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CHARLES WEPNER a/k/a CHUCK WEPNER,	**SUPERIOR COURT OF NEW JERSEY LAW DIVISION: HUDSON COUNTY**
Plaintiff,	**DOCKET NO.:**
v.	**CIVIL ACTION**
	COMPLAINT AND JURY TRIAL DEMAND
SYLVESTER STALLONE,	
Defendant.	

Plaintiff, Charles Wepner, a/k/a Chuck Wepner ("plaintiff" or "Wepner"), as and for his complaint and jury trial demand, by his attorneys, Gangemi, Mango & Iacoviello, LLP, alleges as follows:

NATURE OF ACTION

1. This action arises out of the continuous and current violation of Wepner's rights of publicity by Defendant Sylvester Stallone ("defendant" or "Stallone"). Throughout the years including to date, Stallone has used plaintiff's name to promote the

motion picture *Rocky*, its four (4) sequels, and, among other things, products associated with the *Rocky* line of movies, including the character of Rocky Balboa. (All of the foregoing are collectively referred to herein as the "*Rocky* Franchise").

2. Stallone was inspired to write the script for the motion picture *Rocky* as a result of viewing, and the circumstances surrounding, the Chuck Wepner – Muhammad Ali fight in 1975. Upon information and belief, the *Rocky* movie (including the four sequels) has generated gross revenues in excess of one billion dollars. Stallone has used, and continues to use, the name of Chuck Wepner in the promotion of the *Rocky* line of movies and *Rocky* Franchise, without Wepner's express permission and without compensating Wepner.

3. Stallone uses the name of Wepner for marketing and commercial purposes, by capitalizing on the fact that *Rocky* is based on a true story, namely, Wepner's. Such a use is for the purpose of adding an element of reality and credibility to the *Rocky* movies, and to, among other things, attract a new generation of fans and moviegoers. This blatant misappropriation of Wepner's name by Stallone has the effect of depriving Wepner of past and future compensation for the contribution he has made to not only the *Rocky* Franchise, but to Stallone's career.

THE PARTIES

4. Plaintiff is at all times relevant hereto a male individual, residing in the city of Bayonne, the County of Hudson, and the State of New Jersey. Wepner is a former professional boxer and ranked contender for the heavyweight boxing championship of the world. Currently, Wepner works as a liquor salesman in the State of New Jersey.

5. Upon information and belief, defendant is a male individual, residing in, among other places, Beverly Hills, the State of California. Defendant is doing business in the County of Hudson, the State of New Jersey. Upon information and belief, defendant works as an actor, writer, director and producer of motion pictures. Defendant's motion pictures are exhibited and sold throughout the world, including the State of New Jersey.

THE FACTS

Plaintiff's Boxing Career

6. Plaintiff began his professional boxing career in Bayonne, New Jersey, in August 1964, with a second round knockout of Charlie "Lightning" Cooper. Prior to commencing his professional career, plaintiff was a reigning New York and National Gold Gloves Champion.

7. Throughout his professional career, plaintiff fought many top-ranked contenders, and was himself a top-ten ranked contender for over forty consecutive months during one stretch of his career. Plaintiff was also the reigning North American Boxing Association Heavyweight Champion from 1971 through 1975.

8. In late 1974, plaintiff defeated Terry Henke by knockout in the eleventh round, in Salt Lake City, Utah, as part of a fundraiser for the children of Biafra, organized by plaintiff's promoter, Don King.

9. Prior to the Henke fight, Don King informed plaintiff that if he defeated Henke, plaintiff's next fight would be for the heavyweight title, against George Foreman, who at the time was the heavyweight champion of world. After plaintiff defeated Henke, his title fight against George Foreman was not possible due Muhammad

Ali's defeat of Foreman, in which Ali reclaimed the title. In lieu of George Foreman, Muhammad Ali agreed to fight plaintiff for the heavyweight title of the world.

10. In or about December 1975, plaintiff was notified by his manager that he was scheduled to fight Muhammad Ali for the world heavyweight championship, on March 24, 1975, in Richfield, Ohio.

11. During the weeks leading up to the fight, the sportswriters and odds-makers covering the fight all predicted that Ali would win decisively. In fact, some odds-makers named Ali as a 30-1 favorite to win the bout in less than three rounds. Sports Illustrated labeled the fight "Boxing's Strange Encounter," and placed Wepner on its cover. Indeed, many in the media called the fight a 'public joke'.

12. For the first time in his professional career, plaintiff was able to dedicate his full efforts to training for a fight. Previously, plaintiff was only able to train on a part-time basis, due to his need to maintain a regular job during the day.

13. On March 24, 1975, plaintiff fought Muhammad Ali for the world heavyweight championship, in Richfield, Ohio. During the ninth round of the fight, plaintiff knocked down Ali. The referee began a 'ten-count', but Ali rose off the canvas in time to beat the count. The fight lasted until the fifteenth round, when Muhammad Ali defeated plaintiff by TKO-- Technical Knock-Out, with nineteen seconds remaining in the fight.

14. Following the fight, the public's response to Wepner's performance was astounding. Despite having lost, Wepner was hailed as a courageous fighter with tremendous heart. Ali was quoted as stating that "no other fighter could have

withstood the punishment that Wepner tolerated for fifteen rounds and still have been standing."

The Inspiration for *Rocky*

15. Upon information and belief, and as reported by defendant, on the night of March 24, 1975, defendant witnessed the fight between plaintiff and Muhammad Ali by closed-circuit television. According to defendant, Wepner's courageous performance was the "catalyst" that inspired him to write a script based upon Wepner's experience both prior and during his fight against Ali. Over the next several days immediately following the fight, Stallone penned the script for the movie *Rocky*, with the character of Rocky Balboa based upon Chuck Wepner.

16. Several months after Wepner's fight with Ali, Stallone telephoned Wepner to inform him that he had written a movie script in just three days after being inspired by Wepner's performance against Ali. Indeed, on numerous occasions, many times in the presence of others, defendant has referred to Wepner as "my inspiration."

17. *Rocky*, released in 1976, earned critical acclaim, winning three (3) Academy Awards, including Best Picture.

The *Rocky* Franchise

18. As of the date of the filing of this Complaint, there have been five (5) *Rocky* movies made, known as *Rocky, Rocky II, Rocky III, Rocky IV,* and *Rocky V.* Upon information and belief, these movies have generated gross revenues in excess of one billion dollars. In addition, upon information and belief, it appears that a sixth movie bearing the *Rocky* name will eventually be released. It has also been reported that defendant is considering a Broadway theatre production based upon *Rocky*.

19. The success of the five *Rocky* movies has spawned a veritable franchise, generating millions of dollars of revenue on a yearly basis for defendant in sales of products related to the original movie, including but not limited to memorabilia, apparel, artwork, musical works, literary works, videos, DVDs, toys and games. The creation of such products, and the use of plaintiff's name in connection with such products, continues to this day.

20. The *Rocky* line of movies are exhibited frequently on television throughout the world, and have made defendant a household name causing him to enjoy mega-celebrity status and success. Indeed, *Rocky* is arguably the single most important contributing factor to defendant's success as a motion picture actor, writer, director, producer, and businessman.

Defendant's Misappropriation

21. Defendant has used, and continues to use, the name of Wepner in the promotion of the *Rocky* Franchise, by capitalizing on the fact that *Rocky* is based on a true story – that of Wepner's. Such uses of Wepner's name by defendant serve no purpose other than to promote the *Rocky* Franchise, which generates tremendous revenue for defendant, and will continue to do so in the future.

22. Defendant refers to Wepner as a "supposed stumblebum" and a "club fighter," who was given a shot at the heavyweight title despite the long odds, and cemented his place in history through a courageous performance. Aware that the story line of *Rocky* mirrors Wepner's true story, defendant seizes upon the opportunity to use Wepner's name in drawing the comparison, which adds tremendous appeal to the *Rocky* Franchise, thus enhancing sales.

23. During 2001, the twenty-fifth anniversary of the Academy Award of Best Picture to *Rocky* in 1976, defendant appeared in numerous television interviews in which he used the name of Wepner while describing *Rocky*, and how it became a blockbuster movie. Defendant stated that Wepner was the true-life boxer who provided the basis for the character of Rocky Balboa. During this same time, the twenty-fifth anniversary edition "Special Edition" DVD of *Rocky* was being marketed and sold throughout the world.

24. Defendant has capitalized, and continues to capitalize, on the fact that using Wepner's name in conjunction with the *Rocky* Franchise adds an element of reality to the product defendant is selling.

25. Aware of its intrinsic value, defendant has used Wepner's name in this vain in television interviews, in print, marketing materials, as part of products, and in promotional pieces, for the sole purpose of perpetuating the *Rocky* Franchise and in order to stoke the commercial interest in further products, including subsequent films based upon the Rocky Balboa character.

26. Defendant's unauthorized use of Wepner's name in this vain continues to this very day, selling the *Rocky* Franchise to a new generation unfamiliar with the original movie. Indeed, Wepner's name is currently intricately linked to various marketing materials attributed to defendant and prominently displayed in various media, including defendant's official website, and in materials used to market the sales of videotapes and digital video discs (DVD's).

27. In the "Special Edition" *Rocky* DVD, in the print materials found in the packaging of the disc, as well as in an interview visible while watching the DVD,

Wepner's name is mentioned as having provided inspiration to defendant for going "the full fifteen rounds against heavyweight Muhammad Ali." In the jacket that accompanies the DVD, it is noted that *Rocky* "spawned four sequels," and "inspired-and continues to inspire-audiences to follow their dreams with the same courage, determination and perseverance of the brave young Philadelphia club fighter who went the distance – and became a legend."

28. Through the use of Wepner's name in association with the marketing of DVDs such as the "Special Edition" *Rocky*, a bridge is created, connecting the fantasy world of movies to real life, thus enabling defendant to market the *Rocky* Franchise with the added element of having a 'real-life Rocky' among our midst, from which defendant draws valuable marketing appeal.

Unfulfilled Promises

29. Defendant, on repeated occasions throughout the past twenty-eight years, has made numerous promises to Wepner, concerning various methods in which plaintiff might be compensated for being the inspiration for *Rocky*, and for the many uses of Wepner's name in the promotion of the franchise as described herein.

30. On one occasion, defendant invited Wepner to come to Philadelphia to read for the part of "Ching Webber," a part defendant had written into the script of *Rocky II*. Although plaintiff read for the part, it was ultimately cut out of the movie.

31. As far as the *Rocky* Franchise is concerned, defendant has stated to Wepner, "there will be something in this for you."

32. In or about 1997, when defendant was filming *Copland* in New Jersey, Wepner visited the set and met with defendant. At that time, defendant stated to Wepner that he was "working on something," for Wepner, promising him that the two would 'work on a project together' in the near future.

33. Defendant's promises were intended to placate plaintiff in order that defendant could continue to capitalize on the use of Wepner's name, without consent or compensation, in the promotion of the *Rocky* Franchise.

34. Throughout the years, Wepner has relied on defendant's numerous and repeated promises of some sort of compensation. Nevertheless, his trust in defendant has been entirely in vain.

FIRST COUNT

(For Violation of Plaintiff's Right of Publicity)

35. Plaintiff repeats, realleges, and incorporates each and every allegation contained in Paragraphs 1 through 34, inclusive, as if fully set forth herein.

36. Defendant has used, and continues to use the name and likeness of plaintiff in the promotion of the *Rocky* Franchise, in order to enhance the sales of products associated therewith, and in order to enhance defendant's own image.

37. Defendant's misappropriation of plaintiff's name and likeness provides defendant with a commercial advantage by increasing the appeal and sales of products associated with defendant.

38. Defendant has never secured the consent of plaintiff, either in writing or orally, to use plaintiff's name in likeness in the manner described herein, nor in any manner whatsoever.

39. Defendant was at all times relative hereto aware that the use of plaintiff's name as alleged herein was not authorized by plaintiff.

40. As a direct and proximate result of defendant's violation of plaintiff's right to his own publicity, as described herein, plaintiff has suffered, and continues to suffer severe financial damages in the form of lost income plaintiff should have received in compensation for his name and likeness being used in the manner described herein.

SECOND COUNT

(For Unjust Enrichment)

41. Plaintiff repeats, realleges, and incorporates each and every allegation contained in Paragraphs 1 through 40, inclusive, as if fully set forth herein.

42. As alleged hereinabove, defendant has misappropriated plaintiff's name and likeness, without plaintiff's consent, and without compensating plaintiff, and has profited from such misconduct through the added sales appeal plaintiff's name lends to defendant and the *Rocky* Franchise.

43. As a result of such misconduct, defendant has been unjustly enriched, and is in possession of money that in good conscience and justice belongs to plaintiff.

44. As a direct and proximate result of defendant's acts of misappropriation and unjust enrichment, plaintiff has suffered damages in the form of profits defendant has earned from increased sales of products associated with the *Rocky* franchise, a portion of which profits should be disgorged to plaintiff.

THIRD COUNT

(For Detrimental Reliance)

45. Plaintiff repeats, realleges, and incorporates each and every allegation contained in Paragraphs 1 through 44, inclusive, as if fully set forth herein.

46. As alleged hereinabove, defendant has promised plaintiff that he would receive compensation for the use of his name, whether in the form of monetary compensation, or in the form of acting roles and/or movie-related projects that would generate income for plaintiff.

47. Plaintiff reasonably relied on defendant's promises of compensation for the use of plaintiff's name in the promotion of the sale of defendant's products.

48. Plaintiff reasonably relied on defendant's promises of compensation, to plaintiff's detriment.

49. As a direct and proximate result of plaintiff's detrimental reliance on defendant's promises of compensation, plaintiff has suffered damages in the form of profits defendant has earned from increased sales of products associated with the *Rocky* Franchise, a portion of which profits should be disgorged to plaintiff.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands judgment:

As to the First Count:

50. Awarding plaintiff damages in an amount not less than FIFTEEN MILLION DOLLARS ($15,000,000.00), and other compensatory, consequential and punitive damages.

As to the Second Count:

51. Awarding plaintiff damages in an amount not less than FIFTEEN MILLION DOLLARS ($15,000,000.00), and other compensatory, consequential and punitive damages.

As to the Third Count:

52. Awarding plaintiff damages in an amount not less than FIFTEEN MILLION DOLLARS ($15,000,000.00), and other compensatory, consequential and punitive damages.

As to all Counts:

53. Awarding plaintiff all costs of suit and reasonable attorneys' fees incurred herein by plaintiff to the extent provided by law;

54. Awarding plaintiff interest as may be provided by law; and

55. Awarding plaintiff such other and further relief as the Court deems to be just and proper.

DATED: November 12, 2003

GANGEMI , MANGO & IACOVIELLO, LLP

By: _____
Anthony G. Mango
Attorneys for Plaintiff
CHARLES WEPNER a/k/a
CHUCK WEPNER

KENNETH G. POLLER, P.A.

By: _____
Kenneth G. Poller
Local Counsel for Plaintiff
CHARLES WEPNER a/k/a
CHUCK WEPNER

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues.

GANGEMI , MANGO & IACOVIELLO, LLP

By: _____
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CHARLES WEPNER a/k/a
CHUCK WEPNER

KENNETH G. POLLER, P.A.

By: _____
Kenneth G. Poller
Local Counsel for Plaintiff
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DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, KENNETH G. POLLER and ANTHONY G. MANGO are hereby designated as trial counsel.

RULE 4:5-1 CERTIFICATION

The undersigned hereby certifies that:

1. I am an attorney at law of the State of New Jersey with the law firm of Kenneth G. Poller, P.A. In that capacity I am familiar with the facts of this case.

2. To the best of my knowledge, information and belief our investigation and investigation on behalf of our client has disclosed no other action pending concerning the subject matter of this action in any court or arbitration proceeding nor has it disclosed any other persons who should be added as parties to this action at this time. In addition, as of this date, there are no actions contemplated which relate to this matter.

3. I am aware of my continuing obligation during the course of this litigation to file and serve on all other parties and with this Court an amended Certification if there is a change in the facts stated in this Certification.

KENNETH G. POLLER

Dated: November 12, 2003