



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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FRED NAGGAR and A&F APPAREL, USA, INC.,

Index No.: 662018/07

Plaintiffs,

Date Filed:6-18-07

-against-

**VERIFIED COMPLAINT**

MICHAEL BALL *a/k/a* MICHAEL F. BALL and  
ROCK & REPUBLIC ENTERPRISES, INC., d/b/a  
ROCK & REPUBLIC JEANS,

**TRIAL BY JURY DEMAND**

Defendants.  
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Plaintiffs **FRED NAGGAR and A&F APPAREL, USA, INC.**, by and through their attorneys, **MELTZER LoPRESTI, LLP**, as and for their complaint against defendants **MICHAEL BALL *a/k/a* MICHAEL F. BALL and ROCK & REPUBLIC ENTERPRISES, INC., d/b/a ROCK & REPUBLIC JEANS**, do hereby allege as follows:

**NATURE OF ACTION**

1. This action arises from the wrongful and intentional acts of both corporate defendant Rock & Republic Enterprises, Inc. (“Rock & Republic”), a manufacturer of designer denim jeans and apparel, and its CEO, founder and head designer, Michael Ball, a/k/a Michael F. Ball (“Ball”).

2. Despite the overwhelming success and revenue plaintiff Fred Naggar (“Naggar”) brought to and generated for the defendants, turning what was a fledgling jean company into a fashion empire, Rock & Republic and Michael Ball deliberately and without reason, refused to pay Naggar substantial monies owed, effectively ostracized him, and forced him to resign.

3. Defendants then publicly humiliated Naggar by having him escorted from their

offices by security, while summarily and illegally evicting him from his own home by having the locks on his door changed and by retaining his personal property. Such acts of humiliation and intimidation were immediately followed by the filing of a frivolous lawsuit against Naggar's related company, that had also generated millions for Rock & Republic.

4. In furtherance of a pattern and practice of intimidation directed at both Naggar's person and profession, in May 2007, defendant Michael Ball, without provocation or warning, then violently assaulted Naggar physically and verbally, in a well-known, popular nightclub intending to and causing physical harm and embarrassment before a crowd of onlookers and business associates. Plaintiffs bring this action to recover damages resulting from the aforesaid intentional and wrongful acts and omissions of the defendants.

#### **THE PARTIES**

5. Plaintiff A&F Apparel, Inc. ("A&F USA"), is a corporation duly organized under the laws of the State of New York, and maintains a place of business in the City, County and State of New York. A&F USA is in the business of designing and distributing fashionable clothing.

6. Plaintiff Fred Naggar ("Naggar"), is an individual and resident of Los Angeles, California. Naggar is founder of A&F Apparel USA, and at all relevant times, was Sales Director and Consultant to defendant Rock & Republic. Naggar's experience includes consultation for major designer brands, such as Justin Timberlake's William Rast and People's Liberation.

7. Upon information and belief, defendant Rock & Republic Enterprises, Inc., d/b/a Rock & Republic Jeans ("Rock & Republic"), is a corporation organized under the laws of the

State of California, with a principal office located at 3525 Eastham Drive, Culver City, California 90232, and an office located at 400 West Broadway, 4<sup>th</sup> Floor, New York, N.Y. Rock & Republic is a manufacturer of, among other things, denim jeans, which are sold in New York.

8. Upon information and belief, defendant Michael Ball, a/k/a Michael F. Ball (“Ball”), is a resident of the State of California and New York, and is the CEO and founder of defendant Rock & Republic.

### **VENUE**

9. In accordance with Rule 503(a) of the New York Civil Practice Law and Rules, venue is appropriate in this Court.

### **STATEMENT OF FACTS**

10. In about February 2003, defendants actively sought to enter into a relationship and retain the services of plaintiff Naggar and his Canadian distribution company A&F Apparel, Ltd. (“A&F Canada”)

11. Based upon Naggar’s considerable experience and relationships in the industry, defendant Rock & Republic entered into a distribution agreement with A&F Canada to exploit their fledgling brand.

12. Within just eight months, Naggar and A&F Canada surpassed all expectations in both Canada and the US, generating substantial revenue for defendant Rock & Republic and bringing unprecedented awareness of the previously little known brand to North America.

13. Based upon this success, defendants sought to entice Naggar to move permanently to the US, and accept a full-time consulting position with Rock & Republic.

14. In about November 2003, Naggar and defendants agreed that Naggar would

provide services for Rock & Republic through plaintiff A&F Apparel USA.

15. In consideration of the same, plaintiffs would be entitled to the following: (i) a consulting fee of \$125,000.00 annually (\$2,403.85 per week); and (ii) one percent (1%) of the worldwide gross sales of defendant Rock & Republic (excluding distributors). The parties agreed that commissions were earned upon sale of product, and were to be paid monthly upon actual delivery of product.

16. The parties' agreement was oral, entered into in good faith, with the understanding that it would be memorialized in a formal, written agreement at a later time.

17. In addition, the parties later agreed that defendant Ball would sublease his apartments in Los Angeles and New York to Naggar, so that Naggar could reside in the US to provide the services agreed upon.

18. Based upon the above, defendant Ball and Naggar entered into an oral sublease agreement, whereby Naggar paid Ball \$1,400.00 for the New York residence and \$2,800.00 for the Los Angeles residence. Ball insisted on cash only for payment.

19. Thereafter, at all relevant times through September 2005, Rock & Republic paid both a weekly consulting fee and monthly commissions to plaintiffs, while Naggar performed consulting services for defendants and paid the monthly rent on both apartments.

20. While at Rock & Republic, at all relevant times, Naggar was instrumental in the tremendous growth and development of the Rock & Republic brand and the creation of millions of dollars in sales.

21. At all relevant times, Naggar assumed numerous duties and responsibilities for Rock & Republic, eventually assuming leadership of Rock & Republic sales and operations.

22. By about Spring of 2005, Naggar's numerous duties had increased to and included the following: Sales Director; merchandising; design; sampling coordination; shipping and allocation; credit (working with factors); fittings for all sampling and production; new development for new divisions; company forecast; quality control; distribution; product knowledge with staff; public relations; fashion show coordination; and showroom upgrades.

23. During this time, defendant Ball also expected Naggar to consult and design with him at all times, refusing to create anything unless Naggar was present.

24. During this time, Naggar also dealt with high profile Rock & Republic partners, such as celebrity Victoria Beckham, who maintained her own clothing line with defendants.

25. By the middle of 2005, defendant Rock & Republic achieved outrageous growth, due primarily to the efforts of plaintiff Naggar.

26. At this time, Naggar became essentially the driving force behind Rock & Republic, whereby even department stores refused to work with anyone other than him.

27. At this time, A&F Apparel Canada had also become the largest Rock & Republic distributor in the world.

28. By September and October 2005, while business increased dramatically, defendant Ball began to lose control of Rock & Republic, while his partner, Andrea Bernholtz, became equally ineffective at managing the company's business.

29. Upon information and belief, this change in the dynamic of defendants' operations fomented jealousies among Rock & Republic principals and created animosity towards plaintiff Naggar.

30. Throughout October, November and December 2005, defendants repeatedly

delayed payments of the agreed upon consulting fees, and had ceased paying commissions to plaintiffs.

31. During this time, Naggar continued to generate enormous sales and by December 2005, he had already sold through Spring 2006. However, defendants continued to delay payment of agreed upon commissions, without reason, ignoring and avoiding Naggar's requests.

32. In about November 2005, plaintiffs had demanded that the parties finalize and execute a written agreement. Defendant Ball agreed and represented that corporate counsel would begin drafting the same.

33. Despite demands by plaintiffs throughout December 2005, defendants refused to and/or failed to produce a written agreement.

34. By reason of the same, combined with escalating tensions created by Rock & Republic principals, plaintiff was forced to tender his resignation.

35. At this time, the parties agreed that Naggar could remain in his subleased apartments through January 31, 2006, while searching for a new residence.

36. On about January 2, 2006, Naggar was told by defendants to attend a meeting with defendant Ball at their offices, for the purpose of amicably resolving various issues. However, upon arrival, Naggar was suddenly presented with a written document purporting to release Rock & Republic from any and all claims Naggar might have against the defendants.

37. At this time, Naggar refused to sign the release presented to him, without prior review by his attorney, and he requested reasonable time to do the same.

38. Naggar was then told by defendants that if he did not sign the release, in their presence, unconditionally, and without any review by his attorney, that they would forcibly evict

him from his premises immediately, without further notice.

39. Upon plaintiff's refusal to sign, he was then ordered to immediately vacate his apartments, and defendant Ball directed security personnel to publicly humiliate Naggar by escorting him out of the Rock & Republic offices, to his car parked blocks away.

40. At this time, in complete fear and apprehension over defendant Ball's intimidation and threats to forcibly remove him from his apartment, Naggar rushed to obtain his personal belongings from the Los Angeles apartment, before traveling to New York that same evening.

41. Upon his arrival at his home in New York, however, he was refused access. In this short time, defendant Ball had already arranged to have the locks at the apartment changed. Pleas to allow for entrance by both Naggar and his attorney were ignored.

42. At this time, homeless and in distress, Naggar sought refuge in a hotel. For the next week, he was refused entry even to recover his personal and private belongings.

43. After numerous demands to enter his home and recover his property, the defendants eventually produced certain of Naggar's personal and private belongings, which they had obtained by breaking into and rummaging through a locked area within his apartment, and then haphazardly cramming what would fit of Naggar's belongings into an empty suitcase.

44. On about January 23, 2006, defendant Rock & Republic then filed a baseless lawsuit in Canada against A&F Apparel Canada, a related company, seeking declaratory and injunctive relief, and seeking, among other things, considerable compensatory and punitive damages. (Ontario Superior Court of Justice, Case No. 06-CV-304651PD2). Subsequently, by "Statement of Defense and Counterclaim", dated February 2, 2006, A&F Apparel Canada asserted claims seeking, among other things, "exemplary, aggravated and punitive damages"

resulting from the “egregious and reprehensible conduct of R&R, which conduct was reckless and malicious”.

45. The parties soon settled the matter, whereby Rock & Republic agreed to pay a substantial amount, and the action was dismissed by Order dated May 11, 2007.

46. On about May 7, 2007, plaintiff Naggar arranged to meet with business associates at a high profile nightclub/restaurant called “Butter”, frequented by individuals in the fashion/entertainment industry.

47. While at the establishment, Naggar was suddenly and without reason or provocation, struck violently in the upper back.

48. Defendant Ball had deliberately, with malice and tremendous force, struck Naggar with a full glass, that shattered on and around him, showering Naggar with pieces of glass, ice and liquid.

49. At this time, to the horror of plaintiff, and in clear view of numerous patrons in the establishment, Ball proceeded to menacingly and aggressively thrust his finger at Naggar, while shouting obscenities and overt threats, such as “I’m going to hurt you!” and “no one fucks with me!”.

50. Defendant Ball did, at this time, intentionally and maliciously intimidate, threaten to harm, and approach Naggar in a menacing fashion, placing him in fear for his safety and well being.

51. Defendant Ball did, at this time, intentionally humiliate, ridicule and embarrass Naggar in a public place, before his peers and business associates.

52. Plaintiff, well aware of Ball’s prior incidents and history of violence, intimidation

and criminal behavior, immediately fled the establishment, in fear of further reprisals and harm from defendant Ball.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**AGAINST DEFENDANT ROCK & REPUBLIC**  
(Breach of Contract - Commissions)

53. Plaintiffs incorporate paragraphs “1” through “52”, above by reference.

54. That plaintiffs did enter into an agreement with the defendants whereupon defendants did promise to pay plaintiffs an amount equal to one percent (1%) of the worldwide gross sales of defendant Rock & Republic, excluding distributors, while plaintiffs provided services for defendants.

55. That the parties did agree that commissions were earned upon sale of product, and were to be paid monthly upon actual delivery of product.

56. That to date, despite full performance by the plaintiffs and due demand of commissions due and owing, defendants have refused to pay commissions for October 2005, November 2005, December 2005, and January 2006 through April 2006.

57. That defendant has willfully breached its agreement with plaintiffs by failing to pay plaintiffs commissions earned, due and owing.

58. That defendants have failed and/or refused to honor the parties’ agreement without any cause or justifiable reason.

59. That as a result of defendant’s breach of the parties’ agreement, plaintiffs have been damaged in a sum to be determined at trial, but believed to be no less than Four Hundred Thousand Dollars (\$ 400,000.00), in actual and compensatory damages, plus interest and the costs of this action.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**AGAINST DEFENDANTS**

(Breach of Contract - Consulting Fees)

60. Plaintiff incorporates paragraphs “1” through “59”, above by reference.

61. That plaintiffs did enter into an agreement with the defendants whereupon defendants did promise to pay a consulting fee equal to the sum of \$125,000.00 annually, payable at the weekly rate of \$2,403.85.

62. That to date, despite full performance by the plaintiffs, and due demand, defendants have refused to pay no less than three (3) weeks of commission fees earned, for the month of December 2005 and the first week of January 2006.

63. That defendants have failed and/or refused to honor the parties’ agreement without any cause or justifiable reason.

64. That by reason of the foregoing, plaintiffs have been caused to be damaged in an amount to be determined at trial, but no less than the sum of \$7,211.55 in actual and compensatory damages, plus interest and the costs of this action.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**AGAINST DEFENDANT ROCK & REPUBLIC**

(Unjust Enrichment)

65. Plaintiffs incorporate paragraphs “1” through “64”, above by reference.

66. Under the doctrine of *quantum meruit*, defendant Rock & Republic has been unjustly enriched by receiving the benefit of the numerous services provided by the plaintiffs in a sum to be determined at trial, but believed to be an amount no less than Five Hundred Thousand Dollars (\$ 500,000.00).

**AS AND FOR A FOURTH CAUSE OF ACTION**

**AGAINST DEFENDANTS**  
(Accounting)

67. Plaintiffs incorporate paragraphs “1” through “66”, above by reference.

68. As per the parties’ agreements, plaintiffs entrusted to the defendants a sum equal to no less than one percent (1%) of the worldwide gross sales of defendant Rock & Republic, less distributors, while plaintiffs provided services for defendants.

69. Plaintiffs have made good faith demands for an accounting as to commissions due and owing to no avail.

70. Plaintiffs have no means of knowing or ascertaining the exact funds to determine the amount of monies owed.

71. The exact amount of monies due plaintiffs cannot be ascertained without a full and complete accounting of defendants’ financial affairs.

72. Due to the unlawful actions of defendants, and the hardship to plaintiffs, defendants should bear the burden of such an accounting.

73. As a result of the above, plaintiffs request that an accounting be taken of all of defendants’ financial affairs as pertains to the parties’ agreements, with all costs of such accounting to be born by defendants.

**AS AND FOR A FIFTH CAUSE OF ACTION**  
**AGAINST DEFENDANTS**  
(Constructive Trust)

74. Plaintiff incorporates paragraphs “1” through “73”, above by reference.

75. As per the parties’ agreements, plaintiffs are the rightful owners of funds equal to no less than one percent (1%) of the worldwide gross sales of defendant Rock & Republic, less

distributors, while plaintiffs provided services for defendants, with the promise that said monies would be advanced to plaintiffs.

76. As per the parties' agreements, defendants agreed to hold such funds in trust in the name of plaintiffs, and in a certain account upon which commissions were to be made paid by defendants.

77. By refusing to remit said monies, defendants have unlawfully and fraudulently obtained funds belonging to plaintiffs.

78. Defendants have been unjustly enriched as a result of their actions.

79. Defendants are acting as a constructive trustee over said funds, and owe a duty to convey title, interest and ownership of these funds to plaintiffs.

80. As a result of the above, plaintiffs request that a constructive trust be imposed upon the funds at issue in this action.

**AS AND FOR A SIXTH CAUSE OF ACTION**  
**AGAINST MICHAEL BALL**  
(Assault and Battery)

81. Plaintiff incorporates paragraphs "1" through "80", above by reference.

82. That defendant Ball did deliberately and maliciously, threaten, intimidate and physically strike plaintiff Naggar, without cause or justification.

83. That defendant Ball did deliberately and maliciously cause plaintiff Naggar to be in fear and apprehension of bodily harm, and that Ball did in fact cause bodily harm and/or offensive touching to plaintiff Naggar.

84. That defendant Ball did deliberately and overtly threaten plaintiff Naggar that he would further harm Naggar, thus placing him in continuing and ongoing fear and apprehension

of bodily harm.

85. That by reason of defendant Ball's intentional and/or reckless actions, thus placing plaintiff Naggar in reasonable fear and apprehension of future bodily harm, plaintiff Naggar is entitled to injunctive relief, enjoining and restraining defendant Ball from communicating with and/or threatening and/or approaching and/or coming into any contact with plaintiff Naggar, in any manner, or as may be limited by the court.

86. That by reason of defendant Ball's intentional and/or reckless actions, plaintiff Naggar is entitled to actual, compensatory and punitive damages in an amount to be determined at trial.

**AS AND FOR A SEVENTH CAUSE OF ACTION**  
**AGAINST MICHAEL BALL**  
(Intentional Infliction of Emotional Distress)

87. Plaintiffs incorporate paragraphs "1" through "86", above by reference.

88. That defendant Ball's wrongful conduct, as described in the foregoing paragraphs, constitutes extreme and outrageous conduct and behavior.

89. That defendant Ball acted with malice, and with the intent to cause severe emotional distress to plaintiff Naggar and/or in deliberate disregard of the high probability that severe emotional distress to Naggar would result.

90. That defendant Ball has maliciously embarked on a course of conduct intended to cause Naggar to suffer mental and emotional distress, tension and anxiety.

91. That plaintiff Naggar has suffered and will continue to suffer great mental strain and anguish and severe emotional distress.

92. By reason of the foregoing and as a direct and proximate result of defendant

Ball's conduct, plaintiff Naggar is entitled to actual, compensatory and punitive damages against defendant Ball in an amount to be determined at trial.

**AS AND FOR A EIGHTH CAUSE OF ACTION**  
**AGAINST MICHAEL BALL**  
(Prima Facie Tort)

93. Plaintiffs incorporate paragraphs "1" through "92", above by reference.

94. Defendant Ball's wrongful conduct was completely unjustified and was intended solely to inflict substantial harm against plaintiffs.

95. By reason of the foregoing, plaintiffs are entitled to declaratory and injunctive relief as well as actual, compensatory and punitive damages in an amount to be determined at trial.

**AS AND FOR A NINTH CAUSE OF ACTION**  
**AGAINST DEFENDANTS BALL and ROCK & REPUBLIC**  
(Wrongful Eviction)

96. Plaintiffs incorporate paragraphs "1" through "93", above by reference.

97. That defendants did breach the parties' sublease by demanding that plaintiff Naggar vacate the premises prior to the agreed upon date and by forcefully evicting plaintiff without adequate and proper notice.

98. That defendants did violate state and local laws by forcefully evicting plaintiff Naggar without adequate and proper notice, due process and procedure, by changing the locks on the premises, by breaking into a private, locked area owned and maintained by plaintiff, by retaining property belonging to plaintiff and by denying plaintiff entry without court order, and by causing damage to plaintiff thereby.

99. That by reason of the above, plaintiffs are entitled to recover actual, compensatory

and punitive damages, trebled, in an amount to be determined at trial, inclusive of costs, interest and attorneys' fees.

**AS AND FOR A TENTH CAUSE OF ACTION**  
**AGAINST DEFENDANT BALL and ROCK & REPUBLIC**  
(Conversion)

100. Plaintiffs incorporate paragraphs "1" through "99", above by reference.

101. That plaintiffs owned personal property located at the premises at issue, including a plasma television and furniture.

102. That defendants intentionally interfered with plaintiffs' ownership rights in the property by improperly locking plaintiffs from the premises, breaking into a private, locked area owned and maintained by plaintiffs, and preventing plaintiffs from access to the same.

103. That punitive damages are appropriate to deter defendants' conduct and to deter others from engaging in such conduct, in that the defendants' conduct was illegal, malicious and oppressive.

104. That by reason of the above, plaintiffs are entitled to recover actual, compensatory and punitive damages, in an amount to be determined at trial, inclusive of costs, interest and attorneys' fees.

**AS AND FOR AN ELEVENTH CAUSE OF ACTION**  
**AGAINST MICHAEL BALL and ROCK & REPUBLIC**  
(Tortious Interference with Prospective Business Relations)

105. Plaintiffs incorporate paragraphs "1" through "104", above by reference.

106. Defendants' wrongful actions, as described in the foregoing paragraphs, exhibit an intentional, malicious and unjustified interference with plaintiffs' current and future business relations.



## VERIFICATION

Anthony LoPresti, an attorney duly admitted to practice before this court and the courts of the state of New York, does hereby affirm the truth of the following under penalties of perjury:

I am a member of Meltzer LoPresti, LLP, the attorneys of record for the plaintiffs in the within action, FRED NAGGAR and A & F APPAREL, USA, INC.; that I have read the foregoing Verified Complaint and know the contents thereof; that same is true to affirmant's knowledge, except to matters therein stated to be alleged upon information and belief, and that, as to those matters, affirmant believes them to be true. Affirmant further states that the reason this verification is made by affirmant and not by the plaintiffs, is because plaintiffs are presently outside of the county wherein affirmant maintains his offices.

The grounds of affirmant's belief as to all matters not stated upon affirmant's knowledge are as follows: investigation and information received by affirmant in the course of his duties as attorney for said plaintiffs.

Dated:           New York, New York  
                  June 18, 2007

\_\_\_\_\_/s/\_\_\_\_\_  
ANTHONY A. LoPRESTI