

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Glytec, LLC,

Plaintiff,

v.

Prisma Health,

Defendant.

C.A. No.: 6:25-cv-03211-DCC

**PLAINTIFF’S MEMORANDUM IN SUP-
PORT OF ITS MOTION FOR TEMPO-
RARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

INTRODUCTION

Glytec is a leading supplier of glucose management software. Glytec’s software, licensed under the Glucomander® trademark, uses proprietary trade secret algorithms to dynamically adjust a patient’s recommended insulin dosage. Glytec spent almost twenty years and 60 million dollars developing Glucomander®. For more than a decade, Glytec licensed its software to Defendant Prisma Health (“Prisma”), a health care system with \$6 billion in annual revenue. Prisma agreed that it would *not* “reverse engineer,” “reverse assemble,” or “attempt to discover the source code or structure” of Glytec’s software. Prisma further agreed that it would (a) not use Glytec’s services to “develop ... a competing product or service[,]” (b) only use Glytec’s services to treat patients, and (c) keep Glytec information, including Glytec’s trade secrets, confidential. Prisma breached its agreement and uncovered Glytec’s Trade Secrets, incorporating them into the software its employees were creating for Prisma (*i.e.*, the Prisma Software).

In late 2022 and early 2023, Prisma decided to cut more than \$16.5 million from its budget, and eliminating the annual \$1 million license fee paid to Glytec would go a “long way” toward that goal. To do this, Prisma had to obtain cheaper replacement software or build its own. By the

end of July 2023, Prisma determined that it could not obtain replacement software and decided to develop software that “replicated” Glucommander®.

Prisma found the task more difficult than anticipated. Therefore, Prisma took a shortcut. Breaching the Agreement, Prisma did, in fact, “reverse engineer[ed], reverse assemble[d] . . . and attempt[ed] to discover the source code or structure sequence” of Glucommander®. Prisma employees began a complicated process of “trying to break a secret code.” In documents (including recorded video call presentations), Prisma’s employees admitted:

- That Glytec’s algorithms were unknown and not published;
- They needed to discover Glytec’s algorithms;
- The alternatives to Glucommander® fell short because they could not mirror or “replicate” the functionality, safety features, or accuracy of Glucommander®;
- They would seek to “Crack [Glytec’s] Code” by reviewing data from patients treated with Glucommander® or using Glucommander®’s Test Site (defined below) to reverse engineer Glytec’s algorithms via patient simulations; and
- Prisma incorporated Glucommander®’s trade secrets in the software Prisma “developed” and continues to use (the “Prisma Software”).

In reviewing the more than 45,000 pages of documents Prisma recently produced, Glytec discovered not only an avalanche of evidence proving trade secret misappropriation, but documents showing that Prisma intends to disseminate Glytec’s Trade Secrets to other hospitals via a “roadshow” and to a potential competitor of Glytec. Prisma has been asked to present the Prima Software at an industry conference. Glytec seeks a temporary restraining order and preliminary injunction to prevent Prisma from sharing or otherwise disseminating Glytec’s trade secrets, including any aspect of the software that Prisma “developed.” In addition, the Court should order Prisma to immediately disclose all persons and entities with whom they have shared any information concerning the insulin management software it “developed.”

FACTUAL BACKGROUND

I. The need for insulin management software

Approximately 50% of all medication errors involve insulin. Improper insulin management can have catastrophic consequences, including coma, kidney failure, stroke, paralysis, sepsis, brain damage, cardiac arrest, and death. (Ex. 1, Verified Amended Complaint, ¶ 11.) Insulin also requires an iterative and nuanced adjustment process referred to as “titration” that accounts for the patient’s response to insulin and insulin sensitivities, changing clinical conditions, and trends in blood glucose. (*Id.* ¶ 13.)

II. Glytec and its trade secrets

A. Before Glucommander®, clinicians used an imprecise, static method to calculate insulin doses.

Before the development of Glucommander®, clinicians followed a written protocol (the “Atlanta protocol”) that provided the following formula for adjusting insulin doses based on a patient’s blood sugar: **$(BG-60) * M = X$ units of insulin/hour**. BG stands for a patient’s Blood Glucose level measured in milligrams/deciliter (mg/dl). The “X” is the number of units of insulin per hour that should be administered to the patient. The “M” stands for a multiplier, a measure of the patient’s insulin sensitivity. The default initial multiplier is often set to 0.02. (*Id.* ¶ 16.)

If a hypothetical patient’s blood sugar is 200 mg/dl, the equation is: $(200-60) * 0.02 = 2.8$ units/hour. An intravenous infusion pump would be programmed to infuse 2.8 units of insulin per hour, and the nurse would recheck the blood sugar later, usually in about an hour, with the goal to get the patient’s BG level to the goal range. If a patient’s blood sugar is too high, *M* is increased a fixed amount (usually 0.01). If the blood sugar is too low, *M* is decreased a fixed amount (usually 0.01). For example, if the patient’s blood sugar had increased from 200 to 300 mg/dl, *M* would be increased from 0.02 to 0.03 and a new dose of 7.2 units/hour of insulin would be recommended

per the following calculation: $(300-60) * 0.03 = 7.2$ units/hour of insulin. These rules were easy for clinicians to understand, and simple enough to be performed manually. (*Id.*)

While the Atlanta protocol was an improvement over previous methods, it had limitations. Adjustments to the Multiplier were fixed and thus slow to react to rapid changes in glucose in critically ill patients. In addition, clinicians—who used simple calculators—could make errors. (*Id.* ¶ 17.)

B. Glytec developed trade secret algorithms that it included in computer software technology to tailor the Multiplier to individual patient scenarios.

For almost two decades, and at a cost of more than \$60 million, Glytec has developed Glucommander®, an FDA-cleared medical software device that goes beyond the Atlanta protocol by dynamically adjusting the Multiplier and enhancing the process with multiple safety guardrails and accommodations for special patient cases. (*Id.* ¶ 19.) Glytec’s trade secrets (the “Trade Secrets”) are described in paragraph 19 of the Verified Amended Complaint. Here, Glytec highlights two categories of its Trade Secrets:

- **Proprietary Dynamic Adjustment of M:** Unlike the simplistic 0.01 increments/decrements found in public protocols, Glytec developed a more sophisticated adjustment mechanism. Glytec’s algorithms are designed to take into account a variety of factors, including current blood glucose level, previous blood glucose levels, the patient’s target glucose range, age, and weight. Glytec’s algorithms take these factors into account to adjust the Multiplier based on scenarios not captured by publicly available information. Glytec’s algorithms also take a variety of factors into account to influence how, when, and by how much the Multiplier is adjusted, enhancing precision and patient safety.
- **Management of Hyperglycemic Crisis (MeterMax® Logic):** Point-of-care glucose meters have upper measurement limits (typically 400 - 600 mg/dl) depending on hospital policies and specific device specifications. Many patients are admitted to the hospital in a state of glycemic crisis, with blood sugars that are so high they can only be measured in the hospital’s laboratory by specialized equipment. Simply plugging those high blood sugars into the Atlanta protocol could produce dangerously high insulin doses. When patients present with Diabetic Ketoacidosis or other hyperglycemic crisis, Glucommander uses a special proprietary algorithm to produce insulin doses for these patients that it operates under the trademark MeterMax®. The algorithm applies special logic for managing cases where glucose readings exceed the meter’s measurable range.

III. Prisma licensed Glucommander® and other Glytec Services to Prisma.

Prisma operates approximately 18 acute and specialty hospitals and, according to its website, has \$6 billion in annual operating revenue. (*Id.* ¶ 23.) Through a series of contracts beginning in 2006, Prisma (and its predecessor) licensed Glucommander® from Glytec (and previously its parent company). (*Id.* ¶¶ 25-28.) On or about July 31, 2020, Glytec and Prisma entered into the Glytec Master Service Agreement (the “Agreement”). (Ex. 2.) Pursuant to the Agreement, Glytec granted Prisma “a non-exclusive, non-transferable limited license to access and use the hosted” services, including Glucommander® (the “Glytec Service” or “Glytec Software”). The Glytec Software includes the Trade Secrets. Section 2.2 of the Agreement provides that:

Neither [Prisma], its Affiliates nor its Providers shall use the Glytec Service in violation of any applicable law, statute, ordinance, or regulation. [Prisma] shall not and shall not permit anyone else (including its Affiliates) to, directly or indirectly, copy, reproduce, amend, modify, create derivative works of, adapt, translate, distribute, *reverse engineer, reverse assemble, disassemble, decompile, attempt to discover the source code or structure sequence or organization of any software* accessed or provided hereunder (except where the foregoing is required by applicable law, then only to the extent so permitted). * * * * [Prisma] shall not, directly or indirectly, and shall not permit anyone else (including its Affiliates) to access or use the Glytec Services or Documentation *in any manner in connection with or to develop a commercially available or competing product or service.* * * * * The Glytec Service is a product proprietary to Glytec based upon and containing trade secrets and other confidential information of Glytec, and Glytec owns all right, title and interest, including all intellectual property rights, in and to the Glytec Service and documentation.

(Ex. 2; emphasis added.) Section 1 provides that Prisma could use the Glytec Services “solely for the treatment of patients in accordance with the terms of this Agreement” and that:

Glytec grants Customer the limited right for Customer or its Affiliate to sublicense the right to access and use the subscription service(s) by individual healthcare professionals employed or contracted by the Permitted Facilities (as defined in Section 2) identified in the applicable Order Form (such individuals hereinafter referred to as “Providers”), *such sublicense shall be solely for the treatment of patients in accordance with this Agreement (including without limitation, Section 2)* and shall continue solely for so long as the Provider is employed or contracted by the Permitted Facility.

(*Id.*; emphasis added.) Finally, the Agreement contains a confidentiality provision, under which Prisma agreed not to “use or disclose” Glytec’s “Confidential Information,” which includes “all . . . technical information, trade secrets, know-how or software, including all analyses, digests and summaries, in any form, that is disclosed by or for a party or a party is exposed to, in relation to this Agreement, and which is marked or otherwise identified as proprietary or confidential at the time of disclosure, or which by its nature would be understood by a reasonable person to be proprietary or confidential.” (*Id.* at §§ 7.1, 7.2.)

As part of the Glytec Service, Glytec made available to Prisma a Testing/Sandbox site (the “Test Site”) that Prisma clinicians could use as a training environment. (Ex. 1 ¶ 32.)

IV. Prisma breached the Agreement and stole Glytec’s Trade Secrets.

A. Prisma failed to obtain a suitable replacement from third parties.

In August 2022, Prisma internally discussed trimming \$16.5 million from its budget. At the time, Prisma paid Glytec approximately \$1 million per year. Certain Prisma employees believed that terminating the Agreement would “go a long ways towards that [\$16.5 million savings] goal.” (See **Ex. 3** at PRISMA_00418.)

Prisma then discussed replacing the Glytec Service with (a) an insulin calculator provided by its electronic medical records software provider (the “EMR Provider”) at no cost, or (b) developing its own software. (See *Id.* at PRISMA_00420; **Ex. 4**.)

Prisma tasked an employee, Laura Turman, to secure a replacement for Glucommander®. (See Ex. 3.) In 2023, Turman and employees of the EMR Provider repeatedly met and communicated about Prisma using a module in its platform. (See, e.g., **Group Ex. 5**.) In addition, Prisma obtained “protocol info” and a “logic table extract” from another hospital system, which had built its own simple insulin calculator. (See **Ex. 6**.) Prisma also obtained information from presentations made by two other hospital systems at conferences hosted by its EMR Provider (see **Group Ex.**

7) and met with representatives of another hospital system regarding the rudimentary insulin calculator it had built. (See Ex. 8.)

By July 2023, however, Turman and others determined that the insulin calculator from the EMR Provider “didn’t meet our needs.” Nor did the calculators developed by other hospitals. Therefore, Prisma decided that “Laura [Turman] is going to build [insulin management software] from scratch.” (Ex. 9; see also Ex. 20, at p. 14 at 44:34 time stamp “This is not from [the EMR Provider.] The [EMR Provider] does not have a calculator.”)

B. Prisma breached the Agreement and violated the South Carolina Trade Secrets Act by illegally reverse engineering Glytec’s Trade Secret algorithms.

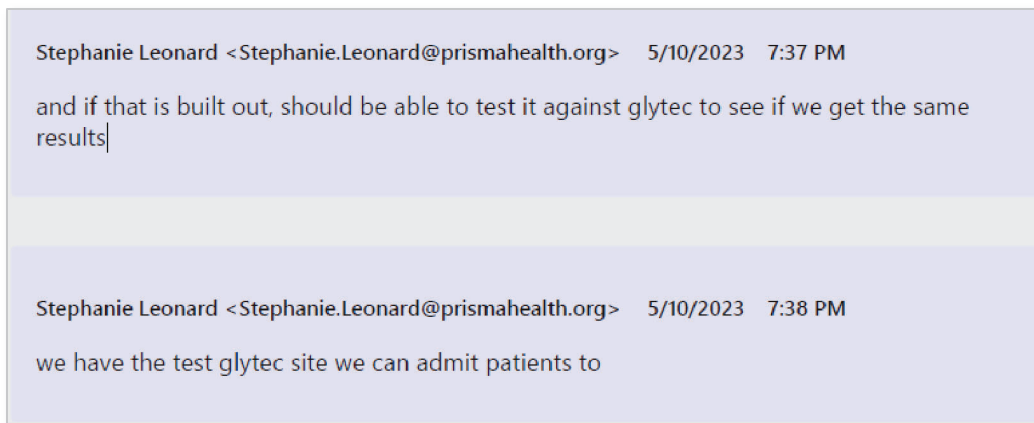
Glytec’s algorithms for determining how to adjust the multiplier are the core of its Trade Secrets. Without them, Prisma could not build its own product. In May 2023, two Prisma employees overseeing Turman—Stephanie Leonard and Kyle Porter—recognized that they needed the “Glytec algorithm” and discussed searching for it on the “Dark Web”:¹

Stephanie Leonard <Stephanie.Leonard@prismahealth.org> 5/10/2023 4:12 PM
didn't you do a dark web search for glytec algorithm?

(Ex. 10 at PRISMA_045054.)² They also discussed reverse engineering how Glytec’s software adjusts the multiplier. Leonard suggested breaching the Agreement and testing any insulin software Prisma developed against Glytec in Glytec’s Test Site:

¹ “The dark web refers to encrypted online content and allows individuals to hide their identity and location from others. . . . Due to anonymity on the dark web, many consider it a place where online marketplaces for drugs, exchanges for stolen data, and other illegal activities occur.” See www.investopedia.com/terms/d/dark-web.asp.

² In Ex. 10, Kyle Porter goes on to state he found Glytec’s algorithm online and then proceeds to send it to Stephanie Leonard in the chat. (Ex. 10 at PRISMA_045055-040556.) The formula that Kyle Porter sent to Leonard, however, is *not* Glytec’s algorithm. It is the simple Atlanta protocol and not a trade secret.



(*Id.* at PRISMA_045057).

At some point before October 2023, a Prisma employee provided Turman with a copy of Glytec’s downtime form (the “Downtime Form”). The Downtime Form is a simplistic written protocol that Glytec created for nurses to continue treating critically ill Glucommander® patients in the event of a natural disaster, power outage, or other computer system downtime. (Ex. 1 ¶ 45.)³ While taking Glytec’s Downtime Form and writing computer code to mimic its written process is itself a breach of Section 2.2 of the Agreement, the information contained in Downtime Form is different from the Trade Secret algorithms contained in Glucommander®. (*Id.* ¶ 46.)

By October 23, 2023, Turman had created a basic insulin calculator based on Glytec’s Downtime Form and presented it internally. Turman advised that Prisma was building its own software because EMR Provider’s product “didn’t really meet our needs, and it didn’t really *replicate* what is happening in Gly [*sic*], in Glytec or Glucommander®.” (See **Ex. 11**, Tr. of 10/23/2023; emphasis added.)⁴

³ Without such a written protocol, a sudden interruption in insulin therapy during an outage could place vulnerable patients at serious risk of harm.

⁴ Prisma produced the .mp4 file for the October 23, 2023-meeting (PRISMA_036738) and an unreadable transcript of the meeting. (PRISMA_037284.) Ex. 11 is a transcript of the meeting created from the original recording. Glytec will provide the recording at the Court’s request.

On December 7, 2023, Turman presented a version of the insulin management software to other Prisma employees, at least one of whom was a doctor (Doctor 1) and member of Prisma's Diabetes Steering Team (the "December 7-Meeting"). (See Ex. 12.)⁵ Turman advised that she was trying to build a program to "act and mimic" Glucomander®, but the challenge was determining when the multiplier should change based on different patient scenarios and writing code to change the Multiplier accordingly. (*Id.*) In other words, Turman did not know Glytec's Trade Secrets.

Turman admitted: "*I've said all along, we need their [Glytec's] algorithm.*" (*Id.* at p. 14 at 50:01.) Doctor 1 acknowledged that Glytec kept its algorithms secret, stating "I mean, I don't think you can call them [Glytec] up and ask them what their formula is." (*Id.* at p. 2 at 3:58.)

Therefore, the participants in the December 7-Meeting decided to reverse engineer the Glytec Software in breach of the Agreement:

- Doctor 1 stated: "***Well, I would suggest that you go to the unit and look at a couple of Glytec patients and just watch and see what it does.*** Because I don't – I'm not sure that the 1.1 increase in multiplier is correct either. I thought it was like 1.2, 1.25 but I mean, you could look at somebody on an insulin drip, but that's out of range, ***and you could see what the multiplier is doing.***" (*Id.* at p. 3 at 06:26; emphasis added.)
- Turman stated: "So I'm probably going to have to have some warriors go out to the unit and ***just make notes and follow along with the Glucomander® patient, so we have a really good handle on exactly what's happening.***" (*Id.* at p. 10 at 37:45; emphasis added.)
- Doctor 1 told Turman: "***you're going to go through some of the Glytec patients or simulate them, and see what the what the rate, what the multiplier changes is in those okay[.]***" (*Id.* at p. 14 at 49:18; emphasis added.)
- Another Prisma employee suggested: "***my first thought is to like pull the most recent user guide of Glytec and see what they disclose for some of these answers.***" (*Id.* at p. 15 at 54:13; emphasis added.)

⁵ Prisma produced the .mp4 file for the December 7, 2023-meeting (PRISMA_036777) and an unusable version of the transcript. (PRISMA_036778.) Ex. 12 is a transcript of the meeting created from the original recording. Glytec will provide the recording at the Court's request.

- Yet another Prisma employee suggested using Glytec’s Test Site to reverse engineer Glytec’s algorithms: “*we also have a Glytec test environment that we can go in and simulate and test against, a test against the epic⁶ functionality to make sure they’re matching up. Doesn’t have to be in production or anything, but we can definitely, you know, we can pull patients that have been on Glytec for days and days and days and then see if we can replicate that in the test environment.*” (*Id.* at p. 10 at 39:28; emphasis added.)
- Turman advised that Prisma could use the Test Site to test its software: “The testing in January probably is literally *create scenarios in Glytec and next to a patient side by side to make sure it’s doing the same.*” (*Id.* at p. 10 at 39:54; emphasis added.)

Glytec’s Trade Secret MeterMax® logic for handling patients with extremely high blood glucose levels was particularly important to Prisma. (*Id.* at pp. 11-13 at 40:49 to 46:08.) Doctor 1 recognized that Glytec’s MeterMax® functionality was unknown:

for MeterMax®. But I think that also the MeterMax® has something to do with whether the multiplier changes or not. I think if it’s greater than 450 it doesn’t necessarily keep going up on the multiplier. I don’t know, *but that’s, that’s the real question is, what does the MeterMax® button tell the formula to do?*

(*Id.* at p. 11 at 41:54; emphasis added.) Doctor 1 directed Turman: “*You’re going to have to figure out what’s involved in that MeterMax® protocol and try to mimic that as well.*” (*Id.* at p. 11 at 40:49.) Another employee said that Prisma could reverse engineer the formula: “*Yeah, we can’t see their formula, but we can test it out, you know, to see what’s done.*” (*Id.* at p. 11 at 42:21.)

Immediately after the December 7-Meeting, Turman began pulling “Glytec reports” on patients that were treated with Glucommander® to “*review retrospectively and compare what happened to their Multiplier in response to specific BG values[.]*” (**Ex. 13** at PRISMA_021066; emphasis added.) For the next several weeks, Turman and others illegally reverse engineered aspects of the Glytec Software by analyzing hundreds of patients’ records. Similarly, Turman and others spent dozens of hours on Glytec’s Test Site creating patient simulations to determine Glytec’s

⁶ Prisma’s employees incorrectly refer to an “Epic Calculator” because it sits on the Epic platform.

(Ex. 19 at PRISMA_042887.)⁷

Prisma succeeded in its efforts to “crack the secret code” and incorporated certain of Glytec’s Trade Secrets into its software, including the MeterMax® function. Turman created a click button labeled “MeterMax” in the Prisma Software to have the same functionality as the MeterMax® button in Glucomander. She was advised, however, that “MeterMax®” is Glytec’s intellectual property and therefore instructed to change the name of the button to “Max Entry” because that would get Prisma “out of legal trouble.” (Ex. 20, Tr. of 2/21/2024 Insulin Calculator Testing meeting, at the discussion from 1:18:00 to 1:19:45.)⁸

On December 15, 2023, Prisma’s Diabetes Steering Team approved continued work on the software. (Ex. 21.)

On December 19, 2023, Turman conducted a recorded Teams meeting with a group of nurses to begin training them on the “new” software. During the presentation, Turman admitted she reverse engineered Glytec’s Trade Secrets at the direction of her superiors:

We are trying to mimic what Glucomander® did. *So there’s been a lot of re-search and lot of looking under the hood of Glucomander®,* I guess, running reports and just trying to figure out, like, what it’s doing. (giggling) Sorry about that, Emily, (giggling) but *I’m just doing the work I was told to do.*

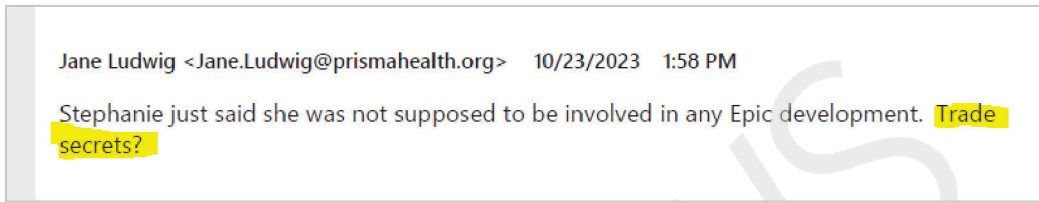
(Ex. 22, transcript of 12/19/2023 meeting; emphasis added.)⁹ “Emily” is a nurse employed by both Prisma and Glytec. In two other video-recorded meetings at which “Emily” was not in attendance,

⁷ Turman credited Doctor 1 for asking questions to make her and her team re-think what they had previously built because “no one really has ever known what Glucomander did. We just used it.” (Ex. 18 at PRISMA_042887.)

⁸ Prisma produced the .mp4 file for the February 21, 2024-meeting (PRISMA_039617) and an unusable version of the transcript. (PRISMA_039618.) Because there is a lot of crosstalk within the meeting, it has been difficult to transcribe the meeting. Glytec will provide the recording at the Court’s request.

⁹ Prisma produced the .mp4 file for the December 19, 2023-meeting (PRISMA_037338) and an unusable version of a transcript. (PRISMA_037339.) Ex. 22 is a transcript of the meeting created from the original recording. Glytec will provide the recording at the Court’s request.

Prisma's employees discussed trying to get her to disclose Glytec's algorithm to Prisma. (See Ex. 11 at p. 12 at 53:17; Ex. 12 at pp. 11-12 at 42:26.) Ironically, in October 2023, before Prisma ramped up its efforts to misappropriate Glytec's Trade Secrets, at least some people at Prisma recognized that using Emily to develop Prisma's replacement for Glucommander would require her divulge Glytec's Trade Secrets:



Jane Ludwig <Jane.Ludwig@prismahealth.org> 10/23/2023 1:58 PM

Stephanie just said she was not supposed to be involved in any Epic development. Trade secrets?

(**Ex. 23**; emphasis added.)¹⁰

On or about February 15, 2024, Prisma terminated the Agreement effective May 19, 2024. (**Ex. 1** ¶ 69.) From March 5, 2024 to the present, Prisma has been treating patients with non-FDA approved glucose management software (the “Prisma Software”) that it “developed” by illegally reverse engineering Glytec’s Software. (**Ex. 1** ¶¶ 71, 84; *see also* Prisma’s Amended Answer and Affirmative Defenses at ¶ 82.)

V. Prisma has indicated that it intends to share Glytec’s Trade Secrets with others.

As noted above, Turman met with other hospitals that had built their own glucose management software. (**Ex. 8**.) Turman stated that she met “every single Monday to review her build [of the Prisma Software” with the EMR Provider. (**Ex. 11**, at p. 2 at 06:01.) This is the same EMR Provider that Turman indicated in the December 19, 2023-recorded meeting that is seeking to build

¹⁰ A more likely explanation for Emily’s exclusion from certain meetings and the project to build the Prisma Software is that Prisma did not want her reporting Prisma’s theft of Glytec’s Trade Secrets to Glytec.

a product that competes with Glucommander and that “they’ve actually learned a lot from my build[.]” (Ex. 22 at p. 14 at 44:34.)

On or about February 26, 2024, the EMR Provider asked Turman to present her “insulin infusion calculator” at an industry conference. (Ex. 24.) In response, the two Prisma employees, Kyle Porter and Stephanie Leonard, who spearheaded Prisma’s misappropriation of Glytec’s Trade Secrets, suggested that Turman should take the Prisma Software on a “roadshow” to other hospitals in South Carolina. (Ex. 25.)

ARGUMENT

Glytec’s employees cavalierly misappropriated Glytec’s Trade Secrets. The documents recently produced show they are equally cavalier about their intention to disseminate those Trade Secrets to other hospitals and even a potential competitor of Glytec. The Court should enter a temporary restraining order and preliminary injunction prohibiting Prisma from disclosing any aspect of the Prisma Software to any third parties. “The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it.” *Compton v. S.C. Dep’t of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). Although Prisma has no right to use Glytec’s Trade Secrets, Glytec does not *yet* seek to prohibit Prisma from *using* Glytec’s Trade Secrets because leaving Prisma without insulin management software may harm patients.

South Carolina law expressly allows for injunctions in the context of actual or threatened misappropriation. South Carolina Trade Secrets Act (“SCTSA”), S.C. Code Ann. § 39-8-50(A), (C). “The availability of injunctive relief for ‘threatened’ misappropriation of trade secrets requires no evidence of actual harm to support an injunction. These provisions serve an important policy function in preserving the value of trade secrets, because a trade secret, once lost, is, of course,

‘lost forever.’” *Prysmian Cables & Sys. USA, LLC v. Szymanski*, 573 F. Supp. 3d 1021, 1042 (D.S.C. 2021).

In addition, in the Agreement, Prisma agreed to injunctive relief without bond:

Customer agrees that, in the event of any breach or threatened breach of this Agreement, Glytec will suffer irreparable damage for which it will have no adequate remedy at law. Accordingly, Glytec shall be entitled to injunctive and other equitable remedies to prevent or restrain, temporarily or permanently, such breach or threatened breach, without the necessity of posting any bond or surety. Such remedies shall be in addition to any other remedy Glytec may have at law or in equity.

(Ex. 2 § 11.11.) “To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law.” *Richland County v. S.C. Dep’t of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018). Glytec easily meets this test.

I. Glytec will suffer irreparable harm without injunctive relief.

The “loss of even a single trade secret is irreparable harm, and the threatened disclosure of a trade secret supports the imposition of injunctive relief.” *Prysmian Cables*, 573 F. Supp. 3d at 1044 (quotation omitted). “Courts consistently have recognized that the loss of permanent relationships with customers and the misappropriation of proprietary information constitutes irreparable harm to the [trade secret owner].” *T&S Brass and Bronze Works, Inc. v. Slanina*, No. 6:16-3687, 2016 WL 11201768, at *7 (D.S.C. Dec. 20, 2016) (Magistrate Judge recommendation), *adopted as modified*, 2017 WL 1734362 (D.S.C. May 4, 2017) (quotation omitted).

Irreparable harm also can be established by “the loss of market share or price erosion, neither of which can be compensated through money damages alone.” *Prysmian Cables*, 573 F. Supp. 3d at 1034. “Further, the loss of a trade secret is difficult to measure in monetary damages because once the secret is lost, it is indeed lost forever.” *Prysmian Cables*, 573 F. Supp. 3d at 1044. *See also, Jennings-Dill, Inc. v. Israel*, No. 2021-CP-23-03406, 2021 WL 9097086, at *3 (Hon. Alex Kinlaw, Jr., Sep. 9, 2021) (granting temporary injunction under SCTSA where “[movant] likely

will suffer a loss of goodwill, a loss of market share, and damage to its business reputation”), *aff’d*, 442 S.C. 98 (Ct. App. 2024).

Moreover, “[i]t is of no significance whether [Glytec] ha[s] suffered damages from [Prisma’s] machinations at this time. It is likewise immaterial whether [Prisma] has realized any personal benefit. [Glytec is] not required to wait until [it is] irreparably harmed to obtain injunctive relief.” *T&S Brass & Bronze Works, Inc. v. Slanina*, No. 6:16-03687, 2017 WL 1734362, at *10 (D.S.C. May 4, 2017).

Here, Prisma’s employees have openly discussed disseminating Glytec’s Trade Secrets by taking them on a “roadshow” to other hospitals in South Carolina. In addition, Prisma communicated with hospitals that built their own insulin management software, has been asked to share (and did share) information with a third party seeking to compete with Glytec, and has been asked to present “its” product at an industry conference. If Prisma were to do (or continue doing) any of these things, it would cause irreparable damage to Glytec. Prisma’s employees recognized that “replicat[ing]” Glucommander® could put Glytec out of business. In an email chain regarding the millions of dollars that Prisma saved by “replicat[ing]” Glucommander, Leonard noted in response to the comment that the savings were “a lot” of money:

I know! *Especially when we can replicate it* [Glucommander®]. The company [Glytec] has already tried unsuccessfully to sell so will [sic] be interesting to see what happens over the next couple of years.

(**Ex. 26**; emphasis added.) A few days after Prisma sent its termination letter, Leonard recognized the harm Prisma inflicted and told a third party that “we will be the first of many to drop from their company” and falsely stated that “it’s dying technology that was never all that advanced.” (**Ex. 27** at PRISMA_0405042.) The clear implication from Leonard’s comments are that if Glytec’s Trade

Secrets are shared with other hospitals or competitors (which Prisma's employees have stated their intention to do), then it could put Glytec out of business.

II. Glytec is likely to succeed on the merits.

Glytec is likely to succeed on its trade secret misappropriation and breach of contract claims. "In evaluating whether a plaintiff is entitled to a preliminary injunction, the court must examine the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief." *Jennings-Dill*, 442 S.C. 98, 106 (quoting *Compton*, 392 S.C. at 367, 709 S.E.2d at 642.) In seeking a preliminary injunction, Glytec does "not need to prove an absolute legal right, only a fair question to raise as to the existence of such a right." *Id.* (quotation omitted).

A. Misappropriation of the Trade Secrets

Glytec is likely to succeed on its trade secret claim under the SCTSA. To establish a claim under the SCTSA, Glytec "must show: (1) the existence of a trade secret; (2) misappropriation, wrongful use, or wrongful disclosure of a trade secret by the defendant; and (3) damages." *SmartLinx Solutions, LLC v. Zeif*, No. 2:21-cv-711, 2022 WL 939846, at *6 (D.S.C. Mar. 29, 2022) (quotation omitted). Glytec, however, "does not need to show actual misappropriation of a trade secret to be entitled to injunctive relief." *Global Consult. USA LLC v. Pinnacle Risk Eng'g, LLC*, No. 2:24-cv-04919, 2025 WL 329664, at *4 (D.S.C. Jan. 29, 2025).

1. Glytec's Trade Secrets are trade secrets under the SCTSA.

The SCTSA defines "trade secret" as:

- (a) Information including, but not limited to, a formula, pattern, compilation, program, device, method, technique, product, system, or process, design, prototype, procedure, or code that:
 - (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily as-

certainable by proper means by the public or any other person who can obtain economic value from its disclosure or use; and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

S.C. Code Ann. § 39-8-20(5).

Glytec's Trade Secrets are trade secrets under the SCTSA. *First*, as set forth above, the Trade Secrets are “formula[s], pattern[s], compilation[s], . . . method[s], technique[s], . . . system[s], . . . procedure[s], or code” for determining the multiplier in the base Atlanta protocol formula. Indeed, Prisma's employees repeatedly advised that they needed Glytec's “algorithm” to “crack the Glucommander code.”

Second, as explained in the attached declaration of one of Glytec's founders, Robby Booth, Glytec's Trade Secrets have independent economic value. (**Ex. 28**.) Trade Secrets are one of the things that differentiate Glytec from its competitors. If the formulas were known, then hospitals like Prisma would just build their own glucose management software and Glytec's competitors would use them to build a competing product.

Third, Glytec's Trade Secrets are subject to extensive efforts to maintain their secrecy, including marking them “CONFIDENTIAL,” storing them in encrypted, password protected locations, using confidentiality agreements to restrict dissemination by employees and customers, and limiting their access to only employees that need to see them to perform their job functions. (*Id.* ¶¶ 10-20.) In fact, as detailed above, Prisma's employees clearly understood that Glytec's Trade Secrets were not publicly available. (*See, e.g.*, **Ex. 18** at PRISMA_042696 (“The algorithm is not published!!!!”); **Ex. 23** (“Trade secrets?”).)

2. *Prisma misappropriated Glytec's Trade Secrets.*

Glytec has a reasonable likelihood of success on misappropriation. The SCTSA defines “misappropriation,” in part, as:

“(a) acquisition of a trade secret of another by a person by improper means;

* * * * *

(c) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret;

S.C. Code Ann. § 39-8-20(2). The SCTSA in turn states that “‘improper means’ include theft, bribery, misrepresentation, *breach or inducement of a breach of a duty to maintain secrecy, duties imposed by ... contract, [or] license*” S.C. Code Ann§ 39-8-20(1) (emphasis added).

Prisma misappropriated the Trade Secrets by breaching the duties imposed on it by the Agreement. The Agreement expressly prohibits Prisma from reverse engineering the Glytec Software. Reverse engineering means to “examine (a product) in order to determine its construction, composition, or operation, typically with a view to manufacturing a similar product.” (Oxford English Dictionary definition of “reverse engineer.”) Merriam-Webster similarly defines reverse engineering as: “to study the parts of (something) to see how it was made and how it works so that you can make something that is like it.” (Merriam-Webster definition of “reverse engineer.”); *see also SAS Inst., Inc. v. World Programming Ltd.*, 874 F.3d 370, 381 (4th Cir. 2017) (approving the foregoing definitions in the context of a contract that prohibited reverse engineering of software).

This is precisely what Prisma did. They studied Glucommander® to see how it worked so Prisma could “make something that is like it.” Turman openly admitted that Prisma was “looking

under the hood of Glucommander®, I guess, running reports and just trying to figure out, like, what it's doing.” (Ex. 22 at pp. 4 at 11:43.)

B. Breach of contract

Glytec also is likely to succeed on its breach of contract claim. To establish a breach of contract, a party must prove: “(1) a binding contract entered into by the parties; (2) breach or unjustifiable failure to perform the contract; and (3) damage suffered by the plaintiff as a direct and proximate result of the breach.” *Prysmian Cables*, 573 F. Supp. 3d at 1036. As shown above, the Agreement expressly prohibited Prisma from:

- “reverse engineer[ing]” and “reverse assembl[ing]” or otherwise attempting to discover the “source code or structure” of the Glytec Software (Ex. 2 § 2.1);
- using or disclosing Glytec’s trade secrets or using any of the Glytec Service for purposes other than treating individual patients (*id.* §§ 7.2 and 1);
- accessing or using Glytec’s software “in any manner in connection with or to develop a commercially available or competing product or service” (*id.* § 2.2); and
- “us[ing] or disclos[ing],” without Glytec’s written consent, any of Glytec’s Confidential Information, which included everything in Glytec’s software (*id.* §§ 7.1 and 7.2).

Prisma breached each of these provisions by reverse engineering aspects of Glucommander®, then using (and continuing to use) Glytec’s Trade Secrets after it misappropriated them, and likely disclosing them to others.

III. Glytec Does Not Have an Adequate Remedy at Law.

If Prisma were to disclose Glytec’s Trade Secrets, Glytec would have no adequate remedy at law. *See, e.g., Jennings-Dill*, 2021 WL 9097086, at *3 (granting preliminary injunction where plaintiff lacked an adequate remedy at law because damages for injuries including “the loss of good will, loss of market share, damage to business reputation, and disclosure of confidential information—are inherently difficult, if not impossible to calculate”), *aff’d*, 442 S.C. 98 (Ct. App.

2024). If Prisma disclosed Glytec's Trade Secrets, Glytec would suffer these same types of injuries, which could not be compensated for in money damages, even if it were possible to calculate them.

In addition, in Section 11.11 of the Agreement, Prisma acknowledged that its breach of the Agreement should lead to an injunction *without bond*. See *Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 467, 626 S.E.2d 38, 43 (Ct. App. 2005) (inadequacy of remedy at law is "best buttressed by a provision in the 2004 Agreement ... that states... damages will 'be difficult, if not impossible, to ascertain, and it is therefore agreed that [the parties] shall have the right to an injunction or other equitable relief'").

Finally, there is no harm to Prisma if the Court prohibits Prisma from disclosing any aspect of the Prisma Software to third parties. Prisma is a hospital system. It is not in the business of marketing or assisting others in developing software.

CONCLUSION

For these reasons, the Court should grant Glytec's motion for a temporary restraining order and preliminary injunction and enter the draft order submitted herewith.

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