

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

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Index #: 653702/2013

ALEX SHANKLIN, LOUISA RASKE, MELISSA
BAKER, ELENI TZIMAS, MARCELLE ALMONTE,
GRECIA PALOMARES, CARINA VRETMAN,
MICHELLE GRIFFIN TROTTER, VANESSA
PERRON,

Individually and as Class Representatives,

FIRST AMENDED ANSWER

Plaintiffs,

-against-

WILHELMINA MODELS, INC., WILHELMINA
INTENRATIONAL LTD., ELITE MODEL
MANAGEMENT CORPORATION, CLICK MODEL
MANAGEMENT, INC., MC2 MODEL AND TALENT
MIAMI LLC, NEXT MANAGEMENT, LLC, MAJOR
MODEL MANAGEMENT INC.,

Defendants.

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Defendant Click Model Management, Inc. (“Click”) by and through its
attorneys M W MOODY LLC, as and for Click’s Answer to Plaintiffs’ Third Amended
Complaint (“Complaint”) dated January 21, 2016, hereby alleges as follows:

1. Click admits the allegations contained in paragraphs 259; 265; and 328 of the Complaint.
2. Click denies the allegations contained in paragraphs 1-13; 28; 33-61 (and with respect to these paragraphs, Click also denies knowledge or information sufficient to form a belief as to the truth or accuracy thereof); 235-236; 238-258; 260-264; 266-269; 271-275 (and with respect to these paragraphs, Click also denies knowledge or information sufficient to form a belief as to the truth or accuracy thereof); 292; 294-297; 299-303; and 312-317 of the Complaint.

3. Click denies any obligation to respond to the allegations contained in paragraphs 14–15; 31-32; 234; 237; 270; 276-291; 293; 298; 304-311; 318-327; and 333-344 of the Complaint.

4. Click denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraphs 16–27; 29-30; 62-233; and 328-332 (with respect to these allegations, to the extent a response is required, the allegations are denied) of the Complaint.

COUNTERCLAIMS

**AS AND FOR A FIRST CAUSE OF ACTION
(Against Melissa Baker – For Breach of Contract)**

5. Click repeats and re-alleges the foregoing allegations as if fully set forth herein.

6. Plaintiff Melissa Baker (“Baker”) hired Click to manage her modeling career by executing a binding contract with Click on or about July 8, 2008 (the “Contract”).

7. The Contract was the second time that Baker had hired Click.

8. Baker signed the Contract because she was pleased with the job that Click was doing on her behalf.

9. Click fully performed pursuant to both Contracts, by *inter alia* obtaining as much work as it was able for Baker, advising her to the best of its ability and whenever Baker asked, and remunerating Baker whatever she was owed.

10. The Contract was for a two (2) year term (the “Term”), ending on July 9, 2010, as is set forth in the Contract’s Second paragraph.

11. The Contract was exclusive, meaning that Baker was not permitted to

be managed by other model managers, as is set forth, *inter alia*, in the Contract's First and Eighth paragraphs.

12. Before the Term ended, on May 21, 2009, Baker unilaterally left Click and performed modeling work with other model managers, thereby breaching the Contract – *inter alia* specifically the Term and exclusivity provisions.

13. Click has no idea, and has no way of knowing without discovery, how many (or which) model managers with which Baker had a relationship during the Term (with the exception of one, *see infra*) as the information is within the exclusive control of Baker (*vis-à-vis* Click).

14. As a direct and proximate result, Click was deprived of the twenty percent (20%) commissions that it otherwise would have earned, as is set forth in the Contract's Fourth paragraph.

15. By way of limited example, Baker did a shoot for L'Oreal while she was represented by Click, and before she breached the Contract by terminating it early.

16. L'Oreal subsequently determined to use Baker's image for an additional nine (9) months for which Baker received a usage fee (the "L'Oreal Usage Fee").

17. Click should have received a twenty percent (20%) commission on the L'Oreal Usage Fee.

18. Click has no idea, and has no way of knowing without discovery, how much the L'Oreal Usage Fee is – as such information is (*vis-a-vis* Click) within the exclusive control of Baker.

19. Baker received the L'Oreal Usage Fee while she was at another model management company called APM Model Management ("APM").

20. Baker did at least one job while at APM. Again, Click has no way of knowing the details of the jobs Baker did while she was represented by APM.

21. In addition, during the Term, Baker sold her services as a model through at least one website called onemodelplace.com.

22. Click is entitled to its twenty percent (20%) commission based upon each and every job Baker procured through onemodelplace.com pursuant to, *inter alia*, the Fourth paragraph of the Contract.

23. Click has no idea, and no way of knowing without discovery how many jobs Baker booked through onemodelplace.com, as such information is within the exclusive control (*vis-à-vis* Click) of Baker.

24. Click has no idea, and no way of knowing without discovery how much money Baker made through onemodelplace.com, as such information is within the exclusive control (*vis-à-vis* Click) of Baker.

25. As a direct and proximate result of the foregoing, Click has been damaged in an amount to be proven at trial.

**AS AND FOR A SECOND CAUSE OF ACTION
(Against Melissa Baker – Breach of the Covenant of
Good Faith and Fair Dealing)**

26. Click repeats and re-alleges the foregoing as if fully set forth herein.

27. The bargain struck in the Contract is that Click was hired by Baker to

advise and counsel her on all aspects of her modeling career (Contract, First paragraph) in exchange for Click receiving a twenty percent (20%) commission on whatever jobs Baker was paid for.

28. Baker hired Click because of its decades of experience understanding the fashion industry, clients' needs, photographers, the magazine industry, the publishing industry, designers, and the way these all interacted with each other, and how a model could best navigate these worlds so as he or she would be best placed to get the most prestigious and ultimately the highest paid jobs possible.

29. Click maximized the benefit of its bargain, therefore, by providing the best advice it could. Click had, and has, an obvious vested interest in providing each model with the best possible advice – which it did and does, including with Baker.

30. This bargain, this understanding, is not explicitly stated in the Contract, but it is implicit. It is implied.

31. Baker, following her mother's advice, breached this implication by repeatedly undermining Click's guidance of her career by ignoring Click's advice in favor of her mother's.

32. Click has decades of experience in the complicated and cut-throat world of the New York fashion industry. Baker's mother had none.

33. Baker's mother's advice damaged Baker's career, and it was obvious that it would – obvious to Click, that is.

34. This constitutes the very essence of bad faith; and contravenes the meaning of fairness.

35. Contractually, Baker was free to follow Click's advice, or not.

36. Baker only hired Click to give her advice; she did not hire Click to tell her what to do.

37. Baker was not free, however, to demand Click's advice over and over again (which Click gave, honoring its obligations pursuant to the Contract), seek its support over and over again (which Click gave, honoring its obligations pursuant to the Contract), challenge Click's advice over and over again based upon her mother's advice – even though her mother's advice was based upon no experience – and then frequently follow her mother's advice thereby damaging her career – not only to Baker's career's detriment, but to Click's financial damage.

38. Click did not agree – as part of its bargain – to expend its time, money, and resources supporting and advising someone that it believed had serious potential only to see that potential destroyed because she repeatedly followed obviously bad advice delivered by someone who knows nothing about the modeling industry.

39. Baker's bookers – Julie Birnbaum and Harold Mindel – were constantly justifying their advice to Baker and her mother because Baker's mother thought she knew better based largely upon her internet research.

40. Baker's mother would disagree with Click as to which photographers were best for Baker to use. Some photographers are more prestigious than others and for a model to be photographed by the more sought after (even for less money), certainly helps, and can even catapult a model's career. Conversely, constantly being photographed by unknown photographers has real potential to damage a model's career.

41. Baker's mother found it hard to comprehend this concept, challenged Click's advice in this regard, advised her daughter not to follow Click's advice, confused the situation for her daughter, and frequently made her daughter make bad decisions for her career.

42. Similarly, Baker's mother had a notion that greater exposure of her daughter's image was good for her daughter's career, so she encouraged her daughter to place her image in as many places as possible – for example, websites like onemodelplace.com. Click would explain to Baker that exposure wasn't so desirable as the right exposure. Her daughter followed her mother's advice, further damaging her career.

43. Baker's mother had an outsized view of where her daughter's career was. She was convinced that Baker should have a contract with Victoria's Secret – one of the most desirable contracts in the modeling world. Baker's mother thought that clients (the third parties like Abercrombie & Fitch who used the models' images) should pay for Baker's travel from Ohio to New York, and that Baker should not have to go to castings. While some of this is possible for the very top models in the industry – mostly those with household names – it's simply not reality for models building their careers; as Baker was doing.

44. By following her mother's advice based on this mindset, Baker fatally damaged any opportunity that she had to grow her career.

45. She had an extremely promising beginning to her career, and if she had followed Click's advice rather than following her mother's, then that career likely would have taken off. Most models do not make it onto the pages of Sports

Illustrated's Swimsuit issue in the early days of their career. By following Click's advice, Baker did. Had she continued to do so, she could have gone much, much further.

46. As a direct and proximate result of the foregoing, Click has been damaged in an amount to be proven at trial.

AFFIRMATIVE DEFENSES
As and For a First Affirmative Defense.

47. The Complaint fails to state a claim upon which relief can be granted.

As and For a Second Affirmative Defense.

48. Plaintiffs' claims and damages are barred, in whole or in part, by the doctrine of avoidable consequences.

As and For a Third Affirmative Defense.

49. Plaintiffs' claims and damages are barred, in whole or in part, by the doctrine of account stated.

As and For a Fourth Affirmative Defense.

50. Plaintiffs' claims are barred by documentary evidence.

As and For a Fifth Affirmative Defense.

51. Plaintiffs' claims are barred by the doctrine of judicial estoppel.

As and For a Sixth Affirmative Defense.

52. Plaintiffs' claims are barred, in whole or in part, to the extent that they derive from work performed outside of New York.

As and For a Seventh Affirmative Defense.

53. Plaintiffs' claims are barred, in whole or in part, by their failure to mitigate their damages.

As and For an Eighth Affirmative Defense.

54. Plaintiffs' claims are barred, in whole or in part, by the doctrine of accord and satisfaction.

As and For a Ninth Affirmative Defense.

55. Plaintiffs' claims are barred, in whole or in part, by the doctrines of unclean hands and *In pari delicto*.

As and For a Tenth Affirmative Defense.

56. Plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver.

As and For an Eleventh Affirmative Defense.

57. Plaintiffs' claims are barred because at all relevant times, Click was acting in good faith.

As and For a Twelfth Affirmative Defense.

58. This action may not be maintained as a class action as questions of law and fact do not predominate.

As and For a Thirteenth Affirmative Defense.

59. This action may not be maintained as a class action because the claims and defenses of the representative parties are not typical of the purported class.

As and For a Fourteenth Affirmative Defense.

60. This action may not be maintained as a class action because the representative parties' claims are antagonistic and detrimental to the interests of the class that they purport to represent.

As and For a Fifteenth Affirmative Defense.

61. This action may not be maintained as a class action because the class action mechanism is not a superior method for resolving the claims of the individual plaintiffs.

As and For a Sixteenth Affirmative Defense.

62. This action may not be maintained as a class action because one of the statutes Plaintiffs seek relief pursuant to provides only a penalty.

WHEREFORE, Click demands that the Complaint be dismissed in its entirety together with such other and further relief as to this Court seems just and proper, and that judgment be entered against Melissa Baker on Click's First and Second Counterclaims in an amount to be determined after trial, together with such other and further relief as to this Court seems just and proper.

Dated: New York, New York
October 20, 2017

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