

Alteration Group of NY, LLC v Magic Fitters of NY
2019 NY Slip Op 31654(U)
June 7, 2019
Supreme Court, New York County
Docket Number: 161128/2018
Judge: Robert D. Kalish
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ROBERT DAVID KALISH PART IAS MOTION 29EFM

Justice

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INDEX NO. 161128/2018

ALTERATION GROUP OF NY, LLC,

MOTION DATE 03/22/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

MAGIC FITTERS OF NY, OKSANA KOMPANEYETS, IRINA
ARNUTOVSKAYA, and JOHN DOES 1-10

**DECISION + ORDER ON
MOTION**

Defendant.

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NYSCEF Doc Nos. 5-19 were read on this motion to dismiss.

Motion by Defendants Magicfitters of NY, Inc. s/h/a Magic Fitters of NY (“MFNY”), Oksana Kompaneyets (“Kompaneyets”), and Irina Arnutovskaya (“Arnutovskaya”) pursuant to CPLR 3211 (a) (1), (5), and (7) to dismiss the complaint of Plaintiff Alteration Group of NY, LLC (“AGNY”) is granted in part and denied in part.

BACKGROUND

On December 19, 2017, Arnutovskaya brought a class action complaint against AGNY on behalf of herself, as named plaintiff, and a proposed class consisting of all persons who worked as tailors for AGNY from December 2011 to present. (NYSCEF Doc No. 1, class action complaint, in *Arnutovskaya et al. v Alteration Group of NY, LLC et al.*, index No. 161194/2017.) The class action complaint alleges violations relating to AGNY’s failures to pay the minimum wage, overtime, and certain commissions and other wages of the putative class throughout the period. AGNY interposed its answer on February 7, 2018. The matter was bifurcated such that pre-class certification discovery would proceed first, and, on October 19, 2018, Arnutovskaya timely moved for class certification. AGNY filed its opposition to the class certification on November 26, 2018.¹

Two days later, on November 28, 2018, AGNY commenced the instant action against MFNY, Kompaneyets, Arnutovskaya, and John Does 1-10, alleging three causes of action for (1) misappropriation of trade secrets; (2) defamation; and (3) tortious interference with contract. (NYSCEF Doc No. 1, complaint.) The complaint alleges that AGNY is an entity formed in 2014 to provide premiere, full-service custom tailoring. The complaint further alleges that AGNY hired Kompaneyets in September 2016 as an Office Manager in its uptown location. The complaint further alleges that Kompaneyets was responsible for answering phones and email, checking in clients, and checking inventory. The complaint then alleges that Kompaneyets was terminated in November 2017 because of personality conflicts between her and supervisors.

¹ On March 12, 2019, the Court granted Arnutovskaya’s motion to certify the action as a class action.

The complaint then alleges that AGNY hired Arnutovskaya in April 2017 as an Associate Tailor in its uptown location. The complaint further alleges that Arnutovskaya was responsible for performing clothing alterations and fittings. The complaint further alleges that Arnutovskaya was terminated in August 2017 due to substandard work, including repeated missteps and mistakes that required correction from other tailors.

The complaint then alleges, in sum and substance, and upon information and belief, that Kompaneyets and Arnutovskaya stole significant confidential and proprietary information from the uptown location while working there. The complaint alleges that the information related to personnel payroll, customer lists, and third-party vendors. The complaint further alleges, upon information and belief, that either Kompaneyets or Arnutovskaya stole copies of employment forms and altered critical documents and contracts within employee files. The complaint further alleges that Kompaneyets and Arnutovskaya were not given access to any of these documents but improperly accessed a computer to add sharing permissions for their company email address. The complaint further alleges, upon information and belief, that this improper access began during their employment at AGNY and continued after their termination.

The complaint further alleges that Kompaneyets and Arnutovskaya, along with others, went on to found MFNY as a direct competitor to AGNY. The complaint alleges that MFNY opened its location near AGNY and began soliciting AGNY clientele, using customer orders and contact information improperly obtained from AGNY to undercut it. The complaint further alleges that Defendants encouraged AGNY employees to breach their employment agreements and to sue AGNY in order to drain its resources through protracted litigation.

As to the first cause of action for misappropriation of trade secrets, the complaint alleges that Defendants gained access to highly confidential work-product and used it to interfere with the operation of AGNY.

As to the second cause of action for defamation, the complaint alleges that Defendants used the confidential information “to defame Plaintiff to its current employees and customers.” (Complaint ¶ 36.)

As to the third cause of action for tortious interference with contract, the complaint alleges that Defendants used the confidential information to encourage AGNY’s employees to breach their employment agreements and to undercut AGNY’s compensation models.

The complaint alleges that AGNY has suffered damages in excess of \$15,000.00.

On December 19, 2018, counsel for Arnutovskaya filed a stipulation whereby counsel for AGNY extended Arnutovskaya’s time to answer, move, or respond to the complaint to January 22, 2019. On January 22, 2019, counsel for Defendants filed their notice of appearance and filed the instant motion pursuant to CPLR 3211 (a) (1), (5), and (7) to dismiss the complaint.

Defendants argue in their moving papers that the instant complaint is a product of retaliation against Arnutovskaya for bringing the class action complaint. As to the first cause of action for misappropriation of trade secrets, Defendants argue that AGNY has failed to

adequately plead any element necessary to assert the cause of action. The elements of a cause of action to recover damages for misappropriation of trade secrets are (1) possession of a trade secret and (2) use of that trade secret by the defendant in breach of an agreement, confidential relationship or duty, or as a result of discovery by improper means. (*See Tri-Star Lighting Corp. v Goldstein*, 151 AD3d 1102, 1106 [2d Dept 2017].) Defendants argue that a trade secret encompasses a formula, pattern, device, or compilation of information used in a business which gives the holder the opportunity to obtain an advantage over competitors who do not know or use it. Defendants further argue that the pleading standard for a trade secret goes beyond the mere statement that an alleged trade secret is confidential. Defendants argue that, here, AGNY has merely pleaded that the allegedly stolen information was confidential, and this is inadequate.

Specifically, as to tailor compensation, movants annex as exhibit B an affidavit of Jeremy Miller an owner of AGNY, that was filed in the class action. Defendants argue that AGNY is estopped from arguing that its compensation structure is a trade secret where it has voluntarily disclosed the information to the public. Defendants argue that the affidavit is documentary evidence in support of their motion. Defendants further argue that customer lists are not inherently trade secrets as a matter of law. Defendants then argue that the complaint fails to allege that AGNY employed measures to keep its customer lists and pricing information confidential, arguing that any member of the public is a potential customer and citing to AGNY's website, a copy of which is annexed as exhibit C, where AGNY's price list is publicly posted.

As to the second cause of action for defamation, Defendants argue that the defamation cause of action is deficient because neither the particular words complained of nor the time, place, and manner of the false statement and to whom it was made was set forth in the complaint. (*See CPLR 3016 [a]; Dillon v City of NY*, 704 NYS2d 1, 5 [1st Dept 1999].) Defendants argue that, here, no words have been set forth with any particularity, nor has any time, place, manner, or audience for any alleged defamation been specified. Defendants further argue that, pursuant to CPLR 215 (3), as the complaint does not specify the date of any alleged defamation, AGNY's statute of limitations may have run.

As to the third cause of action for tortious interference with contract, Defendants again argue that AGNY has failed to adequately plead any element necessary to assert the cause of action. The elements of a tortious interference with contract cause of action are (1) the existence of a valid contract between plaintiff and a third party, (2) defendant's knowledge of the contract, (3) defendant's intentional procurement of a breach of the contract without justification, (4) actual breach of the contract, and (5) resulting damages. (*See Snyder v Sony Music Entertainment, Inc.*, 684 NYS2d 235, 238 [1st Dept 1999]; *Bernberg v Health Mgt. Sys.*, 756 NYS2d 96, 98 [2d Dept 2003].) Defendants argue that a plaintiff must allege that the contract would not have been breached but for the defendant's conduct, citing to *Burrowes v Combs* (25 AD3d 370, 373 [1st Dept 2006]) and *Carlyle, LLC v Quik Park 1633 Garage LLC* (160 AD3d 476, 477 [1st Dept 2018]). Defendants argue that, here, the complaint fails to allege the existence of valid contracts. Defendants argue that employment agreements are not presumptively a basis for a tortious interference with contract claim where the agreement is terminable at will. Defendants further argue that, here, AGNY has failed to allege that the employees allegedly solicited were not employees at will. Defendants then argue that the complaint fails to allege any breach of an existing contract or that it would have occurred but for Defendants' actions.

On March 1, 2019, Plaintiff filed an amended complaint, a memorandum of law in opposition, and an affirmation annexing a copy of the original complaint and the amended complaint. Plaintiff begins by summarizing the allegations in the original complaint. Plaintiff then indicates that it has amended its complaint as of right pursuant to CPLR 3025 (a) and, as such, the instant motion to dismiss is moot.

As to the first cause of action in the amended complaint for misappropriation of trade secrets, AGNY argues that it has identified the information taken by Defendants and has alleged that it was highly confidential work-product taken without AGNY's authorization. Specifically, as to the customer lists, AGNY argues that Defendants have failed to show that the identity of AGNY's customers is readily ascertainable outside Plaintiff's business. As to employee compensation, AGNY argues that the affidavit of Jeffrey Miller annexed to the moving papers and filed in the class action did not disclose which employees were at what commission rate, the amounts earned during a given period, or that there were other employees, such as front office workers and tailor-managers who are not paid through the same formula. AGNY argues, in sum and substance, that the information stolen by Defendants acted as a road map to raiding the business of AGNY.

The first cause of action in the amended complaint indicates that the highly confidential work-product is not generally known to competitors in that it included contractual details that could be used to determine clients and/or referral vendors. The amended complaint indicates that AGNY takes numerous measures to restrict access to the information through specific permissions settings for each company email address. The amended complaint further alleges that Kompaneyets and Arnutovskaya did not have permission from AGNY to access the information but improperly accessed a computer to add unauthorized permissions to their company email address and then used those permissions to access the information wrongfully.

As to the second cause of action in the amended complaint for defamation, AGNY argues that the nature and extent of the alleged defamatory statement is within the knowledge of Defendants. AGNY then argues that the pleading standard of CPLR 3016 should be tempered and relaxed under the circumstances.

The second cause of action in the amended complaint states that, "upon information and belief, Arnutovskaya defamed Plaintiff to Silcenko, Uruci, and Curi, among others, by accusing the company and its owners of cheating and/or stealing from its employees, mistreating employees, and other inappropriate and/or illegal acts."² (NYSCEF Doc No. 14, amended complaint ¶ 42.)

As to the third cause of action in the amended complaint, it has now been amended to allege both tortious interference with contract and prospective economic damage. AGNY reiterates that Defendants took employment agreements between AGNY and its employees, altered them, and used them to encourage breaches by AGNY's employees.

² The amended complaint states that, "in October 2017, Arnutovskaya called and/or sent text messages to Plaintiff's employees, including Anton Silcenko, Nevina Uruci, and Ramiz Curi, among others, regarding the above. Upon information and belief, Arnutovskaya attempted to lure these individuals into breaching their Employment Agreements and to come work for Magic Fitters." (Amended complaint ¶ 29.)

The third cause of action in the amended complaint now alleges that AGNY has lost business from repeat customers and referral networks, who have begun using Defendants for their alteration needs. The third cause of action then alleges that Defendants have defamed AGNY to those customers and networks with false accusations of inappropriate conduct and that the defamation has led to the loss of those customers.

In their reply memorandum of law, Defendants elect to apply their motion to the amended complaint. Defendants argue that the amended complaint is deficient, does not remedy the fatal defects of the original complaint, and does not state a claim. Defendants further argue that AGNY should not be granted leave to amend its complaint.

As to the first cause of action for misappropriation of trade secrets, Defendants argue that the mere allegation that the allegedly confidential information is generally not known to competitors does not amount to a trade secret. Defendants further argue that the alleged password protection on the customer lists does not render them a trade secret. Defendants then argue that AGNY's alleged trade secret information could be accessed by tailors and a manager. Defendants further argue that the amended complaint lacks particularity with respect to: (1) how many employees AGNY had in its employ while Kompaneyets and Arnutovskaya worked there; (2) how many employees had knowledge of the password or access to the computer; (3) whether copies of the customer list were maintained in print or who had access to the lists; (4) the extent that the names of customers or other information in the list was generally known by employees; and (5) whether Defendants had or used the customer list or pricing information while in AGNY's employ. Movants reiterate that AGNY's pricing list is on its website.

As to the second cause of action for defamation, Defendants argue that the additions in the amended complaint amount to vague paraphrasing and are not sufficiently particularized. Defendants further argue that, even if any alleged statements by Kompaneyets or Arnutovskaya were pleaded with the requisite particularity, which they are not, any such alleged statements enjoy a qualified privilege protecting communications between employees on matters of common interest. Defendants argue that the privilege can only be overcome by supporting evidence of actual malice, and here, there is none.

As to the third cause of action for tortious interference with contract and prospective economic damage, Defendants reiterate that there has been no actual breach of any contract nor an allegation that the employees were not employees at-will. Defendants argue that the language used in the amended complaint is speculative and that the addition of elements of defamation in the third cause of action in the amended complaint demonstrates that the allegations are baseless.

DISCUSSION

In the first instance, the Court rejects Defendants' argument that the Court would need to grant AGNY leave to amend its complaint. "[P]laintiff had the right to amend its complaint during the pendency of defendants' motion to dismiss." (*Nimkoff Rosenfeld & Schechter, LLP v O'Flaherty*, 71 AD3d 533, 533 [1st Dept 2010].) "Where an amended pleading is submitted in response to a pre-answer motion to dismiss, the provident course of action for the motion court is to include the amended complaint in the record on the pending motion, which should then be

granted or denied based on the sufficiency of the amended pleading.” (*Uptown Healthcare Mgt. Inc. v Allstate Ins. Co.*, 117 AD3d 542, 542 [1st Dept 2014].) Here, Defendants have elected to apply their motion to dismiss to the amended complaint. As such, the Court will consider the merits of the instant motion as applied to the amended complaint.

CPLR 3211 (a) (1) permits a party to move for judgment dismissing one or more causes of action asserted against it on the ground that a defense is founded upon documentary evidence. Dismissal under this provision “is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” (*Alden Global Value Recovery MF, L.P. v KeyBank Natl. Assn.*, 159 AD3d 618, 621 [1st Dept 2018].) The documentary evidence must “conclusively refute the complaint’s allegations.” (*Lowenstern v Sherman Square Realty Corp.*, 143 AD3d 562, 562 [1st Dept 2016].)

“On a motion to dismiss a cause of action pursuant to CPLR 3211 (a) (5) on the ground that it is barred by the statute of limitations, a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired. To meet its burden, the defendant must establish, inter alia, when the plaintiff’s cause of action accrued.” (*Lebedev v Blavatnik*, 144 AD3d 24, 28 [1st Dept 2016].)

“On a motion to dismiss pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, the complaint must be construed liberally, the factual allegations deemed to be true, and the nonmoving party must be given the benefit of all favorable inferences. In assessing a motion under CPLR 3211 (a) (7), a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint. The test of the sufficiency of a pleading is whether it gives sufficient notice of the transaction, occurrences, or series of transactions or occurrences intended to be proved and whether the requisite elements of any cause of action known to our law can be discerned from its averments.” (*Hampshire Props. V BTA Bldg. and Developing, Inc.*, 122 AD3d 573, 573 [2d Dept 2014].) “The criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one.” (*Sigmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401, 403 [1st Dept 2013], quoting *Leon v Martinez*, 84 NY2d 83, 88 [1994].) “Such a motion should be granted only where, even viewing the allegations as true, the plaintiff still cannot establish a cause of action.” (*Kamen v Berkeley Co-op. Towers Section II Corp.*, 98 AD3d 1086, 1086 [2d Dept 2012], citing *Hartman v Morganstern*, 28 AD3d 423, 424 [2d Dept 2006].)

First Cause of Action—Misappropriation of Trade Secrets

AGNY’s first cause of action is for misappropriation of trade secrets. “The elements of a cause of action to recover damages for misappropriation of trade secrets are: (1) possession of a trade secret; and (2) use of that trade secret by the defendant in breach of an agreement, confidential relationship or duty, or as a result of discovery by improper means.” (*Tri-Star Lighting Corp. v Goldstein*, 151 AD3d 1102, 1106 [2d Dept 2017].) “An essential prerequisite to legal protection against the misappropriation of a trade secret is the element of secrecy.”

As to movants’ CPLR 3211 (a) (1) argument, the Court finds that the affidavit of Jeffrey Miller fails to conclusively establish a defense to this cause of action. While it is undisputed that the affidavit discusses the commission rates of certain tailor employees of AGNY, this is but one

of many alleged trade secrets in the complaint. Specifically, AGNY has alleged that Defendants misappropriated information regarding personnel payroll, customer lists, and third-party vendors, none of which are addressed in the affidavit. As such, even if the disclosure of commission rates in an affidavit filed well after the alleged misappropriation conclusively established that the commission rates were not a trade secret, which it does not, the submitted documentary evidence does not address these other alleged trade secrets, and this is fatal to the CPLR 3211 (a) (1) argument.

As to movant's CPLR 3211 (a) (7) arguments, the Court finds that the amended complaint has a cause of action for misappropriation of trade secrets. Defendants rely heavily on *Tri-Star* in their motion papers. In *Tri-Star*, the court held, as to customer lists, that "[g]enerally, where the customers are readily ascertainable outside the employer's business as prospective users or consumers of the employer's services or products, trade secret protection will not attach and courts will not enjoin the employee from soliciting his employer's customers." (*Tri-Star*, 151 AD3d at 1106.) In *Tri-Star*, the court found that "the complaint contain[ed] no allegations that the plaintiff employed measures to keep its customer lists and pricing information confidential, or that this information was not generally known outside of its business, so as to actually render its customer information a trade secret." Here, the Court finds that *Tri-Star* is distinguishable. The amended complaint in the instant case alleges that the information was not generally known to competitors. The amended complaint further alleges that access to the information was restricted by permissions attached to employee email accounts, that Kompaneyets and Arnutovskaya were not given the permissions, and that Kompaneyets and Arnutovskaya improperly accessed a computer to change their permissions and obtained unauthorized access to the information both during and after their time of employment. The amended complaint further alleges that Defendants used the customer list to solicit a customer base that is nearly identical to AGNY's customer base. As such, the Court finds that the amended complaint has a cause of action for misappropriation of trade secrets.

Second Cause of Action—Defamation

AGNY's second cause of action is for defamation. As the Appellate Division, First Department, has stated,

"[d]efamation is the making of a false statement which tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society. To create liability for defamation there must be: (a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication."

(*Franklin v Daily Holdings, Inc.*, 135 AD3d 87, 91 [1st Dept 2015] [internal citations omitted].)

More recently, Judge Kapnick of the Appellate Division, First Department, stated in a dissent that

“[t]he elements of defamation are a false statement, published without privilege or authorization to a third party, constituting fault as judge by, at a minimum, a negligence standard, . . . causing special harm or constituting defamation per se. When a qualified privilege applies, the statements are protected unless made with malice, meaning either spite or ill will or reckless disregard of whether they were false [].”

(*Stega v New York Downtown Hosp.*, 148 AD3d 21, 36 [1st Dept 2017, Kapnick, J., dissenting].)

Defamation must be pleaded with sufficient particularity to withstand a motion to dismiss. Pursuant to CPLR 3016 (a), “[i]n an action for libel or slander, the particular words complained of shall be set forth in the complaint, but their application to the plaintiff may be stated generally.” Further, “the particular words complained of must be pleaded specifically.” (*Three Amigos SJJ Rest., Inc. v CBS News Inc.*, 132 AD3d 82, 92 n 1 [1st Dept 2015].) “To satisfy the falsity element of a defamation claim, plaintiff must allege that the complained of statement is substantially false.” (*Franklin*, 135 AD3d at 94.)

Here, AGNY has failed to plead the predicate defamation with adequate particularity as to survive a motion to dismiss. AGNY’s complaint, in sum and substance, is that Defendants made false statements to certain of AGNY’s employees in order to induce them to breach their employment agreements, resulting in economic harm. Nevertheless, the amended complaint fails to set forth any particular words that constitute a false statement. Rather, the Court finds that the allegations in the complaint amounts to vague paraphrasing founded upon allegations made upon information and belief, only. The Court finds further that Plaintiff’s argument as to the specifics of any defamatory statement being within the knowledge of Defendants is without merit on this pre-answer motion to dismiss. The relevant statute and case law unconditionally require particularity that is not present here. As such, Plaintiff does not have a cause of action for defamation, and the Court need not reach the issue raised in Defendants’ reply papers of whether a qualified privilege would apply to communications between Kompaneyets and Arnutovskaya and other AGNY employees.³

Third Cause of Action—Tortious Interference with Contract and Prospective Economic Damage

In the first instance, “Defamation is a predicate wrongful act for a tortious interference claim.” (*Amaranth LLC v J.P. Morgan Chase & Co.*, 71 AD3d 40, 47–48 [1st Dept 2009].) Here, Plaintiff has no cause of action for defamation. As such, Plaintiff has no cause of action for its tortious interference cause of action.

³ “The statute of limitations applicable to defamation claims is one year.” (*Hoesten v Best*, 34 AD3d 143, 150 [1st Dept 2006], citing CPLR 215 [3].) As Plaintiff has not set forth a specific date as to any sufficiently particularized defamatory statement, the Court agrees with Defendants that it is not possible to determine whether any applicable statute of limitations may have run on any cause of action involving an alleged defamatory statement. Nevertheless, it is movants’ burden to establish when Plaintiff’s cause of action accrued. As that has not been done—and, indeed, here, cannot be done—that branch of the motion which was for relief pursuant to CPLR 3211 (a) (5) on the second cause of action is denied.

Assuming for the sake of argument that the requisite predicate defamation had been adequately pleaded, which it has not, the amended complaint still would not have a cause of action for tortious interference with contract and prospective economic damage. The elements of a tortious interference with contract cause of action are (1) the existence of a valid contract between plaintiff and a third party, (2) defendant's knowledge of the contract, (3) defendant's intentional procurement of a breach of the contract without justification, (4) actual breach of the contract, and (5) resulting damages. (See *Snyder v Sony Music Entertainment, Inc.*, 684 NYS2d 235, 238 [1st Dept 1999]; *Bernberg v Health Mgt. Sys.*, 756 NYS2d 96, 98 [2d Dept 2003].)

Here, movants argue that employment agreements for at-will employees cannot support a tortious interference with contract cause of action as a matter of law because they are not valid contracts. Movants cite to *American Preferred Prescription v Health Mgt.* (252 AD2d 414, 417 [1st Dept 1998]), which held that “[a]greements that are terminable at will are classified as only prospective contractual relations, and thus cannot support a claim for tortious interference with existing contracts.” The Court takes judicial notice of the docket of the related action, cited previously as the source of the affidavit of Jeffrey Miller, in which AGNY's own Sample Tailor Agreement filed in the class action states that AGNY “may terminate this Agreement with or without notice or cause.” (NYSCEF Doc No. 37, sample contract, in *Arnutovskaya et al. v Alteration Group of NY, LLC et al.*, index No. 161194/2017.) The Court finds that this is an at-will employment agreement of the type contemplated in *American Preferred Prescription*. In AGNY's opposition papers, and in the amended complaint, AGNY has failed to address at all the issue of whether the employment agreements at issue were terminable at will. The Court finds that the failure to do so or to otherwise allege the existence of any valid contract upon which this cause of action may lie is a fatal defect. As such, the Court finds that AGNY does not have a cause of action for tortious interference with contract and prospective economic damage.

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CONCLUSION

Accordingly, it is

ORDERED that the motion by Defendants Magicfitters of NY, Inc. s/h/a Magic Fitters of NY, Oksana Kompaneyets, and Irina Arnutovskaya pursuant to CPLR 3211 (a) (1), (5), and (7) to dismiss the complaint of Plaintiff Alteration Group of NY, LLC ("AGNY") is granted in part and denied in part to the extent that it is

ORDERED that, in the amended complaint, the second cause of action for defamation is dismissed, the third cause of action for tortious interference with contract and prospective economic damage is also dismissed, and the motion is otherwise denied; and it is further

ORDERED that the parties are directed to appear in Part 29, located at 71 Thomas Street Room 104, New York, New York 10013-3821, on Tuesday, June 25, 2019, at 2:15 p.m., for a preliminary conference.

The foregoing constitutes the decision and order of the Court.

6/7/2019
DATE

Robert David Kalish
HON. ROBERT D. KALISH, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	