

**MH Sub I, LLC v Muehter**

2024 NY Slip Op 33382(U)

September 25, 2024

Supreme Court, New York County

Docket Number: Index No. 654956/2023

Judge: Nancy M. Bannon

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. NANCY M. BANNON PART 61M**

*Justice*

-----X

MH SUB I, LLC, WEBMD HEALTH CORP., WEBMD LLC,

Plaintiffs,

INDEX NO. 654956/2023

MOTION DATE 07/19/2024

MOTION SEQ. NO. 008

- v -

VINCENT MUEHTER,

Defendant.

**DECISION + ORDER ON  
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 008) 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150

were read on this motion to/for DISCOVERY.

INTRODUCTION

The plaintiffs, MH Sub I, LLC, WebMD Health Corp. and WebMD LLC (collectively “WebMD”), former employers of the defendant Vincent Muehter, move pursuant to CPLR 3124 and 3126 to compel him to produce certain communications and documents relating to an alleged breach of his employment agreement. Muehter opposes. The motion is denied.

BACKGROUND

WebMD operates a digital marketing platform. Muehter, an employee from 2004 to 2023, held positions including Director of Strategic Accounts, Vice President of Strategic Accounts, Senior Vice President of Sales, Executive Director of Sales, and Group Vice President. He is a party to, *inter alia*, a 2004 Employment Agreement/Trade Secret & Proprietary Information Agreement and a 2021 Sales Compensation Plan (collectively, the “Agreements”), pursuant to which he is subject to certain non-competition, non-solicitation, and confidentiality restrictions. The 2021 Sales Compensation Plan, for instance, (1) imposes a duty of confidentiality on Muehter; (2) prohibits him from joining any “Competitive Business”; (3) prohibits him from soliciting any WebMD employee; and (4) prohibits him from soliciting any existing or prospective WebMD clients.

In 2023, while employed by WebMD, Muehter allegedly breached the Agreements by disclosing confidential information to, and negotiating the terms of his future employment with, non-party Doximity, WebMD's principal competitor. Muehter left WebMD effective October 6, 2023. Muehter planned to join Doximity as its Chief Revenue Officer.

On October 9, 2023, WebMD filed its initial complaint in this matter, seeking, *inter alia*, an injunction barring Muehter from joining Doximity. On November 9, 2023, following an evidentiary hearing wherein Muehter testified that he negotiated with Doximity during his tenure at WebMD, the court (Ostrager, J. [Ret.]) granted WebMD a preliminary injunction, enjoining Muehter from accepting employment at Doximity for one year. A preliminary conference was held on May 16, 2024, and discovery is ongoing. WebMD thereafter twice amended its complaint.

The operative, second amended complaint, asserts five causes of action: breach of fiduciary duty, misappropriation of trade secrets, and three counts of breach of contract, one each for violations of the non-compete, non-solicitation, and confidentiality provisions of the Agreements. It also includes new allegations that, following his exit from WebMD, and less than a month after the court enjoined him from working at Doximity, Muehter founded nonparty consulting firm Avica Health Marketing ("Avica"), and asserts WebMD's "justifiable concern[]" that Muehter "may attempt, through Avica, to circumvent the terms of his employment agreements, including [his] non-solicitation obligations."

#### THE INSTANT DISCOVERY DISPUTE

In January 2024, WebMD served its Second Set of Requests for Production ("RFPs") and Second Set of Interrogatories. As relevant here, the RFPs demanded that Muehter produce:

(13) All Communications with any former employee of WebMD [from January 1, 2023, to the present].

(14) All Communications with, or relating to, Doximity.

(17) All Communications relating to the Litigation.

(18) All Communications Relating to WebMD.

Additionally, RFPs 2-6 and Interrogatories 12 and 14 (collectively, the “Avica Requests”) sought discovery concerning Muehter’s new consulting company. Interrogatory 12 asked Muehter to identify all persons or entities with whom he discussed Avica’s services. Interrogatory 14 requested Muehter to identify all communications with any employee or board member of Doximity relating to Avica. Specifically, RFPs 2-6 sought:

- (2) All Documents and Communications relating to the formation of [Avica].
- (3) All Documents and Communications relating to the launch of [Avica].
- (4) All Communications between [Avica] and any current or potential clients of [Avica].
- (5) All Documents and Communications relating to the purpose of [Avica] and/or the services [Avica] has or will offer.
- (6) All Communications between [Avica] and any former, current, or prospective WebMD customers.

Muehter objected to the above demands on January 22, 2024, contending, *inter alia*, that the requests are overbroad, speculative and seek irrelevant information, and that he has no responsive documents in his possession. WebMD now moves to compel Muehter to produce the aforementioned discovery.

### DISCUSSION

Disclosure in New York civil actions is guided by the principle of “full disclosure of all matter material and necessary in the prosecution or defense of an action.” CPLR 3101(a). The phrase “material and necessary” is “to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity.” See Kapon v Koch, 23 NY3d 32, 38 (2014). “A party seeking discovery must satisfy the threshold requirement that the request is reasonably calculated to yield information that is ‘material and necessary’—i.e., relevant.” Forman v Henkin, 30 NY3d 656, 661 (2018). However, the need for discovery must be weighed against any special burden to be borne by the party opposing discovery. Id. at 662. Requests for “all documents relating to” a certain subject are viewed as indicating a lack of the requisite specificity. See Mendelowitz v Xerox Corp., 169 AD2d 300, 303-04 (1<sup>st</sup> Dept. 1991).

Initially, WebMD has not submitted copies of the RFPs and Interrogatories that are the subject of its motion. As such, although Muehter’s responses are attached to WebMD’s motion

papers, the motion may be denied for failure to attach all “documents as required by the CPLR and as necessary for an informed decision on the motion.” See Commercial Division Rule 16(a). Even if the RFPs and Interrogatories were properly attached, WebMD’s motion would still fail as the subject demands, to the extent they are accurately reproduced in Muehter’s responses, are not “reasonably calculated” to yield relevant information.

A. Former Employees

RFP 13, which requests “All Communications with any former employee of WebMD [from January 1, 2023, to the present]” is overbroad. WebMD contends the request seeks discovery potentially relevant to its allegation that Muehter breached the non-solicitation clauses in the Agreements. It points to evidence already disclosed in discovery that purportedly demonstrates that Muehter improperly solicited certain former WebMD employees and argues that this request is aimed at uncovering the full extent of his misconduct—i.e., the improper solicitation of other, as yet unknown, former employees. That may be so, but RFP 13 is not reasonably tailored by the subject matter of the communications demanded to yield communications relevant to WebMD’s allegations. Rather, it simply demands all communications regardless of subject matter. Therefore, the motion is denied to the extent it seeks to compel the production demanded in RFP 13.

B. Communications Related to Doximity

RFP 14 requests “All Communications with, or relating to, Doximity.” As mentioned, courts view document requests for “any and all” documents as indicative of a lack of the requisite specificity. See Mendelowitz v Xerox Corp., supra. Such a demand may still be proper in certain limited circumstances, provided the demand relates to specific subject matter and thus does not impede a ready identification of the particular things to be produced. Here, the demand for all communication related to Doximity lacks the requisite specificity.

Although the motion is denied to the extent it seeks to compel a response to RFP 14, Muehter’s opposition to this demand is flawed. He contends, *inter alia*, that WebMD is already in possession of any responsive communications, as it took possession of and processed his iPhone, giving it access to his text messages and communications through October 10, 2023. However, WebMD’s motion papers acknowledge the forensic imaging of Muehter’s WebMD-issued cellphone and laptop. RFP 14 requests documents that would not have been captured by that search, including communications made after October 10, 2023, and communications

that Muehter did not make on his work devices. Therefore, Muehter should be prepared to produce such communications upon receiving an appropriately tailored document demand.

C. Communications Relating to the Litigation

RFP 17 seeks “All Communications relating to the Litigation.” This request is overbroad, fraught with attorney-client privilege issues, and not “reasonably calculated” to yield relevant, non-privileged materials. See Forman v Henkin, supra. As such, the motion is denied to the extent it seeks to compel a response to RFP 17.

D. Communications Relating to WebMD

RFP 18 seeks “All Communications Relating to WebMD.” This request is likewise overbroad, unduly burdensome, and not reasonably calculated to yield information relevant to the plaintiffs’ claims. WebMD is a large company, and as explained above, many if not most of the communications relating to it can be expected to contain no relevant information. As such, the motion is denied to the extent it seeks to compel a response to RFP 18.

E. The Avica Requests

The Avica Requests seek documents and communications relating to Avica’s launch, its current and potential clients, its corporate purpose and intended services, and communications between Avica and any former, current, or prospective WebMD customers, as well as the identity of all persons or entities with whom Muehter has discussed Avica’s services and all Doximity employees and directors with whom he has discussed Avica. Muehter objects that there is no legitimate basis for the Avica Requests, arguing that they seek irrelevant information because he is only enjoined from working at Doximity, not Avica.

Muehter’s focus on the preliminary injunction temporarily barring his employment with Doximity is misplaced, as the scope of the discovery to which WebMD is entitled is determined by its causes of action, not the preliminary injunction. See CPLR 3101(a). Nevertheless, Muehter is correct in asserting that the Avica Requests seek entirely irrelevant information. Simply put, none of WebMD’s causes of action relate to Avica in any way, nor are there any concrete allegations of misconduct related to Avica. WebMD does not assert that Avica is a “Competitive Business,” and its alleged “concern,” justifiable or not, that Muehter “*may attempt*, through Avica, to circumvent the terms of his employment agreements” (emphasis added) does

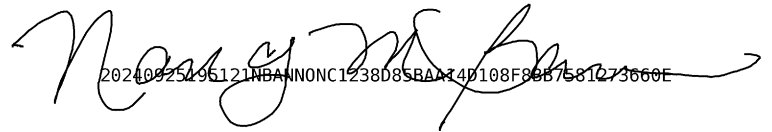
not entitle it to pursue a fishing expedition for, in effect, all documents and communications related to Avica’s founding, customer base, and present business.

CONCLUSION

Accordingly, upon the foregoing papers, it is

ORDERED that the plaintiffs’ motion to compel discovery is denied.

This constitutes the Decision and Order of the Court.



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9/25/2024

DATE

NANCY M. BANNON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE