IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL HARVEY, AARON HARVEY, PHIL HARVEY, CAPACITY CHEMICAL, LLC and BLUETECH LABORATORIES, INC.	)	No.: 150, 2026
Defendants Below/Appellants,	)	On Appeal from C.A. No. 2024-0771-JTL In the Court of Chancery of the State of Delaware
v.	)	
ARXADA HOLDINGS NA INC.	)	
Plaintiff Below/Appellee.	)	

<u>APPELLANTS' CORRECTED OPENING BRIEF</u>

Dated: July 7, 2026

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NATURE OF PROCEEDINGS

Defendants appeal from a bench trial, which resulted in broad liability findings and a judgment in favor of Plaintiff Arxada Holdings, NA, Inc. ("Arxada") of nearly $70 million. The Court of Chancery's decisions on liability and damages are inconsistent with Delaware law and must be reversed. Credibility findings in Arxada's favor do not fulfill Arxada's absent proofs. "[S]ometimes a lie, no matter how morally problematic, is just a lie." *Touch of Italy Salumeria & Pasticceria, LLC v. Bascio*, 2014 WL 108895, *1 (Del. Ch. Jan. 13, 2014).

There are numerous grounds to reverse the judgment, which is an improper windfall. While Defendants took some customer formulas, Arxada failed to establish that they are trade secrets nor that Defendants actually used them. Arxada also failed to prove lost profits or Defendants' unjust enrichment. Critically, Arxada retains possession of its formulas and their exclusive commercial benefit. Arxada's damages calculation—adopted wholesale by the court—is a legally improper measure of damages under the Delaware Uniform Trade Secrets Act ("DUTSA") when misappropriation has not diminished the value of the trade secrets.

Arxada's breach of contract claim fails because of an unenforceable restrictive covenant. Likewise, Arxada failed to prove its breach of fiduciary duty claims where DUTSA preempts, Defendants owed no fiduciary duties, and Arxada presented no evidence of breach or resulting damages.

Furthermore, Arxada's damages expert (Howard) was patently unqualified and improperly parroted Arxada's data. The lower court also used Howard's inappropriate valuation to award breach of fiduciary duty damages, even where Howard admitted he did not value those claims. The judgment is an unlawful "more-than-double" recovery.

This Court need not agree with all of Defendants' actions in order to credit their appellate arguments. Arxada's admissions in the trial record, the language of the parties' contract, and Delaware law compel reversal of both liability and damages.

SUMMARY OF THE ARGUMENT

1. **Because DUTSA only applies to conduct in Delaware, requires a Plaintiff to have standing in the form of actual injury, the existence of trade secrets, reasonable efforts to protect them, that Defendants actually used or disclosed them, and actual damages or unjust enrichment, Arxada's trade secret claim fails as a matter of law.**

2. **Arxada cannot establish that its restrictive covenant was breached because it is unenforceable and the conduct complained of is not a breach. Arxada's claims of tortious interference with the covenant also fail because no underlying breach was proven.**

3. **Arxada cannot prove breach of fiduciary duties when those claims are preempted by DUTSA, it cannot establish Defendants owed such duties or that a breach occurred, and it lacks evidence of any actual, non-speculative damages.**

4. **Arxada's proposed measure of compensatory damages exceeding $25 million, which the court awarded for misappropriation of trade secrets and breach of fiduciary duty, is legally improper because it represents the entire value of the trade secrets. Yet Arxada retains its trade secrets and sole commercial use of them, and has a permanent injunction protecting against future harm. When the only non-speculative damages in the trial record are $900,000 calculated by Defendants' rebuttal expert, Arxada can recover at most that amount.**

5. **Arxada is not entitled to a permanent injunction with terms broader than the parties' contract, so the injunction must be narrowed to remove a prohibition on development.**

6. **The award of attorney fees and costs of $9 million was patently unreasonable given that Defendants' total fees and costs were less than half that amount and Arxada should not be allowed to shift the cost of its legally-flawed experts. Prejudgment interest must also be recalculated.**

STATEMENT OF FACTS

I. Mike Founds a Family Company.

Defendant Mike Harvey ("Mike") formed Enviro Tech Chemical Services, Inc. ("ET") in Modesto, California in 1991 to sell chemical cleaners to food and beverage companies. (A0859-60 at 119:18-120:6.) ET's products included general purpose cleaners, water treatment chemicals, degreasers, and driveway cleaners. (A0860 at 120:9-12.) ET first did not make its own chemicals; rather, it relied on third-party "toll blenders" who mix raw materials or chemicals. (A0860-62 at 120:13-122:2.) ET eventually manufactured its own chemicals, but they were always "splash blends," meaning mixtures of other already-existing chemicals. (A0866 at 126:17-23; A1351-52 at 610:22-611:7; A1614-15 at 873:5-874:8.)

ET was a family business. Mike's nephews, Defendant Phil Harvey ("Phil") and Defendant Aaron Harvey ("Aaron"), worked for ET for decades. (A0901-02 at 161:22-162:5; A1149 at 409:21-23.) Mike played a parental role to Phil and Aaron, who—like Mike's son Brian—worked their way up as ET employees. (A0901-02 at 161:14-163:7.) Phil became VP of Continuous Improvement and Aaron, VP of Transportation and Logistics. (A0904 at 164:15-22; A1027 at 287:9-12.)

The tight-knit family inspired Mike to create trust funds for Aaron, Phil, Brian, and Mike's stepson, Steve Hofmann. (A0905 at 165:11-18.) Approaching age seventy, Mike wanted to reduce his 100-hour weeks (A0905-06 at 165:21-

166:3), so he began estate-planning and looked to sell ET. (A0906 at 166:4-17.) Mike funded each trust to transfer wealth to the next generation, with no conditions on use. (A0906-07 at 166:7-167:6; A0907 at 167:5-6; A0987 at 247:20-23; A1062 at 322:3-6.)

II. Arxada Makes Drastic Changes.

On December 9, 2021, Mike signed a Stock Purchase Agreement ("SPA") to sell ET to Arxada for $450 million. (A0095.) Mike reinvested $127 million of sales proceeds into Arxada's parent company, Herens Topco S.A.R.L., in which he holds a 5.3% interest. (A0908-09 at 168:20-169:11.)

The SPA contained non-competition and non-solicitation provisions broadly preventing Mike from "establishing, operating, assisting or managing" a competing business for five years throughout the entire United States, Canada, and Europe. It also prohibited soliciting ET employees or customers. Notably, the SPA did not prohibit any development activities. (A0153 § 7.5.) Neither Phil nor Aaron signed the SPA.

Mike, Phil, and Aaron remained employees after the sale. (A0917-22 at 177-182; A1015 at 275:13-15; A1389 at 649:8-14.) However, Arxada began to change ET. It raised prices. (A1361 at 621:11-16.) Either customers agreed to the new prices—which sometimes were increases of 100-300%—or ET would discontinue the product. (A1369 at 629:12-15.) ET also increased lead times and refused to allow customers to pick up in-stock product. (A1367-68 at 627:23-628:6; A1376 at 636:17-22.) These changes meant it lost customers. (A1428-30 at 688:20-690:3.)

Mike attempted to save the business ET was losing. (A0920-21 at 180:6-181:4.) ChemStation—one of ET's biggest customers—was on the verge of leaving because it could not afford the new price increases. (A0919-20 at 179:4-180:5.) Mike told ChemStation how to negotiate with ET to try to obtain better pricing. (A0920 at 180:18-24.) It worked and ChemStation remained with ET. (A0921 at 181:1-4.)

In August 2022, Arxada terminated Mike. (A0762-63 at 22:19-23:6.) Jon Anderson, ET's Director of Information Technology, came to Mike's house and set up his new laptop and email forwarding, took his ET equipment, and linked his phone. (A0927 at 187:6-23.) Aaron and Phil soon left ET. (A0764 at 24:3-7.) Recognizing that Aaron and Phil did not have confidentiality agreements, ET offered them separation agreements with restrictive covenants, but both refused to sign. (A1049 at 309:18-23; A1182 at 442:2-6.)

Aaron and Phil formed Defendant Capacity Chemical, LLC ("Capacity"). (A1054-55 at 314:15-315:1.) Mike was not involved in organizing Capacity, nor was he an employee or member of the company. (A1060-61 at 320:21-321:13.)

III. **Mike Buys BTL.**

In 2016, ET entered into a distribution agreement with Defendant BlueTech Laboratories, Inc. ("BTL"), a holding company that owned four EPA registrations for peracetic acid ("PAA"), whereby BTL agreed that ET would be the exclusive manufacturer of BTL's registered PAA. (A0832 at 92:6-10; A1411 at 671:6-9.)

Despite this agreement, BTL and ET never did any business. (A0943-44 at 203:23-204:2; A1415 at 675:17-19.) In 2022, BTL's then-owner, Christopher Binfield ("Binfield"), began trying to update registrations for BTL's products to make them marketable. (A1416-17 at 673:22-674:1.) Binfield also terminated the distribution agreement with ET. (A1416 at 676:6-23.)

Binfield approached Mike about Mike purchasing BTL, which Mike did in the Spring of 2023. (A0943 at 203:22-24; A1434 at 694:5-13; A1436 at 696:4-7.) Mike was clear with Binfield that he had a non-compete and that he viewed his purchase of BTL as a "pet project." (A0944 at 204:7-17; A1436 at 696:10-14.) BTL has no operations. (A0945 at 205:12-14; A1438 at 698:15-18.) Mike has no plans for BTL to sell or license any products in the United States prior to the expiration of his restrictive covenants. (A0949 at 209:9-13.)

IV. **Arxada Sues.**

On July 22, 2024, Arxada filed suit, alleging that Defendants sought to unfairly compete with ET. The operative complaint claimed: (i) breach of contract; (ii) tortious interference with contract; (iii) breach of fiduciary duty; (iv) aiding and abetting breach of fiduciary duty; (v) misappropriation under DUTSA; and (vi) fraud. (A0657.)

In July 2025, the Chancery Court conducted a four-day bench trial. Arxada presented evidence it claimed demonstrated Defendants took ET's formulas without consent. Arxada's damages evidence was non-existent. Arxada's witnesses repeatedly admitted at trial that they could not identify any compensatory damages actually incurred. (A0799 at 59:1-19.) The measure of damages that Arxada's counsel asked experts Kevin Howard ("Howard") and Brent Bersin ("Bersin") to determine was ***the total value of the trade secrets allegedly misappropriated***.

They approached that measure in different ways. Howard, whose opinion the court adopted in awarding nearly $25 million in compensatory damages, proffered an unjust enrichment theory based upon Defendants' purported "avoided costs" of $24,224,125,59. (Ex. C at 63.) However, he merely parroted information from a single conversation with two Arxada fact witnesses without any independent verification.

Bersin opined on a "reasonable royalty" amount that ballooned compensatory damages to $66+ million, but the court rejected that approach, stating "[t]his is not an apt case for a royalty-based alternative." (Ex. C. at 66, 64.)

Arxada did not cross-appeal the finding that Bersin did not present reliable "reasonable royalty" damages calculations, so Bersin has been abandoned.

It is no exaggeration to say that the court "threw the book at" Defendants in its decision. It ruled in favor of Arxada and held that Mike, Phil, and Aaron were jointly and severally liable for $900,000 in lost profits, $24,224,125.59 in avoided cost damages, and $25,124,125.59 in exemplary damages. (Ex. C. at 2.) To ensure Arxada would experience no future harm, the court also awarded permanent injunctive relief. (*Id.*)

The court found that Defendants all had misappropriated trade secrets under DUTSA. (Ex. C at 45-60.) While Arxada presented no evidence of any actual pecuniary loss from the alleged misappropriation—it failed to present either fact or expert witness testimony about lost profits (*id.* at 62)—Defendants' expert, Gardemal, did analyze lost profits, calculating $900,000. The court credited this amount, finding it the appropriate amount of lost profits. (*Id.*)

But, the court also endorsed Howard's opinion of $24,224,125.59 in unjust enrichment under a theory of avoided costs damages. (*Id.* at 62-63.) Finding that Mike, Phil, and Aaron willfully and maliciously took Arxada's trade secret information, the court doubled the award as exemplary damages, because "a total damages award in that range seems reasonable." (*Id.* at 68-69.)

The court next determined Mike breached his covenant not to compete because “Capacity sells many of the same products [ET] sold.” (*Id.* at 71.) Additionally, by supposedly soliciting Phil and Aaron to leave ET, it found Mike further breached the SPA. (*Id.* at 74-75.) It awarded Arxada permanent injunctive relief and extended Mike’s restrictive covenant until October 24, 2029. (*Id.* at 78.)

On Arxada’s tortious interference with contract claim, the court found Phil, Aaron, Capacity, and BTL induced Mike to breach his restrictive covenants. (*Id.* at 79-80.) The court awarded the same $900,000 in lost profits as under the DUTSA claim. (*Id.* at 80.)

The court next found Mike, Phil, and Aaron breached fiduciary duties owed to Arxada. (*Id.*) Mike breached such duties, according to the court, when he advised customers how to obtain better pricing from ET and worked with BTL to terminate its distribution agreement. While Defendants raised DUTSA preemption in pre-hearing briefs and incorporated such argument into their post-trial brief (A0584-656; A1770-1839), the court claimed Defendants did not and found Mike, Phil, and Aaron breached their fiduciary duties by misappropriating trade secrets. (Ex. C at 90.)

Despite having no specific evidence of fiduciary duty damages, the court awarded “the same compensatory damages remedy for the fiduciary breach” as it did for the DUTSA claim. (*Id.* at 93.) Finally, the court found that Capacity and

BTL aided and abetted Mike, Phil, and Aaron in breaching their fiduciary duties. (*Id.* at 97.) The court therefore held that Capacity and BTL were jointly and severally liable for the breach of fiduciary duty damages, *i.e.*, the DUTSA damages. (*Id.*) In essence, the court threw all claims and Defendants together and made them all liable for Howard's ballooned and unsupported damages, which it then doubled.

In addition to the "compensatory" and exemplary damages, the court added $9,989,672.91 in pre-judgment interest and $8,958,693.29 in attorneys' fees and costs. (Ex. B at 5-6.) The judgment further permanently enjoined Mike from: selling, marketing, ***or developing*** any PAA, bromine-based biocides, or sodium chlorites or any other business conducted by ET until October 24, 2029, engaging in any activity for the purpose of establishing, operating, assisting, or managing any person engaged in the foregoing, or soliciting employees or customers of ET. (*Id.* at 7.) The court permanently enjoined Aaron, Phil, Capacity, and BTL from "using, disclosing, or otherwise exploiting any confidential information, trade secrets, or proprietary materials taken." (*Id.* at 8.) This appeal timely followed.

ARGUMENT

I. **DUTSA Does Not Have Extraterritorial Application and Defendants Did Not Misappropriate Any Trade Secrets.**

A. Question Presented

Did the trial court err in finding all Defendants liable for violation of DUTSA, where all relevant conduct occurred outside of Delaware and Delaware law plainly provides DUTSA does not apply extraterritorially, where Arxada failed to prove existence of trade secrets and did not take appropriate actions to safeguard that information, and where the evidence established that Defendants did not use or disclose the information in any way? (Preserved at A1808-17.)

B. Standard and Scope of Review

Questions of law are reviewed *de novo*. *KT4 Partners LLC v. Palantir Techs., Inc.*, 203 A.3d 738, 748-49 (Del. 2019); *Coster v. UIP Cos., Inc.*, 255 A.3d 952, 959 (Del. 2021). Factual findings are reviewed for clear error. *Coster*, 255 A.3d at 959. For mixed questions, this Court reviews conclusions of law *de novo* and factual findings for clear error. *In re Mindbody, Inc., Stockholder Litig.*, 332 A.3d 349, 383 (Del. 2024). This Court has the "authority to review the entire record" and make its own findings of fact. *Id.* at 386.

C. Merits of Argument

1. The Court Erred in Applying DUTSA Extraterritorially.

The court erred in applying DUTSA to conduct entirely outside of Delaware. "Delaware law presumes that 'a law is not intended to apply outside the territorial jurisdiction of the State in which it is enacted.'" *Focus Fin. Partners, LLC v. Holsopple*, 250 A.3d 939, 971 (Del. Ch. 2020). Absent contrary legislative intent, Delaware law cannot impose liability for actions occurring in another jurisdiction. *Id.* DUTSA has no such legislative intent and therefore does not apply to conduct occurring outside the state of Delaware. *Id.*; *see also Sorrento Therapeutics, Inc. v. Mack*, 2023 WL 5670689, *29 (Del. Ch. Sept. 1, 2023). Incorporation in Delaware does not alter this result. *Sorrento Therapeutics*, 2023 WL 5670689, *29.

The court gave this argument short shrift, finding that because California and Delaware both apply the Uniform Trade Secrets Act, there are no "material conflicts" between the two State's laws that would require a choice of law analysis. (Ex. C at 46-47.) This conclusion is wrong. Though both Delaware and California have enacted versions of the Uniform Trade Secrets Act, several outcome determinative differences exist between the two states laws; primarily, the remedies available in Delaware and California differ in material ways. But, that also misses the point: Arxada cannot succeed on a DUTSA claim where *no complained-of conduct occurred in Delaware.* That is not a choice of law question;

but rather Arxada failed to establish a necessary element of its DUTSA claim—a nexus to Delaware. Accordingly, the court erred applying DUTSA to conduct entirely outside of Delaware.

2. Arxada Lacks Standing to Pursue Damages for Subsidiary ET.

The court committed reversible error by awarding Arxada broad relief when any alleged harms arising from Defendants' actions were experienced by ET, a separate corporation. (A0773-75 at 33:19-35:3; A0776-77 at 36:24-37:2; A0781 at 41:1-7; A0784 at 44:2-5; A0784-85 at 44:24-45:17; A0787 at 47:4-10.) "To achieve standing, a plaintiff must allege an injury in fact that is both concrete and actual or imminent." *Albence v. Mennella*, 320 A.3d 212, 216 (Del. 2024). "[A] parent corporation does not, by reason of owning the stock of a subsidiary alone, own or have legal title to the assets of the subsidiary." *Metro Storage Int'l LLC v. Harron*, 275 A.3d 810, 869 (Del. Ch. May 4, 2022). An actionable DUTSA claims requires an injury. *Mattern & Assocs., L.L.C. v. Seidel*, 678 F. Supp. 2d 256, 270 (D. Del. 2010). Yet any purported injury would have been sustained by ET, who owned the alleged trade secrets. (A0773-75 at 33:19-35:3.) Accordingly, Arxada lacks standing.

3. Arxada Failed to Prove Misappropriation.

Under DUTSA, a trade secret is "information, including a formula, pattern, compilation, program, device, method, technique or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." *Elenza, Inc. v. Alcon Labs Holding Corp.*, 183 A.3d 717, 721 (Del. 2018). To prove a DUTSA claim, a plaintiff must show: (1) a trade secret exists; (2) the plaintiff communicated the trade secret to the defendant; (3) there was an express or implied understanding that the secrecy of the matter would be respected; (4) the secret information was improperly used or disclosed to the injury of the plaintiff." *Id.* The plaintiff bears the burden of proving the existence and misappropriation of a trade secret. *Wayman Fire Prot., Inc. v. Premium Fire & Sec., LLC*, 2014 WL 897223, *13 (Del. Ch. Mar. 5, 2014).

Arxada failed to prove that any trade secrets exist, both because it did not take reasonable efforts to protect the confidentiality of its alleged trade secrets and because the information Arxada sought to protect was public. Likewise, Arxada presented no evidence that Defendants actually misappropriated the trade secrets. This Court should reverse the DUTSA liability determination.

4. Arxada Failed to Take Reasonable Efforts to Protect the Alleged Trade Secrets.

A critical element of a trade secret is that it is "the subject of efforts that are reasonable under the circumstances to maintain its secrecy." 6 *Del. C.* § 2001(4). If a plaintiff cannot prove reasonable efforts to maintain secrecy, it cannot recover under DUTSA. *See Triton Constr. Co. v. Eastern Shore Elec. Servs., Inc.*, 2009 WL 1387115, *21-22 (Del. Ch. May 18, 2009) (holding the plaintiff failed to satisfy the reasonable efforts requirement where it "never conducted any training or provided any instructions to its employees on information that the [c]ompany considered secret or confidential."); *see also Abrasic 90 Inc. v. Weldcote Metals, Inc.*, 364 F. Supp. 3d 888, 898 (N.D. Ill. 2019); *Wayman Fire Prot., Inc.*, 2014 WL 897223, *15.

The court found that Arxada had "used reasonable efforts to protect its trade secrets" because it engaged in "employee training, access restrictions, a secure IT environment, shredding of documents after use, keycard-controlled gates, and a ban on on-site photography." (Ex C at 55-56.) To make this finding, the court cherry-picked certain testimony, while ignoring the great weight of the evidence before it, and relied on inadmissible expert testimony. (*See id.*) The court's findings are unsupported by the record.

Instead, the proceedings below unequivocally show that ET never trained any employees on confidentiality (A1041 at 301:18-23; A1181 at 441:9-14), never required the vast majority of employees to sign any kind of confidentiality agreements (A0925 at 185:4-7; A1042 at 302:9-13; A1181 at 441:5-8), and never distributed policies about the treatment of confidential information (*id.*; A0802 at

62:14-17; A0925 at 185:8-17; A1181 at 441:19-22). Neither Phil nor Aaron had employment, non-disclosure, or confidentiality agreements of any kind. (A0792 at 52:20-24.) Despite complaining that Defendants took thousands of trade secrets, Arxada never once asked Defendants to return or destroy these items. (A0801 at 61:13-16; A1051 at 311:7-17.) These undisputed facts demonstrate the lack of trade secret status. *See Abrasic 90, Inc.*, 364 F. Supp. 3d at 900.

5. Arxada Failed to Demonstrate that any Trade Secrets Exist.

Arxada was required to "show the existence of a trade secret with 'reasonable degree of precision and specificity.'" *Dow Chem. Canada Inc. v. HRD Corp.*, 909 F. Supp. 2d 340, 346 (D. Del. 2012). The identification must be such that it separates the trade secret from "matters of general knowledge in the trade or of special knowledge of persons skilled in the trade." *Id.* "Failure to identify the trade secrets with sufficient specificity renders the Court powerless to enforce any trade secret claim." *Porous Media Corp. v. Midland Brake Inc.*, 187 F.R.D. 598, 600 (D. Minn. 1999). Public information is not a trade secret. *See Great Am. Opportunities, Inc. v. Cherrydale Fundraising, LLC*, 2010 WL 338219, *18 (Del. Ch. Jan. 29, 2010). Similarly, information "does not qualify as a trade secret if it is 'generally known or understood within an industry even if not to the public at large.'" *Abrasic 90 Inc.*, 364 F. Supp. 3d at 897.

While compiled public data can sometimes be a trade secret, it must have independent economic value and be "generated in such a fashion that it constitutes intellectual property of the owner." *NRA Group, LLC v. Durenleau*, 154 F.4th 153, 170 (3d Cir. 2025). A plaintiff asserting that compiled public information is a trade secret must still identify that compilation trade secret with a "reasonable degree of precision and great specificity." *Cal. Safe Soil, LLC v. KDC Agribusiness, LLC*, 2025 WL 98479, *18 (Del. Ch. Jan. 10, 2025). That is because "when the breadth of a trade secret description is so far-reaching that it includes publicly available information… and admitted industry knowledge, that information is not specific enough to be accorded trade secret status." *Mallet & Co. v. Lacayo*, 16 F.4th 364, 384 (3d Cir. 2021).

In *Mallet & Co.*, the Third Circuit reversed the district court's preliminary injunction enjoining defendants from competing using plaintiff's alleged formulas for baking release agents. Like the formulas here, "the ingredients used to create [release agents] are commonly known" but developing a successful release agent is not "as simple as knowing a few of its components." *Id.* And, like Arxada did here, plaintiff asserted that the trade secret was "the overall body of knowledge that connects… the development, production, application and implementation of the release agent… coupled with [plaintiff's] proprietary equipment, which go hand in hand with [a] formulated solution." *Id.* at 370. In entering injunctive relief, the trial court identified broad swaths of business documents, including formulas, as trade secrets. The appellate court disagreed:

> The [] statement of protected material is better characterized as a list of general categories of business and technical information, a list that could be used to describe documents found in any number of corporations… The generic list thus falters against the standard for specifying a trade secret.

Id. at 382-83 (citations omitted). "With a wave of the hand," the plaintiff improperly "declare[d] everything to be secret know-how." *Id.* at 383.

Arxada attempts the same. At Arxada's urging, the court found these broad categories were protectible trade secrets: (1) 1,272 formulas; (2) amorphous "business information"; and (3) product labels and data sheets. (Ex. C at 48-57.) The court did not require *any* specificity from Arxada demonstrating the trade secret nature of these large swaths of documents.

Rather than separately analyze each formula, Arxada lumped them into categories, claiming individually assessing each would be too "cumbersome." (A1353 at 613:22-24.) Then, instead of engaging in any analysis itself, the Chancery Court noted that the statutory definition of trade secrets includes "formulas," Defendants took "formulas," and therefore, these formulas "had independent economic value." (Ex. C at 49-50.) This paucity of analysis is not surprising, because Arxada put forth no evidence to demonstrate that <u>each</u> formula met the definition of a trade secret.

To begin, many of the at-issue formulas can be "reverse engineered" by "walking down the aisle in Home Depot" because the ingredients are on the label. (A0881 at 141:14-20; A0883 at 143:2-4; A1293 at 553:13-21; A1352 at 612:17-20.) "[I]f information is 'readily ascertainable through proper means' such as reverse engineering, it is not eligible for trade secret protection." *Insulet Corp. v. EOFlow Co.*, 104 F.4th 873, 882 (Fed. Cir. 2024); *see also Yeiser Research & Dev. LLC v. Teknor Apex Co.*, 281 F. Supp. 3d 1021, 1046 (S.D. Cal. 2017) (applying DUTSA).

The testimony likewise established that the formulas were public information. (A0993 at 253:3-10; A1094 at 354:7-22; A1177 at 437:14-18; A1187 at 447:24-448:4; A1286 at 546:1-2; A1351 at 611:2-22.) Formulas were often disclosed to third parties. (A1095 at 355:3-9.) Defendants' liability expert, Dr. Hickner, corroborated this testimony:

> So these formulations are composed of common chemicals. They use splash blending, which means it's just mixing of known chemicals. And the formulas are rather simple and standard and can be derived from the publicly available information.

(A1613A at 873:8-12; *see also* A0206; A0363.)

The court also failed to account for formulas within this 1,272 that were not owned by ET, were duplicates, or were generic. (A0260; A1115-17 at 375:21-377:9; A118 at 445:9-12; A1249 at 509:9-12.) And, on top of duplicates, many of the formulas were "clearly derivatives" of others, meaning they are not separate trade secrets to which development time should be assigned. (A1616 at 876:2-23.)

The court next found information on ET's "products, customers, suppliers, sales, raw material sourcing, and pricing" had "obvious value" because it would give a competitor "detailed insight into [ET's] market presence. (Ex. C at 51-52.) But customer lists are not trade secrets. *Beard Research, Inc. v. Kates*, 8 A.3d 573, 590 n.103 (Del. Ch. Apr. 23, 2010). Similarly, "costs for labor, material, and equipment do not necessarily constitute trade secrets." *Triton Constr.*, 2009 WL 1387115, *21. Arxada provided no specific identification of what within this "business information" is a trade secret, as DUTSA requires. *Cal. Safe Soil, LLC*, 2025 WL 98479, *18.

Trial testimony demonstrated that commodity pricing was not a trade secret (A0930 at 190:18-22) and that customer sales and pricing information were not treated as trade secrets. (A1083 at 343:7-9; A1193 at 453:1-3.) And, much of the pricing information was years outdated. (A1132 at 392:6-15.) The court erred in finding "business information" to be protected trade secrets.

The court found that the compilation of thousands of labels, safety data and technical sheets constituted trade secrets. (Ex. C at 53-54.) This conclusion was based on the fact that the compilation was "laboriously organized" by ET. (*Id.* at 54.) That finding is unsupported, but regardless, that is not the appropriate test.

Instead, a plaintiff must show that the compilation itself is its intellectual property. *See NRA Group*, 154 F.4th at 170; *see also Del. Exp. Shuttle, Inc. v. Older*, 2002 WL 31458243, *18 (Del. Ch. Oct. 23, 2002).

Because the product labels, safety data, and technical sheets are publicly available, anyone could compile them in one place, such that they cannot be trade secrets. (A0865 at 125:13-21; A1123 at 383:2-5; A1187 at 447:17-23; A1337-38 at 597:19-598:1; A1340 at 600:9-18; A1343 at 603:1-4.) Because this information is publicly available, it cannot constitute a trade secret.

6. Plaintiff Presented No Evidence That Defendants Used or Disclosed the "Trade Secrets."

To succeed on their DUTSA claim, Arxada also had to prove that Defendants used or disclosed the relevant trade secrets. *Truinject Corp. v. Galderma S.A.*, 694 F. Supp. 3d 491, 502 (D. Del. 2023). Evidence that a defendant "could have used" a trade secret is insufficient. *Elenza*, 183 A.3d at 723-26; *see also Alt. Inertial Sys. Inc. v. Condor Pac. Indus of Cal., Inc.*, 2015 WL 3825318, *6 (C.D. Cal. June 18, 2025). Damages cannot be awarded based on trade secrets that a defendant never used. *Cal. Safe Soil*, 2025 WL 98479, *26; *see infra* Section V.

The court never analyzed whether a single Defendant ever actually *used or disclosed* the supposed trade secrets—and there is no record evidence they did. Instead, the court ignored this standard and found misappropriation because Mike, Phil, and Aaron were employees of ET when they took the information and, as employees, owed a fiduciary duty. (Ex. C at 58.) Then, the court goes on in circular fashion, "[b]ecause Mike, Phil, and Aaron used improper means to acquire [ET's] trade secrets, Capacity used improper means to acquire [ET's] trade secrets. The same is true for [BTL]." (*Id.* at 58-59.)

The testimony at trial was consistent that Capacity never once used any information taken from ET. (A1094-95 at 354:23-355:2; A1192 at 452:13-21.) David Hird, Arxada's own witness, and a former Capacity employee confirmed this; all of Capacity's products were developed from the "ground up" "based on publicly available sources." (A1292 at 552:6-15.) This admission is fatal to Arxada's claims. And although Arxada's expert, Howard, offered opinion evidence about the alleged avoided costs, he had no idea whether Defendants actually used or disclosed any of the information at issue. (A1749 at 1009:19-23.) They did not and judgment in favor of Arxada should be reversed.

II. <u>Arxada's Tort Claims Were Preempted by DUTSA.</u>

A. Question Presented

Did the court err in finding DUTSA did not preempt Arxada's common law claims when those claims were based on the alleged misappropriation of trade secrets and, indeed, the court found Defendants had breached their fiduciary duties by misappropriating trade secrets? (Preserved at A0628 at 37; A0650-A0659 at 58-59; Ex. C at 95-96; A1770.)

B. Standard and Scope of Review

Questions of law are reviewed *de novo*. *KT4 Partners LLC*, 203 A.3d 738, 748-49 (Del. 2019).

C. Merits of Argument

Before turning to Arxada's tort claims, this Court must determine whether DUTSA preempts them. Because the tort claims are based on the same conduct—the misappropriation of trade secrets—***DUTSA does preempt***. 6 *Del. C.* § 2007. Where tort claims are based on the same wrongful conduct as a claim under DUTSA, they are precluded. *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 898 (Del. 2002). DUTSA "preserves a single tort cause of action founded on allegations of trade secret misappropriation." *Overdrive, Inc. v. Baker & Taylor, Inc.*, 2011 WL 2448209, *4 (Del. Ch. June 17, 2011). Even if the information falls short of a trade secret—like here—tort claims remain barred. *Yeiser Research*, 281 F. Supp. 3d at 1049; *see also Abrasic 90, Inc.*, 364 F. Supp. 3d at 905.

The court recognized that "there [was] a strong argument that DUTSA preempts at least part of the fiduciary duty cause of action." (Opinion at 95.) However, rather than continue that analysis, it concluded that "[t]he principal remedial difference is that [Arxada] did not request injunctive relief against Phil and Aaron under DUTSA" and did "as a remedy for the common law breaches." (*Id.* at 96.) But the remedies sought is not the test to determine whether there is preemption. Because the vast majority of the court's decision on breach of fiduciary duty was based on the misappropriation of trade secrets, it is preempted.

III. <u>The Restrictive Covenants Were Unenforceable and Not Breached.</u>

A. Question Presented

Are restrictive covenants that restrain trade in areas where the protected party does not operate enforceable and did the Chancery Court properly enter injunctive relief enforcing those covenants absent evidence of any breach thereof? (Preserved at A0613-15 at 21-23.)

B. Standard and Scope of Review

This Court reviews questions of law, such as the lower court's "formulation and application of legal principles" *de novo*. *Sunder Energy, LLC v. Jackson*, 332 A.3d 472, 483-84 (Del. 2024). Contract interpretation is a question of law reviewed *de novo*. *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010).

C. Merits of Argument

1. The Broad Geographical Scope of the Restrictive Covenants Rendered Them Unenforceable.

"Delaware courts review non-compete and non-solicit agreements 'subject to Delaware law to ensure that they are (i) reasonable in geographic scope and temporal duration, (ii) advance legitimate economic interests of the party seeking enforcement, and (iii) survive a balancing of the equities. *Sunder Energy*, 223 A.3d at 485. "Delaware courts do not 'mechanically' enforce non-competes." *Intertek Testing Servs NA, Inc. v. Eastman*, 2023 WL 2544236, *3 (Del. Ch. Mar. 16, 2023). Restrictive covenants must be strictly scrutinized because they are restrictive of trade. *BluSky Restoration Contractors, LLC v. Robbins.*, 2026 WL 599148, *3 (Del. Ch. Mar. 4, 2026). In *Intertek*, the court found unenforceable a five year non-compete in a stock purchase agreement that prohibited the seller of the company from competing anywhere in the world. Because the provision extended to markets "untouched" by the company, the court dismissed the plaintiff's complaint seeking to enforce it. *See also id.* at *4.

Despite acknowledging this case law, the court found that the restrictive covenants were enforceable, primarily because "[b]roader restrictions are permissible in the business-sale context." (Ex. C at 72-73.) Even then, the covenant must still be reasonably tailored to the goodwill and competitive space actually conveyed. *BluSky Restoration*, 2026 WL 599148, *3.

There was no evidence presented that ET's business had national reach, let alone throughout Canada and Europe. The blatant overreach on the non-compete makes it unenforceable such that the court erred in finding Mike liable for its breach. *See BluSky Restoration*, 2026 WL 599148, *15.

2. Mike Did Not Breach the Restrictive Covenants.

Even if the covenants were enforceable, Arxada wholly failed to prove that Mike breached the SPA and the court erred in finding otherwise. The court found that Mike breached the non-competition covenant by "providing Phil and Aaron with access to $4 million in seed funding," by "sending Phil and Aaron a master formula database of [ET] formulas," by giving Phil and Aaron a "steady stream" of advice on how to operate Capacity, by managing Capacity's laboratory operations and supervising Capacity employees, and by working on the PAA registrations owned by BTL. (Ex. C at 71-72.) These findings do not comport with the evidence.

Mike did not provide Phil and Aaron with "seed funding" to start Capacity. Mike put two million dollars in trust funds not only for Phil and Aaron, but also for his son and step-son. (A0905 at 165:11-18.) The trust funds had no conditions on how they could be used. (A0917 at 177:1-3; A1062 at 322:3-6.) Aaron and Phil obtained significant funds from other sources to assist in setting up Capacity, including investing Phil's 401(k) and obtaining a $1.5 million line of credit from F&M Bank with personal guarantees, as well as equipment loans from the same lender. (A1068-69 at 328:16-329:7.) Accordingly, the court's decision that Mike's estate planning constituted a contractual breach was clear error.

Likewise, Mike's "steady stream of advice" was unsolicited, largely ignored by Phil and Aaron,—who humored their uncle due to their close relationship—and was not necessary for Capacity's formation. (A0967-68 at 227:4-228:10; A0968 at 228:11-17; A1130 at 390:12-21.) The court ignored this testimony and instead relied upon documentary exhibits to find that Mike's advice violated the non-compete. (Ex. C at 72 n.280.) But none of the exhibits show Phil or Aaron taking

Mike's advice and using it to operate Capacity. In fact, Phil states to Mike that they "will figure out it regardless" of Mike's advice. (A0202.)

Nor did Mike supervise any Capacity employees. Although he wrote one email to Marcella Sibbald (A0204), that email does not overcome the contrary testimony that Mike did not have the authority to hire, supervise, or communicate with Capacity employees. (A1133 at 393:2-19.) Simply put, the evidence does not support the court's finding that Mike breached the SPA. This Court should reverse.

3. Without a Breach of the SPA, there Can Be No Tortious Interference.

Under Delaware law, the elements of a claim for tortious interference with a contract are: "(1) a contract, (2) about which defendant knew, *and* (3) an intentional act that is a significant factor in causing the breach of such contract, (4) without justification, (5) which causes injury." *Bhole, Inc. v. Shore Investments, Inc.*, 67 A.3d 444, 453 (Del. 2013). The standard for a corporate defendant also requires bad faith or malice. *Id.*

The court held Phil and Aaron liable for tortious interference because they "engaged in intentional and ongoing actions that were a significant factor in causing" Mike's breach of the SPA. (Ex. C at 80.) But, as discussed in Section III(C), *supra*, Mike did not breach the SPA. And Arxada presented no evidence that any of the Defendants actively participated in or induced Mike to breach. *See Truinject Corp.*, 2020 WL 5095448, *5. Instead, the evidence showed only the acceptance of unrestricted trust funds and unsolicited advice. That is not the type of active participation required for tortious interference.

IV. <u>Defendants Did Not Owe Fiduciary Duties and Did Not Breach Any Duties</u>.

A. Question Presented

Do terminated employees owe a fiduciary duty to their employer after termination, and is such a duty breached where the only evidence shows—at most—preparation to compete? (Preserved at A1770 at 26-30.)

B. Standard and Scope of Review

The court's formulation and application of legal principles to determine existence of a fiduciary duty is reviewed *de novo*. *In re Columbia Pipeline Grp, Inc. Merger Litig.*, 342 A.3d 324, 353-54 (Del. 2025). For mixed questions of law and fact, this Court reviews conclusions of law *de novo* and factual findings for clear error. *In re Mindbody, Inc.*, 332 A.3d at 383. This Court has the "authority to review the entire record" and make its own findings of fact. *Id.* at 386.

C. Merits of Argument

1. Defendants Did Not Owe Fiduciary Duties.

Mike, Aaron, and Phil did not owe fiduciary duties to Arxada. As an initial matter, ET was Mike, Aaron, and Phil's employer and, as such, they did not owe Arxada duties at all. Even assuming Arxada was Defendants' employer, no fiduciary relationship arose under these circumstances.

The court circularly reasoned that "Mike, Phil, and Aaron were [ET] employees. Employees are agents. Agents are fiduciaries." (Ex. C at 85.) This reasoning is too simplistic. "Under Delaware law, the relationship of agent to principal does not of itself give rise to fiduciary duties." *Triton Constr.*, 2009 WL 1387115, *11. Nor does an employment relationship automatically give rise to a fiduciary duty. *See id.* *10. Any duty that Mike, Aaron, or Phil may have owed to ET expired when their employment ended. *Touch of Italy*, 2014 WL 108895, *7.

2. Arxada Did Not Prove Defendants Breached Fiduciary Duties.

Even where a fiduciary relationship exists, it does not require the agent to act to his own detriment at all times. Employees are allowed to prepare to compete with their employers before leaving their employ without fear of incurring liability for breach of a fiduciary duty of loyalty. *Triton Constr.*, 2009 WL 1387115, *9; *see also Science Accessories v. Summagraphics Corp.*, 425 A.2d 957, 965 (Del. 1980).

The vast majority of conduct the court found breached Mike's fiduciary obligations occurred *after* he was fired. Nonetheless, the court held "[a]n agent's duties concerning confidential information do not end when the agency relationship terminates." (Ex. C at 87.) The court relied exclusively upon the Restatement (Third) of Agency, but ignored relevant Delaware law that holds a fiduciary duty ends with the fiduciary relationship. *See Touch of Italy*, 2014 WL 108895, *7. Defendants also had freedom to "prepare to compete" after their employment ended. *Triton Constr.*, 2009 WL 1387115, *9.

Mike's conduct while still employed at ET was also proper. His discussions with ChemStation constituted efforts to help ET retain a large customer. (A0918-21 at 178:21-181:4.) And if Arxada had evidence Mike encouraged Binfield to terminate BTL's distribution agreement with ET (it did not), the evidence unequivocally demonstrated BTL *never did any business* with ET under that agreement. (A1415-16 at 675:12-676:16.) With regard to the alleged rights of first refusal in the distribution agreement that would have allowed ET to purchase the EPA registrations, ET presented no evidence as to the registrations' value nor that it would have purchased them. Nor did Howard present any evidence of fiduciary duty damages (A1704-05 at 964:22-965:1)—a required element. *See Science Accessories*, 425 A.2d at 956-66.

Nor can Mike, Aaron, or Phil be held liable under a breach of fiduciary duty claim for misappropriating trade secrets. DUTSA preempts any such claim. *See* Section II, *supra*.

Finally, the court's determination that Defendants breached fiduciary duties by using ET's information to start a competing business ignores the privilege employees have to prepare to compete, even while they remain employees. *Science Accessories*, 425 A.2d at 965. This Court, in *Science Accessories*, held that a defendant's "concealment from [their employer] of their plans to enter into competition with [the employer] was not, without more, a violation of their fiduciary duty of loyalty." *Id.* The Chancery Court's decision that Defendants' concealment of their activities was a breach (Ex. C at 90-91) cannot stand.

3. Capacity and BTL Did Not Aid and Abet a Breach of Fiduciary Duty.

To prove liability for aiding and abetting a breach of fiduciary duty, Arxada was required to prove: "(1) the existence of a fiduciary relationship, (2) a breach of the fiduciary's duty and (3) a knowing participation in that breach by [the defendant]." *In re Santa Fe Pac. Corp. S'holder Litig.*, 669 A.2d 59, 72 (Del. 1995). As demonstrated above, Capacity and BTL did not aid and abet a breach of fiduciary duty, because no such duty or breach was proven.

V. <u>Arxada Has Not Proven It Sustained Any Actual Damages.</u>

A. Question Presented

Has Arxada provided legally sufficient evidence that it sustained in excess of $25 million in compensatory damages, as a result of Defendants' misappropriation of its trade secrets? (Preserved at A0556; A0584-56; A0741-69; A1770-839; A1840-939.)

B. Standard and Scope of Review

This Court reviews a damages award for an abuse of discretion. *In re Mindbody, Inc.*, 332 A.3d at 406; *see also Siga Techs., Inc. v. PharmAthene, Inc.*, 132 A.3d 1108, 1128 (Del. 2015). The "formulation and application of legal precepts" are reviewed *de novo*." *Gaffin v. Teledyne, Inc.*, 611 A.2d 467, 474 (Del. 1992).

C. Merits of Argument

1. Arxada's Measure of DUTSA Damages, Adopted by the Chancery Court, Is Inapplicable As A Matter of Law.

Because the trade secret information remains in Arxada's custody and control and its value is retained, the court's award of $25,124,125.59 of compensatory damages reflecting the total value of the trade secrets is error. This award has no connection to actual harm to Arxada nor any unjust benefit to Defendants. Instead, the award provides Arxada with an improper windfall and, in light of the permanent injunction, a wrongful double recovery. *See Stayton v. Del. Health Corp.*, 117 A.3d 521, 534 (Del. 2015).

University Computing Co. v. Lykes-Youngstown Corp., 504 F.2d 518, 535 (5th Cir. 1974), explains why this "total value" measure of damages is incorrect. "[I]n most cases the defendant has utilized the secret to his advantage with no obvious effect on the plaintiff save for the relative differences in their subsequent competitive positions." *Id.* "Where the plaintiff retains the use of the secret, as here, and where there has been no effective disclosure of the secret through publication ***the total value of the secret to the plaintiff is an inappropriate measure***." *Id.* (emphasis added). "If the plaintiff keeps the goose, the defendant is on the hook for only the value of the stolen golden eggs." *Caudill Seed & Warehouse Co. v. Jarrow Formulas, Inc.*, 53 F.4th 368, 396 (6th Cir. 2022) (Moore, J., concurring and dissenting in part).

The Restatement (Third) of Unfair Competition also explains the limited circumstances—not present here—when full value of the trade secret is appropriate. "Sometimes the disclosure destroys the trade secret by placing the information in the public domain. The fair market value of the trade secret at the time of the appropriation may be the best measure of damages under such circumstances." § 3:24.

Softel, Inc. v. Dragon Med. & Sci. Commc'ns, Inc., 118 F.3d 955, 969 (2d Cir. 1997), is persuasive. On appeal, plaintiff complained it should have gotten a "reasonable royalty" as its development costs plus a profit multiplier or what it would have charged for a license. *Id*. Plaintiff, relying upon *University Computing*, argued "that selling such a license would have been like 'selling the store,' because Dragon took the 'core technology' of Softel's company….[so] it should be compensated for all of the potential damage that Dragon ***could have inflicted*** by stealing the code." *Id*.

The appellate court rejected these measures, stating:

> This argument is flawed. *University Computing* itself rejected Softel's proffered measure of damages: it stated that such a measure usually was appropriate only where the defendant had destroyed the value of the secret. *See id.* at 535. Here, Dragon did not publish Softel's secrets, and therefore did not destroy their value to Softel, other than to the extent that Dragon itself used them.

Id.; *see also Syntel Sterling Best Shores Mauritius Ltd. v. TriZetto Grp., Inc.*, 68 F.4th 792, 811 (2d Cir. 2023) (finding avoided cost damages inappropriate where the trade secrets remained valuable to plaintiff and an injunction prevented defendant from further use). Arxada is similarly situated.

There is no doubt that the total value of the alleged trade secrets is what Arxada asked Howard to assess. He used an avoided cost measure of unjust enrichment to determine the entire value of the trade secrets that Arxada alleges were misappropriated. (A1700 at 960:7-9; A1703 at 963:3-4; A1750 at 1010:2-3; A1705 at 965:16-17.) This was improper.

The Court should clarify the measure of allowable damages under DUTSA in circumstances where misappropriation resulted in little actual harm to plaintiff. Where a plaintiff presents no evidence that the defendant's actions diminished or destroyed the trade secrets' value and plaintiff retained their exclusive profitable use, a plaintiff is not entitled to avoided costs as unjust enrichment damages. This rule is consistent with other longstanding aspects of Delaware law, making clear that the goal of compensatory damages is to make a plaintiff whole, not provide a windfall. *See Stayton*, 117 A.3d at 534.

This rule is particularly important where there is compelling evidence of a defendant's misdeeds but scant evidence of any actual harm to plaintiff or benefit to defendants. A plaintiff does not get a "pass" on their burden of proof to establish actual, non-speculative damages because of a defendant's bad acts. *See Touch of Italy*, 2014 WL 108895, *1 ("Sometimes a lie… is just a lie."). While the trial court has discretion to fashion a remedy within the bounds of the law, it does "not have unbridled authority to dress up punitive damages as expectation damages by importing the willfulness of the breach into the damage award." *Siga Techs.*, 132 A.3d at 1150 (Valihura, J., dissenting); *see also Syntel Sterling*, 68 F.4th at 813.

2. Howard is Unqualified and Unreliable.

A second reason to reverse the unjust enrichment "compensatory" damages, which wholly adopted Howard's testimony, is that Howard's opinions fall far short of the foundational reliability required under Delaware law. An expert witness may offer opinion testimony if "the testimony is based on sufficient facts or data" and "is the product of reliable principles and methods." D.R.E. 702.

Howard was not qualified because he primarily worked on semiconductors and consumer products at Dow, did not focus on industrial or agricultural cleaners, and worked on microbial testing once—for an antifungal additive for composite wood decking. (A1684-85 at 944:17-945:13.) His lack of experience with agricultural splash blending alone renders Howard unqualified on development times for this industry. *See Bowen v. E.I. DuPont de Nemours & Co., Inc.*, 906 A.2d 787, 795-96 (Del. 2006).

His opinions were also unreliable and not scientifically verified. Howard was simply a mouthpiece for Arxada. ET personnel prepared an estimate of avoidance damages and Howard adopted it wholesale without validating the reliability of ET's work or performing his own analysis. (A1706-07 at 966:22-967:20; A1722-33 at 982:3-983:7.) All Howard did was speak with two ET employees, David Hird and Joseph Donabed, take the spreadsheets they prepared, and multiply ET's hours[1] by artificially-inflated labor costs. (A1743 at 1003:1-15; A1748-49 at 1008:22-1009:3.)

Compounding Howard's flaws is the indisputable fact that neither Hird nor Donabed reviewed any documents in devising their estimated development hours or consulted with sales or marketing personnel to validate their estimated commercialization hours. (A1289 at 549:3-7; A1290 at 550:3-6; A1324-25 at 584:18-585:3; A1355 at 615:17-24; A1356-57 at 616:12-617:9.) ***They relied entirely on their experience and thoughts***, and admittedly did not apply a scientific method to derive the estimated hours. (A1246 at 506:7-11; A1271 at 531:4-5; A1274 at 534:12-13; A1289 at 549:8-13; A1355 at 615:10-16.) Hird described the fictional employee whom he and Donabed imagined would perform the development work as "a magic, unicorn person." (A1277 at 537:21-24.) The court should have rejected Howard's opinions. *Brightview Grp., LP v. Teeters*, 2021 WL 2627960, *6 (D. Md. Feb. 8, 2021) ("When an expert's proffered opinion merely parrots information provided to [him] by a party, that opinion is generally excluded."); *Ask Chems., LP v. Comput. Packages, Inc.*, 593 F. App'x

[1] The information ET gave him relating to purported development, testing and marketing hours is also drastically, predictably overinflated, as the testimony of Mike and Phil demonstrated. (A0885-900 at 145:1-160:10; A1110-20 at 370:2-380:16.)

506, 510 (6th Cir. 2014) (excluding opinion that "lack[ed] independent verification or analysis.").

Howard also failed to apportion between trade secrets and non-trade secret information, even though he admits these are different categories of information. (A1694 at 954:9-12.) Howard was tasked with valuing all the information allegedly misappropriated, which his report concedes, includes non-trade secrets. (A1698 at 958:19-23; A1699-1700 at 959:16-960:1; A0262 at 3.) Howard should have apportioned between trade secrets and other information because "the controlling principle [is] that damages must be confined or apportioned to the value or contribution made by the misappropriated features contained within a multi-component product." *MSC Software Corp. v. Altair Eng'g, Inc.*, 2015 WL 13273227, *4 (E.D. Mich. Nov. 9, 2015). His failure to apportion trade secret damages falls short of the rigor *Daubert* requires. *MSC Software*, 2015 WL 13273227, *20.

Finally, Howard's opinions are not relevant. He did not analyze how long ET spent developing the alleged trade secrets as a proxy for the costs *Defendants* would have avoided. Nor did he rely on information that would have allowed him to compare ET's development information with Capacity's R&D efforts. (A1750 at 1010:6-13; A1752 at 1012:2-5.) Instead, Howard used ET's hours to determine the cost if a hypothetical "company today were trying from scratch to build up all these formulations." (A1729 at 989:5-9.) Howard's counterfactual "from scratch" assumption permeates his opinions even though he knows chemists learn from experience. (A1733 at 993:9-12); *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039, 1056 (8th Cir. 2000); *see also Gaffin*, 611 A.2d at 476. Howard's testimony ignores the ***real*** evidence that Capacity *did* start from the ground up and it did *not* take it 98 years to do so. (A1291 at 551:3-19; A1292 at 552:6-15.)

In addition to being legally improper because Defendants' alleged misappropriation did not diminish or reduce the value of ET's trade secrets, his calculations do not meet the threshold requirements of arising from sound methodology. For this additional reason, the Court should reverse the trial court's award of Howard's $24,224,125.59 of so-called "compensatory damages" to Arxada. At most, the Court should remit the damages to the $900,000 lost profits calculated by Defendants' rebuttal expert, Gardemal.

VI. <u>Exemplary Damages Are Not Warranted, and Alternatively, Must be Significantly Reduced</u>.

A. Question Presented

Did the Chancery Court abuse its discretion in awarding $25,124,125.59 in exemplary damages? (Preserved at A0584; A1770; A1840.)

B. Standard and Scope of Review

This Court reviews a damages award for an abuse of discretion. *In re Mindbody, Inc.*, 332 A.3d at 406.

C. Merits of Argument

The trial court awarded exemplary damages because it found that Defendants' conduct was "***willful and malicious***" misappropriation under 6 *Del. C.* § 2003(b). This finding was an abuse of discretion, because Arxada did not prove-up the heightened standard for such an extraordinary remedy. Delaware requires clear proof of both elements, and Arxada's characterizations cannot transform legitimate business competition into egregious conduct warranting punitive measures. *See, e.g.*, *Total Care Physicians v. O'Hara*, 2003 WL 21733023, *4 (Del. July 10, 2003); *Marsico v. Cole*, 1995 WL 523586, *8 (Del. Ch. 1995). Defendants' conduct was neither willful nor malicious.

Delaware's "willful" standard requires "awareness, either actual or constructive, of one's conduct and a realization of its probable consequences." *Beard Research*, 8 A.3d at 600-1. Crucially, this awareness must relate to the wrongfulness of the conduct, not merely knowingly taking information. Nor has Arxada proven malice. Delaware requires "ill-will, hatred or intent to cause injury" for malicious misappropriation. *Beard Research*, 8 A.3d at 600. Competitive business conduct, even aggressive competition, does not satisfy this standard. *Id.* at 600-01.

Defendants did not intend to harm ET. (A0922-23 at 182:24-183:2; A0945 at 205:6-11; A1052 at 312:13-18; A1053 at 313:3-14; A1060 at 320:8-20; A1188-89 at 448:18-449:1.) This is not a case in which parties aggressively and impermissibly solicited customers with intent to convert business. Frustrated ET customers approached Capacity for assistance, not the other way around. Nor is this a case of corporate raiding. Indeed, all of the ET employees who came to work for Capacity, over 70% of whom ET terminated, approached Capacity looking for work. (A1070 at 330:13-24.) Both the court and Arxada relied heavily on intemperate comments as evidence of malice. But Delaware requires evidence of intent to harm through unlawful means, not mere frustration with former colleagues. Petty name calling does not warrant a $25+ million exemplary award.

If this Court affirms the award of exemplary damages, it must reduce them to $900,000. Under DUTSA, only exemplary damages up to twice compensatory damages are possible.

VII. <u>The Scope of the Permanent Injunction Must Be Narrowed, Because It Exceeds the Restrictions in the SPA.</u>

A. Question Presented

Did the court abuse its discretion in entering a permanent injunction prohibiting Defendants from "developing" work when the SPA does not prohibit "developing"? (Preserved at A0584; A1770; A1840.)

B. Standard and Scope of Review

This Court reviews the award of injunctive relief for an abuse of discretion. *Box v. Box*, 697 A.2d 395, 397 (Del. 1997).

C. Merits of Argument

The injunction's prohibition on "developing" impermissibly exceeds the parties' bargained-for restraints and must be narrowed to align with the contract's text. Contractual covenants define the outer boundary of equitable relief; a court may enforce but not expand them. *C & J Energy Services, Inc. v. City of Miami Gen. Employees*', 107 A.3d 1049, 1054 (Del. 2014). Here, the SPA's restrictive covenant—if enforceable—binds Mike only as to engaging in a "Restricted Business," defined as "selling [PAA], bromine-based biocides or sodium chlorites and any other business conducted by the Company or contemplated to be conducted by the Company as of the Closing Date" within a defined "Restricted Territory" and for a five-year "Restricted Period." It further cabins non-solicitation to "Customers" and "Suppliers" as specifically defined for the twelve months pre-Closing. The SPA does not ban "developing" products, technology, or lines of business untethered to its defined scope. Because the contract nowhere restrains "developing," inserting that word into an injunction enlarges the bargain.

Furthermore and troublingly, enjoining "developing" sweeps in pre-commercial research, engineering, or exploratory work even where the SPA permits activity outside the defined "Restricted Business," beyond the "Restricted Territory," or outside the "Restricted Period." That bars conduct beyond the parties' deal and imposes a restraint broader than necessary to protect legitimate interests. The Court should modify the injunction to expressly track the SPA's language.

VIII. <u>The $9 Million Award of Attorney Fees and Costs to Arxada is Excessive and Prejudgment Interest Must Be Dramatically Reduced.</u>

A. Question Presented

Did the court abuse its discretion in awarding in excess of $9,000,000 in fees and costs? (Preserved at A1987; A1770; A1840.)

B. Standard and Scope of Review

This Court reviews an award of attorney fees for an abuse of discretion. *DeMatteis v. RiseDelaware Inc.*, 315 A.3d 499, 508 (Del. 2024).

C. Merits of Argument

The nearly $9 million award far exceeds what was necessary and reasonable to litigate this case. Arxada was obligated to justify its request with competent proof under Rule 88 and Rule 1.5(a), including evidence that its rates are customary and its hours not excessive, redundant, or duplicative. *See Danenberg v. Fitracks, Inc.*, 58 A.3d 991, 995 (Del. Ch. Mar. 5, 2012); *Mahani v. EDIX Media Group, Inc.*, 935 A.2d 242, 247-48 (Del. 2007). The court did not hold Arxada to these standards.

Defendants showed pervasive overuse of partner time—approximately 60% of all billed hours, done by three partners—along with partner performance of associate-level tasks and multiple timekeepers on the same assignments. *Concord Steel, Inc. v. Wilmington Steel Processing Co.*, 2010 WL 571934, *4 (Del. Ch. Feb. 5, 2010); *Carpenter v. Dinneen*, 2008 WL 2268922, *2 (Del. Ch. June 3, 2008).

Arxada's fees also demonstrated unreasonable and insufficiently supported rates, including rapid, outsized annual increases and associate rates well above benchmarks, without evidence of customary local rates or attorney backgrounds. *In re TransPerfect Global, Inc.*, 2021 WL 1711797 (Del. Ch. Apr. 30, 2021).

The court accepted the request wholesale based on case complexity and overall success, without addressing these specific defects or applying the lodestar checks Delaware requires. That cursory treatment fails the reasonableness inquiry and constitutes an abuse of discretion.

Defendants' fees were approximately $3.226 million through February 2026, versus Arxada's $7.238 million, proving disproportionality and unreasonableness. The fee and cost award should be halved at least, consistent with the standards and reductions urged below.

CONCLUSION

Delaware law does not permit a windfall. Arxada has proven no actual harm and it may not short-cut its required proof with facts that may reflect poorly on Defendants. Reversal and entry of judgment for Defendants is required. Alternatively, the Court should affirm lost profits of $900,000, award exemplary damages no more than $900,000, and remand for recalculation of reasonable attorney fees and costs and prejudgment interest.

Dated: July 7, 2026

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CERTIFICATE OF SERVICE

I, James D. Taylor, Jr. hereby certify that on this 7th day of July I caused to be served a true and correct copy of **Defendants-Below/Appellants Michael Harvey, Aaron Harvey, Phil Harvey, Capacity Chemical, LLC and Bluetech Laboratories, Inc.'s Corrected Opening Brief and Appendix** upon counsel as follows:

VIA FILE AND SERVEXPRESS

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