

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO**

ALGORITHM, INC., ET AL.,

Plaintiffs,

v.

ECi MACOLA/MAX, LLC,

Defendant.

Case No. 2:18-cv-01394

Judge Sargus

Magistrate Judge Jolson

**PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER**

Plaintiffs, referred to herein collectively as the “Resellers,” hereby move this Court, pursuant to Federal Civil Rule 65(a), for a temporary restraining order (“TRO”) to temporarily restrain Defendant ECi Macola/MAX, LLC (“ECI”), for fourteen days, from the following:

1. falsely representing to end users of Macola software that they will be prohibited from receiving Support or Consulting services from the Resellers after December 31, 2018;
2. requiring end users of Macola to purchase Support services from ECI as a condition of purchasing Maintenance; and
3. [REDACTED].

For the reasons set forth in the attached Memorandum in Support, the Resellers respectfully request that this Motion be granted and that the proposed order filed herewith be entered.

Dated: November 7, 2018

Respectfully submitted,

/s/ Shawn J. Organ  
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### MEMORANDUM IN SUPPORT

For twenty-five years the Plaintiffs Resellers have developed a market for Macola, the enterprise resource planning (“ERP”) software recently acquired by Defendant ECI. During this time, the Resellers have prospected for new Macola End Users, provided helpdesk services (“Support”), and helped these End Users successfully implement the software into their unique businesses, with custom enhancements, professional advice, and other consulting services (“Consulting”), to ensure that End Users remain satisfied with Macola.

Having now determined to sell Macola direct to End Users without the assistance of the Resellers, ECI is attempting to destroy its former partners and take by force the markets the Resellers have created and sustained for years. ECI’s central tactic is to destroy competition. It is using a misinformation campaign aimed at End Users, fraudulently telling them that their current license agreement with ECI (the “License Agreement”) prohibits them from doing business with the Resellers in the future. Recognizing that the License Agreement does no such thing, ECI is also coercing End Users to sign new license agreements that would prevent competition. At the same time, ECI is squeezing the Resellers through various contract breaches, both actual and threatened—cutting off Reseller sales opportunities, [REDACTED], and threatening to stop paying commissions owed. The goal of ECI’s cynical strategy is twofold: (1) to gain a captive, competition-free market of End Users to exploit, and (2) to put the Resellers out of business and hire their displaced employees at a discount.

ECI’s anticompetitive tactics have led it to (1) breach its contract with the Resellers (the “Reseller Agreement”); (2) tortiously interfere with the Resellers’ contracts and business relationships with End Users; (3) unfairly compete with the Resellers through the use of false statements; (4) violate state and federal antitrust laws through a tying arrangement and attempted

monopolization; and (5) create a controversy regarding the meaning of several provisions of the Reseller Agreement.

As a direct result of ECI's actions, the Resellers have already incurred economic damages. Without immediate relief, they also face irreparable harm in the form of lost customer goodwill and the threat of complete financial ruin. Accordingly, the Resellers seek a TRO enjoining ECI from: (a) falsely representing to end users of Macola software that they will be prohibited from receiving Support or Consulting services from the Resellers after December 31, 2018; (b) requiring end users of Macola to purchase Support services from ECI as a condition of purchasing Maintenance; and (c) [REDACTED].

### **BACKGROUND**

The Resellers have for decades been the primary distributors and service providers for Macola ERP software. (Verified Compl. at ¶¶ 1-6). ERP software such as Macola provides businesses with a single computer system that integrates multiple business processes and databases, handling functions such as financial accounting, human resources, customer-relationship management, and manufacturing planning. (*Id.* at ¶ 28).

Because Macola controls so many key business functions, implementing it can be a monumental task. Implementation frequently involves months of planning, training, testing, and tailoring to ensure that data transfers to the new system properly, users know how to operate the system, third-party software integrates seamlessly, and business processes generally continue with minimal interruption. (*Id.* at ¶¶ 30-31). Even companies with large IT departments often turn to the Resellers to assist with implementations of Macola. (*Id.*). Similarly, End Users will often turn to the Resellers when upgrading Macola or simply looking for ways to use an existing Macola system more efficiently and effectively. (*Id.* at ¶ 32). (Collectively, these services are referred to herein as "Consulting.")

Making Macola work for End Users' unique business needs frequently demands intensive modification and enhancement. (*See id.*). For example, End Users may need custom forms or reports that Macola does not provide, custom code to integrate existing third-party software, or custom applications to fill performance gaps in Macola. (*Id.* at ¶ 5). The Resellers routinely create such enhancements for End Users, along with other custom programs, applications, forms, reports, code, workarounds, documentation, and procedures (the "Reseller Technology"). (*Id.*). In many cases, the Reseller Technology is necessary to the successful performance of Macola, and it often remains inextricably linked to Macola on End Users' systems. (*Id.*).

Consulting is the Resellers' core business, but it is not their only business. The Resellers also prospect for and makes sales to new Macola users, and they also frequently provide End Users online or telephone helpdesk service ("Support"). (*Id.* at ¶ 33). During their years of providing service to End Users, the Resellers have seen many versions of Macola come and go, and they have become Macola experts with deep knowledge of how it works—and, more important to End Users, how it can be made to work—for businesses. (*Id.* at ¶¶ 3-4).

The Resellers have also seen owners of Macola come and go. While prior owners recognized an opportunity for partnership with the Resellers, ECI sees only competition to be stamped out. (*Id.* at ¶¶ 2, 6, 7). Soon after taking over Macola in 2017, ECI began looking for opportunities to take Support and Consulting business—and the accompanying revenue—away from the Resellers. (*Id.* at ¶ 38). Its strong-arm tactics, such as conditioning software discounts on receiving Support from ECI rather than from a Reseller, have backfired and alienated potential end users. (*Id.*). Nevertheless, over time ECI's anticompetitive misconduct has accelerated. (*Id.* at ¶ 39). It has recently denied guaranteed benefits to the Resellers, such as the right to participate in discounted-pricing programs and to be listed as a distributor on ECI's

website. (*Id.* at ¶¶ 40-44). ECI has also [REDACTED]. (*See id.* at ¶ 47).

On October 1, 2018, ECI announced its intention to terminate the Reseller Agreement and end its relationship with the Resellers. (*Id.* at ¶ 48). It sent a letter to End Users (the “End User Letter”) and another to the Resellers (the “Termination Letter”). The End User Letter informs End Users that as of December 31, 2018, the Reseller serving each End User “will no longer be a participant in ECI’s Partner Program.” (Verified Compl., Ex. G at 1). “As a result of this change,” ECI tells End Users, “[the End User’s Reseller] will no longer be able to place orders on your behalf for Macola software products, provide maintenance & support services for the Macola software products, or perform consulting services for Macola software products that are directly licensed to you under your STANDARD LICENSE AGREEMENT with ECI.” (*Id.*)

Apparently by way of explanation, ECI then offers End Users this “reminder”: “licenses for Macola software products are granted specifically to you, the licensee, and do not extend to any third party service providers or any other parties who are not expressly authorized by ECI to access the software or perform services on your behalf.” (*Id.*) In a subsequent “FAQ” section of the letter, ECI explains further:

The section entitled LICENSE in your STANDARD LICENSE AGREEMENT with ECI expressly limits rights and access to the Macola software to you (“Customer”), as licensee, and also limits installation to your owned or controlled operating environment . . . and prohibits any third party from accessing, installing, implementing, customizing, or otherwise touching or using your Macola software installation . . . this limitation applies even if a third party is doing so solely on your behalf.

(*Id.* at 3). ECI quotes no language from the Standard License Agreement (the “License Agreement”) because *none* provides the slightest support for its claims regarding a third party’s ability to “touch[] or us[e]” an End User’s Macola system for Support or Consulting purposes.

And ECI *omits* the explicitly contradictory language in the License Agreement providing that End Users may permit access to Macola “to employees *and contractors* of Customer to whom such disclosure is necessary to the use for which rights are granted hereunder [i.e., to help run the End User’s business].” (Verified Compl. at ¶ 56 (emphasis added)). Since announcing the termination, ECI has removed precisely this language—“and contractors”—from the new license agreements that it is attempting to foist on End Users. (*Id.* at ¶ 57).

In the Termination Letter, which is addressed to the Resellers, ECI took similar liberties with the provisions of the Reseller Agreement. Without citation, ECI proclaimed that

any agreements between [Reseller] and any customers regarding the provision of support services by [Reseller] should be discontinued as of the effective date of termination . . . as [Reseller] will no longer be authorized to support ECI Licensed Products or invoice end users for Enterprise Support services. [Reseller] will also cease to be an authorized professional services provider upon termination . . . and will not be permitted to access or perform services on any ECI Licensed Products.

(*Id.*, Ex. F at 2). In addition—and again without citation to any provision of the Reseller Agreement—ECI says it plans to cut off payments of commissions owed: “[Reseller] will cease being eligible for any margin back payments for maintenance and support contracts where ECI billed an end user for Enterprise Support renewals.” (*Id.*). Neither of ECI’s positions has support in the Reseller Agreement. (Verified Compl. at ¶ 51).

Since October 1, ECI has continued to knowingly misinform End Users that their current License Agreement prohibits them from doing business with the Resellers in the future. (*Id.* at ¶ 57). At the same time, ECI is also pressuring End Users to sign new license agreements with more-restrictive terms that really might prohibit the Resellers from competing for Support and Consulting business. (*Id.*).

Given the uncertainty ECI has created, many End Users have already put on hold plans to do business with the Resellers. (*E.g., id.* at ¶¶ 76, 82). If ECI is permitted to carry out its unlawful plan to deny the Resellers commissions owed and prevent the Resellers from working with End Users, the Resellers will suffer irreparable harm.

### **STANDARD**

When deciding whether to issue a TRO, courts consider the same factors that apply in the context of a preliminary injunction:

- (1) Whether the party seeking the injunction has shown a substantial likelihood of success on the merits;
- (2) Whether the party seeking the injunction will suffer irreparable harm absent the injunction;
- (3) Whether an injunction will cause others to suffer substantial harm; and
- (4) Whether the public interest would be served by the preliminary injunction.

*Doe v. Barron*, 92 F. Supp. 2d 694, 695 (S.D. Ohio 1999). “These factors are not prerequisites that must be met, but are interrelated considerations that must be balanced together.” *Stein v. Thomas*, 672 F. App’x 565, 569 (6th Cir. 2016) (quoting *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991)).

### **ARGUMENT**

#### **I. The Resellers Are Substantially Likely To Succeed On The Merits Of Their Claims.**

Although a plaintiff seeking a temporary restraining order must show more than a “mere possibility” of succeeding on the merits, “it is ordinarily sufficient if the plaintiff has raised questions going to the merits so serious, substantial, difficult, and doubtful as to make them a fair ground for litigation and thus for more deliberate investigation.” *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 543 (6th Cir. 2007) (quoting *Six Clinics*

*Holding Corp., II v. Cafcomp Sys.*, 119 F.3d 393, 402 (6th Cir. 1997)); *see also id.* (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981)) (“A party ‘is not required to prove his case in full at a preliminary injunction hearing.’”).

The Resellers have more than met this substantial-likelihood-of-success requirement on the claims for which they seek temporary relief.

**A. ECI has tortiously interfered with the Resellers’ contractual and ongoing business relations.**

ECI has committed tortious interference by knowingly making false representations to End Users that the License Agreement between ECI and End Users prohibits End Users from contracting with the Resellers for Support or Consulting, with the express intention of curtailing contracts and preventing future business relations between End Users and Resellers.

Under Ohio law, the elements of tortious interference with contract are “(1) the existence of a contract, (2) the wrongdoer’s knowledge of the contract, (3) the wrongdoer’s intentional procurement of the contract’s breach, (4) the lack of justification, and (5) resulting damages.” *Horter*, 257 F. Supp. 3d at 923 (quoting *Fred Siegel Co. v. Arter & Hadden*, 707 N.E.2d 853, 858 (Ohio 1999)). The “distinct, but closely related” claim of tortious interference with business relations has the following elements: “(1) a business relationship; (2) the wrongdoer’s knowledge thereof; (3) an intentional interference causing a breach or termination of the relationship; and (4) damages resulting therefrom.” *Id.* at 923-24 (quoting *Ginn v. Stonecreek Dental Care*, 30 N.E.3d 1034, 1039 (Ohio Ct. App. 2015)).

None of these elements can be in serious question. As to the first two, ECI documents, and until recently has encouraged, the Resellers’ contractual and ongoing business relations with the End Users. (*See Verified Compl.* at ¶ 37). As to the third, ECI has expressly stated its intention to cut off all relations between Resellers and End Users. (*Id.*, Ex. F at 2 (“[A]ny

agreements between [Reseller] and any customers regarding the provision of support services by [Reseller] should be discontinued . . . .”). ECI’s interference is improper and unjustified because it is being carried out through fraud and threats of frivolous litigation should End Users continue to do business with the Resellers. (See Verified Compl., Ex. G at 3). Finally, End Users have already put on hold planned business transactions with the Resellers for fear of ECI’s threats. (E.g., *id.* at ¶¶ 76, 82).

Nor can ECI justify its conduct with a defense that it has interfered in Reseller–End User relationships in a spirit of free and fair competition. “Whether the conduct of the defendant falls within the fair competition privilege is a defense to be established by the defendant, not an element of plaintiff’s claim.” *Power Mktg. Direct, Inc. v. Ball*, 2004 U.S. Dist. Lexis 29068, at \*24 (S.D. Ohio Apr. 6, 2004) (applying Ohio law); see also *Kehoe Component Sales Inc. v. Best Lighting Prods.*, 796 F.3d 576, 594 (6th Cir. 2015) (explaining that under Ohio law, “where the defendant establishes that his conduct amounted merely to ‘fair competition’ within the meaning of Restatement (Second) of Torts § 768, a tortious interference claim is barred as a matter of law”). Competition is not justified when a competitor employs “wrongful means,” see *Kehoe*, 796 F.3d at 594, which include such “predatory” conduct as fraud and wrongful threats of litigation, Restatement (Second) of Torts § 768, comment on Clause (b). By fraudulently misrepresenting to End Users the terms of the License Agreement and wrongfully threatening frivolous litigation on the basis of such misrepresentations, ECI has forfeited any fair-competition justification.

**B. ECI has engaged in unfair competition.**

The common law tort of unfair competition “extend[s] to the circulation of false rumors, or publication of statements, all designed to harm the business of another.” *Ancestry.com Operations, Inc. v. DNA Diagnostics Ctr., Inc.*, 2016 U.S. Dist. Lexis 97297, at \*12 (S.D. Ohio

July 26, 2016) (quoting *Molten Metal Equip. v. Metallurgical Sys., Co. L.P.*, 2000 Ohio App. Lexis 2538, at \*15 (Ohio Ct. App. June 8, 2000)). ECI made knowingly false statements to End Users—that they may no longer do business with the Resellers—with the express intention of harming the Resellers’ business. (Verified Compl. at ¶¶ 80-81). This constitutes unfair competition under Ohio law. See *Wicker Grp. v. Standard Register Co.*, 1994 U.S. Dist. Lexis 20303, at \*11-12 (E.D. Va. Dec. 2, 1994) (applying Ohio law and denying motion to dismiss an unfair-competition claim based on false statements).

**C. ECI has violated state and federal antitrust law.**

ECI’s conduct represents two distinct violations of state and federal antitrust law. Under Section 1 of the Sherman Antitrust Act, ECI has engaged in an unlawful tying arrangement. And under Section 2 of the Sherman Antitrust Act, ECI has unlawfully attempted to monopolize the markets for Support and Consulting. Both of these federal violations are also violations of Chapter 1331 of the Ohio Revised Code, which Ohio courts interpret “in accordance with federal judicial construction of the federal antitrust laws.” *Johnson v. Microsoft Corp.*, 106 Ohio St. 3d 278, 281 (2005).

1. *ECI is unlawfully tying Maintenance to Support.*

“A tying arrangement is ‘an agreement by a party to sell one product but only on the condition that the buyer also purchases a different (or tied) product, or at least agrees that [the buyer] will not purchase that product from any other supplier.’” *Eastman Kodak Co. v. Image Tech. Servs.*, 504 U.S. 451, 461-62 (1992) (quoting *Northern Pacific R. Co. v. United States*, 356 U.S. 1, 5-6 (1958)). “The typical tying case involve[s] a seller’s attempt to exploit its economic power over one product or in one market to force a less desirable, tied product on a buyer.” *Cates v. Crystal Clear Techs., LLC*, 874 F.3d 530, 534 (6th Cir. 2017). “The tie falls foul of antitrust law if ‘the seller has “appreciable economic power” in the tying product market and . . .

the arrangement affects a substantial volume of commerce in the tied market.” *Collins Inkjet Corp. v. Eastman Kodak Co.*, 781 F.3d 264, 271 (6th Cir. 2015) (quoting *Eastman Kodak*, 504 U.S. at 462).

ECI is tying Maintenance (the tying product) to Support (the tied product). As noted, Maintenance consists principally of updates, patches, and bug or error corrections for Macola. (Verified Compl. ¶ 34). It is available to End Users throughout the United States solely from ECI—thus, ECI has complete economic power in the tying market. (*Id.* at ¶ 61). Historically, End Users have had the option to purchase Maintenance on its own, separate from Support. (*Id.* at ¶ 63). But ECI has now changed this policy. If an End User wants to continue to receive Maintenance, it must purchase Support as well—regardless of whether the End User has any use for Support. (*Id.*). This tying arrangement results in a doubling of the price of Maintenance, and therefore a doubling of ECI’s revenues. (*Id.* at ¶ 65). Because a large proportion of End Users purchase Maintenance, a substantial volume of commerce will be affected in the Support market. (*Id.* at ¶ 62). The Resellers will be locked out of competing in the Support market as to all End Users who wish to purchase Maintenance. (*Id.* at ¶ 66).

Competition in the primary market for ERP programs such as Macola does not lessen the importance of ECI’s market power in the Maintenance aftermarket. “The classic indicators of market power in an aftermarket—high information costs and switching costs—are present here.” *Collins Inkjet*, 781 F.3d at 277. Information costs represent the costs of obtaining information about aftermarket pricing when one is deciding whether to purchase a product in the primary market—here, the decision to license the Macola ERP program in the first place. *See id.* Where information costs are “low,” consumers can easily take aftermarket costs into account when making a buying decision in the primary market, and competition in the primary market prevents

the abuse of aftermarket monopoly power. *See Eastman Kodak*, 504 U.S. at 473-74. Switching costs represent “the difficulty of switching to a different primary market supplier.” *Collins Inkjet*, 781 F.3d at 277.

Here, information costs are insurmountably high because ECI has ***changed its policy*** on aftermarket pricing for existing End Users. (Verified Compl. at ¶ 94). It was therefore impossible for End Users to take into account the current aftermarket costs when they made their decision in the primary market to adopt Macola. (*Id.*). Switching costs are also very high: many End Users are locked in by contractual terms and by the high cost of converting to a new business system, which involves extensive planning, training, and related business disruption. (*Id.* at ¶ 95). Thus, the relevant market for antitrust analysis here is the Maintenance aftermarket, not the ERP primary market. (*Id.* at ¶ 90).

The Resellers generate a significant portion of their revenues from Support, and the tying arrangement will therefore cause significant hardship. (*Id.* at ¶ 99). The Resellers are also concerned that ECI may expand its tying arrangement by requiring End Users, in exchange for receiving Maintenance updates, to sign the new, restrictive license agreements prohibiting third-party access to Macola. Such an action would foreclose nearly all competition in the Support and Consulting markets and would constitute an additional antitrust violation.

2. *ECI is attempting to monopolize the markets for Support and Consulting.*

Attempted monopolization requires a plaintiff to prove “(1) that the defendant has engaged in predatory or anticompetitive conduct with (2) a specific intent to monopolize and (3) a dangerous probability of achieving monopoly power.” *Spectrum Sports v. McQuillan*, 506 U.S. 447, 456 (1993).

Here, ECI is attempting to monopolize the markets for Support and Consulting. It is doing so both through a campaign of deliberate misinformation aimed at End Users and Resellers

indicating that business between End Users and Resellers is prohibited and also by pressuring End Users into new license agreements that really do prohibit competition in the Support and Consulting markets. (Verified Compl. at ¶ 105). And ECI has made no secret of its monopolistic intention, explaining to End Users that Resellers and other third parties “will no longer be able to offer support or consulting services for Macola products.” (*Id.*, Ex. G at 3). ECI’s leverage over End Users, who face high switching costs that prevent them from changing to a new ERP provider, means that there is a dangerous probability that ECI will be able to achieve the monopoly power it seeks in the Support and Consulting markets. (*Id.* at ¶ 106). Even those End Users who are not compelled to accept the new restrictive license agreements may nevertheless fear ECI’s bad-faith threats of litigation under the existing License Agreement. (*See id.* at ¶¶ 105-06).

**D. The Resellers are entitled to declaratory relief.**

“The essential elements for declaratory relief are (1) a real controversy exists between the parties, (2) the controversy is justiciable in character, and (3) speedy relief is necessary to preserve the rights of the parties.” *Basista Holdings v. Ellsworth Twp.*, 2016 U.S. Dist. Lexis 117400, at \*15 (N.D. Ohio Aug. 31, 2016) (quoting *Aust v. Ohio State Dental Bd.*, 737 N.E.2d 605, 608 (Ohio Ct. App. 2000)). One justiciable controversy at issue here is relevant to the need for immediate injunctive relief: Are the Resellers prohibited from continuing to provide Support and Consulting to End Users? The unambiguous terms of the Reseller Agreement resolve this question in the negative.

Nothing in the Reseller Agreement prohibits the Resellers from providing Support and Consulting to End Users after the Reseller Agreement terminates. (Verified Compl. at ¶ 112). To be sure, the Reseller Agreement imposes certain post-termination prohibitions on the Resellers, but these prohibitions do not address the provision of aftermarket services such as

Support and Consulting. In sections 4.2(a) and (b), the Reseller Agreement states that [REDACTED]  
[REDACTED]  
[REDACTED].” (Ex. A–D, § 4.2(a)-(b)).

Thus, while the Reseller Agreement remains effective, the Resellers [REDACTED]  
[REDACTED].

Both of these rights are [REDACTED]  
[REDACTED]  
[REDACTED].” Notwithstanding this [REDACTED]  
[REDACTED]  
[REDACTED].”

(*Id.* § 11.4(b)).

Accordingly, termination prohibits the Resellers from [REDACTED]  
[REDACTED]

[REDACTED]. But none of this affects Resellers’ ability to provide Support and Consulting—that is, use their acquired knowledge of Macola to answer End Users’ questions about the software and help End Users employ Macola more effectively and efficiently in their own businesses.

**E. ECI has breached the Reseller Agreement.**

“To succeed on a breach of contract claim under Ohio law,” a plaintiff “must establish (1) the existence of a binding contract or agreement, (2) that it performed its contractual obligations, (3) that the other party failed to fulfill its contractual obligations without legal excuse, and (4) that it suffered damages as a result of the breach.” *Horter Inv. Mgmt., LLC v. Jeffrey Cutter*, 257 F. Supp. 3d 892, 901 (S.D. Ohio 2017).

The Resellers seek injunctive relief only as to ECI's breach of the [REDACTED] [REDACTED] of the Reseller Agreement. (Exs. C & D, § 12.13). ECI's breach could hardly be clearer—it has [REDACTED] [REDACTED]. (Verified Compl. at ¶ 47). This violates the unambiguous provision that [REDACTED] [REDACTED] [REDACTED].” (Exs. C & D, § 12.13).

## **II. If Injunctive Relief Is Not Granted, The Resellers Face Irreparable Harm.**

“It is appropriate to use a preliminary injunction to avoid harms to goodwill and competitive position.” *Collins Inkjet*, 781 F.3d at 279. Loss of client good will is irreparable harm because “the damages flowing from such losses are difficult to calculate.” *Hill Distrib. Co. v. St. Killian Importing Co.*, 2011 U.S. Dist. Lexis 100545, at \*12-13 (S.D. Ohio Sep. 7, 2011) (quoting *Basiccomputer Corp. v. Scott*, 973 F.2d 507, 512 (6th Cir. 1992)). In addition, “[t]he impending loss or financial ruin of [a party’s] business constitutes irreparable injury.” *Performance Unlimited v. Questar Publishers*, 52 F.3d 1373, 1382 (6th Cir. 1995).

The Resellers face both forms of irreparable harm. With respect to loss of goodwill, it is impossible to calculate how many End Users will choose not to do business with the Resellers as a result of ECI's fraudulent misrepresentations and threats, (Verified Compl. at ¶ 82), and similarly, “it is impossible to know what additional business those clients and their goodwill might generate,” *Hall v. Edgewood Partners Ins. Ctr., Inc.*, 878 F.3d 524, 530 (6th Cir. 2017) (holding that loss of goodwill constituted irreparable harm). Indeed, regardless of the outcome of this litigation, some End Users will no doubt avoid the Resellers for fear of becoming caught up in a potential dispute between the Resellers and ECI. The economic losses attributable to such decisions simply cannot be known.

The Resellers also face financial ruin. (Verified Compl. at ¶ 82). End Users of Macola represent a critical proportion of the Resellers' customers. (*Id.*). The dual threat of lost business and the cutoff of Maintenance commissions puts the Resellers at significant risk of financial ruin. (*See id.*).

### **III. Injunctive Relief Will Not Cause Others Substantial Harm.**

As to injunctive relief for the Resellers' antitrust claims, no one will be harmed—ECI will not be harmed by having to compete on a level playing field with the Resellers, *see Collins Inkjet*, 781 F.3d at 280, and End Users will benefit from the competition.

Similarly, neither ECI nor any third party will be worse off by an order prohibiting ECI from continuing to spread misinformation regarding the ability of End Users to purchase Support and Consulting from the Resellers. ECI is not prejudiced by facing ordinary economic competition, and End Users—the third parties most affected by a TRO—would strongly *benefit* from having more options for Support and Consulting.

Finally, prohibiting ECI from [REDACTED] in contravention of the Reseller Agreement would not cause substantial harm. ECI is boasting to End Users that it presently has the capacity to be their sole source of Support and Consulting. (*See id.*, Ex. G at 2). If this is true, then [REDACTED]. And if it is false, ECI can still [REDACTED].

### **IV. The Public Interest Is Served By Increased Economic Competition.**

Economic competition is in the public interest. *See, e.g., Collins Inkjet Corp.*, 781 F.3d at 280; *Cleveland v. Cleveland Elec. Illuminating Co.*, 684 N.E.2d 343, 351 (Ohio Ct. App. 1996); *see also, e.g., Gordon v. N.Y. Stock Exch.*, 422 U.S. 659, 692 (1975) (“The antitrust laws are designed to safeguard a strong public interest in free and open competition . . . .”); *Tas-T-Nut Co. v. Variety Nut & Date Co.*, 245 F.2d 3, 5 (6th Cir. 1957) (“The public interest in competition

ordinarily outweighs the interest in securing to a person the rewards of his ingenuity in making his product attractive to purchasers.”). ECI’s past and threatened future actions are grossly anticompetitive. Not only does ECI seek to extinguish competition for aftermarket services to its now-captive Macola End Users, but it also seeks to put the Resellers out of business on spurious grounds and rehire their displaced employees at a discount. (*See Verified Compl.* at ¶ 68). Ordering ECI to stop communicating falsehoods to the End Users about their ability to do business with the Resellers will increase economic competition. Without ECI’s threats and lies, End Users will be free to purchase Support and Consulting from their preferred provider—the Resellers or ECI. (*See id.* at ¶ 65).

Moreover, “valid contracts are the lynchpin of all commercial activity in society, and therefore, they must be honored.” *Hoover Transp. Servs. v. Frye*, 2002 U.S. Dist. Lexis 22609, at \*30 (S.D. Ohio July 16, 2002). An injunction requiring that ECI honor its contractual obligations would serve this public interest.

### **CONCLUSION**

Because the Resellers face irreparable harm if ECI’s misconduct continues, the Resellers ask the Court to grant this Motion and enter the proposed order that will be sent via email to the Chambers of Judge Sargus and Magistrate Judge Jolson.

Dated: November 7, 2018

Respectfully submitted,

/s/ Shawn J. Organ

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 2018, a copy of the foregoing and all other filings in this action have been served on the adverse party via U.S. Mail at the following address:

ECi Macola/MAX, LLC  
c/o Robin W. Foster, Esq.  
5455 Rings Road, Suite 100  
Dublin, Ohio 43017.

In addition, on the same date, a copy of the foregoing and all other filings in this action have been served on the adverse party via email to Robin W. Foster, Esq., at rfooster@ecisolutions.com.

/s/ Shawn J. Organ  
*One of the attorneys for Plaintiffs Resellers*