

**FILED**  
NORTH COUNTY DIVISION

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CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

1 **JOHN V. GAULE (SBN: 105780)**  
2 **ODDENINO & GAULE**  
3 **444 E. HUNTINGTON DRIVE, SUITE 325**  
4 **ARCADIA, CALIFORNIA 91006**  
5 **(626) 447-5454**

6 **Attorneys for Plaintiffs, JOSEPH PIRROZI and J&T HOBBY LLC**

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN DIEGO**

10 **Case No. 37-2012-00056843-CU-BT-NC**

11 **JOSEPH PIROZZI, an individual,**  
12 **and J&T HOBBY LLC,**

13 **COMPLAINT**

14 **Plaintiffs,**

15 **vs.**

16 **RICHARD McWILLIAM, an individual,**  
17 **THE UPPER DECK COMPANY INC.**  
18 **AND DOES 1 THROUGH 100,**  
19 **INCLUSIVE,**

20 **Defendants.**

21 **COMES NOW** the Plaintiffs Joseph Pirozzi and J&T Hobby LLC and, for  
22 causes of action against the Defendants, The Upper Deck Company, Inc. and  
23 DOES 1 through 100, inclusive, complains and alleges as follows:

24 **GENERAL ALLEGATIONS**

25 1. The Court has jurisdiction over this action and the amount in controversy  
26 exceeds Twenty-Five Thousand (\$25,000.00) Dollars.

27 2. Plaintiff JOSEPH PIROZZI ("Pirozzi"), is and was at all relevant  
28 times, the President of J&T Hobby and, by and through J&T Hobby, entered into  
contracts with Defendants, and each of them, and conducted business in San  
Diego, California.

3. Plaintiff J&T HOBBY LLC ("J&T Hobby") is and at all relevant times herein  
mentioned was a limited liability company organized under New York law, and  
conducted business in San Diego, California.

4. Defendant RICHARD McWILLIAM ("McWilliam") is and at relevant times

1 herein mentioned was an individual residing in San Diego, California and is the  
2 Owner, President, and Chief Executive Officer of The Upper Deck Companies  
3 Inc. which conducts substantial business, maintains offices and stores, and/or  
4 conducts interstate commerce in the County of San Diego, City of Carlsbad.

5 5. Defendant THE UPPER DECK COMPANY INC. ("Upper Deck") is and at  
6 all times herein mentioned was, organized under the laws of the State of  
7 California with its headquarters and/or principal place of business in the County of  
8 San Diego, City of Carlsbad.

9 6. The true names and capacities of Defendants herein named as DOES 1  
10 through 100 are unknown to Plaintiffs, who therefore sue said Defendants, and  
11 each of them, by such fictitious names. Plaintiffs will amend this Complaint to  
12 show their true names and capacities when same have been ascertained.  
13 Plaintiffs are informed and believe, and thereon allege, that each of the  
14 defendants designated herein as DOES was responsible in some manner for the  
15 events herein alleged, and that Plaintiffs' damages as herein alleged were  
16 caused by their conduct.

17 7. Plaintiffs are informed and believe, and thereon alleges, that each of the  
18 defendants herein was, at all times relevant to this action, the agent, employee,  
19 servants, representing partner, co-conspirators and/or joint venturer of the  
20 remaining defendants and was acting within the course and scope of that  
21 relationship. Plaintiffs are further informed and believe, and thereon alleges, that  
22 each of the defendants herein gave consent to, ratified, and authorized the acts  
23 alleged herein to each of the remaining defendants. Plaintiffs are informed and  
24 believe and based thereon alleges that the officers, directors and/or managing  
25 agents of the business entity defendants authorized, directed and/or ratified the  
26 wrongful acts of the employees and representatives of said Defendants and,  
27 consequently, all of said Defendants are jointly and severally liable to Plaintiffs.

28 8. Plaintiffs allege on the basis of information and belief that Defendants, and

1 each of them, intermingled their assets and identities to such an extent that they  
2 are alter egos of one another, and/or that Defendants, and each of them, and  
3 DOES 1 to 100, are completely owned, controlled, dominated, used, managed  
4 and operated by and on behalf of one or more of the remaining defendants and  
5 intermingled their assets and identities to such an extent that they are the alter  
6 egos of said Defendants, are one and the same entity and are a mere shell by  
7 which the remaining defendants conduct business. Plaintiffs further alleges on  
8 the basis of information and belief that each of the defendant entities failed to  
9 maintain corporate identities separate and distinct from one another such that the  
10 adherence to the function of the separate existence of each of those entities  
11 would promote injustice and sanction fraud upon Plaintiffs.

12 **FIRST CAUSE OF ACTION AS TO DEFENDANTS, AND EACH OF THEM**  
13 **(FRAUD)**

14 9. Plaintiffs incorporate by reference each and every allegation above, as  
15 though fully set forth therein.

16 10. On or around 1994, in the City of Carlsbad, San Diego County,  
17 California, Plaintiffs and Defendants entered into a written contract (hereinafter  
18 "Contract") whereby Defendants agreed to manufacture and sell certain sports  
19 and entertainment trading cards (hereinafter "Product") to Plaintiffs to be  
20 distributed throughout the United States. From 1994 through 2009, the parties  
21 entered into numerous subsequent Contracts containing the same and/or similar  
22 terms of the original agreement. Pursuant to and in conjunction with the  
23 Contract, Plaintiffs were exclusive distributors for Defendants, and each of them,  
24 and Pirozzi signed and executed an unconditional personal guaranty (hereinafter  
25 "Guaranty") promising full performance and prompt payment under the Contract.  
26 The business relationship of Plaintiffs and Defendants continued for some time  
27 until approximately October 26, 2009.

28 11. Starting sometime around 2005, rumors materialized that Defendants, and

1 each of them, became closely connected, involved, associated with and/or  
2 acquired and/or purchased and/or controlled distributing entities including, but not  
3 limited to, Edgeman and Vintage (hereinafter "Distributing Entities"). These  
4 Distributing Entities became competitors of Plaintiffs as they performed the same  
5 functions, duties, work, operations, as Plaintiffs and as described under the  
6 Contract between Plaintiffs and Defendants.

7 12. Upon hearing the rumors, commencing sometime around 2005 and  
8 continuously through October 2009, Pirozzi inquired with Defendants, and each  
9 of them, whether Defendants owned, controlled, dominated, used, managed the  
10 Distributing Entities. Between 2005 through October 2009 and beyond,  
11 Defendants, and each of them, consistently represented to Pirozzi that  
12 Defendants did not own, control, dominate, use, manage the Distributing Entities.  
13 Between 2005 through October 2009 and beyond, Defendants, and each of them,  
14 also represented to the public and/or other distributors and/or third-parties  
15 conducting business with Defendants, that Defendants did not own, control,  
16 dominate, use, manage the Distributing Entities.

17 13. The representations made by the Defendants, and each of them, were in  
18 fact false.

19 14. The true facts were that Defendants, and each of them, owned, controlled,  
20 dominated, used, and managed the Distributing Entities.

21 15. When the Defendants, and each of them, made these representations,  
22 they knew them to be false and made these representations with the intention to  
23 deceive and defraud the Plaintiffs and/or other distributors and/or others which  
24 conducted business with Defendants and to induce these individuals, including  
25 Plaintiffs, to act in reliance on these representations in the manner hereafter  
26 alleged, or with the expectation that Plaintiffs would so act. By inducing Plaintiffs  
27 to act, Defendants, and each of them, schemed against Plaintiffs to unrightfully  
28 secure monies through the Guaranty.

1 16. Plaintiffs, at the time these representations were made by the Defendants,  
2 and each of them, and at the time Plaintiffs took the actions herein alleged, were  
3 ignorant of the falsity of the Defendants' representations and believed them to be  
4 true. In justifiable reliance on these representations, Plaintiffs were induced to  
5 and did continue to distribute Product for Defendants pursuant to the terms of the  
6 Contract and subject to the Guaranty. Had Plaintiffs known the actual facts, they  
7 would have rescinded their Contract with Defendants, they would have never  
8 entered into subsequent Contracts with Defendants, and they would have ceased  
9 all distribution of cards for Defendants.

10 17. As a proximate result of the fraudulent conduct of the Defendants, and  
11 each of them, as herein alleged, Plaintiffs were induced to continue a business  
12 relationship with Defendants and continue performance under the terms of the  
13 Contract by reason of which the Plaintiffs have been damaged in the sum of an  
14 amount according to proof at trial.

15 18. The aforementioned conduct of the Defendants, and each of them, was an  
16 intentional misrepresentation, deceit, or concealment of a material fact known to  
17 the Defendants, and each of them, with the intention on the part of the  
18 Defendants, and each of them of thereby depriving the Plaintiffs of property or  
19 legal rights or otherwise causing injury, and was despicable conduct that  
20 subjected the Plaintiffs to a cruel and unjust hardship in conscious disregard of  
21 the Plaintiffs' rights, so as to justify an award of exemplary and punitive damages.

22 **SECOND CAUSE OF ACTION AS TO DEFENDANTS, AND EACH OF THEM**  
23 **(CONCEALMENT)**

24 19. Plaintiffs incorporate by reference each and every allegation above, as  
25 though fully set forth therein.

26 20. Plaintiffs and Defendants, and each of them, entered into a Contract  
27 whereby Defendants agreed to manufacture and sell certain Product to Plaintiffs  
28 to be distributed throughout the United States. The parties were in a business

1 relationship from 1994 until approximately October 26, 2009.

2 21. From approximately 2005 and continuing until 2009, Defendants, and each  
3 of them, intentionally failed to disclose, actively concealed, and blatantly denied  
4 when asked by Plaintiffs that Defendants owned, controlled, dominated, used,  
5 managed the Distributing Entities.

6 22. Plaintiffs did not know of the concealed facts by Defendants, and each of  
7 them, and believed Defendants' representations about their involvement or lack  
8 there of in the Distributing Entities.

9 23. Defendants intended to deceive Plaintiffs by concealing the fact in order to  
10 induce Plaintiffs to continue their business partnership and distribution of  
11 Products.

12 24. Plaintiffs reasonably relied on Defendants' deception and continued to  
13 distribute Products exclusively for Defendants in which resulted in harm and  
14 injury to the Plaintiffs.

15 25. Defendants', and each of them, concealment of the truth that they owned,  
16 controlled, dominated, used, managed the Distributing Entities was a substantial  
17 factor in causing Plaintiffs' harm. Had Plaintiffs known of the Defendants'  
18 involvement of these Distributing Entities Plaintiff would have rescinded it's  
19 Contract with Defendants and/or limited business relations with Defendants.

20 26. Because of Plaintiffs' reliance upon the conduct of Defendants, and each of  
21 them, Plaintiff has been damaged in an amount according to proof at trial plus  
22 lost profits and prejudgment interest.

23 27. The aforementioned conduct of the Defendants, and each of them, was an  
24 intentional misrepresentation, deceit, or concealment of a material fact known to  
25 the Defendants, and each of them, with the intention on the part of the  
26 Defendants of thereby depriving the Plaintiffs of property or legal rights or  
27 otherwise causing injury, and was despicable conduct that subjected the Plaintiffs  
28 to a cruel and unjust hardship in conscious disregard of the Plaintiffs' rights, so as

1 to justify an award of exemplary and punitive damages.

2 **THIRD CAUSE OF ACTION AS TO DEFENDANTS, AND EACH OF THEM**  
3 **(CONSPIRACY)**

4 28. Plaintiffs incorporate by reference each and every allegation above, as  
5 though fully set forth therein.

6 29. Commencing 2005 and continuing until October 2009, Defendants, and  
7 each of them knowingly and willfully conspired and agreed among themselves to  
8 defraud Plaintiffs under the terms of the Contract and Guaranty.

9 30. From approximately 2005 and continuing until 2009, Defendants, and each  
10 of them, intentionally failed to disclose, actively concealed, and blatantly denied  
11 when asked by Plaintiffs that Defendants owned, controlled, dominated, used,  
12 managed the Distributing Entities who were in direct competition with Plaintiffs.

13 31. While concealing the truth to Plaintiffs, Defendants, and each of them,  
14 conspired and schemed to defraud Plaintiffs by pushing unprofitable and  
15 undesired Products to Plaintiffs and then promising to "make up" the monetary  
16 difference at a later date. However, Defendants, and each of them, had no real  
17 intention to "make up" the monetary difference to Plaintiffs. Instead, Defendants,  
18 and each of them, plotted to unload on Plaintiffs unprofitable and unfavorable  
19 Products which were difficult, if not impossible, to redistribute, and then collect  
20 against Plaintiffs personal guaranty.

21 32. Defendants, and each of them, did the acts and things herein alleged  
22 pursuant to, and in furtherance of, the conspiracy and above-alleged agreement.

23 33. As a proximate result of the wrongful acts herein alleged, Plaintiffs have  
24 been damaged in an amount according to proof at trial.

25 34. The aforementioned conduct of the Defendants, and each of them, was an  
26 intentional misrepresentation, deceit, or concealment of a material fact known to  
27 the Defendants, and each of them, with the intention on the part of the  
28 Defendants of thereby depriving the Plaintiffs of property or legal rights or

1 otherwise causing injury, and was despicable conduct that subjected the Plaintiffs  
2 to a cruel and unjust hardship in conscious disregard of the Plaintiffs' rights, so as  
3 to justify an award of exemplary and punitive damages.

4 **FOURTH CAUSE OF ACTION AS TO DEFENDANTS, AND EACH OF THEM**  
5 **(BREACH OF GOOD FAITH & FAIR DEALING)**

6 35. Plaintiffs incorporate by reference each and every allegation above, as  
7 though fully set forth therein.

8 36. California law implies a covenant of good faith and fair dealing in all  
9 contracts between parties entered into in the State of California.

10 37. Plaintiffs claim that Defendants, and each of them violated the duty to act  
11 fairly and in good faith, in relation to the Contract and any subsequent  
12 agreements entered into between the parties from 1994 through 2009.

13 38. Plaintiffs performed all, or substantially all of the required terms under the  
14 Contract. All conditions required for Defendants under the Contract had  
15 occurred.

16 39. Defendants, and each of them, unfairly interfered with Plaintiffs' right to  
17 receive the benefits of the Contract and violated the implied covenant of good  
18 faith and fair dealing contained in relation to the Contract.

19 40. As a result of the actions of Defendants, and each of them, Plaintiffs were  
20 harmed by Defendants' conduct and caused Plaintiffs to suffer damages the sum  
21 of an amount according to proof at trial.

22 **FIFTH CAUSE OF ACTION AS TO DEFENDANTS, AND EACH OF THEM**  
23 **(UNFAIR AND DECEPTIVE BUSINESS PRACTICES)**

24 41. Plaintiffs incorporate by reference each and every allegation above, as  
25 though fully set forth therein.

26 42. The acts of Defendants, and each of them, constituted unlawful, unfair and  
27 fraudulent business practices in violation of Business and Professions Code §  
28 17200, et seq.



1 43. As a result, Plaintiffs have suffered and continues to suffer damages in a  
2 sum of an amount according to proof at trial and Plaintiff is entitled to rescind the  
3 Contract between the parties and above-described agreement as set forth above.

4 **SIXTH CAUSE OF ACTION AS TO DEFENDANTS, AND EACH OF THEM**  
5 **(CANCELLATION OF WRITTEN INSTRUMENT)**

6 44. Plaintiffs incorporate by reference each and every allegation above, as  
7 though fully set forth therein.

8 45. The Contract is in fact void or voidable against Plaintiffs as the Contract  
9 was entered into under fraud and concealment by the Defendants, and each of  
10 them.

11 46. Plaintiffs continued business relationships and entered into subsequent  
12 Contracts with Defendants, and each of them, based upon Defendants false  
13 representations that Defendants owned, controlled, dominated, used, managed  
14 the Distributing Entities. Plaintiffs relied on these representations when deciding  
15 whether to continue a business relationship with Defendants and when entering  
16 into Contracts with Defendants.

17 47. Had Plaintiffs known of the Defendants' involvement of these Distributing  
18 Entities Plaintiff would have rescinded all Contracts with Defendants and would  
19 not have entered into subsequent Contracts with Defendants. Moreover, Plaintiff  
20 would not have signed a personal guaranty under the Contract.

21 48. Plaintiffs did not know until October 2009 that Defendants, and each of  
22 them, in fact owned, controlled, dominated, used, managed the Distributing  
23 Entities.

24 49. Failure to rescind the Contract will cause serious injury to Plaintiff in  
25 connection with the Guaranty under the Contract. Defendants have schemed by  
26 the terms of the Contract to make Pirozzi personally liable for amounts in excess  
27 of one million dollars. Defendants have already filed an action seeking to enforce  
28 this voidable Contract against Plaintiff and to recover funds under the Contract.

1 50. As a result, Plaintiff is entitled to rescind the above-described agreement  
2 as set forth above.

3 ///

4 **WHEREFORE**, Plaintiffs pray judgment as follows:

- 5 1. For general damages;
- 6 2. For special damages;
- 7 3. For restitution;
- 8 4. For prejudgment interest on these sums at the legal rate;
- 9 5. For costs of suit incurred by Plaintiff;
- 10 6. For exemplary and punitive damages; and
- 11 7. For such other and further relief as the court deems proper.

12 Dated: August 21, 2012

**ODDENINO & GAULE**

13  
14 By: 

15 John V. Gaule  
16 *Attorneys for Plaintiffs,*  
17 **JOSEPH PIROZZI AND**  
18 **J&T HOBBY**