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IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

APPELLEE'S ANSWERING BRIEF

Date: July 20, 2026

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NATURE OF PROCEEDINGS

This is an appeal from a bench trial in the Court of Chancery. Vice Chancellor J. Travis Laster found Michael Harvey ("Mike"), Aaron Harvey ("Aaron"), Phil Harvey ("Phil"), Capacity Chemical, LLC ("Capacity"), and BlueTech Laboratories, Inc. ("BlueTech") (collectively "Defendants") jointly and severally liable to Arxada Holdings NA Inc. ("Arxada"), permanently enjoined Defendants, and awarded Arxada approximately $69 million in compensatory and exemplary damages, attorneys' fees, and expenses. Defendants' appeal rests on the implausible premise that the Court of Chancery got virtually every material fact wrong, abandoned settled Delaware law, and awarded Arxada an improper windfall. The record proves otherwise.

The Court of Chancery correctly found Defendants covertly conspired to misappropriate and exploit Enviro Tech Chemical Services, Inc.'s ("ET") trade secrets and then "lost" evidence concerning their misconduct. Defendants acknowledge "compelling evidence" of their misconduct and admit their lies were "morally problematic." (Appellants' Opening Brief ("AOB") at 1, 38). The judgment reflects the straightforward application of settled Delaware law to these extraordinary facts.

Unable to escape liability, Defendants attack the remedy, arguing Arxada suffered little harm because it retained the trade secrets and obtained injunctive relief. Delaware law, however, does not require victims of trade secret theft, fiduciary disloyalty, and contractual breach to prove commercial devastation. The Court of Chancery found Defendants stole the trade secrets that drove Arxada's $450 million acquisition of ET just months prior. The judgment properly reflects the egregiousness of Defendants' actions.

The primary flaw in Defendants' "windfall" narrative is that it disregards their misconduct. The Court of Chancery found intentional, coordinated conduct to seize trade secrets, usurp corporate opportunities, and compete using Arxada's assets. Delaware law does not permit wrongdoers to retain the fruits of their misconduct merely because they were caught before fully accomplishing their objectives. The judgment was designed to "remove[] all temptation, [and] extinguish[] all possibility of profit." (Ex. C, Post-Trial Opinion ("Opinion"), at 92 (quoting *Guth v. Loft, Inc.*, 5 A.2d 503, 510 (Del. 1939))).

Many of Defendants' arguments on appeal have been waived or are raised for the first time in this Court. The remaining arguments ask this Court to disregard factual findings and credibility determinations entitled to substantial deference. Their damages challenge rests on the nonsensical assertion that the trade secret formulas underpinning Arxada's $450 million acquisition of ET had no value. Arxada's conservative avoided-cost damages calculation was supported by expert testimony, tested through cross-examination, accepted by the Court of Chancery, and should not be disturbed on appeal. Likewise, the exemplary damages award reflects a conservative one-to-one ratio consistent with Delaware law. The judgment compensates Arxada for proven wrongdoing and should be affirmed.

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery correctly held Defendants liable for trade secret misappropriation because: (i) Defendants waived their choice-of-law argument and failed to show any law other than Delaware law applies (*infra* at 19–21); (ii) Arxada has standing because it was a party to the Stock Purchase Agreement ("SPA"), was injured by Defendants' misappropriation of assets purchased under the SPA, and had a direct interest in protecting the trade secrets (*infra* at 17–18); (iii) Arxada proved it took reasonable measures to protect the trade secrets, as well as their independent economic value, and Defendants' use of the trade secrets (*infra* at 22–31); and (iv) evidence at trial proved both Arxada's actual losses and Defendants' unjust enrichment (*infra* at 42–48).

2. Denied. The Court of Chancery correctly held Mike breached, and Aaron and Phil tortiously interfered with, the restrictive covenants in the SPA because: (i) Defendants waived any challenge to the covenants' geographic scope (*infra* at 32 n.2); (ii) Mike breached the employee non-solicitation, customer non-solicitation, and non-competition covenants (*infra* at 32–33); and (iii) Aaron and Phil knowingly participated in those breaches (*infra* at 34–35).

3. Denied. The Court of Chancery correctly held Mike, Aaron, and Phil breached their fiduciary duties because: (i) Defendants waived their DUTSA-preemption argument and Arxada's claims rest on conduct beyond trade

secret misappropriation (*infra* at 36–37); (ii) they owed fiduciary duties as key ET employees (*infra* at 38–39); (iii) they breached those duties by acting against Arxada's interests and misappropriating the trade secrets (*infra* at 40–41); and (iv) Arxada proved resulting harm (*infra* at 42–48).

4. Denied. The Court of Chancery correctly awarded damages because: (i) DUTSA permits recovery of lost profits and unjust enrichment (*infra* at 42–45); (ii) the injunctions against Aaron and Phil do not eliminate all future harm (*infra* at 44–45); (iii) Arxada's chemical industry expert offered admissible and reliable avoided-cost testimony (*infra* at 46–48); and (iv) Defendants' willful and malicious conduct warranted exemplary damages (*infra* at 49–51).

5. Denied. The injunction against Mike properly tracks the scope of the non-competition covenant. (*Infra* at 52).

6. Denied. The Court of Chancery correctly awarded attorneys' fees because Arxada's counsel's rates were customary and the litigation expenses were reasonable given the complexity of the case, the extensive record, and Defendants' spoliation. (*Infra* at 53–54).

STATEMENT OF FACTS

I. Arxada Purchased ET, Including Its "Expansive IP Portfolio" and "Proprietary Formulations," in December 2021.

A. Arxada Purchased ET for $450 Million.

In December 2021, Arxada acquired ET for $450 million (A0095) based on Mike's representations that ET had developed and maintained an "expansive IP portfolio" that included "unique compositions" and "proprietary formulations." (B0024; B0056). These formulas represented accumulated technical knowledge developed through testing, iteration, and customer-specific refinement. (A0271).

B. The Stock Purchase Agreement Included Express Restrictive Covenants and Confidentiality Requirements.

Because ET's formulas are its "lifeblood" and competitive advantage (A0755-(15:1–7); A1344-(604:12–19)), Arxada required Mike to agree to restrictive covenants in the SPA. (A0153–54). These protections were "absolutely critical" because Mike retained "all of the know-how, the knowledge, [and] the resources" necessary to replicate ET's business absent restraint. (A0753–54-(13:21–14:19)). The SPA also imposed confidentiality obligations and affirmed ET's measures to protect its trade secrets. (A0152; A0755–56-(15:15–16:8)). The bargain was explicit: Arxada paid for exclusive control over ET's trade secrets, and Mike agreed not to appropriate those assets.

II. Mike Acted Against ET's Interests and Positioned Himself to Directly Compete with ET, in Violation of the SPA.

A. Mike Negotiated Against ET's Interests.

Within months of the acquisition—and while still employed at ET (A0757-(17:11–19))—Mike began acting directly against ET's interests. In March 2022, he advised ET's "largest customer by far" (A0919-(179:6)), ChemStation, to "play hardball" on pricing negotiations with ET, ghost-drafted a ChemStation communication to ET demanding pricing concessions, and instructed ChemStation to "DELETE THIS EMAIL AND DENY YOU EVER SAW IT." (B0254; A0920–21-(180:18–181:1); B0256–57; A0921-(181:2–4)).

B. Mike Usurped a Corporate Opportunity that Enabled Him to Compete with ET.

Mike also positioned himself to directly compete with ET. In late spring of 2022, Mike, while still an ET employee, convinced BlueTech to cancel a distribution agreement with ET that provided ET a right of first refusal to purchase BlueTech's registrations to various peracetic acid ("PAA") formulations. (Opinion at 90; B0268–76; B1527–29). ET's PAA product portfolio was central to Arxada's purchase of ET. (A0748-(8:3–11)). BlueTech's cancellation of the distribution agreement, at Mike's behest, enabled Mike to purchase BlueTech and use its registrations to directly compete with ET: Defendants integrated BlueTech into Capacity's operations (B0322–39; A1162-(422:7–20); B0360; B0362) and marketed

BlueTech-based products to ET customers as “our” products. (B0364–80; B0385–408; A1163–65-(423:14–425:15)).

C. Mike Hid His Conduct with the Help of Aaron and Phil.

After Mike’s termination from ET, Mike emailed an ET-competitor, stating “I 100% confirmed today that I am buying … BlueTech … to be the parent company for the PAA and other registrations,” and “[BlueTech] will be owned by a LLC that has my stepson listed as the manager. He does not have a last name of Harvey. There is no way Arxada or anyone else for that matter can figure this out. It insulates all of us. I am now good to go on my end. Let’s do this.” (B0307; A0839–40-(99:3–100:24)).

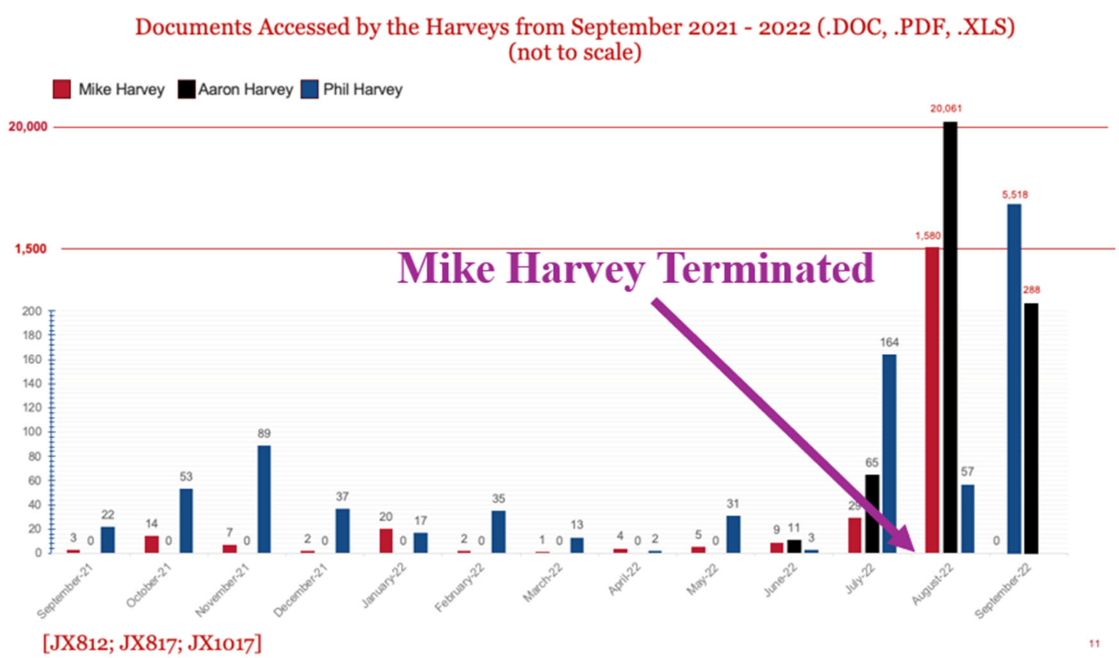
Mike admitted concealing his ownership of BlueTech was “a key component” of his purchase. (A0841-(101:1–12)). Mike told Binfield his ownership “needed to remain anonymous.” (A0845-(105:8–10)). Mike falsely represented his stepson’s girlfriend was BlueTech’s Vice President. (B0314–15; A0841–45-(101:13–105:3)). Mike told a customer, “I’m supporting/helping the boys … . I’m back.” and “I’m working on the PAA … but that needs to be on the down low.” (B0317; A0979–80-(239:19–240:21)). Mike told another customer, “I’ll be back in business with 2 new PAA products” and to “[k]eep in mind no one knows what I’m doing except my boys, and now you.” (B0354). Mike told a distributor he worried someone “would [] throw [him] under the Arxada bus for violating [his] non-compete.” (B0357). And, Mike asked Aaron and Phil to lie and represent that Capacity, not Mike, purchased BlueTech, to which Aaron responded "Absolutely." (B0359; A0847–48-(107:16–108:2)).

III. Mike, Aaron, and Phil Coordinated the Misappropriation of ET's Trade Secrets.

Following Mike's termination from ET, Mike, Aaron, and Phil engaged in a coordinated effort to steal ET's trade secrets.

A. The Surge in Activity and Its Timing.

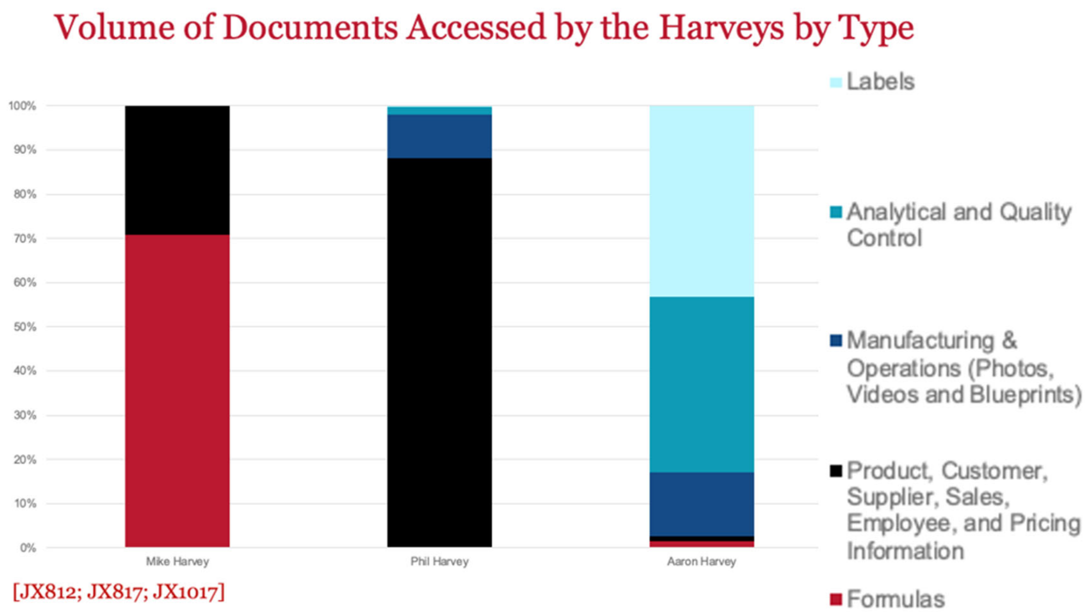
On August 6, 2022, Mike learned he would be terminated from ET (B0281); he informed Phil within minutes. (B0283; A1018-(278:12–18)). What followed was an "exponential" spike in activity on ET's computer systems "indicating … mass-copying." (A1483–84-(743:20–744:11)).



(B1604).

B. The Harveys' Distinct Roles in the Theft of ET's Trade Secrets.

Mike, Aaron, and Phil "[e]ach focused on specific types of information, suggesting they coordinated their efforts." (Opinion at 16; A1483-(743:1–14)).



(B1603).

i. Mike's Role.

Mike copied more than 1,700 documents from ET's servers (A1471–72-(731:19–732:5)) and removed binders from its headquarters containing over 1,000 formulations. (A0926-(186:13–18); A0879-(139:7–13)). He also arranged for his ET company email to be forwarded to a personal account, so he could continue receiving ET customer communications after his termination. (A1466-(726:1–10)). The forwarding scheme allowed Mike to usurp ET opportunities, including an email from a potential vendor that Mike diverted to Capacity. (B0294; B0286). Mike denies downloading ET's documents, but the forensic evidence proves otherwise. (A1471-(731:19–23); B1594).

ii. Aaron's Role.

On August 8, 2022, Aaron downloaded 220 formula documents from ET's restricted-access Chempax database onto a flash drive. (A1177-(437:2–13); B1600). These formulas included ET's "highest grossing or most selling or most popular products." (A1330–31-(590:16–591:3)). Throughout the rest of August 2022, Aaron downloaded approximately 16,000 other documents, including sales and pricing data, customer files, and supplier data. (B0533; A1173–74-(433:14–434:1); A1480-(740:3–24); A0270–74). Aaron compiled these stolen documents, constituting the "entire operational information" of ET (A0278), into a folder he titled "safety review." (B1527; B0512; B0716–1400; B1558–92). Aaron admitted he downloaded these documents onto a flash drive, but when pressed to produce it, he maintained it had been "lost." (A1174–75-(434:8–435:10)).

iii. Phil's Role.

On August 10 and 12, 2022, Phil downloaded spreadsheets for eight key ET customers that he would later email to a Capacity employee. (A1474–75-(734:5–735:2); B1597; B0306). After his resignation, Phil downloaded more than 7,500 ET documents to his flash drive. (A1473-(733:9–13); B0528–31). Phil explained his reasons for taking the documents when the Vice Chancellor asked, "Why take anything?" Phil said, "[S]ome of that stuff was, like, reference – I mean, there's so much reference material in there. … I just couldn't – I mean, I couldn't let it go." (A1107–08-(367:19–368:4)). Despite Phil's representations that he has not retained this downloaded information (B0713), a forensic image shows Phil's same flash drive was inserted into Aaron's laptop at Capacity eight months later. (*Compare* B0451, row 12, column C *with* B0712, "Connected Devices" sheet, row 4, column A).

Arxada's chemical industry expert, Dr. Kevin Howard ("Howard"), testified Defendants' misappropriation of ET's trade secrets gave Capacity a "five-year head start" while "avoid[ing] the [associated] costs." (A1753-(1013:8–14)).

IV. Defendants Formed Capacity to Exploit ET's Trade Secrets and Compete Directly with ET.

A. The Formation of Capacity Began While Aaron and Phil Were ET Employees.

Prior to leaving ET, Defendants laid the groundwork for creating Capacity: securing facilities (B0288–89); engaging legal counsel (B0310–11); and coordinating the launch of their competing enterprise. (B0301–05; B0285; B0287). Their communication patterns reflect sustained coordination, including at least 177 calls in the six weeks preceding Aaron's and Phil's departure from ET, totaling more than 27 hours of discussion. (B0452–89).

B. Mike's Role at Capacity Was Critical to Its Formation and Operations.

Mike provided at least $4 million in initial funding for Capacity (B0290), which was Capacity's core capitalization. (A0988-(248:2–4)). In Aaron's and Phil's words, "Mike's financing the business … we kind of have to do what he says." (A1224-(484:20–24)). Mike played a substantial role at Capacity: he was involved in employee hiring (B0382; B0300; B0341–42); he supervised employees (A0204; A0829–30-(89:5–90:6); A1236-(496:2–9); A1224-(484:1–10)); and he provided constant business, technical, and regulatory advice. (B0347; A0995–1000-(255:14–260:5); A1225-(485:7–13); A0991-(251:14–18); B0320–21; B0349–50; B0409; B0355). Mike's support—as the "godfather" (A0914-(174:19)) and "king" of PAA (A0963-(223:5))—was essential because Aaron and Phil are neither scientists nor chemists (A1212–14-(472:15–474:4); A1306–07-(566:3–567:15)), they "know almost nothing about Regulatory" (B0382; A0808-(68:2–11)), and they had never started a chemical business. (A0807-(67:2–5)).

C. Capacity Used ET's Trade Secret Information in Everyday Operations.

Defendants' use of ET's stolen information at Capacity was foundational. In August 2023, Mike sent Phil and Aaron a "master formula database" of over 1,000 ET formulas. (B0343; B1555). Phil responded, "We've developed a formula database … and this material will be a perfect fit for it." (B0344). Aaron testified the materials he downloaded became a "consistent aspect" of his Capacity workstation. (B0503-(78:1–10); B0712, "Accessed Files" sheet at rows 36–41). He admitted when customers requested products, he would use the ET formulations that Mike gave him to manufacture them. (A1161–62-(421:4–422:2)). Capacity produced products with the same or substantially identical formulations, often for the same customers and applications. Indeed, 44 formulas in Capacity's database bear the same name and ingredients as ET formulas Mike and Aaron stole. (B1661–62). For example, Defendants' expert admitted ET's BioSide HS 15 product and Capacity's Clear Line 1500 product were identical. (A1631–34-(891:7–894:13); B1606).

V. Defendants Used ET's Trade Secrets to Solicit ET's Customers.

Defendants used ET's misappropriated assets to target ET's customers. Even before departure, they evaluated ET's customer base and identified accounts most susceptible to transition and those prepared to "switch all [their] business." (B0293). Stolen customer-specific information—including pricing, purchasing history, volumes, margins, and technical specifications—allowed Defendants to offer identical products at lower prices. (A0272–73; A1333–35-(593:7–595:18)). Aaron defined Capacity's market strategy when asked if Capacity could beat ET's PAA pricing: "All day long. That's our Mission Statement." (B0384). This information enabled Capacity to target specific customers (A1222-(482:10–24)) and undercut their pricing. (A1559-(819:3–15)). Tellingly, Capacity's customer base consists largely of former ET customers. (B0420). Arxada's damages expert, Brent Bersin ("Bersin"), observed Capacity's "top 10 customers … all directly overlap with Enviro Tech." (A1552-(812:2–8)). The record establishes the causal chain: Defendants extracted ET's proprietary information (A0270–74) to identify high-value customers and approach those customers with replicated products and informed pricing to convert those relationships. (A1161–62-(421:4–422:2); B0340; A1143–44-(403:2–404:23); B0293).

VI. Defendants Spoliated Key Evidence.

Defendants spoliated evidence by failing to produce the flash drives they used to download ET's trade secrets. (Opinion at 27; A1472-(732:6–12); A1473-(733:19–23); A1476–77-(736:22–737:16)). Mike also admitted to setting his phone to automatically delete text messages during the fall of 2024, in violation of a preliminary injunction order. (A0853-(113:16–21)). Arxada's computer forensics expert reconstructed Defendants' misappropriation and uncovered its magnitude: Mike, Aaron, and Phil stole "the entire operational information of the [ET] Business" (A0278), used it to launch Capacity, and continued using it to service Capacity customers. (B0507–09; B0513–16).

VII. Arxada's Injury.

Arxada retained Bersin to determine Arxada's damages and Dr. Howard to assess Defendants' avoided costs in misappropriating ET's trade secrets. Bersin concluded a reasonable royalty of $66 million was the most appropriate measure of damages. (B0565). Dr. Howard determined Defendants avoided at least $24 million in costs by misappropriating ET's formulas. (A0262–63).

VIII. The Court of Chancery's Opinion.

In a detailed, 99-page opinion, the Court of Chancery found Defendants engaged in coordinated, willful, and malicious misappropriation of "massive amounts" of ET's trade secrets and used them to build a competing business. (Opinion at 2, 45–60). It rejected Bersin's larger damages theory, adopted Dr. Howard's avoided-cost calculation, awarded more than $50 million in damages, and imposed permanent injunctive relief against all Defendants. (*Id*. at 68–69). Those findings rest on a substantial evidentiary record credited over Defendants' shifting excuses and "loss" of records.

ARGUMENT

I. The Court of Chancery Correctly Held Defendants Misappropriated ET's Trade Secrets.

A. Arxada Has Standing Because It Suffered Direct Economic Harm.

i. Question Presented.

Whether the Court of Chancery correctly held Arxada has standing to pursue its trade secret misappropriation claim.

ii. Scope of Review.

This Court reviews standing *de novo*. *Brookfield Asset Mgmt. v. Rosson*, 261 A.3d 1251, 1262 (Del. 2021).

iii. Merits of Argument.

Defendants argue "Arxada lacks standing" because "any alleged harms arising from Defendants' actions were experienced by ET, a separate corporation." (AOB at 14). The Court of Chancery correctly rejected this argument, holding "a parent corporation has a property interest in—effectively a beneficial interest—in its wholly owned subsidiary's trade secrets sufficient to support standing." (Opinion at 60). This is not a controversial result; DUTSA does not limit relief to the entity holding legal title to a trade secret, but, instead, authorizes claims by the "person seeking relief" and a "complainant" injured by misappropriation. 6 *Del. C.* §§ 2001–2003; *Advanced Fluid Sys. v. Huber*, 958 F.3d 168, 177–78 (3d Cir. 2020) (holding that "[a] *per se* ownership requirement for misappropriation claims is flawed");

DTM Research, L.L.C. v. AT&T Corp., 245 F.3d 327, 332–33 (4th Cir. 2001) (explaining the value protected by trade secret law derives from knowledge of the secret, not formal title). That principle is especially compelling here because ET is Arxada's wholly-owned subsidiary, Arxada was a party to the SPA, and Arxada was injured by Defendants' misappropriation of assets purchased under the SPA. (A0095).

To that end, *Applied Materials, Inc. v. Advanced Micro-Fabrication Equipment (Shanghai) Co., Ltd.*—a case relied upon by the Court of Chancery but ignored by Defendants—held "[a] parent corporation has an ownership interest in the trade secrets of its wholly-owned subsidiary," relying on the Supreme Court's observation that a parent and wholly-owned subsidiary share a "complete unity of interest." 2009 WL 10692715, at *3 (N.D. Cal. Nov. 30, 2009) (citing *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 771 (1984)). *Applied Materials* further recognized "where a wholly-owned subsidiary suffers economic harm, the parent company also likely suffers injury." *Id.* at *7; *Lineage Capital II, L.P. v. Beadles*, No. 2025-0253-PAF, Dkt. 219 at 18 (Del. Ch.) ("[T]he general rule that a parent company does not have standing to sue based on harm to its subsidiary … does not apply to trade secret misappropriation."). Defendants' authorities fail to rebut these reasoned principles, and Defendants' standing argument must be rejected.

B. Defendants' "Extraterritoriality" Argument Was Waived and Is "Really a Choice-of-Law Argument in Disguise."

i. Question Presented.

Whether the Court of Chancery correctly held Defendants waived their choice-of-law argument.

ii. Scope of Review.

Under Delaware Supreme Court Rule 8, "[o]nly questions fairly presented to the trial court may be presented for review" absent plain error. Plain error is "an error so obvious and fundamental that it would be unjust not to take into account on appeal." *Lum v. State*, 2018 WL 4039898, at *1 (Del. Aug. 22, 2018). This exception is "very narrow" and "extremely limited." *Isaac v. Politico LLC*, 346 A.3d 103, 126 (Del. 2025).

iii. Merits of Argument.

Defendants contend the Court of Chancery plainly erred "in finding all Defendants liable" for trade secret misappropriation under DUTSA because "DUTSA does not apply extraterritorially." (AOB at 12). But, as the Court of Chancery explained, this argument is "really a choice-of-law argument in disguise." (Opinion at 46). Courts discussing DUTSA's "extraterritoriality" have always regarded it as a choice-of-law question. *Dow Chemical Co. v. Organik Kimya Holding A.S.*, 2018 WL 2382802, at *5 (Del. Ch. May 25, 2018); *Focus Financial*

Partners, LLC v. Holsopple, 250 A.3d 939, 970 (Del. Ch. 2020) (Laster, V.C.) (citing the Restatement (Second) of Conflicts of Law § 187).

Defendants waived this argument by raising it for the first time in post-trial briefing as a "gotcha" defense. (Opinion at 46 n.180). *Berg v. Bar-Lavi*, 2026 WL 850780, at *9 n.134 (Del. Ch. Mar. 27, 2026) (holding arguments raised for the first time post-trial are waived). Defendants also relied on Delaware law in their pre-trial and post-trial briefs (*see generally* A0584, A2020, A1770, A2090) and their motions *in limine* (*see generally* A0556; A2003), and their expert testified DUTSA was the relevant trade secret statute. (A1662-(922:9–12); A0383–84). That, too, triggers waiver. *NuVasive, Inc. v. Miles*, 2020 WL 5106554, at *9 (Del. Ch. Aug. 31, 2020).

Even if considered, Defendants fail to meet their burden to show that non-Delaware law applies. *Vichi v. Koninklijke Philips Electronics, N.V.*, 85 A.3d 725, 765 (Del. Ch. 2014) (holding "the party seeking the application of foreign law has the burden … of adequately proving the substance of the foreign law"). Defendants never "identified material conflicts between Delaware and California trade secret law." (Opinion at 47). Instead, Defendants argue—without citation or specificity—there are "several outcome determinative differences [] between the two states laws," such as "the remedies available." (AOB at 13). This Court should not entertain these undefined "conflicts" for the first time on appeal. *Rosa v. State*, 2025 WL 3200704, at *2 n.9 (Del. Nov. 14, 2025).

Moreover, Defendants' assertion regarding conflicts is wrong; the results would have been the same under California law. *Sorrento Therapeutics, Inc. v. Mack*, 2023 WL 5670689, at *29 (Del. Ch. Sept. 1, 2023) ("[T]here is no conflict between Delaware and California law on the subject of trade secrets.").

Finally, even if this Court construes Defendants' argument as an "extraterritoriality" argument, it still fails. Defendants argue—without citation—"a necessary element of [a] DUTSA claim" is that the "complained-of conduct occurred in Delaware." (AOB at 13–14). But that is not an element of a DUTSA claim, which solely requires "the existence of a trade secret and its misappropriation." *Labyrinth, Inc. v. Urich*, 2024 WL 295996, at *25 (Del. Ch. Jan. 26, 2024).

C. Defendants Misappropriated ET's "Most Important Trade Secrets."

i. The Formulas, Spreadsheets, Product Labels, Safety and Technical Data Sheets, and On-Site Photographs Are Trade Secrets.

a. Question Presented.

Whether the Court of Chancery correctly found ET's trade secrets had independent economic value.

b. Scope of Review.

This Court reviews the Court of Chancery's finding that information is trade secret for clear error. *SmithKline Beecham Pharms. Co. v. Merck & Co. Inc.*, 766 A.2d 442, 448 (Del. 2000). The clear error standard requires affirmance if the findings "are sufficiently supported by the record and are the product of an orderly and logical deductive process … even though independently [this Court] might have reached opposite conclusions." *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972). This deference is further enhanced "when those findings are based in part on testimony of live witnesses whose demeanor and credibility the trial judge has had the opportunity to evaluate." *OptimisCorp v. Waite*, 137 A.3d 970, 971 n.2 (Del. 2016).

c. Merits of Argument.

A trade secret under DUTSA must "derive independent economic value from being kept secret." (Opinion at 47) (citing 6 *Del. C.* § 2001(4)). Defendants argue the Court of Chancery clearly erred in finding each of the following had independent economic value: the 891 formulas included in the avoided-cost calculation; the "spreadsheets with comprehensive information on [ET's] products, customers, suppliers, sales, raw material sourcing, and pricing" (Opinion at 51); and thousands of safety data sheets, technical data sheets, and product labels. (AOB at 19–22). The Court of Chancery was meticulous in concluding this information, which included "literally every aspect of operating [ET's] business" (A1533-(793:9–17)), had independent economic value.

Formulas. Under DUTSA, the definition of a "trade secret" includes "formula." (Opinion at 48) (quoting 6 *Del. C.* § 2001(4)). When Mike sold ET to Arxada, he represented ET maintained an "expansive IP portfolio" with "[u]nique compositions" and "proprietary formulations." (B0024; B0056). In litigation, "Mike has changed his tune," claiming they are worthless. (Opinion at 57). The truth is ET's formulas are the "lifeblood of [the] company" (A0755-(15:1–7); A1344-(604:12–19)), and as the Court of Chancery found, "represent years of accumulated technical knowledge." (Opinion at 50) (quoting A0271). Defendants' four arguments to the contrary are incorrect and do not establish clear error.

First, Defendants' argument that Arxada did not "put forth [] evidence … that each formula met the definition of a trade secret" is incorrect because Arxada did, in fact, provide evidence that each individual formula included in its avoided-cost calculation is trade secret. (AOB at 19; A1286–87-(546:3–547:15); A0811–14-(71:15–74:19); A0271 (stating each formula "represent[s] years of accumulated technical knowledge")).

Second, Defendants' self-serving testimony that ET's formulas can be "reverse engineered" or are "public information" is factually unsupported. (AOB at 20). At no point during trial "were [] any [ET] chemical formulations … introduced into evidence … that were from the public domain." (A1755-(1015:3–7)). Indeed, Defendants' expert witness testified ET's formulas were *not* publicly available. (A1628-(888:7–20)). Defendants cannot now, at their whim, transform these "proprietary formulations" into worthless recipes.

Third, Defendants' argument that certain formulas "were not owned by ET" or "were duplicates" is irrelevant. (AOB at 20). Arxada excluded non-owned and duplicative formulas in its avoided-cost calculation. (A0278; A1249-(509:13–16)). This was conservative because even non-owned formulas require development time. (A1268-(528:9–17)).

Fourth, Defendants' argument that certain formulas were "generic" or "derivatives" misses the point. (AOB at 20–21). Generic cleaners require time to safely develop (A1262–65-(522:13–525:4)) because they can be "incredibly corrosive and hazardous". (A1263-(523:6–7)). Derivative formulas likewise require development time because "a small change … might lead to a big difference in product stability," especially at industrial scale. (A1256-(516:17–517:3)).

Spreadsheets, Safety Data Sheets, Technical Data Sheets, and Product Labels. Although Arxada did *not* seek avoided-cost damages for these remaining trade secrets, they also have independent economic value because they constitute "literally every aspect of operating a business." [1] (A1533-(793:9–17)). The spreadsheets included "comprehensive information on [ET's] products, customers, suppliers, sales, raw material sourcing, and pricing." (Opinion at 51; B0306; A1333-(593:7–19); A0272–73). These spreadsheets "ha[ve] obvious value" because they enable a competitor like Capacity "to solicit [ET's] customers" and "undercut [ET's] pricing." (Opinion at 52). The safety data sheets, technical data sheets, and product labels also had value because they were "laboriously organized for operational use and for interactions with suppliers and customers," providing a "competitive advantage." (Opinion at 54; A1338-(598:3–13); A1342-(602:1–3); A1186–87-(446:24–447:16)).

Defendants' arguments are incorrect and do not establish clear error. Despite Defendants' assertion, "customer lists" *are* trade secrets. (AOB at 21); *Nucar Consulting, Inc. v. Doyle*, 2005 WL 820706, at *7–8 (Del. Ch. Apr. 5, 2005).

[1] The theft and use of these trade secrets further supports the injunctive relief ordered by the Court of Chancery.

Although *Beard Research, Inc. v. Kates*, held "business cards" did not constitute trade secrets, Defendants here stole *much* more detailed and valuable customer information. 8 A.3d 573, 590 n.103 (Del. Ch. Apr. 23, 2010). Defendants' next argument that "the pricing information was years outdated" is factually incorrect because "[m]uch of the information was current when the Harveys took it," and legally irrelevant because "historical business information has economic value where … a competitor can use the information to target customers." (AOB at 21; Opinion at 52–53). Similarly, Defendants' argument that the safety data sheets, technical data sheets, and product labels are not trade secrets because they are "publicly available" should be rejected because compilations of public information can be trade secrets and are in this case. (AOB at 22); *Beard Rsch.*, 8 A.3d at 594.

Finally, Defendants' reliance on *Mallet & Co. v. Lacayo* is misplaced. 16 F.4th 364 (3d Cir. 2021). In *Mallet*, the Third Circuit vacated a preliminary injunction because the district court simply listed "thirteen broad categories" of information and held "[a]t least some of the [] information in question" was trade secret. *Id.* at 381–82. Here, the Court of Chancery "adequately identified" every misappropriated trade secret and analyzed "evidence tying the Defendants' conduct to the taking of those trade secrets." *Id.* at 388; (Opinion at 48–55). Further, unlike in *Mallet*, Arxada's trade secrets claim relies on particular trade secrets, not "general know-how." *Id.* at 386.

ii. ET Took "Comprehensive" Measures to Protect Its Trade Secrets.

a. Question Presented.

Whether the Court of Chancery correctly found ET adequately protected its trade secrets.

b. Scope of Review.

This Court reviews the Court of Chancery's finding that ET adequately protected its trade secrets for clear error. *SmithKline*, 766 A.2d at 448.

c. Merits of Argument.

A trade secret under DUTSA must "have been subject to adequate efforts at protection." (Opinion at 47) (citing 6 *Del. C.* § 2001(4)). This requirement "is not a high bar." *Brightstar Corp. v. PCS Wireless, LLC*, 2019 WL 3714917, at *7 (Del. Super. Ct. Aug. 7, 2019). Defendants argue the Court of Chancery clearly erred because it "cherry-picked" facts and testimony to find ET "used reasonable efforts to protect [the] trade secrets." (AOB at 16). But, the Court of Chancery reached its decision, in part, because *Mike himself represented* that ET takes "all actions reasonably necessary and all actions common in the industry to maintain and protect … the secrecy, confidentiality and value of trade secrets and other confidential information" when he sold ET to Arxada. (A0135; A0755–56-(15:24–16:21)). Further, before Mike sold ET, Mike was "very protective" of the formulas (A1317-(577:5–6)), "always … engrained it into" his employees that "we must keep them secret" (A1304–05-(564:24–565:6)), and ensured access to the formulas was "very, very limited." (A1313-(573:19–22)).

Defendants mischaracterize the evidence of protection. ET maintains its formulas and spreadsheets in Chempax, a restricted-access system with internal access controls. (A1236–37-(496:18–497:7); A1232-(492:6–16); A0760-(20:3–12); A1312-(572:5–8)). ET also: (i) trains its employees on the confidentiality of formulas (A1304-(564:8–16); A1238-(498:5–13); A1311–12-(571:24–572:10)); (ii) restricts digital access to its systems with password and multi-factor authentication requirements (B0278; B0447; (A1521-(781:5–12)); (iii) restricts physical access with keycard gates (A1303-(563:10–17)); (iv) shreds sensitive documents (A1309-(569:8–20)); A1237-(497:8–10)); (v) prohibits on-site photography (A1309–10-(569:21–570:10)); and (vi) uses confidentiality agreements with employees, including Mike and Phil. (A0152; B0266–67; B0225). These efforts easily satisfy the protection requirement.

Defendants' arguments to the contrary are incorrect and do not establish clear error. *First*, Defendants' argument that ET "never trained any employees on confidentiality" is just flatly incorrect. (AOB at 16); *see supra* at 28. *Second*, Defendants argue ET "never required the vast majority of employees to sign any kind of confidentiality agreements." (AOB at 16). However, Arxada offered evidence that employees—including Mike and Phil—were subject to confidentiality agreements. *See supra* at 28. *Third*, Defendants' argument that ET "never distributed policies about the treatment of confidential information" is incorrect (AOB at 16); ET informed employees that use of personal emails was restricted "for security reasons" (B0445) and informed employees they could not download "Confidential Business Information" without approval. (B0013; *see also* B0001). And *fourth*, Defendants disingenuously argue Arxada "never once asked Defendants to return or destroy" the misappropriated trade secrets. (AOB at 17). Arxada *did ask* Defendants if they possessed any ET property, and *each of them lied* and said they did not. (A0928-(188:13–16); B0436; B0418; B0713; A1020-(280:12–21); B0431; A1174-(434:8–14); B0499–500).

iii. Defendants Misappropriated ET's Trade Secrets and Used Them "Regularly" and "Extensively."

a. Question Presented.

Whether the Court of Chancery correctly found Defendants misappropriated and used ET's trade secrets.

b. Scope of Review.

This Court reviews the Court of Chancery's finding that Defendants misappropriated and used ET's trade secrets for clear error. *Levitt*, 287 A.2d at 673 (explaining findings of fact are reviewed for clear error).

c. Merits of Argument.

Defendants argue the Court of Chancery clearly erred in finding Defendants misappropriated ET's trade secrets because "[t]he court *never analyzed* whether a single Defendant ever actually used or disclosed the supposed trade secrets" and "there is no record evidence they did." (AOB at 22) (emphasis added). That is inaccurate.

The Court of Chancery specifically found "Capacity [] used the trade secrets to conduct its business, often acting through Aaron, Phil, or Mike" (Opinion at 59), and "Capacity [] used the formulas extensively" after "Aaron forwarded these formulas to Capacity's [] chemist." (Opinion at 25, 25 n.107; *see* B1556). Nothing more is required to affirm. *Oakwood Labs. LLC v. Thanoo*, 999 F.3d 892, 910 (3d

Cir. 2021) ("[T]he 'use' of a trade secret encompasses … 'assist[ing] or accelerat[ing] research or development.").

But there is much more. For example, in response to the question, "You did end up using those formulas. Isn't that right?," Aaron answered, "Yes." (A1178-(438:11–13)). Other examples abound: (i) Capacity copied at least 44 ET formulas into Capacity's formula database (B1661-62); (ii) Aaron downloaded the entire "safety review" folder onto his Capacity computer (B0712, "Accessed Files" sheet at rows 36–41); (iii) Capacity employees would ask Aaron for ET's documents (B0318); and (iv) Capacity used ET's formulas to manufacture Capacity's products. (A1161–62-(421:4–422:2)). *See supra* at 13–15.

Instead of addressing these points, Defendants misrepresent ET chemist (and former Capacity chemist) David Hird's ("Hird") trial testimony. Hird did *not* testify that "all of Capacity's products were developed from the 'ground up' 'based on publicly available sources.'" (AOB at 23). Hird's actual testimony was that "*all R&D that* [*he*] [*was*] *involved in* at Capacity was done from the ground up" and Capacity's development of "a nano product" was "based on publicly available sources." (A1292-(552:6–15)). His testimony had nothing to do with the ET formulas Capacity stole.

II. The Court of Chancery Correctly Held Mike Breached the SPA and Phil and Aaron Tortiously Interfered with the SPA.

A. Mike "Repeatedly" Breached the SPA.[2]

i. Question Presented.

Whether the Court of Chancery correctly found Mike breached the SPA.

ii. Scope of Review.

This Court reviews the Court of Chancery's finding that Mike breached the SPA for clear error. *Energy Transfer, LP v. Williams Companies, Inc.*, 346 A.3d 1089, 1112 (Del. 2023).

iii. Merits of Argument.

Defendants do not appeal the Court of Chancery's finding that Mike breached the SPA's employee non-solicitation and customer and supplier non-solicitation covenants. (Opinion at 74–77); *see supra* at 7–8; 13–15. Instead, Defendants argue the Court of Chancery clearly erred in finding Mike breached the SPA's non-competition covenant. (AOB at 27–29). Under this covenant, Mike cannot "engage in ***any activity*** or ***act in any manner*** … for the purpose of … assisting … any Person that engages in a Restricted Business." (A0153) (emphasis added). Critically, Defendants do not substantively dispute Mike (i) "sen[t] Phil and Aaron a master formula database of [ET] formulas"; (ii) "manag[ed] Capacity['s] []

[2] Defendants' argument that the restrictive covenants are unenforceable due to "broad geographic scope" is waived, having been raised for the first time on appeal. (AOB at 26); *Rosa*, 2025 WL 3200704, at *2 n.9.

laboratory operations”; and (iii) “work[ed] on the PAA registrations he covertly obtained so that Capacity [] eventually could use them to sell PAA products.” (Opinion at 71–72); *see supra* at 7–15. These findings are dispositive and cannot be addressed by Defendants on reply. *Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1264 (Del. 2012) (concurrence).

Defendants nevertheless argue the Court of Chancery clearly erred in finding Mike *further* breached this covenant by: (i) “providing Phil and Aaron with access to $4 million in seed funding for Capacity”; (ii) “giving Phil and Aaron a steady stream of business, technical, and regulatory advice on how to operate Capacity”; and (iii) “supervising Capacity [] employees.” (Opinion at 71–72); *see supra* at 13. Defendants’ sole argument for clear error is that the Court of Chancery “relied upon documentary exhibits” and “ignored” their contrary testimony. (AOB at 28). That the Court of Chancery did not find Defendants’ testimony credible is not clear error. *OptimisCorp*, 137 A.3d at 971 n.2.

B. Aaron and Phil Tortiously Interfered with the SPA.

i. Question Presented.

Whether the Court of Chancery correctly found Aaron and Phil tortiously interfered with the SPA.

ii. Scope of Review.

This Court reviews the Court of Chancery's findings that Aaron and Phil tortiously interfered with the SPA for clear error. *Bandera Master Fund LP v. Boardwalk Pipeline Partners, LP*, 2025 WL 3537343, at *21 (Del. Dec. 10, 2025).

iii. Merits of Argument.

Defendants argue the Court of Chancery clearly erred in finding Aaron and Phil tortiously interfered with the SPA because "Arxada presented no evidence that any of the Defendants actively participated in or induced Mike to breach." (AOB at 29).[3] That is inaccurate. Phil and Aaron coordinated their theft with Mike in 177 calls, totaling more than 27 hours of discussion (*see supra* at 12); Phil told Mike the 1,051 formulas Mike stole from ET were "a perfect fit" for Capacity['s] [] formula database (B0344); Aaron told Mike BlueTech's Oxy 5 "will dominate" (B0339; A1162-(422:16–20)) and marketed BlueTech-based products to ET customers (*see* B0364–80; B0385–408); Aaron agreed to lie that Capacity purchased BlueTech (B0359; A0847–48-(107:16–108:2)); Phil agreed to act as BlueTech's registered

[3] Defendants do not appeal the ruling that Capacity and BlueTech tortiously interfered with the SPA. (Opinion at 79–80).

agent (B0345); Aaron and Phil encouraged Mike's involvement at Capacity (*see, e.g.*, B0347); and when Mike sent Phil and Aaron information on ET customers Mike convinced to switch to Capacity, Phil responded, "We'll jump on these right away." (B0293); *see also supra* at 7–15. The Court of Chancery did not commit clear error in finding Aaron and Phil tortiously interfered with the SPA.

III. The Court of Chancery Correctly Held Defendants Breached Their Fiduciary Duties to Arxada "in Multiple Ways."

The Court of Chancery's award of monetary damages and injunctive relief against Mike are fully supported by Arxada's DUTSA and SPA claims. At most, Defendants' fiduciary duty arguments affect the injunction against Phil, Aaron, Capacity, and BlueTech through March 2027.

A. Defendants' Argument Regarding Preemption of Arxada's Breach of Fiduciary Duty Claims Was Waived and Fails on the Merits.

i. Question Presented.

Whether the Court of Chancery correctly held Defendants waived their preemption argument.

ii. Scope of Review.

Under Delaware Supreme Court Rule 8, "[o]nly questions fairly presented to the trial court may be presented for review" absent plain error.

iii. Merits of Argument.

The Court of Chancery found this argument had been waived. (Opinion at 95). Although presented in their pretrial briefing (A0650–51), Defendants waived this argument by failing to include it in their post-trial briefing. *Oxbow Carbon & Minerals Hldgs., Inc. v. Crestview-Oxbow Acquisition, LLC*, 202 A.3d 482, 502 n.77 (Del. 2019). The Court of Chancery's ruling should be affirmed under Rule 8 alone.

Even if considered, Defendants' preemption argument fails. A claim is preempted under DUTSA only "if the same facts are used to establish all elements of both claims." *OverDrive, Inc. v. Baker & Taylor, Inc.*, 2011 WL 2448209, at *4 (Del. Ch. June 17, 2011). But here, the Court of Chancery held different facts supported Arxada's breach of fiduciary duty claims against Aaron and Phil. (Opinion at 96). Defendants misleadingly omit this analysis. (AOB at 24–25).

B. Mike, Aaron, and Phil Owed Fiduciary Duties to Arxada as a Matter of Law.

i. Question Presented.

Whether the Court of Chancery correctly held Mike, Aaron, and Phil owed fiduciary duties to Arxada.

ii. Scope of Review.

This Court reviews the Court of Chancery's "formulation and application of legal principles" *de novo*. *In re Columbia Pipeline Grp., Inc. Merger Litig.*, 342 A.3d 324, 354 (Del. 2025).

iii. Merits of Argument.

Defendants argue they owed no fiduciary duties to Arxada because they were employed by ET, Arxada's wholly-owned subsidiary. (AOB at 31). Under Delaware law, however, key employees owe fiduciary duties not only to the company they serve, but also to its stockholders. *Hampshire Grp., Ltd. v. Kuttner*, 2010 WL 2739995, at *11 (Del. Ch. July 12, 2010). Because Arxada is ET's sole stockholder, Defendants' fiduciary obligations necessarily extended to Arxada. The Court of Chancery correctly held Defendants' duties ran to the *enterprise* they were entrusted to manage and protect, including Arxada. (Opinion at 85–89). This result follows from settled agency principles: an agent is a fiduciary and owes its principal duties of loyalty and good faith. *Science Accessories Corp. v. Summagraphics Corp.*, 425 A.2d 957, 962 (Del. 1980).

Defendants argue "[a]ny duty that Mike, Aaron, or Phil may have owed to ET expired when their employment ended." (AOB at 32). This argument contradicts settled law: "[e]mployees breach their duty of loyalty … by … disclosing or using the employer's trade secrets for any purpose adverse to the employer's interest, *including after termination of the employment relationship*." (Opinion at 85, n.312) (quoting the Restatement (Third) of Employment Law, § 8.01(a)) (emphasis added). Defendants' cited case—*Touch of Italy Salumeria & Pasticceria, LLC v. Bascio*, 2014 WL 108895 (Del. Ch. Jan. 13, 2014)—is irrelevant because it did not involve trade secret misappropriation. (AOB at 32).

C. Mike, Aaron, and Phil Breached Their Fiduciary Duties to Arxada.

i. Question Presented.

Whether the Court of Chancery correctly found Mike, Aaron, and Phil breached their fiduciary duties to Arxada.

ii. Scope of Review.

This Court reviews the Court of Chancery's findings that Mike, Aaron, and Phil breached their fiduciary duties to Arxada for clear error. *In re Mindbody, Inc., S'holder Litig.*, 332 A.3d 349, 382 (Del. 2024).

iii. Merits of Argument.

The Court of Chancery found Defendants breached their fiduciary duties by: (i) "misappropriating over 25,000 documents, including over 1,000 formulas"; (ii) "using the information to start and operate Capacity"; (iii) and "acting in secret and concealing their activities." (Opinion at 90); *see supra* at 7–15. The Court of Chancery further found Mike breached his fiduciary duties by: (i) "advis[ing] customers on how to negotiate against [ET]"; and (ii) "work[ing] with BlueTech to terminate its distribution agreement with [ET]," thereby "depriving [ET] … of its right of first refusal for BlueTech's EPA registrations." (Opinion at 90); *see supra* at 7–8.

Defendants' rationalization of their misconduct does not justify reversal. For example, Defendants' argument that "[t]he vast majority of conduct the court found breached Mike's fiduciary obligations occurred *after* he was fired" is irrelevant. *See* *supra* at 39. Defendants next fault the Court of Chancery for disbelieving their testimony that Mike's discussions with ChemStation were undertaken to help ET, and he did not encourage BlueTech to terminate the distribution agreement. (AOB at 33); *see supra* at 7–8. But, this Court owes credibility determinations its greatest deference. *OptimisCorp*, 137 A.3d at 971 n.2. Defendants identify no clear error in the Court of Chancery's weighing of Defendants' credibility.

In arguing they may "us[e] [ET's] information to start a competing business," Defendants misapply *Science Accessories*, 425 A.2d at 965, which actually supports Arxada. There, this Court explained "[t]he right to make arrangements to compete" does not protect defendants who "misappropriat[e] [] trade secrets." *Id.* Delaware forbids fiduciaries from pocketing corporate assets for later use upon dismissal, and Defendants mischaracterize their wrongdoing as preparation to compete. Defendants' related argument that "Capacity and [BlueTech] did not aid and abet a breach of fiduciary duty, because no such duty or breach was proven" also fails. (AOB at 34).

IV. The Court of Chancery Correctly Held Arxada Is Entitled to Its Compensatory, Exemplary, and Injunctive Damages and Attorneys' Fees.

A. The Court of Chancery's Award of Avoided-Cost Damages is Legally Sound.

i. Question Presented.

Whether the Court of Chancery correctly awarded Arxada avoided-cost damages.

ii. Scope of Review.

This Court reviews the Court of Chancery's "formulation and application of legal principles" *de novo*. *Columbia*, 342 A.3d at 354.

iii. Merits of Argument.

On Arxada's trade secrets claim, the Court of Chancery awarded lost profits of $0.9 million (i.e., actual losses) and avoided costs of $24,224,125.59 (i.e., unjust enrichment). (Opinion at 62–64). For the first time on appeal, Defendants argue Arxada's compensatory damages: (i) are "inapplicable as a matter of law" because they incorrectly "reflect[] the total value of [the] trade secrets"; and (ii) are "wrongful double recovery" "in light of the permanent injunction." (AOB at 35–36). These arguments have been waived because they were not raised below. *Rosa*, 2025 WL 3200704, at *2 n.9.

Even if not waived, Defendants' arguments fail on the merits. DUTSA "[d]amages can include both the actual loss caused by misappropriation *and* the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss." 6 *Del. C.* § 2003(a) (emphasis added). The Court of Chancery adhered to these undisputed statutory principles in awarding lost profits *and* avoided costs as damages. (Opinion at 62–64); (A1670–71-(930:15–931:24) (Defendants' damages expert conceding that "one component of unjust enrichment is avoided costs")).

With nowhere to turn, Defendants advance a "windfall" argument attacking a remedy the Court of Chancery never awarded: the full market value of ET's trade secrets in the form of a reasonable royalty. The Court of Chancery adopted Dr. Howard's narrower avoided-cost analysis (Opinion at 62–64), which is conservative because it ignores "the commercial context in which the misappropriation occurred." *University Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 518, 538 (5th Cir. 1974). Such damages are indisputably grounded in trade secret jurisprudence. *PPG Industries Inc. v. Jiangsu Tie Mao Glass Co.*, 47 F.4th 156, 163 (3d Cir. 2022); *GlobeRanger Corp. v. Software AG U.S., Inc.*, 836 F.3d 477, 499–500 (5th Cir. 2016).

Defendants' authorities confirm the Court of Chancery applied an appropriate measure of damages. *University Computing* identifies two distinct measures for trade secret misappropriation: (1) the plaintiff's loss when the defendant has destroyed the value of the trade secret; and (2) the value of the trade secret to the defendant. *University Computing*, 504 F.2d at 535–38. The latter includes the development costs the defendant avoided through misappropriation and is "usually the accepted approach" when the trade secret remains valuable to the plaintiff. *Id.* at 536; Restatement (Third) of Unfair Competition § 45 cmt. f. That is the case here.

Defendants' reliance on *Softel, Inc. v. Dragon Med. & Sci. Commc'ns, Inc.*, 118 F.3d 955 (2d Cir. 1997), is unavailing because *Softel* involved a reasonable royalty (*id.* at 969), and regardless, *Softel* misinterprets *University Computing*, which says a reasonable royalty *is* appropriate when the trade secret has *not* been destroyed. 504 F.3d at 536. Likewise, Judge Moore's dissent in *Caudill* conflates the plaintiff's loss with the defendant's gain. *Caudill Seed & Warehouse Co. v. Jarrow Formulas, Inc.*, 53 F.4th 368, 396 (6th Cir. 2022) (Moore, J., dissenting). *University Computing* recognizes where, as here, the trade secrets remain valuable, avoided-cost damages are a proper measure of the benefit wrongfully obtained by Defendants.[4]

Finally, the Court of Chancery did not award "wrongful double recovery" when it awarded Arxada damages *and* enjoined Aaron and Phil from using ET's trade secrets until March 13, 2027. (Opinion at 62–64, 94). Defendants ignore that DUTSA expressly allows this dual remedy. 6 *Del. C.* § 2002(a) ("[T]he injunction may be continued … to eliminate commercial advantage that otherwise would be derived from the misappropriation."). And, importantly, "[i]t is often appropriate to

[4] *SIGA Techs., Inc. v. Pharmathene, Inc.*, 132 A.3d 1108 (Del. 2015), has nothing to do with damages for trade secret misappropriation. (AOB at 38). And Defendants' quote is not in the Restatement (Third) of Unfair Competition. (AOB at 36).

enjoin the defendant's use of a trade secret only for the period of time that would have been required for the defendant to acquire the information by proper means," and "[i]n such cases, however, the *defendant remains liable for any development or reverse engineering costs* saved as a result of the appropriation[.]" Restatement (Third) of Unfair Competition § 45, cmt. f (emphasis added).

Defendants' caselaw does not hold otherwise. *Syntel* is distinguishable because there, unlike here, the defendants were indefinitely enjoined from using the trade secrets. *Syntel Sterling Best Shores Mauritius Ltd. v. Trizetto Grp., Inc.*, 68 F.4th 792, 811 (2d Cir. 2023). Further, *Stayton* is an irrelevant medical negligence case. *Stayton v. Del. Health Corp.*, 117 A.3d 521 (Del. 2015).

B. Dr. Howard's Damages Opinion and Testimony Was Credible and "Conservative."

i. Question Presented.

Whether the Court of Chancery correctly found Dr. Howard was credible.

ii. Scope of Review.

This Court reviews the Court of Chancery's decision to admit and credit Dr. Howard's opinion and testimony for abuse of discretion. *Tumlinson v. Advanced Micro Devices, Inc.*, 81 A.3d 1264, 1268 (Del. 2013).

iii. Merits of Argument.

Defendants incorrectly argue Dr. Howard is unqualified because of his purported "lack of experience with agricultural splash blending." (AOB at 39). An expert may testify where his "education, training or general experience demonstrates sufficient knowledge of general principles, even if the expert does not have particular experiences with the exact issue under examination." *Bell Sports, Inc. v. Yarusso*, 759 A.2d 582, 590 (Del. 2000). Dr. Howard easily satisfies this standard: he holds a Ph.D. in Inorganic Chemistry (A1493-(753:3–8)) and spent thirty years as a research scientist at Dow Chemical Company, developing blended chemical formulas (A1498–1500-(758:18–760:7)) and working across the entire product-development lifecycle. (A1494-(754:1–17); A1496–98-(756:3–758:15)).

Defendants next argue Dr. Howard's opinions were "unreliable" and "not scientifically verified" because of his reliance on Joseph Donabed ("Donabed"), ET's Director of R&D, and Hird. (AOB at 39). But Dr. Howard "is permitted wide latitude to offer opinions … that are not based on firsthand knowledge." *Daubert v. Merrell Dow. Pharms., Inc.*, 509 U.S. 579, 592 (1993); *see also Smart Sand, Inc. v. US Well Servs., LLC*, 2021 WL 2396246, at *2 (Del. Super. Ct. June 1, 2021). Donabed and Hird were uniquely qualified to provide input to Dr. Howard; they spent a combined 17 years at ET leading or assisting in the development of its formulas. (A1301-(561:2–4); A1207-(467:6–20)).

Defendants also argue Dr. Howard "was simply a mouthpiece for Arxada" who adopted Donabed's and Hird's development estimates "without validating [their] work or performing his own analysis." (AOB at 39). Defendants are wrong. Dr. Howard testified he reviewed the development estimates with Donabed and Hird, assessed their reasonableness using his own expertise, and concluded their development estimates were reliable and conservative. (A1523–27-(783:13–787:6); A1325–26-(585:7–586:3)).

Defendants fault Donabed and Hird for not "review[ing] any documents in devising their estimated development hours" or "consult[ing] with sales or marketing personnel to validate their estimated commercialization hours." (AOB at 40). To the former, there are no ET documents that track the time it takes to develop a formula. (A1669-(929:1–21)). To the latter, Dr. Howard assessed the commercialized hours and found they were reasonable. (A1523–27-(783:13–787:6)).

Defendants further argue Dr. Howard "failed to apportion between trade secrets and non-trade secret information." (AOB at 41). The record directly refutes this contention. Dr. Howard expressly testified his avoided-cost calculation was limited to the trade secret formulas. (A1700–03-(960:2–963:4); A0274–80). Defendants fail to identify *any* component of Dr. Howard's calculation that included non-trade secret information and cannot attempt to do so in reply. *Ams.*, 51 A.3d at 1264.

Finally, Defendants remark that "Defendants' [] misappropriation did not diminish or reduce the value of ET's trade secrets." (AOB at 42). Arxada purchased ET for $450 million on the basis of ET's "expansive IP portfolio." (B0024). Those formulas are diminished in value because they are now permanently in the hands of a direct competitor. Regardless, Defendants miss the point: the appropriate measure of damages is "the value of the secret to the defendant." *University Computing*, 504 F.2d at 536.

C. Exemplary Damages Were Warranted Because Defendants' Conduct Was Willful and Malicious.

i. Question Presented.

Whether the Court of Chancery correctly awarded Arxada exemplary damages.

ii. Scope of Review.

This Court reviews the Court of Chancery's findings that Defendants' misappropriation of ET's trade secrets was willful and malicious for clear error. *Levitt*, 287 A.2d at 673. This Court reviews the Court of Chancery's decision to award exemplary damages for an abuse of discretion. *William Penn P'ship v. Saliba*, 13 A.3d 749, 758 (Del. 2011).

iii. Merits of Argument.

Willfulness requires "awareness, either actual or constructive, of ones conduct and a realization of its probable consequences." *Beard Rsch.*, 8 A.3d at 600. The record is replete with evidence that Defendants knowingly stole ET's trade secrets and covertly used them to compete with ET. In their final weeks at ET, Mike, Aaron, and Phil stole "the entire operational information of the [ET] Business." (A0278). They stole ET's formulas, the "lifeblood" of the company (A1304-(564:4–7)), and every other document they needed to source the formulas' raw materials (i.e., formulas, supplier information, and product labels), commercialize the formulas (i.e., safety data sheets and technical data sheets), and market the formulas to ET's customers (i.e., customer-specific data and pricing data). *See supra* at 23–25. As former employees, they knew exactly what they were taking and why: having just sold them to Arxada for $450 million, Mike schemed with Phil and Aaron to profit off ET's trade secrets at Capacity.

The Court of Chancery did not err in finding Defendants' misappropriation was malicious. (Opinion at 68–69). Malice requires "ill-will, hatred or intent to cause injury." *Beard Rsch.*, 8 A.3d at 600. Defendants intended to harm Arxada by using ET's trade secrets to compete directly and lure away its employees and customers. *Great Am. Opportunities, Inc. v. Cherrydale Fundraising, LLC*, 2010 WL 338219, at *28 (Del. Ch. Jan. 29, 2010) (holding that "lur[ing] away members of [plaintiff's] sales force and customer base" "alone" shows malice). Aaron's statement that beating ET's pricing was Capacity's "Mission Statement" (B0384) epitomizes their intent. If that were not enough, Capacity also launched a campaign to "lure away" employees and customers using misappropriated trade secrets. *See supra* at 7–9; 12–15. Defendants repeatedly articulated their ill-will toward Arxada, referring to Arxada and its employees as "evil," "brain-dead," "a-holes," a "scumbag company," "[b]ozos," and "a bunch of clowns". (B0381; B0410; B0313; B0413; B0352).

Finally, Defendants wholly ignore their bad faith spoliation of evidence throughout this litigation. None of the three Harveys produced the USB devices they used to steal ET's trade secrets. (A1174–75-(434:8–435:10); (A1473-(733:19–23); A1472-(732:6–732:12)). Mike set his phone to automatically delete text messages during litigation, eliminating thousands of communications. (A0853–54-(113:22–114:1)). This spoliation supports exemplary damages because it demonstrates malicious intent to conceal *and continue the wrongdoing*. *Kemezy v. Peters*, 79 F.3d 33, 35 (7th Cir. 1996).

The Court of Chancery acknowledged "[t]his case could warrant a maximum amount" of exemplary damages but nevertheless elected to be "conservative and impose the same amount awarded for compensatory damages." (Opinion at 69). Its conservative award of exemplary damages—roughly 11% of what Arxada paid to acquire ET—is less than what is allowed by statute (6 *Del. C.* § 2003(b)), and is not an abuse of discretion "given the magnitude of the misappropriation, the damage to [ET], and the need to discourage comparable acts of misappropriation." (Opinion at 69).

D. The Permanent Injunction Over Mike Properly Tracks the SPA's Noncompetition Provision.

i. Question Presented.

Whether the Court of Chancery correctly awarded Arxada injunctive relief prohibiting Mike from "developing" certain products.

ii. Scope of Review.

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

iii. Merits of Argument.

Defendants argue the Court of Chancery abused its discretion in entering a permanent injunction that prohibits Mike from "developing" certain products until October 24, 2029. (AOB at 45–46); (*see* Ex. B at 7–8). Defendants misread the SPA's noncompetition provision. The SPA's noncompetition provision provides Mike cannot "engage in any activity or act in any manner … *for the purpose of* establishing [or] operating … a Restricted Business." (A0153) (emphasis added). If Mike were, for example, developing PAA products, that would be an impermissible act done "*for the purpose of* establishing [or] operating" a Restricted Business. *Id.* (emphasis added). Defendants' argument that Mike is only barred from "engaging in a 'Restricted Business'" seeks to deprive Arxada the benefit of the parties' bargain. (AOB at 45).

E. Arxada's Attorneys' Fees Are Reasonable.

i. Question Presented.

Whether the Court of Chancery correctly awarded Arxada attorneys' fees.

ii. Scope of Review.

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

iii. Merits of Argument.

Defendants argue the Court of Chancery abused its discretion in awarding Arxada its attorneys' fees because Arxada failed to show customary rates, reasonable hours, and appropriate staffing. (AOB at 47–48). None of Defendants' arguments have merit.

Baker McKenzie charged Arxada its standard hourly rates less a 10% discount. (A1979). These rates are customary and lower than those approved in previous cases. *In re TransPerfect Global, Inc.*, 2021 WL 1711797, at *23–24 (Del. Ch. Apr. 30, 2021). Likewise, Baker McKenzie's hours are reasonable: the "parties produced some 94,000 documents"; "took thirty-one depositions"; briefed "a motion to dismiss, a motion for preliminary injunction, two motions for contempt, and four motions in limine"; litigated "a three-and-a-half day trial"; and did "[p]ost-trial briefing and argument." (Ex. A, ¶3). Indeed, "[D]efendants made the litigation more difficult than it needed to be by actively concealing their activities and spoliating evidence." (*Id.*). Defendants' comparison of its fees to Arxada's fees is "unreliable on its face" because it is an "unsubstantiated and grossly apples-to-oranges" comparison. *Transperfect*, 2021 WL 1711797, at *26.

Lastly, Arxada's staffing decisions should not be second guessed absent an egregious problem. *Weil v. VEREIT Operating Partnership, L.P.*, 2018 WL 834428, at *13 (Del. Ch. Feb. 13, 2018). Arxada's use of junior and senior partners for 60% of the work does not present such a problem. *See Concord Steel, Inc. v. Wilmington Steel Processing Co. Inc.*, 2010 WL 571934, at *4 (Del. Ch. Feb. 5, 2010).

CONCLUSION

Defendants' conspiracy to deprive Arxada of the value of the ET acquisition was as sweeping as it was unlawful: sell ET for top dollar; steal everything to replicate and compete with ET; obstruct the ensuing lawsuit; and hope to pay only nominal damages. This Court should affirm the judgment in full and hold Defendants accountable for their misconduct.

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