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

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| CARTIER, a division of RICHEMONT NORTH AMERICA, INC. | : | Index No.: |
| Plaintiff, | : | |
| v. | : | |
| TIFFANY AND COMPANY and MEGAN MARINO, | : | : |
| Defendants. | : | |

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR A PRELIMINARY INJUNCTION**

Dated: New York, New York
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## I. PRELIMINARY STATEMENT

Pursuant to C.P.L.R. §§ 6301 and 6311, Plaintiff Cartier ("Cartier" or "Plaintiff"), a division of Richemont North America, Inc. ("Richemont," and together with Cartier, the "Company") respectfully submits this Memorandum of Law in support of its Motion for Preliminary Injunction against Defendants Megan Marino ("Marino") and Tiffany and Company ("Tiffany") (together with Marino, the "Defendants"). Cartier seeks injunctive relief from this Court.

Plaintiff Cartier has not only uncovered direct evidence of a former employee's unlawful taking of Cartier's valuable confidential information and trade secrets, but through determined investigation Cartier has also opened a window into Tiffany's disturbing culture of misappropriating competitive information. Faced with talent departures that led its Vice President for North American Merchandising to characterize Tiffany's high jewelry division as being in disarray, Tiffany's senior and mid-level management reacted in the lowest and most desperate manner: they used quick money and title advancement to lure away an under-qualified employee from a successful competitor, knowing she lacked the experience and knowledge to perform a high jewelry manager role. Immediately upon hire, Tiffany's President for the Americas met with this junior manager for the express purpose of obtaining information about Cartier, openly asking for highly valuable, detailed confidential information that would foster unfair competition, while in the same breath disparaging Cartier in an unseemly manner. Fully disregarding the new manager's confidentiality and non-solicitation contractual obligations to Cartier, Tiffany's President for the Americas asked her to assist Tiffany in soliciting great talent from Cartier.

Throughout the new employee's brief tenure at Tiffany, both Tiffany's President and its Vice President for Merchandising repeatedly and knowingly solicited and received confidential Cartier information from her. They cavalierly documented these illegal solicitations in e-mails

and text messages that readily approve illegal conduct, including outreach to current Cartier employees for highly valuable confidential information. Moreover, Tiffany's first, second and third reactions to Cartier's written notice of these highly concerning circumstances was to ignore, deflect and deride Cartier's efforts to protect its assets. Only after Cartier refused to accept half-answers and poorly investigated assurances, did Tiffany take *any* action – firing the new junior manager *for failing to disclose her misconduct*, while taking no action against Tiffany's senior leaders who pressured her to engage in it. Moreover, Tiffany continues to ignore open and obvious use of Cartier confidential information, including Tiffany's use of Cartier's confidential information in its internal business presentations. This action is necessary to remedy Tiffany's prior wrongdoing and to cease its current course of illegal conduct.

## II. STATEMENT OF FACTS

The facts relating to the instant motion are fully set forth in the Complaint and in the accompanying affidavits of Debra Sloane, sworn to February 27, 2022 (the "Sloane Aff."), and Megan Marino, sworn to February 25, 2022 (the "Marino Aff."), and the accompanying exhibits attached thereto.

## III. ARGUMENT

Cartier is entitled to a preliminary injunction if it can demonstrate: (a) it is likely to succeed on the merits, (b) it will suffer irreparable harm if an injunction is not issued, and (c) a balancing of the equities tips in its favor. *See* C.P.L.R. § 6301; *W.T. Grant Co. v. Srogi*, 52 N.Y.2d 496 (1981); *Coinmach Corp v. Alley Pond Owners Corp.*, 25 A.D.3d 642, 643 (2d Dep't 2006). As explained below, Plaintiff can establish each of these elements, and therefore is entitled to a preliminary injunction.

**A. Cartier Will Suffer Irreparable Harm Without Injunctive Relief**

Irreparable injury means injury for which a monetary award does not provide adequate compensation. *See Klein, Wagner & Morris v. Lawrence A. Klein, P.C.*, 186 A.D.2d 631 (2d Dep't 1992); *McLaughlin, Piven, Vogel, Inc. v. W.J. Nolan & Co.*, 114 A.D.2d 165 (2d Dep't 1986). The touchstone for finding "irreparable harm" is the inadequacy of quantifiable monetary damages. *See, U.S. Re Companies, Inc. v. Scheerer*, 41 A.D.3d 152, 155 (1st Dept. 2007). New York law provides that a breach of a reasonable restrictive covenant typically entitles a plaintiff to injunctive relief. *See, e.g.*, *Ticor Title Ins. Co. v. Cohen,* 173 F.3d 63 (2d Cir. 1999); *BDO Seidman v. Hirshberg*, 93 N.Y.2d 382, 690 N.Y.S.2d 854 (1999); *Chernoff Diamond & Co. v. Fitzmaurice. Inc.*, 234 A.D.2d 200, 201-02, 651 N.Y.S.2d 504, 505 (1st Dep't 1996) ("Indeed, the modern trend in the case law seems to be in favor of according such covenants full effect when they are not unduly burdensome ...") (*citing Maltby v. Harlow Meyer Savage. Inc.*, 166 Misc.2d 481, 484, 633 N.Y.S.2d 926, 929 (Sup. Ct. N.Y. Co. 1995), *aff'd*, 223 A.D.2d 516, 637 N.Y.S.2d 110 (1st Dep't 1996)).

Here, there can be no doubt that Plaintiff will be irreparably harmed if Defendants are not enjoined from using Cartier's confidential information to undercut Cartier's prices, steal Cartier's customers, replicate Cartier's processes and otherwise unfairly compete with Cartier. Indeed, it is well-established in New York that "[i]rreparable harm is presumed where trade secrets have been misappropriated." *Sylmark Holdings*, 5 Misc. 3d at 299; *PaymentAlliance Int'l, Inc. v. Ferreira*, 530 F. Supp. 2d 477, 480 (S.D.N.Y. 2007). Irreparable harm is presumed because "loss of trade secrets cannot be measured in money damages because a trade secret once lost is, of course, lost forever." *N. Atl. Instruments Inc. v. Haber*, 188 F.3d 38, 49 (2d Cir. 1999) (quotations & citation omitted); *see also Computer Assocs. Int'l, Inc. v. Bryan*, 784 F. Supp. 982, 986 (E.D.N.Y. 1992) ("[T]he loss of trade secrets is not measurable in terms of money damages.") (quotations omitted).

In the absence of appropriate injunctive relief, Defendant Tiffany will be able to use Cartier's confidential information for its own benefit. Defendants' continued possession of Cartier's trade secret information causes Cartier irreparable harm because a competitor's possession and exploitation of that information will make monetary damages difficult, if not impossible, to calculate. The damage caused by Defendants includes the potential loss of client relationships and customer goodwill as well as the permanent loss of its trade secrets and confidential information. Monetary damages will not adequately protect Plaintiff against this loss or the unfair competitive advantage that Defendants will gain from use of Plaintiff's trade secrets and confidential information. Further, denial of injunctive relief would leave Plaintiff vulnerable to the same or similar misconduct from other employees and continued misconduct by Tiffany. As it is, Cartier has become aware that at least one other former Cartier employee misappropriated highly confidential, proprietary and trade secret information from Plaintiff shortly before recently commencing employment with Tiffany; and that highly confidential Cartier information explicitly appeared in at least one January 2022 internal business presentation at Tiffany.

Finally, Defendant Marino contractually agreed that a violation of her obligations under the Agreements would constitute irreparable harm. Such contractual provisions support a finding of irreparable harm. *See, e.g.*, *N. Atl. Instruments Inc.*, 188 F.3d at 49 (finding irreparable harm and relying, in part, on the former employee's acknowledgement that a breach of his agreement would cause "irreparable injury" to the employer).

**B. Plaintiff Is Likely to Succeed on the Merits of Its Claims**

When seeking a preliminary injunction, the element of the applicant's likelihood of success can be satisfied by making a *prima facie* showing of a right to relief, as opposed to conclusive proof. *See Tucker v. Toia*, 54 A.D.2d 322, 326 (4th Dep't 1976) ("the showing of a likelihood of success . . . must not be equated with the showing of a certainty of success. It is enough if the

moving party makes a *prima facie* showing of his right to relief; the actual proving of his case should be left to the full hearing on the merits.") (citations omitted); *see also Flexible Techs., Inc. v. World Tubing Corp.*, 910 F. Supp. 109, 114 (E.D.N.Y. 1996) (to show likelihood of success on the merits the "movant need not show that success is an absolute certainty" but rather need only show "that the probability of the movant prevailing is better than fifty percent").

As discussed below and set forth in more detail in Plaintiff's Complaint, Plaintiff's requested injunctive relief is warranted because Plaintiff is likely to succeed on the merits of its claims. Marino breached her contractual confidentiality and non-disclosure obligations and misappropriated Plaintiff's confidential business information by forwarding to her personal e-mail account a large quantity a highly sensitive documents and other files related to Cartier's High Jewelry business only days before she resigned. After Marino commenced employed with Tiffany, she responded to repeated requests by senior Tiffany executives for confidential Cartier information and provided such information by utilizing the materials she took before she resigned from Cartier and by acquiring additional information from current Cartier employees to the extent she was able.

### *1. Cartier Is Likely to Succeed on Its Misappropriation Claim Against Defendants*

To succeed on its misappropriation of trade secrets claim, Plaintiff must show that (1) Cartier possessed a trade secret, and (2) the defendants used that trade secret in breach of an agreement, confidential relationship or duty, or as a result of discovery by improper means. *Sylmark Holdings Ltd. v. Silicone Zone Int'l Ltd.*, 5 Misc.3d 285, 297 (Sup. Ct., N.Y. Co. 2004). Plaintiff is likely to succeed on the merits of its misappropriation of trade secrets claim.

**a. Cartier's confidential information constitutes a trade secret**

Defendants have misappropriated Cartier's trade secrets, misused them, and threaten to continue to misuse them. New York subscribes to the definition of trade secrets found in comment (b) to the Restatement of Torts § 757 (1939), which defines a trade secret as "any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it." *Ashland Mgmt. Inc. v. Janien*, 82 N.Y.2d 395, 407 (1993) (quoting Restatement of Torts § 757, comment b.).

New York courts consider six factors when determining whether information constitutes a trade secret: (1) the extent to which the information is known outside the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the business to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended by the business in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *See id*.

As explained in detailed in Cartier's accompanying Complaint, on December 9, 2021, just one day after she received a verbal offer of employment from Tiffany, and only days before tendering notice of her resignation from Cartier, Defendant Marino sent from her work e-mail to her personal Gmail account four separate emails, attaching confidential Cartier documents and Excel spreadsheets she selected and screenshots of materials that she viewed as potentially helpful to her in her new role at Tiffany (the "E-Mailed Cartier Information"). The E-Mailed Cartier Information constitutes very sensitive and valuable information regarding Cartier's High Jewelry business and is the product of countless hours of labor and the dedication of enormous resources, financial and otherwise, by Cartier. The confidential information provided by Marino to Tiffany—including Cartier's current and real time business information and strategy regarding its High

Jewelry business and information directly taken from parts of the E-Mailed Cartier Information—is similarly extremely sensitive and valuable, and was doubtlessly requested by Tiffany executives for the very reason that it provided a commercial advantage.

There can be no doubt that the above-described information rises to the level of a protectable trade secret. The materials Defendant Marino took include enough information to allow a competitor to replicate key strategies and with relative ease, to reverse engineer how Cartier allocates, merchandises and prices its High Jewelry stock. The E-Mailed Cartier Information is (a) valuable, (b) only accessible by a limited number of employees, (c) not known outside of Cartier and only to Cartier employees, and (d) would be extremely difficult to properly acquire and certainly cannot be independently duplicated. Not only would gaining this information – and the "real time" information requested by Tiffany executives – likely result in unfair gain to Tiffany, but it would cause irreparable harm to Cartier, its customer relationships, and its workforce by enabling a competitor to unfairly compete with Cartier. *See* Complaint at ¶¶ 41-47; *see also* Sloane Aff. at ¶¶ 10-13. Further, Plaintiff goes to great lengths to protect this information, including requiring its employees to execute non-disclosure agreements and storing confidential information in a password protected database, accessible only through Plaintiff's network. Complaint, at ¶ 17, 47. Thus, it is clear that the Cartier information at issue qualifies as trade secrets under New York law.

**b. Defendants used Cartier's trade secrets in breach of Defendant Marino's Agreements and through improper means**

Defendant Marino had no business need to access the drives, files, and documents that comprise the E-Mailed Cartier Information during her employment with Cartier. By virtue of her Agreements (described in further detail below), she had a duty to maintain the confidentiality of the E-Mailed Cartier Information and not to disclose or use it for the benefit of a competitor.

Marino violated her Agreements and engaged in unlawful misappropriation by retaining and misusing the E-Mailed Cartier Information for Tiffany's benefit.

Likewise, as referenced above and throughout the Complaint, Defendant Tiffany has engaged in a stealth campaign to misappropriate Cartier's confidential information for its own benefit. Acting through its high-level executives and managers, Tiffany sought and obtained a substantial amount of Cartier's confidential and trade secret information, including information about Cartier's High Jewelry assortment, allocations, and pricing. In doing so, Tiffany disregarded the confidentiality and non-disclosure obligations of these employees and indeed, encouraged and facilitated their misappropriation. Accordingly, Cartier is likely to succeed on its misappropriation claim under New York law.

### *2. Cartier Is Likely to Succeed on Its Breach of Contract Claim Against Marino*

Plaintiff is likely to succeed on the merits of its breach of contract claim against Defendant Marino. As a condition of her employment with Cartier, and in consideration for access to Plaintiff's confidential information, Defendant Marino executed Confidential Information and Non-Solicitation Agreements on or about August 2, 2013 and again on or about December 17, 2015 (collectively, the "Agreements").

As set forth in detail in Plaintiff's Complaint, the Agreements prohibit Marino from, among other things, using or disclosing Plaintiff's confidential information and trade secrets. The non-disclosure provision at issue prevents Marino from disclosing or using Plaintiff's confidential information and trade secrets, which are expressly defined in the Agreements as including Plaintiff's financial and business information, product and technical information, marketing information, supplier information, and dealer and customer information. *See* Marino Aff., Exs. A

and B at ¶ 1(a). Marino acknowledged that Plaintiff's confidential information was developed by Plaintiff using substantial time, effort, and money. *Id.*

Protection against the theft and exploitation of an employer's trade secrets and/or confidential information is a legitimate interest that may be protected, as here, by post-employment restrictive covenants. *Lumex Inc. v. Highsmith*, 919 F. Supp. 624, 628 (E.D.N.Y. 1996) (former employers have a legitimate interest in being protected from unfair competition resulting from the use or disclosure of trade secrets or confidential information). Non-disclosure agreements will be enforced in New York, where it can be demonstrated (as it has here) that the employee had access to confidential information and uses it to unfairly compete with her prior employer. *See Reed, Roberts Assocs. v. Stauman*, 40 N.Y.2d 303, 308 (1976) (an employer has a legitimate interest in safeguarding that which has made his business successful; restrictive covenants will be enforceable to the extent necessary to prevent the disclosure or use of trade secrets or confidential customer information). As long as the defendants "may have made use" of the plaintiff's confidential business information, an appropriate restraint will issue. *See Nassau Soda Fountain Equip. v. Mason*, 118 A.D.2d 764, 765 (2d Dep't 1986).

As conceded in Marino's own affidavit, it is clear that she took Cartier's confidential information and that she used it for the benefit of her new employer, Tiffany, in violation of her Agreements with Cartier. Marino Aff., at ¶¶ 40-48, 60-61, 66-70, 73-80. Plaintiff required that all employees, including Marino, execute a non-disclosure agreement to prevent the irreparable harm that would result from such disclosure and use of its confidential information. The non-disclosure provision is reasonable and necessary to protect Plaintiff's vital interest in its confidential information. Further, Plaintiff performed every obligation that is owed to Marino under the Agreements. Thus, because Marino has breached the reasonable terms of her

Agreements for her own benefit and the benefit of a direct competitor, Plaintiff will likely succeed on the merits of this claim.

### *3. Cartier Is Likely to Succeed on Its Tortious Interference Claims Against Tiffany*

Plaintiff is extremely likely to succeed on its claims for tortious interference with contract and prospective economic advantage against Tiffany. Under New York law, the elements of a tortious interference with contract claim are: "[1] the existence of a valid contract between the plaintiff and a third party, [2] the defendant's knowledge of that contract, and defendant's intentional procurement of the third-party's breach of the contract without justification, [3] actual breach of the contract, and [4] plaintiff's damages resulting from the breach" *Aqualife Inc. v Leibzon*, 50 Misc. 3d 1206(A), 2016 WL 56484, at *9 (Sup. Ct. 2016) (*quoting Oddo Asset Mgt. v. Barclays Bank PLC*, 19 NY3d 584, 594 (2012)). Similarly, the elements of a claim for tortious interference with prospective economic advantage include: (1) business relations with a third party; (2) interference with those relations; (3) that the defendant acted with the sole purpose of harming plaintiff or used illegal or wrongful means; and (4) injury to the plaintiff. *NBT Bancorp Inc. v. Fleet/Norstar Financial Group, Inc.*, 87 N.Y.2d 581, 624 (N.Y. App. Ct. 1996).

Cartier has a high likelihood of establishing the elements of both claims. As the Complaint demonstrates, Defendant Tiffany is interfering with Cartier's contractual relationship with its former employees, including but not limited to Defendant Marino. The Agreements are undeniably valid contracts between Cartier and Marino and there can be little doubt that Tiffany was aware of Marino's contractual obligations to Cartier. Tiffany, just like all sophisticated players in the luxury jewelry industry, understands and appreciates the confidentiality and value of the information that they misappropriated from Cartier. Indeed, Tiffany enters into agreements with its own employees that protect similar information, among other things. Moreover, because other Cartier employees

have been hired by Tiffany, it has been exposed to Cartier's agreements on multiple occasions, including the recent past. Despite possessing this knowledge, members of Tiffany's senior leadership induced, encouraged and even praised Defendant's Marino's unlawful taking and misuse of Cartier's confidential information to Cartier's detriment. Finally, as set forth at greater length above, disclosure of the proprietary information possessed by Marino, and the attendant loss of competitive advantage, has caused and will cause, irreparable injury that, despite being hard to quantify, satisfies the requirements for a cause of action for tortious interference with contract. *See Portware LLC v. Barot*, 11 Misc. 3d 1059 (Sup. Ct. N.Y. Cty. 2006).

Tiffany's intent in interfering with Defendant Marino's contractual obligations to Cartier is clear. Tiffany is well aware of the lucrative business relationships Cartier enjoys with its existing and prospective clients, and the importance of Cartier's confidential business information and strategies that are crucial to cultivating and maintaining those relationships. Tiffany has interfered with these relationships by planning and executing the theft of Cartier's confidential information and business through Cartier's former employees to undercut Cartier's pricing and to unfairly compete for Cartier's customers. In light of Tiffany's deliberate, unjustified, and malicious conduct, Cartier is more than likely to succeed on the merits of its tortious interference claim.

**C. The Balance of Hardships Tips Decidedly in Favor of Plaintiff**

Cartier's need for injunctive relief far outweighs any detriment to Defendants (if any can be divined). On the one hand, an injunction would protect Cartier's goodwill, business reputation, confidential information, and trade secrets, and prevent a competitor from unfairly competing with Cartier with its own information. Cartier has a legitimate and entirely reasonable interest in protecting its confidential business information from use by a direct competitor to unlawfully compete with Cartier. In contrast, Defendants have no equity on their side. The Defendants have deliberately misappropriated Cartier's proprietary and confidential information and trade secrets

and used that information without Cartier's knowledge or consent to gain an unfair competitive advantage. The harm faced by Plaintiff outweighs any cognizable harm that Defendants could conceivably claim they would suffer if they are not permitted to use or disclose Plaintiff's confidential information. The relief sought here would not limit Defendant Marino's employment opportunities, nor would it prevent Defendant Tiffany from *fairly* competing with Cartier. Rather, the injunction Plaintiff seeks will only prevent Defendants from engaging in unfair competition through use of Plaintiff's confidential and trade secret information.

## IV. CONCLUSION

For these reasons and the reasons set forth herein, Cartier respectfully requests that Court grant its application for a preliminary injunction and issue such further relief as is just and proper.

Respectfully submitted,

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