

ORIGINAL

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FILED
Superior Court of California
County of Los Angeles

FEB 22 2016

Sherri R. Carter, Executive Officer/Clerk
Judith Lara, Deputy

6 Attorneys for Plaintiffs
7 NU IMAGE, INC.; A&T IP, INC.,
CHARLES "CHUCK" WEPNER; BOXER
8 PRODUCTION SERVICES, INC.; BOXER
PRODUCTIONS, LLC; and
9 TOLLIN/ROBBINS PRODUCTIONS, LLC

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES

BC 6 11 075

13 NU IMAGE, INC., a California corporation;
14 A & T IP, INC., a California corporation,
CHARLES "CHUCK" WEPNER, an
15 individual; BOXER PRODUCTION
SERVICES, INC. a Nevada corporation;
16 BOXER PRODUCTIONS, LLC, a Nevada
limited liability company; and
17 TOLLIN/ROBBINS PRODUCTIONS, LLC, a
California limited liability company,

18 Plaintiffs,

19 v.

20 MARY ALOE, an individual; ALOE
ENTERTAINMENT, a California entity of
21 unknown type; ROBERT SIMMONS, an
individual; GRODNIK/ALOE
22 PRODUCTIONS, a California entity of
unknown type; DANIEL GRODNIK, an
23 individual; MASSIVE FILM PROJECT, a
California entity of unknown type; and DOES
24 1-10, inclusive,

25 Defendants.

Case No.:

Assigned to Hon.

COMPLAINT FOR:

- (1) BREACH OF ORAL AGREEMENT;
- (2) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
- (3) BREACH OF FIDUCIARY DUTY
- (4) MISAPPROPRIATION OF TRADE SECRETS
- (5) INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS
- (6) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

RECEIPT # : CCH520872052
DATE RECD: 02/22/16 01:05 PM
AMOUNT: \$435.00
CHECK: \$435.00
CASH: \$0.00
CHANGE: \$0.00
DRO: \$0.00

CIT/CASE: BC611075
LEA/DEF#:

COMPLAINT

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1 Plaintiffs hereby allege as follows:

2 SUMMARY OF ACTION

3 1. Plaintiff Chuck Wepner ("Wepner") is the boxing legend who was the inspiration for
 4 one of the greatest motion picture characters of all time, Rocky Balboa. Wepner entered into a
 5 contract with Tollin/Robbins Productions, LLC ("Tollin/Robbins") granting Tollin/Robbins and its
 6 successors exclusive and unique access to Wepner, his life, experiences and insights in connection
 7 with creating a motion picture about Wepner's compelling life story. As this process began,
 8 defendant Mary Aloe ("Aloe") approached Tollin/Robbins about providing assistance in raising
 9 financing for this film. Tollin/Robbins agreed she could do so, entrusting Aloe with confidential
 10 and other proprietary information about the project, conditioned upon her accepting and abiding by
 11 the obligation not to use that information to her own advantage, nor to interfere in any way with the
 12 project. After failing to raise any significant funds and abandoning the project, however, Aloe
 13 proceeded to do exactly that, stealing plaintiffs' script, confidential information, production
 14 materials and unique information obtained from Wepner, and intrusively and illegally interfering
 15 with not only plaintiffs' exclusive contractual relationship with Wepner, but with other important
 16 figures in plaintiffs' film, all to improperly make a nearly identical film that fully exploits everything
 17 she obtained in confidence.

18 2. Plaintiffs therefore seek damages and other relief against Aloe and the other
 19 defendants for, *inter alia*, breach of contract, breach of the implied covenant of good faith and fair
 20 dealing, breach of fiduciary duty, misappropriation of trade secrets, and intentional interference with
 21 contractual relations and prospective economic advantage. Plaintiffs further seek preliminary and
 22 permanent injunctions against any further development, production, promotion or distribution of
 23 Aloe's wrongfully-created copycat film.

24 PARTIES

25 3. Plaintiff Nu Image, Inc. ("Nu Image") is incorporated under the laws of the state of
 26 California, with its principal place of business in Los Angeles, California. It and its subsidiaries
 27 have produced, among other films, *The Expendables* (2010), its sequels *The Expendables 2* (2012)
 28 and *The Expendables 3* (2014), *Conan the Barbarian* (2011), and, most recently, *Olympus Has*

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1 *Fallen* (2013) and *London Has Fallen* (2016). It is the film sales agent for the Authorized Wepner
2 Film defined below.

3 4. Plaintiff A & T, IP, Inc. ("A&T") is incorporated under the laws of the state of
4 California, with its principal place of business in Los Angeles, California. It is the owner of the
5 copyright in the Authorized Wepner Film defined below.

6 5. Plaintiff Charles "Chuck" Wepner ("Wepner") is a former professional heavyweight
7 boxer residing in Bayonne, New Jersey. His dramatic 1975 fight against Muhammad Ali inspired
8 Sylvester Stallone to write and film the Academy Award-winning film *Rocky* (1976).

9 6. Plaintiff Boxer Production Services, Inc. ("Boxer Inc.") is a corporation organized
10 under the laws of the state of Nevada, with its principal place of business in Carson City, Nevada. It
11 is a producer of the Authorized Wepner Film defined below.

12 7. Plaintiff Boxer Productions, LLC ("Boxer LLC") is a corporation organized under the
13 laws of the state of Nevada, with its principal place of business in Carson City, Nevada. It is a
14 producer of the Authorized Wepner Film defined below.

15 8. Plaintiff Tollin/Robbins Productions, LLC ("Tollin/Robbins") (Nu Image, A&T,
16 Wepner, Boxer Inc., Boxer LLC and Tollin/Robbins are sometimes collectively referred to herein as
17 "Plaintiffs") is a film production company incorporated under the laws of the state of California,
18 with its principal place of business in Los Angeles, California. It is a creator and producer of the
19 Authorized Wepner Film as defined below.

20 9. Defendant Aloe Entertainment ("Aloe Entertainment") is a California entity of
21 unknown type. Its principal place of business is in Los Angeles, California.

22 10. Defendant Mary Aloe ("Aloe") is a self-described film finance expert residing in Los
23 Angeles, California. She is the founder of Aloe Entertainment and maintains a professional website
24 at www.aloeentertainment.com.

25 11. Defendant Robert Simmons ("Simmons") is a self-described film producer residing in
26 New York, New York who conducts substantial business in California.

27 12. Defendant Grodnik/Aloe Productions ("Grodnik/Aloe Productions") is a California
28 entity of unknown type. Its principal place of business is in Los Angeles, California.

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1 13. Defendant Daniel Grodnik ("Grodnik") is a self-described film producer residing in
2 Los Angeles, California.

3 14. Defendant Massive Film Project ("Massive Film Project," and collectively with Aloe,
4 Aloe Entertainment, Simmons, and Grodnik/Aloe Productions, "Defendants") is a California entity
5 of unknown type. Its principal place of business is in Los Angeles, California.

6 15. Plaintiffs do not know the true names or capacities of the persons or entities sued as
7 Does 1 to 10, inclusive, and therefore sues such defendants by fictitious names. Plaintiffs are
8 informed and believe and thereon allege that each of the Doe defendants is in some manner legally
9 responsible for the damages suffered by Plaintiffs. Plaintiffs will amend this complaint to set forth
10 the true names and capacities of these defendants when they have been ascertained, along with
11 appropriate factual allegations, as may be necessary.

12 **JURISDICTION AND VENUE**

13 16. This Court has personal jurisdiction over Defendants because they are residents of
14 and/or do business in the State of California.

15 17. Venue is proper in this county in accordance with Section 395(a) of the California
16 Code of Civil Procedure because Defendants, or some of them, reside in this county, and the injuries
17 alleged herein occurred in this county.

18 **FACTUAL SUMMARY**

19 18. In 2004, Tollin/Robbins sought out Chuck Wepner -- the New Jersey boxing legend
20 who inspired Sylvester Stallone to write and film the Academy Award winning film *Rocky* (1976) --
21 and entered into an agreement with him to make a feature film based on his life story.

22 19. Working in concert with Tollin/Robbins, Plaintiffs subsequently procured a script
23 written by Jeff Feuerzeig and Jerry Stahl. The script, which titles the film as *The Bleeder* (the
24 "Authorized Wepner Film"), focuses on Wepner's 1975 fight with the heavyweight champion
25 Muhammad Ali, wherein Wepner endured 15 rounds before finally losing by a technical knockout.

26 20. Plaintiffs' interest in being a part of telling Wepner's story, especially as told by
27 Feuerzeig's and Stahl's script, was shared by several high-profile actors, including Liev Schreiber,
28 Naomi Watts, and Elizabeth Moss, who agreed to play the lead roles for the Authorized Wepner

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1 Film. Other notable actors, including Ron Perlman, Jim Gaffigan, and Morgan Spector, later joined
2 the project in supporting roles.

3 21. In or around September 2013, as the details, budget, and schedule of the project
4 coalesced, Tollin/Robbins hired Aloe and Aloe Entertainment to raise funds in support of production
5 of the Authorized Wepner Film. Aloe held herself out as a "film finance expert" and assured
6 Tollin/Robbins that she would be able to source equity to fund the film in the range of \$5-6.5
7 million. In exchange for their efforts, Aloe and Aloe Entertainment would be paid 5% of the actual
8 equity sourced and would be given an executive producer credit on the Authorized Wepner Film.
9 Notably, the parties agreed to abide by "other terms as are standard for motion picture agreements of
10 this type."

11 22. The parties' agreement was verbal and also memorialized in a writing dated
12 September 26, 2013.

13 23. Aloe and Aloe Entertainment were given copies of the script for the Authorized
14 Wepner Film, detailed budgets, proposed production schedules, cast lists, sizzle reels, and other
15 production materials to prepare their marketing presentations to potential investors. Aloe and Aloe
16 Entertainment were expressly informed that these materials were confidential and could not be used
17 other than to try to raise financing for the Authorized Wepner Film, and certainly not for a
18 competing project.

19 24. Almost immediately after they were hired, however, Aloe and Aloe Entertainment
20 began to deviate from the parties' oral agreement and the confirmed terms. Among other things,
21 Aloe incessantly peppered Plaintiffs with emails and phone calls – sometimes in excess of two dozen
22 per day – with requests from purported investors to adjust the budget, interview the cast, and/or
23 otherwise compromise the confidentiality and integrity of the project. Many of these emails were
24 written in a stream-of-consciousness style, lacking any attempt at punctuation and requiring
25 numerous interpretations, confirmations, and explanations by further email and/or phone calls. A
26 significant amount of Plaintiffs' time during this period was occupied simply by reviewing and
27 responding to Aloe's nonsensical emails.
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1 25. Notwithstanding the time spent on these communications, Aloe's incessant phone
2 calls, working lunches, and emails with unknown third parties never developed into actual funding.
3 Most or all of the purported attempts by Aloe and Aloe Entertainment to procure funding proved to
4 be ethereal agreements-to-negotiate and other frolics that did nothing but waste time.

5 26. Most alarmingly, Aloe and Aloe Entertainment also began negotiating side deals with
6 other "finance experts," including at one point an incipient agreement with a third party to further
7 secure funding at a fee rate of 5%, which under Aloe's understanding would be paid out of the funds
8 collected on top of her own 5% fee. Plaintiffs immediately informed Aloe that any such side deal
9 would be unacceptable.

10 27. Soon after, with no funds secured and no credible leads on funding, Aloe and Aloe
11 Entertainment ceased their efforts to obtain funding, warranting no objection from Plaintiffs, who
12 realized that Aloe and Aloe Entertainment would not be able to perform as promised.

13 28. Plaintiffs eventually procured funding elsewhere and proceeded with principal
14 filming, wrapping filming on the Authorized Wepner Film in the fall of 2015 and expecting to
15 release it in the summer of 2016.

16 29. In late 2015, however, Plaintiffs learned of another movie based on Wepner's life,
17 tentatively titled *American Brawler* (the "Stolen Wepner Film"). Upon further investigation,
18 Plaintiffs discovered that Aloe and Aloe Entertainment, working with Simmons, Grodnik,
19 Grodnik/Aloe Productions, and Massive Film Project had produced and financed the Stolen Wepner
20 Film using a script which was similar to Feuerzeig's and Stahl's. The script for the "Stolen Wepner
21 Film includes numerous references to facts, instances, events or statements made by or about
22 Wepner which have never been publically documented and were only known to Aloe through her
23 access to Plaintiffs' script.

24 30. Comparison between the two scripts, sizzle reels, and marketing materials makes it
25 clear that Defendants used portions or all of Plaintiffs' script, budget, production schedule, sizzle
26 reel, and other production materials to develop their own copycat film, which Defendants apparently
27 intend to release before the Authorized Wepner Film. Upon information and belief and under these
28 circumstances, each of the Defendants knew or should have known that the material given to them

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1 by Aloe constituted Plaintiffs' confidential, proprietary, and trade secret information and was given
2 to them in breach of Aloe's obligations to Plaintiffs.

3 31. Aloe's and Aloe Entertainment's surreptitious efforts to create a copycat film in
4 competition with Plaintiffs' Authorized Wepner Film, as well as their misappropriation of Plaintiffs'
5 script and production materials, constitute a clear breach of Plaintiffs' trust in Aloe and Aloe
6 Entertainment as their fiduciaries, agents and representatives to third parties, and a breach of the
7 duties imposed on Aloe and Aloe Entertainment by the parties' agreement.

8 32. Adding insult to injury, Plaintiffs also learned that Aloe and her co-conspirators
9 directly contacted Liev Schreiber to recruit him away from the Authorized Wepner Film and join the
10 Stolen Wepner Film. She also caused a copy of Defendant's script to be sent to Schreiber, and
11 invited him to her set, as part of her recruitment efforts. Aloe similarly attempted to recruit
12 Plaintiffs' director and screenwriter, Jeff Feuerzeig, to join the Stolen Wepner Film.

13 33. Most egregiously, Aloe and her co-conspirators improperly contacted Wepner and his
14 attorney numerous times, and lied to them outright about Tollin/Robbins' intent and ability to make
15 the Authorized Wepner Film. Among other misrepresentations, Aloe stated to Wepner's attorney
16 that Tollin/Robbins would not be able to procure funding for the Authorized Wepner Film without
17 her help, that she had established a relationship with Liev Schreiber and convinced him to join
18 Defendants' cast, and that Tollin/Robbins would not be proceeding with the Authorized Wepner
19 Film. Reluctantly, and based upon the misrepresentations made by Aloe concerning Tollin/Robbins'
20 ability to procure funding for the Authorized Wepner Film, Wepner agreed to meet with Defendants,
21 but quickly learned from Liev Schreiber that Aloe's representations were completely false, and
22 ultimately refused to work with Defendants.

23 34. Promotional material about the Stolen Wepner Film has already begun to frustrate
24 Plaintiffs' attempts to publicize and distribute the Authorized Wepner Film, requiring additional
25 marketing funds and efforts to rectify and/or offset market confusion regarding the two films. If
26 unchecked, Defendants' copycat Stolen Wepner Film could entirely preclude or substantially
27 damage the release of Plaintiffs' Authorized Wepner Film.
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SECOND CAUSE OF ACTION:
BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING
(Against Aloe and Aloe Entertainment)

41. Plaintiffs reallege and incorporate herein by reference the preceding paragraphs.

42. To the extent one or more of the breaches identified in the First Cause of Action is determined not to be an express breach, Aloe and Aloe Entertainment breached the implied covenant of good faith and fair dealing by failing to treat Plaintiffs' script, production materials, deal with and access to Wepner to be provided exclusive and confidential information, deals with and access to cast members associated with the Authorized Wepner Film, and other materials, as confidential.

43. In misappropriating these materials, Aloe and Aloe Entertainment have unfairly interfered with and frustrated a commonly-understood benefit to Tollin/Robbins under the oral agreement at issue, namely the benefit of maintaining the confidentiality and proprietary nature of these materials and not using the information gleaned in the course of the parties' performance to subsequently create a competing project and/or hinder the project which prompted the agreement in the first place.

44. Tollin/Robbins performed all terms, conditions, covenants, and promises required of them by the parties' agreement, or were otherwise excused from those promises by the conduct of Defendants.

45. As a direct and proximate result of Aloe's and Aloe Entertainment's breaches, Tollin/Robbins suffered damages in an amount to be shown according to proof at trial.

THIRD CAUSE OF ACTION:
BREACH OF FIDUCIARY DUTY
(Against Aloe and Aloe Entertainment)

46. Plaintiffs reallege and incorporate herein by reference the preceding paragraphs.

47. As Plaintiffs' agents who were entrusted with Plaintiffs' confidential script, budget, production schedule, sizzle reel, contracts with and information provided by Wepner and cast members, and other production materials, along with control of a bank account maintained by

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1 Plaintiffs, Aloe and Aloe Entertainment owed and continue to owe duties of care, loyalty, and good
2 faith to Plaintiffs.

3 48. Aloe and Aloe Entertainment breached their fiduciary duties to Plaintiffs by, among
4 other things, misappropriating Plaintiffs' confidential script, budget, production schedule, sizzle reel,
5 contracts with and information provided by Wepner and cast members, and other production
6 materials, and by actively using those materials to create a film which would compete with
7 Plaintiffs' film.

8 49. As a direct and proximate result of Aloe's and Aloe Entertainment's breaches,
9 Plaintiffs suffered damages in an amount to be shown according to proof at trial.

10 **FOURTH CAUSE OF ACTION:**

11 **MISAPPROPRIATION OF TRADE SECRETS**

12 (Against All Defendants)

13 50. Plaintiffs reallege and incorporate herein by reference the preceding paragraphs.

14 51. Plaintiffs own certain trade secrets relative to their upcoming Authorized Wepner
15 Film, including but not limited to a confidential script, budget, production schedule, sizzle reel,
16 contracts with and information provided by Wepner and cast members, and other production
17 materials, from which they derive independent economic value and which is/was not generally
18 known or readily ascertainable by proper means by third parties, and for which Plaintiffs took
19 reasonable steps to ensure confidentiality.

20 52. Defendants misappropriated Plaintiffs' trade secrets by taking materials given to them
21 in confidence, disclosing them to competing third parties, and using them to create a competing film.

22 53. Defendants have wrongfully used and will continue to wrongfully use Plaintiffs' trade
23 secrets unless otherwise enjoined. Defendants have not stopped using Plaintiffs' trade secrets,
24 despite a demand from Plaintiffs that they do so.

25 54. As a direct and proximate result of Defendants' misappropriation of Plaintiffs' trade
26 secrets, Plaintiffs suffered damages in an amount to be shown according to proof at trial.

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1 55. Because Plaintiffs' remedy at law is inadequate, Plaintiffs seek preliminary and
2 permanent injunctive relief to avoid further financial losses and other damages to its attempt to
3 market, promote, and distribute its original film, the Authorized Wepner Film entitled *The Bleeder*.

4 56. Defendants' ongoing misappropriation has been willful and malicious in light of the
5 repeated instructions to keep Plaintiffs' materials confidential and/or to cease using those
6 confidential materials, warranting punitive damages and compensation of Plaintiffs' attorneys' fees.

7 **FIFTH CAUSE OF ACTION:**

8 **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**

9 **(Against All Defendants)**

10 57. Plaintiffs reallege and incorporate herein by reference the preceding paragraphs.

11 58. Tollin/Robbins is a party to an agreement with Chuck Wepner to produce and market
12 a film based on his life story. Tollin/Robbins is also a party to an agreement with Aloe/Aloe
13 Entertainment to raise funds to produce that film.

14 59. By virtue of Aloe's agreement with Tollin/Robbins, Aloe and her co-conspirators
15 were aware of Tollin/Robbins's agreement with Wepner.

16 60. By misappropriating Plaintiffs confidential script, budget, production schedule, sizzle
17 reel, and other production materials, and by using those materials to create a copycat film,
18 Defendants knowingly, maliciously, and willfully interfered with the performance on
19 Tollin/Robbins's agreement with Wepner.

20 61. Similarly, by voluntarily accepting Plaintiffs' confidential materials and by using
21 those materials to create a competing film, Defendants Simmons, Grodnik, Grodnik/Aloe
22 Productions, and Massive Film Project knowingly, maliciously, and willfully interfered with the
23 performance on Aloe's and Aloe Entertainment's agreement with Tollin/Robbins.

24 62. As a direct and proximate result of Defendants' acts of interference, Plaintiffs have
25 suffered damages in an amount to be shown according to proof at trial.
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SIXTH CAUSE OF ACTION:

INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS

(Against All Defendants)

63. Plaintiffs reallege and incorporate herein by reference the preceding paragraphs.

64. Plaintiffs are/were engaged in economic relationships with various film distributors and theaters to market its upcoming film, the Authorized Wepner Film entitled *The Bleeder*.

65. By virtue of their agreement with Plaintiffs, Defendants were aware of Plaintiffs' relationships and negotiations with these film distributors and theaters.

66. By misappropriating Plaintiffs' confidential script, budget, production schedule, sizzle reel, contracts with and information provided by Wepner and cast members, and other production materials, and by using those materials to create a copycat film, Defendants knowingly, maliciously, and willfully interfered with Plaintiffs' relationships and negotiations with the film distributors and theaters.

67. As a direct and proximate result of Defendants' acts of interference, Plaintiffs suffered damages in an amount to be shown according to proof at trial.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. For damages according to proof;
2. For punitive damages;
3. For attorneys' fees and costs;
4. For prejudgment interest;
5. For preliminary and permanent injunctive relief enjoining Defendants from further acts of misappropriation of Plaintiffs' trade secrets and halting further production, promotion and/or distribution of its wrongfully-produced copycat film, *American Brawler*; and
6. For such other and further relief as may be permitted by law.

Dated: February 22, 2016

FOX ROTHSCHILD LLP

By

Lincoln D. Bandlow
Patrick J. Hagan
Attorneys for Plaintiffs
Nu Image, Inc.; A&T IP, Inc.; Charles "Chuck"
Wepner; Boxer Production Services, Inc.; Boxer
Productions, LLC; and Tollin/Robbins Productions,
LLC

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JURY DEMAND

Plaintiffs demand a jury trial of all claims alleged in this complaint or any amended complaint.

Dated: February 22, 2016

FOX ROTHSCHILD LLP

By



Lincoln D. Bandlow
Patrick J. Hagan
Attorneys for Plaintiffs
Nu Image, Inc.; A&T IP, Inc.; Charles "Chuck"
Wepner; Boxer Production Services, Inc.; Boxer
Productions, LLC; and Tollin/Robbins Productions,
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