had a Transamerica email address—was mistakenly copied on an email chain with TCS employees, who were sharing excerpts of the Vantage source code and technical manuals a TCS rebadged employee had provided to TCS’s BaNCS development team. The email chain revealed that the BaNCS team was trying to figure out how Vantage’s “rate of return” calculation worked, which CSC considers a trade secret. This discovery precipitated the present litigation.

In August 2019, CSC sued TCS in federal court, pleading, among other claims, a claim of trade secret misappropriation under the Defend Trade Secrets Act (the “DTSA” or the “Act”). Discovery revealed that TCS had been using CSC’s confidential information since the bidding process and had since continued to use the confidential information in TCS’s development of BaNCS and in the conversion of Transamerica’s policies to BaNCS, and Transamerica ultimately terminated its relationship with TCS. TCS moved for summary judgment, arguing, in relevant part, that the Third-Party Addendum authorized Transamerica to grant TCS access to CSC’s confidential information, and that TCS’s use of CSC’s information was authorized by its contracts with Transamerica. The district court denied the motion.

In November 2023, the district court presided over an eight-day trial with an advisory jury. As relevant to this appeal, the jury found that (1) CSC’s source code and technical manuals for Vantage and CyberLife are trade secrets, (2) TSC acquired the manuals by improper means, (3) TSC used the manuals without express or implied consent, and (4) TSC did so willfully and maliciously. The jury recommended \$70 million in compensatory damages and \$140 million in exemplary damages. Thereafter, the district court issued detailed Findings of Fact and Conclusions of Law, affirming liability for TCS but reducing the compensatory damages to \$56 million and the exemplary damages to \$112 million. The court also entered a permanent injunction barring TCS from using CSC’s trade secrets or any version of BaNCS developed using the misappropriated material in the U.S. market, prohibiting TCS employees who had access to CSC’s trade secrets

from working on TCS software for the U.S. market for eighteen months, and imposing a 10-year monitorship.

TCS timely appealed, and we have jurisdiction over the appeal under 28 U.S.C. § 1291.

II.

We “review questions of law, including choice of law and contract interpretation, *de novo*.” *Waterfowl Liab. Co. v. United States*, 473 F.3d 135, 141 (5th Cir. 2006). We review the district court’s findings of fact only for clear error. *Kristensen v. United States*, 993 F.3d 363, 367 (5th Cir. 2021). “A finding is clearly erroneous if it is without substantial evidence to support it, the court misinterpreted the effect of the evidence, or this court is convinced that the findings are against the preponderance of credible testimony.” *Bd. of Trs. New Orleans Emps. Int’l Longshoremen’s Ass’n v. Gabriel, Roeder, Smith & Co.*, 529 F.3d 506, 509 (5th Cir. 2008). “Reversal for clear error is warranted only if the court has a definite and firm conviction that a mistake has been committed.” *Id.* (quoting *Water Craft Mgmt. LLC v. Mercury Marine*, 457 F.3d 484, 488 (5th Cir. 2006)). “Where there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous.” *Hess Corp. v. Schlumberger Tech. Corp.*, 26 F.4th 229, 233 (5th Cir. 2022) (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985)). “This court ‘grant[s] even greater deference to the trial court’s findings when they are based on determinations of credibility.’” *Id.* (quoting *Deloach Marine Servs., L.L.C. v. Marquette Transp. Co.*, 974 F.3d 601, 607 (5th Cir. 2020)).

Finally, we “review[] the district court’s grant of a permanent injunction for abuse of discretion.” *M. D. ex rel. Stukenberg v. Abbott*, 907 F.3d 237, 248 (5th Cir.

2018) (citing *Ball v. LeBlanc*, 792 F.3d 584, 598 (5th Cir. 2015)). A district court “abuses its discretion if it ‘(1) relies on clearly erroneous factual findings when deciding to grant or deny the permanent injunction[,] (2) relies on erroneous conclusions of law when deciding to grant or deny the permanent injunction, or (3) misapplies the factual or legal conclusions when fashioning its injunctive relief.’” *Id.* (quoting *Symetra Life Ins. Co. v. Rapid Settlements, Ltd.*, 775 F.3d 242, 254 (5th Cir. 2014)).

III.

TCS raises six issues on appeal, three of which pertain to TCS’s liability under the DTSA and three of which pertain to the remedies awarded. We address each issue in turn, starting with the liability arguments before turning to the remedies arguments.

A.

The DTSA provides that “[a]n 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.” 18 U.S.C. § 1836(b)(1). CSC was required to prove: (1) that it owns a valid trade secret; (2) that the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce; and (3) that TCS misappropriated the trade secret. TCS’s liability arguments pertain to the first element, *see* Section III.A.3 below, and the third element, *see* Sections III.A.1–2 below.

1.

TCS’s first argument is contractual, although—as CSC highlights—TCS and CSC never contracted with

one another. TCS asserts that its access to and use of CSC's information did not amount to "misappropriation" within the meaning of the DTSA because this activity was authorized by the various contracts between Transamerica and CSC and between Transamerica and TCS.⁴ The DTSA defines "misappropriation" to mean:

(A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(B) disclosure or use of a trade secret of another without express or implied consent by a person who—

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was—

(I) derived from or through a person who had used improper means to acquire the trade secret;

⁴ There are nine contracts that are relevant to this case: three between CSC and Transamerica (the Vantage Agreement, the CyberLife Agreement, and the Third-Party Addendum) and six between TCS and Transamerica (the 2013 Master Services Agreement, Service Agreement 75, the 2018 Master Services Agreement, Service Agreement 2, Service Agreement 4, and the Core Administration System License Agreement). All of the contracts specify the applicable state law. Texas law governs the each of the contracts between CSC and Transamerica, while New York law governs each of the agreements between TCS and Transamerica.

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(II) acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secret or limit the use of the trade secret; or

(III) derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of the trade secret or limit the use of the trade secret; or

(iii) before a material change of the position of the person, knew or had reason to know that—

(I) the trade secret was a trade secret; and

(II) knowledge of the trade secret had been acquired by accident or mistake[.]

18 U.S.C. § 1839(5). The term “improper means” “(A) includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means; and (B) does not include reverse engineering, independent derivation, or any other lawful means of acquisition.” *Id.* at § 1839(6).

TCS primarily argues that the Third-Party Addendum authorized TCS’s access to and use of CSC’s confidential information, including to “formulate a proposal to transition Transamerica from CSC’s systems to the newer BaNCS product and then, once TCS won the competitive bidding process, implement that proposal.” As described above, the Third-Party Addendum is an agreement that Transamerica and CSC executed to allow Transamerica’s third-party service providers to work on CSC’s software as part of the third parties’

work for Transamerica. Section 3(a) of the Third-Party Addendum allows TCS “to access, copy, execute and use” CSC’s software “on behalf of and solely for the benefit of” Transamerica. Section 3(c) further allows TCS “to copy, change, modify, supplement, amend, and prepare Derivative Works of the Software, if and to the same extent permitted in the [Vantage and CyberLife] Agreement[s], on behalf of and solely for the benefit of” Transamerica. Section 5 permits Transamerica to “disclose relevant aspects of [CSC]’s confidential information” to TCS “to the extent that such disclosure is reasonably necessary for the performance of [TCS]’s duties and obligations to” Transamerica.

In denying TCS’s motion for summary judgment, the district court interpreted the phrase “solely for the benefit of [Transamerica]” in Section 3(a) to “prohibit[] uses [of CSC’s software] that inure to a third party’s benefit in a manner beyond ordinary pecuniary benefit for services.” The court further interpreted Section 3(c) as “more difficult to satisfy” than Section 3(a) “because it also requires that the modification at issue be ‘permitted in’ CSC’s earlier agreements with Transamerica,” which “aren’t permissive.” Consistent with these conclusions, the district court ultimately held that “TCS acquired the Trade Secrets by improper means,” that it “disclosed and used the Trade Secrets without CSC’s express or implied consent,” and that “such disclosure and use were not on behalf of and solely for the benefit of Transamerica.”

TCS argues on appeal that the district court’s “ordinary pecuniary benefit” interpretation is atextual and unworkable. But, on the contrary, both the text of the Third-Party Addendum and the broader context favor the district court’s plain reading. Turning first to the text, see *Weeks Marine, Inc. v. Standard Concrete*

Prods., Inc., 737 F.3d 365, 369 (5th Cir. 2013), the most conventional reading of the phrase “solely for the benefit of [Transamerica]” is likely to mean “exclusively for the benefit of Transamerica and no one else,” see *Solely*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/solely> (defining “solely” to mean “to the exclusion of all else” or “without another[,] singly” and identifying synonyms such as “just,” “only,” and “exclusively”). The district court reached the same conclusion, but—prompted by TCS’s assertions—further observed that the third parties still “must be able to receive pecuniary gain for their services under the [Third Party] Addendum.”

This caveat makes sense in light of the nature of the contracting relationship and does not alter the plain reading of the provision. TCS’s access under Section 3(a) must be exclusively for Transamerica’s benefit and for no one else’s, including TCS. But the provision makes no demand that TCS perform its work for Transamerica for free. So, although the Third-Party Addendum does not allow TCS to benefit directly from its access to, and use of, CSC’s confidential information, it does nothing to inhibit TCS’s payment by Transamerica for services TCS provided. And it is irrelevant that performing these services required TCS to access CSC’s confidential information because the “benefit” Transamerica receives from this access, as contemplated by Section 3(a), is distinct from the benefit TCS receives for services rendered.

TCS conflates these two “benefits” to suggest that the district court’s use of the phrase “ordinary pecuniary benefit” is a “limitation” that “has no basis in the text of the provision or a reasonable understanding of the parties’ intent, and it is unworkable as a practical matter.” But the “benefit” TCS receives in

return for its services is in no way part of, or contemplated by, the Third-Party Addendum, a contract between Transamerica and CSC. It is therefore neither atextual nor unreasonable nor unworkable to conclude that, although TCS may, of course, be paid for its services by Transamerica, it may not additionally access and use CSC's confidential information for its own benefit, as that benefit is reserved "solely" for Transamerica under the Third-Party Addendum.

In contrast, TCS's interpretation is divorced from the contractual language and effectively grafts a new clause onto Section 3(a). According to TCS, "the only reasonable interpretation of the phrase 'on behalf of and solely for the benefit of' is that so long as access to CSC's confidential information benefits Transamerica and does not benefit other parties beyond what the service provider itself receives from performing the work, it is authorized." TCS maintains—without citation to any authority—that its reading "reflects ordinary usage" because it is "natural when discussing the duty of loyalty of an agent in performing some work to exclude benefits that inure to the agent on account of the work itself." As an example, TCS observes that, while "an attorney's engagement letter might say that her work will be exclusively on behalf of, and for the benefit of, the client," the letter would not reasonably preclude "benefits to the attorney from performing that work—not just fees, but also experience that could advance her career and increased stature in the profession from a significant representation." Setting aside the conspicuous omission of the word "solely" from the phrase "solely for the benefit of," this example is simply inapposite. As discussed above, the district court correctly recognized that the language of Section 3(a) does not stop TCS from being compensated for its

work—a wholly different benefit. The intangible benefits of “experience” and “increased stature” are no different; nothing in the Third-Party Addendum barred TCS from obtaining those “benefits” by providing its services to Transamerica. However, the contemplated benefits do not extend as far as appellants argue.

A more helpful analogy might be something like the following. An attorney is hired by a client to perform work using another company’s e-discovery platform. To facilitate the attorney’s work, the client enters into an agreement with the e-discovery platform provider to allow the attorney to access the platform’s internal workings so that the attorney can tweak the e-discovery processes to maximize efficiency. To protect the e-discovery company, the agreement only allows the client to share the platform with the attorney for work that the attorney performs exclusively on behalf of and solely for the benefit of the client. As TCS suggests, this limitation would not preclude the attorney from receiving fees from the client or incidental, intangible benefits like experience or increased stature. But it would preclude the attorney from using the e-discovery company’s source code to build her own competing e-discovery platform. *See Syntel Sterling Best Shores Mauritius Ltd. v. The TriZetto Grp., Inc.*, 68 F.4th 792, 806 (2d Cir.) (finding it “fanciful to suggest that [a company] would authorize [a competitor] to use its trade secrets to compete for business without saying so”), *cert. denied*, 144 S. Ct. 352 (2023) (mem.).

This same analysis applies to Section 3(c), which limits TCS’s “right to copy, change, modify, supplement, amend, and prepare Derivative Works of the Software” to work done “on behalf of and solely for the benefit of”

Transamerica. This section also specifies that TCS may only do so “if and to the same extent permitted in the [Vantage and CyberLife] Agreement[s].” As CSC further highlights, Section 3(a) uses different phrasing but similarly limits the access rights granted to third parties to the scope of the “rights granted to [Transamerica] under the [Vantage and CyberLife] Agreement[s].” And, as the district court found and CSC reiterates, those agreements do not permit the use of CSC’s trade secrets to prepare a bid for a competing contract or to develop a competing platform.

The CyberLife Agreement licensed CyberLife to Transamerica “solely” to “process data for [Transamerica’s] own use,” and Transamerica could not “allow any person or entity to transmit or reproduce [CyberLife] in whole or in part in any manner except as permitted” in the agreement. The Vantage Agreement permitted Transamerica to “use” Vantage “only in the manner and for the purposes expressly authorized by [the] Agreement,” and its “[r]ight to [m]odify” Vantage was confined to “modify[ing] or enhanc[ing]” Vantage “to support [Transamerica]’s authorized use of” Vantage. The district court appropriately found that “CSC’s license agreements with Transamerica do not contain any provisions giving Transamerica or any of its vendors the right to use the Trade Secrets to build a competing policy system” and, therefore, that “the [Third-Party Addendum] does not allow TCS to use the Trade Secrets to do so.”⁵

⁵ TCS also argues that its use of CSC’s information was authorized under multiple of Transamerica’s contracts with TCS. However, as CSC articulates, “while Transamerica’s agreements with [TCS] may bear on [TCS]’s knowledge and willfulness, they cannot and do not establish authorization by CSC, the trade-secret owner and a nonparty to those agreements.” As discussed

TCS further contends that the district court “erroneously ruled that TCS, not Transamerica, owns the customer layer of BaNCS.”⁶ However, the relevant contractual language supports the district court’s conclusion that TCS owns all portions of BaNCS, including the “customer layer.” Section 10.7(a)(i) of the 2018 Master Services Agreement provides that “all results of the Services created or developed by [TCS], by itself or jointly with [Transamerica] or others, including the Deliverables, the Procedures Manuals, the Developed Software, [or numerous other materials] developed for or relating to [Transamerica], . . .

above, we conclude that TCS’s use of CSC’s confidential information to prepare its bid and develop BaNCS was unauthorized under the Third-Party Addendum agreement between Transamerica and CSC. We need not spill further ink discussing the agreements between Transamerica and TCS. Because Transamerica was not permitted to authorize TCS’s access and use, TCS’s access and use were necessarily unauthorized, regardless of what the agreements between Transamerica and TCS may (or may not) purport to authorize. To be sure, unauthorized access and use alone is not enough to constitute “misappropriation” under the DTSA; the plaintiff must also prove that the defendant knew or had reason to know that its conduct was improper. But that is a separate mens rea issue, addressed in Section III.A.2 below. For purposes of answering TCS’s first question presented—whether TCS’s use of CSC’s confidential information was authorized by contract—the dispositive question is whether the Third-Party Addendum authorizes this use. It does not.

⁶ The utility of this argument is not entirely clear; even if TCS were correct about the ownership of BaNCS, TCS’s use of CSC’s confidential information was not limited to its development of BaNCS. The district court also found that, “[b]ecause TCS acquired the Trade Secrets to develop its bid to displace CSC at Transamerica, obtain a \$2.6 billion contract, and reduce its time and effort in migrating Transamerica’s data to BaNCS, TCS did not acquire the Trade Secrets ‘solely for the benefit of Transamerica,’ as required under the [Third-Party Addendum].”

(collectively, the ‘Work Product’) are, shall be and shall remain the property of [Transamerica].” However, “Work Product does not include any [TCS] Owned Software (including any enhancements, modifications or derivatives works of such [TCS] Owned Software or documentation related thereto) which is licensed under the Core Administration System License Agreement.”

The Core Administration System License Agreement confirms that “ownership and the title in and to Intellectual Property Rights in the Licensed Products,” including “all enhancements, developments and derivative works of the Licensed Products,” “are and shall at all times remain with” TCS. It further provides that “ownership of and the title in and to Intellectual Property Rights in any enhancements, developments and other work product created by or on behalf of [Transamerica] as part of the Services (excluding in respect of the Licensed Products . . .), are governed by and subject to the terms and conditions of the [2018 Master Services Agreement] and the Service Agreements.” The Core Administration System License Agreement defines “Licensed Products” to include the “[TCS] BaNCS application identified in Schedule 6,” and Schedule 6 lists and describes a litany of “Licensed Components” of “TCS BaNCS” that “are included in the Licensed Products.” The parties thus agree that the critical question is whether the “customer layer” of BaNCS is part of, or a modification of, the BaNCS components captured by this definition. If the former, it is owned by TCS; if the latter, by Transamerica.

TCS asserts that the “customer layer” of BaNCS is distinct from what TCS describes as the “generic features of the core BaNCS layers” listed in the Core Administration System License Agreement’s definition

of “Licensed Products” and, therefore, that its ownership is given to Transamerica under the 2018 Master Services Agreement. But, as demonstrated by CSC, the weight of the evidence does not support that conclusion. Both Suresh Muthuswami—TCS’s President of the company’s Banking, Financial Services, and Insurance Platforms, who executed the 2018 Master Services Agreement on TCS’s behalf—and Arindam Paul—TCS’s Delivery Manager for BaNCS and its corporate representative with respect to TCS’s development of the customer layer—testified that TCS retained ownership of the BaNCS software. Debarati Mukhopadhyay, TCS’s Product Head of BaNCS, explained in a TCS article about the BaNCS software that “the customer layer acts as a repository for modifications specific to a single organization or business unit,” and that “[t]hese customer modifications are forward-compatible by design and easily adaptable to successive updates to the core, business or geography layers of TCS BaNCS.”

This evidence supports the conclusion that the “customer layer” is a collection of “modifications” to or “developments” of BaNCS, as those terms are used in the 2018 Master Services Agreement and the Core Administration System License Agreement. Additionally, the 2018 Master Services Agreement requires TCS to provide Transamerica with the source code for all “software Deliverables,” whereas the Core Administration System License Agreement only requires TCS to provide the “object code of the Licensed Products.” Here, TCS retained all of the BaNCS source code, including the source code for the “customer layer.” This indicates that TCS understood itself, not Transamerica, to be the owner of the “customer layer” under the applicable contracts.

In contrast, TCS references only two pieces of evidence: the Schedule 6 list of “Licensed Components” and testimony from TCS’s Deputy General Counsel Vinod Verghese. Verghese testified that TCS understood the 2018 Master Services Agreement to mean that “all the results of the services performed by TCS, which included the developed software, which is the customer layer of BaNCS for Transamerica, that would remain the sole property of Transamerica.” This testimony contradicts the testimony offered by Muthuswami, who executed the Agreement on TCS’s behalf, and of Paul, who was designated as TCS’s corporate representative on the customer layer. The district court’s decision to credit Muthuswami and Paul over Verghese is not clearly erroneous. *See Guzman v. Hacienda Recs. & Recording Studio, Inc.*, 808 F.3d 1031, 1036 (5th Cir. 2015) (“[T]he great deference owed to the trial judge’s findings [of fact] compels the conclusion that ‘[w]here there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous.’” (alteration in original) (quoting *In re Luhr Bros., Inc.*, 157 F.3d 333, 338 (5th Cir. 1998))).

As to Schedule 6, TCS does not explain what aspect of the list supports its contention that the “customer layer” is not captured by the “Licensed Products” definition, as is the rest of the BaNCS software. It is true that Schedule 6 does not specifically reference the “customer layer.” But it lists more than twenty “components” of BaNCS and then provides extensive descriptions of the various facets of each component. And as noted, TCS has described the “customer layer” as customer-specific modifications to the “off-the-shelf” BaNCS product. It is thus reasonable to infer that the components listed in Schedule 6 are the very components that could be modified through the

“customer layer.” TCS identifies nothing in Schedule 6 that is inconsistent with that conclusion.

* * *

For the reasons above, we affirm the district court’s holding that TCS’s challenged use of CSC’s confidential information was unauthorized under the terms of the relevant contracts.

2.

TCS argues that, even if the Third-Party Addendum did not authorize TCS’s use of CSC’s information, the district court clearly erred in finding that TCS knew or had reason to know that its access and use were unauthorized or, at least, in finding that TCS’s misappropriation was willful and malicious.

We review for clear error. *See Kristensen*, 993 F.3d at 367. “A finding of fact is clearly erroneous if it is without substantial evidence to support it, the court misinterpreted the effect of the evidence, or this court is convinced that the findings are against the preponderance of credible testimony.” *Id.* (quoting *Becker v. Tidewater, Inc.*, 586 F.3d 358, 365 (5th Cir. 2009)). “[W]e show ‘even greater deference to the trial court’s findings when they are based on determinations of credibility.’” *Id.* (quoting *Deloach Marine Servs., L.L.C. v. Marquette Transp. Co., L.L.C.*, 974 F.3d 601, 607 (5th Cir. 2020)).

Here, the district court found that “TCS knew its misappropriation of the Trade Secrets was wrong and intentionally misappropriated the Trade Secrets in conscious disregard of CSC’s rights.” The record reflects that under TCS’s Intellectual Property Rights Manual, TCS was required to “secure access to third-party IP assets, via in-licensing from partners,

vendors, academic institutions[,] or third-parties who own such IP assets” before use of intellectual property. But TCS’s employees failed to follow their own internal procedures when they decided to use CSC’s information—as the district court found, “TCS never asked CSC whether Transamerica could give TCS access to the Trade Secrets” and never asked for “guidance on what, if anything, TCS was permitted to do with respect to the Trade Secrets” TCS’s argument that CSC had an affirmative obligation to share documents prohibiting TCS from using its Trade Secrets is thus inconsistent with its own policies.

The district court also found that “TCS knew as early as April 2018 of CSC’s concerns regarding the rebadging of Transamerica employees to TCS employees,” and that “TCS knew as early as June 2018 that CSC did not believe TCS was authorized to use the Trade Secrets in the ways it did.” TCS responds that “a competitor’s demand that TCS stop building a platform to replace its own is hardly compelling evidence of knowledge.” But “actual or constructive notice that the third party’s disclosure violated a duty owed to the plaintiff,” will “make[] a defendant liable for using a trade secret” *GlobeRanger Corp. v. Software AG United States of Am., Inc.*, 836 F.3d 477, 488 (5th Cir. 2016). And actual notice can be provided by the plaintiff’s complaint, even though parties in trade secrets cases are often competitors. *See Computer Assocs. Int’l, Inc. v. Altai, Inc.*, 982 F.2d 693 (2d Cir. 1992) (interpreting Texas’s trade secret cause of action).⁷

⁷ TCS argues that even if the district court could impute knowledge beginning in mid-2018, the misappropriation primarily “occurred in 2017[,]” and thus damages dating back to 2017 were inappropriate. But numerous of the district court’s findings on

Even if the word of a competitor did not provide notice to TCS that it was misappropriating trade secrets, the district court found that TCS's representations to Transamerica were sufficient to impute knowledge to TCS. Transamerica informed TCS that it should "not incorporate proprietary information or intellectual property of CSC . . . into the Customer Layer, except as expressly permitted in the Master Agreement between the Parties or directly by the third party." The Master Agreement did not expressly permit using CSC's information, nor did CSC direct TCS to do so. TCS responds "that Transamerica repeatedly assured TCS that its use of CSC's information was authorized." TCS points to, for example, a statement by Transamerica that it "feels very confident that we ourselves and TCS are able to move forward with the planned transition of employees and service commencement this weekend." But this is not an explicit authorization to use CSC's information. On the contrary, the exchange appears to be referring to rebadging occurring at the time. We will not disturb the district court's decision not to credit TCS's explanation for vague messages. TCS also points to Transamerica's statement to CSC that "Transamerica is in full compliance with the [Third-Party Addendum] and the [2018 Master Services Agreement] with respect to this matter." As a factual matter, however, a statement by Transamerica to CSC does not absolve TCS of knowledge of its misappropriation.

In support of a finding that TCS as a company had adequate mens rea, CSC points out that multiple TCS employees expressed knowledge that TCS was not

TCS's misappropriation date back to that 2017 period, including the method by which TCS obtained the Trade Secrets in the first place.

allowed to access CSC’s information. TCS responds that the employees “were not sufficiently senior to impute their beliefs to the company” We have held that knowledge can be imputed to a company from an employee with “somewhat significant managerial authority ‘over the sphere of the activities in question.’” *United States ex rel. Vavra v. Kellogg Brown & Root, Inc.*, 848 F.3d 366, 375 (5th Cir. 2017) (quoting *In re Signal Int’l, LLC*, 579 F.3d 478, 496 (5th Cir. 2009)). The employees in question—a manager and director—had supervisory authority over the Transamerica project at issue in this case.

TCS also challenges the district court’s finding that TCS’s misappropriation was willful and malicious. TCS concedes that “[i]n the district court, the parties agreed that the ‘willfully and maliciously’ standard could be met by ‘intentional misappropriation resulting from the conscious disregard of the rights of the owner of the trade secret.’” Here, however, TCS urges us to instead apply a standard based on “intent to cause injury or harm” from a Fourth Circuit case involving Texas state law claims. *Steves & Sons, Inc. v. JELD-WEN, Inc.*, 988 F.3d 690, 727 (4th Cir. 2021). But *Steves & Sons* only acknowledges that the intent to cause injury or harm standard is *JELD-WEN*’s preferred standard; it does not take a position on what standard to apply. An out-of-circuit case taking no position on the standard is not persuasive, let alone binding, on our court.

Using the standard agreed upon by the parties, the district court made numerous findings of fact that TCS had willfully and maliciously misappropriated CSC’s trade secrets. For example, TCS acknowledged that it misrepresented to Transamerica that rebadged employees were not “using any third party intellectual

property or proprietary information to build requirements and/or functionality.” And TCS employees shared CSC trade secrets marked as “confidential information” with the TCS BaNCS team, going so far as to share “a snapshot” when the email did not go through. The district court thus had ample basis to find that TCS’s conduct was intentional and showed “conscious disregard” for CSC’s rights to their information.

We therefore hold that the district court did not clearly err in finding that TCS knowingly misappropriated CSC’s information or that TCS’s misappropriation was willful and malicious.

3.

TCS’s final liability argument is that CSC failed to define its alleged trade secrets with sufficient specificity. The DTSA defines “trade secret” to mean:

all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if—

(A) the owner thereof has taken reasonable measures to keep such information secret; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being

readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information[.]

18 U.S.C. § 1839(3). “The existence of a trade secret is a question of fact.” *CAE Integrated, L.L.C. v. Moov Techs., Inc.*, 44 F.4th 257, 262 (5th Cir. 2022). But, of course, the applicable legal standard is a question of law.

In its order denying TCS’s motion for summary judgment, the district court relied primarily on this court’s decision in *GlobeRanger*, 836 F.3d 477. TCS seems not to contest on appeal that CSC’s definitions of its trade secrets are sufficiently specific under *GlobeRanger*. Rather, TCS argues that *GlobeRanger* is not precedential because it addresses misappropriation of trade secrets under Texas law, rather than the DTSA, and that *GlobeRanger* is out of step with other circuits, which it says require greater specificity than CSC provided. TCS is correct that this panel is not specifically bound by *GlobeRanger*. It predated the DTSA and therefore applies Texas’s misappropriation law. But, as CSC notes, TCS never made this argument before the district court. Instead, TCS supported its insufficient-specificity argument by endeavoring to distinguish *GlobeRanger* on the facts. Now, TCS urges us to articulate for the first time what specificity standard applies in DTSA cases and to hold that the standard differs from that articulated in *GlobeRanger* and applied by the district court here.

As we have previously held, “[a]rguments not raised in the district court cannot be asserted for the first time on appeal.” *Greenberg v. Crossroads Sys., Inc.*, 364 F.3d 657, 669 (5th Cir. 2004); *see also Burciaga v. Deutsche Bank Nat’l Tr. Co.*, 871 F.3d 380, 389 (5th Cir.

2017) (“We will not consider on appeal an issue not previously presented to the district court unless such review is ‘necessary to prevent a miscarriage of justice.’” (quoting *Thorton v. Schweiker*, 663 F.2d 1312, 1315 (5th Cir. 1981))). Moreover, the requisite specificity for trade secrets under the DTSA is a matter of first impression for this court, and the parties’ briefing of this issue is notably sparse. In light of the waiver of this issue, and the parties’ minimal discussion of the necessity of addressing it, we therefore decline to take up this issue.

B.

The district court awarded compensatory damages, exemplary damages, and a permanent injunction—all of which are generally authorized by the DTSA. TCS challenges each of these remedies on appeal, arguing: (1) that the district court erred in awarding both “avoided costs” damages and an injunction against future use; (2) that the exemplary damages award was excessive; and (3) that the injunction improperly binds non-parties.

1.

The DTSA authorizes “damages for actual loss caused by the misappropriation of the trade secret” and “damages for any unjust enrichment caused by the misappropriation of the trade secret that is not addressed in computing damages for actual loss.” 18 U.S.C. § 1836(b)(3)(B)(i). CSC was awarded compensatory damages in the form of unjust enrichment damages. The district court awarded CSC \$56,151,583 in compensatory damages, based on testimony from CSC’s damages expert Brian Napper that TCS was unjustly enriched by that amount as a result of its misappropriation. Napper used two alternate

approaches to calculate the unjust enrichment damages: (1) the cost approach (also referred to as the “avoided costs” approach); and (2) the income approach. Under the cost approach, Napper “analyze[d] how much research and design costs [TCS] avoided by misappropriating [CSC’s] trade secrets.” Napper concluded that the cost approach yielded an unjust enrichment valuation of \$56,151,583. Under the income approach, Napper “calculate[d] the profits a [TCS] expected from its misappropriation of [CSC’s] trade secrets.” Napper concluded that the income approach yielded an unjust enrichment valuation of \$55,484,165.

The district court found that CSC had sufficiently proven both damages measures at trial and, therefore, that CSC was entitled to the greater of the two—\$56,151,583 under the cost approach. The district court also entered an injunction against TCS.⁸ As relevant here, the injunction bars TCS from any future use of CSC Trade Secrets or post-appropriation source code or technical documentation for BaNCS.

TCS argues that the district court erred by imposing both unjust enrichment compensatory damages and an injunction prohibiting future use because: (1) under the DTSA, “a monetary award is not available where the plaintiff has suffered no harm distinct from lost profits and will not suffer such harm in the future”; and (2) the compensatory damages and injunctive remedies are duplicative. TCS asks us to vacate the compensatory damages award, though it acknowledges

⁸ In addition to the compensatory damages and injunction discussed in this Part, the district court awarded CSC \$112,303,166 in exemplary damages (discussed in Section III.B.2 below), pre- and post-judgment interest, attorney’s fees, and costs.

that it argued against the imposition of the injunction before the district court.⁹

TCS relies heavily on the Second Circuit’s decision in *Syntel*. In that case, Syntel had been found liable for trade secret misappropriation under the DTSA and New York law based on evidence that showed it was “actively creating a repository of [TriZetto’s] trade secrets . . . to be used in future work.” *Syntel*, 68 F.4th at 797. TriZetto presented expert testimony that Syntel avoided spending \$285 million in research and development costs through its misappropriation and that TriZetto lost \$8.5 million in profits based on the single instance where Syntel used TriZetto’s trade secrets to perform a software upgrade for a third party. The jury awarded TriZetto \$285 million in compensatory damages in the form of avoided development costs under the DTSA. *Id.* at 799.

The Second Circuit vacated the avoided-costs award, holding that the DTSA did not “permit[] recovery of avoided costs as unjust enrichment damages in this specific case.” *Id.* at 806–07, 815. The court reasoned that the DTSA “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.” *Id.* at 809 (quoting 18 U.S.C. § 1836(b)(3)(B)(i)(II)). Grounding its analysis in the restitutionary origins of unjust enrichment, the

⁹ According to TCS, it makes more sense to vacate the damages award now that TCS has “undertaken substantial effort to comply with [the injunction’s] terms by, among other things, eliminating CSC’s information from its files and servers.” TCS argues in the alternative that “if the damages award stands,” the injunction should be vacated as duplicative.

court highlighted various circumstances where unjust enrichment damages could be appropriate: (1) as a “money substitute” for the return of a “specific thing” that a defendant has gained; (2) where a defendant has profited from the plaintiff’s trade secret; and (3) where a defendant has saved costs through the misappropriation of a plaintiff’s trade secret, with the caveat that “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.’” *Id.* at 810 (first quoting 1 Dan B. Dobbs, *Law of Remedies* § 4.1(1) (1993); then quoting Restatement (Third) of Unfair Competition § 45(2)).

The court reasoned that the second circumstance did not apply because Syntel’s \$823,899 in profit from the single instance where it used the misappropriated trade secrets was addressed in computing TriZetto’s \$8.5 million lost profits calculation from that same transaction, and that, otherwise, TriZetto had suffered no compensable harm. *Id.* at 811. The permanent injunction had “ended Syntel’s use of TriZetto’s trade secrets, and, therefore, its ability to profit from any avoided costs,” and “Syntel’s misappropriation did not diminish, much less destroy, the secrets’ continued commercial value to TriZetto.” *Id.* The court therefore held that TriZetto was “not entitled to avoided costs as a form of unjust enrichment damages in this specific case.” *Id.*

TCS asserts that awarding avoided-costs damages to CSC was improper for the same reasons because CSC “retains its trade secrets in full” and “did not argue that it lost profits or that TCS’s alleged use of the trade secrets in connection with the Transamerica

contracts diminished their value.” TCS also highlights that, prospectively, the permanent injunction “ensures that TCS cannot impair the value of those secrets going forward.”

We agree with much of the Second Circuit’s analysis. Its specific holding—that awarding avoided-costs damages gave TriZetto a windfall because Syntel’s unjust gain (from the one instance that it actually used TriZetto’s trade secrets) was already addressed in computing damages for TriZetto’s actual loss—is consistent with the basic and intuitive logic that the compensatory damages award and the injunction should not be duplicative. *See Syntel*, 68 F.4th at 814.

But *Syntel* also pronounces the general rule that a secret holder can never be awarded unjust enrichment damages under the DTSA where it “suffers no compensable harm beyond its lost profits or profit opportunities,” *id.* at 811, and it is not entirely clear from the opinion what the court meant by “compensable harm,” beyond the example of “instances where the value of the secret is damaged, or worse yet—destroyed,” *id.* at 809. To the extent that this “compensable harm” standard is intended to require proof of some quantifiable impact on the secret holder that goes beyond proof of the misappropriator’s unjust enrichment, that interpretation is divorced from the text of the DTSA and from traditional understandings of the “unjust enrichment” remedy. As noted, the DTSA authorizes damages “for any unjust enrichment caused by the misappropriation of the trade secret that is not addressed in computing damages for actual loss.” 18 U.S.C. § 1836(b)(3)(B)(i)(II). It does not separately require a compensable, quantifiable injury suffered by the secret holder.

While *Syntel* discusses such a requirement, it does so against a backdrop of a permanent injunction; the court highlighted that the “facts matter,” as the avoided costs were already addressed by permanently enjoining the use of the misappropriated trade secrets. *See Syntel*, 68 F.4th at 810. Thus, any lack of clarity around defining a “compensable harm” is mitigated and explained by the imposition of the injunction. We decline to adopt that approach, given the myriad facts that may arise in future claims where an injunction may be inapt. However, despite *Syntel*’s more decisive language on requirements for unjust enrichment damages, the court ultimately appeared to recognize, as we do, the interplay between such damages and injunctive relief. While the “facts matter,” we also maintain the importance of clarifying the contours of unjust enrichment damages as a standalone matter— isolated from the question of duplication with injunctive relief. As such, before addressing the overlap between these remedies, we first address the availability of unjust enrichment damages.

As a general matter, interpreting unjust enrichment damages under the DTSA as having no compensable harm requirement comports with the definition of unjust enrichment at its core. As explained in *Syntel*, “unjust enrichment[?] is ‘a basis of civil liability involving a claim for recovery that sometimes also goes by the name restitution.’” *Syntel*, 68 F.4th at 809 (quoting *Unjust Enrichment*, BLACK’S LAW DICTIONARY (11th ed. 2019)). The remedy focuses on the benefit to the defendant, rather than the impact on the plaintiff. *See* Restatement (Third) of Restitution and Unjust Enrichment § 1 cmt. a (2011) (“Liability in restitution derives from the receipt of a benefit whose retention without payment would result in the unjust enrichment of the defendant at the expense of the claimant.

While the paradigm case of unjust enrichment is one in which the benefit on one side of the transaction corresponds to an observable loss on the other, the consecrated formula ‘at the expense of another’ can also mean ‘in violation of the other’s legally protected rights,’ without the need to show that the claimant has suffered a loss.”); *id.* at § 42 cmt. f (“The minimum liability in restitution for benefits obtained by misconduct is the value of anything wrongfully taken from the claimant, whether or not the taking causes measurable harm to the claimant.”).

This understanding is consistent with longstanding law in our circuit on trade-secret misappropriation. *See, e.g., Univ. Computing v. Lykes-Youngstown Corp.*, 504 F.2d 518, 537–39 (5th Cir. 1974) (measuring the “value of the secret to the defendant” is “usually the accepted approach where the secret has not been destroyed and where the plaintiff is unable to prove specific injury,” making the “appropriate measure of damages . . . not what plaintiff lost, but rather the benefits, profits, or advantages gained by the defendant in the use of the trade secret.” (quoting *Int’l Indus., Inc. v. Warren Petroleum Corp.*, 248 F.2d 696, 699 (3d Cir. 1957))); *Bohnsack v. Varco, L.P.*, 668 F.3d 262, 280 (5th Cir. 2012) (“Damages in misappropriation cases can take several forms,” including “the development costs the defendant avoided incurring through misappropriation,” and “[t]his variety of approaches demonstrates the ‘flexible’ approach used to calculate damages for claims of misappropriation of trade secrets.” (citations omitted)).

The remaining questions, then, are two-fold. First, the threshold inquiry is not whether the secret holder suffered compensable harm beyond “actual loss,” but whether the misappropriator was unjustly enriched by

the misappropriation in a manner that is not captured by the measurement of the secret holder's "actual loss." As discussed above, *Syntel* generally suggests that a broader, context-specific analysis is required before determining whether unjust enrichment damages, such as avoided costs, may be awarded. *Syntel*, 68 F.4th at 810. To clarify our reading of the statute, *contra Syntel*, we set aside the possibility of an injunction: if misappropriating trade secrets allows a misappropriator to avoid \$1 million in costs for trade secrets they continue to leverage, requiring that misappropriator to pay \$1 million in avoided-costs damages simply puts them in the same financial position they would have been in had they not misappropriated trade secrets at the secret holder's expense. *See* Restatement (Third) of Restitution and Unjust Enrichment § 1 cmt. a (2011) ("Liability in restitution derives from the receipt of a benefit whose retention without payment would result in the unjust enrichment of the defendant at the expense of the claimant."). If unjust enrichment damages were not available, the misappropriator would be allowed to keep the benefit of its own misdeeds at the secret holder's expense. That would be a windfall.

Second, the more pertinent concern is whether the unjust enrichment damages measurement overlaps with either the "actual loss" damages measurement or with, as more relevant here, injunctive relief. If a misappropriator has been precluded from benefitting from the trade secrets by virtue of an injunction, there is no longer any unjust benefit. Imposing both an injunction and an unjust enrichment damages award in those circumstances would be duplicative and therefore punitive. The outcome in *Syntel* is consistent with this understanding; the court determined that the past benefit *Syntel* had received was captured by

the “actual loss” calculation and that Syntel could not benefit in the future due to the permanent injunction. *See Syntel*, 68 F.4th at 814; *see also id.* at 809 (“The [DTSA] 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.”); *id.* at 810–11 (“[T]he 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.”).

The question of duplication is the crux of TCS’s position. TCS argues—both as a matter of blackletter law and under the DTSA—that requiring TCS to pay the costs it avoided in developing BaNCS by using CSC’s trade secrets compensates CSC for the very same harm that the injunctive remedy already prevents by barring TCS from using CSC’s trade secrets or that version of BaNCS in the future. TCS does not contest the measure of the unjust enrichment damages. For its part, CSC simply counters that the avoided-costs damages are compensation for past benefits that TCS received, thus getting TCS “back to square one,” while the injunction prevents TCS’s future use of CSC’s trade secrets. CSC is only partially right.

The unjust enrichment damages award is an estimation of the costs that TCS would have incurred had it developed BaNCS in the same way but without the benefit of CSC’s trade secrets. It aims to get TCS back to square one. But that “square one” is not the position that TCS was in before it ever accessed or used CSC’s trade secrets. It is the position that TCS would have been in had it actually incurred the necessary costs to redevelop BaNCS on its own. And because, in this

counterfactual, TCS would have incurred the costs to redevelop BaNCS, it would necessarily have had access to its redeveloped version of BaNCS. At present, however, the unjust enrichment damages award requires TCS to pay for the cost of redeveloping BaNCS, while the injunction prohibits TCS from accessing its redeveloped version of BaNCS. Similar overlap would occur even with the alternate “income approach” measure of unjust enrichment damages, which estimates TCS’s profits from misappropriating CSC’s trade secrets, including profits from “transforming” Transamerica’s policies to BaNCS and profits from the ultimate usage of the redeveloped BaNCS platform.

But there is not complete overlap. First, both the avoided-costs measure and the income measure capture some benefit that TCS received *before* the imposition of the permanent injunction. Second, in addition to enjoining TCS’s use of BaNCS moving forward, the injunction also bars TCS from further accessing, using, possessing, or retaining any of CSC’s trade secrets. This portion of the injunction is not duplicative as it prevents further use of the trade secrets, while the unjust enrichment damages measure only the amount of TCS’s unjust enrichment from its past use of the trade secrets to redevelop BaNCS.

The resulting question, then, is the proper remedy to eliminate the overlap. TCS would prefer for us to vacate the unjust-enrichment damages award and leave the injunction in place. But without complete overlap, TCS’s requested vacatur of the entire award is improper. The better solution here—both legally and logistically—is instead to reduce the scope of the injunction to eliminate the overlap. In addition to being simpler than undertaking a fact-intensive recalculation of damages, adjusting the injunction

rather than the damages award recognizes that “injunctions are an extraordinary remedy, to be granted only when a party is threatened with injury for which he cannot obtain a sufficient legal remedy.”¹⁰ *DSC Commc’ns Corp. v. Next Level Commc’ns*, 107 F.3d 322, 328 (5th Cir. 1997); see also 4 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”).

We therefore vacate the injunction and remand to the district court to modify the injunction to eliminate its prohibition on TCS’s use of “Post-Misappropriation BaNCS Material,” while maintaining the bar on TCS’s access to and use of CSC’s trade secrets.

2.

In addition to compensatory damages, the advisory jury determined that CSC should be awarded \$140,000,000 in exemplary damages. In its Findings of Fact and Conclusions of Law, the district court then reduced this amount to \$112,303,166 because “the DTSA expressly authoriz[es] ‘2 times’ the amount of compensatory damages.”

Exemplary damages are authorized under the DTSA when a defendant acts “willfully and maliciously” in misappropriating a trade secret. 18 U.S.C. § 1836(b)(3)(C). TCS concedes that if we affirm the district court’s

¹⁰ This remedy also better comports with TCS’s arguments before the district court, where TCS asserted both that an avoided-costs measurement was the proper measure of damages and that imposing an injunction would be inappropriate because CSC had failed to show that legal remedies would be inadequate.

finding that TCS acted in a willful and malicious manner—which we do, *see supra* Section III.A.2—the district court had discretion to award some amount of exemplary damages. But TCS argues that, regardless, the amount of the award “was legally excessive and should be vacated or reduced.”

TCS relies on *State Farm Mutual Automobile Insurance Company v. Campbell* for the proposition that any ratio of exemplary damages to compensatory damages higher than 1:1 can exceed “the outermost limit of the due process guarantee” when “compensatory damages are substantial” 538 U.S. 408, 425 (2003). This is a misreading of *Campbell*. In *Campbell*, the Court rejected an exemplary damages award in the ratio of 145:1—plainly far more extreme than the 2:1 ratio at issue here. *Id.* The Court observed that “[s]ingle-digit multipliers are more likely to comport with due process” before contemplating a hypothetical scenario in which a 1:1 ratio might be the maximum allowable “based upon the facts and circumstances of the defendant’s conduct and the harm to the plaintiff.” *Id.* Notably, the Court in *Campbell* built on the holding in *BMW of North America, Inc. v. Gore*, which endorsed punitive damages in a 4:1 ratio. 517 U.S. 559, 581 (1996); *Campbell*, 538 U.S. at 425.

TCS emphasizes *Campbell*’s holding that “[t]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant’s conduct.” *Campbell*, 538 U.S. at 419 (quoting *Gore*, 517 U.S. at 575). The Supreme Court has instructed lower courts to evaluate several factors to determine reprehensibility, including whether: “the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the

target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.” *Id.* TCS argues that none of these factors apply, because the district court’s ruling merely “faulted TCS for failing to adequately respond to CSC’s letters expressing concern—letters from a competitor that had just lost its client to TCS and that had erroneously accused TCS of using CSC’s information to benefit other customers.”

The district court, however, did far more than that. It made findings that TCS: “knew its misappropriation of the Trade Secrets was wrong and intentionally misappropriated the Trade Secrets”; “refused to contact CSC” despite multiple notices of misappropriation; “made misrepresentations to Transamerica” regarding use of the information; intentionally “provided CSC source code copybooks to TCS off-shore resources to create duplicate copybooks”; and failed to discipline its employees for any misconduct. While it is true that the harm was not physical or related to health and safety and that CSC did not have financial vulnerability, the district court’s fact finding shows that TCS’s conduct involved repeated action and that TCS acted maliciously and through repeated deceit by using rebadged employees to obtain CSC’s information.

Finally, we have held that when “Congress has effectively set the tolerable proportion [of exemplary to compensatory damages], the three-factor *Gore* analysis is relevant only if the statutory cap itself offends due process.” *Abner v. Kansas City S. R. Co.*, 513 F.3d 154, 164 (5th Cir. 2008). Here, the district court conformed to the proportion set forth in the DTSA—a ratio no higher than 2 times the compensatory

damages—and based this decision in its findings of fact and in caselaw from this circuit finding “that the statutory maximum civil penalty offers the appropriate award” when the “reprehensible conduct” does not implicate violence, health, or safety, but does involve trickery, deceit, and “a larger pattern of misconduct.” *Lincoln v. Case*, 340 F.3d 283, 293–94 (5th Cir. 2003). Given those findings, as the Supreme Court and our court have recognized, “a higher ratio may be needed where ‘the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine.’” *Id.* at 294 (quoting *Gore*, 517 U.S. at 582).

We therefore affirm the district court’s award of exemplary damages in twice the amount of the compensatory damages.

3.

Finally, TCS asserts that the district court erred by extending the injunction to bind non-parties. Rule 65(d)(2) of the Federal Rules of Civil Procedure provides that an injunction may only bind “(A) the parties; (B) the parties’ officers, agents, servants, employees, and attorneys; and (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).” FED. R. CIV. P. 65(d)(2). In its final judgment, the district court defined “TCS Parties” to mean “TCS and their respective affiliates, successors, directors, officers, employees, consultants, agents, servants, and attorneys, and any and all other persons who are in active concert or participation with any of them.”

TCS moved to amend the judgment, arguing in relevant part that the injunction should be amended to define “TCS Parties” consistent with the terminology used in Rule 65(d). Namely, TCS proposed to revise

the definition to exclude TCS and TAIC's affiliates, successors, directors, officers, employees, consultants, agents, servants, and attorneys from the definition of the "TCS Parties." In its "limited opposition," CSC objected to the position that "affiliates, directors, and successors are not within the scope of the injunction under the 'active concert or participation' prong," and urged the district court to leave the definition as is or modify it to include the aforementioned parties. The district court denied TSC's motion without providing analysis.

Before us, the parties expend little effort on this issue. Despite TCS's assertion that "there was no lawful basis to enjoin non-parties," it acknowledges that non-parties "who are in active concert or participation" with a party may be enjoined under Rule 65(d)(2). The Supreme Court has explained that Rule 65(d)(2) is "derived from the common-law doctrine that a decree of injunction not only binds the parties defendant but also those identified with them in interest, in 'privity' with them, represented by them or subject to their control." *Regal Knitwear Co. v. N.L.R.B.*, 324 U.S. 9, 14 (1945). For that reason, non-parties may be bound by an injunction, as long as they fall within the parameters of Rule 65(d)(2). *See id.* at 14 ("The term 'successors and assigns' in an enforcement order of course may not enlarge its scope beyond that defined by the Federal Rules of Civil Procedure. Successors and assigns may, however, be instrumentalities through which defendant seeks to evade an order or may come within the description of persons in active concert or participation with them in the violation of an injunction."); *see also Ganpat v. Eastern Pacific Shipping PTE, Ltd.*, 66 F.4th 578, 585–86 (5th Cir. 2023) (rejecting party's argument that an

injunction was over-broad for purporting to bind a particular non-party affiliate).

In *Le Tourneau Co. v. N.L.R.B.*, this court considered the National Labor Relations Board's request for rehearing on the basis that the court's injunction referenced only the Le Tourneau Company and did not explicitly bind the company's "officers, agents, successors and assigns." 150 F.2d 1012, 1012 (5th Cir. 1945). The court denied rehearing and explained why adding the requested language was "wholly unnecessary":

A decree of injunction, like other personal judgments, binds parties and their privies, and only these. This Company's officers, agents and successors, though not parties to this case personally, are privies of the Company. All that is necessary hereafter to bind any of them is to notify them of the injunction. As to assigns, they may or may not be bound by such an injunction. If the assignment be of the Company's whole plant and business, it is probable the assignee would be bound as a successor. If the parking lots alone were sold off for another use, we take it the injunction would not affect the new owner. Of course a sham sale to evade the injunction would not be allowed to succeed. Persons who are not parties nor in law affected by an injunction cannot be brought within it by naming them in it. While it is common practice to write into injunctions such broad expressions as are under discussion, they really have no effect. . . . [The entities described by Rule 65(d)(2)] are bound whether named or not.

Nothing is gained by multiplying words about them.

Id. at 1012–13 (internal citations omitted).

Here, TCS has not pointed to any specific non-party that it believes the district court has impermissibly enjoined. The parties apparently agree that affiliates, directors, successors, and consultants can legally be bound by an injunction but only to the extent allowed by Rule 65(d)(2)(C). Their only disagreement, then, is whether the district court’s definition of “TCS Parties” captures that agreement. To some extent, altering the definition seems unnecessary because, regardless, the permissible reach of the injunction is set by Rule 65(d)(2)(C). *See Le Tourneau Co.*, 150 F.2d at 1012– 13; *Regal Knitwear*, 324 U.S. at 14. Still, by intermingling the terms “affiliates,” “directors,” and “consultants” (which require “active concern or participation”) with the terms that appear in Rule 65(d)(2)(B) (which do not), the existing definition of “TCS Parties” risks conflating these categories. For that reason, we direct the district court on remand to modify the definition of “TCS Parties” as follows, which more closely mirrors CSC’s offered compromise:

“TCS Parties” means (i) TCS and TAIC; (ii) their officers, agents, servants, employees, and attorneys; and (iii) other persons who are in active concert or participation with anyone described in subsections (i) or (ii) (including directors, affiliates, successors, and consultants).

This definition tracks the language of Rule 65(d)(2) and reflects the parties’ shared position that non-parties who do not fall within subsection (d)(2)(B) can be enjoined but only if they are “in active concert or participation” as provided by subsection (d)(2)(C).

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IV.

For the foregoing reasons, we VACATE the injunction and REMAND to the district court for the issuance of a revised injunction consistent with this opinion—namely, removing the bar on TCS’s future use of post-appropriation BaNCS material and clarifying that the scope of the injunction comports with Rule 65(d)(2). We otherwise AFFIRM the rulings of the district court on all remaining issues.

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APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Filed: December 19, 2025]

No. 24-10749

COMPUTER SCIENCES CORPORATION,
Plaintiff—Appellee,

versus

TATA CONSULTANCY SERVICES LIMITED;
TATA AMERICA INTERNATIONAL CORPORATION,
Defendants—Appellants.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CV-970

ON PETITION FOR REHEARING AND
REHEARING EN BANC

Before HIGGINSON, HO, and WILSON, *Circuit Judges.**

PER CURIAM:

The petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 40 and 5TH CIR. R. 40), the petition for rehearing en banc is DENIED.

* Judge Irma Carrillo Ramirez did not participate in the consideration of the rehearing en banc.

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. 3:19-CV-0970-X

COMPUTER SCIENCES CORPORATION,
Plaintiff,

v.

TATA CONSULTANCY SERVICES LIMITED, *et al.*,
Defendants.

FINAL JUDGMENT

From November 8, 2023 to November 17, 2023, this Court presided over a trial in this case before an advisory jury. The advisory jury found Tata Consultancy Services Limited (“TCS”) liable for willful and malicious trade secret misappropriation under the federal Defend Trade Secrets Act of 2016 (“DTSA”) and awarded Computer Sciences Corporation (“CSC”) \$70,000,000 in compensatory damages and \$140,000,000 in exemplary damages.

Through its Findings of Fact and Conclusions of Law issued earlier today, the Court also found TCS liable for willful and malicious trade secret misappropriation under the DTSA and awarded CSC \$56,151,583 in compensatory damages and \$112,303,166 in exemplary damages. In the Court’s Findings of Fact and Conclusions of Law, the Court also made rulings on remaining issues, including prejudgment interest,

entitlement to attorney's fees, entitlement to costs, and permanent injunctive relief. Because the Court granted in part CSC's Amended Motion for Entry of Judgment, the Court now enters judgment on the Findings of Fact and Conclusions of Law in the following manner:

1. The Court ORDERS that TCS is liable for willful and malicious trade secret misappropriation under the DTSA.
2. The Court ORDERS that TCS is liable to CSC for \$56,151,583 in compensatory damages and \$112,303,166 in exemplary damages.
3. The Court ORDERS TCS to pay CSC \$168,454,749 in compensatory and exemplary damages.
4. The Court ORDERS that TCS is liable for \$25,773,576.60 in prejudgment interest through June 13, 2024.
5. The Court ORDERS TCS to pay CSC \$25,773,576.60 in prejudgment interest through June 13, 2024.
6. The Court ORDERS that TCS is liable for post-judgment interest at an annual rate of 4.824% starting from the date of entry of this judgment.
7. The Court ORDERS that TCS is liable for CSC's attorney's fees in an amount to be determined in a later order. CSC must file a motion for attorney's fees with supporting evidence within 14 days of the date of this order.
8. The Court ORDERS that TCS is liable for CSC's costs in an amount to be determined in a later order. CSC must file a bill of costs within 14 days of the date of this order.

9. In accordance with the Findings of Fact and Conclusions of Law, the Court ENJOINS TCS as follows:

a. Additional Definitions

- 1) “Transamerica” means Transamerica Corporation or any of its affiliates, including Money Services Inc.
- 2) “CSC Trade Secrets” means CSC’s proprietary source code and confidential documentation for its VANTAGE-ONE®/Wealth Management Accelerator™ and CyberLife® software platforms.
- 3) “TCS Parties” means TCS and their respective affiliates, successors, directors, officers, employees, consultants, agents, servants, and attorneys, and any and all other persons who are in active concert or participation with any of them.
- 4) “TCS I&A Products” means TCS software providing solutions in the U.S. life insurance and annuities market, including but not limited to BaNCS.
- 5) “Post-Misappropriation BaNCS Materials” means code, including source code and object code, for BaNCS and any technical documentation describing actual or potential operation of BaNCS, in each case developed after July 18, 2017.
- 6) “TCS Transamerica Support Personnel” means the TCS officers, directors, employees, consultants, agents, and servants, if any, who are necessary to support Transamerica’s use of Post-

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Misappropriation BaNCS Materials for the purpose of administering existing Transamerica products currently being administered on TCS I&A Products.

- 7) "Monitor" means an independent monitor, to be appointed by CSC and paid for by TCS.
- b. Without express written consent directly from CSC at a point after entry of this judgment, the TCS Parties shall not:
- 1) access, attempt to access, use, or attempt to use any CSC Trade Secrets for any reason, including but not limited to the design, development, enhancement, marketing, implementation, or use of any TCS I&A Products;
 - 2) possess or retain any CSC Trade Secrets in any form in any location, including (i) on any of TCS's servers (including email servers), shared drives, shared domains, or other places of electronic storage, (ii) on any of Transamerica's servers (including email servers), shared drives, shared domains, or other places of electronic storage to which TCS Parties have access, or (iii) on any other servers (including email servers), shared drives, shared domains, or other places of electronic storage to which TCS Parties have access, including computers used by TCS Parties;
 - 3) access, attempt to access, use, or attempt to use any Post-Misappropriation BaNCS Materials for the design, development,

enhancement, marketing, implementation, or use of any TCS I&A Products; or resist, hamper, delay, or otherwise interfere with the activities of the Monitor, who for a period of ten years shall have unfettered access at any time to monitor TCS's design, development, enhancement, marketing, implementation, and use of any TCS I&A Products to ensure the TCS Parties do not improperly use any CSC Trade Secrets or Post-Misappropriation BaNCS Materials.

- c. For a period of 18 months, TCS shall not permit any TCS Parties who had access to any CSC Trade Secrets to work on, or assist in, directly or indirectly, the design, development, enhancement, marketing, implementation, or use of any TCS I&A Products.
- d. For a period of ten years, TCS shall:
 - 1) maintain a list of all TCS Parties who had access to any CSC Trade Secrets;
 - 2) permit the Monitor to confirm that TCS Parties do not have access to CSC Trade Secrets;
 - 3) permit the Monitor to confirm that TCS Parties do not possess or retain any CSC Trade Secrets in any form in any location, including in the locations described in paragraph 9(b)(2) above;
 - 4) permit the Monitor to talk with any TCS Parties who might be able to assist the Monitor in determining whether CSC

Trade Secrets or Post-Misappropriation BaNCS Materials are being used in the design, development, enhancement, marketing, implementation, or use of any TCS I&A Products;

- 5) provide the Monitor with unfettered access to TCS Parties; permit the Monitor to examine, evaluate, and analyze TCS's hard-copy and electronic information in any location, including in the locations described in paragraph 9(b)(2) above, to determine whether CSC Trade Secrets or Post-Misappropriation BaNCS Materials are being used in the design, development, enhancement, marketing, implementation, or use of any TCS I&A Products; and
 - 6) provide the Monitor with unfettered access to the hard-copy and electronic information described above.
- e. As an exception to paragraph 9(b) above, to the extent Transamerica must use Post-Misappropriation BaNCS Materials for existing Transamerica products currently being administered on TCS I&A Products:
- 1) TCS shall maintain a list of the TCS Transamerica Support Personnel and provide it to CSC; and
 - 2) the TCS Transamerica Support Personnel may access and use the Post-Misappropriation BaNCS Materials solely for the purpose of administering the existing Transamerica products currently being administered on TCS I&A Products.

- f. CSC may confidentially provide the Monitor with the type of information CSC deems necessary to monitor TCS's design, development, enhancement, marketing, implementation, or use of any TCS I&A Product to ensure that TCS does not improperly use any CSC Trade Secrets.
- g. The Monitor shall disclose to the Court and CSC the substance or outcome of its investigation six months after the date of this judgment and once every year thereafter and may disclose to the Court whether the Monitor has identified any evidence of misappropriation of any company's trade secrets (not limited to CSC Trade Secrets).
- h. Six months after the date of this judgment and once every year thereafter for the next ten years, TCS shall file with the Court a report in writing and under oath setting forth in detail the manner and form with which TCS has complied with this Order.

Within 14 days, CSC must file a motion for determination of the amount of its attorney's fees and expenses and a separate bill of costs pursuant to Federal Rule of Civil Procedure 54(d).

IT IS SO ORDERED this the 13th day of June, 2024.

/s/ Brantley Starr
BRANTLEY STARR
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. 3:19-CV-0970-X

COMPUTER SCIENCES CORPORATION,
Plaintiff,

v.

TATA CONSULTANCY SERVICES LIMITED, et al.,
Defendants.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Before the Court are the parties' motions for entry of judgment. (Docs. 506, 509). From November 8, 2023 to November 17, 2023, this Court presided over a trial before an advisory jury. The jury found Defendant Tata Consultancy Services Limited ("TCS") liable for willful and malicious trade secret misappropriation under the federal Defend Trade Secrets Act of 2016 ("DTSA") and awarded Plaintiff Computer Sciences Corporation ("CSC") \$70,000,000 in compensatory damages and \$140,000,000 in exemplary damages.¹

After careful consideration, the Court **GRANTS IN PART** CSC's amended motion for entry of judgment (Doc. 509) and **DENIES** TCS's motion (Doc. 506). As

¹ Doc. 488.

discussed more fully below, CSC's damages expert testified at trial that TCS was unjustly enriched in the amount of \$56,151,583, and the Court finds that he testified credibly. However, in its post-trial motion for entry of judgment, CSC contends that, by accounting for inflation, TCS was actually unjustly enriched by at least \$56,151,583 to \$74,870,716, therefore supporting the advisory jury's \$70,000,000 compensatory damages award. The role of an advisory jury is to assist the judge, but it is the duty of the judge to make findings of fact and enter judgment in accordance with the record before the Court.² And as the factfinder, the Court cannot consider disputed evidentiary facts on paper when it did not have the opportunity to examine the credibility of that evidence at trial.³ However, the Court is awarding pre-judgment interest at a rate of 8.5% (totaling \$25,773,576.60), which accounts for a majority of the roughly \$42 million delta CSC seeks.

Accordingly, after a thorough review of the evidentiary record, the Court finds that the evidence supports no more than a \$56,151,583 compensatory damages award in light of the expert testimony in the evidentiary record and an award of \$112,303,166 in exemplary damages. Likewise, the Court cannot hold Tata America International Corporation ("TAIC") jointly and severally liable with TCS given that CSC did not present adequate proof of liability against TAIC at trial. Finally, the Court concludes CSC is entitled to costs and attorney's fees, and the Court awards prejudgment interest and injunctive relief.

² See *Aetna Ins. Co. v. Paddock*, 301 F.2d 807, 811 (5th Cir. 1962).

³ See *Lifshen v. 20/20 Acct. Sols., L.L.C.*, 858 F. App'x 704, 708–09 (5th Cir. 2021) (per curiam).

In accordance with Federal Rule of Civil Procedure 52(a), the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The facts below were all proven by at least a preponderance of the evidence.
2. The facts below supporting willful and malicious misappropriation were also proven by clear and convincing evidence.

A. Parties

3. CSC provides information technology services and business solutions software to its customers, including customers in the life, wealth, and annuities industry.⁴
4. CSC was founded in 1959, is a Nevada corporation, and has a principal place of business in Ashburn, Virginia.⁵
5. CSC is a wholly owned subsidiary of DXC Technology Company (“DXC”).⁶
6. TCS is a global company offering technology and consulting services to its customers, including customers in the insurance industry.⁷
7. TAIC is a wholly owned subsidiary of TCS Limited.⁸

⁴ Doc. 492 at 246:1–8, 246:18–247:1.

⁵ Doc. 451 at 4.

⁶ Doc. 492 at 326:16–18.

⁷ Doc. 496 at 1213:2–11.

⁸ Doc. 451 at 5.

8. Through its subsidiaries, Transamerica Corporation provides life insurance, annuities, and other long-term savings and investment products to its customers.⁹
9. Transamerica Corporation is a wholly owned subsidiary of Aegon N.V.¹⁰
10. MSI is a wholly owned subsidiary of Transamerica Corporation.¹¹
11. For many years, CSC has licensed Vantage and CyberLife—two CSC software platforms used to administer and process annuities and life insurance policies—to Transamerica pursuant to license agreements.¹²
12. In December 1994, CyberTek Corporation (“CyberTek”) entered into an Enterprise License Agreement with MSI under which CyberTek would license certain software systems to MSI (as amended, the “CyberLife Agreement”).¹³
13. Effective September 1999, CyberTek and MSI amended the CyberLife Agreement to include certain CyberLife software as part of the licensed system.¹⁴
14. In 2000, CSC acquired CyberTek’s successor.¹⁵

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Doc. 492 at 246:22–247:4, 252:6–15, 291:1–8, 253:8–17.

¹³ Doc. 451 at 5.

¹⁴ *Id.*

¹⁵ Doc. 492 at 271:9–14.

15. In December 1998, CSC entered into a CSC Customer Agreement with Transamerica's predecessor, Aegon USA, Inc. ("Aegon USA"), under which CSC would license certain software systems to Aegon USA (as amended, the "Vantage Agreement").¹⁶
16. Effective June 2005, CSC and MSI, as assignee of Aegon USA, amended the Vantage Agreement to include certain Vantage software as part of the licensed system.¹⁷
17. In or around 2013, TCS began providing maintenance services to Transamerica for Vantage and CyberLife pursuant to a 2013 Master Services Agreement between TCS and MSI.¹⁸
18. In 2014, to allow third parties like TCS to work on CSC's software with certain restrictions, CSC and Transamerica entered into a Third-Party Access Addendum to Software License Agreements (the "TPAA") effective February 2014.¹⁹
19. The TPAA is an "Addendum" to the "Software license agreements set forth on Exhibit A," which are the CyberLife Agreement and the Vantage Agreement.²⁰

¹⁶ Doc. 451 at 5.

¹⁷ *Id.*

¹⁸ *Id.*; Doc. 381 at 2–3.

¹⁹ Doc. 381 at 2–3; Doc. 451 at 5.

²⁰ PX081 at 1, 6.

20. The TPAA allowed TCS to “access, copy, execute and use” CSC’s software “solely for the benefit of” Transamerica.²¹
21. The TPAA also allowed TCS “to copy” and “modify” CSC’s software only if CSC’s earlier agreement with Transamerica permitted such modifications.²²
22. In 2016, Transamerica decided its software needed a refresh, so it initiated a vendor-selection process through which both CSC and TCS bid for the work.²³
23. At that time, TCS was looking for a client to enter the third-party administrator market in the U.S. insurance industry.²⁴
24. BaNCS is the software platform that TCS uses to, among other things, administer and process annuities and life insurance policies.²⁵
25. As of 2017, TCS was still building its U.S. geography layer for BaNCS, and there was no company using BaNCS to administer life insurance and annuity products in the U.S. because BaNCS was not ready to administer such products in the U.S.²⁶

²¹ *Id.* at 3; Doc. 381 at 2–3.

²² PX081 at 3; Doc. 381 at 2.

²³ Doc. 495 at 865:16–25.

²⁴ Doc. 493 at 440:15–18, 441:7–11.

²⁵ *Id.* at 481:25–482:6.

²⁶ *Id.* at 440:19–441:6, 441:12–22; Doc. 496 at 1378:16–1379:1, 1379:2–13, 1531:10–14.

26. TCS believed that landing Transamerica as an anchor client would create an opportunity to adapt BaNCS for the U.S. market.²⁷
27. TCS won the selection process, and Transamerica began to transition from CSC's software platforms to TCS's BaNCS platform.²⁸
28. On August 3, 2017, TCS and MSI entered into Service Agreement No. 75 ("Project Chess – Due Diligence") to the 2013 Master Services Agreement.²⁹
29. On January 11, 2018, TCS entered into agreements with MSI to, among other things, administer Transamerica's U.S. life insurance and annuity business lines using BaNCS.³⁰
30. The January 2018 agreements were TCS's first contracts with a U.S. insurance company wherein it would be licensing BaNCS to administer and process annuities and life insurance policies.³¹
31. As part of the January 2018 agreements, TCS hired over 2,200 people who were formerly employed by Transamerica ("TCS Rebadged Employees"), including former Transamerica employees who maintained Vantage and CyberLife at Transamerica.³²

²⁷ Doc. 493 at 441:15–22.

²⁸ Doc. 495 at 866:20–22, 878:12–14; Doc. 492 at 291:9–14.

²⁹ Doc. 451 at 6; PX115.

³⁰ Doc. 451 at 5; PX094.

³¹ Doc. 496 at 1379:17–22.

³² Doc. 451 at 5; Doc. 494 at 753:14–17.

32. TCS promised to convert around 10.5 million Transamerica policies to BaNCS in three to five years.³³
33. This promise was aggressive.³⁴
34. Paul Ko—CSC’s current Account Manager for the Transamerica account, whose testimony the Court finds credible and reliable—testified that he had never heard of a conversion of over 10 million policies before the 2018 TCS-Transamerica contracts.³⁵
35. The Transamerica conversion to BaNCS was a “black box” conversion, which is more difficult and expensive.³⁶
36. A black box conversion is when a company converts from one or more source systems (here, Vantage and CyberLife) to a target system (BaNCS) and the target company (TCS) does not have permission to access the source code or technical documents of the source systems to complete the conversion.³⁷
37. TCS’s promise was also ambitious because no U.S. insurance company had ever used BaNCS and TCS was still building BaNCS for use in the U.S.³⁸

³³ Doc. 494 at 802:17–22.

³⁴ *Id.* at 802:8–803:5, 804:8–12.

³⁵ *Id.* at 804:5–7.

³⁶ *Id.* at 804:13–805:23.

³⁷ *Id.* at 804:13–805:3.

³⁸ Doc. 496 at 1378:16–1379:13; Doc. 493 at 440:19–441:6, 441:12–14.

38. Even as late as April 14, 2021—more than three years after TCS’s promise to Transamerica—many carrier-agnostic functions necessary for BaNCS to be able to administer life insurance and annuity products in the U.S. were missing and still needed to be developed.³⁹

B. Trade Secret Misappropriation

39. CSC treats its proprietary source code and confidential documentation for its VANTAGE-ONE® / Wealth Management Accelerator™ (“Vantage”) and CyberLife® (“CyberLife”) software platforms (the “Trade Secrets”) as trade secrets, and in the opinion of CSC’s technical expert Paul Pinto, whose qualifications are discussed below and whose opinions are credible and support the Court’s findings of fact, the Trade Secrets qualify as trade secrets under the requirements of the DTSA.⁴⁰
40. CSC owns the Trade Secrets.⁴¹
41. CSC owns the Vantage software platform, including any modifications made to it by Transamerica.⁴²

³⁹ Doc. 496 at 1382:10–1385:18; PX451.

⁴⁰ Doc. 494 at 796:17–24; Doc. 492 at 254:13–9, 260:6–10; Doc. 495 at 931:21–932:1; 932:9– 950:25; 948:4–949:20; 950:3–950:25.

⁴¹ PX069; PX088; PX081; Doc. 495 at 933:8–11; 935:12–936:2; 936:12–937:18; 939:3–942:16; 947:12–19, 949:7–9.

⁴² Doc. 492 at 251:21–23; PX010 at 1; Doc. 494 at 799:9–800:21, 833:14–18; PX069; PX081; Doc. 494 at 779:15–780:5.

42. The Vantage Agreement provides that “[a]ll copies of and intellectual property rights in” Vantage, “includ[ing] all computer code” and “Documentation . . . provided by CSC with” Vantage, “including translations, adaptations, compilations, partial copies within other software, upgrades, corrections, modifications, enhancements, and derivative works, whether made by [Transamerica] or CSC, shall be the property of CSC.”⁴³
43. The Vantage Agreement further provides that “[Transamerica] understands that [Vantage] (including the program code, Documentation, specifications, logic and design of [Vantage] and any translations, adaptations, compilations, partial copies within other software, upgrades, corrections, modifications, enhancements, and derivative works of [Vantage]) are confidential trade secrets of CSC, developed at great expense.”⁴⁴
44. CSC owns the CyberLife software platform, including any modifications made to it by Transamerica.⁴⁵
45. The CyberLife Agreement provides that “any modified or merged version of [CyberLife],” including the “computer programs for [CyberLife] and its subcomponents designated herein, and all materials related thereto

⁴³ PX069 at 3.

⁴⁴ *Id.* at 8.

⁴⁵ Docs. 492–93 at 251:24–252:2, 272:13–22, 428:7–20; PX088 at 4; PX010 at 1; Doc. 494 at 797:24–799:8; Doc. 495 at 933:8–11; 935:12–936:2; 936:12–937:18; 939:3–942:16; 947:12–19; PX523 at 1–2; PX088; PX081.

provided to [Transamerica] under this Agreement, which may include but not be limited to . . . documentation, source codes, object codes, specifications and materials of any type whatsoever (tangible or intangible and machine or human readable) which incorporate or reflect the design, specifications, or workings of [CyberLife] and any changes, additions or modifications,” “shall remain subject to the LICENSE AND TITLE, POSSESSION AND USE and TERMINATION provisions of this Agreement.”⁴⁶

46. The CyberLife Agreement further provides that it “does not grant [Transamerica] any legal or equitable title or other right in [CyberLife] or any modifications of [CyberLife].”⁴⁷
47. In the CyberLife Agreement, Transamerica “acknowledge[d] that [CyberLife] contain[s] unique, confidential and secret information and is a trade secret and confidential proprietary product of [CSC].”⁴⁸
48. CSC created voluminous technical manuals for Vantage and CyberLife.⁴⁹
49. CSC owns these technical manuals.⁵⁰

⁴⁶ PX088 at 2–3, 5.

⁴⁷ *Id.* at 4.

⁴⁸ *Id.*

⁴⁹ Doc. 492 at 255:23–256:3, 256:23–257:2, 258:12–16.

⁵⁰ Doc. 492 at 255:23–256:3, 256:23–257:4, 258:12–18, 275:1–6; PX002 at 20; PX010 at 1.

50. Transamerica also created technical manuals for Vantage and CyberLife.⁵¹
51. Under its agreements with Transamerica, CSC owns the confidential information regarding Vantage and CyberLife in these technical manuals.⁵²
52. CSC created source code, including copybooks, for Vantage and CyberLife.⁵³
53. CSC owns this source code, including any modifications made by Transamerica.⁵⁴
54. Pinto conducted an investigation into whether the Trade Secrets are generally known, including searches of the public domain, and opined that the Trade Secrets are not generally known.⁵⁵
55. Jon Taute—a former CSC employee who worked in the insurance software industry for over 40 years and for CSC or one of its predecessors for 35 years, and whose testimony the Court finds credible and reliable—also testified that he would not provide the Trade Secrets to employees of a competitor building a competing policy administration system.⁵⁶

⁵¹ PX549; PX550; PX551; PX552.

⁵² PX069 at 3–4, 8; PX088 at 2–5.

⁵³ Doc. 492 at 266:7–9; PX534 at 1–983.

⁵⁴ Doc. 492 at 261:22–262:1, 264:7–11, 265:17–25, 266:10–11; PX534 at 1; PX002 at 20; PX010 at 1; PX069 at 3–4, 8; PX088 at 2–5.

⁵⁵ Doc. 495 at 933:12–21, 949:10–950:7.

⁵⁶ Doc. 492 at 243:21–244:2, 245:7–10, 246:15–17, 254:20–255:4, 260:12–19, 266:20–267:4.

56. The Trade Secrets consist of or relate to highly specialized and complex software systems with millions of lines of code.⁵⁷
57. Pinto evaluated the Trade Secrets and opined that they are not readily ascertainable through proper means.⁵⁸
58. CSC has one of the largest insurance software businesses in the world.⁵⁹
59. CSC receives hundreds of millions of dollars in revenue per quarter from its insurance group, including software licensing fees, maintenance and support fees, and fees for software enhancements and modifications.⁶⁰
60. From 2015 to 2020, CSC's third-party software administration business grew from \$100 million to \$250 million, largely due to Vantage and CyberLife.⁶¹
61. CSC's insurance business process outsourcing ("BPO") services consist of providing end-to-end processing for entire blocks of business, often including underwriting and death claims for millions of insurance policies.⁶²
62. CSC administers BPO services for approximately 20 million insurance policies through

⁵⁷ *Id.* at 252:6–20.

⁵⁸ Doc. 495 at 949:24–950:7.

⁵⁹ Doc. 493 at 569:19–23, 571:8–15.

⁶⁰ Doc. 492 at 267:12–268:8; Doc. 493 at 569:19–23.

⁶¹ Doc. 493 at 571:8–572:2.

⁶² Doc. 492 at 269:8–270:1.

CyberLife and approximately 18 million insurance policies through Vantage.⁶³

63. CSC would not be able to offer these BPO services without Vantage and CyberLife.⁶⁴
64. CSC would lose millions of dollars of revenue if a competitor improperly obtained the Trade Secrets.⁶⁵
65. BaNCS competes with Vantage and CyberLife in the U.S. life insurance and annuities market, and as found in Section IV.C below, TCS obtained economic value from the disclosure and use of the Trade Secrets, which demonstrates that another person could obtain economic value from the disclosure or use of the Trade Secrets.⁶⁶
66. Pinto opined that the Trade Secrets derive independent economic value because they are secret and not generally known or readily ascertainable through proper means.⁶⁷
67. CSC securely stores its source code for Vantage and CyberLife in electronic form in source code libraries on servers used by CSC developers.⁶⁸
68. CSC marks its technical manuals for Vantage and CyberLife with statements that the information is owned by CSC and is trade-secret, confidential, and proprietary

⁶³ *Id.* at 269:8–270:1.

⁶⁴ *Id.* at 270:2–4.

⁶⁵ *Id.* at 270:5–9.

⁶⁶ Doc. 495 at 946:8–15; Doc. 494 at 801:18–22.

⁶⁷ Doc. 495 at 933:12–21; 950:8–12.

⁶⁸ Doc. 492 at 261:17–21, 263:16–20.

information, and marks its Vantage and CyberLife source code, including copybooks, with a banner at the beginning stating: “This program is proprietary, confidential and trade secret property of Computer Sciences Corporation and may not be copied or published without prior written consent.”⁶⁹

69. The CyberLife Agreement allows Transamerica to use the Trade Secrets only to process data for Transamerica’s own use, does not grant Transamerica any legal title or other rights to CyberLife or modifications made to CyberLife, and does not permit Transamerica to use its access to CyberLife to build a competing product.
70. Section 1.1 of the CyberLife Agreement defines the “System” as “[a]n assembly of [CSC’s] computer programs for a System and its subcomponents designated herein, and all materials related thereto provided to [Transamerica] under this Agreement, which may include but not be limited to, flow charts, logic diagrams, documentation, source codes, object codes, specifications and materials of any type whatsoever (tangible or intangible and

⁶⁹ Doc. 492 at 274:9–15, 275:1–10; Doc. 495 at 935:12–939:2; Doc. 493 at 490:19–491:8; PX474 at 2; PX475 at 2; PX476 at 2; PX477 at 2; PX478 at 2; PX479 at 2; PX480 at 2; PX481 at 2; PX482 at 2; PX483 at 2; PX484 at 2; PX485 at 2; PX486 at 2; PX487 at 2; PX489 at 2; PX490 at 2; PX491 at 2; PX492 at 2; PX493 at 2; PX494 at 2; PX495 at 2; PX496 at 2; PX505 at 2; PX506 at 1; PX507 at 2; PX509 at 2; PX510 at 2; PX511 at 2; PX514 at 2; PX515 at 2; PX517 at 3; PX519 at 2; PX520 at 2; PX521 at 2 and footer on 1–210; PX523 at 2; PX524 at 2; PX525 at 2; PX531 at 2; Doc. 492 at 261:22– 262:1, 262:13–16, 264:7–11, 265:17–25; PX534 at 1.

machine or human readable) which incorporate or reflect the design, specifications, or workings of such programs and any changes, additions or modifications provided by [CSC] through Maintenance or Enhancements.”⁷⁰

71. Under Section 4.1, the “License and Title” granted to Transamerica is that Transamerica “is entitled to use said mainframe Systems solely at the Authorized Location to process data for its own use and for the Authorized Companies.”⁷¹
72. Section 4.2 provides that the CyberLife Agreement does not grant Transamerica “any legal or equitable title or other right in the Systems or any modifications of the Systems,” and that “[n]either this Agreement nor any of the Systems or related materials may be assigned, sublicensed, or otherwise transferred by [Transamerica], voluntarily or involuntarily, without prior written consent by [CSC].”⁷²
73. Under Section 5.1, Transamerica acknowledged that “the System(s) contain unique, confidential and secret information and is a trade secret and confidential proprietary product of [CSC],” and that Transamerica cannot “allow any person or entity to transmit or reproduce the System(s) in whole or in part in any manner except as permitted” in the agreement.⁷³

⁷⁰ PX088 at 2–3.

⁷¹ *Id.* at 4.

⁷² *Id.*; Doc. 492 at 271:20–272:22.

⁷³ PX088 at 4.

74. Under Section 5.3, Transamerica “may modify the Systems or merge the System with other computer programs; however, any modified or merged version of the System shall remain subject to the License and Title, Possession and Use, and Termination provisions of [the] Agreement.”⁷⁴
75. Under Section 5.4, Transamerica “may not reverse engineer, reverse assemble or reverse compile any System or part thereof.”⁷⁵
76. Under the Vantage Agreement, CSC provided Transamerica with a limited license to use Vantage, pursuant to the confidentiality provisions—the agreement did not provide Transamerica with any title or ownership in Vantage, but rather provides that CSC owns any works, modifications, enhancements, copies, software upgrades, corrections, enhancements, and derivative works of Vantage, irrespective of who makes them.⁷⁶
77. Under Section 2 of the Vantage Agreement, “Documentation” is defined as “the formal documentation provided by CSC with a Software Product licensed by [Transamerica] as updated by CSC from time to time,” and “Software Product” is defined as “any computer software package owned or marketed by CSC, and includes all computer code (whether machine readable or human readable),

⁷⁴ *Id.* at 5.

⁷⁵ *Id.*

⁷⁶ Doc. 495 at 941:16–942:16; PX069 at 3–4, 8.

Documentation, and related materials identified by CSC as part of the package.”⁷⁷

78. Under Section 3.1, Transamerica “receives only a limited license to use [the] Software Products,” “[n]o title, ownership, or intellectual property rights are transferred to” Transamerica, Transamerica “may use Software Products licensed to [Transamerica] only in the manner and for the purposes expressly authorized by [the] Agreement,” and “CSC reserves all rights not expressly granted to [Transamerica].”⁷⁸
79. Under Section 3.2, “[a]ll copies of and intellectual property rights in Software Products, including translations, adaptations, compilations, partial copies within other software, upgrades, corrections, modifications, enhancements, and derivative works, whether made by [Transamerica] or CSC, shall be the property of CSC and subject to the terms of [Transamerica’s] license to the Software Products.”⁷⁹
80. Under Section 9.1, Transamerica recognized “that the Software Products (including the program code, Documentation, specifications, logic and design of the Software Products and any translations, adaptations, compilations, partial copies within other software, upgrades, corrections, modifications, enhancements and derivative works of the Software Products) are

⁷⁷ PX069 at 3.

⁷⁸ *Id.*

⁷⁹ *Id.*

confidential trade secrets of CSC, developed at great expense.”⁸⁰

81. CSC’s other license agreements for CyberLife and Vantage contain language similar to the restrictive language in the CyberLife Agreement.⁸¹
82. Under Section 1 of the TPAA, “Licensor Competitor” is defined as “any person or division of an entity in the business of developing, licensing and marketing computer software systems for the administration of life insurance or annuity market that perform the same or similar function as the Software.”⁸²
83. Under Section 2(i) of the TPAA, Transamerica “may disclose [CSC’s] confidential information” to Licensor Competitors only “with [CSC’s] prior written consent” and “only after [CSC], [Transamerica] and such Licensor Competitor have signed a non-disclosure agreement in substantially the form of the Non-Disclosure Agreement set forth in Exhibit B hereto.”⁸³
84. Section 1 of Exhibit B to the TPAA, “Form of Non-Disclosure Agreement for Licensor Competitors,” states that “[t]he Software Products (including the source code, program code, specifications, logic, design, ideas, techniques, know-how and procedures), all related documentation, any information about the Software Products (tangible or not tangible), pricing and

⁸⁰ *Id.* at 8.

⁸¹ Doc. 492 at 271:20–272:9; 272:23–273:9.

⁸² PX081 at 1.

⁸³ *Id.* at 2.

terms of this Agreement (collectively, the ‘Confidential Information’) are confidential trade secrets of [CSC] . . . and protected by United States and international copyright laws.”⁸⁴

85. Section 1 of Exhibit B further provides that “[t]he parties agree that (i) no Consultant employees who are working or who have worked in the past 9 months on core insurance applications, such as policy administration systems, compensation systems and new business systems, shall be included as Permitted Employees [who may access the Confidential Information to perform the services for Transamerica]; (ii) Permitted Employees may not work for Consultant on an insurance company engagement that involves access to CSC Confidential Information for 9 months before or after having been included as a Permitted Employee . . . ; and (iii) Permitted Employees may not work for Consultant on engagements related to Consultant-owned intellectual property for life and/or annuity insurance systems for 9 months before or after having been included as a Permitted Employee.”⁸⁵
86. Section 2(iv) of the TPAA—which Transamerica and CSC signed before TCS began licensing and marketing BaNCS in the U.S. and therefore qualified as a Licensor Competitor—“excluded” TCS (but not its employees who qualify as Licensor Competitors) from the requirements of Section 2(i) of

⁸⁴ *Id.* at 7.

⁸⁵ *Id.*

the TPAA, but states that TCS “shall be subject to obligations of confidentiality at least as stringent as those imposed on [Trans-america] herein and terms substantially similar to those set forth on Exhibit D hereto.”⁸⁶

87. When CSC’s clients request to share the Trade Secrets with a third party, if CSC agrees, CSC requires the third party to sign a nondisclosure agreement and places restrictions on how the Trade Secrets may be used.⁸⁷
88. All CSC employees sign a confidentiality agreement before receiving access to the Trade Secrets.⁸⁸
89. Under Section 3 of an example of such confidentiality agreements, titled “Receipt of CSC Property and Confidential Information,” the employee agreed not to “disclose any Confidential Information to anyone other than CSC employees and CSC Customers, but only as is reasonably necessary for Employee’s work on behalf of CSC.”⁸⁹
90. CSC has an intellectual property policy that sets forth protections and requirements regarding ownership, access, and handling of CSC’s intellectual property.⁹⁰

⁸⁶ *Id.* at 3.

⁸⁷ *Id.* at 2–3; Doc. 492 at 273:10–274:3.

⁸⁸ Doc. 492 at 275:11–17; PX002 at 20.

⁸⁹ Doc. 492 at 277:4–8; PX002 at 20.

⁹⁰ PX010 at 1.

91. Under this policy, “[a]ll [CSC] personnel must exercise utmost vigilance to protect all [CSC] Intellectual Property.⁹¹
92. Pinto opined that, under industry standards, CSC took reasonable measures to protect the secrecy of the Trade Secrets.⁹²
93. Pinto opined that a document authored by CSC that describes trade secrets in CSC’s software would be understood by persons in the industry to be confidential and proprietary to CSC.⁹³
94. Pinto also opined that CSC’s marking of its Trade Secrets compares favorably to other software companies in the industry.⁹⁴
95. Pinto further opined that CSC’s employee agreements, non-disclosure agreements, customer agreements, and company policies and security restrictions are reasonable measures to protect the Trade Secrets.⁹⁵
96. Transamerica uses Vantage and CyberLife to administer millions of life insurance policies throughout the U.S.⁹⁶
97. CSC has sold Vantage and CyberLife across the U.S. and in foreign countries including Canada, Mexico, and Japan.⁹⁷

⁹¹ Doc. 492 at 278:7–16; PX010 at 1.

⁹² Doc. 495 at 933:22–25; 935:12–950:25.

⁹³ Doc. 495 at 937:19–938:9.

⁹⁴ *Id.* at 938:10–939:2.

⁹⁵ *Id.* at 948:4–949:4.

⁹⁶ Doc. 493 at 482:3–6.

98. The products and services provided under the Vantage Agreement, including Vantage, are used in interstate commerce, as the agreement was originally between CSC, then located in Texas, and Aegon USA, then located in Iowa, and the agreement is now between CSC, located in Virginia, and Transamerica, located in Iowa.⁹⁸
99. The products and services provided under the CyberLife Agreement, including CyberLife, are used in interstate commerce, as the agreement was originally between CyberTek, then located in Texas, and MSI, then located in Iowa, and the agreement is now between CSC, located in Virginia, and Transamerica, located in Iowa.⁹⁹
100. TCS was only authorized to access, copy, execute, and use the Trade Secrets on behalf of and solely for the benefit of Transamerica.¹⁰⁰
101. Software companies sometimes give their customers the right to authorize certain third parties to access their software so the customer can host the software on their own infrastructure, and for application management, testing, or routine maintenance purposes.¹⁰¹
102. The purpose of the TPAA was to lay out the access that third-party vendors for Tran-

⁹⁷ Doc. 492 at 253:2–17.

⁹⁸ PX069 at 2; Doc. 451 at 5; Doc. 497 at 1600:21–23.

⁹⁹ PX088 at 1; Doc. 451 at 5; Doc. 492 at 271:9–19; Doc. 497 at 1600:21–23.

¹⁰⁰ Doc. 381 at 4–6.

¹⁰¹ Doc. 493 at 569:14–18, 591:8–592:1.

samerica could have to CSC's software and the conditions for that access.¹⁰²

103. When negotiating the TPAA, Transamerica did not intend to allow TCS to access or use CSC's Vantage and CyberLife source code to develop BaNCS.¹⁰³
104. Section 3(a) of the TPAA grants Transamerica the authority to grant TCS "the right to access, copy, execute, and use the Software and all other rights granted to [Transamerica] under the Agreement (collectively, 'Access Rights'), on behalf of and solely for the benefit of [Transamerica]."¹⁰⁴
105. The term "solely" in the phrase "on behalf of and solely for the benefit of [Transamerica]" "means that the use must be for Transamerica's exclusive benefit."¹⁰⁵
106. Moreover, the "Access Rights" in the TPAA that may be granted by Transamerica to TCS under Section 3(a) do not exceed the rights granted to Transamerica by CSC in the CyberLife Agreement and the Vantage Agreement.¹⁰⁶
107. Section 3(c) of the TPAA grants Transamerica the authority to grant TCS "[t]he right to copy, change, modify, supplement, amend, and

¹⁰² Doc. 493 at 591:1-6.

¹⁰³ Doc. 495 at 919:14-920:3; PX081 at 3.

¹⁰⁴ PX081 at 3; Doc. 493 at 593:4-15; Doc. 495 at 942:17-944:4.

¹⁰⁵ Doc. 381 at 5 fn. 16.

¹⁰⁶ PX081 at 3.

prepare Derivative Works of the Software, if and to the same extent permitted in the Agreement, on behalf of and solely for the benefit of [Transamerica].”¹⁰⁷

108. Because the “right to copy, change, modify, supplement, amend, and prepare Derivative Works of the Software” is restricted to “if and to the same extent permitted in the Agreement,” the rights that may be granted by Transamerica to TCS under Section 3(c) of the TPAA do not exceed the rights granted to Transamerica by CSC in the CyberLife Agreement and the Vantage Agreement.¹⁰⁸
109. CSC also imposed conditions on “Authorized Service Providers,” including TCS, before they could access the Trade Secrets.¹⁰⁹
110. Section 2 of the TPAA states: “[Transamerica] may disclose [CSC’s] confidential information to the following categories of Third Parties [described in Sections 2(i)–(iv)] which shall be included in the definition of ‘Authorized Service Providers.’”¹¹⁰
111. Section 2(ii) does not apply to TCS because it is limited to “Third Parties . . . who have been approved by [CSC] as indicated by inclusion on Exhibit C hereto,” and TCS is not identified in Exhibit C to the TPAA.¹¹¹

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 2–3.

¹¹⁰ *Id.* at 2.

¹¹¹ *Id.*

112. Section 2(iii) does not apply to TCS because it applies only to “Third Parties . . . with ninety nine (99) or fewer employees,” and TCS has more than 99 employees.¹¹²
113. Section 2(i) states that “with [CSC’s] prior written consent, Transamerica may disclose CSC’s confidential information to “Licensor Competitors, but only after [CSC], [Transamerica], and Licensor Competitor have signed a non-disclosure agreement in substantially the form of the Non-Disclosure Agreement set forth in Exhibit B hereto.”¹¹³
114. Section 2(iv) states that Transamerica may disclose CSC’s confidential information to certain entities which are set forth on Exhibit E hereto (that by definition may fall within (i),(ii) or (iii) above but are hereby being excluded and are subject to the provisions of this paragraph (iv)), that are providing services to [Transamerica] and required access to the Software, provided that such entities shall be subject to obligations of confidentiality at least as stringent as those imposed on [Transamerica] herein and terms substantially similar to those set forth on Exhibit D hereto.”¹¹⁴
115. TCS is identified on Exhibit E to the TPAA.¹¹⁵
116. Exhibit D to the TPAA states: “[Transamerica] is a licensee of certain third party software

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* at 3.

¹¹⁵ *Id.* at 17.

products and their related documentation, source code, program code, specifications, logic, design, techniques, know-how and procedures (collectively “Third Party Software”) that “is owned by [Transamerica’s] licensors” and “is considered [Confidential Information/Proprietary Information] hereunder and shall be subject to all of the restrictions or obligations set forth herein with respect to [Confidential Information/Proprietary Information].”¹¹⁶

117. Exhibit D further states: “Consultant agrees that any modification or derivative works of the Third Party Software, and the copyrights therein, shall be owned by [Transamerica’s] licensor [CSC] pursuant to the underlying License Agreement.”¹¹⁷
118. Jeremy Frieden, a TCS rebadged employee, testified it was “not [his] understanding that TCS employees rebadged from Transamerica could use CSC’s confidential information for TCS’s benefit.”¹¹⁸
119. Frieden also testified that it is not appropriate for TCS Rebadged Employees to access CSC’s confidential information, including CSC’s technical manuals and copybooks, for the development of Transamerica’s version of BaNCS.¹¹⁹
120. Frieden further testified that it was his belief that CSC manuals for Vantage and CyberLife

¹¹⁶ *Id.* at 16.

¹¹⁷ *Id.*

¹¹⁸ Doc. 494 at 728:8–11.

¹¹⁹ Doc. 494 at 728:23–729:6, 751:5–10, 785:12–22, 791:1–7.

should not be shared with anyone at TCS drafting requirements, developing, or designing Transamerica's version of BaNCS.¹²⁰

121. Transamerica instructed TCS that TCS was not authorized to use the Trade Secrets to develop BaNCS.¹²¹
122. Transamerica told TCS, including TCS's Deputy General Counsel Vinod Verghese, not to use the Trade Secrets for the Transamerica customer layer of BaNCS unless it was expressly authorized.¹²²
123. Specifically, Transamerica told TCS that "TCS will not incorporate the proprietary information or intellectual property of CSC or its predecessors, affiliates or successors or any other third-party software, information or intellectual property into the Customer Layer, except as expressly permitted in the Master Agreement between the Parties or directly by the third party."¹²³
124. No such express permission was given by CSC or in any agreement between TCS and Transamerica.¹²⁴
125. As early as April 2018, Transamerica's Vendor Management team also notified TCS Rebadged (or soon-to-be-rebadged) Employees, including Chethan Setty, that "any documentation that

¹²⁰ *Id.* at 731:2–11, 732:19–23, 736:6–18, 784:15–792:15.

¹²¹ Doc. 495 at 1029:7–1032:16; PX327 at 2; PX438 at 1.

¹²² Doc. 496 at 1213:25–1214:6, 1317:18–1319:8; PX127 at 1.

¹²³ Doc. 496 at 1320:12–1321:1; PX127 at 2.

¹²⁴ PX069; PX088; PX081.

is proprietary to an external vendor, such as CSC, cannot be shared with TCS.”¹²⁵

126. Transamerica’s Head of Experience, Execution, and Business Architecture Abby Canfield also “encouraged [TCS] employees not to leverage any CSC confidential information in building BaNCS.”¹²⁶
127. Transamerica’s Lead Vendor Liaison Tom Blazek was “not aware of a specific authorization allowing TCS” to “access CSC’s source code to help write requirements for BaNCS.”¹²⁷
128. Nor was he aware of “anyone at Transamerica authorizing” TCS Rebadged Employees to provide CSC proprietary manuals to TCS employees who were writing requirements for BaNCS.¹²⁸
129. Before CSC filed this lawsuit, TCS sent letters to Transamerica asking for indemnification, which Transamerica refused to sign, further demonstrating that TCS knew its actions were wrong and that Transamerica did not authorize TCS’s actions as found herein by the Court.¹²⁹
130. On February 21, 2019, TCS sent a letter to Transamerica asking for indemnification.¹³⁰

¹²⁵ PX438 at 1.

¹²⁶ Doc. 495 at 887:4–14.

¹²⁷ *Id.* at 895:15–24.

¹²⁸ *Id.* at 896:14–897:11.

¹²⁹ Doc. 496 at 1328:20–1332:2; PX136; PX128

¹³⁰ *Id.* at 1329:6–24; PX136 at 1.

131. The letter included an acknowledgement section where Transamerica was asked to acknowledge and sign.¹³¹
132. Transamerica did not sign or agree to the letter.¹³²
133. On March 8, 2019, Transamerica responded to the letter.¹³³
134. Transamerica told TCS that, “[f]or avoidance of doubt, [Transamerica] will have no indemnity obligation with respect to the [CSC] dispute if TCS does not comply with its obligations under the MSA and related agreements regarding the use, access and protection of [CSC] confidential and proprietary information and software platform”¹³⁴
135. TCS concedes that, in this letter, Transamerica told TCS that Transamerica would not indemnify TCS if it misused CSC’s intellectual property in a way that is not permitted under the Master Services Agreement.¹³⁵
136. After CSC filed this case, TCS sent another letter to Transamerica asking for indemnification, which Transamerica refused to sign.¹³⁶
137. TCS sent the letter on April 25, 2019, shortly after CSC filed this suit.¹³⁷

¹³¹ *Id.* at 1330:7–15; PX136 at 2.

¹³² *Id.* at 1330:7–17; PX136 at 2.

¹³³ *Id.* at 1330:18–1331:10; PX128 at 1.

¹³⁴ *Id.* at 1331:12–22; PX128 at 1.

¹³⁵ *Id.* at 1331:23–1332:2.

¹³⁶ *Id.* at 1332:3–1335:15; PX133.

138. Transamerica did not agree to indemnify TCS.¹³⁸
139. Transamerica stated that it did “not believe that the claims asserted [in this lawsuit] give rise to any indemnification or defense obligation on [Transamerica]’s part” because the claims CSC asserts rest on its allegation that “TCS has improperly accessed, used, and misappropriated CSC material (including trade secrets) to develop TCS’ BaNCS for use in competing with CSC in the U.S. market.”¹³⁹
140. CSC only allowed TCS to use the Trade Secrets for the sole benefit of Transamerica and did not expressly or impliedly consent to TCS using the Trade Secrets for any kind of development of BaNCS.
141. There was no document or credible testimony showing any express consent by CSC for TCS to use the Trade Secrets for any purpose other than for the sole benefit of Transamerica.¹⁴⁰
142. CSC’s license agreements with Transamerica do not contain any provisions giving Transamerica or any of its vendors the right to use the Trade Secrets to build a competing policy administration system.¹⁴¹

¹³⁷ *Id.* at 1332:21–25; PX133 at 1.

¹³⁸ *Id.* at 1333:8–1335:9; PX133 at 1; DTX777 at 1.

¹³⁹ DTX–0777 at 1; Doc. 496 at 1334:8–1335:9.

¹⁴⁰ *See* PX081 at 3.

¹⁴¹ Doc. 493 at 430:7–16; PX088; Doc. 496 at 940:12–15, 970:6–9, 1029:7–13, 1120:24–1121:8.

143. Because Transamerica is not authorized to use the Trade Secrets to build a competing product, the TPAA does not allow TCS to use the Trade Secrets to do so.¹⁴²
144. There was no document or credible testimony showing any implied consent by CSC for TCS to use the Trade Secrets for any purpose other than for the sole benefit of Transamerica.
145. To the contrary, after learning of the January 2018 contracts between Transamerica and TCS, CSC wrote a series of letters to Transamerica and TCS regarding its concerns about the treatment of its intellectual property.¹⁴³
146. On February 8, 2018, CSC sent a letter to Transamerica detailing CSC's concerns regarding Transamerica's security and treatment of CSC's intellectual property. In this letter, CSC requested confirmation that its intellectual property would be "protected from any improper disclosure or use by TCS of CSC confidential information." CSC further requested to meet with Transamerica to discuss what CSC confidential proprietary information would be accessed by TCS under the January 2018 contracts and what steps would be taken to "appropriately protect CSC's confidential proprietary information." CSC also discussed concerns regarding how TCS Rebadged Employees who had access to CSC's proprietary information at Transamerica would

¹⁴² Doc. 494 at 832:15–833:9; PX069 at 3; Doc. 495 at 1120:4–1121:8.

¹⁴³ PX120; PX122; PX125.

handle that information once they became TCS employees. Following this letter, CSC employees Phil Ratcliff and Darren Klauser met with Transamerica over the phone regarding CSC's concerns about its intellectual property, but this phone call did not resolve CSC's concerns.¹⁴⁴

147. On April 4, 2018, CSC sent Transamerica a follow-up letter regarding Transamerica's obligations to protect CSC's confidential information. This follow-up letter again discussed CSC's concerns regarding Transamerica's obligations to protect CSC's proprietary information, specifically emphasizing CSC's concerns that TCS may use CSC's proprietary information "to enhance its BPO offering to third parties in violation of the underlying agreements." CSC informed Transamerica of its position that "TCS' permitted access and use of [CSC] confidential proprietary information is limited to only TCS' performance of certain services for [Transamerica] and for no other purpose." CSC requested that Transamerica send information regarding TCS's use of CSC's proprietary information under the 2018 Transamerica-TCS contracts, including agreements between Transamerica and TCS regarding Transamerica's authorization for TCS to use CSC's proprietary information, details regarding any disclosures of CSC's proprietary information to TCS, and any agreements and details regarding protections

¹⁴⁴ Doc. 493 at 575:17-22, 576:3-16, 577:4-14; PX120 at 1-2; PX120 at 2; Doc. 493 at 577:4-25; PX120 at 2; Doc. 493 at 578:1-579:20; PX120 at 2; PX122 at 1; Doc. 493 at 579:24-580:3.

over TCS's use of CSC's proprietary information.¹⁴⁵

148. On June 22, 2018, CSC sent Transamerica and TCS a letter stating: "This letter also provides TCS, copied, with notice that [CSC] believes TCS's receipt or use of [CSC] technology or information constitutes tortious interference with [CSC]'s contractual rights, unfair competition, and misappropriation of trade secrets under both federal and state law, among other things."¹⁴⁶
149. CSC's decision to copy TCS on the June 2018 letter was deliberate and resulted from CSC not receiving adequate assurances regarding intellectual property protection from Transamerica.¹⁴⁷
150. In the June 2018 letter, CSC emphasized that the agreements between CSC and Transamerica "do not contemplate a transition of services being used as an improper vehicle for TCS to leverage [CSC] technology and information in order to develop a competing platform and service other customers."¹⁴⁸
151. CSC also wrote that it was "also particularly concerned about [Transamerica]'s apparent rebadging to TCS of thousands of employees

¹⁴⁵ PX122 at 1; Doc. 493 at 579:24–580:5, 581:4–20, 581:21–582:9.

¹⁴⁶ PX125 at 2; Doc. 493 at 583:14–584:2.

¹⁴⁷ Doc. 493 at 583:14–584:9.

¹⁴⁸ PX125 at 2; Doc. 493 at 584:25–585:19.

with current access to [CSC] technology and information.”¹⁴⁹

152. CSC was concerned that TCS would leverage CSC technology and information to develop a competing product due to the lack of assurances from Transamerica and TCS that CSC’s intellectual property would be protected, the complexity of the Transamerica conversion, and TCS’s and BaNCS’ lack of experience in the U.S. insurance market.¹⁵⁰
153. At the time of this letter, TCS’s heritage support team for Transamerica reported to Bonny Eappen, a Vice President at TCS.¹⁵¹
154. After reviewing this letter, Eappen did not institute any new policies or procedures for the heritage support team for Transamerica.¹⁵²
155. Eappen was unaware of any actions taken by TCS after receiving this letter to ensure that the heritage support team was not violating restrictions on its access to the Trade Secrets.¹⁵³
156. Suresh Muthuswami, TCS’s President of Banking, Financial Services, and Insurance Platforms, likewise could not recall whether TCS did anything to investigate CSC’s concerns raised in this letter.¹⁵⁴

¹⁴⁹ Doc. 493 at 443:5–11; PX125 at 2.

¹⁵⁰ Doc. 493 at 585:20–586:14, 574:7–25.

¹⁵¹ *Id.* at 451:1–5.

¹⁵² *Id.* at 451:6–11.

¹⁵³ *Id.* at 451:12–16.

¹⁵⁴ *Id.* at 440:9–14, 443:12–15.

157. CSC sent the February, April, and June 2018 letters to Transamerica to ensure the Trade Secrets were protected.¹⁵⁵
158. In an August 2018 letter, CSC told both Transamerica and TCS that Transamerica's purported grant of a license to TCS "violates the 1994 and 1998 License Agreements as well as the 2014 Addendum."¹⁵⁶
159. Despite receiving CSC's notice that TCS violated these agreements, TCS and its Deputy General Counsel Verghese did not question whether TCS had authorization to do what it was doing.¹⁵⁷
160. Despite being told by Transamerica that use of the Trade Secrets for the Transamerica customer layer of BaNCS was only permitted if expressly authorized, which it was not, TCS and Verghese did not question whether TCS had authorization for what it was doing.¹⁵⁸
161. TCS focused its misappropriation of the Trade Secrets on calculations, data structures, business rules, correspondence triggers, and software interfaces.¹⁵⁹
162. TCS improperly acquired the Trade Secrets in 2017 as part of its due diligence process to

¹⁵⁵ *Id.* at 588:13–17.

¹⁵⁶ PX138 at 2; Doc. 496 at 1322:20–1324:7.

¹⁵⁷ Doc. 496 at 1324:8–13.

¹⁵⁸ *Id.* at 1324:8–1325:4.

¹⁵⁹ Doc. 495 at 934:7–935:11.

develop a bid to displace CSC at Transamerica and obtain a \$2.6 billion contract.¹⁶⁰

163. As part of its due diligence, TCS requested and received documents from Transamerica at a shared location on Transamerica's servers.¹⁶¹
164. Ordinarily, a customer will provide access to a data room (otherwise known as a shared location) to only a small number of personnel from a software developer, the data room will be hosted on the customer's servers, and files in the data room will not be permitted to leave the data room.¹⁶²
165. Rangarajan Sampathkumar was the only TCS employee who was provided access to the shared location stored on Transamerica's servers.¹⁶³
166. Transamerica did not give Dipan Talukdar, TCS's Offshore Head for the Transamerica Customer Layer of BaNCS, or any of his direct or indirect reports access to this shared location.¹⁶⁴
167. Sampathkumar downloaded more than 1,700 documents from the shared location set up by Transamerica and uploaded these documents

¹⁶⁰ Doc. 496 at 1412:12–19, 1412:23–1413:14; Doc. 495 at 931:21–932:8, 953:15–954:6; Doc. 493 at 440:15–18.

¹⁶¹ Doc. 496 at 1412:12–16, 1412:23–1413:14.

¹⁶² Doc. 495 at 956:9–958:22, 961:21–962:9.

¹⁶³ Doc. 496 at 1413:23–1414:8.

¹⁶⁴ *Id.* at 1410:14–17, 1413:16–22, 1414:12–15, 1415:17–20.

to a TCS document repository called Knowmax.¹⁶⁵

168. Then, on July 18, 2017, Sampathkumar sent an email to dozens of TCS employees, including Talukdar and Arindam Paul, the Delivery Manager for TCS BaNCS.¹⁶⁶
169. In this email, Sampathkumar stated that “[Transamerica] ha[d] shared the following documents and I have uploaded the same in Knowmax,” and he provided a “link” to Knowmax for the documents.¹⁶⁷
170. On July 18 and 19, 2017, TCS employee Pankay Agarwal forwarded Sampathkumar’s email to a number of TCS employees and included a link to the Knowmax folder containing the documents from the Transamerica shared space.¹⁶⁸
171. One of the recipients of Agarwal’s emails was Raghupathy N. Pasupathy, TCS’s Director of the Transamerica Transformation Program who led the TCS team that gathered requirements for the Transamerica customer layer of BaNCS.¹⁶⁹

¹⁶⁵ *Id.* at 1410:14–17, 1413:17–1414: 5; Doc. 495 at 954:17–956:4; PX271 at 1; PX273.

¹⁶⁶ PX271 at 6; Doc. 493 at 674:6–10; Doc. 496 at 1410:14–21.

¹⁶⁷ PX271 at 6.

¹⁶⁸ PX271 at 5; Doc. 493 at 644:14–645:13.

¹⁶⁹ PX271 at 5; Doc. 493 at 645:14–19; Doc. 493 at 457:21–458:2; Doc. 496 at 1407:3–6, 1419:10–19.

172. Pasupathy confirmed he had access to Knowmax in 2017 during TCS's due diligence process.¹⁷⁰
173. As a result of receiving the more than 1,700 documents, TCS acquired CSC's Trade Secret information regarding the functionalities and processes performed by Vantage and CyberLife.¹⁷¹
174. TCS employee Abhijeet Mate created an index of the documents uploaded to Knowmax by Sampathkumar.¹⁷²
175. Mate's index shows that the documents available at the Knowmax link included extensive Vantage and CyberLife Trade Secret documents, including PX549 (CyberLife Overview CSFL), PX550 (CyberLife Overview – CUSTSCV), PX551 (Vantage P65), and PX552 (Vantage P75).¹⁷³
176. PX549, PX550, PX551, and PX552 are documents created by Transamerica using the Trade Secrets and contain CSC's Trade Secret information, including calculations, business rules, and data structures for Vantage and CyberLife.¹⁷⁴

¹⁷⁰ PX271 at 5; Doc. 496 at 1417:1–6.

¹⁷¹ Doc. 493 at 463:19–23, 464:7–14; Doc. 495 at 955:24–967:17; PX271; PX273; PX551; PX552.

¹⁷² Doc. 496 at 1420:7–1421:5; PX271 at 1; PX273; Doc. 495 at 962:4–24.

¹⁷³ PX273 at Row 454; Doc. 496 at 1423:13–20, 1424:16–1425:17; Doc. 495 at 960:12–961:8.

¹⁷⁴ PX549; PX550; PX551; PX552.

177. PX549 is a 72-page “CyberLife Overview” manual that contains CSC’s trade secret business rules for CyberLife.¹⁷⁵
178. PX550 is a 57-page “CyberLife Overview” manual that contains CSC’s trade secret calculations, business rules, data structures, and screens for CyberLife.¹⁷⁶
179. PX551 is a 93-page “Vantage – P65” manual that contains CSC’s trade secret calculations, business rules, data structures, and screens for Vantage.¹⁷⁷
180. PX552 is a 98-page “Vantage – P75” manual that contains CSC’s trade secret calculations, business rules, data structures, and screens for Vantage.¹⁷⁸
181. TCS shared the Knowmax link containing the Trade Secrets to TCS employees not rebadged from Transamerica (“TCS Non-Rebadged Employees”) who were not authorized to access or use the Trade Secrets.¹⁷⁹

¹⁷⁵ Doc. 493 at 502:21–503:17; PX549.

¹⁷⁶ Doc. 495 at 965:13–966:20; Doc. 493 at 498:24–499:2, 499:14–500:19; PX550 at 46.

¹⁷⁷ Doc. 495 at 965:13–966:20; Doc. 494 at 789:12–17; PX551 at 3–93.

¹⁷⁸ Doc. 495 at 965:13–966:20; Doc. 494 at 787:9–25; PX552 at 6–96.

¹⁷⁹ Doc. 496 at 1416:20–22, 1417:25–1418:5, 1418:9–12; Doc. 493 at 501:18–502:1, 503:11–17, 513:5–10; Doc. 494 at 788:13–789:3, 789:18–790:3; PX271 at 6.

182. For example, Talukdar had access to the more than 1,700 documents from Transamerica's shared location via the Knowmax link.¹⁸⁰
183. Talukdar is a TCS Non-Rebadged Employee.¹⁸¹
184. Paul had access to the same documents.¹⁸²
185. Paul is a TCS Non-Rebadged Employee.¹⁸³
186. Pasupathy had access to the same documents.¹⁸⁴
187. Pasupathy is a TCS Non-Rebadged Employee.¹⁸⁵
188. TCS employee Shalini Kotian had access to at least some of the 1,700 documents, including PX549, PX550, PX551, and PX552.¹⁸⁶
189. Kotian is a TCS Non-Rebadged Employee.¹⁸⁷
190. Frieden testified that it would be against his team's practice to provide PX551 and PX552 to TCS Non-Rebadged Employees as part of the conversion process, and that Kotian should not have had access to PX552.¹⁸⁸

¹⁸⁰ Doc. 496 at 1416:20–22, 1417:25–1418:5, 1418:9–12; PX271 at 6.

¹⁸¹ Doc. 496 at 1389:19–25.

¹⁸² *Id.* at 1416:23–25, 1418:6–12; PX271 at 6.

¹⁸³ Doc. 493 at 674:6–10; Doc. 494 at 733:3–13.

¹⁸⁴ PX271 at 5–6.

¹⁸⁵ Doc. 493 at 457:21–22, 458:13–19, 503:18–504:1; Doc. 494 at 732:11–23.

¹⁸⁶ Doc. 493 at 501:18–502:1, 503:11–17, 513:5–10; Doc. 494 at 788:13–789:3, 789:18–790:3.

¹⁸⁷ Doc. 493 at 501:18–502:1; Doc. 494 at 789:4–5.

¹⁸⁸ Doc. 494 at 788:1–12, 789:6–11, 790:4–7, 14–17.

191. TCS employees removed the Trade Secrets from the Knowmax document repository and maintained them for years in other TCS repositories. For example, PX549, PX550, PX551, and PX552 were obtained from Kotian's laptop.¹⁸⁹
192. TCS "decommissioned" the link to the Knowmax document repository containing the documents from the Transamerica shared location that contained CSC's Trade Secret information.¹⁹⁰
193. Decommissioning a Knowmax link means the site was discontinued or deleted at some point and is currently not available.¹⁹¹
194. "TCS determined that no access information was available for the link," so TCS could not determine "who had access to the decommissioned Knowmax link."¹⁹²
195. TCS also cannot determine whether there were any restrictions on who could access documents in the decommissioned Knowmax link.¹⁹³
196. Because TCS deleted the Knowmax repository, it is impossible to know the full extent of TCS's misappropriation of the Trade Secrets in the

¹⁸⁹ Doc. 493 at 501:18–502:1, 503:11–17, 513:5–10; Doc. 494 at 788:13–789:3, 789:18–790:3.

¹⁹⁰ Doc. 493 at 641:23–643:19; Doc. 496 at 1429:17–20.

¹⁹¹ Doc. 493 at 642:15–19.

¹⁹² *Id.* at 643:5–23.

¹⁹³ *Id.* at 643:24–644:2.

more than 1,700 documents that TCS stored in that repository.¹⁹⁴

197. In addition to the Knowmax repository, TCS also used another repository called “Fresco” to keep other documents for the Transamerica project.¹⁹⁵
198. Like the decommissioned Knowmax link, the “Fresco” repository has been deleted.¹⁹⁶
199. In addition to the more than 1,700 documents on TCS’s Knowmax repository, TCS Non-Rebadged Employees were in possession of 491 Trade Secret source code files for Vantage in the form of copybooks.¹⁹⁷
200. TCS employee Srinivasan Palanisamy had access to these 491 CSC copybooks (compiled in PX579), as the copybooks were found on his laptop.¹⁹⁸
201. Palanisamy was a TCS Non-Rebadged Employee.¹⁹⁹
202. Frieden testified that Palanisamy should not have had CSC copybooks on his laptop.²⁰⁰
203. Frieden further testified that it would be against TCS policies for CSC copybooks to be

¹⁹⁴ *Id.* at 641:23–644:2.

¹⁹⁵ Doc. 496 at 1430:5–13.

¹⁹⁶ *Id.* at 1430:14–17.

¹⁹⁷ Doc. 495 at 963:14–964:9.

¹⁹⁸ Doc. 493 at 501:18–502:1, 503:11–17, 513:5–10; Doc. 494 at 788:13–789:3, 789:18–790:3; Doc. 495 at 963:14–17.

¹⁹⁹ Doc. 493 at 513:11–14; Doc. 494 at 792:3–6.

²⁰⁰ Doc. 494 at 792:11–15.

on the laptop of a TCS employee that was not part of his team.²⁰¹

204. It was improper for TCS Non-Rebadged Employees to have been in possession of CSC source code files.²⁰²
205. TCS also possessed three separate copies of CSC's CyberLife Web Component Transaction manual.²⁰³
206. The CyberLife Enterprise System Web Component Transactions manual is 2,727 pages long.²⁰⁴
207. The second page of the manual states that "[t]he information contained in this document is considered by CSC to be a TRADE SECRET and CONFIDENTIAL," that "Authorization for use is limited by LICENSE AGREEMENT," and that "[t]his material is not to be viewed, printed, copied, or reproduced in any manner without LICENSE AGREEMENT or prior written permission of CSC."²⁰⁵
208. The manual maps data from the internal databases and data elements of CyberLife to a standard web service set of transactions known as an ACORD standard.²⁰⁶

²⁰¹ *Id.* at 781:5–16.

²⁰² Doc. 495 at 964:10–25.

²⁰³ *Id.* at 936:12–24, 1001:10–1003: 14; PX523; PX524; PX525.

²⁰⁴ PX523; PX524; PX525.

²⁰⁵ PX523, PX524, and PX525; PX523 at 2; Doc. 495 at 1001:10–1003:14.

²⁰⁶ Doc. 492 at 259:1–10; Doc. 495 at 1001:22–1002:11 PX523; PX524; PX525.

209. The manual acts as a roadmap for building the Cyberlife platform.²⁰⁷
210. Taute testified that the manual functions as “a roadmap on how to build an insurance processing system.”²⁰⁸
211. Pinto testified that the manual effectively had the “keys to the kingdom” for CyberLife, as it tells “the reader everything they needed to know to essentially reverse engineer CyberLife.”²⁰⁹
212. Frieden testified that it would be against his team’s practice to upload CSC documents marked “trade secret and confidential,” such as the Cyberlife Enterprise System Web Component Transactions manual, to Knowmax.²¹⁰
213. Frieden further testified that he instructed his team of TCS Rebadged Employees “to not share information” marked as CSC’s trade secrets, like the Cyberlife Enterprise System Web Component Transactions manual, with TCS employees not involved in administering Transamerica’s products on CSC’s system.²¹¹
214. TCS should not have had any of the Trade Secrets, including confidential technical manuals for Vantage and CyberLife like CSC’s

²⁰⁷ Doc. 492 at 258:12–25, 259:11–18, 260:6–8; Doc. 495 at 1002:12–24; PX523; PX524; PX525.

²⁰⁸ Doc. 492 at 259:11–18; PX523; PX524; PX525.

²⁰⁹ Doc. 495 at 1002:8–11.

²¹⁰ Doc. 494 at 786:1–6.

²¹¹ *Id.* at 785:12–22.

CyberLife Web Component Transaction manual, on TCS's servers.²¹²

215. TCS used the Trade Secrets it acquired during due diligence to prepare its bid for the Transamerica contract in 2017 and to reduce its time and effort in migrating Transamerica's data to BaNCS.
216. Palanisamy told Ajit Menon, TCS's Chief Security Officer, that he used the Trade Secrets on his laptop for data migration purposes and to do an effort estimation on how long the migration would take.²¹³
217. Talukdar also told Menon that TCS used the Trade Secret documentation stored in Knowmax to prepare TCS's bid to Transamerica in 2017.²¹⁴
218. Because TCS acquired the Trade Secrets to develop its bid to displace CSC at Transamerica, obtain a \$2.6 billion contract, and reduce its time and effort in migrating Transamerica's data to BaNCS, TCS did not acquire the Trade Secrets "solely for the benefit of Transamerica," as required under the TPAA.
219. TCS's acquisition of the Trade Secrets from the shared location at Transamerica, TCS's distribution of the Trade Secrets to TCS Non-Rebadged Employees, and TCS's use of the Trade Secrets to improve its bid to displace

²¹² Doc 495 at 962:25–963:13.

²¹³ Doc. 493 at 640:1–8, 640:9–15, 640:20–641:4, 644:25–645:2, 646:2–8, 646:15–21.

²¹⁴ *Id.* at 639:21–25, 644:3–5, 646:9–14.

CSC at Transamerica, obtain a \$2.6 billion contract, and reduce its time and effort in migrating Transamerica's data to BaNCS primarily, if not exclusively, benefitted TCS and therefore was not "solely" (or exclusively) "for the benefit of Transamerica," as required for authorization under the TPAA.

220. TCS also improperly acquired the Trade Secrets to avoid costs and save time in developing BaNCS and performing under its \$2.6 billion contract with Transamerica.²¹⁵
221. TCS's Transamerica conversion discovery report for Vantage, titled "BaNCS Migration Release 1.1 and Release 1.2" ("Transamerica Conversion Discovery Report"), shows that TCS's "[d]iscovery [process] was focused on analyzing source systems"—i.e., Transamerica's existing software platforms, including Vantage.²¹⁶
222. The report states that "[t]he Discovery for this initial phase specifically cover[ed]," among other things, "Process," "Calculation," "Interface," and "Agency."²¹⁷
223. The report demonstrates that TCS's activities included "[l]isting 'calculations' and 'correspondences,'" "[l]isting interfaces," and "[u]nd-

²¹⁵ Doc. 495 at 931:21–932:8, 934:7–935:11, 953:15–954:9, 1003:15–1004:16.

²¹⁶ PX208 at 6; Doc. 495 at 970:10–971:19.

²¹⁷ Doc. 494 at 738:18–24; PX207 at 6; PX208 at 5; Doc. 495 at 968:15–970:9; PX208 at 5.

erstanding Data Structure of source systems,” including Vantage.²¹⁸

224. The report further reveals that “[a]s part of the Discovery exercise for the Vantage systems,” TCS performed “an analysis of calculations in the scope of the Vantage systems,” and that “[t]he calculation specifications [would be] central to the operation of BaNCS” and would “dictate the value of the policy and payments made to customers.”²¹⁹
225. As a result of this analysis, TCS was in possession of a spreadsheet indexing and describing “Calculations” and “Sub Calculations” used in Vantage, and identifications and descriptions of calculations performed by Vantage (and, later, CyberLife) were provided to the BaNCS requirements team, informing the team of the functionality being performed in Vantage (and, later, CyberLife).²²⁰
226. There was no valid business reason for TCS to obtain a list of all the calculations in Vantage (and, later, CyberLife); rather, TCS wanted that information to identify gaps in functionality between BaNCS and Vantage (and, later, CyberLife), which CSC did not permit.²²¹

²¹⁸ PX208 at 6; Doc. 495 at 971:20–972:6.

²¹⁹ PX208 at 20; Doc. 493 at 462:7–23, 466:2–12, 467:12–25, 471:15–19, 472:14–18; PX209; Doc. 495 at 967:18–979:8, 981:2–983:1; PX215; Doc. 494 at 739:5–13, 740:11–16, 740:22–741:4; PX203.

²²⁰ PX215; Doc. 493 at 478:19–479:2, 479:7–14.

²²¹ Doc. 495 at 972:7–973:7.

227. The Transamerica Conversion Discovery Report also lists “IT source code within Vantage system” as one of the calculation artifacts that would be needed for the requirements phase of TCS’s Transamerica conversion project.²²²
228. When converting an insurance company’s data from a source system like Vantage to a target system like BaNCS, it is not proper for the employees of the company with the target system to obtain the source code or technical manuals of the source system, especially if the two systems are competing products.²²³
229. The Transamerica Conversion Discovery Report also shows that TCS employees responsible for BaNCS, including Pasupathy, regularly met with TCS Rebadged Employees with access to the Trade Secrets, including “Vantage SME [Subject Matter Expert]” Frieden.²²⁴
230. CSC did not authorize TCS employees working on requirements for BaNCS to meet with former Transamerica employees about Vantage.
231. TCS Rebadged Employees with access to the Trade Secrets used that access to search for and analyze the calculations in Vantage and CyberLife to determine the number of

²²² Doc. 493 at 466:13–467:8; PX208 at 20.

²²³ Doc. 492 at 292:25–293:19.

²²⁴ Doc. 495 at 968:15–969:8; PX208 at 2.

calculations that BaNCS would have to support.²²⁵

232. A September 13, 2019 email chain involving TCS Rebadged Employee Mark Wisely reveals that another TCS Rebadged Employee, Setty, had scanned the Vantage code to determine the number of calculations in Vantage.²²⁶
233. Wisely then did the same thing as Setty to determine the number of calculations in CyberLife.²²⁷
234. Setty's and Wisely's use of CSC's source code for Vantage and CyberLife to determine the number of calculations that BaNCS would have to support was improper.²²⁸
235. TCS's written plan for the conversion of the Vantage system includes "Knowledge Sharing/Transition from CSC/DXC proprietary base manuals through Discussions and Meetings."²²⁹
236. In addition, during TCS's discovery exercise regarding Vantage, Paul asked other TCS employees to send him and members of the BaNCS development team various artifacts from Vantage.²³⁰
237. On April 24, 2018, Paul sent an email asking TCS employee Vasanthi Jambulingam to "send

²²⁵ Doc. 495 at 993:9–994:19.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Doc. 493 at 464:15–24; PX196 at Row 32.

²³⁰ Doc. 493 at 679:16–680:4, 680:11–21; PX203 at 1.

all the latest consolidated artifacts from product, plan code, business rule, calculation, and process data for both Vantage and Life Pro systems” as part of TCS’s discovery process for the Transamerica conversion.²³¹

238. In the same email, Paul asked TCS employee Sri P to “share all the latest consolidated artifacts from Source system data structure, any data driven user story/requirements for both Vantage and Life Pro.”²³²
239. In the same email, Paul asked TCS employee Srinivas M to “share all the latest artifacts consolidated so far from the Heritage agency system perspective.”²³³
240. The “Heritage agency system” refers to Transamerica’s then-existing systems, including Vantage and CyberLife.²³⁴
241. Members of the BaNCS development team, including BaNCS requirements lead Pasupathy and BaNCS Chief Architect Ayan Mustafi, were copied on Paul’s April 24, 2018 email.²³⁵
242. Paul requested information that would have included CSC’s Trade Secret information—specifically, Vantage business rules, calculations, data structures, and interfaces— from

²³¹ Doc. 493 at 679:16–680:4; PX203 at 1.

²³² Doc. 493 at 680:11–21; PX203 at 1.

²³³ Doc. 493 at 682:20–683:7; PX203 at 1.

²³⁴ Doc. 493 at 682:20–683:7.

²³⁵ Doc. 493 at 676:22–677:3; Doc. 495 at 982:6–8; PX203 at 1.

a number of TCS personnel who should not have had access to that information.²³⁶

243. Paul did, in fact, receive artifacts regarding Vantage in connection with TCS's discovery process and sent these artifacts to TCS Non-Rebadged Employees.²³⁷
244. For example, the Transamerica Conversion Discovery Report contained discovery artifacts from TCS's discovery process.²³⁸
245. On April 10, 2019, Paul sent a zip file containing the Transamerica Conversion Discovery Report to Talukdar and Subrata Chaudhury, the enterprise architect for Transamerica's customer layer of TCS BaNCS.²³⁹
246. In March 2019, Ashish Barnwal—a CSC employee who supported Transamerica and had a Transamerica email address—was copied on an email chain in which TCS Non-Rebadged Employees, including Yogitha Kiran and Pasupathy, received excerpts of the Trade Secrets—specifically, Vantage source code and portions of Vantage confidential technical manuals.²⁴⁰
247. This email chain shows that TCS and Transamerica were trying to figure out how Vantage performed a “rate of return” calculation so they

²³⁶ Doc. 495 at 981:2–983:1; PX203 at 1.

²³⁷ Doc. 493 at 689:4–15, 690:2–10, 691:16–22; PX207 at 1–2.

²³⁸ Doc. 493 at 690:13–22; PX207 at 2–25; PX208 at 1–24.

²³⁹ Doc. 493 at 689:4–22, 690:2–10; PX207 at 1–2.

²⁴⁰ PX228 at 1–2; Doc. 493 at 430:17–21; Doc. 494 at 805:24–806:5; Doc. 494 at 784:1–5.

could determine whether or not to “emulate” Vantage’s functionality in BaNCS.²⁴¹

248. The way Vantage calculates a “rate of return” for a product is unique.²⁴²
249. CSC considers how Vantage calculates investment rates of return to be a trade secret.²⁴³
250. CSC invested millions of dollars in the annuity code and formulas disclosed in this email chain.²⁴⁴
251. In the email chain, TCS Rebadged Employees with access to the Trade Secrets, including Setty, provided screenshots of Vantage source code and confidential technical manuals to TCS Non-Rebadged Employees who were working to develop functional requirements for BaNCS.²⁴⁵
252. In particular, Kiran and Pasupathy received excerpts of CSC’s Vantage source code and technical manuals pertaining to Vantage’s rate of return calculation.²⁴⁶
253. Like Pasupathy, Kiran is a TCS employee who was on the BaNCS requirements team.²⁴⁷

²⁴¹ Doc. 495 at 983:9–987:21.

²⁴² *Id.* at 983:9–987:21; PX228 at 2–4.

²⁴³ Doc. 492 at 295:24–296:5.

²⁴⁴ *Id.* at 294:24–295:13.

²⁴⁵ Doc. 495 at 983:9–987:21; PX228 at 1–11.

²⁴⁶ Docs. 492–93 at 296:6–297:17, 432:22–433:2; Doc. 494 at 747:19–22, 748:2–751:10; PX228 at 1–4, 7–8.

²⁴⁷ Docs. 492–93 at 295:19–21, 431:1–3, 431:25–432:6; Doc. 496 at 1455:4–13; Doc. 493 at 474:5–9; PX228 at 1; Doc. 496 at 1454:18–24.

254. Frieden testified that Kiran should not have received source code for Vantage.²⁴⁸
255. While this email chain was ongoing, on March 4, 2019, Setty had a conversation via Skype with Andrew Lockhart that shows that Setty knew BaNCS team members should not receive Vantage documentation.²⁴⁹
256. In this conversation, Setty stated: “Hi Andrew, [I] shared Vantage system documentation on VALR screen.”²⁵⁰
257. This conversation referred to the same rate of return calculation Setty shared in the rate of return email chain that was eventually sent to Barnwal.²⁵¹
258. Setty told Lockhart: “Please do not share with BaNCS tea”²⁵²
259. Setty told Lockhart “[t]hey are sensitive about anything Vantage,” and Lockhart responded: “Gotcha, thanks for sending over. I have to remember all the new rules about what we can share.”²⁵³
260. Setty then responded: “[Y]eah, it is hard when the line keeps shifting depending on whom you talk to”²⁵⁴

²⁴⁸ Doc. 494 at 747:19–748:1, 750:1–6.

²⁴⁹ PX374 at 1.

²⁵⁰ Doc. 493 at 668:23–669:6; PX374 at 1.

²⁵¹ Doc. 493 at 669:7–10; PX374 at 1.

²⁵² Doc. 493 at 669:11–13; PX374 at 1.

²⁵³ Doc. 493 at 670:6–14; PX374 at 1.

²⁵⁴ Doc. 493 at 671:3–672:16; PX374 at 1.

261. After B a r n w a l received the rate of return email chain, he sent it to CSC employee Kaushik Gupta, who brought it to the attention of Ko.²⁵⁵
262. Ko alerted the senior management team at CSC, including Taute, Ratcliff, and CSC's lawyers.²⁵⁶
263. In response to this email chain, CSC filed this lawsuit on April 21, 2019.²⁵⁷
264. TCS Non-Rebadged Employees, including the TCS BaNCS team, viewed detailed information regarding the surrender penalty calculations performed by Vantage.²⁵⁸
265. On March 13, 2018, Transamerica and TCS employees met regarding TCS's discovery exercise.²⁵⁹
266. A Minutes of Meeting document details the participants, agenda, action items, and minutes for this meeting.²⁶⁰
267. The listed participants for this meeting include "TCS BaNCS Team."²⁶¹
268. The agenda for this meeting includes "[d]iscussions with the Vantage team," an "[O]verview of the Vantage Features systems,"

²⁵⁵ Doc. 494 at 796:2–13, 806:6–10.

²⁵⁶ *Id.* at 806:20–807:2.

²⁵⁷ Doc. 493 at 635:8–12.

²⁵⁸ PX432 at 2.

²⁵⁹ *Id.* at 1.

²⁶⁰ Doc. 494 at 741:5–10; PX432 at 1–2.

²⁶¹ PX432 at 1; *see* Doc. 495 at 974:3–975: 23.

and a “[d]eep dive in to [the] VTG-P65 application,” in reference to a particular Vantage system.²⁶²

269. The Minutes of Meeting document further states: “Sample screen Vantage for some Surrender Penalty calculations and the specific details was used to show the Maximums, Decreasing, and Cumulative, when zeroed out, Frequencies (ex Qtrly).”²⁶³
270. Frieden testified that it would have been against his team’s typical practices to show sample screens from Vantage to members of the BaNCS team.²⁶⁴
271. TCS Non-Rebadged Employees also met with soon-to-be rebadged Transamerica subject matter experts to discuss variable annuity calculations, a calculation that is performed in Vantage.²⁶⁵
272. This meeting involved TCS Non-Rebadged Employees working on BaNCS (Kiran and Pasupathy) and soon-to-be TCS Rebadged Employees who had access to the Trade Secrets relating to Vantage.²⁶⁶
273. TCS also had in its possession a document mapping approximately 30 interfaces from

²⁶² Doc. 494 at 741:11–24; PX432 at 1.

²⁶³ Doc. 494 at 742:7–15; PX432 at 2.

²⁶⁴ Doc. 494 at 742:21–743:2.

²⁶⁵ Doc. 495 at 974:3–975:23.

²⁶⁶ *Id.* at 974:3–975:23.

CyberLife to other systems that are internal within Transamerica.²⁶⁷

274. PX548 contains CSC's Trade Secret information regarding CyberLife's interfaces.²⁶⁸
275. It was improper for TCS to have this information about CSC's CyberLife interfaces.²⁶⁹
276. TCS Non-Rebadged Employees also viewed and received CSC's Trade Secret information regarding data structures in Vantage.²⁷⁰
277. On March 26, 2018, TCS conducted another "Discovery Phase – Conversion Discovery Meeting" in which Setty, who had access to the Trade Secrets, met with TCS personnel responsible for BaNCS (e.g., Arnab Das and Pasupathy) to discuss Vantage data structures.²⁷¹
278. A Minutes of Meeting document details the participants, agenda, action items, and minutes for this meeting.²⁷²
279. According to this document, TCS employees Rajaraman, Das, and Pasupathy attended the meeting.²⁷³

²⁶⁷ *Id.* at 1003:15–1005:3.

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ PX536 at 1.

²⁷¹ *Id.*

²⁷² Doc. 493 at 656:10–13; Doc. 494 at 731:15–18; PX536 at 1–2.

²⁷³ PX536 at 1.

280. Like Pasupathy, Das is involved in developing BaNCS.²⁷⁴
281. The Minutes of Meeting document lists three specific agenda items: (1) Data Model for Vantage System; (2) Data Dictionary for Vantage Systems; and (3) Data structure of party and roles for Vantage System.²⁷⁵
282. The “Data Model,” “Data Dictionary,” and “Data Structure” of Vantage are CSC’s Trade Secret information related to the “Data Structure” category of the Trade Secrets that TCS targeted.²⁷⁶
283. The Minutes of Meeting document also contains “Action items,” including Action item number 5, which was to “[p]rovide the copybooks for all the segments.”²⁷⁷
284. Frieden testified that it would not have been appropriate for Setty to share information from CSC’s technical manuals during a meeting with Das or Pasupathy.²⁷⁸
285. Following this March 26, 2018 meeting, Setty sent an email containing CSC’s trade secret information, including information on Vant-

²⁷⁴ Doc. 493 at 656:14–23; Doc. 493 at 457:21–458:7; Doc. 494 at 732:3–17.

²⁷⁵ Doc. 493 at 656:24–657:10; PX536 at 1.

²⁷⁶ Doc. 495 at 976:20–978:5,

²⁷⁷ Doc. 493 at 657:15–18; PX536 at 1.

²⁷⁸ Doc. 494 at 732:19–23; *see also* Doc. 493 at 460:13–18.

age's data structures, to members of the BaNCS team.²⁷⁹

286. Setty sent this email to Paul, Talukdar, Mustafi, Das, Arnoy Ganguly, Rittwick Ray, Santosh Sur, Sudip Sen, Uptal Sen, Subhadeep Ghoshal, and Subhasis Ghosh—all of whom were involved with the development of BaNCS.²⁸⁰
287. Setty also copied Pasupathy on the email.²⁸¹
288. In the email, Setty included a snapshot of the data structure, labeled as the “VANTAGE-ONE Data Structure,” that he shared during the March 26, 2018 meeting.²⁸²
289. Setty also attached three documents that he shared with the TCS BaNCS team members at the March 26, 2018, meeting.²⁸³
290. In the email, Setty wrote: “Attached are the documents I shared today. The P65-Contract segment copybook is an example of the data payout of one of the Vantage segments.”²⁸⁴
291. The term “P65” refers to one of the Vantage systems.²⁸⁵

²⁷⁹ Doc. 493 at 658:4–660:4, 660:23–661:3, 661:10–662:11, 663:9–664:6; PX336 at 1.

²⁸⁰ Doc. 493 at 684:19–685:22; Doc. 493 at 658:4–22; Doc. 494 at 733:3–13; PX336 at 1; PX172 at 1.

²⁸¹ Doc. 494 at 733:18–21; PX336 at 1; PX172 at 1.

²⁸² Doc. 493 at 660:23–25, 664:2–6; Doc. 494 at 735:5–8; PX336 at 2; PX172 at 1.

²⁸³ Doc. 493 at 658:18–659:2, 659:17–21; PX336 at 1.

²⁸⁴ PX336 at 1; PX172 at 1.

²⁸⁵ Doc. 494 at 734:9–13; PX336 at 1; PX172 at 1.

292. The first attachment is Segment_Copybooks_Info.xlsx, which is a spreadsheet.²⁸⁶
293. The second attachment is Rider Tables.vsd, which is a Visio format document.²⁸⁷
294. The third attachment is P65 Contract Segment – CIUAF11.txt.²⁸⁸
295. Setty further stated that he was “unable to share the CSC manual since the mail server blocks due to some terminology in the documents. Instead, sharing a snapshot of the data structure that I shared during the meeting.”²⁸⁹
296. The CSC technical manual that Setty attempted to share with the TCS BaNCS team in his March 26, 2018 email is titled “Vantage Technical Guide V-1 Database & Tables 15.0.”²⁹⁰
297. This manual is a 210-page Vantage manual containing CSC’s Trade Secret information, including calculations, business rules, data structures, and interfaces.²⁹¹

²⁸⁶ Doc. 493 at 659:3–8; PX336 at 1.

²⁸⁷ Doc. 493 at 659:9–13; PX336 at 1.

²⁸⁸ Doc. 493 at 659:14–16; PX336 at 1.

²⁸⁹ Doc. 493 at 659:22–660:4; Doc. 494 at 734:23–735:4; PX336 at 1; PX172 at 1.

²⁹⁰ Doc. 493 at 660:10–15; PX521 at 1; PX336 at 1; PX172 at 1.

²⁹¹ Doc. 495 at 996:18–998:8; PX521 at 1–2.

298. The manual is marked as “Computer Sciences Corporation Confidential and Proprietary Information” on the footer of every page.²⁹²
299. On the second page, the manual states “[t]his document contains trade secrets and confidential information which are proprietary to Computer Sciences Corporation,” and “[t]he use, reproduction, distribution or disclosure of this document, in whole or in part, without the express written permission of Computer Sciences Corporation is prohibited.”²⁹³
300. Setty attempted to share this manual with the TCS BaNCS team even though it was marked as CSC proprietary and confidential, but he was not able to share the whole manual.²⁹⁴
301. Page 172 of the manual contains the same VANTAGE-ONE data structure that Setty shared as a snapshot in his March 26, 2018 email.²⁹⁵
302. That page of the manual contains a notice stating: “Computer Sciences Corporation, Confidential and Proprietary Information.”²⁹⁶
303. When Setty cut and pasted the snapshot of the VANTAGE-ONE data structure into his March 26, 2018 email, he did not include this notice

²⁹² Doc. 495 at 996:18–998:8; *see generally* PX521.

²⁹³ Doc. 495 at 996:18–998:8; PX521 at 1–2; PX336 at 2.

²⁹⁴ Doc. 493 at 662:8–11, 663:23–664:1.

²⁹⁵ PX521 at 172.

²⁹⁶ Doc. 493 at 661:16–21; PX521 at 172.

that the data structure was confidential and proprietary CSC information.²⁹⁷

304. After Setty sent his email, no one from TCS followed up to tell him that it was improper to share what he shared or not to do it again.²⁹⁸
305. Frieden testified that his team would not share information like the snapshot shared by Setty if the information came from CSC's technical manuals (which, in this case, it did).²⁹⁹
306. During TCS's discovery phase, TCS employees also received CSC's source code copybooks pertaining to data structures for Vantage.³⁰⁰
307. On May 4, 2018, Palanisamy sent Setty an email with the subject line "Vantage Copybooks [TLS]."³⁰¹
308. In this email, Palanisamy stated: "As discussed, requesting you share the copybook layouts for P5, P6, P65 and P75 systems along with Data Dictionary and other relevant documents to Bruce and Leanne Cced in this email. They will evaluate and share it with us through secure FTP."³⁰²
309. Palanisamy then requested that Setty "let [him] know who can provide source copybooks for P12 system," and noted that Setty "can

²⁹⁷ Doc. 493 at 661:22–25; PX336 at 2.

²⁹⁸ Doc. 493 at 662:1–4, 663:9–14; Doc. 493 at 687:3–8, 688:23–689:3.

²⁹⁹ Doc. 494 at 731:4–11, 736:6–18; PX186.

³⁰⁰ PX161 at 3–6.

³⁰¹ Doc. 493 at 666:2–5; PX161 at 6.

³⁰² Doc. 493 at 666:10–17; PX161 at 6.

request them to share with Bruce and Leanne and they can evaluate and share with us.”³⁰³

310. On May 9, 2018, TCS employee Anil Kumar emailed the copybook layouts for Vantage systems to various TCS employees.³⁰⁴
311. On May 10, 2018, Bruce Fleming emailed Rajaraman that the Vantage copybook information had been copied over to a secure FTP site.³⁰⁵
312. This series of May 2018 emails shows that TCS personnel who had access to Vantage copybooks provided those copybooks to other personnel at TCS who did not have access to, or authorization to access, the copybooks.³⁰⁶
313. TCS also used the Trade Secrets to determine how Vantage performed its order of operations for the purpose of recreating Vantage’s functionality in BaNCS.³⁰⁷
314. In a policy administration system, the order of operations controls the specific order in which transactions or activities are applied to a customer’s policy.³⁰⁸
315. Because the order in which calculations are made impacts the end result, having an

³⁰³ Doc. 493 at 666:18–24; PX161 at 6.

³⁰⁴ Doc. 493 at 667:14–22; PX161 at 4.

³⁰⁵ Doc. 493 at 667:23–668:6; PX161 at 3–4.

³⁰⁶ Doc. 493 at 668:7–22; PX161 at 3–4.

³⁰⁷ Doc 495 at 987:22–993:8; PX317 at 1; PX319.

³⁰⁸ Doc. 496 at 1447:24–1448:2.

accurate order of operations is important for TCS in developing BaNCS.³⁰⁹

316. The Vantage order of operations is a business rule and a Trade Secret.³¹⁰
317. TCS and Charles Kirpes, a TCS Rebadged Employee with access to the Trade Secrets, created a comparison of Vantage's order of operations and compared it to BaNCS' order of operations to determine how to make BaNCS emulate the operation of Vantage.³¹¹
318. Kirpes testified that he "reference[d] the transaction order from Vantage" when developing requirements for the order of operations for BaNCS.³¹²
319. Kirpes created a document comparing Vantage's order of operations with the order of operations in BaNCS.³¹³
320. Kirpes did not ask CSC for permission to reference Vantage's order of operations when developing requirements for BaNCS.³¹⁴
321. TCS and Kirpes' conduct regarding the Vantage order of operations was not permitted by any CSC contract with Transamerica.³¹⁵

³⁰⁹ Doc 495 at 987:22–988:6.

³¹⁰ *Id.*

³¹¹ Doc 495 at 988:16–989:1; Doc 496 at 1442:16–19.

³¹² Doc. 496 at 1455:16–22; PX317 at 1; PX319.

³¹³ PX319.

³¹⁴ Doc. 496 at 1455:23–25.

³¹⁵ Doc 495 at 989:2–6.

322. TCS's use of the Trade Secrets to develop BaNCS' order of operations was "not just a shortcut" but "a big shortcut" because it saved TCS from having to develop the order of operations on its own.³¹⁶
323. TCS also used the Trade Secrets to determine how Vantage performed its systematic pay-out options for the purpose of recreating Vantage's functionality in BaNCS.
324. In an April 15, 2019 email, Zachary Voss, a TCS Rebadged Employee with access to CSC's technical manuals and user interfaces for Vantage, wrote: "Over the past couple of days, I've worked on a new table that I propose we add to the Claims module (see attached), which I feel contains most or all of the information needed to continue [systematic pay-out options] that are active in Vantage at the time of the conversion date within BaNCS."³¹⁷
325. In this email, Voss also wrote: "I understand that BaNCS will have different functionality than Vantage and a field in Vantage won't necessarily be a field in BaNCS. The fields I included in the attached doc are the ones I feel are necessary in BaNCS to continue the [systematic pay-out options] as they are currently functioning in Vantage."³¹⁸
326. On April 17, 2019, Voss created and circulated tables with information on the systematic pay-

³¹⁶ *Id.* at 992:8–15.

³¹⁷ Doc. 494 at 743:14–744:11; PX372 at 3.

³¹⁸ Doc. 494 at 744:12–21; PX372 at 3.

out options for the P65, P75, and P6 Vantage systems³¹⁹

327. Frieden instructed Voss not to communicate in this manner going forward and, more specifically, not to instruct the BaNCS team on what data should be in BaNCS.³²⁰
328. TCS Rebadged Employees with access to the Trade Secrets also sent TCS Non-Rebadged Employees a traditional life table guide for Vantage.
329. In an email chain, Jane Bockenstedt, Jenny Mullen, and Eron Stokes of TCS contacted Frieden, who had access to the Trade Secrets.³²¹
330. Bockenstedt is a TCS Non-Rebadged Employee.³²²
331. Mullen lists in her profile that her job is to develop requirements for BaNCS.³²³
332. Bockenstedt acknowledged in her email to Frieden that none of Bockenstedt, Stokes, or Mullen had the necessary “permissions” to access a traditional life table guide for Vantage.³²⁴

³¹⁹ Doc. 494 at 746:7–747:7; PX372 at 1–2.

³²⁰ Doc. 494 at 745:15–746:6, 781:25–782:13.

³²¹ Doc. 495 at 994:20–995:6, 995:21–25.

³²² *Id.* at 995:1–6.

³²³ *Id.* at 995:7–996:5.

³²⁴ *Id.* at 995:7–996:15.

333. Nonetheless, Bockenstedt requested the Vantage manual.³²⁵
334. Frieden responded to Bockenstedt's email by stating "Here you go" and attaching the requested document.³²⁶
335. The Vantage manual that Frieden sent to unauthorized TCS employees, including a member of the BaNCS requirements team, was a 661-page traditional life table guide.³²⁷
336. This document contains CSC's Trade Secret information, including calculations, business rules, and data structures.³²⁸
337. Bockenstedt's email also shows that Setty, another TCS Rebadged Employee with access to the Trade Secrets, had provided Bockenstedt with a .pdf of the Vantage table document for the P5 UL, which Pinto identified as PX521, the same Vantage manual that Setty had previously tried to send to unauthorized TCS Non-Rebadged Employees in March 2018.³²⁹
338. Like during TCS's discovery process for Vantage, TCS BaNCS employees improperly received and accessed the Trade Secrets during TCS's discovery process for CyberLife.
339. TCS's discovery process for CyberLife was similar to its discovery process for Vantage.³³⁰

³²⁵ *Id.* at 995:7–996:5.

³²⁶ *Id.* at 996:1–8.

³²⁷ *Id.* at 996:6–17.

³²⁸ *Id.*

³²⁹ *Id.* at 996:18–998:8.

³³⁰ *Id.* at 1000:10–1001:9; PX283 at 6.

340. The “CyberLife Conversion, Life Discovery Functional Report” detailed that the “Focus Area” of TCS’s discovery process for CyberLife was “Product Features, Process, Product/Process Variations, Calculations, Correspondences, and Interfaces & Data,” which relate to the five categories of the Trade Secrets that TCS was targeting in calculations, business rules, correspondence triggers, data structures, and software interfaces.³³¹
341. TCS’s CyberLife Conversion-Life Discovery Functional Report contains an inventory of the calculations performed by CyberLife.³³²
342. Pasupathy sent this document, including the list of CyberLife calculations, to TCS employees working on BaNCS, including Mustafi.³³³
343. While TCS purported to segregate TCS employees developing BaNCS from TCS Rebadged Employees with access to the Trade Secrets, there was in fact no meaningful segregation and instead the TCS Rebadged Employees functioned like a “drive up service window” where TCS employees developing BaNCS could contact TCS Rebadged Employees to request the Trade Secrets to use in developing BaNCS.³³⁴
344. TCS Rebadged Employees who had access to CSC’s source code and confidential product documentation were able to, and did,

³³¹ Doc. 495 at 1000:10–1001:9; PX283 at 6.

³³² PX283 at 13–18; Doc. 493 at 471:14– 19.

³³³ PX326 at 1; Doc. 496 at 1435:18–21.

³³⁴ Doc. 495 at 994:21–1000:9; PX336 at 1–2; PX521.

communicate with TCS employees who were writing requirements for, developing, and coding the Transamerica version of BaNCS.³³⁵

345. For example, Pasupathy worked with TCS Rebadged Employees for the purpose of collecting business requirements for BaNCS.³³⁶
346. Indeed, TCS's governance team directed Pasupathy to work with TCS Rebadged Employees for the purpose of collecting business requirements.³³⁷
347. Under the instruction of TCS's governance team, Pasupathy asked TCS Rebadged Employees for information to draft business requirements for BaNCS before asking Transamerica subject-matter experts.³³⁸
348. Pasupathy received no training on the proper use of CSC's confidential information in connection with his role as the Director of the Transamerica Transformation Program.³³⁹
349. TCS acquired the Trade Secrets during discovery to (1) avoid time and costs in developing BaNCS and (2) enable TCS to perform under its \$2.6 billion contract with Transamerica.³⁴⁰

³³⁵ Doc. 494 at 737:13–19.

³³⁶ Doc. 493 at 457:21–458:2, 458:20–459:2.

³³⁷ *Id.* at 458:20–459:2.

³³⁸ *Id.* at 475:14–476:1; 478:9–18.

³³⁹ *Id.* at 459:8–12.

³⁴⁰ Doc. 496 at 1526:20–1527:14; Doc. 495 at 953:15–954:9, 1003:16–1004:16.

350. These benefits were primarily for TCS and not “solely” (or exclusively) “for . . . Transamerica,” as required under the TPAA.
351. TCS claims that Transamerica owns the Transamerica customer layer of BaNCS and, therefore, TCS’s use of the Trade Secrets to develop the customer layer was solely for the benefit of Transamerica, but in fact TCS owns that layer.
352. It is standard practice for TCS to retain ownership of BaNCS.³⁴¹
353. Muthuswami, who executed the First Amended and Restated Master Services Agreement dated January 18, 2018, with Transamerica (the “2018 MSA”) and the Core Administration System License Agreement with Transamerica, understood that TCS retained ownership of the licensed BaNCS software.³⁴²
354. TCS’s Delivery Manager for TCS BaNCS, Paul, who was responsible for delivering the Transamerica customer layer of BaNCS, also understood that TCS—not Transamerica—owned the source code for that layer.³⁴³
355. The 2018 MSA between Transamerica and TCS does not grant Transamerica ownership of the Transamerica customer layer of BaNCS.³⁴⁴

³⁴¹ Doc. 496 at 1309:24–1310:1

³⁴² Doc. 493 at 440:6–14, 442:5–8; DTX–0419 at 25; DTX–0672 at 1.

³⁴³ Doc. 493 at 674:5–10, 674:24–675:5.

³⁴⁴ DTX–0672 at 1, 66–68.

356. Schedule G to the 2018 MSA lists the software that Transamerica either owns or licenses but does not mention a Transamerica customer layer of BaNCS.³⁴⁵
357. Section 10.5, “Source Code,” of the 2018 MSA states that “[a]ll software Deliverables will be provided to [Transamerica] in source code and object code form (including any Service Provider Software embedded therein),” and “[Transamerica] shall be entitled to receive the source code of any Service Provider Owned Software which is licensed under the Core Administration System License Agreement solely in accordance with the terms of such Core Administration System License Agreement.”³⁴⁶
358. TCS did not deliver source code for the Transamerica customer layer of BaNCS to Transamerica.³⁴⁷
359. Instead, TCS provided Transamerica with only object code for the Transamerica customer layer, as required by the Core Administration System License Agreement.³⁴⁸
360. Because TCS provided Transamerica with only object code and not source code for the Transamerica customer layer of BaNCS, the Transamerica customer layer of BaNCS is not considered a software deliverable under the 2018 MSA, but rather, as explained below, it is

³⁴⁵ Doc. 496 at 1310:18–1311:6; *see generally* DTX–0672.

³⁴⁶ DTX–0672 at 66.

³⁴⁷ Doc. 496 at 1489:15–1490:20, 1576:7–1580:23.

³⁴⁸ *Id.* at 1490:10–16; DTX–0419 at 6.

- a Licensed Product under the Core Administration License Agreement.³⁴⁹
361. Section 10.7(a)(i) of the 2018 MSA is the “Ownership of Work Product” clause.³⁵⁰
362. Section 10.7(a)(i) lists the items that Transamerica owns.³⁵¹
363. Section 10.7(a)(i) also states that, “[f]or clarity, Work Product does not include any Service Provider Owned Software (including any enhancements, modifications or derivative[] works of such Service Provider Owner Software or documentation related thereto) which is licensed under the Core Administration System License Agreement even if such Software, enhancements, modifications or derivatives are referred to as deliverables, work product or any other similar term in any Service Agreement.”³⁵²
364. Debarati Mukhopadhyay, TCS’s Product Head of BaNCS, stated in a TCS article that “the customer layer acts as a repository for modifications specific to a single organization or business unit,” and that “[t]hese customer modifications are forward-compatible by design and easily adaptable to successive updates to the core, business or geography layers of TCS BaNCS.”³⁵³

³⁴⁹ DTX-0419 at 6.

³⁵⁰ Doc. 496 at 1313:3-13; DTX-0672 at 67.

³⁵¹ Doc. 496 at 1313:22-24; DTX-0672 at 67.

³⁵² Doc. 496 at 1314:1-1315:2; DTX-0672 at 67.

³⁵³ Doc. 496 at 1315:22-1316:1; Doc. 496 at 1342:9-15; Doc. 496 at 1537:16-1539:9; DTX-0538 at 6.

365. Because Transamerica does not own “any Service Provider Owned Software (including any enhancements, modifications or derivatives works of such Service Provider Owner Software or documentation related thereto) which is licensed under the Core Administration System License Agreement,” Transamerica does not own the Transamerica customer layer of BaNCS.³⁵⁴
366. The Core Administration System License Agreement between TCS and Transamerica applies to the Transamerica customer layer of BaNCS and grants ownership of that layer to TCS.³⁵⁵
367. Schedule 1, “Definitions,” to the Core Administration System License Agreement states that (1) “‘Licensed Products’ means [TCS] BaNCS application identified in Schedule 6 and embedded Third Party software identified in Schedule 2” and “includes associated Documentation, Source Code Documentation (subject to the Release License), and object code and the Source Code (subject to the Release License);” and (2) “‘Release Event’ means any one or more of [identified] events or sets of circumstances.”³⁵⁶
368. Under Section 2.1.6.1 of the Core Administration System License Agreement, “[Transamerica] acknowledge[d] that the ownership of and the title in and to Intel-

³⁵⁴ DTX-0672 at 67; *see* Doc. 496 at 1315:22-1316:1; DTX-0538 at 6.

³⁵⁵ DTX-0419 at 5, 29-30.

³⁵⁶ *Id.* at 28-29.

lectual Property Rights in the Licensed Products (including Third Party software embedded therein and all enhancements, developments and derivative works of the Licensed Products and Third Party software embedded therein) . . . prior to a Release Event, are and shall at all times remain with [TCS] or the relevant Third Party (as applicable),” and “[s]ave for the license rights granted herein, [TCS] and the relevant Third Party (as applicable) own all rights and title, including all Intellectual Property Rights, in and to the Licensed Products.”³⁵⁷

369. TCS did not assert or present any evidence that a “Release Event” has occurred.
370. Under Section 2.1.6.2 of the Core Administration System License Agreement, “[TCS further] acknowledge[d] that ownership of and the title in and to Intellectual Property Rights in any enhancements, developments and other work product created by or on behalf of [Transamerica] or any of its Affiliates as part of the Services (excluding in respect of the Licensed Products and Third Party software embedded therein), are governed by and subject to the terms and conditions of the MSA and the Service Agreements.”³⁵⁸
371. Under Section 2.1.8 of the Core Administration System License Agreement, TCS is only

³⁵⁷ *Id.* at 5.

³⁵⁸ *Id.* at 5.

obligated to deliver various “object code” to Transamerica for “Licensed Products.”³⁵⁹

372. TCS only delivered object, or executable, code for the Transamerica customer layer of BaNCS to Transamerica.³⁶⁰
373. Under the Core Administration System License Agreement between TCS and Transamerica, TCS retains full ownership of TCS BaNCS.³⁶¹
374. Pinto also testified that he reviewed source code for BaNCS and there was no indication that there were any different layers in the code, which supports the conclusion that Transamerica could not and does not own any layer of that code.³⁶²
375. TCS also improperly acquired the Trade Secrets to avoid costs and save time in transferring Transamerica data from CSC’s software platforms to BaNCS.³⁶³
376. As part of Transamerica’s January 2018 contracts with TCS, Transamerica’s policy data had to be converted from Vantage and CyberLife to BaNCS.³⁶⁴

³⁵⁹ *Id.* at 6.

³⁶⁰ Doc. 496 1489:15–1490:20.

³⁶¹ *Id.* at 1309:8–15, 1310:2–5; *see* DTX–0419 at 5–6, 29–30.

³⁶² Doc. 495 at 959:4–960:11.

³⁶³ *Id.* at 934:7–935:11, 953:15–954:6, 1003:16–1004:16.

³⁶⁴ Doc. 493 at 573:2–13, 573:25–574:5; DTX–0672.

377. TCS was not authorized to access the source code or technical documents of Vantage or CyberLife to complete this data conversion.³⁶⁵
378. Nevertheless, TCS used the Trade Secrets to prepare for the conversion.³⁶⁶
379. As explained above, Palanisamy told Menon that he used the Trade Secrets for data migration purposes—specifically, to give him “information about the structure of data, as it exists today, so he can then plan for the migration.”³⁶⁷
380. TCS Rebadged Employees who had access to the Trade Secrets also improperly provided CSC source code, in the form of duplicate copybooks, to non-rebadged TCS “offshore” employees to save time and money in transferring Transamerica data from CyberLife to BaNCS.³⁶⁸
381. Wisely and his team of TCS Rebadged Employees understood that TCS’s offshore resources were not allowed to access source code for CyberLife.³⁶⁹
382. As of February 2019, Wayne Taylor and Bruce Gross were part of Wisely’s team at TCS.³⁷⁰
383. Taylor stated that for the conversion process, because TCS’s offshore resources were not

³⁶⁵ Doc. 494 at 805:7–13.

³⁶⁶ Doc. 493 at 646:22–647:6.

³⁶⁷ *Id.* at 646:22–647:6.

³⁶⁸ Doc. 495 at 1005:4–1017:21; PX166.

³⁶⁹ Doc. 493 at 516:20–23; PX166 at 3.

³⁷⁰ Doc. 493 at 518:3–16.

allowed to touch CSC code, they would have to “be creative.”³⁷¹

384. Gross understood that CSC was “being touchy on the COBOL copybooks names.”³⁷²
385. Wisely understood this statement to mean that CSC did not want TCS Rebadged Employees to share CSC’s copybooks with TCS offshore resources.³⁷³
386. Wisely did not ask CSC whether it would agree to allow TCS Rebadged Employees to create duplicate CyberLife copybooks and provide these duplicate copybooks to TCS offshore resources.³⁷⁴
387. Wisely also admitted that he did not ask CSC for permission to use the Trade Secrets to build TCS’s BaNCS system.³⁷⁵
388. There are also no documents or credible testimony showing that Transamerica authorized Wisely and his team of TCS Rebadged Employees to create the duplicate CyberLife copybooks.³⁷⁶
389. Wisely’s team of TCS Rebadged Employees created “duplicate” versions of CSC’s CyberLife copybooks, where only the names and prefixes

³⁷¹ *Id.* at 516:20–23; PX166 at 3.

³⁷² PX166 at 2.

³⁷³ Doc. 493 at 526:20–25.

³⁷⁴ *Id.* at 525:1–5, 528:10–19.

³⁷⁵ *Id.* at 492:10–16, 493:1–494:3.

³⁷⁶ *Id.* at 562:6–11.

were changed and some of the fields were expanded.³⁷⁷

390. Wisely's team provided offshore TCS resources with these "duplicate" versions of CSC's CyberLife copybooks, which the TCS offshore resources received.³⁷⁸
391. PX581 through PX588 are examples of the "duplicate" versions of CSC's CyberLife copybooks created by Wisely's team and provided by them to offshore TCS resources.³⁷⁹
392. TCS offshore employees created alleged "Neutral" versions of CSC's CyberLife copybooks that still contained all the markings of CSC's original copybooks.³⁸⁰
393. In a February 12, 2019 email, Taylor proposed creating "neutral" copybooks by taking the "duplicate copybooks" and creating a new file layout to convert them into MWB (MySQL Workbench) files.³⁸¹
394. Wisely's team of TCS Rebadged Employees and TCS offshore employees carried out the plan proposed by Taylor in his February 12, 2019 email.³⁸²
395. The TCS "duplicate" and alleged "neutral" copybooks were near wholesale copies of CSC's

³⁷⁷ *Id.* at 528:23–529:7; PX166 at 1–3.

³⁷⁸ Doc. 493 at 520:21–521:10, 524:1–13; PX166 at 1–3.

³⁷⁹ Doc. 493 at 529:21–24, 530:5–15, 531:4–14; PX581; PX582; PX583; PX584; PX585; PX586; PX587; PX588.

³⁸⁰ Doc. 495 at 1012:1–13; PX166 at 3; Doc. 493 at 523:17–25.

³⁸¹ PX166 at 3.

³⁸² Doc. 493 at 524:1–13.

source code with only insignificant aspects changed.³⁸³

396. Pinto compared these copybooks to CSC's copybooks and discovered extensive copying by TCS of CSC's source code in both the "duplicate" and alleged "neutral" copybooks.
397. Pinto testified that, in his experience, there is no such thing as a "neutral" copybook because copybooks contain data structures; instead, there is only neutral data that is removed and "neutralized" to remove the data structures.³⁸⁴
398. TCS's alleged "neutral" copybooks were not "neutral" because they directly copied CSC's source code from CSC's copybooks.³⁸⁵
399. TCS's use of CSC's source code to create "duplicate" copybooks was improper, as was TCS's sharing of CSC's source code to TCS NonRebadged Employees through the "duplicate" copybooks.³⁸⁶
400. At trial, TCS argued that it had no reason to misappropriate the Trade Secrets because BaNCS is superior to Vantage and CyberLife, but the evidence detailed above demonstrates TCS's widespread misappropriation of the Trade Secrets.
401. Moreover, TCS did not show that BaNCS is superior to Vantage and CyberLife.

³⁸³ Doc. 495 at 1005:4–1017:21.

³⁸⁴ *Id.*

³⁸⁵ *Id.*

³⁸⁶ *Id.*

402. In the end, TCS did not convert a single product from any legacy platform at Transamerica to the purportedly superior BaNCS.³⁸⁷
403. At the time of trial, Transamerica had terminated its relationship with TCS³⁸⁸ and was using Vantage and CyberLife for the policies that had been slated for conversion and for new policies as well.³⁸⁹
404. TCS acquired the Trade Secrets through theft by possessing the Trade Secrets despite knowing it should not be in possession of them.
405. As found above, TCS possessed the Trade Secrets in its Knowmax document repository and on the laptops of TCS Non-Rebadged Employees, among other places.
406. And as found below, TCS knew its possession of the Trade Secrets was improper, as evidenced by CSC's and Transamerica's communications to TCS, communications and testimony by TCS employees, and TCS's own intellectual property policies.
407. TCS also acquired the Trade Secrets by misrepresenting its access to and use of the Trade Secrets to Transamerica.
408. On November 6, 2018, Eappen misleadingly responded to a request for information from

³⁸⁷ Doc. 496 at 1385:21–1386:4; Doc. 494 at 807:10–18; Doc. 496 at 1456:3–6, 1457:5–10.

³⁸⁸ Doc. 494 at 807:19–22.

³⁸⁹ *Id.* at 807:23–808:9; Doc. 494 at 779:19–22, 780:13–20.

Transamerica regarding TCS's use of the Trade Secrets.³⁹⁰

409. In response to Transamerica's request that "TCS confirm no Transamerica or Transamerica rebadged employees are involved in any aspects of building requirements and/or functionality in TCS BaNCS related to U.S. product administration," TCS represented to Transamerica: "Yes, we confirm that no Transamerica or Transamerica rebadged employees are involved in any aspect of building requirements and/or functionality in TCS BaNCS related to U.S. product administration."³⁹¹
410. In response to Transamerica's request that "TCS confirm no Transamerica or Transamerica rebadged employees are using any third party intellectual property or proprietary information to build requirements and/or functionality for TCS BaNCS," TCS represented to Transamerica: "Yes, we confirm."³⁹²
411. TCS's representations to Transamerica were false.
412. Contrary to TCS's representations, TCS Rebadged Employees, including Setty and Kirpes, were involved in building requirements and functionality in BaNCS related to U.S. product administration, shared the Trade Secrets with members of the BaNCS team, and

³⁹⁰ PX327 at 1-2.

³⁹¹ PX328; Doc. 495 at 869:23-870:22.

³⁹² PX328; Doc. 495 at 870:23:871:8.

used the Trade Secrets to help build requirements and functionality for BaNCS.

413. TCS never informed Transamerica that it was accessing and using the Trade Secrets to develop requirements and functionality for BaNCS.
414. Despite regularly meeting with Canfield regarding the BaNCS conversion process, TCS never told her that it had used the Trade Secrets to build requirements for BaNCS.³⁹³
415. TCS also never told Canfield that TCS believed TCS Rebadged Employees could use the Trade Secrets to help build requirements for BaNCS.³⁹⁴
416. Nor did TCS ever tell Transamerica about any violations of the restrictions that Transamerica had imposed on TCS's access to and use of the Trade Secrets.³⁹⁵
417. For example, TCS never told Transamerica that (1) TCS Rebadged Employees shared CSC proprietary manuals and copybooks with TCS employees writing requirements for BaNCS;³⁹⁶ (2) TCS Rebadged Employees shared calculations and sample screens from Vantage and Cyberlife with TCS employees writing requirements for BaNCS;³⁹⁷ and (3) TCS Rebadged Employees analyzed CSC's propri-

³⁹³ Doc. 495 at 871:9–20.

³⁹⁴ *Id.* at 871:21–872:5, 899:20–25.

³⁹⁵ *Id.* at 898:1–5.

³⁹⁶ *Id.* at 898:6–23.

³⁹⁷ *Id.* at 899:4–14.

etary source code and manuals to help prepare requirements for BaNCS.³⁹⁸

418. TCS also acquired the Trade Secrets through a breach of its duty to CSC to maintain the secrecy of the Trade Secrets.
419. TCS knew that CSC owned the Trade Secrets, and that CSC did not authorize TCS to acquire the Trade Secrets other than for the sole benefit of Transamerica.
420. Nevertheless, TCS Rebadged Employees shared the Trade Secrets with TCS Non-Rebadged Employees, who used the Trade Secrets to avoid time and costs in developing BaNCS and to enable TCS to perform under its \$2.6 billion contract with Transamerica.
421. TCS also acquired the Trade Secrets by inducing Transamerica to breach its duty to CSC to maintain the secrecy of the Trade Secrets.
422. Under its agreements with CSC, Transamerica had a duty to maintain the secrecy of the Trade Secrets.
423. Under Section 5.1 of the CyberLife Agreement, Transamerica cannot “allow any person or entity to transmit or reproduce the System(s) in whole or in part in any manner except as permitted” in the agreement and cannot “disclose or otherwise make the System available to any person or entity other than employees of [Transamerica] and employees of

³⁹⁸ *Id.* at 899:15–19.

an Authorized Company required to have such knowledge for normal use of the System(s).”³⁹⁹

424. Under Section 9.1 of the Vantage Agreement, Transamerica agreed to strict confidentiality provisions, including to “not allow any copies of the Software Products or related materials to leave its possession and control,” and to “take all necessary steps to ensure that the provisions of this Agreement are not violated by any person under its control or in its service.”⁴⁰⁰
425. In the TPAA, CSC granted to Transamerica the right to authorize TCS to access and use the Trade Secrets only on behalf of and solely for the benefit of Transamerica.
426. TCS induced Transamerica to breach its duty to maintain the secrecy of the Trade Secrets by, among other acts, misrepresenting its access to and use of the Trade Secrets, bypassing Transamerica’s restrictions on TCS’s access to and use of the Trade Secrets, and using the Trade Secrets to develop BaNCS.
427. TCS knew it was not permitted to acquire and use the Trade Secrets to bid for work from Transamerica, develop BaNCS, and save time and costs in performing under its January 2018 contracts with Transamerica.⁴⁰¹

³⁹⁹ PX088 at 4.

⁴⁰⁰ PX069 at 8.

⁴⁰¹ Doc. 495 at 949:5–979:8, 981:2–1033:17; PX271 at 1–7; PX273; PX551; PX552; PX215; PX536 at 1–3; PX203 at 1–7; PX228 at 1–11; PX317 at 1–3; PX319; PX336 at 1–3; PX283;

428. TCS violated its own intellectual property policies when accessing and using the Trade Secrets to develop BaNCS and save time and costs in performing under its January 2018 contracts with Transamerica.⁴⁰²
429. TCS has policies on how to handle third parties' intellectual property rights.⁴⁰³
430. As of 2012, TCS's Intellectual Property Rights (IPR) Apex Manual stated: "TCS shall secure access to third-party IP assets, via in-licensing from partners, vendors, academic institutions or third-parties who own such IP assets."⁴⁰⁴
431. Under this manual, TCS was supposed to get permission from the owner of third-party intellectual property assets to use such assets.⁴⁰⁵
432. TCS's IP Safe Readiness Assessment Manual further states that there should be "[v]erification that the licenses of the third party software allow commercial use along with right use and right access."⁴⁰⁶
433. Contrary to TCS's own intellectual property policies, TCS did not approach CSC with

PX523; PX524; PX525; PX166 at 1–4; PX451 at 1–20; PX125 at 1–3; PX327 at 1–2; PX328.

⁴⁰² Doc. 495 at 1121:9–1122:22.

⁴⁰³ Doc. 496 at 1292:24–1293:1; Doc. 495 at 1121:9–1122:22.

⁴⁰⁴ PX562 at 17; Doc. 496 at 1293:6–1294:20; Doc. 497 at 1558:13–1559:11; *see also* PX558 at 27; Doc. 496 at 1295:21–1296:11.

⁴⁰⁵ Doc. 496 at 1296:19–1297:1; Doc. 495 at 1121:9–1122:22; Doc. 497 at 1558:13–1559:11.

⁴⁰⁶ Doc. 493 at 449:8–17; PX559 at 19.

respect to TCS's rights to use and access CSC's software.⁴⁰⁷

434. TCS never asked CSC whether Transamerica could give TCS access to the Trade Secrets.⁴⁰⁸
435. Nor did TCS ever ask CSC for guidance on what, if anything, TCS was permitted to do with respect to the Trade Secrets.⁴⁰⁹
436. Despite not asking CSC for permission or seeing a single contract from CSC giving TCS authorization to access and use the Trade Secrets in the ways it did, TCS purportedly decided it had authorization.⁴¹⁰
437. It was a violation of TCS's intellectual property policies not to ask CSC for permission before accessing and using the Trade Secrets.⁴¹¹
438. As found above, CSC and Transamerica informed TCS that it was not authorized to provide the Trade Secrets to TCS Non-Rebadged Employees or use the Trade Secrets to develop BaNCS.
439. Specifically, TCS knew as early as April 2018 of CSC's concerns regarding the rebadging of Transamerica employees to TCS employees.⁴¹²

⁴⁰⁷ Doc. 493 at 449:18–23; Doc. 495 at 1121:9–1122:22.

⁴⁰⁸ Doc. 496 at 1297:2–17; Doc. 493 at 446:8–16; Doc. 495 at 1121:9–1122:22.

⁴⁰⁹ Doc. 493 at 442:16–20; Doc. 495 at 1121:9–1122:22.

⁴¹⁰ Doc. 496 at 1297:24–1298:16, 1298:7–8, 1299:3–7; Doc. 493 at 443:16–20.

⁴¹¹ Doc. 496 at 1297:18–23; Doc. 495 at 1121:9–1122:22.

⁴¹² Doc. 496 at 1316:13–25.

440. And TCS knew as early as June 2018 that CSC did not believe TCS was authorized to use the Trade Secrets in the ways it did.⁴¹³
441. TCS's failure to inform Transamerica of its use of the Trade Secrets to develop BaNCS and TCS's inaccurate representations to Transamerica about such use further show that TCS knew it was improper to use the Trade Secrets to develop BaNCS.
442. Communications surrounding TCS's creation of the duplicate and so-called "neutral" copybooks show that TCS employees knew it was improper to share CSC's source code copybooks with TCS's offshore resources.⁴¹⁴
443. Frieden's testimony and TCS communications surrounding the email chain where Setty shared snapshots from CSC's proprietary manuals with the BaNCS team show that TCS employees knew it was improper to share information from CSC's proprietary manuals with the BaNCS team.⁴¹⁵
444. Communications surrounding the rate of return email chain show that TCS employees knew it was improper to share Vantage source code and documentation with the BaNCS team.
445. Frieden's testimony that it would have been against his team's practices to show sample screens from Vantage to members of the

⁴¹³ *Id.* at 1299:8–15; Doc. 495 at 1027:11–1029:6; PX125.

⁴¹⁴ PX166 at 3.

⁴¹⁵ Doc. 494 at 731:4–11, 736:6–18; PX336 at 1–3; PX172 at 1–3.

BaNCS team shows that TCS employees knew it was improper to share sample Vantage screens with the BaNCS team.

446. As found above, TCS disclosed the Trade Secrets to TCS Non-Rebadged Employees and used the Trade Secrets to (1) develop a bid to displace CSC at Transamerica and obtain a \$2.6 billion contract; (2) save time and costs in developing BaNCS and performing under its January 2018 contracts with Transamerica; and (3) save time and costs in transferring Transamerica data from CSC software to BaNCS.
447. TCS did not have CSC's express or implied consent to do any of the above.
448. As found above, at the time of disclosure and use, TCS knew it had acquired the Trade Secrets through improper means.
449. At the time of disclosure and use, TCS knew its knowledge of the Trade Secrets was derived from or through a person who had used improper means to acquire the Trade Secrets.
450. TCS knew its policy was to obtain authorization from the owner of third-party intellectual property before accessing or using such third-party intellectual property.
451. TCS also knew that the Trade Secrets were marked as CSC confidential and/or proprietary, and that TCS Rebadged Employees could not share the Trade Secrets with TCS Non-Rebadged Employees developing BaNCS.

452. Nevertheless, TCS Rebadged Employees provided the Trade Secrets to TCS Non-Rebadged employees developing BaNCS.
453. As found above, at the time of disclosure or use, TCS knew its knowledge of the Trade Secrets was acquired under circumstances giving rise to a duty to maintain the secrecy of the Trade Secrets.⁴¹⁶
454. At the time of disclosure and use, TCS knew its knowledge of the Trade Secrets was acquired under circumstances giving rise to a duty to limit the use of the Trade Secrets.⁴¹⁷
455. TCS knew it was authorized to access, copy, execute, and use the Trade Secrets only on behalf of and solely for the benefit of Transamerica.⁴¹⁸
456. TCS also knew it could not use the Trade Secrets to develop a bid to displace CSC at

⁴¹⁶ Doc. 495 at 931:21-932:8, 935:17-939:2, 943:15-944:4, 956:1-957:25, 961:9-962:9, 963:4- 13, 964:22-965:5, 968:15-970:5, 970:22-971:15, 971:20-974:2, 974:10-979:8, 981:2-993:8, 994:20- 1000:9, 1002:25-1008:4, 1010:12-1014:4, 1014:16-1017:21, 1020:4-1026:8, 1027:6-1033:17, 1044:20-1045:15, 1050:17-1052:5, 1053:10-16, 1086:13-1087:3, 1090:13-1092:4, 1097:13-1099:2, 1099:14-1102:4, 1120:4-11:24:19; PX125 at 1-3; PX438 at 1-6; PX327 at 1-3; PX328; PX166 at 1- 4.

⁴¹⁷ Doc. 495 at 931:21-932:8, 935:17-939:2, 943:15-944:4, 956:1-957:25, 961:9-962:9, 963:4- 13, 964:22-965:5, 968:15-970:5, 970:22-971:15, 971:20-974:2, 974:10-979:8, 981:2-993:8, 994:20- 1000:9, 1002:25-1008:4, 1010:12-1014:4, 1014:16-1017:21, 1020:4-1026:8, 1027:6-1033:17, 1044:20-1045:15, 1050:17-1052:5, 1053:10-16, 1086:13-1087:3, 1090:13-1092:4, 1097:13-1099:2, 1099:14-1102:4, 1120:4-11:24:19; PX125 at 1-3; PX438 at 1-6; PX327; PX328; PX166 at 1-4.

⁴¹⁸ PX081 at 3.

Transamerica and secure a \$2.6 billion contract from Transamerica, or to develop BaNCS.

457. Finally, at the time of disclosure or use, TCS knew its knowledge of the Trade Secrets was derived from or through a person who owed a duty to CSC to maintain the secrecy and limit the use of the Trade Secrets.⁴¹⁹

C. Damages

458. TCS was unjustly enriched in the amount of at least \$56,151,583 as a result of its misappropriation of the Trade Secrets.⁴²⁰
459. There are three different approaches that can properly calculate the amount of unjust enrichment damages for trade secret misappropriation: (1) the cost approach; (2) the income approach; and (3) the market approach.⁴²¹
460. The cost approach analyzes how much research and design costs a person avoided by misappropriating trade secrets.⁴²²

⁴¹⁹ Doc. 495 at 931:21–932:8, 935:17–939:2, 943:15–944:4, 956:1–957:25, 961:9–962:9, 963:4–13, 964:22–965:5, 968:15–970:5, 970:22–971:15, 971:20–974:2, 974:10–979:8, 981:2–993:8, 994:20–1000:9, 1002:25–1008:4, 1010:12–1014:4, 1014:16–1017:21, 1020:4–1026:8, 1027:6–1033:17, 1044:20–1045:15, 1050:17–1052:5, 1053:10–16, 1086:13–1087:3, 1090:13–1092:4, 1097:13–1099:2, 1099:14–1102:4, 1120:4–11:24:19; PX125 at 1–3; PX438 at 1–6; PX328; PX166 at 1–4.

⁴²⁰ Doc. 495 at 1126:6–1161:11; Doc. 495 at 1033:18–1041:2.

⁴²¹ Doc. 495 at 1131:16–24.

⁴²² Doc. 495 at 1133:11–15.

461. The income approach calculates the profits a person expected from its misappropriation of trade secrets.⁴²³
462. The market approach calculates how much the trade secret owner could receive by selling or licensing its trade secrets to another.⁴²⁴
463. Because CSC has never licensed or sold the Trade Secrets to a competitor for use to develop a competing product, the market approach is not a useful approach in this matter.⁴²⁵
464. Both the cost and income approach show that TCS was unjustly enriched by its trade secret misappropriation.⁴²⁶
465. CSC's damages expert, Brian Napper, whose qualifications are discussed below and whose opinions are credible and support the Court's findings of fact regarding TCS's unjust enrichment, opined that TCS has been unjustly enriched by \$56,151,583.⁴²⁷
466. To form his opinions, Napper assumed the Trade Secrets were misappropriated by TCS and relied on Pinto's expert report.⁴²⁸
467. Napper used two approaches in calculating the amount of TCS's unjust enrichment: (1) the cost approach; and (2) the income approach.⁴²⁹

⁴²³ Doc. 495 at 1133:16–25.

⁴²⁴ Doc. 495 at 1134:3–9.

⁴²⁵ *Id.* at 1134:3–9.

⁴²⁶ *Id.* at 1134:1–12.

⁴²⁷ *Id.* at 1130:24–1131:2, 1160:23–1161:11.

⁴²⁸ *Id.* at 1130:11–20, 1132:22–1133:2.

468. Napper opined that, based on the cost approach, the amount of TCS's unjust enrichment is \$56,151,583.⁴³⁰
469. Napper opined that, based on the income approach, the amount of TCS's unjust enrichment is \$55,484,165.⁴³¹
470. Napper's analysis focused on valuing the categories of functionalities of Vantage and CyberLife that TCS was focused on in its misappropriation: calculations; business rules; data structures; correspondence; and interfaces.⁴³²
471. TCS used the Trade Secrets to help build a competing product and reduce its own operating costs associated with delivering the \$2.6 billion contract to Transamerica.⁴³³
472. Because TCS did not actually develop the Trade Secrets, CSC's costs to develop the Trade Secrets, less any costs TCS actually incurred that would have reduced its costs to develop the misappropriated Trade Secrets, are a reasonable proxy for the development costs TCS avoided due to its misappropriation.⁴³⁴

⁴²⁹ *Id.* at 1131:3–1132:8.

⁴³⁰ Doc. 495 at 1133:11–15.

⁴³¹ *Id.* at 1133:16–25.

⁴³² *Id.* at 1134:13–1135:8.

⁴³³ *Id.* at 1134:15–1135:8, 1149:23–1150:11.

⁴³⁴ *Id.* at 953:15–18, 953:25–954:6.

473. There is no credible evidence that CSC's trade secrets were worth less at the time of misappropriation in 2017 and 2018 than at the time CSC acquired the Vantage and CyberLife platforms or at the time of the applicable software version releases.
474. Pinto testified that there had not been technological decay of the value of the Trade Secrets and that, instead, the age, maturity, and proven stability of Vantage and CyberLife created a great deal of value.⁴³⁵
475. CSC's costs to develop the Trade Secrets include both its acquisition costs and its development costs since acquisition through the latest versions of software accessed by TCS at Transamerica.⁴³⁶
476. CSC's cost to acquire CyberLife was at least \$10.6 million.⁴³⁷
477. CSC acquired CyberLife as part of its acquisition of a company called Mynd, which CSC acquired in 2000 for \$572 million.⁴³⁸
478. Seven years before CSC's acquisition of Mynd, in 1993, Mynd acquired CyberTek for \$59.7 million.⁴³⁹
479. At the time of Mynd's acquisition of CyberTek, CyberTek had multiple assets, including the software that became CyberLife.⁴⁴⁰

⁴³⁵ Doc. 495 at 1040:2–19, 1140:2–13.

⁴³⁶ *Id.* at 1135:9–18.

⁴³⁷ *Id.* at 1137:13–15.

⁴³⁸ *Id.* at 1136:4–7.

⁴³⁹ *Id.* at 1136:2–4.

480. A 1993 Mynd SEC filing stated that the software acquisition costs portion of that acquisition were \$10.6 million.⁴⁴¹
481. The software costs in the Mynd acquisition were attributable to the CyberLife software.⁴⁴²
482. Using Mynd's costs to acquire the CyberTek software in 1993 understates CSC's costs to acquire CyberLife in 2000 because it does not include Mynd's development costs from 1993 through 2000.⁴⁴³
483. CSC's cost to acquire Vantage was at least \$23.6 million.⁴⁴⁴
484. CSC acquired Vantage as part of its acquisition of a company called Continuum, which CSC acquired in 1996 for \$1.47 billion.⁴⁴⁵
485. Three years before CSC's acquisition of Continuum, in 1993, Continuum acquired Vantage Systems for \$40.3 million.⁴⁴⁶
486. Continuum's primary purpose for acquiring Vantage Systems was to acquire the Vantage software because, at the time, Continuum lacked a comprehensive policy administration system for life insurance and annuities, and

⁴⁴⁰ Doc. 495 at 1136:4–6.

⁴⁴¹ *Id.* at 1136:20–1137:12.

⁴⁴² *Id.* at 1137:6–12.

⁴⁴³ Doc. 492 at 285:25–286:7; Doc. 495 at 1141:9–16.

⁴⁴⁴ Doc. 495 at 1139:14–16.

⁴⁴⁵ *Id.* at 1137:16–1138:4.

⁴⁴⁶ Doc. 495 at 1137:21–22.

the Vantage software filled this market void for Continuum.⁴⁴⁷

487. Continuum's 1993 SEC filing reflected that Continuum allocated \$8.5 million of the Vantage Systems purchase price to software and \$15.6 million to purchased research and development, which totals \$24.1 million.⁴⁴⁸
488. \$23,633,000 of these purchase price allocations (i.e., all but \$467,000 attributable to property and casualty software) are attributable to Vantage.⁴⁴⁹
489. CSC has invested tens of millions of dollars in the development of the Trade Secrets since acquiring Vantage and CyberLife, and CSC continues to invest significant resources in the development of the Trade Secrets.⁴⁵⁰
490. CSC capitalizes some of its software development costs and expenses some of its software development costs.⁴⁵¹
491. CSC does not have information reflecting its development costs before 2000 for CyberLife and Vantage.⁴⁵²

⁴⁴⁷ Doc. 492 at 251:11–17.

⁴⁴⁸ Doc. 495 at 1138:5–23.

⁴⁴⁹ *Id.* at 1138:5–1139:16.

⁴⁵⁰ Doc. 492 at 278:20–279:11; Doc. 493 at 578:13–20, 584:14–19.

⁴⁵¹ Doc. 495 at 1140:15–1141:8; Doc. 492 at 279:15–281:11, 281:22–282:11; 282:14–25, 284:16–285:2; PX145; PX146.

⁴⁵² Doc. 495 at 1141:9–16; Doc. 492 at 281:2–5, 282:1–6, 285:25–286:7.

492. CSC's total capitalized development costs for labor for the Vantage platform from fiscal years 2000 to 2003 were \$18.8 million.⁴⁵³
493. Vantage version 15.14—released in 2003—is the latest version of Vantage that TCS accessed at Transamerica.⁴⁵⁴
494. CSC's total capitalized development costs for labor for the CyberLife platform from fiscal year 2000 to 2010 were \$60.7 million.⁴⁵⁵
495. CyberLife version 10.01—released in 2010—is the latest version of CyberLife that TCS accessed at Transamerica.⁴⁵⁶
496. The acquisition and capitalized development costs for labor together total at least \$71.3 million for CyberLife and \$42.4 million for Vantage, which together totals at least \$113.7 million.⁴⁵⁷
497. TCS's misappropriation focused on five functionalities: calculations; business rules; data structures; correspondence; and interfaces.⁴⁵⁸
498. These functionalities comprise approximately 65 percent of CyberLife and 39 percent of Vantage.⁴⁵⁹

⁴⁵³ Doc. 495 at 1142:14–19.

⁴⁵⁴ *Id.* at 1141:17–20.

⁴⁵⁵ Doc. 495 at 1142:14–19.

⁴⁵⁶ *Id.* at 1141:9–1142:5.

⁴⁵⁷ Doc. 495 at 1142:20–1143:7.

⁴⁵⁸ *Id.* at 934:7–935:5, 1143:9–1144:3.

⁴⁵⁹ *Id.* at 1035:10–14, 1143:9–1144:3.

499. Napper asked Pinto to look into the portion of CSC's Trade Secrets that were the focus of TCS's misappropriation.⁴⁶⁰
500. In response to Napper's request, Pinto evaluated an analysis performed by Taute of approximately 950 functions in the enhanced software releases for Vantage and CyberLife, where Taute identified which of the enhancements were for calculations, interfaces, business rules, correspondence, or data structures.⁴⁶¹
501. Analyzing the composition of the enhancements provided over the years is a reasonable way to estimate the composition of the software platforms accessed by TCS.⁴⁶²
502. In an abundance of caution to limit the software to the functions that were the focus of TCS's misappropriation, Pinto reduced the number of functions Taute had identified as functions for calculations, interfaces, business rules, correspondence, or data structures by removing any function that dealt with another product that was internal to CSC.⁴⁶³
503. TCS misappropriated through use at least 64.9 percent of CyberLife and 39.3 percent of Vantage.⁴⁶⁴

⁴⁶⁰ Doc. 495 at 1033:18–1034:17.

⁴⁶¹ *Id.* at 1034:18–1035:20; Doc. 492 at 289:4–19.

⁴⁶² Doc. 495 at 1034:14–25.

⁴⁶³ *Id.* at 1034:18–1035:20.

⁴⁶⁴ *Id.* at 1034:18–1035:14, 1035:21–1036:6.

504. This apportionment is conservative because TCS had access to all of Vantage and CyberLife, including everything contained in the source code and confidential product documentation, and Pinto narrowed that down to just the functionalities that would be impactful or meaningful to the development of BaNCS.⁴⁶⁵
505. Applying these apportionment percentages to the cost calculation performed by Napper yields a total cost of at least \$62,962,097.⁴⁶⁶
506. While CSC's development costs could be a reasonable measure of TCS's unjust enrichment, Napper then conservatively deducted TCS's estimated transformation costs associated with the functionality at issue—\$6,810,514—from CSC's total costs.⁴⁶⁷
507. TCS estimated that it would earn \$55.9 million in revenues from Transamerica for its transformation services (i.e., moving Transamerica from its old software platforms onto BaNCS).⁴⁶⁸
508. Five of the nine transformation activities performed in each phase would benefit from access to the Trade Secrets, and three of the six phases included Vantage and CyberLife.⁴⁶⁹

⁴⁶⁵ *Id.* at 1035:21–1036:6.

⁴⁶⁶ *Id.* at 1144:8–24.

⁴⁶⁷ Doc. 495 at 1146:16–1147:22, 1149:20–22.

⁴⁶⁸ *Id.* at 1037:11–23.

⁴⁶⁹ *Id.* at 1037:25–1038:18.

509. It is conservative to adjust TCS's expected off-shore revenues (i.e., charges to Transamerica) upward at an amount of 129 percent for purposes of this analysis, because CSC's costs were all based on U.S. labor, including U.S. engineers and employees.⁴⁷⁰
510. After making this adjustment, deducting TCS's expected profits from the revenues yields TCS's expected costs for the phases involving the misappropriated functionalities, which is \$6,810,514.⁴⁷¹
511. Deducting TCS's total cost (\$6,810,514) from CSC's apportioned total costs (\$62,962,097) equals \$56,151,583.⁴⁷²
512. TCS's avoided costs are therefore at least \$56,151,583.⁴⁷³
513. TCS misappropriated the Trade Secrets to help TCS win and implement a \$2.6 billion contract with Transamerica.⁴⁷⁴
514. TCS's misappropriation positively impacted at least four of the revenue categories from TCS's \$2.6 billion contract with Transamerica : (i) TCS's Transformation Charges for BaNCS, (ii) TCS's Platform Charges for the BaNCS Platform, (iii) BaNCS Production Support

⁴⁷⁰ *Id.* at 1148:13–1149:7.

⁴⁷¹ *Id.* at 1149:20–22.

⁴⁷² *Id.* at 1149:23–1150:18.

⁴⁷³ Doc. 495 at 1149:23–1150:18.

⁴⁷⁴ *Id.* at 932:2–5.

Charges, (iv) BaNCS IT Infrastructure Support Charges.⁴⁷⁵

515. The first category is revenue relating to transformation activities—the revenue that TCS was going to earn by transforming Transamerica’s policies to BaNCS.⁴⁷⁶
516. TCS’s estimated transformation charges for BaNCS were approximately \$55.9 million.⁴⁷⁷
517. TCS’s estimated profits for its transformation charges were \$5,433,827.⁴⁷⁸
518. The other categories of revenue fall under TCS’s usage charges for BaNCS—these are types of revenue TCS would charge generally on a permanaged-insurance-policy basis.⁴⁷⁹
519. TCS’s estimated usage revenues included the following: BaNCS Platform Charges: License Fee of \$20.16 million, Variable Policy Fee of \$53.5 million, BaNCS Production Support Charges of \$68.2 million, BaNCS IT Infrastructure Support Charges of \$240.4 million.⁴⁸⁰
520. Of the \$20.16 million license fee, 4.97 percent is for Vantage policies and 25.1 percent is for CyberLife policies, which results in

⁴⁷⁵ Doc. 495 at 1038:19–1039:5, 1151:1–9.

⁴⁷⁶ *Id.* at 1151:10–19.

⁴⁷⁷ *Id.* at 1151:10–19; PX450.

⁴⁷⁸ Doc. 495 at 1152:24–1153:8.

⁴⁷⁹ *Id.* at 1151:20–24.

⁴⁸⁰ *Id.* at 1151:25–1152:9.

approximately \$1 million for Vantage and \$5.06 million for CyberLife.⁴⁸¹

521. Multiplying these percentages of the revenues attributable to Vantage and CyberLife by TCS's estimation of its gross margin for this revenue stream results in profits of \$3,791,013.⁴⁸²
522. Of the \$53.5 million variable policy fee, after apportioning both the closed-and open-book policies and applying TCS's estimated gross margin, the total expected profits for Vantage and CyberLife policies is \$13,520,847.⁴⁸³
523. Of the \$68.2 million in revenues for BaNCS production support, after apportioning both the closed-and open-book policies and applying TCS's estimated gross margin, the total expected profits for Vantage and CyberLife policies is \$15,433,622.⁴⁸⁴
524. Of the \$240.4 million in revenues for IT Infrastructure Support, after applying the closed-book apportionment percentages and applying TCS's estimated gross margin, the total expected profits for Vantage and CyberLife policies is \$21,085,779.⁴⁸⁵

⁴⁸¹ *Id.* at 1039:6–16, 1154:14–1155:2.

⁴⁸² *Id.* at 1155:3–11. Napper testified that the values came from the schedules in his expert report. *Id.* at 1155:12–15. Napper further testified that for his calculations, he rounded to the ten-thousandths place. *Id.* at 1155:16–1156:1.

⁴⁸³ Doc. 495 at 1156:2–20.

⁴⁸⁴ *Id.* at 1156:22–1157:21.

⁴⁸⁵ *Id.* at 1157:22–1158:17.

525. Totaling the above expected profits results in expected profits of \$579,265,088.⁴⁸⁶
526. Napper made one additional adjustment to discount TCS's total expected profits to January 2018 (the time of the announcement of the deal between TCS and Transamerica) because it was a 15-year agreement between TCS and Transamerica.⁴⁸⁷
527. While TCS's estimated profits were not projected specifically into the future (and so the estimates could already have been discounted to present value), Napper calculated the total expected profits 15 years into the future and then discounted it back to 2018 at a risk-free rate, the T-bill rate of 0.9 percent.⁴⁸⁸
528. Napper testified that under the income approach his final determination was \$55,448,165.⁴⁸⁹
529. TCS's expected profits from its misappropriation were therefore at least \$55,448,165.⁵⁶⁵
530. At trial, CSC proved \$56,151,583 in damages from TCS's misappropriation under the cost approach, and it also proved \$55,448,165 in damages under the income approach. CSC is

⁴⁸⁶ *Id.* at 1158:19–1159:3.

⁴⁸⁷ *Id.* at 1159:4–17, 1160:14–18.

⁴⁸⁸ Doc. 495 at 1159:17–23. Napper selected the T-bill rate because, based on his discussions with Pinto, TCS having access to the Trade Secrets reduced TCS's risk associated with their Transamerica contract, making a risk-free T-bill rate was appropriate. *Id.* at 1159:25–1160:13.

⁴⁸⁹ *Id.* at 1160:19–22.

entitled to the higher level of damages it proved at trial, \$56,151,583.

D. Willful and Malicious Misappropriation

531. TCS willfully and maliciously misappropriated the Trade Secrets.
532. TCS knew its misappropriation of the Trade Secrets was wrong and intentionally misappropriated the Trade Secrets in conscious disregard of CSC's rights.⁴⁹⁰
533. As found above, TCS violated its own intellectual property policies when accessing and using the Trade Secrets to develop BaNCS and save time and costs in performing under its January 2018 contracts with Transamerica.⁴⁹¹
534. CSC's Trade Secrets were marked with statements identifying both the confidential technical manuals and source code as CSC proprietary and/or trade-secret information.
535. CSC notified TCS that CSC did not authorize TCS's use of CSC's Trade Secrets to develop BaNCS.⁴⁹²

⁴⁹⁰ Doc. 495 at 931:21-932:8, 935:17-939:2, 943:15-944:4, 956:1-957:25, 961:9-962:9, 963:4- 13, 964:22-965:5, 968:15-970:5, 970:22-971:15, 971:20-974:2, 974:10-979:8, 981:2-993:8, 994:20- 1000:9, 1002:25-1008:4, 1010:12-1014:4, 1014:16-1017:21, 1020:4-1026:8, 1027:6-1033:17, 1044:20-1045:15, 1050:17-1052:5, 1053:10-16, 1086:13-1087:3, 1090:13-1092:4, 1097:13-1099:2, 1099:14-1102:4, 1120:4-11, 1124:4-19; PX125 at 1-3; PX438 at 1-6; PX327; PX166 at 1-4.

⁴⁹¹ Doc. 495 at 1121:9-1122:22.

⁴⁹² PX138 at 1-3; PX125 at 1-3; Doc. 495 at 1027:21-1029:6.

536. TCS refused to contact CSC in response to CSC's notices.⁴⁹³
537. Muthuswami and Eappen were not aware of TCS ever contacting CSC regarding authorization for use of the Trade Secrets.⁴⁹⁴
538. As found above Transamerica also notified TCS on multiple occasions that Transamerica did not authorize TCS's use of CSC's Trade Secrets to develop BaNCS.
539. As found above, TCS made misrepresentations to Transamerica regarding TCS's access to and use of the Trade Secrets.
540. TCS's own documents and witness testimony further show that TCS knew its misappropriation of the Trade Secrets was wrong.
541. For example, TCS understood that "TCS off-shore resources . . . can't touch DXC code," but TCS nevertheless provided CSC source code copybooks to TCS off-shore resources to create duplicate copybooks.⁴⁹⁵
542. When asked whether it would "be proper for [TCS] to access or use CSC source code or proprietary documentation as part of its development of the customer layer at Transamerica," Paul testified: "[A]s part of the [TCS] ethics and code and these rules, it is—definitely not proper."⁴⁹⁶

⁴⁹³ Doc. 495 at 1028:18–1029:6.

⁴⁹⁴ Doc. 493 at 442:16–20; Doc. 493 at 446:12–16; *see also* Doc. 496 at 1338:18–1339:13.

⁴⁹⁵ PX166 at 1–4.

⁴⁹⁶ Doc. 493 at 674:3–10; 692:13–22.

543. Wisely likewise understood that CSC's technical documentation for its systems are CSC's trade secrets.⁴⁹⁷
544. Finally, testimony from Frieden shows that TCS knew its misappropriation of the Trade Secrets was wrong.
545. For example, Frieden knew it was not appropriate for TCS Rebadged Employees to access CSC's confidential information, including CSC's technical manuals and copybooks, for the development of Transamerica's version of BaNCS,⁴⁹⁸ and testified that it would be against TCS's policies for CSC copybooks to be on the laptop of a TCS employee that was not part of his team.⁴⁹⁹
546. Frieden also knew CSC technical manuals for Vantage and CyberLife should not be shared with anyone at TCS drafting requirements, developing, or designing Transamerica's version of BaNCS.⁵⁰⁰
547. Despite purportedly having a zero-tolerance policy regarding TCS employees violating third parties' intellectual property rights, TCS did not discipline anyone for their conduct related to TCS's misappropriation of the Trade Secrets.⁵⁰¹

⁴⁹⁷ *Id.* at 490:10–491:4, 507:14–16.

⁴⁹⁸ Doc. 494 at 728:23–729:6, 751:5–10, 785:12–22, 791:1–7.

⁴⁹⁹ *Id.* at 781:5–16.

⁵⁰⁰ *Id.* at 731:2–11, 732:19–23, 736:6–18, 784:15–792:15.

⁵⁰¹ Doc. 496 at 1338:1–17; Doc. 493 at 447:16–448:2.

548. The appropriate amount of exemplary damages for TCS's willful and malicious misappropriation of the Trade Secrets is \$112,303,166.⁵⁰²

E. Expert Qualifications

549. Based on his knowledge, skill, experience, and training, CSC's technical expert, Paul Pinto, is an expert in software development, acquisition, and conversion in the banking, financial services, and insurance industry.⁵⁰³
550. Pinto has more than 37 years of experience in the software and services business and specifically with outsourcing licensed software and policy administration systems, including CSC's Vantage and CyberLife.⁵⁰⁴
551. Pinto is experienced as a software developer, including development for COBOL systems like Vantage and CyberLife.⁵⁰⁵
552. Pinto specializes in providing services to banking, financial services, and insurance companies, and his clients have included Citigroup, Barclays, Swiss RE, Somerset RE, Hanover Group, and Voya Financial.⁵⁰⁶
553. Pinto spends the majority of his working time helping his clients select and implement

⁵⁰² Doc. 487 at 11.

⁵⁰³ Doc. 495 at 926:2–930:4.

⁵⁰⁴ *Id.* at 926:2–23.

⁵⁰⁵ *Id.* at 929:11–930:4.

⁵⁰⁶ *Id.* at 928:25–929:10.

software products and migrate and convert the data associated with them.⁵⁰⁷

554. Pinto has experience representing both buyers and sellers of software licenses.⁵⁰⁸
555. Pinto has experience with helping companies convert from one software application to another.⁵⁰⁹
556. Pinto had access to all the discovery produced in this case, and his review included CSC contracts, CSC technical documentation, CSC source code, interviews with CSC subject-matter experts, documentation produced by TCS, and deposition transcripts from CSC, TCS, and Transamerica witnesses.⁵¹⁰
557. Pinto's testimony was credible and supports the Court's findings of fact.
558. Based on his knowledge, skill, experience, training, and education, CSC's damages expert, Brian Napper, is an expert on trade secret misappropriation damages.⁵¹¹
559. Napper earned a Bachelor of Science degree in Business Administration, Accounting and Finance from U.C. Berkeley.⁵¹²
560. Napper's educational background also included a Berkeley study program about Intellectual

⁵⁰⁷ *Id.* at 928:13–24.

⁵⁰⁸ *Id.* at 929:11–930:4.

⁵⁰⁹ Doc. 495 at 927:20–928:12.

⁵¹⁰ *Id.* at 930:12–931:16.

⁵¹¹ *Id.* at 1126:22–1130:10.

⁵¹² *Id.* at 1128:8–14.

Property technology and transfer, which he later taught.⁵¹³

561. Napper currently works at Ocean Tomo, an intellectual property consulting firm, where he values intellectual property, including patents, copyrights, trademarks, and trade secrets.⁵¹⁴
562. Napper has been providing intellectual property consulting services for 35 years.⁵¹⁵
563. During those 35 years, Napper previously was Global Head of Intellectual Property at global consulting firm FTI, cofounder of a consulting company called Stone Turn Group, and Head of Intellectual Property globally for Deloitte.⁵¹⁶
564. Napper has received awards and recognition for his work, including being named by Intellectual Asset Management as one of the leading economic experts for Intellectual Property.⁵¹⁷
565. Napper has guest lectured at various law schools on intellectual property damages.⁵¹⁸
566. The clients that have retained Napper to consult on intellectual property valuation include Microsoft, Adobe, and John Deere.⁵¹⁹

⁵¹³ *Id.* at 1128:15–21.

⁵¹⁴ *Id.* at 1126:22–1127:8.

⁵¹⁵ Doc. 495 at 1127:12–16.

⁵¹⁶ *Id.* at 1127:17–1128:6.

⁵¹⁷ *Id.* at 1128:22–1129:2.

⁵¹⁸ *Id.* at 1129:3–11.

⁵¹⁹ *Id.* at 1129:12–25.

567. Napper has previously testified in court on intellectual property valuation and damages fifty times, including in trade secret cases.⁵²⁰
568. Napper relied on information produced in this case by both parties, legal filings, financial filings, and the deposition transcripts of witnesses in this case.⁵²¹
569. Napper's testimony was credible and supports the Court's findings of fact.

F. Affirmative Defenses

570. CSC did not have full knowledge of TCS's use of the Trade Secrets to develop BaNCS.⁵²²
571. TCS presented no evidence showing that CSC had full knowledge of TCS's use of the Trade Secrets to develop BaNCS.
572. Ko was surprised at trial that TCS had engaged in the activities shown during the trial, which Ko found out about during trial by watching the deposition videos of TCS's witnesses for the first time.⁵²³

G. Injunction

573. CSC has suffered irreparable injury as a result of TCS's misappropriation of the Trade Secrets.
574. As a result of misappropriating the Trade Secrets, TCS gained invaluable knowledge and information about the U.S. life insurance and

⁵²⁰ *Id.* at 1130:1–10.

⁵²¹ Doc. 495 at 1132:9–21.

⁵²² *See generally* Docs. 488, 492–98.

⁵²³ *See* Doc. 494 at 797:7–19.

annuities market, specifically regarding how to develop and implement a policy administration system to administer life insurance policies and annuities in the U.S.

575. Numerous TCS employees involved in developing, marketing, implementing, and using BaNCS, including a number of TCS executives, received the Trade Secrets.⁵²⁴
576. Before TCS's contracted with Transamerica to administer Transamerica insurance policies and annuities using BaNCS, many of these TCS employees had no experience with the U.S. life insurance and annuities market.
577. For example, before working on the Transamerica BaNCS transformation project, TCS employee Talukdar had no experience with the U.S. life insurance and annuities market.⁵²⁵
578. After working on the project, Talukdar now has knowledge of the Trade Secrets and experience with implementing software in the U.S. life insurance and annuities market.⁵²⁶
579. In misappropriating the Trade Secrets, TCS avoided years, if not decades, of development of, and significant financial investment in, BaNCS.

⁵²⁴ Doc. 493 at 683:19–684:22; Doc. 493 at 658:4–22; Doc. 494 at 733:3–13; PX336 at 1; PX172 at 1.

⁵²⁵ Doc. 496 at 1437:7–13.

⁵²⁶ *Id.* at 1437:7–17.

580. CSC and its predecessor companies have been developing Vantage and Cyberlife for decades.⁵²⁷
581. CSC has invested significant financial resources into developing Vantage and Cyberlife.⁵²⁸
582. Since 2000, CSC has conservatively spent \$64 million in capitalized costs developing Vantage and \$80 million in capitalized costs developing Cyberlife.⁵²⁹
583. As a result of TCS's misappropriation of the Trade Secrets, CSC risks losing market share to BaNCS, which was derived from the Trade Secrets.
584. BaNCS was built to displace Vantage and Cyberlife at Transamerica and in the U.S. market.⁵³⁰
585. Absent an injunction, TCS would be free to (1) use its knowledge of the Trade Secrets to further develop BaNCS, and (2) sell a software platform that was developed using the Trade Secrets.⁵³¹
586. Remedies available at law, such as monetary damages, are inadequate to compensate CSC for TCS's misappropriation of the Trade Secrets.

⁵²⁷ Doc. 492 at 278:20–279:2.

⁵²⁸ *Id.* at 278:20–279:11.

⁵²⁹ *Id.* at 281:2–16, 281:21–282:6, 285:15–23, 285:25–286:7; PX145; PX146.

⁵³⁰ Doc. 496 at 1335:16–1336:6.

⁵³¹ *Id.* at 1336:7–13.

587. Because it is impossible to determine the full scope of TCS's misappropriation of the Trade Secrets, monetary damages are inadequate, and an injunction is necessary to fully compensate CSC.
588. TCS admitted that it decommissioned a link to a TCS document repository called "Knowmax" that contained Trade Secrets and, as a result, it cannot determine who all "had access to the decommissioned Knowmax link."⁵³²
589. It is also unknown how many TCS employees accessed the Trade Secrets uploaded to Knowmax.⁵³³
590. Because it is unknown which TCS employees had access to the Trade Secrets through Knowmax (and Fresco), it is unknown whether those employees still possess the Trade Secrets.⁵³⁴
591. Furthermore, monetary damages would fail to compensate CSC for the future harm resulting from TCS's misappropriation of the Trade Secrets, including CSC's loss of market share, goodwill, and business advantages associated with the Trade Secrets.⁵³⁵

⁵³² See Doc. 493 at 641:5–642:19, 643:5–23, 643:24–644:2; Doc. 496 at 1429:17–20.

⁵³³ See Doc. 493 at 641:5–642:19, 643:5–23, 643:24–644:2; Doc. 496 at 1429:17–20.

⁵³⁴ See Doc. 493 at 641:5–642:19, 643:5–23, 643:24–644:2; Doc. 496 at 1429:17–20.

⁵³⁵ Doc. 496 at 1335:16–1336:13.

592. CSC's hardship if an injunction were not granted would outweigh any hardship to TCS if an injunction were granted.
593. An injunction would not unduly harm TCS.
594. TCS is a subsidiary of Tata Group, which has dozens of entities and is one of the largest groups of companies in India.⁵³⁶
595. Tata Group has combined revenues of over \$150 billion per year.⁵³⁷
596. TCS's revenue is \$25–30 billion per year.⁵³⁸
597. TCS provides a variety of services and products besides life insurance and annuities software for the U.S. market.⁵³⁹
598. Absent an injunction, CSC would be forced to compete against a policy administration system built using CSC's own Trade Secrets, causing CSC to lose business advantages and value associated with the Trade Secrets.
599. CSC has competed against TCS for business administering life insurance and annuity products in the U.S., including competing for work for Transamerica and MetLife.⁵⁴⁰
600. TCS currently is free to sell the current version of BaNCS—which was developed using the Trade Secrets—to any of CSC's current

⁵³⁶ *Id.* at 1287:25–1288:15.

⁵³⁷ *Id.* at 1288:19–22.

⁵³⁸ *Id.* at 1288:23–1289:6.

⁵³⁹ *Id.* at 1213:2–6.

⁵⁴⁰ Doc. 494 at 823:24–824:1; Doc. 495 at 865:21–25; DTX–0081 at 53.

customers and could use that version of BaNCS to compete against CSC in the future.⁵⁴¹

601. The public interest would be served by entering a permanent injunction against TCS.
602. BaNCS was derived from misappropriating the Trade Secrets.
603. Without an injunction, CSC would be forced to compete against a policy administration system developed with CSC's own Trade Secrets, and against a competitor who bypassed the considerable time and resources CSC invested to develop those Trade Secrets.⁵⁴²
604. The public interest is served by protecting trade secrets, and allowing TCS to do the activities prohibited by the injunction would not serve the public interest.

Conclusions of Law

A. Burden of Proof

1. CSC had the burden of proving the following by a preponderance of the evidence: (1) whether the Trade Secrets qualify as trade secrets under the DTSA; (2) whether TCS misappropriated the Trade Secrets; (3) whether TCS willfully and maliciously misappropriated the Trade Secrets; (4) the amount of CSC's damages as a result of TCS's misappropriation of the Trade Secrets; and (5) the

⁵⁴¹ Doc. 496 at 1336:7–13; Doc. 492 at 278:20–279:11.

⁵⁴² See Doc. 496 at 1336:7–13.

amount of exemplary damages to award CSC.⁵⁴³

B. Jury Verdict

2. The findings of the advisory jury are not binding on the Court but support the Court's findings of fact.⁵⁴⁴

C. Misappropriation

3. Under 18 U.S.C. § 1836(b)(1), “[a]n 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.”
4. Accordingly, the elements of trade secret misappropriation that CSC had to prove were (1) CSC owns a valid trade secret; (2) that trade secret relates to a product or service used in, or intended for use in, interstate or foreign

⁵⁴³ Fifth Circuit Pattern Jury Instructions (Civil Cases) § 3.2 (2020); see 18 U.S.C. § 1836(b)(3)(C) (no mention of a higher burden of proof for willful and malicious misappropriation); *Brackeen v. Haaland*, 994 F.3d 249, 429 (5th Cir. 2021) (explaining that where a statute says “nothing about a burden of proof,” “[t]he presumption, then, is that the section incorporates, not a heightened standard of proof, but the normal preponderance standard”), *aff’d in part, vacated in part, rev’d in part*, 599 U.S. 255 (2023); see also *Grogan v. Garner*, 498 U.S. 279, 286 (1991) (statutory “silence” is “inconsistent with the view that Congress intended to require a special, heightened standard of proof”).

⁵⁴⁴ *Sheila’s Shine Prods., Inc. v. Sheila Shine, Inc.*, 486 F.2d 114, 122 (5th Cir. 1973) (“[The trial court] is not bound by the findings of the advisory jury, which it is free to adopt in whole or in part or to totally disregard.”).

commerce; and (3) TCS misappropriated that trade secret.⁵⁴⁵

5. Under 18 U.S.C. § 1839(3), a trade secret is defined as “all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if—
 - (A) the owner thereof has taken reasonable measures to keep such information secret; and
 - (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.”
6. Under 18 U.S.C. § 1839(4), “the term ‘owner’, with respect to a trade secret, means the person or entity in whom or in which rightful legal or equitable title to, or license in, the trade secret is reposed.”
7. Use or intended use of a product or service in interstate commerce means that the product or service involves travel, trade, transportation, or communication between a place in one state

⁵⁴⁵ 18 U.S.C. § 1836(b)(1); *see also* Doc. 486 at 9.

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and a place in another state, and use of a product or service in foreign commerce means that the product or service involves travel, trade, transportation, or communication between a place in the United States and a place outside of the United States.⁵⁴⁶

8. Under 18 U.S.C. § 1839(5), “the term ‘misappropriation’ means—
- (A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
 - (B) disclosure or use of a trade secret of another without express or implied consent by a person who—
 - (i) used improper means to acquire knowledge of the trade secret;
 - (ii) at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was—
 - (I) derived from or through a person who had used improper means to acquire the trade secret;
 - (II) acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secret or limit the use of the trade secret; or

⁵⁴⁶ See *United States v. Morris*, No. 3:09-CR-101-D(01), 2010 WL 2900323, at *3 (N.D. Tex. July 19, 2010) (Fitzwater, J.) (defining interstate and foreign commerce as such under Title 18); see also Doc. 486 at 11.

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- (III) derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of the trade secret or limit the use of the trade secret; or
 - (iii) before a material change of the position of the person, knew or had reason to know that—
 - (I) the trade secret was a trade secret; and
 - (II) knowledge of the trade secret had been acquired by accident or mistake.”
- 9. Under 18 U.S.C. § 1839(6), “the term ‘improper means’—
 - (A) includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means; and
 - (B) does not include reverse engineering, independent derivation, or any other lawful means of acquisition.”
- 10. Based on the Court’s findings of fact, TCS is liable to CSC for trade secret misappropriation because CSC has proven by a preponderance of the evidence all elements of trade secret misappropriation under the DTSA.
- 11. Because CSC has rightful legal title to the Trade Secrets, CSC is the owner of the Trade Secrets.
- 12. The Trade Secrets qualify as trade secrets under the DTSA.

13. The Trade Secrets are software platforms and confidential technical documents relating to the software platforms, and include calculations, business rules, codes, data structures, correspondence rules, and interfaces.⁵⁴⁷
14. This information is “technical” information—namely, “compilations,” “processes,” “procedures,” “programs,” and “codes.”⁵⁴⁸
15. CSC has taken reasonable measures to keep the Trade Secrets secret because CSC’s protections for its source code and technical documents include (1) confidentiality designations; (2) restricted access within CSC; (3) CSC employment agreements imposing confidentiality and nondisclosure restrictions; and (4) customer license agreements and nondisclosure agreements restricting use and imposing confidentiality and non-disclosure restrictions.⁵⁴⁹
16. Because CSC has taken reasonable measures to keep the Trade Secrets secret, the Trade Secrets are not generally known to another person who can obtain economic value from the disclosure or use of the information.
17. Because it would have been extremely expensive and time consuming for anyone to dupli-

⁵⁴⁷ *GlobeRanger Corp. v. Software AG United States of Am., Inc.*, 836 F.3d 477, 493 (5th Cir. 2016).

⁵⁴⁸ *ResMan, LLC v. Karya Prop. Mgmt., LLC*, No. 4:19-CV-00402, 2021 WL 3403935, at *4 (E.D. Tex. Aug. 4, 2021) (“A software platform is certainly a form or type of technical information. Further, a platform undoubtedly qualifies as a compilation or program.”).

⁵⁴⁹ *Id.* at *5.

cate the Trade Secrets through independent development and because the Trade Secrets are critical to CSC's insurance software business, the Trade Secrets derive independent economic value, actual and potential, from not being known to, and not readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

18. Because CSC has sold Vantage and CyberLife across the U.S. and in foreign countries to insurance companies for their use in selling life insurance policies and annuities to customers all over the world and in different states in the U.S., the Trade Secrets relate to a product or service used in, or intended for use in, interstate or foreign commerce.
19. Under the TPAA, TCS was allowed to access, copy, execute, and use the Trade Secrets only on behalf of and solely for the benefit of Transamerica.⁵⁵⁰
 - i. “[T]he [TPAA] allows [TCS] to access CSC’s software only when it does so ‘solely for the benefit of Transamerica.’”⁵⁵¹
 - ii. “*Solely* means ‘to the exclusion of all else.’”⁵⁵²
 - iii. “*Solely*,” as used in the TPAA, “means that the use must be for Transamerica’s

⁵⁵⁰ PX081 at 3.

⁵⁵¹ Doc. 381 at 5 (quoting PX081 at 3).

⁵⁵² *Id.* (quoting *Solely*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/solely>).

exclusive benefit—not that the use cannot be for the exclusive benefit [of] a third-party” (*e.g.*, TCS).⁵⁵³

- iv. The TPAA allows third parties “to receive pecuniary gain for their services under the . . . Addendum,” “[b]ut *solely* still prohibits uses that inure to a third party’s [*e.g.*, TCS’s] benefit in a manner beyond ordinary pecuniary benefit for services.”⁵⁵⁴
20. 20. “[A] separate provision [in the TPAA] governs [TCS’s] ability to ‘copy, change, modify, supplement, amend, and prepare Derivative Works of [CSC’s] Software’ (‘the modification provision’).”⁵⁵⁵
- i. “The modification provision is more difficult to satisfy than the access provision because it also requires that the modification at issue be ‘permitted in’ CSC’s earlier agreements with Transamerica,” and “those earlier agreements aren’t permissive.”⁵⁵⁶
 - ii. For example, the CyberLife Agreement “prohibits Transamerica from allowing third parties ‘to transmit or reproduce [CSC’s software] in whole or in part’ or

⁵⁵³ *Id.* at 5 & n.16.

⁵⁵⁴ *Id.* at 5.

⁵⁵⁵ *Id.* at 6 (quoting PX081 at 3).

⁵⁵⁶ *Id.*

‘reverse engineer, reverse assemble, or reverse compile [CSC’s software].’⁵⁵⁷

21. TCS acquired the Trade Secrets by improper means, including theft, misrepresentation, breach of a duty to maintain secrecy, and inducement of a breach of a duty to maintain secrecy, and knew that the Trade Secrets were acquired by improper means.
22. TCS disclosed and used the Trade Secrets without CSC’s express or implied consent, and such disclosure and use were not on behalf of and solely for the benefit of Transamerica.
 - i. TCS used improper means to acquire knowledge of the Trade Secrets.
 - ii. At the time of disclosure and use, TCS knew its knowledge of the Trade Secrets was derived from or through a person who had used improper means to acquire the Trade Secrets.
 - iii. At the time of disclosure and use, TCS knew its knowledge of the Trade Secrets was acquired under circumstances giving rise to a duty to maintain the secrecy of the Trade Secrets.
 - iv. At the time of disclosure and use, TCS knew its knowledge of the Trade Secrets was acquired under circumstances giving rise to a duty to limit the use of the Trade Secrets.

⁵⁵⁷ *Id.* (quoting Doc. No. 253-12 at 151 (Under Seal Ex. 37), 1994 Enterprise License Agreement, at CSC_000575870).

- v. At the time of disclosure and use, TCS knew its knowledge of the Trade Secrets was derived from or through a person who owed a duty to CSC to maintain the secrecy and limit the use of the Trade Secrets.

D. Willful and Malicious Misappropriation

- 23. “Willful and malicious misappropriation” means “intentional misappropriation resulting from the conscious disregard of the rights of the owner of the trade secret.”⁵⁵⁸
- 24. Based on the Court’s findings of fact, TCS is liable for willful and malicious misappropriation under the DTSA.
- 25. TCS willfully and maliciously misappropriated the Trade Secrets because TCS knew its misappropriation of the Trade Secrets was wrong and intentionally misappropriated the Trade Secrets in conscious disregard of CSC’s rights.
- 26. Despite the fact that the Trade Secrets were marked with statements identifying both the confidential technical manuals and source code as CSC proprietary and/or trade-secret information, TCS intentionally continued to misap-

⁵⁵⁸ See TEX. CIV. PRAC. & REM. CODE § 134A.002(7) (defining “willful and malicious misappropriation” under TUTSA); *Silverthorne Seismic, LLC v. Sterling Seismic Servs., Ltd.*, No. CV-H-20-2543, 2021 WL 4710813, at *7 (S.D. Tex. Oct. 7, 2021) (“The DTSA does not define the terms ‘willful’ or ‘malicious.’ District courts have looked to the relevant state’s uniform trade secret act for the definition inasmuch as the two are substantively identical.”) (cleaned up).

propriate the Trade Secrets knowing it was wrong.

27. Despite receiving a formal letter from CSC's outside counsel warning TCS of its trade secret misappropriation and other warnings, TCS intentionally continued to misappropriate the Trade Secrets knowing it was wrong.
28. Despite being notified by Transamerica that Transamerica did not authorize TCS's use of the Trade Secrets to develop BaNCS, TCS intentionally continued to misappropriate the Trade Secrets knowing it was wrong.
29. TCS intentionally made misrepresentations regarding its use of the Trade Secrets in order to continue to misappropriate the Trade Secrets knowing it was wrong.
30. TCS admitted that it knew its misappropriation was wrong.

E. Affirmative Defenses

31. TCS must establish the following five elements to prevail on its equitable estoppel defense against CSC: (1) CSC was aware of certain facts; (2) CSC concealed material facts; (3) CSC intended its alleged act or omission to be enacted upon; (4) TCS did not have knowledge of the facts; and (5) TCS reasonably relied on CSC's conduct to its substantial injury.⁵⁵⁹

⁵⁵⁹ See *VRC, L.L.C. v. City of Dallas*, No. 3:03-CV-2450-B, 2004 WL 2958385, at *6 (N.D. Tex. Dec. 21, 2004) (Boyle, J.).

32. The first element requires that CSC have “full knowledge” of the relevant facts.⁵⁶⁰
33. Based on the Court’s findings of fact, TCS did not meet its burden in showing any of the elements of its equitable estoppel defense.
34. “Waiver is an intentional relinquishment or abandonment of a known right or privilege.”⁵⁶¹
35. TCS must show that the alleged waiver was not only voluntary “but constitute[d] a knowing and intelligent relinquishment or abandonment of a known right or privilege.”⁵⁶²
36. Based on the Court’s findings of fact, TCS did not meet its burden in showing that CSC knowingly relinquished a right in order to establish TCS’s affirmative defense of waiver.
37. “Acquiescence involves the plaintiff’s implicit or explicit assurances to the defendant which induce reliance by the defendant.”⁵⁶³
38. Under this defense, “if a plaintiff knowingly takes an action in contravention of its rights, it cannot exercise those rights in a subsequent suit.”⁵⁶⁴

⁵⁶⁰ *Kaneb Servs., Inc. v. Fed. Sav. & Loan Ins. Corp.*, 650 F.2d 78, 81 (5th Cir. 1981) (describing equitable estoppel with regard to “a party with full knowledge of the facts”).

⁵⁶¹ *Long v. Gonzales*, 420 F.3d 516, 520 (5th Cir. 2005) (per curiam).

⁵⁶² *Richardson v. Lucas*, 741 F.2d 753, 756 (5th Cir. 1984).

⁵⁶³ *Elvis Presley Enters., Inc. v. Capece*, 141 F.3d 188, 206 (5th Cir. 1998) (cleaned up).

⁵⁶⁴ Doc. 381 at 17.

39. Based on the Court’s findings of fact, TCS did not meet its burden in showing that CSC knowingly relinquished a right in order to establish TCS’s affirmative defense of acquiescence.

F. Damages

40. Under the DTSA, the Court may award the following for misappropriation of trade secrets: “(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.”⁵⁶⁵
41. Generally, “the measure of unjust enrichment damages is the benefit conferred to the defendant.”⁵⁶⁶
42. The Fifth Circuit takes a “flexible and imaginative’ approach” to damages calculation in trade secret misappropriation cases that allows calculation of damages based on the defendant’s avoided costs.⁵⁶⁷
43. Based on the Court’s findings of fact, TCS was unjustly enriched in the amount of \$56,151,583 as a result of TCS’s misappropriation of the Trade Secrets.

⁵⁶⁵ 18 U.S.C. § 1836(b)(3)(B).

⁵⁶⁶ *ResMan*, 2021 WL 3423345, at *7 (finding the measure of unjust enrichment damages in a DTSA case to be “Defendants’ ill-gotten gains”).

⁵⁶⁷ *GlobeRanger*, 836 F.3d at 499 (“The costs a plaintiff spent in development—which is the method used by GlobeRanger’s expert—can be a proxy for the costs that the defendant saved.”).

44. CSC is therefore entitled to \$56,151,583 in compensatory damages.
45. Under the DTSA, the Court may award the following for willful and malicious misappropriation of trade secrets: “exemplary damages in an amount not more than 2 times the amount of the damages awarded under subparagraph (B).”⁵⁶⁸
46. The Due Process Clause of the Fourteenth Amendment “prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor.”⁵⁶⁹
47. “The Supreme Court has established ‘three guideposts courts should consider in determining whether a punitive damages award is unconstitutionally excessive: the degree of the defendant’s reprehensibility or culpability; the disparity between the harm or potential harm suffered by the victim and the punitive damages award; and the sanctions authorized or imposed in other cases for comparable misconduct.’”⁵⁷⁰
48. “The most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant’s conduct.”⁵⁷¹

⁵⁶⁸ 18 U.S.C. § 1836(b)(3)(C).

⁵⁶⁹ *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003).

⁵⁷⁰ *Wellogix, Inc. v. Accenture, L.L.P.*, 716 F.3d 867, 885 (5th Cir. 2013) (cleaned up).

⁵⁷¹ *State Farm*, 538 U.S. at 419 (cleaned up).

49. “Reprehensibility” factors include “whether: the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.”⁵⁷²
50. Under 18 U.S.C. § 1832(b), “[a]ny organization that commits any offense described in subsection (a) shall be fined not more than the greater of \$5,000,000 or 3 times the value of the stolen trade secret to the organization, including expenses for research and design and other costs of reproducing the trade secret that the organization has thereby avoided.”
51. Because 18 U.S.C. § 1832(b) authorizes fines “3 times the value of the stolen trade secret to the organization,” there is a sanction for comparable misconduct that results in the same amount of money that TCS would have to pay if it paid \$168,454,749 million for compensatory and exemplary damages here.
52. Based on the Court’s findings of fact, TCS’s willful and malicious misappropriation of CSC’s Trade Secrets satisfies the reprehensibility factors because the conduct involved repeated misappropriation of the Trade Secrets despite TCS knowing it was improper and it was not the result of mere accident.

⁵⁷² *Id.*

53. An award of \$112,303,166 in exemplary damages⁵⁷³ to CSC comports with due process because of (1) the reprehensibility of TCS's conduct; (2) the comparable sanctions authorized under 18 U.S.C. § 1832(b); (3) the DTSA expressly authorizing "2 times" the amount of compensatory damages; and (4) the fact that \$112,303,166 is merely a ratio of 2:1 to compensatory damages.⁵⁷⁴

G. Interest

54. "Prejudgment interest is 'compensation allowed by law as additional damages for lost use of the money due as damages during the lapse of time between the accrual of the claim and the date of judgment.'⁵⁷⁵
55. "There is a strong presumption in favor of awarding pre[]judgment interest" to account for the time value of money, and, consequently, to make the plaintiff whole.⁵⁷⁶
56. "Federal law governs the allowance of prejudgment interest when a cause of action arises from a federal statute."⁵⁷⁷
57. "Federal courts apply a two-step analysis to determine whether an award of prejudgment interest is within a court's discretion: (1)

⁵⁷³ See *infra* note 589.

⁵⁷⁴ *Lincoln v. Case*, 340 F.3d 283, 292 (5th Cir. 2003).

⁵⁷⁵ *Johnson & Higgins of Texas, Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 528, (Tex. 1998) (cleaned up).

⁵⁷⁶ *United States v. Ocean Bulk Ships, Inc.*, 248 F.3d 331, 344 (5th Cir. 2001).

⁵⁷⁷ *In re Tex. Gen. Petroleum Corp.*, 52 F.3d 1330, 1339 (5th Cir. 1995).

whether the federal act that creates the cause of action precludes such an award; and (2) whether such an award furthers the congressional policies of the federal act.”⁵⁷⁸

58. Here, under step one, no federal statute precludes an award of prejudgment interest.⁵⁷⁹
59. Under step two, an award of prejudgment interest furthers the congressional policies of the DTSA because Congress’s purpose for the DTSA is to make the trade secret owner whole.
60. Because the two-step test is satisfied, the Court exercises its discretion and awards prejudgment interest as outlined below.
61. No federal statute specifies what rate of prejudgment interest applies when a plaintiff prevails on a claim under the DTSA.⁵⁸⁰
62. Where federal law is silent on the prejudgment interest rate, “state law is an appropriate source of guidance.”⁵⁸¹
63. Because this lawsuit was filed in a federal court located in the State of Texas, the Court will apply Texas law to determine the prejudgment interest rate.⁵⁸²

⁵⁷⁸ *Id.*

⁵⁷⁹ *See generally* 18 U.S.C. §§ 1831–39.

⁵⁸⁰ *See generally* 18 U.S.C. §§ 1831–39.

⁵⁸¹ *U.S. for Use & Benefit of Canion v. Randall & Blake*, 817 F.2d 1188, 1193 (5th Cir. 1987).

⁵⁸² *See, e.g.*, Doc. 1 at 5 (alleging that “Defendants and their agents may be found in this judicial district, both Defendants are subject to personal jurisdiction in this judicial district and a substantial portion of the events giving rise to this action

64. The Texas Supreme Court has made clear that “prejudgment interest accrues at the rate for postjudgment interest.”⁵⁸³
65. Under Texas law, post-judgment interest accrues at the prime rate as published by the Federal Reserve System on the date of computation.⁵⁸⁴
66. Because the Federal Reserve’s prime interest rate is currently 8.50%, 8.50% is the appropriate prejudgment interest rate.⁵⁸⁵
67. To determine the amount of prejudgment interest, “the proper equation the law mandates is . . . : Damages (D) multiplied by the interest rate (R) multiplied by the time (in years) since [accrual] (T): (D x R x T).”⁵⁸⁶
68. Prejudgment interest begins to accrue on the earlier of (1) 180 days after the date a defendant receives written notice of a claim or (2) the date suit is filed.⁵⁸⁷
69. CSC provided TCS written notice of its claim of trade secret misappropriation on June 22, 2018

occurred within this district”), 4 (“Texas is a ‘key business hub’ for TCS, which has more than 3,500 employees statewide.”) (citing <https://www.tcs.com/tcs-expands--operations-texas-welcoming-200-new-employees-to-plano>).

⁵⁸³ *Kenneco Energy*, 962 S.W.2d at 532.

⁵⁸⁴ TEX. FIN. CODE § 304.003(c)(1).

⁵⁸⁵ See Selected Interest Rates (Daily) – H.15, Board of Governors of the Federal Reserve System, May 20, 2024, at <https://www.federalreserve.gov/releases/h15/>.

⁵⁸⁶ *Carter v. Transp. Workers Union of Am.*, *Loc. 556*, 644 F. Supp. 3d 315, 330 (N.D. Tex. 2022) (Starr, J.) (collecting cases).

⁵⁸⁷ *Kenneco Energy*, 962 S.W.2d at 531.

and filed suit on April 22, 2019.⁵⁸⁸ Therefore, prejudgment interest began accruing on December 19, 2018, 180 days after June 22, 2018 when TCS received written notice of the claim.

70. On June 13, 2024, the date of this judgment, 2,003 days have elapsed since December 19, 2018, approximately 5.4 years (2,003 days divided by 365 = 5.487, rounded down).
71. The appropriate amount of prejudgment interest is \$25,773,576.60 through June 13, 2024 (*i.e.*, \$56,151,583⁵⁸⁹ X 8.5% X 5.4 years).⁵⁹⁰
72. Based on the Court's findings of fact, prejudgment interest is awarded in the amount of \$25,773,576.60 through June 13, 2024.⁵⁹¹

⁵⁸⁸ PX125; Doc. 1.

⁵⁸⁹ Generally, pre-judgment interest is compensatory in nature and should not be granted on punitive damages awards. *George v. Foster*, 129 F.3d 610 (5th Cir. 1997) ("Most other courts that have addressed the issue agree that prejudgment interest is basically compensatory and generally should not be granted on punitive damages. We adopt the view of these courts and hold that the district court erred in awarding prejudgment interest on plaintiffs' punitive damages award."). *see also Dunbar Med. Sys. Inc. v. Gammex Inc.*, 216 F.3d 441, 455 (5th Cir. 2000) ("Under Texas law, pre-judgment interest is not recoverable on an award of punitive damages."). And the DTSA does not state otherwise. Therefore, the Court assessed CSC's exemplary damages award prior to calculating prejudgment interest, and now the Court calculates pre-judgment interest on only CSC's compensatory damages award, \$56,151,583, not its exemplary damages.

⁵⁹⁰ *Kenneco Energy*, 962 S.W.2d at 528.

⁵⁹¹ *Id.*

H. Attorney's Fees and Costs

73. Under 18 U.S.C. § 1836(b)(3)(D), “if . . . the trade secret was willfully and maliciously misappropriated,” a court may “award reasonable attorney’s fees to the prevailing party.”
74. Thus, “[t]o be eligible, the party seeking fees (1) must prevail and (2) it must do so in one of the three listed scenarios that also require a showing of bad faith or malice.”⁵⁹²
75. In cases where a federal statute allows for attorney’s fee recovery at the discretion of the court, the Fifth Circuit finds that the court should consider “(1) the degree of the opposing parties’ culpability or bad faith; (2) the ability of the opposing parties to satisfy an award of attorneys’ fees; (3) whether an award of attorneys’ fees against the opposing party would deter other persons acting under similar circumstances; . . . and ([4]) the relative merits of the parties’ positions.”⁵⁹³
76. Because of TCS’s willful and malicious misappropriation of the Trade Secrets and actions before and during trial, TCS acted with a high degree of culpability and in bad faith.
77. Given TCS’s vast financial resources, TCS would easily satisfy an award of attorney’s fees in this case.
78. Although an award of attorney’s fees against TCS would barely dent TCS’s bottom line, it

⁵⁹² *Dunster Live, LLC v. LoneStar Logos Mgmt. Co.*, 908 F.3d 948, 952 (5th Cir. 2018) (citing 18 U.S.C. § 1836(b)(3)(D)).

⁵⁹³ *Wegner v. Standard Ins. Co.*, 129 F.3d 814, 821 (5th Cir. 1997).

would serve as an effective deterrent to companies of any size from performing similar willful and malicious misappropriation of trade secrets.

79. Given that TCS willfully and maliciously misappropriated the Trade Secrets, the relative merits of this case plainly favor CSC.
80. Based on the Court's findings of fact, CSC is entitled to attorney's fees.
81. The Court orders CSC to file a motion for attorney's fees with supporting evidence no later than 14 days from the date of this order.
82. "Costs . . . should be allowed to the prevailing party, and the clerk may tax costs on 14 days' notice."⁵⁹⁴
83. "There's a strong presumption that the prevailing party will be awarded costs, and a court may reduce a prevailing party's request for cost only after first articulating some good reason for doing so."⁵⁹⁵
84. A "losing party's good faith is alone insufficient to justify the denial of costs to the prevailing party."⁵⁹⁶
85. The Court cannot reduce Defendants' costs based on the financial resources of either party.⁵⁹⁷

⁵⁹⁴ *Clapper v. Am. Realty Invs., Inc.*, No. 3:14-CV-2970-X, 2023 WL 5618947, at *8 (N.D. Tex. Aug. 30, 2023) (Starr, J.) (citing FED. R. CIV. P. 54(d)(1)) (cleaned up).

⁵⁹⁵ *Id.* (cleaned up) (citing *Pacheco v. Mineta*, 448 F.3d 783, 793–94 (5th Cir. 2006)).

⁵⁹⁶ *Pacheco*, 448 F.3d at 795.

86. Based on the Court's findings of fact, CSC is the prevailing party and is entitled to its costs.
87. The Court orders CSC to file a bill of costs no later than 14 days from the date of this order.

I. Joint and Several Liability

88. Under the doctrine of joint and several liability, "when two or more persons cause an indivisible harm, each is subject to liability for the entire harm."⁵⁹⁸
89. In order to hold defendants jointly and severally liable, however, "the evidence supporting the verdict must be sufficient as to each defendant."⁵⁹⁹
90. There is no evidence in the record supporting TAIC's liability.
91. In fact, the only evidence CSC presented at trial as to TAIC was one stipulated fact: TAIC is a subsidiary of TCS Limited.
92. Therefore, CSC did not meet its burden to hold TAIC jointly and severally liable.

J. Injunction

93. CSC is entitled to a permanent injunction because all elements of 18 U.S.C. § 1836 (b)(3)(A) are satisfied and all factors for a permanent injunction weigh in favor of CSC.

⁵⁹⁷ See *Moore v. CITGO Refin. & Chems. Co., L.P.*, 735 F.3d 309, 320 (5th Cir. 2013).

⁵⁹⁸ *Cox v. City of Dallas*, 256 F.3d 281, 301 n. 37 (5th Cir. 2001).

⁵⁹⁹ *Tompkins v. Cyr*, 995 F. Supp. 664, 682 (N.D. Tex. 1998).

94. Under 18 U.S.C. § 1836(b)(3)(A), a court may “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 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.”

95. “The Fifth Circuit favors permanent injunctions for most misappropriation of trade secrets cases.”⁶⁰⁰
96. A district court can award both compensatory damages and injunctive relief.⁶⁰¹
97. A plaintiff seeking a permanent injunction “must demonstrate (1) that it has suffered irreparable injury; (2) that remedies available at law . . . are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.”⁶⁰²
98. To establish irreparable injury, “[a] plaintiff must allege specific facts.”⁶⁰³
99. “An injury is irreparable and there is no adequate remedy at law [if] a multiplicity of suits would be required to gain relief.”⁶⁰⁴
100. Where a plaintiff has “invested decades of effort and significant financial resources to

⁶⁰⁰ *BarZ Adventures Inc. v. Patrick*, No. 4:20-CV-299, 2022 WL 4082464, at *5 (E.D. Tex. Sept. 6, 2022) (citing *Metallurgical Indus. Inc. v. Fourtek, Inc.*, 790 F.2d 1195, 1208 (5th Cir. 1986)).

⁶⁰¹ See *ResMan*, 2021 WL 3423345, at *4.

⁶⁰² *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

⁶⁰³ *ITT Educ. Servs. v. Arce*, 533 F.3d 342, 347 (5th Cir. 2008) (cleaned up).

⁶⁰⁴ *Moss v. Princip*, No. 3:14-CV-3088-BF, 2016 WL 9245113, at *3 (N.D. Tex. May 31, 2016) (cleaned up), *aff'd and remanded*, 913 F.3d 508 (5th Cir. 2019).

develop [its] software” and a defendant “attempted to bypass this process and produce a competing product at a lower price, essentially undercutting [the plaintiff] . . . [.]” the plaintiff “would suffer irreparable harm.”⁶⁰⁵

101. Based on the Court’s findings of fact, CSC has suffered irreparable injury.
102. “Often times the concepts of ‘irreparable injury’ and ‘no adequate remedy at law’ are indistinguishable.”⁶⁰⁶
103. Unlike the “irreparable injury” prong, “the inadequate remedy test looks to the possibilities of alternative modes of relief, however serious the initial injury.”⁶⁰⁷
104. Based on the Court’s findings of fact and because the Court concludes that CSC has suffered an irreparable injury, the remedies at law are inadequate for CSC.
105. Courts have found the balance of hardship factor to favor an injunction where “[p]laintiffs risk losing the business advantage, value, and goodwill connected to the development and lawful exploitation of their trade secrets” without an injunction.⁶⁰⁸

⁶⁰⁵ *Calsep A/S v. Intelligent Petroleum Software Sols., LLC*, No. 4:19-CV-1118, 2022 WL 2813069, at *8 (S.D. Tex. June 10, 2022), *report and recommendation adopted*, NO. 4:19-CV-01118, 2022 WL 2806538 (S.D. Tex. July 18, 2022), *aff’d sub nom. Calsep A/S v. Dabral*, 84 F.4th 304 (5th Cir. 2023).

⁶⁰⁶ *Lewis v. S. S. Baune*, 534 F.2d 1115, 1124 (5th Cir. 1976).

⁶⁰⁷ *Id.*

⁶⁰⁸ *See, e.g., Philips Med. Sys. (Cleveland), Inc. v. Buan*, No. 19-CV-2648, 2023 WL 4533336, at *4 (N.D. Ill. July 13, 2023).

106. Based on the Court's findings of fact, the balance of hardship between CSC and TCS weighs in CSC's favor.
107. The Fifth Circuit has held that protecting against the misappropriation of trade secrets is aligned with the public interest.⁶⁰⁹
108. Based on the Court's findings of fact, the public interest would be served by granting a permanent injunction against TCS.
109. Because an injunction should be entered in favor of CSC, the injunctive relief set forth in paragraph 9 of the Court's Final Judgment is entered against TCS.
110. A permanent injunction against TCS as set out in paragraph 9(b) of the Court's Final Judgment, including that "TCS Parties shall not" "access, attempt to access, use, or attempt to use any CSC Trade Secrets for any reason," "possess or retain any CSC Trade Secrets in any form in any location," or "access, attempt to access, use, or attempt to use any Post-Misappropriation BaNCS Materials for the design, development, enhancement, marketing, implementation, or use of any TCS I&A Products," is warranted because, as explained above, CSC has suffered and will continue to suffer irreparable harm caused by TCS's misappropriation.

⁶⁰⁹ *Aspen Tech., Inc. v. M3 Tech., Inc.*, 569 F. App'x 259, 273 (5th Cir. 2014) (per curiam) (finding "that it was in the interest of public policy to prohibit the sale and use of M3 products containing infringing source code and that were derived from the improper misappropriation of trade secrets").

111. With respect to the Trade Secrets, TCS never should have accessed, possessed, or used the Trade Secrets without CSC's express consent—causing CSC irreparable harm—and it should not do so in the future.
112. With respect to Post-Misappropriation BaNCS Materials, as defined in the Final Judgment, CSC would suffer irreparable harm if TCS could use the code for BaNCS or technical documentation describing actual or potential operation of BaNCS, in each case developed after July 18, 2017, for the design, development, enhancement, marketing, implementation, or use of TCS software providing solutions in the U.S. life insurance and annuities market.
113. TCS's misappropriation of the Trade Secrets began no later than July 18, 2017, when Mr. Sampathkumar sent an email to dozens of TCS employees, including Mr. Talukdar and Mr. Paul, with a link to TCS's Knowmax document repository containing Trade Secrets.
114. The code and documentation for BaNCS developed by TCS after that time is irrevocably tainted because it was developed in part by accessing and using the Trade Secrets.
115. CSC should not be forced to compete against a policy administration system built using CSC's own Trade Secrets.
116. TCS will suffer no undue hardship or harm as a result of this permanent injunctive relief, as TCS will still be able to continue with legitimate business activities.

117. In particular, the permanent injunctive relief with respect to the Post-Misappropriation BaNCS Materials is limited only to designing, developing, enhancing, marketing, implementing, or using any TCS software providing solutions in the U.S. life insurance and annuities market, and, to compete in that market, TCS can revert back to the version of BaNCS before it began misappropriating the Trade Secrets.⁶¹⁰
118. The harm to CSC substantially outweighs any potential harm to TCS, and the public interest weighs in favor of protecting trade secrets by permanently enjoining TCS.
119. A permanent injunction barring possession, access, and use of the misappropriated trade secrets and barring making, offering to sell, selling, or otherwise distributing products derived from misappropriated trade secrets is appropriate in cases, such as this one, where a company misappropriated the trade secrets of a competitor and used those trade secrets in the development of a competing product.
120. An injunction of 18 months during which time “TCS shall not permit any TCS Parties who had access to any CSC Trade Secrets to work on, or assist in, directly or indirectly, the design, development, enhancement, marketing, implementation, or use of any TCS I&A Products, as set out in paragraph 9(c) of the Court’s Final Judgment, is warranted to prevent “TCS Parties who had access to any CSC Trade Secrets” from using knowledge

⁶¹⁰ Doc. 496 at 1378:16–19.

obtained from that access on the “design, development, enhancement, marketing, implementation, or use of any TCS I&A Products.”

121. An injunction period of 18 months is appropriate because the 2014 TPAA expressly contemplated that “Consultant employees” of “Licensor Competitors” (e.g., CSC competitors like TCS) could have access to CSC “Confidential Information” (including the CSC Trade Secrets) only if they had not worked on “core insurance applications, such as policy administration systems, compensation systems and new business systems” in the “past 9 months” and that such “Consultant employees” (also referred to as “Permitted Employees”) could not “work for Consultant” (e.g., TCS) “on engagements related to Consultant-owned” (e.g., TCS-owned) “intellectual property for life and/or annuity insurance systems for 9 months before or after” having had access to CSC “Confidential Information.”⁶¹¹
122. Accordingly, for employees of a competitor to access CSC Trade Secrets under the 2014 TPAA, there was a mandatory 18-month window where such employees could not work on the competitor-owned intellectual property for life and/or annuity insurance systems.
123. The same 18-month time period is appropriate for the injunctive relief set forth in paragraph 9(c) of the Court’s Final Judgment.
124. Transamerica terminated its agreement with TCS related to BaNCS and, at the time of trial,

⁶¹¹ PX081 at 1, 7–8.

Transamerica was using CSC's Vantage and CyberLife for the policies that had been slated for conversion to BaNCS and for new policies.⁶¹²

125. “[T]o the extent Transamerica must use Post-Misappropriation BaNCS Materials for existing Transamerica products currently being administered on TCS I&A Products” during this transition period, an exception to the permanent injunction of paragraph 9(b) of the Final Judgment, set out in paragraph 9(e) of the Final Judgment, is warranted to avoid any potential disservice to Transamerica or the public interest (namely, customers of Transamerica).
126. Paragraph 9(e) of the Final Judgment allows “TCS Transamerica Support Personnel” to “access and use the Post-Misappropriation BaNCS Materials solely for the purpose of administering the existing Transamerica products currently being administered on TCS I&A Products,” provided that “TCS shall maintain a list of the TCS Transamerica Support Personnel and provide it to CSC.”
127. This exception ensures that Transamerica may continue to use “Post-Misappropriation BaNCS Materials,” in the manner stated, as it winds down its use of BaNCS.
128. A monitoring period of 10 years, as set out in paragraph 9(d) of the Court’s Final Judgment,

⁶¹² Doc. 494 at 807:19–23-808:9; Doc. 494 at 779:19–22, 780:13–20.

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is warranted to ensure TCS's compliance with the ordered injunctive relief.

129. A monitoring period of 10 years is warranted for at least the following reasons: (1) even TCS does not know the full extent of the TCS Parties who had access to the Trade Secrets and accordingly cannot know the full extent of the TCS Parties who still possess or retain the Trade Secrets; (2) TCS is a large company with thousands of employees; (3) TCS willfully and maliciously misappropriated the Trade Secrets for years.

IT IS SO ORDERED this 13th day of June, 2024.

/s/Brantley Starr

BRANTLEY STARR

UNITED STATES DISTRICT JUDGE

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APPENDIX E

Constitution of the United States

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX F

Title 18. Crimes and Criminal Procedure

Part I. Crimes

Chapter 90. Protection of Trade Secrets

§ 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 purpose of this paragraph

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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—(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;

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(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);

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(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.—

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- (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

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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

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not merely on the information the person knows; or

(II) otherwise conflict with an applicable State law prohibiting 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

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(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.