IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ARDENT LABS, INC., d/b/a COMULATE,	:	
Plaintiff,	:	
v	:	C. A. No. 2025-1405-BWD
APPLIED SYSTEMS, INC.,`	:	
Defendant.	:	

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Chancery Court Chambers
Court of Chancery Courthouse
34 The Circle
Georgetown, Delaware
Friday, December 12, 2025
1:30 p.m.

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BEFORE: HON. BONNIE W. DAVID, Vice Chancellor

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TELEPHONIC ORAL ARGUMENT AND RULING OF THE COURT ON PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION TO EXPEDITE

APPEARANCES:

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THE COURT: Good afternoon. This is Bonnie David.

Could counsel please enter their appearances, beginning with the plaintiffs.

ATTORNEY STOTTMANN: Good afternoon, Your Honor. It's Ryan Stottmann from Morris Nichols on behalf of the plaintiff, who we call Comulate. I'm joined in my office here by my colleagues: Alec Hoeschel, Isaac Hopkin, and Andrew Schoen. And then we have our co-counsel on the line from the Elsberg Baker & Maruri firm: Rollo Baker, Silpa Maruri, Brian Campbell, Chase Shelton, and Elizabeth Baines.

And with the Court's permission, Mr. Baker and Ms. Maruri were planning on addressing our motions today.

THE COURT: Thank you.

And who do we have for the defendant.

ATTORNEY BARLOW: Your Honor, good afternoon. It's Michael Barlow of Quinn Emanuel in Wilmington. I am here today on behalf of defendant Applied Systems, Inc. I'm joined by Shannon Doughty of the Wilmington office. I'm also joined by a few others, including Sam Stake of our San Francisco office, as well as Richard Cohan, the general counsel

of Applied Systems.

Your Honor, with the Court's permission, Mr. Stake plans to make the argument today.

THE COURT: Thank you very much. I appreciate everyone making themselves available this afternoon for oral argument on the pending motion for expedited proceedings and motion for a temporary restraining order. I'm happy for the parties to make whatever record they'd like to make on the motions. I will tell the parties, though, how I am thinking about the pending motion.

It seems to me that the complaint likely states a colorable claim. The standard for colorability is very low. It's essentially a nonfrivolous claim. It's not a very difficult bar to meet. And it's pretty clear to me that the plaintiffs potentially will suffer irreparable harm in the absence of a temporary restraining order.

So I think that my decision over whether to enter a TRO is likely to turn on a balance of the equities. And one substantial concern I've got is whether Delaware is really the right forum to litigate these disputes.

So I'm happy to hear the parties' arguments on colorability and irreparable harm, but I have studied the papers, I think I have a fairly strong grasp on those issues. I'm interested to hear what the parties have to tell me about the balance of the equities and about the forum issue.

My inclination currently is that what makes the most sense is to have expedited briefing on the defendant's motion to dismiss in favor of the Illinois forum. And the question that I've really got is whether it makes sense to have some very narrow TRO in place between now and the time I decide that motion to dismiss. And if it does make sense based on the balance of the equities to issue such a TRO, what should the scope of that TRO be.

That's just my reaction going in. I thought it may be helpful for the parties to know that. But I'm, again, happy to hear whatever argument you'd like to make.

So since this is the plaintiff's motion, why don't I hear from the plaintiffs first.

ATTORNEY BAKER: Thank you, Your Honor. Rollo Baker from Elsberg Baker & Maruri on behalf of Comulate.

I will briefly address the hardship prong that Your Honor just focused on, and my partner, Ms. Maruri, will address the forum issue that you raised.

Your Honor, if I may just quickly give a brief factual background. This case is about a monopolist that couldn't beat a competitor on the merits, so it's trying to destroy that competitor instead. Applied controls over 81 percent of the enterprise insurance agency management system market. They are the dominant leading platform that the overwhelming majority of major brokers use to conduct all back office and accounting functions. These businesses require access to Applied Epic, which is the name for the agency management system market, in order to function.

Now, Applied uses this undisputed dominant market power in two improper ways. First, Applied uses the dominant market power to cause friction and pain for innovators, like Comulate, so as to make their business more difficult and ultimately eliminate competitors, like Comulate, through either acquisition or destruction.

And second, Applied uses its market

dominance to lock in customers who, once are locked into the Epic platform, have limited, if any, ability to transfer away from Epic given that their entire business operations is tied into the Epic system and it takes years and years and hundreds of thousands of dollars in order to transfer away.

Now, once Epic -- Applied has locked in the customers, it is now using that power to control a secondary market, which is the market around automated insurance accounting, which is the market in which Comulate participates. And Applied is using its market power and the lock-in effect to prevent customers from exercising choice in that secondary market and to eliminate and throttle competitors, like Comulate, so that Applied can force its customers to ultimately use Applied's own in-house solution, Applied Recon.

Now, Comulate is a 30-person startup and has built a superior product using artificial intelligence, it is automating the insurance accounting process, and it allows teams of hundreds of individuals to now be a team of a dozen while eliminating human error. By all accounts, Comulate is a transformative product that has changed the nature

of the business.

Now, Applied has sought to acquire Comulate at least three separate times, and when Comulate refused, Applied has declared war.

Because Your Honor has said that you would like us to focus on the balance of the equities and the other issues, I will skip over the back-and-forth on the colorability of the claims. I do want to make one point at the start, which is that Applied apparently is now telling all customers that they must transition off Comulate by Q2 2026 or by the end of Q2 2026. And that information I think is important for a number of reasons.

First, that is when Applied expects its competing product, Applied Recon, to be commercially launched.

Two, the fact that Applied is telling its customers that they will have continued access to Comulate through Q2 2026 indicates that there is no ongoing harm whatsoever by the Court entering a temporary restraining order ensuring that the status quo is preserved through the relevant time period.

And three, it shows that this is not about Applied being concerned that Comulate's

continued access to Epic through customers' instances creates a risk of trade secret misappropriation; this is about eliminating competition.

And one further point I want to note, Your Honor, is that given the timeline for customers transitioning off from Comulate, an assertion or a representation by Applied that customers can use Comulate through Q2 2026 is a demand that customers today begin the process to transition. This is a six-month process.

Mr. Katz submitted a supplemental declaration just last night, where he copied and pasted verbatim two emails from two customers who are currently using Comulate. They indicated that it was more like a nine-to-twelve-month period or a multiyear period. But if customers are told that they can only use Comulate through the end of 2026 second quarter, that means customers have to start the transition process today.

Now, if we focus, Your Honor, on the issue of the balance of equities, the balance of equities clearly favors Comulate. As I just mentioned, Comulate's customers, who are also Applied customers, have already been told that they will have

access through Q2 2026, which means that Applied is suffering no ongoing harm by that continued access. And, as we set forth in our opening papers and Applied has not disputed it, Applied told at least one customer that access to Comulate would be unimpeded pending resolution of litigation.

So if Applied suffers no harm from continued Comulate access through Q2 2026, it suffers no harm from a TRO maintaining the status quo in the interim.

Now, Applied makes, nonetheless, an ongoing harm argument in its brief. Applied claims that allowing Comulate access would expose it to "ongoing misappropriation." But to the extent -- and it is the extent -- that Applied's assertion of ongoing misappropriation is based on PBC, the PBC account has already been terminated. So if the PBC account was a source of the alleged misappropriation, then the alleged harm is already eliminated.

Now, one thing that Your Honor has probably realized, having read Mr. Katz's supplemental affidavit from last night, is that Comulate does not dispute that it used PBC to create or to open up a sandbox account. And I would urge the Court to

carefully study the Katz supplemental affidavit because I think it is very apparent that this sandbox account access did not create in any way, shape, or form new access to information or new access to any sort of secret sauce that Comulate did not already have through the SDK and was able to access through 60 separate customer integrations that Applied knew about and had endorsed.

And it's also important to note, Your Honor -- and it's set forth in the affidavit -- that Comulate only used the PBC sandbox account after Applied had breached the pilot agreement pursuant to which Applied had agreed that it would provide SDK access directly to Comulate. That's the pilot agreement. And my colleague, Ms. Maruri, will speak about that because that pilot agreement and the NDA both have a Delaware forum selection clause.

But Mr. Katz's supplemental affidavit explains why Comulate used the PBC sandbox accounts in order to operate a noncustomer, nonproduction sandbox account for development and demonstration.

Mr. Katz explains that the sandbox account was used to develop and demonstrate Comulate's functionality for Epic-integrated customers in a

sandbox or test environment that was isolated from real customer data and real customer environments.

Comulate used mock data in that instance in that account in order to create fictionalized invoices and documentation so that Comulate could use that account to run demonstrations. The data was obviously fictionalized. Terms like "Benefits Brokers" are on the invoice and "Chicago, Georgia." This is sort of standard process, to use mock data in order to show customer demonstrations and in order to refine a product. There's nothing sinister or improper about that.

And when Comulate obtained its own test account through PBC, it gained nothing new. It already had the same SDK methods. It already had the same functionality and the same information that Applied had already shared with Comulate directly and with its 60-plus customer integrations.

One sort of illustration of how harmless this was is the PBC sandbox account was used to run a Comulate product demonstration at the 2024 Applied Net Conference before four senior Applied employees, who directly observed the demonstration. That demonstration included fictionalized data. No

one expressed any concern from attending that conference. No one from Applied said, "Why do you have access to this system? Why are you doing a demonstration? There was no concerns at all because this was all harmless.

Now, one point that Mr. Peters focuses on in his affidavit is that he says there was a high volume of GET requests and that the high volume of so-called GET requests in the PBC account was illustrated potentially of data scraping or reverse engineering.

But what it actually shows is Comulate's business model. Remember, Comulate automates the process. So in the background Comulate has a script that every 15 minutes is requesting updated information. And here, that updated information request is directed at fictionalized data that Comulate had uploaded to the Epic account through the PBC account, the sandbox account. So over and over again, in multiple instances, this same routine request was being asked over and over and over for fake information to see if there had been any updates into the system. And this is a function of the way that the Applied system is created. It requires this

automated script to be run over and over again.

So the high volume of GET requests wasn't about reverse-engineering; it's about the same request being made every 15 minutes, over and over again, in multiple instances over a 150-day period, which is how you get to the 10 million or so GET requests' number. If there had been reverse engineering, there would have been different requests being made over and over again. But here, it was the same request over and over again because it was an autonomous script running with little human involvement. And that's explained in detail in Mr. Katz's supplemental declaration.

There is no evidence whatsoever of any reverse engineering or trade secret misappropriation. And the access that PBC obtained through -- the access that Comulate obtained through the PBC accounts was the exact same access they previously had. It was simply more convenient and a better environment to test demos and refine the product outside a particular customer's instance.

So there is no harm, no damage caused through the PBC sandbox account, and the sandbox account has been shut down.

Importantly, Your Honor, Applied has never sought emergency relief in Illinois, proving it doesn't believe it faces any imminent ongoing harm.

We did learn yesterday by email from Quinn Emanuel, who recently entered its appearance, that they intend to file a PI. But we submit that's in reaction to the arguments we are making in this case, where we noted that their lack of urgency shows they don't really believe there's any trade secret misappropriation. They are trying to eliminate a competitor through litigation.

So when we focus on the comparative hardships here, Your Honor, for Comulate, without a TRO, a 30-person company faces near immediate extinction. Customers are already terminating contracts. Customers are raising questions on a daily basis. Partnerships are dissolving. Employees are uncertain about their future. Comulate's very existence is at stake.

By contrast, for Applied, a 2,000-employee company owned by a private equity firm, maintaining the status quo is what they have already offered to do to certain favored customers. And at least one customer they offered and told the customer

that they would allow Comulate access throughout the duration of litigation. No harm to Applied by allowing the continued access that they have already told clients they would provide. So the equities, we would submit, are not even close.

Your Honor, Applied notes the unclean hands doctrine. That is a doctrine designed to protect the integrity of a court of equity, not a weapon to be wielded by parties seeking to excuse their own inequitable behavior. That's the *Portnoy* case. Courts applying unclean hands do so in a proportional way, and they do not do so when there is no harm.

We would submit, for all the reasons I mentioned, there was no harm here. There is no damage here. And applying unclean hands here to bar a TRO would not be proportional to the alleged wrongdoing because there was no harm. There was no harm. Applied knows that, and instead of admitting that, they concocted a whole set of allegations and smoke and mirrors while not seeking expedition because they are seeking to eliminate a competitor, not to address any actual alleged trade secret misappropriation.

So we would submit the balance of the

equities clearly favors Comulate here and that absent a TRO, the business will be in serious and imminent jeopardy.

So with that, Your Honor, I will not spend time focusing on irreparable harm elements or the colorability, unless Your Honor has any specific questions, because I think Your Honor -- I heard the message from Your Honor loud and clear, and I would pass the --

THE COURT: I do have questions for you. Sorry to interrupt. It's difficult on the phone.

Here is my question. If Applied has agreed that customers can continue to use the Comulate product into 2026, perhaps through the end of Q2 2026, what conduct is it that Comulate seeks to enjoin through the temporary restraining order? Can you explain that with some specificity, what it is that your client is seeking to enjoin.

ATTORNEY BAKER: Sure. So that message that Comulate will be available through the second quarter of 2026 is not a message that we understand has been universally conveyed. So some customers in the wake of the lawsuit had their

Comulate instance shut down immediately. Others were told it would be the first quarter of 2026. Others received vague messages that it would be at some point in time in the near future. So there's been no clarity around messaging.

So what we would want is a TRO in place that makes clear that Comulate's customers will have uninterpreted access to Comulate through the scheduling of a preliminary injunction hearing. And at that preliminary injunction hearing, we will be asking for a preliminary injunction that builds into place a six-month lead time so that customers today do not have to start transitioning away from Comulate.

The whole reason why Applied is saying we will provide Comulate access through Q2 2026 and the whole reason they suggest in their brief a May 2026 PI hearing is because they know that six months, five to six months is exactly how long customers need to transition, at a minimum, to a different product.

So by saying that Comulate will be available until the Q2 2026 end, they are telling customers you have to start today transitioning because we're going to shut down, we're going to bring

down the gate to Comulate in May of 2006 and you are going to be out of options unless you start transitioning now.

And who are they saying they should transition to? One of the entities they are saying they should transition to is Ascend. Now, Ascend is a product that Applied has previously described as vastly inferior to Comulate, but -- this is what's really important -- Applied has apparently told certain customers, or at least one customer, that Applied intends to kill Ascend in the near future by precluding Ascend to access the SDK necessary to integrate with Applied Epic.

So what is happening is Applied is putting into place a process where today customers have only one option in the long term, and that is to transition to Applied Recon, when Applied Recon just happens to commercially launch at the end of second quarter 2026, and they are forcing customers to start that process today.

So we want a TRO and we would ask Your Honor for a PI in February of 2006, expedited discovery and a TRO in place until that time period. And then at that hearing, we would ask for a

preliminary injunction, making clear that customers would have six months from the resolution of the lawsuit to transition because otherwise Applied is getting the ultimate thing they are after, which is forcing customers to transition today.

Hopefully, that answered your question, Your Honor.

THE COURT: It did. That was very helpful. Thank you.

ATTORNEY MARURI: Good afternoon, Your Honor.

THE COURT: Please proceed.

ATTORNEY MARURI: This is Silpa Maruri from Elsberg Baker & Maruri. And I will address the Court's question regarding the appropriate forum for this dispute.

Your Honor, Delaware is the right forum for this dispute. The parties agreed to Delaware in their forum selection clauses. And they didn't just choose Delaware once; they chose it twice. They chose it in a nondisclosure agreement between Comulate and Applied, and they chose it again in the pilot agreement. That conclusively resolves the question. They picked Delaware not just once; they

picked it twice.

The Court does not need to reach *McWane* because the forum selection clauses here control the analysis.

Now, I'll briefly explain why the forum selection clauses in the parties' NDA and the pilot agreement require this case to be heard in Delaware.

Applied and Comulate agreed in the nondisclosure agreement to "the sole and exclusive jurisdiction and venue of the state and federal courts in Delaware, for any action or claim between the parties." That was in the parties' November 2022 nondisclosure agreement. That's Exhibit 4 to our reply brief.

The clause is exceptionally broad. It designates Delaware as the exclusive venue for "any action or claim between the parties."

Both parties also agreed to Delaware again in the May 2023 pilot agreement. In that agreement, they designated Delaware as the "sole and exclusive jurisdiction and venue" for "any action or claim between the parties." That was in May of 2023. And that's Exhibit D to the Doughty affidavit.

THE COURT: I'm sorry to interrupt, but there is a later-in-time agreement between the parties that also purports to cover any proceeding or claim between the parties that chooses Illinois; isn't that right?

ATTORNEY MARURI: That's what I was about to address, Your Honor. So you are one step ahead of me. That is the master services agreement. And there are really four reasons why the forum selection clause in the master services agreement should not control the analysis here.

The first is that Comulate is not bound by the master services agreement because it's not a party to the master services agreement. The master services agreement is a form contract that Applied signed with PBC to grant PBC a software license to use a program called Epic.

Now, Applied admits it was contracting with PBC, and PBC alone, when it signed the master services agreement. Applied says Comulate can still be bound to the PBC agreement because it has a "close relationship" with PBC. But to satisfy that "close relationship" test, Applied has to show that it was foreseeable that Comulate would be bound by that

agreement.

In other words, what Applied has to show is that --

THE COURT: I'm so sorry to interrupt. It really is so hard on the phone. It would be much easier to do this in person. And I don't mean to be rude.

But I'm looking at the reply that was filed last night, and it says, "Comulate does not dispute it obtained an Epic account under the name PBC Consulting to run a sandbox account." But your argument is that Comulate is not a party to this agreement and isn't bound by it?

ATTORNEY MARURI: So I think there are two separate points here that are important.

The first is that even though Comulate posed as PBC, as admitted in the affidavit, it's not necessarily bound by the MSA.

But I think there's a second, and more critical component to analyzing the MSA. And that's what the MSA actually governs. The MSA's scope doesn't include this type of dispute. And that was actually the second point that I was going to make.

The forum selection clause -- if you

read the forum selection clause in full in the PBC agreement, what it says is, "The Agreement and the relationship between the parties" -- that's between PBC and Applied -- "and all proceedings directly or indirectly related thereto, shall be governed by the laws of Illinois," and then it goes on to say that any proceeding or claim between the parties should take place in Illinois.

This is a narrow agreement that has to do with a license to use Epic. It has to do with the relationship between PBC and Applied. So this dispute resolution mechanism is specific to "proceedings that directly or indirectly" are related to the MSA or the relationship between PBC and Applied. That's not what this dispute is about.

THE COURT: Why doesn't that reading, then, translate to both the nondisclosure agreement and the pilot agreement's jurisdictional language, which also purport to apply to "any action or claim between the parties"?

ATTORNEY MARURI: That's a great question, Your Honor. And the reason is because both the NDA and the pilot agreement concern subject matter that is more squarely at the heart of this dispute.

The NDA and the pilot agreement are about the relationship between Comulate, on the one hand, and Applied, on the other hand, and their business partnership in connection with developing a product to market in the marketplace.

As set forth in our complaint, Applied pursued an "acquire or kill strategy" for its competitors. That "acquire or kill strategy" meant that it either bought its competitors or it killed them off.

The NDA and the pilot agreement were about the "acquire" aspect of that relationship. So Applied sort of sank its teeth into Comulate with this NDA and this pilot agreement because they began a business relationship, but when that collaboration didn't work, Applied started trying to kill Comulate off from the marketplace. And it slowly squeezed Comulate off through a variety of anticompetitive practices.

So the relationship between Applied and Comulate that's at the core of this dispute, it is really what the NDA and the pilot agreement are exactly about. And the scope of both the NDA and the pilot agreement are exceptionally broad. They are

about the relationship between Applied, on the one hand, and Comulate, on the other hand.

So their scope is very, very, very broad as compared to the PBC agreement. The PBC agreement is a license agreement to allow PBC simply to use the Epic software and the platform. The NDA and the pilot agreement are at the core of this dispute about anticompetitive practices.

Now, one point I want to add that might not be clear from the papers but is absolutely clear once you look at the timeline is that the offending conduct that is outlined in our complaint, in the Delaware complaint, has to do with a number of events that completely predate that PBC license agreement.

So the PBC license agreement was signed in 2024. The NDA and the pilot agreement, which are about the relationship between Comulate and Applied, come years earlier than that. And that is when Applied started this campaign of trying to kill Comulate off from the marketplace. So we posit that is the dispute resolution venue provision that governs here.

THE COURT: Thank you.

ATTORNEY MARURI: And, Your Honor, that brings me to my last point, which is that there's no conflict between the NDA, the pilot agreement, and the MSA. The provisions in those agreements can be harmonized, and the two forum provisions govern fundamentally different things. The NDA and the MSA govern the relationship between Applied, on the one hand, and Comulate, on the other hand, and how they relate to one another in the marketplace. The MSA governs a much narrower topic, which is PBC's license to use Epic.

This case is about the relationship between Applied and Comulate, and therefore, the dispute resolution mechanisms in the NDA and in the pilot agreement govern. Thus, Delaware is the proper forum here. And the Court need not reach the *McWane* analysis at all because Delaware is the venue that is appropriate for this case.

Now, Your Honor, I want to touch on the *McWane* analysis in the event that the Court believes that there is any dispute about these forum selection clauses. To dismiss the case under *McWane*, Applied has to show two things. Applied has to show that an Illinois court can give prompt and complete

justice, and it also needs to show that the two cases involve substantially the same issues. Now, the defendants can't meet either of those requirements.

On the first factor, an Illinois court cannot provide prompt and complete justice because there is a substantial risk that Illinois can't even hear this case. Your Honor, there is no federal question jurisdiction for these claims. There is also no diversity jurisdiction for these claims. The case involves two Delaware entities. So the only way that the claims can be heard in Illinois is if there is supplemental jurisdiction.

And, Your Honor, supplemental jurisdiction is doubtful here. Supplemental jurisdiction can only be exercised under the "same case or controversy" test. Proving the same case or controversy requires showing that there is a common nucleus of operative facts between the two cases, between the Illinois action and the Delaware action. It will be an uphill battle for Applied to establish a common nucleus of operative facts here. There is not a significant factual overlap between the two cases.

The Illinois complaint centers on PBC's alleged use of this master services agreement to

misappropriate trade secrets through Epic. That's the core of their claim in Illinois. The Illinois action is going to focus on the facts concerning creating PBC and the events that took place over a 19-month period to allegedly acquire trade secrets. Now, we dispute those allegations. We do. But that's what the Illinois case is going to be about.

This case is far more complex than that. It concerns a yearslong anticompetitive set of conduct by Applied to squeeze Comulate out of the market. It predates that PBC agreement entirely. Applied's claims concern a significantly less lengthy period than the Delaware action. That is just true if you review the two complaints.

The claims in the two actions are also significantly different from one another and will require substantially different proof. In Illinois, there's a few questions, and they all center around PBC and the misappropriation of trade secrets. There's a claim for fraud in connection with signing that master services agreement, a trade secrets violation, and claims relating to a breach of the master services agreement. All of these claims are going to center around this claim that Applied is

making about misappropriation of trade secrets. And again, we contest that. We contest that in its entirety.

But that is a completely different set of questions than the questions that will be presented in Delaware. Applied in that Illinois action will probably need to put on expert witnesses to opine on questions like trade secret misappropriation.

The Delaware complaint is completely different. The Delaware complaint is about Applied's anticompetitive practices in the marketplace. It asserts claims under unfair competition law, trade libel, and tortious interference with prospective business advantage.

That collection of claims has one thing in common — anticompetitive conduct. That's what the Delaware case is about. It's about Applied's campaign to squeeze Comulate out of the marketplace over the course of years and years. These claims require proof about Applied's conduct in trying to push Comulate out of the picture.

So the Delaware case is going to require different proof. It may involve antitrust experts who talk about the relevant marketplaces, for

example.

And, by the way, Your Honor, the claims are not even governed by the same law. Comulate's claims are governed by California law, while Applied's claims involve federal questions and Illinois law. So these are two very different lawsuits from one another, and suggesting that they involve a common nucleus of operative facts stretches the law beyond recognition.

For that reason, it is highly unlikely, it is at least very risky, that the Illinois court will even be able to entertain these claims.

Now, Your Honor, there's another factor in the *McWane* analysis. The other factor in the *McWane* analysis is whether the two cases involve different issues. And, Your Honor, I've touched on that in significant detail a lot already, so I won't belabor the point.

The claims between the two cases are not similar to one another. The issues involved in the two cases are not similar to one another. The claims themselves have no overlap. The Illinois case is a trade secrets case about the use of a sandbox account by PBC over the course of 19 months.

As I've mentioned, this case is much broader. It is going to concern years of misconduct by Applied involving its anticompetitive practices and its tortious conduct with respect to customers that's all a part of a scheme to try to eliminate a competitor from the marketplace entirely. At most, there's a handful of overlapping facts and issues.

But courts have said that's not enough. The mere presence of overlapping facts is insufficient unless there is "substantial or functional identity" between the actions. That's the *Raymond* case that we cite in the briefing.

So, Your Honor, there is a lot of reason to suspect that the *McWane* analysis also points in favor of Delaware.

So to close, Your Honor, the TRO should be granted. There is no question that Delaware is the right forum here. The parties agreed to Delaware, and that agreement should be honored. Once the jurisdictional issue is resolved, all of the grounds for a TRO are easily met here. As Your Honor noted, the claims are colorable, and there is a real risk of irreparable harm here. And as my colleague addressed, the balance of equities strongly favors a

TRO. We respectfully request that the Court exercise its jurisdiction and grant the TRO.

Thank you, Your Honor.

THE COURT: Thank you very much.

Why don't I hear from the defendants next.

ATTORNEY STAKE: Good afternoon, Your Honor. This is Sam Stake on behalf of Applied Systems.

Respectfully, Comulate's motion asks this court of equity to preserve access to Applied Systems that Comulate admits it obtained through fraud.

To provide some critical context, Applied operates Epic, an insurance agency management system used by thousands of agencies. That access is contractual. That access requires identity verification, compliance restrictions, and it includes termination rights for misuse.

Comulate built its business to depend on access to Epic. To get it legitimately, Comulate needed to sign a license agreement and complete Applied's verification.

Instead, Comulate took a shortcut.

What we learned last night definitively from the supplemental declaration of Mr. Katz is that it invented a fake company, PBC Consulting, and a fake person, Jordan Bates, to sign the master services agreement. As Mr. Katz admits under oath, "PBC [] is not a real insurance agency and is not a real entity." He admits that Comulate used PBC "for development" of Comulate's own products.

Mr. Baker invited Your Honor to take a close look at Mr. Katz's supplemental declaration. And these admissions indeed are fatal to Comulate's claim for a TRO. There's no factual dispute. Comulate concedes it used a sham entity and fake signatory to defraud Applied. Yet Comulate here is seeking extraordinary relief to enforce a contract procured by fraud. Comulate doesn't deny this. It attempts to minimize it, calling that fraud "not ideal." And it attempts to deflect through an expired pilot agreement and an NDA that has been superseded.

Today I intend to focus on three dispositive points. I'll certainly focus on the questions Your Honor has directed me to.

First, unclean hands alone defeats this TRO.

Second, this case belongs in Illinois because of the parties' forum selection agreements and the *McWane* doctrine. I believe Your Honor is picking up on the correct interpretation of the parties' agreements. This case belongs in Illinois.

Frankly, it's breathtaking that Comulate would pose as PBC, agree to have disputes heard in Illinois that are directly or indirectly related to its conduct as PBC, and then claim it's not bound by that agreement. The *McWane* doctrine also compels dismissal or stay.

I also just heard an argument that different law applies to different claims. That's not true either. PBC, Comulate, also agreed that Illinois law applies to the parties' disputes.

Third, even if the Court reaches the TRO factors, Comulate's claim for a TRO fails.

And going to the heart of the matter Your Honor highlighted, there's no risk of imminent irreparable harm. There's no risk that while the parties are briefing a motion to dismiss on an expedited basis, that any recognizable irreparable harm will happen to Comulate. Any harm is self-inflicted and should not be recognized in this

TRO analysis.

Second, there is zero basis for a narrowed TRO because there's no imminent injury here. Applied will keep the status quo in place pending the motion to dismiss on an expedited basis, and the termination date for all Comulate customers will be the end of quarter two.

Finally on that point, and we'll get to this in more depth, any injury in planning for change is compensable for damages if in the Illinois court Judge Shaw finds that there are damages.

To begin, Your Honor, with that first point, unclean hands, just to go into one more layer of depth. The unclean hands doctrine exists for cases just like this. After last night's reply, the undisputed facts are this: Comulate created a fake PBC Consulting entity in 2024. Mr. Katz admits PBC is not a real insurance agency and not a real entity. Jordan Bates, who signed multiple agreements between the parties, doesn't exist. He has the same first name as Mr. Katz and a similar last name, but Jordan Bates does not exist.

Comulate made 10 million API calls through the PBC account. 99 percent were GET

requests, which is far beyond any legitimate insurance agency.

So why the fake company? Well, last night, just before this hearing, we finally hear the truth. Mr. Katz admits in paragraphs 5 and 6 that PBC was created to develop Comulate's functionality. That word "develop" is put in there twice.

And that's the crux — to build their competing product on our platform, Applied's platform. It wasn't for insurance operations. It was for executive product development. Comulate knew it couldn't get access legitimately without accepting restrictions on reverse engineering and derivative works, so it created a fake customer with a fake person instead.

Comulate -- I heard Mr. Baker largely focus in on trade secrets that are misappropriated. Applied looks forward to proving its trade secret case in Illinois, which were obtained through this improper access for 19 months.

But the contract itself was procured by fraud. That alone has already -- the breaches of the contract and the fraud in procuring it has already been established, and that alone bars equitable

relief.

The MSA between Applied and Comulate proves the breach, at least the following terms which we've laid out. These are the key ones I would highlight.

Comulate claims that PBC was a legitimate agency. It wasn't.

Comulate also said that PBC would use SDK for its own business operations. It had none.

There were claims about a fake integration with an app called HubSpot. It never built that integration.

Comulate also agreed that PBC would use SDK only for authorized methods, but it made over 10 million unauthorized general ledger calls.

And based on those lies about identity and purpose, Applied signed the agreement and extended access and resources, competing resources and access to its systems to PBC. These are each a material breach of the parties' contracted termination rights under Section 13.1.

Comulate's defenses to unclean hands fail. First, they invoke the 2023 pilot agreement. We heard that from Ms. Maruri. That agreement expired

before the fraud. We haven't even heard any pleading of breach of that agreement. That speaks volumes. And even if there was a breach of that expired pilot, the remedy would be a contract claim, not fraud and inducement to enter a new fake contract. One supposed harm doesn't make another one right.

PBC -- Comulate has also said that PBC gave them nothing new. That is both not true and irrelevant.

Trade secret law condemns improper access. And that's what we saw here. Comulate used this PBC account and its fake credentials it obtained to circumvent Applied's security systems.

Simply put, Your Honor, it's improper to lie your way into access to a platform and then complain when that access is terminated.

Moving on to forum selection and *McWane*. Starting with *McWane*, Applied filed first. It filed its suit in Illinois on November 21. Comulate filed here on December 3. That is 12 days later. Under *McWane*, the first-filed court has priority. And it's the same issues that are being litigated here and in Chicago. There's a serious risk that there would be inconsistent judgments entered.

And as a matter of comity, it's proper for the Illinois matter to go forward. The same PBC fraud is at the center of Applied's claims. And Comulate's counterclaims that we improperly terminated that access as result of the PBC fraud will also be at issue.

Comulate says that the cutoffs, customer communications, and the aftermath of the termination are anticompetitive, that they are tortious interference, and that they are trade libel, but those all resulted from the shutoff from the PBC fraud. So the core questions are identical: Was Applied entitled to terminate access and warn customers about the fraud?

Next, going to the parties' forum selection. Section 14.6 of the MSA is broad. Section 14.6 of the parties' MSA is broad. It says that "all proceedings directly or indirectly related" to the agreement between Applied and Comulate/PBC will be brought in Will County, Illinois. That is the Northern District where Judge Shaw will hear the case. That's the case that we filed on November 21.

To take on each of the earlier agreements, first, I heard about the May 2023 pilot

agreement. That was a six-month agreement that expired in late 2023. An expired contract can't give a basis for venue.

I also heard about the November 2022 NDA between the parties. That was directed to a narrow purpose. It was purely a confidentiality agreement. At worst, even if that applied more broadly, it's superseded, as Your Honor observed, by the MSA's forum selection clause, a new agreement between Applied and Comulate. That MSA forum selection is the operative contract. It was signed later in time, and it dictates who may use the Applied SDK and the Epic platform, on what terms. And it says that any disputes directly or indirectly relating to that access to Applied Systems shall be heard in Illinois.

I also heard a couple of arguments that the Illinois court would not hear all of Comulate's claims. In fact, Comulate's claims that it would bring in federal court, we anticipate, would be compulsory counterclaims under Federal Rule 13(a). They arise from the same transaction as Applied's claims. The tortious interference and trade libel claims we've seen are based on what Applied told

customers after the PBC scheme was uncovered and Applied filed its suit. The UCL claim, the California Unfair Competition Law claim, is also based on Applied having its access cut off, the same cutoff we're arguing over in Illinois. A court can't decide whether any of these actions were wrongful without deciding whether Applied's fraud claims are of merit.

So to bring that all together, Applied filed first. The contract says Illinois. Illinois can adjudicate all the claims, and so this case belongs there, in Illinois.

Turning to irreparable harm, Your Honor. I don't plan to spend too much time on colorable claims. But turning to irreparable harm, even reaching material factors, Comulate can't show irreparable harm. They say they are suffering two kinds of injury: reputational harm and business harm.

But let's look at where that supposed harm comes from. Applied has told customers the truth, that it filed a lawsuit. We explained why we filed a lawsuit, that we uncovered a sham entity in PBC. And we told them that Comulate had violated our contracts, and that we are terminating access because of that sham. That's disclosure, not defamation.

It's protected by the First Amendment and litigation privilege.

And let's look at what Comulate alleges in its papers and what we heard today from Mr. Baker and Ms. Maruri. We heard about lost contracts, lost revenue, reduced valuation. But those are all dollar figures. Those are precisely the types of harms that a damages expert could model, and will model. Comulate -- it's also not a company on the brink of collapse. It describes itself as a thriving startup, has tripled its revenue, and has high valuations.

And there's another point that's fatal to harm, and that's at the heart of Your Honor's question, which is timing. Your Honor asked whether there would be imminent harm while a motion to dismiss is heard on an expedited basis. The answer is no.

Applied will be maintaining the status quo, as we saw Comulate admit last night, as we heard today, pending a motion to dismiss. That's on my representation here today as well. So while a motion to dismiss is disposed of and while Judge Shaw takes the reins of the case in Illinois, there will be no irreparable harm, even if there was any harm that was

recognizable and not disposed of by the unclean hands doctrine.

THE COURT: That's certainly a helpful representation, but could you put a finer point on it. I heard the plaintiffs argue that although Applied has agreed that some customers can continue to use the Comulate product into 2026, that it hasn't done so for all customers.

Are you telling me that Applied intends to permit all joint customers to continue using Comulate through resolution of the motion to dismiss?

ATTORNEY STAKE: That's right, Your Honor. That is, in fact, what Applied has told customers. There are a number of hearsay statements, respectfully, that we saw in the various declarations. But the notification -- notice provided to customers is for end of quarter two 2026.

I would just distinguish one issue, which is that Applied has learned that Comulate has released their own sandbox or ajentic AI in certain instances. Applied discovered that. This is a product that it believes was created by the fruits of this poisonous tree of this trade secret

misappropriation. It suspended those. It has now, out of respect for Your Honor and these proceedings today, restored the status quo, restored those. This is admittedly at great risk to Applied. Applied wanted to take the high road here, let's say, to restore status quo. And on my representations it will continue to do so while this motion to dismiss is heard and while, hopefully, we believe, this case is transferred over to Judge Shaw.

THE COURT: Thank you. That's helpful.

ATTORNEY STAKE: And just to hit one final point. I could talk at great length about the likelihood of success, colorable claims. Let me just talk about the balance of hardships for a moment because Your Honor asked about that.

We believe the balance of hardships decisively favors Applied here. Comulate frames its request as preserving the status quo. But there is no mutual status quo here. The current situation where PBC had access includes that fraudulent access through PBC. A TRO would force Applied to keep posting, supporting, extending its integrations for the company that allegedly deceived it.

If we consider what Comulate is asking for here, it is asking that Applied is compelled to maintain a business relationship with a company that admits it lied its way onto our platform while Applied simultaneously litigates claims of trade secret theft and fraud against that company.

In short, Applied has contractual rights to terminate access for material breach and to third parties that pose risk to its IP and has statutory rights to prevent misappropriation, and any balance of the hardships must account for those entitlements.

One final point. I believe Your Honor has picked up on this, but the proposed order that has been requested here is fatally defective as overbroad. I'm happy to answer any questions. I believe that no TRO should be granted here for all the reasons given.

But should a temporary status quo order be entered, it's very important that it would be very narrowly tailored. There's very broad language regarding interfering with a customer's use of Comulate that are in the proposed temporary restraining order. Experience tells me that entering these kinds -- this kind of broad language will land

us right back here in front of Your Honor with claims of contempt. And that kind of overbreadth would be completely inappropriate in view of the unclean hands, forum selection issues we talked about, and the balance of hardships.

Finally, the proposed bond that has been proposed of $1,000 is grossly inadequate. To be clear, Comulate is asking that Applied take on massive risk, that it be asked to take Comulate back into its ecosystem, to give it access to its systems again. It has shown that it can't be trusted, that it has abused Applied's trust. And the harms that are risk here with Applied being restored access can be measured in the tens of millions, not in nominal terms. It's a risk that Applied should not be asked to take on. But if it were asked to take that on, the true magnitude of that should be recognized.

Thank you.

THE COURT: Thank you.

Would the plaintiffs like to offer a brief reply?

ATTORNEY MARURI: Yes, Your Honor. This is Silpa Maruri again. I'll address the forum issues, and then my colleague Rollo Baker will address

the balance of the issues.

So I will briefly address the forum issues. So I heard my friends on the other side refer to *McWane* as a starting point of the analysis. Your Honor, the case law is clear that *McWane* is not the starting point of the analysis. If there is a forum selection clause that controls, *McWane* is inapplicable. There's mountains of case law that say that that we cite in our briefing. So that's the first and principal point, and very important to consider here.

The second point is a point that I heard my friends on the other side make multiple times, which is that the MSA supposedly superseded the NDA. Your Honor, that is not correct. The NDA has a term that goes through the present, and there's nothing to show that an intent to supersede the NDA can be inferred.

Now, contract interpretation is primarily and fundamentally a question of intent. That's just black-letter law. Here, there is nothing that shows a mutual intent by both Applied, on the one hand, and Comulate, on the other hard, to amend the NDA in any respect whatsoever.

Now, the other side asks the Court to assume an intent to amend the NDA based on the fact that PBC is somehow related to Comulate. But the parties did not express or share any such mutual intent. And we know that because we know that Applied admits it did not even know of a relationship between Comulate and PBC.

So the law does not allow us to infer or wave some wand and pretend that such intent existed. The NDA remains applicable.

Now, Your Honor, there's a related point, and that is that the NDA and the MSA concern completely different subject matter. The subject matter of the MSA is not at issue in this litigation. And so the forum selection clause that appears in the MSA is simply inapplicable here.

I heard my friends on the other side agree yet again that the forum selection clause governs matters that are directly or indirectly related to the MSA. But, Your Honor, the MSA has nothing to do with this dispute.

PBC's access to Epic is not what's at issue in this case. This case has to do with years of anticompetitive conduct. And the starting point of

the relationship between Comulate, on the one hand, and Applied, on the other hand, is that NDA.

I heard my friends on the other side characterize the NDA as simply being a nondisclosure agreement. Well, Your Honor, we've attached the NDA to our submission, and the very first paragraph of that NDA provides the background for why the NDA was entered into. And the concept behind the NDA was collaboration between the two parties. And as I mentioned, that is a part of the Applied strategy that we outlined in the complaint. They start off by trying to acquire their competitors, and when they can't acquire them, they kill them off. The NDA was the beginning of that. It is the basis for the entire relationship between the parties and the conduct that is problematized in the complaint. It is the operative forum selection clause that should govern this dispute.

Now, finally, Your Honor, I want to touch on a point that I heard for the very first time on this call. And that point was that the claims that are asserted in the Delaware litigation are compulsory counterclaims to the claims that are asserted in Illinois. Your Honor, that argument appears nowhere

in the briefing. Nowhere. It was raised for the first time on this call, and it is completely inaccurate.

The claims in this litigation, in the Delaware litigation, do not arise out of the same transaction or occurrence as the claims that are at issue in the Illinois litigation. The Illinois litigation concerns 19 months of conduct relating to an entity called PBC. The litigation in this case has to do with a series of transactions that predate the Illinois litigation entirely and a few transactions that postdate the Illinois litigation.

So this case, if it turns on whether or not our claims are compulsory counterclaims to the claims in Illinois, well, the defendants flunk that test, Your Honor.

So Your Honor, those are briefly the points that I wanted to touch on. I'll turn the mike over to my friend Rollo Baker to address the remainder of the issues. Thank you.

ATTORNEY BAKER: Thank you, Your Honor. Just briefly.

First, I want to focus on the PBC sandbox account. I want to be very clear, Applied has

already shut that account down. But we are not seeking any further access to that account. The TRO we are seeking has nothing to do with the PBC sandbox account.

And counsel for Applied did not dispute -- I did not hear him dispute that Comulate already had access to the SDK through 60 separate customer integrations and four user seats. So that access that we're seeking continued access to through the TRO is completely independent of the PBC sandbox account, for which we are not seeking any relief.

The entire PBC sandbox account issue is a red herring. Applied didn't even list the right name on the master services agreement. Applied listed the name BBC. This was not -- they did no diligence. There was no justifiable reliance. They give away the SDK key to everyone that needs it. There was no injury whatsoever.

And I heard no response from my friend on the other side concerning Mr. Katz's credible, cogent explanation for the GET requests and why the GET requests were routine and innocent.

The PBC sandbox account was convenient. It didn't provide any additional access

to Comulate. It only provided the SDK key that Comulate already had through over 60 separate customer integrations.

Separately, Your Honor, the TRO we are seeking would do the following. One -- and this is set forth in the proposed order -- it would allow new customers to onboard. Right now, Applied is not allowing new customers to onboard.

Two, it would allow customers who signed a contract prior to the lawsuit with Comulate for integration to Applied to continue to onboard, to finish onboarding. Right now, they are being prohibited from onboarding. They need to be able to onboard. They are being hurt. These customers are being hurt by being unable to onboard.

And three, it would allow customers to continue using the Comulate integration who are currently using it and it would provide certainty to them, because right now there is no certainty. I saw no response to the point that I tried to make repeatedly, which is, as it currently stands, absent a TRO, customers today have to take steps to transfer to an alternative option because of the six-month lead time. This affects not just Comulate, it affects all

the broker customers who need Comulate to better deliver product to their insurance policyholders.

And just to be very clear, again, we are not seeking a TRO that would restore PBC's Epic instance. We are simply seeking a status quo order consistent with the status quo order that then-Vice Chancellor Strine issued in the *Instituform Techs* case at page 15. That is all we are seeking.

THE COURT: All right. Thank you. Anything further from the plaintiffs, first?

ATTORNEY BAKER: No, Your Honor.

THE COURT: Anything further from the defendants?

ATTORNEY STAKE: Your Honor, very briefly. This is Sam Stake. Three quick points.

I heard no denial just now of the wrongdoing. None. There's no denial of a fraudulent entity or a fake individual. That's all undisputed. It's also undisputed that Comulate thereby acquired access to these restricted and sensitive systems through that fraud.

Second, this whole case arises from that fraud, from precisely this PBC scheme. The notion that I've heard that there was some pattern of

conduct before that rings hollow. Frankly, we would not be here for this case if not for the termination of Comulate that resulted from the PBC scheme. We did not, notably, see any complaints of antitrust harm or competitive malfeasance before the scheme was uncovered. We're hearing that now after the fact. We're hearing, respectfully, a parroting of the kinds of complaints we've seen in other cases, but no proof of that. And we walked through that exhaustively in our opposition brief.

And then, finally, I heard continued reliance on Mr. Katz's statements about the supposed use of the systems. I'll note that he did slide into his statements, respectfully, that they were using our systems for product development. That's enough for egregious breaches.

And I would also offer, respectfully, that his credibility should be called into some question, given that he is the very individual who lied to get access to Applied Systems through PBC.

Nothing further, Your Honor.

THE COURT: Thank you.

Would the plaintiffs like the final word?

ATTORNEY BAKER: Yes, Your Honor, if I may just quickly. This is Rollo Baker again.

It sounds like the crux of defendant's equity argument is as follows. They are claiming we built our product by using access obtained through PBC. That is not factual. The PBC contract was signed on March 15, 2024. Comulate built its product in 2022. Comulate signed an NDA with Applied in 2022. Comulate got access from Applied directly.

Mr. Katz's supplemental affidavit shows an email where an Applied employee sends him the SDK key. That is paragraph 15. That is an email from December 1, 2022. Comulate also got access from its customers as well. Applied admits it allowed this access.

So Comulate's access has nothing to do with PBC. PBC was just a sandbox. It was a sandbox that was used to provide a demonstrative to Applied itself. I heard no response from Mr. Stake about that. PBC has been turned off. Any potential harm -- and there was none -- is over. They couldn't even bother to put the right entity into the master services agreement. They refer to BBC. They were not providing access to sensitive systems. They were

providing access to the SDK, where all you can do is provide inputs and get output.

This is all an effort to eliminate a competitor through smoke and mirrors. Why have they not sought a PI or a TRO in the Illinois proceeding? Because this is all about creating a cloud over Comulate so that Comulate's customers would be forced to start transition immediately. And that is what is happening. They are getting their entire way. This is the scheme. They are using litigation in order to eliminate a competitor.

We have every basis to believe that we are going to defeat the ludicrous trade secret and reverse-engineering allegations. We will do that in Chicago. But the lawsuit here in Delaware, pursuant to Delaware forum selection clauses is about yearslong anticompetitive conduct which they have not denied, nor can they. Nor can they.

We appreciate Your Honor's time and attention to this matter. It's one of the reasons why it's so much a privilege to practice before this court. Thank you.

THE COURT: I appreciate everyone's arguments this afternoon. What I would like to do is

take a brief recess, no more than ten minutes, perhaps closer to five, to gather my thoughts, and then we will reconvene so I can give the parties a ruling on the motion.

We stand in recess for a few minutes.

(Recess taken from 2:45 p.m. to 2:53 p.m.)

THE COURT: This is Bonnie David again. Do we still have counsel for plaintiff on the line?

ATTORNEY BAKER: Yes, Your Honor.

THE COURT: And do we still have counsel for defendant on the line?

ATTORNEY STAKE: Yes, Your Honor.

THE COURT: Thank you. I appreciate your patience while I took a few moments to collect my thoughts. In the interest of time, I am going to give the parties an oral ruling on the motion for expedited proceedings and motion for a temporary restraining order filed by plaintiff Ardent Labs, Inc., which operates under the name of Comulate.

By way of very brief background, Defendant Applied Systems, Inc., is a Delaware corporation headquartered in Illinois that offers cloud-based insurance software embedded with

artificial intelligence capabilities. Since 2013, Applied has owned Insurance Value-Added Network Services, or "IVANS," which operated as a digital hub for insurers to exchange data.

According to the complaint, no agency management system can function without IVANS' connectivity, and no meaningful alternate exists for a carrier-to-agency data exchange. Because Applied controls the infrastructure on which its competitors depend, Applied publicly committed to maintain IVANS as an open platform.

In addition, Applied's flagship software, Applied Epic, is widely used by insurance brokers, including eight of the top ten insurance brokerage firms in the U.S.

In August 2021, Applied announced that its latest version of Applied Epic would be an open platform for customers to build on and around so that customers and third parties would have the flexibility to build the tech stack that is right for their businesses.

To assist developers in creating products on the Epic platform, Applied hosts a developer center web page that provides an environment

to explore application programming interfaces. Applied also provides a software development kit, or "SDK," that allows developers to access the Applied Epic database from their own code, giving developers the ability to read and write data to and from the Epic database. At the risk of vastly oversimplifying, developers essentially develop and sell products that are built on top of the Applied Epic platform using the SDK.

Comulate is a Delaware corporation headquartered in California that provides insurance brokers with an accounting automation platform to streamline accounting functions. Comulate works on top of Applied Epic, so brokers buy Comulate's product from Comulate to integrate with the agency management system they already use. This means that Comulate customers need access to Applied Epic's SDK in order for Comulate to integrate with Applied Epic.

As alleged in the complaint, when Comulate first began using Applied Epic, it did not sign any contracts to access SDK, as Applied Epic operated an open platform.

In November 2022, however, Comulate and Applied did execute a nondisclosure agreement to

facilitate discussions regarding a potential collaboration. Paragraph 10 of that agreement states, "This Agreement and the relationship between the parties, and all activities directly or indirectly related thereto, shall be governed by and interpreted in accordance with the laws of the state of Delaware. The parties consent to the sole and exclusive jurisdiction and venue of the state and federal courts in Delaware for any action or claim against the parties".

According to Comulate, during this period Comulate could only access the SDK through its joint customers with Applied. Applied knew this and never objected.

On May 25, 2023, to give Comulate access to a dedicated test environment, Comulate and Applied signed a pilot agreement under which Applied granted Comulate a limited right to use its software for testing. Like the nondisclosure agreement, paragraph 13 of the pilot agreement chose Delaware law and a Delaware forum.

Despite the pilot agreement, Applied never gave Comulate access to test software and knew that Comulate continued to use the SDK through its

joint customers.

As alleged in the complaint, Applied wanted to acquire Comulate, but Comulate rebuffed Applied's offers, and thereafter, Applied undertook a course of conduct designed to harm Comulate's business. The complaint alleges that Applied developed a competing product, Applied Recon, and in an effort to erode Comulate's business and force it to sell or leave the market, Applied demanded that Comulate sign unnecessary and onerous contracts to delay and dissuade customers from working with Comulate, used its influence to kick Comulate out of an industry trade group and conference, told Comulate's customers that Comulate would soon be out of business, and blamed Comulate for problems with Applied's own products.

Applied tells a very different story. Applied contends that access to Epic and its SDK is governed by a master service agreement, which Comulate refused to sign.

Instead, on March 15, 2024, PBC Consulting, Inc., or "PBC," signed the master service agreement, which prohibits licensees from developing, using, or providing a competing software product or

service and 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.

Section 14.6 of the master service agreement states, "The Agreement and the relationship between the parties, and all proceedings directly or indirectly related thereto, shall be governed by the laws of the Location. The Location is Will County, Illinois (if Licensee is located in the United States) or Ontario (if Licensee is located in Canada). Licensee consents to the sole and exclusive jurisdiction and venue of the courts of the Location or any proceeding or claim between the parties."

According to Applied, 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. PBC held itself out to Applied as a new three-person insurance agency in Sacramento seeking to integrate HubSpot with Epic. But unbeknownst to Applied, PBC was actually a shell company fronted by a fictitious person, in actuality run by Comulate to secretly access the SDK

and steal Applied's proprietary technology.

On November 21, 2025, Applied filed a complaint in the Northern District of Illinois against PBC and Comulate, alleging claims for trade secret misappropriation, fraud, fraudulent inducement, breach of contract, unjust enrichment, and civil conspiracy. Applied also terminated PBC's Epic access allegedly due to breach of the master service agreement and informed Applied and Comulate's joint customers of its lawsuit.

On December 3, Comulate initiated the present action against Applied in the Court of Chancery alleging claims for unlawful business practices under California state law, tortious interference with prospective economic advantage, tortious interference with contract, and trade libel.

Concurrent with the filing of its complaint, Comulate moved for a temporary restraining order and expedited proceedings in advance of a forthcoming motion for preliminary injunction. Through its motion for a temporary restraining order, Comulate seeks an order temporarily enjoining Applied, and those acting in concert with it, from interfering with existing joint customers' ongoing use of and

access to plaintiff's software, interfering with the onboarding of existing joint customers' use and access to plaintiff's software, and interfering with the solicitation, uptake, or onboarding of prospective customers of plaintiff.

The standard for a motion to expedite is well-known in this court. To demonstrate entitlement to expedition, the movant must state a colorable claim and show a possibility of threatened irreparable injury sufficient to justify the substantial costs of an expedited proceeding.

The standard for a temporary restraining order is similar. The movant must state a colorable claim, show imminent irreparable harm in the absence of a TRO, and demonstrate that the balance of the equities favors temporary injunctive relief.

Putting aside for a moment defendant's representations today that they will not shut off access to Comulate products pending resolution of a motion to dismiss, I am satisfied that plaintiff has adequately demonstrated that it will face irreparable harm in the absence of some form of injunctive relief because without access to Applied's platform, Comulate will not be able to run its business. Defendants

suggest that any potential harm could be remedied by money damages, but I am convinced that the possibility that Comulate could be forced out of the market entirely does threaten irreparable harm.

Plaintiff has also stated at least one colorable claim, which is essentially a nonfrivolous claim. Since I am not an expert on California anti-competition laws, I have focused my review on plaintiff's claim for tortious interference with contract. This court has recognized that California and Delaware recognize the same basic elements for tortious interference with contractual relations and prospective contractual relations.

The complaint states a nonfrivolous claim for tortious interference with contract, which requires that a party allege a valid contract between plaintiff and a third party, defendant's knowledge of this contract, defendant's intentional acts designed to induce a breach or disruption of the contractual relationship, actual breach or disruption of the contractual relationship, and resulting damages. I draw that standard from *PHD Marketing, Inc. v. Vital Pharmaceuticals, Inc.*, 2021 WL 8693518.

The complaint here alleges that

Applied permitted Comulate to build a product on its platform initially using open source material to service joint clients and knowing that Comulate was accessing Applied's platform through their joint clients, but then terminated Comulate's access to its platform to gain a competitive advantage, thereby interrupting service to the parties' joint customers.

Applied argues that it was justified in so acting and that Comulate has unclean hands. But at this early stage of the proceedings, I cannot weigh evidence and must accept the allegations of the plaintiff's complaint as true.

I am not convinced by defendant's argument in the briefing that Comulate had sufficient time to build an evidentiary record such that it bears an evidentiary burden like it would on a preliminary injunction motion. I find that, here, Comulate meets the very low bar for alleging at least one colorable claim.

I turn, then, to the balance of the equities. On one hand, it seems clear that plaintiff could suffer significant harm to its business if its clients cannot access its product. On the other hand, defendant's position that it should not be required to

continue to do business with a partner that it contends has defrauded it also has real persuasive force.

Separately, I've got serious concerns that Delaware is not the right forum for this dispute. The parties have identified a few agreements with different jurisdiction provisions seemingly broadly drafted to govern all disputes concerning the relationship of the parties. The latest-in-time agreement between the parties seems to choose an Illinois forum, although two prior agreements choose Delaware.

It's not clear to me that California state law anti-competition claims fall into any of the forum provisions. It's not clear to me why this dispute would fall within the forum provision of one of these agreements but not the choice of law provision. If none of the forum provisions govern, then *McWane* should apply. When there is an earlier-filed action in a foreign jurisdiction, this court applies the *McWane* doctrine, which counsels in favor of granting a stay where there is a prior action pending elsewhere and a court capable of doing prompt and complete justice involving the same parties and

the same issues.

The Illinois action was first filed and involves the same parties. It's not clear to me why the Illinois federal court would not be capable of doing prompt and complete justice. Based on a preliminary assessment of the complaints at issue, this case and the Illinois case seem to arise out of the same facts, such that it would not make a lot of sense for claims to go forward simultaneously in two separate courts.

As I balance all of these considerations, I think the most appropriate way to proceed here is to expedite briefing on the question of forum before ordering expedited discovery and scheduling a hearing on a motion for a preliminary injunction. I understand the holidays are coming up, but I am contemplating that briefing on a motion to dismiss could be complete by the end of January.

In the interim, I think the proposal or representation that defense counsel made today, that Applied will not interrupt access for any Comulate customers pending the court's resolution of the motion to dismiss, comes close to striking the right balance of the parties' interests in this case

during this interim time period. I would expand that to include the onboarding of existing joint customers. But otherwise I think the defendant's representation is a reasonable way to proceed.

I would like the parties to meet and confer on a proposed form of order that memorializes that, and I will enter that limited form of order. But otherwise the motion for a temporary restraining order is denied.

I understand that was a lot to process, but let me ask counsel now whether that ruling was sufficiently clear and if there's anything else we need to address on this call this afternoon. Why don't I hear from the plaintiffs first.

ATTORNEY BAKER: I think we understood your order. Thank you, Your Honor.

THE COURT: Thank you.

And what about from the defendants' perspective, was that order sufficiently clear?

ATTORNEY STAKE: Yes, Your Honor. Thank you for that.

THE COURT: Thank you all for your time this afternoon. We are adjourned.

(Proceedings concluded at 3:10 p.m.)

CERTIFICATE

I, DENNEL NIEZGODA, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Merit Reporter, Certified Realtime Reporter, do hereby certify that the foregoing pages numbered 3 through 70 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated, except for the rulings at pages 58 through 70, which were revised by the Vice Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 14th day of December, 2025.

/s/ Dennel Niezgoda

Dennel Niezgoda
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter