

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

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MARILYN MODEL MANAGEMENT, INC., Index No.
Plaintiff, **COMPLAINT**

-against-

DEREK SAATHOFF and 1 MODEL
MANAGEMENT LLC d/b/a ONE
MANAGEMENT,

Defendants.

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Plaintiff Marilyn Model Management, Inc. (“Marilyn”), for its Complaint against
Defendants Derek Saathoff (“Saathoff”) and 1 Model Management LLC d/b/a One Management
 (“One Mgmt.”), alleges as follows:

NATURE OF THE ACTION

1. This action seeks injunctive relief and damages for the flagrant and repeated
breaches by Marilyn’s former employee, Derek Saathoff (“Saathoff”), of his non-solicitation and
confidentiality contractual obligations.

2. Notwithstanding the clear warnings he was given about those contract obligations,
Saathoff has, upon information and belief, already unlawfully solicited *at least six* Marilyn
models under contract, and continues to wrongfully try to induce models under contract with
Marilyn to breach their contracts with Marilyn, entering into agreements with his new employer,
Defendant One Mgmt., instead. Two of those six models have, upon information and belief,
already abandoned Marilyn for One Mgmt.

3. Marilyn’s contracts with its models are the lifeblood of its business. Now,
however, through Saathoff’s deliberate disregard of his contractual obligations to Marilyn, One

Mgmt. is systemically attacking those critical model relationships, and has already twice succeeded—irreparably injuring Marilyn.

4. To preserve the status quo, and to prevent the destruction of its core business, Marilyn seeks immediate injunctive relief prohibiting Saathoff from further breaching his non-solicitation agreement and from further disclosing, and using, Marilyn’s confidential information to induce Marilyn models to join One Mgmt. Marilyn also seeks immediate injunctive relief against One Mgmt. for tortiously interfering with Marilyn’s contracts with its models and Marilyn’s non-solicitation agreement with Saathoff.

PARTIES

5. Plaintiff Marilyn Model Management, Inc. is a New York corporation with its principal place of business in New York, New York. Marilyn is an international modeling agency.

6. Upon information and belief, Defendant Derek Saathoff is a resident of New York, New York. Saathoff is a Model Agent, having worked in that capacity for Marilyn for over five years, before resigning to join Defendant One Mgmt. in the same capacity.

7. Upon information and belief, Defendant 1 Model Management LLC d/b/a One Management is a limited liability company with its principal place of business in New York, New York. Like Marilyn, One Mgmt. is a modeling agency, and competes directly with Marilyn.

JURISDICTION AND VENUE

8. This Court has personal jurisdiction over this matter because, upon information and belief, both Defendants are residents of New York.

9. Venue is proper in this Court, pursuant to CPLR § 503, because, upon information and belief, all parties reside in New York County. Venue is also proper in this Court pursuant to

CPLR § 501, because Saathoff consented to venue in this county for any disputes arising out of his September 16, 2017, renewed Employment Agreement with Marilyn.

FACTUAL ALLEGATIONS

The Employment Agreement

10. Marilyn hired Saathoff as a Model Agent in August 2013.

11. As an express condition of his employment, Saathoff entered into a series of Employment Agreements with Marilyn, the most recent of which is dated September 16, 2017 (the “Employment Agreement,” attached hereto as Exhibit A), agreeing, *inter alia*, to certain restrictive covenants.

12. Among those restrictive covenants were a series of non-solicitation obligations which, under the Employment Agreement, Saathoff remains subject to, both through the period of his employment at Marilyn and for six months thereafter. These non-solicitation obligations included prohibitions on:

- a. “solicit[ing], or assist[ing] in the solicitation of, any person or entity . . . whom [Saathoff] had contact with, solicited, provided services for, received services from, or gained substantive knowledge of during the six months immediately prior to [Saathoff’s] last day of employment, for the purpose of obtaining the patronage of such person”; and
- b. “directly or indirectly solicit[ing], or assist[ing] in the solicitation of, for the purpose of offering employment to or hiring, any person employed by [Marilyn] (as an employee, independent contractor or otherwise) unless, prior to any such solicitation, such person is, independent of any acts or omissions by [Saathoff], no longer employed or engaged by [Marilyn].”

(Ex. A, Employment Agreement § 6(A)(ii), (iv).)

13. Saathoff also agreed in the Employment Agreement to maintain Marilyn's non-public information confidential throughout the term of his employment at Marilyn "and at all times thereafter," specifically agreeing not to:

[U]tilize, divulge, furnish or make accessible to any third person, company or other organization . . . and shall not use in any manner (other than in connection with the business, operations and affairs of [Marilyn]), any confidential or proprietary information concerning [Marilyn], or any of its divisions, subsidiaries or affiliates, or the business, operations, affairs or financial condition or results of any of the foregoing (provided, however, that confidential and proprietary information shall not be deemed to include any information otherwise generally available to the public (other than as a result of an unauthorized disclosure).

(*Id.* § 7(A)(a).)

14. Saathoff acknowledged in the Employment Agreement that the specific information he was required to keep confidential included, "the identities of existing and potential Model clients and key accounts, including [those] cultivated or maintained by [Saathoff] while providing services at [Marilyn]," "the particular preferences, likes, dislikes and needs of those existing and potential Model clients and key accounts and contact persons with respect to the services provided by [Marilyn] and other marketing terms and techniques," and "all other information [Marilyn] tries to keep confidential and that has commercial or competitive value or is of such a nature that its unauthorized disclosure would be detrimental to [Marilyn's] interest." (*Id.* § 7(A)(i), (ii), (vi).)

15. In Section 8 of the Employment Agreement, Saathoff agreed that, because damages may not be an adequate remedy for a breach or a threatened breach of the foregoing non-solicit and confidentiality obligations, those restrictive covenants could be specifically enforced by injunction. Saathoff further agreed he would "not raise as a defense that adequate remedies at law are or may be available to [Marilyn] if [Marilyn] seeks to specifically enforce, or

seeks other equitable relief . . . , and that no bond will be required . . . in connection with any action brought by [Marilyn] seeking equitable relief.” *Id.* § 8.

Saathoff’s Resignation

16. Saathoff worked for Marilyn for over five years before tendering notice of his resignation.

17. Thereafter, on September 25, 2018, Marilyn issued Saathoff a letter agreement accepting his resignation (the “Letter Agreement,” attached as Exhibit B), releasing Saathoff from the non-compete restrictive covenants in his Employment Agreement, and underscoring that Saathoff still remained bound by his “continuing non-solicitation [and] non-disclosure . . . obligations to Marilyn,” enclosing a copy of the Employment Agreement for his reference. (*Id.*)

18. Saathoff confirmed his acceptance of, and agreement to, the terms of the Letter Agreement on September 26, 2018, returning a signed copy to Marilyn. (*Id.*)

19. Saathoff thereafter took a position as a Model Agent with Defendant One Mgmt.

Saathoff’s Breach of the Employment Agreement

20. In late October 2018, Marilyn learned Saathoff was breaching his Employment Agreement by soliciting models under contract with Marilyn to join One Mgmt, and was using Marilyn’s confidential information about each such model to do so.

21. Upon information and belief, Saathoff has to date solicited at least six such Marilyn Models to leave Marilyn for One Mgmt., succeeding in persuading at least two models to do so.

22. All six of the Marilyn models Saathoff solicited were, at the time they were solicited, subject to contracts with Marilyn designating Marilyn as their sole and exclusive personal career managers.

23. Saathoff would have been aware of those Marilyn contracts at the time of his

solicitations.

24. On November 14, 2018, Marilyn sent Saathoff a letter reminding him of his non-solicitation obligations under his Employment Agreement and noting those obligations remained in effect for six months following the date of his resignation from Marilyn. (*See* Nov. 19, 2018 Affirmation of Kenneth W. Taber (“Taber Aff.”), Ex. A.)

25. The next day, on November 15, 2018, Marilyn, acting through its counsel, sent One Mgmt.’s General Counsel a letter notifying One Mgmt. of Saathoff’s continuing non-solicitation obligations, and of Marilyn’s understanding that Saathoff and One Mgmt. had already been soliciting Marilyn Models in violation of Saathoff’s Employment Agreement. (*See* Taber Aff, Ex. B.)

26. The following day, November 16, 2018, Marilyn’s counsel and One Mgmt.’s General Counsel had a telephone call to discuss Marilyn’s November 15th letter. Marilyn’s counsel informed One Mgmt. that Marilyn would not agree to release any of its models under contract to join One Mgmt. In response, One Mgmt.’s General Counsel specifically assured Marilyn’s counsel that One Mgmt. would never enter into contracts with any model still subject to a contract with Marilyn.

27. Notwithstanding that assurance, however, just a few hours later, at approximately 6 p.m. EST, Saathoff posted an image of a Marilyn model, Missy Rayder, on his Instagram account, together with the words “Missy Rayder @missyrayder Welcome to @onemanagement.” (*See* Nov. 19, 2018 Affidavit of Maria Cognata (“Cognata Aff.”), Ex. 14.) One Mgmt. simultaneously posted an image of Ms. Rayder on its own Instagram account, together with the caption: “NOW REPRESENTING | @MissyRayder #ONE.” (*See id.*) One Mgmt. then uploaded Ms. Rayder’s portfolio onto its website,

<http://www.onemanagement.com/mainboard/missy-rayder/portfolio/?sid=66401/#img668385>.

(*See id.*)

28. Saathoff and One Mgmt. have made it clear that, unless enjoined, they will continue breaching Saathoff's obligations under the Employment Agreement, attempting to induce Marilyn's models to breach their contracts with Marilyn, thereby irreparably damaging Marilyn's business.

FIRST CAUSE OF ACTION

Breach of Contract (against Defendant Saathoff)

29. Marilyn repeats and re-alleges paragraphs 1–28 as if fully set forth herein.

30. Saathoff and Marilyn entered into a series of Employment Agreements, the most recent of which, the September 16, 2017 Employment Agreement, remains a valid and fully enforceable agreement.

31. Marilyn has performed all of its obligations under the Employment Agreement.

32. Under the terms of the Employment Agreement, Saathoff agreed not to solicit, directly or indirectly, "any person employed by Marilyn," including its independent contractors (i.e., models), or to solicit or interfere with the contractual duties of any individual providing services to Marilyn, including its models. (Ex. A, Employment Agreement § 6(A).)

33. Saathoff further agreed he would not use Marilyn's confidential information for purposes other than those in connection with Marilyn's business, including personal information about Marilyn's models. (*Id.* § 7(A).)

34. Saathoff has repeatedly breached his Employment Agreement, upon information and belief, by directly and/or indirectly soliciting models currently under contract with Marilyn, and by using Marilyn's confidential information concerning those models, encouraging them to leave Marilyn and join One Mgmt.

35. Marilyn has been damaged, and is still being damaged, by Saathoff's contract breaches, in an amount to be determined at trial.

SECOND CAUSE OF ACTION

Breach of Common Law Duty of Loyalty (against Defendant Saathoff)

36. Marilyn repeats and re-alleges paragraphs 1–35 as if fully set forth herein.

37. As a former employee of Marilyn, Defendant Saathoff has a continuing duty of loyalty to Marilyn not to use Marilyn's confidential information that he acquired during his employment with Marilyn to his own advantage or to the advantage of his new employer, One Mgmt.

38. Upon information and belief, Saathoff has breached his duty of loyalty to Marilyn by using Marilyn's confidential information concerning the identities and preferences of Marilyn's models to solicit those models to join One Mgmt. and leave Marilyn.

39. Marilyn has been, and is still being, damaged by Saathoff's duty of loyalty breaches, in an amount to be determined at trial.

THIRD CAUSE OF ACTION

Unfair Competition (against Defendant One Mgmt.)

40. Marilyn repeats and re-alleges paragraphs 1–39 as if fully set forth herein.

41. Marilyn's business depends upon the relationships it has cultivated over the years with its models.

42. One Mgmt. has now gained an unfair business advantage by misappropriating confidential information about Marilyn's business and Marilyn's models through Saathoff, one of Marilyn's former employees.

43. Upon information and belief, One Mgmt. has used that Marilyn confidential information, in bad faith, to induce models to leave Marilyn and join One Mgmt., thereby gaining an unfair business advantage.

44. Marilyn has been, and is still being, damaged by One Mgmt.'s unfair competition, in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

Tortious Interference with Contract (against Defendant One Mgmt.)

45. Marilyn repeats and re-alleges paragraphs 1–44 as if fully set forth herein.

46. Marilyn has a valid and enforceable contract, the Employment Agreement, with Defendant Saathoff, a contract to which One Mgmt. is not a party.

47. Under the terms of the Employment Agreement, Saathoff agreed not to solicit, directly or indirectly, “any person employed by Marilyn,” including its independent contractors (*i.e.*, models), or to solicit or interfere with the contractual duties of any individual providing services to Marilyn, including its models. (Ex. A, Employment Agreement § 6(A).)

48. Saathoff further agreed he would not use Marilyn's non-public confidential information for purposes other than those in connection with Marilyn's business, including personal information about Marilyn's models. (*Id.* at § 7(A).)

49. Upon information and belief, One Mgmt., with full knowledge of the Employment Agreement and Saathoff's obligations thereunder, has encouraged Saathoff to breach his Employment Agreement by directly or indirectly soliciting models currently under contract with Marilyn, and by using Marilyn's non-public confidential information concerning those models to encourage them to leave Marilyn and join One Mgmt.

50. One Mgmt. is, upon information and belief, now representing at least two such Marilyn models.

51. Marilyn has been, and is still being, damaged as a result of One Mgmt.'s tortious interference with the Employment Agreement between Saathoff and Marilyn, in an amount to be determined at trial.

FIFTH CAUSE OF ACTION***Tortious Interference with Contract (against all Defendants)***

52. Marilyn repeats and re-alleges paragraphs 1–51 as if fully set forth herein.

53. Marilyn has a valid and enforceable contract with a third party, Missy Rayder, a model.

54. Under the terms of that contract, Marilyn is Ms. Rayder’s sole and exclusive personal career manager in the United States until October 26, 2020. (*See Cognata Aff., Ex. 13 §§ 1, 5.*)

55. Upon information and belief, Defendants Saathoff and One Mgmt., acting with knowledge of that contract and the obligations thereunder, tortiously interfered with that contract by soliciting Ms. Rayder and inducing her to breach that contract with Marilyn.

56. Upon information and belief, One Mgmt. is now acting as Ms. Rayder’s personal career manager, in violation of the contract between Ms. Rayder and Marilyn.

57. Marilyn has been, and is still being, damaged as a result of the Defendants’ tortious interference with the contract between Ms. Rayder and Marilyn, in an amount to be determined at trial.

SIXTH CAUSE OF ACTION***Unjust Enrichment (against all Defendants)***

58. Marilyn repeats and re-alleges paragraphs 1–57 as if fully set forth herein.

59. Upon information and belief, Defendants Saathoff and One Mgmt. have benefited, at Marilyn’s expense, by using Marilyn’s confidential information and knowledge concerning Marilyn’s business and its relationships with its models, to recruit models away from Marilyn to join One Mgmt.

60. Defendants Saathoff and One Mgmt. have thus far succeeded in recruiting two such models.

61. Equity and good conscience require Defendants to provide restitution to Marilyn, in an amount to be determined at trial, for the benefits they have unjustly obtained by unlawfully using such confidential information and knowledge.

SEVENTH CAUSE OF ACTION

Misappropriation of Confidential Information (against all Defendants)

62. Marilyn repeats and re-alleges paragraphs 1–61 as if fully set forth herein.

63. Marilyn’s business depends upon the relationships it has cultivated over the years with models.

64. Information concerning Marilyn’s models’ identities, preferences, likes, dislikes, and needs are all confidential information belonging to Marilyn.

65. Upon information and belief, Defendants have misappropriated that Marilyn confidential information and are using it to induce models to leave Marilyn and join One Mgmt. instead.

66. Marilyn has been, and is still being, damaged by Defendants’ misappropriation of Marilyn’s confidential information, in an amount to be determined at trial.

EIGHTH CAUSE OF ACTION

Injunctive Relief (against all Defendants)

67. Marilyn repeats and re-alleges paragraphs 1–66 as if fully set forth herein.

68. Defendants have caused, and are causing, Marilyn irreparable harm by seizing for themselves, and attempting to seize for themselves, Marilyn’s relationships with models. Once those models defect to One Mgmt., as two models already have done, it becomes impossible to determine the amounts they would have generated in fees and commissions had they remained with, and continued to be served by, Marilyn.

69. The defection of models under contract also irreparably injures Marilyn’s business reputation and encourages other models under to contract to believe they, too, can

breach their contracts with Marilyn, thereby threatening Marilyn's entire business model.

70. An award of damages alone will be insufficient to remedy the harm that Marilyn will otherwise suffer as a result of Defendants' continued recruitment of its models and their tortious interference with Marilyn's contracts with models.

71. Defendant Saathoff expressly acknowledged in his Employment Agreement that such breaches of his non-solicitation and non-disclosure obligations would cause Marilyn irreparable harm. (Ex. A, Employment Agreement § 8.)

72. Temporary, preliminary, and, ultimately, permanent injunctive relief is necessary to preserve the status quo, to protect Marilyn's business, and to prevent Saathoff and One Mgmt. from continuing to wrongfully solicit Marilyn's models and attempting to induce them to breach their contracts with Marilyn.

PRAYER FOR RELIEF

WHEREFORE, Marilyn respectfully requests that the Court enter judgment in favor of Marilyn and against Defendant, awarding Marilyn:

- (a) a judgment against Defendants for damages in an amount to be determined at trial, but not less than \$25,000;
- (b) injunctive relief, temporarily and then preliminarily during the pendency of this action, and permanently thereafter, to enforce the non-solicitation and non-disclosure restrictive covenants in Saathoff's Employment Agreement, to prohibit One Mgmt.'s tortious interference with Saathoff's Employment Agreement, and to prohibit both Defendants from tortiously interfering with Marilyn's contracts with its models; and

(c) such other and further relief as this Court deems just and proper.

Dated: November 19, 2018
New York, New York

Respectfully submitted,

/s/ Kenneth W. Taber

Kenneth W. Taber

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