IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

PARTNER ASSESSMENT CORPORATION,

Plaintiff,

v.

CLAUDIA ROSEN,

Defendant.

Case No. 25-cv-12832

Hon. Thomas L. Ludington
Mag. Judge Patricia T. Morris

DEFENDANT'S EMERGENCY MOTION TO DISSOLVE OR MODIFY TEMPORARY RESTRAINING ORDER

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DEFENDANT'S EMERGENCY MOTION TO DISSOLVE OR MODIFY TEMPORARY RESTRAINING ORDER

Following this Court's issuance of an order granting Plaintiff's request for a temporary restraining order, Defendant respectfully moves to dissolve the TRO under Fed. R. Civ. P. 65(b)(4) and also submits this filing in response to the pending motion for preliminary injunction. Alternatively, Defendant respectfully requests that the Court modify the Temporary Restraining Order to narrowly address only the protection of specific, identifiable trade secrets. The current TRO imposes a sweeping employment ban that exceeds the scope of any legitimate interest and is unsupported by evidence of actual misuse or disclosure. Defendant is willing to return or delete any remaining documents and work cooperatively to establish a protocol that ensures the protection of any confidential information. No further restrictions are warranted.

Rosen respectfully requests the Court schedule this motion for hearing at the earliest available date consistent with Fed. R. Civ. P. 65(b)(4)'s notice requirements.

Respectfully submitted,

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Dated: August 21, 2025

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Case No. 25-cv-12832

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DEFENDANT'S BRIEF IN SUPPORT OF HER MOTION TO DISSOLVE OR MODIFY TEMPORARY RESTRAINING ORDER

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CONCISE STATEMENT OF THE ISSUES PRESENTED

1. Under California Business & Professions Code § 16600, which voids restraints on employment, is a global non-compete provision enforceable when a California corporation recruited a California-trained environmental specialist specifically for her California expertise to serve California clients, seeks to prevent her from working for another California corporation and California clients from following her, and California has the most significant relationship to the employment under Restatement § 188?

2. Under Michigan's reasonableness standard for non-compete agreements, can a restriction barring all employment in environmental consulting anywhere in the world be enforced against a regional manager whose work focused on California clients and regulations?

3. Under the Defend Trade Secrets Act and Michigan Uniform Trade Secret Act, does an employer establish misappropriation when it approved and configured the employee's personal Dropbox for work use, never requested return of materials, transferred the employee's business phone number after resignation, and cannot identify any actual use or disclosure of confidential information?

4. Does irreparable harm exist when an employer waits nearly a month to seek injunctive relief, cannot identify any lost clients or disclosed secrets, and seeks only to prevent lawful competition from an employee who transparently transitioned to a new position?

5. Does the balance of equities favor dissolving a TRO that would destroy a 30-year career based on an unenforceable agreement, while the employer—a large corporation—faces only lawful competition?

6. Does public interest support an injunction that would derail pending California litigation by preventing a designated expert witness from testifying at trial, while enforcing a non-compete agreement that violates California's fundamental public policy?

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INTRODUCTION[1]

The Court issued a temporary restraining order based on an incomplete and misleading record. Now that the full facts are before the Court, it is clear that California-based Partner Assessment Corporation has weaponized this litigation to accomplish what it cannot lawfully achieve through contract: destroying the career of an environmental consultant who chose to leave.

The truth Partner concealed is damning. When Claudia "Suzi" Rosen gave notice she was joining a competitor, Partner said nothing about restrictive covenants. It transferred her business cell phone—the primary means by which clients contacted her—knowing she was leaving for AEI Consultants, where Partner's own CEO once worked. Only after she began working did Partner, through a letter from its general counsel, imply she needed to quit. The CEOs of both companies then engaged to resolve the matter. But after nearly a month of Rosen working at AEI without incident, Partner abruptly abandoned these talks and went straight for the jugular; rushing to court to seek an *ex parte* TRO to get her fired.

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[1] This filing serves as both Defendant's Ex Parte Emergency Motion to Dissolve or Modify the Temporary Restraining Order and Defendant's Response to Plaintiff's Motion for Preliminary Injunction. This Court previously granted Rosen permission to file a 35-page brief in response to Partner's Motion for Preliminary Injunction. Because the Court issued its Opinion and Order granting Partner's TRO request before Rosen could file her opposition, Defendant respectfully submits this combined motion and response using the previously granted 35-page extension under Local Rule 7.1(d)(3)(A).

In doing so, Partner failed to disclose critical facts to the Court. It omitted that it had approved and configured Rosen's personal Dropbox account for work use throughout her employment. It concealed that Rosen is a designated expert witness in pending California litigation with trial set for October 2025, testimony now jeopardized by the TRO. Most fundamentally, it failed to explain that this dispute involves a California corporation that recruited a California-trained specialist specifically for her California environmental expertise to serve California clients; yet now seeks to enforce a worldwide employment ban through Michigan courts.

This is not a case about protecting trade secrets. Partner has identified no actual misuse or disclosure of confidential information. It never asked Rosen to return materials from her Dropbox. Instead, it seeks to enforce an unlawful non-compete through the backdoor of trade secret law, obtaining relief it could never secure through a direct contractual claim. The Court should not permit this abuse of the judicial process.

The TRO should be dissolved under Fed. R. Civ. P. 65(b)(4), or at least modified to address only specific, identifiable trade secrets. Rosen stands ready to return any documents and work cooperatively to protect legitimate confidential information. But she should not be barred from her profession, her clients, or her obligations as an expert witness based on Partner's manipulation of both the facts and the law.

FACTS

I. Rosen's Specialized Expertise and Career Before Partner

Rosen's path to this litigation began over 25 years ago when she received a geology degree in California. Ex. A, Rosen Decl. ¶¶ 2-3. This educational foundation launched a career dedicated to a highly specialized field: environmental due diligence, site investigation, and remediation consulting. *Id*. at ¶¶ 4, 8.

Environmental consulting is not a profession one enters casually. It serves as a critical safeguard in real estate transactions, where consultants like Rosen help businesses, investors, and developers answer fundamental questions: Is this property contaminated? What environmental liabilities exist? How can any contamination be remediated safely and cost-effectively in accordance with state regulations? This work requires deep scientific expertise in conducting Phase I Environmental Site Assessments to identify potential contamination through historical research and site inspection, Phase II Investigations involving actual soil and groundwater sampling, developing remediation strategies that protect human health while managing costs, and navigating the complex web of environmental regulations. *Id*. at ¶¶ 5-6.

What makes this expertise particularly specialized is its regional nature. A hydrogeologist who understands California's unique geology, hydrogeology, and California's environmental regulations cannot simply be replaced by someone from

another state. The knowledge is both scientifically complex and geographically specific. *Id*. at ¶ 7.

By 2007—nine years before Partner would enter her professional life— Rosen had already established herself as a respected environmental consultant. She spent years conducting investigations, performing compliance audits, and developing remediation strategies throughout California. But technical expertise was only part of her professional development. She understood that success in environmental consulting required building relationships with those who need these services: real estate attorneys, developers, and property investors. *Id*. at ¶¶ 9-10.

Rosen methodically built her professional network through active participation in legal and industry associations. She served on committees within the Los Angeles County Bar Association's Environmental Law Section, where she developed relationships with attorneys who regularly needed environmental consultants for their real estate transactions. She attended environmental law conferences, participated in industry associations, and cultivated referral relationships. These weren't casual networking events, they were strategic relationship-building efforts that took years to develop and maintain. *Id*. at ¶¶ 10-13.

From February 2014 to May 2016, while serving as Environmental Services Manager and Senior Geologist at Gannett Fleming's Irvine, California office, Rosen managed an entire environmental services group and operated as a client service

manager for both public and private sector clients. Crucially, she also held the role of leading business development for environmental services for the Western Region, a role that required her to leverage and expand the professional network she had spent years building. She brought clients to Gannett Fleming through relationships she had cultivated at bar association events, through contacts she had developed at industry conferences, and through the reputation she had built over nearly two decades in California's environmental consulting community. *Id*. at ¶¶ 14-15.

When Partner came recruiting in 2016, they weren't just hiring a technical expert. They were acquiring access to a professional who had spent years building relationships with California attorneys, developers, and property owners. Rosen's value wasn't just in what she knew, but in who she knew and who trusted her professional judgment. She brought with her to Partner not only deep industry experience and technical knowledge, but also the ability to evaluate the financial performance of an office, manage profit and loss at the practice level, and oversee project teams—alongside longstanding consultant relationships and a personal book of business, including lucrative referral sources. *Id*. at ¶¶ 16-18.

II. Partner's Exploitation of Rosen's Personal Crisis

Partner's recruitment of Rosen began straightforwardly enough. In March 2016, Partner offered her a position as Technical Director, Site Mitigation Group, in

their Santa Ana, California offices, which Rosen accepted. *Id*. at ¶¶ 16-17.

Shortly after accepting, Rosen faced a personal crisis: she needed to relocate *temporarily* to Michigan due to urgent family circumstances. Rather than lose her expertise, Partner agreed to accommodate her needs and sent a revised offer letter permitting remote work. This offer explicitly stated compliance with California Labor Code. The offer made employment contingent upon signing the firm's "Confidentiality and Non-Solicitation Agreement." *Id*. at ¶¶ 19-20, Ex. 1 therein.

On April 15, 2016, Rosen signed the offer letter and a Confidentiality and Non-Solicitation Agreement that contained a California choice-of-law provision and, true to its title, included only confidentiality and non-solicitation provisions. *Id*. at ¶¶ 23-25, Ex. 1 therein. The agreement contained no restrictions on competitive employment or service of clients—a deliberate omission reflecting California Business and Professions Code § 16600, which renders non-compete agreements void as unlawful restraints on trade. This aligns with California's fundamental public policy of protecting employee mobility and promoting open competition.

But Partner saw an opportunity in Rosen's personal crisis. In May 2016, after Rosen had already left her previous employment and while she was managing both her father's care and an unexpected interstate move, Partner presented her with a different agreement containing a global non-compete provision. *Id*. at ¶¶ 26; ECF

No. 9-3; PgID.173. Rosen, overwhelmed with these competing demands, does not recall signing this second agreement on May 4, 2016. Ex. A, ¶ 26.

Partner's own documents reveal what happened here. Nothing about the job had changed: Rosen would still serve California clients, apply California environmental regulations, and provide the same California expertise Partner had originally sought. *Id*. at ¶¶ 22; ECF No. 9-3. But Partner recognized that Rosen's temporary relocation to care for her ill father created an opening to impose restrictions that California law prohibits. They exploited her family emergency to circumvent California's public policy against restraints on trade.

The scope of the non-compete provision Partner slipped into this second agreement is extraordinary:

> for a period of 12 months following termination of employment from the Company, Employee will not render to or for any Client any services of the type rendered by the Company o*r act as an employee, consultant, partner, or shareholder of any business that is engaged in the business of the same nature or competitive with that conducted by the Company on the date of termination of employment.*

Id. (emphasis added). No geographic limitation whatsoever. Partner sought to ban Rosen from working anywhere in the world in environmental consulting, the profession she had practiced for nearly a decade before Partner recruited her. A California corporation, hiring someone for their California expertise to serve California clients, now claims the right to enforce a worldwide employment ban simply because the employee worked remotely from Michigan.

III. Rosen's Work at Partner: From Regional Focus to National Role

From May 2016 through June 2021, Rosen worked remotely from Michigan as Technical Director in Partner's Site Mitigation Group, but her work focused on California clients and projects. Throughout this period, she regularly traveled to California, reported to the leader of Partner's West Site Mitigation Region; a reporting structure that made sense given that her work remained solely California-focused. Ex. A, ¶¶ 27-29.

Around 2020, Rosen invested substantial funds to become a Principal, acquiring an ownership stake while maintaining her Technical Director role. She did so with the expectation that Partner would be her long-term professional home and that she would eventually retire from the firm. At the time, Partner's remediation practice was fragmented and not well recognized in the industry. Rosen proposed leading a unified national remediation group to integrate the East and West teams and expand the firm's remediation capabilities. *Id.* at ¶¶ 30–33.

In July 2021, Partner promoted Rosen to National Managing Director following the integration of its remediation groups into a single national practice. Her role focused on high-level leadership: managing day-to-day operations of the Environmental Solutions practice, coordinating resources across regions, overseeing financial performance, and guiding strategic growth. Rosen succeeded in this role by drawing on her decades of industry experience, collaborative leadership style,

and ability to foster team morale. While she provided technical support as needed, the vast majority of her client-facing work remained California-focused. Her day-to-day clients, relationships, and professional activities were overwhelmingly rooted in California. *Id.* at ¶¶ 34-38.

Rosen worked to grow the remediation practice but encountered persistent challenges with the Phase I team that negatively affected revenue, profitability, and team morale. These inefficiencies also impacted the financial performance of her Environmental Solutions group, ultimately affecting merit and bonus compensation for her and her team. She raised these concerns repeatedly with management, including the CEO and her direct supervisor, proposing collaborative solutions aimed at improving operations and enhancing Partner's reputation in the industry. Her efforts were met with resistance and dismissiveness. *Id.* at ¶¶ 39–41.

These issues came to a head at the 2025 Principal's Retreat in California. Rosen had requested, and the CEO had agreed to, a session to discuss improving the transition from Phase I to Phase II work. The session devolved into chaos. People argued, talked over each other, and came unprepared. When Rosen attempted to explain the need for improvements to meet regulatory requirements, her supervisor Patrick Lorimer laid blame on her, offered no solutions, and denied obvious process issues. She was stonewalled and wrongly reprimanded. *Id*. at ¶ 42.

IV. Finding a New Opportunity Through Legitimate Channels

Within a month of the retreat, when a professional recruiter reached out to Rosen, she decided to engage in discussions about other opportunities. The dysfunction she had experienced at Partner made her receptive to exploring positions where she could apply her experience and skill set without these impediments. She was keenly aware of her professional obligations and sought only legitimate employment based on her skills and experience. She intentionally declined opportunities where prospective employers asked her to "gut their operations" by taking Partner clients and employees. *Id*. at ¶¶ 43-44.

Through this process, she connected with AEI Consultants, a California-based environmental consulting firm. *Id*. at ¶ 45. AEI was seeking to replace a division leader who was retiring. They needed someone with remediation expertise and leadership experience, not specific knowledge of Partner's operations or clients. The position required technical skill, industry expertise, and the ability to manage teams and client relationships. AEI believed Rosen would be an excellent fit based on these qualifications. Ex. B, Hinkston Decl. ¶¶ 9-15.

The companies share a historical connection: Partner's CEO Joseph Derhaker had worked at AEI before founding Partner approximately 18 years ago. Partner has since grown into a much larger operation, and both companies operate independently in the marketplace. *Id*. at ¶ 16.

It is significant to understand how the environmental consulting industry operates. Like a law firm, professionals provide specialized services based on their technical expertise, regulatory knowledge, and ability to communicate environmental risk in a way that aligns with a client's tolerance and project goals. Her role at AEI mirrors her work at Partner: providing strategic guidance, mentoring team members, and overseeing practice-level operations. The management side of her work, such as evaluating financial performance and managing profit and loss, is based on general business principles and experience developed over time. While each company presents and tracks financial metrics differently, the underlying concepts are universal. Rosen's ability to interpret and apply those metrics is a skill she developed across multiple firms, not something derived from Partner's internal systems. Nothing about Partner's style of managing financials is needed for Rosen to perform her role at AEI. *Id.* at ¶¶ 48–51; Ex. B, ¶¶ 7-8, 14-15.

AEI's CEO Paul Hinkston confirms that AEI hired Rosen for her professional capabilities and industry expertise. AEI has no need for Partner's trade secrets or confidential information, nor would such information be useful in performing her role. AEI operates its own established systems, has its own client base, and follows industry-standard practices that are well-known throughout the environmental consulting field. Ex. B, ¶ 10, 14-15.

V. Transparent Transition to AEI

Before accepting AEI's offer, Rosen provided AEI with a copy of her restrictive covenant, including the Confidentiality and Non-Solicitation Agreement she had signed with Partner on April 15, 2016. She was unaware of any additional agreements at that time. Ex. A, ¶¶ 52-54.

Though Rosen had decided to leave Partner months earlier, she remained through July 11, 2025, continuing her normal work routine without deviation. She used a personal Dropbox account for work throughout her employment, with Partner's IT department's approval and configuration. When preparing to leave, she sought only to retain materials personal to her, including state licenses, electronic signatures, and documents relevant to calculating her bonus. She also retained a short list of client contacts, eight in total, all of whom were longstanding relationships that predated her time at Partner. These clients had active projects that were staying with Partner, and Rosen worked with Partner personnel to ensure a smooth transition, including holding project handoff meetings. Her intent was to support continuity, not to take business. *Id.* at ¶¶ 56- 63.

On June 30, 2025, Rosen announced her resignation and discussed her reasons with Lorimer, informing him of her intent to join a competitor who would compensate her fairly for her book of business. Lorimer responded that he understood and made no mention of any restrictive covenants that would prevent her

from working in the industry or servicing her clients. She also had numerous conversations with CEO Derhake, who attempted to counter with vague offers, though he failed to put anything in writing and presented only conceptual proposals. He too made no mention of any restrictive covenants. *Id*. at ¶¶ 65-67.

During her exit interview with the Chief People Officer and an HR Manager, despite knowing she was going to work at AEI, neither mentioned any restrictive covenants nor provided her with the agreement that Partner now seeks to enforce prohibiting her from working or servicing clients. *Id*. at ¶ 68.

Upon her departure, Rosen requested that Partner release to her the cell phone number it owned, that she brought with her to Partner, and that she had used to conduct business throughout her employment. Partner granted this request, transferring the number to her despite knowing she was leaving for a competitor and that this was the primary way clients contacted her. *Id*. at ¶¶ 70-71.

VI. Partner's Litigation Threats and Aggressive Tactics

Rosen began her employment at AEI on July 15, 2025, as Senior VP for Site Mitigation. On July 18, 2025, Partner sent a letter to Rosen and AEI, advising them, for the first time, that by working in the industry, in any capacity, she was violating her world-wide non-compete. *Id*. at ¶¶ 73-75. AEI had hired Rosen based on the initial Confidentiality and Non-Solicitation Agreement she had disclosed, which did not contain the broad language that would prevent her from earning a living in her

area of practice. Ex. B ¶¶ 17, 22, Ex. 1 therein.

The CEOs of both companies began discussions to resolve the matter. AEI intended to find a reasonable solution that would allow Rosen to continue working while ensuring no confidential information or trade secrets would be used, to the extent such information even exists or is known to Rosen. *Id*. at ¶ 23-24.

While these negotiations were ongoing, real clients faced immediate harm from Partner's position. Rosen had been serving as an expert witness in complex environmental litigation in Los Angeles County, having drafted the expert report and been designated by name as the trial witness. In early August 2025, during the CEO negotiations, the client's attorney contacted Rosen directly, confirming she would be needed to testify at the October 6, 2025 trial. The client now faced significant prejudice as it was too late to substitute another expert witness.

Rosen had worked with Misty Ponce, Partner's Professional Engineer and National Client Manager for this client, to ensure continuity during a transition. Yet Partner appeared to be taking the position that neither the attorney nor the client could use Rosen's services, and upon information and belief, Ponce was advising Partner not to transfer the file to Rosen so she could prepare and fulfill her critical role as the designated expert. Partner was willing to leave this client without their expert witness before trial. Ex. A, ¶¶ 76-80.

Negotiations between the CEOs collapsed when Partner escalated its aggressive tactics. Ex. B, ¶ 25. Partner sent AEI a copy of a complaint they had filed against Rosen, though they never served her with it. Ex. A, ¶ 81; Ex. B, ¶ 25, Ex. 2 therein. Partner then filed an *ex parte* motion for a TRO. ECF No. 5.

Throughout this period, despite having Rosen's contact information, Partner never contacted Rosen to request the return of alleged trade secrets. Ex. A, ¶ 82. They never even made any of these requests to AEI. Ex. B, ¶ 26.

Partner's strategy is transparent: rather than negotiating reasonable restrictions compliant with California and Michigan law, they seek to eliminate Rosen from the marketplace entirely. Their goal is to prevent her from working in her field and to stop California clients from exercising their right to choose their environmental consultant. This scorched-earth approach reveals that Partner's true concern is not protecting legitimate business interests but rather eliminating competition from a successful professional who chose to take her talents elsewhere.

ARGUMENT[2]

This Court must now reconsider the temporary restraining order in light of the complete factual record and applicable law. In evaluating Partner's *ex parte*

[2] As an initial matter, this case should be transferred to the Central District of California under 28 U.S.C. § 1404(a). Indeed, venue is proper there because that is where the subject matter of the contract is located, where Plaintiff resides, and where Plaintiff was employed—albeit remotely. *See* 28 U.S.C. § 1391(b)(2). Moreover, the Central District of California: (1) is a more convenient venue for the non-party

application, the Court necessarily relied on Partner's selective presentation of facts and legal theories. Now, with Rosen's evidence and legal authority before it, the Court can assess whether the extraordinary remedy of a TRO remains justified.

Applying the four-factor test for injunctive relief, Partner fails at every step. *See Certified Restoration Dry Cleaning Network v. Tenke Corp.*, 511 F.3d 535, 540 (6th Cir. 2007). *First*, Partner cannot show likelihood of success. Its non-compete is void under California law, which governs this dispute between a California corporation and an employee hired for California expertise. Even under Michigan law, the agreement's global scope renders it unenforceable. The trade secret claims rest on speculation, not evidence of actual misuse. *Second*, Partner demonstrates no irreparable harm, only routine competition from an employee.*Third*, the balance tips decisively toward Rosen, who faces career destruction while Partner faces only lawful competition. *Fourth*, public interest opposes an injunction that disrupts pending litigation, violates California policy, and deprives the market of specialized expertise. The TRO should be dissolved, or at minimum, modified to protect only

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witnesses; (2) is where Plaintiff resides; (3) and as explained more fully below, is more familiar with the governing law, among other reasons. *See Overland, Inc. v. Taylor*, 79 F. Supp. 2d 809, 811 (E.D. Mich. 2000) (outlining factors to be considered). A motion to this effect is forthcoming, however, "[a] district court may transfer a case under § 1404(a) sua sponte." *Mich. Ass'n of Pub. Sch. Acads. v. United States Dep't of Educ.*, No. 1:22-cv-712, 2024 U.S. Dist. LEXIS 23653, at *2 (W.D. Mich. Jan. 10, 2024) (citing *Carver v. Knox Cnty., Tenn.*, 887 F.2d 1287, 1291 (6th Cir. 1989)).

specific, identified trade secrets—not to enforce an unlawful employment ban.

I. Partner has no likelihood of success on the merits.

A. The non-compete and non-solicitation provisions are void and unlawful under California law, which governs this dispute.[3]

Because this case is in federal court based on diversity jurisdiction, this Court must apply Michigan's choice-of-law rules. *See Johnson v. Ventra Grp., Inc*., 191 F.3d 732, 738 (6th Cir. 1999). Michigan follows the Restatement (Second) of Conflict of Laws § 187 to determine whether a contractual choice-of-law provision should be enforced. *See Stone Surgical, LLC v. Stryker Corp*., 858 F.3d 383, 389 (6th Cir. 2017). Under § 187(2)(b), a court may decline to apply the chosen law if applying the chosen law would be contrary to a fundamental policy of a state with a materially greater interest in the issue and which would otherwise govern under § 188.[4] Restat 2d of Conflict of Laws, § 187 (2nd 1988).

1. Under § 188, the state with the most significant relationship to the transaction and the parties is California.

Under § 187(2)(b), this Court must first consider whether another state's law

[3] While this Court denied Partner's request for a temporary restraining order with regard to its breach of contract claim, Rosen nonetheless includes arguments addressing this point in the interest of presenting a complete account and in light of Partner's remaining pending request for a preliminary injunction.

[4] Importantly, while subsection one does not list any exceptions, "Michigan law appears to apply the § 187(2) exceptions even when operating under § 187(1) in its choice-of-law analysis." *Stone Surgical,* 858 F.3d at 389 (citing *Chrysler Corp. v. Skyline Indus. Serv., Inc.*, 448 Mich. 113, 528 N.W.2d 698, 703-04 (Mich. 1995).

would apply under § 188, which looks to the state with the most significant relationship to the contract based on factors like where it was made, performed, and the location of the parties and subject matter. *Stone Surgical*, 858 F.3d at 389.

Partner is a California corporation headquartered in Torrance. The initial employment agreement was governed by California law, and Rosen had been living and working in California since college. When she executed the second agreement in May 2016, she was in the process of relocating from California to Michigan due to a family emergency. Although her work was ultimately performed remotely, she was hired for her California-specific expertise to serve California clients under California environmental regulations. The employment relationship was therefore centered in California in all material respects, making California the state with the most significant relationship under § 188.

2. Michigan's law contravenes California's fundamental policy against non-compete agreements.

While "Michigan law strongly favors non-competes," California has a fundamental public policy against non-compete agreements. *Stone Surgical,* 858 F.3d at 391 n.5; *see also Dowell v. Biosense Webster, Inc.*, 179 Cal. App. 4th 564, 575, 102 Cal. Rptr. 3d 1, 8 (2009) (discussing "California's strong public policy of protecting the right of its citizens to pursue any lawful employment and enterprise of their choice."). This policy is codified in Business & Professions Code § 16600,

which voids any contract that restrains a person from engaging in a lawful profession, trade, or business.[5]

California courts interpret this prohibition broadly. It applies not only to traditional non-compete clauses, but also to non-solicitation provisions that restrict an employee's ability to contact former clients. These clauses are considered unlawful restraints on trade when they prevent individuals from pursuing their profession or leveraging their professional relationships. *See Edwards v. Arthur Andersen LLP*,189 P.3d 285, 292 (2008) (finding a noncompetition agreement which prevented the plaintiff from "performing professional services of the type he had provided while at [the defendant], for any client on whose account he had worked during 18 months prior to his termination[,]" and from soliciting "any client of [the defendant's] Los Angeles office" invalid because it "restrained [the plaintiff's] ability to practice his profession."). California courts thus routinely refuse to enforce choice-of-law provisions that would undermine this policy. *See Nedlloyd Lines B.V. v. Superior Court*, 3 Cal. 4th 459, 466 (1992) ("If California has a materially greater interest than the chosen state, the choice of law shall not be enforced, for the obvious

[5] In 2023, the Legislature enacted § 16600.1, which goes further: it makes it unlawful to include a non-compete clause in an employment contract or to require an employee to enter such an agreement unless it falls within a narrow statutory exception. Employers were required to notify affected employees by February 14, 2024, that such clauses are void. Failure to do so constitutes an act of unfair competition under § 17200.

reason that in such circumstance we will decline to enforce a law contrary to this state's fundamental policy."). Accordingly, Michigan law contravenes California's fundamental public policy against non-competes.

3. California has a materially greater interest in this matter.

To evaluate which state has a materially greater interest in a conflict of law analysis, courts look to the relationship between the parties and the transaction at issue. For example, in *Stone Surgical, LLC v. Stryker Corp*., a Louisiana domiciled employee of a Michigan corporation sought to invalidate a Michigan choice of law provision in favor of Louisiana's public policy against non-compete agreements. 858 F.3d 383 (6th Cir. 2017). While the Court acknowledged Louisiana's interest in protecting its employees from unfair non-compete clauses, it held that Michigan had a greater interest in protecting its corporations from economic harm, despite the fact the employee's sales territory was Louisiana. *Id*.

Similarly, in *Down-Lite Int'l, Inc. v. Altbaier*, the Sixth Circuit held that despite the fact the employee was domiciled and generated business in California for his employer, Ohio had a greater interest in the dispute. 821 F. App'x 553 (6th Cir. 2020). In so holding, the Sixth Circuit noted that the employee's work extended beyond the borders of California, the employer was a close Ohio corporation, and the Shareholder Agreement containing the covenants at issue was designed to protect its Ohio shareholders. *Id*.

Here, by contrast, Partner is a California corporation, headquartered in California, and Rosen was hired to serve California clients under California law. Her work was not global or diffuse; it was rooted in California's environmental consulting industry. California's interest in regulating employment relationships within its borders and protecting its workforce from unlawful restraints is materially greater than Michigan's interest in enforcing a non-compete clause against a remote employee who was hired for her California expertise. Indeed, the only connection Michigan has to this matter is the fact Rosen is domiciled there, which is incidental to the parties' relationship. *Compare Chrysler Corp.*, 448 Mich. 113 (1995) (upholding a Michigan choice-of-law provision despite the fact that the contract was performed in Illinois, because the dispute involved two Michigan corporations with a longstanding business relationship that had contracted in Michigan). Where Michigan has no apparent interest in this matter, California law governs.

B. Even under Michigan law, the non-compete is unenforceable.

Even if Michigan law applied, Partner's non-compete provision is unenforceable under MCL § 445.774a(1), which permits such agreements only if they are "reasonable as to its duration, geographical area, and the type of employment or line of business," and only to the extent necessary to protect the employer's legitimate competitive business interests. As this Court correctly determined, Partner's agreement fails this test in multiple respects.

1. The global scope is overbroad.

Non-compete agreements are enforceable only if they are narrowly tailored to protect specific competitive advantages without imposing undue hardship on the employee or harming the public. Agreements that are overly broad—particularly those with global or nationwide restrictions—are disfavored unless the employer can demonstrate that such restrictions are necessary and that the employee had meaningful connections to the restricted areas. *See Kelly Servs. v. Eidnes*, 530 F. Supp. 2d 940, 950 (E.D. Mich. 2008); *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 537–38 (6th Cir. 2007).

In *Mapal, Inc. v. Atarsia*, the court held that a non-compete agreement barring the employee from working for any competitor "anywhere in the world" was geographically overbroad and unenforceable. 147 F. Supp. 3d 670, 681 (E.D. Mich. 2015). The court emphasized that geographic limitations must be tailored to protect the employer's legitimate business interests, and that the agreement's global scope exceeded what was necessary, particularly since the employee's duties were limited.

Likewise, in *Chart Indus. v. Spagnoletti*, the court declined to enforce a non-compete that prohibited the employee from working for any competitor in any capacity worldwide. No. 1:12 CV 2354, 2012 U.S. Dist. LEXIS 140102 (N.D. Ohio Sep. 28, 2012). The restriction was not reasonably tailored to protect legitimate business interests. Importantly, the court noted that in cases where nationwide

covenants were upheld, the agreements were limited to soliciting customers with whom the employee had contact—a limitation Partner did not even attempt. Instead, Partner seeks to bar Rosen from working in her entire industry, in any role, anywhere in the world, and without identifying any specific confidential information, proprietary strategy, or customer relationships that Rosen allegedly misused.

While some courts have upheld broad restrictions, they have done so only where the employee's role justified it. For example, in *Learn2.com v. Bell*, No. 3:00-CV-812-R, 2000 U.S. Dist. LEXIS 14283 (N.D. Tex. July 20, 2000), the court upheld a global restriction because the employee, Vice President of R&D and Production, had responsibilities that extended across all of the company's worldwide locations. Rosen's role does not come close to that of a VP or C-suite executive with global responsibilities and access to enterprise-wide strategy, let alone research and development. She was a mid-level manager whose work was focused on California clients and California environmental regulations. Her national title did not reflect global client engagement; her role was rooted in regional expertise and industry know-how.

2. The Court should not reform the agreement.

While Michigan courts may modify overly broad agreements to render them reasonable, they are not required to do so. *See Mapal*, 147 F. Supp. 3d at 681. Courts decline to rewrite agreements that are not merely overbroad in a technical sense but

are structurally defective, as is the case here.

Partner's agreement is not a close call. It lacks geographic boundaries, applies to any role in the industry, and is not limited to specific clients or confidential information. Rewriting it would require more than trimming a radius or shortening a time frame; it would require a wholesale reconstruction. Courts should not be expected to rescue employers from the consequences of drafting oppressive and unenforceable agreements. As the Sixth Circuit has cautioned, "[a] court should not rewrite a contract to rescue a party from the consequences of its own overreaching." *Rogers v. Stratton Indus., Inc.*, 798 F.2d 913, 917 (6th Cir. 1986). That principle is especially important here, where enforcing or reforming this agreement would reward a litigation strategy designed to intimidate employees into staying put; not by protecting legitimate interests, but by threatening them with career destruction if they leave.

C. Partner's trade secret claims also fails because Rosen did not misappropriate any trade secrets and Partner offers no evidence of improper use or disclosure.

The Court's TRO ruling rests on the premise that Partner took reasonable steps to protect its trade secrets. But that conclusion was based on an incomplete factual record. Critically, Partner's IT department approved and configured Rosen's use of a personal Dropbox account for work. This Dropbox account was not only used throughout her employment; it was actively integrated into her workflow by Partner.

This fact was not disclosed to the Court and fundamentally alters the analysis.

Partner cannot now claim that Rosen's retention of documents via Dropbox constitutes misappropriation when it was the Partner itself that enabled this method of storage, permitted her to use it for client files and internal documents, and failed to revoke access or implement any restrictions upon her departure. There were no forensic protocols, no offboarding procedures, and no effort to disable the account or retrieve materials. Rosen even reminded IT about the Dropbox connection when returning her laptop, and Partner took no action.

This directly undermines the Court's finding that Partner "limits access to trade secrets on a need-to-know basis" and "password-protected certain highly sensitive documents." Whatever protections existed were rendered meaningless by the open Dropbox pipeline Partner created. Trade secret protection requires affirmative, consistent efforts to maintain secrecy. Partner's conduct—approving personal cloud storage, failing to monitor access, and neglecting to revoke permissions—falls far short of that standard.

Courts recognize that such failures defeat trade secret claims. In *Encompass Servs., PLLC v. Maser Consulting P.A.*, the court found that while password protections and confidentiality agreements may support a claim of secrecy, the employer's failure to restrict personal external storage devices created a factual issue undermining the adequacy of those protections. 2021 NCBC 40; 2021 NCBC LEXIS

59. Similarly, in *Raycap Holdings LLC v. Ervin*, the court held that a company's failure to monitor or enforce policies regarding personal cloud storage weighed against a finding that reasonable measures were taken to protect trade secrets. No. 4:24-cv-1219-RHH, 2025 U.S. Dist. LEXIS 75060 (E.D. Mo. Feb. 5, 2025).

Moreover, the theory of inevitable disclosure does not apply here. Rosen does not need, use, or rely on any Partner information in her role at AEI. Her work is entirely independent. AEI is a separate business with its own systems, clients, and operational structure. Rosen was hired for her experience, technical expertise, and leadership, not for any knowledge of Partner's internal workings. She applies her own know-how, developed over decades in the industry, to perform her role. AEI has made clear that it does not want or need Partner's proprietary information, and many of the documents Partner claims as trade secrets actually belong to AEI. These include client deliverables and reports generated for AEI projects, retained by Rosen in her capacity as a consultant to AEI. Ex. A, ¶¶ 62-63.

The client list Rosen retained was created solely for transition purposes, and Partner was aware of the process. She worked with Partner personnel to ensure continuity and did not solicit or divert any clients. Other materials were retained only to calculate her bonus and preserve personal records. Additionally, the business plan Partner references was created over eight months ago for a company Rosen ultimately declined to join. It was never used, never shared, and has no bearing on

her current role. *Id*. at ¶ 65.

Taken together, these facts demonstrate that Rosen has not misappropriated any trade secrets and that Partner failed to take reasonable steps to protect the information it now claims as proprietary.

II. Partner will not suffer irreparable harm absent continued injunctive relief.

The Court's TRO ruling placed significant weight on the potential loss of customer goodwill. But while that concern may justify temporary relief in some cases, it does not support the continued enforcement of a blanket employment ban, especially where the record shows no actual harm, no client loss, and no misuse of confidential information.

Partner has not identified a single client who was solicited, diverted, or lost. Rosen's transition was transparent and collaborative. She worked with Partner personnel to ensure continuity, created a client list solely for handoff purposes, and held transition meetings to support ongoing projects. Partner was aware of this process and did not object. The list was not used to solicit business; it was used to protect it. Ex. A, ¶ 64.

Moreover, Rosen's role at AEI is entirely independent. She does not rely on Partner's information to perform her job. AEI has its own systems, clients, and operational structure. Rosen was hired for her technical expertise and leadership, not for any knowledge of Partner's internal operations. *Id*. at ¶ 48. Her work is based on

her own experience and know-how, developed over decades in the environmental consulting industry. *Id.* at ¶ 49. AEI has made clear that it does not want or need Partner's proprietary information, and Rosen has no reason to use it.

Partner's claim of irreparable harm is based entirely on *conjecture* of monetary damages. As evidenced in paragraph 24 of Lorimer's declaration, Partner speculates that Rosen's continued employment at AEI *might* result in lost business, as one unnamed referral source is "considering" following Rosen to AEI. Partner also argues that "*[i]f* Rosen is allowed to solicit Partner's invaluable business partners. . . it will be impossible for Plaintiffs to calculate the exact amount of future or prospective revenue or profits lost." ECF No. 9; PgID.155 (emphasis added).

However, and as this Court has explained, "[w]hether or not the loss of customer goodwill amounts to irreparable harm often depends on the significance of the loss to the plaintiff's overall economic well-being." *Apex Tool Grp., LLC v. Wessels*, 119 F. Supp. 3d 599, 610 (E.D. Mich. 2015). Absent a showing of harm to its overall economic wellbeing or loss of any projects or clients, Partner does not meet the requisite threshold. *Id.* Regardless, Partner does not allege that this referral source was solicited, nor that any trade secrets were used to influence the decision.

Even if Partner could show economic loss, that would not suffice. "Mere economic loss does not constitute irreparable injury," because it is compensable through damages. *TowerCo 2013, LLC v. Berlin Twp. Bd. of Trs.*, 110 F.4th 870,

889 (6th Cir. 2024). Moreover, Partner has not shown that Rosen solicited any clients, used any confidential information, or caused any measurable disruption.

Federal courts have also rejected any presumption of irreparable harm under the DTSA. As the Tenth Circuit explained in *First Western Capital Mgmt. Co. v. Malamed*, 874 F.3d 1136, 1143 (10th Cir. 2017), the DTSA "merely authorizes and does not mandate injunctive relief and thus does not allow a presumption of irreparable harm." This Court recently reaffirmed this principle in *Versata Software, Inc. v. Ford Motor Co.*, where it noted that "while federal courts may once have presumed that the victim of trade secret misappropriation would suffer irreparable harm without an injunction," that is no longer the case. No. 15-cv-10628, 2023 U.S. Dist. LEXIS 188219, at *11 (E.D. Mich. Oct. 19, 2023).

Partner's own conduct further undermines its claim of urgency. When Rosen gave notice on June 30, 2025, she informed Partner that she was joining a competitor. Partner said nothing about restrictive covenants, made no demand for the return of documents, and even transferred her business cell phone number to her, knowing it was the primary way clients contacted her. Despite ongoing communications with Rosen and AEI, Partner never requested the return of any materials. It then waited nearly a month before filing its motion. These facts are incompatible with the notion of imminent harm and confirm that this litigation is not about protecting confidential information. It's about punishing Rosen for leaving.

If Partner genuinely feared trade secret misappropriation, it would have requested the return of documents, a forensic examination, or a narrowly tailored injunction. Instead, it moved to remove Rosen from the industry entirely. That is not a protective measure. It is an anti-competitive one. To the extent the Court remains concerned about customer goodwill, any relief should be narrowly tailored to address specific risks. A blanket prohibition on employment is not justified and should be dissolved or modified accordingly.

III. The balance of hardships tips decidedly towards Rosen.

Partner seeks to enforce a noncompete provision that this Court has already found to be overbroad and unenforceable. Its trade secret claim is not supported by evidence of actual misuse or disclosure, and the relief it seeks—a blanket employment ban—is disproportionate to any legitimate interest. The hardship imposed on Rosen is immediate, severe, and irreparable.

Rosen has worked in environmental consulting for over 30 years. Her professional licenses, reputation, and ability to earn a living are tied to this highly specialized field. She cannot simply pivot to another industry. If the TRO remains in place, she will be unable to practice her profession anywhere, and her credentials will be rendered effectively useless. She is already suffering harm from having to defend herself against an agreement that is unlawful under California law and

unenforceable under Michigan law.[6]

In contrast, Partner is a large company that generates substantial annual revenue. Even if it were to lose a small number of clients or referral sources, that loss would be marginal in the context of global operations. Partner has not shown that Rosen has misused or disclosed any confidential information, or that she has solicited any clients using Partner's data. Competition alone is not a cognizable harm, and normal employee mobility is a cost of doing business.

As the court recognized in *Merrill, Lynch, Pierce, Fenner & Smith v. Liniere*,

> [i]f an injunction were to issue, damage to [the employee] while she waited ultimately to prevail would be catastrophic as a result of the loss of most of her income. Because the effect of the loss of income pending the outcome of this dispute would, by reason of the differing financial strength of a large brokerage firm and an individual broker, bear far more heavily on [the employee] than on Merrill Lynch, that disparity of effect supports denial of an injunction.

572 F. Supp. 246, 249 (N.D. Ga. 1983). The same is true here. There is no reason to destroy Rosen's livelihood based on Partner's speculative allegations and complete lack of evidence. If the injunction is denied, Partner will suffer no irreparable harm.

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[6] While Partner cites to *Kelly Servs. v. Noretto*, in support of its contention that Rosen can mitigate her harm by "seeking employment in another industry[,]" that case is inapposite. 495 F. Supp. 2d 645 (E.D. Mich. 2007). There, the defendant's testimony indicated that he had "been a successful and self-motivated employee that has been able to rise through the ranks of various corporations[,]" and under the agreement, he was "unrestricted in applying his skill set to any position outside of the staffing industry[.]" *Id*. at 660. Rosen does not have a general skillset that can be applied to different industries, her knowledge is specialized to that of environmental consulting.

There has been no misuse of information and no actual loss of business. The balance of hardships weighs decisively in favor of denying the injunction.

IV. Public interest weighs strongly against issuing an injunction.

A. Immediate Harm to Third-Party Litigation

Preventing Rosen from working in the industry, even temporarily, would not only harm Rosen, it would also prejudice an innocent third party in active litigation. Rosen is currently designated as an expert witness in a complex environmental case pending in Los Angeles Superior Court, with trial set for October 6, 2025. Her expert report has already been submitted under her name, and it is now too late to substitute another expert. The client relied on Rosen's specific expertise and worked with Partner personnel, including Misty Ponce, to ensure a smooth transition.

Partner is now willing to jeopardize that client's case, not to protect trade secrets, but out of spite. It is using an overbroad non-compete to interfere with judicial proceedings and harm third parties who have no connection to this dispute. California has a strong public policy protecting litigants' choice of experts, and this Court should not enable litigation interference under the guise of protecting business interests. The requested injunction would create collateral damage far beyond the scope of any alleged harm to Partner.

B. Strong Public Policy Against Unreasonable Restraints on Trade

The public interest also weighs heavily against enforcing a non-compete that is unlawful under California law and overbroad under Michigan law. Professional

mobility benefits society. It promotes innovation, facilitates knowledge transfer, ensures the best match between professionals and employers, and protects individual economic liberty. Enforcing a blanket employment ban against Rosen would undermine all of these values.

California's public policy is explicit: employment restraints are unlawful unless they fall within narrow statutory exceptions. The state promotes open competition and innovation and views employee mobility as a cornerstone of its economy. That policy should govern this dispute, given Partner's California headquarters, AEI's California headquarters, California clients, and the California-based nature of Rosen's work.

Even Michigan recognizes limits. Overbroad restrictions harm competition and are void as against public policy. Courts will not enforce anti-competitive agreements that serve only to suppress lawful employment transitions.

C. An injunction would deprive the public of a specialized environmental expert.

Environmental consulting itself serves a critical public function. It protects public health through contamination assessment, ensures safe real estate transactions, and supports environmental compliance. The public benefits from access to experienced consultants like Rosen. Continuing to enjoining her from working not only harms her, but it also deprives the public of her expertise.

V. The TRO should be modified to address only specific trade secrets.

If the Court finds any basis to maintain injunctive relief, it must be narrowly tailored to protect only legitimate and identifiable trade secrets. The current TRO imposes a blanket prohibition on Rosen's employment, despite the Court's own finding that the noncompete agreement is overbroad and unenforceable. Trade secret law does not justify a categorical employment ban here, particularly where there is no evidence that Rosen has disclosed or used any confidential information. Her declaration confirms that she retained only materials necessary to calculate her bonus or preserve personal records, and AEI has made clear it does not want or need Partner's proprietary information.

Rosen is willing to return or delete any remaining documents and work with Partner to establish a protocol for doing so. Any continued injunctive relief should be limited to:

- Prohibiting use or disclosure of specifically identified trade secrets.
- Requiring return or deletion of any documents that qualify as such.
- Preserving Rosen's ability to continue working in her field, without restriction, based on her own expertise and experience.

This approach protects Partner's legitimate interests without imposing unnecessary harm on Rosen or the public. The TRO should be modified accordingly.

CONCLUSION

For the reasons stated above, Defendant respectfully requests that the Court **dissolve** or at least **modify** the Temporary Restraining Order to narrowly address only the protection of specific, identifiable trade secrets. The current TRO imposes a sweeping employment ban that exceeds the scope of any legitimate interest and is unsupported by evidence of actual misuse or disclosure. Rosen is willing to return or delete any remaining documents and work cooperatively to establish a protocol that ensures the protection of any confidential information. No further restrictions are warranted.

Respectfully submitted,

BUTZEL LONG, P.C.

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