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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ARDENT LABS, INC., d/b/a COMULATE, Plaintiff, v. APPLIED SYSTEMS, INC., Defendant.	))))))))))	**REDACTED PUBLIC VERSION** **EFILED: December 17, 2025** C.A. No. 2025-1405-BWD

DEFENDANT APPLIED SYSTEM, INC.'S ANSWERING BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION TO EXPEDITE

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PRELIMINARY STATEMENT

Comulate's motion is audacious. It asks this Court to order Applied to do business with a company that created a fake insurance agency, invented a fake person, and used both to get inside Applied's core system and strip out its know-how for more than a year and a half. And it does so ***without ever addressing—much less denying***—its fraudulent conduct that sits at the center of Applied's Illinois complaint.

Here is what Comulate orchestrated: In 2024, Comulate established "PBC Consulting Inc.," a shell company registered to a Sacramento apartment with no customers, no employees, no insurance carrier relationships, and no insurance license. Comulate then had someone calling himself "Jordan Bates"—a fabricated persona whose email address belongs to a Comulate engineer and whose profile photo is a stock image—to sign Applied's Master Agreement under the pretense that PBC was "a new, three-person insurance agency" seeking a simple integration into HubSpot, a third-party customer relationship manager. Comulate's actual CEO, Jordan Katz, either posed as Bates or directed the deception. Once inside, Comulate made more than 10 million SDK ("Software Development Kit") calls—a volume far in excess of normal use—using fake invoices and test data to probe and reverse-engineer the proprietary algorithms that Applied spent decades of effort and millions of dollars developing. The IP addresses traced to Comulate's offices; the user credentials matched Comulate employees; and hundreds of emails in the PBC account discussed Comulate's product development.

Comulate does not deny any of this. Instead, it asks this Court to reward its fraud. Equity will not aid a wrongdoer. The unclean hands doctrine bars relief when the movant's conduct has been "tainted with fraud," and Delaware courts have long refused to become "instruments" of such schemes. Comulate's motion fails on that ground alone.

But even setting aside Comulate's fraud, its motion fails at every turn. To start, this second-filed case does not belong here. Applied sued Comulate first in the Northern District of Illinois, asserting detailed trade secret, fraud, and contract claims. The contract that governs access to Applied's Epic platform and SDK has a mandatory forum-selection clause requiring that "all proceedings directly or indirectly related" to that agreement and the parties' relationship be brought in Illinois. Comulate has built its business around access to Epic under those contracts—whether through its PBC shell or through joint customers—and cannot pretend it is a stranger to that clause. Under *McWane*, the Court should dismiss or stay this action in favor of the first-filed Illinois action, where a capable court can resolve the overlapping parties, contracts, and issues in a single forum.

Even if this Court reaches the motion, Comulate cannot show any likelihood of success on the merits. Its California Unfair Competition Law ("UCL") claim boils down to a demand that Applied be compelled to keep licensing its proprietary system to a direct competitor it accuses of theft. That runs headlong into the *Colgate* doctrine and California authority adopting a safe harbor for unilateral refusals to deal. There is no law that forces a company to continue integrating a rival that abused its contractual and intellectual property rights. Comulate's common law theories (tortious interference and trade libel) fare no better. They are built on Applied's litigation-related communications to joint customers, which are absolutely privileged under California Civil Code § 47(b), and on the same conduct that federal and state trade secret statutes encourage—investigate, file suit, and warn affected customers.

Most critically for purposes of the motion for a temporary restraining order, Comulate cannot show imminent, irreparable harm. What Comulate describes—a risk of lost contracts, lost annual recurring revenue, reduced valuation—is money. Comulate's own pleadings put dollar figures on the alleged losses, projecting millions in ARR and "mid-nine-figure" damages. Those are exactly the types of injuries damages experts calculate every day. At the same time, Comulate touts itself as a thriving, well-funded startup: a recent $20 million Series B, 99% retention, tripled revenue, and partnerships outside Epic. That is not an enterprise on the brink of collapse.

The balance of hardships also strongly favors Applied. A TRO would not preserve any neutral "status quo." It would force the victim of fraud and a trade-secret theft to keep hosting, supporting, and extending integrations for the alleged misappropriator. It would override Applied's contractual rights to terminate access for material breach and its intellectual property rights to stop actual or threatened misappropriation by Comulate. By contrast, any hardship Comulate faces is self-inflicted. It chose to set up a sham agency, use a fabricated identity, and push millions of high-velocity SDK calls through Epic to build its own product. The foreseeable consequence of those choices is that Applied would cut-off access and sue. Equity does not shield Comulate from the business fallout of its own strategy.

Finally, Comulate's Proposed Order is defective on its face. It uses vague, elastic language—barring Applied from "interfering" with customers' "use of and access to" Comulate—without defining what "interfering" means, in clear violation of Rule 65(d)'s specificity requirement. Read the way Comulate plainly intends, it is also an improper mandatory injunction: it would require Applied provide access to its SDK to Comulate's new customers. That is precisely the sort of mandatory relief that cannot be entered on a contested preliminary record. And Comulate proposes no meaningful bond. If any injunction issued and later proved wrongful, Applied's harm would be measured in eight figures. Rule 65(c) requires security commensurate with that risk.

In short, Comulate asks this Court to ignore unrebutted allegations of fraud, sidestep a first-filed Illinois action and a mandatory Illinois forum-selection clause, and conscript Applied into an ongoing integration with a competitor it accuses of theft. But there is no duty to deal with a fraudster. The Court should deny the Motion.

STATEMENT OF FACTS

A. Applied's Business, Epic Platform, and Trade Secrets

Applied develops and operates software that insurance agencies and brokers use to run their businesses. Doughty Aff., Ex. I ¶ 2. Applied's core product, Applied Epic ("Epic"), is an agency-management platform that serves as the system of record for many brokers' day-to-day operations. *Id.* ¶ 24. Brokers use Epic to store client and policy information, track renewals, issue and reconcile invoices, record cash receipts and disbursements, calculate and allocate commissions, and produce accounting and management reports. *Id*. Epic also connects to outside systems—such as customer-relationship-management tools, carrier portals, and downstream accounting software—so that transactions entered in one system flow consistently through the rest of the broker's technology stack. *Id*.

To allow customers and approved partners to connect their own tools to Epic, Applied offers a software-development kit (the "SDK"). Doughty Aff., Ex. I ¶ 33. The SDK exposes a set of methods that external applications can call—such as creating or updating a policy record, posting a payment, or retrieving ledger entries—without revealing how Epic internally validates, sequences, and posts those transactions. *Id.* ¶¶ 33-35.

Applied maintains and relies on its Epic Algorithm Trade Secrets—the algorithms, processes, and logic Epic uses behind the scenes to validate inputs, allocate amounts across accounts and periods, handle edge cases, and ensure that the general ledger, subledgers, and operational records remain in sync. Doughty Aff., Ex. I ¶¶ 37-57. These proprietary algorithms represent Applied's "secret sauce," developed over 40 years of building insurance-specific functionality. *Id.* The algorithms encompass unique mathematical formulations and processing logic for general ledger operations, reconciliation processes, broker and employee commission calculations, transaction processing, month-end closing procedures, and invoice generation—all tailored specifically to the insurance industry's complex requirements. *Id.*

If a competitor could map out, at a detailed level, how Epic responds to different sequences of SDK calls and data, it could infer those algorithms and processes and replicate them without investing the time and expense Applied has spent building them. Doughty Aff., Ex. I ¶¶ 37-57. Applied therefore treats these underlying algorithms as strictly confidential and protects them through layered contractual restrictions, technical access controls, and confidentiality obligations imposed on customers, third-party vendors, and employees. *Id.*. Applied does not disclose these algorithms to customers or third parties under any circumstances. *Id.*

B. <u>The MSA and SDK Schedule</u>

Access to Epic and its SDK is governed by a Master Services Agreement ("MSA") and related schedules that impose those limits on licensees. Doughty Aff., Exs. A, B. PBC Consulting Inc. ("PBC") executed an MSA and related SDK schedule with Applied on March 15, 2024. *Id.*, Ex. A (MSA); *id.*, Ex. B (SDK schedule).

Section 3.6 of the MSA prohibits licensees from attempting to "disassemble, decompile, reverse-engineer, modify, transform, otherwise translate, or attempt to gain unauthorized access to the Applied Software, including the source code," and from using the software "for purposes of benchmarking, competitive analysis, or for developing, using, or providing a competing software product, or service." Doughty Aff., Ex. A § 3.6 (MSA). Section 4.3 requires licensees to acknowledge that Applied's software "constitutes, embodies and/or contains valuable trade secrets, proprietary information, and other Confidential Information owned by Applied." *Id.*, Ex. B § 4.3 (MSA).

The Schedule SDK further restricts use. Doughty Aff., Ex. B. It states that the licensee has "no license to use the [SDK] for the purpose of developing an application, patch, fix, tool, or other program, software, or device marketed, sold, and/or distributed to third parties." *Id.*, § 5.2. The Schedule specifies a limited set of "Authorized Integrations"—a finite list of SDK methods the licensee may call—and confines use to the "Authorized Business Purpose" stated in the agreement. *Id.* §§ 5.1-5.2. PBC represented that its authorized purpose was to use the SDK to develop an integration between Epic and HubSpot, a third-party customer relationship manager, as "part of normal internal business operations" owned or licensed by PBC. *Id.* § 5.1.

Section 14.6 of the MSA contains a forum selection clause stating that "all proceedings directly or indirectly related" to the Agreement and the parties' relationship must be brought in Will County, Illinois, and that the licensee "consents to the sole and exclusive jurisdiction and venue of the courts of the Location." Doughty Aff., Ex. A § 14.6 (MSA).

C. <u>Comulate's Business and Its Relationship to Epic</u>

Comulate is a Delaware corporation headquartered in San Francisco, California that offers an insurance accounting and revenue-automation platform for insurance brokers. Compl. ¶¶ 17-18. Comulate markets its product to many of the same mid-size and large brokers that rely on Epic as their core system of record and positions its software as a way to streamline invoicing, cash application, and reporting tasks that are today performed in or through Epic. Compl. ¶¶ 2, 15, 17-18.

Before PBC existed, Comulate explored ways to connect its product directly to Epic and to deepen those connections. Doughty Aff., Ex. I ¶ 60. In those discussions, Applied told Comulate that any third-party developer seeking broad SDK access needed to sign Applied's standard third-party consultant agreement, which contains specific trade-secret and use-restriction protections. *Id.* ¶ 63. Comulate declined to move forward on those terms. *Id.* ¶ 65.

D. <u>Comulate Uses PBC as a Shell to Obtain SDK Access</u>

The way PBC obtained and used SDK access is central to this dispute. Doughty Aff., Ex. I ¶ 68. According to Applied's investigation, Comulate did not obtain the access by signing Applied's standard third-party consultant agreement or any direct contract with Applied. *Id.* Instead, Comulate formed PBC and used it as a shell insurance agency to obtain Epic and SDK access on terms Comulate had declined to accept in its own name. *Id.*

PBC held itself out to Applied as a new three-person insurance agency in Sacramento seeking to integrate HubSpot with Epic. Doughty Aff., Ex. I ¶ 69. In March 2024, a person identifying himself as "Jordan Bates" told Applied that PBC was "a new, three-person start-up insurance agency" whose principals "had heard from several IT people in insurance that Epic is the only way to go." *Id.* PBC represented that it would use the SDK only for an internal HubSpot integration, consistent with the "Authorized Business Purpose" in the Schedule SDK. *Id.*, Ex. I ¶ 71. & Ex. B § 5.1 (Schedule SDK).

Those representations were central to Applied's decision to grant PBC access. Doughty Aff., Ex. I ¶ 72. Applied understood PBC to be a small, real agency using the SDK to connect Epic with an internal CRM tool for its own business—not a software vendor using the SDK at enterprise scale to build and refine a competing product for resale. *Id.* As described below, Applied's investigation later showed that PBC did not have the characteristics of a functioning agency and that it operated as an access vehicle for Comulate, making those initial statements materially misleading. Peters Decl. ¶ 37.

Applied's investigation concluded that PBC had no real agency business and no economic existence separate from Comulate. Doughty Aff., Ex. I ¶ 96. PBC had no customers, no producers or licensed agents, and no bona fide operations of its own. *Id.*, Ex. I ¶ 72. Its listed address—1430 Q Street #402, Sacramento, California—is a residential apartment, not a commercial office. Peters Decl. ¶¶ 23-24. PBC's website is a bare shell with nonfunctional links, PBC never registered with the California Secretary of State as a functioning agency, and it held no insurance licenses. Peters Decl. ¶ 25. Applied has not identified any revenue, employees, or business records showing PBC conducting an insurance business independent of Comulate. Doughty Aff., Ex. I ¶ 104.

Taken together, these facts led Applied to conclude that PBC existed for a single purpose: to serve as Comulate's vehicle for Epic and SDK access while concealing Comulate's role and avoiding Applied's standard third-party terms. Peters Decl. ¶ 37.

E. <u>The Fabricated "Jordan Bates" Identity and Operational Overlap with Comulate</u>

The identity of "Jordan Bates" reinforced that conclusion. Peters Decl. ¶ 27. The individual who signed the MSA on PBC's behalf identified himself as "Jordan Bates," purportedly PBC's owner and the person who would use the SDK for the claimed HubSpot integration. Doughty Aff., Ex. A at 6; *id.*, Ex. B at 2. Applied's investigation showed that "Bates" is not a real insurance agent but a fabricated identity linked directly to Comulate. Peters Decl. ¶¶ 18-27.

The email address Bates provided—[redacted]—is tied to a LinkedIn profile for "Riley W.," whose headline reads "Engineering at Comulate" and whose profile photo is a stock image reused on other websites. Peters Decl. ¶¶ 19-22. Invoices and other documents associated with the PBC account carry Phoenix Benefits Consulting headers and the same Sacramento apartment address listed for PBC. *Id.* ¶ 31. Applied has found no evidence that a Jordan Bates even exists, much less that he holds an insurance license, owns a going-concern agency, or operates an independent business at that address. *Id.* ¶ 27.

Applied's logs and internal records further show that PBC's Epic account was populated and operated entirely by Comulate personnel using Comulate infrastructure. Peters Decl. ¶¶ 18-36. The named "users" on the PBC account include Comulate engineers and data scientists. *Id*. ¶¶ 18-20. Many of those users accessed Epic from IP addresses associated with Comulate's offices and cloud environments. *Id*. ¶ 35. Emails stored within PBC's Epic account include threads among Comulate employees discussing Comulate product work while using PBC's credentials. *Id*. ¶¶ 28-30. In those communications, Comulate personnel refer to "our" product, "our" roadmap, and "Comulate" while sending and receiving messages from within the PBC Epic user account. *Id*. ¶ 34.

Applied also observed that the Bates persona and Comulate's internal identities were used interchangeably. Peters Decl. ¶ 28. The same individuals who appeared as PBC users in Epic also appeared as Comulate employees in external communications with customers and investors, and internal meeting notes referenced work "in PBC" as part of Comulate's testing and development efforts. *Id*. ¶¶ 28-29, 36. Based on this evidence, Applied concluded that PBC had no separate management, staff, or operations apart from Comulate, and that Comulate's leadership—including Jordan Katz—either created and controlled the "Jordan Bates" persona or directed a Comulate engineer to act in that name to sign the MSA and interact with Applied. *Id*. ¶¶ 18-36.

F. Nineteen Months of Abnormal SDK Activity and Data Misuse

What PBC and Comulate did with the SDK access also departed sharply from what a small agency would do. Peters Decl. ¶ 10. Using the credentials issued under PBC's MSA, Comulate engaged in an extreme pattern of SDK usage from March 2024 through November 2025. *Id.* Applied's logs show that PBC/Comulate made more than 10 million calls to Epic SDK methods, including more than 22 million calls to general-ledger methods that were outside PBC's authorized scope and not needed for a simple HubSpot integration. Peters Decl. ¶¶ 11-13

PBC's general-ledger call volume was many multiples of any comparable agency and placed PBC at the far extreme of Applied's customer-usage distribution—higher than even Applied's largest customers with thousands of users. Peters Decl. ¶ 13. Internal dashboards and exported log tables list more than 10 million general-ledger calls from IP addresses that Applied associates with Comulate, including a single IP address that alone generated over 10 million calls. *Id.*. By contrast, small agencies pursuing legitimate CRM-to-Epic integrations typically generate a few thousand SDK calls in a comparable period. *Id.*.

The same evidence that links PBC's account to Comulate's personnel and systems also shows that Comulate, not PBC, was the real user of PBC's Epic and SDK access. Doughty Aff., Ex. I ¶ 98. IP address data show that key IPs for PBC's activity traced back to Comulate's infrastructure. *Id.*, Ex. I ¶ 96. PBC's user list includes named Comulate employees, not independent PBC staff. *Id.*, Ex. I ¶ 99. Numerous emails in PBC's Epic account were sent to and from Comulate data scientists, product managers, and executives about Comulate's development efforts. Peters Decl. ¶¶ 28-30. Many of those emails explicitly identify Comulate, reference testing of Epic, and attach invoices and customer data used for Comulate's product work. Doughty Aff., Ex. I ¶ 102.

Applied further concluded that Comulate did not attempt to simulate legitimate agency usage. Peters Decl. ¶¶ 31-33. Instead, Comulate used fake invoices, fake customers, and actual invoices from Comulate's real customers—likely uploaded without those customers' permission—to test Epic's behavior and probe its internal logic. *Id.* In some cases, the same synthetic or copied data was posted repeatedly through different SDK methods or parameter combinations in ways that mirrored a systematic experiment rather than real-world transaction flow. *Id.* This pattern of activity, combined with PBC's lack of separate business operations and the fabricated Bates identity, led Applied to conclude that Comulate had used misrepresentations to secure access and then used that access to run an automated testing campaign designed to map and replicate Epic's internal accounting algorithms. *Id.* ¶ 34.

G. Applied's Investigation and the Illinois Lawsuit

Applied discovered the fraud through systematic investigation. Doughty Aff., Ex. I ¶¶ 95-105. Once Applied's internal monitoring flagged PBC's usage as anomalous, Applied assembled a cross-functional team from security, engineering, product, legal, and customer-success groups to examine these sources. *Id.*, Ex. I ¶ 98. That team reviewed logs, pulled additional exports, confirmed IP-address ownership, cross-checked user identities, and captured screenshots and reports. *Id.* Applied also retained outside counsel and a forensic consultant to assist in organizing and validating the evidence and to ensure that the factual allegations in the Illinois complaint matched what the data showed. *See* Peters Decl.

Applied's fraud and misappropriation allegations in the Illinois action thus rest on objective evidence, not speculation. Peters Decl., Ex. I ¶¶ 98-105. The core facts described herein are supported by:

- Contract documents, including the MSA and Schedule SDK signed in PBC's name and the representations PBC made about its business purpose and size;
- Corporate, regulatory, and public-record checks showing that PBC and Phoenix Benefits Consulting have no licenses, customers, or independent agency operations and share a residential address;
- Epic system logs and internal dashboards reflecting PBC's SDK call volumes, method mix, and IP-address history over the nineteen-month period;
- Network-forensics data tying key IP addresses to Comulate's offices and cloud environments;

- User-identity records showing that the individuals provisioned as PBC Epic users are Comulate employees; and
- Emails and other content stored in the PBC Epic tenant in which Comulate employees discuss Comulate's product work, attach Comulate customer invoices, and refer to Comulate by name while using PBC's credentials. Doughty Aff., Ex. I ¶ 102.

On November 21, 2025, after that investigation, Applied filed a detailed complaint in the Northern District of Illinois against PBC and Comulate. Doughty Aff., Ex. I ¶ 14. The Illinois complaint sets out the PBC formation and Bates identity, the absence of any real PBC business, the SDK contracts and restrictions, the 10-million-plus SDK call pattern, the IP-address and user-identity ties to Comulate, and the email and data-usage evidence described above. *Id.*, Ex. I.

Applied brought claims for trade-secret misappropriation, fraud, fraudulent inducement, breach of contract, unjust enrichment, and civil conspiracy based on that record, and terminated PBC's Epic access under the MSA's termination provisions for material breach. Doughty Aff., Ex. I; *id.*, Ex. A §§ 12-13 (MSA).

H. <u>Applied's Communications with Joint Customers</u>

The same day it filed in Illinois, Applied also addressed the situation with joint customers. Plaintiff's Opening Brief ("Br.") 22. On November 21, 2025, Applied sent communications to joint Applied-Comulate customers who used Comulate integrations with Epic. *Id.* In those communications, Applied explained that it had filed a lawsuit against Comulate for fraudulently and unlawfully accessing

Applied's technologies to misappropriate Applied's sensitive trade secrets, reverse-engineer Applied's functionality to accelerate product development, and access other confidential information, and invited customers to review their contracts and discuss next steps. *Id.*

I. <u>Comulate's Second-Filed Delaware Action</u>

Comulate waited twelve days before seeking emergency relief. *Compare* Doughty Aff., Ex. I (11/21/2025 filing date), *with* Plaintiff's Mot. For TRO (12/3/2025 filing date). During that interval, Comulate met with customers, prepared and sent its own communications responding to Applied's message, and drafted its Delaware complaint and supporting motion papers. Compl. ¶¶ 5, 155, 163.

<u>ARGUMENT</u>

I. THIS COURT SHOULD DECLINE TO ENTERTAIN THIS SECOND-FILED ACTION FILED IN THE WRONG JURISDICTION

Comulate filed second in the wrong forum. The parties already are litigating the same dispute, under the same contracts, in the forum they chose—Illinois. But, instead of face the numerous Fraud allegations in federal court in Illinois, Comulate attempts to perform a runaround to Delaware and expend this Court's valuable resources on an expedited proceeding of a trade secret dispute purportedly governed by California law with ongoing parallel litigation. The Court should not countenance such a waste of resources. Delaware courts routinely stay later-filed actions when a prior case in a competent forum can provide prompt and complete relief. The Delaware Supreme Court has emphasized that approach to avoid "wasteful duplication of time, effort, and expense" and "unseemly race[s]" to judgment. *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Eng'g Co.*, 263 A.2d 281, 283 (Del. 1970). Two independent grounds compel dismissal or a stay here.

First, the Illinois action satisfies each element of *McWane* and has priority. Dismissal is warranted when there is (1) a prior action pending elsewhere, (2) in a court capable of doing prompt and complete justice, (3) involving the same parties and the same issues. *Id*. All three requirements are obvious met here. Applied sued first, filing its complaint in the Northern District of Illinois two weeks before Comulate filed here. Compl. ¶ 5. In addition to Applied's already pending claims, the Illinois court is more than capable of promptly resolving Comulate's claims here including granting injunctive relief. The parties and issues are the same; both suits concern the same course of conduct, the same Epic access, and the same alleged misuse of Epic. *See* Compl. ¶¶ 1-5, 17-22, 64-72.; *see* Ex. I.

Delaware has a "strong preference for the litigation of a dispute in the forum in which the first action was filed." *LG Elecs., Inc. v. InterDigital Commc'ns, Inc.*, 114 A.3d 1246, 1252 (Del. 2015). That preference exists precisely to avoid the "wasteful duplication" and "unseemly race" that *McWane* warns against. 263 A.2d at 283. The relief Comulate seeks here—interim orders about access and customer communications—is an integral part of the core merits already being litigated in Illinois. Comity is "even more compelling" when a later-filed action seeks to interfere with a first-filed proceeding or to pre-adjudicate issues central to it. *See LG Elecs.*, 114 A.3d at 1253. This Court should not be asked to manage interim measures in a dispute Illinois is already positioned to decide in full.

Second, the parties' contract points to Illinois, not Delaware. The Master Subscription Agreement's forum-selection clause requires that "all proceedings directly or indirectly related" to the agreement be brought in Will County, Illinois. Stake Decl., Ex. B § 14.6. Will County, Illinois is in the Northern District of that state, which is why use of that court is appropriate.

Comulate cannot avoid that bargain by pretending it is a stranger to the MSA. Delaware courts routinely enforce forum-selection clauses against non-signatories that are "closely related" to the agreement or who knowingly accept its "direct benefits," where it is foreseeable they will be bound. *See, e.g.*, *Weygandt v. Weco, LLC*, 2009 WL 1351808, at *4 (Del. Ch. May 14, 2009); *Fla. Chem. Co. v. Flotek Indus., Inc.*, 262 A.3d 1066, 1092 (Del. Ch. 2021).

Comulate gained access to Epic only by exploiting those customer MSAs—either through its shell entity PBC or by riding along on mutual customers' contracts. Comulate cannot claim the benefit of that access while disavowing the forum clause that comes with it. *Cf. Ashall Homes Ltd. v. ROK Ent. Grp. Inc.*, 992 A.2d 1239, 1250 (Del. Ch. 2010) (enforcing clause against tort claims that depend on contractual rights). Any "proceeding[] directly or indirectly related" to that access belongs in Illinois.

The pending proper Illinois litigation is sufficient enough to deny Comulate's TRO, because there is no imminent harm that must be addressed *in this jurisdiction*. To the extent Comulate argues that improper forum is not an appropriate defense to a Motion to Expedite or a TRO, Applied requests the Court only expedite the briefing of Applied's Motion to Dismiss filed contemporaneously herewith. *See Gallagher v. Alliant Ins. Serv., Inc.*, C.A. No. 2020-0780-JTL, at *43-45 (Del. Ch. Oct. 26, 2020) (TRANSCRIPT) (granting a motion to expedite limited to the motion to dismiss briefing where the court thought the jurisdictional and *Mcwane* arguments were "fairly strong."). Further, the Court should also deny the TRO for the following reasons.

II. <u>COMULATE HAS NOT SHOWN ANY LIKELIHOOD OF SUCCESS</u>

Comulate has not shown a colorable claim, much less the requisite reasonable probability of success on the merits. Its California UCL unfair competition theories effectively ask this Court to force Applied to keep doing business with a competitor accused of fraud and trade-secret theft, contrary to settled antitrust principles that create a safe harbor. Its common-law claims for tortious interference and trade libel—on which its UCL "unlawful" theory rests—are barred by California's litigation privilege and fail on their own terms.

A. <u>Comulate Must Show A Reasonable Probability of Success</u>

Comulate must show a reasonable probability of success on the merits because it had ample opportunity to develop evidence before moving for a TRO. When a TRO applicant has time to build a record, the Court applies a standard "akin to the traditional preliminary injunction formulation," requiring "probability of success on the merits" rather than mere colorability. *Roseton OL, LLC v. Dynegy Holdings Inc.*, 2011 WL 3275965, at *8 (Del. Ch. July 29, 2011). This rule prevents plaintiffs from gaming the standard by delaying their filings to gather favorable proof while still claiming entitlement to the more lenient TRO test. *Id.*

Roseton is instructive. There, the Court applied the preliminary injunction standard to a TRO motion because the plaintiffs waited twelve days to file—a delay the Court found gave them "sufficient time to explore . . . the relevant facts." 2011 WL 3275965, at *8. The Court also justified the heightened scrutiny because the record contained "substantially all of the important documents," particularly the contracts at the center of the dispute. *Id.*

Comulate's delay and evidentiary control mirror *Roseton*. Applied filed its Illinois complaint on November 21, 2025. Stake Decl., Ex. A. By the next business day, Comulate issued a press release announcing that "Comulate will countersue" and had already begun to "prepare[] [its] lawsuit." *Id.* Ex. B. Yet despite publicly announcing its intention to sue one business day later after Applied filed its Illinois action, Comulate waited until December 3, 2025—twelve days after Applied sued—to file suit and its Motion. Dkts. 1, 3. The twelve-day interval between Applied's complaint and Comulate's Motion matches *Roseton* exactly, and the Court there found such delay sufficient to warrant the higher standard.

Comulate used this interval to build its case. [redacted] Armed with those conversations and documents already in its possession—including the Pilot Agreement, customer contracts, and party correspondence—Comulate assembled a 99-page, 263-paragraph Verified Complaint, a 54-page brief in support of its TRO motion, a ten-page declaration, and multiple exhibits. Dkts. 1, 4, 5. Because Comulate controlled the timing and filed only after building a robust record, the Court can and should apply the preliminary-injunction standard. On that standard, Comulate must show a reasonable probability of success. *See Cantor Fitzgerald, L.P. v. Cantor*, 724 A.2d 571, 579 (Del. Ch. 1998).

In any event, Plaintiff has not carried its burden on the merits of its claims, regardless of what standard the Court applies.

B. Unclean Hands Bars Comulate's Claims Entirely

Comulate asks this Court to bar Applied from "interfering" with customers' use of Comulate's software and to stop Applied from telling customers about the Illinois lawsuit. Br. at 1; Proposed Order ¶¶ 2(a)-(c). That relief would force Applied to maintain a business relationship—specifically, the technical integration of Comulate's software with Applied's platform—that Comulate secured and refined through a campaign of corporate fraud. This request fails under hornbook Delaware law. Delaware law denies equitable relief to a litigant whose conduct has been inequitable, unconscionable, or tainted with fraud. *See Nakahara v. NS 1991 Am. Tr.*, 718 A.2d 518, 522 (Del. Ch. 1998). The doctrine applies with particular force here, where the misconduct relates directly to the access Comulate seeks to restore. *Bodley v. Jones*, 59 A.2d 463, 469 (Del. 1948) (explaining that equity "refuse[s] to interfere on [the wrongdoer's] behalf, to acknowledge his right, or to award him any remedy").

The evidence of fraud is overwhelming. In March 2024, Comulate created a shell company called "PBC Consulting Inc.," told Applied it was a three-person insurance agency, and had someone calling himself "Jordan Bates" sign the MSA as PBC's owner. Doughty Aff., Ex. A at 6; *id.*, Ex. B at 2. Every part of that was a lie.

In fact, PBC had no customers, no employees, no carrier appointments, and no business operations—just a residential apartment for an address and a nonfunctional website with dead links. It never registered with the California Secretary of State or obtained a license to operate an insurance agency. *Id.* And "Jordan Bates" does not exist: the email address belongs to a Comulate engineer, and the profile picture is a stock photo. *Id.* Comulate's actual CEO, Jordan Katz, either posed as Bates or directed the fictitious persona to sign. *Id.* Notably, ***neither Comulate's Complaint nor its Motion denies these specific allegations of fraud***.

Once inside, Comulate went to work. Over nineteen months, it made more than 10 million API calls to Applied's SDK. The IP addresses traced to Comulate's headquarters; the user credentials matched Comulate employees; hundreds of emails in the PBC account discussed Comulate's product development. Comulate was not running an insurance business. It was extracting Applied's proprietary and trade secret information, including proprietary methods and algorithms, and using them to build and refine a competing product. Doughty Aff., Ex. I ¶¶ 1-12, 127.

Equity does not reward this conduct. Comulate used a fake company, a fake identity, and fake credentials to steal trade secrets—and now asks this Court to order Applied to keep the door open. The unclean hands doctrine exists precisely to prevent courts from becoming instruments of fraud. *In re Rural/Metro Corp. Stockholders Litig.*, 102 A.3d 205, 237 (Del. Ch. 2014). Because Comulate's hands are unclean, its claims fail.

C. <u>Comulate Cannot Succeed on Its UCL "Unfair" Conduct Claim</u>

The California Unfair Competition Law ("UCL") prohibits "any unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200. This single statutory provision creates three distinct theories of liability—"unlawful," "unfair," and "fraudulent"—each with different elements. Comulate invokes two of them here: the "unfair" prong and the "unlawful" prong.

Under the "unfair" prong, California courts apply a different test depending on whether the plaintiff is a consumer or a competitor. For competitor plaintiffs like Comulate, the California Supreme Court in *Cel-Tech* held that conduct is "unfair" only if it "threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition." *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 187 (1999). This standard is designed to ensure that the UCL does not become an end-run around antitrust law's carefully calibrated rules. If conduct does not violate or threaten to violate antitrust principles, it is not "unfair" under the UCL—even if the plaintiff dislikes the outcome. The *Colgate* doctrine, discussed below, establishes that a unilateral refusal to deal generally does not violate antitrust law and therefore cannot support a UCL "unfair" claim.

Comulate advances two theories under the UCL's "unfair" claim: first, that Applied's refusal to deal violates the spirit of the antitrust laws; second, that Applied has "locked in" customers to force them to use Applied's product. *See* Br. 37-41. Comulate cannot show a reasonable probability of success on either theory.

1. Comulate's Refusal-to-Deal Theory Fails Because the Colgate Doctrine Provides a Safe Harbor

Comulate's first theory asks this Court to compel Applied to license its intellectual property to a known thief—indefinitely. That relief is foreclosed as a matter of law. "[A] private party generally may choose to do or not to do business with whomever it pleases" without violating antitrust laws. *Drum v. San Fernando Valley Bar Ass'n*, 182 Cal. App. 4th 247, 254 (2010).

The California Court of Appeal recently reaffirmed this principle in *Beverage v. Apple, Inc.*, 101 Cal. App. 5th 736, 755 (2024), which arose from the *Epic Games v. Apple* litigation. There, the court held that Apple's unilateral restrictions on app distribution—including removing Epic's Fortnite from the App Store—could not support a UCL claim under the "unfair" prong because such conduct was protected by the *Colgate* doctrine. *Id.* at 752-55. The court explained:

> If the same conduct is alleged to be both an antitrust violation and an 'unfair' business act or practice for the same reason—because it unreasonably restrains competition and harms consumers—the determination that the conduct is not an unreasonable restraint of trade necessarily implies that the conduct is not 'unfair' toward consumers.

Id. at 751 (quoting *Chavez*, 93 Cal. App. 4th at 375). Permitting a "separate inquiry" under the UCL "into essentially the same question" raised by antitrust law "would only invite conflict and uncertainty and could lead to the enjoining of procompetitive conduct." *Id.*

That reasoning applies with full force here. Comulate alleges that Applied's conduct violates "the policy and spirit of antitrust laws." Br. 37. But Applied's conduct is precisely the type of unilateral refusal to deal that the *Colgate* doctrine protects. Applied has chosen not to do business with Comulate—a competitor it has accused of trade secret theft. A company has a presumptively valid right to refuse to license its intellectual property. *See, e.g.*, *Data Gen. Corp. v. Grumman Sys. Support Corp.*, 36 F.3d 1147, 1188 (1st Cir. 1994) (holding that plaintiff could not "overcome the presumption that a refusal to license is not exclusionary"), abrogated on other grounds by *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010); *In re Indep. Serv. Orgs. Antitrust Litig. (Xerox)*, 203 F.3d 1322, 1328 (Fed. Cir. 2000) (holding that "Xerox was under no obligation to sell or license its patented parts and did not violate the antitrust laws by refusing to do so").

Comulate cannot "plead around" this "absolute bar to relief" by "recasting the cause of action as one for unfair competition." *Beverage*, 101 Cal. App. 5th at 753 (quoting *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 182 (1999)).

Comulate's reliance on *hiQ Labs, Inc. v. LinkedIn Corp.*, 273 F. Supp. 3d 1099 (N.D. Cal. 2017), does not change the analysis. In *hiQ*, LinkedIn revoked access to *publicly available* data on its website. *Id.* at 1118. Here, Applied has accused Comulate of using its access to Applied's proprietary products to engage in trade secret theft—not merely using public data. Applied uncovered that Comulate set up a sham organization to gain access to Epic, made anomalous calls far exceeding any legitimate insurance business, and used that access to reverse-engineer Applied's software. Unlike *hiQ*, Applied is not revoking access to public information; it is stopping ongoing misappropriation and contractual breaches.

Comulate also fails to show the market-wide competitive harm required for antitrust injury. The antitrust laws "were enacted for the protection of *competition*, not *competitors*." *Cargill, Inc. v. Monfort of Colo., Inc.*, 478 U.S. 104, 115 (1986). Comulate's alleged harm—loss of access to Applied's data—is individual injury to Comulate, not harm to competition. Br. 42 (alleging "substantial, irreparable harm to Comulate"). Comulate cites *Satmodo v. Whenever Comms., LLC*, 2017 WL 1365839 (S.D. Cal. 2017), but there the defendant engaged in a "click fraud" scheme to drain a competitor's advertising budget and force it from the market. *Id.* at *8. Applied has taken no such action; it is stopping Comulate's ongoing theft.

2. Comulate's "Lock-In" Theory Lacks Factual and Legal Support

Comulate's second theory fares no better. Comulate alleges that Applied has "locked in" customers to force them to use Applied's products instead of Comulate. Br. 40-41. Comulate cannot show a reasonable probability of success on this theory for three independent reasons.

First, Comulate has not pleaded a "lock in" theory to support antitrust injury under *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451 (1992). In *Kodak*, the Court found lock-in where "lifecycle pricing of complex, durable equipment is difficult and costly" and the information needed for such pricing is "difficult—some of it impossible—to acquire at the time of purchase." *Id.* at 473. The Ninth Circuit has since explained that plaintiffs must show "*significant information costs*" to establish a single-brand aftermarket. *Epic Games, Inc. v. Apple Inc.*, 67 F.4th 946, 976-77 (9th Cir. 2023). Comulate alleges only that switching costs are high. Br. 40. But Applied's pricing is straightforward: customers pay a license fee for access to Epic for a set term. There is no information gap. Customers know the terms, pricing, and duration when they sign up, and can readily plan whether to switch.

Second, Comulate's aftermarket theory is implausible because Applied is not active in the alleged "automated accounting market." Comulate claims Applied is "forc[ing] customers to use Applied's lesser Applied Recon product." Br. 41. But Applied Recon has not launched. Applied cannot wield market power in a market it does not yet participate in.

Third, Comulate ignores the actual reason Applied terminated access: Comulate's trade secret theft. A refusal to deal grounded in protecting intellectual property does not violate the antitrust laws. *Data Gen.*, 36 F.3d at 1188. The evidence of theft here is substantial: Comulate created a fake insurance agency to gain access to Epic, made thousands of unauthorized calls, and used that access to reverse-engineer Applied's software. Applied had every right to stop this misconduct.

D. <u>Comulate Cannot Succeed on Its Common Law and UCL "Unlawful" Conduct Claims</u>

The remaining claims—tortious interference with prospective economic advantage, tortious interference with contract, trade libel, and UCL "unlawful" conduct—fare no better. The "unlawful" prong of the UCL simply borrows violations of other law. *See S. Bay Chevrolet v. Gen. Motors Acceptance Corp.*, 85 Cal. Rptr. 2d 301, 311 (Ct. App. 1999). Comulate identifies its common-law tort claims as the predicates. Br. 52; Compl. ¶ 213. If those claims fail, the UCL "unlawful" claim fails with them.

1. California’s Litigation Privilege Bars the Common Law Claims

California’s litigation privilege is dispositive. Under Civil Code section 47(b), any communication (1) made in a judicial or quasi-judicial proceeding, (2) by litigants or their representatives, (3) to achieve the objects of the litigation, and (4) with some logical relation to the action, is absolutely privileged. *See Silberg v. Anderson*, 50 Cal. 3d 205, 212 (1990). The privilege is “absolute in nature” bars all tort claims other than malicious prosecution, and applies “to *all* publications, irrespective of their maliciousness.” *Action Apartment Ass’n, Inc. v. City of Santa Monica*, 41 Cal. 4th 1232, 1241 (2007). “Any doubt about whether the privilege applies is resolved in favor of applying it.” *Kashian v. Harriman*, 98 Cal. App. 4th 892, 913 (2002).

All four elements are met. Applied filed the Illinois action on November 21, 2025. Doughty Aff., Ex. I. After that filing, it sent emails to joint customers informing them of the suit, outlining its trade-secret allegations, and warning that continued use of Comulate through Epic could breach their agreements with Applied. *See* Br. 22. Those communications were made by a litigant, in connection with a pending case, and aimed at achieving the litigation’s objective: stopping ongoing misappropriation through customer accounts.

Joint customers are plainly within the privilege's reach. California courts treat communications to non-party customers and members as privileged where they have a substantial interest in the dispute or may be witnesses. *See Neville v. Chudacoff*, 160 Cal. App. 4th 1255, 1266-68 (2008) (employer's letter to customers accusing ex-employee of misappropriation privileged); *Healy v. Tuscany Hills Landscape & Recreation Corp*., 137 Cal. App. 4th 1, 5-6 (2006) (communications to association members about pending litigation "unquestionably" privileged).

The functional connection to the litigation is direct. Applied's emails told customers their accounts were being used to siphon trade secrets and that Applied would cut off Comulate's access. Without those communications, the relief sought in Illinois would be impossible to implement. Communications that are "timely and directed to the . . . dispute" fall within the privilege. *See Knoell v. Petrovich*, 76 Cal. App. 4th 164, 170-71 (1999).

Labeling the statements "false" or "defamatory" does not change the result. The privilege applies "to *all* publications, irrespective of their maliciousness." *Action Apartment*, 41 Cal. 4th at 1241. Comulate's remedy for any supposed misstatements is to win in Illinois—not to bring collateral tort claims here.

2. The Common Law Claims Also Fail on the Merits

Even apart from the litigation privilege, Comulate cannot show a reasonable probability of success on its tortious interference and trade libel claims.

To state a claim for tortious interference with prospective economic advantage, a plaintiff must show "intentional *wrongful* acts on the part of the defendant designed to disrupt the relationship." *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1154 (2003) (emphasis in original).[1] The conduct must be "proscribed by constitutional, statutory, regulatory, common law, or other determinable legal standard." *Id.* at 1159. And "[a] cause of action for intentional interference with prospective economic advantage may not be based solely on true statements made by the defendant." *Paradise Hill Assocs. v. Procel*, 235 Cal. App. 3d 1528 (1991), *overruled on other grounds by Kowis v. Howard*, 3 Cal. 4th 888 (1992).

Applied's communications were accurate. It told customers it had filed a trade-secret lawsuit. It described its belief that Comulate had obtained access through improper means. It urged customers to review their contracts. All of that is true and independently lawful. Comulate's authorities are far afield: one involved false and misleading cease-and-desist letters, another involved deliberate efforts to pressure distributors into dropping a supplier. *See BriteSmile, Inc. v. Discus Dental, Inc.*, 2005 WL 3096275, at *5 (N.D. Cal. Nov. 18, 2005); *Bert G. Gianelli Distrib.*

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[1] Applied does not concede that California law governs Comulate's tort claims. Applied reserves the right to argue that Illinois law or another state's law applies and that the claims fail under that law as well.

Co. v. Beck & Co., 172 Cal. App. 3d 1020, 1053 (1985). Here, Applied did what a company facing misappropriation is supposed to do: investigate, file suit, and inform affected customers.

Moreover, "a legitimate business purpose can indeed justify interference with contract." *Meta Platforms, Inc. v. BrandTotal Ltd.*, 605 F. Supp. 3d 1218, 1274 (N.D. Cal. 2022). In *Meta*, the court granted summary judgment where the defendant investigated alleged policy violations, discovered scraping and platform abuse, and communicated its beliefs to a third party. *Id.* at 1275-76. Applied conducted a similar investigation: it discovered anomalous API calls, traced IP addresses to Comulate, found Comulate employee credentials in a sham account, and discovered hundreds of incriminating emails. *See generally*, Peters Decl. Applied's communications "reflected its beliefs at the time" and were justified. *Meta*, 605 F. Supp. 3d at 1276.

For trade libel, Comulate must show actual malice—knowledge of falsity or reckless disregard for the truth. *See ComputerXpress, Inc. v. Jackson*, 93 Cal. App. 4th 993, 1010 (2001); *see also WPEngine, Inc. v. Automattic Inc*., 2025 WL 2637505, at *13-14 (N.D. Cal. Sept. 12, 2025) (requiring "actual malice"). There is no such evidence here. Applied's investigation uncovered anomalous volume, Comulate IP addresses, Comulate employee credentials in the PBC tenant, and dozens of emails that tie PBC usage to Comulate's product development. On that record, Applied's statements reflected a good-faith belief in Comulate's misuse, which is the opposite of actual malice.

Moreover, even if Comulate could state a claim for trade libel, this Court may lacks subject-matter jurisdiction to hear it. The Court of Chancery's jurisdiction is limited to matters historically cognizable in equity. Trade libel is a common-law tort action that sounds in damages, not equitable relief. *See* 10 *Del. C.* § 341 (defining Chancery jurisdiction). Comulate's attempt to bootstrap a damages claim into a TRO motion does not transform the nature of the underlying cause of action.

III. COMULATE CANNOT SHOW IMMINENT, IRREPARABLE HARM

Comulate does not carry its burden to show imminent, irreparable injury that cannot be remedied by money. Injunctive relief requires more than a reasonable likelihood of success and some business disruption; the movant must prove irreparable harm "for which money damages will not suffice," which must be "imminent and genuine, as opposed to speculative. *Mody v. Aldrich*, 2025 WL 3048948, at *3 (Del. Ch. Oct. 31, 2025); *see Maplewood Indus., Inc. v. Dep't of Nat. Res. & Env't Control*, 1989 WL 155944, at *4 (Del. Ch. Dec. 7, 1989) (explaining that monetary loss, however substantial, "is not necessarily irreparable"). Comulate's supposed harms are quantifiable, speculative, and self-inflicted.

First, Comulate's claimed injuries are classic money damages. Economic loss—lost revenue, lost profits, or lost enterprise value—is not irreparable harm.

Sampson v. Murray, 415 U.S. 61, 90 (1974) ("[M]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough."). Comulate's own filings show that its alleged harms are financial and quantifiable. The complaint accuses Applied of causing the loss of "millions of dollars in annual recurring revenue" and asserts damages "expected to exceed mid-nine figures." Compl. ¶¶ 208-09. The Katz Affidavit identifies specific revenue figures: Major Client 1's contract allegedly was worth [redacted], and affected customers supposedly represent [redacted]; Comulate projects [redacted] in 2026 and [redacted] in 2027 from Epic-integrated customers. [redacted] Those are lost-contract and lost-opportunity numbers that can be modeled and proven at trial. Comulate sells enterprise software on multi-year contracts. If it ultimately prevails, its experts can calculate lost profits and any diminution in enterprise value using those very figures. That is what damages experts do every day.

Second, [redacted] But Comulate also tells investors and this Court that it is a thriving, heavily backed startup. Comulate publicly announced a $20 million Series B round in February 2025 and describes itself as "a hugely valuable business with an enterprise value that exceeds mid-nine figures." Compl. ¶¶ 27, 98; Br. 25. It touts a "99% customer retention rate," "tripled its revenue over the past year," and "more than 120% net revenue retention." Compl. ¶¶ 26, 98. It employs roughly 30 people and [redacted] Compl. ¶ 27; [redacted] That is not the profile of a company on the brink of immediate failure.

The cases Comulate relies on for "existential harm" are miles away. In *Insituform Techs., Inc. v. Insitu, Inc.*, the plaintiff technology owner purported to terminate the defendant's license to the only technology it used, while still owing fiduciary duties as a partner, and then publicly told customers the defendant could no longer use that technology. 1999 WL 240347, at *1, *6, *13-15 (Del. Ch. Apr. 19, 1999). The Court found irreparable harm because the defendant's entire business depended on that license and the plaintiff was exploiting its role as a fiduciary partner. *Id*. at *14-15. Here, Applied and Comulate are arm's-length competitors, not partners; Applied owes Comulate no duty to preserve its business.

Nor does *hiQ Labs, Inc. v. LinkedIn Corp*. help. There, LinkedIn threatened to block the plaintiff's access to public profile data—the lifeblood of the plaintiff's analytics service—by invoking anti-hacking laws against scraping entirely public data. 31 F.4th 1180, 1187-89 (9th Cir. 2022). The Ninth Circuit emphasized that LinkedIn could not claim proprietary control over information "presumptively open to all comers." *Id*. at 1199. Here, Comulate was not scraping public data; it was accessing Applied's closed, password-protected Epic system and SDK, which require authentication and are governed by express license terms that forbid using the SDK to develop competing products or reverse-engineer Applied's software. MSA § 3.6; Schedule SDK §§ 5.5-5.7. Because Comulate had no freestanding right to sit inside Applied's proprietary system—let alone via a sham entity—it cannot claim irreparable harm from being excluded.

And *KL Golf, LLC v. Frog Hollow, LLC* is further afield. There, the plaintiff faced eviction from the physical premises where it operated a golf course—the sole asset of its business. 2004 WL 828377, at *3 (Del. Ch. Apr. 8, 2004). Physical eviction from a single-asset business is not remotely analogous to losing one integration channel where the plaintiff still has its own code, employees, capital, [redacted], and the ability to pursue customers using other agency-management systems.

Third, Comulate's reputational and relationship theories are long on rhetoric and short on evidence. Br. 26, 31-33. It claims Applied "eroded Comulate's hard-earned customer goodwill" and caused reputational harm "difficult or impossible to quantify." Compl. ¶ 208. But it identifies no concrete, non-economic injury—no lost financing, no regulatory sanction, no lasting stigma that cannot be undone. Rule 65 requires "specific facts shown by affidavit or by the verified complaint" demonstrating imminent irreparable injury. Ct. Ch. R. 65(b)(2). Vague references to "goodwill" are not enough.

The reputational theory also fails because it rests on truthful disclosures. Applied told joint customers that it had sued Comulate for fraud and trade-secret theft, and why. Comulate cannot claim irreparable reputational harm from accurate statements about its own alleged misconduct. If its reputation has suffered, that flows from what it did, not from Applied's decision to speak. The cases Comulate cites do not change that.[2] Each involved an innocent business harmed by lies, fiduciary breaches, or internal sabotage—not a party that allegedly created a fake company, used a fake identity, made roughly 10 million unauthorized API calls, and built its product on misappropriated methods, now asking equity to shield that conduct.

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[2] *See Next Level Ventures, LLC v. AVID USA Techs. LLC*, 2023 WL 3141054, at *1-5, *17 (Del. Ch. Mar. 16, 2023) (defendants falsely portrayed plaintiff as in financial ruin with "enormous tax debt," unlike Applied's communications grounded in a verified complaint); P.*C. Connection, Inc. v. Synygy Ltd.*, 2021 WL 57016, at *1-5 (Del. Ch. Jan. 7, 2021) (innocent customer cut off from critical services in a billing dispute, not a party that obtained access through fraud); *Arkema Inc. v. Dow Chem. Co*., 2010 WL 2334386, at *4-5 (Del. Ch. May 25, 2010) (irreparable harm tied to breach of a valid supply contract, not termination of access under a fraudulently procured agreement permitting termination); *ZRii, LLC v. Wellness Acquisition Grp., Inc*., 2009 WL 2998169, at *1-9 (Del. Ch. Sept. 21, 2009) (faithless fiduciaries dismantling the company from within, not an external competitor enforcing contractual and IP rights).

The rest of Comulate's [redacted]—is equally speculative. [redacted] It offers no evidence of actual departures, failed financings, or concrete projects terminated because of Applied's conduct—[redacted] Delaware law requires likely injury, not conjecture. The contrast with Comulate's own cases is stark: in one, the plaintiff literally could not pay its salesforce because its compensation platform was cut off; in another, faithless fiduciaries were dismantling the company from within. 2021 WL 57016, at *1-5, *22; 2009 WL 2998169, at *5-6, *9, *13. Here, Applied is enforcing license and trade-secret rights against an external competitor. [redacted]. That is not the kind of direct, imminent, and unquantifiable harm that justifies extraordinary relief.

IV. <u>THE BALANCE OF HARDSHIPS SHARPLY FAVORS APPLIED</u>

The balance of hardships favors Applied, not Comulate. A court "cannot, in equity, risk greater harm to defendants … than it seeks to prevent." *Pell v. Kill*, 135 A.3d 764, 793 (Del. Ch. 2016) (quotation omitted). The Court must deny an injunction when the "alleged harm does not outweigh the burden to be suffered by" the non-moving party. *CBOT Holdings, Inc. v. Chi. Bd. Options Exch., Inc.*, 2007

WL 2296356, at *5 (Del. Ch. Aug. 3, 2007). Four independent grounds confirm that the balance of hardships favors Applied.

First, the TRO would shift the risk of ongoing misappropriation onto Applied. Comulate did not simply plug into Epic through ordinary customer integrations. It created and controlled a sham "agency," PBC, misrepresented PBC's business and ownership, and then used PBC's SDK key to generate more than 10 million SDK calls—orders of magnitude beyond normal usage. Doughty Aff., Ex. I ¶¶ 69-83, 88-96, 120-22. Within that artificial environment, Comulate used fabricated data and test invoices to map how Epic handled transactions and to copy Applied's confidential logic into competing Comulate tools. *Id*. ¶¶ 88-96, 156-63.

Every extra month of access makes that problem worse. Applied's logic becomes harder to unwind and easier for Comulate to entrench. A TRO would force Applied to keep Comulate wired into Epic while this case proceeds. That means the alleged victim of a trade secret theft must host and support the alleged misappropriator. Equity does not require a trade-secret plaintiff to maintain a relationship that exposes it to continued misuse of its confidential information. *See Mountain W. Series of Lockton Cos., LLC v. Alliant Ins. Servs., Inc.*, 2019 WL 2536104, at *23 (Del. Ch. June 20, 2019) (declining relief to party that "willfully and knowingly took advantage" of competitor's rights).

Second, the TRO would gut Applied's contractual and statutory protections. Under the MSA and Schedule SDK, PBC's access was tightly cabined. The SDK could be used only for a specific "Authorized Business Purpose" and defined "Authorized Integrations," and could not be used to reverse engineer, benchmark, or build competing tools. Applied reserved the right to terminate access upon material breach. MSA §§ 3.2-3.3, 3.6, 4.2-4.3, 5.1, 7.2, 13.1; Schedule SDK §§ 2-3, 5.1-5.2, 5.5-5.8. Federal and Illinois trade-secret law likewise give Applied the right to seek to stop "actual or threatened misappropriation" of its trade secrets. 18 U.S.C. § 1836(b)(3); 765 ILCS 1065/3. Applied exercised those rights: it terminated PBC's access, rejected new Comulate integrations, and warned customers after uncovering what it alleges is a multi-year misuse of Epic. Compl. ¶¶ 88-96, 120-22, 186-88, 192-94; Doughty Aff., Ex. I.

The TRO would carve out an exception to that regime for Comulate alone. It would obligate Applied to provide and expand connectivity to a counterparty it reasonably believes breached the MSA, violated express non-reverse-engineering and non-competition provisions, and used that access to build competing products. Br. 1, 33-34; Proposed Order ¶¶ 2(a)-(c). It would also restrict Applied's communications with its own customers about the Illinois action and the customers' contracts. *Id*. Equity does not rewrite commercial agreements so that a party that allegedly obtained access through deception enjoys interim protection for that access while the merits are litigated. *See CBOT Holdings*, 2007 WL 2296356, at *5 (considering whether TRO would "curtail" defendant's contractually granted powers).

Comulate's rejoinder—that Applied will suffer "no harm" because it did not seek a TRO in Illinois and initially allowed some customers to keep using Comulate—misses the point. Br. 33-34. Applied's choice not to seek emergency relief in its own first-filed case does not waive its contractual and statutory rights, nor does it obligate Applied to expand a risky relationship across its customer base under court order. And limited, temporary accommodations with individual customers do not show that a broad, court-imposed obligation to maintain and support Comulate's access is harmless. The hardship here is the loss of Applied's ability to decide, customer by customer and in real time, how to manage risk to its core system—that is precisely the discretion its contracts and trade-secret statutes give it.

Third, Comulate's claimed harms are economic and self-inflicted. [redacted] But those consequences flow from Comulate's own choices. Comulate set up PBC, misrepresented what PBC was, used PBC's SDK access far beyond any plausible "internal operations," and leveraged that access to build and refine competing tools. When Applied's monitoring and the forensic review flagged PBC as an extreme outlier, Applied did exactly what the contracts and statutes permit: it cut off access, audited usage, filed suit, and informed customers.

Delaware law does not reward that strategy. A sophisticated party that "set out in bad faith" cannot "complain about suffering the foreseeable consequences of its actions" once those actions trigger enforcement of contractual and legal rights. *Mountain West*, 2019 WL 2536104, at *25. If customers now hesitate to rely on a vendor accused of fraudulent access and trade-secret misuse, that is not an independent wrong by Applied. It is the foreseeable market reaction to Comulate's conduct and to the Illinois lawsuit Comulate's conduct provoked. Comulate remains free to compete on other platforms and to engineer its products so they do not depend on compelled access to Applied's SDK. What it cannot do is ask a court of equity to insulate it from the business fallout of the path it chose.

Fourth, the broader equities and public interest support denying the Motion. Comulate dresses this up as a policy fight about "open" versus "closed" systems and customer choice. Br. 33-35; Compl. ¶¶ 48-57, 204-07. But the question is simpler: should a company that alleges it was deceived into granting access, and that its confidential logic was then copied in violation of express contractual limits, be forced to keep furnishing that access while the case proceeds? A ruling in Comulate's favor would validate a troubling playbook—obtain access through misstatements, use it in ways the contract forbids, then ask a court to lock in the resulting business model in the name of "innovation."

Denying the TRO instead leaves in place the rights the parties negotiated and the protections Congress and the Illinois legislature enacted. Applied keeps control over who accesses Epic and on what terms; Comulate keeps all its claims and can seek damages and permanent relief if it ultimately prevails. On this record, an injunction would threaten more harm to the party asserting misappropriation and would undermine clear contractual and statutory protections. *Cantor Fitzgerald*, 724 A.2d at 587-89.

V. <u>THE PROPOSED ORDER IS IMPERMISSIBLY VAGUE, MANDATORY, AND UNSECURED.</u>

Even if Comulate could satisfy the elements for interim relief—and it cannot—the Proposed Order fails for three independent reasons.

First, the Proposed Order is too vague and indefinte to enforce. Rule 65(d) requires an injunction to "be specific in terms" and "describe in reasonable detail" the acts restrained; a court cannot police orders that rely on abstract labels or cross-references. Ct. Ch. R. 65(d); *Magness v. Krewson*, 2004 WL 877348, at *3 n.15 (Del. Ch. Apr. 15, 2004). Comulate asks the Court to bar Applied from "interfering" with existing customers' "ongoing use of and access to" Comulate, with "the onboarding of existing joint customers," and with the "solicitation, uptake, or onboarding of prospective customers"—without ever saying what "interfering" is. Proposed Order ¶ 2(a)-(c). That elastic word could be stretched to cover truthful litigation updates, internal product decisions about what Applied will and will not integrate with Epic, and routine enforcement of SDK license terms. An order that fuzzy invites contempt fights over every disputed business decision. Rule 65(d) is designed to prevent that. Any relief must be tied to specific, objectively verifiable acts, not a free-floating ban on "interference."

Second, read the way Comulate presumably intends, the Proposed Order is an impermissible mandatory injunction. A mandatory injunction "commands the defendant to do some positive act" instead of preserving the status quo and may issue only after trial or on undisputed facts; otherwise, it is improper "as a matter of law." *C & J Energy Servs., Inc. v. City of Miami Gen. Emps.' & Sanitation Emps.' Ret. Tr.*, 107 A.3d 1049, 1071 n.107 (Del. 2014) (quotation omitted). To avoid "interfering" with "solicitation" of new customers, Applied would be required to facilitate onboarding for new customers who want to use Comulate on Epic. Proposed Order ¶ 2(c). That is not "do no harm." And Comulate seeks that relief while the core questions—whether it procured Epic access through a sham brokerage, misused that access, and reverse-engineered Applied's systems—are sharply disputed. *C & J* reversed comparable relief that required a company, on a preliminary record, to endure "judicially-ordered infringement of its contractual rights." 107 A.3d at 1071. The same principle bars an order compelling Applied to keep supporting the very conduct it is suing to stop.

Third, if the Court grants any relief, a substantial bond is mandatory. Rule 65(c) requires security sufficient to cover the damages the enjoined party may suffer if the injunction proves wrongful, and courts must "err on the high side" because "a wrongfully enjoined party has no recourse other than the security." *Guzzetti v. Serv. Corp. of Westover Hills*, 7 A.3d 467, 470 (Del. 2010). Applied's Illinois complaint alleges that Comulate engaged in corporate espionage and misappropriated technology that cost tens of millions of dollars to develop. Doughty Aff., Ex. I ¶ 127. Forcing Applied to keep supporting Comulate's access would magnify that harm: it would let Comulate further refine and commercialize the very functionality Applied says was built on misappropriated methods, and it would deepen the risk of losing customers and market position tied to that functionality. If the injunction is later vacated, those losses—in exclusivity over critical IP and in customer relationships—will be measured in the tens of millions. A token bond would not come close. Under *Guzzetti*, any injunction should be conditioned on a bond of at least $10 million.

VI. COMULATE'S MOTION TO EXPEDITE

The Court of Chancery has broad discretion over its docket and the inherent power to control its docket and manage its affairs to promote the efficient administration of justice. *See TA Instruments-Waters, LLC v. University of Conn.*, 31 A.2d 1204, 1211 (2011). The Court has held that a motion to expedite should only be granted if the plaintiff sufficiently articulates a colorable claim and shows a sufficient possibility of threatened irreparably injury. *Giammargo v. Snapple Beverage Corp.*, 1994 WL 672698, at *2 (Del. Ch. Nov. 15, 1994). For the reasons stated above, Comulate's Motion to Expedite fails.

However, if the Court chooses to grant Comulate's Motion to Expedite, then Applied would request that the Court enter an expedited schedule for Applied's Motion to Dismiss and, if necessary, a reasonable schedule for a Preliminary Injunction Hearing in May 2026 which would afford the parties sufficient time to litigate this issue prior to the termination date at issue.

CONCLUSION

For the reasons above, Applied respectfully requests that this Court deny Comulate's Motion, dismiss or stay this action in favor of the first-filed Illinois proceeding, and award Applied such other relief as the Court deems appropriate.

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