SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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STATE ARTIST MANAGEMENT, LLC, SUSAN LEVINE, WILLIAM IVERS

Plaintiffs,

- v -

KATHLEEN ALQUIST,

Defendant.

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INDEX NO. 651600/2023

MOTION DATE N/A

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 44, 45

were read on this motion to/for DISCOVERY.

Plaintiffs' motion to compel defendant to provide complete documentation is decided as described below.

Background

This action arises out of a fit modeling contract between State Artist Management ("State") and defendant entered into in 2013. Plaintiffs maintain that the agreement required defendant to pay State a 20% commission for modeling services provided through the term of the agreement. It also provided that she would pay a 20% commission for modeling services provided to a third-party for the two years following the termination of the agreement where State initially introduced defendant to that third-party.

State claims that it worked tirelessly to get defendant notable modeling jobs, which resulted in defendant making well over $200,000 per year. It alleges that it even obtained work for her with Madewell at the end of 2022. It argues that right after it secured the Madewell job, defendant terminated the agreement. Plaintiffs argue that following the termination of the

agreement, defendant specifically refused to honor the portion of the agreement requiring the payment of a commission for two years. Plaintiffs identify multiple entities that later hired defendant where they claim they should have received commissions. They estimate that they are due at least $96,000 in commissions.

In this motion, plaintiffs complain that defendant has refused to turn over key records relating to both plaintiffs' affirmative claims and defendant's counterclaims. They point out that defendant formed her own corporation to help manage her modeling business and emphasize that she has refused to turn over documents showing her work for clients that State allegedly introduced to defendant as well as communications relating to that work. Plaintiffs insist that defendant should provide responsive documents to Requests 3, 4, 6, 8–10, 13, 15, 17, 18, and 64.

In opposition, defendant complains that State is attempting to enforce an illegal and coercive contract provision that a federal court found (in a case involving a different model) to be unenforceable. She emphasizes that she was misclassified as an independent contractor and brings counterclaims under the FLSA and the Labor Law. Defendant insists that many of these discovery requests are overbroad and seek irrelevant information.

Discussion

"Disclosure in civil actions is generally governed by CPLR 3101(a), which directs: there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." We have emphasized that the words, 'material and necessary', are ... 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. The test is one of usefulness and reason. 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—regardless of whether discovery is sought from another party. The statute embodies the policy determination that liberal discovery encourages fair and effective resolution of disputes on the merits, minimizing the possibility for ambush and unfair surprise" (*Forman v Henkin*, 30 NY3d 656, 661, 70 NYS3d 157 [2018]).

Initially, to the extent that defendant's opposition is based on the premise that certain provisions of the modeling contract are unenforceable, that claim is wholly irrelevant at this stage as defendant has not sought any relief on that basis. In other words, because defendant has not yet demanded or obtained affirmative relief on her claim about the illegality of certain provisions, she cannot make that claim as a defense to valid discovery demands. Nothing prevented (or prevents) defendant from making a dispositive motion prior to this discovery motion. In any event, the Court will consider each of the disputed requests in turn. According to the requests, the relevant time period is February 25, 2013 (when Alquist signed the contract) to the present (NYSCEF Doc. No. 34 at 6).

Request No. 3

This request demands "All communications between you and any third parties you provided services to as a model" (*id*.).

As defendant correctly points out, this document request is overbroad and burdensome. It demands all communications for over 12 years from every single modeling job regardless of its connection to plaintiffs or this case. Plaintiffs say they offered to limit this request to the two years following the termination of the agreement as a "good faith gesture." But that still does not rectify the fact that it seeks patently irrelevant communications with third parties who have no connection to plaintiffs.

Request No. 4

"Documents sufficient to show your daily schedule of appointments with clients" (*id.*). Similarly, this request is overbroad and is not reasonably calculated to reveal relevant information as it demands over 12 years of daily schedules with every single client.

Request No. 6

"Any agreements between you and any other entity related to the payment of your legal fees with regard to this Action" (*id.*). "Because the plaintiffs are seeking to recover legal fees, their fee arrangement with counsel, as well as the terms of the legal retainers are discoverable, since they are not protected by any privilege" (*Cutrone v Gaccione*, 210 AD2d 289, 291, 619 NYS2d 758 [2d Dept 1994]). Here, defendant seeks legal fees in her counterclaims and so she must respond to this request. To the extent that defendant insists that certain portions are subject to the attorney client-privilege she may redact and produce a privilege log.

Request No. 8

"All documents and communications concerning revenue or earnings received by Alquist from third parties after you terminated the Agreement" (NYSCEF Doc. No. 34 at 6).

The Court finds that this request is also overbroad as it covers a time period *after* the expiration of the two-year post-termination clause that is relevant to this case. Plaintiffs allege that the contract was cancelled at the end of 2022 and so a demand for these records up to the present includes a significant amount of irrelevant information. Moreover, it seems to include any revenue or earnings from non-modeling sources or sources irrelevant to this case.

Request No. 9

"All documents, communications, agreements, or contracts between you and any modeling agency" (*id.* at 7).

Clearly, this request is overbroad and burdensome as it demands records from the last 12 years and its relevance to this case is unclear; plaintiff is seeking its commission arising out of modeling jobs defendant booked in the two years after the termination of her agreement with clients which were introduced to her by plaintiffs. Her contacts with any modeling agency for over a decade is unlikely to produce relevant documents.

Request No. 10

"All documents, communications, agreements or contracts between you and any modeling clients" (*id*). For the same reasons, the Court strikes this request as overbroad.

Request No. 13

"All documents and communications concerning your engagement with clients, including Victoria's Secret, Banana Republic, Lululemon, Madewell, G-iii Andrew Marc, Jason Wu, Aerie, Adrianna Papell, LLC, Delta Galil USA, and Calvin Klein" (*id*.).

This request is stricken because it is overbroad—it demands all records from all clients.

Request No. 15

"All documents and communications concerning commissions from clients State introduced to Alquist, including Victoria's Secret, Banana Republic, Lululemon, Madewell, G-iii Andrew Marc, Jason Wu, Aerie, Adrianna Papell, LLC, Delta Galil USA, and Calvin Klein" (*id*.).

Although this request is more narrowly tailored, the problem remains that it is overbroad given the time period requested. It seeks records for over 12 years while this case largely concerns the termination of the agreement and the following two years.

Request No. 17

"Documents concerning your federal, state, and municipal income tax returns, including attachments thereto, schedules and Forms W-2, 1099, K-1, and any and all documents of whatsoever nature that relate to your filing or non-filing of said tax returns for the year 2019, 2020, 2021, 2022, 2023 and 2024" (*id.* at 8).

Defendant must respond to this request. As plaintiffs observe, part of defendant's defenses and counterclaims is a theory that she was misclassified as an independent contractor while under contract with plaintiffs. Of course, her tax return documentation would likely provide material and relevant information relating to this issue. It would be insightful to know, for instance, whether or not defendant utilized certain tax forms for independent contractors throughout this period. Personal information may be redacted in accordance with applicable rules governing this type of disclosure.

Request No. 18

"All documents and communications concerning Alquist performing modeling services for State clients" (*id.*).

As with many of the above document demands, this request is simply too broad and burdensome.

Request No. 64

"All documents and communications concerning your claim for attorneys' fees, including documents sufficient to show the fee arrangement between you and your attorney in this matter" (*id.* at 15).

As with request number 6, the Court requires defendant to respond to this demand as she seeks legal fees in this case. Of course, defendant may assert appropriate privileges where applicable along with a log.

Summary

The Court emphasizes that it has no obligation to "prune" discovery demands (*see Lewis v Hertz Corp.*, 193 AD2d 470, 470, 597 NYS2d 368 [1st Dept 1993]). Although plaintiffs' case appears to focus on defendant's post-termination conduct, it routinely seeks more than a decade of records about, essentially, defendant's entire modeling career. There is little doubt that is not reasonably calculated to produce relevant information; rather, it is reasonably calculated to require the production of thousands of pages of irrelevant emails.

Plaintiffs seemed to acknowledge the overbreadth of many of the requests by pointing out that they offered to limit the time period for certain requests. For instance, plaintiffs claim they now seek defendant's schedule of appointments for the two years following her termination of the parties' agreement. While it may be a litigation tactic to ask "for the moon" and then pull back at a meet-and-confer, that type of strategy evaporates once the overbroad request comes before the Court. The Court finds it inappropriate for a party to make a far-reaching demand and then attempt to back-track in motion papers once it is readily apparent that the demand is improper. Nothing prevents plaintiffs from serving another document demand that contains more narrowly tailored requests that focus on the claims and the time period at issue here. But this Court declines to do that work on plaintiffs' behalf.

Moreover, it seems that many of the records plaintiffs seek should already be in their possession and, therefore, there is no reason to require defendant to produce them (*Cornex, Inc. v Carisbrook Indus., Inc.*, 161 AD2d 376, 377 [1st Dept 1990]). For instance, plaintiffs should

have records of which clients it introduced to defendant while she was under contract with plaintiffs. This should include emails, modeling work agreements and evidence of commissions paid to plaintiffs.[1] And plaintiffs should have ample evidence within their own possession concerning the "misclassification" issue. Presumably, plaintiffs are able to describe, through testimony and documents, how a modeling job was ordinarily obtained for defendant during her many years under contract with plaintiffs. They should have evidence about their input (if any) concerning defendant's schedule and payment rate. After all, the question concerning whether someone is an employee or independent contractor turns, for the most part, on the alleged employer's control over the employee.

Accordingly, it is hereby

ORDERED that plaintiffs' motion is granted only to the extent that defendant must turn over records in response to demand numbers 6, 17 and 64 on or before January 8, 2026.

See NYSCEF Doc. No. 43 concerning the next conference.

12/3/2025
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE

[1] The agreement attached to the complaint suggests plaintiff had a possible role in collecting fees and discussing compensation rates with defendant (NYSCEF Doc. No. 2, ¶¶ 3, 5).