

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

**ORIGINAL**

DARRYL AUGUSTIN, JR., TERRANCE  
FORD, WHITE COBRA ENTERPRISES, INC.,  
ANTAWN JAMISON, DEANDRE JORDAN,  
WOLFOTTER, INC., ROWCATS, INC.,  
TRACY MCGRADY, ANTHONY  
RANDOLPH, JR., DERRICK ROSE,  
BRANDON ROY, RUSSELL WESTBROOK,

Plaintiffs,

-against-

THE TOPPS COMPANY, INC.,

Defendant.

Index No.  
Purchase Date:

**SUMMONS**

09602652

Plaintiffs designate New York  
County as the place of trial.

The basis for venue is CPLR §§501, 503,  
and 509

To: The Topps Company, Inc.  
One Whitehall Street  
New York, NY 10004

**FILED**

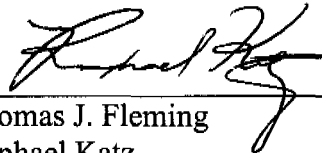
**AUG 26 2009**

**COUNTY CLERK'S OFFICE  
NEW YORK**

YOU ARE HEREBY SUMMONED and required to serve upon plaintiffs  
answer to their complaint in this action within twenty (20) days after the service of this  
summons, exclusive of the day of service (or within thirty (30) days after the service is complete  
if this summons is not personally delivered to you within the State of New York), and in the case  
of your failure to appear or answer, judgment will be taken against you by default for the relief  
demanded in the complaint.

Dated: New York, New York  
August 24, 2009

OLSHAN GRUNDMAN FROME  
ROSENZWEIG & WOLOSKY LLP

By:  \_\_\_\_\_

Thomas J. Fleming  
Raphael Katz  
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BRANDON ROY, RUSSELL WESTBROOK,

Index No.

**COMPLAINT**

Plaintiffs,

-against-

THE TOPPS COMPANY, INC.,

Defendant.

09602652

Plaintiffs Darryl Augustin, Jr., Terrance Ford, White Cobra Enterprises, Inc., Antawn Jamison, DeAndre Jordan, WolfOtter, Inc., Rowcats, Inc., Tracy McGrady, Anthony Randolph, Jr., Derrick Rose, Brandon Roy, and Russell Westbrook (collectively "Plaintiffs"), through their attorneys Olshan, Grundman, Frome, Rosenzweig, & Wolosky LLP, for their Complaint against defendant The Topps Company, Inc. ("Topps") allege as follows:

**THE PARTIES**

**Plaintiffs**

1. Plaintiffs are all prominent professional basketball players who play in the National Basketball Association (the "NBA") or the entities through which those players transact business; many of these players are all-stars and top draft picks.
2. Plaintiff Darryl "D.J." Augustin, Jr. is a professional basketball player currently playing for the Charlotte Bobcats who resides in Houston, Texas.
3. Plaintiff Terrance "T.J." Ford is a professional basketball player currently playing for the Indiana Pacers who resides in Houston, Texas.

4. Plaintiff White Cobra Enterprises, Inc. is a Delaware Corporation with its principal office in Dover, Delaware. It is an entity through which Danilo Gallinari, a professional basketball player for the New York Knicks, contracts business.

5. Plaintiff Antawn Jamison is a professional basketball player currently playing for the Washington Wizards who resides in Charlotte, North Carolina.

6. Plaintiff DeAndre Jordan is a professional basketball player currently playing for the Los Angeles Clippers who resides in Houston, Texas.

7. Plaintiff WolfOtter, Inc. is a Delaware Corporation with its principal office in Charlottesville, Virginia. It is an entity through which Brook Lopez, a professional basketball player for the New Jersey Nets, contracts business.

8. Plaintiff Rowcats, Inc. is a Delaware Corporation with its principal office in Charlottesville, Virginia. It is an entity through which Robin Lopez, a professional basketball player for the Phoenix Suns, contracts business.

9. Plaintiff Tracy McGrady is a professional basketball player currently playing for the Houston Rockets who resides in Houston, Texas.

10. Plaintiff Anthony Randolph, Jr. is a professional basketball player currently playing for the Golden State Warriors who resides in Walnut Creek, California.

11. Plaintiff Derrick Rose is a professional basketball player currently playing for the Chicago Bulls who resides in Chicago, Illinois.

12. Plaintiff Brandon Roy is a professional basketball player currently playing for the Portland Trailblazers who resides in Seattle, Washington.

13. Plaintiff Russell Westbrook is a professional basketball player currently playing for the Oklahoma City Thunder who resides in Oklahoma City, Oklahoma.

Defendant

14. Upon information and belief, defendant The Topps Company, Inc. is a Delaware corporation with its principal office in New York, New York. According to its website, Topps is engaged in the marketing of entertainment products, *inter alia*, collectible trading cards.

JURISDICTION AND VENUE

15. Defendant has consented to be sued in this County. Defendant is also subject to personal jurisdiction in this County pursuant to CPLR 302(a)(1), as Defendant transacts or has transacted business within this State, and/or contracted to supply goods or services in this State, from which transactions or contacts the claims asserted herein arise.

16. Venue is proper in this court pursuant to CPLR §§ 501 and 503 (c).

FACTUAL BACKGROUND

The Promotion and License Agreement

17. In 2008, the Plaintiffs each entered into separate Promotion and License Agreements (“Agreements”) with Topps, which are each valid and enforceable agreements.

18. Pursuant to each of the Agreements, each Plaintiff granted Topps the right to use the respective player’s images, portraits, likenesses and photographs on its trading card products. Additionally, each Plaintiff agreed to personally autograph cards supplied by Topps.

19. Pursuant to each of the Agreements, in exchange for receiving such grants and licenses, Topps agreed to accept a certain number of autographs from each Plaintiff, and pay the Plaintiffs a certain fee per autograph.

20. Each of the Agreements was in substantially identical form. They differed in the names of the contracting Plaintiff, the date they were entered into, the number of autographs that Topps contracted to pay for, and the price per autograph, as follows:

- (a) D.J. Augustin, Jr.:
  - Date Entered: May 28, 2008.
  - 4,000 autographs at \$8 per autograph.
- (b) T.J. Ford:
  - Date Entered: July 21, 2008.
  - 500 autographs at \$6 per autograph.
- (c) White Cobra Enterprises, Inc.
  - Date Entered: June 8, 2008.
  - 4,000 autographs at \$10 per autograph.
- (d) Antawn Jamison
  - Date Entered: September 4, 2008.
  - 500 autographs at \$10 per autograph.
- (e) DeAndre Jordan
  - Date Entered: May 28, 2008.
  - 4,000 autographs at \$3 per autograph.
- (f) WolfOtter, Inc.
  - Date Entered: May 8, 2008.
  - 4,000 autographs at \$8 per autograph.
- (g) Rowcats, Inc.
  - Date Entered: May 8, 2009.
  - 4,000 autographs at \$5 per autograph.
- (h) Tracy McGrady
  - Date Entered: March 31, 2008.

- 1000 autographs at \$50 per autograph.
- (i) Anthony Randolph, Jr.
  - Date Entered: May 8, 2008.
  - 4,000 autographs at \$7 per autograph.
- (j) Derrick Rose
  - Date Entered: May 1, 2008.
  - 10,000 autographs at \$25 per autograph.
- (k) Brandon Roy
  - Date Entered: February 25, 2008.
  - 5,000 autographs at \$18 per autograph.
- (l) Russell Westbrook
  - Date Entered: June 8, 2008.
  - 4,000 autographs at \$12 per autograph.

Topps' Breach of the Agreements

21. In March 2009, Topps notified Plaintiffs that it would no longer be honoring the Agreements and would not be making any further payments to the Plaintiffs for the remaining number of autographs in their respective Agreements, despite prior demand by Plaintiffs.

22. Subsequently, on or about March 24, 2009, Plaintiffs demanded in writing that Topps perform its obligations under the Agreements, notifying Topps that they were ready, willing and able to perform all of their responsibilities under the Agreements. Plaintiffs have fully performed their obligations under the Agreements.

23. Despite Plaintiffs' due demand, Topps breached the Agreements by, *inter alia*, (1) refusing to allow Plaintiffs to autograph the full number of cards they were entitled to under the

Agreement; (2) refusing to provide Plaintiffs with cards and/or other materials necessary for Plaintiffs to autograph the full number of cards they were entitled to under the Agreements; and (3) failing to make full payments to Plaintiffs for all amounts due pursuant to the Agreements.

24. Topps owes the Plaintiffs for autographs it has refused to accept, as follows:

- (a) D.J. Augustin, Jr.: \$16,000 for 2,000 autographs at \$8 per autograph.
- (b) T.J. Ford: \$3,000 for 500 autographs at \$6 per autograph.
- (c) White Cobra Enterprises, Inc.: \$20,000 for 2,000 autographs at \$10 per autograph.
- (d) Antawn Jamison: \$5,000 for 500 autographs at \$10 per autograph.
- (e) DeAndre Jordan: \$6,000 for 2,000 autographs at \$3 per autograph.
- (f) WolfOtter, Inc.: \$14,560 for 1,820 autographs at \$8 per autograph.
- (g) Rowcats, Inc.: \$10,000 for 2,000 autographs at \$5 per autograph.
- (h) Tracy McGrady: \$37,500 for 750 autographs at \$50 per autograph.
- (i) Anthony Randolph, Jr.: \$14,000 for 2,000 autographs at \$7 per autograph.
- (j) Derrick Rose: \$112,500 for 4,500 autographs at \$25 per autograph.
- (k) Brandon Roy: \$36,000 for 2,000 autographs at \$18 per autograph.
- (l) Russell Westbrook: \$24,000 for 2,000 autographs at \$12 per autograph.

#### FIRST CAUSE OF ACTION

##### Breach of Contract

25. Plaintiffs restate the allegations in paragraphs 1 through 24.

26. Based upon the foregoing, Topps has materially breached its obligations to Plaintiffs under the Agreements. As a direct, approximate and foreseeable result of Topps' breaches, Plaintiffs are entitled to recover from Topps an amount to be determined at trial but not less than \$298,560, exclusive of interest.

SECOND CAUSE OF ACTION

Indemnification

27. Plaintiffs restate the allegations in paragraphs 1 through 26.

28. Pursuant to the Agreements, Topps is obligated to indemnify Plaintiffs from, amongst other things, all damages, expenses, and costs, including without limitation, reasonable attorney's fees, arising out of, amongst other things, Topps's material breach of the Agreements.


29. By virtue of Topps' material breaches of the Agreements, Plaintiffs have incurred, and will continue to incur substantial damages. Plaintiffs hereby demand and are entitled to judgment against Topps, indemnifying it for all damages expenses, and costs, including without limitation, attorney's fees, in an amount to be determined at trial but not less than \$298,560, exclusive of interest.

WHEREFORE, Plaintiffs pray for judgment as follows:

- (a) Against defendant Topps, awarding Plaintiffs all sums due under the Agreements, plus prejudgment interest and costs, including attorney's fees in an amount to be determined at trial but believed to be in excess of \$298,560; and
- (b) Such other and further relief as the Court may deem just and proper.

Dated: August 24, 2009  
New York, New York.

OLSHAN GRUNDMAN FROME ROSENZWEIG  
& WOLOSKY LLP

By:   
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Raphael Katz  
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New York, New York 10022

**UNITED**  
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**6002 92 GUN**  
AUG 26 2009

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**SUMMONS AND COMPLAINT**

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