IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

C3.AI INC.,	)	
	)	
Plaintiff,	)	C.A. No.: N23C-11-106 EMD CCLD
	)	
v.	)	
	)	
CUMMINS, INC.,	)	
	)	
Defendant.	)	

Submitted: August 10, 2026
Decided: November 23, 2026

Upon Defendant's Renewed Motion for Judgment as a Matter of Law
DENIED in part and GRANTED in part

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DAVIS, P.J.

I. INTRODUCTION

This is a civil action assigned to the Complex Commercial Litigation Division of the Superior Court. C3.ai, Inc. (the "Plaintiff" or "C3") claims that Defendant Cummins, Inc. (the "Defendant" or "Cummins") misappropriated certain trade secrets and, in doing so, breached the parties' Master Subscription and Services Agreement (the "MSSA"). Cummins subsequently asserted counterclaims for (i) breach of contract and (ii) declaratory judgment as to ownership of the trade secrets. The Court presided over a jury trial in this civil action from May 11, 2026, through May 19, 2026. At the conclusion of C3's case-in-chief, Cummins moved for judgment as a matter of law pursuant to Rule 50(a) of the Delaware Superior Court Civil Rules.

Presently before the Court is Cummins' Renewed Motion for Judgment as a Matter of Law (the "Motion") brought pursuant to Civil Rule 50(b), which was filed on June 3, 2026. C3 filed its opposition brief on June 12, 2026. Cummins filed its reply brief on June 30, 2026. The Court held oral arguments on the Motion on August 10, 2026. At the conclusion of the hearing, the Court took the Motion under advisement.

For the reasons set forth below, the Motion is **GRANTED** in part and **DENIED** in part.

II. BACKGROUND[1]

On November 16, 2023, C3 commenced this action against Cummins asserting claims for (i) misappropriation of trade secrets; (ii) violation of the Delaware Uniform Trade Secret Act; and (iii) breach of contract.[2] C3 alleged that Cummins misappropriated certain trade secrets of C3 by acquiring, disclosing, and utilizing the trade secrets beyond the scope of any related agreement.[3] C3 further asserted that the misappropriation of the trade secrets constitutes a

[1] The Court assumes the reader's familiarity with the general facts and allegations involved in this action.
[2] Complaint ("Compl.") (D.I. No. 1) ¶¶ 86-106.
[3] *Id*. ¶ 81.

separate breach of several agreements entered into by the parties.[4] Cummins subsequently asserted counterclaims for (i) breach of contract and (ii) declaratory judgment as to ownership of the trade secrets.[5] By the time trial commenced, the remaining claims in the action were: (i) misappropriation of trade secrets brought pursuant to the federal Defend Trade Secrets Act ("DTSA") against Cummins (the "DTSA Claim"); (ii) breach of contract against Cummins; (iii) Cummins' declaratory judgment claim as to ownership of the trade secrets; and (iv) breach of contract against C3.[6]

Trial commenced on May 11, 2026, and concluded on May 19, 2026. Following the conclusion of C3's case-in-chief, Cummins orally moved for Judgment as a Matter of Law pursuant to Civil Rule 50(a) as to C3's Claims. Relevant here, Cummins argued that it was entitled to judgment as a matter of law on the DTSA Claim concerning both liability[7] and damages.[8] C3 opposed the motion in its entirety. The Court granted in part and denied in part the motion.[9]

On May 19, 2026, the jury returned its verdict. The jury found that Cummins misappropriated the following trade secrets under the DTSA: (i) engine clustering ("TS1"); (ii) regression models ("TS2"); (iii) performance simulation ("TS3"); (iv) optimization ("TS4"); and (v) trial code modules ("TS9").[10] Accordingly, the jury awarded $2,000,000 each for TS1-TS4

[4] *See id*. ¶ 101.
[5] Defendant Cummins, Inc.'s Answer and Amended Counterclaims to First Amended Complaint ("Am. Answer") (D.I. No. 255) ¶¶ 31-43.
[6] *See generally* Pretrial Stipulation and (Proposed) Order (D.I. No. 468).
[7] *See* May 15 Tr., 67:1-9.
[8] *See* May 15 Tr., 73:12-13.
[9] The Court granted the motion as to unjust enrichment and exemplary damages under the DTSA.
[10] *See* Special Verdict Form Signed by Foreman on 05-19-26 ("Verdict Form") (D.I. No. 581).

and an additional $15,300,000 for TS9.[11] The jury further found that Cummins breached the MSSA, but awarded no damages.[12]

Following entry of the judgment, Cummins filed the Motion. On August 10, 2026, the Court heard oral argument and took the Motion under advisement.

III. STANDARD OF REVIEW

Civil Rule 50(b) provides:

> Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by service and filing not later than 10 days after entry of judgment. A motion for a new trial under Rule 59 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned, the Court may, in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the Court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial.[13]

In deciding a motion brought pursuant to Civil Rule 50(b), "[j]udgment as a matter of law is appropriate if there is no legally sufficient evidentiary basis for a reasonable jury to find for the non-moving party.[14] "[T]he Court must view the evidence and draw all reasonable inferences in a light most favorable to the non-moving party. The moving party bears the burden of demonstrating both the absence of a material fact and entitlement to judgment as a matter of law."[15]

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[11] *See id*.
[12] *See id*.
[13] Super. Ct. Civ. R. 50(b).
[14] *LCT Capital, LLC v. NGL Energy Partners LP,* 249 A.3d 77, 89 (Del. 2021) (internal citations omitted).
[15] *Id*. at 90.

IV. DISCUSSION

A. THE MOTION IS DENIED AS TO LIABILITY.

Cummins argues that it is entitled to judgment as a matter of law on liability as to the DTSA claim. Cummins asserts that: (i) C3 failed to prove any valid trade secret;[16] (ii) C3 failed to prove misappropriation;[17] and (iii) C3 failed to prove it owned the FEO Trial Application ("FEOA").[18] In response, C3 claims that the record evidence on trade secret validity, misappropriation, and ownership provides a sufficient basis for the jury's findings.[19] Each of these issues is addressed in turn below.

1. There is sufficient evidence to support the jury's finding on trade secret validity.

Under the DTSA, a valid trade secret must be established. Pursuant to the DTSA, a trade secret constitutes information that (i) derives "independent economic value, actual or potential and (ii) the owner took 'reasonable measures' under the circumstances to keep the secret."[20] The trade secret must derive such value specifically and not from being "generally known" or "readily ascertainable."[21] Moreover, at trial, the trade secrets must be identified with sufficient particularity.[22]

Cummins argues that C3's trial identification of the trade secrets "falls far short of the standard for identifying a trade secret with specificity under the DTSA."[23] Cummins asserts that

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[16] Defendant Cummins Inc.'s Rule 50(b) Motion for Judgment as a Matter of Law ("Def. Mot.") (D.I. No. 588) at 2.
[17] *Id*. at 5.
[18] *Id*. at 8.
[19] Plaintiff C3.ai, Inc.'s Opposition to Defendant Cummins Inc.'s Post-Trial Rule 50(b) Motion for Judgment as a Matter of Law ("Pl. Opp'n.") (D.I. 592) at 2-8.
[20] *See, e.g., Agilent Techs., Inc. v. Kirkland*, 2010 WL 610725, at *21 (Del. Ch. Feb. 18, 2010); *Savor, Inc. v. FMR Corp.*, 2004 WL 1965869, at *7 (Del. Ch. July 15, 2004); *Religious Tech. Ctr. v. Netcom On-Line Commc'n Servs., Inc.*, 923 F.Supp. 1231, 1253 (N.D. Cal. 1995).
[21] 18 U.S.C. § 1839(3)(B).
[22] *See Olaplex, Inc. v. L'Oreal USA, Inc.,* 855 F.App'x 701, 712 (Fed.Cir. 2021).
[23] Def. Mot. at 2.

C3's description of TS9 as "the entire [FEOA] code" is insufficient for purposes of the DTSA.[24] Cummins further states that the "same problem afflicts TS1-4."[25] Moreover, Cummins maintains that "[e]ven if the [trade secrets] were identified with particularity, C3 presented legally insufficient evidence to prove that they were not readily ascertainable."[26]

In response, C3 argues that it sufficiently identified the trade secrets at trial.[27] C3 claims that it "provided detailed technical descriptions of each trade secret…."[28] C3 also asserts that it set forth sufficient evidence on the issue of readily ascertainable.[29]

The Court finds that C3 adequately identified its trade secrets at trial. Qiwei Li and Dr. Vijay Madisetti testified at length as to a description of the trade secrets. Both witnesses explained the trade secrets with reference to technical documents and key portions of the source code.[30] Mr. Li and Dr. Madisetti walked the jury through each trade secret and explained how each worked within the entirety of the FEOA.[31] As such, the Court finds that C3's trial description of the trade secrets was adequate.

Moreover, the Court finds that C3 presented sufficient evidence on the issues of "generally known" and "readily ascertainable" to support the jury's verdict. Contrary to Cummins' assertion, Mr. Li and Dr. Madisetti addressed the issue of "generally-known" by explaining that open-source coding was used in connection with the FEOA, but was customized such that it would allow the FEOA to operate.[32] For example, Dr. Madisetti testified that while

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[24] *See id*. at 2-4.
[25] *Id*. at 4.
[26] *Id*. at 5.
[27] *See* Pl. Opp'n. at 6.
[28] *Id*.
[29] *See id*. at 2-5.
[30] *See, e.g.,* JTX-0229; JTX-0082; May 12 Tr. 200:22-202:22, 206:16-208:12, 210:8-211:22; May 13 Tr. 158:9-159:2.
[31] *See, e.g.*, May 12 Tr. 200:22-202:22, 206:16-208:12, 210:8-211:22.
[32] *See, e.g.,* May 13 Tr. 177:20-178:6.

C3 did not invent the K-means algorithm that was incorporated in TS1, implementing it in the application required sophisticated feature analysis to handle "thousands of variables" and "billions of rows" of data.[33] For TS2, Dr. Madisetti testified that C3's approach applied a separate regression model to each cluster—an approach that performed better than the prior industry approach of using the same regression model for all clusters, and differed from the approach previously used by Cummins before engaging C3.[34] For TS3-4, evidence showed that C3 developed those modules almost entirely from scratch.[35] Finally, Dr. Madisetti testified that TS9 includes implementation details of C3 proprietary algorithms, models, and data processing pipelines in a manner that was not generally known.[36]

As to readily ascertainable, Mr. Li and Dr. Madisetti both explained C3's custom implementations.[37] Additionally, Mr. Li and Dr. Madisetti testified that Cummins continued to have great difficulty in "replicating" the FEOA even after its software engineers reviewed the source code.[38]

Based on the above, C3 set forth sufficient evidence to support the jury's finding that the trade secrets were valid. Accordingly, the Motion is **DENIED** based on trade secret validity.

2. There is sufficient evidence to support the jury's finding on misappropriation.

Under the DTSA, misappropriation constitutes use or disclosure without authorization.[39] Federal courts have interpreted the term "use" expansively.[40]

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[33] *Id*.
[34] May 13 Tr. 191:10-193:3.
[35] May 13 Tr. 202:9-13.
[36] May 13 Tr. 158:9-159:2, 159:14-161:1, 201:23-221:14.
[37] May 12 Tr. 230:8-12, 231:15-232:10; May 13 Tr. 161:11-162:13, 180:4-181:4, 191:10-193:18, 202:1-13, 218:23 221:14, 224:15-225:14.
[38] *Id*.
[39] 18 U.S.C. § 1839(5).
[40] *See Oakwood Labs. LLC v. Thanoo*, 999 F.3d 892, 910 (3d. Cir. 2021).

Cummins argues that C3 failed to provide sufficient evidence on misappropriation to support the jury's finding that Cummins misappropriated C3's trade secrets.[41] Cummins asserts that C3 presented no evidence of acquisition of the trade secrets by improper means or code copying.[42] In response, C3 argues it "presented abundant evidence of misappropriation from which the jury reasonably found 'use' or 'disclosure' as defined by the DTSA."[43] C3 further maintains that Cummins position is "misdirection" because C3 never asserted acquisition by improper means or code copying.[44]

The Court finds that C3 presented sufficient evidence of misappropriation to support the jury's finding on this issue. As an initial matter, the Court notes that C3 did initially allege code copying as the basis for its misappropriation claim.[45] However, as discovery progressed, C3's theory appeared to morph into a claim that Cummins misappropriated the trade secrets by improperly "using" the trade secrets to assist or accelerate research and development of its own Databricks platform.

To that point, C3 set forth sufficient evidence of improper use of the trade secrets. For example, C3 presented an email chain indicating that Cummins' "replicating" project was being done "to develop a solution similar to C3.AI solution" in Databricks.[46] Moreover, C3 set forth another email chain in which Cummins' employees were instructing its India team to "use most of the current code with [a] little bit of refactoring in it in [D]atabricks … so that way, you don't have to spend much time in building the new code for [FEOA]."[47] Finally, C3 presented the testimony of Dr. Archana Sahu, who testified that the India team used "C3 code" to "understand

[41] *See* Def. Mot. at 5-6.
[42] *See id*. at 6.
[43] Pl. Opp'n. at 7.
[44] *Id*.
[45] *See* Compl. ¶ 4.
[46] JX-1394.
[47] JX-1399.

functionality and what each function does" before starting their development work on the Databricks platform.[48]

Based upon the foregoing, the Court finds that C3 presented sufficient evidence to support the jury's finding as to misappropriation. Accordingly, the Motion is **DENIED** as to misappropriation.

3. There is sufficient evidence to support the jury's finding on ownership of the FEOA.

To establish ownership pursuant to the MSSA, C3 had to prove that the FEOA was "designed and developed solely" by C3.[49]

Cummins argues that no reasonable jury could have made a finding that C3 owned the FEOA within the meaning of the MSSA.[50] Cummins maintains that C3 admitted that Cummins subject-matter experts "contributed to the application's development, including to its use of clustering, regressions, simulation, and optimization."[51] Cummins further notes that the Trial Agreement required Cummins to contribute resources, including "proprietary know-how" to the FEOA.[52] Finally, Cummins asserts that C3's physical writing of the source code is insufficient to establish that C3 solely "designed and developed" the FEOA.[53]

In response, C3 argues that it presented sufficient evidence to support the jury's finding as to ownership of the FEOA.[54] C3 notes that Cummins "did not claim to be a joint developer of the [FEOA] until after C3 sued for trade secret misappropriation…."[55] Moreover, C3 asserts that

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[48] Sahu-Dep. 120:25 121:2, 122:14-15.
[49] JX-1, §IV.A.
[50] *See* Def. Mot. at 8.
[51] *Id*. at 8-9.
[52] *Id*. at 9.
[53] *Id*. at 10.
[54] *See* Pl. Opp'n. at 8.
[55] *Id*.

"Cummins ignores the evidence that explaining data, providing feedback, and validating the results is not joint development."[56]

The Court finds that C3 presented sufficient evidence to support the jury's finding as to ownership of the trade secrets. C3 set forth ample of evidence indicating that C3 "solely designed and developed" the FEOA and trade secrets encapsulated therein. For example, Mr. Li acknowledged that some contribution of Cummins employees was necessary for the successful design and development of the FEOA.[57] Mr. Li also testified that explaining data, providing feedback, and validating the results does not constitute joint development.[58] Moreover, Dr. Madisetti testified that "C3 engineers ... developed these trade secrets" during the trial period, and that C3 developed each asserted module and trade secret.[59]

The Court is skeptical of Cummins' joint-development defense. Aside from the fact that joint-development was first claimed after this lawsuit was initiated, the Court's skepticism arises from the fact that Cummins' patent application for the FEOA did not name a single C3 employee as an inventor.[60] Because the patent failed to name a single C3 employee, the patent seems to indicate that Cummins, not C3, "solely designed and developed" the FEOA. The evidence presented at trial, however, contradicted this assertion and is inconsistent with Cummins "joint-development" defense. Accordingly, the evidence suggests that at least one C3 employee would have contributed to the invention of the FEOA.

As such, the Court finds that C3 presented sufficient evidence to support the jury's finding as to ownership. Therefore, the Motion is **DENIED** as to ownership.

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[56] *Id*.
[57] *See* May 12 Tr. 202:18-206:15, 208:20-210:6, 212:13-213:6. 213:22-214:1.
[58] *Id*.
[59] May 13 Tr. 210:8-211:20.
[60] *See* May 11 Tr. 196:2-6, 196:18-22.

Based upon the foregoing, C3 presented sufficient evidence to support the jury's findings as to (i) trade secret validity; (ii) misappropriation; and (iii) ownership. Accordingly, the Motion is **DENIED** as to all liability issues raised.

B. THE MOTION IS GRANTED AS TO DAMAGES.

Cummins argues that it is entitled to judgment as a matter of law on damages as to the DTSA claim.[61] Cummins asserts that (i) the jury's award constitutes an impermissible double recovery;[62] (ii) C3's diminution-in-value damages are unsupported by the evidence;[63] and (iii) C3's lost profits are speculative.[64] In response, C3 argues that Cummins has failed to establish "double-counting," much less any basis to overrule the award based upon apportionment.[65] C3 maintains that "the record evidence for the jury's finding that a diminution-in-value calculation was appropriate was more than sufficient."[66] Finally, C3 asserts that it presented sufficient evidence of actual damages.[67]

1. Jury Instructions Relating to DTSA Damages

The jury instructions are important to the Court's decision on damages. The jury instructions, developed during the prayer conference, set forth the relevant law as to damages. Pertinent to this discussion, the Court instructed the jury as follows:

> ***Introduction:*** It is the duty of the Court to instruct you about the measure of damages. By instructing you on damages, the Court does not mean to suggest for which party the verdict should be rendered. If you find that C3 is not entitled to prevail on its trade secret misappropriation claims, then you do not need to address damages at all. However, if you find that C3 has proved one or more of its trade secret misappropriation claims, then you must determine the amount of damages, if any, established by C3.[68]

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[61] Def. Mot. at 10.
[62] *Id*.
[63] *Id*. at 11.
[64] *Id*. at 13.
[65] Pl. Opp'n. at 9.
[66] *Id*. at 12.
[67] *Id*. at 13.
[68] May 19 Tr. 125:16-126:5.

Apportionment: C3 must prove its damages, if any, on an individual trade secret basis or, if applicable, by groups of trade secrets.[69]

Compensatory Damages: "If C3 proves that Cummins misappropriated its trade secrets, then [C3] is entitled to recover damages for actual loss caused by the misappropriation."[70]

Actual Loss: The law provides for recovery of damages for C3's actual loss caused by any trade secret misappropriation. Actual loss is a measure of the harm caused to C3 as opposed to the gains or benefits to Cummins. In this case, C3 seeks to recover the following types of "actual loss" damages: Lost profits C3 proves that it would have made, if any, had there not been a misappropriation of the alleged trade secrets; diminution in value to the extent that C3 proves any trade secret misappropriation caused the value of C3's alleged trade secret to be permanently impaired.[71]

Loss Profit Damages Explained: C3 seeks to recover a type of actual loss called lost profits damages. Lost profits are the additional profits C3 proves that it would have made, if any, had Cummins not misappropriated the alleged trade secret. Lost profits can include both C3's past and future lost profits caused by the misappropriation. Lost profits are typically calculated by determining lost revenue, if any, and then deducting the incremental or avoided costs that would have been incurred in producing that lost revenue. Incremental or avoided costs are the costs associated with producing and selling the claimed lost sales volume.[72]

Diminution or Destruction of Trade Secret Value Damages Explained: C3 seeks to recover damages for the diminution or destruction of trade secret value as actual loss damages. To recover this type of damages, C3 must prove that Cummins' trade secret misappropriation caused the value of C3's trade secrets to be diminished or destroyed of. To decide the amount of such damages, you must first determine the value of C3's trade secrets before the misappropriation and after the misappropriation, and then calculate the difference in value caused by Cummins' misappropriation.[73]

[69] May 19 Tr. 126:7-9.
[70] May 19 Tr. 127:23-128:3.
[71] May 19 Tr. 128:5-17.
[72] May 19 Tr. 129:3-10.
[73] May 19 Tr. 129:12-130:1.

2. There is no legally sufficient evidentiary basis to support the jury's awarded damages.

The Court finds that there are three separate issues inherent in the jury's award that warrant a reduction in the total damages. First, the Court finds that the jury's award of $2,000,000 each for TS1-TS4 and an additional $15,300,000 for TS9 constitutes an impermissible double recovery. Second, the Court finds that C3's diminution-in-value damages constitute lost enterprise value damages that were "cloaked" as diminution-in-value damages when presented to the jury. The Court finds that, in any event, there is no sufficient evidentiary basis to award either diminution-in-value or lost enterprise value damages. Finally, the Court finds that C3's lost profit damages post-dating 2023 are speculative and warrant a reduction to the award. Accordingly, the Court reduces the jury's award to $1,493,032.

i. The jury's award constitutes an impermissible double recovery.

In the context of DTSA claims, federal courts have recognized the potential for overlapping or duplicative damages when an individual trade secret is encompassed within a larger trade secret.[74] To address this concern, federal courts have found that where a trade secret is encapsulated within a larger one, apportionment of the trade secrets is required.[75] Moreover, federal courts have found that a double recovery is impermissible.[76] Put simply, a double recovery constitutes the double counting of damages "for the same injury."[77]

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[74] *See Comet Techs. USA, Inc. v. XP Power, LLC,* 181 F.4th 988, 1002 (9th Cir. 2026) (Hamilton, J., concurring).
[75] *See Trinseo Europe GmbH v. Kellogg Brown & Root, L.L.C.*, 165 F.4th 399, 410 (5th Cir. 2026).
[76] *See Motorola Sols, Inc. v. Hytera Comm's Corp. Ltd.*, 108 F.4th 458, 490 (7th Cir. 2024).
[77] *Id*. at 470.

Cummins argues that the $23,300,000 jury award is an impermissible double recovery.[78] Cummins asserts that because the jury awarded $15,300,000 for TS9, "no reasonable jury could have awarded additional damages for TS1-4" as each is subsumed within TS9.[79]

In response, C3 argues that Cummins cannot establish that the jury double counted.[80] C3 claims that "the Verdict Form shows … that the jury awarded a separate amount for each trade secret as required by the form that Cummins proposed."[81] C3 further notes that "the jury found breach of contract but did not award additional damages beyond misappropriation…."

The Court finds that the jury's award of $23,300,000 constitutes an impermissible double recovery. As described above, the jury awarded $2,000,000 each for TS1-TS4 and an additional $15,300,000 for TS9.[82] However, pursuant to the apportionment theory presented by C3's damages expert, Jim Bergman, C3 assigned "a hundred percent value to [TS9] because it contains all the trade secrets."[83] It follows from this testimony that, if the jury were to award damages for the misappropriation of TS9, the jury could not award additional damages for the misappropriation of TS1-4 because such an award would constitute a double counting of damages for the same injury. That is precisely what occurred. Therefore, the Court finds that no reasonable jury[84] could have awarded additional damages for TS1-4.

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[78] Def. Mot. at 10.
[79] *See* Def. Mot. at 10-11.
[80] Pl. Opp'n. at 10.
[81] *Id*.
[82] *See* Verdict Form.
[83] May 14 Tr. 46:5-47:7.
[84] The Court notes that only itself and counsel are to blame for the confusing nature of the apportionment presentation. In hindsight, the Court should not have permitted Mr. Bergman to render the apportionment opinion presented.

ii. C3's diminution-in-value damages constitute lost enterprise value damages and are unsupported by the evidence.

Diminution-in-value "is an appropriate measure of damages only when the defendant has in some way destroyed the value of the [trade] secret."[85] Likewise, lost enterprise value damages are only available when a plaintiff's "business is permanently impaired."[86]

Cummins argues that C3 presented no evidence that the value of any trade secret was permanently impaired.[87] Cummins maintains that C3's only evidence as to diminution-in-value damages constitutes lost enterprise value damages.[88] To that point, Cummins asserts that C3 presented insufficient evidence of lost enterprise value.[89] C3 contends that it presented sufficient evidence of diminution-in-value of the trade secrets to support the jury's verdict.[90] C3 asserts that it set forth evidence establishing the licensing revenue from Cummins ceased due to misappropriation.[91]

The Court finds that C3's diminution-in-value evidence is insufficient to support the jury's verdict. The trial record is devoid of evidence indicating that the value of any trade secret was "in some way destroyed." To the contrary, C3 witnesses conceded that Cummins never publicly disclosed any trade secret.[92] More importantly, Mr. Bergman acknowledged that the trade secrets "still have value to C3 today."[93]

For his diminution-in-value theory, Mr. Bergman presented a calculation of lost "enterprise value," due to C3's inability to "reinvest" lost profits into C3's business.[94] The

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[85] *University Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 518, 535 (5th Cir. 1974).
[86] *US Dominion, Inc. v. Newsmax Media, Inc.*, 2025 WL 1092289, at *39 (Del. Super. Apr. 9, 2025).
[87] Def. Mot. at 11.
[88] *See id*. at 12.
[89] *See id*.
[90] Pl. Opp'n. at 12.
[91] *Id*.
[92] May 14 Tr. 105:13-15, 184:18-185:5.
[93] May 15 Tr. 30:11-31:4.
[94] May 14 Tr. 236:13-237:16; May 15 Tr. 31:11-33:13.

problem with this testimony is twofold. First, the Court notes that diminution-in-value damages concern a reduction in value of the trade secrets – not the business of C3. Therefore, C3's inability to reinvest in its business is not evidence of diminution-in-value of its trade secrets. Second, even when construing C3's diminution-in-value theory as a lost enterprise value theory, Mr. Bergman's testimony fails to establish that C3's business was permanently impaired because of the misappropriation.

Therefore, the Court finds that C3 failed to present sufficient evidence to support the jury's verdict as to diminution-in-value damages. Accordingly, the Court holds that no reasonable jury could have awarded diminution-in-value damages.

iii. C3's lost profit damages post-dating 2023 are speculative.

As explained to the jury, lost profits are one category of actual losses that are recoverable under the DTSA. Lost profits can be properly characterized as the plaintiff's actual loss – *i.e.*, the revenue the plaintiff would have earned but for the misappropriation.[95] To recover lost profits, a plaintiff is not required to prove such damages with "absolute precision … but mere speculation is insufficient."[96]

Cummins argues that "no reasonable jury could have awarded C3's lost profits" because the purported lost profits are speculative.[97] Cummins posits that C3's lost profits theory is based upon a series of assumptions that are contradicted by the events that actually took place.[98] For example, Cummins notes that Mr. Bergman's lost profits calculation assumed a continuous renewal of the MSSA through 2026.[99]

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[95] *See BioPoint, Inc. v. Dickhaut*, 110 F.4th 337, 349-350 (1st Cir. 2024).
[96] *Great Am. Opportunities, Inc. v. Cherrydale Fundraising, LLC*, 2010 WL 338219, at *23 (Del. Ch. Jan. 29, 2010).
[97] Def. Mot. at 13.
[98] *See id*. at 13-14.
[99] *See id*. at 13.

C3 argues that the record evidence for the jury's award of actual damages – *i.e.*, lost profits – was more than sufficient.[100] C3 notes that "Cummins was free to and did argue that there are no actual damages at all because Cummins would not have renewed the MSSA under any circumstances."[101] C3 states that Cummins' position runs contrary to the evidence based upon the fact "that Cummins continued to pursue an AI fuel economy application after its non-renewal [of the MSSA] and the fact that Cummins had such an application ready to go, but 'on hold.'"[102]

The Court finds that C3's lost profit calculation post-dating 2023 is speculative and, thus, insufficient to support the jury's verdict. The Courts notes several glaring problems associated with C3's presentation of its lost profit calculation.

First, Mr. Bergman's lost profit calculation assumed "that Cummins continued to pursue an AI fuel economy application after its non-renewal and the fact that Cummins had such an application ready to go, but "on hold."[103] Mr. Bergman based his assumption upon Cummins' projections of revenues it could have realized with a working FEOA.[104] The Court finds this assumption problematic as the record reflects that C3 never delivered a working FEOA.[105] As such, a lost profits opinion based upon what might have happened *if* C3 delivered a working FEOA is nothing but mere speculation or conjecture.

Second, Mr. Bergman significantly inflated his lost profits calculation. Mr. Bergman rendered his opinion as to lost profits based upon the original MSSA Order Form's rates, despite the fact that the parties subsequently modified the MSSA to provide Cummins with a $800,000

[100] Pl. Opp'n. at 13.
[101] *Id*.
[102] *Id*.
[103] May 14 Tr. 222:3-18; May 15 Tr. 10:11-19.
[104] May 14 Tr. 231:10-232:9.
[105] May 15 Tr. 45:22-46:2.

per year discount beginning in 2022.[106] Mr. Bergman then further inflated his lost profits calculation by including services such as Ex Machina that did not "have anything at all to do with" the FEOA.[107]

Finally, and most glaring, Mr. Bergman assumed renewal of the MSSA beyond the initial four-year term.[108] The problem here is that Mr. Bergman's assumption of renewal beyond the initial four-year term ignores that fact that Cummins "kill[ed] the FEOA project in late-2023 after customers responded negatively.[109] The record is devoid of evidence indicating that Cummins would have continued paying for the FEOA after it "killed" the FEOA project. This lack of evidence makes sense considering the notion that, if Cummins truly did misappropriate the FEOA as claimed by C3, there would be no need for Cummins to renew the FEOA past its initially contemplated term. As such, the Court finds that the evidence of lost profits presented by C3 post-dating 2023 are speculative and not recoverable.

Therefore, based upon the foregoing, the Court finds that no reasonable jury could have awarded more than the $1,493,032 Mr. Bergman calculated for 2023.[110]

Accordingly, the Motion is **GRANTED** as to damages.

V. CONCLUSION

For the reasons set forth above, the Motion is **GRANTED** in part **and DENIED** in part. The Motion is **DENIED** as to liability and **GRANTED** as to damages. The jury's award is remitted to $1,493,032.[111]

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[106] May 15 Tr. 10:11-19.
[107] May 13 Tr. 24:13-25:3.
[108] May 15 Tr. 24:19-25:12.
[109] May 18 Tr. 33:14-34:23.
[110] May 14 Tr. 232:17-236:8.
[111] *Burns v. Delaware Coca-Cola Bottling Co*., 224 A.2d 255 (Del. Super. Ct. 1966). "If a court determines that the amount of the award is inconsistent with the evidence in a case, it must offer a new trial as a[ ] [conditional] alternative to a reduction in the award in order to avoid depriving the plaintiff of his/her Seventh Amendment right to a jury trial." *Leonard v. Stemtech Int'l Inc*, 834 F.3d 376 (3d Cir. 2016) (internal quotation marks omitted).

In ordering remittitur of a jury's award of damages, the Court is required to allow the plaintiff the option to either remit the stated portion of the damage judgment or submit to a new trial.[112] As such, C3 has the option of accepting the remittitur or ask for a new trial. C3 has thirty (30) days from the date of this decision to notify the Court whether it wants a new trial.

IT IS SO ORDERED

November 23, 2026
Wilmington, Delaware

/s/ Eric M. Davis
Eric M. Davis, President Judge

cc: File&ServeXpress

[112] *Riegel v. Asstad*, 272 A.2d 715, 718 (Del. 1970); *see also Moffitt v. Carroll*, 640 A.2d 169, 176 n. 3. (Del. 1994).