

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

<b>VERSATA DEVELOPMENT GROUP, INC.,</b>	§	
<b>F/K/A TRILOGY DEVELOPMENT GROUP,</b>	§	
<b>INC., VERSATA SOFTWARE, INC., F/K/A</b>	§	
<b>TRILOGY DEVELOPMENT GROUP, INC.,</b>	§	
<b>AND TRILOGY, INC.</b>	§	
	§	<b>CASE NO. 4:15-CV-00316</b>
	§	
<b>v.</b>	§	<b>JURY TRIAL DEMANDED</b>
	§	
<b>FORD MOTOR COMPANY.</b>	§	
	§	

**PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs Versata Development Group, Inc., Versata Software, Inc., and Trilogy, Inc. (collectively “Versata”) respectfully file this Motion for Preliminary Injunction to protect Versata’s trade secrets and prevent further misappropriation of Versata’s proprietary software.

**I. INTRODUCTION**

Texas courts have a statutory mandate to enjoin “[a]ctual or threatened misappropriation” of trade secrets “in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.” TEX. CIV. PRAC. & REM. CODE ANN. § 134A.003. Texas courts have recognized that proprietary software – and the confidential knowledge that comes with it – are trade secrets. *See, e.g., DSC Commc’ns Corp. v. DGI Tech.*, 898 F.Supp. 1183, 1195 (N.D. Tex. 1995).

For over a decade, Ford used Versata’s Automotive Configuration Management (ACM) software as its core technology for vehicle design and product development, saving hundreds of millions of dollars in manufacturing costs. Ford integrated ACM with dozens of other Ford software systems and allowed hundreds of Ford employees worldwide to use the software. But,

in its license agreement with Versata, Ford agreed that ACM was always Versata's property. Ford also promised not to use ACM for improper purposes, not to reverse engineer ACM, and to submit to on-premises verification and inspection by Versata to ensure compliance with these terms.

Unbeknownst to Versata, Ford secretly used its knowledge of ACM to develop software internally to replace ACM and save money by not having to pay Versata. Not coincidentally, the Ford executive who oversaw the development of Ford's ACM replacement had also managed Ford's ACM team for over ten years, and had unrestricted, ongoing access to ACM while he was working on both projects. Ford also selected multiple other employees who had experience with Versata's proprietary technologies to work on this project. Yet Ford tried to convince Versata that it erected a "Chinese wall" to protect Versata's intellectual property – as if these people who had direct, firsthand experience with Versata's software could "separate" the knowledge they gained from Versata from their work on Ford's replacement software.

The Master Subscription and Services Agreement (MSSA) gives Versata the right to conduct on-premises verification regarding Ford's use of Versata's confidential information. MSSA, § 3.5. This provision applies with equal force if Ford – as it did here – uses this information in a different software system than ACM. Despite this, when Versata demanded to conduct on-site verification concerning its use of Versata's technology in this replacement software (as was Versata's right under the MSSA), Ford denied Versata access. Ford also refused to disclose the names of the people who worked on the replacement project, even though Versata has identified at least six people who had access to Versata's technology. At most, Ford has been willing to let Versata review a self-selected set of "decommissioning" records related to

ACM. But these records are red herrings because the real issue is how Ford stole Versata's technologies and used them in Ford's own software.

Ford's actions blatantly violate the MSSA and Versata's trade secrets, threatening irreparable harm to Versata by putting ACM at risk of further uncontrolled copying, misappropriation, and dissemination. For this reason, Versata respectfully requests a preliminary injunction that enjoins Ford from violating its contractual duties: (1) not to interfere with Versata's on-premises verification process to determine how Ford has used Versata's technology in replacement software; (2) to stop using all Versata software and confidential information in the development of any new software; and (3) to separate any Ford personnel who had access to Versata software from the development process.

## II. FACTUAL BACKGROUND

### A. Ford has saved hundreds of millions of dollars by using Versata's ACM software for more than 15 years.

Each Ford vehicle is a complex system that involves thousands of potential combinations of parts, features, and options.<sup>1</sup> These combinations must be compatible and result in a buildable, integrated design in which all the parts work together.<sup>2</sup> ACM is configuration software that Ford has used to automate the process of designing and developing vehicles with compatible feature combinations since the early 2000s.<sup>3</sup>

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<sup>1</sup> Declaration of Seth Krauss (Ex. 2), ¶ 4.

<sup>2</sup> Declaration of Seth Krauss (Ex. 2), ¶ 4. For example, in designing a pickup truck, Ford may be able to choose from among several different engines and transmissions. But each engine may be only compatible with certain transmissions and other internal parts. By contrast, the choice of engine may have no effect on the wheel design, paint color, or upholstery (although for business or aesthetic reasons, Ford may only offer certain paint and upholstery combinations together). With thousands of parts, features, and options – and billions of possible combinations – Ford requires powerful software in order to ensure that each vehicle configuration is valid and results in a buildable vehicle. *Id.*, ¶ 5.

<sup>3</sup> Declaration of Seth Krauss (Ex. 2), ¶ 4.

In the late 1990s, Ford was losing money due to its inadequate configuration software.<sup>4</sup> Ford's software depended heavily on manual inputs and calculations, costing Ford hundreds of millions of dollars because of errors and delays.<sup>5</sup> These problems caused increased Ford's manufacturing costs and sometimes led to failures and recalls that hurt Ford's pocketbook and reputation.<sup>6</sup>

Because of these problems, Ford wanted to automate the entire configuration process.<sup>7</sup> But Ford was unable to develop workable configuration software internally.<sup>8</sup> For this reason, Ford turned to Versata (which was then named Trilogy).<sup>9</sup> Versata implemented the first configuration software at Ford in 1998,<sup>10</sup> and, in December 2004, the parties signed a new license agreement – the Master Subscription and Services Agreement (MSSA).<sup>11</sup>

Versata's ACM software was successful at Ford because it is more powerful, more accurate, and faster than other configuration software available in the market.<sup>12</sup> The ACM software shortened the time Ford required to bring vehicles to market, prevented recalls and failures caused by pre-ACM configuration errors, and enabled far greater precision and accuracy.<sup>13</sup> Because of these advantages, Ford deployed ACM throughout the company.<sup>14</sup> Ford stored ACM on internal Ford servers, integrated ACM with myriad of other Ford software

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<sup>4</sup> Declaration of Seth Krauss (Ex. 2), ¶ 6.

<sup>5</sup> Declaration of Seth Krauss (Ex. 2), ¶ 6.

<sup>6</sup> Declaration of Seth Krauss (Ex. 2), ¶ 6.

<sup>7</sup> Declaration of Seth Krauss (Ex. 2), ¶ 7.

<sup>8</sup> Declaration of Seth Krauss (Ex. 2), ¶ 7.

<sup>9</sup> Declaration of Seth Krauss (Ex. 2), ¶ 7.

<sup>10</sup> Declaration of Seth Krauss (Ex. 2), ¶ 8.

<sup>11</sup> Declaration of Seth Krauss (Ex. 2), ¶ 8; Declaration of Michael Richards (Ex. 1), Ex. B.

<sup>12</sup> Declaration of Seth Krauss (Ex. 2), ¶ 9.

<sup>13</sup> Declaration of Seth Krauss (Ex. 2), ¶ 9.

<sup>14</sup> Declaration of Seth Krauss (Ex. 2), ¶ 10.

programs in different departments, and allowed hundreds of Ford employees to use the software.<sup>15</sup>

ACM was so integral to Ford's vehicle design and product development processes that Ford established an internal ACM implementation group consisting of Ford employees who worked on ACM-related projects.<sup>16</sup> Headed by Ford technology executive Michael Sullivan, this group helped other Ford business units understand, use, and implement ACM.<sup>17</sup> Versata assisted Ford by providing detailed user guides, manuals, and training to Ford employees.<sup>18</sup> Trusting that Ford would honor the MSSA, Versata gave Ford unrestricted access to ACM and its trade secrets, including significant portions of source code.<sup>19</sup>

**B. Versata protected its proprietary software and trade secrets through the MSSA.**

Versata invested tens of millions of dollars, hundreds of thousands of person-hours, and more than a decade of effort to develop the technology used in ACM.<sup>20</sup> The software is irreplaceable and worth hundreds of millions of dollars because of its capabilities.<sup>21</sup> To protect its investment, Versata required Ford to agree in the MSSA<sup>22</sup> to ironclad protections for its software

- Versata, not Ford, owns ACM. Ford admitted that Versata has exclusive ownership of ACM and that "Ford has no ownership interest in the Software." MSSA, § 6.1; § 7.4.
- Ford had to stop using and delete or return ACM and any Versata confidential information after its license terminated. MSSA, § 11.4.

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<sup>15</sup> Declaration of Seth Krauss (Ex. 2), ¶ 10.

<sup>16</sup> Declaration of Seth Krauss (Ex. 2), ¶ 11.

<sup>17</sup> Declaration of Seth Krauss (Ex. 2), ¶ 11.

<sup>18</sup> Declaration of Seth Krauss (Ex. 2), ¶ 11.

<sup>19</sup> Declaration of Seth Krauss (Ex. 2), ¶ 11.

<sup>20</sup> Declaration of Seth Krauss (Ex. 2), ¶ 12.

<sup>21</sup> Declaration of Seth Krauss (Ex. 2), ¶ 12.

<sup>22</sup> Declaration of Michael Richards (Ex. 1), Ex. B.

- Ford cannot use its knowledge of ACM to develop replacement software. The MSSA restricts Ford’s use of ACM “solely to perform those functions described in the Documentation” and “solely to support Ford’s own internal operations, in the operating software environment specified on the applicable Subscription Schedule.” MSSA, §§ 1.1, 1.5.
- Ford cannot reverse engineer ACM and must protect Versata’s confidential information with the same care as its own. MSSA §§ 1.7, 7.5, and 7.1.2.
- Versata has the right to conduct on-premises verification of Ford’s compliance with the MSSA and review all records related to Ford’s use of Versata’s confidential information, even if they pertain to its use in other software besides ACM. MSSA, § 3.5.

**C. Ford violated the MSSA and stole Versata’s proprietary technology.**

**1. To save money, Ford used its knowledge of ACM to develop replacement software.**

Unbeknownst to Versata, Ford was not honoring these promises. In 2010, Ford convened a secret project to replace ACM using its knowledge of ACM to develop a replacement software system called “PDO” (Product Definition and Offering).<sup>23</sup> Ford apparently did this because it was tired of paying for ACM and wanted configuration software that it did not have to license.

Ford assigned Mike Sullivan – the same executive who managed Ford’s ACM projects for more than a decade – to supervise the development of this replacement software.<sup>24</sup> During the time Sullivan was working on this development project, he had direct, unrestricted, daily access to ACM and its technical documentation; supervised teams of Ford employees who used and implemented ACM at Ford; and worked directly with Versata consultants on ACM.<sup>25</sup> No one at Ford knew more about ACM than Sullivan. But Ford never disclosed that he was working on a replacement for ACM.

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<sup>23</sup> Ford Motor Company’s Complaint for Declaratory Judgment, ¶ 36,46 (Ex. 3).

<sup>24</sup> Declaration of Michael Richards, (Ex. 1), ¶¶ 14-15.

<sup>25</sup> Declaration of Michael Richards, (Ex. 1), ¶ 15; Declaration of Seth Krauss (Ex. 2), ¶ 11.

Ford also assigned other individuals besides Sullivan – including Bryan Goodman, Gintaras Puskorius, Yakov Fradkin, Jian Lin, and Martin Pipoly – to work on replacement software, even though they had knowledge of and experience with Versata’s configuration technologies.<sup>26</sup> Like Sullivan, there is no way that these individuals could have “separated” this knowledge from their work on replacement software either.

**2. Ford desperately tried to renew its license by subterfuge to buy time to complete its development and implementation of replacement software.**

In the summer of 2014, Versata and Ford were unable to agree on the terms of a renewal of Ford’s ACM license, which was scheduled to terminate in January 2015.<sup>27</sup> Therefore, Versata sent a termination letter on October 7, 2014 and reminded Ford of its obligation to stop using ACM and delete all vestiges of Versata’s software and trade secrets from its servers after its license terminated.<sup>28</sup>

Two days after receiving Versata’s termination letter, seeking to bypass the Versata executives who had rejected its \$8.45 million license proposal, Ford mailed a check to Versata’s accounts receivable department for \$8.45 million and misrepresented that the check was for “subscription renewal fees for ACM for the 2015 license term.”<sup>29</sup> Ford also anonymously posted two purchase orders for the same amount to Versata’s electronic ordering systems – one in the United States and one in Europe.<sup>30</sup> Ford apparently was hoping that someone at Versata would deposit the check or accept its purchase orders by mistake.

**3. Versata discovered Ford’s deception.**

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<sup>26</sup> Declaration of Seth Krauss, ¶ 16; Declaration of Duncan McDougall (Ex. 4), ¶¶ 2-4.

<sup>27</sup> Declaration of Michael Richards, (Ex. 1), ¶ 6-8.

<sup>28</sup> Declaration of Michael Richards, (Ex. 1), ¶ 9 & Ex. C.

<sup>29</sup> Declaration of Michael Richards, (Ex. 1), ¶ 10 & Ex. D.

<sup>30</sup> Declaration of Michael Richards, (Ex. 1), ¶ 11 & Ex. E.

Ford's unusual activities raised Versata's suspicions and prompted Versata to demand to exercise its verification rights under the MSSA. In a November 20, 2014 letter, Versata requested to audit Ford's usage of its software on January 16, 2015, the day after Ford's license terminated. Versata identified multiple categories of information that Versata would need to examine.<sup>31</sup> Instead of agreeing to cooperate with Versata's verification request, Ford summoned Versata to a meeting in Dearborn, Michigan on December 19, 2014.<sup>32</sup>

At this December 19, 2014 meeting, Ford disclosed to Versata for the first time that it was developing replacement software for ACM.<sup>33</sup> Ford initially claimed that Ford had established a "Chinese wall" to ensure that the new software did not utilize any Versata software or trade secrets.<sup>34</sup> But when asked who headed up the development project, Ford admitted that Sullivan had played this role.<sup>35</sup> Deflecting Versata's questions, Ford refused to provide any further information about the project or who had worked on it and Ford refused to comply with Versata's verification request.<sup>36</sup>

Despite Ford's refusal to provide information, Versata later learned that other Ford personnel who had received access to Versata's software had worked on the replacement project. Versata learned that Bryan Goodman, Gintaras Puskorius, Yakov Fradkin, Jian Lin, and Martin Pipoly were also involved.<sup>37</sup> These discoveries further refuted Ford's claim that it had established a "Chinese wall" to prevent misuse of Versata's confidential information. In addition, Ford applied for at least two patents on its new software and these patent applications

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<sup>31</sup> Declaration of Michael Richards, (Ex. 1), ¶ 12 & Ex. F.

<sup>32</sup> Declaration of Michael Richards, (Ex. 1), ¶ 13.

<sup>33</sup> Declaration of Michael Richards, (Ex. 1), ¶ 14.

<sup>34</sup> Declaration of Michael Richards, (Ex. 1), ¶ 14.

<sup>35</sup> Declaration of Michael Richards, (Ex. 1), ¶¶ 14-15.

<sup>36</sup> Declaration of Michael Richards, (Ex. 1), ¶ 16.

<sup>37</sup> Declaration of John "Jay" Kamm (Ex. 5), ¶ 7 & Ex. A; Declaration of Seth Krauss, ¶¶ 14-16; Declaration of Duncan McDougall, ¶¶ 2-4.



show that Ford incorporated and used specific Versata's technologies.<sup>38</sup> Yet Ford did not disclose this to the Patent Office.

**4. Ford used procedural gamesmanship to gain an advantage in the dispute.**

Recognizing the seriousness of its predicament, Ford moved quickly to secure what it perceived as a more favorable venue for any dispute with Versata. On February 19, 2015, Ford filed a declaratory judgment action against Versata in the United States District Court for the Eastern District of Michigan.<sup>39</sup> In violation of the District's local rules, Ford filed its complaint under seal and did not serve Versata.<sup>40</sup> Ford later filed two additional complaints in Michigan related to this dispute, again without serving Versata.<sup>41</sup>

After almost two and a half months passed without any activity in the lawsuits Ford had filed, Versata file suit in this Court to protect its rights. Versata sued Ford in the Sherman Division, where Ford has a regional office and, on information and belief, is using the ACM software and/or the replacement Ford created using Versata's trade secrets. Although courts defer to the first-filed case in some circumstances, this default practice does not apply when a party is trying to game the system as Ford has done here.<sup>42</sup>

**D. Ford continues to refuse to comply with the MSSA.**

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<sup>38</sup> Declaration of Seth Krauss, ¶¶ 14-17.

<sup>39</sup> *Ford Motor Co. v. Versata Software, Inc.*, No. 2:15-cv-10628-MFL-EAS (E.D. Mich. Feb. 19, 2015) (Doc. 1).

<sup>40</sup> *Ford Motor Co. v. Versata Software, Inc.*, No. 2:15-cv-10628-MFL-EAS (E.D. Mich. Mar. 2, 2015) (Doc. 5) (show cause order issued *sua sponte* by Court).

<sup>41</sup> *Ford Motor Co. v. Versata Software, Inc.*, No. 2:15-cv-10628-MFL-EAS (E.D. Mich. Mar. 16, 2015) (Doc. 6); *Ford Motor Co. v. Versata Software, Inc.*, No. 2:15-cv-11264-MFL-EAS (E.D. Mich. Apr. 2, 2015) (Doc. 1).

<sup>42</sup> In the Sixth Circuit, where Ford filed, "[a] plaintiff, even one who files first, does *not* have a right to bring a declaratory judgment action in the forum of his choosing." *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 551 (6th Cir. 2007). Indeed, there is effectively "a presumption that a first filed declaratory judgment action should be dismissed or stayed in favor of the substantive suit." *AmSouth Bank v. Dale*, 386 F.3d 763, 791, n. 8 (6th Cir. 2004).

Ford has refused to permit Versata to enter its premises to verify Ford's compliance with the MSSA. Although Ford has offered to permit Versata to review "decommissioning" records for ACM, Ford has not agreed to a broader inspection of software and servers necessary to determine how Ford has used Versata's proprietary technology for its own benefit.<sup>43</sup> This limited review is inadequate to verify Ford's compliance with the MSSA. Even if Ford did "decommission" ACM (and Ford has produced no evidence of this), this does not mean that Ford stopped using Versata's proprietary technology in its own replacement software.

On May 29, 2015 (last Friday), Ford circulated to Versata an email regarding a planned server outage that had been sent to Ford employees and outside contractors.<sup>44</sup> The email included a spreadsheet that identified seven Ford servers that are continuing to host "GPD," Ford's internal project name for the ACM software.<sup>45</sup> Four months after Ford was supposed to remove ACM and all Versata confidential information from the company, Versata still has not been able to verify whether and how Ford is using its technology. Ford's internal email raises serious concerns that Ford either does not know – or does not want Versata to know – what it is doing with the ACM software.

### III. ARGUMENT

To obtain a preliminary injunction, Versata must demonstrate a substantial likelihood of success on the merits; a substantial threat of irreparable injury if the injunction is not issued; that

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<sup>43</sup> Declaration of Mike Richards (Ex. 1), ¶ 17 & Ex. G.

<sup>44</sup> Declaration of John Kamm (Ex. 5), ¶ 4.

<sup>45</sup> Declaration of John Kamm (Ex. 5), ¶ 4. Because the email identifies specific servers by sever number and may contain confidential information, Versata, out of an abundance of caution, has not attached the email to this motion. Instead, Versata will introduce this evidence at the hearing.

the threatened injury outweighs any damage the injunction might cause to Ford; and that the injunction will not disserve the public interest. *See Daniels Health Scis. v. Vascular Health Scis.*, 710 F.3d 579, 582 (5th Cir. 2013). Ford's behavior in this case establishes each of these elements.

**A. Versata is substantially likely to succeed on the merits of its claims.**

The Texas Uniform Trade Secret Act specifically authorizes injunctive relief to enjoin “[a]ctual or threatened misappropriation.” TEX. CIV. PRAC. & REM. CODE ANN. § 134A.003. “Because [Versata] need only present a prima facie case, rather than meet the standard for summary judgment,” these facts are more than sufficient “to establish a likelihood of success on the merits[.]” *Daniels Health Sciences, LLC*, 710 F.3d at 584-585 (holding that prima facie evidence of trade secret misappropriation justified grant of preliminary injunction).

Versata's injunction request addresses two key issues on which Versata is entitled to prevail as a matter of law. First, Ford has breached the MSSA by using its knowledge of ACM to develop replacement software. This conduct unequivocally breaches the MSSA. *See, e.g., Wellogix, Inc. v. Accenture, L.L.P.*, 716 F.3d 867, 874 (5th Cir.2013); TEX. CIV. PRAC. & REM. CODE § 134A.002. Contrary to what Ford told Versata, Ford did not erect a “Chinese wall” to prevent misuse of Versata's technology. Instead, based on what Versata has learned, Ford actively sought to misuse Versata's technology. Ford assigned the most knowledgeable employee in the company about ACM to supervise the replacement project. Ford also assigned other employees who had knowledge of Versata's proprietary technology to help with this project. These people cannot separate their knowledge of Versata technology from their work on the replacement project. Under these circumstances, misappropriation of Versata's software and trade secrets is inevitable.

Compounding these abuses, Ford has denied Versata the only possible way to verify whether Ford complied with the MSSA. The MSSA permits Versata to “enter Ford’s premises to verify Ford’s compliance” with the MSSA and to inspect all “records pertaining to” ACM “or other [Versata] Confidential Information.” This includes records identifying the Ford employees and contractors who worked on the replacement project and comparing them with the names of people who had access to Versata’s proprietary technology. This also includes the source code and technical documentation for PDO, which was developed by numerous Ford personnel who brought their knowledge of Versata technologies to the development process.

Ford’s breaches of the MSSA and misappropriation of Versata’s trade secrets are issues on which Versata is substantially likely to prevail. Therefore, injunctive relief is proper. TEX. CIV. PRAC. & REM. CODE ANN. § 134A.003.

**B. Versata faces irreparable harm if the injunction is not issued.**

Versata faces a substantial risk of irreparable harm. Ford has misappropriated – and is continuing to misappropriate – its software and trade secrets and Versata cannot control where, how, or by whom its software and trade secrets are used. The MSSA *should* provide adequate protection against these risks because it requires Ford to stop using and delete the software and gives Versata the right to conduct an on-site verification of Ford’s compliance. But Ford’s refusal to comply with these MSSA provisions places Versata’s intellectual property at risk of being copied, stolen, and used in places over which Versata has no control.

Versata faces irreparable harm from Ford’s continued possession of its software and trade secrets and refusal to cooperate in on-premises verification. *See DSC Commc’ns Corp.*, 898 F.Supp. at 1195 (unauthorized use of plaintiff’s operating system software program constituted irreparable harm). Although Ford may argue that Versata can utilize the discovery process to

obtain information about Ford's contract compliance, Versata bargained for, and the parties agreed upon, a broader and faster procedure designed to protect Versata's interests.

Ford's ongoing refusal to separate employees who worked on ACM from the development process for replacement software also threatens irreparable harm to Versata. The Fifth Circuit's opinion in *FMC Corporation v. Varco International, Inc.* is instructive. 677 F.2d 500, 505 (5th Cir. 1982). The Fifth Circuit held that the trial court abused its discretion when it failed to preliminarily enjoin a company's former employee from working on projects for his new employer which posed "an inherent threat of disclosure or use" of the former employer's trade secrets. The Fifth Circuit held that under this type of scenario an injunction is required because "[e]ven assuming the best of good faith, [the employee] will have difficulty preventing his knowledge of [plaintiff's trade secrets] from infiltrating his work." *Id.*

The Fifth Circuit is joined by numerous Texas courts that have recognized the inherent risk of disclosure, which requires issuance of temporary injunctive relief, when a company employs someone with trade secret knowledge in a position that utilizes the same type of knowledge. *See T-N-T Motorsports, Inc. v. Hennessey Motorsports, Inc.*, 965 S.W.2d 18, 24 (Tex. App. – Houston [1st Dist.] 1998, pet. dismissed) ("The record indicates that appellants possess appellee's confidential information and are in a position to use it to compete directly with appellee. Under these circumstances, it is likely appellants will use the information to appellee's detriment."); *Rugen v. Interactive Bus. Sys., Inc.*, 864 S.W.2d 548, 552 (Tex. App. --- Dallas 1993, no writ) ("Rugen is in possession of IBS's confidential information and is in a position to use it. Under these circumstances, it is probable that Rugen will use the information for her benefit and to the detriment of IBS."); *Weed Eater, Inc. v. Dowling*, 562 S.W.2d 898, 902 (Tex. Civ. App. – Houston 1978, writ refused n.r.e) ("Dowling has been employed by Hawaiian

Motor Company to supervise the production of a device which it formerly purchased from Weed Eater . . . Even in the best of good faith, Dowling can hardly prevent his knowledge of his former employer's methods from showing up in his work.”).

Injunctive relief is also warranted because Versata's software, source code, and technical documentation remain in the possession of Ford and Ford can destroy the value of that code by disclosing it to others: “If the Court were to allow [Ford] to continue to possess these unauthorized copies, there is nothing to prevent [Ford] from disclosing the operating system software to other parties.” *DSC Commc'ns Corp.*, 898 F.Supp.1183 at 1195; *see also Cisco Sys., Inc. v. Huawei Techs., Co., Ltd.*, 266 F.Supp.2d 551, 556 (E.D. Tex. 2003) (holding preliminary injunction warranted because “[a] portion of a company's confidential source code, if publicly disclosed, could inflict serious irreparable injury”).

**C. Versata's real injury far outweighs any hypothetical injury to Ford from an injunction.**

The threatened injury to Versata far outweighs any possible harm to Ford. Versata only seeks to require Ford to comply with the MSSA and do what it promised. “[G]ranteeing an injunction that enforces the terms of the [licensing] Agreement, it is not imposing a hardship on [Ford] that exceeds the terms to which [it] has already agreed.” *Johnson Serv. Gp., Inc. v. France*, 763 F.Supp.2d 819, 831 (N.D. Tex. 2011) (granting preliminary injunction where company's former employee allegedly breached contract and misappropriated confidential trade secrets); *see also H.O. Sports v. Earth & Ocean Sports, Inc.*, 2001 WL 514314 (W.D. Wash. 2011) (observing “[i]f the defendants sincerely intend not to infringe, the injunction harms them little; if they do, it gives [the plaintiff] substantial protection[.]”). In addition, the injunction provides a means for Versata to mitigate damages by preventing further misappropriation and dissemination of its software and trade secrets.

By contrast, Ford has no interest in continuing to breach its contractual obligations to Versata and use software and confidential information that it is not entitled to possess. *See, e.g., Autoskill, Inc. v. Nat'l Educ. Support Sys., Inc.*, 994 F.2d 1476, 1498 (10th Cir. 1993) (“[E]ven assuming the injunction would have a ... devastating effect ... a knowing infringer cannot be permitted to construct its business around infringement.”); *accord Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240, 1255 (3d Cir. 1983).

**D. Granting the injunction will not disserve the public interest.**

In the MSSA, Ford and Versata specifically agreed that “[t]ermination of this Agreement ... shall not limit either party from pursuing other remedies available to it, including injunctive relief.” MSSA, § 11.5. Granting injunctive relief here serves the public interest because “it is in the public interest to uphold contracts and to enforce a remedy to which the parties have expressly agreed.” *Johnson Serv. Gp.*, 763 F.Supp.2d at 831 (quotation & citations omitted).

**E. Bond**

Versata is willing to pay the required bond and believes that a bond of \$100,000 is appropriate.

**IV. CONCLUSION**

For the foregoing reasons, this Court should grant Versata’s motion for preliminary injunction.

DATED: June 3, 2015

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(b)(1) on this the 3<sup>rd</sup> day of June, 2015 as follows:

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**CERTIFICATE OF CONFERENCE**

Counsel has complied with the meet and confer requirement in Local Rule CV-7(h) and the motion is opposed. I contacted Defendant's counsel on June 2 and 3, 2014 and we were unable to reach an agreement on the relief sought in this motion.

/s/ Steven J. Mitby