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**

## REPLY BRIEF FOR PETITIONERS


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## REPLY BRIEF

The court of appeals affirmed an award of nearly $200 million even though the district court never found that respondent suffered a dollar of harm from petitioner's use of its trade secrets. Such a grossly punitive award is not authorized by the DTSA and exceeds the limits of due process.

Respondent's efforts to obscure the conflicts of authority implicated by the decision below lack merit. First, the court of appeals rejected the requirement, adopted by the Second and Seventh Circuits, that "as a matter of law" a DTSA plaintiff must establish harm beyond lost profits to obtain unjust-enrichment damages. *Syntel Sterling Best Shores Mauritius Ltd.* v. *The TriZetto Grp., Inc.*, 68 F.4th 792, 814 (2d Cir.), *cert. denied*, 144 S. Ct. 352 (2023); *see Motorola Sols., Inc.* v. *Hytera Commc'ns Corp. Ltd.*, 108 F.4th 458, 490 n.10 (7th Cir. 2024), *cert. denied*, 145 S. Ct. 1182 (2025). Respondent's arguments largely focus on the court of appeals's separate holding on duplicative remedies, but that has no bearing on the court's independent holding that harm is not required for unjust-enrichment damages.

Second, with respect to exemplary damages, the court of appeals clearly misconstrued *State Farm Mutual Automobile Insurance Co.* v. *Campbell*, 538 U.S. 408 (2003), by ignoring the Court's guidance that where compensatory damages are substantial, a ratio of punitive to compensatory damages in excess of 1:1 will often exceed the limits of due process—guidance regularly applied by most other circuits. Instead of seriously defending the court of appeals's misapprehension, respondent reframes the question as limited to punitive damages subject to federal statutory caps.

But the court of appeals did not limit its misinterpretation of *Campbell* to that circumstance.

The Court should grant review.

## I. THE COURT SHOULD GRANT REVIEW TO CLARIFY WHEN UNJUST-ENRICHMENT AWARDS ARE AVAILABLE UNDER THE DTSA

A. The circuits are divided over whether a DTSA plaintiff must show that it suffered some harm beyond lost profits in order to obtain an unjust-enrichment award.

The Second Circuit held in *Syntel* "that, as a matter of law, an unjust enrichment award of avoided costs was unavailable" under the DTSA because "Syntel's unjust gain was fully addressed in computing damages for [TriZetto's] actual loss, and TriZetto suffered *no compensable harm* beyond that actual loss." 68 F.4th at 814 (emphasis in original; quotation marks omitted). In so holding, the Second Circuit rejected the view that "no corresponding harm to the trade secret owner [is] necessary" for unjust-enrichment damages. *Id.* at 813. Contrary to respondent's contention (Br. in Opp. (BIO) 11, 12-14), *Syntel*'s holding was neither "unclear" nor "fact-dependent." While *Syntel* emphasized that "facts matter" for remedial questions, 68 F.4th at 810, the opinion requires, "as a matter of law," proof of harm beyond lost profits to obtain unjust-enrichment damages, *id.* at 814.

For its part, 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 the plaintiff] *beyond* its actual loss.'" *Motorola*, 108 F.4th at 490 n.10 (quoting *Syntel*, 68 F.4th at 809-10).

In the decision below, the court of appeals 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.'" Pet. App. 32a (quoting *Syntel*, 68 F.4th at 811). The court then "decline[d] to adopt that approach," instead announcing the categorical rule that "unjust enrichment damages under the DTSA" have "no compensable harm requirement." *Id.* at 33a.

The conflict is thus clear. Although respondent attempts to reconcile the cases on their facts, it concedes that the court of appeals "parted ways with the Second Circuit" on the requirement of harm (BIO 11); that there is an "academic disagreement" or "modicum of disagreement" between the circuits (understatements, if telling ones) (BIO 15, 16); and that the Seventh Circuit "cursorily agree[d]" with the Second Circuit's rule (BIO 14 (quotation marks omitted)).

In reality, unanimous panels of the Second, Fifth, and Seventh Circuits have reached irreconcilable interpretations of a core provision for a statute that gives rise to thousands of federal cases each year. *See* Pet. 14-15. That is exactly the sort of important disagreement this Court regularly resolves. *See, e.g.*, *Perttu* v. *Richards*, 605 U.S. 460, 466-67 (2025) (resolving 1-1 split on question under Prison Litigation Reform Act); *Bittner* v. *United States*, 598 U.S. 85, 89 (2023) (resolving 1-1 split on question

under Bank Secrecy Act); *Becerra* v. *Empire Health Found., for Valley Hosp. Med. Ctr.*, 597 U.S. 424, 433-34 (2022) (resolving 2-1 split on question under Medicare Act).

B. Respondent's efforts to muddy that clear division of authority lack merit.

1. Respondent emphasizes (BIO 10-12, 14-16) that the court of appeals agreed with the Second Circuit that unjust-enrichment awards should not be duplicative with injunctions. That is true but beside the point. Petitioner does not here challenge the court of appeals's holding about duplicative remedies. Rather, it challenges the court's rejection of harm as a prerequisite to an unjust-enrichment award under the DTSA.

Contrary to respondent's assertion (BIO 11), that requirement does not depend on whether the plaintiff obtained a duplicative injunction or the defendant challenges the injunction on appeal. Rather, the Second Circuit held that compensable harm beyond lost profits is necessary for *any* award of unjust enrichment. What the Second Circuit deemed relevant was the legal *availability* of injunctive relief under the DTSA: To hold that "avoided costs would be available as unjust enrichment damages . . . even where a trade secret owner suffers no compensable harm beyond its lost profits or profit opportunities," it said, would be "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*." 68 F.4th at 811 (emphasis altered).

Respondent relatedly claims (BIO 11-12) that the court of appeals's holding rested in part on the fact

that petitioner had argued in the district court that the injunction should be vacated and that avoided costs is the appropriate measure of unjust-enrichment damages. Not so. While the court of appeals noted in a footnote that solving the duplicative-remedy problem by partially vacating the injunction "better comports with [petitioner's] arguments before the district court," Pet. App. 38a n.10, that came well after its independent holding that compensable harm is not a requirement for unjust-enrichment damages, *id.* at 32a.

Importantly, the court of appeals did not hold that petitioner had failed to preserve the *Syntel* issue, and it fully addressed it on the merits—meaning that the issue is cleanly presented for this Court's review. *See Ellingburg* v. *United States*, 607 U.S. ---, 146 S. Ct. 564, 567 n.2 (2026). And petitioner's position that the appropriate *measure* of damages is avoided costs has no bearing on the antecedent question whether damages are available at all.

Respondent also claims (BIO 12) that petitioner conceded in the court of appeals that the *Syntel* rule would not apply in the absence of a duplicative injunction. But in its brief below, petitioner made exactly the argument that it raises here: "[A]n unjust-enrichment award is generally appropriate only for 'instances where the value of the secret is damaged,' and a court must ask whether the defendant's 'misappropriation injure[d] [the plaintiff] *beyond* its actual loss . . . in lost profits.'" Supp. App. 2a (quoting *Syntel*, 68 F.4th at 809-10). Respondent misconstrues a sentence explaining that the lack of harm and the presence of an injunction are *sufficient* to foreclose unjust-enrichment damages to mean that both factors

are necessary—a reading at odds with earlier sentences in the same paragraph.

2. Respondent argues (BIO 12-16) that the different outcomes of *Syntel* and *Motorola* "grow from factual and procedural differences rather than a split among the circuits." Again, that ignores the legal rule adopted in each case.

Respondent's distinction of *Syntel* is opaque. Respondent says (BIO 13) that Syntel was "a services company, not a software company," and had not built a competing product (as petitioner was found to have done here). But that consideration was relevant in *Syntel* only because the use of a plaintiff's trade secrets to build a competing product might in a particular case enrich the defendant "at the expense of the secret holder" by reducing "the value of the[] misappropriated trade secrets." 68 F.4th at 811-12. That kind of harm would justify unjust-enrichment damages under the Second Circuit's rule. Here, as in *Syntel*, there was no finding that petitioner's "misappropriation diminished the value of [respondent's] trade secrets to any degree" or otherwise caused it harm—in part because the competing product was never delivered to a customer. *Id.* at 812; *see* Pet. App. 133a.

Contrary to respondent's claim (BIO 25 n.5), the district court made no finding that respondent suffered harm. Although the district court found that petitioner used respondent's trade secrets to build a competing product and bid for Transamerica's contract, the court did *not* find that respondent would have won the contract but for that misappropriation. Nor could it have done so: The finalists were

petitioner and a third company; respondent didn't make the cut. C.A. Record 13111.

Respondent quotes out of context (BIO 15) the district court's factual finding that petitioner as a general matter would lose revenue from misappropriation of its trade secrets by a competitor, which was part of the district court's findings related to why the information here qualified for trade-secret protection. Pet. App. 67a. Nowhere did the district court find that respondent *actually* had lost revenue as the result of the specific conduct here. And at any rate, harm in the form of lost revenue is insufficient under the *Syntel* rule because it would be compensable as lost profits under a different provision of the DTSA.

Respondent also claims (BIO 15) that unlike in *Syntel*, here petitioner sought a "windfall" by "keeping its competing product on the market while retaining the $56 million in costs it avoided." That is not correct: Petitioner's position below was that the damages award should be vacated but not the injunction.

Respondent's attempted distinction of *Motorola* (BIO 14) only confirms the intractable conflict among the circuits. Respondent notes that the district court had not issued an injunction in that case. But the Seventh Circuit *still* applied the *Syntel* rule requiring harm as a prerequisite to unjust-enrichment damages—refuting respondent's claim that the rule depends on the presence of a duplicative injunction. The fact that the Seventh Circuit ultimately upheld the damages award after finding that the defendant's sale of infringing products in the marketplace had diminished the value of the trade secrets does not

detract from the square conflict over the legal requirements for such relief.

C. Respondent's vehicle arguments (BIO 16) lack merit. Respondent does not deny the massive importance of the question presented given the numerous DTSA claims filed each year. The 2-1 conflict is clear and unlikely to resolve itself. The court of appeals squarely decided the question presented and did not suggest that petitioner had failed to preserve its argument. *See* p.5, *supra.* And although respondent makes a boilerplate plea for more percolation, both the Second Circuit in *Syntel* and the Fifth Circuit in this case thoroughly examined the question presented. The Court is well positioned to answer that purely legal question now.

D. Respondent briefly addresses (BIO 17-18) the merits of the Second Circuit's scholarly analysis in *Syntel*, but its arguments miss the point. The Second Circuit explained how the unjust-enrichment remedy traditionally focuses on the return to the plaintiff of "what the defendant has gained in a transaction," *i.e.*, the "'return of a specific thing or . . . a money substitute for that thing.'" 68 F.4th at 810 (quoting 1 Dan B. Dobbs, LAW OF REMEDIES § 4.1(1) (1993)). Where the plaintiff has suffered no diminution in the value of the trade secret or other harm beyond lost profits, there is simply nothing to return. *Id.* at 810 & n.34.

## II. THE FIFTH CIRCUIT'S DEPARTURE FROM *CAMPBELL* WARRANTS THIS COURT'S REVIEW

A. In affirming the district court's $112 million exemplary-damages award, the court of appeals

interpreted *Campbell* in a manner that conflicts with that decision's plain language. *Campbell* instructed that "[w]hen compensatory damages are substantial," a 1:1 ratio of punitive damages to compensatory damages "can reach the outermost limit of the due process guarantee." 538 U.S. at 425. There is nothing "cryptic" (BIO 23) about that guidance.

Yet when petitioner cited *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'"—*i.e.*, exactly what it says—the court of appeals held that "[t]his is a misreading of *Campbell*." Pet. App. 39a (quoting *Campbell*, 538 U.S. at 425). The court went on to give no weight to the size of unjust-enrichment damages here (which are not even compensatory). That clearly conflicts with numerous circuit decisions. *See* Pet. 20-23.

Faced with a straightforward conflict, respondent moves the goalposts. According to respondent, *Campbell*'s guidance does not apply where damages are within a "federal statutory cap." BIO 19-22. But the court of appeals did not rest its disregard of the 1:1 ratio on the ground that the DTSA contains a statutory cap. It simply misread *Campbell*.

Respondent cites (BIO 20) a later part of the opinion in which the court of appeals noted its prior 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.'" Pet. App. 40a (quoting *Abner* v. *Kansas City S. R. Co.*, 513 F.3d 154, 164 (5th Cir. 2008)) (alteration in

original). But as the petition explained (at 26), nothing in that discussion revealed whether, had the court of appeals correctly understood *Campbell*'s ratio guidance, it would have concluded that the DTSA's cap—insofar as it authorizes a gargantuan award of exemplary damages with no finding of harm—offends due process. Were this Court to grant review and correct the court of appeals's misunderstanding of *Campbell*, it would have the option of remanding for that court to decide in the first instance the relevance of the statutory cap.

At any rate, even indulging respondent's reframing of the question presented, there is a conflict of authority ripe for this Court's resolution. Other circuits have applied the *Campbell* ratio analysis where punitive damages were within a federal statutory cap. *See E.E.O.C.* v. *Fed. Express Corp.*, 513 F.3d 360, 378 (4th Cir.), *cert. denied*, 555 U.S. 814 (2008); *MacGregor* v. *Mallinckrodt, Inc.*, 373 F.3d 923, 933 (8th Cir. 2004); *see also Myers* v. *Cent. Fla. Invs., Inc.*, 592 F.3d 1201, 1221-22 (11th Cir.), *cert. denied*, 562 U.S. 890 (2010) (state-law cap). Even the Tenth Circuit decision that respondent cites held that the *Campbell* guideposts still apply where punitive damages are subject to a federal statutory cap, albeit in a less "rigid" manner. *BNSF R. Co.* v. *U.S. Dep't of Labor*, 816 F.3d 628, 643-645 & n.10 (10th Cir. 2016) (quotation marks omitted).

The Ninth Circuit, by contrast, has held that the "ratio analysis has little applicability . . . [w]hen a statute narrowly describes the type of conduct subject to punitive liability, and reasonably caps that liability," at least where there is "a consolidated cap on *both* compensatory and punitive damages."

*Arizona* v. *ASARCO LLC*, 773 F.3d 1050, 1057-58 (9th Cir. 2014) (en banc). The Seventh Circuit has adopted a similar rule for caps that are tailored "to the particular claims for which punitive damages were sought," but has applied the *Gore* ratio analysis to "generic" punitive-damages caps that apply to "nearly all" claims. *Motorola*, 108 F.4th at 498-500.

Accordingly, even if respondent's framing of the *Campbell* issue were correct, granting review in this case would provide important guidance to lower courts.

Respondent relatedly argues (BIO 23) that the question presented implicates "the constitutionality of the DTSA's 2:1 cap itself." That is true only in a limited sense. The fact that particular applications of that provision may raise due process concerns does not cast doubt on its facial constitutionality—no more so than this Court's holding that an extreme application of the criminal-forfeiture statute violated the Excessive Fines Clause called into question the facial constitutionality of that statute, *see United States* v. *Bajakajian*, 524 U.S. 321, 323 (1998). And contrary to respondent's suggestion (BIO 9), petitioner did argue below that the application of the DTSA's exemplary-damages provision here violated due process. Pet. App. 39a.

B. Respondent offers little defense of the court of appeals's misreading of *Campbell*. No one claims that *Campbell* established a "bright-line 1:1 rule" (BIO 24). But it does state that a 1:1 ratio will often set the limit of due process where compensatory damages are substantial—as numerous courts of appeals have held. Pet. 20-23. The court of appeals misunderstood that guidance.

Respondent notes (BIO 20) that one of *Campbell*'s animating concerns was fair notice, which it asserts is not implicated where a statute caps punitive damages. But *Campbell* rests on both "procedural *and substantive* constitutional limitations on [punitive-damages] awards." 538 U.S. at 416 (emphasis added). Regardless of notice, "an award [that] is grossly excessive . . . furthers no legitimate purpose and constitutes an arbitrary deprivation of property." *Id.* at 417 (citation omitted); *see Cooper Indus., Inc.* v. *Leatherman Tool Grp., Inc.*, 532 U.S. 424, 433-34 (2001).

Respondent also argues (BIO 25) that the reprehensibility guidepost would justify the $112 million exemplary-damages award here, despite the fact that this case involves a purely economic tort and no finding of harm. Were this Court to grant review and correct the court of appeals's misreading of *Campbell*, the court of appeals could address that question on remand.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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# APPENDIX

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**APPENDIX A**

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## IV. THE DISTRICT COURT COMMITTED LEGAL ERROR IN AWARDING BOTH AVOIDED-COST DAMAGES AND AN INJUNCTION AGAINST FUTURE USE

The district court committed legal error in awarding both $56 million in avoided-cost damages—which supposedly represented what TCS would have spent to develop the CSC trade secrets independently—and an injunction prohibiting Transamerica from using those same trade secrets.

Two legal principles are relevant here. First, it is blackletter law that an injunction should not issue where it "would be 'duplicative' of [a] monetary award" because "the damages awarded already effectively (though perhaps not perfectly) compensate [the plaintiff] for the . . . harm that is the basis for its request for a[n] . . . injunction." *CardiAQ Valve Techs., Inc. v. Neovasc Inc.*, 708 F. App'x 654, 668 (Fed. Cir. 2017); *Next Level Commc'ns LP v. DSC Commc'ns Corp.*, 179 F.3d 244, 254 (5th Cir. 1999).

Second, under the Defend Trade Secrets Act, 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. The statute authorizes an award of "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). As the Second Circuit held in its recent decision in *Syntel Sterling Best Shores Mauritius Limited v. The TriZetto Group, Inc.*, 68 F.4th

792 (2d Cir. 2023), an unjust-enrichment award is generally appropriate only for "instances where the value of the secret is damaged," and a court must ask whether the defendant's "misappropriation injure[d] [the plaintiff] *beyond* its actual loss . . . in lost profits." *Id.* at 809-10. The court grounded that rule in longstanding principles of restitution, which require "'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 (quoting RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 45(2)). For that reason, where the defendant's use of the trade secret did not diminish its value (such as through public disclosure) or cause the plaintiff other harm, and where the defendant is enjoined from further use of the trade secret in its competing products, an unjust-enrichment award is not available. *See id.* at 811-14.

Under these principles, it was legally improper for the district court to award any damages given CSC's arguments and the injunction. CSC, which retains its trade secrets in full, 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. It is undisputed that TCS did not publicly disclose the alleged secrets, and the injunction ensures that TCS cannot impair the value of those secrets going forward. Under the reasoning of *Syntel*, no damages were available in this circumstance.

But if the damages award stands, then the injunction is impermissibly duplicative of that award because it effectively requires TCS to redo any development that it undertook after July 18, 2017—even though the $56 million award supposedly

accounts for the cost of that development. CSC argued below that the injunction is necessary to prohibit TCS from exploiting trade secrets that it obtained but that were not used to develop the customer layer of BaNCS. But the district court made no specific finding that any such information would be useful to TCS. And even if CSC's argument had merit, it would not justify barring TCS from marketing post-July 2017 versions of BaNCS, as the injunction does.

Accordingly, one of the remedies must be vacated. Although in the district court TCS requested that the injunction be vacated as duplicative, the more appropriate disposition at this point would be to vacate the damages award (including exemplary damages) because the injunction has already been in force for months and TCS has undertaken substantial effort to comply with its terms by, among other things, eliminating CSC's information from its files and servers.

* * *