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STEPHANIE HIMONIDIS and
6 GERARDO LOPEZ

7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA

9 STEPHANIE HIMONIDIS, an
individual; and GERARDO LOPEZ, an
10 individual,

11 Plaintiffs,

12 v.

13 SPANISH BROADCASTING
SYSTEM OF CALIFORNIA, INC., a
14 Delaware corporation, and DOES 1 to
10, inclusive,

15 Defendants.
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CASE NO. 2:16-cv-06953

PLAINTIFFS' COMPLAINT FOR DAMAGES FOR:

1. Wrongful Termination in Violation for Public Policy;
2. Violation of Labor Code § 1102;
3. Breach of Contract;
4. Breach of the Implied Covenant of Good Faith and Fair Dealing;
5. Violation of Labor Code §§ 201, 203, 204, et seq.;
6. Violation of Labor Code § 227.3;
7. Intentional Infliction of Emotional Distress
8. Violation of Business & Professions Code §§ 17200, et seq.

[JURY TRIAL DEMANDED]

1 COME NOW PLAINTIFF STEPHANIE HIMONIDIS (“MS.
2 HIMONIDIS” and/or “Plaintiff”) and PLAINTIFF GERARDO LOPEZ (“MR.
3 LOPEZ” and/or “Plaintiff”) and hereby allege as follows:
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5 **JURISDICTION AND VENUE**

6 1. The Court has jurisdiction over this action and the matters alleged
7 herein pursuant to diversity jurisdiction under 28 U.S.C. § 1332(a).

8 2. All times relevant herein, Plaintiffs were, and are, individuals residing in
9 the County of Los Angeles, State of California. Plaintiffs are informed and believe,
10 and based thereon allege that at all times relevant herein, Defendant SPANISH
11 BROADCASTING SYSTEM OF CALIFORNIA, INC. (“Defendant” and/or
12 “SBS”) was and is a corporation organized under the laws of the State of Delaware.
13 Plaintiffs are informed and believe and based thereon allege that at all times relevant
14 herein, each owner and/or shareholder of DEFENDANT SBS is a citizen of the State
15 of Florida or other non-California state. The amount in controversy herein exceeds
16 the sum or value of \$75,000 and will be established according to proof at trial.

17 3. This Court has jurisdiction over Defendant because Defendant has
18 sufficient minimum contacts in California or otherwise intentionally avails itself of
19 the California market so as to render the exercise of jurisdiction over it by this Court
20 consistent with traditional notions of fair play and substantial justice.

21 4. Venue is proper in this judicial district, because upon information and
22 belief, the named Defendant resides, transacts business, or has offices in this county,
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1 and/or the acts or omissions that gave rise to this Complaint occurred in this judicial
2 district.

3 **PARTIES**

4 5. Plaintiff Stephanie Himonidis at all times relevant to this Complaint was
5 an employee of Defendant Spanish Broadcasting System of California, Inc., and at all
6 times relevant to this Complaint is and was a resident of the County of Los Angeles,
7 State of California.

8 6. Plaintiff Gerardo Lopez at all times relevant to this Complaint was an
9 employee of Defendant Spanish Broadcasting System of California, Inc., and at all
10 times relevant to this Complaint is and was a resident of the County of Los Angeles,
11 State of California.

12 7. Defendant SBS is and at all times relevant to this Complaint was a
13 Delaware corporation authorized to conduct and conducting substantial business in
14 the County of Los Angeles, State of California.

15 8. Plaintiffs are unaware of the true names and capacities, whether
16 individual, corporate, associated or otherwise, of Defendants DOES 1 through 10
17 (“Does”) inclusive, and therefore sue said Does by such fictitious names. Plaintiffs
18 will seek leave of Court to amend this Complaint to show the true names and
19 capacities of such DOES when the same has been ascertained. Plaintiffs are informed,
20 believe, and thereon allege that each of the fictitiously named Defendants are
21 responsible to Plaintiffs for the injuries suffered and alleged herein, or are subject to
22 the jurisdiction of the Court as a necessary party for the relief herein requested.

1 11. Ms. Himonidis began her radio career in 1999 working for “Super
2 Stereo” 100.3 FM, in Guadalajara, Mexico. In 2002, MS. HIMONIDIS began
3 appearing as a morning radio personality for VIVA 106 FM, in Fresno, California for
4 CBS radio. In 2004, Ms. Himonidis began working for Univision as a radio and
5 television host. Ms. Himonidis worked for Univision for approximately ten (10)
6 years.

7 12. During her successful tenure at Univision, Ms. Himonidis had her own
8 midday radio show on 107.5 KLOVE in Los Angeles. Ms. Himonidis’s radio show on
9 KLOVE was consistently the highest-rated radio show in her time slot and the
10 highest-rated radio show overall in Los Angeles. During this time, Ms. Himonidis
11 additionally served as a celebrity judge on a television program entitled “Viva el
12 Sueno,” the Spanish-language equivalent of American Idol. MS. HIMONIDIS
13 further worked as a Host and Collaborator for the Univision television program
14 “Despierta America” (“Wake Up America”). She also made appearances on several
15 other television programs - “Don Francisco Presenta,” “El Gordo y la Flaca,” and
16 “Sal y Pimienta.” In 2008, Ms. Himonidis won two (2) Emmy awards for her work
17 in television. As of 2014, Ms. Himonidis had been happily working for Univision for
18 almost a decade and was earning over \$350,000 a year. She enjoyed her job and had
19 no interest in leaving.

20 13. Mr. Lopez is a media content and operations executive with over twenty
21 (20) years of experience serving Hispanic audiences in México and the United States.
22 Mr. Lopez has managed a variety of radio music formats including but not limited to
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1 Regional Mexican, Spanish AC, Spanish CHR, Spanish talk, and Spanish Oldies.
2 During his career, Mr. Lopez managed the entire programming department for
3 Univision Radio Regional Mexican division for more than 13 major markets: Los
4 Angeles, New York, Chicago, Dallas, Houston, Austin, El Paso, Albuquerque,
5 Phoenix, Las Vegas, Fresno, San Diego, and San Francisco. During Mr. Lopez's
6 tenure, Univision's regional Mexican stations were number one in the ratings for
7 their markets.

8 14. From 2004 to 2012, Mr. Lopez worked for Univision on various radio
9 programs, including but not limited to serving as Regional Program Director on the
10 "Piolin por la Manana" show. This was the most successful radio network show in
11 the history of Hispanic radio in the United States, carried by more than sixty (60)
12 affiliates. Mr. Lopez also worked as the General Show Advisor on "El Vacilon del
13 Mandril Show" ("Mandrill Show"). In or around 2013, during the time that Mr.
14 Lopez worked on the Mandril Show, it won the "Medalla De Cortez Award" from
15 Radio Ink Magazine at the Hispanic Conference. Mr. Lopez traveled to the award
16 show in Miami, Florida. During the trip Mr. Lopez met the CEO of SBS, Raul
17 Alarcon ("Mr. Alarcon").

18 15. SBS is the largest Hispanic-controlled radio broadcasting company in
19 the United States. It is the owner and/or operator of at least twenty (20) Spanish-
20 language FM radio stations, which serve the Los Angeles, New York, Puerto Rico,
21 Miami, Chicago, and San Francisco metropolitan areas. SBS also owns and operates
22 Mega TV, a television operation primarily serving the South Florida market, with
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1 additional national distribution through DirecTV. SBS additionally produces live
2 concerts and events throughout the United States and in Puerto Rico.

3 16. In 2014, Mr. Lopez was the Program Director at KXOS 93.9 earning
4 approximately \$100,000 per year. Looking to advance his career, Mr. Lopez met with
5 Mr. Alarcon in Miami in our about March 2014 and was offered a job opportunity to
6 manage two radio stations for SBS as well as a higher salary. Mr. Lopez jumped at the
7 opportunity and accepted the job.

8 17. On or about April 20, 2014, Mr. Lopez and SBS entered into an
9 Employment Agreement (the "Lopez Employment Agreement") whereby Mr.
10 Lopez agreed to work as a Programming Manger for radio stations KLAX-FM and
11 KXOL-FM. Mr. Lopez was specifically responsible for overseeing the Programming
12 functions KLAX-FM and KXOL-FM. The Lopez Employment Agreement specified
13 that Mr. Lopez would be employed for at least three (3) years, commencing on April
14 21, 2014, and ending on April 20, 2017. A true and correct copy of the Employment
15 Agreement is attached hereto and incorporated herein as **Exhibit A**.

16 18. SBS agreed to pay Mr. Lopez an annual base salary of One Hundred
17 Twenty Thousand Dollars (\$120,000). **Ex. A**. In addition, Mr. Lopez was eligible for
18 a Ratings Performance Bonus as follows: If KLAX-FM achieved a #1 ranking in the
19 Hispanic Adult 18-49 General Market in the Los Angeles, California Metro Survey
20 Area per Nielsen Audio Arbitration Average of three monthly PPM books, Mr. Lopez
21 would earn a bonus of \$20,000. *Id.* If KXOL-FM achieved either a #1 or #2 ranking
22 in the Adult 18-49 General Market in the Los Angeles, CA Metro Survey Area per
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1 Arbitron book or the Average of three monthly PPM books, he would earn a bonus of
2 \$15,000. *Id.* The Lopez Employment Agreement further provided that if MR.
3 LOPEZ was terminated without cause, he would receive three (3) months of his Base
4 Salary. *Id.*

5 19. Knowing that Mr. Lopez and Ms. Himonidis were in a relationship, SBS
6 executives began courting Ms. Himonidis to poach her from Univision. They made
7 her a lucrative offer — to head up her own morning radio program in the Los Angeles
8 metropolitan area for their primary station - KLAX-FM. Although Ms. Himonidis
9 had not been planning to leave her job at Univision, she jumped at the opportunity to
10 host her own morning radio show.

11 20. On or about April 30, 2014, Ms. Himonidis and SBS entered into an
12 Employment Agreement (the “Himonidis Employment Agreement”) whereby Ms.
13 Himonidis agreed to work as a morning radio show host for SBS and specifically for
14 SBS’s station KLAX-FM, 97.9 FM-LA RAZA. This station was broadcast
15 throughout both the Los Angeles and San Francisco metropolitan areas. The
16 Himonidis Employment Agreement specified that Ms. Himonidis would be
17 employed for at least three (3) years, commencing on April 30, 2014, and ending on
18 April 30, 2017. A true and correct copy of the Himonidis Employment Agreement is
19 attached hereto and incorporated herein as **Exhibit B**.

20 21. SBS agreed to pay Ms. Himonidis an annual base salary of Two Hundred
21 Thousand Dollars (\$200,000) for year one, Two Hundred Fifteen Thousand Dollars
22 (\$215,000) for year two, and Two Hundred Thirty Thousand Dollars (\$230,000) for
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1 year three. **Ex. B.** In addition, Ms. Himonidis was guaranteed an additional One
2 Hundred Fifty Thousand Dollars (\$150,000) bonus payment during the course of the
3 first year of the Employment Agreement. *Id.* With the \$150,000 guaranteed bonus,
4 Ms. Himonidis would earn a minimum of Three Hundred and Fifty Thousand
5 Dollars (\$350,000) total for her first year with SBS. *Id.* Further, MS. HIMONIDIS
6 was eligible for an additional Ratings Performance Bonus commencing in the 3rd
7 Quarter of the 2014 ratings period. *Id.*

8 22. The Himonidis Employment Agreement further provided that if MS.
9 HIMONIDIS was terminated without cause, she would receive one (1) year of her
10 then current compensation amount. **Ex. B.**

11 23. Ms. Himonidis's radio show - "the Chiquibaby Show" - began
12 broadcasting on or about May 5, 2014, during the 5:00 a.m. to 10:00 a.m. time slot.

13 24. The Chiquibaby Show soon became a huge success for SBS. It quickly
14 garnered the following of an extremely large radio audience in both Northern and
15 Southern California. By September 2014, the ratings averaged 2.5, a seventy percent
16 (70%) increase over the programming previously in place at KLAX. This rapid rise in
17 ratings was even more impressive because of the fact that the Los Angeles Spanish-
18 speaking market is the largest and most influential Spanish-speaking market in the
19 United States.

20 25. Not only did Ms. Himonidis's work for SBS lead to increased ratings
21 during her show, SBS's addition of Ms. Himonidis to their roster of stars resulted in
22 a massive forty percent (40%) boost to all of SBS's ratings station-wide across all of
23

1 its programming.

2 26. Thus, SBS was able to solicit and obtain considerably greater advertising
3 revenue as a direct result of Ms. Himonidis's joining the company and broadcasting
4 her unique personality and sense of humor to Spanish speakers throughout
5 California.

6
7 *In or around May 2014, Mr. Lopez Learned That*
8 *Defendant SBS Was Engaging in an Unlawful Payola Scheme.*

9 27. Upon his hiring Mr. Lopez discovered that SBS was actively
10 participating in an unlawful "payola" scheme. In the music industry, payola refers to
11 the federally-prohibited practice of under-the-table payment of cash or similar such
12 consideration by record companies in exchange for the broadcast of certain
13 recordings on commercial radio, which recordings are presented as part of the normal
14 day's broadcast. Per 47 U.S.C. § 317, a radio station may only play a specific song in
15 exchange for money if this arrangement is disclosed on the air as sponsored airtime,
16 like any other advertisement. That play of the song cannot be counted as a "regular
17 airplay."

18 28. Defendant SBS demanded that Mr. Lopez engage in an illegal payola
19 scheme by selling "music spots" to musicians who wanted SBS to play their music
20 on the air. SBS executives instructed Mr. Lopez that part of his job duties were to sell
21 "music spots," whereby musicians would buy an on-air announcement or
22 advertisement promoting one of their songs or albums. No such "announcement" or
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1 “advertisement” was actually made, however. SBS simply played the song along with
2 its other music programming as if they were one and the same. SBS demanded Five
3 Thousand Dollars (\$5,000) in payment from musicians in exchange for one play of
4 one song on the air per station. SBS flat-out refused to play music on its stations if
5 musicians refused to pay SBS’s illegal “fee” for the same. SBS in turn gave Mr.
6 Lopez a monthly sales quota of five (5) music spots, i.e. SBS required Mr. Lopez to
7 illegally sell and collect from musicians at least five such “fees” each month, per
8 station, per month which would yield at least \$50,000 per month (or at least
9 \$600,000 per year) in illegal revenue to SBS. Plaintiffs are informed and believe that
10 other SBS employees received similar such instructions to sell “music spots” to
11 musicians in exchange for such fees.

12 29. On or around August 21, 2014, Jorge Ramos (“Mr. Ramos”) the SBS
13 Director of Music Spots came out from Miami to meet with Mr. Lopez. The meeting
14 took place outside of the SBS office. Mr. Ramos told Mr. Lopez that Mr. Lopez
15 needed to hit the budget every month or else he would get in “trouble” with SBS.

16 30. Mr. Lopez told Ms. Himonidis about SBS’s demands. He told her that
17 he felt uncomfortable selling these music spots. He told her that he believed that this
18 program and SBS’s “fees” were illegal and constituted a federally-prohibited payola
19 scheme.

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21 ***Plaintiffs Complained to Defendant SBS About Its Illegal Payola Scheme.***

22 31. In or around August 2014, Mr. Lopez complained to Jesus Salas (“Mr.
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1 Salas”), Executive Vice President of Programming at SBS, regarding SBS’S
2 “payola” program. Specifically, Mr. Lopez complained to Mr. Salas that certain
3 members of SBS management were illegally selling air-time to various music industry
4 promoters, labels, and agents to play particular songs at particularly choice segments
5 of air-time. He complained that SBS internally referred to this illegal activity as “SBS
6 music spots” to disguise such illegal activity as a type of sales package. Mr. Lopez’s
7 complaints were ignored by Mr. Salas and SBS executives. Mr. Lopez relayed the
8 same to Ms. Himonidis.

9 32. Ms. Himonidis agreed with Mr. Lopez that SBS’s payola scheme was
10 unlawful. Like Mr. Lopez, she personally refused to partake in it. After SBS
11 executives ignored Mr. Lopez’s complaints, Ms. Himonidis personally complained
12 directly to SBS’s President and CEO, Mr. Alarcon about the payola scheme.

13 33. In early September 2014, Mr. Lopez refused to sell any music spots in
14 exchange for the illegal fees per his superiors’ instructions.

15 34. On or around September 19, 2014, in retaliation for Ms. Himonidis’s
16 and Mr. Lopez’s protected complaints and approximately two weeks after Mr. Lopez
17 refused to sell the illegal music spots, SBS terminated Mr. Lopez’s employment.

18 35. At the time of his termination, SBS refused to pay Mr. Lopez three
19 months’ salary in breach of his employment agreement. During the last two weeks of
20 September, KLAX ranked 3.6 and 3.5, making it the number one station in the market
21 regional Mexican. Mr. Lopez had achieved extraordinary results in a very short
22 period of time and had earned his bonuses under the terms of his Employment
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1 Agreement. Mr. Lopez, however, was never paid his earned bonuses in violation of
2 the Lopez Employment Agreement.

3 36. During the same month, SBS stopped paying Ms. Himonidis \$150,000
4 of contractually-promised endorsement and bonus pay, in breach of the Himonidis
5 Employment Agreement, in retaliation for her payola-related complaints.

6
7 ***Undeterred by Defendant SBS's Retaliatory Acts,***
8 ***Ms. Himonidis Hired Counsel and Complained Again to SBS Regarding***
9 ***SBS's Illegal Payola Scheme.***

10 37. Undeterred by Defendant SBS'S retaliatory acts, Ms. Himonidis hired
11 counsel, Keith A. Fink & Associates, which firm complained on her behalf to
12 Defendant SBS, both regarding its illegal payola scheme and SBS's unlawful acts of
13 retaliation in response to Ms. Himonidis's and Mr. Lopez's complaints.

14 38. On or about October 24, 2014, Ms. Himonidis's attorney Keith A. Fink
15 ("Mr. Fink") wrote SBS management, including Messrs. Alarcon and Salas to (1)
16 complain on her behalf about the payola scheme, (2) to question why SBS had refused
17 to take any action on such complaints; and (3) to advise SBS that Ms. Himonidis
18 would not ignore and/or engage in any illegal activity.

19 39. Specifically, Ms. Himonidis acting by and through Mr. Fink, reiterated
20 her earlier complaints that she would "not break the law to keep [her job], nor will
21 she remain quiet regarding SBS's ongoing 'payola' and 'pay for play' illegal
22 activities." Acting through her attorney, Ms. Himonidis demanded that SBS stop
23

1 violating federal and state laws. She further demanded that SBS demonstrate to her
2 in writing that SBS had affirmatively severed its business relationships with those
3 who had provided illegal payments to SBS.

4 40. In her counsel's letter, Ms. Himonidis also complained of SBS's
5 continued failure to pay Ms. Himonidis her guaranteed \$150,000 bonus in breach of
6 her Employment Agreement and in unlawful retaliation for her and Mr. Lopez's
7 complaints.

8 41. On or about October 30, 2014, SBS's counsel responded to Mr. Fink's
9 letter. SBS demanded that Ms. Himonidis subject herself to an "interview" with
10 Human Resources. SBS claimed that it wanted this meeting so that it could discuss
11 in detail Ms. Himonidis's "fundamental misunderstanding of SBS's Paid Spin
12 Program...." SBS's demand made little sense given the fact that this program was
13 run by high-level marketing executives, not by the company's Human Resources
14 Department.

15 42. In its October 30, 2014 letter SBS made its intentions toward Ms.
16 Himonidis clear. Specifically, SBS made clear that it would terminate Ms.
17 Himonidis's employment per the terms of her Employment Agreement if she did not
18 stop complaining about the payola scheme and if she pursued any legal action relating
19 to the same against SBS. This the first time during Ms. Himonidis's tenure with SBS
20 that SBS threatened her employment with SBS in any fashion.

21 43. Given this explicit threat of termination, Ms. Himonidis refused to meet
22 with SBS's Human Resources Department as SBS demanded. She reiterated her
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1 demands that the company stop engaging in its federally-prohibited payola scheme.

2
3 ***In November 2014, SBS Escalated Its Retaliatory Efforts by Threatening Ms.***
4 ***Himonidis's Physical Safety, Moving Her Show into the Graveyard Shift, and***
5 ***Firing Her Entire Radio Team.***

6 44. In or around November 2014, SBS ratcheted up its retaliatory efforts
7 against Ms. Himonidis to a new, particularly despicable level. Specifically, SBS
8 instructed one of its larger, physically intimidating, male security guards to follow
9 Ms. Himonidis all around the workplace and to and from her vehicle all day, every
10 day. This guard never spoke to Ms. Himonidis, nor did he ever explain to her why he
11 suddenly was following her around everywhere at work, nor did anyone at SBS
12 explain to Ms. Himonidis why she was being hounded in this fashion. Prior to her
13 complaints, she never been stalked by SBS's security staff. On at least one occasion,
14 the guard even blocked Ms. Himonidis from exiting the facility in her car for no
15 apparent reason other than to let Ms. Himonidis know that he could harass and
16 threaten her with SBS's full authority and approval.

17 45. As a consequence of this stalking, Ms. Himonidis felt frightened for her
18 physical health and safety. She still refused to submit, however, to SBS's demands
19 that she lay off her complaints about SBS's violations of federal law and keep her
20 mouth shut.

21 46. On or about November 11, 2014, approximately two weeks after her
22 lawyer sent SBS a written complaint letter, Defendant SBS continued its retaliatory
23

1 efforts by abruptly moving Ms. Himonidis out of her prime morning air spot and into
2 the graveyard shift time slot of 7:00 p.m. to 12:00 a.m. SBS did this with no prior
3 notice or explanation.

4 47. By moving Ms. Himonidis into the graveyard shift, SBS deliberately
5 created a situation where it would be extremely difficult, if not impossible, for Ms.
6 Himonidis to meet her contractually-agreed-upon ratings requirements. SBS, in
7 other words, purposely and intentionally placed Ms. Himonidis into this graveyard
8 shift so that it could then terminate her employment “for cause” and not pay her
9 contractually-agreed-upon severance pay because of the anticipated severe drop in
10 her ratings.

11 48. Three days later on or about November 14, 2014, counsel for Ms.
12 Himonidis again wrote SBS, reiterating *inter alia*, her complaints about the payola
13 scheme, demanding payment of her guaranteed \$150,000 bonus and questioning the
14 sudden position taken by SBS that Ms. Himonidis’s job was now in jeopardy in its
15 response to Ms. Himonidis’s and Mr. Lopez’s complaints.

16 49. In response to this subsequent complaint from Ms. Himonidis via her
17 counsel, Defendant SBS abruptly terminated all of the members of Ms. Himonidis’s
18 radio team. SBS did this to further retaliate against Ms. Himonidis for her complaints
19 about SBS’s illegal payola scheme, to hasten the anticipated drop in Ms. Himonidis’s
20 ratings (so that SBS could terminate her “for cause”) and to further discourage Ms.
21 Himonidis from pursuing her complaints via counsel.

22 50. In the midst of this turmoil, Ms. Himonidis took a few days off from
23

1 work to get married and go on her pre-planned and pre-approved honeymoon with
2 Mr. Lopez.

3 51. Three days after SBS fired all of Ms. Himonidis's radio team on or about
4 November 17, 2014, Defendant SBS continued its war on Ms. Himonidis by trashing
5 and threatening her in the industry press. Specifically, Juan Carlos Hidalgo
6 ("Hidalgo") - SBS's newly-hired Vice President of West Coast Programming -
7 published an article on industry website www.radionotas.com wherein he falsely
8 stated that Ms. Himonidis had been fired from SBS and was now "without a job."
9 This article was published during Ms. Himonidis's honeymoon and expressly
10 referenced the same, presumably with the hope that Ms. Himonidis and Mr. Lopez
11 would read the article and believe that Ms. Himonidis had been terminated during
12 their honeymoon.

13 52. On or about December 2, 2014, Ms. Himonidis's counsel again wrote
14 SBS, again demanding that the company cease its retaliatory efforts and properly
15 investigate Ms. Himonidis's complaints. Ms. Himonidis's counsel referenced the
16 recent article by SBS's VP Hidalgo and demanded that SBS investigate this
17 misconduct as well. SBS did no such thing.

18 53. Instead, three days later on or about December 5, 2014, SBS sent Ms.
19 Himonidis a newly-drafted document entitled "SBS Internal Security Anti-
20 Payola/Anti-Plugola Policy and Statement" (the "Statement"). SBS demanded for
21 the first time that Ms. Himonidis sign the Statement and swear to its contents under
22 penalty of perjury. Within the text of this document, SBS demanded that Ms.

1 Himonidis swear under penalty of perjury that *she* had not and would not engage in
2 illegal payola schemes and that she understood SBS had a “zero tolerance policy” for
3 the same. Interestingly, the very same music spots that Plaintiffs complained of as
4 being illegal were now referenced in the document. Because SBS did not have a “zero
5 tolerance policy” and the affirmations contained within the document were false, Ms.
6 Himonidis refused to sign this document.

7 54. That same Friday, SBS attempted to manufacture a new “cause” to
8 terminate Ms. Himonidis’s employment.¹ SBS abruptly demanded that Ms.
9 Himonidis appear and broadcast her show live from SBS’s Los Angeles studio on
10 Monday, December 8, 2014. SBS gave Ms. Himonidis all of three (3) calendar days’
11 notice for the same. SBS further demanded that Ms. Himonidis broadcast her show
12 from Los Angeles on Monday knowing full well that this was impossible for Ms.
13 Himonidis to do. Ms. Himonidis was then filming a program with Telemundo in
14 Florida, which SBS had previously approved and authorized. Indeed, SBS executive
15 Mr. Salas had originally encouraged such appearances by Ms. Himonidis as helpful
16 to Ms. Himonidis’s (and by virtue SBS’s) ratings, market share, and advertising
17 revenue. As SBS further was well aware, Ms. Himonidis would not return from
18 Florida to Los Angeles until Tuesday, December 9, 2014. Thus, it was impossible for
19 Ms. Himonidis to broadcast her show as demanded.

20
21
22 ¹ By terminating Ms. Himonidis for “cause” SBS would absolve itself of having to
23 pay her one year’s salary pursuant to the contract.

1 *In January 2015, SBS Terminated Ms. Himonidis's Employment on*
2 *Trumped-Up Grounds.*

3 55. On or about January 26, 2015, SBS hand-delivered to Ms. Himonidis a
4 "Notification of a For-Cause Termination" ("Termination Notification"). In this
5 Notification, SBS alleged that Ms. Himonidis had "failed to meet the minimum
6 ratings threshold outlined" in her Employment Agreement.

7 56. In its Termination Notification, SBS specifically cited to Ms.
8 Himonidis's Employment Agreement at § 10(d), which "affords SBS the right to
9 terminate the Agreement 'at any time, effectively immediately' and without further
10 obligation in the event that your (Ms. Himonidis) radio program '(xviii) fail[s] to
11 maintain at least a 3.0 share A 19-49 General Market in the Los Angeles, CA Metro
12 Survey Area for an Average of three monthly PPM books.'" In the Notification, SBS
13 claimed that Ms. Himonidis failed "to notch even a 2.0 ratings share since its
14 inception (May 5, 2014)."

15 57. SBS's aforementioned "cause" for terminating Ms. Himonidis's
16 employment is demonstrably false. Per Nielsen's "XTrends PPM Overview Report"
17 for the Los Angeles Metro Market 18-49, Ms. Himonidis maintained a 3.0 rating
18 during the December PPM Book (November 6 through December 3, 2014), a 2.9
19 rating during the Holiday PPM Book (December 4 - December 31, 2014); and a 3.2
20 rating in the January PPM Book (January 1 through January 28, 2015). Thus, Ms.
21 Himonidis did maintain at least a 3.0 share for an average of three monthly PPM
22 books. Moreover, SBS terminated Ms. Himonidis's employment prior to the end of
23

1 January, which was before she could finish the January PPM Book period. If the entire
2 month of January had been considered, she would have had an average of rating of
3 3.033, well above her required minimum.

4 58. Thus, notwithstanding SBS's months-long efforts to nosedive Ms.
5 Himonidis's ratings (by moving her show to the worst time slot and firing her entire
6 radio crew and her fiancé), Ms. Himonidis still maintained or exceeded the minimum
7 rating requirements set forth in her Employment Agreement. Indeed, Ms.
8 Himonidis's program remained the top-ranked and highest-rated Spanish-language
9 program in Los Angeles when SBS fired her in January 2015.

10 59. In its Termination Notification, SBS separately accused Ms. Himonidis
11 of lacking commitment "to attempt to reverse the program's dismal performance -
12 which is reflective in your habitual absence." Again, any implication that Ms.
13 Himonidis's program did poorly or that her time away from work somehow caused
14 the same was demonstrably false. Ms. Himonidis only took time away from work
15 when SBS pre-approved and pre-authorized it. She was never "habitual[ly]" away
16 from work. Her show's drop in ratings, moreover, was caused directly by SBS's
17 months-long efforts to punish Ms. Himonidis and her then fiancé Mr. Lopez for
18 complaining about SBS's illegal payola scheme, decrease her ratings, and trump up
19 "cause" to terminate her employment.

20 60. Following Ms. Himonidis's termination, SBS's ratings for the
21 replacement programming Ms. Himonidis's prior time-slot submarined by forty
22 percent (40%), dropping to a "dismal" 2.0 average rating.

1 conduct including but not limited to “payola” scheme(s), in violation of well-
2 established California State legislative policy as well as other governing regulations.

3 65. SBS’s actions described herein above were in violation of established
4 public policy against termination for refusing to engage in illegal activity and/or
5 retaliation for complaining of illegal activity, and other behavior more specifically
6 alleged above.

7 66. The conduct, statements and acts described herein were an ongoing part
8 of a continuing scheme and course of conduct. SBS knew the substance of the above-
9 described facts and circumstances and ratified the wrongs and injuries mentioned
10 herein when it was their ability to prevent, remedy and/or correct these wrongs. SBS
11 further intentionally and willfully failed to ensure that their employees were informed
12 of the law relevant to their duties or to ensure that employees would not be required
13 to participate in illegal conduct.

14 67. SBS continued to ratify and refused to remedy or correct the
15 aforementioned conduct during and since Plaintiffs’ employment, notwithstanding
16 the fact that company officials knew or reasonably should have known of the conduct
17 and its unlawfulness.

18 68. As a direct and proximate result of the aforementioned violations of
19 statute and public policy, Plaintiffs have suffered and will continue to suffer:

- 20 a. Substantial reduction in past and current income, and
21 future income potential in a sum as may be shown
22 according to proof;

1 intentionally and deliberately then harassed, threatened, and terminated the
2 employment of Ms. Himonidis and Mr. Lopez so that they could continue to do so in
3 an uninterrupted manner and continue to operate illegally.

4
5 **SECOND CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE § 1102.5**

7 **(PLAINTIFFS AGAINST DEFENDANT AND DOES 1 TO 10)**

8 71. Plaintiffs re-allege and incorporate herein by reference, as though set
9 forth in full, each and every allegation contained in Paragraphs 1 through 70 inclusive.

10 72. Pursuant to Labor Code § 1102.5(b), an employer may not retaliate
11 against an employee “because the employer believes that the employee disclosed or
12 may disclose information, to a government or law enforcement agency, to a person
13 with authority over the employee or another employee who has the authority to
14 investigate, discover, or correct the violation or noncompliance, or for providing
15 information to, or testifying before, any public body conducting an investigation,
16 hearing, or inquiry, if the employee has reasonable cause to believe that the
17 information discloses a violation of state or federal statute, or a violation of or
18 noncompliance with a local, state, or federal rule or regulation, regardless of whether
19 disclosing the information is part of the employee’s job duties.”

20 73. Plaintiffs reasonably believed and complained to management of SBS’s
21 illegal payola activities.

22 74. SBS willfully retaliated against Plaintiffs for engaging in the acts alleged
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1 herein by ultimately terminating their employment, due to their complaints to
2 management and/or to due to SBS's belief that Plaintiffs would report SBS
3 governmental officials and agencies.

4 75. As a direct and proximate result of SBS' conduct, Plaintiffs have
5 suffered and will continue to suffer:

6 a. A substantial reduction in past and current income and
7 future income potential in sums as may be shown
8 according to proof;

9 b. A substantial injury and damage to their occupation and
10 professional reputation in a sum as may be shown
11 according to proof;

12 c. A substantial reduction in loss of work-related benefits;
13 and

14 d. Extreme humiliation and embarrassment and other losses
15 from the date of said acts all to their damage, and as may
16 be shown according to proof.

17 76. Pursuant to Labor Code § 1102.5(f) and due to SBS's violations,
18 Plaintiffs also seek civil penalties of ten thousand dollars (\$10,000) for each violation
19 of Labor Code § 1102.5.

20 77. Plaintiffs will seek attorneys' fees and costs to the extent permitted by
21 any applicable statutes and provisions of the Labor Code.

THIRD CAUSE OF ACTION

BREACH OF CONTRACT

(PLAINTIFFS AGAINST DEFENDANT AND DOES 1-10)

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4 78. Plaintiffs re-allege and incorporate herein by reference, as though set
5 forth in full, each and every allegation contained in Paragraphs 1 through 77 inclusive.

6 79. In or around April 2014, SBS and Mr. Lopez entered into the Lopez
7 Employment Agreement, which provided that the term of Mr. Lopez's employment
8 would be from April 21, 2014 to April 20, 2017. (Lopez Employment Agreement,
9 paragraph 3, Ex. A). The Lopez Employment Agreement also provided that MR.
10 LOPEZ would be paid three (3) months' salary if he was terminated without cause.
11 The Compensation Rider to the Lopez Employment Agreement provided that he
12 would receive a bonus based on ratings. This writing constitutes a valid and binding
13 contract, the terms of which are certain and enforceable.

14 80. On or about April 30, 2014, SBS and Ms. Himonidis entered into an
15 Employment Agreement, which provided that the term of Ms. Himonidis's
16 employment would be from April 30, 2014 to April 30, 2017. (Himonidis
17 Employment Agreement, paragraph 3, Ex. B) Further, the Compensation Rider to
18 the Himonidis Employment Agreement provided that Ms. Himonidis "will have a
19 \$150,000 Guarantee during the course of the first year against endorsements and
20 bonuses." The Compensation Rider also provided that Ms. Himonidis would be paid
21 one year of her salary should she be terminated without cause. This writing
22 constitutes a valid and binding contract, the terms of which are certain and
23

1 enforceable.

2 81. Ms. Himonidis and Mr. Lopez, at all times, performed their obligations
3 under the contracts and did not engage in any conduct or action which would justify
4 SBS in terminating them.

5 82. SBS breached the Lopez Employment Agreement by terminating Mr.
6 Lopez prior to April 20, 2017, failing to compensate him through April 20, 2017,
7 failing to provide him three months' salary, and/or failed to pay his earned bonuses.

8 83. SBS breached the Himonidis Employment Agreement by terminating
9 Ms. Himonidis prior to April 30, 2017, failing to compensate her through April 30,
10 2017, failing to one years' salary and/or by failing to provide her with the entire
11 \$150,000 guaranteed payment.

12 84. SBS's refusal to perform both Mr. Lopez's and Ms. Himonidis's
13 Employment Agreements was undertaken without stipulation, justification, or
14 excuse, and upon information and belief they purposefully and intentionally failed
15 and refused to perform the obligations presented in the Employment Agreements.

16 85. Plaintiffs' damages are a certain, foreseeable, and measurable
17 consequence of SBS's breaches.

18 86. As a direct and proximate result of said breaches, Ms. Himonidis and
19 Mr. Lopez have been damaged in an amount to be proven at trial according to proof,
20 and which they believe to be in excess of \$1,000,000.

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FOURTH CAUSE OF ACTION

Breach of Implied Covenant of

Good Faith and Fair Dealing

(PLAINTIFFS Against Defendant and DOES 1-10)

87. Plaintiffs re-allege and incorporate herein by reference, as though set forth in full, each and every allegation contained in Paragraphs 1 through 86 inclusive.

88. Implied in every California contract is a covenant of good faith and fair dealing. This implied covenant prevents one party to a contract from acting in bad faith in the performance of its contractual obligations and prevents it from intentionally depriving the other party of the benefit he or she bargained for in the agreement.

89. In or around April 2014, SBS and Mr. Lopez entered into the Lopez Employment Agreement, which provided that the term of Mr. Lopez’s employment would be from April 21, 2014 to April 20, 2017. (Ex. A). The Lopez Employment Agreement also provided that Mr. Lopez would be paid three (3) months’ salary if he was terminated without cause. The Compensation Rider to the Lopez Employment Agreement provided that he would receive a bonus based on ratings. This writing constitutes a valid and binding contract, the terms of which are certain and enforceable.

90. On or about April 30, 2014, SBS and Ms. Himonidis entered into an Employment Agreement, which provided that the term of Ms. Himonidis’s employment would be from April 30, 2014 to April 30, 2017. (Ex. B) Further, the

1 Himonidis Employment Agreement provided that Ms. Himonidis “will have a
2 \$150,000 Guarantee during the course of the first year against endorsements and
3 bonuses” and that she would be paid one year of her salary upon termination without
4 cause. **(Ex. B)** This writing constitutes a valid and binding contract, the terms of
5 which are certain and enforceable.

6 91. Ms. Himonidis and Mr. Lopez, at all times, performed their obligations
7 under the contracts and did not engage in any conduct or action which would justify
8 SBS in terminating them under their Employment Agreements or otherwise.

9 92. SBS breached the Lopez Employment Agreement by terminating Mr.
10 Lopez prior to April 20, 2017, failing to compensate him through April 20, 2017,
11 failing to pay him three months of compensation and/or failing to pay his bonuses.

12 93. SBS breached the Himonidis Employment Agreement by terminating
13 Ms. Himonidis prior to April 30, 2017, failing to compensate her through April 30,
14 2017, failing to pay her one year of compensation and/or failing to provide her with
15 the entire \$150,000 guaranteed payment.

16 94. SBS’ refusal to perform the according to the Employment Agreements
17 was undertaken without stipulation, justification, or excuse, and upon information
18 and belief it purposefully and intentionally failed and refused to perform the
19 obligations set forth in the Employment Agreements.

20 95. SBS intentionally, unreasonably, and wrongfully terminated Mr. Lopez
21 prior to April 20, 2017 and failed and refused to provide him with three months of
22 salary and/or his bonuses.

1 96. SBS intentionally, unreasonably, and wrongfully terminated Ms.
2 Himonidis prior to April 30, 2017, failed to pay her one year of compensation and
3 failed and /or refused to provide her with her guaranteed \$150,000.

4 97. SBS has breached the implied covenant of good faith and fair dealing in
5 both Employment Agreements. Said breaches were neither excused nor justified.

6 98. Plaintiffs' damages are a direct, natural, and foreseeable consequence of
7 SBS' breaches.

8 99. As a direct and proximate result of said breaches, Ms. Himonidis and
9 Mr. Lopez have been damaged in an amount to be proven at trial according to proof,
10 and which they believe to be in excess of \$1,000,000.00.

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12 **FIFTH CAUSE OF ACTION**

13 **Violation of Labor Code §§ 201, 203, 204, et seq.**

14 **(PLAINTIFFS Against Defendant and DOES 1-10)**

15 100. Plaintiffs re-allege and incorporate herein by reference, as though set
16 forth in full, each and every allegation contained in Paragraphs 1 through 99 inclusive.

17 101. SBS failed to pay Plaintiffs their wages earned and unpaid upon
18 termination, including the total guaranteed payment of \$150,000 and/or accrued
19 and/or unused vacation, and/or bonuses and/or guaranteed salary upon termination
20 without cause. Pursuant to Labor Code § 201, it is unlawful for an employer to fail to
21 pay an employee the wages earned and unpaid at the time of termination. Bonuses
22 are considered wages under Labor Code § 204.

1 employer willfully fails to pay any wages and benefits of an employee who is
2 discharged or quit within specified times, the wages of such employee shall continue
3 to accrue from the date thereof at the same rate until paid, or until an action is
4 commenced, up to a maximum of thirty (30) days.

5 107. Ms. Himonidis will seek attorneys' fees incurred in prosecuting this
6 action under Labor Code §§ 201, 202, 218.5, and/or 1194, et seq.

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8 **SEVENTH CAUSE OF ACTION**

9 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

10 **(PLAINTIFFS AGAINST DEFENDANT AND DOES 1-10)**

11 108. Plaintiffs re-allege and incorporate herein by reference, as though set
12 forth in full, each and every allegation contained in Paragraphs 1 through 91, inclusive.

13 109. SBS's conduct toward Plaintiffs, as alleged above, was outrageous and
14 unprivileged and was done either with the intent to cause severe emotional distress
15 or with reckless disregard of the probability of causing such emotional distress.

16 110. As a direct and proximate result of the aforementioned conduct,
17 Plaintiffs have suffered and will continue in the future to suffer:

- 18 a. A substantial reduction in past and current income, and
19 future income potential in sums as may be shown
20 according to proof;
- 21 b. A substantial injury and damage to their occupation and
22 professional reputation in a sum as may be shown

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according to proof;

c. A substantial reduction in loss of work-related benefits;

and

d. Extreme humiliation, embarrassment, depression, sleeplessness, emotional pain, emotional distress which culminated in physical injury and bodily injury, suffering, mental anguish, inconvenience, loss of enjoyment of life, and other losses from the date of said acts all to Plaintiffs' damage in a sum as may be shown according to proof.

111. The amount of Plaintiffs damages is not presently known, but they will seek leave of Court to amend this Complaint when the exact amount of such damages has been ascertained or will prove the same at trial.

112. The above-recited actions of SBS was done with malice, fraud, or oppression, and reckless disregard of Plaintiffs' rights. SBS engaged in its offensive conduct despite its awareness of the effect on Plaintiffs. As a result of these and other actions, Plaintiffs are entitled to an award of punitive damages.

EIGHTH CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, ET SEQ.

(PLAINTIFFS AGAINST DEFENDANTS AND DOES 1-10)

113. Plaintiffs re-allege and incorporate herein by reference, as though set forth in full, each and every allegation contained in Paragraphs 1 through 112

1 inclusive.

2 114. Business and Professions Code § 17200, et seq., provides that unfair
3 competition shall mean and include “all unlawful, unfair or fraudulent business act
4 or practices and unfair, deceptive, untrue or misleading advertising.”

5 115. SBS has engaged in unfair competition in violation of Business and
6 Professions Code §17200, et seq., by maintaining a workplace rife with retaliation and
7 violations of established California public policy including but not limited to the
8 following: California Constitution, Article I, § 8, Labor Code 1102.5 and Civil Code
9 § 1770, et seq. The continuation of such unfair business practices allows SBS to
10 maintain an unfair advantage over other companies which comply with established
11 California laws and the public policy of the state of California.

12 116. SBS falls within the definition of “person” as set forth in Business and
13 Professions Code §§ 17203 and 17506.

14 117. The unlawful, unfair, and fraudulent business practices of SBS
15 described above presents a continuing threat to members of the public in that SBS
16 has or will soon engage in the conduct described above, and members of the public
17 are likely to be deceived when they pursue or gain employment with SBS. Pursuant
18 to Business and Professions Code § 17203, Plaintiffs seek an order from this Court
19 that:

- 20 a. Provides injunctive and declaratory relief finding that SBS
21 and has violated the provisions of Business and
22 Professions Code § 17200, et seq.;

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and

- b. For an order enjoining SBS and its respective successors, agents, servants, officers, directors, employees, and all other persons acting in concert with them, directly or indirectly, from engaging in conduct which violates Business and Professions Code §§ 17200, et seq.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Stephanie Himonidis and Gerardo Lopez pray for judgment against Defendant SBS as follows:

- 1. For lost wages and benefits and other monetary relief in amount to be determined at trial;
- 2. For compensatory damages in an amount to be determined at trial;
- 3. For general and special damages in an amount to be determined at trial in an amount no less than \$3,000,000;
- 4. For punitive damages in an amount to be determined at trial;
- 5. For civil penalties in the amount of \$10,000.00 for each violation of California Labor Code section 1102.5 (f);
- 6. For appropriate civil and statutory penalties;
- 7. For restitution and/or disgorgement of all ill-gotten gains;
- 8. For preliminary and permanent injunctions against SBS from the

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acts of unfair competition as described in the Eighth Cause of Action;

9. For an award of reasonable attorneys' fees, costs, expert costs, and expenses pursuant to statutory and common law;

10. For pre- and post-judgment interest on all damages; and

11. For such other and further relief as this Court may deem just, fair, and proper.

DATED: September 15, 2016

KEITH A. FINK & ASSOCIATES

By:  _____

Keith A. Fink
Sarah E. Hernandez
Attorneys for Plaintiffs
STEPHANIE HIMONIDIS and
GERARDO LOPEZ