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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **JOHN DAVID HAYWORTH, JR.,**)
12 **an individual,**)
13 **Plaintiff,**)
14 **vs.**)
15 **BROADCAST COMPANY OF THE**)
16 **AMERICAS, LLC, a California**)
17 **limited liability company, and DOES**)
18 **1 through 25, inclusive,**)
19 **Defendants.**)

CASE NO. '13CV2646 W BGS

Complaint for:

- 1) Breach of Contract
- 2) Breach of Implied Covenant of Good Faith and Fair Dealing
- 3) Breach of Labor Code § 970
- 4) Conversion
- 5) Unfair Business Practices— Unfair Competition Law (*Bus. & Prof. Code §§ 17200, et seq.*)

Jury Trial Demanded

INTRODUCTION

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2 1. This case arises out of the breach of an employment agreement and other
3 wrongful conduct by Defendant, a radio station employer.

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5 2. Plaintiff was induced to relocate from out of state to become the co-host
6 of a morning radio show.

7
8 3. To induce Plaintiff to accept the position, and relocate from Arizona to
9 California, Defendant guaranteed Plaintiff, by written agreement, a two year term of
10 employment and compensation package.

11
12 4. The agreement also indicated that Plaintiff could only be terminated "for
13 Cause," and further specified that if the Defendant elected to terminate "for Cause,"
14 Plaintiff would have five days after written notice by employer within which to cure
15 the alleged breach or violation.

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17 5. Despite Plaintiff's satisfactory performance of all the duties outlined in
18 the agreement, and the express written provisions relating to termination "for Cause,"
19 Defendant unilaterally terminated the agreement, without any opportunity to cure any
20 alleged breach or violation.
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23 **JURISDICTION AND VENUE**

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25 6. This Court has jurisdiction over the claims asserted herein under U.S.C. §
26 1332(a) because the matter in controversy exceeds the jurisdictional minimum and
27 there is complete diversity of citizenship between Plaintiff and Defendant.
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7. Plaintiff resides within the State of Arizona.

8. Defendant is, and at all times herein mentioned was, a California limited liability company [CA Entity No. 200305510162] duly organized and existing under and by virtue of the laws of the State of California.

9. Venue is proper in the United States District Court for the Southern District of California pursuant to 18 U.S.C. § 1391(b)-(c) and § 1441(a) because Defendant is deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced, and because Defendant’s contacts with this District are sufficient to subject it to personal jurisdiction. Venue is also proper in this District because a substantial part of the events giving rise to Plaintiff’s causes of action against Defendant occurred within this judicial district.

PARTIES

10. Plaintiff, John David Hayworth, Jr. ("**Plaintiff**"), is a citizen and resident of the State of Arizona. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (39).

11. Plaintiff is informed and believes, and thereon alleges, that Defendant, Broadcast Company of the Americas, LLC [CA Entity No. 200305510162] ("**BCA**"), is and at all times mentioned herein was, a California limited liability company, that has its primary corporate offices at 6160 Cornerstone Ct. East, Suite 100, San Diego, CA 92121. Plaintiff alleges that at all times relevant herein BCA conducted business

1 in the State of California and in the County of San Diego, and within this judicial
2 district. BCA is, and at all times mentioned herein was, a “person,” as defined by 47
3 U.S.C. § 153 (39).
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5 12. Plaintiff is ignorant of the true names and capacities of the Defendants
6 sued herein as Does 1 through 25, inclusive, and therefore sues such Defendants by
7 fictitious names. Plaintiff will amend this Complaint to allege their true names and
8 capacities when the same have been ascertained. Plaintiff is informed and believes
9 and based thereon alleges that each of the fictitiously named Defendants are sued as
10 principals, representatives, shareholders, agents, managing agents, servants or
11 employees of each other Defendant, and were, at all times herein mentioned, acting
12 within the course and scope of the aforesaid relationships, in concert and with the
13 authorization, consent and ratification of all the other Defendants. (BCA and Doe
14 defendants are collectively referred to as "**Defendants**".) Further, each of the
15 fictitiously named Defendants is liable in some manner for the conduct alleged herein.
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19 13. Plaintiff believes and thereon alleges that at all times mentioned herein
20 each of the Defendants, was the agent, servant and employee of each of the other
21 Defendants and, that each Defendant in committing the acts or omissions alleged
22 herein, was acting within the course and scope of such agency and employment and/or
23 ratified or approved the conduct of the other Defendants.
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FACTUAL ALLEGATIONS

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2 14. Plaintiff is a former federal official, who served six terms as a member of
3 the United States House of Representatives from 1995 to 2007.

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5 15. Prior to serving in the House of Representatives, Plaintiff developed an
6 extensive background in sports broadcasting. He was a sportscaster for WFBC-TV
7 (now WYFF-TV), the NBC station in Greenville, South Carolina, from 1981 to 1986,
8 and WLWT-TV in Cincinnati, Ohio from 1986 to 1987. From 1987 to 1994, he was
9 the sports anchor on the news reports of KTSP-TV (later KSAZ-TV), which was then
10 the CBS affiliate in Phoenix.
11

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13 16. After his time in Congress, Plaintiff also hosted a radio political talk
14 show in Phoenix, Arizona (for approximately 33 months) between 2007-2010.

15
16 17. Defendant BCA is a broadcasting company based in San Diego,
17 California. BCA operates at least two sports radio stations, including: (1) XEPRS-
18 AM 1090 kHz: The Mighty 1090 (flagship home for the San Diego Padres), and (2)
19 XEPE-AM 1700 kHz: ESPN Radio 1700.
20



25 18. In or around early 2013, BCA was searching for a sports-talk co-host for
26 the 6:00am - 9:00am morning show (the "**Morning Show**") BCA operated on its
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1 Mighty 1090 radio station. At the time, the Morning Show was conducted by a single
2 radio show host, Lee "Hacksaw" Hamilton.

3 19. BCA sought to explore adding a co-host to the Morning Show, to
4 conduct the show together with Lee "Hacksaw" Hamilton, and ultimately sought to
5 engage Plaintiff for the position.
6

7 20. On or about March 7, 2013, BCA presented Plaintiff a written
8 employment agreement (the "**Agreement**".)
9

10 21. At the time, Plaintiff resided in Scottsdale, Arizona, and the Morning
11 Show co-host position required Plaintiff to relocate to San Diego, California.
12

13 22. To influence, persuade, and engage Plaintiff to accept the Morning Show
14 co-host position, and relocate to San Diego, California, BCA represented to Plaintiff
15 that he would receive a guaranteed compensation package for a minimum term of two
16 years. BCA further represented that Plaintiff could only be terminated "for Cause."
17

18 23. Pursuant to the representations made by BCA, if at any time BCA
19 intended to terminate "for Cause," BCA would first submit a written statement to
20 Plaintiff detailing the alleged breach or violation, and Plaintiff would thereafter have a
21 reasonable opportunity within which to cure the alleged breach or violation.
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23 24. Based on these representations, Plaintiff accepted the Morning Show co-
24 host position, and relocated to San Diego, California.
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1 25. At all times relevant, Plaintiff satisfactorily performed all the duties
2 outlined in the Agreement. At no time did any event occur that would give rise to the
3 "Cause" required for termination of the Agreement.
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5 26. On August 30, 2013, BCA unilaterally terminated the Agreement and
6 removed Plaintiff from the Morning Show.

7 27. At no time did BCA notify Plaintiff, in writing or otherwise, of any
8 alleged violation or breach prior to terminating the Agreement. Nor did BCA provide
9 Plaintiff a reasonable opportunity "to cure such breach or violation" as is expressly
10 required in the Agreement.
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12 28. Since the time BCA terminated Plaintiff's employment, the Morning
13 Show has been hosted only by Lee "Hacksaw" Hamilton, without any permanent co-
14 host.
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17 **FIRST CAUSE OF ACTION**

18 **(BREACH OF CONTRACT)**

19 29. Plaintiff incorporates by reference all of the above paragraphs of this
20 Complaint as though fully stated herein.
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22 30. On or about March 7, 2013, Plaintiff entered into a written employment
23 contract (previously termed the "**Agreement**") with BCA. Defendant BCA agreed to
24 hire Plaintiff as a "morning show personality/co-host between the hours of 6am and
25 9am M-F" in exchange for specific compensation, as described in Section 2 of the
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1 Agreement. A true and correct copy of the Agreement is attached hereto as **Exhibit**
2 “A” and incorporated herein by reference.

3 31. Plaintiff relied on the provisions of Sections 1.1, 2 and 5.1 of the
4 Agreement in that he would receive the agreed compensation, for a minimum term of
5 two years, and that he would not be terminated unless there was good "cause" to do
6 so.
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8 32. The terms of the Agreement included, but were not limited to, the express
9 condition that if BCA elected to terminate "for Cause," Plaintiff was to be provided
10 five days after written notice by BCA within which to cure such alleged breach or
11 violation.
12

13 33. Plaintiff at all times fulfilled his duties and conditions under the
14 Agreement and has been ready, willing, and able to continue performing them in a
15 competent and satisfactory manner.
16

17 34. Notwithstanding the express promise to terminate the Agreement only for
18 good cause, on or about August 30, 2013, BCA terminated the Agreement on the
19 alleged ground of failure to satisfactorily perform the duties requested. BCA refused
20 to specify the duty requested of Plaintiff that he allegedly failed to satisfactorily
21 perform. Further, BCA had never before notified Plaintiff, either orally or in writing,
22 of any alleged breach or violation of the Agreement.
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25 35. As a proximate result of BCA's breach of the Agreement, Plaintiff has
26 suffered and continues to suffer losses of earnings and other employment benefits to
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1 his damage in the amount to be established at the time of trial, and will suffer future
2 loss of earning capacity and special damages. The exact amount of such losses is
3 unknown at the present time and Plaintiff will ask leave of Court to amend this
4 Complaint when the exact amounts thereof have been ascertained.
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7 **SECOND CAUSE OF ACTION**

8 **(BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)**

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10 36. Plaintiff incorporates by reference all of the above paragraphs of this
11 Complaint as though fully stated herein.
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13 37. The Agreement referred to above contained an implied covenant of good
14 faith and fair dealing, which obligated BCA to perform the terms and conditions of the
15 agreement fairly and in good faith and to refrain from doing any act that would
16 prevent or impede Plaintiff from performing any or all of the conditions of the
17 contract that he agreed to perform, or any act that would deprive Plaintiff of the
18 benefits of the contract.
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21 38. BCA failed to reasonably identify or properly disclose to Plaintiff any
22 specific failure (because there was no such failure) to satisfactorily perform the duties
23 required under the Agreement. BCA also failed to follow the pre-agreed procedures
24 to provide Plaintiff with prior notice of intended termination. BCA also failed to
25 provide Plaintiff an opportunity to cure any alleged violation or breach of the
26 Agreement.
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1 39. Plaintiff reasonably relied on the provisions of Agreement regarding the
2 causes for which he could be terminated, and the procedures set forth for such
3 termination, for the expectation that BCA would apply these provisions and
4 procedures even-handedly to afford Plaintiff the protections of those provisions and
5 procedures if BCA believed there was cause to terminate Plaintiff.
6

7 40. Plaintiff performed all the duties and conditions of the Agreement.
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9 41. BCA knew that Plaintiff had fulfilled all his duties and conditions under
10 the Agreement.
11

12 42. BCA breached the implied covenant of good faith and fair dealing under
13 the Agreement by terminating Plaintiff intentionally, maliciously, and without
14 probable cause, in bad faith and for reasons extraneous to the contract. In fact, BCA
15 terminated Plaintiff, not because of poor performance, but because BCA was
16 attempting to divert funds that were contractually committed to Plaintiff under the
17 Agreement, for its own personal use and purposes. Such motives were extraneous to
18 the employment relationship and were intended to deprive Plaintiff of the benefits
19 thereof.
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21 43. BCA further breached the implied covenant of good faith and fair dealing
22 by not providing Plaintiff with the promised written warning of performance
23 deficiency required by the Agreement before termination.
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1 44. BCA further breached the implied covenant of good faith and fair dealing
2 by failing to disclose or specify, either orally or in writing, the requested duties that
3 Plaintiff allegedly failed to satisfactorily perform.

4 45. BCA further breached the implied covenant of good faith and fair
5 dealing by inventing a "cause" for termination that did not in fact exist.
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7 46. As a proximate result of BCA's breach of the implied covenant of good
8 faith and fair dealing, Plaintiff has suffered, and continues to suffer, losses in earning
9 and other employment benefits, and special damages, to his damage in an amount to
10 be established at trial. As a further proximate result of BCA's breach of the implied
11 covenant of good faith and fair dealing, Plaintiff has incurred reasonable attorney's
12 fees in attempting to secure the benefits owed him under the Agreement.
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17 **THIRD CAUSE OF ACTION**

18 **(BREACH OF LABOR CODE § 970)**

19 47. Plaintiff incorporates by reference all of the above paragraphs of this
20 Complaint as though fully stated herein.
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22 48. On March 7, 2013, BCA offered Plaintiff the position of the Morning
23 Show co-host, located in San Diego, California. At that time, Plaintiff resided in
24 Scottsdale, Arizona, a distance of approximately 360 miles from the offered
25 employment.
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1 49. Because Plaintiff was concerned with the impediment of relocating to a
2 different city and state, Plaintiff inquired and was informed by and through Mr.
3 Michael Shepard, as agent for BCA, that the minimum term of the employment
4 position offered to Plaintiff was two years, and that Plaintiff would only be terminated
5 "for Cause."
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7 50. It was further represented to Plaintiff that if BCA intended to terminate
8 "for Cause," it would first provide written notice to Plaintiff detailing the reason(s) for
9 termination, and further providing Plaintiff at least five days after his receipt of
10 written notice to cure any alleged breach or violation.
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12 51. Based on these representations Plaintiff accepted the position. Plaintiff
13 moved to San Diego, California from Scottsdale, Arizona.
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15 52. When BCA made these representations to Plaintiff, BCA knew the
16 representations were false. At the time it entered into the Agreement with Plaintiff,
17 BCA did not intend to honor its promise of a guaranteed two year term, or that
18 Plaintiff could be terminated only "for Cause," or that BCA would make any attempt
19 to notify Plaintiff of any alleged breach or violation or provide Plaintiff a reasonable
20 opportunity to cure, before choosing to terminate. BCA made such representations
21 only to influence, persuade, engage and induce Plaintiff to accept the position and
22 move to California.
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26 53. As Plaintiff later came to understand, BCA had already developed a
27 pattern of ignoring similar promises in at least one other similar written employment
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1 contract with another radio show host. Further, BCA terminated other radio host
2 contracts without following the contractually required procedures.

3 54. Based on these misrepresentations, Plaintiff accepted a position that
4 required Plaintiff to relocate over 360 miles from Scottsdale, Arizona to San Diego,
5 California. As a result of Defendant's false representations, Plaintiff lost income and
6 was terminated from his position. Therefore, BCA's actions violate Lab. Code § 970,
7 and pursuant to Lab. Code § 972, Plaintiff is entitled to double damages.
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11 **FOURTH CAUSE OF ACTION**

12 **(CONVERSION)**

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14 55. Plaintiff incorporates by reference all of the above paragraphs of this
15 Complaint as though fully stated herein.
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17 56. BCA was obligated to distribute the compensation set forth in the
18 employment Agreement to Plaintiff. Plaintiff was and is at all times relevant herein
19 entitled to immediately possess his earned compensation.
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21 57. In failing to pay Plaintiff his earned compensation, Defendants
22 wrongfully converted to their use specific sums of money that should have been
23 distributed to Plaintiff, the exact amount of which is readily ascertainable and will be
24 proven at trial.
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1 58. Defendants' refusal to distribute income, instead keeping it for their own
2 use was knowing and intentional. This conduct by Defendants was the illegal cause of
3 damage to Plaintiff, the precise amount of which will be proven at trial.
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5 59. Defendants' conversion of funds owing to Plaintiff was done for the
6 express purpose of enhancing their economic position to the detriment of Plaintiff.
7 The conduct was malicious, oppressive and undertaken in conscious disregard of the
8 rights and probable consequences to Plaintiff. Plaintiff therefore seeks an award of
9 punitive damages to punish and make an example of Defendants and to deter similar
10 conduct in the future by Defendants and others.
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14 **FIFTH CAUSE OF ACTION**

15 **(UNFAIR BUSINESS PRACTICES—UNFAIR COMPETITION LAW)**

16 **[BUS. & PROF. CODE §§ 17200, ET SEQ.]**
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18 60. Plaintiff incorporates by reference all of the above paragraphs of this
19 Complaint as though fully stated herein.
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21 61. California Business & Professions Code Section 17200 provides that
22 unfair competition means and includes: "All unlawful, unfair or fraudulent business
23 practices and unfair, deceptive, untrue or misleading advertising." The activities
24 described herein by Defendants, by refusing to distribute contractual and earned
25 compensation, wrongfully retaining the monies due Plaintiff, converting those sums
26 for their own use, and by influencing, persuading, engaging and inducing Plaintiff to
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1 relocate based on knowingly false representations, constitutes unlawful, unfair,
2 deceptive and fraudulent business practices under Business & Professions Code
3 Section 17200 et seq.

4
5 62. Defendants' unlawful, unfair, deceptive and fraudulent business practices
6 have caused and continue to cause damage and injury to Plaintiff in an amount
7 according to proof at time of trial.

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9 63. Plaintiff seeks an order of this Court awarding restitution, disgorgement,
10 and all other relief allowed under Bus. & Prof. Code §§ 17200, et seq..

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13 WHEREFORE, Plaintiff prays for judgment as follows:

- 14 1. For general and special damages according to proof at trial;
15 2. For lost income, bonuses and all other compensation due to Plaintiff;
16 3. For exemplary and punitive damages;
17 4. For an order of restitution and disgorgement of any and all profits
18 obtained by Defendants' unfair business practices;
19 5. For prejudgment interest accrued herein;
20 6. For attorneys fees' and costs of suit incurred herein; and,
21 7. For such other and further relief as this court may deem proper.
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26 **TRIAL BY JURY**

27 Pursuant to the seventh amendment to the Constitution of the United States of
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1 America, Plaintiff is entitled to, and demands, a trial by jury on all counts so triable.
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4 Date: November 1, 2013

ADLER LAW GROUP, APLC

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