**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

APPLIED SYSTEMS, INC.,   )
)
       Plaintiff,   )
)
      v.   )   Case No. 1:25-cv-14251
)
PBC CONSULTING INC. AND ARDENT LABS,)   Hon. Manish S. Shah
INC., d/b/a COMULATE,   )   Hon. Maria Valdez
)
       Defendants.   )
)
)

**<u>MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFF'S
MOTION FOR A PRELIMINARY INJUNCTION</u>**

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INTRODUCTION

Comulate's opposition attacks arguments that Applied has not raised rather than addressing those it has. These misdirections are for good reason; Comulate has all but conceded this motion. Comulate admits that it used a false identity and created a fake entity to deceive Applied. Comulate admits that "PBC is not a distinct entity," dkt. 53, and thus that it entered into and is bound by the Master Agreement and Schedule SDK. Comulate does not suggest that Applied failed to perform under those agreements. Rather, Comulate admits it violated the agreements: despite them limiting the "Permitted Use[s]" to those "in connection with Licensee's internal insurance operations," Mot. Ex. A §§ 3.1, 15,[1] Comulate "develop[ed] … features" using the account. Mot. Ex. P ¶ 5. Those "concession[s] amount[] to a breach." Dkt. 53.

Comulate's opposition offers no escape from this straightforward conclusion. Its primary response is that this was a mere "technical breach" without injury. Opp. 8. But Applied has suffered both monetary and non-monetary injuries. Applied incurred direct, financial costs to investigate Comulate's breach. *See* Dkt. 33-23 ("Peterlin Decl.") ¶¶ 9-21. And Comulate's breach will cause Applied irreparable harm if Comulate is permitted to exploit the confidential information it obtained through its illicit use of Applied's software. Without an injunction, Applied faces competitive injury that no damages award can repair. Comulate has already leveraged its nineteen months of fraudulent access to develop competing products, including one that presently and directly competes with Applied's new Recon product. Mot. Ex. P ¶ 24; Dkt. 33-22 ("Blackwell Decl.") ¶ 15. As of filing this motion, Applied had already contracted for $600,000 in revenue for Recon and stands to lose critical early-adopter customers to a competitor trading on Applied's own confidential information. Blackwell Decl. ¶ 15. Each sale Comulate

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[1] "Mot. Ex." refers to the exhibits to the Hamstra Declaration, filed at Dkt. 33-1.

makes using products developed through its fraudulent scheme erodes Applied's market position and customer relationships in ways that cannot be quantified or remedied after the fact.

Applied's harm extends beyond lost sales. Comulate remains in possession of the Applied information Comulate obtained through its fraudulently-obtained access, and can continue refining its products, developing new offerings, and expanding its competitive footprint—all to Applied's detriment. Without injunctive relief, Comulate may continue to leverage this information to develop products competing with the entirety of Applied's Epic offering, not just its reconciliation product. Applied's competitive position, built over years of investment and innovation, is being undermined daily. That position, once lost, cannot be restored through monetary compensation.

The Court should grant Applied's motion for a preliminary injunction.

ARGUMENT

Most of Applied's Motion is uncontested. Comulate does not dispute that the Master Agreement (Mot. Ex. A) and Schedule SDK (Mot. Ex. B) bind it. Comulate does not challenge that Applied performed under those agreements. And Comulate has admitted it breached those agreements. Mot. Ex. P ¶¶ 5-6, 24. Comulate's defense, then, relies on the specious arguments that its theft will not harm Applied. Comulate is wrong: the harm is significant and will be irreparable absent an injunction.

I.   APPLIED IS LIKELY TO SUCCEED ON THE MERITS OF ITS CLAIM

Comulate has breached the Master Agreement and Schedule SDK, and its breach harmed Applied. Comulate used Applied's software to develop its own products. Comulate automated interactions with the Epic user interface, Peterlin Decl. ¶ 18; Mot. Ex. P ¶¶ 26-35; uploaded fake documents and invoices, Dkt. 33-24 ("Peters Decl.") ¶¶ 29-34; Mot. Exs. D-O; and made millions of SDK calls, Peterlin Decl. ¶ 10. This pattern is evidence of reverse engineering: to automate and

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replicate Epic's functions in its own products, Comulate needed to determine how Epic processes transactions internally. Blackwell Decl. ¶¶ 12-13; Peters Decl. ¶¶ 13, 38.

Before Applied filed this Motion, Comulate's CEO admitted as much. He said that "Comulate needed" what it called a "sandbox account" "for *developing* and demonstrating features." Mot. Ex. P at 3 & ¶ 24.[2] He claimed that use of such "product *development*" accounts is standard to, for example, "identify bugs" and "refine user experience." *Id.* ¶ 9. Comulate also admitted operating its "Sandbox Account" for "*development* and demonstration" (Mot. Ex. P ¶¶ 5-6, despite the Master Agreement limiting the "Permitted Use" to "[PBC's] internal insurance operations," (Mot. Ex. A §§ 3.1, 15). The features Comulate developed appear aimed at "automat[ing] the agency bill reconciliation process within Epic," which would "directly compete with an Applied product." Blackwell Decl. ¶ 15; Peterlin Decl. ¶ 22.[3]

Comulate has since changed its tune. It now claims that its direct and agency billing products were "develop*ed*" prior to obtaining the PBC account. *See* Dkt. 61-1 ("Katz Jan. 13 Decl.") ¶¶ 12-13. That post-hoc revision is inconsistent with Comulate's prior admissions that it "needed" the PBC account for "develop*ing* … features," (Mot. Ex. P at 3 & ¶ 24), and that it used the account for "develop*ment*," (*id.* ¶ 5). At minimum, Comulate's use of the account to develop features—rather than for "insurance operations"—establishes breach. Mot. Ex. A §§ 3.1, 15. Comulate notably does not assert that it actually complied with the relevant contracts. Opp. 8-9.

Comulate's explanation of its nineteen months of access underscores the problem. Its CEO explains that the "majority" of GET requests were for "background sync[ing]" of "demo" instances. Katz Jan. 13 Decl. ¶ 33. Even if true, those actions violate the "Permitted Use"

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[2] All emphasis is added unless otherwise indicated.

[3] In view of the Court's denial of Applied's Motion for Expedited Discovery, Applied focuses on the breach to which Comulate has already admitted.

restrictions because they were not "in connection with [PBC's] internal insurance operations." Ex. A §§ 3.1, 15 And Comulate offers no explanation for its *other* actions—the millions of additional SDK calls and Epic interactions that Applied's forensic investigation revealed. *See* Peterlin Decl. ¶¶ 10-18; Peters Decl. ¶¶ 13, 29-34. That silence, combined with the pattern of access consistent with software development, supports the inference that Comulate used its fraudulently obtained access to reverse engineer Applied's systems. Blackwell Decl. ¶ 12; Peters Decl. ¶ 38.[4]

Comulate's central defense (Opp. 8-11)—that Applied cannot establish harm without identifying the specific information that Comulate misappropriated—misconstrues the law. *None* of Comulate's cases establish that, to prove damages at the preliminary injunction stage, a plaintiff must identify the specific information that the defendant used. Comulate cites *Ivey v. Transunion Rental Screening Solutions, Inc.*, 215 N.E.3d 871 (Ill. 2022) (cited Opp. 8) for the unremarkable proposition that a breach claim requires "damages caused by the breach." But *Ivey* is inapposite as the plaintiff there had failed to establish its prospective profits at summary judgment. *Id.* at 872. Equally misplaced is *Automed Technologies, Inc. v. Microfil, LLC*, 2006 WL 1647505 (N.D. Ill. June 7, 2006) (cited Opp. 9), both because it arose at the summary judgment stage and because the defendant's competing product had "yet to reach the market." *Id.* at *2. In contrast, Applied has made a robust showing of harm: Comulate fraudulently obtained access to Applied's systems, made over ten million SDK calls, used that access to develop competing products, and continues to market those products to Applied's customers.[5] Blackwell Decl. ¶¶ 13, 15; Peterlin Decl. ¶¶ 10,

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[4] Comulate's denials of reverse engineering are notably narrow. It states that it "does not use its agency bill automation product to reverse engineer" (Katz Jan. 13 Decl. ¶ 26) and "was not making these ['GET'] method calls to perform any reverse engineering" (*id.* ¶ 34). But Applied alleges the product is a *result* of reverse engineering, not a tool for it. And Comulate does not deny that its other uses of the PBC account involved reverse engineering.

[5] Despite contending that it "does not compete directly with *Epic*" (Opp. 3), Comulate repeatedly concedes that it is *Applied's* competitor. *E.g.*, Opp. 1 (referring to Applied's alleged

22; Peters Decl. ¶ 13. Courts have granted preliminary injunctions based on similar showings. *See, e.g.*, *Life Spine, Inc. v. Aegis Spine, Inc.*, 2021 WL 963811, at *12-15, *24 (N.D. Ill. Mar. 15, 2021).

Comulate faults Applied for, without the benefit of discovery, inadequately identifying the Confidential Information that Comulate possesses. Opp. 8. To be clear, all information Comulate obtained through the PBC account was obtained through breach of the Master Agreement, which defines "Confidential Information" broadly.[6] According to Comulate's theory, Applied could *never* allege harm because it cannot obtain evidence of exactly what Confidential Information Comulate retained—information exclusively within Comulate's control. But this Court correctly recognized that Applied "can establish [harm] through its own information and argument." Dkt. 53. Applied has done exactly that, presenting evidence that Comulate used the PBC account to develop products that compete with Recon. *See*, Peterlin Decl. ¶¶ 11-21. If Comulate could have developed its software with only public information, it would not have "needed" the non-public PBC account access it obtained. The Court should not condone Comulate's attempt to manufacture a Catch-22 with the Court's holding that "[d]iscovery is not necessary for [Applied] to establish the harm it alleges." Dkt. 53.

"campaign to eliminate *a competitor*"); *id.* at 2 (accusing Applied of "creat[ing] a cloud over a *competitor*"); *id.* at 3 (calling Comulate Applied's "*competition*"); *id.* (referring to Comulate as Applied's "primary *competition*"); *id.* at 14 (calling Comulate "Applied's soon-to-be primary *competitor*"); *id.* at 15 (dubbing Applied's suit "*anticompetitive*"). In fact, Comulate's newly filed Sherman Act suit refers to itself as a "competitor" of Applied in the first paragraph. *Ardent Labs, Inc. v. Applied Systems, Inc.*, Case No. 26-cv-00591, Dkt. 1.

[6] "Confidential Information" includes "[t]he Applied Software, Support Materials, any trade secrets, compilations, components, Licensee Data, data, source/object code, customer/vendor/supplier info, documents, drawings, sketches, financial info, formulae, inventions, lists, manuals, parts, patterns, plans, processes, software, specification, techniques, proposals and all other information protectable by applicable privacy laws and other information of a secret, confidential, or proprietary nature." Mot. Ex. A § 15.

Comulate's remaining arguments are specious. *First*, its argument that Applied did not "access[] Epic's source code" (Opp. 8) misconstrues Applied's motion. Applied's breach claim *does not depend on* Comulate having accessed any source code. That is precisely the point. Reverse engineering does not require access to source code. Comulate used its Epic SDK and user interface access to determine the workings of Applied's software to understand the functions it was attempting to automate. Blackwell Decl. ¶ 12; Peters Decl. ¶ 38. Applied's harm flows from this unauthorized information gathering and product development.

Second, Comulate repeats the misdirection (Opp. 5, 8, 15) that it already had access to Applied's systems through customer accounts. As Comulate acknowledges, it had only "*SDK access*" through its customers. Opp. 8. SDK access only got Comulate so far. It "needed the [PBC] account" for user interface access. Mot. Ex. P at 3. And it needed that access because SDK access was "inconvenient in some ways because it did not have a user-facing interface connected." *Id*. ¶ 15. In truth, it was more than merely "inconvenient." Some key functionalities cannot be invoked from the SDK at all; Epic's user interface offers additional actions. Blackwell Decl. ¶ 6; Am. Compl. ¶ 37.

Even Comulate's SDK access was not the same through customer accounts. As Comulate's CEO noted, Comulate's access to the SDK "through its customers[]" put those "customers in the middle of every integration, test, or demonstration." *Id*. ¶¶ 13-14.[7] Comulate could not develop its software with that limitation. As Applied's President explained, Comulate's access through customer accounts is limited, and customers would not permit Comulate to develop products using their accounts. Blackwell Decl. ¶ 12. After all, such use would put the *customers*

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[7] Comulate's half-hearted attempt (Opp. 8) to employ the Master Agreement's "lawfully known" clause fails because any information Comulate obtained from joint customer accounts would still originate from Applied, "the disclosing party." Mot. Ex. A § 10.2.

in violation of the Master Agreement. If Comulate's access to Epic through joint customers was sufficient for its needs, it would not have engaged in fraud to obtain the PBC account.[8]

II.   APPLIED WILL SUFFER IRREPARABLE HARM ABSENT THE INJUNCTION

Comulate should be enjoined from further benefitting from its PBC scheme, by ceasing use of Applied's illicitly obtained Confidential Information and ceasing the sale of products built using the Applied Confidential Information to new customers. If Comulate is not enjoined, Applied faces the prospect of unfair competition based on misuse of information Comulate obtained only by fraudulently obtaining the PBC account, including competition against Applied's Recon product. Blackwell Decl. ¶ 15. This "risk" of Comulate using Applied's Confidential Information to cause "further losses to" Applied is sufficient to show irreparable harm. *Medcor, Inc. v. Garcia*, 2022 WL 124163, at *12 (N.D. Ill. Jan. 13, 2022) (Plaintiff "has shown irreparable injury through lost customers, potential customers, and revenue.").

First, Comulate's argument (Opp. 11) that Applied's authorities address trade secret claims conveniently omits that *every authority* it purports to distinguish granted an injunction, at least in part, *based on a breach of contract claim*, often expressly relying on the breach claims in the Courts' irreparable-harm analysis.[9] Comulate further fails to acknowledge either *Moss Holding*

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[8]   PBC's disclosure of Confidential Information to Comulate is an additional theory of breach. Although Comulate now portrays its admission that PBC and Comulate are alter egos as Applied's "argu[ment]" (Opp. 10-11), its admission is binding, as it formed the basis for this Court's January 2 Order (Dkt. 53). Comulate's admission moots Applied's theory concerning PBC's disclosures to Comulate, but it does *not* affect Comulate's liability for its disclosures to third parties, including via demonstrations. *See* Mot. Ex. P ¶ 24; Katz Jan. 13 Decl. ¶ 37.

[9]   *Life Spine*, 8 F.4th at 543-46 (affirming district court holding that plaintiff "had a 'high likelihood of success' on its" breach of contract claim and explaining that loss of market share and goodwill was irreparable); *My Fav Elecs., Inc. v. Currie*, 2024 WL 4528330, at *7-8 (N.D. Ill. Oct. 18, 2024) (finding a likelihood of success on the merits where the defendant's misappropriation and disclosure formed the basis for both plaintiff's trade secrets and contract claims); *Medcor*, 2022 WL 124163, at *5-7, 12 (plaintiff showed likelihood of success on the merits for breach of contract prohibiting disclosure of trade secrets, violation of which caused irreparable harm);

Co. v. Fuller, 2020 WL 1081730, at *9 (N.D. Ill. Mar. 6, 2020)—which explained that "the harm analysis" for misappropriation and contract claims "converges" when they rely on similar prohibited conduct—or *nClosures Inc. v. Block & Co.*, 2013 WL 158954, at *2-4 (N.D. Ill. Jan. 15, 2013)—which relied *exclusively* on a breach of contract claim to issue a preliminary injunction. Comulate's remaining authorities do not undermine the Motion, either because Comulate's cherry-picked quotation omits qualifying language[10] or the plaintiff admitted to the adequacy of a legal remedy.[11]

Second, *DM Trans, LLC v. Scott*, 38 F.4th 608 (7th Cir. 2022), *Lawson Prods., Inc. v. Morichelli*, 707 F. Supp. 3d 759 (N.D. Ill. 2023) (Shah, J.), and *CraneTech, Inc. v. Slack*, 789 F. Supp. 3d 662 (N.D. Ind. 2025)—all cases involving solicitation of an identifiable customer base—are inapposite. Applied's proposed order would not permit sales to "entities other than existing

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Groupon v. Shin, 2022 WL 60526, at *3–6 (N.D. Ill. Jan. 6, 2022) (finding irreparable harm where defendant's "disclosure of [plaintiff's] *confidential and/or* trade secret information would put [plaintiff] at a serious competitive disadvantage"); *GCM Partners, LLC v. Hipaaline Ltd.*, 2020 WL 6867207, at *12, 14 (N.D. Ill. Nov. 23, 2020) (granting injunction on contract claim, not trade secret claim); *Aon Risk Services Cos. v. Alliant Ins Servs., Inc.*, 415 F. Supp. 3d 843, 847–51 (N.D. Ill. Nov. 25, 2019) ("Regarding its breach of contract claim, the Court finds irreparable harm is likely if the Court does not enforce the non-solicitation covenant."); *Optionmonster Holdings, Inc. v. Tavant Techs., Inc.*, 2010 WL 2639809, at *3-6, 9 (N.D. Ill. June 29, 2010) (finding likelihood of success on contract claim and highlighting the same in irreparable harm analysis); *PepsiCo, Inc. v. Redmond*, 1996 WL 3965, at *24-30 (N.D. Ill. Jan. 2, 1996) (finding likelihood of success on breach claim and finding irreparable harm based on access to "competitive information," not just trade secrets). Further, Comulate's narrow reading of *GCM Partners* ignores that the injunction prohibited the defendant from "violating any other provision of the Agreement," not just denying plaintiff's access to the defendant's platform. 2020 WL 6867207, at *16.

[10] *Seaga Mfg., Inc. v. Intermatic Mfg., Ltd.*, 2013 WL 773037, at *4-5 (N.D. Ill. Feb. 28, 2013) (cited Br. 12) ("Injunctive relief is disfavored where the gravamen of a complaint is breach of contract *and* the trial court could award damages if it found a breach occurred. … [V]iolations of exclusivity agreements and loss of goodwill are the kind of harms that can be … irreparable.").

[11] *Cooper v. Durham Sch. Servs.*, 2003 WL 22232833, at *10 (N.D. Ill. Sept. 22, 2003) (cited Br. 12) ("[Plaintiff] undermines its argument for injunctive relief by recognizing a clear legal remedy.").

joint customers of Applied and Comulate." Proposed Order at 2. Absent the requested injunction, those non-joint customers will have the option of choosing Recon, Comulate's products (regardless of whether they were developed using Applied's Confidential Information), and other competing products, like Ascend's. Determining after the fact which customers would have selected Recon but for Comulate's breach is, by its nature, a speculative endeavor. This is not a case where the parties could "identify the [exact number of] customers and calculate the extent to which they shifted their business." *DM Trans*, 38 F.4th at 619. Because Recon has been launched to pilot customers only, Blackwell Decl. ¶ 15, Applied cannot identify *ex ante* which **potential** customers would select Recon absent an injunction. *See Life Spine*, 8 F.4th at 546 (affirming district court finding of irreparable harm where lost customers "were not fully identifiable" because "identifying and quantifying lost business 'would be especially difficult'"). Comulate's own authorities establish that such losses from future sales of a new product to an unidentified pool of customers "def[y] calculation." *PepsiCo*, 1996 WL 3965, at *30.

Third, Comulate's argument regarding the certainty of Applied's irreparable harm disregards evidence to the contrary. Recon is a real product, already being piloted and used by paying customers. Blackwell Decl. ¶ 15. In addition, Comulate's argument that Applied's harms "rest on **potential** future losses" (Opp. 13 (emphasis in original)) shows only that an injunction is appropriate. *GCM Partners*, 2020 WL 6867207, at *14 ("The loss of customers and sales and the **continuing threat of further loss** can constitute irreparable harm."); *Medcor*, 2022 WL 124163, at *12 (Plaintiff "has shown irreparable injury through lost customers, **potential customers**, and revenue."); *see Optionmonster*, 2010 WL 2639809, at *9 (finding "loss of competitive advantage" where competing products "will **in the future** be used to unfairly compete with [plaintiff]"). Indeed, "an injunction is a forward-looking remedy." *Swanigan v. City of Chicago*, 881 F.3d 577,

583 (7th Cir. 2018) If there were no risk of potential future harm, an injunction would serve no purpose.

None of Comulate's authorities is to the contrary. Some relied on a presumption of irreparable harm, offering only "bare assertions" or "speculat[ion]" to support their position.[12] Others did not even reach the issue of irreparable harm, with plaintiffs uncertain of "whether or how [defendant] might breach the agreement."[13] And the remainder merely held that, *if* there was irreparable harm, the harm was outweighed by other factors.[14] Applied's harm, by contrast, is the ongoing and expanding head-to-head competition between Recon and Comulate's products that were developed using Applied's Confidential Information. Applied established this harm by submitting declarations describing Comulate's access to Applied's Confidential Information and the unfair competitive threat Comulate poses to Recon. *See* Blackwell Decl. ¶¶ 12-15; Peterlin Decl. ¶¶ 10, 22.

Comulate's continued use of Applied's Confidential Information poses an imminent and irreparable threat to Applied's competitive position through unfair competition, loss of market share, and reputational injury. Comulate's attempts to recast these harms as speculative ignore both the record evidence and the settled caselaw. The Court should reject Comulate's invitation to allow Applied's harms to compound while litigation proceeds.[15]

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[12] *Bidi Vapor, LLC v. Vaperz LLC*, 543 F. Supp. 3d 619, 632-33 (N.D. Ill. 2021) (plaintiff failed to substantiate its alleged harms, relying primarily on a presumption of irreparable harm and offering only "bare assertions"); *EnVerve, Inc. v. Unger Meat Co.*, 779 F. Supp. 2d 840, 845 (N.D. Ill. 2011) (rejecting rejected reputational harm and insolvency concerns as "too speculative" because there was "no evidence" that plaintiff's "parade of horribles" would unfold).

[13] *E. St. Louis Laborers' Local 100 v. Bellon Wrecking & Salvage Co.*, 414 F.3d 700, 706 (7th Cir. 2005),

[14] *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 23 (2008).

[15] Comulate's accusation that Applied "quietly" amended its complaint to remove, what it incorrectly and unilaterally dubs, "the heart of [Applied's] case" is a spar with specters. Opp. 1,

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III.   THE EQUITIES AND PUBLIC INTEREST FAVOR AN INJUNCTION

Comulate's continued failure to take any semblance of responsibility for its fraud establishes the need for an injunction. Rather than acknowledge the wrongfulness of its actions, Comulate blames *Applied* for not sooner detecting Comulate's fraud and makes excuses that Applied's alleged breach of a *different* contract—under which Comulate has never asserted a breach claim—somehow necessitated Comulate's deception. Opp. 4-5 & n.2. But the equities do not favor fraudsters, and fraud is not the remedy for breach of contract. *See, Mintel Int'l Grp. v. Neergheen,* 2008 WL 2782818, at *6 (N.D. Ill. July 16, 2008) ("[A]ny harm that [defendant' may suffer … would be in large part a consequence of his own conduct"). The equitable result puts the parties on the same footing they would have been but for the fraud.

Comulate's primary gripe (Opp. 13)—that Applied's Proposed Order would cause Comulate economic harm—rests on Comulate's continued misreading of the scope of the proposed injunction. Contrary to Comulate's suggestion, Applied's Proposed Order would not prohibit Comulate from selling its existing products to pre-existing Applied customers. Assuming Comulate is correct that ▮ of its revenue comes from pre-existing joint customers with Applied (Opp. 13 (citing Katz Jan. 13 Decl. ¶ 49)), then Applied's proposed order, which expressly *carves out* "existing joint customers of Applied and Comulate" (Proposed Order at 2) would leave the large majority of Comulate's existing contracts untouched. Comulate's argument thus merely

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11. Setting aside that Comulate itself "quietly" omits that Applied continues to assert the same ten groups of asserted trade secrets (*compare,* Compl. ¶¶ 44-53, *with* Am. Compl. ¶¶ 45-54), Comulate does not dictate how Applied pursues its case, and Applied's Motion does not rely on its trade secret allegations. And even if it did, by signing the Master Agreement, Comulate already "agree[d] that the Software constitutes … valuable trade secrets, proprietary information, and other Confidential information." Mot. Ex. A §§ 4.3;15. To the extent the Court considers Comulate's argument at all, it should reject this additional attempt to resist its own admissions. *PepsiCo,* 1996 WL 3965, at *16 (holding defendant to its admissions that "business information at issue [wa]s confidential" and constituted trade secrets).

shows that Applied's proposed order is narrowly tailored in scope. Indeed, Comulate presents no evidence or argument at all (in terms of revenue projections, for instance) of *any harm* it would suffer from the prohibition on onboarding new Applied customers to Comulate. Its CEO *excluded* revenue from "prospective customers" from his estimates. Katz Jan. 13 Decl. ¶ 50. Thus, Comulate's argument that this order would be ███████████████████ (Opp. 13) is unsupported. Applied's Proposed Order would still allow Comulate to sell existing products to "existing joint customers of Applied and Comulate," and any future products that were not "developed, tested, or trained using" Applied's Confidential Information to other customers. Comulate's case citations regarding companies "going out of business,"[16] incurring "substantial damage to [their] finances,"[17] facing the prohibition of marketing practices that "ha[d] been in use for years,"[18] or confronting "elimination of an entire business line,"[19] are therefore inapposite.

Comulate further argues (Opp. 1, 3, 13) that Applied's proposed order is vague, but its only attempt to identify ambiguity is taking issue with the word "information." (Opp. 15) There is no ambiguity: the "information" referred to is any information "obtained through [Comulate]'s access" (Opp. 15) to Applied's software. It stretches credulity that Jordan Katz knows Comulate "develop[ed] … Comulate functionality" using the PBC account, but Comulate cannot identify what functionality it developed. Mot. Ex. P ¶ 6.[20]

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[16] *Machlett Lab'ys, Inc. v. Techny Indus., Inc.*, 665 F.2d 795, 798 (7th Cir. 1981) (cited Opp. 13).

[17] *Scala's Original Beef & Sausage Co. v. Alvarez*, 2009 WL 5183799, at *7 (N.D. Ill. Dec. 22, 2009) (cited Opp. 13).

[18] *Vienna Beef, Ltd. v. Red Hot Chicago, Inc.*, 833 F.Supp.2d 870, 876-77 (N.D. Ill. 2011) (cited Opp. 14).

[19] *Abrasic 90 Inc. v. Weldcote Metals, Inc.*, 364 F. Supp. 3d 888, 908-09 (N.D. Ill. 2019) (cited Opp. 14).

[20] Comulate's lone authority on ambiguity reinforces that Applied's Proposed Order is unambiguous. The appellant there "d[id] not quibble with the injunction's prohibition on using

Having failed to establish substantial economic harm to itself, Comulate turns (Opp. 14) to the purported public interest in having its products utilizing Applied's Confidential Information on the market. Comulate largely sources this argument from the opinion of a single customer, who believes that removing Comulate access would negatively affect that customer. Opp. 14. Remarkably, this customer's existing use of Comulate would *not be impacted by the proposed injunction*; it was a joint customer at least as of July 2025. Dkt. 60-6 ("Garcia Decl.") ¶ 2. Comulate's only other argument is an unsourced attorney statement that the injunction would "leav[e] insurance agencies with no good alternative to Recon." Opp. 14.[21] In addition to the lack of evidence underlying this assertion, Comulate contradicts it in a recent filing by naming another competitor in what Comulate calls the "enterprise-level automated insurance agency accounting software" market. *Ardent Labs, Inc. v. Applied Systems, Inc.*, Case No. 26-cv-00591, Dkt. 1 ¶ 71. Regardless, a "free and fair" (Opp. 14) market is not one that condones the use of stolen confidential information: "The public interest is supported by upholding the sanctity of confidential information … and preventing others from the unauthorized use of such confidential information for their own benefit." *Mazak Optonics Corp. v. Marlette*, 2017 WL 3394727, at *3 (N.D. Ill. Aug. 8, 2017).

Comulate also takes a passing shot (Opp. 14) at the timing of Applied's motion. That argument fails on both the law and facts. On the law, Comulate fails to cite a single case stating that a twenty-four-day period between filing a complaint and seeking a preliminary injunction

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the computer files obtained from Patriot's computers," because the appellant knew exactly which files it took. *Patriot Homes, Inc. v. Forest River Hous., Inc.*, 512 F.3d 412, 414 (7th Cir. 2008).

[21] Comulate's only citation (Opp. 7) purporting to refute Applied's assertion that customers can freely switch between AMS platforms (Blackwell Decl. ¶¶ 5, 14) is to its now-withdrawn Delaware complaint. The same is true of Comulate's quibbles (Opp. 3, 14) with Applied's market share estimates (Blackwell Decl. ¶ 4). Those contentions thus lack support.

weighs against that injunction. To the contrary, courts in this circuit have granted injunctions filed on similar timelines. *See, e.g., My Fav Elecs.*, 2024 WL 4528330, at *6, 18 (granting in part preliminary injunction where complaint was filed March 7, 2024 and motion for preliminary injunction was filed April 1, 2024). On the facts, Comulate characterization is, at best, misleading. Comulate misrepresents that Applied was aware of all of Comulate's misdeeds in early October, to assume a delay of "six weeks" (Opp. 2, 7) before Applied's original complaint, then later rounds up—artificially inflating the already-invented delay to "two months" (Opp. 14). Both are unsupported. October 2025 is when Applied discovered "***unusual activity***" on the PBC account. Peterlin Decl. ¶ 9. One of the examples (Mot. Ex. D) Applied provided of Comulate's testing using the PBC account is dated October 26, 2025, which alone contradicts Comulate's timeline. Applied's investigation of that unusual activity ***started*** in October 2025, continuing ***through this action***. *See* Peterlin Decl. ¶¶ 11-21.

Comulate's characterizations (Opp. 14) of the timing and substance of the now dismissed Delaware action are similarly both incomplete and irrelevant. Comulate does not acknowledge that the Chancery Court "largely denied" Comulate's requested injunction and generally "memorialize[d]" promises Applied made at oral argument. Dkt. 60-3 at 4. Comulate in fact later voluntarily dismissed that suit, thereby dissolving that injunction.

In its final effort, Comulate accuses (Opp. 14-15) Applied of having "unclean hands" due to an alleged breach of a different agreement. But Comulate has ***never brought a claim for breach of that contract***, let alone proven this supposed breach. And even if that supposed breach had any connection to this case (it does not), the breach would still not be the type of "fraud, unconscionability or bad faith" required to constitute unclean hands. *Int'l Union, Allied Indus. Workers of Am. v. Loc. Union No. 589*, 693 F.2d 666, 672 (7th Cir. 1982). It would remain a far

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cry from the bad faith breach of a fiduciary duty, or participation in the same conduct sought to be enjoined, to which Comulate's cited authorities point. S*ee Allied Indus. Workers*, 693 F.2d at 672-73; *Bidi Vapor*, 543 F. Supp. 3d at 629.

IV.   THE COURT SHOULD NOT REQUIRE A BOND

Because Comulate has failed to submit evidence establishing its likely costs if wrongfully enjoined, the Court should waive the bond requirement. *See Doe v. Elkhorn Area Sch. Dist.*, 743 F. Supp. 3d 1053, 1082 (E.D. Wis. 2024); *Planned Parenthood of Ind. & Ky., Inc. v. Comm'r, Ind. State Dep't of Health*, 2018 WL 10580407, at *8 (S.D. Ind. June 28, 2018).

Comulate's request (Opp. 15) for a bond of "at least $███ million" has no basis. Comulate's supposed support for that number is that "Comulate's expected annual revenue from customers who use Epic "*was* ████████████████████████" Katz Jan 13 Decl. ¶¶ 49-50 (cited Opp. 15). But this allegation suffers from the same flaws as Comulate's balance of the hardships analysis, in that it ignores the actual scope of Applied's proposed order. Applied's preliminary relief would end Comulate's sale of products containing Confidential Information only "to any entities *other than existing joint customers* of Applied and Comulate." Proposed Order at 2. Comulate's estimate, which does not even provide the bottom-line projection, establishes only Comulate's revenue from customers who would be *unaffected*.[22]

CONCLUSION

Applied respectfully requests this Court grant Applied's proposed order.

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[22] Comulate's sole bond authority is uninformative, as the amount there was uncontested. *See* Transcript of Preliminary Injunction Closing Arguments, *Kimberly-Clark Worldwide, Inc. v. First Quality Baby Prods., LLC*, Case No. 09-C-916 (E.D. Wis.) Doc. 157 at 711:25-712:21.

Dated: January 26, 2026

Respectfully submitted,

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