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Stephen Humphrey Bogart,

Plaintiff,

v.

Moda Entertainment, Inc., a Delaware
Corporation, Shannon Mulholland, in her
capacity as both Chairman and Secretary/
Treasurer of Moda Entertainment and
Richard Zampella, in his capacity as Chief
Executive Officer of Moda Entertainment,
John Does 1-100, Jane Doe Entities or
Corporations 1-100,

Defendants.

:
: UNITED STATES DISTRICT COURT
: FOR THE DISTRICT OF NEW JERSEY
:
: *Civil Action*
:
: Civil Action No.

COMPLAINT

Plaintiff, Stephen Humphrey Bogart, residing at 333 Bogert Avenue, Town of
Ridgewood, County of Bergen, State of New Jersey 07450, through his attorney, Linda
Kenney Baden, Esq., respectfully through this Complaint, alleges against the defendants:

JURISDICTION

1. Jurisdiction is invoked pursuant to diversity, 28 U.S.C. §1332, with damages
that exceed \$75,000.00.

VENUE

2. Venue is proper in this district as plaintiff resides in the State of New Jersey and a substantial amount of work on behalf of the defendants and was performed by plaintiff from his above residence in the County of Bergen, State of New Jersey.

STATEMENT OF CASE

3. Stephen Humphrey Bogart is the son of Humphrey Bogart and Lauren Bacall and worked on behalf of a company named Moda Entertainment, Inc. from on or about June 8, 2005 until on or about June 27, 2008. He was only paid for several months of work rather than for the over three (3) years that he performed services for Moda Entertainment. This lawsuit seeks to obtain the monies due and owing Mr. Bogart.

PARTIES

4. Stephen Humphrey Bogart (hereinafter referred to as "Bogart" or "Plaintiff"), at all relevant times, worked for or on behalf of Moda Entertainment, from on or about June 8, 2005 through on or about June 27, 2008. Bogart, given the fact that he is the son of Humphrey Bogart and Lauren Bacall, has numerous contacts within the classic Hollywood community as well as a wealth of knowledge and experience regarding classic Hollywood. Bogart is also the President of Bogart, Inc., a company that manages the name, image and likeness of Humphrey Bogart.

5. Defendant, Moda Entertainment, Inc. (hereinafter referred to as "Moda" or collectively with other persons as "Defendants") is, according to its own description of itself, a "full service entertainment company that complements the highest work standards in the industry with an unparalleled commitment to its clients and its projects. Moda is

involved in all aspects of the entertainment industry including production, publishing, licensing and public relations.” (See description at <http://www.modaentertainment.com>).

6. Moda is a Delaware corporation that has its main office at 59 West 71st Street, New York, New York 10023. Moda produces, publishes, licenses and participates with the entertainment industry with a strong and particular emphasis on classic Hollywood.

7. At all times appropriate to the Complaint hereunder, Shannon Mulholland (hereinafter “Mulholland”) was the Chairwoman of Moda Entertainment. She was also the Secretary/Treasurer of Moda according to the company’s stock certificate. Mulholland resides and works at the company’s main office located at 59 West 71st Street, New York, New York 10023. She also was the Chairwoman of Moda Entertainment. Mulholland is also the daughter of John Mulholland, Executive Vice President, Creative Affairs for Moda Entertainment. Mr. Mulholland is also the host of Icons Radio, see www.iconsradio.com. Icons Radio also has started an internet magazine entitled “Icons Magazine.” See www.iconsradiomagazine.com. Moda, as an umbrella company, feeds the contacts it obtains through its entertainment work to the Icons Magazine/Radio branch. While Mulholland was listed as Secretary/Treasurer, for all intent and purposes she was a superior of Bogart throughout the facts set forth below because of her relationship with her father, John Mulholland, Executive Vice President, Creative Affairs, who had upon information and belief, financed or personally arranged financing for much of the Moda startup.

8. At all times appropriate to the Complaint hereunder, Richard Zampella (hereinafter “Zampella”) is the Chief Executive Officer of Moda. Mr. Zampella also works and resides at Moda’s main company office at 59 West 71st Street, New York, New York

10023. He was for all intents and purposes during the facts pled in this complaint was both Bogart's supervisor and superior in corporate title.

9. John Does 1-100 are unknown persons who participated or aided in the failure to recompense Bogart through any of the actions pled in this Complaint or other actions which may be revealed through discovery.

10. Jane Doe Entities or Corporations 1-100 are unknown entities or corporations who participated or aided in the failure to recompense Bogart through any of the actions pled in this Complaint or other actions which may be revealed through discovery.

FACTS

11. On or about June 8, 2005, Moda entered into an express contract (hereinafter "the Contract" which is attached hereto and incorporated herein as Exhibit A) with Stephen Bogart via the company's agent, Shannon Mulholland. The Contract term provided that Bogart would be given the 'title' of President of Moda. This title was a paper title and had no corporate power associated with it. Bogart, however, was required under any circumstances to utilize his best efforts exclusively on behalf of Moda. (see Exhibit A, para. 1.1) Moda agreed to pay Bogart \$120,000 per annum as compensation in the manner consistent with Moda's regular payment practices. (see Exhibit A, para 3.1)

12. Bogart performed services for Moda, including but not limited to: report directly to the Chairwoman, Shannon Mulholland, and assist her in any way possible to further the success of Moda; be the public face and public liaison for Moda; promote Moda, Moda's goals and classic Hollywood in any and all public forums and media, including the internet, television, radio, print and public appearances; assist the CEO in any and all areas of Moda promotion as needed; host the Icons Radio Hour and land top of the line

interviews for the show; assist in signing of new Licensing clients for Moda and in the closing of licensing deals for Moda at the behest of the Chairwoman; seek out new influxes of capital for Moda and for specific Moda projects; identify and develop or assist in development of new revenue streams for Moda; and head up new projects for Moda as assigned in any and all areas of production. This work was sometimes performed at the office in New York City but more often, a substantial amount of the work was performed from his home in Ridgewood, New Jersey using Bogart's computers, phones and home office space.

13. Moda paid Bogart \$10,000 per month for the first two months of his employment. Upon receiving the first payments, Bogart learned that Moda had unilaterally converted his employment relationship to one of an independent contractor because the "salary" paid was for July and August 2005. In other words, no FICA or social security or other withholding taxes were taken as required by law from Bogart's salary. After being paid the monies for July and August 2005, Bogart received no further payments for his work for Moda, which work he continued to perform until on or about June 27, 2008 when he was forced to submit his resignation and was constructively discharged. (Bogart did speak to a third party group in November 2008 that had been previously arranged before his termination and was paid directly by that third party group.)

14. Despite express salary terms in the contract, Bogart was forced to repeatedly demand earnings from Moda. Some requests were oral and examples of some of the requests to be paid can be seen in e-mails dated August 6, 2006, April 4, 2007, July 1, 2007, October 25, 2007 and October 27, 2007, incorporated herein by reference. Notwithstanding the fact that Bogart fulfilled his contractual duties by continuing to work for Moda, no

further money was forthcoming. Part of the duties he executed were helping to create the weekly radio show at Icons Radio for classic Hollywood, promoting sales of scripts, producing the first issue of the company magazine under Icons Magazine, and devoting his time to networking for, on behalf of and promoting the interest in Moda of classic Hollywood and other entities.

15. After numerous requests by Bogart to be paid, Moda's agent, Mulholland, repeatedly assured Bogart that he would be paid if he just waited a little longer. During the conversion of Bogart's employment relationship to an independent contractor, Moda even issued a check to him dated May 10, 2007 for \$190,000 to induce him to continue to perform his duties as President of Moda. However, this check has insufficient funds to cover the \$190,000 payment so none of the \$190,000 was ever paid. Attached hereto as Exhibit B and incorporated herein is a copy of the check dated May 10, 2007 for \$190,000 as well as a copy of the bank receipt holding the deposit. Moda through Mulholland continued to assure Bogart that the monies to cover the \$190,000 payment for partial back services would be forthcoming.

16. In an e-mail exchange between Bogart and Mulholland in which Bogart again requested the monies due him, Mulholland told him that "no one is getting any money ... I will get this done ..." (E-mail dated August 7, 2007 incorporated herein by reference) Unknown to Bogart, however, other corporate officers and employees were being paid for services rendered.

17. In a separate deal between Moda and Bogart, Bogart as President of Bogart, Inc., transferred the right to be exclusive licensing agent for a set period of time for the name, image and likeness of Humphrey Bogart. That contract is independent from Bogart's

relationship starting from the contract for employment with Moda dated 2005. However, upon information and belief, Moda wanted to retain Bogart and utilize his services and knowledge in order to give itself additional value as the exclusive licensing agent for Humphrey Bogart. In fact, Moda promoted not only the Bogart image on Icons Radio and Icons Magazine, but promoted the Icons Radio hour with Stephen Bogart as a co-host with John Mulholland, the father of Shannon Mulholland set forth above. By having Stephen Bogart attached to Moda Entertainment and making calls on behalf of Moda and networking on behalf of Moda, the value to Moda of the licensing image of Humphrey Bogart was greater and gave credibility to John Mulholland's radio hour. *See* for instance, Exhibit C, pages from the Icons website incorporated herein by reference.

18. Once Bogart fed to Moda contacts and his sources, in order for Moda to succeed in the classic Hollywood world, Bogart began to be increasingly excluded from the business and creative decisions of Moda. Additionally, Mulholland and Zampella's business relationship grew into a romantic live-in liaison, soon after the signing of the contract dated 2005 between Bogart and Moda, making attendance at business meetings at Moda's office increasingly uncomfortable. This also contributed to Bogart's performing the work services required by Moda out of his home in New Jersey instead of in New York City and was sanctioned by Moda.

19. Upon information and belief, despite Moda's refusal to pay Bogart, other corporate officers of Moda were being paid.

20. In 2007, Bogart was informed by the officers of Moda that their company was being purchased by TGM. Bogart was instructed by Mulholland and Zampella, his superiors in the chain of command, to report to TGM regarding his weekly activities.

Bogart reported to and was given instructions by a person named Peter Ubaldi, who was acting in his capacity as Chief Financial Officer of TGM. Bogart continued to work in the best interests of Moda on promises of payment, on which such promises Bogart materially relied upon to his detriment. It is unknown whether Moda ever disclosed the fact to TGM or to any governmental filings the existence of the liability for payments due Bogart for services performed.

21. On or about March 10, 2008, Moda attempted to formalize the fact that Bogart had been unilaterally treated by Moda as an independent contractor by giving him a new contract to sign entitled "Contractor Services." (hereinafter "Independent Contractor formalization" attached hereto as Exhibit D) However, the duties Bogart had from the day he started with Moda never changed irrespective of the formal title placed on his relationship with Moda, as well as the \$190,000 check written the previous year was for the gross amount, indicating that the company had, since the original first two months of payments, viewed Bogart as an independent contractor who largely worked out of his home in Ridgewood, New Jersey, utilizing his own computers, telephones and home office.

22. In or about March 2008, Bogart overheard Zampella discussing the fact that Mulholland had forged the signature of the daughter of a Hollywood dancing icon to a contract. Bogart complained to Zampella that this was illegal and had to be remedied. The contract had been forged in order to assign a likeness of a major Hollywood dancing icon in a deal brokered by Moda in a deal that would yield Moda money. As a result of Bogart's complaint to his superior, Zampella, about the conduct of another superior, Bogart was viewed as no longer a team player. Bogart's actions as a whistleblower further caused his exclusion from company business affairs and his isolation became greater.

23. As the relationship continued to decline between Zampella and Mulholland, Bogart felt that the work environment had become increasingly hostile and in June 2008, when Bogart reported into the New York office on two separate occasions, he was assaulted by Zampella who threatened to perform physical violence upon him. Other harassing behavior occurred in front of Mulholland, another corporate officer. Zampella was never reprimanded and continues to work for Moda. Bogart was so upset by the unsafe work environment that it factored into his constructive discharge/resignation decision.

24. Followed by the extensive non-payment of monies due and owing to Bogart, his whistleblower complaint about the forgery concerning the daughter of a major Hollywood dancing icon, coupled with the threats of physical violence and prolonged period in which Bogart was being alienated from the day to day workings of Moda and with TGM, Bogart terminated his employment on June 27, 2008. That e-mail is incorporated herein by reference hereto.

COUNT ONE

BREACH OF CONTRACT
(Employment)

25. The failure of Moda to pay Bogart according to the express terms of the contract dated June 2005 constitutes a material breach of that contract.

26. As a direct result of defendants' actions, Bogart has been harmed.

COUNT TWO

BREACH OF CONTRACT
(Independent Contractor)

27. Bogart worked for Moda during some portion of his relationship as an independent contractor. The terms for payment as an independent contractor were the same as the terms in the express contract referred to in Count One. Despite repeated demands to be paid, Bogart is still owed money under the terms of such independent contractor relationship.

28. As a direct result of defendants' actions, Bogart has been harmed.

COUNT THREE

QUANTUM MERIT

29. Bogart performed services for Moda during his over three year relationship as set forth. As a result, Moda received a benefit. Bogart is owed for the value of his services from on or about June 5, 2005 through on or about June 27, 2008. Bogart has not been paid for any services rendered since August 2005.

30. As a direct result of defendants' actions, Bogart has been harmed.

COUNT IV

BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

31. In every contract there is an implied covenant that neither party shall do anything which will destroy or injury the right of the other party to receive the benefit of the contract. That covenant implies to contracts concerning the employment relationship. Zampella and Mulholland as either agents of Moda failed to perform any and all the duties inherent in the contractual obligations of Moda relating to Bogart and in fact, affirmatively performed acts that prevented Bogart from being paid

32. As a direct result thereof, Bogart has not received the monetary benefits due and owing him for his work performed for the benefit of Moda from on or about June 2005 through June 2008 and has been harmed.

COUNT V

INTENTIONAL AND/OR NEGLIGENT MISREPRESENTATION

33. Mulholland, as an agent of the company, made misrepresentations to Bogart that the salary and/or monies due which were in arrears would soon be paid. These representations came directly from Shannon Mulholland on numerous times both orally and in e-mails, one of the e-mails is specifically referenced herein above. Both Moda, through its agent Mulholland and Mulholland individually, knew that these promises were false and nonetheless made the statements and that Bogart would rely upon them and continue to work.

34. Furthermore, Mulholland continued to represent that no one else in the company was being paid and that Bogart would receive his salary and/or the monies due with the direct knowledge that those statements were false. Moda officers upon information and belief were being paid while Mulholland had no intention of paying Bogart. These representations pled above Bogart believes were intentional or negligently but in any event, were made in order to induce Bogart to continue to perform services and he relief upon same.

35. As a direct result of these misrepresentations, Bogart relied on same to sink further and further into performing additional work for Moda under the contract.

36. As a direct result of defendants' actions, Bogart has been harmed.

COUNT VI

ASSAULT

37. On several occasions in June 2008, Zampella as an agent of the company, threatened to inflict bodily harm on Bogart. Zampella's actions were intentional or at the very least, grossly reckless causing Bogart to become afraid. These threats to do bodily harm created an extremely hostile environment for Bogart and it is believed that they were directly related to both Bogart's continued request for payment and especially to his being viewed as a whistleblower by telling Zampella that the forgery committed by Moda Entertainment had to be remedied by Moda or else Bogart would report same to the daughter of the major Hollywood dancing icon who had been victimized.

38. Apparently, as a result of the daughter of the major Hollywood dancing icon who had been victimized learned of the forgery, her unhappiness was made clear to the agents of Moda, an unhappiness that was blamed by the Moda agents on Bogart.

39. As a direct result the actions of Zampella, Bogart has been harmed.


PRAYER FOR RELIEF

WHEREFORE, Plaintiff Stephen Bogart, demands judgment awarding following

- a. compensatory damages;
- b. an order for back pay or monies owed which would have been earned by the plaintiff had he been properly compensated;
- c. an award for punitive or any other exemplary damages which may be allowed under the causes of action pled: intentional misrepresentation and/or assault;
- d. an award for costs;
- e. an award for interest;
- f. an award for damages to be made whole for being put in fear from the assault; and
- g. any other award or equitable relief as allowed by statute or pursuant to the equitable and just power of the court to which plaintiff is entitled.

LAW OFFICE OF LINDA KENNEY BADEN
Attorneys for Plaintiff, Stephen Bogart

Dated: 11/18/08

By: 

Linda Kenney Baden, Esq.