

1 George Brandon (Arizona Bar No. 017947)
2 Brian M. McQuaid (Arizona Bar No. 019541)
3 SQUIRE, SANDERS & DEMPSEY L.L.P.
4 40 North Central Avenue, Suite 2700
5 Phoenix, Arizona 85004-4498
6 gbrandon@ssd.com
7 bmcquaid@ssd.com
8 Telephone: +1.602.528.4000
9 Facsimile: + 1.602.253.8129

10 Attorneys for Plaintiffs
11 BARRETT-JACKSON AUCTION COMPANY, LLC
12 and BARRETT-JACKSON US, LLC

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**

15 BARRETT-JACKSON AUCTION
16 COMPANY, LLC, an Arizona limited
17 liability company; and BARRETT-
18 JACKSON US, LLC, a Delaware limited
19 liability company

20 Plaintiffs,

21 vs.

22 THUMBCO, a Michigan Nominee
23 Partnership; and DAVID L.
24 CLABUESCH, an individual

25 Defendants.

Case No.

COMPLAINT

26 Barrett-Jackson Auction Company, LLC and Barrett-Jackson US, LLC (collectively,
27 “Barrett-Jackson”) for their Complaint state:

28 **NATURE OF THE CASE**

1. This case arises from the Defendants’ outrageous and defamatory actions after the sale of their car at the January 2007 WestWorld auto auction in Scottsdale, Arizona. Defendants signed a contract explicitly acknowledging that their car would be offered for no reserve, i.e., that it would be sold at the high bid, without guarantees of a minimum price or minimum time on the block. Nevertheless, when the car sold for less than they apparently thought it was worth, defendant David L. Clabuesch, on behalf of defendant ThumbCo and for

1 himself, *chained the car* in an attempt to keep it from being delivered to the rightful buyer,
2 posted in view of auction attendees false statements that the sale was void and that Barrett-
3 Jackson had improperly conducted the auction and other auctions, and repeated those false
4 statements and others, including without limitation, to the buyer and to an industry reporter.
5 Those false statements have since been widely circulated on the Internet, including in chat
6 rooms, group email lists and on Web “blogs.” Barrett-Jackson now seeks an order prohibiting
7 the defendants and their agents from continuing to malign it, and it seeks damages for the harm
8 done to its valuable reputation.

9 **PARTIES**

10 2. Barrett-Jackson Auction Company, LLC is an Arizona limited liability company
11 with its principal place of business at 3020 N. Scottsdale Road in Scottsdale, Arizona, in this
12 district.

13 3. Barrett-Jackson US, LLC is a Delaware limited liability company with its
14 principal place of business at 3020 N. Scottsdale Road in Scottsdale, Arizona, in this district.

15 4. Barrett-Jackson is in the business of holding classic and collector car auctions
16 and related expositions. It holds auctions annually in Scottsdale, Arizona and Palm Beach,
17 Florida.

18 5. On information and belief, defendant ThumbCo (“ThumbCo”) is a Michigan
19 Nominee Partnership with a business address at Thumb National Bank & Trust, 7254 Michigan
20 Ave., Pigeon, Michigan.

21 6. On information and belief, defendant David L. Clabuesch (“Clabuesch”) is the
22 beneficiary of ThumbCo and an authorized signatory and agent for ThumbCo. On information
23 and belief, Clabuesch was and is a citizen of Michigan, with a residence at 9923 Sunset Blvd.,
24 Sand Point, Michigan.

25 **JURISDICTION AND VENUE**

26 7. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1332(a) because
27 the action is between citizens of different states and the amount in controversy exceeds \$75,000,
28 exclusive of interest and costs.

1 8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a
2 substantial part of the events or omissions giving rise to Barrett-Jackson's claims occurred in this
3 judicial district.

4 THE AUCTION

5 9. In January 2007, Barrett-Jackson conducted a six-day automobile show and
6 auction in Scottsdale, Arizona (the "Scottsdale Auction").

7 10. On December 5, 2006, ThumbCo entered into a consignment agreement (the
8 "Consignment Agreement") with Barrett-Jackson to sell a 1970 Plymouth Hemi-Cuda race car
9 (the "Car") at the Scottsdale Auction. A true and correct copy of the Consignment Agreement is
10 attached as Exhibit 1.

11 11. The Consignment Agreement provides that Barrett-Jackson does not guarantee
12 the price a vehicle will bring.

13 12. Specifically, Section 4 of the Consignment Agreement states:

14 NO GUARANTEES

15 Barrett-Jackson does not guarantee times that particular vehicles will cross the
16 auction block. *Barrett-Jackson does not guarantee values or prices for particular*
17 *vehicles. I understand that neither Barrett-Jackson nor any agent of Barrett-*
18 *Jackson can predict the exact time my vehicle will cross the auction block. I*
19 *understand that neither Barrett-Jackson nor any agent of Barrett-Jackson can*
20 *guarantee values or prices as a result of the auction process. Barrett-Jackson*
21 *reserves the right to add additional lot numbers.*

22 (emphasis added).

23 13. Section 4 of the Consignment Agreement for the Car was signed with a separate
24 signature line acknowledging that section.

25 14. The Consignment Agreement provides that the auction is "No Reserve."

26 15. Specifically, the Consignment Agreement includes the following language in
27 Section 6 on page 2: "OWNER AUTHORIZES BARRETT-JACKSON TO MARKET AND
28 SELL THE VEHICLE ON BEHALF OF OWNER FOR NO RESERVE, SELLING TO THE
HIGHEST BIDDER."

16. Section 6 of the Consignment Agreement for the Car was signed with a separate
signature line acknowledging that section.

17. Part of Paragraph 5a. of the Terms and Conditions, incorporated as a material

1 part of the Consignment Agreement, states:

2 Barrett-Jackson shall have complete control over all aspects of the Auction,
3 including without limitation, advertising, promotional activities, bidder screening,
4 site selection, vehicle parking and display, auction sequence, bid advancing and
5 time on the block.

6 18. Barrett-Jackson's internal pre-auction estimate of the Car's probable selling price
7 was \$200,000.

8 19. Any person wishing to bid at Barrett-Jackson auctions also signs an agreement
9 known as the "Bidder Agreement."

10 20. Thomas Kazamek ("Kazamek") entered into a Bidder Agreement with Barrett-
11 Jackson.

12 21. During the Scottsdale Auction, on January 20, 2007, the Car was placed for
13 auction as Lot 1252.1.

14 22. After the price hit a high bid of \$300,000, and no further bids were received, the
15 auctioneer struck the gavel and announced that the Car was sold for \$300,000.

16 23. Thomas Kazamek was the high bidder on the Car.

17 24. The sale price for the Car was the highest sale price of any car that had been sold
18 in the previous four-and-a-half days of the six-day Scottsdale Auction.

19 **DEFENDANTS' POST-AUCTION CONDUCT**

20 25. Following the auction of the Car, Clabuesch filed with Barrett-Jackson a
21 grievance report contesting its validity (the "Grievance Report"). Clabuesch attached a four-
22 page handwritten letter to the Grievance Report (the "Grievance Report Letter"). A true and
23 correct copy of the Grievance Report and Grievance Report Letter is attached as Exhibit 2.

24 26. The Grievance Report and Grievance Report Letter contained many false
25 statements about Barrett-Jackson's conduct of the auction.

26 27. The Grievance Report and Grievance Report Letter also purported to put
27 Kazamek on notice that the sale and transfer of title to him was invalid, void, or otherwise
28 irregular.

29 28. While arrangements were being made to ship the Car to Kazamek, the Car
30 remained in Barrett-Jackson's possession, and Barrett-Jackson had an obligation to store the Car
safely.

1 29. Barrett-Jackson stored the Car overnight in an area known as the Showcase
2 Pavilion at the Scottsdale Auction, where it could continue to be displayed to auction attendees,
3 along with other high-profile cars that had been sold or were remaining to be sold at the auction.

4 30. The Showcase Pavilion was a public space and high-traffic area where high-
5 profile and featured cars were displayed, and members of the public attending the Scottsdale
6 Auction were intended to, and did in fact, pass through it during the auction.

7 31. On January 21, 2007, representatives from Barrett-Jackson found that the Car
8 had been vandalized.

9 32. Specifically, the Car was locked with heavy-gauge chains connecting the Car's
10 four tires and the chains were padlocked together.

11 33. On information and belief, Clabuesch, for himself and on behalf of ThumbCo,
12 placed the chains and padlocks on the Car or directed someone to do so.

13 34. In addition to having been chained, the Car was also used to post in public view
14 one copy of the Grievance Report Letter and six copies of a new document dated January 21,
15 2007 (the "January 21, 2007 poster"). These documents were taped all over the Car in plain
16 view of anyone passing by. A copy of the January 21, 2007 poster is attached hereto as Exhibit
17 3.

18 35. The January 21, 2007 poster also contained many false statements about Barrett-
19 Jackson.

20 36. The January 21, 2007 poster falsely stated, "The sale of this car has been voided
21 due to auction irregularities."

22 37. The January 21, 2007 poster stated, "They [i.e., Barrett-Jackson] have been
23 directed to not release this vehicle until a court of competent jurisdiction determines the rightful
24 owner."

25 38. The January 21, 2007 poster falsely represented that Barrett-Jackson had
26 breached duties to consignors by stating: "This notice is given to ensure that Barrett-Jackson
27 management is aware that their [sic] failure to abide by this notice will result in a *further* breach
28 [sic] of the fiduciary duty the auction company owes its consignor." (emphasis added).

 39. The January 21, 2007 poster falsely stated: "Movement of the car without the

1 consent of the undersigned will result in criminal and/or civil prosecution.”

2 40. The January 21, 2007 poster was signed by Clabuesch as “beneficial owner &
3 authorized signatory” for “ThumbCo, a Michigan Nominee.”

4 **THE INTERNET POSTINGS AND OTHER DEFAMATORY PUBLICATIONS**

5 41. On January 27, 2007, Sam Barer (“Barer”) posted to the Internet on the Web site
6 known as “Sam Barer’s Four Wheel Drift,” an article entitled, “Barrett-Jackson in trouble:
7 Barrett-Jackson Westworld Tents Turn-out to be a House of Cards.”

8 42. On information and belief, Clabuesch, for himself and on behalf of ThumbCo,
9 made false statements to Barer.

10 43. On information and belief, Clabuesch falsely told Barer that Barrett-Jackson had
11 acted dishonestly or criminally in conducting the car auction.

12 44. On information and belief, Barer incorporated Clabuesch’s false statements in a
13 revision or revisions of the January 27, 2007 article.

14 45. On information and belief, these and other false statements by Clabuesch were
15 republished throughout the Internet, including in chat rooms and email group lists catering to
16 classic and collector car enthusiasts.

17 46. On February 9, 2007, Clabuesch sent to Barrett-Jackson a letter also addressed to
18 Kazamek (the “February 9, 2007 letter”). The letter contained false statements concerning the
19 sale of the Car. A copy of the February 9, 2007 letter and its enclosures is attached as Exhibit 4.

20 47. The February 9, 2007 letter included as enclosures copies of the Grievance
21 Report Letter and the January 21, 2007 poster.

22 48. On February 26, 2007, a check from Barrett-Jackson to ThumbCo for \$276,000
23 (i.e., the \$300,000 sale price minus Barrett-Jackson’s commission on the sale) was cashed and
24 deposited into a bank account controlled by ThumbCo. A true and correct copy of the cashed
25 check is attached hereto as Exhibit 5.

26 49. On February 27, 2007, Kazamek received a telephone call from a detective
27 assigned to the Auto Theft division of the El Segundo, California, Police Department. The
28 detective informed Kazamek that someone from the Huron County, Michigan, Sheriff’s
Department had asked him to contact Kazamek and inform him that the seller of the Car was

1 filing a civil action to recover it and that the seller intended to get the Arizona Attorney General
2 involved in resolving the situation.

3 **DAMAGE TO THE PALM BEACH AUCTION**

4 50. In addition to the annual auction in Scottsdale, Barrett-Jackson will be
5 conducting an automobile show and auction in Palm Beach, Florida from March 28, 2007
6 through April 1, 2007.

7 51. On information and belief, owners of classic and collectable cars who had
8 intended to consign their cars to Barrett-Jackson for auction in Palm Beach have decided not to
9 auction their cars at the Palm Beach event.

10 52. On information and belief, these potential consignors have withdrawn their cars
11 from the auction because of the false statements published by Clabuesch for himself and on
12 behalf of ThumbCo.

13 **COUNT ONE**

14 **(Breach of Contract)**

15 53. Barrett-Jackson realleges and incorporates by reference, as if fully set forth
16 herein, the previous allegations of the Complaint.

17 54. The Consignment Agreement was a valid contract between ThumbCo and
18 Barrett-Jackson.

19 55. Barrett-Jackson performed its obligations under the contract.

20 56. Clabuesch's actions, for himself and on behalf of ThumbCo, including, for
21 example, chaining the Car and publicly posting statements that the sale of the Car was void,
22 constituted a material breach of the Consignment Agreement and is the proximate cause of
23 damage to Barrett-Jackson.

24 57. Barrett-Jackson was damaged by ThumbCo's breach in the amount of the costs
25 associated with having to unchain the Car, and in other amounts to be determined at trial.

26 58. This action arises out of the Consignment Agreement, which is a contract
27 between ThumbCo and Barrett-Jackson. Therefore, Barrett-Jackson is entitled to recover its
28 attorneys' fees pursuant to A.R.S. § 12-341.01(A).

1 **COUNT TWO**

2 **(Breach of Covenant of Good Faith and Fair Dealing)**

3 59. Barrett-Jackson realleges and incorporates by reference, as if fully set forth
4 herein, the previous allegations of the Complaint.

5 60. Arizona law implies a covenant of good faith and fair dealing in every contract
6 such that a party must act with honesty and fairness toward the other and not seek to deprive a
7 party of the entitlements and benefits of the contract between them.

8 61. Clabuesch's actions, for himself and on behalf of ThumbCo, including but not
9 limited to chaining the Car and publicly posting statements that the sale of the Car was void,
10 constituted a material breach of ThumbCo's covenant of good faith and fair dealing.

11 62. The breaches of the covenant of good faith and fair dealing are the proximate
12 cause of Barrett-Jackson's injuries, or some of them.

13 63. Barrett-Jackson was damaged by ThumbCo's breach in the amount of the costs
14 associated with having to unchain the Car, and in other amounts to be determined at trial.

15 64. This action arises out of the Consignment Agreement, which is a contract
16 between ThumbCo and Barrett-Jackson. Therefore, Barrett-Jackson is entitled to recover its
17 attorneys' fees pursuant to A.R.S. § 12-341.01(A).

18 **COUNT THREE**

19 **(Interference with Business Expectancy)**

20 65. Barrett-Jackson realleges and incorporates by reference, as if fully set forth
21 herein, the previous allegations of the Complaint.

22 66. Barrett-Jackson had a valid expectancy of a business relationship with those
23 persons who had intended to consign their cars to Barrett-Jackson for the Palm Beach auction.

24 67. Clabuesch knew of Barrett-Jackson's valid business expectancy.

25 68. Clabuesch's actions, for himself and on behalf of ThumbCo, including but not
26 limited to the statements contained in the letters published on the car and to Barer, were intended
27 to and did interfere with that expectancy.

28 69. Clabuesch's actions were taken with an improper motive or means.

70. Barrett-Jackson has been damaged by ThumbCo and Clabuesch's interference

1 with the relationship between Barrett-Jackson and its potential customers in an amount to be
2 determined at trial.

3 **COUNT FOUR**

4 **(Conversion)**

5 71. Barrett-Jackson realleges and incorporates by reference, as if fully set forth
6 herein, the previous allegations of the Complaint.

7 72. Barrett-Jackson had the right to possess and control the Car after its sale to
8 Kazamek until it could be delivered to him.

9 73. By chaining the Car on January 21, 2007, ThumbCo and Clabuesch immobilized
10 it and seriously interfered with Barrett-Jackson's right to control the Car.

11 74. Barrett-Jackson was damaged by ThumbCo and Clabuesch's actions in the
12 amount of the costs associated with unchaining the Car and in other amounts to be determined at
13 trial.

14 **COUNT FIVE**

15 **(Injurious Falsehood to Barrett-Jackson)**

16 75. Barrett-Jackson realleges and incorporates by reference, as if fully set forth
17 herein, the previous allegations of the Complaint.

18 76. On information and belief, Clabuesch, for himself and on behalf of ThumbCo,
19 made false statements to Barer concerning Barrett-Jackson.

20 77. Clabuesch's statements to Barer concerning Barrett-Jackson were not privileged.

21 78. Clabuesch's statements to Barer concerning Barrett-Jackson were made with the
22 knowledge that they were false.

23 79. Clabuesch's statements to Barer concerning Barrett-Jackson were made in an
24 effort to dissuade Barer and other third parties from dealing with Barrett-Jackson.

25 80. Clabuesch's statements to Barer concerning Barrett-Jackson were of the sort to
26 bring it into disrepute, contempt or ridicule or to impeach its honesty, integrity, virtue or
27 reputation in the conduct of its business.

28 81. Clabuesch's statements to Barer concerning Barrett-Jackson discredit it and tend
to cause loss to Barrett-Jackson in the conduct of its business.

1 other amounts to be determined at trial.

2
3
4 **WHEREFORE**, Barrett-Jackson prays for judgment against ThumbCo and Clabuesch as
5 follows:

6 A. For an award of compensatory damages, punitive damages, prospective damages
7 and restitution, if any, in an amount to be determined at trial.

8 B. For an award of plaintiffs' attorneys' fees and costs incurred herein pursuant to
9 A.R.S. §§ 12-341, 12-341.01(A).

10 C. For an order permanently enjoining ThumbCo, and any of its partners,
11 representatives, or agents from making further false statements concerning the Car, its auction by
12 Barrett-Jackson, its sale to Kazamek, and Barrett-Jackson.

13 D. For an award of pre- and post-judgment interest on the foregoing sums at the
14 maximum rate permitted by law.

15 E. For such other and further relief as the Court deems appropriate under the
16 circumstances.

17 DATED this 15th day of March, 2007.

18
19 s/George Brandon

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