

Case 1:18-cv-07442-VEC Document 11 Filed 09/12/18

Page 1 of 1  
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ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 9/12/2018

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EASTMORE MANAGEMENT, LLC,

Plaintiff,

-against-

SUMAN GUNTA,


Defendant.

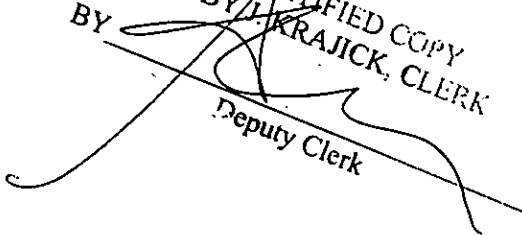
Case No. 1:18-cv-07442-VEC

**ORDER REMANDING ACTION**

**IT IS HEREBY ORDERED** that this action is remanded to the Supreme Court of the State of New York, County of New York (Index No. 653592/2018), pursuant to 28 U.S.C. § 1447(c), based on the parties' joint letter representing that the Court lacks subject matter jurisdiction (ECF No. 10).

Dated: 9/12/2018

  
Valerie E. Caproni, U.S.D.J.

A CERTIFIED COPY  
RUBY J. KRAJICK, CLERK  
BY   
Deputy Clerk

ECF

**U.S. District Court  
Southern District of New York (Foley Square)  
CIVIL DOCKET FOR CASE #: 1:18-cv-07442-VEC**

Eastmore Management, llc v. Gunta  
Assigned to: Judge Valerie E. Caproni  
Demand: \$500,000  
Case in other court: State Court - Supreme, 653592-2018  
Cause: 28:1332 Diversity Action

Date Filed: 08/16/2018  
Jury Demand: None  
Nature of Suit: 190 Contract: Other  
Jurisdiction: Diversity

**Plaintiff**

**Eastmore Management, llc**

represented by **Kyle J Kolb**  
Olshan Frome Wolosky LLP  
1325 Avenue of the Americas  
New York, NY 10019  
(212)-451-2344  
Fax: (212)-451-2222  
Email: kkolb@olshanlaw.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Thomas James Fleming**  
Olshan Frome Wolosky LLP  
1325 Avenue of the Americas  
New York, NY 10019  
212-451-2300  
Email: tfleming@olshanlaw.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

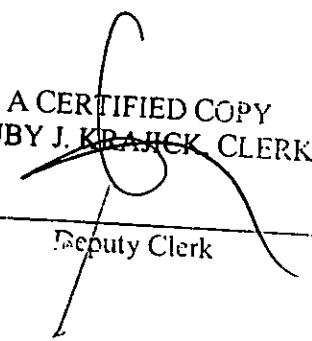
**Defendant**

**Suman Gunta**

represented by **David Nicholas Saponara**  
Kudman Trachten Aloe, LLP  
The Empire State Building  
350 Fifth Avenue  
New York, NY 10118  
(212)-868-1010  
Fax: (212) 868-0013  
Email: dsaponara@kudmanlaw.com  
**ATTORNEY TO BE NOTICED**

**Gary Trachten**

A CERTIFIED COPY  
RUBY J. KRANCK, CLERK

  
Deputy Clerk

Kudman Trachten Aloe, LLP  
 The Empire State Building  
 350 Fifth Avenue  
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 Fax: 212 868 0013  
 Email: gtrachten@kudmanlaw.com  
 ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/16/2018	<u>1</u>	NOTICE OF REMOVAL from Supreme Court, County of New York. Case Number: 653592/2018. (Filing Fee \$ 400.00, Receipt Number 0208-15459898). Document filed by Suman Gunta. (Attachments: # <u>1</u> Exhibit A - State Court Action Documents)(Trachten, Gary) (Entered: 08/16/2018)
08/16/2018	<u>2</u>	CIVIL COVER SHEET filed. (Trachten, Gary) (Entered: 08/16/2018)
08/16/2018	<u>3</u>	NOTICE OF APPEARANCE by David Nicholas Saponara on behalf of Suman Gunta. (Saponara, David) (Entered: 08/16/2018)
08/16/2018	<u>4</u>	AFFIDAVIT OF SERVICE of Notice of Filing of Notice of Removal served on Eastmore Management, LLC on 8/16/2018. Document filed by Suman Gunta. (Saponara, David) (Entered: 08/16/2018)
08/17/2018	<u>5</u>	NOTICE OF APPEARANCE by Thomas James Fleming on behalf of Eastmore Management, llc. (Fleming, Thomas) (Entered: 08/17/2018)
08/17/2018	<u>6</u>	NOTICE OF APPEARANCE by Kyle J Kolb on behalf of Eastmore Management, llc. (Kolb, Kyle) (Entered: 08/17/2018)
08/17/2018	<u>7</u>	AFFIDAVIT OF SERVICE of Notice of Filing of Notice of Removal served on Eastmore Management, LLC on 8/17/2018. Document filed by Suman Gunta. (Saponara, David) (Entered: 08/17/2018)
08/17/2018		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge Valerie E. Caproni. Please download and review the Individual Practices of the assigned District Judge, located at <a href="http://nysd.uscourts.gov/judges/District">http://nysd.uscourts.gov/judges/District</a> . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and Instructions, located at <a href="http://nysd.uscourts.gov/ecf_filing.php">http://nysd.uscourts.gov/ecf_filing.php</a> . (pne) (Entered: 08/17/2018)
08/17/2018		Magistrate Judge Barbara C. Moses is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: <a href="http://nysd.uscourts.gov/forms.php">http://nysd.uscourts.gov/forms.php</a> . (pne) (Entered: 08/17/2018)
08/17/2018		Case Designated ECF. (pne) (Entered: 08/17/2018)

08/17/2018		<p><b>***NOTICE TO ATTORNEY REGARDING CIVIL CASE OPENING STATISTICAL ERROR CORRECTION: Notice to attorney Gary Trachten. The following case opening statistical information was erroneously selected/entered: Dollar Demand \$500,000,000; County code New York. The following corrections have been made to your case entry: the Dollar Demand has been modified to \$500,000; the County code has been modified to XX Out of State. (pne) (Entered: 08/17/2018)</b></p>
08/22/2018	<u>8</u>	<p>LETTER MOTION for Extension of Time <i>to Respond to Complaint and Plaintiff's Motion for Preliminary Injunction</i> addressed to Judge Valerie E. Caproni from Gary Trachten dated August 22, 2018. Document filed by Suman Gunta. (Attachments: # <u>1</u> Proposed Stipulation and Order)(Trachten, Gary) (Entered: 08/22/2018)</p>
08/22/2018	<u>9</u>	<p>STIPULATION AND ORDER EXTENDING DEFENDANT'S TIME TO RESPOND TO COMPLAINT AND PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION: granting <u>8</u> Letter Motion for Extension of Time. IT IS HEREBY STIPULATED AND AGREED by and between plaintiff and defendant that the time for defendant to respond to the complaint and plaintiff's motion for a preliminary injunction is hereby extended until September 10, 2018. IT IS FURTHER STIPULATED AND AGREED that plaintiff consents to these extensions without waiving its right to seek a remand of this action to the Supreme Court of the State of New York, County of New York. IT IS FURTHER STIPULATED AND AGREED that, pursuant to Federal Rule of Civil Procedure 65(b)(2), defendant consents to an extension of the Temporary Restraining Order entered by the Supreme Court of the State of New York, County of New York, on July 20, 2018, pending the Court's hearing on plaintiff's motion for a preliminary injunction. IT IS FURTHER ORDERED that Plaintiff's reply brief in support of its motion for preliminary injunction is due by September 21, 2018. SO ORDERED. (Signed by Judge Valerie E. Caproni on 8/22/2018) (ama) (Entered: 08/22/2018)</p>
08/22/2018		<p>Set/Reset Deadlines: Suman Gunta answer due 9/10/2018. Replies due by 9/21/2018. (ama) (Entered: 08/22/2018)</p>
09/11/2018	<u>10</u>	<p>JOINT LETTER addressed to Judge Valerie E. Caproni from Gary Trachten dated September 11, 2018 re: Remand Back to State Court. Document filed by Suman Gunta. (Attachments: # <u>1</u> Text of Proposed Order)(Trachten, Gary) (Entered: 09/11/2018)</p>
09/12/2018	<u>11</u>	<p>ORDER REMANDING ACTION: IT IS HEREBY ORDERED that this action is remanded to the Supreme Court of the State of New York, County of New York (Index No. 653592/2018), pursuant to 28 U.S.C. § 1447(c), based on the parties' joint letter representing that the Court lacks subject matter jurisdiction (ECF No. 10). (Signed by Judge Valerie E. Caproni on 9/12/2018) (anc) Transmission to Docket Assistant Clerk for processing. (Entered: 09/13/2018)</p>

**PACER Service Center**  
**Transaction Receipt**

09/13/2018 10:45:44			
<b>PACER Login:</b>	us5070:2654438:0	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:18-cv-07442-VEC
<b>Billable Pages:</b>	2	<b>Cost:</b>	0.20

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EASTMORE MANAGEMENT, LLC,

Plaintiff,

-against-

SUMAN GUNTA,

Defendant.

Case No. 18-cv-7442

**NOTICE OF REMOVAL**

Supreme Court of the State of New York  
County of New York  
Index No. 653592/2018

Defendant Suman Gunta ("Gunta"), by his attorneys, Kudman Trachten Aloe LLP, files this notice of removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, removing to the United States District Court for the Southern District of New York the above-captioned civil action brought by plaintiff Eastmore Management, LLC ("Eastmore"), in the Supreme Court of the State of New York, County of New York, Index No. 653592/2018. In support of his notice and grounds for removal, Gunta respectfully states as follows:

**Introduction**

1. Gunta is the defendant in a civil action pending in the Supreme Court of the State of New York, County of New York, captioned *Eastmore Management, LLC v. Suman Gunta*, Index No. 653592/2018 (the "State Court Action").

2. The complaint filed in the State Court Action alleges three causes of action, sounding in breach of contract, misappropriation of trade secrets, and disgorgement, seeking preliminary and permanent injunctive relief and judgment "in an amount to be determined at trial." The Commercial Division Request for Judicial Intervention Addendum that Eastmore filed in the State Court Action states that the amount of Eastmore's "claim for compensatory damages" is \$500,000.00.

A CERTIFIED COPY  
RUBY J. KRAJICK, CLERK

BY

Deputy Clerk

1

**Subject Matter Jurisdiction**

3. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) because it is between citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

4. Gunta is citizen and resident of Stamford, Connecticut.

5. Eastmore is a Delaware limited liability company qualified to do business in New York with its principal place of business at 40 Wall Street, New York, New York 10005.

6. Upon information and belief, none of the members of Eastmore is a citizen of Connecticut. Upon informational and belief, the members of Eastmore are either (a) Marc Preston, David Subotic, and Sasha Szabo, or (b) one or more partnerships or limited liability companies of which they are the only members, or (c) one or more corporations not citizen(s) of Connecticut, or (d) a combination of the above.

7. Upon information and belief, Marc Preston is a citizen and resident of New York.

8. Upon information and belief, David Subotic is a citizen and resident of California.

9. Upon information and belief, Sasha Szabo is a citizen and resident of New York.

10. Accordingly, removal is proper under 28 U.S.C. § 1441(a) because this Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1).

**Removal is Timely and the Requirements of 28 U.S.C. § 1446 Are Satisfied**

11. Eastmore commenced the State Court Action on July 19, 2018, by filing a summons and complaint in the Supreme Court of the State of New York, County of New York.

12. On July 26, 2018, Eastmore purported to serve copies of the summons and complaint in the State Court Action on Gunta by delivering them to Gunta at 26 Strawberry Hill Avenue, #3B, Stamford, Connecticut 06902.

13. This notice of removal is timely filed within the thirty-day time frame set forth in 28 U.S.C. § 1446(b)(1) because this action is being removed fewer than thirty days after Gunta received copies of the initial pleading in the State Court Action.

14. In accordance with 28 U.S.C. § 1446(a), “all process, pleadings, and orders served upon” Gunta in the State Court Action are attached as Exhibit A, except for the document Eastmore filed under seal in the State Court Action and which is not available on the public docket.

15. The requirement in 28 U.S.C § 1446(b)(2) that all defendants who have been properly joined and served must join in or consent to the removal of the action is satisfied because Gunta is the sole defendant in the State Court Action.

16. Venue is proper in this Court under 28 U.S.C. § 1441(a) because the State Court Action is pending in the Supreme Court of the State of New York, County of New York.

17. In accordance with 28 U.S.C. § 1446(d), Gunta will promptly file a Notice of Filing of Notice of Removal in the Supreme Court of the State of New York, County of New York, with a copy served on Eastmore’s counsel.

**WHEREFORE**, Gunta hereby gives notice that the State Court Action, which is now pending in the Supreme Court of the State of New York, County of New York, has been removed to this Court, and he respectfully requests that the matter proceed in this Court as an action properly removed.

Dated: New York, New York  
August 16, 2018

By: /s/ Gary Trachten  
Gary Trachten  
David N. Saponara  
KUDMAN TRACHTEN ALOE LLP  
Empire State Building  
350 Fifth Avenue, 68<sup>th</sup> Floor  
New York, New York 10118  
Tel: (212) 868-1010

*Attorneys for Defendant*

# Exhibit

## “A”

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

EASTMORE MANAGEMENT, LLC,  Plaintiff,  <i>-against-</i>  SUMAN GUNTA,  Defendant.
-----------------------------------------------------------------------------------------------------------

Index No.

Date of Filing with the Clerk of the Court:  
July 18, 2018

**SUMMONS**

Basis of Venue: Plaintiff resides in New York County. Plaintiff's address is: 40 Wall Street, New York, New York

**To the Above Named Defendant:**

**YOU ARE HEREBY SUMMONED** and required to serve upon plaintiff's undersigned attorneys an answer to plaintiff's complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York), and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
July 19, 2018

OLSHAN FROME WOLOSKY LLP

By: /s/ Thomas J. Fleming  
Thomas J. Fleming  
Kyle J. Kolb  
1325 Avenue of the Americas  
New York, New York 10019  
(212) 451-2300

*Attorneys for Plaintiff Eastmore  
Management, LLC*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

EASTMORE MANAGEMENT, LLC,  
  
Plaintiff,  
  
-against-  
  
SUMAN GUNTA,  
  
Defendant.

Index No. \_\_\_\_\_

VERIFIED COMPLAINT

Plaintiff, Eastmore Management, LLC (“Eastmore” or “Plaintiff”), by its attorneys, Olshan Frome Wolosky LLP, for its Complaint against Suman Gunta (“Gunta” or “Defendant”), states as follows:

Preliminary Statement

1. Plaintiff is a securities investment firm that trades in, among other things, futures and ETF’s related to equities, commodities, and indexes for equities and commodities. Plaintiff utilizes proprietary trading strategies, relying on data that Plaintiff has gathered for several years as well as algorithms and software that analyze its data to optimize the time to purchase and sell securities. Plaintiff employed defendant in helping to further develop and implement these strategies. Defendant served pursuant to an Employment Agreement, dated July 1, 2016, with comprehensive protections for Plaintiff’s proprietary data and strategies which are typical for the industry. Plaintiff terminated Defendant earlier this year and on or about July 12, 2018, his non-competition covenant expired. Plaintiff has recently learned that defendant is offering his services to competitors to implement the same proprietary strategies, which further requires the use of the proprietary data that Plaintiff has acquired and/or developed at considerable expense and effort. Defendant has provided one or more competitors with detailed descriptions of Plaintiff’s

proprietary strategies, in violation of his Employment Agreement, including returns and amounts allocated to the strategy. Defendant has no doubt retained or misappropriated extensive confidential data in a plan to use that data for his own enrichment. At the very least, he is seeking to exploit the confidential trading strategies and knowledge that he learned while employed by Plaintiff. Immediate injunctive relief is required to prevent the dissemination and misuse of plaintiff's proprietary data and strategies.

**The Parties**

- 2. Plaintiff Eastmore is a Delaware limited liability company qualified to do business in New York with its principal place of business at 40 Wall Street, New York, New York.
- 3. Defendant Gunta is a citizen of India residing in Stamford, Connecticut.

**Jurisdiction and Venue**

- 4. Defendant has consented to personal jurisdiction pursuant to the written agreement at issue herein. This Court also has personal jurisdiction over Defendant pursuant to CPLR §§ 301, 302(a)(1), and 302(a)(2).
- 5. Venue is proper pursuant to CPLR § 503(a) because Plaintiff has its offices in this County.

**Factual Background**

**Eastmore's Quantitative Trading Strategies**

6. Eastmore is an alternative investment firm with offices in New York and Los Angeles that was founded in 2012. Since its founding, Eastmore has developed several proprietary trading strategies based on data that Eastmore has collected and analyzed, the application of algorithms to that data, and the refinement of both in an iterative process. The proprietary trading of securities is highly competitive, and the development of unique trading strategies is a key

component of Eastmore’s business model. The development of a successful trading strategy can result in significant investment gains.

7. Eastmore’s quantitative trading strategy is led by one of Eastmore’s founders and principals, a FINRA licensed Proprietary Trader who has over twenty years of trading experience on Wall Street.

8. Eastmore has historically employed a number of people to research, develop, maintain, operate, and deploy a variety of its confidential and proprietary strategies for trading Eastmore’s capital. To assist in this development, Eastmore also employs people with expertise in trading technology, algorithms, and highly specialized coding and mathematics, in order to create algorithms, software, and source code that are used in connection with Eastmore’s trading strategies. Eastmore spends a significant amount of time and money to develop these confidential and proprietary trading strategies.

The Employment Agreement with Gunta

9. Eastmore and Gunta entered into an Employment Agreement made as of July 1, 2016 (the “Employment Agreement”) whereby Gunta agreed to serve as a Senior Quantitative Trader for Eastmore and its affiliates. A copy of his Employment Agreement is annexed.\*

10. When Eastmore hired Gunta in July 2016, he had over a decade of experience as a quantitative trader and developer, holding experience with a number of advanced coding environments, computer languages, and software applications, but he was not knowledgeable regarding the trading strategies in which Eastmore specialized. Gunta has a bachelor of technology degree from the Indian Institute of Technology and a master of science in aerospace engineering from the University of Michigan.

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\* Plaintiff has applied separately for this document to be filed under seal.

11. Given the extremely sensitive nature of Gunta’s contemplated work for Eastmore, Gunta was required to execute the Employment Agreement in which, among other things, he both agreed and was obligated to maintain the confidentiality of Eastmore’s data, information, and strategies, whether in tangible or intangible form and refrain from using it for his own benefit. Section 10 of the Employment Agreement contains comprehensive protections for Eastmore’s confidential information.

12. To start, the Employment Agreement defines “Confidential Information” broadly to include:

- (i) the names of the investors in any entity to which the Company and/or Entities is an advisor;
- (ii) the amount of money invested in any fund which the Company and/or Entities serves as an advisor;
- (iii) the fees charged by the Company and/or Entities and the fees charged by any Person to which the Company and/or Entities serves as an advisor;
- (iv) any and all information regarding the Company’s and/or Entities’ compliance efforts, obligations, and responsibilities;
- (v) any and all information regarding “soft dollar” arrangements between the Company and/or Entities and any of its brokers;
- (vi) *any and all information regarding trading positions and trading strategies;*
- (vii) *any and all analyses of investments strategies, equities, or investment instruments performed;*
- (viii) any information relating to the finances of the Company and/or Entities or fees paid to the Company and/or Entities;
- (ix) any information relating to regulatory investigations, actions, disputes, or complaints, and any information relating to lawsuits by the Company and/or Entities, against the Company and/or Entities, and/or relating to services provided by the Company and/or Entities to clients;
- (x) *any marketing strategies, plans, financial information, or projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of the Company and/or Entities;*
- (xi) *any plans for products or services and customer or supplier lists;*
- (xii) *any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method;*
- (xiii) *any concepts, reports, data, know-how, works-in-progress, designs, development, software, source code, object code, software design, web design, algorithms, flow charts, databases, inventions including, but not limited to, Inventions as defined in Section 10(g), information and trade secrets;*
- (xiv) any and all information

relating to the Company and/or Entities or any clients to which the Company and/or Entities provides products and/or services; and (xv) any other information that should reasonably be recognized as confidential information of the Company and/or Entities.

(Section 10(a) (emphasis added)).

13. In Section 10 of the Employment Agreement, Gunta “agree[d] to use the Confidential Information *solely* in connection with the employment relationship between the parties and not for any purpose other than as authorized by this Agreement without the prior written consent of the Company.” (emphasis added)

14. Gunta also agreed to:

[M]aintain, *at all times*, the [Confidential Information] in a confidential manner and protect it from disclosure, orally or otherwise, to any person who is not subject a confidentiality/non-disclosure agreement with the Company. Employee further agrees to take all reasonable measures, which such measures shall not be less than the degree of care used by Employee in safeguarding Employee’s own confidential information, to ensure that the Confidential Information is, at all times, maintained in a confidential manner.

(Section 10(b) (emphasis added)).

15. Gunta further acknowledged and agreed that:

Confidential Information is a valuable and unique economic asset that belongs to the Company and/or Entities and is at all times the Company’s and/or Entities’ exclusive property, and that Company and/or Entities have not granted and will not grant Employee any license, copyright or similar right with respect to any of the Confidential Information or any other material made available to Employee by or on behalf of the Company and/or Entities.

(Section 10(a)).

16. In the event that Gunta’s employment was terminated, or upon written or oral request by Eastmore, Gunta was obligated to return all of Eastmore’s property and Confidential Information, and to verify that he had done so. Accordingly, Gunta was obligated to “verify that

no copies of such Property or Confidential Information have been made and/or that all tangible material ... have been returned to the Company and that no copies have been made.”

17. Pursuant to Section 10(g) of the Employment Agreement, all of Gunta’s work product for Eastmore is considered a “work made for hire” and all rights arising from such work product belong exclusively to Eastmore. This work product included any “strategies, systems, ... technology, computer programs, computer applications, software design, web design, algorithms, trade secrets,” and the like.

18. The extremely sensitive nature of Gunta’s employment was reinforced by other provisions in the Employment Agreement. For example, Gunta was subject to personal securities trading restrictions and was restricted from working for other companies. In addition, Section 10 of the Employment Agreement contains provisions calling for non-interference with other employees, non-solicitation, non-competition, and non-disparagement.

19. Pursuant to Section 10(i) of the Employment Agreement, Gunta expressly acknowledged and agreed that any violation of its provisions may cause Plaintiff irreparable harm, monetary damages may not be sufficient, and Plaintiff is entitled to seek injunctive relief.

20. The Employment Agreement is governed by New York law, and the parties consented to exclusive jurisdiction and venue in New York County courts.

Gunta Assists in Developing Eastmore’s Proprietary Strategy

21. The Employment Agreement provided Gunta with a substantial base salary, and entitled him to a share of the net profits from a trading strategy he had previously developed (“Strategy A”). His employment with Eastmore was at-will and could be terminated with or without cause.

22. Gunta was originally assigned to work on implementing his pre-existing Strategy A, which was the main basis on which Eastmore hired him. However, Gunta was not able

to successfully implement Strategy A and Eastmore was unable to utilize it. After a few months, Eastmore assigned Gunta to a new role in which he assisted in developing the supporting technology and programming to implement and deploy one of Eastmore's core proprietary trading strategies involving ETFs and futures trading. This strategy is confidential, proprietary, and a trade secret, of Eastmore.

23. Eastmore's strategy relies upon a proprietary database generated from trading data for equity securities included in the S&P 500 which Eastmore has gathered and refined. Eastmore uses this data to make investments in futures and ETFs. This strategy employs proprietary algorithms and formulas that provide Eastmore with a competitive advantage in making its investments.

24. Eastmore provided Gunta with its confidential and proprietary trading strategies and required that he learn them firsthand in order to write the code to implement, monitor, test, deploy, and modify the strategies and technologies. The research and development to create, test, deploy, and adjust as needed, the proprietary strategy and technologies associated with this strategy depended upon the non-public and proprietary database assembled by Eastmore over the past several years. This strategy also relies upon unique and proprietary data visualization methods that assist in implementing and refining the strategy.

25. Eastmore has invested substantial sums in researching, developing, testing, and modifying its trading strategy over many years. The strategy provides Eastmore with a significant advantage over its competitors, who would be given an unfair advantage if they could gain access to it without having to incur the time and expense themselves to develop it. Eastmore's competitors could use and/or modify Eastmore's proprietary and confidential information, strategies, and technologies to identify the same valuable trading opportunities that Eastmore currently employs,

and usurp those opportunities to unjustly enrich themselves. Eastmore’s strategy would be rendered worthless if Eastmore’s competitors learned details about it or were able to utilize it at the same time as Eastmore.

26. Gunta was also exposed to Eastmore’s other legacy proprietary strategies during the course of his employment, which were developed by other Eastmore employees.

27. Eastmore takes reasonable steps to guard the secrecy of its strategies and technologies, as well as its other confidential and proprietary information.

Gunta’s Failure to Perform Results in His Termination

28. While gaining exposure to Eastmore’s confidential and proprietary information, Gunta presented challenges to Eastmore and its workplace. Gunta had performance issues, but he also created a difficult work environment for other employees.

29. Unable to resolve these difficulties, Eastmore’s Managing Director notified Gunta that his employment was terminated in early 2018.

30. Approximately one month later, Eastmore delivered a formal termination letter, notifying Gunta that he was terminated for cause. The termination letter also reminded him to comply with his post-termination obligations under the Employment Agreement, explicitly noting that he “shall refrain from retaining, using or exploiting any Company intellectual property” and to return all Confidential Information and Company property.

31. The termination letter expressly reminded Gunta of his confidentiality and non-disclosure obligations pursuant to Section 10 of the Employment Agreement, and demanded return of all Confidential Information and Company property.

32. Gunta thereafter continued to dispute that he was validly terminated for cause, and claimed that the terms of his Employment Agreement were modified orally such that his failures to perform should be excused.

Gunta Misappropriates Eastmore's Confidential and Trade Secret Information

33. The non-compete period restricting Gunta's ability to be employed by an Eastmore competitor expired, at the latest, on July 11, 2018.

34. On or around July 12, 2018, Eastmore learned from a competitor that Gunta had contacted them offering his services. Gunta was pitching this competitor on the high returns to be achieved with a quantitative strategy identical to that developed by Eastmore, revealing past performance and descriptive information concerning Eastmore's strategies and financial information. The resume, strategy approach document, and past returns that Gunta provided Eastmore's competitor made clear that he was offering to provide the very same proprietary strategy with which he had worked at Eastmore. Gunta's apparent plan is to recreate, or import wholesale, Eastmore's trading strategy down to its finest detail. Gunta would not be able to implement this strategy without having improperly copied and retained the proprietary database, algorithms, and/or software that are the centerpiece of the strategy.

35. Upon information and belief, Gunta is contacting multiple competitors using this same pitch with respect to Eastmore's proprietary strategy and the confidential trade returns it has already generated for Eastmore. In the course of his employment hunt, Gunta is therefore conveying detailed presentations that discloses Eastmore's confidential, proprietary, and trade secret information.

AS AND FOR A FIRST CAUSE OF ACTION  
(Breach of Employment Agreement)

36. Plaintiff repeats and re-alleges the allegations contained in the foregoing paragraphs as though fully set forth herein.

37. The use, dissemination, and disclosure of Eastmore's Confidential Information, including Confidential Information related to its trading strategy, violates Section 10 of the

Employment Agreement, which expressly prohibits Gunta from using any Confidential Information for any purposes not related to his employment, and requires him to maintain Confidential Information in a confidential manner and protect it from disclosure.

38. Moreover, Gunta has breached the Employment Agreement by failing to return all Eastmore property and Confidential Information.

39. Unless injunctive relief is entered, Plaintiff will continue to suffer irreparable harm in the form of the misappropriation and use of Plaintiff's confidential and proprietary, and trade secret information and other recognized injuries.

40. Plaintiff has no adequate remedy at law.

41. Accordingly, Plaintiff is entitled to preliminary and permanent injunctive relief enjoining and restraining Defendant, and all those acting in concert or cooperation with him, from improperly using and/or disclosing Plaintiff's Confidential Information, as described herein, and requiring him to return all Eastmore property and Confidential Information.

AS AND FOR A SECOND CAUSE OF ACTION  
(Misappropriation of Trade Secrets)

42. Plaintiff repeats and re-alleges the allegations contained in the foregoing paragraphs as though fully set forth herein.

43. Plaintiff spent years, and millions of dollars, creating and maintaining its confidential, proprietary, and trade secret information, including its database, data visualization tools, algorithms, formulas, and software associated with its core trading strategies. This information was developed through years of cultivation and iterative changes. The strategy provides Eastmore with a competitive edge.

44. Plaintiff took significant precautionary measures to secure and preserve its confidential, proprietary, and trade secret information, including requiring its employees to sign

confidentiality and non-disclosure agreements and restricting access to its servers and other information.

45. By virtue of his role within Eastmore, Defendant had access to Eastmore's confidential, proprietary, and trade secret information.

46. Defendant acted in bad faith and misappropriated a commercial advantage belonging to Plaintiff by exploiting, using, misappropriating, and disclosing Plaintiff's proprietary information and trade secrets.

47. Unless injunctive relief is entered, Plaintiff will continue to suffer irreparable harm in the form of the misappropriation and use of Plaintiff's trade secrets.

48. Plaintiff has no adequate remedy at law.

49. Accordingly, Plaintiff is entitled to preliminary and permanent injunctive relief enjoining and restraining Defendant, and all those acting in concert or cooperation with him, from misappropriating Plaintiff's trade secrets, as described herein.

AS AND FOR A THIRD CAUSE OF ACTION  
(Disgorgement)

50. Plaintiff repeats and re-alleges the allegations contained in the foregoing paragraphs as though fully set forth herein.

51. To the extent that Defendant has retained ill-gotten gains as a result of his breaches of the Employment Agreement and misappropriation of Plaintiff's trade secrets, Plaintiff is entitled to disgorgement of all monetary benefits directly or indirectly received or retained by Defendant.

WHEREFORE, Plaintiff prays that the Court award the following relief:

- A. Temporary, preliminary, and permanent injunctive relief, prohibiting Defendant from breaching the Agreements and misappropriating Plaintiff's trade secrets,

including prohibitions on using and/or disclosing Plaintiff's Confidential Information;

- B. Judgment in Plaintiff's favor in an amount to be determined at trial, reflecting the ill-gotten gains Defendant has retained as a result of his breaches of the Employment Agreement and/or misappropriation of Plaintiff's trade secrets;
- C. Such other and further relief as the Court deems just and proper.

Dated: New York, New York  
July 19, 2018

OLSHAN FROME WOLOSKY LLP

By: /s/ Thomas J. Fleming  
Thomas J. Fleming  
Kyle J. Kolb  
1325 Avenue of the Americas  
New York, New York 10019  
(212) 451-2300

*Attorneys for Plaintiff Eastmore Management, LLC*

**VERIFICATION**

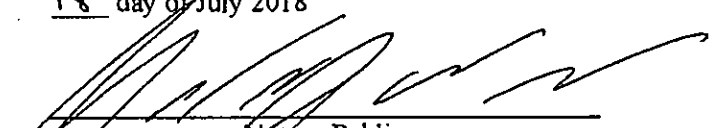
STATE OF NEW YORK     )  
                                          )  
COUNTY OF NEW YORK    )

Marc Preston, being sworn, states, I am a manager of plaintiff Eastmore Management, LLC ("Plaintiff") in this action. I make this verification on behalf of Plaintiff. I have read the foregoing complaint against defendant Suman Gunta. I declare under penalty of perjury that the same is true to my knowledge, except as to matters therein stated to be alleged on information and belief, I believe them to be true.

Executed on July 18, 2018 in New York, New York.

  
\_\_\_\_\_  
MARC PRESTON

Sworn to before me this  
18 day of July 2018

  
\_\_\_\_\_  
Notary Public

**MONSELETE J BOWDEN**  
Notary Public, State of New York  
No. 01806337082  
Qualified in New York County  
Commission Expires 2/16/2020

**EXHIBIT 1**  
**to Verified Complaint**  
*(Eastmore Management, LLC v. Gunta)*

FILED UNDER SEAL

At I.A.S. Part \_\_\_ of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, located at 60 Centre Street, New York, New York on the \_\_\_ day of July, 2018.

PRESENT: \_\_\_\_\_, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

EASTMORE MANAGEMENT, LLC,	
	Plaintiff,
	-against-
SUMAN GUNTA,	
	Defendant.

Index No.:  
(I.A.S. Pt. \_\_\_)  
(Motion Seq. No. 001)

**ORDER TO SHOW CAUSE WITH  
TEMPORARY  
RESTRAINING ORDER**

Upon the Verified Complaint, dated July 19, 2018, the Affirmation of Emergency of Thomas J. Fleming, sworn to July 19, 2018, and the Memorandum of Law in Support of Plaintiff's Motion For Temporary Restraining Order and Preliminary Injunction dated July 19, 2018, and good cause having been alleged, it is hereby:

**ORDERED** that Defendant Suman Gunta ("Defendant") show cause before this Court, at IAS Part \_\_\_ Room \_\_\_ of the Courthouse located at 60 Centre Street, New York, New York, on July \_\_\_, 2018 at \_\_\_, or as soon thereafter as counsel may be heard, why an Order should not be entered pursuant to CPLR § 6301:

1. Preliminarily enjoining and restraining Defendant, and all those acting in concert or cooperation with him, from :
  - (a) directly or indirectly using, disclosing, or transferring any of Plaintiff Eastmore Management, LLC's ("Plaintiff") Confidential Information as

defined in the Employment Agreement entered into as of July 1, 2016 with Plaintiff (the "Agreement"), including but not limited to, Plaintiff's trading strategies, data, databases, formulas, algorithms, software, and historical returns;

- (b) destroying or disposing of any evidence or other materials, in any form, relating to this action and the issues raised herein, including, without limitation, all devices, electronic media, cloud storage, and all copies of any and all documents, media and/or other materials, containing, identifying, describing, reflecting or referencing Plaintiff's confidential, proprietary, or trade secret information, and any and all documents, data and information which was obtained by Defendant from, or by virtue of his relationship with Plaintiff, including all current or archived media, emails, chats, texts, documents, data, database, software, code, electronic logs, meta data, storage and/or directories;
- (c) further violating Defendant's confidentiality agreement obligations to Plaintiff, including without limitation § 10 of the Agreement prohibiting the use or disclosure of Plaintiff's confidential, proprietary, or trade secret information; and

2. Granting such other and further relief as the Court finds just, proper or equitable.

**AND, IT IS FURTHER ORDERED** that pending the hearing and determination of this application, pursuant to CPLR §§ 6301 and 6313:

- 1. Defendant, and all those acting in concert or cooperation with him, are hereby enjoined from:

- (a) directly or indirectly, using, disclosing or misappropriating any of Plaintiff's confidential and proprietary information, including but not limited to, Plaintiff's trading strategies, data, databases, formulas, algorithms, software, and historical returns, or any other information defined as Confidential Information in the Agreement;
  - (b) destroying, or disposing any evidence or other materials, in any form, relating to this action and the issues raised herein, including, without limitation, all devices, electronic media, cloud storage, and all copies of any and all documents, media and/or other materials, containing, identifying, describing, reflecting or referencing Plaintiff's confidential, proprietary, or trade secret information, and any and all documents, data and information which was obtained by Defendant from, or by virtue of his relationship with Plaintiff, including all current or archived media, emails, chats, texts, documents, data, database, software, code, electronic logs, meta data, storage and/or directories;
  - (c) further violating Defendant's confidentiality agreement obligations to Plaintiff, including with limitation § 10 of the Agreement prohibiting the use or disclosure of Plaintiff's confidential, proprietary, or trade secret information;
2. Defendant, and all those acting in concert or participation with him, is hereby ordered and directed to:
- (a) turn over all computers, laptops, tablets, cell phones, and other devices, that contain or have contained any of Plaintiff's proprietary or confidential

information, or which Defendant used in connection with his employ by Plaintiff, for forensic imaging by an agent of Plaintiff within three days of the date of this order;

- (b) deliver to Plaintiff all copies of all documents, materials and other media, whether in paper form or in an electronic medium, containing Plaintiff's confidential, proprietary, or trade secret information that he possesses or has in his custody or control within three days of the date of this order;
- (c) identify all email accounts used by Defendant, websites, hosting vendors and/or servers on which Defendant uses or stores any of Plaintiff's confidential and trade secret information and technology, cloud data storage accounts along with the user names and passwords for those accounts to allow Plaintiff to recover any and all of its confidential business information and trade secrets misappropriated within three days of the date of this order; and

3. Granting such other and further relief as the Court finds just, proper or equitable.

**AND, IT IS FURTHER ORDERED** that Defendant shall preserve, and take steps to prevent the automatic or intentional deletion or modification of, all data, databases, cloud storage accounts including Dropbox, electronic files, emails, media and computer hard drives that may contain information related to this action.

**AND, IT IS FURTHER ORDERED**, that service of a copy of this Order to Show Cause, and the papers upon which it is based, by personal service upon Defendant on or before \_\_\_\_\_, 2018.

**AND, IT IS FURTHER ORDERED** that opposition papers to the instant motion, if any, shall be served so as to be received by counsel for Plaintiff, Olshan Frome Wolosky LLP, Attn: Thomas J. Fleming, Esq., on or before \_\_\_\_\_, 2018.

**AND, IT IS FURTHER ORDERED** that reply papers in further support of the instant motion, if any, shall be served so as to be received by defendant or his counsel on or before \_\_\_\_\_, 2018.

**AND, IT IS FURTHER ORDERED**, that the parties shall be entitled to immediately conduct pre-hearing discovery on the issues pertinent to the preliminary injunction.

SO ORDERED:

\_\_\_\_\_  
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

EASTMORE MANAGEMENT, LLC,  
  
Plaintiff,  
  
-against-  
  
SUMAN GUNTA,  
  
Defendant.

Index No. \_\_\_\_\_  
  
(I.A.S. Pt. \_\_)  
  
(Motion Seq. No. 001)

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

OLSHAN FROME WOLOSKY LLP  
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Kyle J. Kolb  
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(212) 451-2300

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Plaintiff Eastmore Management, LLC (“Eastmore” or “Plaintiff”), by its attorneys, respectfully submits this memorandum of law in support of its application for a temporary restraining order and preliminary injunction pursuant to Article 63 of the Civil Practice Law and Rules. The requested injunctive relief is necessary to prevent imminent and irreparable harm to Eastmore and to preserve the status quo between the parties while the Court addresses the merits of the underlying litigation.

Preliminary Statement

Plaintiff is a securities investment firm that trades in, among other things, futures and ETF’s related to equities, commodities and indexes for equities and commodities. Plaintiff utilizes proprietary trading strategies, relying on data that plaintiff has gathered for several years as well as algorithms and software that analyze its data to optimize the time to purchase and sell securities. Plaintiff employed defendant in developing and implementing these strategies. Defendant served pursuant to an Employment Agreement, dated July 1, 2016, with comprehensive protections for plaintiff’s proprietary data and strategies which are typical for the industry. Plaintiff terminated defendant earlier this year. Plaintiff has recently learned that defendant is offering his services to competitors to implement the same proprietary strategies that plaintiff has developed and/or acquired at considerable expense and effort. Defendant has provided one or more competitors with detailed descriptions of plaintiff’s proprietary strategies, in violation of his Employment Agreement, including returns and amounts allocated to the strategy. Defendant has no doubt retained or misappropriated extensive confidential data in a plan to use that data for his own enrichment. At the very least, he is seeking to exploit the confidential trading strategies and knowledge that he learned while employed by plaintiff. Immediate injunctive relief is required to prevent the dissemination and misuse of plaintiff’s proprietary data and strategies.

Statement of Facts

The statement of facts is taken from the Verified Complaint dated July 19, 2018 (“V. Compl.”) and the Affirmation of Emergency of Thomas J. Fleming sworn to July 19, 2018 (“Fleming Aff.”).

The Parties

Plaintiff Eastmore is a Delaware limited liability company with its principal place of business in New York, New York. Eastmore is an investment company that focuses on unique trading strategies, and hires employees specialized in quantitative analysts (a/k/a “quants”) and developers to develop proprietary and highly specialized trading strategies for Eastmore. (V. Compl. ¶ 8).

Defendant Suman Gunta is a resident of Connecticut with a background as a quantitative trader who was hired by Eastmore in July 2016. (*Id.* ¶¶ 3, 10). Gunta was terminated in early 2018. (*Id.* ¶ 29).

Eastmore’s Trading Strategies

Relying upon the specialized skillset of its employees, Eastmore develops a number of proprietary and highly specialized trading strategies that rely upon “quant” strategies and methodologies. (*Id.* ¶¶ 6-8). The development of these strategies is highly competitive among investment firms, and can result in significant profit for Eastmore. Accordingly, Eastmore invests substantial resources into the development, refinement, and protection of these strategies. (*Id.* ¶ 8).

Gunta’s Employment Agreement

Gunta was hired in part due to his experience as a quant trader and developer, and because he was offering Eastmore the opportunity to utilize his own pre-existing trading strategy (“Strategy A”). (*Id.* ¶ 2). As is customary with Eastmore’s employees, Gunta entered into a

detailed Employment Agreement as of July 1, 2016 (the "Employment Agreement") setting forth the terms of his employment as a Senior Quantitative Trader (*Id.* ¶ 9 & Ex. 1).<sup>1</sup>

The Employment Agreement contains detailed provisions specifically protecting Eastmore's Confidential Information from misuse or disclosure without its prior written consent.<sup>2</sup> In the Employment Agreement, Gunta acknowledged that Confidential Information is a "valuable and unique economic asset" belonging to Eastmore. (*Id.* Ex. 1 § 10(a)). Further, Eastmore retained the exclusive rights to any "work made for hire" by Gunta during his employment. (*Id.* § 10(g)). Upon termination of his employment, the Employment Agreement obligated Gunta to return all Confidential Information and any company property. (*Id.* § 10(f)).

The Employment Agreement required Gunta to comply with a number of restrictive covenants of varying lengths during and after his employment, including non-interference with other employees, non-solicitation, non-disparagement, and a non-competition provision prohibiting Gunta from working for a competitor for a certain period after the last day of his employment. (*Id.* §§ 10(c),(d),(e),(h)).

<sup>1</sup> Plaintiff has filed an application for permission to file the Employment Agreement under seal.

<sup>2</sup> The Employment Agreement defines "Confidential Information" to include, *inter alia*:  
(vi) any and all information regarding trading positions and trading strategies; (vii) any and all analyses of investment strategies, equities, or investment instruments performed; (viii) any information relating to the finances of the Company and/or Entities or fees paid to the Company and/or Entities; ... (x) any marketing strategies, plans, financial information, or projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of the Company and/or Entities; (xi) any plans for products or services and customer or supplier lists; (xii) any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method; (xiii) any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer programs, computer applications, computer software, source code, object code, software design, web design, algorithms, flow charts, databases, inventions including, but not limited to, Inventions as defined in Section 10(g), information and trade secrets; ... and (xv) any other information that should reasonably be recognized as confidential information of the Company and/or Entities.  
(*Id.* § 10(a)).

Gunta's Troubled Employment

Gunta immediately had trouble fulfilling his duties with Eastmore, and did not successfully implement his own Strategy A. (V. Compl. ¶ 22). In order to utilize Gunta's skills, Eastmore assigned Gunta to the team developing one of Eastmore's proprietary trading strategies. This strategy relies upon the compilation and assembly of non-public and proprietary data by Eastmore, which it then analyzes using sophisticated data visualization tools. Eastmore then develops algorithms, formulas, and software that implements this strategy in order to make investments in futures and ETFs.

Gunta was given access to the confidential, proprietary, and trade secret information regarding the strategy, coding, and technology involved in the development and refinement of this strategy, as well as other legacy proprietary strategies. (*Id.* ¶¶ 22-24). Eastmore has spent a significant amount of employee time and resources in developing its trading strategies, and considers them a valuable asset. (*Id.* ¶ 25). This includes compiling Eastmore's proprietary database of trading advantages, as well as time spent coding software used to implement the strategy.

Eastmore devotes significant resources ensuring that its trading strategies and other confidential information is protected from disclosure to its competitors, as it is a unique strategy that delivers substantial profits to Eastmore. (*Id.* ¶ 27).

In this role, however, Gunta also failed to live up to expectations. After nearly two years of unsuccessfully trying to make Gunta a good fit for any role within Eastmore, Eastmore decided to terminate him for cause in early 2018. (*Id.* ¶¶ 28-29). After Gunta expressed confusion about the date of his termination, Eastmore delivered a formal notice of termination. Under his non-competition covenants, Gunta was prohibited from working for a competitor through July 11, 2018. (*Id.* ¶ 33).

Gunta's Misappropriates Eastmore's Proprietary Strategies

On July 12, 2018, Eastmore learned from another trading firm that a prior Eastmore employee was shopping his ability to implement a new, unique, and lucrative quant trading strategy. (*Id.* ¶ 34). After receiving more information, Eastmore learned that Gunta was disseminating his resume touting his apparent successes at Eastmore, the monthly returns using Eastmore's trading strategy, and descriptive information concerning Eastmore's strategies and financial information. (*Id.*). This information disclosed critical proprietary, confidential, and trade secret information belonging to Eastmore, which Gunta was under a contractual and common law duty not to use or disclose to third parties. Gunta's promise to implement Eastmore's strategy at a new firm would only be possible had Gunta improperly copied and retained Eastmore's proprietary database. Eastmore quickly filed this action after learning of Gunta's illegal acts.

Argument

I.

THE COURT SHOULD GRANT A PRELIMINARY INJUNCTION TO ENFORCE PLAINTIFF'S AGREEMENTS AND TO PROTECT ITS TRADE SECRETS

A. The Standard of Review

Plaintiff is entitled to a preliminary injunction pursuant to CPLR § 6301 to prevent Defendant from unlawfully misappropriating Plaintiff's trade secrets and disclosing its confidential and proprietary information. Section 6301 of the CPLR authorizes a court to issue a preliminary injunction "where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action." CPLR § 6301. "The party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of

an injunction and a balance of equities in its favor.” *Alexandru v. Pappas*, 68 A.D.3d 690, 691 (2d Dep’t 2009) (citation and quotation marks omitted); *see also Chernoff Diamond & Co. v. Fitzmaurice, Inc.*, 234 A.D.2d 200, 201 (1st Dep’t 1996).

As set forth below, Plaintiff meets the requirements for a preliminary injunction. Moreover, Defendant has already conceded that injunctive relief is an appropriate remedy for breach of the covenants contained in the Employment Agreement. (*See* Employment Agreement § 10(i) (“Employee expressly acknowledges and agrees that any violation of this Section 10 herein may cause the Company and/or Entities irreparable harm and that the immediate enforcement of this Section 10 may be essential to protect the interest of the Company and/or Entities . . . . [I]n the event of a breach of this Section 10 herein, monetary damages alone may not make the Company and/or Entities whole and that the Company and/or Entities is entitled to seek injunctive relief.”).

**B. Plaintiff Is Likely to Succeed on the Merits**

A party moving for injunctive relief need only show that it is more likely than not that it will prevail on its claims. *See Barbes Rest. Inc. v. ASRR Suzer 218, LLC*, 140 A.D.3d 430, 431 (1st Dep’t 2016); *see also McLaughlin, Piven, Vogel, Inc. v. W.J. Nolan & Co., Inc.*, 114 A.D.2d 165, 172-73 (2d Dep’t 1986). A judicial determination regarding likelihood of success does not amount to a predetermination of the issues, and the moving party’s showing “must not be equated with the showing of a *certainty* of success” on the merits. *Bingham v. Struve*, 184 A.D.2d 85, 88-89 (1st Dep’t 1992) (citation and quotation marks omitted) (emphasis in original). “[A] *prima facie* showing of a right to relief is sufficient; actual proof of the case should be left to further court proceedings.” *McLaughlin*, 114 A.D.2d at 172-73; *Barbes Rest. Inc.*, 140 A.D.3d at 431 (“A likelihood of success on the merits may be sufficiently established even where the facts are in dispute and the evidence need not be conclusive.”). Here, Plaintiff is likely to

succeed on the merits of its claims for breach of the Employment Agreement and misappropriation of trade secrets.

1. Plaintiff Is Likely to Succeed on Its Breach of Contract Claim

The elements of a cause of action for breach of contract are: (1) the existence of a contract; (2) the plaintiff's performance under the contract; (3) the defendant's breach of an obligation imposed by the contract; and (4) damages that the plaintiff suffered as a result of the breach. *See J.P. Morgan Chase v. J.H. Elec. of New York, Inc.*, 69 A.D.3d 802, 803 (2d Dep't 2010); *Bd. of Managers of Trump Palace Condo. v. Feld Kaminetzky & Cohen, P.C.*, 24 Misc. 3d 1203(A) (Sup. Ct. N.Y. Cty. 2009). Here, because of Gunta's failure to return Eastmore's Confidential Information and his improper use and disclosure of Confidential Information after his employment was terminated, Gunta has breached the Employment Agreement. His breaches have caused, and will continue to cause, Plaintiff substantial harm that cannot be remedied by monetary damages. Indeed, courts routinely grant preliminary injunctions to enforce valid non-disclosure provisions in written agreements. *See Garvin GuyButler Corp. v. Cowen & Co.*, 155 Misc.2d 39, 44 (Sup. Ct. N.Y. Cty. 1992) (granting a preliminary injunction regarding use of confidential information where the former employees retained confidential information after leaving their employer); *North Atlantic Instruments, Inc. v. Haber*, 188 F.3d 38, 48-49 (2d Cir. 1999) (applying New York law to enjoin a former employee from disseminating confidential information where the employment agreement prohibited him "from disclos[ing] any such confidential matter to anyone"); *Ecolab, Inc. v. K.P. Laundry Machinery, Inc.*, 656 F. Supp. 894, 897 (S.D.N.Y. 1987) (enjoining use of employer's confidential information in accord with employment agreement precluding such use).

The Employment Agreement’s confidentiality clause prevents Gunta from disclosing, using, or causing to be used, any of Eastmore’s Confidential Information for any reason that is outside of his employment. (Employment Agreement § 10(b)). The Employment Agreement also requires Gunta to return all Confidential Information to the Company at the time of termination from the Company. (Employment Agreement § 10(f)).

Gunta has clearly violated these confidentiality and non-disclosure obligations and should be enjoined from any further violation. Gunta has misappropriated Eastmore’s highly confidential and proprietary information by disseminating detailed information regarding its proprietary trading strategies, and by promising to be able to implement these strategies for a new firm, which would only be possible if he retained a copy of Eastmore’s proprietary data. (V. Compl. ¶¶ 34-35) Moreover, he has not returned any of these materials to the Company, pursuant to Section 10(f) of the Employment Agreement. Accordingly, an injunction must be entered by this Court to enforce the terms of the Employment Agreement. *See Clarion Assocs., Inc. v. D.J. Colby Co., Inc.*, 276 A.D.2d 461, 462-63 (2d Dep’t 2000) (awarding preliminary injunction due to defendant’s misappropriation of company’s confidential information); *see also BitSight Technologies, Inc. v. SecurityScorecard, Inc.*, 143 A.D.3d 619, 621 (1st Dep’t 2016) (holding plaintiff adequately alleged irreparable harm required for permanent injunctive relief because defendant acknowledged in contract with plaintiff that any breach of obligations with respect to confidential information would cause “substantial harm to the other party that could not be remedied by payment of damages alone”); *Aon Risk Servs. v. Cusack*, 102 A.D.3d 461, 463 (1st Dep’t 2013) (awarding preliminary injunction to plaintiff due to defendant utilizing its proprietary and confidential information “when not subject to formal judicial restraint”).

Accordingly, Plaintiff is entitled to a preliminary injunction enforcing Section 10 of the Employment Agreement.

2. Eastmore Is Likely to Succeed on Its Misappropriation of Trade Secrets Claim

Plaintiff is also likely to succeed on its claim for Gunta’s misappropriation of Eastmore’s trade secrets. In New York, misappropriation of trade secrets is a common law claim. New York courts define trade secrets with reference to section 757 of the Restatement of Torts. According to this definition, a trade secret is “any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.” *E.J. Brooks Co. v. Cambridge Sec. Seals*, 2018 WL 2048724, at \*5 (N.Y. May 3, 2018) (quoting *Ashland Mgmt. Inc. v. Janien*, 82 N.Y.2d 395, 407 (1993) (citing Restatement of Torts § 757, cmt. b (1939))); *Schroeder v. Pinterest Inc.*, 133 A.D.3d 12, 27 (1st Dep’t 2015); *U.S. Reinsurance Corp. v. Humphreys*, 205 A.D.2d 187, 191-92 (1st Dep’t 1994).

To determine whether particular information qualifies as a trade secret, New York courts consider the following six factors:

- (1) the extent to which the information is known outside of the business;
- (2) the extent to which it is known by employees and others involved in the business;
- (3) the extent of measures taken by the business to guard the secrecy of the information;
- (4) the value of the information to the business and its competitors;
- (5) the amount of effort or money expended by the business in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

*Ashland Mgmt.*, 82 N.Y.2d at 407 (quoting Restatement of Torts § 757, cmt. b) (internal quotation marks and brackets omitted); *see also Schroeder*, 133 A.D.3d at 27.

The secrecy component of a trade secrets analysis focuses on: (1) the “substantial exclusivity of knowledge of the formula, process, device or compilation of information,” and (2)

“the employment of precautionary measures to preserve such exclusive knowledge by limiting legitimate access by others” so that, “except by the use of improper means, there would be difficulty in acquiring the information.” *Delta Filter Corp. v. Morin*, 108 A.D.2d 991, 992 (3d Dep’t 1985) (citing Restatement of Torts § 757, cmt. b (1939)); *Ain Leasing Corp. v. Peat, Marwick, Mitchell & Co.*, 166 Misc. 2d 902, 903-04 (Sup. Ct. Nassau Cty. 1995). Thus, although absolute secrecy is not required, the information claimed to be a trade secret must be cloaked with a “substantial element of secrecy.” *A.H. Emery Co. v. Marcan Prods. Corp.*, 389 F.2d 11, 16 (2d Cir. 1968). Applying these above factors, Eastmore’s strategy and the proprietary database is a trade secret. (See V. Compl. ¶¶ 8, 22-27).

Courts routinely grant preliminary injunctions in cases involving advanced technologies and software. See, e.g., *Invesco Institutional (N.A.), Inc. v. Deutsche Inv. Management Americas, Inc.*, 74 A.D.3d 696, 697 (1st Dep’t 2010) (affirming preliminary injunction enjoining misappropriation of trade secrets in connection with software tools); *Secured Worldwide LLC v. Kinney*, 2015 WL 1514738, at \*11 (S.D.N.Y. Apr. 1, 2015) (granting preliminary injunction arising from misappropriation of trade secrets held by programmer); *Fabkom, Inc. v. R.W. Smith & Assocs., Inc.*, 1996 WL 531873, at \*6-7 (S.D.N.Y. Sept. 19, 1996) (granting preliminary injunction arising from misappropriation of software trade secrets); *Tradescape.com v. Shivaram*, 77 F. Supp. 2d 408, 419 (S.D.N.Y. 1999) (granting preliminary injunction to prevent misappropriation of trade secrets contained in computer software, noting that “computer software indisputably is a subject of trade secret protection”).

Eastmore has also taken reasonable steps to maintain the secrecy of its trade secrets. (V. Compl. ¶ 27). See *Petnet Direct, LLC v. Petflow, Inc.*, 2013 WL 6506858, at \*1 (Sup. Ct. N.Y. Cty. Dec. 19, 2013) (“The allegation [of misappropriation of trade secrets] is supported by the

NDA, executed by both parties, which specifically recites the confidential nature of the information disclosed to the defendants.”).

C. Plaintiff Will Continue to Suffer Irreparable Harm if the Court Does Not Grant the Relief Sought

To satisfy the second prong of the preliminary injunction standard, Eastmore is required to demonstrate that there is the “potential for irreparable injury if the injunction is not granted.” *Chernoff Diamond*, 234 A.D.2d at 201. Eastmore can readily demonstrate its exposure to imminent and irreparable harm from the breach of the Employment Agreement’s confidentiality provisions and Defendant’s misappropriation of trade secrets. Defendant’s exploitation of Eastmore’s confidential and proprietary information and trade secrets is injuring Eastmore’s existing and future business and the value of such information. *See Faiveley Transport Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (“A rebuttable presumption of irreparable harm might be warranted in cases where there is a danger that, unless enjoined, a misappropriator of trade secrets will disseminate those secrets to a wider audience or otherwise irreparably impair the value of those secrets.”); *FTI Consulting, Inc. v. PricewaterhouseCoopers LLP*, 8 A.D.3d 145, 146 (1st Dep’t 2004) (breach of restrictive covenants constitutes irreparable harm where the loss of goodwill is not quantifiable); *Aon Risk Servs. Northeast v. Cusack*, 34 Misc. 3d 1205(A), at \*16 (Sup. Ct. N.Y. Cty. Dec. 20, 2011) (“Continuing violations of restrictive covenants that results in the loss of customer goodwill or proprietary information constitute irreparable harm.”); *Creative Collections of New York, Inc. v. Diblasi*, 2007 WL 1299207, at \*4 (Sup. Ct. Erie Cty. Apr. 24, 2007) (finding irreparable harm where former employees had wrongfully taken confidential information regarding customers resulting in harm to the business reputation of the former employer); *Garvin GuyButler Corp.*, 155 Misc. 2d at 45 (finding irreparable injury to plaintiff if the defendants used misappropriated confidential

information to divert customers away from plaintiff); *North Atlantic Instruments, Inc.*, 188 F.3d at 49 (finding irreparable harm where confidential information and trade secrets were improperly disclosed “because a trade secret once lost is, of course, lost forever” (internal quotation omitted)). Indeed, the “presumption of irreparable harm afforded trade secrets is particularly appropriate when information at risk of disclosure is highly technical or can be used only by a few specialized businesses.” *Secured Worldwide*, 2015 WL 1514738, at \*11.

Additionally, the parties agreed that any breach of Section 10 of the Employment Agreement would constitute irreparable harm for which money damages would be inadequate, and that in the event of such a breach, the Company is entitled to injunctive relief. (Employment Agreement § 10(i)). Language in a contract stipulating to the appropriateness of equitable relief can be viewed as “an admission” of “irreparable harm.” *Ticor Title Ins. Co. v. Cohen*, 173 F.3d 63, 68-69 (2d Cir. 1999); *Aon Risk Servs. Northeast*, 34 Misc. 3d 1205(A), at \*16 (finding of irreparable harm “reinforced by [defendant’s] employment agreement, in which [defendant] acknowledged that a violation of the post-employment covenants would irreparably harm [plaintiff], and consented to the entry of injunctive relief on that basis”); *Private One of New York, LLC v. JMRL Sales & Service, Inc.*, 2008 WL 4482406, at \*10 (Sup. Ct. Kings Cty. Oct. 6, 2008) (holding that defendant acknowledged that its actions in breaching the contract would cause irreparable harm); *Ikon Office Solutions, Inc. v. Usherwood Office Technology, Inc.*, 21 Misc. 3d 1144(A), at \*17 (Sup. Ct. Albany Cty. Dec. 12, 2008) (finding that the court’s determination of irreparable harm from breach of the continuing obligations under an employment agreement was reinforced by the parties’ acknowledgment of irreparable harm); see also *North Atlantic Instruments, Inc.*, 188 F.3d at 49 (relying on a similar clause in determining irreparable injury for purposes of upholding a grant of injunctive relief).

Irreparable harm is also “presumed, where, as here, trade secrets have been misappropriated.” *Sylmark Holdings Ltd. v. Silicone Zone Int’l Ltd.*, 5 Misc. 3d 285, 299 (Sup. Ct. N.Y. Cty. 2004); *see Ingenuit, Ltd. v. Harriff*, 33 A.D.3d 589, 590 (2d Dep’t 2006) (employer would be irreparably harmed if it was not granted preliminary injunction prohibiting former employee from utilizing its trade secrets and proprietary information which the employee could only have ascertained by wrongful appropriation of employer’s computer files). Further, irreparable harm is assumed where the continued use of trade secrets would cause plaintiff to “sustain a loss of business [that is] impossible, or very difficult, to quantify.” *Invesco*, 74 A.D.3d at 697 (quoting *Willis of N.Y. v. DeFelice*, 299 A.D.2d 240, 242 (1st Dep’t 2002)).

D. The Balance of the Equities Heavily Favors Granting Injunctive Relief to Plaintiff

The balance of the equities favors Eastmore. “[T]he balancing of the equities’ usually simply requires the court to look to the relative prejudice to each party accruing from a grant or denial of the requested relief.” *Ma v. Lien*, 198 A.D.2d 186, 186-87 (1st Dep’t 1993); *Suttongate Holdings Ltd. v. Laconm Management N.V.*, 159 A.D.3d 514, 515 (1st Dep’t 2018) (affirming lower court’s grant of plaintiff’s motion for preliminary injunction finding the balance of equities favored plaintiff); *see also Barbes Rest. Inc.*, 140 A.D.3d at 432 (“The harm to plaintiff and its employees outweighs any potential harm to defendant resulting from delays to its redevelopment scheme, which it has not shown to be imminent.”). In this instance, Eastmore’s request for a preliminary injunction should be granted because it “would maintain the status quo and prevent any further alleged breach of the contract by [defendant] and result in no demonstrated harm or prejudice to defendant[.]” *Private One of New York*, 2008 WL 4482406 at \*10; *see also Mr. Natural, Inc. v. Unadulterated Food Products, Inc.*, 152 A.D.2d 729, 730 (2d Dep’t 1989) (remanding for lower court to grant preliminary injunction to “preserve the status quo” and

ensure “plaintiff will be able to stay in business pending trial”); *Abed v. Zach Assocs.*, 124 A.D.2d 531, 532 (2d Dep’t 1986) (finding temporary injunction “necessary to maintain the status quo pending a determination on the merits”). Further, there is no harm to Defendant from prohibiting him from using Eastmore’s proprietary information and trade secrets. *See Wyndham Resort Dev. Corp. v. Bingham*, 2010 WL 2720920, at \*7 (E.D. Cal. July 8, 2010); *see also Garvin GuyButler Corp.*, 155 Misc.2d at 45 (“The prohibition of defendants to utilize confidential and proprietary information of [plaintiff] pending the disposition of this case will not prejudice defendants but rather shall maintain the status quo.”); *Fabkom, Inc. v. R.W. Smith & Assocs., Inc.*, 1996 WL 531873, at \*15 (S.D.N.Y. Sept. 19, 1996) (holding defendant and its business “will suffer little harm from a preliminary injunction”).

II.

THE COURT SHOULD GRANT A TEMPORARY RESTRAINING ORDER

A temporary restraining order will be granted where “immediate and irreparable injury, loss or damage will result unless the defendant is restrained before a hearing can be had.” CPLR § 6313(a). “It is well established that . . . the standard for entry of a TRO is the same as for a preliminary injunction.” *Bayit Care Corp. v. Tender Loving Care Health Care Servs. of Nassau Suffolk, LLC*, 2012 WL 1079042, at \*4 (E.D.N.Y. Mar. 30, 2012) (applying New York law); *accord Ragone v. Devoe Properties, LLC*, 15 Misc. 3d 1104(A), at \*5 (Sup. Ct. Kings Cty. Mar. 15, 2007). Further, the Court may grant the relief sought related to imaging Defendant’s electronic devices. For example, in *Crocker C. v. Anne. R.*, the Court granted defendant’s ex parte application for a temporary restraining order directing the sheriff to serve the court’s order and requiring plaintiff to immediately turn over all computing devices to the sheriff for safekeeping, as providing notice of the relief requested in the application would have provided plaintiff with an opportunity to alter or destroy the relevant evidence of his alleged wrongdoing.

49 Misc. 3d 1202(A), at \*2 (Sup. Ct. Kings Cty. Sept. 18, 2015). The same risk exists here, as Defendant can easily erase all evidence of his retention and use of Plaintiff's confidential and proprietary information, especially in light of his advanced technological knowledge.

Defendant is engaged in an employment search using Plaintiff's own confidential business information and trade secrets, disclosing Eastmore's financial results, strategy thesis and metrics, and offering up the proprietary database that Eastmore has developed over years, as well as the years of know-how that Defendant has acquired from Eastmore. Absent an immediate injunction, Defendant may succeed in destroying Plaintiff's business and deleting evidence of his misappropriation.

Conclusion

For the foregoing reasons, Eastmore respectfully requests that the Court grant its application for a temporary restraining order and a preliminary injunction.

Dated: New York, New York  
July 19, 2018

OLSHAN FROME WOLOSKY LLP

By: /s/ Thomas J. Fleming  
Thomas J. Fleming  
Kyle J. Kolb  
*Attorneys for Plaintiff*  
1325 Avenue of the Americas  
New York, New York 10019  
(212) 451-2300

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

<p>EASTMORE MANAGEMENT, LLC,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>SUMAN GUNTA,</p> <p style="text-align: right;">Defendant.</p>	<p>Index No.:</p> <p>(I.A.S. Pt. <u>    </u>)</p> <p>(Motion Seq. No. 001)</p> <p><b><u>AFFIRMATION OF EMERGENCY OF THOMAS J. FLEMING</u></b></p>
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STATE OF NEW YORK            )  
                                          ) ss:  
COUNTY OF NEW YORK        )

THOMAS J. FLEMING, an attorney duly admitted to practice before the courts of the State of New York, affirms under the penalty of perjury as follows:

1. I am an attorney at Olshan Frome Wolosky LLP, attorneys for plaintiff Eastmore Management, LLC ("Eastmore" or "Plaintiff"). I submit this Affirmation in support of Plaintiff's application, made by order to show cause, for a TRO and preliminary injunction protecting its proprietary data, including algorithms and software, used to accomplish a unique quantitative trading strategy.

2. Plaintiff employed defendant for approximately two years, during which defendant had extensive access to plaintiff's proprietary quantitative trading strategies. Defendant was at all times bound by comprehensive confidentiality provisions in his Employment Agreement with plaintiff, dated July 1, 2016. As set forth in the accompanying Verified Complaint, Plaintiff has learned that Defendant is now violating his confidentiality obligations, as well as his common law duty to refrain from misappropriating Plaintiff's trade secrets.

3. Plaintiff filed the Verified Complaint and brought this application within days of learning that Defendant had misappropriated Plaintiff's confidential, proprietary, and trade secret information, was disclosing it to Plaintiff's competitors, and was offering to use this information in connection with his employment by those competitors.

4. A temporary restraining order, preliminary injunction, and related relief are necessary to protect Plaintiff's proprietary data, the loss of which will cause Plaintiff immediate irreparable harm. In the Employment Agreement, Defendant acknowledged that a breach of the agreement's confidentiality provisions would irreparably harm Plaintiff and require injunctive relief.

5. Because Plaintiff is being immediately and irreparably harmed by Defendant's action, Plaintiff respectfully requests that the instant application be processed on an expedited basis and be granted in its entirety.

6. I provided Defendant with notice of this application by email on July 18, 2018.

7. No prior application for the relief requested herein or similar relief has ever been made to this or any other Court.

Dated: July 19, 2018

/s/ Thomas J. Fleming  
Thomas J. Fleming

At I.A.S. Part \_\_ of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, located at 60 Centre Street, New York, New York on the \_\_ day of July, 2018.

PRESENT: \_\_\_\_\_, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

EASTMORE MANAGEMENT, LLC,  Plaintiff,  -against-  SUMAN GUNTA,  Defendant.
----------------------------------------------------------------------------------------------------

Index No. \_\_\_\_\_

**ORDER TO SHOW CAUSE TO SEAL  
EXHIBIT TO COMPLAINT**

(I.A.S. Pt. \_\_)

(Motion Seq. No. 002)

UPON reading and filing of the Affirmation of Thomas J. Fleming, dated July \_\_, 2018, and the exhibits annexed thereto, submitted to the Court in connection with this motion to seal, and all pleadings and prior proceedings had herein, and good cause having been alleged, it is hereby:

**ORDERED** that Defendant Suman Gunta ("Defendant") show cause before this Court at IAS Part \_\_\_\_ Room \_\_\_\_ of the Courthouse located at 60 Centre Street, New York, New York, on July \_\_, 2018 at \_\_\_\_, or as soon thereafter as counsel may be heard, why an Order should not be entered:

1. Directing the Clerk of the Court to file UNDER SEAL any the Exhibit to the Verified Complaint filed in the above-captioned action on July 19, 2018; and
2. Granting such other and further relief as the Court deems just, proper or equitable.

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**AND, IT IS FURTHER ORDERED** that pending the hearing and disposition of this Order to Show Cause, the parties are directed to temporarily file all documents that attach or quote from the Exhibit to the Complaint under seal, except upon consent of both parties;

**AND, IT IS FURTHER ORDERED**, that service of this Order to Show Cause, along with the papers upon which it is based, shall be served so as to be received by Defendant no later than July \_\_, 2018, via overnight delivery service such as Federal Express, and that such service shall constitute good and sufficient service;

**AND, IT IS FURTHER ORDERED** that opposition papers to the instant motion, if any, shall be served so as to be received by counsel for Plaintiff, Olshan Frome Wolosky LLP, Attn: Thomas J. Fleming, Esq., on or before \_\_\_\_\_, 2018.

SO ORDERED:

\_\_\_\_\_  
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

EASTMORE MANAGEMENT, LLC,

Plaintiff,

-against-

SUMAN GUNTA,

Defendant.

Index No. \_\_\_\_\_

AFFIRMATION OF THOMAS J.  
FLEMING IN SUPPORT OF  
(PROPOSED) ORDER TO SHOW  
CAUSE TO SEAL EXHIBIT TO  
COMPLAINT

(I.A.S. Pt. \_\_)

(Motion Seq. No. 002)

STATE OF NEW YORK        )  
                                          ) ss:  
COUNTY OF NEW YORK    )

THOMAS J. FLEMING, an attorney duly admitted to practice before the courts of the State of New York, affirms under the penalty of perjury as follows:

1. I am a member of Olshan Frome Wolosky LLP, attorneys for Plaintiff Eastmore Management, LLC. I respectfully submit this Affirmation in support of Plaintiff's Order to Show Cause to Seal the Exhibit to the Complaint, an Employment Agreement made as of July 1, 2016 ("Agreement"). Annexed hereto as Exhibit A is a true and correct copy of the Agreement.

The Confidential Information

2. Plaintiff is an investment firm that utilizes highly proprietary quantitative trading strategies. Its employees work pursuant to written employment agreements with strong confidentiality covenants. The Agreement annexed to the Verified Complaint contains the terms of employment between Plaintiff and defendant Suman Gunta ("Defendant"), including the length and nature of the restrictive covenants agreed to by Defendant, Defendant's base salary, details regarding Defendant's bonus structure, and a description of the proprietary and confidential

quantitative trading strategy developed by Defendant, among other features. Plaintiff competes with many other investment firms for the specialized services of a small group of tech-savvy financial personnel. If competitors were to learn the terms of Plaintiff's employment arrangements, they could use this information to their competitive advantage to hire away Plaintiff's valuable personnel. For this very reason, Plaintiff's Employment Agreement provides:

Employee acknowledges that Employee may not otherwise disclose this Agreement to any Person, including but not limited to his current employer and any prospective employer.

The Standard for Sealing

3. Section 216.1 of the Uniform Rules for N.Y.S. Trial Courts provides that a court may enter an order sealing records "upon a written finding of good cause." 22 NYCRR § 216.1(a). The court's task under this Section involves a "balancing [of] the interest of the public and the parties in light of the facts of the particular case at bar." *An Individual Described Herein by the Pseudonym v. Szul Jewelry, Inc.*, No. 604277/2007, 2011 WL 3565831 (Sup. Ct. N.Y. Aug. 4, 2011) (Kornreich, J.) (holding that "the public has no significant interest in having access to the records submitted in this case"); *see also Mancheski v. Gabelli Grp. Cap. Partners*, 39 A.D.3d 499, 502 (2d Dep't 2007).

4. New York courts generally find good cause exists to keep documents confidential and to seal records in order to protect litigants' confidential business and financial information. *See, e.g., Mancheski*, 39 A.D.3d at 502 (court properly sealed documents containing the corporation's proprietary financial information because disclosure could harm the private corporation's competitive standing); *Dawson v. White & Case*, 184 A.D.2d 246, 247 (1st Dep't 1992) (court properly sealed financial and accounting information because there was no legitimate public concern "to counterbalance the litigants' interest in keeping their financial arrangements private."); *Lennox Industries, Inc. v. Honeywell Int'l, Inc.*, No. 653318/2013, 2014 WL 917037, at

\*1 (N.Y. Sup. Ct. Mar. 5, 2014) (Kornreich, J.) (sealing records containing proprietary information that would provide a competitive advantage); *D'Amour v. Ohrenstein & Brown*, 17 Misc.3d 1130(A), at \*21 (Sup. Ct. N.Y. 2007) (“Sealing a court file may be appropriate to preserve the confidentiality of materials which involve the internal finances of a party and are of minimal public interest.”).

5. Where a party has a compelling interest in keeping information confidential, as is the case here, there must be a “legitimate public concern, as opposed to mere curiosity,” in order to counterbalance such privacy interests. *Dawson*, 184 A.D.2d at 247 (holding that the public had no legitimate interest in the internal finances of a law firm or its partners). The dispute here involves private parties and concerns disputes regarding internal governance of private businesses. The public has very little, if any, interest in the details of these quintessentially private disputes. *See RSSM CPA LLP v. Bell*, No. 65353/2014, 2015 WL 9215589, at \*6 (N.Y. Sup. Ct. Dec. 16, 2015) (Kornreich, J.) (granting motion to seal because public’s interest in documents was mere curiosity); *Jetblue Airways Corp. v. Stephenson*, 31 Misc. 3d 1241(A) (N.Y. Sup. Ct. 2010) *aff’d*, 88 A.D.3d 567 (1st Dep’t 2011) (“Sealing records may be particularly appropriate, moreover, when the parties wish to maintain the confidentiality of materials that ‘for the most part involve the internal finances’ of a party and do not implicate any matters of public interest.”); *Feffer v. Goodkind, Wechsler, Labaton & Rudolf*, 152 Misc. 2d 812, 816 (N.Y. Sup. Ct. 1991) *aff’d sub nom.* 183 A.D.2d 678 (1st Dep’t 1992) (noting that the internal finances of the defendant “is of minimal public interest”).

Sealing is Appropriate

6. The precise terms of Plaintiff’s employment arrangements with its employees are matters of minimal public interest. Plaintiff takes steps to assure the confidentiality of those terms, prohibiting employees from disclosing them to other businesses. Public disclosure of the terms of

Plaintiff's employment arrangements will likely place Plaintiff at a severe competitive disadvantage. The Employment Agreement, we respectfully submit, should be filed under seal to assure its continued confidentiality. At the very least the Court should permit the Employment Agreement to be redacted to seal: (i) the salary amount and any bonus/compensation formula; (ii) the term of any non-competition covenant; and (iii) the details of Defendant's "Strategy A."

7. No previous application has been made for the relief sought in this Order to Show Cause Application.

WHEREFORE, I respectfully request that, in view of the foregoing, Plaintiffs be permitted to have the Order to Show Cause to Seal the Exhibit to the Complaint.

Dated: July 19, 2018

/s/ Thomas J. Fleming  
Thomas J. Fleming

**EXHIBIT A**  
**To Affirmation of Thomas J. Fleming in Support**  
**of Order to Show Cause to Seal**  
*(Eastmore Management, LLC v. Gunta)*

FILED UNDER SEAL



**NATURE OF JUDICIAL INTERVENTION:** Check ONE box only AND enter additional information where indicated

- Infant's Compromise
- Note of Issue and/or Certificate of Readiness
- Notice of Medical, Dental, or Podiatric Malpractice Date Issue Joined: \_\_\_\_\_
- Notice of Motion Relief Sought: \_\_\_\_\_ Return Date: \_\_\_\_\_
- Notice of Petition Relief Sought: \_\_\_\_\_ Return Date: \_\_\_\_\_
- Order to Show Cause Relief Sought: Injunction/Restraining Order Return Date: \_\_\_\_\_
- Other Ex Parte Application Relief Sought: \_\_\_\_\_
- Poor Person Application
- Request for Preliminary Conference
- Residential Mortgage Foreclosure Settlement Conference
- Writ of Habeas Corpus
- Other (specify): \_\_\_\_\_

**RELATED CASES:** List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases. If additional space is required, complete and attach the RJ1 Addendum. If none, leave blank

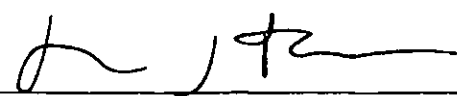
Case Title	Index/Case No.	Court	Judge (If assigned)	Relationship to Instant Case

**PARTIES:** For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in space provided. If additional space is required, complete and attach the RJ1 Addendum.

Un-Rep	Parties:	Attorneys and/or Unrepresented Litigants:	Issue Joined (Y/N):	Insurance Carrier(s):
<input type="checkbox"/>	EASTMORE MANAGEMENT, LLC, Last Name  First Name Primary Role: Plaintiff  Secondary Role (If any):	Fleming Last Name Thomas J. First Name  Olshan Frome Wolosky LLP Firm Name 3325 Avenue of the Americas Street Address New York City New York State 10019 Zip +1 (212) 451-2300 Phone +1 (212) 451-2222 Fax tfleming@olshanlaw.com e-mail	<input checked="" type="radio"/> YES  <input type="radio"/> NO	
<input checked="" type="checkbox"/>	GUNTA Last Name SUMAN First Name Primary Role: Defendant  Secondary Role (If any):		<input type="radio"/> YES  <input checked="" type="radio"/> NO	
<input type="checkbox"/>			<input type="radio"/> YES  <input type="radio"/> NO	
<input type="checkbox"/>			<input type="radio"/> YES  <input type="radio"/> NO	

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: 07/19/2018  
  
1454123  
ATTORNEY REGISTRATION NUMBER

  
SIGNATURE  
Thomas James Fleming  
PRINT OR TYPE NAME

Print Form

UCS-840C  
3/2011

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF New York

Index No. \_\_\_\_\_

EASTMORE MANAGEMENT, LLC,

RJI No. (if any) \_\_\_\_\_

-against-

Plaintiff(s)/Petitioner(s)

SUMAN GUNTA,

Defendant(s)/Respondent(s)

**COMMERCIAL DIVISION**

**Request for Judicial Intervention Addendum**

COMPLETE WHERE APPLICABLE [add additional pages if needed]:

Plaintiff/Petitioner's cause(s) of action [check all that apply]:

- Breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g. unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings (e.g. sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices)
- Transactions governed by the Uniform Commercial Code (exclusive of those concerning individual cooperative or condominium units)
- Transactions involving commercial real property, including Yellowstone injunctions and excluding actions for the payment of rent only
- Shareholder derivative actions — without consideration of the monetary threshold
- Commercial class actions — without consideration of the monetary threshold
- Business transactions involving or arising out of dealings with commercial banks and other financial institutions
- Internal affairs of business organizations
- Malpractice by accountants or actuaries, and legal malpractice arising out of representation in commercial matters
- Environmental insurance coverage
- Commercial insurance coverage (e.g. directors and officers, errors and omissions, and business interruption coverage)
- Dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures — without consideration of the monetary threshold
- Applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related Injunctive relief pursuant to CPLR Article 75 involving any of the foregoing enumerated commercial issues — without consideration of the monetary threshold

Plaintiff/Petitioner's claim for compensatory damages [exclusive of punitive damages, interest, costs and counsel fees claimed]:

\$ 500,000

Plaintiff/Petitioner's claim for equitable or declaratory relief [brief description]:

Breach of Employment Agreement with injunction; Misappropriation of Trade Secrets with injunction; Disgorgement.

Defendant/Respondent's counterclaim(s) [brief description, including claim for monetary relief]:

[Empty box for counterclaim description]

I REQUEST THAT THIS CASE BE ASSIGNED TO THE COMMERCIAL DIVISION. I CERTIFY THAT THE CASE MEETS THE JURISDICTIONAL REQUIREMENTS OF THE COMMERCIAL DIVISION SET FORTH IN 22 NYCRR § 202.70(a), (b) AND (c).

Dated: 07/19/2018

SIGNATURE

Thomas J. Fleming  
PRINT OR TYPE NAME

FILED NEW YORK COUNTY CLERK OF NEW YORK 09/17/2018 03:11 PM  
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NYSCEF DOC. NO. 14 RECEIVED NYSCEF: 09/20/2018

At I.A.S. Part <sup>48</sup> of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, located at 60 Centre Street, New York, New York on the <sup>20</sup> day of July, 2018.

**HON. ANDREA MASLEY**

PRESENT: \_\_\_\_\_, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

EASTMORE MANAGEMENT, LLC,  
  
Plaintiff,  
  
-against-  
  
SUMAN GUNTA,  
  
Defendant.

Index No.: 653592/2018  
(I.A.S. Pt. \_\_\_)  
(Motion Seq. No. 001)

**ORDER TO SHOW CAUSE WITH  
TEMPORARY  
RESTRAINING ORDER**

Upon the Verified Complaint, dated July 19, 2018, the Affirmation of Emergency of Thomas J. Fleming, sworn to July 19, 2018, and the Memorandum of Law in Support of Plaintiff's Motion For Temporary Restraining Order and Preliminary Injunction dated July 19, 2018, and good cause having been alleged, it is hereby:

**ORDERED** that Defendant Suman Gunta ("Defendant") show cause before this Court, at IAS Part <sup>48</sup> Room <sup>212</sup> of the Courthouse located at 60 Centre Street, New York, New York, on July <sup>13</sup>, 2018 at <sup>930</sup>, or as soon thereafter as counsel may be heard, why an Order should not be entered pursuant to CPLR <sup>3</sup> 6301:

- 1. Preliminarily enjoining and restraining Defendant, and all those acting in concert or cooperation with him, from :
  - (a) directly or indirectly using, disclosing, or transferring any of Plaintiff Eastmore Management, LLC's ("Plaintiff") Confidential Information as

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(4)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5(d)) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

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defined in the Employment Agreement entered into as of July 1, 2016 with Plaintiff (the "Agreement"), including but not limited to, Plaintiff's trading strategies, data, databases, formulas, algorithms, software, and historical returns;

- (b) destroying or disposing of any evidence or other materials, in any form, relating to this action and the issues raised herein, including, without limitation, all devices, electronic media, cloud storage, and all copies of any and all documents, media and/or other materials, containing, identifying, describing, reflecting or referencing Plaintiff's confidential, proprietary, or trade secret information, and any and all documents, data and information which was obtained by Defendant from, or by virtue of his relationship with Plaintiff, including all current or archived media, emails, chats, texts, documents, data, database, software, code, electronic logs, meta data, storage and/or directories;
- (c) ~~further~~ violating Defendant's confidentiality agreement obligations to Plaintiff, including without limitation § 10 of the Agreement prohibiting the use or disclosure of Plaintiff's confidential, proprietary, or trade secret information; and

2. Granting such other and further relief as the Court finds just, proper or equitable.

AND, IT IS FURTHER ORDERED that pending the hearing and determination of this application, pursuant to CPLR §§ 6301 and 6313:

*Order to show cause*  
*AK*  
HON. ANDREA MASLEN  
*JSC*

1. Defendant, and all those acting in concert or cooperation with him, are hereby enjoined from:

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- (a) directly or indirectly, using, disclosing or ~~misappropriating~~ <sup>transferring</sup> any of Plaintiff's confidential and proprietary information, including but not limited to, Plaintiff's trading strategies, data, databases, formulas, algorithms, software, and historical returns, or any other information defined as Confidential Information in the Agreement;
- (b) destroying, or disposing any evidence or other materials, in any form, relating to this action and the issues raised herein, including, without limitation, all devices, electronic media, cloud storage, and all copies of any and all documents, media and/or other materials, containing, identifying, describing, reflecting or referencing Plaintiff's confidential, proprietary, or trade secret information, and any and all documents, data and information which was obtained by Defendant from, or by virtue of his relationship with Plaintiff, including all current or archived media, emails, chats, texts, documents, data, database, software, code, electronic logs, meta data, storage and/or directories;
- (c) ~~further~~ <sup>out</sup> violating Defendant's confidentiality agreement obligations to Plaintiff, including with limitation § 10 of the Agreement prohibiting the use or disclosure of Plaintiff's confidential, proprietary, or trade secret

(d) Defendant shall not send you "Strategy Agreement" information;  
 2. Defendant, and all those acting in concert or participation with him, is hereby

ordered and directed to:  
 (a) turn over all computers, laptops, tablets, cell phones, and other devices, that contain or have contained any of Plaintiff's proprietary or confidential

(e) defendant shall not write any documents, <sup>or provide them</sup> regarding the "Strategy Agreement" ~~documents~~

*Handwritten notes:*  
 All  
 JS  
 all  
 JS

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(F) defendant may continue to search his phone

But not with the "Sandy Brown" laptop (b) "Kipman" about OR any about (c) similar do it

all

JSC

information, or which Defendant used in connection with his employ by Plaintiff, for forensic imaging by an agent of Plaintiff within three days of the date of this order; deliver to Plaintiff all copies of all documents, materials and other media, whether in paper form or in an electronic medium, containing Plaintiff's confidential, proprietary, or trade secret information that he possesses or has in his custody or control within three days of the date of this order; identify all email accounts used by Defendant, websites, hosting vendors and/or servers on which Defendant uses or stores any of Plaintiff's confidential and trade secret information and technology, cloud data storage accounts along with the user names and passwords for those accounts to allow Plaintiff to recover any and all of its confidential business information and trade secrets misappropriated within three days of the date of this order; and

3. Granting such other and further relief as the Court finds just, proper or equitable.

AND, IT IS FURTHER ORDERED that Defendant shall preserve, and take steps to prevent the automatic or intentional deletion or modification of, all data, databases, cloud storage accounts including Dropbox, electronic files, emails, media and computer hard drives that may contain information related to this action.

AND, IT IS FURTHER ORDERED, that service of a copy of this Order to Show Cause, and the papers upon which it is based, by personal service upon Defendant on or before

July 27, 2018.

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5(d)) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

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AND, IT IS FURTHER ORDERED that opposition papers to the instant motion, if any, shall be served so as to be received by counsel for Plaintiff, Olshan Frome Wolosky LLP, Attn: Thomas J. Fleming, Esq., on or before 8/2/18, 2018. *Brook*

AND, IT IS FURTHER ORDERED that reply papers in further support of the instant motion, if any, shall be served so as to be received by defendant or his counsel on or before                     , 2018.

AND, IT IS FURTHER ORDERED, that the parties shall be entitled to immediately conduct pre-hearing discovery on the issues pertinent to the preliminary injunction.

*JSC*

SO ORDERED:  
*[Signature]*  
J.S.C.  
HON. ANDREA MASLEY

**ORAL APPOINTMENT DIRECTED**  
*[Signature]*  
J.S.C.  
HON. ANDREA MASLEY

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(1)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5(d)) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

FILED: NEW YORK COUNTY CLERK 07/20/2018 04:16 PM  
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NYSCEF DOC. NO. 12 RECEIVED NYSCEF: 07/20/2018

At I.A.S. Part 48 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, located at 60 Centre Street, New York, New York on the \_\_\_ day of July, 2018.

PRESENT HON. ANDREA MASLEY J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

EASTMORE MANAGEMENT, LLC,

Plaintiff,

-against-

SUMAN GUNTA,

Defendant.

Index No. 653592/2018

**ORDER TO SHOW CAUSE TO SEAL  
EXHIBIT TO COMPLAINT**

(I.A.S. Pt. 48)

(Motion Seq. No. 002)

UPON reading and filing of the Affirmation of Thomas J. Fleming, dated July \_\_, 2018, and the exhibits annexed thereto, submitted to the Court in connection with this motion to seal, and all pleadings and prior proceedings had herein, and good cause having been alleged, it is hereby:

**ORDERED** that Defendant Suman Gunta ("Defendant") show cause before this Court at IAS Part 48 Room 242 of the Courthouse located at 60 Centre Street, New York, New York, on July 3 2018 at 9:30am, or as soon thereafter as counsel may be heard, why an Order should not be entered:

1. Directing the Clerk of the Court to file UNDER SEAL any the Exhibit to the

Verified Complaint filed in the above-captioned action on July 19, 2018; and

*and Strategy Approach for panel's Court*

2. Granting such other and further relief as the Court deems just, proper or equitable.

FILED: NEW YORK COUNTY CLERK 07/20/2018 04:16 PM

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AND, IT IS FURTHER ORDERED that pending the hearing and disposition of this

Order to Show Cause, the parties are directed to temporarily file all documents that attach or

quote from the Exhibit to the Complaint under seal, except upon consent of both parties; and

AND, IT IS FURTHER ORDERED, that service of this Order to Show Cause, along with the papers upon which it is based, shall be served so as to be received by Defendant no later than July 11, 2018, via overnight delivery service such as Federal Express, and that such service shall constitute good and sufficient service;

with the papers upon which it is based, shall be served so as to be received by Defendant no later

than July 11, 2018, via overnight delivery service such as Federal Express, and that such service

shall constitute good and sufficient service;

AND, IT IS FURTHER ORDERED that opposition papers to the instant motion, if any,

shall be served so as to be received by counsel for Plaintiff, Olshan Frome Wolosky LLP, Attn:

Thomas J. Fleming, Esq., on or before August 2, 2018. 12 noon

SO ORDERED:

*[Signature]*  
J.S.C.

HON. ANDREA MASLEY

ORAL ARGUMENT  
DIRECTED  
*[Signature]*  
J.S.C.  
HON. ANDREA MASLEY