No. 25-1107

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**

## BRIEF IN OPPOSITION


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## QUESTIONS PRESENTED

1. Whether the court of appeals correctly affirmed an award of unjust-enrichment damages under the Defend Trade Secrets Act.

2. Whether the court of appeals correctly affirmed an award of exemplary damages that conformed to the 2:1 ratio provided in the Defend Trade Secrets Act.

## DISCLOSURE STATEMENT

Computer Sciences Corporation is a wholly owned subsidiary of DXC Technology Company (NYSE: DXC). The Vanguard Group, Inc. and BlackRock, Inc. (NYSE: BLK) own at least 10% of DXC's outstanding common stock.

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## BRIEF IN OPPOSITION

## INTRODUCTION

Petitioner maliciously stole respondent's trade secrets and used them to create a competing product. While petitioner now complains about the compensatory and exemplary damages that resulted from its actions, it identifies no meaningful division of authority among the circuits. Nothing about the court of appeals' fact-bound application of settled law warrants further review.

## STATEMENT

### I. BACKGROUND

#### A. Statutory background

Enacted in 2016, the Defend Trade Secrets Act provided the first federal civil cause of action for trade-secret misappropriation. 18 U.S.C. § 1836(b)(1). The DTSA "created a body of federal trade secret laws that [complement] and largely mirror the [Uniform Trade Secrets Act], which has been adopted in 48 states." *Beijing Neu Cloud Oriental Sys. Tech. Co.* v. *Int'l Bus. Machs. Corp.*, 110 F.4th 106, 117 (2d Cir. 2024) (quoting Cleveland Jr., *Preventing Trade Secrets Theft Under the Defend Trade Secrets Act*, 66 FED. LAW. 72, 73 (2019)).

To establish misappropriation under the statute, a plaintiff must show "(1) a trade secret existed, (2) the trade secret was acquired through a breach of a confidential relationship or discovered by improper means, and (3) the defendant used the trade secret without authorization from the plaintiff." *CAE Integrated, L.L.C.* v. *Moov Techs., Inc.*, 44 F.4th 257, 262 (5th Cir. 2022) (emphasis omitted). The plaintiff must also prove that the defendant knew or had "reason to know" that its conduct was improper. 18 U.S.C. § 1839(5)(A)–(B).

The statute authorizes courts to grant injunctive relief "to prevent any actual or threatened misappropriation" and, "if determined appropriate by the court," to require "affirmative actions to be taken to protect the trade secret." *Id.* § 1836(b)(3)(A)(i)–(ii).

The DTSA also provides that 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." *Id.* § 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). Finally, the statute 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. *Id.* § 1836(b)(3)(C).

These remedial provisions track the common law of trade-secret misappropriation, under which courts have long measured unjust enrichment by "the value of the secret to the defendant" 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.'" *Univ. Computing* v. *Lykes-Youngstown Corp.*, 504 F.2d 518, 536–539 (5th Cir. 1974) (quoting *Int'l Indus., Inc.* v. *Warren Petroleum Corp.*, 248 F.2d 696, 699 (3d Cir. 1957)).

### B. Factual background

Respondent Computer Sciences Corporation ("CSC") provides information-technology services and business-solutions software to customers in the life, wealth, and annuities industry. Pet. App. 56a. Petitioner Tata Consultancy Services Limited ("TCS") is a technology and consulting company based in India that also serves customers in the insurance industry. *Ibid.*; *id.* at 166a.

For many years, CSC licensed two proprietary software platforms to Transamerica Corporation, an insurance company, to administer and process annuities and life-insurance policies. *Id.* at 57a. Those license agreements provide that CSC retains ownership over its software platforms and the confidential information therein, including "confidential trade secrets of CSC, developed

at great expense." *Id.* at 2a–3a, 63a.

In 2013, Transamerica engaged TCS as a third-party consultant to provide maintenance services on CSC's platforms. *Id.* at 58a. To facilitate this and other third-party work, CSC and Transamerica executed a Third-Party Access Addendum (the "Third-Party Addendum") in February 2014. *Ibid.* The Third-Party Addendum generally allowed Transamerica to authorize its consultants, including TCS, to "access, copy, execute, and use" CSC's software "solely for the benefit" of Transamerica. *Id.* at 3a–4a, 59a.

While providing consulting services, TCS was simultaneously interested in breaking into the U.S. insurance industry with its own software platform called BaNCS. *Id.* at 4a. TCS was still building its U.S. version of BaNCS, and no company was yet using BaNCS to administer life-insurance and annuity products in the United States because the platform was not ready for such use. *Id.* at 59a. TCS believed that landing Transamerica as its "anchor client" would create an opportunity to adapt BaNCS for the U.S. market. *Id.* at 60a.

In 2016, Transamerica initiated a vendor-selection process to revamp and consolidate its software platforms. *Id.* at 4a. TCS ultimately bid for and won the $2.6 billion contract over CSC. *Id.* at 5a. This meant TCS would convert all of Transamerica's policies from CSC's platforms to TCS's, then take over as Transamerica's software provider. *Ibid.* In January 2018, TCS and Transamerica entered into new agreements under which TCS would administer Transamerica's U.S. life-insurance and annuity business lines using BaNCS. *Id.* at 60a. The BaNCS platform itself was being developed by TCS's software development team, based mostly in India. *Id.* at 6a.

Given that TCS (as Transamerica's maintenance con-

sultant) had access to CSC's trade secrets, CSC voiced concerns to both Transamerica and TCS about TCS's continued use of its intellectual property. *Ibid.* TCS reassured Transamerica that it was not using any of CSC's trade secrets to convert Transamerica's policies or develop its BaNCS software. *Id.* at 7a.

This all came to a head in March 2019. A TCS employee mistakenly copied a CSC employee on an email chain with the BaNCS development team, revealing that TCS employees were, in fact, using CSC's trade secrets to build TCS's competing software. *Id.* at 105a. Upon learning that TCS was using CSC's trade secrets to develop BaNCS, CSC sued TCS in April 2019. As it turned out, TCS had been pilfering CSC's trade secrets for years, first to build its competing $2.6 billion Transamerica bid, then to convert the Transamerica policies and develop BaNCS. *Id.* at 89a–91a.

## II. Proceedings Below

### A. The district court's decision

CSC sued TCS under the Defend Trade Secrets Act, seeking (1) a permanent injunction preventing TCS from using CSC's trade secrets and any version of BaNCS developed using CSC's trade secrets, and (2) compensatory and punitive damages. Pet. App. 8a.

The district court presided over an eight-day trial with an advisory jury. *Ibid.* On damages, CSC established two paths for its compensatory, unjust-enrichment damages. The first was the avoided-cost approach, *i.e.*, "how much research and design costs [TCS] avoided by misappropriating [CSC's] trade secrets." *Id.* at 143a. This amounted to $56.1 million. *Ibid.* The second was the "income approach," *i.e.*, "the profits [TCS] expected from its misappropriation of trade secrets." *Id.* at 144a. This amounted to $55.4 million. *Id.* at 145a.

The jury found TCS liable for willful and malicious trade-secret misappropriation and recommended $70 million in unjust-enrichment damages and $140 million in exemplary damages. *Id.* at 8a, 55a. Following the verdict, CSC moved for entry of judgment. C.A. Rec. 8082. As to the relief, TCS responded that "the only appropriate measure of damages is TCS's proposed 'avoided costs'" and that "[t]hose costs are calculated as the amount of additional money TCS would have spent to complete its work for Transamerica without accessing or using" CSC's trade secrets. C.A. Rec. 51111–51112. TCS also argued that injunctive relief barring TCS's use of CSC's trade secrets and BaNCS was impermissibly duplicative of the avoided-cost award. C.A. Rec. 51116–51118.

The district court issued detailed findings of fact and conclusions of law—spanning nearly 150 pages—finding that TCS misappropriated CSC's trade secrets. Pet. App. 54a–197a. The court found, by clear and convincing evidence, that the misappropriation was willful and malicious: "TCS knew its misappropriation of [CSC's] Trade Secrets was wrong and intentionally misappropriated the Trade Secrets in conscious disregard of CSC's rights." *Id.* at 156a–159a.

As for remedies, the court credited the opinions of CSC's expert on avoided-cost and income-approach damages and awarded compensatory damages of the greater of the two—$56 million, representing the research and design costs TCS avoided by misappropriating CSC's trade secrets. *Id.* at 55a, 143a. The court thus adopted the "avoided cost" measure of damages that both CSC and TCS deemed appropriate. And in conformance with the DTSA's 2:1 exemplary-to-compensatory-damages cap, the court awarded exemplary damages of $112 million. *Id.* at 48a, 159a. The district court permanently enjoined TCS from using CSC's trade secrets or any ver-

sion of BaNCS developed using the misappropriated trade secrets. *Id.* at 49a–51a.

### B. The court of appeals' decision

The Fifth Circuit affirmed TCS's liability in full: TCS was not authorized to access and use CSC's trade secrets to create a competing bid to steal CSC's client or to build a competing software platform; and TCS knew that it was not authorized but did it anyway, actively concealing its misdeeds from Transamerica and CSC. *Id.* at 10a–22a.

Turning to remedies, the Fifth Circuit affirmed the compensatory-damages award. TCS argued (1) the unjust-enrichment damages award and the permanent injunction were impermissibly duplicative, and (2) for the first time on appeal, unjust-enrichment damages were legally unavailable under the Second Circuit's decision in *Syntel Sterling Best Shores Mauritius Ltd.* v. *The TriZetto Group, Inc.*, 68 F.4th 792 (2d Cir. 2023), because CSC allegedly did not establish "actual loss" beyond TCS's unjust enrichment. The court of appeals "agree[d] with much of the Second Circuit's analysis" in *Syntel*, including *Syntel*'s "specific holding" that "the compensatory damages award and the injunction should not be duplicative." Pet. App. 32a. The court noted that the scope of *Syntel*'s broader rule was "not entirely clear from the opinion" but declined to adopt a 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.'" *Ibid.* The court explained that, "[t]o 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 enrich-

ment' remedy." *Ibid.* The court grounded its holding in "longstanding law in [the Fifth Circuit] on trade-secret misappropriation," including half-century-old authority measuring unjust enrichment by the "value of the secret to the defendant" where "the plaintiff is unable to prove specific injury." *Id.* at 34a (quoting *Univ. Computing* v. *Lykes-Youngstown Corp.*, 504 F.2d 518, 536–539 (5th Cir. 1974)).

Identifying partial duplication between the damages award and the injunction, the court partially vacated the injunction to allow TCS to access the version of BaNCS that TCS used CSC's trade secrets to build. Pet. App. 36a–38a. The Fifth Circuit therefore ordered the district court to narrow the scope of the injunction to allow TCS to use the post-misappropriation BaNCS material while maintaining the bar on TCS's access to and use of CSC's trade secrets themselves. *Id.* at 37a–38a, 45a. This disposition, the court observed, "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." *Id.* at 38a n.10.

The court of appeals also affirmed the district court's exemplary-damages award of $112 million. The court rejected TCS's "misreading" of *State Farm Mutual Automobile Insurance Co.* v. *Campbell*, 538 U.S. 408 (2003), as requiring a 1:1 ratio whenever compensatory damages are "substantial." Pet. App. 39a. The court emphasized that the district court's findings of repeated and intentional misconduct, misrepresentations, and conscious disregard for CSC's rights supported the award. *Id.* at 39a–41a. And the court relied on circuit precedent holding 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." *Id.* at 40a (quoting *Abner* v. *Kansas City S. R. Co.*, 513 F.3d 154, 164 (5th Cir. 2008)). Because TCS did not argue that the DTSA's statutory cap offended due process, and because TCS's "reprehensible conduct" involved "trickery, deceit, and 'a larger pattern of misconduct,'" the Fifth Circuit affirmed the exemplary-damages award. Pet. App. 40a–41a (quoting *Lincoln* v. *Case*, 340 F.3d 283, 293–294 (5th Cir. 2003)).

The court of appeals denied petitioner's request for rehearing en banc without a poll.

## REASONS FOR DENYING THE PETITION

Neither of TCS's alleged circuit splits warrants this Court's review.

First, there is no meaningful disagreement over when unjust-enrichment damages are available under the DTSA. The Second Circuit decision in *Syntel* vacated an unjust-enrichment award because it duplicated a permanent injunction. The Fifth Circuit embraced the same concern about duplicative remedies and narrowed the district court's injunction to avoid overlapping relief. It chose this course in part because TCS had affirmatively argued below that avoided costs were the appropriate measure of damages. To the extent the Second Circuit states a more broadly applicable test for unjust-enrichment damages, it is avowedly fact-specific and multi-faceted. And it is likely that CSC would have prevailed under that test in the Second Circuit. Regardless, any tension between the circuits is ill-defined, shallow, and would benefit from further percolation.

Second, the circuits have unanimously upheld punitive-damages awards that fall within federal statutory caps, including under the DTSA. Those consistent results reflect this Court's admonition that substantial def-

erence is due to legislative judgments about the appropriate amount of punitive damages. TCS tries to conjure a circuit split by citing decisions that restricted punitive damages to a 1:1 ratio in cases arising under the common law or statutes that do *not* cap punitive damages. That is comparing apples and oranges. There is no relevant split, and the decision below is correct.

## I. THE COURT OF APPEALS CORRECTLY AFFIRMED THE COMPENSATORY-DAMAGES AWARD

### A. The circuits are not divided on the availability of unjust-enrichment damages under the DTSA

1. TCS claims that the Fifth Circuit broke with the Second and Seventh Circuits regarding when an unjust-enrichment award is allowed under the DTSA. In truth, the different outcomes stemmed from different facts and procedural histories—not from any material legal divergence among the circuits. That much is apparent from the face of the opinion below.

For starters, the Fifth Circuit "agree[d] with much of the Second Circuit's analysis" in *Syntel Sterling Best Shores Mauritius Ltd.* v. *The TriZetto Group, Inc.*, 68 F.4th 792 (2d Cir. 2023). Pet. App. 32a. Indeed, it agreed with *Syntel*'s "specific holding" that compensatory damages and injunctive relief "should not be duplicative." *Ibid.* Acting on that shared principle, the Fifth Circuit partially vacated the injunction to eliminate the perceived overlap between the avoided-cost damages award and the bar on TCS's future use of its BaNCS product (which was tainted by TCS's use of CSC's trade secrets to build it). *Id.* at 34a–37a.

TCS nonetheless urges that the Fifth Circuit disagreed with the Second Circuit's "interpretation" of the DTSA, which purportedly renders unjust-enrichment damages "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." Pet. 11. But, as the Fifth Circuit observed, the substance of the Second Circuit's "general rule" is "not entirely clear." Pet. App. 32a. The Second Circuit itself explained that the availability of avoided-cost damages "derive[s] from 'a comparative appraisal of all the factors of the case.'" *Syntel*, 68 F.4th at 809–810; *id.* at 811 (disallowing avoided-cost damages "in this specific case"). And the Second Circuit reversed the damages award because the "district court [had] permanently enjoin[ed] Syntel from using TriZetto's [trade secrets]," thus addressing the same overlap between injunction and damages that the Fifth Circuit likewise strived to avoid. *Id.* at 810.

The Fifth Circuit, for its part, praised the Second Circuit's core holding "as consistent with the basic and intuitive logic that the compensatory damages award and the injunction should not be duplicative." Pet. App. 32a. It parted ways with the Second Circuit only "[t]o the extent [that its 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." *Ibid.* While the Second Circuit's test was unclear and fact-dependent, the Fifth Circuit deemed "any lack of clarity" to be "mitigated and explained" by the presence of a duplicative permanent injunction in *Syntel*. *Id.* at 33a; *ibid.* (noting that when *Syntel* "discusses [the compensable-harm] requirement, it does so against a backdrop of a permanent injunction"). Thus, it is questionable that the Second Circuit would apply a strict compensable-harm requirement to preclude avoided-cost damages where no duplicative permanent injunction has been entered.

TCS complains that the court of appeals narrowed the injunction rather than vacating the damages award, while *Syntel* vacated the damages award. Pet. 14. But the

court of appeals elected that approach in part because "this remedy 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 "an injunction would be inappropriate" because legal remedies were adequate. Pet. App. 38a n.10. In other words, the divergent remedial outcomes between *Syntel* and the decision below were affected by TCS's own arguments in district court, rather than any meaningful legal dispute among the circuits.

Even in the court of appeals, TCS recognized that an absence of additional harm does not, standing alone, preclude an unjust-enrichment award. Rather, it contended that "an unjust-enrichment award is not available" "where the defendant's use did not diminish its value * * * or cause the plaintiff other harm, *and where the defendant is enjoined from further use of the trade secret in its competing products*." Pet. C.A. Br. 54 (emphasis added). TCS has since reversed course to attempt to manufacture a split. At bottom, the Second Circuit, the Fifth Circuit, and even TCS (at earlier procedural stages) all agree that courts must avoid duplication between injunctions and damages awards. The Fifth Circuit addressed that overlap by narrowing the injunction—as opposed to vacating the damages award—because of TCS's litigation choices below. There is no circuit split over the general availability of unjust-enrichment damages warranting this Court's intervention.

2. A closer examination of *Syntel*, *Motorola*, and the decision below confirms that the differing results grow from factual and procedural differences rather than a split among the circuits. That is especially important given the fact-laden "comparative appraisal" that underpins the Second Circuit's "not entirely clear" standard.

a. Start with *Syntel*. There, a software company

(TriZetto) licensed its platform to insurance companies and also competed with third parties to service that platform. 68 F.4th at 796–797. Syntel was a services company, not a software company. *Id.* at 797. Under a subcontracting arrangement, Syntel had access to TriZetto's trade secrets; things soured when Syntel used them outside that capacity to service a new customer, with TriZetto estimating it suffered $8.5 million in lost profits. *Id.* at 798, 811.

TriZetto sought a permanent injunction, its $8.5 million in actual losses, and $285 million in avoided-cost damages, *i.e.*, what it would have cost Syntel to develop TriZetto's platform on its own. *Id.* at 798–799. The Second Circuit vacated the avoided-cost award, while Syntel did not challenge the permanent injunction. *Id.* at 806–807. "The parties concede[d] that avoided costs are recoverable as damages for unjust enrichment under the DTSA" as a general matter; "[t]hey dispute[d], however, whether avoided costs are available *under the particular facts of this case*." *Id.* at 809 (emphasis added). After recounting unjust enrichment's equitable roots, the court found a "comparative appraisal of all the factors" necessary to determine if avoided costs are legally available under these specific circumstances. *Id.* at 809–811. Key to its conclusion was that Syntel "never developed or sold a competing software product"; the trade secrets' value to TriZetto remained undiminished; and a permanent injunction ended Syntel's use going forward. *Id.* at 811–812. The court emphasized that "future cases may present a range of factual scenarios" in which avoided costs would be appropriate—for example where "the defendant has used the secret in developing its own competing product." *Id.* at 812. But there, Syntel was not a software competitor, and it never had any intention of building a competing product. *Ibid.* Thus, given the unchallenged prospective injunction, the court concluded "that,

as a matter of law, an unjust enrichment award of avoided costs was unavailable *under the specific facts of this case*." *Id.* at 814 (emphasis added).

b. The Seventh Circuit's decision in *Motorola* could not possibly evidence a split with the decision below because it *upheld* an unjust-enrichment damages award. See *Motorola Sols., Inc.* v. *Hytera Commc'ns Corp. Ltd.*, 108 F.4th 458 (7th Cir. 2024). In a footnote, the Seventh Circuit cursorily "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 809–810). But it did not suggest—much less hold—that unjust-enrichment damages would be unavailable on the facts and procedural history presented here. Quite the contrary: *Motorola* aligns with both *Syntel* and the decision below.

There, Hytera stole Motorola's trade secrets to build a line of competing radios that it sold worldwide for years—precisely the scenario *Syntel* identified as supporting an avoided-cost award. *Id.* at 468–470. The Seventh Circuit upheld the avoided-cost award because Hytera had "'used the claimant's trade secrets in developing its own product,' thereby diminishing the value of the trade secret to the claimant." *Id.* at 490 n.10 (quoting *Syntel*, 68 F.4th at 812, in turn quoting *GlobeRanger Corp.* v. *Software AG U.S. of Am., Inc.*, 836 F.3d 477, 499 (5th Cir. 2016)). Notably, the district court in that case had not granted permanent injunctive relief, so the problem of duplicative remedies was not squarely presented. *Id.* at 469.

c. The decision below was consistent with the result in both *Syntel* and *Motorola*. Recall that the district court originally enjoined TCS from using or accessing

CSC's trade secrets *and* any version of BaNCS tainted by misappropriation. Pet. App. 192a–194a. The Fifth Circuit vacated the latter part, such that TCS pays CSC for the costs it avoided but keeps the resulting BaNCS software going forward. *Id.* at 36a–38a. The Fifth Circuit therefore reached exactly the result *Syntel* would have demanded: It identified the duplication between the damages award and the injunction and eliminated that overlap (by narrowing the injunction). *Ibid.*

The court of appeals' academic disagreement with *Syntel*'s arguably broader dicta does not warrant this Court's review. With the injunction narrowed to allow TCS to use its post-misappropriation BaNCS software, CSC would likely have been entitled to avoided-cost damages in the Second Circuit. See *Syntel*, 68 F.4th at 812 (noting that avoided costs "might" be warranted where defendant used trade secrets "in developing its own competing product" or to compete with the claimant). The district court found that "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," Pet. App. 145a, and that "CSC would lose millions of dollars of revenue if a competitor improperly obtained the Trade Secrets," *id.* at 67a.

The factual contrast with *Syntel* is stark. Syntel "never developed or sold a competing software product using TriZetto's trade secrets"; it merely used them to service one customer on one occasion. *Syntel*, 68 F.4th at 812. Awarding TriZetto $285 million—representing the cost of developing a platform that Syntel never built and would never use—would have duplicated the permanent injunction that already barred Syntel from any future use of the trade secrets. *Id.* at 811, 814. TCS seeks a "windfall" in keeping its competing product on the market while retaining the $56 million in costs it avoided by

stealing CSC's trade secrets. Pet. App. 35a. There is no reason to believe the Second Circuit would countenance such a result, given the vastly different facts and remedial posture in *Syntel*.

### B. This case is a poor vehicle, and further percolation is warranted

Any modicum of disagreement between the Second and Fifth Circuits does not merit review at this time. The DTSA was enacted in 2016, and only two court of appeals opinions have discussed at any length when unjust-enrichment damages may be awarded. Further percolation would shed light on how the Second Circuit applies its fact-specific compensable-harm standard to additional scenarios—such as where there is no overlapping injunction or where the defendant uses trade secrets to create a competing product. The Seventh Circuit may also have occasion to decide whether it would reject unjust-enrichment damages on facts like those presented here. And other circuits would have an opportunity to weigh in on unjust-enrichment damages. If a clear conflict develops, the Court can grant review at that juncture.

In addition, this case presents a particularly poor vehicle to address the availability of avoided-cost damages. That is because TCS affirmatively argued below that "the only appropriate measure of damages is TCS's proposed 'avoided costs.'" C.A. Rec. 51111–51112. This contention influenced the court of appeals to address any potential remedial duplication by narrowing the injunction rather than vacating the damages award. Pet. App. 37a–38a & n.10. The Court should not resolve a question about the availability of unjust-enrichment damages where petitioner conceded below that such damages were available, and where its shifting positions contributed to the outcome on appeal.

### C. The decision below is correct

The Court should also deny review because the decision below is correct. The DTSA imposes no rule forbidding avoided-cost damages absent some showing of additional harm beyond the defendant's unjust enrichment.

TCS advances no textual argument for its preferred rule, and for good reason. 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). The phrase "that is not addressed in computing damages for actual loss" simply means that any unjust-enrichment remedy may not duplicate any actual-loss remedy. Nothing in that text requires proof of "compensable harm" to the secret-holder. Pet. App. 32a. By its nature, the unjust-enrichment remedy "focuses on the benefit to the defendant, rather than the impact on the plaintiff." *Id.* at 33a. The Restatement confirms this understanding: 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." Restatement (Third) of Restitution and Unjust Enrichment § 1 cmt. a (2011); see also *id.* § 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.").

To the extent *Syntel* requires proof of "compensable harm" beyond the defendant's unjust enrichment as a precondition to any avoided-cost award, that interpretation would effectively eliminate unjust enrichment as a standalone category of damages—collapsing it into "actual loss" and rendering § 1836(b)(3)(B)(i)(II) superfluous. The Fifth Circuit correctly rejected that reading,

grounding its holding in the DTSA's text and "longstanding law" measuring unjust enrichment by "the value of the secret to the defendant." Pet. App. 34a (quoting *Univ. Computing*, 504 F.2d at 537–539); see *Beijing Neu Cloud*, 110 F.4th at 117 (recognizing that the DTSA "largely mirrors" the common-law tradition); *PPG Indus. Inc.* v. *Jiangsu Tie Mao Glass Co.*, 47 F.4th 156, 161 (3d Cir. 2022) (affirming avoided-cost award and permanent injunction under Pennsylvania's UTSA without evidence of "actual loss from [the defendant's] misappropriation"). Given the absence of a well-defined split over the DTSA's meaning, the Court should not review the Fifth Circuit's correct interpretation of that statute.

## II. There Is No Circuit Split With Respect To Exemplary-Damages Awards Within Federal Statutory Limits, And The Court Of Appeals Correctly Affirmed The 2:1 Award Here

TCS next asserts a circuit conflict regarding whether the Constitution imposes a 1:1 limit on exemplary damages when "compensatory damages are substantial." Pet. 17–26 (citing *Campbell*, 538 U.S. at 425). This Court's punitive-damages caselaw, however, stemmed from concerns about unguided state common-law awards. TCS ignores that this case arises under a federal statute that reflects Congress's considered judgment about the appropriate amount of punitive damages. And this Court has long recognized that "legislative judgments concerning appropriate sanctions for the conduct at issue" deserve "substantial deference." *BMW of N. Am., Inc.* v. *Gore*, 517 U.S. 559, 583 (1996) (quoting *Browning-Ferris Indus. of Vt., Inc.* v. *Kelco Disposal, Inc.*, 492 U.S. 257, 301 (1989) (O'Connor, J., partially concurring and partially dissenting)). In light of that guidance, it is hardly surprising that no circuit conflict exists over whether a 1:1 ratio constitutionally restrains punitive damages where

Congress has set a different limit. Thus, this Court should deny review.

### A. There is no split over the constitutionality of a 2:1 exemplary-damages award under the DTSA or any other federal statute that caps such damages

1. TCS asserts a conflict of authority over the meaning of a single, ambiguous sentence from *Campbell*'s review of a state common-law punitive-damages award: "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." 538 U.S. at 425. TCS frames its "split," however, at an improperly high level of generality. This case arises under the DTSA and its 2:1 punitive-damages cap. None of TCS's cases that allegedly disagree with the decision below limits an exemplary-damages award that conforms to a federal statutory cap.

That distinction makes a dispositive difference. After all, *Campbell* built on the familiar "guideposts" the Court established in *Gore*. Under those guideposts, courts reviewing a punitive-damages award must consider (1) reprehensibility of the conduct, (2) the disparity between punitive and actual damages, and (3) the difference between the punitive damages and civil penalties for comparable conduct. *Gore*, 517 U.S. at 575. In *Campbell*, as in *Gore*, this Court "decline[d] again to impose a bright-line ratio" between punitive and compensatory damages that an "award cannot exceed." *Campbell*, 538 U.S. at 425. The Court observed that "few awards exceeding a single-digit ratio between punitive and compensatory damages * * * will satisfy due process," noting that the Court had twice endorsed a 4:1 ratio. *Ibid.* (citations omitted). While upward variances in the ratio may sometimes be necessary, the Court also suggested the

"converse," that "[w]hen compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee." *Ibid.*

Critically, the *Gore-Campbell* line of cases grew from due-process concerns about unguided juries imposing massive awards under state common-law regimes that provided inadequate notice to defendants of the consequences of their actions. See *Pac. Mut. Life Ins. Co.* v. *Haslip*, 499 U.S. 1, 18 (1991) ("[U]nlimited jury discretion—or unlimited judicial discretion for that matter—in the fixing of punitive damages may invite extreme results that jar one's constitutional sensibilities."). While this Court has never reviewed a due-process challenge to a federal statutory punitive-damages award, *Exxon Shipping Co.* v. *Baker*, 554 U.S. 471, 502 (2008) ("Our due process cases * * * have all involved awards subject in the first instance to state law."), it has strongly signaled that the inquiry would be quite different. That is because "legislative judgments concerning appropriate sanctions for the conduct at issue" deserve "substantial deference." *Gore*, 517 U.S. at 583 (quoting *Browning-Ferris*, 492 U.S. at 301 (O'Connor, J., partially concurring and partially dissenting)). And that makes sense: Statutory caps both provide notice to defendants and constrain jury (and judicial) discretion.

2. Lower courts have followed this Court's lead, regularly upholding punitive-damages awards that conform to federal statutory caps. In the decision below, the Fifth Circuit explained 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." Pet. App. 40a (quoting *Abner* v. *Kansas City S. R. Co.*, 513 F.3d 154, 164 (5th Cir. 2008)). TCS conveniently ignores this important rationale.

The Seventh Circuit followed a similar approach in the only other appellate decision to consider a due-process challenge to a DTSA punitive-damages award. The *Motorola* court affirmed a $271.6 million DTSA punitive-damages award that equaled the statutory maximum 2:1 ratio. 108 F.4th at 497. The court concluded "[b]ased on the statutory limits on punitive damages in the DTSA" that the 2:1 award was "consistent with *Gore* and its progeny." *Id.* at 498.

Other courts have reached the same conclusion when reviewing awards capped under other federal statutes. The *en banc* Ninth Circuit, for instance, contrasted such awards with the "unrestricted state common law damages awards" at issue in *Gore* and *Campbell*. *Arizona* v. *ASARCO LLC*, 773 F.3d 1050, 1055 (9th Cir. 2014). When a federal statute "narrowly describes the type of conduct subject to punitive liability, and reasonably caps that liability, it makes little sense to formalistically apply [the] ratio analysis" outlined in *Gore* and *Campbell*. *Ibid.* The Tenth Circuit likewise observed, in reviewing a punitive-damages award, that "the 'landscape of our review is different' in this [federal] statutory context." *BNSF R. Co.* v. *U.S. Dep't of Labor*, 816 F.3d 628, 643 (10th Cir. 2016).

3. TCS cites court of appeals' decisions that reduced above-1:1 punitive-damages awards under (a) state common law and state statutes that do not cap punitive damages,[1] or (b) federal statutes that do not cap punitive

[1] *Thomas* v. *iStar Fin., Inc.*, 508 F. Supp. 2d 252, 264 (S.D.N.Y. 2007), *aff'd*, 652 F.3d 141 (2d Cir. 2011) (New York law); *Cole* v. *Foxmar, Inc.*, No. 23-87, 2024 WL 74902, at *1 (2d Cir. Jan. 8, 2024) (Vermont law); *Jurinko* v. *Med. Protective Co.*, 305 F. App'x 13, 15 (3d Cir. 2008) (Pennsylvania law); *Morgan* v. *New York Life Ins. Co.*, 559 F.3d 425, 439 (6th Cir. 2009) (Ohio law); *Saccameno* v. *U.S. Bank Nat'l Ass'n*, 943 F.3d 1071, 1091 (7th Cir. 2019) (Illinois law); *Boerner* v. *Brown & Williamson Tobacco Co.*, 394 F.3d 594, 601–602

damages.[2] But it identifies no court of appeals that has rejected a punitive-damages award that complies with a federal statutory cap. Viewed at the relevant level of specificity, therefore, no circuit split warrants this Court's attention.[3]

Congress put TCS on notice that if it willfully and maliciously misappropriated trade secrets, it could face exemplary damages up to twice the compensatory damages awarded. 18 U.S.C. § 1836(b)(3)(C). There is no disagreement among the circuits over the constitutionality of such DTSA awards, or even awards under other similar federal statutes.

### B. This case is a poor vehicle to address any tension regarding the constitutionally permissible ratio between punitive-damages awards and "substantial" compensatory-damages awards

At most, TCS identifies disagreement over how lower

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(8th Cir. 2005) (Arkansas law); *Lompe* v. *Sunridge Partners, LLC*, 818 F.3d 1041, 1071–1072 (10th Cir. 2016) (Wyoming law).

[2] *Méndez-Matos* v. *Municipality of Guaynabo*, 557 F.3d 36, 55 (1st Cir. 2009) (42 U.S.C. § 1983); *Bach* v. *First Union Nat'l Bank*, 486 F.3d 150, 154 n.1 (6th Cir. 2007) (Fair Credit Reporting Act); *Williams* v. *ConAgra Poultry Co.*, 378 F.3d 790, 798 (8th Cir. 2004) (42 U.S.C. § 1981).

[3] TCS omits a case that limited a punitive-damages award in the context of a state statutory cap—likely because TCS was the willful misappropriator in a remarkably similar trade-secret case. See *Epic Sys. Corp.* v. *Tata Consultancy Servs. Ltd.*, 980 F.3d 1117 (7th Cir. 2020). However, the effect of Wisconsin's statutory cap on the constitutionality of the punitive-damages award was not squarely presented to the court of appeals. See Brief in Opposition 10–12, *Epic Sys. Corp.* v. *Tata Consultancy Servs. Ltd.*, No. 20-1426 (U.S. June 11, 2021); Brief for the United States as *Amicus Curiae* 8, 10–15, *Epic Sys. Corp.* v. *Tata Consultancy Servs. Ltd.*, No. 20-1426 (U.S. Feb. 15, 2022) (noting forfeiture and explaining that statutory caps "materially inform the analysis" and weigh heavily in favor of constitutionality).

courts apply *Campbell*'s cryptic 1:1 guidance in cases where, unlike here, punitive damages are not statutorily capped.[4] A case involving a federal statutory cap presents an exceedingly poor vehicle to resolve the purported tension TCS identifies.

The reason is straightforward. The Court could—and likely would—readily resolve this case by deferring to Congress's judgment and upholding the punitive-damages award on that basis. Such a resolution would provide no instruction on whether *Campbell* prohibits awards above a 1:1 ratio in cases where punitive damages are not statutorily constrained.

This case would also require the Court to wade into constitutional waters that have not been explored in the briefing below or in this Court. Reversing the award here would require holding not only that the award violates the Due Process Clause; it would also call into question the constitutionality of the DTSA's 2:1 cap itself (not to mention other federal statutes with similar caps). See Pet. App. 40a–41a. Yet TCS has never explained why the DTSA's careful limits on punitive damages and the precise notice it provides are constitutionally insufficient. Indeed, TCS never alludes to the Fifth Circuit's discussion of the DTSA's cap on punitive damages until the final paragraph of its petition, and even then it does not make any attempt to engage with the Fifth Circuit's constitutional analysis. Pet. 25–26. The Court should not reach out to address this novel constitutional question before a circuit split arises over statutorily capped awards.

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[4] The Court has regularly declined to address this question in recent years. See *Monsanto Co.* v. *Pilliod*, 142 S. Ct. 2870 (2022); *Johnson & Johnson* v. *Ingham*, 141 S. Ct. 2716 (2021); *TransUnion LLC* v. *Ramirez*, 141 S. Ct. 972 (2020) (rejecting question presented).

### C. The decision below correctly applies *Campbell* and other relevant precedents

The absence of a relevant circuit conflict and the petition's vehicle problems provide ample grounds for denial. The decision below is also correct on the merits.

"[T]he DTSA functions like a host of other federal statutes authorizing double or treble damages—especially for wrongdoing in commerce—whose constitutionality is virtually beyond question." *Motorola*, 108 F.4th at 497. What is more, "sanctions of double, treble, or quadruple damages to deter and punish" have "a long legislative history, dating back over 700 years and going forward to today." See *Campbell*, 538 U.S. at 425; *Gore*, 517 U.S. at 580 & n.33. Given this Court's "substantial deference" to "legislative judgments concerning appropriate sanctions for the conduct at issue," *Gore*, 517 U.S. at 583 (quoting *Browning-Ferris*, 492 U.S. at 301 (O'Connor, J., partially concurring and partially dissenting)), the 2:1 award here falls squarely within the constitutional zone.

The Fifth Circuit acknowledged *Campbell*'s dicta on the appropriate ratio "when 'compensatory damages are substantial * * * .'" Pet. App. 39a (quoting *Campbell*, 538 U.S. at 425). But it also flagged *Campbell*'s other guidance that "[s]ingle-digit multipliers are more likely to comport with due process," and that the appropriate award must be "based upon the facts and circumstances of the defendant's conduct and the harm to the plaintiff." *Ibid.* (quoting 538 U.S. at 425); see also *ibid.* (noting that *Gore* endorsed a 4:1 ratio). The Fifth Circuit understood that this Court has never established a bright-line 1:1 rule, much less for awards that comply with federal statutory caps. See *Campbell*, 538 U.S. at 424. Far from being "the rule that the Court's opinion [in *Campbell*] laid down," Pet. 19, *Campbell* went out of its way to reject

"bright-line ratio[s]" and "rigid benchmarks," 538 U.S. at 424–425.

The Fifth Circuit likewise appreciated that the reprehensibility of TCS's conduct was the most important factor in evaluating the award. Pet. App. 39a–41a ("[T]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." (quoting *Campbell*, 538 U.S. at 419)). TCS no longer disputes that it acted willfully and maliciously, or that its misappropriation "involved repeated action" and "repeated deceit." *Id.* at 40a.[5] Where the conduct "involve[s] trickery, deceit, and 'a larger pattern of misconduct,'" *id.* at 41a (citation omitted), or where "the injury is hard to detect," a "higher ratio" is necessary, *ibid.* (quoting *Gore*, 517 U.S. at 582). The Fifth Circuit therefore correctly affirmed the district court's award within the DTSA's 2:1 cap.

[5] TCS asserts that there was "no finding that [CSC] was harmed." Pet. 17. That is patently false: The district court found that TCS stole CSC's trade secrets to build a competing product and prevail over CSC in a $2.6 billion bid for Transamerica's business. See *supra* Statement § I.B.

## CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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