

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

STATS LLC D/B/A STATS PERFORM,

Plaintiff,

v.

HELEN SUN,

Defendant.

Case No.

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff, STATS LLC, d/b/a Stats Perform (“STATS” or “Plaintiff” or “Company”), by its attorneys Littler Mendelson, P.C., brings this action against its former employee, Helen Sun (“Sun” or “Defendant”), based on Sun’s breach of contractual obligations owed to STATS, breach of fiduciary duty, and misappropriation of trade secret information, and states as follows:

I. NATURE OF THIS ACTION

1. The Court has federal subject matter jurisdiction over Count I, a claim under the Federal Defend Trade Secrets Act, 18 U.S.C. §§ 1836 *et seq.* (“DTSA”). *See* 28 U.S.C. § 1331.

2. This Court has supplemental jurisdiction over the other counts in this Complaint, because they form part of the same case or controversy as Count I. *See* 28 U.S.C. § 1367.

3. Venue is proper in this judicial district because a substantial part of the events or omissions giving rise to the claims in this case occurred in this district. *See* 28 U.S.C. § 1391. In addition, Sun is domiciled in Illinois and her permanent residence is in Cook County. *Id.*

4. STATS, whose principal place of business is in Illinois, is damaged and continues to be damaged by Plaintiff's conduct in Illinois. Plaintiff's actions described herein were intentional and directed to STATS, knowing it was located in Illinois.

II. PARTIES

5. STATS is a privately held limited liability company, organized under the laws of Delaware, with headquarters in Chicago, Illinois, at 203 N. LaSalle Street, Suite 2200.

6. Sun is an individual who resides at 1435 North Elk Grove Avenue, Chicago, Illinois. Sun is a resident of Illinois.

III. FACTS

A. STATS' BUSINESS

7. STATS is one of a global group of affiliated entities that is well known as Stats Perform. STATS, as part of Stats Perform, is a data and technology company that collects data and video from sporting events around the world and sells data, video, and various products incorporating the same to media outlets, professional sports leagues and teams, members of the gaming industry, betting operators, fantasy sports providers, and others. STATS also provides software solutions, including based on artificial intelligence ("AI"), predictive modeling, and machine learning, optical tracking solutions, and various derivative products that utilize sports data and video, such as editorial content, visualizations, and graphics.

8. STATS' business relies on, among other things, its wealth of sports-related data, its proprietary tools for analyzing and presenting data to customers, its patented and patent-pending AI technology, and a robust, growing, and ever-evolving research and development program to help STATS create and provide cutting-edge solutions for customers and stay ahead of its competitors. STATS' business is also dependent on its valuable relationships with its thousands of customers, vendors, partners, owners and controllers of rights to sporting content, and other

industry players, as well as its branding and marketing strategies that keep STATS positioned as a leader in the field of sports-related data, video, and software.

B. SUN'S EMPLOYMENT AT STATS

9. Sun was hired by STATS on May 23, 2018, as the Chief Technology Officer (“CTO”), reporting directly to the Chief Executive Officer of STATS. She started work for the Company on July 16, 2018.

10. As CTO, Sun oversaw STATS’ product, engineering, artificial intelligence, and information technology teams. Her supervisory role included overseeing development of the next generation of products and services that STATS uses to revolutionize the performance and experience of sports. She was at the highest levels within the Company, in the highest of technology roles, and had access to some of STATS’ most proprietary, highly confidential, and competitively sensitive information.

11. Sun was one of the most highly compensated employees in the Company. (*See* Employment Agreement attached at Exhibit A; Amended Employment Agreement attached at Exhibit B). As a condition of her Employment Agreement, Sun was required to sign an Employment and Restrictive Covenants Agreement (“Restrictive Covenants Agreement”). (*See* Exhibit A at ¶ 5).

12. Sun executed the Restrictive Covenants Agreement in January 2019 and it is attached hereto as Exhibit C. It states that Sun “will faithfully perform [her] duties with the utmost loyalty to the Company, and will owe a fiduciary duty to the Company. [Sun] agrees that during her employment [she] will do nothing disloyal or adverse to the Company or the Business of the Company.” (*See* Exhibit C at ¶ 3(a)).

13. The Restrictive Covenants Agreements also expressly imposes detailed employment and post-employment requirements on Sun, related to the Company's documents and information, in Paragraph 7:

Any Confidential Information, trade secrets, materials, equipment, information, documents, electronic data, or other items that have been furnished by the Company to Employee in connection with the Employment are the exclusive property of the Company and shall be promptly returned to the Company by Employee, accompanied by all copies of such documentation, immediately when the Employment has been terminated or concluded, or otherwise upon the written request of the Company. Employee shall not retain any copies of any Company information or other property after the Employment ends, and shall cooperate with the Company to ensure that all copies, both written and electronic, are immediately returned to the Company. Employee shall cooperate with Company representatives and allow such representatives to oversee the process of erasing and/or permanently removing any such Confidential Information or other property of the Company from any computer, personal digital assistant, phone, or other electronic device, or any cloud-based storage account or other electronic medium owned or controlled by Employee.

(See Exhibit C, at ¶ 7).

14. Sun violated her Employment and Restrictive Covenants Agreements and her fiduciary duties to the Company based on her repeated and continued failure to cooperate with the return and supervised deletion of all Company information and property, as well as her refusal to sign a straightforward attestation stating that no Company property or documents remain in her possession or are accessible to her.

C. STATS' EFFORTS TO PROTECT AGAINST THE DISCLOSURE OF CONFIDENTIAL INFORMATION

15. STATS has developed, and continues to amass and develop, substantial intellectual property, valuable data, trade secret information, and other proprietary, competitively sensitive, and confidential information in the course of its business operations. As set forth in the Employment Agreement, Sun was advised that her employment was contingent upon her signing and complying with the Restrictive Covenants Agreement, stating:

Because the Company and its affiliates are engaged in a continuous program of research, development, production and marketing in connection with their business, we wish to reiterate that it is critical for the Company and its affiliates to preserve and protect its proprietary information and its rights in inventions.

(See Exhibit A at ¶ 5).

16. As noted above, the Restrictive Covenants Agreement and Employment Agreement repeatedly set forth that Sun's employment and post-employment covenants required her to maintain the confidential and trade secret information that is not known to others outside of STATS, and that her return of all documents, and actions in accordance with fiduciary duties as a high level executive, were of the utmost importance and ensured that STATS can maintain its distinct competitive advantage. In relevant part, the Restrictive Covenants Agreement and Employment Agreement states:

This Agreement is intended: to allow the parties to engage in the Employment, with the Company giving Employee access to the Company's customers, employees, and Confidential Information (as that term is defined below); to protect the Company's business, information, and relationships against unauthorized competition, solicitation, recruitment, use, or disclosure; and to clarify Employee's legal rights and obligations.

(See Exhibit C at ¶ 1).

17. In no uncertain terms, the Restrictive Covenants Agreement continued its emphatic statements and requirements protecting the confidential nature of the Company's data and information:

Employee further acknowledges that Employee will be given the use of the Company's Confidential Information. Employee acknowledges that the Company's goodwill with its customers and customer prospects, as well as the Company's Confidential Information, ***are among the most valuable assets of the Company's Business. Accordingly, Employee hereby agrees, acknowledges, covenants, represents and warrants that at all times during Employee's employment with the Company, Employee will faithfully perform Employee's duties with the utmost loyalty to the Company, and will owe a fiduciary duty and duty of loyalty to the Company.*** Employee agrees that during employment, Employee will do nothing disloyal or adverse to the Company or the Company's

Business, or which creates any conflict of interest with the Company or the Business of the Company. Employee will abide by the policies of the Company at all times during Employee's employment, and acknowledges that the Company may unilaterally change its policies, practices, and procedures at any time, at the sole discretion of the Company. Employee understands and acknowledges that all equipment, communication devices, physical property, documents, information, data bases, furniture, accessories, premises, and any other items provided to Employee while employed by Company, shall at all times remain the sole property of the Company, and as such, Employee shall have no reasonable expectation of privacy when using such items.

(See Exhibit C at ¶ 3(a), emphasis added).

18. The Restrictive Covenants Agreement expressly provided non-disclosure and affirmative protection obligations for STATS' confidential and trade secret information, stating:

Employee expressly agrees that, throughout the term of Employee's Employment with the Company and at all times following the termination of Employee's Employment from the Company, for so long as the information remains confidential, Employee will not use or disclose any Confidential Information disclosed to Employee by the Company, other than for the purpose to carry out the Employment for the benefit of the Company (but in all cases preserving confidentiality by following the Company's policies and obtaining appropriate non-disclosure agreements). Employee shall not, directly or indirectly, use or disclose any Confidential Information to third parties, nor permit the use by or disclosure of Confidential Information by third parties. Employee agrees to take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information in order to prevent it from falling into the public domain or into the possession of any Competing Business or any persons other than those persons authorized under this Agreement to have such information for the benefit of the Company. Employee agrees to notify the Company in writing of any actual or suspected misuse, misappropriation, or unauthorized disclosure of Confidential Information that may come to Employee's attention. Employee acknowledges that if Employee discloses or uses knowledge of the Company's Confidential Information to gain an advantage for Employee, for any Competing Business, or for any other person or entity other than the Company, such an advantage so obtained would be unfair and detrimental to the Company.

Employee expressly agrees that Employee's duty of non-use and non-disclosure shall continue indefinitely for any information of the Company that constitutes a Trade Secret under applicable law, so long as such information remains a Trade Secret.

(See Exhibit C at ¶ 6).

19. Such information includes, among other things, STATS' marketing strategies, operational methods, planning information, business plans, operational methods, market studies, marketing plans or strategies, patent information, business acquisition plans, past, current and planned research and development, formulas, methods, patterns, processes, procedures, instructions, designs, inventions, operations, engineering, services, drawings, equipment, devices, technology, software systems, price lists, sales reports and records, sales books and manuals, code books, financial information and projections, personnel data, names of customers, customer lists and contact information, customer pricing and purchasing information, lists of targeted prospective customers, supplier lists, product/service and marketing data and programs, product/service plans, product development, advertising campaigns, new product designs or roll out, agreements with third parties, or any such similar information. (*See* Exhibit C at ¶ 13 (e)).

20. In addition, STATS maintains other confidential information that it regards as trade secrets, including without limitation information related to clients, vendors, partners, and other entities with whom STATS has or has had a business relationship, product information, strategic and marketing plans, and invention disclosures and patent applications.

21. Because STATS operates in a niche industry, it has taken many years of targeted sales and marketing to distinguish itself from its competitors and develop a unique reputation and loyal customer base within a highly-competitive and relatively narrow market. STATS also underwent a corporate transaction in July 2019 under which STATS became commonly owned with Perform Content Limited ("Perform") and affiliates of Perform. As a result, the months since July 2019 have been a critical and formative time in the history and development of STATS and its now family of companies, Stats Perform, including with respect to research and development, marketing, product strategy and direction, and competitive positioning.

22. As a member of STATS executive team, Sun acquired confidential and proprietary information regarding all aspects of STATS' business, including all of the various types and categories described above. This information is not known outside of STATS, and only certain of STATS' employees were even permitted access to such information.

23. Armed with such confidential and proprietary information, an employee such as Sun, if she were to retain and/or use or disclose the Company's confidential and proprietary or competitively sensitive information, could severely damage STATS' competitive advantage in the marketplace.

24. Indeed, the Restrictive Covenants Agreement recognizes that injunctive relief is warranted in the event of a breach: "Employee understands that the violation of any restrictive covenants of this Agreement may result in irreparable and continuing damage to the Company for which monetary damages will not be sufficient, and agrees that Company will be entitled to seek . . . a temporary restraining order, preliminary injunction or similar injunctive relief from a court of competent jurisdiction in order to preserve the status quo or prevent irreparable injury pending the full and final resolution of the dispute through arbitration, without the necessity of showing any actual damages or that monetary damages would not afford an adequate remedy, and without the necessity of posting any bond or other security." (*See* Exhibit C at ¶ 12).

25. STATS' confidential and proprietary information was entrusted to Sun with the explicit understanding that she would at all times maintain its confidentiality and use it only for the benefit of STATS, that she would comply with her post-employment covenants and return all such information and cooperating in ensuring its deletion or return, and that she would not engage in efforts to delete such information, withhold anything from STATS, or otherwise harm or jeopardize STATS' legitimate interests.

26. The confidential and proprietary information was and is an important asset of STATS, and STATS has carefully guarded it by, among other things: (a) requiring executives and certain employees to execute confidentiality and nondisclosure covenants; (b) limiting access to confidential information; (c) utilizing computer passwords; (d) transferring certain information only through secure file transfer protocol with encrypted passwords; (e) limiting access to offices; (f) monitoring who is given access to confidential information; (g) instructing personnel not to show confidential information to customers or persons outside STATS; (h) entering into non-disclosure agreements with customers, potential customers, vendors, and other business partners; and (i) requiring all confidential and proprietary information to be used for STATS' business purposes only.

D. SUN DEFLECTS INITIAL EFFORTS FROM STATS TO RETURN HER COMPANY-ISSUED LAPTOP AND CELLPHONE

27. On April 28, 2020, Sun's position within STATS was eliminated and her employment with STATS was terminated. At 8:15 a.m. on April 28, a proposed severance and release agreement was provided to her via email and Sun was advised that on the following day, April 29, 2020, a courier would be at her home between 9 a.m. and 11 a.m. to retrieve her company-issued computer and cell-phone.

28. The severance and release agreement provided, among other things, a generous offer of severance equal to more than ten times the amount of severance she was owed under the terms of her Employment Agreement and Restrictive Covenants Agreement, assuming compliance with the terms of those agreements and assuming certain predicates within the severance and release agreement itself. For example, the offered severance pay was "contingent on Executive timely returning all Company property in accordance with" the terms of the severance and release agreement.

29. Despite this email being sent to her on the morning of April 28, to an email address Sun had been using regularly, Sun did not respond to this notice, and failed to answer the door to the courier the following day. Notably, given the state-issued, shelter-in-place order in effect at the time, STATS reasonably believes that Sun was home when the courier arrived.

30. STATS sent Sun text messages regarding the courier and her failure to answer the door, to which Sun failed to respond to until 10:17 p.m. on April 29. In those text messages, Sun demanded to be provided with the courier's company name, type of vehicle and license plate and provided express instructions that she was to be texted when the courier arrived, and that they could not approach her door and that she would then leave the laptop and cellphone on her porch. After much back and forth, STATS finally retrieved its computer and cell phone on April 30. Sun did not provide a signed copy of the severance and release agreement she had been given, and did not at any point during these text message and email exchanges agree to sign the agreement or acknowledge it in any way.

E. RETURN OF THE COMPANY PROPERTY RAISES CONCERNS

31. Upon STATS opening Sun's returned laptop it was discovered that a screen saver had been enabled with the Portuguese phrase stating "*pense duas vezes.*" Translated, the phrase means "think twice." The screen saver was installed on the laptop while in Sun's possession.

32. Further review also revealed that certain documents, which by their file names appeared to be STATS' documents, had been uploaded or pending upload to an iCloud storage account associated with the email address hsun@STATS.com. For example, one such document pending upload had a file name "STATS Product and Strategy Examples.pdf." Another was "Product and Technology Org Chart.pdf." These documents could have been placed in a queue for uploading to the iCloud through the laptop computer, or possibly through another device such as a tablet or phone. While the domain for the email address associated with the account is

“stats.com,” STATS does not independently have access to the iCloud account. It was an iCloud account to which only Sun had access, through a password she had selected. Despite requests, Sun refused to provide user credentials to access the hsun@stats.com iCloud account, and STATS has been unable to determine if these files or other Stats Perform business records were uploaded to or downloaded from that account, or otherwise synchronized with the hsun@stats.com iCloud account.

33. Also, although Sun returned her Company-purchased iPhone to STATS on April 30, the device was locked at the time it was returned, and Sun did not provide the passcode to unlock it. While the phone, once unlocked, might indicate whether Sun was still in the possession of STATS documents, for example, within her iCloud account, STATS is not able to unlock the phone in order to take steps to ensure that all copies of STATS documents and information have been destroyed or returned to STATS, pursuant to Sun’s Restrictive Covenants Agreement

34. Sun regularly used an iPad or other brand tablet during the course of her employment, as observed by her colleagues. The device was not purchased for her by the Company. As of the date of this Complaint, Sun has refused to provide the iPad or tablet to STATS for forensic examination and for STATS to confirm that no Company documents or information remain on it, as STATS is expressly permitted to do under Sun’s Restrictive Covenants Agreement.

F. STATS’ PRE-LITIGATION EFFORTS TO ENFORCE THE CONFIDENTIALITY AGREEMENT

35. On May 1, 2020, the undersigned counsel, Jennifer Schilling, sent a letter reminding Sun of her compliance obligations under the Restrictive Covenants Agreement including return of all Company documents, and compliance with her fiduciary duties and

requesting her immediate cooperation including signing an attestation that she had not retained any confidential information. (*See Exhibit D*).¹

36. On May 5, 2020, Sun responded denying any wrongdoing yet refusing to sign the one-page attestation stating in plain and simple terms that she had not retained and no longer had access to any Company property or information. (*See Exhibit E*).

37. On May 15, 2020, Ms. Schilling again sought Sun's cooperation requesting that Sun:

1. Provide the password and login credentials for your iCloud account associated with the email address hsun@stats.com;
2. Provide the passcode to the Company iPhone that you returned at the end of your employment;
3. Delete and/or return all Stats Perform confidential information in your possession whether in paper or electronic form;
4. Remove all association of employment with Stats Perform from your LinkedIn or any other social media accounts, and do not hold yourself out as being still employed by or associated with Stats Perform; and
5. Sign and return to me the previously provided attestation.

If you agree to cooperate with these measures, Stats Perform may consider reassessing severance. If you do not provide these basic assurances and necessary information you will be in breach of your Employment and Restrictive Covenants Agreement and Stats Perform will have no choice but to explore legal action to protect its business interests.

I look forward to your prompt cooperation by no later than Wednesday, May 20.

(*See Exhibit F*).

G. SUN REVEALS THAT SHE IS IN COMMUNICATION WITH STATS' COMPETITORS AND CONTINUES HER REFUSAL TO COOPERATE

38. Following this email, Sun engaged legal counsel, Michael Persoon, and sent a letter dated May 22, 2020 continuing to deny any violations of her Restrictive Covenants Agreement, and yet continuing to ignore STATS' requests as set forth in the May 15 email and continuing to

¹ The concerns regarding deleted emails referenced in this and other correspondence are not an issue before the Court at the present time. STATS reserves all rights regarding this issue.

refuse to sign the straightforward attestation that had been provided to Sun. (*See* Exhibit G, at pg. 4). Instead, Sun, through her attorney, demanded various payments be made to her, and insisted that she be believed as “a woman of her word.” (*Id.*)

39. Sun also stated that while she does not “expect or intend to seek employment in sports or sports analytics” that she has already been “presented with significant opportunities.” Sun further took the position, through her counsel and in direct contradiction of the Restrictive Covenants Agreement, that she is “not obligated” to comply with her restrictions in working with a competitor. (*Id.*)

40. These words are of paramount concern to STATS as it is clear that Sun is already in contact with competitors all the while having access to STATS’ confidential and propriety information. Indeed, in subsequent correspondence Sun’s counsel specifically made reference to a recruiter asking Sun if she was interested in a position with a company STATS is actively evaluating as an acquisition target. (*See* Ex. I at p. 3). Sun is aware of this potential acquisition and was provided with a large volume of information about the potential target and STATS’ highly confidential internal evaluations and strategies related to the same.

41. In yet another good faith attempt to simply receive its confidential documents, iPhone passcode, password to the iCloud account for STATS files, and an attestation that she had not retained any confidential documents, on May 28, 2020, Ms. Schilling sent yet another letter seeking Sun’s cooperation as required by her Restrictive Covenants Agreement and again requested that she sign the previously provided attestation. (*See* Exhibit H). Ms. Schilling further invited a verbal discussion with Mr. Persoon to resolve these issues.

42. Over several phone calls between counsel, Sun continued to deny STATS’ request for the passcode to the iCloud account, deny the request for the passcode for her Company-

purchased iPhone, refused to sign STATS' attestation of compliance, and refused to provide a third-party forensics vendor with the iPad she routinely used in her employment with STATS and which she used, on information and belief, to access STATS' email, save Company documents, and/or store STATS' documents in the iCloud account. Rather, Sun—a *Chief Technology Officer* who holds a Ph.D. and who used the iCloud and iPhone for work-related purposes—claims that she does not remember the password to her iCloud account or the passcode for her iPhone and had no idea how to retrieve those passwords/passcodes. She stated only that she would engage in phone calls with “Apple” or STATS' vendor in an attempt to retrieve the passwords or passcodes STATS sought to recover. (*See* Exhibit I). Further, despite the fact that dozens of witnesses can confirm that Sun brought the iPad to work and routinely used it in meetings, Sun initially took the position that she did not use the iPad for work purposes, and now refuses to provide her iPad for forensic analysis or for STATS to confirm deletion of Company information. This is a violation of her obligations under Paragraph 7 of her Restrictive Covenants Agreement, which clearly requires her to “cooperate with Company representatives and allow such representatives to oversee the process of erasing and/or permanently removing any such Confidential Information or other property of the Company from any computer, personal digital assistant, phone, or other electronic device, or any cloud-based storage account or other electronic medium owned or controlled by Employee.” (*See* Exhibit C).

43. As for the proposed attestation STATS has repeatedly asked Sun to sign, Sun's only offer was to provide “a signed statement” that includes at least the following text, which in fact confirms STATS' belief that Sun continues to retain STATS' documents and information. Specifically, Sun's counsel stated, “Once these issues are resolved, Dr. Sun will provide a signed

statement with the following material clause: ‘To the best of her knowledge, Dr. Sun has no Company Information in her custody or control *other than as related to the terms of her employment and the parties’ ongoing dispute over her separation.* In the future, if she discovers any Company Information in her custody or control, she will perform the deletion and notify the Company at [insert desired contact].’ (Ex. I at p. 2) (emphasis added; brackets in original). Sun’s counsel offered no explanation of what potential wealth of information Sun was retaining that is purportedly “related to the terms of her employment and the parties’ ongoing dispute over her separation.”

44. On, June 10, 2020, counsel for STATS inquired with counsel for Sun as to whether he would accept service of a complaint against Sun. Counsel declined, stating that doing so was not within his “scope of representation” and Sun had not “authorized” him to accept service on her behalf. (*See* Exhibit J).

45. On June 19, STATS made another and final good faith attempt to avoid litigation and requested that Sun provide a log of all STATS documents within her possession, so that the parties could see if they might either agree that such documents could be retained or were confidential and must be returned, and that Sun sign an attestation that other than the documents she disclosed she did not have any other STATS’ documents, she would return any documents subsequently identified and that she would honor her post-employment covenants. (*See* Exhibit K).

46. Despite this patently reasonable request, Sun refused to cooperate, and sent only an email deflecting and refusing to commit to any cooperation. (*See* Exhibit L).

47. On June 22, STATS again reached out noting that it was seeking Sun’s basic compliance and disclosure of what documents she was holding and assurances that she would

honor her agreements. (*See* Exhibit M). Sun offered yet another vague and non-committal response, confirming that she has Company documents in her possession but refusing to return them or disclose what she has, and further disclosing general categories of documents that she intends to keep and believes she has the right to do so. (*See* Exhibit N). Specifically Sun, through her attorney, stated that she “expects and intends to delete all STATS documents, except” those in certain listed categories, and those that she described as “in connection with pending legal disputes.” (*Id.*) Further, rather than agreeing to confirm her cooperation and sign an attestation, Sun continues to deflect stating that she will “work with STATS to provide assurances.” (*Id.*).

48. Having exhausted all reasonable attempts at cooperation and faced with continued deflection, delays, and excuses, STATS must protect its legitimate business interests and seek this Court’s intervention.

IV. CAUSES OF ACTION

COUNT I

FEDERAL DEFEND TRADE SECRETS ACT

49. STATS incorporates by reference Paragraphs 1-48 as if fully set forth herein.

50. The actions of Sun as described above, constitute violations of one or more provisions of the Federal Defend Trade Secrets Act (“DTSA”).

51. The DTSA applies because STATS’ trade secrets are related to products and services used in, and intended for use in, interstate and foreign commerce. The products and services to which the trade secrets relate are, researched and developed, used by STATS and its affiliates and offered and sold to STATS’ and its affiliates’ clients across the United States and globally.

52. By engaging in the above conduct, Sun has misappropriated, threatened to misappropriate, and/or inevitably will misappropriate STATS' trade secrets related to a product or service used in, or intended for use in, interstate or foreign commerce.

53. The Company emails and other documents to which Sun had access the entire time she was employed by STATS – a subset of which she has *confirmed* she is retaining and which may be stored in Sun's iCloud account among other places – contain proprietary data, research and development and technical product information related to AI and machine learning inventions, software and system architecture documents, product planning information, business strategy discussion and documents, customer information, and Company financial information, to name a few categories. The various items of information to which Sun had access and which she made use of in her employment, at least a subset of which she is currently in possession of and has not agreed to destroy or return to STATS, are trade secrets. STATS expended substantial time, energy, money and ingenuity in compiling this information based on its own efforts and communications with STATS' clients and others.

54. Sun admits she is retaining but is unwilling to list or otherwise identify, including documents she is retaining under the guise of being “related to the terms of her employment and the parties' ongoing dispute over her separation” and “in connection with pending legal disputes” are highly likely to contain confidential and proprietary information. (*See Exhibits I & N*). STATS has repeatedly requested that Sun disclose what she has retained and that the parties could agree if such documents need to be returned or not. Sun refuses to do so.

55. STATS has taken reasonable measures to keep its trade secret information secret by, among other things: (1) requiring employees who have access to such information to sign confidentiality agreements, (2) promulgating confidentiality and information security policies,

(3) limiting the disclosure and distribution of such information to only a small number of employees on a need to know basis, (4) requiring that such information be saved on password protected networks or servers, and/or (5) utilizing non-disclosure agreements when engaging in discussions with customers, prospective customers, partners and others.

56. STATS' trade secret information is sufficiently secret to derive independent economic value due to not being generally known to, and not being readily ascertainable through proper means by, other persons who can obtain economic value from its disclosure and use, such as STATS' competitors.

57. Without authorization, Sun misappropriated, threaten to misappropriate, or inevitably will misappropriate these trade secrets in a willful manner and with a deliberate intent to injure STATS and improve her own financial gain, by among other things:

Refusing to disclose the documents she has admittedly retained for her own personal benefit in the dispute regarding the end of her employment;

Refusing to provide STATS with a one page attestation confirming that she does not maintain possession of and will not use STATS confidential information;

Refusing to provide STATS with the password to her iCloud where STATS' documents have been uploaded or are pending upload;

Refusing to provide STATS with her company-issued iPhone passcode;

Expressly advising STATS that she has been approached about potential employment by at least one direct competitor and by others within the sports industry; (*See Exhibit G at p. 4*); and

Expressly advising STATS she does not believe her non-compete obligations are enforceable (*Id.*).

58. STATS communicated trade secrets to Sun in confidence. At the time of disclosure, Sun knew that the trade secrets were acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secrets and limit the use of the trade secrets.

59. Sun can obtain economic value for the disclosure and use of STATS' trade secrets, for example, by avoiding years and millions of dollars in investment that it took STATS to develop the trade secret information and client relationships, permit other companies to be better positioned to compete against STATS without investing the time and money STATS has invested, and to convert or attempt to convert STATS' customers to those of a competitor for her own or another employer's financial gain.

60. As a consequence of the foregoing, STATS has suffered and will continue to suffer irreparable harm, injury and loss. Pursuant to the DTSA, actual or threatened misappropriation of trade secrets can be enjoined. Unless enjoined, STATS will continue to suffer irreparable harm that cannot be remedied through money damages.

61. As a direct and proximate result of the conduct of Sun, STATS is entitled to actual damages in an amount to be determined at trial. The acts and conduct of Sun were willful and malicious, justifying an award of exemplary damages and attorneys' fees.

COUNT II

ILLINOIS TRADE SECRETS ACT

62. STATS incorporates by reference Paragraphs 1-61 as if fully set forth herein.

63. STATS has confidential and proprietary information that constitutes trade secrets under the Illinois Trade Secrets Act, 75 ILCS 1065 *et seq.* ("ITSA"). Such information derives independent value from not being generally known to STATS competitors. Further, such information is not readily ascertainable through proper means by STATS' competitors.

64. STATS undertook reasonable efforts and instituted reasonable precautions to protect the confidentiality of its proprietary, confidential and trade secret information.

65. Sun has misappropriated STATS' trade secrets in violation of the ITSA.

66. Sun's misappropriation has endangered STATS and exposes STATS to immediate and irreparable harm for which there is no adequate remedy at law.

67. Sun's misappropriation has also caused and will continue to cause STATS to suffer monetary damages and legal costs to be determined at trial.

COUNT III

BREACH OF CONTRACT

68. STATS incorporates by reference Paragraphs 1-48 as if fully set forth herein.

69. As a condition of her employment and/or continued employment, Sun signed and agreed to an Employment Agreement and Restrictive Covenants Agreement, which provided in relevant part that: (a) she was not to disclose or use any of STATS' confidential information for the benefit of herself or another; (b) she was to return all STATS' property and information upon termination of employment; and (c) disclosure of STATS' confidential information would cause STATS irreparable harm that would entitle STATS to injunctive relief. (*See Exhibits A and C.*)

70. STATS fully performed and met the obligations required of it by the Employment and Restrictive Covenant Agreements.

71. Sun has already violated these provisions by her refusal to provide STATS with access to the iCloud to ensure deletion and removal of such documents, installing intimidating messages of "think twice" in Portuguese on her Company-issued laptop, refusing to provide a passcode to her company-issued iPhone, refusing to "cooperate" in allowing a STATS' representative to "oversee the process of erasing and/or permanently removing any ... Confidential Information or other property of the Company" from electronic devices or remote storage, including Sun's iPad/tablet and iCloud, and refusing to provide a basic attestation of her

compliance with her restrictive covenants, and affirmatively representing that she is retaining an untold number of STATS' documents. (*See* Exhibit C).

72. As a direct, foreseeable, and proximate result of these breaches by Sun, STATS will suffer substantial losses, the precise amount and value of which are incalculable.

73. Upon information and belief, Sun will continue to breach her Agreements unless and until she is forced to stop doing so by this Court.

74. As a result of Sun's breaches of the Employment and Restrictive Covenant Agreements attached hereto as Exhibits A, B and C, STATS is entitled to injunctive relief to prevent further misappropriation or wrongful disclosure of its confidential information and trade secrets for which STATS has no adequate remedy at law, and it is entitled to its attorneys' fees and costs for enforcing its provisions and legitimate confidentiality interests. (*See* Exhibit C at ¶ 11 (c), expressly setting forth that STATS is entitled to recover "any costs or attorneys' fees, arising out of or in connection with any breach by Employee or enforcement action relating to Employee's obligations under this Agreement).

COUNT IV

BREACH OF FIDUCIARY DUTY

75. STATS incorporates by reference Paragraphs 1-48 as if fully set forth herein.

76. During her time with STATS, Sun was a key employee, placed in a senior role as the Chief Technology Officer. STATS placed Sun in a position of trust and confidence, with access to STATS' sensitive and proprietary business information.

77. Sun's fiduciary duty to STATS required that she exercise the highest degree of care, loyalty, good faith, and fair dealing toward STATS, both during her employment and after her separation.

78. Despite this high level of care owed to STATS, Sun refuses to provide access to the personal iCloud account Sun used to store STATS' documents, refusing to cooperate and sign an attestation that she has returned all STATS property and information in her possession, custody or control or which is accessible by her, admitting she is retaining STATS' documents described in vague and open-ended terms, refusing to permit a representative of STATS to oversee and confirm the deletion of Company information and documents from electronic devices or remote storage, including her iPad/tablet and iCloud, and refusing to provide passwords/passcodes to her iCloud and iPhone so that STATS can secure its propriety interests, all establishing numerous breaches of her fiduciary duty.

79. As a direct and proximate cause of Sun's fiduciary breaches, STATS will suffer ongoing financial losses in an amount, which can only be determined based upon a trial of Sun's breaches of her fiduciary duties.

80. In addition to all equitable and compensatory remedies that should be awarded to STATS based on Sun's breaches of fiduciary duties are/were willful and wanton, justifying a further award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, STATS respectfully requests that this Court:

A. Enter an order temporarily, preliminarily, and permanently that:

Defendant HELEN SUN ("Sun") and all parties in active concert or participation with her who receive actual notice of the Order, by personal service or otherwise, be enjoined from publishing, broadcasting, selling, distributing, releasing, conveying or otherwise making any statements regarding any of STATS' confidential, proprietary and/or trade secret information;

Sun and all parties in active concert or participation with her who receive actual notice of the Order, by personal service or otherwise, be temporarily enjoined from breaching her Employment and Restrictive Covenants Agreements and specifically, from publishing, broadcasting,

selling, distributing, releasing, conveying or otherwise disclosing STATS' confidential and privileged information;

Sun and all parties in active concert or participation with her who receive actual notice of the Order, by personal service or otherwise, be enjoined from retaining, utilizing and/or disclosing confidential and/or proprietary information of STATS;

Sun is required to identify any STATS information in her possession, custody or control or accessible to her (or in the possession, custody or control of any of her agents or attorneys or accessible to them) and to turn over to STATS all originals and all copies of files, data and information removed from or belonging to STATS (including journals, logs, diaries and other personal memoranda that may reference, include or discuss STATS information), in electronic and physical or hard copy form;

Sun be ordered to turn over to a STATS representative, for inspection, all devices (or, for any cloud-based or remote storage locations, all passwords or necessary access information for such storage locations) that are currently used or previously used by her to store or access STATS company information and/or to which she has at any time downloaded or saved any STATS company information, including but not limited to any such hard drives, flash drives, phones, tablets, computers, cloud-based media or other storage device or location and be enjoined from using or disclosing the same;

Sun be ordered to permit direct physical access by a STATS representative, to all computers, personal communications devices, laptops, tablets, or other storage devices in her possession, custody, or control and all passcodes/passwords for those devices, within four (4) days of the Court's entry of the Order, for forensic examination by a third party expert and to confirm deletion of Company documents and information.

- B. Issue an order declaring Sun to have violated her Restrictive Covenant Agreement;
- C. Order Sun liable for Plaintiff's attorneys' fees and costs; and
- D. Award such other damages and further relief as this Court deems appropriate.

Dated: June 24, 2020

Respectfully submitted,

STATS LLC

/s/ Jennifer Schilling

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Attorneys for Plaintiff

VERIFICATION

Under penalties as provided by law pursuant to 28 U.S.C. § 1746, the undersigned, Michael Perez, hereby verifies that he is the Chief Operating Officer of STATS LLC; he has read the foregoing Verified Complaint and knows the contents thereof; to the extent the factual statements therein are based on the undersigned's personal knowledge, he knows that they are true and accurate to the best of his knowledge; to the extent that the factual statements therein are based on statements that have been told to the undersigned by others, he believes them to be true and accurate; and to the extent that the factual statements therein are based on the personal knowledge of other employees or agents of Plaintiff, the undersigned believes them to be true and accurate.

A handwritten signature in black ink, appearing to be "Michael Perez", is written over a horizontal line. The signature is stylized and somewhat cursive.

Date: June 24, 2020