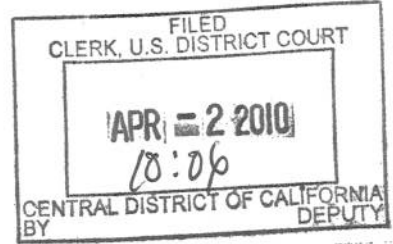


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11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

14 MATTHEW BALDWIN,  
15 Plaintiff,  
16 v.  
17 IMG WORLDWIDE, INC., an Ohio  
18 corporation,  
19 Defendant.

Case No. CV 10-02408 - GW (SSx)  
COMPLAINT FOR  
DECLARATORY RELIEF

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1 Plaintiff Matthew Baldwin (“Plaintiff” or “Baldwin”), for his claims against  
2 Defendant IMG Worldwide, Inc. (“Defendant” or “IMG”), alleges upon knowledge  
3 with respect to his own acts, and upon information and belief as to all other matters,  
4 as follows:

5 **INTRODUCTION**

6 1. This diversity case concerns certain post-employment restrictive  
7 covenants that, as a matter of law, are unenforceable in the state of California.

8 2. In his previous employment with IMG, Baldwin entered into an “at  
9 will” employment agreement that, while preserving IMG’s right to fire Baldwin for  
10 any reason (or no reason at all), purported to preclude Baldwin from competing with  
11 IMG after his employment with IMG terminated.

12 3. In April 2010, Baldwin, who was unsatisfied with the terms and  
13 conditions of his employment at IMG, resigned from IMG, moved to California and  
14 joined Creative Artists Agency, a competitor of IMG’s located in Los Angeles.

15 4. Now that Baldwin lives and works in California, any injunction  
16 enforcing any restrictive covenants against Baldwin would entail enforcement of  
17 such covenants in the state of California. The restrictive covenants, therefore, are  
18 enforceable only to the extent California law would permit such enforcement.

19 5. The post-employment restrictions contained in Baldwin’s employment  
20 agreement are void under California law. Hence, the restrictive covenants are  
21 unenforceable.

22 6. Under California law, Baldwin is free to compete with IMG, and to  
23 service any of his former clients who may choose to hire him. Baldwin is entitled to  
24 a declaration declaring that his restrictive covenants are void and unenforceable.

25 7. As set forth below, this case is virtually identical to another case  
26 decided in this district, *Danzi v. IMG*, in which this Court confirmed an arbitral  
27 award under the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, In that arbitral award,  
28 the arbitrator ruled that, in an employment contract virtually identical to Baldwin’s

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1 contract with IMG at issue here, the Ohio choice-of-law clause in the parties'  
2 employment agreement was unenforceable, and that the restrictive covenants were  
3 enforceable only to the extent California law would permit enforcement of them.  
4 Because California law does not allow enforcement of such anti-competitive  
5 covenants, IMG agreed to entry of a consent award, and a consent judgment  
6 confirming the award, freeing Danzi of any of his post-employment restrictions.

7 8. The same result should be reached here. Baldwin, like Danzi, moved to  
8 California after terminating his employment contract with IMG and, also like Danzi,  
9 Baldwin commenced employment with a competitor of IMG's based in Los  
10 Angeles. Just as in *Danzi*, now that Baldwin lives and works in California, his post-  
11 employment anti-competitive restrictions with IMG must be interpreted under  
12 California law. And, because the post-employment anti-competitive restrictions in  
13 Baldwin's employment contract with IMG are void under California law, Baldwin is  
14 entitled to a declaratory judgment declaring that such restrictions are null, void and  
15 unenforceable as a matter of law.

16 **JURISDICTION AND VENUE**

17 9. This Court has jurisdiction over the subject matter of this action  
18 pursuant to 28 U.S.C. § 1332, as the parties are of diverse citizenship and the  
19 amount in controversy exceeds \$75,000, exclusive of interest and costs.

20 10. Plaintiff Matthew Baldwin is a citizen of the State of California and  
21 resides in Los Angeles, California.

22 11. Defendant IMG Worldwide, Inc. is a corporation organized under the  
23 laws of the State of Ohio, with its principal place of business in Cleveland, Ohio.

24 12. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, as  
25 it is where a substantial part of the events giving rise to the claims asserted occurred,  
26 as described below.

27  
28

PARTIES

1  
2 13. Baldwin is a citizen and resident of the State of California who, with  
3 his wife, resides at 1715 Camden Avenue, Apt. 107, Los Angeles, California  
4 90062. Baldwin is engaged in the business of recruiting and soliciting professional  
5 athletic coaches to enter into endorsement, financial services and agent contracts,  
6 and procuring employment for such coaches.

7 14. Defendant IMG Worldwide, Inc. is a corporation organized under the  
8 laws of the State of Ohio, with its principal place of business and headquarters in  
9 Cleveland, Ohio. Although IMG Worldwide, Inc. has offices in several states and  
10 countries, its principal place of business is Cleveland, Ohio and a majority of IMG  
11 Worldwide, Inc.'s business activity takes place in Ohio.

12 15. Defendant IMG Worldwide, Inc. describes itself as a "diversified  
13 sports, entertainment and media company."<sup>1</sup> Among other things, Defendant IMG  
14 Worldwide, Inc. operates a sports agency providing client representation in golf,  
15 tennis, broadcasting, speakers, motor sports, coaching, Olympic and action sports.

16 16. Upon information and belief, IMG Worldwide, Inc. also does business  
17 in California. IMG Worldwide, Inc. is engaged in the business of recruiting and  
18 soliciting talent to enter into endorsement, financial services and agent contracts and  
19 for procuring employment opportunities for such talent. However, as alleged above,  
20 IMG Worldwide, Inc. is headquartered in Cleveland, Ohio, conducts the majority of  
21 its business activity in Ohio and is an Ohio citizen. By way of example:

22 a. On February 23, 2001, IMG Worldwide, then known as IMG  
23 Management, petitioned this Court in *S & H Promotions, Inc. v. Sang Hung*  
24 *Lee*, C.D. Cal. Case No. CV 01-1771 DT (Ex), for removal of a state court  
25 lawsuit based upon diversity of citizenship. In paragraph 7 of the Notice of  
26 Removal, IMG Management (now IMG Worldwide, Inc.) alleged that it had

27  
28 <sup>1</sup> See [http:// www.imgworld.com/about/default.sps](http://www.imgworld.com/about/default.sps).

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1 “its principal place of business in the City of Cleveland, State of Ohio.”  
2 Plaintiffs thereafter moved to remand the action to Los Angeles County  
3 Superior Court, asserting that IMG Management could not avail itself of  
4 diversity jurisdiction because of its offices and alleged activities in California.  
5 IMG Management opposed the motion to remand, submitting evidence that  
6 the substantial predominance of its business was in Ohio, and, additionally,  
7 that Ohio was IMG Management’s principal place of business under a “nerve  
8 center” test. The Honorable Dickran Tevrizian agreed with IMG  
9 Management. In his April 23, 2001 Order denying the motion to remand,  
10 Judge Tevrizian found that, “under the place of operations test, IMG’s  
11 principal place of business is not in California, but is in either Ohio or New  
12 York.” (April 23, 2001 Order, Exhibit B, at page 8.) Citing to the declaration  
13 by the “Vice President of IMG’s Legal Department,” Judge Tevrizian found  
14 that “IMG was founded in Ohio, IMG’s headquarters is in Ohio, and eighty  
15 percent (80%) of IMG’s executive and administrative functions are conducted  
16 in Ohio.” (April 23, 2001 Order, Exhibit B, at page 8.)

17 b. On February 9, 2010, IMG Worldwide, Inc. removed the action,  
18 *Perman v. IMG Worldwide, Inc.*, No. 1:10-cv-1066-WHP (S.D.N.Y.) from  
19 New York State Supreme Court to the Southern District of New York. In  
20 paragraph 4 of its Notice of Removal, IMG alleged that “Defendant IMG is a  
21 media company with its principal place of business in Cleveland, Ohio. As  
22 recorded with the New York Secretary of State, IMG is organized and  
23 incorporated under the laws of the State of Ohio with its principal executive  
24 office in Cleveland, Ohio. Accordingly, IMG is a citizen of Ohio for  
25 diversity purposes.” (February 9, 2010 Notice of Removal, Exhibit C, at page  
26 2.)

1 c. On May 17, 2006, IMG Worldwide, Inc. “formerly known as  
2 IMG Management, Inc.” filed a Complaint in the Northern District of Ohio,  
3 captioned *IMG Worldwide, Inc. (f/k/a IMG Management, Inc.) v. Stuart*  
4 *Appleby*, Case No. 1:06-cv-1231. In paragraph 2 of the Complaint, IMG  
5 Worldwide, Inc. alleged that it “is a citizen of the State of Ohio, as it is an  
6 Ohio corporation which maintains its principal place of business at IMG  
7 Center, 1360 Ninth Street, Suite 100, Cleveland, Ohio.” In paragraph 4 of the  
8 Complaint, IMG Worldwide, Inc. alleged that the District Court had diversity  
9 jurisdiction pursuant to 28 U.S.C. § 1332 (a) “because IMG is an Ohio citizen  
10 and Appleby is an Australian citizen who has a home in Florida.”  
11 (Complaint, Exhibit D, ¶¶ 2, 4).

#### 12 SUMMARY OF THE DISPUTE

13 17. The State of California has a fundamental public policy against  
14 contracts that prevent workers from engaging in their lawful business endeavors.  
15 California Business and Professions Code § 16600 provides, in pertinent part:  
16 “every contract by which anyone is restrained from engaging in a lawful profession,  
17 trade, or business of any kind is to that extent void.”

18 18. Baldwin is currently an employee of Creative Artists Agency (“CAA”),  
19 located in California. Between approximately August 2004 and his resignation on  
20 April 2, 2010, Baldwin was employed by IMG and represented professional athletic  
21 coaches on IMG’s behalf.

22 19. When IMG hired Baldwin, it required Baldwin to sign a form  
23 employment agreement (the “Employment Agreement”) that contained an anti-  
24 competitive non-competition clause. A true and correct copy of the Employment  
25 Agreement is attached hereto as Exhibit A.

1           20. Paragraph 6 of the Employment Agreement, entitled “Representation of  
2 Existing and Prospective Clients, Properties and Customers,” provides the following  
3 post-employment restriction:

4           For the period of two years following the end of  
5 Employee’s employment with IMG, Employee will not  
6 directly or indirectly solicit or represent as a client, on  
7 Employee’s own behalf or on behalf of another, or be  
8 employed by, any person or organization which: (i) was a  
9 client of IMG within the eighteen months next preceding  
10 the end of Employee’s employment with IMG and,  
11 further, was a client with whom Employee had dealings  
12 while Employee was associated with IMG or was a client  
with whom IMG employees reporting to Employee had  
dealings while Employee was associated with IMG; or (ii)  
was a prospective client of IMG who was actively  
solicited as such within the twelve months next preceding  
the end of Employee’s employment with IMG and,  
further, Employee, or IMG employees reporting to  
Employee, participated in such solicitation.

13 This non-competition clause purports to prohibit Baldwin from competing with IMG  
14 to represent any coaches Baldwin represented while he was at IMG for two years  
15 following the termination of his employment. Thus, under the terms of the  
16 Employment Agreement, IMG could terminate Baldwin at any time, with or without  
17 notice (under paragraph 1 of the Employment Agreement), and then, under  
18 paragraph 6, preclude Baldwin from “directly or indirectly” soliciting or  
19 representing any IMG client or former client for a period of two years thereafter.

20           21. Similarly, when paragraph 1 is read in conjunction with the non-  
21 association clause in paragraph 7 of the Employment Agreement, IMG reserved for  
22 itself the ability to fire Baldwin at any time, for no reason at all, and then prevent  
23 him from working for a period of one year thereafter for any company that hires  
24 another former IMG employee:

25           During Employee’s employment with IMG and for the  
26 twelve months following the end of Employee’s  
27 employment with IMG, Employee will not, directly or  
28 indirectly, on Employee’s own behalf or on behalf of  
another, be involved with the hiring of, nor be hired by or

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1 associated with, any person who was an IMG employee or  
2 who provided substantial services to IMG at any time  
3 during the six (6) months next preceding the end of  
4 Employee's employment with IMG.

5 22. The foregoing restrictive covenants are void under California law.

6 **THE AMOUNT IN CONTROVERSY**

7 23. The amount in controversy in this action far exceeds \$75,000, exclusive  
8 of interests and costs.

9 24. The value of Baldwin's services to professional athletic coaches far  
10 exceeds \$75,000. Typically, representation agreements with such individuals  
11 provide for the agent to receive as compensation for its services a percentage of the  
12 gross value of all existing and future employment contracts and marketing and  
13 commercial opportunities. While the amounts paid to coaches for employment  
14 contracts and marketing and commercial opportunities, and the amount of the  
15 commission that in turn is earned by the agent, vary depending upon the coach's  
16 status and other factors, the gross value of employment contracts and marketing and  
17 commercial opportunities is in the millions of dollars.

18 25. Baldwin's former clients at IMG include some of the most recognizable  
19 and esteemed coaches. They include coaches of some of the most successful NCAA  
20 programs and NFL franchises. These former clients are likely to earn many millions  
21 of dollars in endorsement and employment contracts, from which Baldwin (and  
22 CAA) would and could but for the onerous and unlawful provisions in the  
23 Employment Agreement earn commissions well in excess of \$75,000.

24 26. If enforced, the non-competition clause in Baldwin's contract would  
25 prohibit Baldwin from representing his former clients, thus impairing his ability to  
26 generate millions of dollars in commissions from these marquee coaches who  
27 themselves earn substantial compensation in employment contracts and marketing  
28 and commercial opportunities.



1 27. The value to Baldwin of the ability to engage in business with and  
2 provide services to coaches who desire to employ his services and who are or will  
3 be former clients of IMG with whom Baldwin had dealings is greater than the  
4 \$75,000 jurisdictional minimum of this court since Baldwin's compensation is  
5 based, in part, upon the commissions generated by the coaches that he represents.  
6 Enforcement of the non-competition clause would cause Plaintiff to lose an amount  
7 of profits significantly in excess of \$75,000.

#### 8 THE DECLARATORY RELIEF

9 28. Plaintiff seeks to engage in business with professional athletic coaches  
10 who are or will be former clients of IMG and who desire Baldwin to provide  
11 services to them.

12 29. Plaintiff seeks a declaration that the restrictive covenant is void and  
13 unenforceable under California law, so that Baldwin may represent his former  
14 clients in connection with his employment at CAA.

#### 15 BACKGROUND

16 30. Baldwin is a successful professional agent who primarily represents  
17 professional athletic coaches. Baldwin is employed in the Los Angeles, California  
18 office of CAA. Baldwin's employment with CAA commenced in April of 2010.  
19 Prior to Baldwin's current employment with CAA, Baldwin was employed by IMG.  
20 Baldwin's employment with IMG concluded on April 2, 2010.

21 31. IMG is a "diversified sports, entertainment and media company" that  
22 provides a broad range of services including client representation, brand  
23 management, media production and distribution, licensing, and consulting services.  
24 IMG maintains offices throughout the world. In the United States, IMG has offices  
25 in California, Florida, Georgia, Illinois, Massachusetts, Minnesota, New York,  
26 North Carolina, and Ohio.

1 32. At the time of his hiring, Baldwin was young and fresh out of graduate  
2 school, whereas IMG was a leading sports, entertainment and media company with a  
3 dominant position in the field of representing professional athletic coaches.

4 33. Due to IMG's preeminent position in the representation of such  
5 coaches, there were no other meaningful employment opportunities that Baldwin  
6 could have pursued as a recent graduate that would have enabled him to pursue a  
7 career in the field of representing such talent.

8 34. IMG, the party with the far superior bargaining position, presented the  
9 Employment Agreement to Baldwin on a "take-it-or-leave-it" basis. IMG advised  
10 Baldwin that the terms of the Employment Agreement were not negotiable. IMG  
11 was represented by counsel, while Baldwin was not.

12 **THE NON-COMPETITION CLAUSE**  
13 **VIOLATES CALIFORNIA LAW**

14 35. Part Two of California's Business and Professions Code is entitled  
15 "Preservation and Regulation of Competition." Chapter 1 of Part Two is entitled  
16 "Contracts in Restraint of Trade." Business and Professions Code § 16600, which is  
17 set forth within Chapter 1 of Part Two, addresses non-competition clauses in  
18 employment contracts. It provides, in pertinent part, that "every contract by which  
19 anyone is restrained from engaging in a lawful profession, trade, or business of any  
20 kind is to that extent void." Under § 16600, all post-employment non-competition  
21 covenants are void. *Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937, 955, 81 Cal.  
22 Rptr. 3d 282, 296 (2008) ("noncompetition agreements are invalid under section  
23 16600, even if narrowly drawn, unless they fall within the applicable statutory  
24 exceptions").

25 36. The non-competition clause in the Employment Agreement falls  
26 squarely within Section 16600. If enforced, the non-competition clause would bar  
27 Baldwin from engaging in any business with any former IMG clients because  
28

1 Baldwin would be barred from “directly or indirectly” representing anyone who was  
2 “a client of IMG within the eighteen months next preceding the end of Employee’s  
3 employment.”

4 37. The non-competition clause is particularly unreasonable because, if  
5 enforced, it would allow IMG to terminate Baldwin without cause at any time after  
6 beginning his employment, and then preclude CAA from having Baldwin represent  
7 potential clients for a period of two years. The non-competition clause is void under  
8 California law.

9 **IMG IS BOUND BY THIS COURT’S FINAL JUDGMENT THAT**  
10 **CALIFORNIA LAW APPLIES TO THE**  
11 **NON-COMPETITION CLAUSE IN BALDWIN’S CONTRACT**

12 38. IMG is bound by a July 30, 2008 judgment entered by this Court  
13 finding that California law applies to the non-competition clause set forth in  
14 paragraph 6 of the Employment Agreement. (*See Exhibit E, Danzi, et al. v. IMG*  
15 *Worldwide, Inc., et al.*, Civ. Action No. 2:07-cv-6979-GAF-SH, order (C.D. Cal.  
16 July 30, 2008)). Under California law, such non-competition clauses are  
17 unenforceable as a matter of law.

18 39. The facts of the *Danzi* case are strikingly similar to the ones at bar.  
19 Joseph Danzi, a California resident, was previously employed as an athlete agent by  
20 IMG and signed an employment agreement containing, word for word, the same  
21 non-competition clause set forth in paragraph 6 of Baldwin’s Employment  
22 Agreement:  
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Danzi/IMG Agreement at ¶ 6	Baldwin/IMG Agreement at ¶ 6
<p>Representation of Existing and Prospective Clients, Properties and Customers. During Employee's employment with IMG, Employee will not solicit nor represent any client, property or customer on behalf of anyone other than IMG, including on Employee's own behalf. For the period of two years following the end of Employee's employment with IMG, Employee will not directly or indirectly solicit or represent as a client, on Employee's own behalf or on behalf of another, or be employed by, any person or organization which: (i) was a client of IMG within the eighteen months next preceding the end of Employee's employment with IMG and, further, was a client with whom Employee had dealings while Employee was associated with IMG or was a client with whom IMG employees reporting to Employee had dealings while Employee was associated with IMG; or (ii) was a prospective client of IMG who was actively solicited as such within the twelve months next preceding the end of Employee's employment with IMG and, further, Employee, or IMG employees reporting to Employee, participated in such solicitation.</p>	<p>Representation of Existing and Prospective Clients, Properties and Customers. During Employee's employment with IMG, Employee will not solicit nor represent any client, property or customer on behalf of anyone other than IMG, including on Employee's own behalf. For the period of two years following the end of Employee's employment with IMG, Employee will not directly or indirectly solicit or represent as a client, on Employee's own behalf or on behalf of another, or be employed by, any person or organization which: (i) was a client of IMG within the eighteen months next preceding the end of Employee's employment with IMG and, further, was a client with whom Employee had dealings while Employee was associated with IMG or was a client with whom IMG employees reporting to Employee had dealings while Employee was associated with IMG; or (ii) was a prospective client of IMG who was actively solicited as such within the twelve months next preceding the end of Employee's employment with IMG and, further, Employee, or IMG employees reporting to Employee, participated in such solicitation.</p>

40. In April of 2007, Danzi resigned from IMG and joined Wasserman Media Group ("WMG"), one of IMG's competitors. IMG sent letters to Danzi threatening litigation and asserting, among other things, that the non-competition clause was enforceable against him and WMG.

41. Danzi and WMG brought an action against IMG Worldwide, Inc. (the same defendant in this action) and one of its affiliates, seeking a declaration that, among other things, the non-competition clause in Danzi's contract with IMG was unenforceable against Danzi as a California resident under California law,

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1 notwithstanding the fact that the contract specified the choice of Ohio law -- the  
2 same issue that is presented in this case.

3 42. Danzi and IMG stipulated to arbitrate the dispute in New York and  
4 were afforded a full and fair opportunity to litigate -- and did actually litigate -- the  
5 choice of law issue. After extensive briefing by the parties, the arbitrator sided with  
6 Danzi, holding that California law, not Ohio law, applied to the restrictive covenants  
7 in Danzi's contract, thus eviscerating IMG's position regarding the enforceability of  
8 such covenants against a California resident.

9 43. Thereafter, Danzi and IMG entered into a Consent Award in favor of  
10 Danzi, dated June 26, 2008, which incorporated by reference the April 30, 2008  
11 order. Pursuant to the Award, IMG agreed that the non-competition provisions  
12 "may not be enforced against Danzi in any way and IMG covenants not to sue Danzi  
13 for any alleged violation of or activity inconsistent with those provisions." (*See*  
14 Exhibit F, June 26, 2008 award at page 2).

15 44. Danzi and WMG petitioned this Court to confirm the Consent Award  
16 in the form of a judgment. By order dated July 30, 2008, this Court granted such  
17 relief and confirmed the Award as a final judgment. (*See* Exhibit E, July 30, 2008  
18 order at pages 1-3).

19 45. IMG is thus bound by this Court's final judgment that California law  
20 applies to the non-competition clause set forth in IMG's contract with Danzi, and  
21 under well-settled principles of collateral estoppel, is precluded from relitigating this  
22 same issue with respect to IMG's contract with Baldwin.

23 **THE CONTROVERSIES BETWEEN PLAINTIFF AND DEFENDANT**

24 46. Plaintiff contends that the non-competition clause is unenforceable as it  
25 violates Business and Professions Code § 16600 and violates the public policy in  
26 California prohibiting contracts in restraint of trade.

27  
28

1           47. Upon information and belief, IMG contends that it is entitled to  
2 injunctive relief barring Baldwin from engaging in business with former IMG  
3 clients.

4           48. IMG additionally included in the Employment Agreement a provision  
5 requiring Baldwin “to promptly furnish any new employer with a copy of this  
6 Agreement prior to the commencement of employment with any third party which is  
7 less than two years after the termination of Employee’s employment with the  
8 Company.” Upon information and belief, IMG included this provision to provide a  
9 foundation for legal action against any IMG competitor who hires current or former  
10 IMG employees and/or to cause sufficient apprehension in its competitors that they  
11 will be dissuaded from recruiting and hiring IMG employees. This is also an act in  
12 violation of Business and Professions Code § 16600 and in restraint of trade.

13                   **THE ARBITRATION PROVISION IS UNCONSCIONABLE**

14           49. Paragraph 9 of the Employment Agreement sets forth an arbitration  
15 provision (“Arbitration Provision”) that is both procedurally and substantively  
16 unconscionable, and thus unenforceable.

17           50. Baldwin did not have any meaningful opportunity to negotiate the  
18 terms of the Arbitration Provision or to opt out of it when signing the Employment  
19 Agreement. The Arbitration Provision contains several one-sided provisions that  
20 maximize IMG’s advantage at Baldwin’s expense, without reasonable justification,  
21 including, among others, the following:

22           a. Although the Arbitration Provision requires Baldwin to “submit  
23 to arbitration any dispute related to the employment relationship,” IMG  
24 unfairly reserved for itself, but not for Baldwin, the right to “obtain[ ]  
25 injunctive relief from a court of competent jurisdiction to enforce the  
26 obligations of Paragraphs 4, 5, 6, 7 and 8 for which IMG may obtain  
27 provisional relief pending a decision on the merits by the arbitrator.” The  
28

1 Arbitration Provision lacks mutuality because it makes arbitration mandatory  
2 for Baldwin but optional for IMG.

3 b. Additionally, IMG inserted a provision that “any breach of this  
4 Agreement could cause irreparable harm to IMG and that in the event of such  
5 breach, IMG shall have, in addition to any and all remedies of law, the right  
6 to an injunction, specific performance or other equitable relief to prevent any  
7 violation of Employees’ obligations hereunder.” This provision inures to the  
8 benefit of IMG and the burden of Baldwin. There is no reciprocal agreement  
9 that any breach by IMG could cause irreparable harm to Baldwin.

10 c. The Arbitration Provision requires that “[a]ll arbitration  
11 proceedings shall be confidential,” which benefits only IMG.

12 d. The Arbitration Provision limits discovery for each party to the  
13 “deposition of one individual and any expert witness designated by the other  
14 party,” and allowing for additional discovery “only where the arbitrator so  
15 orders, upon a showing of substantial need.” This limitation on discovery  
16 only benefits IMG because IMG, as the employer, will have access to more  
17 documents and witnesses. The severe limitations on discovery are designed  
18 to thwart Baldwin’s ability to gather evidence.

19 e. The Arbitration Provision eliminates Baldwin’s right to recover  
20 punitive damages that are otherwise allowed by law. As the Arbitration  
21 Provision purports to be the exclusive method of dispute resolution, at least  
22 for claims initiated by Baldwin, this limitation on the authority of the  
23 arbitrator is actually a limitation on Baldwin’s available remedies, without  
24 stating so explicitly. This part of the Arbitration Provision, like the others,  
25 only benefits IMG and is designed to prejudice Baldwin’s rights without  
26 making such prejudice clear.

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1 51. Moreover, the Employment Agreement itself is illusory. The  
2 Employment Agreement does not set forth any consideration to Baldwin, and  
3 contains no obligation on the part of IMG to employ Baldwin for any period of time.  
4 Rather, paragraph 2 of the Employment Agreement merely provides that Baldwin's  
5 "salary shall be as agreed payable semi-monthly in arrears." But Paragraph 1 of the  
6 Employment Agreement also provides that Baldwin's employment was on an "at  
7 will" basis.

8 52. The Arbitration Provision is both substantively and procedurally  
9 unconscionable, and hence, this Court may render judgment in the claim herein  
10 without regard to the Arbitration Provision.

11 **FIRST CLAIM FOR RELIEF**

12 (Declaratory Relief under 28 U.S.C. §§ 2201, 2202, Fed. R. Civ. P. 57)

13 53. Plaintiff incorporates herein by this reference the allegations of  
14 Paragraphs 1 through 52.

15 54. An actual, present, and justiciable controversy has arisen between  
16 Plaintiff and IMG regarding the enforceability of the non-competition clause in the  
17 Employment Agreement.

18 55. Plaintiff contends that the non-competition clause is governed by  
19 California law and is invalid and unenforceable as a matter of law under California  
20 Business and Professions Code § 16600.

21 56. Plaintiff further contends that IMG is bound by this Court's final  
22 judgment in *Danzi, et al. v. IMG Worldwide, Inc., et al.*, Civ. Action No. 2:07-cv-  
23 6979-GAF-SH, order (C.D. Cal. July 30, 2008), which confirmed an arbitral opinion  
24 that California law applied to a verbatim non-competition clause that IMG included  
25 in an employment agreement with another agent.  
26  
27  
28



Dewey & LeBoeuf LLP  
333 South Grand Avenue, Suite 2600  
Los Angeles, CA, 90071-1530

1 57. Unless the non-competition clause is invalidated, Baldwin will not be  
2 able to represent, and CAA will not be able to have Baldwin represent, clients once  
3 affiliated with IMG, which will cause substantial damages to Baldwin.

4 58. IMG contends that the non-competition clause is enforceable and that it  
5 is entitled to specific performance of the clauses, which would preclude Baldwin  
6 from engaging in business with prospective clients.

7  
8 WHEREFORE, Plaintiff prays for relief against Defendant as follows:

9 1. Plaintiff seeks a declaration that the non-competition clause in  
10 Plaintiff's contract is unenforceable.

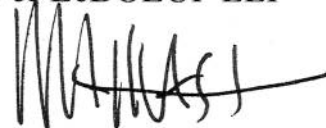
11 2. Plaintiff seeks a declaration that Defendant is not entitled to equitable  
12 relief barring Plaintiff from violating any restrictive covenant in his contract.

13 3. For costs of suit incurred herein; and

14 4. For such other and further relief as this Court may deem to be just and  
15 proper.

16  
17 Dated: April 2, 2010

18 Matthew M. Walsh  
19 Jeffrey L. Kessler  
20 Adam J. Kaiser  
21 DEWEY & LeBOEUF LLP



22 Matthew M. Walsh

23 *Attorneys for Plaintiff Matthew Baldwin*

24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge George H. Wu and the assigned discovery Magistrate Judge is Suzanne H. Segal.

The case number on all documents filed with the Court should read as follows:

**CV10- 2408 GW (SSx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====  
**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

**Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

**Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

**Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Matthew M. Walsh SBN 17500  
email: mwalsh@dl.com  
DEWEY & LeBOEUF LLP  
333 South Grand Avenue, Suite 2600  
Los Angeles, CA 90071-1530  
Telephone: (213) 621-6000  
Facsimile: (213) 621-6100

Attorneys for Plaintiff Matthew Baldwin

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MATTHEW BALDWIN,

PLAINTIFF(S)

v.

IMG WORLDWIDE, INC., an Ohio corporation,

DEFENDANT(S).

CASE NUMBER

**CV 10-02408 -GW(SSX)**

**SUMMONS**

TO:DEFENDANT(S): IMG WORLDWIDE, INC., an Ohio corporation,

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached  complaint  \_\_\_\_\_ amended complaint  counterclaim  cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Matthew M. Walsh, whose address is Dewey & LeBoeuf LLP, 333 South Grand Avenue, Suite 2600, Los Angeles, CA 90071-1530. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: April 2, 2010

By: \_\_\_\_\_

*Marilyn Dues*  
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT CALIFORNIA  
CIVIL COVER SHEET

**I (a) PLAINTIFFS** (Check box if you are representing yourself )  
MATTHEW BALDWIN

**DEFENDANTS**  
IMG WORLDWIDE, INC., an Ohio corporation

**(b) Attorneys** (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  
Matthew M. Walsh, SBN 175004  
DEWEY & LeBOEUF LLP  
333 South Grand Avenue, Suite 2600  
Los Angeles, California 90071-1530  
Telephone: (213) 621-6000

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an X in one box only.)

- 1 U.S. Government Plaintiff     3 Federal Question (U.S. Government Not a Party)  
 2 U.S. Government Defendant     4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** - For Diversity Cases Only  
(Place an X in one box for plaintiff and one for defendant.)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | <b>PTF</b>                            | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                            |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. ORIGIN** (Place an X in one box only.)

- 1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from another district (specify):     6 Multi-District Litigation     7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT: JURY DEMAND:**  Yes  No (Check 'Yes' only if demanded in complaint.)

**CLASS ACTION** under F.R.C.P. 23:  Yes  No

**MONEY DEMANDED IN COMPLAINT: \$** \_\_\_\_\_

**VI. CAUSE OF ACTION** (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Diversity action for declaratory relief pursuant to 28 U.S.C. § 2201, 2202 and Fed. R. Civ. P. 57

**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<b>BANKRUPTCY</b>	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 22 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<b>FORFEITURE / PENALTY</b>	<b>PROPERTY RIGHTS</b>
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 61 HIA(1395ff)
<input type="checkbox"/> 891 Agricultural Act	<b>REAL PROPERTY</b>	<b>IMMIGRATION</b>	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 863 DIWC/DIWW 405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				<b>FEDERAL TAX SUITS</b>
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

**FOR OFFICE USE ONLY:** Case Number: **CV 10-02408**

**AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.**

**COPY**

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT CALIFORNIA  
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed?  No  Yes

If yes, list case number(s): \_\_\_\_\_

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case?  No  Yes

If yes, list case number(s): \_\_\_\_\_

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)  A. Arise from the same or closely related transactions, happenings, or events; or  
 B. Call for determination of the same or substantially related or similar questions of law and fact; or  
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Ohio

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

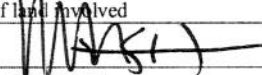
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):

  
Matthew M. Walsh

Date April 2, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))