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

ARDENT LABS, INC.,	)	Case No. 26 C 591
d/b/a COMULATE,)	
)	
Plaintiff,)	
)	
v.)	
)	
APPLIED SYSTEMS, INC.,	)	Chicago, Illinois
	)	March 5, 2026
Defendant.	)	10:34 a.m.

TRANSCRIPT OF PROCEEDINGS -
TELEPHONE MOTION HEARING/RULING
BEFORE THE HONORABLE MANISH S. SHAH

APPEARANCES (telephonically):

For the Plaintiff:	ELSBERG BAKER & MARURI, PLLC
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1 APPEARANCES (Continued):

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Also Present:

MR. JORDAN KATZ, CEO of Comulate

MR. RICH COHAN, General Counsel
Applied Systems, Inc.

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Court Reporter:

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1 (Proceedings heard telephonically:)

2 THE COURT: Good morning. This is Judge Shah.

3 The clerk will call the case.

4 THE CLERK: 26 CV 591, Ardent Labs versus Applied
5 Systems.

6 THE COURT: We have counsel's appearances already
7 noted for the record. Thank you, everyone, for calling in.

8 The motion to seal the exhibit, Mr. Baker's
9 supplemental declaration, is granted.

10 I understand there was an issue with the redactions in
11 the public version. You can file a new public version, and
12 we'll keep the old one under seal. It is under seal on my end
13 when I look at the docket.

14 So Ardent and Comulate can file a new public version
15 with the appropriate redactions.

16 The exhibit --

17 MR. BAKER: Thank you, Your Honor.

18 THE COURT: The exhibit, the email isn't really new
19 evidence to Comulate. It's not evidence that couldn't have
20 been presented earlier. It's an email that Mr. Katz received
21 in August 2025.

22 I understand that counsel didn't know about it, but
23 given Mr. Katz's role in the litigation, whether counsel knew
24 about it isn't a good reason to allow additional evidence or
25 argument.

1 That said, I read it. I read the supplemental
2 declaration, I have read the statement, so I have considered
3 it.

4 I can give you a ruling now on the motion for a
5 TR0/preliminary injunction and the motion for expedited
6 discovery.

7 My rulings, including on legal questions, are
8 preliminary given the procedural posture here.

9 First, following Illinois choice-of-law principles on
10 the state-law claims, I look at the issues within the claims.
11 Each issue under Illinois law is subject to a separate
12 choice-of-law analysis. *Townsend v. Sears, Roebuck*, 227 Ill.2d
13 147, 161 (2007).

14 Tortious interference claims are torts independent of
15 contractual choice-of-law clauses. The place of injury,
16 California, leads to California law applying to the tortious
17 interference claims. Illinois law applies to the asserted
18 defenses. See, for example, *Osundairo*, 0-s-u-n-d-a-i-r-o, 447
19 F.Supp.3d 727, 743 (N.D. Ill. 2020), for a discussion of that
20 doctrine in Illinois choice-of-law principles.

21 California Unfair Competition Law insofar as it's
22 based on tortious interference conduct would result in a
23 similar choice-of-law analysis. Preliminarily, at this stage
24 of the case, I don't agree that the contracts, the Master
25 Services Agreement or the Non-Disclosure Agreement, reflect the

1 parties' intent about how tort claims would be governed. So I
2 look to California law on these claims, these state-law claims
3 except as to defenses.

4 On likelihood of success on the merits, unclean hands
5 does not preclude Comulate from seeking injunctive relief on
6 the current record. The unclean hands of its breach of
7 contract is a different transaction than the customer
8 communications at the heart of the tortious interference claim.
9 Applying unclean hands to bar Comulate from pursuing its claim
10 would not be equitable or just right now. It's too harsh a
11 doctrine, and the conduct here is sufficiently distinct from
12 the merits. There is a preference to resolve cases on the
13 merits.

14 I do look to Illinois' version of the litigation
15 privilege as a defense to tortious interference. That leads me
16 to preliminarily conclude that almost everything Applied said
17 in its November 21, 2025 communication was privileged.

18 What Applied told joint customers, customers who had
19 an interest in the litigation, what Applied told them about the
20 lawsuit, including that Comulate fraudulently and unlawfully
21 accessed Applied's technologies to misappropriate trade
22 secrets, reverse-engineer functionality, and access other
23 confidential information, and about "brazen fraud and theft,"
24 were all statements covered by the litigation privilege.
25 However, there is a sliver of the November 21st email in which

1 Applied is advising, perhaps directing, joint customers to cut
2 off Comulate's access to Epic. That likely was not privileged.
3 That statement was likely a separate effort, distinct from
4 merely alerting joint customers to the litigation and
5 describing the litigation. That kind of effort or statement to
6 direct someone to terminate a relationship with Comulate could
7 amount to tortious interference with existing contractual
8 relations or with a prospective economic advantage.

9 So there is a likelihood of success on tortious
10 interference and California Unfair Competition, to the extent
11 that is based on tortious interference conduct. But with
12 Applied's agreement to hold off on any actions as to mutual
13 existing customers through June, I conclude there is no
14 irreparable harm from that claim. I understand the point that
15 customers need to plan and the end of the quarter will be here
16 quickly, but I nevertheless conclude that the status quo as to
17 mutual customers does not need an injunction from me today to
18 be preserved. A mandatory injunction requiring Applied to
19 guarantee access or to positively influence customers toward
20 Comulate is not preservation of the status quo and would be an
21 extraordinary injunction more harmful to Applied on balance
22 than refraining from such an injunction would be to Comulate.
23 The public interest here is not weighty either way in this
24 private pursuit.

25 I am not persuaded that there's a rigorous-enough

1 record for me to reach any conclusions about the likelihood of
2 antitrust liability, even as an antitrust-lite analysis within
3 California Unfair Competition law.

4 So for those reasons, the motion for a TRO and
5 preliminary injunction are denied.

6 Comulate does have good cause, in my view, to get some
7 discovery to aid a possible renewed motion for preliminary
8 injunction on its tortious interference claims based on
9 customer communications and interference with Comulate's
10 business with those customers.

11 I am open to an injunction that prevents Applied from
12 cutting off Epic access after June, but I need some more in
13 order to be persuaded that what happens after June really is
14 anything attributable to tortious interference as opposed to
15 independent customer judgment about risk and uncertainty and
16 was not proximately caused by Applied's conduct.

17 The motion for expedited discovery is granted in
18 limited part. I authorize plaintiff to serve its document
19 request No. 3 and its interrogatory No. 3 on defendant.
20 Document request No. 3 is limited in date range to October 2025
21 through January 19th, 2026. You can serve those now, and
22 defendant has two weeks to respond to them, which would be
23 March 19th. I am not authorizing depositions.

24 All other discovery is stayed pending a ruling on the
25 motion to dismiss. And Comulate has leave to file a renewed

1 motion for a preliminary injunction when you're ready in light
2 of the comments I have made this morning.

3 In sum, the motion for a TRO and preliminary
4 injunction, which is docket No. 6, is denied. The motion for
5 expedited discovery, which is docket No. 10, is granted in
6 part, denied in part.

7 Is there anything else the parties would like to raise
8 with me this morning? I'll start with Ardent and Comulate.

9 MR. BAKER: Thank you, Your Honor. We will get our
10 discovery requests out promptly.

11 The one thing I wanted to raise is, in response to
12 Your Honor's ruling, is that it sounds like Your Honor is
13 entertaining the possibility -- and we will intend to make --
14 of a renewed preliminary injunction motion. The problem is
15 that when June 30 comes and goes, whatever we're trying to
16 preserve through the preliminary injunction will no longer
17 exist.

18 The customers are going to have to transition, and are
19 already transitioning now. That is the entire purpose of
20 Applied's actions. They know that uncertainty forces clients
21 to leave today.

22 So while Comulate certainly appreciates the
23 opportunity to take the discovery and file a renewed
24 application, when we seek that renewed application, given the
25 timeline, absent Applied agreeing that they will extend the

1 cutoff to 90 days following resolution of the PI from the
2 merits, there will be nothing to preserve. Comulate will be
3 destroyed. And no matter how strong our case is and what we
4 believe we can establish in discovery, by the time we get to
5 the merits or final resolution, Comulate will be gone.

6 And I don't think anyone should be surprised if --
7 come June 30th that all the customers are gone and Comulate is
8 out of business, if Applied drops its lawsuit. Because this is
9 not about PBC access. This is about a prolonged campaign to
10 drive out a competitor. A decision that was made months before
11 Applied's alleged discovery of PBC in October 2025.

12 And you said that, Your Honor -- and that is what I
13 just saw for the first time two nights ago. Your Honor said
14 you didn't believe it was new evidence, but, respectfully, it's
15 clear that Applied had already made the decision to kick
16 Comulate out before they claimed to even have discovered PBC.

17 So I apologize for going on at length. But my point
18 is that absent some agreement by Applied to extend that June 30
19 cutoff to some period of time upon resolution of the renewed PI
20 motion -- the PI we are seeking doesn't allow us to get the
21 relief we need because everyone will be gone by then. And
22 Applied knows this. And if Applied cares about its
23 customers -- and given Your Honor has already issued a
24 preliminary injunction preventing Comulate from accessing
25 anything gained from PBC, it seems to me that the road we're

1 going down is a road that gives Applied everything it wants and
2 leads to the certain destruction of Comulate.

3 Thank you, Your Honor.

4 THE COURT: I understand the point and the argument.
5 As I said in my ruling, I am not persuaded or satisfied that an
6 injunction from me now is justified on the record.

7 I am giving you an opportunity to develop your
8 information along the lines I have discussed, and you will file
9 your motion when you file it.

10 If you file it within a few days of receiving whatever
11 discovery you receive on March 19th, it'll be on file. I can
12 entertain arguments about it.

13 I am aware of your sensitivity to the June deadline.
14 As I've said, I am not persuaded right now that what happens in
15 June necessarily has persuasively been established to be the
16 proximate cause or the results were not proximately caused by
17 Applied's conduct. But you have an opportunity to convince me
18 otherwise. I understand the urgency on your client's end, but
19 you have my ruling.

20 Anything else on behalf of plaintiff?

21 MR. BAKER: No, Your Honor. We will, we will file our
22 motion within a day of receiving discovery.

23 And to the extent we can get a ruling on the revised
24 motion before the end of March, I think that would go a long
25 way to addressing our situation. I don't know if that's

1 possible. But we would urgently request that the -- sort of
2 the timeline we're thinking about given the gravity of the
3 situation.

4 THE COURT: Anything further on behalf of defendant?

5 MR. STAKE: No, Your Honor. Thank you.

6 THE COURT: While everyone is here, given the tenor of
7 the discussions from plaintiff this morning, I would urge
8 counsel to keep talking to each other and urge the litigants,
9 the clients to consider what the paths forward are going to
10 look like. I'll leave it at that and just ask you to continue
11 to meet and confer about the realities of the situations here
12 and the relationships.

13 But I will take the motions as they come and get you
14 rulings as quickly as I can.

15 Thank you for calling in. We're in recess.

16 (Proceedings concluded at 10:48 a.m.)

17 * * * * *

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19 I certify that the foregoing is a correct
20 transcript of the record of proceedings in the above-entitled
21 matter.

22

23 /s/ Colleen M. Conway, CSR, RMR, CRR

03/05/2026

24

Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

Date

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

ARDENT LABS, INC., d/b/a COMULATE,)	
)	
Plaintiff,)	
)	
v.)	
	)	Case No. 1:26-cv-00591
APPLIED SYSTEMS, INC.,)	
)	
Defendant.)	
)	
)	

**SUPPLEMENTAL DECLARATION OF JORDAN KATZ IN SUPPORT OF
COMULATE’S RENEWED MOTION FOR A PRELIMINARY INJUNCTION**

I, Jordan Katz, hereby declare as follows:

1. I am a co-founder and Chief Executive Officer of Ardent Labs, Inc., d/b/a Comulate (“Comulate”), the Plaintiff in this Action. I co-founded Comulate in 2022.
2. I respectfully submit this declaration in support of Comulate’s Renewed Motion for a Preliminary Injunction.
3. I have personal knowledge of the facts set forth in this Declaration.
4. I previously submitted a declaration in support of Comulate’s Motion for a Temporary Restraining Order and Preliminary Injunction (Dkt. # 7-2). The statements in that declaration are all still true and accurate. I incorporate my previous declaration herein by reference.

I. Customers Are Continuing to Leave Comulate Because of Applied’s Threats

5. Since the Court denied Comulate’s Motion for a Temporary Restraining Order and Preliminary Injunction, at least five mutual customers have moved to terminate their contracts with Comulate. Each confirmed that its decision was driven by Applied’s conduct, including Applied’s

communications directing customers to cease using Comulate and Applied's self-imposed June 30, 2026 cutoff of Comulate's SDK access. Customers who have not moved to terminate have largely reported their evaluation of Applied's recommended alternatives to Comulate are likewise a result of Applied's statement.

6. On March 5, 2026, a representative from [REDACTED] notified me that [REDACTED] was terminating its contract with Comulate. In its termination email, [REDACTED] stated: "***Applied's actions, Applied's communication, and the general lack of resolution on these legal issues has affected my decision to stay with Comulate past 06/30/2026. . . . I cannot delay a resolution any longer for my team and will be moving to Ascend by the 06/30/2026 cutoff date.***"

7. On March 10, 2026, a representative from [REDACTED] notified my team that [REDACTED] was terminating its contract with Comulate. In its termination email, [REDACTED] stated: "***I am actually going to have to move forward with cancelling our Comulate subscription. We are starting to feel more and more pressure from Applied to have a smooth transition and they are still acknowledging we need to be fully moved by June.*** We just unfortunately cannot be waiting in limbo any longer, I hope you understand." During a follow-up communication on March 12, the representative explained further that although they were "being forced into" an inferior product, they are planning to use Recon instead of any competitor to Applied because they "don't want to go with another competitor and the same thing happen as it did [with Comulate]."

8. On March 12, 2026, a representative from [REDACTED] wrote a letter to me terminating its services agreement with Comulate. In the letter, [REDACTED] stated that, as a result of the June 30, 2026 cutoff, "[REDACTED] ***cannot rely on ongoing Comulate access and must make appropriate arrangements to proactively respond to the termination of access to and to ensure ongoing coverage without violation of Applied's terms or a court order.*** As a basis for [REDACTED]

termination, without exclusion to any other basis that may exist, at such time as [REDACTED] Comulate access is suspended, Comulate will no longer be able to provide the Services as required under the Agreement, which will constitute a material breach and basis for termination under Section 5.2.” The representative also stated that “[i]f the June 30, 2026, deadline is extended by agreement of Applied and Comulate or if the court order is vacated, modified or otherwise lifted in a way that allows ongoing customer access after June 30, 2026, [REDACTED] would consider extending its agreement. [REDACTED] wishes to keep the Comulate Services and the Agreement in force for as long as legally permissible.” A true and correct copy of the letter from [REDACTED] is attached hereto as Exhibit A.

9. On March 16, 2026, a representative from [REDACTED] notified me that [REDACTED] was moving to terminate its contract with Comulate. In an email, [REDACTED] wrote: “In an effort to make sure our processing stays on track with the pending litigation we have made the decision to move forward with Ascend to ensure there isn’t a gap in processing effective 6/30. I want you to know that *this is not the direction we wanted to go but we have waited as long as we can and are concerned if we don’t move now then we will have support issues if the 6/30 date is carried out by Applied.*”

10. On March 16, 2026, a representative from [REDACTED] notified me that [REDACTED] was suspending its use of Comulate. The representative confirmed that [REDACTED] “like[s] your product and were very excited to use it for our growing organization,” but explained that the lawsuit and Applied’s June 30 cutoff made it impossible to continue. Absent an injunction, [REDACTED] suspended implementation will convert into a permanent termination by operation of Applied’s deadline.

11. On March 17, 2026, a representative from [REDACTED] notified me that [REDACTED] was taking steps that would result in it terminating its contract with Comulate. In its termination email, [REDACTED] stated: “Applied has let us know that *they will not allow Comulate usage with EPIC after June 30, 2026. Because of that, we have contacted ‘Ascend’ to use for our direct bill entry.* To allow for an appropriate transition, we will begin using Ascend on May 1, 2026 with EPIC. We need a software solution for direct bill entry. While we would prefer continued use of Comulate, we must ensure continuity in this area. This has required that we look at other options for direct bill entry.”

12. In addition, on or about December 3, 2025, Applied unilaterally reset [REDACTED] [REDACTED] SDK authentication key without notice, severing [REDACTED] integration with Comulate. [REDACTED] Accounting Manager subsequently informed me that the [REDACTED] management team had directed her to terminate services with Comulate. She stated: “*On a personal note – I love your product and service, and if you ever need a reference, please feel free to reach out. I wish your company the best of luck and hope you remain highly successful.*” After the Delaware Court entered its TRO on December 16, 2025, [REDACTED] reversed course and resumed using Comulate.

II. Customers Will Only Leave Comulate if Forced by Applied

13. In addition to the Mutual Customers that have already cancelled their contracts with Comulate, at least fifteen Mutual Customers have expressly stated, without obligation, that they will only leave Comulate if forced to do so by Applied. These customers expressed that they did not want to leave Comulate, but that they were being forced to seriously consider alternative options because of Applied’s directives and the looming June 30, 2026 cutoff date.

14. On January 13, 2026, a representative from [REDACTED] wrote a letter to me stating: “*Applied has directed [REDACTED] to terminate access for any and all*

Comulate personnel (and Comulate software) to our Applied Epic platform. . . . Accordingly, we would like to further discuss with you the process for transitioning off of Comulate’s services in the event that we find ourselves compelled to do so. To be clear, ***we consider the transition off of Comulate to be a last resort.*** The need to identify a suitable new service provider and integrate that service provider’s services into our business would create substantial disruption to our business and operations, which we cannot quantify or predict.”

15. On January 27, 2026, a representative from [REDACTED] wrote to me via email: “***Will Applied Systems actually disable Comulate’s access to the SDK at the end of Q2? We do not want to stop using Comulate,*** and we’d like to remain committed to you and your team. However, our accounting team will not revert back to the old direct-bill reconciliation process. . . . We’re trying to understand the real risk and timing here so we can plan appropriately while continuing our partnership with Comulate.”

16. On March 5, 2026, a representative from [REDACTED] wrote to me via email: “***Applied’s conduct and their threats*** to shut down Comulate’s access to the SDK is ***the only factor*** that is affecting our decision whether to continue with Comulate or find a viable alternative by 6/30/2026.”

17. On March 5, 2026, a representative from [REDACTED] wrote to me via email: “As a current Comulate customer, who vetted many options for this service, ***our strong preference is to continue using the platform.*** Any decision to terminate our business relationship with Comulate would be based solely upon a need to do so as a result of the current litigation.”

18. On March 5, 2026, a finance executive at a large independent broker customer wrote a letter to me stating: “Applied has communicated that the Comulate integration with Epic

will end after June 30, 2026. ***Because of that announced cutoff***, we have begun evaluating potential alternatives in order to prepare for a possible transition. . . . Importantly, our evaluation of alternatives ***is not the result of dissatisfaction with Comulate or a preference for a different product***. Rather, ***it is a direct response to the announced integration cutoff***. Absent that change, our current preference would be to continue using Comulate as part of our finance and operations stack.”

19. On March 10, 2026, a representative from [REDACTED] wrote to my counsel via email: “***As a result of Applied Systems cutting off Comulate on June 30th***, [REDACTED] must explore other options to run our business. We are also being ***strongly encouraged by Applied Systems to search for a replacement product***, and they have gone as far as ***verbally offering to assist us in the exploration***. We declined their offer. This is a major disruption to [REDACTED]. I hope there is resolution well in advance of the June 30th cut-off allowing [REDACTED] to continue on Comulate without having to sign a contract with a competitor.”

20. On March 11, 2026, an executive at a mid-sized independent broker customer wrote to a Comulate employee via email: “As mentioned, we’ve been very happy with Comulate and ***if not for the June 30th deadline we wouldn’t have any reason to make a change from Comulate***.”

21. On March 11, 2026, a representative from [REDACTED] wrote to my counsel via email: “The ***only reason*** we would make a change in our preferred partner relationship with Comulate would be ***because of threat by Applied Epic to cut off our subscribed [SDK] access*** to both our data and our customer’s data.” The representative consented to sharing his information with Applied but noted that he was “somewhat fearful of retribution” from Applied.

22. On March 13, 2026, a representative from [REDACTED] wrote to my counsel via email: “We are happy with Comulate with their service and would continue to do business

with Comulate. *If it wasn't for the threat that Applied has sent in emails to [REDACTED] to cut off our ability to do business with Comulate on June 30, 2026*, which would adversely impact us and our business if Applied did in fact cut us off.”

23. On March 13, 2026, a representative from a Top 100 independent broker customer wrote to me via email: “Plainly put, *the only way I would sever the relationship with Comulate is if Applied forced me to do so*, you have a good product and I am happy with the current relationship.” The customer also stated his belief that “no one would leave Comulate without Applied pushing them out.” The customer also referenced statements made by the Court at the March 5, 2026 hearing on Comulate’s Motion for a Temporary Restraining Order and Preliminary Injunction and stated: “There is no question that in my company’s situation, Judge Shah’s comment about interference vs customer judgement, falls wholly on the former. I am sorry to hear that others have left Comulate as a result of Applied’s interference, remember that my decision to engage with [Comulate] was on the [heels] of attending a CIAB working group and sitting in a room of 25 other CFOs of the top independent agencies in the country, all recommending your solution. That right there should be telling, no one would leave Comulate without Applied pushing them out.”

24. On March 15, 2026, a representative from [REDACTED] wrote to another Comulate employee via email: “We have been very pleased with Comulate’s product. *The only reason we are looking at other options is because Applied indicated they would no longer integrate with Comulate effective at the end of Q2 2026*. . . . System integration is essential for our agency when choosing a direct bill reconciliation vendor partner. Our preference would be that Comulate remain an approved vendor with Applied and we have as little interruption to our business as possible.”

25. On March 17, 2026, a representative of a mid-sized independent broker customer wrote to my counsel via email: “It is our preference to continue using Comulate absent Applied’s interference preventing that, and ***Applied’s demand is the sole reason driving any consideration of a change away from Comulate.***”

26. On March 17, 2026, a representative of a mid-sized independent broker customer wrote to me via email: “Applied’s conduct is impacting our business. . . . We let [Applied] know how happy we were with Comulate and that ***we were not going to voluntarily leave Comulate.*** They then shared that they were forcing everyone off by the end of Q2. We responded by telling them how disappointing that was given the time, effort, and money spent in making the decision to partner with Comulate. We also shared how disappointing it was to ***force us off what we believe is the premier product in the marketplace*** and to have to move to their product or Ascend’s product (two alternatives that they presented).”

27. On March 18, 2026, a representative of a Top 100 independent broker customer wrote to me via email: “If access to Comulate were restricted or eliminated, the impact would be significant. . . . ***We have not independently chosen to reduce or discontinue our use of Comulate.*** Any consideration of doing so would be ***driven by external constraints*** rather than a change in our assessment of [Comulate’s] value to our organization.”

28. On March 18, 2026, a representative of a mid-sized independent broker customer wrote to my counsel via email: “We are in an annual contract with Comulate expiring August 2026. We ***would not be considering changing vendors if it weren’t for Applied’s conduct in restricting our access in June 2026*** by turning off SDK integration. Our preference is to renew our contract with Comulate. We would continue using Comulate if it remained operable with Epic.”

29. To the extent that I have not provided a Mutual Customer's identity above, it is because the customers specifically requested anonymity out of fear of retribution or retaliation from Applied.

III. Ascend Is Telling Customers They Must Leave Comulate by April 1, 2026

30. I understand from multiple customers that Ascend—Applied's "preferred referral partner"—has told Comulate customers that they must sign a contract with Ascend by April 1, 2026, or they will not be able to transition to Ascend before the June 30, 2026 cutoff.

31. Ascend's conduct has only increased the urgency of Comulate's requested preliminary injunction. Without a preliminary injunction barring Applied from cutting off Comulate's SDK access on June 30, 2026, customers will continue to leave Comulate on an even more expedited timeline and sign contracts to transition to Ascend.

IV. Ascend Has Raised Prices As Applied and Ascend Eliminate Comulate

32. I understand from several customers that, since Applied sued Comulate, Ascend has increased its pricing for its accounting automation software. I have been told that Ascend raised per-seat prices [REDACTED] and imposed new four-seat minimums, a prerequisite that didn't previously exist and that forces customers to pay for capacity they do not need, artificially raising contract values without additional value being delivered.

33. Comulate's customers and prospects indicated to me that Ascend's pricing increase and minimums created a [REDACTED] annual floor, nearly triple what some Comulate customers pay for superior software.

34. For example, one Mutual Customer chose Comulate over Ascend prior to the lawsuit, selecting the superior product despite Comulate costing twice as much. Ascend's post-lawsuit pricing resulted in Ascend being approximately 30% more expensive than Comulate for that customer.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 23, 2026 in San Francisco, California.

Jordan Katz

Jordan Katz
CEO, Comulate

Signature: Jordan Katz
Jordan Katz (Mar 23, 2026 19:12:27 PDT)

Email: jordan@comulate.com

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

ARDEnt LABS, INC.,	)	Case No. 26 C 591
d/b/a COMULATE,)	
)	
Plaintiff,)	
)	
v.)	
)	
APPLIED SYSTEMS, INC.,	)	Chicago, Illinois
	)	April 21, 2026
Defendant.	)	9:53 a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION HEARING/RULING
BEFORE THE HONORABLE MANISH S. SHAH

APPEARANCES:

For the Plaintiff: (telephonically)	ELSBERG BAKER & MARURI, PLLC BY: MR. ROLLO C. BAKER, IV MR. BRIAN R. CAMPBELL Empire State Building 350 Fifth Avenue, 38th Floor New York, New York 10118
	MILLER SHAKMAN LEVINE & FELDMAN, LLP BY: MR. ZACHARY J. FREEMAN 30 W. Monroe Street, Suite 1900 Chicago, Illinois 60603
For the Defendant:	QUINN EMANUEL URQUHART. & SULLIVAN, LLP BY: MR. JONATHAN C. BUNGE 191 N. Wacker Drive, Suite 2700 Chicago, Illinois 60606

1 APPEARANCES (Continued):

2

3 Also Present:
4 (telephonically)

MR. JORDAN KATZ, CEO of Comulate

MR. RICH COHAN, General Counsel
Applied Systems, Inc.

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Court Reporter:

COLLEEN M. CONWAY, CSR, RMR, CRR
Official Court Reporter
219 S. Dearborn Street, Room 1918
Chicago, Illinois 60604
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1 (Proceedings heard in open court:)

2 THE CLERK: 26 CV 591, Ardent Labs versus Applied
3 Systems.

4 THE COURT: Good morning. I understand we have
5 plaintiff's counsel on the line. If we can get lead counsel's
6 appearance just for the record, please.

7 MR. BUNGE: Good morning, Your Honor. John Bunge for
8 Applied.

9 THE COURT: Can I get a plaintiff's counsel just to
10 state an appearance for the record, please?

11 (No response.)

12 THE COURT: You might be on mute.

13 MR. FREEMAN: Good morning, Your Honor. This is
14 Zachary Freeman, local counsel.

15 Mr. Baker was here at the introduction, so I'm not
16 sure what --

17 MR. BAKER: I am back.

18 MR. FREEMAN: -- the situation is.

19 MR. BAKER: I apologize. My internet, for some
20 reason, shut down for a second. I'm back on. I apologize.

21 THE COURT: So, Mr. Baker, we have you on the line?

22 MR. BAKER: Yes. Yes, Your Honor. I apologize. My
23 internet shut down for one moment. I apologize.

24 THE COURT: That's fine. Good morning, everyone.

25 The motions to file under seal and the motion to file

1 a surreply are granted.

2 Ultimately, it was helpful to me to have a thorough
3 picture of the contractual relationships among the parties and
4 customers, and it was not an unfair advantage in the
5 adversarial presentation to give Applied an extra brief.

6 I can give you a ruling on the motion for preliminary
7 injunction now. I have read all of the materials and all the
8 declarations. There is no need for an evidentiary hearing, and
9 I don't need oral argument either.

10 The harm to Comulate from customers leaving or ending
11 their relationships with Comulate is more likely caused by
12 Applied's decision to stop supporting Comulate than it was
13 caused by a November 2025 warning or direction from Applied to
14 the customers advising them to stop giving Comulate access.

15 That decision, the decision to stop supporting
16 Comulate, is not likely to be tortious, at least on the current
17 record before me. There is some evidence to suggest that the
18 decision was motivated by a desire to eliminate a potential or
19 existing competitive threat, and that decision may be
20 disruptive to existing locked-in contractual relationships
21 between Comulate and its customers or prospective expectancy of
22 business with those customers, but Applied is under no duty,
23 contractual or tort, to continue to support Comulate's product.

24 Applied is permitted to give notice to its customers
25 as to how Applied's product can be used. I am not persuaded

1 that that conduct is likely to be tortious. And I am not
2 persuaded that the harm experienced by Comulate from a June
3 30th deadline is caused by tortious conduct as opposed to harsh
4 but authorized business practices.

5 Applied may very well have an inferior product in the
6 wings, and Comulate and its customers may prefer Comulate to
7 any alternative -- on top of that, the customers may have
8 become dependent on Epic in a way that makes it difficult for
9 them to switch -- but none of that persuades me that Applied
10 has an obligation to support Comulate's product, or that
11 compelling Applied to support Comulate going forward is an
12 appropriate form of preliminary injunctive relief or
13 preservation of the status quo.

14 The harm to Comulate is a business harm, a loss of
15 revenue. That is ordinarily compensable. But I do think
16 Comulate has come forward with some evidence that this is an
17 existential threat, which would be harder to compensate for at
18 the end of protracted litigation. I balance the harms using
19 the circuit's sliding scale approach. And there is a competing
20 irreparable harm to Applied to require it to affirmatively
21 support Comulate's product. That would be changing Applied's
22 internal business plan in a manner that's not compensable
23 either.

24 Comulate has not, as far as I can tell from the
25 materials, gone out of business, and it can adapt to a non-Epic

1 world. The likelihood of success on the tortious interference
2 theory is not as strong as I thought it was earlier. And the
3 balance of harms from the requested injunction weighs more in
4 favor of Applied.

5 The harm to nonparties, the customers, is on the
6 scale, too, but that harm is not irreparable. Those customers
7 have contractual interests and enough time to plan. The courts
8 are not a guarantee for an unchanging business environment.

9 So for those reasons, the motion for preliminary
10 injunction is denied.

11 We still have the briefing schedule on the motion to
12 dismiss. I think it's May 4th and then May 21st.

13 Does anyone need any adjustments to that? Mr. Baker?

14 MR. BAKER: No adjustment to the briefing schedule,
15 Your Honor.

16 THE COURT: Anything else I can help you with,
17 Mr. Baker, while you have me?

18 MR. BAKER: No, Your Honor.

19 THE COURT: Mr. Bunge, anything further from the
20 defendants?

21 MR. BUNGE: No. No. Thank you, Your Honor.

22 THE COURT: Thank you, all, for calling in. Thank
23 you, Mr. Bunge, for being here. We are in recess.

24 (Proceedings concluded at 9:59 a.m.)
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I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

/s/ Colleen M. Conway, CSR, RMR, CRR

04/21/2026

Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

Date

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

ARDENT LABS, INC.,	)	Case No. 26 C 591
d/b/a COMULATE,)	
)	
Plaintiff,)	
)	
v.)	
)	
APPLIED SYSTEMS, INC.,	)	Chicago, Illinois
	)	May 14, 2026
Defendant.	)	10:04 a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION HEARING/RULING
BEFORE THE HONORABLE MANISH S. SHAH

APPEARANCES (telephonically):

For the Plaintiff:	ELSBERG BAKER & MARURI, PLLC BY: MR. ROLLO C. BAKER, IV Empire State Building 350 Fifth Avenue, 38th Floor New York, New York 10118
For the Defendant:	QUINN EMANUEL URQUHART & SULLIVAN, LLP BY: MR. SALVADORE J. DIAZ 295 5th Avenue, Floor 9 New York, New York 10016
	QUINN EMANUEL URQUHART & SULLIVAN, LLP BY: MR. SAM STAKE 50 California Street, 22nd Floor San Francisco, California 94111
Also Present:	MR. RICH COHAN, General Counsel Applied Systems, Inc.
Court Reporter:	COLLEEN M. CONWAY, CSR, RMR, CRR Official Court Reporter 219 S. Dearborn Street, Room 1918 Chicago, Illinois 60604 (312) 435-5594

* * * * *

1 (Proceedings heard in open court:)

2 THE CLERK: 26 CV 591, Ardent Labs versus Applied
3 Systems.

4 THE COURT: Good morning. This is Judge Shah.
5 Do we have counsel for plaintiff on the line?

6 MR. BAKER: Good morning, Your Honor. You have Rollo
7 Baker.

8 THE COURT: And counsel for the defense?

9 MR. DIAZ: Good morning, Your Honor. This is
10 Salvadore Diaz. And on the line with me, I have Sam Stake.
11 And from Applied Systems, Richard Cohan.

12 THE COURT: Good morning.

13 I have the motion for reconsideration. I don't need
14 to brief it. I can give you a ruling on it now.

15 I don't agree that I misunderstood the existential
16 threat to Comulate in assessing the harm. The argument for
17 reconsideration amounts to a disagreement with how I weighed
18 the irreparable harm. That's not sufficient, in my view, to
19 warrant reconsideration.

20 The more substantial argument for reconsideration is
21 that I misunderstood the contractual relationships and failed
22 to recognize a duty Applied had not to cut off its own
23 customers from Comulate, as well as the argument that I didn't
24 walk through all of the elements of a California tortious
25 interference claim, as stated in the *hiQ Labs* case.

1 I still conclude that the at-will termination
2 provisions do give Applied the ability to withdraw its support
3 for Comulate.

4 I understand the point that Applied didn't terminate
5 its contracts in their entirety, but there is also the
6 competitor acknowledgment form issue. There is a provision
7 that allows Applied to revoke approval for a competitor's
8 access, and Applied didn't waive or forfeit that.

9 I continue to conclude Applied was not under a duty to
10 keep Comulate on board as an authorized integration.

11 I did not walk through the *hiQ Labs* elements when
12 assessing likelihood of success, but that omission does not
13 warrant reconsideration.

14 Although I didn't articulate this point, one of the
15 reasons likelihood of success on tortious interference is not
16 strong on the current record is that Applied's interests likely
17 outweigh the societal interest in contractual stability.

18 The justification for Applied's decision to withdraw
19 support for Comulate was that Comulate lied about the PBC
20 account. That justification is not likely pretextual. It's
21 likely true.

22 There is no dispute right now that Comulate lied about
23 who it was when it set up the PBC account. Although Applied
24 likely did want to eliminate Comulate's competitive threat, it
25 also did not want to be the victim of a deception or allow

1 Comulate to reap any advantage from its deception. Not wanting
2 to continue to authorize a competitor that resorts to fraud or
3 deception in its business practices is a legitimate
4 justification. Protecting Applied, and perhaps the market
5 generally, from an actor that engages in that kind of conduct
6 is likely of greater social value than the stability of
7 Comulate's contracts with its customers.

8 The fallout to Comulate's business, ultimately, at
9 least for now, looks to me to be a product of Comulate and
10 Mr. Katz's own misdeeds, such that, on balance, a preliminary
11 injunction in Comulate's favor would be contrary to the
12 equities here.

13 So for those reasons, the motion to reconsider is
14 denied.

15 I know we've got other things briefing and under
16 advisement. And I don't think there is anything else for us to
17 cover this morning. But, Mr. Baker, is there anything else
18 you'd like me to address this morning?

19 MR. BAKER: Yes. Yes, Your Honor.

20 I would like to make an oral application for an
21 injunction pending appeal, and I'd like to have the opportunity
22 to briefly support my basis.

23 The harm the original preliminary injunction motion
24 warned of has materialized. Twenty additional customers have
25 moved to terminate, 20% of Comulate's workforce has been laid

1 off, and the June 30 cutoff is less than seven weeks away. The
2 situation has worsened materially since April 21st.

3 Comulate has never asked Applied to affirmatively
4 support its product. Comulate has only asked the Court to
5 enjoin Applied from taking the extraordinary step of cutting
6 Comulate off on June 30 while the merits of this case are
7 heard.

8 The Court stated at the April 21 ruling that Comulate
9 could adapt to a non-Epic world. In a competitive market,
10 Comulate perhaps could pivot and serve non-Epic customers, or
11 even create a competing offering to Epic, but this is not a
12 normal market. Applied owns 92% of the hundred-million-dollar
13 revenue enterprise AMS market, which is Comulate's core revenue
14 base.

15 Customers using Epic have no ability to switch away
16 from Epic -- it would take years and millions of dollars -- nor
17 could Comulate build a competing AMS, even if it had the
18 resources to do so. Applied controls the SDK, which is
19 required to migrate customer data out of Epic to any
20 alternative. Applied owns Ivans, which is the intranet for
21 insurance brokers and carriers, to which every AMS must
22 operate. And Applied deploys its claimed rights to bar any
23 entity it deems a competitor from Ivans' access, despite having
24 acquired Ivans in 2014, but promises that Ivans would be
25 maintained in an open way, not to preference Applied's Epic.

1 Applied blocks all potential tasks to a pivot.

2 The customer contracts that Your Honor focuses on
3 during the April 21 ruling expressly recognized Comulate as an
4 authorized integration. What Applied is doing is it's reaching
5 into those agreements with its own customers and pulling
6 Comulate out. It has no contractual basis to do so. The
7 contracts provide formal procedures for terminating the
8 agreement.

9 Your Honor mentioned convenience upon 60 days' notice.
10 They have not done so, nor will they. It's hypothetical. They
11 would not do so because they would torch their business. It
12 would save liability from their own customers from breaching
13 their contracts.

14 Your April 21 ruling characterized Applied's conduct
15 as "authorized," but the ruling identified no contractual
16 provision for authorizing it, Applied has identified none, and
17 that's because the provision does not exist.

18 Applied's recent cutoff notices that we brought to
19 Your Honor's attention in the motion for reconsideration
20 described no theory of breach. They identify no particular
21 contractual provision that allows them to do what they're
22 trying to do.

23 And when customers have asked Applied to identify the
24 contractual basis for the cutoff, Applied has refused. Why?
25 Because there is none. Applied is using the threat of

1 breaching its own customer contracts to force those customers,
2 the so-called mutual customers, to breach their contracts with
3 Comulate.

4 Under California law, as explained upon the Ninth
5 Circuit in *hiQ Labs*, Applied has a duty not to interfere with
6 Comulate's customer contracts under the circumstances. That
7 duty applies here.

8 Your Honor, in this ruling, mentioned the PBC issue,
9 but the record evidence demonstrates that Applied had
10 determined well before October 2025 that they were going to
11 eliminate Comulate. They do not deny it. There is no evidence
12 that they have submitted before Your Honor that demonstrates
13 that there's anything other than a pretextual explanation for a
14 predetermined course of action consistent with historical
15 practice.

16 Comulate is one-hundredth Applied's size. Applied's
17 own documents before Your Honor describe Comulate as Applied's
18 principal independent threat in the accounting automation
19 market. The June 30 cutoff is what removes that threat.

20 The antitrust claims in this case are pending. If the
21 June 30 cutoff proceeds, Comulate will be forced to be wound
22 down before any court rules on those claims. The harm is
23 irreparable. Damages cannot remedy the destruction of a
24 business entity.

25 Applied's unlawful foreclosure of the accounting

1 automation market to monopolize control of the Epic platform is
2 what we are seeing in realtime. This destruction, this
3 tortious interference is precisely what preliminary injunctions
4 are meant to prevent. And this destruction is being inflicted
5 by a company whose conduct this Court has already described in
6 a prior ruling as "perhaps motivated by a desire to eliminate a
7 potential for existing competitive threat."

8 Comulate accepts that courts do not guarantee an
9 unchanging business environment. That is not what is happening
10 here. Here, a monopolist controls every input necessary to
11 compete in this market and is unlawfully using that control to
12 eliminate competitors.

13 Comulate is just the latest victim of the more than 15
14 described in Comulate's complaint. Applied has had the
15 opportunity to submit multiple evidentiary declarations. They
16 deny none of it.

17 *High Q* shows Your Honor that Applied has engaged in
18 tortious interference. This is precisely what the courts are
19 supposed to put a stop to.

20 The relief Comulate seeks is narrow: Applied changes
21 nothing about its business. It leaves in place Comulate's
22 integration with the fewer than 60 customers that remain.
23 Revenue from those customers is what keeps Comulate alive long
24 enough to reach the merits.

25 Without granting reconsideration or without granting

1 an injunction pending appeal, Applied achieves its
2 anticompetitive goal, which harms customers and eliminates
3 Comulate and competition on June 30 before the merits can be
4 decided.

5 So for those reasons, and the reasons set forth in the
6 prior briefing, we would respectfully request an injunction
7 pending appeal.

8 THE COURT: Thank you, Mr. Baker.

9 Mr. Bunge or counsel for defendant, do you want to
10 address the point that there is no contractual basis for
11 Applied to narrowly target Comulate for withdrawal from
12 authorized integrations?

13 MR. DIAZ: Yes, Your Honor. I'd be happy to. This is
14 Salvadore Diaz.

15 Of course, we oppose the motion for an injunction
16 pending appeal. This is Comulate's now *ex post* fourth request
17 for a preliminary injunction from this Court. It still
18 identifies no controlling authority the Court overlooked, no
19 newly discovered evidence, and no manifest error of fact or
20 law.

21 Of course, there's a lot that Mr. Baker said that we
22 would disagree with, but focusing in on the point that Your
23 Honor has directed us to.

24 Applied isn't required to terminate the entirety of
25 its contracts with its mutual customers. Mr. Baker is treating

1 these contracts as though they are all perfectly uniform, and
2 that's simply not true.

3 If you look at page 9 of their reconsideration brief,
4 he points out that certain contracts have, as an "authorized
5 integration," Comulate listed. However, that's not true of all
6 of the contracts. He ignores the record evidence that shows
7 that not all of these contracts contain that provision.

8 I direct Your Honor to docket entries 121-9 through
9 121-13.

10 So first and foremost, that characterization of the
11 contract is incorrect. And second, it's important that we
12 don't throw the baby out with the bath water here, as I think
13 Your Honor has recognized, that Applied is trying to narrowly
14 ensure that only the individuals that committed the fraud here
15 is the one that is having termination applied to it. It would
16 not be appropriate for us to punish all of the other
17 integrators with our systems because they have not engaged in
18 similar conduct to Comulate.

19 So what we're trying to do here is be precise and
20 target the issues that are actually at issue here. There's
21 absolutely no basis to claim that we have to terminate all
22 joint customer SDKs in their entirety. And it's questionable
23 whether Comulate even lacks standing to make that argument.

24 THE COURT: Have you heard from any customers accusing
25 Applied of threatening a breach?

1 And are there customers out there that are saying to
2 Applied, "You are about to breach these contracts, and so we
3 may be about to sue you for a pending breach that you're
4 threatening?"

5 Has that been happening in the landscape from
6 Applied's perspective?

7 MR. DIAZ: I'm certainly not aware of any.

8 To the best of my knowledge, we have received a
9 reach-out from certain joint customers asking what the basis
10 was for our termination, specifically because Comulate is
11 demanding it.

12 So my understanding is that several of the joint
13 customers have reached out to Comulate stating that their
14 access will be cut off on June 30th, and they intend to
15 terminate their contracts with Comulate. And then Comulate, as
16 a means of achieving back-door discovery, has demanded that
17 those joint customers provide a detailed analysis of Applied's
18 theory of termination in this case.

19 I am not aware of any joint customer asking Applied or
20 telling Applied that it is somehow in breach of its contract.

21 THE COURT: Thank you.

22 I understand and appreciate the arguments, Mr. Baker,
23 and the consequences that are flowing from the current
24 landscape, but the motion for an injunction pending appeal is
25 denied.

1 Your points are really just the same points you've
2 asserted in the motion for reconsideration, and I am not
3 persuaded that I should effectively reconsider my
4 reconsideration denial.

5 So for those reasons, the oral motion is denied.

6 Anything else --

7 MR. BAKER: Understood, Your Honor. And I understand
8 your ruling, Your Honor. And just for the record, yet again,
9 Applied has failed to identify any specific contractual
10 provision that allows it to do what it's purporting to do.

11 There was -- in direct response to Your Honor's
12 question, there was no answer, no specific provision.

13 But thank you, Your Honor, for your time.

14 THE COURT: On behalf of Applied, is there anything
15 else you'd like me to address this morning?

16 MR. DIAZ: Nothing else this morning, Your Honor.

17 I'll just flag for you that we have the
18 motion-to-dismiss reply coming up next week, and so that motion
19 will be fully briefed shortly.

20 THE COURT: Understood. Thank you. Thank you for
21 calling in.

22 MR. BAKER: Thank you, Your Honor.

23 MR. DIAZ: Thank you, Your Honor.

24 (Proceedings concluded at 10:20 a.m.)

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

ARDENT LABS, INC.,	)	Case No. 26 C 591
d/b/a COMULATE,)	
)	
Plaintiff,)	
)	
v.)	
)	
APPLIED SYSTEMS, INC.,	)	Chicago, Illinois
	)	March 26, 2026
Defendant.	)	9:45 a.m.

TRANSCRIPT OF PROCEEDINGS -
TELEPHONE MOTION HEARING/RULING
BEFORE THE HONORABLE MANISH S. SHAH

APPEARANCES (telephonically):

For the Plaintiff:	ELSBERG BAKER & MARURI, PLLC BY: MR. BRIAN R. CAMPBELL MR. ROLLO C. BAKER, IV Empire State Building 350 Fifth Avenue, 38th Floor New York, New York 10118
	MILLER SHAKMAN LEVINE & FELDMAN, LLP BY: MR. BRIAN J. KERWIN 30 W. Monroe Street, Suite 1900 Chicago, Illinois 60603
For the Defendant:	QUINN EMANUEL URQUHART & SULLIVAN, LLP BY: MR. SAM STAKE 50 California Street, 22nd Floor San Francisco, California 94111
	QUINN EMANUEL URQUHART. & SULLIVAN, LLP BY: MR. JONATHAN C. BUNGE 191 N. Wacker Drive, Suite 2700 Chicago, Illinois 60606

1 APPEARANCES (Continued):

2

3 For the Defendant:

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& SULLIVAN, LLP
BY: MR. AARON H. PERAHIA
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017

6

7 Also Present:

MR. JORDAN KATZ, CEO of Comulate

MR. RICH COHAN, General Counsel
Applied Systems, Inc.

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Court Reporter:

COLLEEN M. CONWAY, CSR, RMR, CRR
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1 (Proceedings heard telephonically:)

2 THE COURT: Good morning. This is Judge Shah.

3 The clerk will call the case.

4 THE CLERK: 26 CV 591, Ardent Labs versus Applied
5 Systems.

6 THE COURT: Good morning, everyone. We have the
7 attorneys' appearances noted for the record, so we can just get
8 started.

9 The motion to file a 25-page memorandum *instanter* is
10 granted.

11 The motions to seal that have been filed are all
12 granted.

13 I do want to flag for the lawyers that the
14 confidentiality with which the parties have treated some of the
15 information in this case likely falls below the standards for
16 permanent sealing. So at some point, much of what you are
17 redacting will likely become public.

18 Right now, the public interest in access to the courts
19 and knowing the details of customer relationships or particular
20 financial arrangements is low right now, but that balance might
21 change as time moves forward. So keep that in mind as you're
22 trying to seal relevant information that, ultimately, you are
23 asking me to consider.

24 And if I take into account some of the information
25 that's under seal, unless it's actually protected by a trade

1 secret or something like that, I may very well need to unseal
2 that underlying material. But for now, the motions to seal are
3 granted.

4 The next item on my agenda is the motion to compel. I
5 have the motion, and I have the response.

6 I'll give plaintiff a short opportunity to say
7 anything in reply, but I hopefully can give you a ruling on the
8 motion to compel right now.

9 MR. CAMPBELL: Your Honor, this is Brian Campbell from
10 Elsberg Baker & Maruri on behalf of the plaintiff.

11 Thank you for hearing us quickly on this discovery
12 motion. Our client is facing a genuine exigency, so we have
13 been moving as quickly as possible to get a complete factual
14 record for Your Honor's consideration on the preliminary
15 injunction motion.

16 We do have some good news that I want to report. The
17 parties have been able to resolve some of their issues in the
18 last couple of days.

19 Last night, Applied informed us that they will be
20 producing the Slack messages that we addressed in the motion.
21 So we believe that takes one issue off the table because the
22 parties have been able to reach agreement.

23 In addition, one of our privilege challenges addressed
24 entry No. 126 on Applied's privilege log. And Applied said, in
25 their opposition, that they had inadvertently omitted certain

1 work products over that document on their privilege log. So we
2 can withdraw that issue for today as well and potentially take
3 it up at a later stage in discovery, if need be.

4 So that leaves us with four issues which I'd like to
5 address briefly; one interrogatory, two narrow privilege
6 issues, and then text messages. So --

7 THE COURT: Go ahead.

8 MR. CAMPBELL: -- the first two issues -- sure. Go
9 ahead. Oh, sorry.

10 The first two issues, I think, are -- should be taken
11 up together because they address, essentially, Applied's
12 customer call-tracking log which they have asserted work
13 product over.

14 So this is one of the privilege issues, and it also
15 relates to the interrogatory.

16 For context, Applied's customer outreach campaign here
17 was a major effort. It reached out to 40, 50, 60 Cumulate
18 customers over the course of days and weeks after November
19 21st. This involved, we think, hundreds of phone calls with
20 customers. And very logically, Applied tracked their customer
21 outreach efforts in a shared spreadsheet that their executives
22 kept up to date.

23 Now, we believe that this spreadsheet reflects for
24 each customer every call that was placed, who was on the call,
25 and a summary of what was said on the call. This is extremely

1 relevant to the issues before Your Honor on the preliminary
2 injunction motion. But we did not receive these trackers in
3 discovery. They were withheld as work product on the privilege
4 log.

5 On the interrogatory side. We didn't get a response
6 to the one interrogatory that we served. We asked them to
7 identify their emails and calls with customers. Their
8 response, instead, gave us zero information. They cited Rule
9 33(d) and referred us to their entire document production.
10 Which, yes, their document production does contain the emails,
11 but it doesn't contain the calls. And so we didn't get any
12 disclosure of the calls that were had other than stray comments
13 that are mentioned in passing in emails.

14 So we don't believe that the work-product assertion
15 over these customer outreach trackers makes any sense. These
16 trackers track commercial discussions with third parties who
17 are Comulate customers. This is exactly the kind of
18 information that we were supposed to get in discovery.

19 These call trackers were not prepared in anticipation
20 of litigation. They were prepared after litigation had
21 commenced. And they certainly weren't part of trial prep. So
22 these customer outreach trackers, we think, were created for
23 commercial purposes and not for litigation purposes. So that,
24 we think, cannot be protected as work product.

25 THE COURT: May I interrupt --

1 MR. CAMPBELL: We think --

2 THE COURT: -- with a question?

3 MR. CAMPBELL: Yes, of course.

4 THE COURT: On the idea of customer call tracking
5 being work product, you don't think that it's at least a
6 colorable argument that in light of the other -- in light of
7 the litigation that had been filed that part of the development
8 of a legal strategy might involve counsel directing Applied's
9 efforts to talk to customers to find out what was happening so
10 that they can develop some sort of strategy in support of
11 their, their motion for a preliminary injunction, for example?

12 You don't think that is within the realm of
13 possibility?

14 MR. CAMPBELL: It could be, it could be possible, but
15 what we can see from the context around these discussions is
16 that the substance of these discussions was Applied telling
17 Comulate customers that they need to cease using Comulate and
18 the timeline on which they needed to cease using Comulate.

19 So we don't think that, as a matter of fact, these
20 customer calls or the tracker that records the customer calls
21 or reflects the customer calls were actually part of any, you
22 know, litigation strategy, litigation development. We think
23 that these were commercial conversations for a commercial
24 purpose.

25 But if it were that these trackers did reflect some

1 degree of work product, fact work product, they, we believe,
2 would be -- work-product protection is not absolute. There's
3 exception if there's a compelling need for the information and
4 there's no other reasonable way to obtain it. And here, you
5 know, we don't have the opportunity to take a whole slew of
6 depositions, and they never responded to our interrogatory. So
7 there really is no other way of getting at what was said on all
8 these calls, who these calls were had with. And that
9 information is important for the preliminary injunction motion.

10 So even if work product were appropriate, we think
11 that the need overcomes that as well.

12 THE COURT: Thank you. Feel free to continue with the
13 other couple of points you wanted to make, or I can turn it
14 over -- I have a question for the defense, but I want you to
15 complete your thoughts.

16 MR. CAMPBELL: Okay. So we think with respect to the
17 interrogatory response, we think that the solution here is
18 fairly straightforward. If they want to rely on 33(d), we
19 think that it could be appropriate to produce the call tracker,
20 refer to it under 33(d); and to the extent the call tracker is
21 incomplete or omits some calls, do a short supplementation of
22 their interrogatory response.

23 And if there is uncertainty as to whether the call
24 trackers reflect some litigation strategy versus commercial
25 discussions, we think that if Your Honor took the

1 latest-in-time or most-updated call tracker *in camera* to review
2 to make that determination, that would be an appropriate way to
3 proceed.

4 THE COURT: Thank you.

5 MR. CAMPBELL: So --

6 THE COURT: Let me ask -- oh, go ahead.

7 MR. CAMPBELL: I was going to say, I did want to touch
8 on the other issues that we raised, but I think if Your Honor
9 has questions about these issues, it would be a good time.

10 THE COURT: Sure. Well, why don't -- let me ask
11 Applied, then, why isn't it feasible to provide a more complete
12 answer to the interrogatory, perhaps relying on information you
13 may have in your call-tracking log?

14 If you think that document is protected by work
15 product, the answer to the question, "Tell us who you spoke
16 to," could be provided in a different format, but as an answer
17 to the interrogatory. And maybe you already have it handy
18 because you've had a log.

19 So why can't you give a more complete answer to the
20 interrogatory than just referring to the documents you've
21 produced?

22 MR. BUNGE: Well, Your Honor, this is Jon Bunge for
23 Applied.

24 We certainly could. But let me put in context what
25 the answer to the interrogatory was.

1 The lawyer for Comulate has said a couple times we
2 didn't respond. We did respond.

3 It's important to look at exactly what the question
4 was in the interrogatory. We were asked to identify, identify
5 each mutual customer to whom we sent the November 25 email and
6 the date of the communication, including replies. Okay?

7 You know what the November 25 email was because that
8 was a subject discussed in the March 5th hearing a few weeks
9 ago.

10 What we did is we sent the email together with replies
11 and responses in email strings showing what they asked for, who
12 it was sent to, which mutual customers -- so 80 or so mutual
13 customers -- and the dates of these, of any back-and-forth.
14 And rather than catalog all those items by going through the
15 2400-page production, we said they're all laid out in the
16 production by mutual customer, if you just look at the email
17 strings, which we're allowed to do under Rule 33.

18 As for the privilege log issue on the spreadsheets.
19 The -- first of all, there's a misstatement of the work-product
20 privilege, if I heard correctly what was just said. The
21 work-product privilege does not end once a case is filed. The
22 work-product privilege says that it protects documents prepared
23 at the direction of counsel during act of litigation. Okay?

24 That's exactly what happened here. To say that this
25 subject of communications with customers, mutual customers is

1 not the subject of the litigation, I mean, that's just not
2 true. That's exactly what the preliminary injunction that was
3 filed last night, the renewed motion, is about, these November
4 25 communications and replies and so on.

5 So the subject is one that is central to the act of
6 litigation, point one. Point two, the spreadsheets were
7 prepared at the direction of Mr. Cohan, the general counsel of
8 Applied, and he was working with people in terms of this
9 customer outreach, which is a subject of the litigation.

10 So the spreadsheets are protected by work product.
11 And we did answer the interrogatory in a way that we're allowed
12 to do under Rule 33, (d)(1) says that explicitly.

13 So especially given the fact of what we're talking
14 about here is a two-week period of discovery, from our point of
15 view, we've certainly complied with our obligations and done
16 what we're -- what we should have done.

17 THE COURT: Thank you, Mr. Bunge.

18 Let me turn it back over to plaintiff's counsel to
19 complete your thoughts on the remaining issues that are still
20 in --

21 MR. CAMPBELL: Yes. Let me --

22 THE COURT: -- dispute on discovery.

23 MR. CAMPBELL: Let me please respond to the comment
24 that I just heard about the scope of what we asked for on the
25 interrogatory.

1 So this is Exhibit 10 to our motion. On page 7, the
2 interrogatory asks for them to identify and provide information
3 concerning not just the emails, but Applied's November 2025
4 customer communications. And that term was a defined term. We
5 defined it to include the emails, of course, but also to
6 include the follow-up conversations that happened.

7 So this was not asking them to identify just emails.
8 It is asking them to identify the conversations that had --
9 that were had after that, which is exactly what we're looking
10 for here.

11 And the summary of calls about what was said with
12 third parties. What was said with third parties is
13 discoverable information, and we need to be able to get at that
14 information. And if the only way to get it is through the
15 customer call-tracking log, because they don't respond to an
16 interrogatory, then that's the only way we can go about getting
17 it.

18 THE COURT: Well, there's another way to go about
19 getting it, which is to talk to the customers.

20 MR. CAMPBELL: Yes. But under the timeline that we
21 have here, we think that it is within the scope of discovery
22 that Your Honor ordered Applied to provide, and we should be
23 able to get it from Applied.

24 THE COURT: Let's move on to the other --

25 MR. CAMPBELL: Unless Your Honor has any questions --

1 THE COURT: No. Let's move on to the other issues,
2 please.

3 MR. CAMPBELL: Okay. All right. So the next issue I
4 wanted to take up relates to communications between Applied
5 personnel and Applied counsel's PR consultant.

6 There are four emails that were sent the day that the
7 lawsuit was filed, and Applied has claimed attorney-client
8 privilege over them.

9 Now, the problem there is that a PR consultant, of
10 course, is neither an attorney nor a client. They are a third
11 party. There's a lot of law in this jurisdiction and others
12 that says that PR consultants break the privilege except under
13 the most very narrow circumstances that don't apply here.

14 The *Breuder* case from this district -- we cited that
15 in our motion -- it identifies a number of factors. It's a
16 very thorough, comprehensive discussion of this issue. But the
17 essential thing is that in order to not break the privilege,
18 the third party needs to be essential for the provision of
19 legal advice. Not just helpful, but essential. And Applied
20 hasn't made any argument that the PR firm was necessary for
21 Simpson Thatcher to give legal advice. So their presence
22 breaks the privilege.

23 Applied, in their opposition, cited two cases, both of
24 which have their roots in decisions by the Southern District of
25 New York that are more than 20 years old.

1 The first case they cited, *Ludwig v. Pilkington*, but
2 *Ludwig* rejected a privilege assertion unless the parties
3 submitted an affidavit from the PR consultant explaining how
4 their role was similar to the role of the PR consultant that
5 the Southern District saw in *In Re: Copper Market Antitrust*
6 *Litigation*.

7 Now, *In Re: Copper Market Antitrust Litigation* is a
8 case that stands for the proposition that a PR consultant that
9 is acting as the functional equivalent of an employee might not
10 break the privilege.

11 But Applied isn't arguing that here. There's no
12 argument that Simpson Thatcher's PR consultant is the
13 functional equivalent from an Applied employee.

14 And, as discussed in the *Breuder* decision, the Seventh
15 Circuit and this district have not recognized that doctrine the
16 same way that the Southern District of New York has. So that
17 gets Applied nowhere.

18 The second case that they cite is *In Re: Grand Jury*
19 *Subpoenas*, which is also from the Southern District of New
20 York. And *Breuder* itself explains why that case is not
21 applicable.

22 *In Re: Grand Jury Subpoenas* is a very rare situation,
23 it's a very narrow ruling, and courts have held it and
24 understood it as such. But what was going on in that case is
25 that counsel for the person who was the target of a criminal

1 investigation engaged a PR firm to influence public opinion so
2 that prosecutors and regulators wouldn't prosecute their
3 client. So there, the PR firm was a tool that the attorneys
4 used to achieve the legal ends of getting the prosecutors not
5 to prosecute.

6 That's not the way that the PR consultants were used
7 here. There's no assertion that the PR firm that Applied
8 worked with here was intended to influence some litigation
9 objective. Rather, it seems that they were engaged to help
10 with customer communications, which, again, is not part of the
11 litigation.

12 So they don't fit within the exception. They are a
13 third party that breaks the privilege.

14 The -- unless Your Honor has questions about that, the
15 last issue I want to touch on is text messages.

16 With text messages, the issue is simple. Applied
17 didn't capture its custodians' text messages. Instead, Applied
18 allowed the custodians to decide what might be relevant, and
19 the custodians sent screenshots of those text messages to
20 counsel.

21 That process is problematic on its face. These
22 custodians are not lawyers. They should not be the ones
23 determining which documents are potentially responsive.

24 Not only are they not feat in the discovery rules and
25 practices, they also have self-interest in selectively

1 identifying messages.

2 Three of the four custodians are people who are
3 discussed at length in our complaint. They have a personal
4 interest in their reputations and in the litigation.

5 As to burden, collection of text messages is a very
6 commonplace practice in modern litigation. There's no reason
7 to believe that text-message collection would be unduly
8 burdensome.

9 Applied only has four custodians. They can apply
10 search terms, just the same way they are with Slack messages,
11 and so it should be achievable.

12 Now, Applied raised an argument for the first time in
13 its opposition brief that maybe Applied doesn't have
14 possession, custody, or control over its custodians' text
15 messages. The first time we heard this argument was in their
16 opposition brief. And their delay in raising this is very
17 prejudicial to us.

18 So we asked Applied on day two, after Your Honor's
19 order allowing us to take this discovery -- on day two -- to
20 ensure that it's capturing text messages. And if they had told
21 us then that Applied could not produce text messages from its
22 custodians, we could have taken remedial steps two weeks ago.

23 So we think they waived this argument. But also, it
24 seems to be a moot point because Applied isn't even arguing
25 that it doesn't have the right to obtain the documents from its

1 custodians, the text messages from its custodians. They're
2 just raising a speculative argument that they might not have
3 the ability to obtain those.

4 So we think that they should be ordered to collect the
5 text messages and run search terms.

6 THE COURT: Thank you. I don't need to hear further
7 from Applied on those, those last couple of issues.

8 I am glad you continue to talk to each other and have
9 worked out the Slack messages issue, and that you're continuing
10 to work collaboratively, even while you are adverse to work
11 through these issues. So that's -- I appreciate that
12 everybody's working very hard on these tight timetables.

13 The motion to compel as to what's remaining at issue
14 is denied.

15 I appreciate the point that a more lawyer-supervised
16 collection of personal devices or text messages might be
17 warranted to capture all of the information called for in the
18 request, but ultimately I agree with defendant that what they
19 did on a short timetable was reasonable and proportional to the
20 needs of the case here given the urgency with which plaintiff
21 wants to move.

22 If the key point in support of plaintiff's preliminary
23 injunction motion is from the customers' perspective, more
24 digging internally at defendant isn't, in my view at this very
25 early stage of things, meaningfully moving that ball forward.

1 As to customer outreach, referencing the document
2 production as an interrogatory answer does suffice for now
3 given the short deadline that I imposed on defendant.

4 As to the privilege or work-product protection
5 assertion on the logs, I am satisfied for now that the
6 defendant's assertion is appropriate. And more importantly, I
7 don't think a privilege fight is a good use of everybody's time
8 right now. And that includes as it relates to the PR firm.

9 I have read the opening brief in support of the motion
10 for preliminary injunction. And given that you're still
11 talking to each other about some follow-on discovery in
12 response, I am satisfied that plaintiff is equipped with
13 appropriate information to advance the motion that they have
14 filed, and that further compelling defendant on the request for
15 the interrogatory is not appropriate to continue with the
16 briefing on the motion for preliminary injunction.

17 So for those reasons, the motion to compel is denied.
18 Let's talk about the motion for preliminary injunction.

19 Plaintiff is proposing a short response/reply
20 deadline. What is Applied's position?

21 (Court reporter interruption.)

22 MR. STAKE: Your Honor, this is Sam Stake, Quinn
23 Emanuel, for Applied.

24 (Court reporter exits. Following is audio transcription:)

25 THE COURT: Let me -- I'm sorry to interrupt, counsel.

1 But we actually have lost the court reporter, so we don't have
2 -- we're not on the record right now.

3 So knowing that we are off the record, we can talk off
4 the record about scheduling. So --

5 MR. STAKE: Okay.

6 THE COURT: -- go ahead.

7 MR. STAKE: Of course.

8 (Discussion held off record. Court reporter returns.)

9 THE COURT: (Continuing) I do think it makes sense to
10 give defendant a little time to file a response.

11 Oh, I think we are now back on the record.

12 So I'll just say that while we were off the record, we
13 were discussing scheduling a briefing schedule for the motion
14 for a preliminary injunction.

15 I will give defendant until April 7th to file a
16 response to the motion for a preliminary injunction, and
17 plaintiff can have until April 10th to reply.

18 I know that's past April 1st and past the point of
19 comfort for plaintiff, but I think that's a reasonable schedule
20 to impose on the parties.

21 And as soon as I finish reading all of the materials,
22 I'll let you know how quickly it will be before I can give you
23 a ruling. Or, if I need to talk to you, I'll get you on the
24 phone.

25 Anything else we should cover this morning on behalf

1 of plaintiff?

2 MR. BAKER: No, Your Honor. We appreciate Your
3 Honor's attention to this matter. And every day that goes
4 by -- I don't want to be a broken record -- is the day that
5 we're losing customers. We have lost five additional customers
6 since the March 5 hearing. We expect to lose more as a result
7 of this April 1 deadline. But we appreciate everything Your
8 Honor and Your Honor's staff is doing to move this case
9 forward. Thank you.

10 THE COURT: Anything further on behalf of defendant?

11 MR. STAKE: Yes. Just briefly, Your Honor.

12 This is a situation completely of Comulate's own
13 making. Their motion barely mentions the 19-month PBC fraud in
14 which they developed their own products and was the subject of
15 your own -- of Your Honor's preliminary injunction against
16 them.

17 The actions that Applied took in response were
18 entirely justified under the law.

19 THE COURT: You know, I'm sorry to interrupt, but this
20 is not the time to make --

21 MR. STAKE: Understood, Your Honor.

22 THE COURT: -- statements about the merits.

23 MR. STAKE: Thank you. I appreciate your time today.

24 THE COURT: Okay.

25 MR. STAKE: Appreciate it.

1 THE COURT: Thank you, everyone. Thank you, everyone,
2 for calling in. We're in recess.

3 UNIDENTIFIED MAN: Thank you, Your Honor.

4 (Proceedings concluded at 10:20 a.m.)

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8 I certify that the foregoing is a correct
9 transcript of the record of proceedings in the above-entitled
10 matter.

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13 /s/ Colleen M. Conway, CSR, RMR, CRR

03/26/2026

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Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

Date

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I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

/s/ Colleen M. Conway, CSR, RMR, CRR

05/14/2026

Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

Date