

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

VIRTU FINANCIAL OPERATING LLC,

Plaintiff,

v.

NATHAN CLARK,

Defendant.

Index No. _____

Date Index No. Purchased _____

SUMMONS

To the above named Defendant:

You are hereby summoned to serve upon Plaintiff's attorneys an answer to the Complaint in this action within 20 days after the service of this summons, exclusive of the day of service, or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Plaintiff designates New York County as the place of trial. The venue is designated on the basis of CPLR § 501 and § 503. Plaintiff is a resident of New York County.

Dated: New York, New York
August 31, 2023

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

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COMPLAINT

Virtu Financial Operating LLC¹ (“Virtu” or “the Company”), by and through its attorneys, Paul, Weiss, Rifkind, Wharton & Garrison LLP, upon personal knowledge with respect to itself and its actions and otherwise on information and belief, alleges as follows:

Nature of the Action

1. Virtu brings this action to prevent Nathan Clark, who abruptly resigned as Virtu’s Head of Client Technology on August 10, 2023, from breaching his Noncompetition Agreement with Virtu by becoming Chief Technology Officer at Clear Street LLC, a Virtu customer and rival, prior to the expiration of his eighteen-month non-compete period.

2. Clark is intimately familiar with Virtu’s most valuable trade secrets and other proprietary information, including the algorithms that run its major service offerings. He will inevitably use that proprietary information, to Virtu’s detriment, if he is permitted to join Clear Street as its Chief Technology Officer prior to the expiration of his non-compete period.

¹ In 2011 Virtu Financial LLC was renamed Virtu Financial Operating LLC.

The Parties

3. Plaintiff Virtu is a Delaware limited liability company with its principal place of business in New York City. Through its wholly owned subsidiaries, Virtu employs sophisticated, proprietary electronic trading technology that makes markets and provides high-volume and high-speed execution services across a broad spectrum of financial assets including, for example, equities, bonds, commodities, foreign exchange, and derivatives.

4. Until August 10, 2023, Defendant Nathan Clark was Virtu's Head of Client Technology. On information and belief, he is a resident of Brooklyn, New York.

Jurisdiction and Venue

5. Jurisdiction and venue properly lie in this Court because Virtu's headquarters and principal place of business are situated within this judicial district, the events giving rise to the claims occurred in this judicial district, and the parties agreed in their Noncompetition Agreement to submit to the exclusive jurisdiction of and venue in the federal and state courts of the State of New York, for the resolution of all disputes arising under, or relating to, that Agreement.

Relevant Facts

Virtu

6. Virtu is a leading financial services firm operating in the Americas, Europe, and Asia that relies on cutting-edge proprietary technology to provide its clients brokerage services and trading technology across the entire life cycle of a trade. Leveraging its expertise in the application of technology to trading around the globe,

Virtu developed and provides a robust product suite, including offerings in execution, liquidity sourcing, analytics, and broker-neutral workflow technology.

7. Virtu's product offerings enable clients to trade on markets globally and in multiple asset classes, including but not limited to global equities, ETFs, foreign exchange, futures, and fixed income. Additionally, Virtu's integrated, multi-asset data analytics platform provides a range of pre- and post-trade services, data products, and compliance tools that clients rely upon to implement investment decisions.

8. On a typical trading day, Virtu processes millions of highly time-sensitive trades on behalf of clients. This would not be possible without its trading technology (which includes Virtu's trading hardware/infrastructure as well as its own software codes/programs) and proprietary methods/strategies to efficiently manage vast amounts of data over varying periods of time. Notably, Virtu's trading methods, programs, strategies and algorithms are the result of years of practical experience developing trading logic and infrastructure globally.

9. Technology is at the core of Virtu's business. Virtu has developed an exclusive, multi-asset, multi-currency technology platform that is highly reliable, scalable, and modular, and is integrated directly with exchanges, liquidity centers/venues, and its clients—although only Virtu knows and has access to the source code that underlies the technology. Virtu's application of its proprietary technology enables it to be one of the lowest cost providers of liquidity and brokerage services in the world, which contributes to the smooth functioning of global markets.

10. Virtu's two operating segments consist of Market Making and Execution Services. The Market Making segment principally consists of market making

in the cash, futures, and options markets across global equities, fixed income, currencies, cryptocurrencies, and commodities.

11. Virtu's Execution Services business provides customers with trading execution services and access to trading venues (such as a stock exchange) that assist clients in implementing their investment decisions. Virtu's clients for these services include, but are not limited to, institutional asset managers, hedge funds, banks, brokers, dealers, and sovereign wealth funds. The Execution Services business offers three categories of products and/or services: (1) brokerage, (2) trading software, and (3) data analytics. Thus, while market making provides liquidity to financial markets, Virtu's proprietary Execution Services business facilitates investors' ability to execute trades in a variety of ways based on their specific objectives.

12. Virtu delivers its agency-based execution trading products and services in a variety of ways. Clients can place their own orders in the market (using Virtu's agency algorithms), or they can send their orders to Virtu's Sales Trading Desk to execute the order on their behalf using largely the same algorithms the client uses to place their own orders. In both cases, clients benefit from Virtu's years of experience and the significant monetary investment it has made over the years.

13. Triton, Virtu's execution management software ("EMS"), is a proprietary technology that allows customers to manage risk, perform pre-trade scenario analysis, automate workflows, enter orders directly into the market, or send to brokers/dealers to execute on the client's behalf.

14. Virtu also offers data analytics products to customers to enable them to perform analyses prior to trading (pre-trade analytics), monitor trading

performance while an order is being executed (real-time), and evaluate the performance of executed orders against a variety of dimensions/benchmarks (post-trade).

15. In the financial services industry, a company's proprietary technology, developed by highly capable and experienced technologists, is a critical asset to and a foundational feature of a firm's business offerings. As a result, Virtu guards its trade secrets and treats all and any information regarding them as highly confidential. Virtu's well adopted, proprietary trading technology in large part drives its competitive position in the market. It is the cornerstone of Virtu's offerings. Clark is intimately familiar with all of it.

16. Virtu takes numerous precautions to safeguard its proprietary information and to maintain its secrecy. For example:

17. Virtu takes numerous precautions to safeguard its proprietary information and to maintain its secrecy. For example:

(a) all employees with access to confidential information are required to sign noncompetition and confidentiality agreements, though the length of the noncompete period varies based on the employee's role;

(b) access to Virtu's most important offices, including its New York office where Clark was based, requires an electronic key card;

(c) Virtu's proprietary source code is stored on encryption-protected systems;

(d) access to Virtu's proprietary technology and underlying source code is restricted to specific roles on a least-privilege basis;

(e) access to Virtu's private network is protected by encryption and multi-factor authentication;

(f) all U.S. employees are required to acknowledge and execute Virtu's Code of Conduct and Ethics, which states, "[t]he obligation to use proprietary information only for legitimate business purposes continues even after individuals leave the Company"; and

(g) all U.S. employees are required to acknowledge and execute Virtu's Employee Handbook, which states, in part, "[m]aintaining the confidentiality of this information is vital to the Company's competitive position in the industry and, ultimately, to its ability to achieve financial success and stability. You must protect this information by safeguarding it when in use, using it only for Company business and disclosing it only when authorized to do so and to those who have a legitimate business need to know about it."²

Nathan Clark

18. Clark is highly trained in computer science. He graduated from the University of Michigan with a bachelor's degree in engineering in 2002 and received a Ph.D. from the University of Michigan in Computer Science and Engineering in 2007. He was an assistant professor of computer science at the Georgia Institute of Technology from 2007 to 2010, which is when he joined Virtu.

19. In August 2010, Clark started working at Virtu as a software developer. In or about July 2017, he became Head of Client Technology at Virtu and

² Clark acknowledged and electronically executed both Virtu's Code of Conduct and Ethics and Virtu's Employee Handbook on December 7, 2022.

remained in that position until his abrupt resignation two weeks ago.

20. Clark's primary responsibilities included overseeing the development and maintenance of Virtu's client technology, which includes Virtu's Execution Services and retail market making technology. Clark was also a member of the Management Committee and the Technical Leadership Committee, which was limited to the senior-most technologists at the Company. Prior to his role heading Virtu's client technology, Clark worked as a senior developer on the core trading platform on which Virtu's market making business operates. This trading platform was ultimately leveraged to support Virtu's client businesses and Clark played a prominent role in its adaptation and implementation.

21. As a result of his role and memberships, Clark had broad and nearly unfettered access to Virtu's exclusive technology and source code. Moreover, Clark has a detailed understanding of Virtu's technology and its value to clients. Clark either helped develop or was intimately familiar with the development of the most important elements of Virtu's trading technology.

22. The trade secrets and other confidential technology to which Clark became privy while at Virtu represent the product of Virtu's substantial investment in research and innovation and are critical to Virtu's competitive success. Virtu carefully protects such information and does not make it accessible to the public or to Virtu's competitors, and it cannot be replicated from public sources.

23. By his own description on his LinkedIn profile, Clark states that he "was responsible for Virtu's client-facing technology [and its] OMS, EMS, agency trading stack, dark pools, block cross, and pre/post trade analytics."

The Noncompetition Agreement

24. Because Clark would be exposed to trade secrets by helping to develop Virtu's confidential and exclusive trading algorithms, Clark was asked to sign a Proprietary Invention, Assignment, Noncompetition and Confidentiality Agreement (the "Noncompetition Agreement") when he joined the Company in 2010.³ A copy of the Noncompetition Agreement, which is governed by New York law, is annexed hereto as Exhibit 1.

25. In the agreement, Clark acknowledged and agreed that "during the course of my Engagement by the Company, I may learn of or have access to the Company's Confidential Information." (¶ 1(b).) He also agreed that, if he left the Company, he would not join a company that (i) is a client of the Company or (ii) engages in any business activity that its similar to or directly competitive with the Company, for a period of eighteen months:

During the term of my Engagement with the Company, and for the greater of eighteen (18) months thereafter or the period during which the Company must pay severance to me (the "Restricted Period"), I will not be employed by . . . any other person or entity . . . that is (i) during the term of my Engagement, a past, current, or prospective client of the Company or (ii) engaged in any business or activity that is similar to or directly competitive with that of the Company (including, without limitation, areas in which the Company is or has conducted business and areas in which it is contemplating doing business), unless such employment or other arrangement has been approved by the Company in advance in writing. (*Id.* ¶ 2(a).)

³ Clark entered into the Noncompetition Agreement with Virtu Financial, LLC. That company changed its name to Virtu Financial Operating LLC in 2011.

26. These noncompetition provisions were referred to collectively in the Noncompetition Agreement as the “Restrictive Covenants.”

27. Clark made several important acknowledgements in the Noncompetition Agreement regarding the Restrictive Covenants, including that the Restrictive Covenants:

“are reasonable and valid in geographical and temporal scope and in all other respects, and are necessary in order to secure for the Company the benefits for which it has contracted” (*id.* ¶ 2(b));

“do not impose a greater restraint than is necessary to protect the goodwill or other business interests of the Company” (*id.*);

“contain reasonable limitations as to time and scope of activity to be restrained” (*id.*);

“are not harmful to the general public” (*id.*); and

“are not unduly burdensome to me” (*id.*).

28. Clark also acknowledged and agreed in paragraph 5(c) of the Noncompetition Agreement that:

I acknowledge and agree that . . . any violation by me of any of the undertakings contained in this Agreement would cause the Company and its affiliates immediate, substantial and irreparable injury for which it has no adequate remedy at law. Accordingly, I agree that in the event of a breach or threatened breach by me of any said undertakings, the Company will be entitled to temporary and permanent injunctive relief in any court of competent jurisdiction (without the need to post bond and without proving that damages would be inadequate).

(*Id.* § 5(c).)

29. The 18-month Noncompetition Agreement that Clark entered into, which applies to competitive or similar business activity worldwide, is necessary to

protect Virtu's technology, with which Clark is deeply familiar. This technology consists of proprietary technical infrastructure, trading software, and databases that took years to develop. Unlike some technologies that become quickly outdated, these proprietary technologies are at the core of Virtu's service offerings and will remain so for many years. Further, Virtu has a global client base and one of the key strengths of the Company's technology offering to clients is that it can be used globally. Thus, it is critical to have a Noncompetition Agreement that applies across the world.

Clark Violates the Noncompetition Agreement by Agreeing to Become Chief Technology Officer at Clear Street

30. Notwithstanding the covenants in his Noncompetition Agreement, Clark informed Virtu on August 10, 2023, that he had an opportunity to join "a tech startup (non-competitive)"⁴ as Chief Technology Officer, and asked what he could do "to make the transition as painless as possible." In a subsequent message, Clark told Virtu's Chief Human Resources Officer and Deputy General Counsel Tom Merritt that he was joining the "retail arm" of Clear Street.

31. However, despite Clark's assertion that Clear Street is "non-competitive," Clear Street is a New York-based company that is both a customer of Virtu's execution services and brokerage services, and a financial services company that offers financial technology solutions and brokerage services to customers.

32. Clear Street markets itself on its website as offering a "prime brokerage platform [that] adds significant efficiency to the market, while focusing on

⁴ Clear Street is not a "start-up" but instead an established financial services firm that has been in business for five years.

minimizing risk and cost for clients. The firm's goal is to create a single source-of-truth platform for every asset class, in every country, and in any currency."

33. Based on publicly available information, Clear Street has initially focused on providing clearing and settlement brokerage services to customers, though it also provides execution services to clients. In the past year, it has also demonstrated its plan to expand its business to compete with Virtu including by bringing certain additional execution services in-house, some of which it currently partially outsources to Virtu. Specifically, Clear Street has announced that its "actionable goals" include: (i) "expand[ing] product and asset class offerings to serve new customer personas and include fixed income and derivatives"; (ii) "add[ing] new geographies to serve more of the global economy"; and (iii) "leverag[ing] our unique technology to launch tools that decrease risk and unlock greater capital efficiency."

34. Clear Street is also a Virtu customer. It uses Virtu for order routing and execution services for certain of its client order flow. However, Clear Street's Founder and CEO Chris Pento recently stated in a publicly available podcast that the company wants to provide its clients, which "range from emerging manager to the largest institutions," with "everything they need to execute, clear, settle, finance [and] custody" their securities trades and positions. This desire is part of a broader strategy to "move up the size of customers we're serving" and to be able to service all buy-side firms such that none would "graduate off of our platform." Pento also acknowledged that part of Clear Street's strategy was "hir[ing] the best engineers we can find."

35. Consistent with these public statements, when Virtu asked Clear Street CEO Chris Pento about the company's intention to hire Clark, Pento said Clear

Street was looking for someone to help build tools for clients in its active trading segment, which he said was the “order flow” that Clear Street sends to Virtu as a client.

36. Clear Street’s ambitions to broaden its offering and compete directly with Virtu’s brokerage business are evidenced not only by its public statements, but also by its actions. In the past year, Clear Street has hired away three Virtu employees with twenty-plus years’ experience providing sales and trading coverage to institutional clients. By hiring them, Clear Street obtained access to these client relationships along with expertise in institutional sales trading. These individuals have no expertise in the clearing and settlement business that Clear Street has initially focused on, nor would their client relationships be natural consumers of these services. Instead, the relationships represent an expanded client universe that Clear Street aims to address with the individual expertise it acquired through these hires, plus technology products and services. Now, Clear Street is seeking to hire Clark as part of its efforts to use Virtu talent and knowledge of Virtu’s proprietary technology to further build out its business.

37. Further evidence of Clear Street’s intentions is that, in October 2022, Pento reached out to Virtu executives via email proposing a “partnership” between Clear Street and Virtu in which Clear Street would “asset purchase the Virtu Institutional Sales Trading Team,” “license software from Virtu,” and “Virtu [would] agree[] to establish a liquidity pool for CS’s institutional flow.” Virtu declined to engage with this proposal given its commitment to its brokerage business and its lack of interest in helping Clear Street build out a competitive offering. This email indicates that Clear Street is preparing to expand its business to compete with Virtu’s Execution Services.

38. Pento and Joseph Ricciardi, Clear Street's Head of U.S. Sales and Trading formerly worked at Knight Capital Group ("Knight") which in 2013 merged with Getco LLC to form KCG Holdings ("KCG"). Pento left KCG in 2014 and Ricciardi left KCG in 2016. In July 2017, Virtu acquired KCG. Both Pento and Ricciardi were deeply familiar with Knight's business, which was absorbed into Virtu following the 2017 acquisition.

39. Additionally, Clear Street has recently been engaged in significant fundraising efforts from venture capital firms and similar sources. In April 2023, Clear Street announced \$435 million Series B funding to support its "plans to expand its reach across new markets and asset classes, accelerate future product offerings, increase availability to all market participants, and offer solutions to clients looking to migrate to a single-source platform." With these funds, and with access to Clark's deep and extensive knowledge of Virtu's technology and its implementation, Clear Street will be able to more easily develop its own technology for execution services to directly compete with Virtu.

40. Flush with venture capital raised to super charge its growth, and with the attendant expectations from its venture investors, and having tried unsuccessfully to buy or license technology and assets from Virtu to grow its execution and trading capabilities, Clear Street is now seeking to hire as its Chief Technology Officer Clark, former Head of Client Technology at Virtu and a primary architect and engineer of Virtu's highly proprietary, scalable and robust trading platform, to further its efforts to build trading and technology tools and capabilities to service a broader universe

of buy side clients—a client base with whom its other former Virtu hires have long and enduring relationships.

41. On August 11, 2023, Virtu sent a letter to Clark demanding that he immediately cease and desist from the violation of any and all restrictive covenants contained in his agreements with Virtu. Clark did not respond to Virtu's letter, and he did not provide the assurances demanded regarding his compliance with his post-employment obligations to Virtu.

42. The week after Clark gave notice, Merritt spoke on the phone with Pento and Clear Street's Chief Legal Officer, Kenneth Sicklick. Pento told Merritt that Clear Street hired Clark because it was looking for someone to help build tools for clients in its active trading segment. During that phone call, Merritt informed Pento that Clark was subject to a noncompetition agreement, and asked Pento that he get back to him as to whether Clear Street intended to proceed with hiring Clark in the face of his Noncompetition Agreement. On August 23, 2023, Merritt had a follow-up call with Pento and Sicklick and again posed that question. Pento and Sicklick did not answer that question. To date, Clear Street has given Virtu no assurance that it will stop or even suspend its plans to hire Clark as its Chief Technology Officer.

43. Due to the overlap of Virtu and Clear Street, Clear Street's apparent plans to expand its business in execution services, and the similarity of Clark's roles at Clear Street and Virtu, Clark will inevitably make use of his knowledge of Virtu's exclusive technology to Virtu's detriment.

44. In light of Clear Street's stated goals of expanding its addressable client universe and providing a comprehensive suite of brokerage offerings, its pattern of

hiring Virtu's people, its previously rejected bid for Virtu technology and assets, and the very nature of the institutional brokerage business, it is a near certainty that, in discharging his duties as Clear Street's Chief Technology Officer, Clark would be engaging in competition with Virtu as he works to develop technology to enhance Clear Street's brokerage capabilities, decrease any execution dependency on firms like Virtu, expand Clear Street's client roster, and increase its client wallet share.

FIRST CAUSE OF ACTION
(Breach of Noncompetition Agreement)

45. Virtu repeats and realleges, as if fully set forth herein, the allegations set forth above.

46. The Noncompetition Agreement is an enforceable agreement that imposes upon Clark certain contractual obligations.

47. Clark has breached and intends to further breach the terms of his Noncompetition Agreement by, among other things, accepting employment with Clear Street.

48. As Chief Technology Officer at Clear Street, Clark will inevitably use, disclose, or rely on the Virtu trade secrets that he became aware of during his tenure at Virtu and that he agreed to protect in executing the Noncompetition Agreement.

49. If Clark is not enjoined from commencing employment with Clear Street, and thereby violating his Noncompetition Agreement, Virtu will be irreparably injured inasmuch as Clark inevitably will make use of, disclose, and/or rely on Virtu trade secrets and other confidential and proprietary information in performing his responsibilities at Clear Street.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- (a) preliminarily and permanently enjoining Defendant from:
 - (i) breaching the terms of his Noncompetition Agreement with Virtu; and
 - (ii) engaging in any employment arrangement with Clear Street in violation of Virtu's rights under the Noncompetition Agreement prior to the expiration of the eighteen-month restricted period under the Noncompetition Agreement;
- (b) awarding Virtu compensatory damages in an amount sufficient to compensate Virtu for Clark's breaches of contract;
- (c) awarding Virtu's attorneys' fees, costs, and disbursements as incurred as a result of this action; and
- (d) awarding Virtu such other and further relief as the Court may deem just and proper.

Dated: New York, New York
August 31, 2023

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

By: /s/ Joshua Hill Jr.

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