

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 26-CV-04158

Northfield Savings Bank, Plaintiff v. Chad Bell and Clay Bell, Defendants	FINDINGS, CONCLUSIONS, AND ORDER
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RULING ON PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION

This action involves the enforcement of non-competition and non-solicitation restrictions in Employment Agreements that Defendants Chad Bell and Clay Bell (together, “the Bells”) signed while they were employed by Plaintiff Northfield Savings Bank, Inc. (“NSB” or the “Bank”). On July 30, 2026, the Court granted an ex parte Temporary Restraining Order against the Bells. On September 9, 2026, the Court held an evidentiary hearing on Plaintiff’s preliminary injunction motion and heard testimony from witnesses and admitted several exhibits. NSB is represented by F. David Harlow, Esq. and the Bells are represented by Evan Barquist, Esq. The parties submitted post-hearing briefing, and the Court took the matter under advisement on September 24, 2026. For reasons discussed below, Plaintiff’s motion for a preliminary injunction is GRANTED.

Findings of Fact

Based on the credible evidence presented, the Court finds the following relevant facts to be established by a preponderance of the evidence for purposes of deciding the instant motion.

Plaintiff Northfield Savings Bank is a mutual savings bank with its main office in Northfield, Vermont. It provides banking and financial services to individuals and businesses primarily in Vermont and surrounding areas. According to the credible testimony of NSB’s President and CEO, Joseph Bator, the Bank’s primary customer base draws from in and around Northfield and the surrounding communities. As part of its mission and business plan, the Bank makes investments in those communities in order to develop and maintain customer relationships. NSB offers investment services to its customers under the name Northfield Investment Services (“NIS”) as a way of preserving its customer relationships and meeting its clients’ needs, even though the division itself is sometimes viewed as operating at a loss. Bator explained that it is worthwhile for the Bank to provide this service to customers as part of the larger picture, such that the Bank is profitable as a whole. Once a customer leaves a bank and starts receiving services elsewhere, it is very difficult to get the customer back.

Chad Bell (“Chad”) has worked in investment management services for over twenty-five years. He began working for NSB as an investment adviser with NIS in the fall of 2004. His brother, Clay Bell (“Clay”), joined the Bank in 2011 and Clay worked along with Chad as an investment adviser with NIS.¹ When Clay joined, the assets under management at NSB were between \$5 and \$50 million dollars, and when Clay joined the Bank, he brought with him approximately \$50 million dollars in assets. When Chad and Clay resigned in June 2026, the Bank had around 2,000 investment clients, and the Bells were managing approximately \$670 million dollars in assets. In addition to generating business through their own efforts and connections, the Bells received client referrals from the Bank.

On February 21, 2021, in exchange for their continued employment with NSB, Chad and Clay each signed an identical Employment Agreement, which included a Confidentiality and Non-Competition Agreement. Exs. A, B. Prior to signing the Agreement, Chad read through it briefly, but did not seek legal advice or discuss the terms with NSB management. The Confidentiality and Non-Competition Agreement includes the following provisions:

3. Restrictive Covenants.

(a) I agree to the following definitions:

- (i) “Business” means the provision of investment advice to individuals.
- (ii) “Restricted Period” means the period of time that commences with my employment for NSB and continues for a period of six months following the termination of my employment with NSB, for whatever reason.
- (iii) “Clients” means all of NSB’s existing investment clients on the date my employment with NSB ends.
- (iv) “Geographic Area” means within seventy-five miles of NSB’s main office.

(b) During the Restricted Period, I agree to the following restrictions:

- (i) Non-Compete. I will not, directly or indirectly, participate as an owner, employee or consultant of any entity engaged in the Business within the Geographic Area, unless I do so on behalf of NSB or unless I obtain the prior written consent of NSB.
- (ii) Non-Solicitation of Clients. I will not, directly or indirectly, solicit or have, or attempt to have, any contacts with Clients for the purpose of soliciting Business, unless I do so on behalf of NSB or unless I obtain the prior written consent of NSB.

¹ Because of the similarities in Defendants’ names, for ease of reference and to avoid confusion, the Court adopts the parties’ approach and refers to the Defendants by their first names.

In 2026, the Bells were seeking greater involvement in the decision-making process for NIS and sought to explore buying the book of business from NSB. In early June 2026, the Bells met with CEO Bator and other high-level executives to discuss this idea. However, the meeting did not result in an agreement and the Bells resigned from NSB by email on June 26, 2026. Exs. E, F. Chad had been contemplating providing financial services through a different firm since at least November 2025, and formulated a list of questions and logistical issues to consider in the event he and Clay left the Bank. Ex. G. Upon resigning from NSB, Chad and Clay formed the investment services company Green Mountain Financial Services, LLC (“GMF”) and opened an office in Charlestown, New Hampshire. That office is more than 75 miles from the Bank’s main office in Northfield by highway, but less than 75 miles away by air or “as the crow flies.” After the Complaint was filed in this action, the Bells closed the Charlestown office and relocated to an office in Concord, New Hampshire. According to Chad, he commutes two days a week to the New Hampshire office, although he is always trying to generate business and “works seven days a week,” including speaking to customers on the phone. The Bells have not met with any customers in their New Hampshire offices, and there is no signage for GMF on the building that would alert walk-in customers. The Bells employ two assistants at GMF, who work from their homes in Waterbury Center and Barre, interacting with customers electronically and by phone.

Following the Bells’ resignations, the Bank sent an email to their investment clients on June 29, 2026 to let them know Chad and Clay had left the Bank. NSB knows that customers can be concerned about the management of their funds when their contact at an investment firm leaves, and it sought to reassure them and retain their business. NSB’s Executive Vice President and Chief Banking Officer, Megan Cicio, reached out to many clients beginning on June 30. Ms. Cicio stated that many of the clients were not surprised and were already aware the Bells had left NSB. One customer told Cicio that the Bank “should have given the Bells” what they wanted, which indicated to Cicio that the Bells had been communicating with the client. Another told Cicio that Chad had been to visit him at his home in Richmond the day before and he was moving his accounts with Chad.² Cicio produced a report showing that between June 26 and August 5, 2026, 170 of the Bank’s investment services clients transferred their accounts to GMF, and 143 of those clients reside within 75 miles of the Bank’s main office in Northfield. Ex. J. Under relevant financial regulations, clients’ funds cannot be moved to a different investment firm without their consent.

² Based on the weight of the persuasive authority, the Court concludes that it may consider hearsay evidence in determining whether to grant a preliminary injunction. *See, e.g., Mullins v. City of New York*, 626 F.3d 47, 52 (2d Cir. 2010) (concluding that, in light of “the summary nature of the remedy” and the need for “courts to provide timely provisional relief,” as well as the fact that “admissibility of hearsay . . . goes to weight, not preclusion, at the preliminary injunction stage,” “hearsay evidence may be considered by a [trial] court in determining whether to grant a preliminary injunction”). Thus, the Court considers the testimony of Ms. Cicio regarding the statements of NSB clients she spoke with (to the extent such testimony properly constitutes hearsay under Rule 801 of the Vermont Rules of Evidence), particularly given that Ms. Cicio testified at the hearing and was subject to cross-examination. However, the Court did not admit, and does not consider, the Declaration of Sandra Shepard (Ex. I), who did not appear at the hearing to be questioned about what she was told by an NSB customer.

After the Bells resigned, Chad contacted approximately 30 clients whom he testified were “friends and family” that he knows outside his role as their investment advisor to inform them of his departure from NSB. In addition, Chad was contacted by about 40 of the Bank’s clients after they received the Bank’s email, and many of them have moved their accounts over to GMF. To do this, the Bells gathered the necessary information from the clients and then sent them a request for an electronic signature to open the new accounts. For example, Defendants presented the testimony of one of their clients, SH, with whom they have a good relationship and who has been an NSB customer for 15 years. After receiving the Bank’s email, SH contacted Chad and they began communicating about transferring his accounts to GMF. On July 12, Chad reached out to SH, and then SH emailed Chad the documentation for his investments at NSB. Next, Chad sent SH forms to move his investments electronically using “DocuSign.” SH understood that the Bells were operating remotely until they opened an office, which he believed, based on a conversation, would be in Barre, Vermont. SH never met with Chad at the New Hampshire office. Chad confirmed that on June 28, 2026, he met personally with another NSB client, whom he knows well outside of work and likes to meet in person, in Richmond. That client has also transferred his accounts to GMF. Chad testified that he understood the non-compete clause to preclude him from providing investment advice to anyone if *he* was located within 75 miles of the Bank’s main branch in Northfield. He did not think he was precluded from providing investment advice to individuals residing within that geographic area if they were not Clients, as that term is defined in the Agreement. Currently, if Chad is contacted by an NSB client, he tells them that he is temporarily unable to assist them.

On July 30, 2026, NSB filed its Verified Complaint against the Bells asserting a claim for breach of contract. NSB seeks a preliminary injunction to prevent the Bells from acting in violation of the non-solicitation clause and from providing investment advice to individuals located within 75 miles of Northfield who have not already transferred their accounts to GMF for the remainder of the six-month period.

Discussion

“A preliminary injunction is an extraordinary remedy never awarded as of right.” *Taylor v. Town of Cabot*, 2017 VT 92, ¶ 19, 205 Vt. 586 (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)). In considering the request under Rule 65 of the Vermont Rules of Civil Procedure, “the court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Id.* ¶ 19 (quotation omitted). The moving party has the burden of establishing the relevant factors, which include “(1) the threat of irreparable harm to the movant; (2) the potential harm to the other parties; (3) the likelihood of success on the merits; and (4) the public interest.” *Id.* (citing *In re J.G.*, 160 Vt. 250, 255 n.2, 627 A.2d 362, 365 n.2. (1993)). The balancing test articulated by the Vermont Supreme Court is designed to be “sufficiently flexible to allow for a preliminary injunction in cases in which the court cannot definitively conclude that the movant is likely to prevail on the merits, but the balance of other factors tips strongly in favor of an injunction.” *In re J.G.*, 160 Vt. at 255 n.3. The Court considers each of the factors below.

I. Likelihood of Success.

A party seeking a preliminary injunction is “not required to prove his case in full,” and the court’s findings of fact and conclusions of law “are not binding at trial on the merits.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) (citations omitted); *see also Gardner v. Jefferys*, 2005 VT 56, ¶ 14, 178 Vt. 594 (trial court’s interpretation of restrictive covenant following limited hearing on motion for temporary injunction does not bind court’s later interpretation when record is fully developed).

“The modern approach to reviewing restrictive covenants is one of reasonableness. Courts seek to balance the employer’s interest in protecting its business and investments, the employee’s interest in pursuing a desired occupation, and the public’s interest in the free flow of commerce.” *Summits 7, Inc. v. Kelly*, 2005 VT 97, ¶ 7, 178 Vt. 396. Under Vermont law, “a restrictive covenant ‘is unreasonably in restraint of trade if (a) the restraint is greater than is needed to protect the promisee’s legitimate interest, or (b) the promisee’s need is outweighed by the hardship to the promisor and the likely injury to the public.’” *Systems & Software, Inc. v. Barnes*, 2005 VT 95, ¶ 4, 178 Vt. 389 (quoting *Restatement (Second) of Contracts* § 188(1) (1981)). Courts “proceed with caution” when a party seeks to enforce a restrictive covenant “because such restraints run counter to public policy favoring the right of individuals to engage in the commercial activity of their choice.” *Id.* (citing *Roy’s Orthopedic, Inc. v. Lavigne*, 142 Vt. 347, 350, 454 A.2d 1242, 1244 (1982)). Agreements containing restrictive covenants are nonetheless enforced “unless the agreement is found to be contrary to public policy, unnecessary for protection of the employer, or unnecessarily restrictive of the rights of the employee, with due regard being given to the subject matter of the contract and the circumstances and conditions under which it is to be performed.” *Id.* (quoting *Vt. Elec. Supply Co. v. Andrus*, 132 Vt. 195, 198, 315 A.2d 456, 458 (1974)). “[N]oncompetition agreements may protect legitimate employer interests such as customer relationships and employee-specific goodwill.” *Barnes*, 2005 VT 95, ¶ 5 (citing *Restatement (Third) of Employment Law* § 6.05 cmt. b). The employer bears the burden of proving “the reasonable necessity of the restrictive covenant.” *Summits 7*, 2005 VT 97, ¶ 14 (quotation omitted). “[C]ontinued employment alone is sufficient consideration to support a [restrictive covenant] entered into during an at-will employment relationship.” *Id.* ¶ 18.

The Bells do not argue that six months is an unreasonable length of time for the Restrictive Covenants to be in effect, and Vermont courts have found restrictions of five years to be reasonable. *Andrus*, 132 Vt. at 199, 315 A.2d at 458. Further, the Bells do not contend that the Restrictive Covenants’ geographic range of 75 miles is unreasonable, and courts in other jurisdictions have approved the same or greater restrictions. *See, e.g., A.H. Harris & Sons, Inc., v. Naso*, 94 F. Supp. 3d 280, 296 (D. Conn. 2015) (enforcing restrictive covenant for two-year period covering 100-mile radius from employer’s business where employer serviced customers within 100 miles of its office); *Marine Contractors Co. v. Hurley*, 310 N.E.2d 915, 918, 921 (Mass. 1974) (enforcing agreement precluding employee from competing with employer for five-year period within 100 miles of employer’s business where facts showed employer engaged in marine repair work up to 100 miles away); *Griggs & Browne Co. v. Healy*, 453 A.2d 761, 762 (R.I. 1982) (affirming trial court’s preliminary injunction enforcing restriction that employee may not compete with employer within 75-mile radius of employer’s office for three years).

Rather, the only dispute between the parties seems to be the interpretation of both the Non-Compete and the Non-Solicitation of Clients sections of the Restrictive Covenants. “Whether a set of facts constitutes a breach of contract is a question of law. The cardinal rule in construing contracts is the intent of the parties.” *Beldock v. VWSD, LLC*, 2023 VT 35, ¶ 27, 218 Vt. 144 (quotations omitted). “To determine the meaning of a specific provision of a contract,” courts “consider the whole instrument and construe it in harmony if possible.” *Id.* (quotation omitted). “When the language of the contract is clear on its face, [the court] will assume that the intent of the parties is embedded in its terms.” *Dep’t of Corr. v. Matrix Health Sys., P.C.*, 2008 VT 32, ¶ 12, 183 Vt. 348 (quotation omitted). An ambiguity exists when “a writing in and of itself supports a different interpretation from that which appears when it is read in light of the surrounding circumstances, and both interpretations are reasonable.” *Isbrandtsen v. N. Branch Corp.*, 150 Vt. 575, 579, 556 A.2d 81, 84 (1988). However, the mere fact “that a dispute has arisen over the proper interpretation of a contract does not automatically render the language ambiguous.” *Towns v. Vt. Mut. Ins. Co.*, 169 Vt. 545, 726 A.2d 65, 67 (1999) (mem.). As our Supreme Court has explained, “if the court concludes the writing is unambiguous, it must declare the interpretation as a matter of law; if it reaches the opposite conclusion, interpretation of the ambiguous contract becomes a question of fact.” *Sutton v. Purzycki*, 2022 VT 56, ¶ 38, 217 Vt. 326 (quotation omitted). The Court will analyze the Non-Compete and the Non-Solicitation of Clients sections of the Restrictive Covenants in turn.

A. Non-Compete Section

The Non-Compete restriction provides, in relevant part, that the Bells will not participate in “any entity engaged in the Business within the Geographic Area” without “the prior written consent of NSB.” Ex. A, at 5, § 3(b)(i). After inserting the definitions of “Business” and “Geographic Area,” the full provision requires that the Bells will not participate in “any entity engaged in the **provision of investment advice to individuals within seventy-five miles of NSB’s main office.**” See *id.* § 3(a)(i), (iv). This is the key language the Court must interpret. The Bank argues the provision precludes the Bells from providing investment advice to individuals who reside within 75 miles of the Bank’s main office, regardless of where the Bells are when they provide this advice. The Bells, on the other hand, contend the provision is ambiguous, but is more properly interpreted to refer to the location of the entity’s office and to their location when they communicate with the individuals. Thus, the Bells believe they (through GMF) are permitted to provide investment advice to individuals who are within 75 miles of Northfield, so long as they and GMF’s office are situated outside the 75-mile radius of the Bank when the advice is provided.

For purposes of deciding the instant motion, the Court concludes that the Non-Compete restriction is unambiguous, and at least operates to preclude the Bells from providing investment advice to clients who are located within 75 miles of the Bank’s main office. The evidence established that NSB’s primary customer base is located in and around Northfield and the surrounding communities. This is where the Bank focuses its marketing efforts and seeks to generate business and develop customer relationships. NSB offers investment services to its customers as a way of strengthening these relationships, so clients do not have to do business with other institutions to meet their full financial needs. NSB has a legitimate interest in protecting its customer catchment area where it primarily conducts business. See *A.H. Harris &*

Sons, 94 F. Supp. 3d at 293 (noting that non-compete provisions typically “restrict an employee from engaging in the same business as the employer in a given geographical area and prohibit the employee from doing business with all consumers of the service located in that area” (quotation omitted)); *Andrus*, 132 Vt. at 197, 315 A.2d at 457 (upholding non-competition agreement that covered Rutland County, where the employer primarily conducted business, despite the fact that the employee “was a native of Rutland County, and, through his work, developed a close personal relationship with many” clients in the area).

The Court is unpersuaded by the Bells’ argument that the physical location of the office determines where a firm is doing business, or where the investment advice is provided. This assertion is belied by the testimony that investment advice is often provided by the advisor remotely and does not require face-to-face meetings in an office. Indeed, the Bells never met with a client in their New Hampshire offices. There is no signage on the building or advertising to bring in customers. GMF’s support staff field phone calls and serve its customers from their homes in Vermont.

Thus, the Court’s construction is consistent with the purpose of the Non-Compete restriction to protect the area within a 75-mile radius of the Bank’s main office, where its primary source of customers is located. *See Sutton*, 2022 VT 56, ¶ 40 (explaining that, in interpreting a contract, the court “may look to the overall purpose of the [contract] as expressed in its language for guidance”). Courts in other jurisdictions have similarly adopted this reasonable construction. As the Massachusetts federal district court has held, “[a]greements restricting an employee from working in areas in which his former employer operates are generally considered to be reasonable.” *Lombard Med. Techs., Inc. v. Johannessen*, 729 F. Supp. 2d 432, 439 (D. Mass. 2010) (citations omitted); *see also A.H. Harris & Sons*, 94 F. Supp. 3d at 296 (employer was “entitled to protect itself from unfair competition in areas where [employee] was actually conducting business for it,” including 100-mile radius from office “location where it had a warehouse from which it was able to service customers within 100 miles with its trucks”); *Marcam Corp. v. Orchard*, 885 F. Supp. 294, 299 (D. Mass. 1995) (nationwide geographic restriction was reasonable because it restricted “former employee from doing business in an area in which the company itself conducts business”); *Spann v. Lovett & Co.*, 389 S.W.3d 77, 84 (Ark. Ct. App. 2012) (holding that non-compete covenant restricting seller of business “from carrying on an accounting business in the geographical area covering a fifty mile radius from” business’s main office was not ambiguous and prevented seller “from serving clients located within” the geographic area, rather than from merely “opening an office there”); *O’Leary v. Telecom Res. Serv., LLC*, No. 10C-03-108-JOH, 2011 WL 379300, at *5 (Del. Super. Ct. Jan. 14, 2011) (“The overarching intent of a non-compete covenant is to protect the geographical area where the business owner conducts business, and to protect its economic interests against those who may have gained an unfair competitive advantage against them as a former employee.” (citation omitted)).

To their credit, the Bells do not dispute that they are now serving customers who are located within 75 miles of NSB’s main office. Thus, the Court finds NSB has established a reasonable likelihood of success on their claim that the Bells are in violation of the Non-Compete restriction.

B. Non-Solicitation of Clients Section

The Non-Solicitation restriction provides, in relevant part, that the Bells will not “directly or indirectly, solicit or have, or attempt to have, any contacts with Clients for the purpose of soliciting Business,” without NSB’s prior written consent. Ex. A, at 5, § 3(b)(i). As noted above, “Clients” means “all of NSB’s existing investment clients” as of the date the Bells’ employment with NSB ends and “Business” refers to “the provision of investment advice to individuals.” See *id.* § 3(a)(i), (iii). The key dispute between the parties concerns the meaning of the term “solicit.” The Bells argue they did not solicit any of the 170 clients who moved their accounts from NSB to GMF, and that the Non-Solicitation clause does not prevent them from accepting business from a client who contacts them first. The Bank argues that the provision prohibits the Bells from having contacts with its clients for the purpose of soliciting their business, regardless of who initiates the first communication, and that the undisputed evidence of the Bells’ visits and communications with the Bank’s clients constitutes solicitation.

In interpreting a contract, courts apply “the plain meaning of the terms used.” *Vt. Hum. Rts. Comm’n v. State, Dep’t of Corr.*, 2015 VT 138, ¶ 52, 201 Vt. 62. According to *Black’s Law Dictionary*, “solicitation” means “[t]he act or an instance of requesting or seeking to obtain something; a request or petition.” *Black’s Law Dictionary*, Solicitation (12th ed. 2024); see also “Solicit,” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/solicit> (“solicit” means “to approach (someone) with a request or plea; to make petition to; entreat; to try to obtain (something) by usually urgent requests or pleas”). Given the breadth of the various definitions, determining whether solicitation has occurred “requires a fact-specific inquiry into the wrongful conduct claimed.” *Wells Fargo Ins. Servs. USA, Inc. v. McQuate*, 276 F. Supp. 3d 1089, 1111 (D. Colo. 2016). However, it seems clear that “the restricted party needs to take affirmative action that entreats, implores, pleads, or petitions for the business at issue.” *Insure Idaho, LLC v. Horn*, 572 P.3d 183, 196 (Idaho 2025) (noting that “the difference between accepting and receiving business, on the one hand, and indirectly soliciting on the other, may be more metaphysical than real” (quotation omitted)).

As an initial matter, the Court rejects the Bells’ argument that solicitation cannot be found where the client contacted them first. As the First Circuit Court of Appeals has concluded, “the better view holds that the identity of the party making initial contact is just one factor among many that the trial court should consider in drawing the line between solicitation and acceptance in a given case.” *Corp. Techs., Inc. v. Harnett*, 731 F.3d 6, 12 (1st Cir. 2013) (declining “to assign talismanic importance to initial contact”); see also *Legal Tech. Grp., Inc. v. Mukerji*, No. CV 17-631 (RBW), 2019 WL 9143477, at *10 (D.D.C. June 10, 2019) (holding that “the plain meaning of ‘solicit’ does not necessarily require the soliciting party to initiate contact”); *Meyer-Chatfield v. Century Bus. Servicing, Inc.*, 732 F. Supp. 2d 514, 522 (E.D. Pa. 2010) (“Under the definition in Black’s Law Dictionary, solicitation is not confined only to the verbal act of asking or requesting something, or to the act of formally first approaching a potential employee. Actions to ‘awake or incite to action,’ or ‘conduct intended to and calculated to incite’ the desired act are also acts of solicitation.”). The Court agrees that “[a]ccording decretory significance to who makes the first contact would undermine” the employer’s “bargained-for protection of its accrued good will” because “that factor, standing alone, will rarely tell the whole tale. And because initial contact can easily be manipulated – say, by a targeted announcement that piques

customers' curiosity – a per se rule would deprive the employer of its bargained-for protection.” *Corp. Techs., Inc.*, 731 F.3d at 11.

The Non-Solicitation Section prevents the Bells from soliciting NSB's clients or having (or attempting to have) contacts with such clients for the purpose of soliciting their business. The contract prohibits any such activity that is carried out directly or *indirectly*. Chad Bell testified that he called about 30 NSB clients whom he knew personally to tell them that he had left NSB, and that approximately 40 clients contacted him. He also visited some clients in person. The Bells also acknowledged that they informed those 30 clients about their new firm. Defs.' Opp. to Mot. for Prelim. Inj. (filed Aug. 27, 2026) at 3. Chad denied soliciting any of NSB's clients in any of those conversations. However, Chad's denials are not dispositive of the issue. Courts have held that such selective communications are not merely general announcements, but may constitute solicitation. A case decided by the federal court for the District of Columbia involving investment services is instructive. In *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Schultz*, No. 01-0402, 2001 WL 1681973 (D.D.C. Feb. 26, 2001), defendant was subject to a non-solicitation provision stating he would “not solicit” Merrill Lynch's clients who defendant served or whose names became known to him during his employment. *Id.* at *2. Defendant conceded that he called his former customers but insisted that he “merely ‘announced’ his resignation and ‘did not solicit any customer to move his or her account’” to his new firm, Dean Witter. *Id.* The court rejected “the subtle distinction the defendant attempt[ed] to draw,” and granted a preliminary injunction, finding Merrill Lynch had demonstrated a likelihood of success on the merits that “defendant is violating the nonsolicitation clause.” *Id.* The court reasoned:

Even if the defendant merely calls his clients and states that he has resigned from Merrill Lynch and now works for Dean Witter, the Court finds that his initiation of targeted contact through the use of client information gained through his employment with Merrill Lynch constitutes prohibited solicitation. Despite the ‘announcement’ label the defendant places on it, *such initiated, targeted contact is tantamount to solicitation because there is no reason to believe that a customer on the receiving end of such a phone call does not assume that the broker wishes for him to transfer his account.*

Id. at *3 (emphasis added); *see also UBS Fin. Servs. Inc. v. Fiore*, No. 17-CV-993 (VAB), 2017 WL 3167321, at *14 (D. Conn. July 24, 2017) (preliminary injunction issued where blast email that was targeted at clients of former employer who defendants “clearly hoped to attract” to their new firm “rose to the level of solicitation”); *Marsh USA Inc. v. Schuhriemen*, 183 F. Supp. 3d 529, 536 (S.D.N.Y. 2016), *amended*, No. 16CIV. 2998, 2016 WL 2731588 (S.D.N.Y. May 3, 2016) (granting preliminary injunction based on improper solicitation, dismissing employee's “alternative explanations” and finding that his “notice announcing his [new] employment . . . was not a general announcement, but was communicated” to all his “contacts,” which were his employer's clients); *Compass Bank v. Hartley*, 430 F. Supp. 2d 973, 981 (D. Ariz. 2006)

(holding that defendant's "letter constitutes a solicitation not only because it was a targeted mailing, but because it contained contact information initiating customers to call/e-mail/write" defendant).³

Likewise here, it defies credulity that the Bells' personal calls and visits to 30 targeted clients, with whom they had particularly close relationships (even if they were "friends and family"), to tell them about their departure from the Bank and new firm were not contacts for the purpose of soliciting the clients' business. This is particularly true where NSB sent an announcement email to all NIS customers on the next business day after the Bells' resignation to provide the required information regarding the end of the Bells' employment. Notably, by that time, at least one customer had met in person with the Bells and told NSB he was moving accounts.

Thus, based on the current record, the Court finds that NSB is reasonably likely to prevail on its claim that the Bells breached the Non-Solicitation of Clients restriction. The Court notes that, based on Plaintiff's request, the injunction applies only to future conduct and maintains the status quo. It does not seek to reverse the transfer of client accounts that has occurred or prevent the Bells from providing services to those clients. The Court is mindful that other "courts have routinely found that an individual does not suffer undue hardship where a restrictive covenant merely prohibits him from soliciting his former employer's clients for a reasonably defined period of time." *Willis Re Inc. v. Herriott*, 550 F. Supp. 3d 68, 104 (S.D.N.Y. 2021) (quotation omitted). Thus, the preliminary injunction is appropriate to prevent further harm to NSB, which weighs in favor of issuing it.

II. Irreparable Harm.

To establish irreparable harm, a plaintiff "must show that there is a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation." *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (quotation omitted). Further, a plaintiff must show that the harm is "actual and imminent, not remote or speculative." *Id.* When "it appears that the applicant has an adequate alternate remedy in the form of money damages or other relief" the request for a preliminary injunction

³ The cases cited by the Bells are not to the contrary. For example, in *Akron Pest Control v. Radar Exterminating Co.*, 455 S.E.2d 601, 602-03 (Ga. Ct. App. 1995), on interlocutory appeal, the Georgia Court of Appeals rejected plaintiff's argument that the parties' non-solicitation clause required defendant to turn away business from plaintiff's former customers that it "in no way sought out," finding that plaintiff had identified "no act by [defendant] that could possibly be considered a solicitation" in "the broadest possible sense" of that term. As discussed below, the Court finds otherwise in this case. Further, *Hilb, Rogal & Hamilton Ins. Servs. v. Robb*, 39 Cal. Rptr. 2d 887, 892 (Ct. App. 1995), was decided as a matter of equity, not contract interpretation, under California's unfair competition law and Uniform Trade Secrets Act. *See id.* ("Equity will not enjoin a former employee from receiving business from the customers of his former employer even though the circumstances be such that he should be prohibited from soliciting such business." (quoting *Aetna Bldg. Maint. Co. v. West*, 246 P.2d 11, 15 (Cal. 1952))). Therefore, it is not controlling and is less persuasive than *Merrill Lynch* and other cases.

will ordinarily be denied. *Taylor*, 2017 VT 92, ¶ 40 (citing C. Wright & A. Miller, *Fed. Prac. & Proc.* § 2948.1 (3d ed. 2017)). In determining whether adequate monetary compensation exists, the court must look at the specific harm in the case.

As our Supreme Court has long held, the “potential loss of a business satisfies the irreparable harm requirement for the issuance of an injunction, and demonstrates the inadequacy of a remedy at law.” *Campbell Inns, Inc. v. Banholzer, Turnure & Co.*, 148 Vt. 1, 7, 527 A.2d 1142, 1146 (1987) (citing *Roso-Lino Beverage Distributors, Inc. v. Coca-Cola Bottling Co.*, 749 F.2d 124, 125-26 (2d Cir. 1984)). Additionally, irreparable harm is typically found to be established in situations involving a business’s loss of clients, their referrals, and harm to a business’s reputation. “Irreparable injury may be shown through . . . [the] loss of revenues from . . . clients, and loss of referral business usually garnered from clients. Loss of goodwill associated with a business, which is difficult to quantify, can constitute irreparable injury, even if monetary damages, as well as injunctive relief, are requested.” *Battenkill Veterinary Equine P.C. v. Cangelosi*, 768 N.Y.S.2d 504, 507 (App. Div. 2003) (citations omitted); *see also Destiny USA Holdings, LLC v. Citigroup Glob. Markets Realty Corp.*, 889 N.Y.S.2d 793, 802 (App. Div. 2009) (“Harm to business reputation is harm for which money damages are insufficient and for which injunctive relief may be appropriate.”).

Vermont courts have found irreparable harm where an employee developed close relationships with an “employer’s customers or knowledge of an employer’s business” and could “use those acquaintances or knowledge in a competing business.” *Barnes*, 2005 VT 95, ¶ 12 (citing *Dyar Sales & Mach. Co. v. Bleiler*, 106 Vt. 425, 175 A. 27 (1934)). “Because it is very difficult to calculate monetary damages in the event of the loss of a client relationship ‘that would produce an indeterminate amount of business in years to come,’ the violation of an enforceable non-compete constitutes irreparable harm.” *Veramark Techs., Inc. v. Bouk*, 10 F. Supp. 3d 395, 400 (W.D.N.Y. 2014) (quoting *Ticor Title Ins. Co. v. Cohen*, 173 F.3d 63, 69 (2d Cir. 1999)); *see also A.R.S. Servs., Inc. v. Morse*, No. MICV201300910, 2013 WL 2152181, at *10 (Mass. Super. Ct. Apr. 5, 2013) (“Good will is generated by repeat business with existing customers, or by referrals to potential customers.” (quoting *N. Am. Expositions Co. Ltd. P’ship v. Corcoran*, 898 N.E.2d 831, 846 (Mass. 2009))).

Here, NSB has established that it faces actual and imminent harm from the Bells’ violations of their non-competition and non-solicitation covenants that cannot be remedied by money damages alone. The Bells’ operation of a competing business within the area where NSB’s primary customer base is located and provision of services to the Bank’s clients poses a threat to the Bank’s continued operations and efforts to build its investment services division. It also has real potential to interfere with the Bank’s ability to maintain its current customer relationships and cause financial loss that is very difficult to quantify. *See, e.g., Intertek Testing Servs.*, 443 F. Supp. 3d at 329 (“Generally, when a party violates a reasonable non-compete clause, the resulting loss of client relationships and customer good will built up over the years constitutes irreparable harm for purposes of imposing a preliminary injunction.” (quotation omitted)); *Andrus*, 132 Vt. at 199 (holding that where an employee “voluntarily left his employer for the very purpose of going into business competitively in the same special field,” the “potential for harm to the [employer’s] business was certainly established, and “injunctive relief is adequately supported”). Moreover, NSB has “been deprived of the time and opportunity to

transition clients from the [Bells] to other [Bank] employees without interference.” *Mercer Health & Benefits LLC v. DiGregorio*, 307 F. Supp. 3d 326, 348 (S.D.N.Y. 2018) (“The purpose behind the non-compete clauses is to allow the plaintiff a brief period to transfer the client relationships maintained through the defendants to their replacements. That benefit is inexorably lost by the failure to enforce the clauses immediately.” (quotation omitted)). Therefore, the Court concludes that NSB has met the threshold for demonstrating irreparable harm if the preliminary injunction is not granted.

III. Balancing of Harms.

As discussed above, the Court finds that in the absence of a preliminary injunction, the Bank stands to lose more than the Bells. Defendants’ operation of a competing business within NSB’s primary customer catchment area and provision of investment services to the Bank’s clients during the six months following their departure threatens to destroy the customer relationships the Bank has developed as a result of the Bells’ employment. Further, it would deprive NSB of its opportunity to work on transitioning clients from the Bells to their replacements without interference. Chad and Clay were the main employees providing investment advice for NSB, and they had relationships with customers that the Bank expected to grow and develop over time. Allowing the Bells to immediately take over these customers would be unfair to the Bank and could cause lasting harm extending longer than the six-month term of the Restrictive Covenants. *See Barnes*, 2005 VT 95, ¶ 6 (noting that “the loss of even a single contract could deprive plaintiff of revenue for many years”). On the other hand, the Bells have not presented any evidence that they are unable to work in the investment advising industry if they are precluded from providing services to the limited pool of customers covered by the Restrictive Covenants for just six months. Moreover, Chad and Clay are free to reestablish their relationships with such clients at the expiration of the brief restrictive period. Thus, the Court finds that, without the preliminary injunction, the Bank would suffer greater harm than the Bells.

IV. Public Interest.

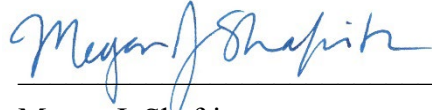
Finally, the Court cannot find that this is a case where the public interest weighs against enforcing the restrictive covenants. Vermont’s economic marketplace is strengthened where businesses can rely on the enforceability of their contracts and know that employees who willingly terminate their employment will not be permitted to leave and take the business’s goodwill and existing or potential customers with them in violation of non-competition and/or non-solicitation agreements. Moreover, the proposed injunction maintains the status quo, does not disrupt existing customers who have transferred their accounts to GMF, and seeks to prevent future harm to NSB for a relatively short remaining duration.

Order

For the foregoing reasons, Plaintiff’s Motion for a Preliminary Injunction (Mot. #1) is GRANTED. Within 14 days, the parties shall submit a stipulated proposed Preliminary Injunction Order, consistent with the Court’s decision, for the Court’s review and approval. The

injunction shall remain in effect through December 26, 2026. Plaintiff is not required to post any bond under Rule 65(c) of the Vermont Rules of Civil Procedure.⁴

Electronically signed on October 9, 2026 at 3:41 PM pursuant to V.R.E.F. 9(d).



Megan J. Shafritz
Superior Court Judge

⁴ In the Confidentiality and Non-Competition Agreements, the Bells agreed to waive the posting of a bond if the Bank was forced to take legal action to enforce the agreements. *See, e.g.*, Ex. A, at 5-6, § 4. The Court finds this constitutes good cause, *see* V.R.C.P. 65(c), and there has been no suggestion that NSB is without means to satisfy any damages that could be awarded under 12 V.S.A. § 4447. *See, e.g., Doctor's Assocs., Inc. v. Stuart*, 85 F.3d 975, 985 (2d Cir. 1996) (holding trial court did not abuse its discretion in waiving bond requirement where “Defendants have not shown that they will likely suffer harm absent the posting of a bond”).