

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

COMCAST CABLE COMMUNICATIONS
MANAGEMENT, LLC and COMCAST CABLE
COMMUNICATIONS, LLC,

Plaintiffs-Counterclaim
Defendants,

- against -

MAXLINEAR, INC.,

Defendant-Counterclaim
Plaintiff.

Case No. 1:23-cv-04436-AKH

**MAXLINEAR'S BRIEF REGARDING THE LAW INVOLVED
WITH TRADE SECRET DAMAGES**

Pursuant to the Court’s directive at the January 6, 2026 status conference to “brief [the Court] on the law involved with damages”, MaxLinear respectfully provides the below overview regarding the law involved with the trade secret damages theories it expects to seek in this action and to be set forth in its forthcoming damages expert report.¹ *See* Jan. 6, 2026 Hr’g Tr. 13:7–14:6, 17:11–18:22.

I. BRIEF FACTUAL AND PROCEDURAL BACKGROUND

MaxLinear is a technology company that designs and develops innovative technology solutions for the communications sector. Comcast, who has historically been a MaxLinear customer, provides cable internet services to millions of subscribers across its network using communications technologies of the type supplied by MaxLinear. With the demand for increasing internet speeds and bandwidth, Comcast faced “increasingly fierce competition from fiber-optic competitors” and “had to ‘evolve or die.’” ECF 148 at 10, ¶ 9. To meet the demands for higher performance internet and effectively compete with fiber optics providers, Comcast needed to transform its network performance.² But upgrading its network would come at the significant cost of replacing its existing coaxial infrastructure with fiber. A “*full fiber upgrade*” across Comcast’s

¹ As directed by the Court during the January 6, 2026 hearing, this brief sets forth the legal framework for damages available for trade secret misappropriation. Details regarding the specific damages models and supporting facts underlying those models, while not requested by the Court for inclusion in this brief and so not provided herein, will be included in MaxLinear’s forthcoming damages expert report that the Court ordered is due on March 26, 2026. ECF 238 at 2. MaxLinear objects to any attempt by Comcast to treat this briefing as a premature motion for summary judgment or to exclude any of MaxLinear’s forthcoming damages theories or expert opinions.

² B. Volpe, “Evolve or Die: Can DOCSIS 4.0 Compete with Fiber?,” Broadband Library, *available at* <https://tinyurl.com/42htbfz8>; D. Alba and C. Kang, “So We’re Working From Home. Can the Internet Handle It?,” *The New York Times* (May 20, 2020), *available at* <https://www.nytimes.com/2020/03/16/technology/coronavirus-working-from-home-internet.html>; D. Goovaerts, “Comcast broadband sub growth flatlines amid fiber, FWA pressure,” *Fierce Network* (July 28, 2022), *available at* <https://tinyurl.com/2dprd9b3>.

full footprint would *cost about \$61.14 billion.*”³

Because Comcast lacked a viable technical solution to upgrade its network, Comcast turned to MaxLinear for help. *See* ECF 148 at ¶ 16. Comcast and MaxLinear entered into an NDA in June 2020 to enable Comcast to evaluate MaxLinear’s technology before agreeing to purchase it. The NDA permitted the parties to use “‘Confidential Information solely’ ‘to *discuss [Comcast’s] potential use* of [MaxLinear’s] products and/or services and to discuss [Comcast’s] products and/or services.’” *Id.* at ¶ 18 (NDA §§ 1, 2(b), 3(a)) (emphasis added). MaxLinear used its expertise to develop a trade secret “FDX amplifier” design that Comcast could use to upgrade its network, and to prove that technology would work. After MaxLinear confidentially presented its FDX amplifier trade secrets to Comcast in 2020-2021 pursuant to the NDA, the parties engaged in business discussions about Comcast purchasing MaxLinear’s technology. *See* ECF 148 at ¶¶ 10, 12-16. But then Comcast went silent.

Unbeknownst to MaxLinear, after learning MaxLinear’s trade secrets, Comcast instead contracted with a different technology supplier—Broadcom, MaxLinear’s largest market competitor—to supply Comcast with FDX amplifier technology. Discovery in this case has confirmed that, to enable Broadcom’s development of that technology, Comcast disclosed MaxLinear’s trade secrets to Broadcom in violation of its confidentiality obligations to MaxLinear. *See id.* at ¶¶ 26, 30, 32. As a result of this improper disclosure, MaxLinear lost Comcast’s FDX business to Broadcom and the associated profits that MaxLinear would have earned by supplying that business. With Comcast, the largest cable provider, doing business with Broadcom, Broadcom

³ J. Baumgartner, “Comcast’s multi-gig network upgrade to cost less than \$200 per home passed,” Light Reading (Nov. 15, 2022), *available at* <https://www.lightreading.com/cable-technology/comcast-s-multi-gig-network-upgrade-to-cost-less-than-200-per-home-passed> (emphasis added).

has made at least hundreds of millions of dollars while MaxLinear has been shut out of this billion-dollar market.

In October 2024, MaxLinear brought four counterclaims against Comcast for Comcast's improper use and disclosure of MaxLinear's trade secret information: Breach of Contract (Count I); Unfair Competition (Count II); Trade Secret Misappropriation under New York law (Count III); and Trade Secret Misappropriation under the DTSA (Count IV). ECF 148 at 19-27. MaxLinear seeks an award of compensatory damages, punitive damages, injunctive relief, as well as pre-judgment and post-judgment interest, costs, expenses, and attorney fees. *Id.* at 28.

Further details regarding MaxLinear's trade secret technology, Comcast's misuse of the trade secrets, and the resulting damages suffered by MaxLinear will be set forth in MaxLinear's forthcoming expert reports.

II. OVERVIEW OF TRADE SECRET DAMAGES LAW

MaxLinear's trade secret misappropriation claims are governed by the Defend Trade Secrets Act ("DTSA"), 18 U.S.C. § 1836, and New York common law. "The elements for a misappropriation claim under New York law are fundamentally the same as a DTSA claim." *Better Holdco, Inc. v. Beeline Loans, Inc.*, 666 F. Supp. 3d 328, 395-96 (S.D.N.Y. 2023) (internal quotation omitted). As explained above, Comcast engaged MaxLinear in confidential discussions to develop and refine MaxLinear's proprietary technology for Comcast's benefit, and Comcast misappropriated MaxLinear's trade secrets by "using [MaxLinear's] trade secret[s] in breach of an agreement, confidence, or duty." *Id.* at 395; 18 U.S.C. § 1839(5) ("disclosure or use of a trade secret of another ... [by one] who owed a duty to the person seeking relief to maintain the secrecy of the trade secret"). Damages are owed to MaxLinear for Comcast's misappropriation.

Under both the DTSA and New York law, damages are available to the plaintiff as a result of the misappropriation by the defendant. The categories of available damages are largely the same

under the DTSA and New York law, but the availability of specific damages within each category differ at times. *Town & Country Linen Corp. v. Ingenious Designs LLC*, No. 18-cv-5075, 2022 WL 2757643, at *13 (S.D.N.Y. July 14, 2022) (“while the *requirements* for showing such misappropriation are similar under federal [DTSA] and [New York] state law, the *damages* available once such misappropriation has been shown are not the same”) (emphasis in original).

Under the DTSA, a plaintiff may recover compensatory damages in the amount of ***both*** (1) the actual loss caused by the misappropriation ***and*** (2) the unjust enrichment of the party who engaged in misappropriation, ***or*** (3) alternatively a reasonable royalty:

(3) REMEDIES.—In a civil action brought under this subsection with respect to the misappropriation of a trade secret, a court may—
 (B) award—
 (i) (I) damages for actual loss caused by the misappropriation of the trade secret; **and**
 (II) damages for any unjust enrichment caused by the misappropriation of the trade secret that is not addressed in computing damages for actual loss; **or**
 (ii) in lieu of damages measured by any other methods, the damages caused by the misappropriation measured by imposition of liability for a reasonable royalty for the misappropriator’s unauthorized disclosure or use of the trade secret.

18 U.S.C. § 1836(b)(3)(B)(i)-(ii) (emphases added). The DTSA “permits a plaintiff to recover both its actual losses and a misappropriator’s unjust benefit caused by misappropriation, so long as there is no double counting.” *Syntel Sterling Best Shores Mauritius Ltd. v. The TriZetto Grp., Inc.*, 68 F.4th 792, 809 (2d Cir. 2023); *Motorola v. Hytera*, 108 F.4th 458, 489-90 (7th Cir. 2024) (plaintiff entitled to the greater of (1) defendant’s total profits from the theft (unjust enrichment); or (2) sum of plaintiff’s actual losses and any additional amount of unjust enrichment not accounted for in actual losses). “The statutory language for the DTSA’s first two methods [actual loss and unjust enrichment] of calculating damages parallels the Copyright Act.” *Motorola*, 108 F.4th at 488, 490

(citing 17 U.S.C. 504(b)).

In addition to compensatory damages, the DTSA provides for “exemplary damages in an amount not more than 2 times the amount of the [compensatory] damages awarded” if the misappropriation is found to be “willful[] and malicious[],” (18 U.S.C. § 1836(b)(3)(C)), as well as attorneys’ fees. *Id.* § 1836(b)(3)(D); *Syntel*, 68 F.4th at 808.

Under New York common law, a plaintiff may also recover compensatory damages comprising: (1) actual loss *and* (2) unjust enrichment; *or* (3) reasonable royalty. *See E.J. Brooks Co. v. Cambridge Sec. Seals*, 31 N.Y.3d 441, 450-54 (2018); *Town & Country*, 2022 WL 2757643, at *16–17. However, damages under New York law focuses on the harm to the plaintiff, rather than on defendant’s improper gain. *E.J. Brooks*, 31 N.Y.3d at 454 (“[D]amages in trade secret actions must be measured by the losses incurred by the plaintiff”); *Town & Country*, 2022 WL 2757643, at *16 (S.D.N.Y. July 14, 2022) (“[W]ith respect to trade secrets, compensatory damages are available to return the plaintiff, as nearly as possible, to the position it would have been in had the wrongdoing not occurred—but do no more.”) (internal quotation omitted).

Similar to the DTSA, New York law enables a trade secret plaintiff to obtain punitive damages for “gross and wanton” misappropriation. *Topps Co. v. Cadbury Stani*, 380 F. Supp. 2d 250, 267 (S.D.N.Y. 2005); *LivePerson, Inc. v. [24]7.ai, Inc.*, No. 17-cv-01268, 2022 WL 3723117 at *10-11 (N.D. Cal. July 28, 2022) (3.5 multiplier for punitive damages awarded for trade secret misappropriation under New York law).

III. THE LAW REGARDING MAXLINEAR’S DAMAGES FROM COMCAST’S TRADE SECRET MISAPPROPRIATION

Each of the above categories of damages are available to MaxLinear in this case. The full support and computation of damages will be set forth in MaxLinear’s forthcoming expert report

on damages.⁴ An overview of the law governing the types of trade secret damages sought by MaxLinear is provided below.

A. Actual Loss Damages

It is well settled under the law that damages for actual loss under both the DTSA and New York law may be measured by MaxLinear's lost profits (including through lost sales and price erosion) caused by the misappropriation. *See, e.g., Syntel Sterling Best Shores Mauritius Ltd. v. TriZetto Grp., Inc.*, No. 15 Civ. 211, 2025 WL 1565327, at *2-3 (S.D.N.Y. June 3, 2025), *reconsideration denied*, 2025 WL 1642886 (S.D.N.Y. June 9, 2025) (finding lost profits and price erosion as available forms of actual loss).

It is bedrock law in this Circuit and New York state courts that lost profits are available as damages for trade secret misappropriation. *See, e.g., Calltrol Corp. v. Loxysoft AB*, No. 18 CV 9026, 2023 WL 2529844, at *6 (S.D.N.Y. Mar. 15, 2023) (“In an intellectual property misappropriation case, the available measures of damages include plaintiff's lost profits or defendant's unjust enrichment.”); *Smart Team Glob. LLC v. HumbleTech LLC*, No. 19-CV-4873, 2022 WL 847301, at *8 (S.D.N.Y. Feb. 18, 2022), *R&R adopted*, 2022 WL 846927 (S.D.N.Y. Mar. 22, 2022) (“[plaintiff] has stated claims under the DTSA and the VUTSA, both of which allow a successful plaintiff to recover its lost profits”); *Stanacard, LLC v. Rubard LLC*, No. 12 Civ. 5176, 2016 WL 6820741, at *5 (S.D.N.Y. Nov. 10, 2016) (“Damages for unfair competition, like damages for misappropriation of trade secrets, are typically measured by ‘plaintiff’s lost profits resulting from defendant’s improper conduct.’”); *Softel, Inc. v. Dragon Med. & Sci.*

⁴ These damages analyses are highly factual. Accordingly, to the extent Comcast (including though its rebuttal damages expert) disputes MaxLinear's damages analyses, that would present fact issues for a factfinder. Comcast has argued the same in the context of its contract claims. *See* ECF 219 at 14-15 (“To the extent there is any question as to whether MaxLinear's misconduct was the cause of Comcast's California Lawsuit-based damages, ***it is a factual issue properly reserved for trial.*** [citing cases].”) (emphasis added).

Commc'ns Ltd., No. 87 Civ. 0167, 1995 WL 75490, at *4 (S.D.N.Y. Feb. 23, 1995) (“[F]or both copyright infringement and trade secret misappropriation, plaintiff must offer the same proof of its lost profits and defendants’ profits earned from the infringement or trade secret theft.”); *Marky’s Martial Arts, Inc. v. FC Online Mktg., Inc.*, No. 19-CV-03363, 2022 WL 18276016, at *7 (S.D.N.Y. Sept. 16, 2022), *R&R adopted*, 2023 WL 171401 (S.D.N.Y. Jan. 12, 2023) (“The DTSA allows a successful plaintiff to recover its lost profits.”); *Cont’l Indus. Grp., Inc. v. Altunkilic*, 2020 WL 3884312, at *1 (S.D.N.Y. July 1, 2020) (recommending the “Court award compensatory damages in the amount of \$10,459,870.55 of lost profits”); *Schneider v. Danbury Pharma, LLC*, No. CV 14-7127, 2018 WL 1787944, at *3 (E.D.N.Y. Feb. 26, 2018), *R&R adopted*, 2018 WL 1785488 (E.D.N.Y. Apr. 12, 2018) (“Damages in such cases [for New York trade secret misappropriation] are generally determined by a plaintiff’s lost profits resulting from defendant’s improper conduct”); *E.J. Brooks*, 31 N.Y.3d at 444 (analyzing lost profits as damages for trade secret misappropriation); *Suburban Graphics Supply Corp. v. Nagle*, 774 N.Y.S.2d 160, 163 (2004) (“The measure of damages for ... misappropriation and exploitation of confidential information is the loss of profits sustained by reason of the improper conduct”) (quoting *Allan Dampf, P.C. v. Bloom*, 512 N.Y.S.2d 116, 117 (1987)). Additionally, “[l]ost profits . . . are properly the subject of expert analysis and opinion.” *Capstone Logistics Holdings, Inc. v. Navarrete*, No. 17-CV-4819, 2018 WL 6786237, at *4 (S.D.N.Y. Dec. 13, 2018); *see also Kaiser Aluminum Warrick, LLC v. US Magnesium, LLC*, 766 F. Supp. 3d 462, 475 (S.D.N.Y. 2025), *reconsideration denied*, 2025 WL 2306864 (S.D.N.Y. Aug. 8, 2025) (denying motion to exclude expert report on lost profits).

Actual loss may also include MaxLinear’s development costs where, as here, MaxLinear has lost the benefit of the trade secrets—*e.g.*, because the trade secrets have been made public and rendered valueless to MaxLinear. *E.J. Brooks*, 31 N.Y.3d at 454.

In its forthcoming expert reports, MaxLinear will demonstrate its entitlement to actual loss damages based on the facts of this case, including the revenue and associated profits that MaxLinear lost from not going forward with the Comcast deal (and other lost contracts) due to Comcast's misappropriation, loss of profits associated with MaxLinear's loss of its competitive edge in the signal amplification market, and lost value of the trade secrets due to their public disclosure, all due to misappropriation.

B. Unjust Enrichment Damages

Damages to MaxLinear for Comcast's unjust enrichment, at least under the DTSA, may be awarded in addition to actual loss damages, "so long as there is no double counting." *Syntel*, 68 F.4th at 809. Under the DTSA, "damages for any unjust enrichment" "can take several forms and cover a broad array of activity," as it is based on principles of restitution. *Id.* at 809-810. "[I]n some situations the defendant's enrichment is represented by profits from sales made possible by the appropriation, while in others it is represented by savings achieved through the use of the trade secret in the defendant's business." *Id.* at 810 (internal quotations omitted). Cost savings can be appropriate where the "[defendant's] misappropriation injure[d] [plaintiff] beyond its actual loss [] in lost profits" to "reduce the harm a trade secret holder suffers beyond its lost business." *Id.* at 811.⁵

⁵ Unjust enrichment damages under New York common law provides for damages in an amount based on a misappropriator's gain that approximates the loss to the plaintiff. *E.J. Brooks*, 31 N.Y.3d at 454; *see also Town & Country*, 2022 WL 2757643, at *16 ("a plaintiff who prevails under a New York common law claim in this genre ... may recover compensatory damages that return it to the position it would have been had the wrong not occurred; such damages may be measured using the plaintiff's actual losses or the defendant's gains, but only to the extent that the plaintiff has demonstrated a connection between those gains and the plaintiff's losses such that they reasonably approximate the actual loss"). Such unjust enrichment damages are legal in nature and for jury determination. *See Pauwels v. Bank of New York Mellon Corp.*, No. 19-CV-2313 (RA), 2025 WL 3030913, at *9 (S.D.N.Y. Oct. 30, 2025) (because plaintiff is "seeking a monetary award only in the amount of the value of the Pauwels Model, he is properly seeking legal relief").

Unjust enrichment damages are proper here because Comcast’s misappropriation of MaxLinear’s trade secrets caused Comcast to reap substantial benefits for itself. In its forthcoming expert reports, MaxLinear will demonstrate its entitlement to unjust enrichment damages including Comcast’s profits from the misappropriation, avoided development and implementation costs, and commercial advantage and head-start benefit. *See* 24 SEDONA CONF. J. 349, 384-85 (2023) (noting that certain “unjust enrichment remedies arise repeatedly: defendant’s profits, avoided development costs, and commercial advantage or head-start benefit”).

C. Reasonable Royalty Damages

Under both the DTSA and New York law, reasonable royalty damages are available to MaxLinear as an alternative to actual loss and unjust enrichment damages.⁶

A reasonable royalty is the “hypothetically agreed value of what the defendant wrongfully obtained from [the] plaintiff.” *Town & Country*, 2022 WL 2757643, at *12. In constructing the “hypothetical negotiation” that leads to a reasonable royalty, courts look to the *University Computing* and *Georgia-Pacific* factors. *See Univ. Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 518, 537-39 (5th Cir. 1974); *Georgia-Pacific Corp. v. U.S. Plywood-Champion Papers Inc.*, 446 F.2d 295, 296-97 (2d Cir. 1971); *see also Motorola Sols., Inc. v. Hytera Commc’ns Corp. Ltd.*, 2021 WL 6690279, at *2, *6, *13 (N.D. Ill. Dec. 14, 2021), *aff’d*, 2025 WL 1201950 (7th Cir. Mar. 11, 2025); *Vermont Microsystems, Inc. v. Autodesk, Inc.*, 88 F.3d 142, 151–52 (2d Cir. 1996) (“In fashioning a reasonable royalty, most courts adjust the measure of damages to accord with the commercial setting of the injury, the likely future consequences of the misappropriation,

⁶ The DTSA and New York law diverge only in when reasonable royalty damages are available. Under the DTSA, a reasonable royalty is always available at plaintiff’s option. *See* 18 U.S.C. § 1836(b)(3)(B)(ii). In contrast, under New York law, reasonable royalty damages are only available “where measuring either the defendant’s profits or the plaintiff’s losses is too hard or speculative.” *E.J. Brooks Co. v. Cambridge Security Seals*, 858 F.3d 744, 748 (2d Cir. 2017).

and the nature and extent of the use the defendant put the trade secret to after misappropriation.”) (internal quotation omitted). The reasonable royalty determination is left for the jury, *LinkCo*, 232 F. Supp. 2d at 188 (“the jury should be instructed to calculate a reasonable royalty award”), and they may consider “expert testimony as to what would constitute a reasonable royalty.” *Univ. Computing*, 504 F.2d at 539; *LinkCo*, 232 F. Supp. 2d at 187 fn.7 (“A jury should consider the following when determining a reasonable royalty [for trade secret misappropriation] ... the opinion testimony of qualified experts”).

In its forthcoming expert reports, MaxLinear’s damages expert report will show that the parties would have agreed to a monetary royalty at a hypothetical negotiation, considering Comcast’s significant infrastructure upgrade cost savings from the trade secrets, Comcast’s significant expected revenues and profits from the trade secrets, and MaxLinear’s foregone profits and business opportunities as a result of the misappropriation.

D. Exemplary/Punitive Damages and Attorney’s Fees

MaxLinear will additionally demonstrate that exemplary/punitive damages (under the DTSA and New York law) and attorney’s fees (under the DTSA) are also available. *See* 18 U.S.C. § 1836(b)(3)(C) (“exemplary damages in an amount not more than 2 times”); *Topps*, 380 F. Supp. 2d at 267 (punitive damages); 18 U.S.C. § 1836(b)(3)(D) (attorney’s fees); *Syntel*, 68 F.4th at 808.

MaxLinear will present evidence to the factfinder of the egregiousness of Comcast’s unlawful misappropriation and its efforts to cover up its misconduct. Accordingly, an award of punitive damages may be available to MaxLinear. *See, e.g., LivePerson, Inc.*, 2022 WL 3723117 at *10-11; 18 U.S.C. § 1836(b)(3)(D); *Syntel*, 68 F.4th at 808.

Dated: February 6, 2026

Kirkland & Ellis LLP

/s/ Sharre Lotfollahi
 Atif Khawaja, P.C.
 KIRKLAND & ELLIS LLP

601 Lexington Avenue
New York, NY 10022
Telephone: +1 212 446 4800
akhawaja@kirkland.com

Judson Brown, P.C. (*pro hac vice*)
Megan McGlynn (*pro hac vice*)
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: +1 202 389 5000
judson.brown@kirkland.com
megan.mcglynn@kirkland.com

Adam Alper, P.C. (*pro hac vice*)
Kyle Austin Calhoun (*pro hac vice*)
KIRKLAND & ELLIS LLP
555 California Street, 27th Floor
San Francisco, CA 94104
Telephone: +1 415 439 1400
aalper@kirkland.com
kyle.calhoun@kirkland.com

Michael W. De Vries, P.C. (*pro hac vice*)
KIRKLAND & ELLIS LLP
695 Town Center Dr, Ste. 1700
Costa Mesa, CA 92626
Telephone: +1 714-982-8822
michael.devries@kirkland.com

Sharre Lotfollahi (*pro hac vice*)
KIRKLAND & ELLIS LLP
2049 Century Park East, Suite 3700
Los Angeles, CA 90067
Telephone: (310) 552-4200
slotfollahi@kirkland.com

*Attorneys for Defendant-Counterclaim
Plaintiff MaxLinear, Inc.*