

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

EXCEL SPORTS MANAGEMENT, LLC

Plaintiff,

v.

GIDEON COHEN, WILLIAM PETOK, and
KATHERINE CUTLER,

Defendants.

Index No. ____

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer on Plaintiff Excel Sports Management, LLC (“Plaintiff”), or their undersigned attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, Judgment will be taken against you by default for the relief demanded in the Complaint.

Plaintiff designates New York County as the place of trial. The basis of venue is under New York CPLR § 503 by reason of the fact that Plaintiff maintains its principal office in New York County and/or a substantial part of the events giving rise to Plaintiff’s claims against Defendants occurred in New York County.

Dated: New York, New York
August 20, 2024

ALSTON & BIRD LLP

By: /s/ Adam J. Kaiser
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COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Excel Sports Management, LLC (“Excel”), by and through its counsel, files this Complaint against Gideon Cohen (“Cohen”), William Petok (“Petok”), and Katherine “Kayli” Cutler (“Cutler”) (together, the “Former Employees” or “Defendants”), hereby alleging and stating as follows:

NATURE OF THE ACTION

1. This case involves breaches of post-employment client non-solicitation agreements by three former employees of Excel who each resigned by email at approximately 8:30 p.m. on Sunday, August 18, 2024, and who by 8:45 p.m. that evening, in complete contravention of their contractual promises, collectively began calling Excel’s clients to solicit them on behalf of their new employer, Athletes First LLC (“Athletes First”). Two clients have already terminated their relationships with Excel, and Excel is aware that the Former Employees have solicited at least four other clients. The actions of these Former Employees give rise to a claim for breach of contract.

2. Excel is one of the preeminent sports and talent agencies in the world, representing hundreds of professional athletes, entertainers, media personalities, and many others. In April 2021, Excel hired Cohen to build its Media Talent Division, which represents broadcasters in

sports, journalism, entertainment, and other media. Cohen was supported by Cutler and Petok, who were hired by Excel in November 2021 and April 2022, respectively.

3. At the time the Former Employees joined Excel, the Media Talent Division had roughly a dozen clients. Excel sought to grow the division by leveraging its extensive list of clients and industry contacts, and it hired the Former Employees to develop this business. From April 2021 through their coordinated late Sunday night departure, the Former Employees helped Excel grow the Media Talent Division considerably. Excel now has more than 65 media talent clients and one of the most prestigious and robust broadcast talent representation businesses in the world.

4. Athletes First is an agency that represents NFL players and coaches and is a competitor of Excel. Rather than devote the time and resources to organically expand its business into representing broadcast talent (as Excel did), Athletes First elected to hire Excel's Media Talent Division chief executive and top two lieutenants who are now attempting to steal Excel's clients in violation of their contractual agreements.

5. Each of the Former Employees are, pursuant to their negotiated employment agreements with Excel, subject to post-employment client non-solicitation provisions that are limited in time (collectively, the "Non-Solicitation Agreements"). Cohen's Employment Agreement prohibits him from directly or indirectly soliciting Excel's clients for six months following termination of his employment, and Cutler and Petok's Employee Confidentiality Agreements each contain a similar provision prohibiting the representation of existing and prospective clients for a twelve-month period following termination of employment.

6. The Former Employees have violated their reasonable and narrowly tailored Non-Solicitation Agreements and threatened Excel's legitimate business interests, including but not limited to its relationships with its media talent clients.

7. As a result of the Former Employees' breach of contract, Excel will suffer irreparable harm, including to its business reputation, goodwill, and client base, for which there is no adequate remedy at law. Therefore, Excel seeks injunctive relief against the Former Employees, including but not limited to an order enjoining the Former Employees from violating the Non-Solicitation Agreements.

THE PARTIES

A. Excel Sports Management, LLC

8. Excel is a Delaware limited liability company with its principal place of business in New York County. The members of Excel include citizens of New York, Connecticut, and Florida.

B. Gideon Cohen

9. Cohen was employed by Excel at its New York headquarters as its Senior Vice President of Media Talent from April 2021 until his resignation on August 18, 2024.

10. At all relevant times, Cohen was a resident of the State of New York.

C. William Petok

11. Petok was employed by Excel at its New York headquarters as a Senior Manager of Media Talent from April 2022 until December 2023, when he was promoted to Director of Media Talent. Petok held that position until his resignation on August 18, 2024. During his employment with Excel, Petok reported directly to Cohen.

12. At all relevant times, Petok was a resident of the State of New York.

D. Katherine "Kayli" Cutler

13. Cutler was employed by Excel at its New York headquarters as an Assistant of Media Talent from November 2021 until December 2022, when she was promoted to Senior Coordinator of Media Talent—a position that she held until December 2023. Cutler was promoted

again to Manager of Golf and Media Talent in January 2024 and held that position until her resignation on August 18, 2024. During her employment with Excel, Cutler reported directly to Cohen.

14. At all relevant times, Cutler was a resident of the State of New York.

JURISDICTION AND VENUE

15. Jurisdiction and venue are proper under CPLR §§ 301 and 302 because Excel's principal place of business is in New York, and the Former Employees reside in New York.

16. Venue in this Court is appropriate pursuant to CPLR § 503(a) because Excel and Cutler reside in New York County, and the actions complained of arose in New York County.

FACTUAL ALLEGATIONS

A. Defendants' Employment Agreements and Their Contractual Commitments to Excel

17. Cohen executed an Employment Agreement dated April 13, 2021 that memorialized the terms and conditions of his employment.

18. The initial term of Cohen's employment was April 2021 to April 2024. Cohen was paid a substantial base salary and a discretionary bonus of at least \$100,000 per year.

19. The Employment Agreement memorialized Cohen's contractual commitments to Excel upon which his employment was conditioned. Cohen acknowledged and agreed that:

it is reasonable and necessary for the protection of the goodwill, trade secrets and continued business of the Company that Executive abides by the covenants and agreements contained in this Agreement during and following the termination (voluntary or otherwise) of Executive's employment with the Company and that the Company will suffer irreparable injury, loss, harm and damage if Executive engages in conduct prohibited in this Agreement. Executive acknowledges and agrees that Executive's experience and abilities are such that compliance with this Agreement, including but not limited to the Restrictive Covenants, will not cause any undue hardship or unreasonable restriction on Executive's ability to earn a livelihood.

20. Cohen also agreed to comply with the Restrictive Covenants set forth in Exhibit B to the Employment Agreement, which contained restrictions on his ability to solicit Excel's clients as follows:

For a period of six (6) months following the termination (voluntary or otherwise) of Executive's employment relationship with the Company, Executive shall not directly or indirectly, or by action in concert with others, either for Executive's own benefit or for the benefit of any other person or entity, solicit, encourage or induce any Applicable Client (as defined below) to sever, terminate, reduce, limit or otherwise diminish such Applicable Client's relationship with the Company or any of its Affiliates. "**Applicable Client**" means any person or entity that (i) was a client of the Company within the six (6) month period preceding the termination of Executive's employment with the Company with whom Executive, or other employees of the Company reporting to or working with Executive, had dealings while Executive was employed with the Company, or (ii) was a prospective client of the Company who was actively solicited by the Company within the six (6) month period preceding the termination of Executive's employment with the Company where the Executive participated in such solicitation. This provision shall not apply to clients of the Company who were represented by Executive prior to the Effective Date.

21. Cutler and Petok each executed an Employee Confidentiality Agreement, in which they agreed that:

For a period of twelve (12) months following the end of Employee's employment with Company (voluntary or otherwise), Employee shall not directly or indirectly solicit or represent as a client, on Employee's own behalf or that of another, or be employed by, any person or organization which (i) was a client of Company within the twelve (12) months next preceding the termination of Employee's employment with Company and, further, was a client with whom Employee had dealings while Employee was employed with Company or was a client with whom Company employees reporting to or working with Employee had dealings while Employee was employed with Company, or (ii) was a prospective client of Company who was actively solicited as such within the twelve (12) months next preceding the end of Employee's employment with Company and, further, Employee, or Company employees reporting to or working with Employee, participated in such solicitation.

22. The Non-Solicitation Agreements were crafted narrowly to protect Excel from the specific harms it believed the Former Employees could inflict on its legitimate business interests by virtue of their positions at the company.

23. The Former Employees' contractual commitments were designed to survive termination of their employment and the expiration of the Employment Agreement (for Cohen).

24. The Employment Agreement and Employment Confidentiality Agreements and surviving contractual commitments are controlled by New York law.

B. Defendants' Resignation from Excel and Solicitation of Excel's Clients

25. Cohen's Employment Agreement expired in April 2024. At that time, and until Cohen resigned without warning, Excel and Cohen were in the process of negotiating a renewal of Cohen's term contract. Excel was also in the process of negotiating a new term contract with Petok. However, at the time Defendants resigned, they were all at will employees of Excel.

26. Defendants resigned from Excel by sending emails on the evening of Sunday, August 18, 2024, as follows: Cutler sent her email at 8:36 p.m., followed by Petok at 8:37 p.m., and then Cohen at 8:38 p.m.

27. By 8:45 p.m. on Sunday, August 18, 2024, Defendants were already soliciting Excel's clients to join Athletes First. Defendants called four high profile sports broadcasters within minutes of resigning from Excel and expressly encouraged these clients to retain them as their respective broadcast agents in lieu of Excel.

28. On Tuesday, August 20, 2024, clients Lisa Byington and Kevin Kugler terminated their contracts with Excel.

29. Defendants' conduct constitutes a breach of their continuing obligations under the Non-Solicitation Agreements, which were narrowly tailored to protect Excel's legitimate business interests.

30. On or about August 19, 2024, Excel, through counsel, notified Defendants of their post-employment obligations to Excel.

COUNT I**(BREACH OF CONTRACT)**

31. Excel incorporates the above allegations as if set forth fully herein.

32. Excel entered into valid, binding, and enforceable Non-Solicitation Agreements with Defendants that required them to not solicit clients of Excel for a period of six months (for Cohen) or twelve months (for Cutler and Petok).

33. These restrictions survived the termination of Cohen's Employment Agreement and the termination of Defendants' employment with Excel.

34. The restrictions on Defendants' ability to solicit Excel's clients are reasonable in scope and duration, narrowly tailored to protect Excel's legitimate business interests, and do not impose undue burdens on Defendants.

35. Defendants breached the Non-Solicitation Agreements by soliciting Excel's clients within minutes (not anywhere close to the required six or twelve month period) of the termination of their employment with Excel.

36. As a direct and proximate result of Defendants' breach of the Non-Solicitation Agreements, Excel has suffered and will continue to suffer irreparable injury, including to its goodwill with its media talent clients and business opportunities with the same, for which there is no adequate remedy at law. Defendants have already solicited at least six of Excel's clients to join Athletes First (and two of these clients have terminated their contracts with Excel). Accordingly, Excel is entitled to injunctive and equitable relief, including a preliminary injunction. A preliminary injunction is further warranted because such an injunction would maintain the status quo pending final resolution of Excel's claims and prevent Defendants from soliciting, or continuing to solicit,

Excel's clients, or otherwise engaging in conduct that violates the Non-Solicitation Agreements that expressly survive the termination of Defendants' employment with Excel.

WHEREFORE, Excel respectfully prays that:

1. The Court enter a temporary restraining order enjoining Defendants from violating the Non-Solicitation Agreements;
2. The Court enter a subsequent preliminary injunction enjoining Defendants from engaging in conduct in violation of the Non-Solicitation Agreements until such time as this case can be decided on its merits;
3. The Court find Defendants' conduct to be in violation of the Non-Solicitation Agreements and the contractual obligations owed by them to Excel;
4. The Court enter a judgment permanently enjoining Defendants from violating the Non-Solicitation Agreements for six (6) months (for Cohen) or twelve (12) months (for Cutler and Petok) from the date of the Order plus such additional time during which Defendants were in breach of the Non-Solicitation Agreements; and
5. The Court award such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 20, 2024

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