

STATE OF NORTH CAROLINA
PITT COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV008972-730

S&R COMPUTER
ASSOCIATES, INC.,
a North Carolina Corporation,

Plaintiff,

v.

JUSTIN L. HAMPEL; ZACHARY D.
HAMPEL; ZACHARY PARKER; and
ITBROS LLC, a North Carolina
Limited Liability Company,

Defendants.

**ORDER ON PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION
AND MOTION FOR HEARING ON
MOTION FOR PRELIMINARY
INJUNCTION**

1. This matter is before the Court on Plaintiff's motion for a preliminary injunction, (ECF No. 13), and Plaintiff's motion for a hearing on the motion for a preliminary injunction, (ECF No. 25).

2. Having considered the motions, the verified complaint, the competent evidence of record, the written arguments of counsel, and applicable law, in the exercise of judicial discretion, the Court determines that the motion for a preliminary injunction should be **DENIED** and that motion for a hearing on the preliminary injunction motion should be **DENIED AS MOOT**.

3. With respect to these determinations, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT¹

4. Plaintiff S&R Computer Associates, Inc. is a North Carolina corporation with its principal place of business located in Pitt County, North Carolina. (ECF No. 3, ¶ 1). Plaintiff provides “computer technology sales and support” through its business. (ECF No. 3, ¶ 22).

5. Defendants Justin L. Hampel, Zachary D. Hampel, and Zachary Parker (the “**Individual Defendants**”) are prior employees of Plaintiff, each of whom was employed as an “IT Support Member.” Plaintiff hired the Hampels in 2021 and Parker in 2023. (ECF No. 3, ¶¶ 12–14).

6. Defendant ITBros LLC is a North Carolina limited liability company with its principal place of business in Orange County, North Carolina. (ECF No. 3, ¶ 5). The Hampel Defendants formed ITBros on 1 September 2023, during their employment with Plaintiff, to “provide IT solutions and services . . . includ[ing] managed word-press sites and search engine optimization.” (ECF No. 3, ¶ 38).

7. That business “of providing IT solutions and services is the same or substantially similar as Plaintiff’s business of providing computer technology sales and support.” (ECF No. 3, ¶ 40). Nonetheless, Plaintiff knew that the Hampels had formed ITBros and even “consented to [ITBros’s] engaging in the business of managing websites and search engine optimization.” (ECF No. 3, ¶ 39). Plaintiff did not specifically consent to having ITBros compete with Plaintiff, and ITBros managed

¹ These findings of fact are made solely to decide the motions at issue. *Lohrmann v. Iredell Mem’l Hosp., Inc.*, 174 N.C. App. 63, 75 (2005) (“It is well settled that findings of fact made during a preliminary injunction proceeding are not binding upon a court at a trial on the merits.”).

Plaintiff's website "until recently." (ECF No. 3, ¶ 39).

8. As employees of Plaintiff, the Individual Defendants agreed to non-competition and non-solicitation clauses in their employment contracts, with each contract containing substantially similar language. (ECF No. 3, ¶¶ 12–14, 18).

9. The non-competition clauses provide, in relevant part, as follows:

a. Covenant Against Limited Territory. During the term of employment and one (1) year immediately following the termination of employment for any reason, regardless of who initiates the termination, Employee hereby promises and agrees not directly or indirectly for herself/himself or on behalf of other individuals, partnerships, firms, corporations, or other entities engage in, own any interest in (other than less than 5% of the outstanding shares of any publicly-traded corporation), manage, operate, control, loan money to, be employed or engaged by, render consulting or advisory services to, serve as a director of, represent, or participate in or be connected with any business that is the same or similar to Employer's Business servicing customers in Pitt County, North Carolina or within seventy-five (75) miles of Pitt County.²

b. Covenant Against Working for Employer's Customers. For one (1) year immediately following termination of employment for any reason, regardless of who initiates the termination, Employee hereby promises and agrees not to be employed, work as independent contractor, or provide services, whether with or without pay, for any of Employer's customers or clients in any of the customer's or client's locations.

c. It is the desire and intent of the parties that the provisions of these covenants not to compete shall be enforced to the fullest extent permitted under the laws and public policies of the State of North Carolina. If any court determines that any provision of this covenant not to compete is unenforceable because of the duration or geographic area or scope of such provisions, such court shall have the power to reduce the duration, area, or scope of such provision, as the case may be, and, in its reduced form, such provision shall be enforceable.

² Defendant Parker's clause is limited to sixty-five, rather than seventy-five, miles. (ECF No. 3, Ex. C, ¶ 9).

(ECF No. 3, Exs. A–C, ¶ 9; ECF No. 3, ¶ 21).

10. Thus, the non-competition clauses purport to limit the Individual Defendants from being in any way “connected with” or “engaged by” any business that is even “similar to” Plaintiff’s business, regardless of the nature of the business and regardless of whether the business or entity is even so much as in Plaintiff’s industry. The clauses do not, for example, specify factors to determine whether another entity is “similar”—such as, for example, the industry, the number of employees, the location, the style of building in which it operates, the name, or any other factor that Plaintiff would contend denotes a “similar” entity. (ECF No. 3, Exs. A–C, ¶ 9(a)).

11. The same provision also purports to prohibit the Individual Defendants from offering *any* “services,” paid or unpaid, for any customer or client of Plaintiff’s, regardless of whether the services provided relate in any way to the Individual Defendants’ duties during their employment with Plaintiff. (ECF No. 3, Exs. A–C, ¶ 9(b)).

12. As to non-solicitation, the parties agreed as follows:

10. Non-Solicitation Covenants. The Employee agrees at all times during the term of this Agreement and for a period of one (1) year thereafter, irrespective of the time, manner or cause of termination from employment, Employee shall not engage or participate in any effort or act to induce any clients, customers, former clients, former customers, prospective clients, prospective customers, associates, vendors, employees or contacts of the Employer to take any action or refrain from taking any action which action or inaction might be disadvantageous to the Employer, including but not limited to, the solicitation of clients, customers, former clients, former customers, prospective clients, prospective customers, associates, vendors, employees or contacts

to cease doing business, association, or employment with the Employer.

(ECF No. 3, Exs. A–C, ¶ 10; *see* ECF No. 3, ¶ 28).

13. This provision therefore purports to prohibit the Individual Defendants from taking “*any* action” or failing to take any action that even “*might* be disadvantageous” to Plaintiff, regardless of the context and regardless of whether the action or inaction is in any way related to the Individual Defendants’ employment or relationship with Plaintiff. (ECF No. 3, Exs. A–C, ¶ 10 (emphasis added); *see* ECF No. 3, ¶ 28).

14. Neither the non-competition clauses nor the non-solicitation clauses are limited to clients or client contacts made during the period of the Individual Defendants’ employment with Plaintiff. (ECF No. 3, Exs. A–C, ¶¶ 9–10).

15. Each of the agreements does, however, include certain severability clauses providing in substance and in relevant part that, if any provision is unenforceable, the remaining provisions remain in effect to the extent permitted by law and are to be construed as if the stricken or unenforceable provision does not otherwise exist. (ECF No. 3, Exs. A–C, ¶¶ 14, 18).

16. In early May 2025, the Hampels gave two weeks’ notice of their intended resignation from employment with Plaintiff. Plaintiff contends that, during the subsequent two-week period, the Hampels misappropriated purported trade secrets and other confidential information in the form of “Plaintiff’s business information including client and customer names, addresses, telephone numbers, and other information relating to service needs . . . by acquiring Plaintiff’s business information

by improper means, including, without limitation, accessing Plaintiff's computer network pertaining to clients, without consent, or alternatively, exceeding any consent, with no legitimate purpose[.]” (ECF No. 3, ¶¶ 78–80).

17. Ultimately, the Hampels resigned on 23 May 2025 following their notice period. (ECF No. 3, ¶¶ 34–35, 80).

18. Thereafter, around 7 July 2025, defendant Parker also ended his employment with Plaintiff. (ECF No. 3, ¶ 36). Plaintiff alleges, primarily upon information and belief, that the Hampels solicited Parker to leave his employment with Plaintiff to work instead for ITBros, (*e.g.*, ECF No. 3, ¶¶ 41–42, 55(b), 56(a), 100(d)), and that all Defendants thereafter began providing IT solutions and services somewhere within seventy-five miles of Pitt County and soliciting Plaintiff's clients less than a year after the Individual Defendants' employment with Plaintiff ended, (*e.g.*, ECF No. 3, ¶¶ 43–45, 50, 55(a)–(g)).³

19. Though its principal place of business is in Orange County, (ECF No. 3, ¶ 5), in filings with the North Carolina Secretary of State, ITBros has also listed its principal office as being in Greenville, Pitt County, North Carolina—well within the

³ While Plaintiff may make allegations upon information and belief for purposes of its complaint, such allegations generally do not constitute competent evidence for purposes of a motion for injunctive relief. Rather, affidavits and declarations ordinarily must be made on personal knowledge—a standard that allegations made “upon information and belief” do not satisfy. *See* N.C. R. Civ. P. 43(e) (providing for resolution of motions based on affidavits); *Currituck Assocs. Residential P'ship v. Hollowell*, 170 N.C. App. 399, 403–04 (2005) (“[I]t is a general legal principle that affidavits must be based upon personal knowledge,” and “[o]ur appellate courts have repeatedly held that statements made ‘upon information and belief’—or comparable language—do not comply with the personal knowledge requirement...”) (quoting *Hylton v. Koontz*, 138 N.C. App. 629, 634 (2000) (internal quotation marks omitted)). Further, even Plaintiff's verified statements not based on information and belief are largely conclusory in nature. (*See generally* ECF No. 3).

radius restricted by the parties' agreements. (ECF No. 17, Exs. 1–2); *see* N.C. R. Evid. 201 (providing for judicial notice, which includes publicly filed documents such as ITBros's articles of organization and annual report).

20. At some point,⁴ two of Plaintiff's customers—LaFevers Dental Team and Orthopaedics East and Sports Medicine Center—terminated their contracts with Plaintiff. (ECF No. 3, ¶ 74). Plaintiff alleges in conclusory fashion that Defendants convinced those customers to terminate their contracts, though Plaintiff does not assert that those customers now do business with Defendants or otherwise provide any facts suggesting that they ever did work with Defendants. (ECF No. 3, ¶¶ 69–76).

21. Thus, more than five months after the Hampels left their employment with Plaintiff and approximately four months after Parker left (purportedly at the Hampels' behest), Plaintiff brought suit on 6 November 2025. (ECF No. 3). In the complaint, Plaintiff asserts causes of action for (i) breach of contract, (ii) tortious interference with contract as to Parker's employment, (iii) tortious interference with contract as to Plaintiff's contract with a customer, (iv) violation of the North Carolina Trade Secrets Protection Act, (v) violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(g), and (vi) violations of N.C. Gen. Stat. §§ 75–1.1 *et seq.* (*See generally* ECF No. 3).

⁴ Presumably, this time was after the Individual Defendants left their employment with Plaintiff, though the complaint lacks factual allegations regarding the particular time at which the events allegedly occurred, and even Plaintiff's cease-and-desist letter lacks a linear timeline. (*See generally* ECF No. 3, ¶¶ 69–76; ECF No. 17, Ex. 3).

22. The most pertinent allegations of Plaintiff's complaint—those purporting to allege wrongdoing by Defendants—are made upon information and belief, as verified by Plaintiff's President, and are not further supported by affidavits or other supplemental evidence. (*See generally* ECF No. 3, ¶¶ 41–45, 55–56, 68, 76 & Verification, ¶ 3).

23. Though Plaintiff requested injunctive relief in its complaint and calendared a hearing for 8 December 2025 before this matter was designated to the Business Court, Plaintiff did not at that time have an independently filed motion for injunctive relief, and Plaintiff did not seek entry of a temporary restraining order. (ECF No. 3 at 1 & ¶¶ 99–109; ECF No. 6).

24. On 26 November 2025, after this matter was designated to the Business Court, the Court—via email through its law clerk—reminded counsel of the requirement to comply with the Business Court Rules, including the requirement to fully brief the preliminary injunction motion, (*see* BCR 7.2, 7.6, and 7.13), and directed counsel to confer regarding a briefing schedule, whether for the pre-scheduled 8 December 2025 hearing date or a future agreed date. On 3 December 2025, counsel proposed a briefing schedule whereby Plaintiff's brief was due on 15 December 2025, Defendants' response was due on 7 January 2026, and Plaintiff's reply was due 16 January 2026. The Court adopted the agreed briefing schedule accordingly. (ECF No. 8).

25. More than a month after filing its complaint—on 15 December 2025, around seven months after the Hampels' resignation and more than five months after

Parker's resignation—Plaintiff filed its motion for a preliminary injunction that is currently before the Court. (ECF No. 13).⁵

26. With its motion, Plaintiff seeks a preliminary injunction “prohibiting Defendants from competing and soliciting Plaintiff’s employees, clients, and customers in violation of the non-competition and non-solicitation covenants under the Agreements,” (ECF No. 13, ¶ 11), and premises its request on only its breach of contract claim and the Individual Defendants’ alleged breaches of their employment agreements with Plaintiff, (ECF No. 14 at 6 (“S&R is likely to be successful on the merits because Defendants breached a valid and enforceable contract.”)). The Court therefore limits its analysis to that cause of action.

⁵ On 22 January 2026, shortly after briefing concluded and with the Court having reviewed the motion, briefing, and all appropriate matters of record, the Court determined in its discretion that the motion could properly be resolved based on the briefing and matters of record and notified counsel that the Court would resolve the motion without a hearing. *See* BCR 7.4. Nonetheless, Plaintiff’s counsel then requested via email that a “that a hearing be held on the motion for preliminary injunction at the same time [a] hearing is held on Defendants’ partial motion to dismiss,” after which the Court reiterated it would resolve the motion without a hearing. Persistent to the end, on 13 February 2026, Plaintiff filed a motion for a hearing and a supporting brief, arguing that “[s]pecial considerations are present because (1) presentation of evidence is necessary and appropriate for determination of the pending motion; (2) judicial economy is furthered by allowing comprehensive presentation of legal positions and simultaneous resolution of evidentiary issues; and (3) a hearing would allow meaningful dialogue between the Court and counsel.” (ECF No. 26 at 4). Of course, as Defendants note in their briefing, (ECF No. 31), the Business Court Rules provide that “[a]ll materials, including affidavits, on which a motion or brief relies must be filed with the motion or brief,” (BCR 7.5), and “a hearing on a motion, including an emergency motion, will not involve live testimony” unless ordered otherwise by the Court, BCR 7.12. Thus, the parties had ample opportunity to present their evidence via the briefing process, and neither party reasonably should have had any expectation that it would be permitted to present new or additional evidence at a hearing that might or might not occur. Moreover, there is no apparent basis for the suggestion that “judicial economy is furthered” by holding an otherwise unnecessary hearing.

CONCLUSIONS OF LAW

27. The purpose of immediate injunctive relief “is ordinarily to preserve the status quo ... [and i]ts issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities.” *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 400 (1983) (quoting *State ex rel. Edmisten v. Fayetteville St. Christian Sch.*, 299 N.C. 351, 357 (1980)).

28. Preliminary injunctions are extraordinary remedies, and North Carolina courts have long held that immediate injunctive relief will be issued only:

(1) if a plaintiff is able to show *likelihood* of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff’s rights during the course of litigation.

A.E.P. Indus., 308 N.C. at 401 (emphasis in original) (citations omitted); *La Mack v. Obeid*, 2014 NCBC LEXIS 38, at *1–3 & *2 n.2 (N.C. Super. Ct. Aug. 29, 2014) (denying a motion for a temporary restraining order; noting the drastic nature of such relief even in instances when the nonmovant has notice).

29. A likelihood of success on the merits means a “reasonable likelihood.” *A.E.P. Indus.*, 308 N.C. at 404.

30. An “irreparable injury” is not necessarily “beyond the possibility of repair or possible compensation in damages, but ... is one to which the complainant should not be required to submit or the other party permitted to inflict, and is of such continuous and frequent recurrence that no reasonable redress can be had in a court of law.” *Id.* at 407 (citation omitted).

31. “If irreparable injury is not shown, the preliminary injunction will be denied.” *Unimin Corp. v. Gallo*, 2014 NCBC LEXIS 44, at *17 (N.C. Super. Ct. Sept. 4, 2014) (citations omitted).

32. Moreover, “[w]here there is a full, complete and adequate remedy at law, the equitable remedy of injunction will not lie.” *Bd. of Light & Water Comm’rs v. Parkwood Sanitary Dist.*, 49 N.C. App. 421, 423 (1980) (citations omitted).

33. For the movant to meet its burden, the evidence in support of a preliminary injunction must consist of more than speculation and conclusory allegations made upon information and belief. *See Vanguard Grp., Inc. v. Snipes*, 2022 NCBC LEXIS 55, at *14 (N.C. Super. Ct. June 6, 2022) (“[C]onclusory assertions made ‘upon information and belief’ are not sufficient.”).

34. Ultimately, however, “[t]he issuance of a preliminary injunction is a decision committed to a trial court’s discretion.” *State ex rel. Stein v. MV Realty PBC, LLC*, 2023 NCBC LEXIS 102, at *37–38 (N.C. Super. Ct. Aug. 30, 2023) (citing *Fayetteville St. Christian Sch.*, 299 N.C. at 357).

35. In this case, the Court has balanced and weighed the potential harm to Plaintiff if an injunction is not issued against the potential harm to Defendants if an injunction is granted. *See, e.g., Wheeler v. Wheeler*, 2018 NCBC LEXIS 156, at *17 (N.C. Super. Ct. Nov. 15, 2018).

36. After careful review and consideration of the complaint, the motion, the parties’ submissions, and the competent evidence of record, the Court concludes that

the applicable factors weigh against issuance of a preliminary injunction and that Plaintiff is not entitled to such relief.

37. With respect to Plaintiff's breach of contract cause of action based on the non-competition and non-solicitation provisions, "[t]he elements of a claim for breach of contract are (1) existence of a valid contract and (2) breach of the terms of that contract." *Parker v. Glosson*, 182 N.C. App. 229, 232 (2007) (citation and internal quotation marks omitted).

38. Where, however, the contract terms at issue are invalid or unenforceable, a breach of those provisions does not provide a viable basis for a breach of contract claim. *See Power Home Solar, LLC v. Sigora Solar, LLC*, 2021 NCBC LEXIS 55, at *26–29 (N.C. Super. Ct. June 18, 2021) (dismissing breach of contract cause of action involving an overly broad and unreasonable non-solicitation clause)

I. Likelihood of Success on the Merits

a. Non-competition Provisions

39. "To be enforceable under North Carolina law, a non-competition [or non-solicitation] agreement must be (1) in writing; (2) part of an employment contract; (3) based on valuable considerations; (4) reasonable as to time and territory; and (5) designed to protect a legitimate business interest." *Medical Staffing Network, Inc., v. Ridgway*, 194 N.C. App. 649, 655 (2009); *Prometheus Grp. Enters., LLC v. Gibson*, 2023 NCBC LEXIS 42, at *12 (N.C. Super. Ct. Mar. 21, 2023) ("[N]on-solicitation agreements must meet the same requirements as covenants not to compete[.]" (citations omitted)).

40. The party seeking enforcement of the covenant has the burden of proving that the agreement is reasonable. *Medical Staffing Network*, 194 N.C. App. at 655.

41. In determining the reasonable geographical scope of a non-competition agreement, courts evaluate six factors:

(1) the area, or scope, of the restriction; (2) the area assigned to the employee; (3) the area where the employee actually worked or was subject to work; (4) the area in which the employer operated; (5) the nature of the business involved; and (6) the nature of the employee's duty and his knowledge of the employer's business operation. Where the alleged primary concern is the employee's knowledge of the customers, the *territory should only be limited to areas in which the employee made contacts during the period of his employment*.

Hartman v. W.H. Odell & Assocs., 117 N.C. App. 307, 312 (1994) (emphasis added) (explaining also that an employer must demonstrate that the “territory embraced by the covenant is no greater than necessary to secure the protection of its business or good will” (citations omitted)).

42. Here, though Plaintiff contends that the restrictions are reasonably tailored, the evidence of record does not reflect how far Plaintiff's business extends geographically, how far the Individual Defendant's assigned work areas extended, where Plaintiff's customers are or were located during the Individual Defendants' employment, or other substantive information about the locations of the customers that the Individual Defendants allegedly solicited from Plaintiff.⁶ See *Comfort Spring*

⁶ In its complaint, Plaintiff identifies two customers that it alleges to have been “poached” by ITBros—LaFevers Dental Team and Orthopaedics East and Medicine Center. (ECF No. 3, ¶¶ 70, 71). Though Plaintiff represents that its agreement with LaFevers is attached “as Exhibit D” to the complaint, no such exhibit is attached or otherwise in the record to provide geographic information concerning LaFevers. (ECF No. 3, ¶ 70). There is similarly no

Corp., v. Burroughs, 217 N.C. 658, 661–62 (1940) (determining that a non-competition provision was overbroad and unenforceable on the basis of geographic scope in “the absence of any allegation or proof as to the territory over which the plaintiff’s business extends”).

43. Similarly, “restrictive covenants are unenforceable where they prohibit the employee from engaging in future work that is distinct from the duties actually performed by the employee.” *Medical Staffing Network*, 194 N.C. App. at 656.

44. The provisions at issue in this case unambiguously provide that the Individual Defendants are prohibited from “directly or indirectly” and in any way “engag[ing] in, own[ing] any interest in . . . manag[ing], operat[ing], control[ing], loan[ing] money to, be[ing] employed or engaged by, render[ing] consulting or advisory services to, serv[ing] as director of, represent[ing], or participat[ing] in or be[ing] connected with any business that is the same or similar” to Plaintiff’s business. (ECF No. 3, Exs. A–C, ¶ 9). All of these limits purportedly apply without respect to the duties the Individual Defendants performed for Plaintiff or that they would be performing for a new entity. *Medical Staffing Network*, 194 N.C. App. at 656.

45. Given the overbreadth of this language, Plaintiff requests that the Court “give effect to the plain and obvious *purpose* of the restriction while avoiding an absurdly overbroad interpretation that would render the noncompete unenforceable.” (ECF No. 18 at 7 (emphasis added)). The problem, of course, is that any “absurdly

substantive evidence of record regarding Orthopaedics East’s geographic location or other substantive information about it.

broad interpretation” of this language necessarily stems from the plain and unambiguous nature of the “absurdly broad” provisions that Plaintiff chose to include in its contracts.

46. While non-competition clauses barring employees from working in identical positions for direct competitors can be (and often are) enforceable, non-competition provisions that bar competition “directly or indirectly” or that prohibit former employees from working in “any business similar” to the employers are often determined to be facially overbroad. *VisionAIR*, 167 N.C. App. at 508–09 (holding a covenant unenforceably broad when it required previous employees not to “own, manage, be employed by or otherwise participate in, directly or indirectly, any business similar to Employer’s”); *Horner Int’l Co. v. McKoy*, 232 N.C. App. 559, 565–66 (2014); *PDF Elec. & Supply Co., v. Jacobsen*, 2020 NCBC LEXIS 103, *18 (N.C. Super. Ct. Sept. 9, 2020) (determining a provision to be unenforceable where it barred “any association with a business providing similar services, including performing even wholly unrelated work” (internal citations and quotation marks omitted)); *Prometheus Grp. Enters.*, 2023 NCBC LEXIS 42, at *13–15; *Akzo Nobel Coatings, Inc. v. Rogers*, 2011 NCBC LEXIS 42, at *32.

47. Though the Individual Defendants were employed by Plaintiff as IT Support Team Members, (ECF No. 3, ¶¶ 12–14), Plaintiff fails to provide factual justification for the breadth of the non-competition provisions, particularly where the complaint does not detail the specific job duties or customer relationships of the

Individual Defendants and the applicable employment agreements do not otherwise contain limiting language.

48. Considering the plain language of the non-competition provisions and the agreements before the Court, the Court determines that Plaintiff has failed to meet its burden to demonstrate that the provisions are reasonable, valid, or otherwise enforceable as a matter of law. *See Power Home Solar*, 2021 NCBC LEXIS 55, at *26–29.

b. Non-solicitation Provisions

49. Though they are more easily enforced than non-competition agreements, as set forth above, “non-solicitation agreements must meet the same requirements as covenants not to compete[.]” *Prometheus Grp. Enters.*, 2023 NCBC LEXIS 42, at *12 (citations omitted).

50. “[A] client-based limitation cannot extend beyond contacts made during the period of the employee’s employment.” *Farr Assocs., Inc., v. Baskin*, 138 N.C. App. 276, 282 (2000); *Manpower of Guilford Cnty., Inc. v. Hedgecock*, 42 N.C. App. 515, 522–23 (1979) (“A restriction as to territory is reasonable only to the extent it protects the legitimate interests of the employer in maintaining his customers.”); *Andy-Oxy Co., Inc. v. Harris*, 268 N.C. App. 323, at *6 (2019) (unpublished).

51. In this case, however, the non-solicitation provisions at issue purport to bar the Individual Defendants from undertaking any act or “effort” to induce *any* clients, customers, former clients, former customers, *prospective* clients, prospective customers, associates, vendors, employees or contacts of [Plaintiff] to take any action or refrain from taking any action which action or inaction *might be*

disadvantageous to [Plaintiff], including *but not limited to*, the solicitation of clients, customers, former clients, former customers, prospective clients, prospective customers, associates, vendors, employees or contacts to cease doing business, association or employment with [Plaintiff].

(ECF No. 3, Exs. A–C, ¶ 10 (emphasis added)).

52. This language plainly is not limited in application to clients who had a relationship with Plaintiff or the Individual Defendants while the Individual Defendants were employed by Plaintiff. (*See generally* ECF No. 3, Exs. A–C, ¶ 10).

53. Further, the provisions lack any parameters or identifiers as to the clients with whom the Individual Defendants would purportedly be prevented from working or associating and lack limitations with respect to the specific “disadvantageous” conduct that might trigger a breach. Rather, under the provisions as currently drafted, *any* act by an Individual Defendant that results in *any* act or omission by a current, former, or future customer of Plaintiff’s that *might in any way* be “disadvantageous” to Plaintiff might conceivably be a breach, regardless of whether that Individual Defendant’s conduct has any relation to his employment with Plaintiff and regardless of whether the potential disadvantage to Plaintiff similarly has any relation to the scope of the Individual Defendant’s employment. (*See generally* ECF No. 3, Exs. A–C, ¶ 10).

54. With no limiting parameters, Plaintiff has failed to demonstrate that such a provision is reasonable or enforceable. *See Andy-Oxy*, 268 N.C. App. 323, at *14–15 (determining that a restrictive covenant was unenforceable where it “fail[ed] to define

‘customer’” and failed to “tie[] that term to [the prior employee] and the contacts he made in his position” while employed).

55. Thus, because Plaintiff has failed to meet its burden with respect to enforceability of the non-competition and non-solicitation provisions, Plaintiff has failed to meet its burden to demonstrate a likelihood of success on a breach of contract claim. *See Power Home Solar*, 2021 NCBC LEXIS 55, at *26–29.

II. Likelihood of Irreparable Harm

56. Plaintiff’s failure to demonstrate a reasonable likelihood of success on the merits of its claims is a sufficient basis on which to deny the motion for a preliminary injunction. However, Plaintiff has also failed to demonstrate a reasonable likelihood of irreparable harm if injunctive relief is not granted.

57. “It is not enough that a plaintiff merely allege irreparable injury. Rather, the applicant is required to set out with particularity facts supporting such statements so the court can decide for itself if irreparable injury will occur.” *Knightdale v. Vaughn*, 95 N.C. App. 649, 651 (1989) (internal citations, modifications, and quotation marks omitted).

58. In analyzing the likelihood of irreparable harm to Plaintiff, the Court notes that the Hampels left their employment with Plaintiff in May 2025, with Parker leaving in early July 2025 and allegedly transitioning to ITBros at some point thereafter. (ECF No. 3, ¶¶ 34–36, 80).

59. In turn, Plaintiff—at some unspecified point—lost contracts with two of its customers, though it does not appear that either of those clients currently does

business with Defendants. (ECF No. 3, ¶¶ 69–76).

60. Around 25 August 2025, Plaintiff’s attorney sent a cease and desist letter to the Hampels, (i) asserting that Plaintiff “believe[d]” that the Hampels were working for Plaintiff’s customers and had induced unspecified customers to end their contracts with Plaintiff, and (ii) demanding that the Hampels confirm that they had ceased doing business with Plaintiff’s clients and provide a list of any customers that the Hampels had solicited. (ECF No. 13, Ex. 3 (letter); ECF No. 18 at 12 (acknowledging authenticity of letter)).

61. Plaintiff otherwise provides no timeline from Parker’s resignation in July 2025 through the filing of its complaint in November 2025 or its motion for a preliminary injunction a month later. Indeed, the only two 2025 dates clearly delineated in the verified complaint are 23 May 2025 and 7 July 2025—the dates when the Individual Defendants left their employment with Plaintiff. (*See* ECF No. 3, ¶¶ 34–36).

62. At a minimum, after Plaintiff’s attorney sent her 25 August 2025 cease and desist letter to Defendants, Plaintiff nonetheless waited several months before filing suit and nearly four months before filing the current motion for a preliminary injunction—with little more non-conclusory evidence in its verified complaint than is otherwise alleged in conclusory fashion in that August letter. (ECF Nos. 3 and 13; *see also* ECF No. 17, Ex. 3).

63. Moreover, though Parker’s purported employment with ITBros is allegedly a breach of his agreement with Plaintiff (and the Hampels’ alleged solicitation of

Parker is purportedly a breach of their agreement with Plaintiff), after Parker left Plaintiff, Plaintiff waited months to sue or otherwise seek relief from the Court. (ECF Nos. 3, 13).

64. These delays, while not conclusive, weigh against Plaintiff's argument of irreparable harm. *Glob. Textile All., Inc. v. TDI Worldwide, LLC*, 2017 NCBC LEXIS 108, at *30 (N.C. Super. Ct. Nov. 21, 2017) ("One significant measure of ... immediate and irreparable harm is the haste with which the moving party seeks injunctive relief." (citations omitted)); see *N. Iredell Neighbors for Rural Life v. Iredell Cnty.*, 196 N.C. App. 68, 79 (2009) (affirming denial of injunction pending appeal where "some two months" passed "without any contention ... of an urgent threat of irreparable harm"); *W&W Partners, Inc. v. Ferrell Land Co.*, 2018 NCBC LEXIS 210, at *12 (N.C. Super. Ct. Mar. 8, 2018) (addressing delay of eight months after learning of underlying dispute before filing suit); *Am. Air Filter Co. v. Price*, 2017 NCBC LEXIS 9, at *13–15 (N.C. Super. Ct. Feb. 3, 2017) (denying preliminary injunction after several delays of three to six months after Plaintiff learned of certain events).

65. Though Plaintiff points to the loss of LaFevers and Orthopaedics East as customers, there are no non-conclusory facts in the record to indicate that Defendants have an ongoing relationship with those customers or to reasonably suggest that Plaintiff is experiencing any ongoing irreparable harm. Rather, Plaintiff's assertions that Defendants "have contacted or attempted to contact several of Plaintiff's clients in an effort to solicit" them are made "[u]pon information and belief" or are otherwise conclusory allegations unsupported by substantive facts that might otherwise be

persuasive to the Court. (See ECF No. 3, ¶¶ 45, 55(c), 55(g), 56(b), 56(d), 100(a)–(d); see also ECF No. 14 at 5 (arguing, without elaboration, that S&R “continues to suffer irreparable harm”); ECF No. 14 at 22 (“[A] preliminary injunction is of utmost importance because of the irreparable harm S&R has already faced, and the irreparable harm it will continue to face”).

66. Considering the limited evidence of record and Plaintiff’s delays in seeking relief, the Court determines that Plaintiff has failed to demonstrate a reasonable likelihood of irreparable harm if injunctive relief is not granted. *Unimin Corp.*, 2014 NCBC LEXIS 44, at *17.

67. Ultimately, the Court determines that Plaintiff has failed at this stage to carry its burden to demonstrate that the provisions at issue are reasonable, valid, and enforceable or that injunctive relief is otherwise appropriate considering, among other things:

a. the provisions’ expansive geographic reach (between sixty-five and seventy-five miles and with no specific ties to the Individual Defendants’ geographic areas served) and subject-matter breadth (i.e., limitations on being “connected with” any business that is even “similar to” Plaintiff’s), see, e.g., *Henley Paper Co. v. McAllister*, 253 N.C. 529, 535 (1960) (voiding restrictions); *CopyPro, Inc. v. Musgrove*, 232 N.C. App. 194, 204 (2014); *Sandhills Home Care, L.L.C. v. Companion Home Care – Unimed, Inc.*, 2016 NCBC LEXIS 61, at *13–14, 18, 23 (N.C. Super. Ct. Aug. 1, 2006) (non-solicitation clauses must be reasonable in duration); *VisionAIR*, 167 N.C. App. at 509 (describing the limited scope of viable non-compete agreements);

b. the expansive scope of the clients and other persons and entities not to be solicited, *see Farr Assocs., Inc.*, 138 N.C. App. at 281; *Andy-Oxy*, 268 N.C. App. 323 at *6; and

c. the agreements' prohibition on competition "directly or indirectly" with Plaintiff, *e.g.*, *Prometheus Grp. Enters.*, 2023 NCBC LEXIS 42, at *13–15; *Akzo Nobel Coatings*, 2011 NCBC LEXIS 42, at *32; *VisionAIR*, 167 N.C. App. at 509.

III. Application of the Blue Pencil Rule

68. In light of the lack of legal and factual support for enforcement of the provisions in their current form, Plaintiff asserts that the severability clauses in the agreements permit the Court to rewrite and "blue pencil" any unenforceable and overly broad provisions, keeping only the enforceable provisions. (ECF No. 18 at 11).

69. "North Carolina has adopted a 'strict blue pencil doctrine' wherein a court cannot rewrite an unenforceable covenant; instead, to avoid scrapping an entire covenant, a Court may enforce the divisible parts of a covenant that are reasonable." *NFH, Inc. v. Troutman*, 2019 NCBC LEXIS 66, at *33 (N.C. Super. Ct. Oct. 29, 2019) (citation omitted).

70. "North Carolina's blue pencil rule cannot be used to salvage [a] far-reaching non-compete. The rule is one of excision, not modification. 'A court at most may choose not to enforce a distinctly separable part of a covenant in order to render the provision reasonable. It may not otherwise revise or rewrite the covenant.'" *Prometheus Grp. Enters.*, 2023 NCBC LEXIS 42, at *18–19 (citations omitted).

71. Thus, "courts will not rewrite a contract if it is too broad but will simply not

enforce it.” *VisionAIR*, 167 N.C. App. at 508 (quoting *Whittaker Gen. Med. Corp. v. Daniel*, 324 N.C. 523, 528 (1989)).

72. “Furthermore, application of the blue pencil rule is within the discretion of the Court.” *Prometheus Grp. Enters.*, 2023 NCBC LEXIS 42, at *19 (citing *McGriff Ins. Servs. v. Hudson*, 2023 NCBC LEXIS 4, at *16–17 (N.C. Super. Ct. Jan. 17, 2023)); see *Hartman*, 117 N.C. App. at 312 (“When the language of a covenant not to compete is overly broad, North Carolina’s ‘blue pencil’ rule severely limits what the court may do to alter the covenant. A court at most *may choose* not to enforce a distinctly separable part of a covenant in order to render the provision reasonable.” (emphasis added) (citation omitted)); see also *Tech. Ptnrs., Inc. v. Hart*, 298 F. App’x 238, 243 (4th Cir. 2008) (“North Carolina’s ‘blue pencil’ rule, however, is narrow and its employment by the courts is discretionary.” (citation omitted)).

73. Here, in the exercise of judicial discretion and considering the substantial overbreadth of the provisions at issue, the Court declines Plaintiff’s invitation to rewrite the parties’ agreements, particularly at the preliminary injunction stage of the case. As set forth above, Plaintiff has failed to meet its burden to demonstrate a reasonable likelihood of irreparable harm, such that the Court would not grant injunctive relief even if the non-competition and non-solicitation provisions were otherwise enforceable.

IV. Plaintiff’s Motion for Hearing

74. Finally, the Court addresses Plaintiff’s motion for a hearing on the preliminary injunction motion. (ECF No. 25).

75. Rule 7.4 of the Business Court Rules provides that “[t]he Court may rule on a motion without a hearing. Special considerations thought by counsel sufficient to warrant a hearing or oral argument may be brought to the Court’s attention in the motion or response.” BCR 7.4.

76. Plaintiff’s motion for a preliminary injunction was fully briefed by the parties, (ECF Nos. 14, 17, and 18), and the Court considered that briefing and all appropriate matters of record.

77. Thus, as the Court informed counsel promptly after briefing closed, the Court determined in its discretion and pursuant to Rule 7.4 that a hearing would be of no benefit and that it was appropriate to resolve the motion on the record before it.

78. In turn, the Court has, in fact, fully resolved the motion for a preliminary injunction as set forth in this Order.

79. Accordingly, Plaintiff’s motion for a hearing on the preliminary injunction motion is now moot and appropriately denied as such.

CONCLUSION

80. Accordingly, in the exercise of judicial discretion, the Court **DENIES** Plaintiff’s motion for a preliminary injunction, (ECF No. 13), and **DENIES AS MOOT** Plaintiff’s motion for a hearing on the motion for a preliminary injunction, (ECF No. 25).

SO ORDERED, this 4th day of March 2026.

/s/ Matthew T. Houston
Matthew T. Houston
Special Superior Court Judge
for Complex Business Case