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

DAVID HESTER, an individual,

Plaintiff,

vs.

ORIGINAL PRODUCTIONS, LLC, a
California limited liability company, A&E
TELEVISION NETWORKS, LLC, a
Delaware limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No. **BC497151**

COMPLAINT FOR:

- (1) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
- (2) BREACH OF CONTRACT;
- (3) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
- (4) UNFAIR BUSINESS PRACTICES;
- AND
- (5) DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

Plaintiff DAVID HESTER hereby alleges as follows:

WHAT THIS CASE IS ABOUT

1. This case involves the retaliation by one of the largest cable networks, A&E, against one of the cast members on its highest-rated series *Storage Wars* ("Series"). Although the Series is intended to be a truthful "reality series" depicting people bidding at auctions of abandoned storage lockers, A&E has committed a fraud on the public and its television audience in violation of the Communications Act of 1934, which makes it illegal for broadcasters to rig a contest of intellectual

1 skill with the intent to deceive the viewing public. A&E regularly plants valuable items or
2 memorabilia. By way of example, in one episode a pile of old newspapers announcing the death of
3 Elvis Presley was discovered. In another episode, a BMW mini car was found buried under a pile of
4 trash. When Plaintiff David Hester (“Hester”) complained to producers that A&E’s fraudulent
5 conduct of salting and staging the storage lockers was possibly illegal, he was fired from the Series.
6 As further evidence of Defendants’ outrageous conduct, they purported to rescind their written
7 exercise of an option retaining Hester’s services this coming season.

8 2. The Series, which is the highest rated non-fiction program on cable, follows an
9 eclectic group of modern day treasure hunters who earn their living attending public auctions of the
10 contents of abandoned storage lockers in the hopes of finding buried treasure in those lockers, which
11 they can then resell for a profit. Hester, one of the most experienced and successful professional
12 buyers featured on the Series (referred to on the Series as “The Mogul”) once purchased a box lot at
13 an abandoned moving and storage auction containing a painting by impressionist artist Jack
14 Wilkinson Smith for \$750. and Hester was able to resell the painting for \$155,000.

15 3. Defendants Original Productions, LLC (“Original”), the producer of the Series, and
16 A&E Television Networks, LLC (“AETN”), the distributor of the Series, would like the public to
17 believe that the Series presents a genuine and accurate portrayal of the abandoned storage locker
18 auction process. The truth, however, is that nearly every aspect of the Series is faked, even down to
19 the plastic surgery that one of the female cast members underwent in order to create more “sex
20 appeal” for the show, the cost of which was paid for by Original. Original regularly “salts” the
21 storage lockers that are the subject of the auctions portrayed on the Series with valuable or unusual
22 items to add dramatic effect, even going so far as to stage entire storage units. Original also
23 manipulates the outcome of certain auctions by paying for storage units on behalf of the weaker cast
24 members who lack the both the skill and financial wherewithal to place winning bids.

25 4. Hester was not comfortable participating in this charade. Hester complained to
26 senior production staff at both Original and AETN (collectively “Defendants”), as well as to
27 Original’s Executive Vice President of Business and Legal Affairs that he believed that Original’s
28 salting and staging of the storage lockers was unfair, unethical and possibly illegal conduct. After

1 Original had notified Hester that it was engaging him to render services on the upcoming Cycle of
2 the Series just one (1) week prior to Hester voicing his complaints, Defendants responded to Hester's
3 complaints by firing him from the Series. Because Defendants are unwilling to produce and
4 distribute a program that honestly portrays the auction process, they decided to get rid of Hester
5 when he objected to Defendants' fraudulent and deceitful conduct.

6 5. Defendants have no right to terminate Hester's employment on the Series under these
7 circumstances, and Defendants' wrongful and tortious conduct has resulted in damages to Hester in
8 excess of \$750,000.

9 PARTIES

10 6. Plaintiff David Hester ("Hester" or "Plaintiff") is, and at all relevant times was, an
11 individual doing business in the County of Orange, State of California.

12 7. Plaintiff is informed and believes and based thereon alleges that Defendant Original
13 Productions, LLC ("Original") is, and at all relevant times was, a limited liability company
14 organized and existing under the laws of the State of California, doing business in the County of Los
15 Angeles, State of California.

16 8. Plaintiff is informed and believes and based thereon alleges that Defendant A&E
17 Television Networks, LLC ("AETN") is, and at all relevant times was, a limited liability company
18 organized and existing under the laws of the State of Delaware, doing business in the County of Los
19 Angeles, State of California.

20 9. Plaintiff is presently unaware of the true names and capacities of the defendants sued
21 herein as Does 1 through 10, inclusive, and, therefore, sues said defendants by such fictitious names.
22 Plaintiff will amend this Complaint to allege the true names and capacities of such fictitiously-named
23 defendants when the same have been ascertained. Plaintiff is informed and believes, and based
24 thereon alleges, that each of the fictitiously-named defendants is responsible in some manner for the
25 occurrences, acts and omissions alleged herein and that Plaintiff's damages were proximately caused
26 by their conduct.

27 10. Plaintiff is informed and believes, and based thereon alleges, that each defendant at
28 all times mentioned in this Complaint was the agent, employee, partner, joint venturer, co

1 conspirator, and/or employer of the other defendants and was at all times herein mentioned acting
2 within the course and scope of that agency, employment, partnership, conspiracy, ownership or joint
3 venture. Plaintiff is further informed and believes, and thereon alleges, that the acts and conduct
4 herein alleged of each defendant was known to, authorized by and/or ratified by the other
5 defendants, and each of them.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 11. For twenty-six (26) years, Hester has been in the professional buying business,
8 attending public auctions where the contents of abandoned storage lockers are sold to the highest
9 bidder. Hester has operated a highly successful business re-selling those items at his own
10 consignment and thrift shops, however, due to the demands of working on the Series Hester has had
11 to close his storefronts and now operates his business re-selling items online through e-Bay,
12 Amazon.com and Craig's List.

13 12. Hester is also one of the principal cast members on the Series. Hester was engaged
14 to render services on the Series pursuant to a written Talent Agreement dated June 24, 2010, as
15 amended October 19, 2010, December 30, 2010, June 7, 2011, July 29, 2011, August 18, 2011 and
16 February 24, 2012 (hereinafter the "Agreement"). Pursuant to the Agreement, Hester was first
17 engaged to render services in connection with Cycle 1 of the Series for a period of approximately six
18 (6) weeks commencing in June 2010 (Cycle 1 was ultimately extended to 26 episodes, produced over
19 a period of eight months, and Cycles 2 and 3 were also 26 episode cycles). Thereafter, Defendants
20 had five (5) exclusive options to engage Hester's services for subsequent cycles of the Series.
21 Defendants exercised their first and second options under the Agreement, and Hester performed in
22 Cycle 2 and Cycle 3 of the Series.

23 13. The Series follows Hester and the other cast members as they compete against one
24 another to bid in public auctions for the contents of abandoned storage lockers. Prior to each
25 auction, Hester and the other prospective bidders are permitted only a brief glimpse inside the
26 storage locker, after which they compete against one another to place the winning bid in an auction
27 of the contents of the locker. The audience then watches in suspense as the winning bidder sifts
28 through the contents of the storage locker he or she has acquired to determine whether it contains

1 any "hidden treasure" or whether the winning bidder has just won a locker full of junk with no
2 value. Viewers of the Series are led to believe that, other than the cursory glance into the locker
3 immediately before the bidding starts, the lockers have been sealed and their contents completely
4 unknown to the participants until after the auction.

5 14. Since the participants on the Series frequently discover valuable items or other items
6 of interest inside the storage units, despite the fact that the odds of an abandoned storage unit
7 containing anything of value are very slim, many viewers have questioned whether the valuable
8 items are planted in the units for dramatic effect. In response, AETN issued the following press
9 release: "*There is no staging involved. The items uncovered in the storage units are the actual*
10 *items featured on the show.*" That was a lie.

11 15. The truth is that Defendants regularly salt or plant the storage lockers that are the
12 subject of the auctions portrayed on the Series with valuable or unusual items to create drama and
13 suspense for the show. Defendants have even gone so far as to stage entire storage units, and will
14 enlist the cooperation of the owners of the storage facilities to stage entire units. The producers of
15 the Series have scheduled appraisals of items in the storage lockers several weeks before they are
16 supposedly "discovered" by the cast member who wins the particular auction. Hester is informed
17 and believes that a company called Off the Wall Antiques provides Defendants access to an entire
18 warehouse full of marquee items, and in exchange, the owners of that establishment are regularly
19 featured on the Series. Hester is informed and believes that Off the Wall Antiques is generously
20 compensated for the items from its warehouse that are shown on the Series.

21 16. Similarly, many of the scenes portrayed on the Series are staged by the producers.
22 Interviews with the cast members are scripted in advance. While on location filming an auction,
23 Defendants also film footage of the cast members and the public bidding when no actual auction is
24 taking place, in order to make it appear that any of the cast members is bidding at any given auction,
25 whether or not he or she is actually bidding on the unit. Although the Series shows cast members
26 who have won storage units at auction "breaking away" from the rest of the cast to inspect the
27 contents of the unit during the auction, this never occurs. Typically the winning bidder will not
28 inspect the contents of the unit he or she has acquired until after the auction is completed or the

1 following day. In addition, Original pays for the storage lockers bid on by certain cast members, but
2 not others, in order to give the weaker cast members an advantage over the more experienced and
3 successful bidders such as Hester.

4 17. During Cycle 1 of the Series, Defendants requested that Hester provide valuable
5 items that would be planted by Defendants in the storage lockers acquired by Hester. Although
6 Hester initially agreed to do so, he soon realized that he did not want to participate in this fraudulent
7 conduct. Hester complained to Dolph Scott ("Scott"), a Co-Executive Producer of the Series, and in
8 response Defendants no longer requested that Hester provide items to be planted in the storage
9 lockers.

10 18. At the beginning of Cycle 2, Defendants continued to salt the storage units and
11 Hester again complained to Scott. Defendants' response to Hester's complaint was that they stopped
12 salting only those storage units acquired by Hester, but continued to salt the storage units acquired
13 by other cast members. In so doing, Defendants' manipulated the outcome of the auctions and made
14 it appear that the other cast members were more skillful bidders since they routinely purchased
15 lockers containing valuable items and Hester did not.

16 19. During Cycle 1 and Cycle 2, when Hester or one of the other cast members on the
17 Series won the contents of a storage locker in the auction, that individual would use his or her own
18 lock to secure the contents of the storage locker until he or she had the opportunity to review the
19 contents of the locker. However, in Cycle 3, Defendants insisted on using their own locks on the
20 storage lockers portrayed in the Series. Consequently, because Defendants exercised sole control of
21 the parties' access to the storage units that were the subject of the auction, any salting of those
22 storage units occurred outside of Hester's presence and without his knowledge. However, it was
23 obvious that Defendants were continuing to salt the storage units, including those purchased by
24 Hester. When Hester would examine the contents of storage lockers he acquired, Original's
25 production staff would prod him to "check out" certain boxes or direct him to unload his unit in such
26 a way that he would be certain to "discover" particular items that Defendants clearly knew had been
27 planted in the unit.

28

1 20. On August 30, 2012, Defendants sent written notification to Hester that, as of
2 August 21, 2012, they were exercising their option to engage Hester's services for Cycle 4 of the
3 Series. Pursuant to the Agreement, Hester is entitled to receive a fee of \$25,000 per episode, with a
4 guaranteed minimum of 26 episodes for Cycle 4 of the Series. In addition, Hester is entitled to
5 receive \$2,500 per month for the duration of the production of Cycle 4 of the Series, as well as a
6 non-accountable expense account of \$124,500 for the Cycle and a \$25,000 signing bonus.

7 21. On September 6, 2012, **one week after Defendants gave written notification to**
8 **Hester that they were exercising the option under the Agreement to engage Hester's services for**
9 **Cycle 4 of the Series**, Hester, along with some of the other cast members of the Series, participated
10 in a meeting with Neil Cohen, AETN's Senior Vice President, Talent & Production ("Cohen").
11 During that meeting, Hester complained that he believed that it was illegal for Defendants to
12 continue to salt the storage units. The other cast members present agreed with Hester that
13 Defendants' conduct was inappropriate and possibly illegal.

14 22. Thereafter, Hester and the rest of the cast of the Series met with Cohen, Jeff
15 Bumgarner, the Series Producer ("Bumgarner"), and Ernest Avila, Original's Executive Vice
16 President, Business and Legal Affairs ("Avila"). During that meeting, Bumgarner became angry
17 and stated that he did not want to hear anything further about salting storage units. Cohen admitted
18 that he was aware of the salting issue, but did not realize that the salting was occurring to the extent
19 described by Hester. Avila responded to Cohen and identified two AETN executives who he
20 indicated knew the scope of the salting issue and who had been aware that the storage units were
21 salted from the beginning of the Series.

22 23. Following the meeting, on September 18, 2012, Hester's entertainment attorney,
23 Stephen Barnes ("Barnes"), sent a letter to Avila requesting on behalf of Hester that Defendants
24 agree to indemnify Hester in connection with any third party claims regarding the authenticity of the
25 auction process and the Series. Defendants response to this request was to fire Hester from the
26 Series.

27 24. On October 1, 2012, Avila sent a letter to Hester notifying him that Defendants were
28 purportedly rescinding their exercise of the option to engage Hester's services on Cycle 4 of the

1 Series. Avila's letter cited Barnes' September 18, 2012 letter in which Barnes had requested, among
2 other things, that Defendants indemnify Hester in connection with claims arising from Defendants'
3 fraudulent conduct as one of the reasons for Defendants' decision.

4 25. Defendants have no right under the Agreement or California law to rescind their
5 exercise of the option to engage Hester's services on Cycle 4 of the Series. It is obvious that the
6 reason for Defendants' purported rescission of their exercise of the option is that Defendants are
7 retaliating against Hester for complaining that he believed Defendants were engaging in illegal and
8 improper conduct.

9 **FIRST CAUSE OF ACTION**

10 **(Wrongful Termination in Violation of Public Policy Against all Defendants)**

11 26. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 25 above, and
12 incorporates those allegations herein by reference.

13 27. Hester's employment on the Series was terminated by Defendants in violation of the
14 fundamental public policy of the State of California since he was terminated as a result of his
15 complaint to Cohen, Bumgarner and Avila that he believed Defendants were engaging in illegal,
16 unethical and improper conduct.

17 28. As set forth above, the actions and conduct of Defendants were wrongful and in
18 violation of the fundamental principals of the public policy of the State of California as reflected in
19 its laws, objectives and policies.

20 29. As a direct and proximate result of the Defendants' conduct, Hester has suffered
21 general and special damages for, *inter alia*, the loss of the compensation he would have received in
22 connection with Cycle 4 of the Series, in an amount in excess of Seven Hundred Fifty Thousand
23 Dollars (\$750,000), according to proof at the time of trial.

24 30. Hester is informed and believes and based thereon allege that the above-described
25 conduct of Defendants was willful and intentional and done with malice, fraud and oppression, and
26 constitutes despicable conduct in conscious and reckless disregard of Hester's rights and interests,
27 such that the conduct warrants the imposition of punitive damages in a sum appropriate to punish
28

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

3 **SECOND CAUSE OF ACTION**

4 **(Breach of Contract Against All Defendants)**

5 31. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 25 above, and
6 incorporates those allegations herein by reference.

7 32. Defendants anticipatorily repudiated and materially breached the Agreement by,
8 among other things, improperly attempting to rescind their exercise of the option to engage Hester's
9 services for Cycle 4 of the Series.

10 33. Hester has performed all conditions, covenants and promises required pursuant to the
11 terms of the Agreement, except to the extent such performance was waived, excused or prevented by
12 reason of the acts or omissions of Defendants.

13 34. As a direct and proximate result of the anticipatory repudiation and material breach
14 of the Agreement by Defendants, Hester has suffered general and special damages for, *inter alia*, the
15 loss of the compensation he would have received in connection with Cycle 4 of the Series, in an
16 amount in excess of Seven Hundred Fifty Thousand Dollars (\$750,000), according to proof at the
17 time of trial.

18 35. Hester is also entitled to an award of his reasonable attorney's fees and costs
19 pursuant to Paragraph 23 of the Agreement and California Civil Code section 1717.

20 **THIRD CAUSE OF ACTION**

21 **(Breach of the Implied Covenant of Good Faith and Fair Dealing Against All Defendants)**

22 36. Plaintiff repeats and realleges the allegations of Paragraph 1 through 25 above, and
23 incorporates those allegations herein by reference.

24 37. Inherent in every contract is an implied condition and covenant that the parties will
25 act in good faith and that no party will engage in conduct that is designed to and/or has the natural
26 effect of depriving any other party of the benefits for which the parties bargained under the contract.
27 Such implied covenant existed in the Agreement between Hester and Defendants.

1 constitute unlawful business acts or practices within the meaning of Business & Professions Code
2 section 17200.

3 45. As a direct and proximate result of aforesaid wrongful acts of Defendants,
4 Defendants have and/or will receive and hold ill-gotten gains resulting from their fraudulent,
5 deceptive, unfair and illegal practices. Defendants' fraudulent practices have harmed Hester and the
6 other participants on the Series since the auctions portrayed on the Series are intended to be a
7 genuine and honest competition among the bidders, but Defendants have manipulated the outcome of
8 the auctions shown on the Series by planting valuable items in certain lockers, staging entire storage
9 units and paying for the storage lockers bid on by the weaker cast members on the Series to give
10 them an unfair advantage over the rest of the participants. This fraudulent conduct has also harmed
11 Hester's reputation and business since Defendants' behind the scenes manipulation of the results of
12 the auctions has in some instances made it appear that he is less skillful than other cast members who
13 are able to outbid Hester since Defendants are paying for the storage units they bid on or who have
14 acquired storage units that have been salted with valuable items. In addition, Defendants' deceptive
15 and fraudulent conduct has also duped members of the television viewing public into watching the
16 Series and making it the highest rated non-fiction program on cable television.

17 46. Pursuant to Section 17203 of the of Business & Professions Code, and pursuant to
18 the equitable powers of this Court, Plaintiff prays that Defendants be ordered to restore the parties
19 injured by Defendants' unlawful conduct all funds acquired by means of any act or practice declared
20 by this Court to be unlawful or fraudulent under Business & Professions Code section 17200.

21 47. Pursuant to Section 17203 of Business & Professions Code and the equitable powers
22 of the Court, Plaintiff prays for a preliminary and permanent injunction, and an order restraining
23 Defendants and each of them from engaging in the practice of salting the storage units that are the
24 subject of the Series.

25 48. Plaintiff is informed and believes and based thereon alleges that the relief that it is
26 seeking against Defendants as described above will confer a significant benefit on a large class of
27 persons, and the necessity and financial burden on Plaintiff in bringing this action is such to make an
28 award of attorney's fees to Plaintiff appropriate and that such fees in the interest justice should not be

1 paid out of the recover, if any. Accordingly, Plaintiff is entitled to an award of attorney's fees under
2 California Code of Civil Procedure section 1021.5.

3 **FIFTH CAUSE OF ACTION**

4 **(Declaratory Relief Against All Defendants)**

5 49. Plaintiff repeats and realleges the allegations of Paragraph 1 through 25 above, and
6 incorporates those allegations herein by reference.

7 50. An actual controversy has arisen and now exists between Hester and Defendants
8 regarding their respective rights, duties and obligations under the Agreement.

9 51. Hester contends that Defendants have no right to rescind their exercise of the option
10 to engage Hester's services for Cycle 4 of the Series. Hester is informed and believes and based
11 thereon alleges that Defendants dispute the foregoing contention.

12 52. Accordingly, Hester seeks the following declaration of the parties' rights and duties
13 under the Agreement: (i) Defendants have exercised the option to engage Hester's services for Cycle
14 4 of the Series; (ii) Defendants have no right to rescind their exercise of the option to engage
15 Hester's services for Cycle 4 of the Series; and (iii) Defendants are obligated to pay Hester all
16 compensation he is entitled to receive in connection with Cycle 4 of the Series pursuant to the
17 Agreement.

18 53. Hester is also entitled to an award of his reasonable attorney's fees and costs
19 pursuant to Paragraph 23 of the Agreement and California Civil Code section 1717.

20
21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as
23 follows:

24 **As to the First Cause of Action:**

- 25 1. For general and special damages not less than Seven Hundred Fifty Thousand Dollars
26 (\$750,000), in accordance with proof at trial, together with interest thereon at the
27 legal rate;

- 1 2. For exemplary and punitive damages in an amount according to proof at the time of
2 trial;

3
4 **As to the Second Cause of Action:**

- 5 3. For general and special damages not less than Seven Hundred Fifty Thousand Dollars
6 (\$750,000), in accordance with proof at trial, together with interest thereon at the
7 legal rate;
- 8 4. For an award of reasonable attorney's fees and costs pursuant to Paragraph 23 of the
9 Agreement and California Civil Code section 1717;

10 **As to the Third Cause of Action:**

- 11 5. For general and special damages not less than Seven Hundred Fifty Thousand Dollars
12 (\$750,000), in accordance with proof at trial, together with interest thereon at the
13 legal rate;
- 14 6. For an award of reasonable attorney's fees and costs pursuant to Paragraph 23 of the
15 Agreement and California Civil Code section 1717;

16 **As to the Fourth Cause of Action:**

- 17 7. For an award of restitution, according to proof at the time of trial, together with
18 interest thereon at the legal rate;
- 19 8. For preliminary and permanent injunction restraining Defendants, and each of them,
20 from engaging in the unfair, deceptive and fraudulent practice of salting the storage
21 lockers that are the subject of the Series;
- 22 9. For an award of attorneys' fees pursuant to California Code of Civil Procedure
23 section 1021.5;

24 **As to the Fifth Cause of Action:**

- 25 10. For a declaration of the parties' rights and duties under the Agreement as follows: (i)
26 Defendants have exercised the option to engage Hester's services for Cycle 4 of the
27 Series; (ii) Defendants have no right to rescind their exercise of the option to engage
28 Hester's services for Cycle 4 of the Series; and (iii) Defendants are obligated to pay

1 Hester all compensation he is entitled to receive in connection with Cycle 4 of the
2 Series pursuant to the Agreement;

3
4 As to the All Causes of Action:

- 5 11. For costs of suit incurred herein;
- 6 12. For pre- and post-judgment interest at the maximum legal rate as may be provided by
7 law; and
- 8 13. For such other and further relief as the Court may deem just and proper.
- 9

10 DATED: December 10, 2012

LAVELY & SINGER
PROFESSIONAL CORPORATION
MARTIN D. SINGER
ALLISON S. HART

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14 By: 
15 MARTIN D. SINGER
16 Attorneys for Plaintiff DAVID HESTER
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DEMAND FOR JURY TRIAL

Plaintiff DAVID HESTER hereby demands a trial by jury in this action.

DATED: December 10, 2012

LAVELY & SINGER
PROFESSIONAL CORPORATION
MARTIN D. SINGER
ALLISON S. HART

By: 

MARTIN D. SINGER
Attorneys for Plaintiff DAVID HESTER

