**No. 26A____**

IN THE

# Supreme Court of the United States

MEDALLIA, INC.,

*Applicant,*

*v.*

ECHOSPAN, INC.,

*Respondent.*

## APPLICATION TO EXTEND TIME TO FILE PETITION FOR A WRIT OF CERTIORARI

**To the Honorable Justice Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:**

Pursuant to Rule 13.5, Applicant Medallia, Inc. respectfully requests a 60-day extension of time to file a petition for a writ of certiorari—from the current due date of April 6, 2026, to and including June 5, 2026—to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.[1]

The court of appeals entered its judgment on October 31, 2025 (App. A), and denied Medallia's timely petition for panel rehearing and rehearing en banc on January 5, 2026 (App. B). This Court would have jurisdiction under 28 U.S.C. § 1254(1). This application is being filed more than ten days before the current due date. S. Ct. R. 13.5, 30.2.

[1] Applicant Medallia, Inc. has one direct parent company, Medallia Intermediate II, LP, which owns 100% of Medallia, Inc.'s shares. Medallia Intermediate II, LP is beneficially or indirectly owned by private investment funds managed by Thoma Bravo, L.P.

## BACKGROUND

This case involves claims of trade-secret misappropriation under the Defend Trade Secrets Act of 2016 (DTSA), 18 U.S.C. § 1836 *et seq.* Respondent EchoSpan, a software company, alleged that Medallia misappropriated nine trade secrets relating to EchoSpan's employee-review software tool. C.A. ECF 33 ("ER") 2-ER-323. An eight-day jury trial followed.

EchoSpan's damages expert presented an aggregated damages figure of $23.4 million in unjust enrichment that assumed misappropriation of all nine trade secrets. 8-ER-1446:20-25; 8-ER-1448:3-15; 8-ER-1457:2-1459:7. He conceded on the stand that he "did not do any apportionment" and that the jury "would have no way of figuring out from [his] calculation" how much to award for misappropriation of fewer than all the asserted trade secrets. 8-ER-1496:22-24; 8-ER-1498:17-22. The district court cautioned EchoSpan during trial that its failure to apportion damages was a "significant issue" and "big problem." 8-ER-1575:1-8.

The jury found in EchoSpan's favor on only one of nine alleged trade secrets—trade secret 6 ("TS6"), defined as "The Design and Organization of the User Interface for Managing Projects"—and awarded $11.7 million in unjust-enrichment damages and $14 million in exemplary damages. 2-ER-323; 2-ER-326-27. The district court upheld the liability finding but vacated the damages award, concluding that EchoSpan's damages model "did not apportion or give any logical basis for what any one individual trade secret was worth." 1-ER-28.

A Ninth Circuit panel reversed. App. A. Although the panel acknowledged that the jury may have "awarded the full unjust enrichment amount" in the expert's model, it

concluded that "it was also reasonable to" treat the $11.7 million award as "represent[ing] half of the" total unjust-enrichment estimate. *Id.* at 3. The panel found a "reasonable basis" for the award in vague testimony about "value drivers," publicly accessible videos, and statements that TS6 was the "core" that "enables everything." *Id.* at 3–5. The panel also rejected Medallia's alternative ground for affirmance on trade-secret liability in one paragraph, concluding that a "jury could find that EchoSpan identified TS 6 with sufficient particularity." *Id.* at 6.

Medallia petitioned for panel rehearing and rehearing en banc. On January 5, 2026, the court denied panel rehearing and rehearing en banc. App. B.

**REASONS FOR GRANTING AN EXTENSION OF TIME**

The time to file a petition for a writ of certiorari should be extended by 60 days—to and including June 5, 2026—for multiple reasons.

First, Medallia anticipates that the petition will present important and recurring questions of federal trade-secret law on which the circuits are now divided. The petition will raise at least two substantial questions: (1) whether damages in a multiple-trade-secrets case under the DTSA require a sufficient evidentiary basis tying the award to the specific trade secrets found to have been misappropriated, or whether a jury may rely on unapportioned aggregate damages evidence and general lay testimony to arrive at an award; and (2) whether publicly disclosed software functionality qualifies for federal trade-secret protection under the DTSA.

On the first question, the panel's approach conflicts with the Fifth Circuit's recent published decision in *Trinseo Europe GmbH v. Kellogg Brown & Root, LLC*, 165 F.4th 399 (5th Cir. 2026), which affirmed the vacatur of a $75 million jury verdict under materially

indistinguishable circumstances. The Fifth Circuit discussed this case by name and reached the opposite result on a materially indistinguishable record: a plaintiff that asserted ten trade secrets, presented an all-or-nothing damages model assuming misappropriation of all ten, and a jury that found misappropriation of only four. *See id.* at 412-15. The *Trinseo* Court held that "trade secret misappropriation damages must reflect the value attributable to the information or technology that is misappropriated by the defendant," and that a plaintiff who alleges multiple trade secrets must give the jury "a reasonable basis to award damages attributable only to the information or technology that actually qualifies as a trade secret." *Id.* at 413.

The Fifth Circuit's decision is consistent with other leading authorities on the question, which arises in virtually every multi-trade-secret DTSA case. *See, e.g.*, *Tex. Advanced Optoelectronic Sols., Inc. v. Renesas Elecs. Am., Inc.*, 895 F.3d 1304, 1317 (Fed. Cir. 2018); *Caudill Seed & Warehouse Co. v. Jarrow Formulas, Inc.*, 53 F.4th 368, 389 (6th Cir. 2022); *O2 Micro Int'l Ltd. v. Monolithic Power Sys., Inc.*, 399 F. Supp. 2d 1064, 1076-77 (N.D. Cal. 2005). The square circuit conflict warrants this Court's review. And the Federal Circuit may deepen the conflict further in *Versata Software, Inc. v. Ford Motor Co.*, No. 24-1140 (Fed. Cir.) (argued Dec. 4, 2025), which presents the same question.

On the second question, the panel extended trade-secret protection to software functionality that EchoSpan had publicly demonstrated on YouTube, its website, and at trade shows to thousands of users without confidentiality designations. That holding conflicts with the Seventh Circuit's decision in *Next Payment Solutions, Inc. v. CLEAResult Consulting, Inc.*, 163 F.4th 1091 (7th Cir. 2026), which held that generic

descriptions of what software does—as opposed to the underlying source code or algorithms explaining *how* it works—cannot constitute protectable trade secrets, and that features "any user or passer-by sees at a glance" are "'exceedingly hard to call trade secrets.'" *Id.* at 1097 (quoting *IDX Sys. Corp. v. Epic Sys. Corp.*, 285 F.3d 581, 584 (7th Cir. 2002)).

EchoSpan's own witnesses conceded that TS6's "functionality" and the "administrative side of the tool" had been disclosed in public YouTube videos and at trade shows, 6-ER-1003:5-1004:9; 6-ER-1014:19-1023:21, and every screenshot of the TS6 "admin tool" identified by EchoSpan's expert was visible in those marketing materials, 9-ER-1655-57. EchoSpan's principal evidence of confidentiality measures was a clickwrap agreement that users could accept without reading; it designated nothing in the software itself as confidential. 6-ER-1002; 6-ER-1007; 7-ER-1276. The Seventh Circuit held that the existence of such an agreement does not establish that the underlying information qualifies as a protectable trade secret; at most, it could be relevant to whether misappropriation occurred. *Next Payment Sols.*, 163 F.4th at 1099 n.4. Several other circuits are in accord that actual secrecy and reasonable confidentiality measures are predicates to trade-secret protection for software. *See Pauwels v. Deloitte LLP*, 83 F.4th 171, 182-83 (2d Cir. 2023); *Fin. Info. Techs., LLC v. iControl Sys., USA, LLC*, 21 F.4th 1267, 1273 (11th Cir. 2021). These deepening disagreements on the scope of DTSA protection present issues of exceptional importance to the technology industry.

The case has substantial stakes. The panel reinstated a $25.7 million verdict following an eight-day trial and extensive post-trial motion practice. Preparing a petition

that adequately addresses the circuit conflicts and frames the questions in a manner most helpful to this Court requires additional time.

Although counsel of record has been working diligently, the press of other matters will make preparation of the petition difficult absent an extension of time. In the time between the Ninth Circuit's denial of rehearing and the current due date, counsel of record has argued in four federal and state appellate courts and has filed multiple briefs in this Court, including as counsel of record in *Cisco Systems, Inc. v. Doe I*, No. 24-856. Counsel of record also has numerous upcoming briefing deadlines and scheduled arguments in this and other courts. In addition, the parties have filed multiple motions in the district court in this case following remand from the Ninth Circuit, and a hearing is scheduled for April 15, 2026.

**CONCLUSION**

For these reasons, the time to file a petition for a writ of certiorari in this matter should be extended by 60 days—from the current due date of April 6, 2026, to and including June 5, 2026.

Dated: March 24, 2026

Respectfully submitted,

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## CERTIFICATE OF SERVICE

Pursuant to Supreme Court Rules 29.3 and 29.5(b), I, Christopher G. Michel, a member of the Bar of this Court, hereby certify that on March 24, 2026, a copy of the foregoing Application to Extend Time to File Petition for a Writ of Certiorari was served by e-mail and first-class U.S. mail, postage prepaid, to the following counsel:

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All parties required to be served have been served.

Dated: March 24, 2026

Respectfully submitted,

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