

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

CBS Radio Inc.
1515 Broadway, 46th Floor
New York, NY 10036,

Plaintiff,

v.

Index No. _____

Howard Stern
c/o Don Buchwald & Associates, Inc.
10 East 44th Street # 7
New York, NY 10017,

One Twelve, Inc.
111 West 40th Street
New York, NY 10018,

Don Buchwald
c/o Don Buchwald & Associates, Inc.
10 East 44th Street # 7
New York, NY 10017,

Don Buchwald & Associates, Inc.
10 East 44th Street # 7
New York, NY 10017,

and

Sirius Satellite Radio, Inc.
1221 Avenue of the Americas,
New York, NY 10020

Defendants.

COMPLAINT

Plaintiff CBS Radio Inc., formerly known as Infinity Broadcasting Corporation

("Infinity"), by and through its undersigned counsel, files this Complaint on its behalf and as the

successor in interest to Sagittarius Broadcasting Corporation (collectively "CBS Radio"), against Defendants Howard Stern ("Stern"), One Twelve, Inc. ("One Twelve"), Don Buchwald, Don Buchwald & Associates, Inc. (collectively "Buchwald"), and Sirius Satellite Radio, Inc. ("Sirius"), and alleges as follows:

NATURE OF THE CASE

1. This is a suit for compensatory and punitive damages, disgorgement, and replevin for multiple breaches of contract, fraud, unjust enrichment, and misappropriation of CBS Radio's broadcast time by One Twelve and Stern. This suit also seeks compensatory and punitive damages and disgorgement for tortious interference with an existing contract, unjust enrichment, aiding and abetting fraud, and inducing and conspiring in the misappropriation of CBS Radio's airtime by Don Buchwald, Stern's agent, and Sirius. It further seeks damages for unfair competition against Sirius.

2. After almost two decades of CBS Radio's dedicated support and continuous promotion of his radio programs and persona, Howard Stern, a radio talk show host, repeatedly and willfully breached his written contract with CBS Radio over the last twenty-two months of that contract, misappropriated millions of dollars worth of CBS Radio airtime for his own financial benefit and the financial benefit of Buchwald and Sirius in contravention of repeated directives by CBS Radio, fraudulently concealed his interest in hundreds of millions of dollars of Sirius stock while promoting Sirius, deceived CBS Radio and caused it to incur substantial expenses and obligations it would not have incurred but for the deception, and failed to give CBS Radio notice of his plans to develop a radio project with Sirius in disregard of explicit contractual requirements. Even today, Stern continues to breach his contract by refusing to return property that belongs to CBS Radio.

3. Under the terms of the Agreement entered into on January 1, 1996, by Infinity, Sagittarius Broadcasting Corporation (a former wholly-owned subsidiary of Infinity and now part of CBS Radio) and Stern and One Twelve, as amended by an Extension Agreement dated January 1, 2001 (collectively "Agreement"), Stern agreed to devote his best professional efforts to host a morning radio program, "The Howard Stern Show" ("the Program"), in a manner that maximized the success of that show. Except as provided in the Agreement, Stern's on-air radio performances were to be exclusively for CBS Radio through the completion of the contract on December 31, 2005. He and One Twelve also agreed in the contract that they would comply with all federal laws, including specifically the statutory and regulatory provisions of the Communications Act of 1934, as amended, 47 U.S.C. §§ 508 & 317, regarding payola and plugola, the rules of the Federal Communications Commission ("FCC") implementing those provisions (47 C.F.R. §§ 73.1212, 73.4180) and CBS Radio's policies with respect to those matters. Those laws, CBS Radio's conflict of interest and payola policies, and the Agreement obligated Stern to bring to the attention of CBS Radio any agreements to receive any money or other valuable consideration for including any promotional materials in the programming covered by the Agreement, and to report to CBS Radio management "any program material which has as its subject, or which could in any way materially affect, any business concern... in which [he]... held a... financial interest."

4. In flagrant disregard of these contractual and other obligations, Stern secretly entered into an agreement with Sirius that rewarded him and Buchwald, his agent and manager, with hundreds of millions of dollars for his promotion of Sirius in 2004 and 2005 while he was under contract with CBS Radio. After announcing his contract with Sirius, Stern engaged during the Program in the consistent promotion of satellite radio in general and Sirius in particular.

Despite frequent demands by CBS Radio that he cease the promotion of Sirius, Stern persisted, offering a false explanation for his conduct. As one broadcaster commented, "Howard has become a non-stop commercial for Sirius Satellite radio" and another said that the "show has turned into nothing but an infomercial for Satellite radio." A recent Barron's article noted that, in the final months of his contract with CBS Radio, Stern was "relentlessly promoting Sirius." In addition to his incessant promotion of Sirius during this period, Stern constantly denigrated terrestrial radio, the type of radio service in which CBS Radio is primarily engaged. Stern's promotional activity was undertaken with the consent of and in coordination with Sirius, giving it millions of dollars of free advertising on CBS Radio's airwaves and substantially increasing its subscriber base.

5. On or about January 9, 2006, Sirius paid over 34 million shares of stock, valued at approximately \$220 million, to Stern and his agent because Sirius exceeded by the end of 2005 certain subscriber targets that were set in the Sirius-Stern contract. On information and belief, the Sirius-Stern contract provided that Stern was eligible to receive this stock payment in 2010, but it had an acceleration provision that allowed Stern to receive the compensation as early as January 2006 if these subscriber targets were met. All of Stern's actions for which he received this expedited compensation occurred during the time that Stern was under exclusive contract with CBS Radio, when the Sirius payment terms to Stern were kept secret. By the contract, Sirius provided, and Stern took full advantage of, a compelling incentive for Stern to do all that he could to help Sirius reach the subscriber targets by the end of 2005 so that he could receive his Sirius stock payment in January 2006 while Sirius's stock was extremely valuable. Without the accelerated payment, Stern would risk the decline of the Sirius stock value or even the

demise of Sirius. By taking action on CBS Radio's airtime in 2004 and 2005, Stern assured himself of immediate access to \$200 million in assets that could be readily converted to cash.

6. This provision of his Sirius contract was carefully and deliberately concealed from CBS Radio and the public during the entire time of his contract with CBS Radio, which expired on December 31, 2005. All of the public announcements, including all filings with the Securities and Exchange Commission ("SEC"), in 2004 and 2005 concerning the Sirius contract indicated that the Sirius contract would not commence until January 2006, and thus Stern's obligations to, and benefits from, Sirius would not begin until after the expiration of the Agreement.

7. By hiding from CBS Radio the enormous financial rewards Stern stood to obtain from activities undertaken on-air while under contract to CBS Radio, Stern was able to, and did, assure that CBS Radio would continue to employ him and that he could use CBS Radio's valuable air time to increase Sirius's subscriber numbers. Indeed, when CBS Radio admonished Stern for promoting Sirius and demanded that he cease, Stern fraudulently misled CBS Radio into believing that he was only discussing his life, as he had done in the past on the Program. Stern repeatedly stated on the air, falsely as it now appears, that it did not matter to him personally if Sirius subscriptions increased. Had Stern been honest with CBS Radio and disclosed his interest in Sirius stock, CBS Radio would have discharged him unless he revealed the interest on air, as required by Sections 507 and 317 of the Communications Act, and compensated CBS Radio for the use of its broadcast time, requirements to which, on information and belief, Stern would not have agreed or adhered. His failure to comply with those requirements would have resulted in his discharge.

8. Sirius intentionally interfered with and procured Stern's breach of the Agreement. Sirius knew that Stern had a contractual obligation to host a program that served the best interests of CBS Radio, to comply with federal payola and plugola regulations, and to comply with his duty of good faith. Sirius intentionally induced and caused Stern to breach these contractual provisions by offering to accelerate Stern's payment of millions of dollars in stock options to promote Sirius on CBS airwaves and by concealing Stern's stock interest from CBS Radio. Sirius went to great lengths to conceal this arrangement with Stern, omitting any mention in its press releases or in its required filings with the SEC that Stern could acquire stock on an accelerated basis as a result of increases in Sirius's subscriber base during 2004 and 2005.

9. CBS Radio seeks from the Defendants damages and disgorgement for Stern's, Buchwald's, and Sirius's unjust enrichment that resulted from the illicit arrangement during the term of the Agreement and which was facilitated through fraudulent misrepresentations, fraudulent concealment, breaches of the Agreement and repeated misuse of CBS Radio's valuable airtime. The unjust enrichment includes the value of the stock awarded to Stern and Buchwald as well as Sirius's revenues from the more than 1 million new subscribers that Sirius has attributed to Stern's promotional activities from October 2004 through December 31, 2005. CBS Radio also seeks damages from Sirius to compensate CBS Radio for the value of the airtime that Sirius misappropriated for its own use through this unfair competition.

10. In addition to promising that his radio services would be exclusive to CBS Radio through December 31, 2005, Stern also promised in the Agreement to give CBS Radio "the first opportunity to discuss participation" in any new "concepts or projects relating to radio" involving Stern. Starting in the Spring of 2004 and continuing into the Fall of that year, however, Stern and One Twelve continuously disregarded this contractual mandate and, without

giving the required notice to CBS Radio, secretly negotiated an agreement with Sirius to host, *inter alia*, a radio program commencing in January 2006, at the end of the term of the Agreement. They were aided and abetted in this violation by Buchwald, who was intimately involved in the negotiation of the Agreement, was fully familiar with its terms and stood to benefit substantially by Stern's failure to comply with this contractual obligation.

11. While engaged in clandestine negotiations with Sirius, Stern and Buchwald misled CBS Radio, creating the false impression that Stern would renew his contract with CBS Radio and that CBS Radio would be given notice and the "first opportunity" to discuss participating in any new radio "concept or project" Stern developed during the term of his contract. In reliance upon this deception and as a direct result of the flagrant disregard by Stern and Buchwald of Stern's contractual obligation to give CBS Radio notice and an opportunity to participate, CBS Radio incurred substantial expenses and obligations that it would not otherwise have undertaken to satisfy Stern's extra-contractual demands and assure his exposure in markets where the Program had been cancelled by other broadcasters.

12. Stern's breach of his contractual obligations also harmed CBS Radio by denying it the opportunity, which it would have actively pursued, to develop and exploit jointly with Stern any satellite radio opportunity that Stern and One Twelve developed. CBS Radio seeks damages for the expenses it incurred in reliance on the intentional actions of Stern and his agent ignoring their obligation to give CBS Radio any notice that he was negotiating with Sirius and the lost profits to which it is entitled under the Agreement as a result of his breach of the contract.

13. As Stern's agent and manager, Buchwald was aware of the terms of the Agreement and Stern's obligation to give CBS Radio notice of any radio project or concept

developed by Stern. By facilitating Stern's contract with Sirius and assisting Stern in the breach of his obligation to give CBS Radio the opportunity to participate in the Sirius negotiations, Buchwald intentionally induced Stern and One Twelve to breach the Agreement and not offer CBS Radio the first opportunity for a satellite radio project because Buchwald personally stood to gain significant rewards from an exclusive deal between Stern and Sirius. CBS Radio seeks damages from Buchwald and his company, Don Buchwald & Associates, Inc., for their tortious inference with the existing contract.

14. CBS Radio also requests an order requiring Stern or One Twelve, or both, to return the audio recordings of Stern's CBS Radio Programs and all copies that might have been made to prevent any unauthorized use. The Agreement and the prior contracts governing Stern's employment by CBS Radio explicitly give CBS Radio the exclusive rights to the audio recordings of Stern's programs made during the terms of the respective agreements and expressly preclude their use by Stern or One Twelve after the Agreement terminates. While Stern has acknowledged CBS Radio's ownership of the audio recordings, he has refused to respond to CBS Radio's timely demands to return the recordings currently in his possession. In fact, on his December 7, 2005 program, Stern threatened to burn or bulk erase the "carts" – which are audio recordings containing excerpts of Stern's programs – that were still located in the studio if CBS Radio did not let him take possession of them. Indeed, One Twelve has refused to return the recordings, as requested on a number of occasions, including in a letter from CBS Radio's counsel dated December 19, 2005.

THE PARTIES

15. Plaintiff CBS Radio Inc. (formerly known as Infinity Broadcasting Corporation) is a corporation organized and existing under the laws of the State of Delaware, with its principal

place of business in New York, New York. CBS Radio seeks to enforce its rights under the Agreement and those of Sagittarius Broadcasting Corporation, which merged with Infinity in 2001, as its successor-in-interest.

16. Defendant Howard Stern is a resident of New York, New York.

17. Defendant One Twelve, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business in New York, New York.

18. On information and belief, Defendant Don Buchwald is a resident of New York, New York.

19. Defendant Don Buchwald & Associates, Inc. is a corporation organized and existing under the laws of the State of New York, with its principal place of business in New York, New York.

20. Defendant Sirius Satellite Radio is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

FACTS

A. Background

21. CBS Radio operates 179 radio stations located in 40 markets throughout the United States. The majority of those stations are in the nation's top 50 markets. Stern is a radio talk show host who provided services, through his personal service company, One Twelve, to CBS Radio as host of the Program. The terms of his service over the past ten years were governed by the Agreement which provides that it is to be interpreted according to the laws of New York. Stern's work with CBS Radio prior to 1996 was governed by similar contracts which also provided that they would be interpreted according to New York law.

22. Stern provided services to CBS Radio from November 1985 until the end of 2005. From the time Stern first began this work until the occurrence of the events which form the basis of this Complaint, CBS Radio actively and continuously promoted and supported Stern, facilitated One Twelve's efforts to syndicate the Program to other radio stations, encouraged other stations to carry the Program, and undertook various other efforts to enhance Stern's visibility, popularity and reputation.

23. Under the Agreement, Stern was required to host the Program during morning weekday drive time hours and "to insure that the Programs [were] professionally presented and promoted in a manner which maximizes the prospects for the success of the Programs." (§ 1(d) of the Agreement). One Twelve promised in the Agreement that it would "insure that Artist [Stern] performs the services described herein relating to the Programs to the best of his ability and in an artistic and professional manner." (§ 2(a) of the Agreement). It also agreed that, "[e]xcept as expressly permitted by this Agreement, ... [Stern's] on-air radio announcing services shall be exclusive to [CBS Radio] ... during the Term" (§ 2(b) of the Agreement).

24. CBS Radio broadcast the Program from a unique studio specially constructed for Stern at the studios of Station WXRK (now WFNY) in New York City. (§ 33 of the Agreement). Together with One Twelve, CBS Radio syndicated the Program to radio stations throughout the United States. (§ 32 of the Agreement).

25. Under the original 1996 Agreement and a supplemental agreement, CBS Radio paid One Twelve for Stern's services a base compensation totaling \$39.1 million over the five years of the Agreement, (§ 4(a) of the Agreement), annual bonuses totaling \$5.4 million over five years (§ 4(b)(i) of the Agreement), plus a number of incentive bonuses (§ 4(b)(ii)-(viii) of the Agreement) and stock options with a value of \$3.45 million each year (§ 4(b)(ix) of the

Agreement). Under the Extension Agreement entered into in 2001 and a supplemental agreement, Stern's base compensation increased to over \$58.8 million to be paid over the five year term of the extension (§ 3(a) of the Extension Agreement), bonus payments totaling \$7.5 million over the 5 years (§ 3(b) of the Extension Agreement), plus additional bonus payments provided that the program achieved certain audience ratings (§ 3(c) of the Extension Agreement). Stern was also granted 849,806 stock options under CBS Radio's 1999 Long-Term Incentive Plan. (§ 3(d) of the Extension Agreement). All of the payments required under the Agreement, including those under the Extension Agreement, were paid.

26. In addition to his salary, Stern demanded substantial and unique benefits which CBS Radio provided. For example, One Twelve received a disproportionate share of the syndication revenue collected from radio stations that carried the Program. CBS Radio built Stern a special studio at Station WXRK, and, at Stern's request, provided him special security while in the WXRK facilities in New York. CBS Radio reimbursed One Twelve for Stern's expenses associated with the Programs, and paid for a limousine to transport Stern to and from the station. (§ 5 of the Agreement).

27. Since Stern began working with CBS Radio, the number of radio stations carrying Stern's show increased from one in 1985 to over 60 at its peak. Stern's base salary increased from \$705,000 in 1985 to over \$15 million in 2005, not including \$8.4 million that his company, One Twelve, earned in syndication license fees in 2005 from CBS Radio affiliates. In addition to providing Stern's generous salary, substantial bonuses, and special benefits, CBS Radio devoted substantial financial and other resources over the past twenty years advertising and promoting Howard Stern's on-air persona and the Programs. These efforts by CBS Radio

facilitated Stern becoming a national celebrity with a substantial following and the ability to demand huge fees for appearances outside the scope of his employment by CBS Radio.

28. Throughout the term of the Agreement, CBS Radio also faithfully supported Stern's programming, notwithstanding enforcement actions by the FCC stemming from numerous complaints filed with it alleging that Stern's programming was indecent. CBS Radio devoted significant resources responding to these complaints, including substantial attorneys' fees. CBS Radio ultimately contributed to the U.S. Treasury over two million dollars in settlement payments in connection with, *inter alia*, conduct that was attributable to Stern.

B. Stern's Failure to Notify CBS Radio of his Proposed Radio Project with Sirius or to Reveal His Interest in Sirius

29. Through the term of the Agreement until October 6, 2004, Stern and Buchwald gave CBS Radio the impression that Stern would renew the Agreement and continue to host the Program on CBS Radio. Indeed, during the summer of 2004, after Clear Channel Communications, Inc. ("Clear Channel"), a major national broadcast station owner, precipitously dropped the Program on six of its stations, CBS Radio, in reliance on the terms of the Agreement that Stern would give it notice of any other radio idea Stern was exploring and on his indications that he would renew the Agreement, acceded to Stern's requests for extraordinary actions to support Stern. In response to his requests, CBS Radio commenced carrying the Program in July 2004 on CBS Radio stations in the five Clear Channel markets where CBS Radio had stations – San Diego, Pittsburgh, West Palm Beach, Orlando, and Rochester. It also agreed to carry the Program in four other additional markets – Austin, Houston, Tampa and Fresno – to show support for Stern and to allay his concern that other broadcasters might follow Clear Channel and drop him if CBS Radio did not demonstrate its confidence in him.

30. In addition, at Stern's urging, CBS Radio joined Stern and One Twelve in a lawsuit against Clear Channel for breach of the syndication agreements applicable to the six markets in question. CBS Radio agreed to join the suit and bear half of the litigation costs at Stern's request to facilitate Stern's desire to make Clear Channel pay for its breach of contract and to deter others from attempting to cancel their affiliation contracts.

31. During this period, Stern and Buchwald never advised CBS Radio that Stern was considering a satellite radio program, much less actually negotiating a contract with Sirius, but rather gave CBS Radio the clear impression that he would renew his contract. Indeed, Stern and Buchwald made comments in connection with CBS Radio's action in response to Clear Channel's decision to drop the Program that renewal was likely. Given those comments, the historical relationship and course of dealing between the parties, and the lack of any notice by Stern or Buchwald that Stern was negotiating with Sirius, CBS Radio reasonably believed that Stern would renew.

32. Stern had been with CBS Radio for twenty years and had renewed his contract with CBS Radio four times – in 1986, 1990, 1996, and 2001. In each case, the agreements between Stern and CBS Radio had been negotiated only a few months before the earlier agreement was scheduled to expire. CBS Radio was therefore not particularly concerned that formal renewal negotiations had not commenced fifteen months before the expiration of the Agreement.

33. Moreover, CBS Radio was aware that One Twelve and Stern's agent had given Beasley Broadcast Group, Inc. ("Beasley") assurances that Stern would renew his Agreement. During their July 2004 syndication negotiations with Beasley to restore the Program to another Clear Channel market, Miami, Buchwald told Beasley that Stern intended to renew his

Agreement with CBS Radio. As the general counsel of Beasley stated in a June 3, 2005 letter to Buchwald alleging that Buchwald fraudulently induced Beasley to enter into the licensing contract, “[he] led Bruce Beasley to believe that Mr. Stern would be remaining on terrestrial radio at least through the last day of the term of the Beasley/One Twelve Agreement, August 15, 2006...” – some 8½ months after the Agreement with CBS Radio was scheduled to expire.

34. Unknown to CBS Radio, Stern and One Twelve were at the time secretly discussing with Sirius the development of a satellite radio project in blatant and intentional disregard of Stern’s and One Twelve’s obligations under the Agreement. The Agreement explicitly obligates One Twelve to provide CBS Radio with “the first opportunity to discuss participation” in other “concepts or projects” related to radio, providing that:

To the extent that [One Twelve] or [Stern] should develop other concepts or projects relating to radio involving [Stern], [One Twelve] agrees that it will provide Infinity with the first opportunity to discuss participation in such projects....

(¶ 35(c) of the Agreement). This provision applies to any “concepts or projects relating to radio involving [Stern],” a broad obligation that encompasses virtually any innovation or new idea involving Stern’s career in radio. Satellite radio is clearly within the scope of this provision.

35. Under the Agreement, the obligation to give CBS Radio the first opportunity to discuss participation in radio projects applies to concepts or projects that are conceived during the term of the Agreement, even if the concept or project is launched or implemented after the term. Paragraph 35 of the Agreement, entitled “Other Projects Involving Infinity, Contractor [One Twelve] and Artist [Stern],” defines the rights and obligations of the parties with respect to new radio projects. Paragraph 35(a) provides that CBS Radio does not have any rights with respect to any film, film merchandising or book transactions involving Stern. Paragraph 35(b) covers projects relating to radio in which the parties jointly engaged during the Term on

mutually agreeable terms and conditions, with CBS Radio entitled to 40% of the net profits from “such ventures.” It provides:

Infinity, Contractor and Artist desire, during the Term hereof, jointly to engage in other projects relating to radio on mutually agreeable terms and conditions. Such projects in which it is anticipated that the parties will participate include “1-800-STERN,” the production and marketing of audio and video tapes, and the production and distribution of newsletters, although it is acknowledged by Company that there may be no such projects during the term hereof. If the parties pursue such ventures, Infinity shall receive forty percent (40%) of the net profits of any such venture.

36. By its terms, Paragraph 35(b) applies to joint projects pursued by the parties “during the Term” of the Agreement, while Paragraph 35(c), which conspicuously lacks any temporal limit, applies to activities conceived during the term but which may be pursued after the Term. Stern and One Twelve, as well as senior officials of CBS Radio, were well aware at the time the Agreement was negotiated that Paragraph 35(c) was intended to cover such future concepts or projects, and that CBS Radio was to be given the “first opportunity” to discuss participation in any such projects.

37. On information and belief, Stern developed the concept of hosting a satellite program, rather than a terrestrial radio program, during the term of the Agreement, probably in 2004. Stern was consequently required under the Agreement to give CBS Radio notice and the “first opportunity” to participate in any such satellite radio project. Stern and One Twelve intentionally violated that obligation and never gave CBS Radio the required “first opportunity” to participate in the development of the concept.

38. In so doing, Stern knowingly violated the detailed provisions of the Agreement concerning the procedures that he and One Twelve were required to follow whenever he developed concepts or projects relating to radio. Under those provisions, One Twelve was

obligated to “first consult with Infinity concerning whether Infinity may be interested in participating” when Stern conceived of any radio project. (¶ 35(c)(i) of the Agreement). If CBS Radio indicated that it was interested in participating in such a project, One Twelve was then obligated to negotiate with CBS Radio “in good faith in an effort to agree upon mutually acceptable terms.” (¶ 35(c)(ii) of the Agreement).

39. If an agreement were reached as to the new joint project but the parties were unable to agree on a distribution of proceeds, then under the Agreement, CBS Radio would be entitled to 40% of the net profits of the joint venture. (¶ 35(c)(ii) of the Agreement). One Twelve could negotiate new radio projects with other entities only after CBS Radio was “first” consulted and indicated that it was not interested in participating, or the parties were unable to agree upon mutually acceptable terms notwithstanding good faith negotiations, other than CBS Radio’s pre-agreed equity interest. (¶¶ 35(c)(iii)-(iv) of the Agreement).

40. Notwithstanding these clear obligations to provide notice and give CBS Radio the first opportunity to participate, Stern and One Twelve, with the assistance of Buchwald, engaged from March until October 2004 in clandestine negotiations with Sirius to host a program for Sirius and to engage in other radio-related activities for Sirius to the exclusion of CBS Radio. And, on October 6, 2004, without giving CBS Radio the notice required under the Agreement, Stern announced on the Program and Sirius issued a press release announcing that they had signed a contract that would commence in 2006, after Stern’s contract with CBS Radio expired. This announcement was made, without any warning to CBS Radio, on the eve of the National Association of Broadcasters annual radio convention, a major meeting of radio broadcasters from throughout the United States which the CEO of CBS Radio was attending. Nothing in these announcements indicated that Stern or Buchwald could benefit by receiving accelerated

payments for promotional activities Stern might take on the Program before the end of his Agreement with CBS Radio. Rather, the announcements stated that he would earn \$500 million in cash and stock over the 5 years of the contract, which would begin in 2006.

41. By announcing Stern's contract with Sirius fifteen months before his contract with CBS Radio was scheduled to expire, rather than shortly before the Agreement was to expire, Stern was able to, and did, use the Programs on CBS Radio to promote and advance his and Buchwald's undisclosed financial stake in Sirius as well as the interests of Sirius. That promotional activity violated his obligation under the Agreement to promote the Programs "in a manner which maximizes the prospects for the success of the Programs." Stern not only engaged in such promotional activity on the air and in other venues, hyping the alleged benefits of satellite radio, but also disparaged terrestrial radio, which competes for an audience with satellite radio. His promotional activities also violated his obligations under Paragraph 28 of the Agreement requiring compliance with Sections 317 and 507 of the Communications Act of 1934, as amended, and requiring him to adhere to CBS Radio's policies to disclose any financial interest in an entity promoted on the air.

42. Stern and One Twelve's failure to give CBS Radio the required notice of his negotiations with Sirius required by Paragraph 35(c) of the Agreement caused CBS Radio to incur extraordinary expenses to satisfy his extra-contractual requests. As noted, shortly before Stern's precipitous announcement of his Sirius contract, CBS Radio added the Program to nine of its stations in July 2004 to address Stern's concerns over Clear Channel's decision to drop the Program and the syndication license fees Stern and One Twelve lost as a result of Clear Channel's action. To address Stern's concerns and relying on Buchwald's indications that Stern would renew his contract if CBS Radio continued to support Stern, CBS Radio incurred over

eight million dollars in direct expenses, including restructuring the format of several of its stations, incurring increased license fees, and making severance payments to employees discharged to make room for him.

43. These increased expenses were incurred by CBS Radio as a long-term investment based on the belief, supported by Buchwald's statements, that Stern would renew his contract. These expenses, a substantial portion of which constituted license fees which were paid by CBS Radio to One Twelve, were not offset by a corresponding increase in revenue. To the contrary, from the time Stern was added to the stations in the nine markets through December 2005, as compared to the previous seventeen-month period, CBS Radio's cash flow for those stations declined by approximately \$11 million – a loss of 99% of the cash flow generated by those stations in that prior period. CBS Radio would never have assumed the extraordinary risks associated with introducing the Program in these markets if it had known that Stern was actively engaged in negotiating a satellite radio deal with Sirius to the exclusion of CBS Radio, particularly a deal that gave Stern a hidden interest in promoting Sirius as soon as possible to as wide an audience as possible.

44. CBS Radio also would not have joined Stern and One Twelve in suing Clear Channel for its action and incurred significant legal fees if it had known that Stern was engaged in serious negotiations with Sirius. By entering into the Sirius agreement, Stern effectively capped the potential damages in connection with that litigation, undermined the potential benefits of the litigation, and mandated, as a practical matter, abandoning the claim.

45. Had CBS Radio been given notice and its "first opportunity for discussion," it would have, as Stern and One Twelve well knew, pursued a satellite radio project jointly with them. CBS Radio highly valued its relationship with Stern, and had advised Stern's agent that

any renewal with CBS Radio would include a substantial increase in Stern's compensation. CBS Radio had also told Stern's agent that it was very interested in pursuing with One Twelve and Stern any satellite opportunity Stern might be considering.

46. Had CBS Radio been brought into the discussions of Stern's move to satellite radio, CBS Radio would have worked diligently with Stern and One Twelve to develop an arrangement that would have been beneficial to all parties. Multiple-party deals and repurposing of broadcast material are common in the industry. CBS Radio had previously demonstrated its willingness to participate with Stern in new ventures that would enhance his exposure and improve both parties' financial position by entering into the agreement with E! to create a cable television program from Stern's radio Programs. In the satellite radio arena, CBS Radio demonstrated its flexibility and interest in expanding its business opportunities by agreeing with the NFL to allow Sirius to share CBS Radio's exclusive rights to air certain NFL games. CBS Radio was willing to and interested in participating in a comparable or different arrangement in connection with any move by Stern to satellite radio.

47. Stern and One Twelve violated their contractual obligation to provide CBS Radio with notice of their plans to launch a satellite radio project and the first opportunity to participate in any satellite radio project because, on information and belief, Stern did not want to share the profits with CBS Radio, not because a three-party arrangement was unattainable. In October 2004, only a few days after the Sirius announcement, Buchwald acknowledged to a CBS Radio official that Stern and One Twelve did not first consult with CBS Radio about a satellite radio project and did not honor their contractual obligations because they did not want to share the profits from the satellite venture. Stern and One Twelve were well aware that if the parties jointly pursued a project during the Term, CBS Radio would receive 40% of the net profits

(¶ 35(b) of the Agreement) and if an agreement were reached as to a new joint radio project to be performed after the Term, but the parties were unable to agree on a distribution of proceeds, then CBS Radio would be entitled to 40% of the net profits of such a venture. (¶ 35(c)(ii) of the Agreement). By intentionally repudiating their contractual obligations, Stern and One Twelve sought to avoid that obligation and to keep the entire compensation – including their interest in millions of dollars of Sirius stock which was hidden from CBS Radio.

48. As Stern's manager and agent, Buchwald was intimately familiar with the Agreement and knew that Stern and One Twelve had contractual obligations to provide CBS Radio with a first opportunity to discuss any radio projects involving Stern and to pay the required percentage of net profits. However, Buchwald knowingly and intentionally facilitated, induced and caused Stern to breach his contractual obligation to provide CBS Radio notice and an opportunity to participate in a satellite radio project because Buchwald stood to gain significant personal financial benefits from Stern's exclusive contract with Sirius. Buchwald shared in the stock options, valued at almost \$220 million, that he and Stern could earn on an accelerated basis while Stern was under contract with CBS Radio and before he began hosting his morning program at Sirius. As a result of that breach of contract, CBS Radio incurred substantial damage.

C. Stern's Promotion of Sirius Satellite Radio in 2004 and 2005

49. Without the knowledge of CBS Radio, Sirius had agreed in October of 2004 to award Stern and Buchwald millions of shares of Sirius stock, which Stern could earn on an accelerated basis if the number of Sirius subscribers increased to certain target levels, including subscribers added during the period when Stern was under contract to CBS Radio. The October 2004 agreement was construed by the parties to mean that Stern would be awarded stock-

incentive payments as early as January 1, 2006, prior to the date that his Sirius program even began, if Sirius's subscriber levels hit these targets by December 31, 2005. In order to capitalize on the opportunity created by that provision and to accelerate the award of that stock, as well as to increase the value of Sirius stock, Stern engaged in a continuing campaign to promote satellite radio and Sirius in particular under the guise that Sirius subscription levels did not matter to him and that he was merely discussing details of his life – his move from terrestrial radio, and the constraints imposed by the FCC, to satellite radio where he was to be freed from those constraints. As Sirius intended, Stern had every incentive to do all that he could to increase Sirius subscriber levels in 2004 and 2005 so that he could obtain his Sirius stock award as early as possible. Receipt of the stock-incentive payment in January 2006, rather than at the end of some later fiscal year, was worth a substantial amount of money to Stern. For example, current payments are always worth more, and can be immediately spent or reinvested. Further, the January 1, 2006 stock incentive payments eliminated substantial risks: Stern was well aware that the long-term future of Sirius is in doubt and that Sirius stock to be paid in 2010 might be worth very little or even worthless by that time. Stern's concealment of that contract term from CBS Radio and the failure to disclose his substantial financial interest in increasing the number of Sirius subscribers while under employ by CBS Radio constituted a breach of his contractual obligations and fraudulent misrepresentation and concealment of information he was required by law to provide CBS Radio.

50. Stern's promotional activity on behalf of Sirius by using the valuable airtime of CBS Radio was undertaken with the knowledge, support and encouragement of Sirius in order to increase the number of subscribers to Sirius's satellite radio service as quickly as possible.

51. Stern's incessant promotion of Sirius also included the denigration of terrestrial radio. For example, on his October 7, 2004 Program, fifteen months before the expiration of the Agreement with CBS Radio, Stern and two of his staff proclaimed the benefits of moving to Sirius satellite radio, described Sirius satellite radio and how it has hundreds of channels, and touted many of the specific channels available on Sirius. They also extolled how Sirius satellite radio has channels for everyone, including CNN, NBC and a channel that carries NFL coverage. In addition, Stern boasted on that show that moving to Sirius satellite radio "is the only way I can destroy regular radio." Stern proclaimed, "I believe in the medium [of satellite radio].... I believe that the medium offers something you can't get anywhere else."

52. On October 8, 2004, Stern again urged his audience to move to satellite radio with him, and he even endorsed Sirius's monthly fee as a bargain. He also effusively endorsed the other two Sirius channels for which he would be developing the programming. Once again, he proclaimed the benefits of Sirius and insisted that one "can hear entertainers how they want to be heard" on satellite radio. In regard to Sirius satellite radio, he exclaimed, "I believe in the future. I believe in the product. I believe in the technology, and I know that the hottest item in cars right now is satellite radio. Everybody wants it - why? Because they love it!" This type of promotion of Sirius by Stern was extensive and continuing over the last 15 months of the Agreement.

53. While under a contractual obligation to do all that he could to maximize the success of CBS Radio's programs and to avoid any act which impaired CBS Radio's relationship with its advertisers, Stern also participated in numerous outside events to urge his fans and listeners to abandon terrestrial radio and subscribe to Sirius satellite radio. After several days of extensively promoting these appearances on his CBS Radio program, Stern hosted a rally in Union Square in New York City on November 18, 2004 where he distributed Sirius receivers and

promoted Sirius. That same day, Stern appeared on The Late Show with David Letterman where he extolled Sirius and publicized his move to satellite radio. More recently, in November and December of 2005, Stern appeared again on The Late Show with David Letterman, 60 Minutes, and the Today Show, where he promoted satellite radio and the new programming that he would be hosting and creating there.

54. Stern used CBS Radio's airtime to urge his listeners to tune into Sirius at specific times for specific events. InsideRadio.com reported on November 10, 2005 that, during his regular CBS Radio broadcast, Stern promoted the appearances of his parents on Howard 100, a Sirius satellite radio program. Stern also advertised, on CBS Radio, specific programs that he was planning for Sirius radio in January. As reported by the New York Daily News on November 8, 2005, "[Stern's] Sirius riffs yesterday included promotion of [upcoming Sirius programs] 'Tissue Time With Heidi,' a new show on which Heidi Cortez will talk dirty to guys at bedtime, and 'Crack Ho View,' on which 'crack ho's' will address the subjects addressed that day on the popular TV show 'The View.'"

55. In addition, as Billboard Radio Monitor reported on November 7, 2005, Stern repeatedly pitched Sirius on his farewell show to his Las Vegas listeners that day. Billboard reported, "During a goodbye to Vegas listeners, Stern mentioned Sirius several times, taking a call from a longtime listener saying goodbye to the show in which he suggested the listener subscribe to the satellite radio service. He also mentioned his upcoming appearance on 'The Late Show...' in which he'll make his case to viewers to follow him to Sirius."

56. As part of his campaign to increase the subscriptions of Sirius satellite radio, Stern launched a fierce attack at terrestrial radio, constantly talking about its limitations and shortcomings in comparison with satellite radio. This campaign against terrestrial radio even

included making personal attacks against CBS Radio management. As the Los Angeles Times reported on November 19, 2004, “On the air, [Stern] has made a habit of badmouthing Infinity executives....” This pattern continued thereafter. For example, in the Fall of 2005, Stern stated on air that “the President of the Company [Infinity] is the biggest House Negro...”, and argued with management over CBS Radio’s decision to delete the statement by a regular program participant who expressed the wish that Infinity’s CEO and his mother would contract cancer.

57. As Sirius’s 8-K Form, filed on January 5, 2006, reports, Stern and Buchwald received 34,375,000 shares of common stock on January 9, 2006 because Sirius exceeded its subscriber targets for 2005 that the parties agreed upon in their October 2004 contract. The Wall Street Journal reported on January 5, 2006, that these Sirius shares are worth approximately \$218.8 million and were provided because Stern helped Sirius meet its targets, “reeling in” more than 1.14 million new subscribers in the fourth quarter of 2005. All of the “reeling” occurred while Stern, under contract to CBS Radio, was obliged to use his best efforts for CBS Radio, and without Sirius or Stern paying CBS Radio one cent for the extremely valuable air time Stern was co-opting.

58. Stern’s promotional efforts and the payment that he received from Sirius for these efforts constitute a breach of the Agreement. That Agreement required Stern to adhere to the FCC’s payola and plugola rules and to follow CBS Radio’s policies in this regard. The Agreement also provided that Stern and One Twelve would not “in the future accept or agree to accept... any money, service or other valuable consideration for the inclusion of such matter in the programs covered by this Agreement” and that they would give CBS Radio any information which might alert CBS Radio “that an announcement was required” under federal law. Under the FCC’s rules and the terms of the Agreement, Stern’s right to acquire an accelerated stock

award from Sirius based on the number of Sirius subscribers had to be disclosed once Stern began to promote Sirius on the air. His promotion of Sirius under these circumstances was also a clear violation of the letter and the spirit of Paragraph 1(d) of the Agreement which obligated him to perform his duties under the Agreement “in a manner which maximizes the prospects for the success of the Programs,” Paragraph 2(a) which obligated him to perform “in a professional manner,” Paragraph 17 which prohibits “any act which impairs the relationship between [Infinity] and its advertisers,” and his obligation of “good faith and fair dealing” with respect to his responsibilities under the Agreement.

59. Stern’s concealment of his interest in Sirius also violated CBS Radio’s internal policies. In the Agreement, One Twelve and Stern promised to adhere to the Company’s policy statement regarding payola. CBS Radio’s policy statement provides: “During the term of my employment, neither I nor my spouse... has accepted, solicited or agreed to accept any money, service, gift, or favor or other thing of value whatsoever to influence any decision by me as to matters to be broadcast.” Stern’s agreement with Sirius to accept an accelerated payment of compensation for promotional and advertising services provided to Sirius during the term of his Agreement with CBS Radio clearly violated CBS Radio’s policies regarding payola and its conflict of interest policies.

60. Although Sirius disclosed in its Form 10-K, filed March 16, 2005, that it had agreed to pay Stern “substantial stock based incentive payments... if [Sirius] significantly exceed[s] agreed upon year-end subscriber targets during the term of the agreement, or acquire[s] material amounts of subscribers during the term directly and trackably through Stern’s efforts” (emphasis added), this SEC filing did not put CBS Radio on notice that Stern could benefit through the award of stock earned while he was in CBS Radio’s employ. Rather, the normal and

reasonable reading of that statement was that Stern could receive stock from Sirius as a result of Sirius's reaching subscriber targets after January 1, 2006, when his contract with Sirius commenced. Indeed, the SEC statement provides that Stern would earn these payments based on the number of subscribers "during the term of the agreement" – not those obtained before the agreement commenced. Sirius's Form 8-K, filed on October 6, 2004 was similarly misleading in that it also stated that Stern would be paid these incentive payments if certain targets were met "during the term of the agreement."

61. Sirius accelerated Stern's payment of this stock award because its subscriber levels increased, substantially due to Stern's promotion of Sirius in 2004 and 2005, prior to the commencement of his contract with Sirius, and during the term of his Agreement with CBS Radio. As Sirius's Form 8-K, filed on January 5, 2006 stated, Sirius awarded the stock to Stern and Buchwald because "[o]ur *December 31, 2005* subscriber total exceeded the subscriber target we agreed upon with Stern in October 2004." (emphasis added.)

62. Stern fraudulently misrepresented the reason he was hyping Sirius when he told CBS Radio, in response to its demand that he cease talking about Sirius, that he was just "talking about his life." In response to CBS Radio's complaints about Stern's promotion of Sirius on air, Stern's attorney, in a letter dated October 15, 2004, stated, "Howard has been talking about events personal to him, a practice that is entirely consistent with his past practices relating to the Programs..." In addition, in a November 3, 2005 letter, a lawyer at Buchwald & Associates referred to Stern's promotion of Sirius as "Mr. Stern discussing current events ... occurring in his life... which has been a staple of Mr. Stern's broadcasts...."

63. Stern also fraudulently misrepresented the reason that he was discussing Sirius when he falsely stated on CBS Radio air that Sirius subscription levels did not matter to him.

For example, on the December 1, 2004 Program, Stern stated that: "If three people sign up for satellite radio, I get paid the same amount of money. What do I care?" Likewise, on March 3, 2005, Stern said on the Program that: "I'm doing it [going to Sirius], and I don't give a rat's ass if three people [listeners] come with me, because it doesn't matter to me."

64. These statements were material misrepresentations of fact since Stern knew that his promotion of Sirius could result in a prompt receipt of hundreds of millions of dollars as a result of an acceleration of his stock payment from Sirius if its subscription rates increased to certain specified levels. Stern's omissions from these misleading representations also constituted fraudulent concealment because, pursuant to Section 507 of the Communications Act and under the Agreement and applicable CBS Radio policies, he had a duty to disclose his hidden financial interest to CBS Radio. His misrepresentations and omissions were made intentionally, and with scienter, in order to mislead CBS Radio and to induce it to continue his employment, even though he was promoting a competitor. Those efforts were successful; CBS Radio was deceived into believing that Stern's compensation under the Sirius contract was tied to the period after that contract commenced and reasonably relied on Stern's misrepresentation. Had CBS Radio known that Stern would benefit directly, immediately and personally from his promotion of Sirius, it would have required him to disclose that interest on his Program whenever he engaged in any promotion of Sirius, as required by the Communications Act and the FCC's rules, and to compensate CBS Radio for the use of its broadcast time. On information and belief, Stern would not have agreed to those requirements or, had he agreed to them, he would not have adhered to them, just as he did not stop promoting Sirius after CBS Radio directed that he cease. Stern's refusal to honor CBS Radio's conditions or his failure to adhere to them would have resulted in CBS Radio firing him for cause.

65. Sirius tortiously interfered with CBS Radio's contract with Stern. Sirius knew that Stern and CBS Radio had a valid contract and, on information and belief, knew that Stern was obligated to do all that he could to maximize the success of the Programs on CBS Radio, and knew he generally had an obligation to fulfill that contract in good faith. On information and belief, Sirius also knew that the contract obligated Stern to follow federal payola and plugola regulations and laws. Sirius intentionally induced Stern to breach the Agreement by offering him the opportunity to acquire millions of shares of Sirius stock, worth a hundred million dollars or more, on an accelerated basis by promoting their service in violation of these provisions of the Agreement. Sirius's actions resulted in Stern's actual breach of the Agreement which resulted in CBS Radio incurring substantial damages.

66. Stern's promotional activities resulted in his, his agent's, and Sirius's unjust enrichment, at the expense of CBS Radio. As a result of Stern's activities, Stern and his agent received an acceleration of the stock incentive payment of more than 34 million shares, with a value of more than \$218 million. Sirius received at least one hundred million dollars of free advertising and a corresponding explosion in their number of subscribers, which is attributable to Stern's promotional activities. These actions constituted a misappropriation of CBS Radio's extremely valuable advertising time and damaged CBS Radio's relationship with its advertisers and affiliates.

67. Sirius's misappropriation of CBS Radio's property for commercial advantage also constituted unfair competition. CBS Radio had clear property rights over the use of its airtime and Stern's programs. Sirius undertook these activities intentionally and in bad faith, as evidenced by the fact that Sirius carefully concealed the terms of the accelerated stock-option payment from the public and from CBS Radio.

68. As Variety reported on November 18, 2004, Sirius's "signing of Stern and his apparent willingness to tubthump the service before his contract begins could boost [Sirius] subscribers faster than originally projected." Similarly, the Los Angeles Times reported on November 19, 2004 that "Stern is ... plugging satellite radio at every turn.... Stern's relentless campaign has driven up Sirius's stock value. Even though it has only 900,000 subscribers, the company is worth about \$6 billion on Wall Street, nearly twice as much as it was at the beginning of the year." At the time of these reports, neither CBS Radio nor the public had any knowledge that Stern was benefiting directly and personally during the term of his Agreement with CBS Radio from the promotion of Sirius.

69. Stern's promotion of Sirius and satellite radio reached such excessive levels that three non-CBS Radio companies, Citadel Broadcasting Corporation, Beasley Broadcasting Group, Inc., and North American Broadcasting Company, Inc., dropped the Program in six separate markets, citing the free on air advertising that Stern was giving to Sirius, their competitor. Three other station licensees, LM Communications Radio, Clarity Communications Inc., and Beasley, opted not to renew their syndication agreements, also citing Stern's incessant promotion of Sirius on air. This caused CBS Radio to lose affiliation fees worth more than \$700,000.

70. Citadel actually quantified the dollar value of free advertising that Stern had been performing for Sirius on the air just on Citadel's four Program-affiliated stations and demanded payment from Stern for the value of that airtime. This amount totaled \$536,895 for less than two months. The comparable value of that same airtime on stations licensed to CBS is conservatively estimated at approximately \$100 million.

D. Stern's Refusal to Return CBS Radio's Audio Recordings

71. During the period of Stern's employment, CBS Radio made audio recordings of the Programs as they were produced. Under the Agreement and the previous agreements governing Stern's employment, these recordings – which reflect the unedited version of the Programs – are “the sole and absolute property of” CBS Radio; and One Twelve has “no rights whatsoever to such tapes following expiration of this Agreement or termination pursuant to the provisions hereof.” (§ 18(a) of the Agreement). The Agreement and the predecessor agreements provide that only CBS Radio has the right to use the recordings. The Agreement also provides that CBS Radio can use the audio recordings “only during the Term of this Agreement and in connection with the Programs or repeat broadcasts of the Programs (“Best of Programs”), the selection of such Best of Programs to be subject to Artist's reasonable approval.” (§ 18(a) of the Agreement).

72. With the permission of CBS Radio, Stern periodically removed the audio recordings from CBS Radio's studio. Both CBS Radio and Stern, however, recognized that Stern's temporary physical possession of the tapes did not affect CBS Radio's ownership rights. In light of Stern's departure, on December 19, 2005, CBS Radio's counsel asked Stern's attorney to return the audio recordings. Neither Stern, Buchwald, nor Stern's attorney has responded substantively to that request.

73. In light of the lack of a substantive response and Stern's comments on his Program and elsewhere concerning the recordings, CBS Radio has reason to believe that Stern may destroy the tapes or use these audio recordings in connection with another project, without CBS Radio's permission and in violation of the Agreement. Indeed, Stern proclaimed, on his December 7, 2005 program, that if CBS Radio did not let him take the “carts” (which are

excerpts from the audio recordings of the Programs and which also belong to CBS Radio) with him when he left CBS Radio, then “I’m going to erase them ... I’m not leaving it in their hands. I will burn every tape before I leave it in their hands.” CBS Radio did not give Stern permission to take the carts with him when he left, and CBS Radio believes that it was able to store all the carts safely before Stern’s departure. However, Stern may have in his possession some carts of past shows, and CBS Radio has demanded the return of any recordings or carts in Stern’s possession. Notwithstanding Stern’s acknowledgement that he does not have the rights to these recordings, he has not returned them.

74. Although Stern’s counsel will not confirm CBS Radio’s ownership of the tapes, Stern himself has admitted that he cannot use the recordings, or clips of those recordings, without the express permission of CBS Radio. On December 7 and 8, 2005, Stern admitted on the Program that he cannot use the tapes of his past shows without the permission of CBS Radio: “The radio shows are owned by ... me and Infinity. I don’t own the radio show.” Stern went on to state: “Let’s say every fan gave [the carts] back to me. I can’t use them anyway. It’s the same as the tapes – I can’t use them.”

75. In addition, on his November 17, 2005 appearance on The Late Show with David Letterman, Stern stated that he cannot use the tapes of his past programs without CBS Radio’s consent and that CBS Radio has not given him the consent to do so. In fact, Stern has asked CBS Radio for permission to take the carts with him, indicating that “I will keep the carts properly stored and in the event that [I]nfinity chooses to go into business with me on this material, [I] will have it safe and sound and ready to use. I am very aware that the material on these carts can’t be used.... [I] have no strange motive with this material. I will put it in storage where [I] can keep my eye on it.... not to worry.”

76. Buchwald has also acknowledged that Stern cannot use the tapes without the permission of CBS Radio and offered CBS Radio \$250,000 to purchase the tapes on Stern's behalf. CBS Radio turned down the offer because it believes the tapes are worth substantially more. These tapes are especially valuable because they contain unedited versions of the Programs, many of which have never been aired before in their entirety.

77. Notwithstanding Stern's recognition that CBS Radio owns the tapes, Stern, his counsel, and his agent have refused to return the audio recordings of his past CBS Radio shows.

COUNT ONE
MISAPPROPRIATION OF CBS RADIO'S AIRTIME AND THE UNJUST
ENRICHMENT BY STERN, BUCHWALD AND SIRIUS

78. CBS Radio repeats and re-alleges the allegations of Paragraphs 1-77 as if fully set forth herein.

79. Stern spent over fourteen months continually promoting and advertising Sirius's satellite radio service on CBS Radio's airwaves. CBS Radio received no compensation from Sirius or Stern for the airtime, which CBS Radio sells to commercial advertisers. CBS Radio never authorized Stern to use its airwaves to promote the interests of one of its competitors. Indeed, CBS Radio repeatedly directed Stern to cease his promotions. While Stern would from time to time reduce the frequency and length of his promotions, he repeatedly returned to the practice of extolling the virtues of Sirius Radio in particular and satellite radio in general.

80. This repeated and intentional campaign by Stern to promote Sirius constituted a deliberate misappropriation, misuse and exploitation for unauthorized personal gain of CBS Radio's valuable airtime and a breach of Stern's duty to undertake activities to ensure the success of the Programs and to use CBS Radio's valuable airtime for its benefit. Stern's

activities were also undertaken against the direct orders of CBS Radio and in violation of his obligations to CBS Radio.

81. Stern's campaign to promote Sirius on the airtime of CBS Radio was undertaken with the knowledge, advice, support, and encouragement of and in collaboration with Sirius and Buchwald. Stern, Sirius and Buchwald were unjustly enriched by this unauthorized tortious conduct. Those presentations advanced Sirius's interests directly and immediately and, as a result of Stern's announcements and promotions on the Program, Sirius has credited Stern with obtaining more than 1 million new subscribers, each of whom will pay Sirius \$12.95 per month, and its stock doubled in price. Stern's actions also advanced Buchwald's interests, resulting in his receipt of more than \$20 million in Sirius stock for subscriptions obtained from October 2004 through December 31, 2005. Stern received an accelerated payment of approximately \$200 million in Sirius stock as a result of his misappropriation of CBS Radio's airwaves, his unauthorized promotion of Sirius, and his repeated on-air urging, without any compensation to CBS Radio, of CBS Radio listeners to abandon terrestrial radio and to subscribe to Sirius Satellite Radio.

82. Pursuant to principles of equity and to prevent their unjust enrichment, Stern and Buchwald are liable for the misappropriation of CBS Radio's airtime and must compensate CBS Radio for the value of the benefits they received from Sirius for this promotional activity. CBS Radio seeks restitution and disgorgement from Stern and Buchwald in the amount of \$218 million, which represents the amount that Sirius paid for Stern's promotion of Sirius from October 2004 through December 31, 2005.

83. Because Sirius knowingly participated with and paid Stern and his agent on an accelerated basis to undertake this promotional activity, Sirius is liable to CBS Radio for the

misappropriation of CBS Radio's airtime. CBS Radio seeks damages from Sirius to compensate for the value of the broadcast time that Stern devoted to promoting Sirius and disgorgement of the subscription fees that were received as a result of the misappropriation of CBS Radio's assets that Sirius induced, encouraged and endorsed.

COUNT TWO
BREACH OF CONTRACT
(Paragraphs 1(d) & 28)

84. CBS Radio repeats and re-alleges the allegations of Paragraphs 1-77 as if fully set forth herein.

85. Stern and One Twelve breached Paragraph 28 of the Agreement by promoting Sirius on the Programs during the term of the Agreement without disclosing to CBS Radio that he had entered into a contract with Sirius which enabled Stern and Buchwald to receive an accelerated stock-incentive payment based on increases in the number of Sirius subscribers during the term of the Agreement. Stern and One Twelve also breached their obligations under Paragraph 1(d) of the Agreement to insure that the programs were professionally presented and promoted in a manner which maximized the prospects for the success of the Programs. Rather than devoting his efforts in the best interests of CBS Radio, Stern used the Programs to enhance the best interests of Sirius, a competitor of CBS Radio. Stern and One Twelve also breached their obligations of good faith and fair dealing under New York law.

86. As a result of Stern's promotion of Sirius on the Program, his violation of the obligation to disclose his interest to CBS Radio, his obligation to promote the best interests of the CBS Radio program, and his obligation to deal fairly and in good faith, Stern and Buchwald have received an accelerated award of Sirius stock valued at approximately \$218 million. CBS Radio is entitled to recover damages from Stern and One Twelve for this breach of contract equal

to the amount of compensation and the value of the benefits that CBS Radio paid to Stern over the last fifteen months of the Agreement.

COUNT THREE
FRAUDULENT MISREPRESENTATION, FRAUDULENT CONCEALMENT,
AND AIDING AND ABETTING FRAUD

87. CBS Radio repeats and re-alleges the allegations of Paragraphs 1-77 as if fully set forth herein.

88. Stern engaged in fraudulent misrepresentation when he made misrepresentations of material fact by telling CBS Radio that he was not intentionally promoting Sirius on CBS Radio's air and that he did not have a personal interest in increased Sirius subscriptions, but was instead just talking about events in his life. The omission of the material fact that Stern was being compensated by Sirius for this incessant promotion constituted fraudulent concealment because Stern had a duty under federal law and CBS Radio's policies to disclose the fact that he had a direct financial incentive to help increase Sirius subscriptions.

89. Stern's statement of the alleged reason that he was promoting Sirius was false and was made intentionally with scienter in order to defraud and mislead CBS Radio. CBS Radio was deceived and reasonably relied on this misrepresentation and the material omission and allowed Stern to remain on the air. Stern's misrepresentation and material omission directly and proximately caused damage to CBS Radio because it allowed Stern to remain on the air, paid his substantial salary, incurred unnecessary expenses and suffered additional losses. If Stern had not deceived CBS Radio, it would have required him to disclose his interest in Sirius stock when he engaged in any promotion of Sirius radio, as required by law, and to compensate CBS Radio for the value of the broadcast time used for that purpose. On information and belief, Stern would

not have agreed to those requirements or adhered to them, and, as a result CBS Radio would have discharged him for cause.

90. Sirius aided and abetted Stern in his fraud against CBS Radio by intentionally filing misleading statements with the SEC that omitted material information regarding the acceleration provision of the stock incentive payments that Stern could collect for promotional activity undertaken during the term of his CBS Radio contract. Buchwald also aided and abetted Stern in perpetrating this fraud by knowingly and deliberately making material misrepresentations to CBS Radio, stating that Stern was just talking about his life and concealing from CBS Radio Stern's financial interest in Sirius. Sirius's and Buchwald's actions substantially assisted Stern in committing this fraud. CBS Radio is entitled to all the damages it sustained from this fraud, including all benefits that Stern, One Twelve, Buchwald, and Sirius received from their perpetration of this fraud, and to an appropriate award of punitive damages.

COUNT FOUR
TORTIOUS INTERFERENCE WITH CONTRACT BY SIRIUS

91. CBS Radio repeats and re-alleges the allegations of Paragraphs 1-77 as if fully set forth herein.

92. Sirius is liable to CBS Radio for its tortious interference with the contract between Stern, One Twelve, and CBS Radio. Sirius knew that Stern had a contract with CBS Radio and, on information and belief, knew that he was obligated to produce a program devoted to CBS Radio's best interests, to follow federal payola and plugola laws and the related policies of CBS Radio, and to comply with a general duty of good faith and fair dealing towards CBS Radio.

93. Sirius intentionally procured and induced Stern's breach of that Agreement, without justification, by offering Stern the opportunity to acquire stock worth hundreds of

millions of dollars as early as January 2006 by promoting Sirius while he was under contract with CBS Radio, in clear violation of the Agreement. Sirius also assisted in Stern's breach by helping Stern to keep the acceleration provision of its contract with Stern a secret, and withholding material provisions of that contract in SEC filings, thereby misrepresenting the terms of that contract. On information and belief, Stern would not have breached the Agreement in this manner but for Sirius's wrongful conduct. Sirius's actions resulted in Stern's actual breach of the contract and caused CBS Radio to incur substantial damages.

94. CBS Radio is entitled to recover as damages from Sirius the full pecuniary loss it suffered from Stern and One Twelve's breach of the Agreement and punitive damages in an amount to be determined by the Court.

COUNT FIVE
TORTIOUS INTERFERENCE WITH CONTRACT BY BUCHWALD

95. CBS Radio repeats and re-alleges the allegations of Paragraphs 1-77 as if fully set forth herein.

96. Buchwald is liable to CBS Radio for his tortious interference with the contract between Stern, One Twelve, and CBS Radio. There was a valid contract between Stern, One Twelve, and CBS Radio. Buchwald had intimate knowledge of all the details of that contract, which he negotiated on behalf of Stern and One Twelve. Buchwald specifically knew that Stern had a duty under Paragraph 1(d) to use his best professional efforts to present and promote a program for the best interests of CBS Radio, that his on-air radio performances during the term of the Agreement were to be exclusively for CBS Radio, that Stern was to comply with the FCC's payola and plugola laws and CBS Radio's related policies, that Stern was obligated to advise CBS Radio of any financial interests in a matter he promoted on the air and that Stern had a duty, under Paragraph 35(c) to give CBS Radio the first opportunity to discuss participation in

any future radio projects involving Stern. Buchwald intentionally induced and caused Stern to breach those contractual provisions. On information and belief, Stern would not have breached these contractual provisions but for Buchwald's wrongful actions. These breaches of the Agreement caused CBS Radio to incur substantial damages.

97. CBS Radio is entitled to recover from Buchwald the full pecuniary loss of benefits of the contract with which Buchwald interfered. This damage includes 40% of the net profits that One Twelve and Stern derive from the contract with Sirius.

98. In addition, CBS Radio seeks damages from Buchwald equal to the funds expended in reliance on Buchwald's indications that Stern would renew his contract and failure to fulfill Stern's obligation to notify CBS Radio that he was engaged in discussions with Sirius to develop a radio project. CBS Radio also seeks punitive damages for Buchwald's inducing the breaches of the Agreement.

COUNT SIX
UNFAIR COMPETITION BY SIRIUS

99. CBS Radio repeats and re-alleges the allegations of Paragraphs 1-77 as if fully set forth herein.

100. By inducing Stern to use CBS Radio's airtime for its own benefit, Sirius engaged in unfair competition. Sirius misappropriated for its commercial advantage property rights that belonged to CBS Radio, its competitor. Specifically, Sirius misappropriated the assets, skill, and labor of CBS Radio. In addition, Sirius pursued these measures in bad faith and acted unfairly.

101. Sirius misappropriated, for its own benefit and commercial advantage, CBS Radio's primary corporate asset, its airtime, by offering Stern substantial compensation to promote its service on his CBS Radio programs. Sirius also misappropriated CBS Radio's right to Stern's exclusive radio announcing services by secretly entering into a contract with Stern to

pay him on an accelerated basis for services that he could perform for Sirius during the term of his Agreement with CBS Radio.

102. Sirius pursued this course of action willfully, deliberately, and in bad faith. Sirius intentionally concealed the fact that it was offering Stern accelerated payments for helping Sirius meet certain subscriber target levels so that CBS Radio would not terminate Stern's employment and so that Stern would be able to continue to entice CBS Radio's listeners to subscribe to satellite radio. Sirius did this by filing misleading disclosure forms with the SEC, and by deliberately and carefully concealing the material terms of its contract with Stern.

103. Sirius undertook these measures in order to gain commercial advantage over CBS Radio. Sirius and CBS Radio are direct competitors and Sirius attempted to usurp the listening audience of CBS Radio by paying Stern to talk about all the benefits of Sirius satellite radio and to speak disparagingly about terrestrial radio, all the while concealing the financial interest that Stern had in promoting Sirius for over 14 months. CBS Radio and its listeners were deceived into believing that Stern was just discussing his life, when in fact he had a direct financial interest in increasing the number of Sirius's subscribers.

104. CBS Radio was damaged when it failed to receive just compensation for its air time, while its competitor reduced its costs by receiving millions of dollars of free advertising. In addition, Sirius's actions damaged CBS Radio because Sirius, a direct competitor of CBS Radio, received over one million new subscribers as a result of Stern's advertisements for Sirius on CBS Radio's airwaves, thereby reducing the potential audience for any competing CBS Radio programming. Since CBS Radio's revenues are related to its audience, Sirius's deceptive advertising practice of using Stern to promote Sirius has caused, and will continue to cause, CBS Radio damages for which it should be compensated.

105. To prevent the unjust enrichment of Sirius, CBS Radio seeks the disgorgement of the revenue from the subscription fees that Sirius received as a result of its misappropriation of CBS Radio's labor and assets. CBS Radio also seeks punitive damages for Sirius's unfair competition.

COUNT SEVEN
BREACH OF CONTRACT
(Paragraph 35(c))

106. CBS Radio repeats and re-alleges the allegations of Paragraphs 1-77 as if fully set forth herein.

107. One Twelve and Stern have breached Paragraph 35(c) of the Agreement by entering into discussions and ultimately a contract with Sirius Satellite Radio without first giving CBS Radio the required notice and a "first opportunity to discuss participation" in a radio concept or project.

108. As a result of this breach of contract and in reliance on Stern's indications that he would renew his CBS Radio contract, CBS Radio suffered substantial damages when it restructured its radio programming and satisfied Stern's other extra-contractual demands in order to put the parties in a position for a successful extension of Stern's contract.

109. CBS Radio suffered further damages from this breach of contract because, without the notice that it was due, CBS Radio did not have an opportunity to mitigate the business impact of Stern's announcement. CBS Radio seeks damages to compensate for these losses.

110. CBS Radio can show that if given its "first opportunity for discussion," CBS Radio and One Twelve would have agreed to participate in a similar satellite radio project. Therefore, under the Agreement, CBS Radio is entitled to 40% of the net profits that One Twelve

and Stern derive from the contract with Sirius and should be awarded additional damages in that amount.

COUNT EIGHT
REPLEVIN

(Requesting the return of the recordings of Stern's programs to CBS Radio)

111. CBS Radio repeats and re-alleges the allegations in Paragraphs 1-77 as if fully set forth herein.

112. CBS Radio requests the Court, under the remedy of replevin, to order Stern and One Twelve to return to CBS Radio the audiotapes and recordings of the Programs and any and all copies made by or at the request of Defendants or either of them. CBS Radio is the lawful owner of the recordings, has the right to the immediate possession of the recordings, and has revoked its permission allowing Stern to borrow the tapes in a formal demand letter. Stern has refused to return the recordings and hence, his current possession of them is wrongful and in breach of the Agreement. Since these audio recordings contain unedited and previously unbroadcast material they have a tremendous potential value.

DEMAND FOR RELIEF

WHEREFORE, CBS Radio requests that this Court issue a judgment and order:

A. Requiring Stern, Buchwald and Sirius to disgorge to CBS Radio all of the benefits they unjustly received as a result of the misuse of CBS Radio's airtime to promote Sirius from October 2004 through December 31, 2005, including but not limited to, the value of the stock granted to Stern and Buchwald as a result of Sirius's exceeding the subscription target before December 31, 2005, and all of Sirius's revenues from the more than 1 million new subscribers that Sirius obtained between October 2004 and December 31, 2005 that Sirius attributed to the promotional efforts of Stern.

B. Requiring Defendants to pay CBS Radio for all damages directly and proximately caused by the fraudulent misrepresentation and fraudulent concealment, tortious interference with contract, misappropriation and unfair competition and ordering them to pay punitive damages for the fraud, tortious interference with the binding Agreement of CBS Radio, misappropriation and unfair competition.

C. Requiring Stern to repay to CBS Radio all of the compensation, including the value of the benefits he received from October 2004 through December 31, 2005, as damages for his repeated, numerous and material breaches of the Agreement and the breaches of his implied duties to CBS Radio as a result of his hidden financial arrangement with one of its competitors.

D. Requiring Stern, Buchwald, and Sirius to pay to CBS Radio damages to compensate CBS Radio for the value of the broadcast time that Stern devoted to promoting Sirius.

E. Requiring Stern to pay CBS Radio for all damages directly and proximately caused by his breaches of the Agreement with CBS Radio, and requiring Sirius and Buchwald to pay for all damages caused by their inducing Stern's breaches of the Agreement, including the losses sustained by not receiving, as required by the Agreement, a "first opportunity" to negotiate a satellite radio contract with Sirius and Stern.

F. Ordering Stern and One Twelve to return to CBS Radio the audio recordings and audiotapes of the Programs and any copies thereof made by or at the request of Defendants or any of them.

G. Ordering any further or additional relief that this Court deems just and proper under all the circumstances.

Respectfully submitted,

Dated: New York, New York
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