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ORIGINAL FILED

MAR 13 2003

LOS ANGELES
SUPERIOR COURT

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

13 **BC292018**

14 HOWARD STERN, an individual; and
15 HOWARD STERN PRODUCTIONS,
16 INC., a New York corporation,

CASE NO. _____

17 Plaintiffs,

COMPLAINT FOR:

18 v.

(1) UNFAIR BUSINESS PRACTICES

19 TELEPICTURES PRODUCTIONS,
20 INC., a California corporation; NEXT
21 ENTERTAINMENT, INC., a
22 California corporation; AMERICAN
23 BROADCASTING COMPANIES,
24 INC., a Delaware corporation; MIKE
25 FLEISS, an individual; SCOTT
26 EINZIGER, an individual; and DOES 1
27 through 20, inclusive,

(2) UNFAIR COMPETITION

(3) BREACH OF FIDUCIARY
DUTIES

28 Defendants.

(4) MISAPPROPRIATION OF
TRADE SECRETS

(5) INTERFERENCE WITH
PROSPECTIVE
ECONOMIC
ADVANTAGE

(6) UNJUST ENRICHMENT

(7) IMPOSITION OF A
CONSTRUCTIVE TRUST

29 Plaintiffs Howard Stern and Howard Stern Productions, Inc. (collectively
30 "Plaintiffs") allege as follows:
31
32

INTRODUCTION

1
2 1. This action arises out of the blatant, egregious and inequitable violation of
3 Howard Stern's rights and interests by Defendants Telepictures Productions, Next
4 Entertainment, American Broadcasting Companies (ABC), Mike Fleiss and Scott Einziger
5 with respect to the recently aired new ABC television series *Are You Hot? The Search for*
6 *America's Sexiest People* (herein the "Series"). Howard Stern has spent over two decades
7 painstakingly creating, developing and nurturing one of the most successful daily radio
8 programs in the history of radio, and cultivating a loyal fan base with his innovative and
9 unique program formats and bits. Mr. Stern has become so popular, and his radio program
10 so successful, that it has enabled him to develop half-hour episodic television programs
11 based on his radio program, which television shows air nightly across the country on E!
12 Entertainment Television.

13 2. One of the ongoing elements of Plaintiffs' programs made immensely popular
14 by Mr. Stern is a segment where Mr. Stern, acting as emcee, has celebrity guests on his
15 show, together with members of his regular crew, serve as judges to candidly assess the
16 physical attributes of a "contestant" and provide their opinions as to whether the contestant
17 is "hot enough" to be a playmate in *Playboy* magazine, or in some other magazine such as
18 *Penthouse*. Sometimes the contestants are evaluated to determine if they are to win a
19 particular prize. Mr. Stern has developed the segment, known as "The Evaluators," over
20 many years, to the point where the segment and some of its unique elements have become
21 instantly and widely recognizable with the Howard Stern radio and television programs.

22 3. The Series is a blatant rip-off of The Evaluators. In fact, the Defendants did
23 not even take efforts to try to make it appear that the Series is unique and not a violation of
24 Mr. Stern's rights and interests. To the contrary, Defendants even hired Scott Einziger,
25 a former executive producer of Mr. Stern's E! Entertainment Television show, to produce
26 the Series, and Mr. Stern's former head writer, Jackie Martling, to be a writer for the
27 Series.

28 4. By this lawsuit, Mr. Stern intends to hold Defendants accountable for the tens

1 of millions of dollars in damages that Mr. Stern has suffered as a result of Defendants' ill-
2 advised and malicious decision to proceed with the development, production and
3 broadcasting of the Series. Mr. Stern also intends to recover punitive damages against
4 Defendants for their malicious conduct in proceeding with the Series notwithstanding that
5 they knew it was a direct violation of Plaintiffs' rights and interests, and even though they
6 knew the Series was an unauthorized, outrageous and despicable capitalization on Mr.
7 Stern's originality, hard work and innovation.

8

9

THE PARTIES

10 5. Plaintiff Howard Stern is, and at all times relevant hereto has been, an
11 individual and one of the most successful radio and television personalities and celebrities
12 in the United States. Mr. Stern's morning radio program is broadcast on radio stations
13 across the country and has become one of the most popular and successful radio programs
14 in the history of radio. In addition, portions of Mr. Stern's radio program are broadcast on
15 a daily basis as half hour television shows on E! Entertainment Television.

16 6. Plaintiff Howard Stern Productions, Inc. is, and at all times relevant hereto
17 has been, a production company owned and operated by Mr. Stern and through which Mr.
18 Stern develops and produces television programs and motion picture projects.

19 7. Plaintiffs are informed and believe and based thereon allege that Defendant
20 Telepictures Productions, Inc. ("Telepictures") is, and at all times relevant hereto has
21 been, a corporation duly organized and existing under the laws of the State of California,
22 doing business within the County of Los Angeles as a television production company.

23 8. Plaintiffs are informed and believe and based thereon allege that Defendant
24 Next Entertainment, Inc. is, and at all times relevant hereto has been, a corporation duly
25 organized and existing under the laws of the State of California, doing business within the
26 County of Los Angeles as a television production company.

27 9. Plaintiffs are informed and believe and based thereon allege that Defendant
28 American Broadcasting Companies, Inc. ("ABC") is, and at all times relevant hereto has

1 been, a corporation duly organized and existing under the laws of the State of Delaware,
2 doing business within the County of Los Angeles, State of California as a television network
3 that broadcasts television programs across the United States. Plaintiffs are informed and
4 believe and based thereon allege that ABC's principal place of business and its primary
5 business office is located in Manhattan, New York.

6 10. Plaintiffs are informed and believe and based thereon allege that Defendant
7 Mike Fleiss ("Fleiss") is, and at all times relevant hereto has been, an individual residing
8 in the County of Los Angeles, State of California, and a principal of Defendant Next
9 Entertainment.

10 11. Plaintiffs are informed and believe and based thereon allege that at various
11 times relevant hereto Defendant Scott Einziger ("Einziger") has been an individual residing
12 in the State of New York and serving as the executive producer of Plaintiffs' television
13 program on E! Entertainment Television. Plaintiffs are further informed and believe and
14 based thereon allege that at various times relevant hereto Defendant Einziger has been an
15 individual residing the County of Los Angeles, State of California and serving as a producer
16 of the ABC television series *Are You Hot? The Search for America's Sexiest People*.

17 12. The true names and capacities, whether individual, corporate or otherwise,
18 of Defendants named herein as Does 1 through 20 are unknown to Plaintiffs at this time.
19 Plaintiffs therefore sue said Defendants by such fictitious names. Plaintiffs will amend
20 their Complaint to allege the true names and capacities of Does 1 through 20 when
21 ascertained. Plaintiffs are informed and believe and based thereon allege that each of the
22 Doe Defendants is in some manner responsible for the damages alleged herein. Defendants
23 Telepictures, Next Entertainment, ABC, Fleiss, Einziger and Does 1 through 20 will
24 sometimes collectively be referred to herein as the "Defendants." For convenience, each
25 reference to a named defendant herein shall also refer to the Doe Defendants and each of
26 them.

27 13. Plaintiffs are informed and believe and based thereon allege that Defendants,
28 and each of them, were the agents, employees, partners, joint venturers, co-conspirators,

1 owners, principals and employers of the remaining Defendants and each of them, and that
2 said Defendants at all times mentioned herein were acting within the course and scope of
3 that agency, partnership, employment, conspiracy, ownership, or joint venture. Plaintiffs
4 are further informed and believe and based thereon allege that the acts and conduct alleged
5 herein on the part of each Defendant was known to, and authorized by and/or ratified by the
6 remaining Defendants, and each of them.

7 8 THE EVALUATORS

9 14. Through his hard work, innovation and unique comedic and broadcasting talent,
10 Mr. Stern has developed his daily morning radio program into one of the most successful
11 radio programs in the history of radio, and has expanded his audience to major markets
12 throughout the United States.

13 15. Mr. Stern's radio program reached such unprecedented levels of success and
14 popularity that commencing several years ago, Mr. Stern began to have camera crews set
15 up in his radio studio to record his radio program for purposes of using the footage as
16 material for half hour television shows. The half hour television shows are comprised of
17 excerpts from Mr. Stern's morning radio program, and are broadcast nightly on E!
18 Entertainment Television throughout the United States. Plaintiffs are informed and believe
19 and based thereon allege that Howard Stern's half hour television show is, and for many
20 years has been, the number one rated regular series on E! Entertainment Television.

21 16. The Evaluators has been a staple of Plaintiffs' programming for many years.
22 During those years, Mr. Stern has created and developed a number of unique aspects of the
23 segment. For example, the judges use a 10-point rating system to evaluate the candidates,
24 the judges are unabashed, blunt and often harsh in their criticisms of the contestants, and
25 the judges often use a laser pointer to highlight areas of the contestant's body during the
26 critiquing process. Also, after a contestant's evaluation by the judges, the contestant is
27 often interviewed backstage (behind the scenes sequences). Plaintiffs are informed and
28 believe and based thereon allege that these and other aspects of the segment are original and

1 unique, and have become synonymous with and widely recognizable as an important and
2 continuing element of the Howard Stern radio and television programs.

3 4 THE SERIES

5 17. The new Series *Are You Hot?* is strikingly similar to The Evaluators.
6 Examples of elements of the Series that are strikingly similar to unique and original
7 elements of Mr. Stern's long-running segment include, but are not limited to:

8 (a) The Series has a single male host (just as Mr. Stern serves as the sole
9 host or emcee of his long-running segment);

10 (b) The Series uses a three-judge panel to evaluate contestants to determine
11 if they are hot enough to proceed to the next round and ultimately win a prize;

12 (c) The judges on the Series are often unabashedly blunt and harsh in their
13 critiques of the contestants;

14 (d) The judges on the Series sometimes use a laser pointer to highlight
15 areas of the contestant's body during the critiquing process;

16 (e) The judges on the Series utilize a 10-point rating system to evaluate the
17 contestants;

18 (f) Contestants on the Series are often interviewed backstage after they
19 are evaluated by the judges (behind the scenes sequences).

20 18. The striking similarities between The Evaluators and the Series are far from
21 a coincidence. Plaintiffs are informed and believe and based thereon allege that Defendants
22 purposefully tried to copy or imitate unique elements of Mr. Stern's long-running segment,
23 because Defendants were aware of the immense popularity of The Evaluators, and
24 Defendants wanted to capitalize on that popularity by misappropriating for their own benefit
25 those unique elements. Evidence of Defendants' bad faith motives can be found in the fact
26 that Defendants employed a former executive producer of Mr. Stern's E! Entertainment
27 Television program, Defendant Scott Einziger, as an executive producer of the Series, and
28 Mr. Stern's former head writer for his radio program, Jackie "The Joke Man" Martling, as

1 a writer for the Series. Plaintiffs are informed and believe and based thereon allege that
2 through his involvement with the Series, Defendant Einziger disclosed to Defendants
3 valuable ideas and/or confidential, proprietary information and trade secrets that he
4 obtained through his prior involvement with Plaintiffs, which ideas and information Einziger
5 knew he was not permitted to disclose and which Einziger had expressly promised to keep
6 confidential.

7 19. Plaintiffs are further informed and believe and based thereon allege that
8 additional evidence of Defendants' bad faith exists in that Plaintiffs notified and warned
9 Defendants that the Series constituted a blatant and unauthorized violation and
10 misappropriation of Mr. Stern's rights and interests prior to the time the Series was
11 broadcast on ABC, but Defendants disregarded such notification and warning and proceeded
12 to broadcast the Series anyway.

13 20. At the time Defendants began developing and producing the Series, Plaintiffs
14 were in negotiations for the development and production of a television series based directly
15 on The Evaluators, whereby Plaintiffs would develop and produce a television program
16 substantially similar to Mr. Stern's long-running segment to be broadcast on either a
17 network or on a pay cable television station without the censorship and editing required of
18 a non-pay cable station such as E! Entertainment Television.

19 21. Plaintiffs are informed and believe and based thereon allege that at all times
20 relevant hereto Defendants, and each of them, knew or should have known of Plaintiffs'
21 negotiations for such a television series, were aware of the substantial economic benefits
22 Plaintiffs stood to reap as a result of a deal for such a television series, and were aware that
23 the production and broadcasting of the Series would detrimentally impact Plaintiffs'
24 negotiations in this regard.

25 22. As a direct result of Defendants' production and broadcasting of the Series,
26 third parties ceased negotiations with Plaintiffs and refused to enter into a contract with
27 Plaintiffs for the development and production of a television program based on The
28 Evaluators, thereby causing Plaintiffs to suffer substantial economic loss and injury.

1 **FIRST CAUSE OF ACTION**

2 **(For Unfair Business Practices – Cal. Bus. & Prof. Code §§ 17200, *et seq.***

3 **Against All Defendants)**

4 23. Plaintiffs repeat, reallege, adopt and incorporate each and every allegation
5 contained in paragraphs 1 through 22, inclusive, as though fully set forth herein.

6 24. By misappropriating unique elements of The Evaluators, as alleged in greater
7 detail hereinabove, Defendants, and each of them, have intentionally deceived and misled
8 the public in an effort to gain unfair economic advantage.

9 25. Defendants' conduct as alleged hereinabove constitutes unlawful, unfair and
10 fraudulent business acts and practices in violation of California Business and Professions
11 Code Sections 17200 through 17204, 17500 and 17535, *et seq.*

12 26. Plaintiffs are informed and believe and based thereon allege that as a direct
13 and proximate result of Defendants' wrongful conduct, as alleged herein, Defendants have
14 received or will receive substantial revenues as a result of the broadcasting and exploitation
15 of the Series, which revenues Plaintiffs are entitled to receive.

16 27. As a direct and proximate result of Defendants' wrongful conduct, as
17 described herein, Plaintiffs are entitled to restitution from Defendants in an amount in
18 excess of the jurisdictional limits of this Court, the exact amount subject to proof at the
19 time of trial.

20
21 **SECOND CAUSE OF ACTION**

22 **(For Common Law Unfair Competition Against All Defendants)**

23 28. Plaintiffs repeat, reallege, adopt and incorporate each and every allegation
24 contained in paragraphs 1 through 22, and 24 through 26, inclusive, as though fully set forth
25 herein.

26 29. Prior to the development, production and broadcast of the Series, Plaintiffs
27 created and developed a number of unique aspects of Mr. Stern's radio and television
28 programs, including but not limited to various words, terms, names, symbols, devices, trade

1 dress, look and/or feel. These highly creative and distinct details of Mr. Stern's show have
2 acquired "secondary meaning" in that they have come to be identified exclusively with Mr.
3 Stern and his goods and services by a significant number of members of the public.

4 30. In their broadcast and promotion of the Series, Defendants have appropriated
5 and used some of the unique aspects of Mr. Stern's radio and television programs that have
6 acquired "secondary meaning."

7 31. As a result of such uses by the Defendants, a significant number of members
8 of the public are likely to be confused, and Plaintiffs are informed and believe and based
9 thereon allege that a significant number of members of the public have in fact been
10 confused.

11 32. Through their conduct as alleged hereinabove, Defendants have unfairly
12 competed with Plaintiffs by deceptively using the distinctive and/or secondary meaning that
13 certain unique aspects of Mr. Stern's radio and television programs have acquired, all to the
14 injury of the Plaintiffs and the confusion and deceit of the public.

15 33. As a direct and proximate result of such unlawful conduct by the Defendants,
16 Plaintiffs have been damaged in an amount in excess of the jurisdictional limits of this
17 Court, the exact amount subject to proof at the time of trial, said amount to be no less than
18 Ten Million Dollars (\$10,000,000).

19 34. Plaintiffs are informed and believe and based thereon allege that the aforesaid
20 acts of Defendants, and each of them, were willful, malicious, oppressive and despicable,
21 and done with an intent to injure Plaintiffs and with full knowledge of the adverse effects
22 such acts would have on Plaintiffs, or with a conscious disregard of Plaintiffs' rights and
23 willful and deliberate disregard for the substantial economic consequences to Plaintiffs,
24 such as to constitute oppression, fraud or malice thus entitling Plaintiffs to exemplary and
25 punitive damages in an amount appropriate to punish or set an example of Defendants, and
26 each of them, and to deter such conduct in the future, the exact amount subject to proof at
27 the time of trial.

28 35. Plaintiffs are informed and believe and based thereon allege that the officers,

1 directors and/or managing agents of Defendants, and each of them, authorized, directed
2 and/or ratified the wrongful acts of Defendants and are consequently liable to Plaintiffs.
3

4 THIRD CAUSE OF ACTION

5 (For Breach of Fiduciary Duties Against Defendant Einziger)

6 36. Plaintiffs repeat, reallege, adopt and incorporate each and every allegation
7 contained in paragraphs 1 through 22, 24 through 26, and 29 through 32, inclusive, as though
8 fully set forth herein.

9 37. By virtue of his position as an executive producer of Mr. Stern's television
10 program for E! Entertainment Television, Defendant Einziger had a joint interest in
11 protecting Plaintiffs' trade secrets and the confidential and proprietary information regarding
12 the manner in which Plaintiffs developed and produced the show, including but not limited
13 to the manner in which Plaintiffs developed, produced, edited and promoted The Evaluators
14 segments.

15 38. By nature of this relationship, Defendant Einziger stood in a position of trust
16 and confidence to Plaintiffs. In that regard, Plaintiffs trusted and relied on Einziger, and
17 Einziger owed, and continues to owe, Plaintiffs a fiduciary duty to act toward Plaintiffs
18 with the highest good faith.

19 39. Plaintiffs allege that by engaging in the conduct described herein, Einziger
20 breached his fiduciary duties to Plaintiffs by violating the trust and confidence reposed in
21 him by Plaintiffs and by putting the interests of himself and the other Defendants ahead of
22 the interests of Plaintiffs.

23 40. As a direct and proximate result of Defendant Einziger's acts of
24 misappropriation and use of Plaintiffs' trade secrets, Plaintiffs have suffered damages in
25 an amount in excess of the jurisdictional limits of this Court, the exact amount subject to
26 proof at the time of trial, said amount to be no less than Ten Million Dollars (\$10,000,000).

27 41. Plaintiffs are informed and believe and based thereon allege that the aforesaid
28 acts and omissions of Defendant Einziger were willful, malicious, oppressive and

1 despicable, and done with an intent to injure Plaintiffs and with full knowledge of the
2 adverse effects such acts would have on Plaintiffs, or with a conscious disregard of
3 Plaintiffs' rights and willful and deliberate disregard for the substantial economic
4 consequences to Plaintiffs, such as to constitute oppression, fraud or malice thus entitling
5 Plaintiffs to exemplary and punitive damages in an amount appropriate to punish or set an
6 example of Defendant Einziger, and to deter such conduct in the future, the exact amount
7 subject to proof at the time of trial.

8
9 **FOURTH CAUSE OF ACTION**

10 **(For Misappropriation of Trade Secrets Against All Defendants)**

11 42. Plaintiffs repeat, reallege, adopt and incorporate each and every allegation
12 contained in paragraphs 1 through 22, 24 through 26, 29 through 32, and 37 through 39,
13 inclusive, as though fully set forth herein.

14 43. As a former executive producer of Mr. Stern's E! Entertainment Television
15 program, Defendant Einziger was a *de-facto* employee of Plaintiffs, and was controlled and
16 instructed by Plaintiffs with respect to many of the tasks and activities he performed in his
17 role as executive producer of the television program.

18 44. As a result of his working relationship with Plaintiffs, and while he was in a
19 position of responsibility, trust, and confidence of Plaintiffs, Einziger became intimately
20 familiar with Plaintiffs' operations, and was granted access to and acquired knowledge of
21 numerous trade secrets and confidential and proprietary information ("confidential
22 information") that are the property of Plaintiffs. This confidential information includes, but
23 is not limited to (i) the manner in which Mr. Stern identifies and selects individual
24 contestants to participate in his evaluation segments; (ii) the manner in which Mr. Stern
25 identifies and selects the celebrity judges to evaluate the contestants in his segments; and
26 (iii) other behind the scenes business methods of Mr. Stern's radio and television programs
27 which are divulged only to people working under the control, direction and auspices of
28 Plaintiffs.

1 45. At all times material hereto, Plaintiffs' trade secrets have had economic value
2 in that their use resulted in the creation of and continuing success of Mr. Stern's radio and
3 television programs. Plaintiffs have taken reasonable steps to protect the confidentiality and
4 secrecy of the information described above by, among other things, restricting access to the
5 confidential information to those persons employed by or working under the control,
6 direction and auspices of Plaintiffs who were required to use the confidential information
7 in performing their jobs, and by informing and reminding such employees and persons that
8 the information was and had to remain confidential. In fact, Plaintiffs even took the
9 protective measure of having Defendant Einziger sign a Confidentiality Agreement pursuant
10 to which Einziger promised not to disclose to third parties any confidential information
11 obtained while working on Plaintiffs' programs.

12 46. Plaintiffs are informed and believe and based thereon allege that Einziger
13 disclosed by improper means to third persons, including but not limited to Defendants
14 Telepictures, Next Entertainment, ABC, and Fleiss, some or all of the trade secrets and
15 confidential and proprietary information of Plaintiffs that Einziger obtained while he was
16 in a position of responsibility, trust, and confidence of Plaintiffs, the very information that
17 Einziger agreed to keep confidential when he executed the Confidentiality Agreement.

18 47. Plaintiffs are informed and believe and based thereon allege that Defendants
19 have used the trade secrets and confidential and proprietary information of Plaintiffs
20 disclosed by Einziger for their own economic benefit.

21 48. Plaintiffs are informed and believe and based thereon allege that the wrongful
22 disclosure by Einziger and the wrongful use by all Defendants of Plaintiffs' trade secrets
23 and confidential and proprietary information have given Defendants, and each of them, a
24 substantial competitive advantage to the detriment of Plaintiffs.

25 49. Defendants knew or had reason to know that the confidential information
26 obtained by Einziger while he was in a position of responsibility, trust, and confidence of
27 Plaintiffs constituted or contained trade secrets and confidential and proprietary information
28 of Plaintiffs in that (i) the information had independent economic value and was not

1 generally known to the public or to others who could have obtained economic value from the
2 disclosure or use of the information, and (ii) Plaintiffs made or took reasonable efforts to
3 ensure the secrecy of the information.

4 50. Plaintiffs are informed and believe and based thereon allege that Defendants
5 misappropriated the trade secrets of Plaintiff as defined in California Civil Code section
6 3426.1 to their own economic benefit by the wrongful disclosure and use of such
7 information, without the consent of Plaintiffs, while knowing or having reason to know that
8 Einziger had acquired the information and secrets under circumstances giving rise to a duty
9 on his part to maintain their secrecy.

10 51. As a direct and proximate result of Defendants' acts of misappropriation and
11 use of Plaintiffs' trade secrets, Plaintiffs have suffered damages in an amount in excess of
12 the jurisdictional limits of this Court, the exact amount subject to proof at the time of trial,
13 said amount to be no less than Ten Million Dollars (\$10,000,000).

14 52. Plaintiffs are informed and believe and based thereon allege that the aforesaid
15 acts and omissions of Defendants, and each of them, were willful, malicious, oppressive
16 and despicable, and done with an intent to injure Plaintiffs and with full knowledge of the
17 adverse effects such acts would have on Plaintiffs, or with a conscious disregard of
18 Plaintiffs' rights and willful and deliberate disregard for the substantial economic
19 consequences to Plaintiffs, such as to constitute oppression, fraud or malice thus entitling
20 Plaintiffs to exemplary and punitive damages in an amount appropriate to punish or set an
21 example of Defendants, and each of them, and to deter such conduct in the future, the exact
22 amount subject to proof at the time of trial.

23 53. Plaintiffs are informed and believe and based thereon allege that the officers,
24 directors and/or managing agents of Defendants, and each of them, authorized, directed
25 and/or ratified the wrongful acts of Defendants and are consequently liable to Plaintiffs.

26 54. Plaintiffs are informed and believe and based thereon allege that Defendants'
27 illegal acts as described above are a serious and continuing threat to Plaintiffs' reputation,
28 goodwill, and livelihood. If Defendants are allowed to continue their wrongful acts,

1 Plaintiffs will suffer further and irreparable injury, loss, and damage.

2

3

FIFTH CAUSE OF ACTION

4

(For Negligent Interference with Prospective Economic Advantage

5

Against All Defendants)

6

55. Plaintiffs repeat, reallege, adopt and incorporate each and every allegation
7 contained in paragraphs 1 through 22, 24 through 26, 29 through 32, 37 through 39, and 43
8 through 50, inclusive, as though fully set forth herein.

9

56. As alleged in paragraphs 20 through 22, *supra*, at the time Defendants began
10 developing and producing the Series, Plaintiffs were in negotiations with third parties for
11 the development and production of a series based directly on The Evaluators, whereby
12 Plaintiffs would develop and produce a television program substantially similar to Mr.
13 Stern's long-running segment to be broadcast on either network television or a pay cable
14 station.

15

57. Plaintiffs' relationship with said third parties was an economic relationship
16 which carried with it the likelihood of future economic benefit to Plaintiffs.

17

58. Plaintiffs are informed and believe and based thereon allege that at all times
18 relevant hereto Defendants, and each of them, knew or should have known of the economic
19 relationship between Plaintiffs and said third parties, and knew or should have known that
20 such economic relationship was likely to produce future economic benefit to Plaintiffs.

21

59. Plaintiffs are informed and believe and based thereon allege that at all times
22 relevant hereto Defendants, and each of them, knew or should have known that the
23 production and broadcasting of the Series would detrimentally impact Plaintiffs' negotiations
24 with said third parties, and would have the effect of depriving Plaintiffs of the economic
25 benefits of their relationship with said third parties.

26

60. As a direct result of Defendants' production and broadcasting of the Series,
27 the economic relationship between Plaintiffs and said third parties was disrupted in that the
28 third parties ceased negotiations with Plaintiffs and refused to enter into a contract with

1 Plaintiffs for the development and production of a cable television program based on Mr.
2 Stern's long-running segment.

3 61. But for Defendants' negligent interference with the relationship, there was a
4 reasonable probability that Plaintiffs would have entered into a contract with said third
5 parties and reaped substantial economic benefit as a result thereof.

6 62. As a direct and proximate result of Defendants' interference with Plaintiffs'
7 prospective economic advantage, Plaintiffs have been damaged in an amount in excess of
8 the jurisdictional limits of this Court, the exact amount subject to proof at the time of trial,
9 said amount to be no less than Ten Million Dollars (\$10,000,000).

10

11

SIXTH CAUSE OF ACTION

12

(For Unjust Enrichment Against All Defendants)

13

14 63. Plaintiffs repeat, reallege, adopt and incorporate each and every allegation
15 contained in paragraphs 1 through 22, 24 through 26, 29 through 32, 37 through 39, 43
16 through 50, and 56 through 61, inclusive, as though fully set forth herein.

16

17 64. As alleged hereinabove, Defendants have usurped and misappropriated
18 Plaintiffs' proprietary business methods without their authorization and without just
19 compensation to Plaintiffs, and have profited from such misconduct by broadcasting and
20 otherwise exploiting the Series.

20

21 65. As a result of such misconduct, Defendants, and each of them, have been
22 unjustly enriched, and are in possession of money which in good conscience and justice
23 belongs to Plaintiffs.

23

24 66. As a direct and proximate result of Defendants' acts of misappropriation and
25 unjust enrichment, Plaintiffs have suffered damages in the form of profits Defendants have
26 earned from the broadcast and exploitation of the Series, which profits should be disgorged
27 to Plaintiffs.

27

28

1 **SEVENTH CAUSE OF ACTION**

2 **(For Imposition of a Constructive Trust Against All Defendants)**

3 67. Plaintiffs repeat, reallege, adopt and incorporate each and every allegation
4 contained in paragraphs 1 through 22, 24 through 26, 29 through 32, 37 through 39, 43
5 through 50, 56 through 61, and 64 through 65, inclusive, as though fully set forth herein.

6 68. As a result of Defendants' breach of their fiduciary duties, unlawful
7 misappropriation of Plaintiffs' trade secrets, and unjust enrichment as alleged hereinabove,
8 Defendants are in possession of money which belongs to Plaintiffs, and will receive future
9 monies that rightfully belong to Plaintiffs.

10 69. Plaintiffs therefore allege that the Court should impose a constructive trust
11 to prevent unjust enrichment to Defendants, and that any revenues and profits derived from
12 the broadcasting or exploitation of the Series be placed in the constructive trust in favor of
13 Plaintiffs.

14
15 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them,
16 as follows:

17
18 **AS TO THE FIRST CAUSE OF ACTION:**

19 1. For restitution from Defendants in the form of the substantial revenues
20 Defendants have received or will receive as a result of the broadcasting and exploitation of
21 the Series, together with interest thereon at the maximum legal rate, in an amount in excess
22 of the jurisdictional limits of this Court, the exact amount subject to proof at the time of
23 trial;

24 **AS TO THE SECOND CAUSE OF ACTION:**

25 2. For compensatory damages in an amount in excess of the jurisdictional limits
26 of this Court, the exact amount subject to proof at the time of trial, said amount to be no
27 less than Ten Million Dollars (\$10,000,000);

28 3. For punitive damages in a sum appropriate to punish Defendants, and each of

1 them, and to deter Defendants from engaging in future similar misconduct, the exact sum
2 subject to proof at the time of trial;

3 **AS TO THE THIRD CAUSE OF ACTION:**

4 4. For compensatory damages in an amount in excess of the jurisdictional limits
5 of this Court, the exact amount subject to proof at the time of trial, said amount to be no
6 less than Ten Million Dollars (\$10,000,000);

7 5. For punitive damages in a sum appropriate to punish Defendant Einziger, and
8 to deter Defendant Einziger from engaging in future similar misconduct, the exact sum
9 subject to proof at the time of trial;

10 **AS TO THE FOURTH CAUSE OF ACTION:**

11 6. For compensatory damages in an amount in excess of the jurisdictional limits
12 of this Court, the exact amount subject to proof at the time of trial, said amount to be no
13 less than Ten Million Dollars (\$10,000,000);

14 7. For punitive damages in a sum appropriate to punish Defendants, and each of
15 them, and to deter Defendants from engaging in future similar misconduct, the exact sum
16 subject to proof at the time of trial;

17 **AS TO THE FIFTH CAUSE OF ACTION:**

18 8. For compensatory damages in an amount in excess of the jurisdictional limits
19 of this Court, the exact amount subject to proof at the time of trial, said amount to be no
20 less than Ten Million Dollars (\$10,000,000);

21 **AS TO THE SIXTH CAUSE OF ACTION:**

22 9. For disgorgement by Defendants of all profits derived from the broadcasting
23 and exploitation of the Series, together with interest thereon at the maximum legal rate, in
24 an amount in excess of the jurisdictional limits of this Court, the exact amount subject to
25 proof at the time of trial;

26 **AS TO THE SEVENTH CAUSE OF ACTION:**

27 10. For the imposition of a constructive trust in favor of Plaintiffs, consisting of
28 all profits derived from the broadcasting and exploitation of the Series, together with

1 interest thereon at the maximum legal rate;

2 **AS TO ALL CAUSES OF ACTION:**

3 11. For all costs of suit and reasonable attorneys' fees incurred herein by
4 Plaintiffs to the extent provided by law;

5 12. For interest as may be provided by law; and

6 13. For such other and further relief as the Court deems just and proper.

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8 DATED: March 13, 2003

LAVELY & SINGER
PROFESSIONAL CORPORATION
MARTIN D. SINGER
LYNDA B. GOLDMAN
MICHAEL D. HOLTZ

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12 By: 

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15 HOWARD STERN and HOWARD
16 STERN PRODUCTIONS, INC.
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