



3. The Defendants herein, work out of modeling agencies in Manhattan and Los Angeles respectively.

4. Defendant Philyne's parental home is 661 E. 234<sup>th</sup> Street, Bronx, New York 10466 and is a model represented by NYMM as her agent whose address is 71 West 23rd Street, Suite 301, New York, NY 10010.

5. Defendant Dallas Burgera works out of the NYMM offices at 71 West 23rd Street, Suite 301, New York, NY 10010.

6. Defendant Karine Roman works out of the LAMM offices at 7700 W. Sunset Boulevard, Los Angeles, CA 90046.

7. Defendant Heinz Holba is the President and Founder of L.A. Models and NYMM and he works out of 7700 W. Sunset Boulevard, Los Angeles, CA 90046 according to public records. Heinz Holba is named here as he owns NYMM and LAMM.

8. On May 3, 2019 Plaintiffs Wally Shaykhoun and IMM and Defendant Philyne Mercedes entered into a mother agency contract wherein Wally and IMM would represent Philyne to modelling agencies globally ("**Contract**") (Exhibit 1).

9. During the life of the Contract, Defendants Dallas and Karine tortiously interfered with the contract and in breach of the covenant of good faith and fair dealing, tortiously interfered with the Contract and Dallas defamed Wally to set the stage for the later Contract termination.

10. Philyne defamed Wally as evidenced by Dallas' accusations of sexual harassment of Philyne against Wally.

11. On December 8, 2021, Philyne – in cahoots with the Defendants Dallas and Karine - breached the Contract by attempting to terminate the contract on fraudulent and false pretenses.

12. Defendants Dallas and Karine tortiously interfered with the contracts with the foreign agents, Special Management and The Face Paris.

### NATURE OF THE ACTION

13. This is a breach of contract, breach of covenant of good faith and fair dealing, defamation, tortious interference with contract and loss of economic opportunity, and fraud and fraudulent misrepresentation action in which Defendants conspired individually and/or collectively to derail the contract between Philyne and IMM and Wally thus causing Wally and IMM significant financial loss, emotional distress, and reputational damage. Despite Plaintiffs' acting in good faith to secure Philyne modeling jobs from the May 3, 2019 ("**Effective Date**") to the termination of the Contract (defined in paragraph 2) during the height of the Covid-19 pandemic, the manipulative machinations of the Defendants independently and/or collectively resulted in a costly breach, financial and time losses, frustrated commercial opportunities, and damage to the Plaintiff's emotional state and reputation. Plaintiff sees damages and injunctive and declaratory relief.

14. After Wally personally scouted Philyne on the 1 train in Manhattan sometime in 2019, Philyne and Immortal entered the Contract, a Mother Agency Agreement with IMM, a New York registered company on May 3, 2019, , that stipulated that "Model hereby engages The Mother Agent as Model's sole exclusive personal manager

throughout [the] entire Word (“**The Territory**”)...” The Contract provides that IMM would represent Philyne to other modeling agencies for an initial term of five (5) years with automatic renewals of one (1) year renewal terms in consideration for a range of commissions from ten (10%) per cent to twenty-five (25%) per cent (“**Commission/s**”) depending on the nature of the job booked for Philyne by IMM. Specifically: the Contract stipulates: a) per sub-clause 3.1.b, 25% of the gross income paid to Model directly/indirectly “from direct jobs (jobs booked directly between the Mother Agent and the client) in Slovenia and other territories where the Mother Agent does not charge a separate booking fee to the client directly...”; b) per sub-clause 3.1.a, 20% of “the gross income paid to Model directly or indirectly from direct jobs (jobs booked directly between the Mother Agent and the client) in the USA, UK and other territories where the Mother Agent charges a separate booking fee to the client...”; and, c) per sub-clause 3.1.c, 10% of “the gross income paid to Model directly or indirectly from jobs booked by The Foreign Agencies.”

15. The term of the Agreement (“**Term**”) coincided in large part with the entire Covid-19 pandemic when international commerce was still very stagnant but starting to come back to life in mid-2021, after the world-wide lockdown that started in March 2020 (Exhibit 2.<sup>1</sup>)

16. Wally, who has worked in the international modeling world since 1990 when he started working as a fashion photographer at the age of 17 in Manhattan, has owned IMM since November 13, 2018. Since he started working as a photographer,

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<sup>1</sup> <https://www.gq.com/story/how-coronavirus-is-affecting-the-fashion-industry>

Wally has always been hyper-aware of the fragile and vulnerable nature of the young models, typically women, many of whom are uneducated, come from broken homes, suffer from mental illness, abuse alcohol and drugs, and try to use modeling as a means of getting out of their various desperate situations. In 2008, Wally and his ex-wife, Svetlana Shaykhoun, who worked as an international model for many years, pivoted from fashion photography and modeling to running Immortal Model Management, the original agency registered in Slovenia and have signed and placed many young male and female models over the years working as their mother agents. Wally is naturally gregarious and has an international network of modeling agents, agencies, and models. Wally is an expert in his field if one applying Malcolm Gladwell's rule that it takes 10,000 hours of focused work to become an expert.<sup>2</sup> The role of the "mother agent" is multi-faceted and involves mothering young (often female) aspiring models like Philyne as well as training, coaching, providing emotional and psychological support, and pitching the models to agencies around the world.

17. Philyne is a young woman from a low-income household in the Bronx marred by domestic abuse as Philyne had confided to Wally that her mother physically beats her because Philyne is a homosexual woman.

18. After signing Philyne to IMM, Wally placed Philyne with a modeling agency named Lions, which provide unproductive in terms of modeling jobs. After a year,

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<sup>2</sup> Malcolm Gladwell, *Complexity and The Ten Thousand Hour Rule*, The New Yorker August 21, 2013 <https://www.newyorker.com/sports/sporting-scene/complexity-and-the-ten-thousand-hour-rule> [accessed December 20, 2022.]

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