SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ANDREW BORROK** **PART** **53**

Justice

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CLEAR STREET LLC,CLEAR STREET MANAGEMENT LLC,CLEAR STREET DERIVATIVES LLC,

Plaintiff,

- v -

HIDDEN ROAD PARTNERS LP, HIDDEN ROAD PARTNERS CIV US LLC,MARC ASCH, NOEL KIMMEL, WILLIAM KRINSKY, PATRICK TRAVERS

Defendant.

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INDEX NO. 656452/2025

MOTION DATE N/A

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents, the Plaintiffs' motion for a temporary restraining order is DENIED.

A party seeking a preliminary injunction must demonstrate (i) a probability of success on the merits, (ii) danger of irreparable harm in the absence of an injunction, and (iii) a balance of the equities in their favor (*Nobu Next Door, LLC v Fine Arts Housing, Inc.*, 4 NY2d 839, 840 [2005]). Pursuant to CPLR 6301, "[a] temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had" (CPLR 6301). In order to demonstrate a likelihood of success on the merits, the movant must demonstrate that the covenant is enforceable (*Sussman Educ., Inc. v Gorenstein*, 175 AD3d 1188, 1189 [1st Dept 2019], citing *Buchanan Capital Mkts., LLC v DeLucca*, 144 AD3d 508 [1st Dept 2016]). A covenant is not enforceable where "the party benefitted was responsible for the breach of the contract containing the covenant" (*id.*, citing *Cornell v T.V. Dev. Corp.*, 17 NY2d 69, 75 [1966]). An injunction shall not be granted "where conflicting affidavits raise[] sharp issues of fact" (*id.* at 1189-1191).

By order to show cause, the Plaintiffs in this case seek a temporary restraining order and a preliminary injunction *during the pendency of this action*, enjoining the Defendants and all those acting in concert or participation with them or on their behalf from:

(a) directly or indirectly developing, launching, announcing, or engaging in a security-based swap dealer business;

(b) employing, directly or indirectly, any of (x) Patrick Travers, Cory Solomon, Will Frank, Jordan Brodsky, Michael Batanjany (collectively, "Former Clear Street Employees"), or (y) any Clear Street employees that either the Former Clear Street Employees or anyone affiliated with Hidden Road Partners LP or Hidden Road Partners CIV US LLC solicited, either directly or indirectly; and

(c) using, disclosing, or taking any action to use or disclose Plaintiffs' confidential, proprietary and/or trade secrets information and know-how

(NYSCEF Doc. No. 8).

The relief sought is plainly overbroad. As an initial matter, the parties only bargained for the non-compete and non-solicitation periods at issue for discrete periods of time such that the duration of the requested injunction is inconsistent with the parties' express agreement. They are also not entitled to an injunction that would effectively prevent the Defendants from engaging in the SWAP dealer business without geographical limitation or for a time which exceeds that for which they bargained (*Sussman Educ., Inc.*, 175 AD3d at 1189, citing *Brown & Brown, Inc. v Johnson*, 25 NY3d 364, 370-371 [2015]; *Good Energy, L.P. v Kosachuk*, 49 AD3d 331, 332 [1st Dept 2008]); *Crippen v United Petroleum Feedstocks*, 245 AD2d 152, 153 [1st Dept 1997]; *Garfinkle v Pfizer, Inc.*, 162 AD2d 197 [1st Dept 1990]). Nor are they entitled to effectively put them out of work. Indeed, according to them (*tr.* 12.16.25-12.17.25), there are only a handful of players in this industry.

Additionally, the Court notes that the restrictive covenants at issue are with a different company than the company whose business the movant seeks to protect. To wit, the complaint alleges that Patrick Travers was the Chief Executive Officer of Clear Street Derivatives LLC, the leader of Clear Street's security-based swap dealer business. However, the restrictive covenants at issue which the Plaintiffs seek to enforce are not set forth in agreements with Clear Street Derivatives LLC. They are in an employment agreement with Clear Street Management LLC. According to the parties (*tr.* 12.16.25-12.17.25), Clear Street Management LLC is merely a shell employment company not engaged in any business.[1]

Reference is made to a certain Employment Agreement (the **Employment Agreement**), dated February 6, 2022, by and between Clear Street Management LLC (**Management LLC**) and Patrick Travers and a certain Proprietary Information, Assignment of Inventions, Non-Competition, Non-Solicitation and Non-Disparagement Agreement attached as Exhibit A to the Employment Agreement (the **Non-Competition Non-Solicitation Agreement;** the Employment Agreement, together with the Non-Competition Non-Solicitation Agreement, hereinafter the **Travers Management LLC Agreement**), of even date therewith, by and between the Company and Mr. Travers.

[1] The Court notes that although the papers refer to the plaintiffs collectively as "Clear Street," the record does not contain an agreement with Clear Street Derivatives LLC and Mr. Travers title in the Management LLC Agreement is Managing Director – Head of Distribution, not CEO.

Pursuant to Section 3.2 of the Travers Management LLC Agreement, the parties agreed that Mr. Travers would not compete while employed by the Company (as defined in the Travers Management LLC Agreement) and for the period three (3) months after termination:

> so long as Employee is employed by the Company and for the period of three (3) months after the termination of employment with the Company for any reason, whether voluntarily or involuntarily, (the "Non-Compete Period"), Employee shall not, directly or indirectly, participate in, engage in or prepare to engage in any Competitive Business Act.

(NYSCEF Doc. No. 19 § 3.2).

Company is defined as "Clear Street Management LLC," a Delaware limited liability company. The definition itself does not appear to include "affiliates."

Competitive Business Activity is defined as:

> (i) activity that is similar in nature to the services [Mr. Travers] provided to the Company during the last 2 years preceding the termination of [Mr. Travers] employment with the Company; ((ii) activity which utilizes Proprietary Information the Employee acquired during employment with the Company; (iii) controlling (by contract, equity ownership or otherwise), investing in (except as the owner of up to three percent of the securities of any given entity), providing other financial support to participating in, engaging in or consulting for any person or Company in any: clearing business, clearing broker dealer, clearing and reporting technology development, stock loan business, client agency execution services, principal execution services and prime brokerage services.

(*id.* § 3.3). Thus, the parties agreed that Mr. Travers could not compete with Management LLC while employed by Management LLC and for a period of three months after his employment with Management LLC. This is not however the harm alleged in the complaint. According to the complaint, Management LLC is not in the SWAP business. Clear Street Derivatives LLC is.

Additionally, the parties agreed that for the term of employment and for twenty-four (24) months thereafter, Mr. Travers would not solicit or attempt to induce any current or former employee of Management LLC:

> 4. Non-Solicitation and No Hire. Employee acknowledges and agrees that so long as the Employee is employed by the Company and for twenty-four (24) months thereafter, Employee shall not, either individually or on behalf of any other person or entity, directly or indirectly: (1) employ, solicit, induce, hire, offer to hire, or otherwise interfere with the employment or association of any current or former (within the prior twenty-four (24) months) director, member, officer or employee of the Company or its affiliates, or (2) induce, or attempt to induce, any current or former (within the prior twenty-four (24) months) company investor, consultant or supplier to alter, limit or end its business dealings or relationship with the

> Company or any of its affiliates; or (3) induce, or attempt to induce, any current or former (within the prior twenty-four (24) months) consultant or supplier of the Company to alter their relationship with, or to cease providing services for, the Company or any of its affiliates.

(*id.* § 4).

Finally, as relevant, the parties agreed that disputes between the parties shall be submitted in accordance with the rules of FINRA and all other disputes which do not arise of out of the Company's securities shall be submitted for binding arbitration administered by JAMS:

> 11.Governing Law; Arbitration. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to choice of law principles. Any dispute among Employee and the Company which cannot be amicably settled and is a dispute that arises out of the Company's securities business activities shall be submitted for binding arbitration in accordance with the rules of FINRA. All other disputes which do not arise out of the Company's securities business activities shall be submitted for binding arbitration administered by Judicial Arbitration and Mediation Services (JAMS). Arbitration shall be the exclusive dispute resolution process, though, for the avoidance of doubt, this shall in no way limit the company from obtaining immediate injunctive relief pursuant to the Proprietary Information, Assignment of Inventions, Non-Competition, Non-Solicitation and Non-Disparagement Agreement. Nor does this Section limit Employee's ability to file any regulatory charge against the Company. Any party may commence arbitration by sending a written demand for arbitration to the other parties. Such demand shall set forth the nature of the matter to be resolved by arbitration. The parties shall share equally all costs of arbitration. All decisions of the arbitrator shall be final, binding, and conclusive on all parties. Judgment may be entered upon any such decision in accordance with applicable law in any court having jurisdiction thereof.

(*id.* § 11).

The gravamen of the complaint in this case is that Mr. Travers and the other Defendants got a "head start" in creating a swap business at Hidden Road Partners LP such that they could compete with the Plaintiffs and that Mr. Travers violated the non-solicitation provision by attempting to induce certain employees to leave their employment with the Plaintiffs to go to work for Hidden Road Partners LP (*see, e.g.*, NYSCEF Doc. Nos. 24 and 25). Additionally, the Plaintiffs allege that Mr. Travers conveyed proprietary information not otherwise disclosed in the marketplace through prospectus or otherwise and not generally understood about the swap business in violation of the employment agreement.

There are however significant factual disagreements as to these issues. For one thing, and according to the Defendants in their first filed action (case number: 1:25-cv-08420 (AT)) in the United States District Court for the Southern District of New York (**SDNY Court**), the Plaintiffs

in this case (and the defendants in that case) violated securities laws and failed to address the Defendants whistleblower concerns as to their conduct. According to the Defendants in the first filed action in the SDNY Court, they were retaliated against (*see* NYSCEF Doc. No. 36). The Plaintiffs in this case violated the relevant employment agreements, eliminated vested compensation, and fired them pretextually to mask their improper conduct. Indeed, according to Mr. Travers they paid Curtis Allemang to retain him and to keep quiet and admitted that they have no basis for claiming that Mr. Travers violated his agreement with the Plaintiffs:

> 42. Based on my experience at Clear Street, they only encouraged Curtis to stay after he resigned because, unlike Plaintiffs, either senior management was unaware of his complaints about illegal conduct, he was recognized by senior management as someone who would never report Clear Street to a regulatory authority, and/or they knew they could scare him into staying at Clear Street and not talking by giving him millions of dollars that he needs for his young family.
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> 43. After I resigned on September 15, 2025, I received multiple threats from Cohen, Tilly, and Volz regarding Clear Street's plans to sue me personally. Clear Street not only threatened to sue my family and me but also to hire private investigators to follow us and gather information.
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> 44. On September 22, 2025, Cohen personally told me that he was going to sue me because he "had to make an example of someone and that he couldn't just let people walk out of his firm." He also admitted during that call that he had no evidence that I had breached any restrictive covenant I owed to Clear Street, and it was clear he was threatening me with litigation solely to retaliate against my family and me.

(NYSCEF Doc. No. 38 ¶¶ 42-44).

Second, the Defendants dispute vigorously that the communications at issue involve Section 1.3 Proprietary Information. According to them, all that was conveyed was the basic requirement for managing a swap lifecycle and industry standard practices from an operations perspective and no conversation containing confidential information (*id.*, ¶¶ 52-53). The conversations amounted to nothing more than due diligence and they did not disclose non-public information about the Plaintiffs business or otherwise disclose information not otherwise publicly known about strategy set forth in prospectus or available on Bloomberg. Additionally, they contend the Omega Platform itself is not proprietary information and that it is customizable and that that the software that they will build at Hidden Road will be completely new for that business (*see* NYSCEF Doc. No. 62 at 10-11). They further content that their internal discussions were musings about whether they should leave and what they needed clarity about in order to make those decisions (NYSCEF Doc. No. 38 ¶ 49). Finally, they dispute that they were the source of the solicitation itself or that they encouraged the solicitation. As such, and given the factual disputes not properly resolved on this record (and absent expert analysis of the information conveyed), it would be an improvident exercise of discretion to grant the temporary restraining order (*see Sussman Educ., Inc.*, 175 AD3d at 1189-1190; *compare e.g.*, NYSCEF Doc. No. 49

with NYSCEF Doc. No. 18 [highlighting, among other things, a factual dispute regarding the circumstances surrounding Patrick Travers's departure from Clear Street]).[2]

Additionally, the covenants not to compete are scheduled to terminate imminently. It is hard to square why the Plaintiffs did not come to Court and seek relief between September 16, 2025 and November 13, 2025 when nothing prevented them from doing so if in fact this was the irreparable harm as they have permitted the Defendants covenants not to compete to run during this time period without relief (cf. *New York Real Estate Inst., Inc. v. Edelman,* 42 AD.3d 321 [2007]; *see Nobu Next Door, LLC,* 4 NY2d at 840; *see e.g.,* NYSCEF Doc. No. 2 ¶ 4).[3] More specifically, the Plaintiffs lack adequate explanation as to why they waited for close to two months and until the end of the expiration of the covenant not to compete period to come to Court seeking relief. Mr. Travers indicates he has not yet started work at Hidden Road given his restrictive covenants. They also fail to explain why the dispute at issue should not be sent to arbitration pursuant to the terms of the agreements as it relates to the individual defendants.

Lastly, the Court notes that the Plaintiffs also fail to meet their burden in demonstrating that the balance of the equities favors granting an injunction (*see Nobu Next Door, LLC,* 4 NY2d at 840). As such, the temporary restraining order must be denied.

However, and as discussed, leave is granted to the Plaintiff to supplement the record no later than January 15, 2025 addressing by (i) expert affirmation that (a) the information contained in the emails was in fact Section 1.3 Proprietary Information not otherwise publicly available and (b) that the communications demonstrate solicitation by Mr. Travers (and not merely internal conversations among certain of the Defendants or solicitation by employees of the Plaintiffs that ultimately elected to remain employed by the Plaintiffs), (ii) the enforceability of the covenants themselves including as to preparative conduct, (iii) why the claims asserted against these individual defendants are not to be sent to arbitration and (iv) the time period by which they believe they are entitled to tack on to the otherwise date of expiration of the restrictive covenants.

The Defendants may respond to such supplemental papers no later than February 5, 2025 with their own expert.

The experts are to appear for a hearing scheduled on February 12, 2025 at 9:30am.

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[2] The Court notes that the Defendants are not correct in their assertion that these claims necessarily should have been brought against the Defendants in the federal action. This would require the exercise of supplemental jurisdiction and analysis by the federal court – not this Court. However, the Court notes that there appears to be parties on both sides of the "v" from Delaware.

[3] The Court notes that according to the parties (*tr.* 12.17.25), the SDNY court did not enjoin the defendants in that case (the Plaintiffs) in this case from seeking relief until November 13, 2025 when the court issued a temporary restraining notice. To the extent that the Plaintiffs indicate that based on *Edelman,* they are entitled to an extension of the covenant not to compete period, they at this stage fail to adequately address this period of time when nothing prevented them from coming to Court to seek relief.

12/17/2025
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE