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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Barrett-Jackson Auction Company, LLC, an )  
Arizona limited liability company; and )  
Barrett-Jackson US, LLC, a Delaware )  
limited liability company, )

Plaintiffs, )

vs. )

ThumbCo, a Michigan Nominee )  
Partnership; and David L. Clabuesch, an )  
individual, )

Defendants. )

No. 2:07-cv-00561-EHC

**ANSWER**

**(Jury Trial Demanded)**

Defendant David L. Clabuesch (“Defendant”) answers Plaintiffs’ Complaint as follows:

**NATURE OF THE CASE**

1. Defendant admits that ThumbCo entered into a contract with Barrett-Jackson Auction Company, L.L.C., regarding the sale of an automobile. That contract speaks for itself. Defendant denies the remaining allegations in Paragraph 1 of the Complaint.

**PARTIES**

2. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Complaint, and therefore denies the same.



1 that the Consignment Agreement required that Barrett-Jackson Auction Company  
2 conduct the auction in an appropriate and fair manner that maximized the value of the  
3 consigned automobile.

4 13. Defendant admits the allegations in Paragraph 13 of the Complaint.

5 14. As to the allegations in Paragraph 14 of the Complaint, Defendant states  
6 that the Consignment Agreement speaks for itself. Defendant also affirmatively alleges  
7 that the Consignment Agreement required that Barrett-Jackson Auction Company  
8 conduct the auction in an appropriate and fair manner that maximized the value of the  
9 consigned automobile.

10 15. As to the allegations in Paragraph 15 of the Complaint, Defendant states  
11 that the Consignment Agreement speaks for itself. Defendant also affirmatively alleges  
12 that the Consignment Agreement required that Barrett-Jackson Auction Company  
13 conduct the auction in an appropriate and fair manner that maximized the value of the  
14 consigned automobile.

15 16. Defendant admits the allegations in Paragraph 16 of the Complaint.

16 17. As to the allegations in Paragraph 17 of the Complaint, Defendant states  
17 that the Consignment Agreement speaks for itself. Defendant also affirmatively alleges  
18 that the Consignment Agreement required that Barrett-Jackson Auction Company  
19 conduct the auction in an appropriate and fair manner that maximized the value of the  
20 consigned automobile.

21 18. Defendant lacks knowledge or information sufficient to form a belief as to  
22 the truth of the allegations in Paragraph 18 of the Complaint, and therefore denies the  
23 same.

24 19. Defendant lacks knowledge or information sufficient to form a belief as to  
25 the truth of the allegations in Paragraph 19 of the Complaint, and therefore denies the  
26 same.

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1           28. Defendant admits the allegation in Paragraph 28 of the Complaint that  
2 Plaintiffs had an obligation to store the Car safely. Defendant denies the remaining  
3 allegations in Paragraph 28 of the Complaint.

4           29. Defendant admits the allegation in Paragraph 29 of the Complaint that the  
5 Car is a high-profile car. Defendant denies that Barrett-Jackson placed the Car in the  
6 Showcase Pavilion after the purported sale. Defendant affirmatively alleges that Barrett-  
7 Jackson had left the Car outside following the purported sale, and that the Defendant  
8 pushed it inside the Showcase Pavilion tent the evening of January 20, 2007 to help  
9 protect the Car against the elements. Defendant lacks knowledge or information  
10 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 29 of  
11 the Complaint, and therefore denies the same.

12           30. Defendant lacks knowledge or information sufficient to form a belief as to  
13 the truth of the allegations in Paragraph 30 of the Complaint, and therefore denies the  
14 same.

15           31. Defendant denies the allegations in Paragraph 31 of the Complaint.

16           32. In response to Paragraph 32 of the Complaint, Defendant admits that he  
17 placed a chain around the Car. Defendant also affirmatively alleges that he only did so  
18 after Barrett-Jackson Auction Company breached their contract and had otherwise failed  
19 to take proper actions after the improper sale of the Car, and after Plaintiffs refused to  
20 meet with Defendant regarding that sale despite earlier promises to do so. Defendant  
21 denies the remaining allegations of Paragraph 32.

22           33. In response to Paragraph 33 of the Complaint, Defendant admits that he  
23 placed a chain around the Car. Defendant also affirmatively alleges that he only did so  
24 after Barrett-Jackson Auction Company breached their contract and had otherwise failed  
25 to take proper actions after the improper sale of the Car, and after Plaintiffs refused to  
26 meet with Defendant regarding that sale despite earlier promises to do so. Defendant  
27 denies the remaining allegations of Paragraph 33.

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1           34.     In response to Paragraph 34 of the Complaint, Defendant admits he taped  
2 one copy of the Grievance Report Letter to the inside window of the Car on January 20,  
3 2007. Defendant affirmatively alleges that only the first page of the Grievance Report  
4 Letter was visible to persons outside the Car. Defendant further admits that on January  
5 21, 2007 he taped Exhibit 3 of the Complaint to the Car. Defendant affirmatively alleges  
6 that he taped Exhibit 3 to the Car only after Plaintiffs failed to honor promises to address  
7 the original and supplemental grievance reports. Defendant denies the remaining  
8 allegations in Paragraph 34.

9           35.     Defendant denies the allegations in Paragraph 35 of the Complaint.

10          36.     Defendant denies the allegations in Paragraph 36 of the Complaint.  
11 Defendant further states that the January 21, 2007 poster speaks for itself.

12          37.     As to the allegations in Paragraph 37 of the Complaint, Defendant states  
13 that the January 21, 2007 poster speaks for itself.

14          38.     Defendant denies the allegations in Paragraph 38 of the Complaint.  
15 Defendant further states that the January 21, 2007 poster speaks for itself.

16          39.     Defendant denies the allegations in Paragraph 39 of the Complaint.  
17 Defendant further states that the January 21, 2007 poster speaks for itself.

18          40.     Defendant admits the allegations in Paragraph 40 of the Complaint.

19          41.     Defendant lacks knowledge or information sufficient to form a belief as to  
20 the truth of the allegations in Paragraph 41 of the Complaint, and therefore denies the  
21 same.

22          42.     Defendant denies the allegations in Paragraph 42 of the Complaint.

23          43.     Defendant denies the allegations in Paragraph 43 of the Complaint.

24          44.     Defendant denies the allegation in Paragraph 44 of the Complaint that he  
25 provided false statements to Sam Barer. As to the remaining allegations in Paragraph 44  
26 of the Complaint, Defendant lacks knowledge or information sufficient to form a belief as  
27 to the truth of those allegations and therefore denies the same.

28          45.     Defendant denies the allegations in Paragraph 45 of the Complaint.



1 states legal conclusions, no response is required. To the extent any response is required,  
2 Defendant denies the same.

3 57. The allegations in Paragraph 57 of the Complaint are not directed to  
4 Defendant and therefore no response is required. To the extent any response is required,  
5 Defendant denies the same.

6 58. The allegations in Paragraph 58 of the Complaint are not directed to  
7 Defendant and therefore no response is required. To the extent any response is required,  
8 Defendant denies the allegations in Paragraph 58 of the Complaint.

9 **COUNT TWO**

10 **(Breach of the Covenant of Good Faith and Fair Dealing)**

11 59. In Answering Paragraph 59 of the Complaint, Defendant incorporates  
12 herein the foregoing responses to Paragraphs 1-58 of the Complaint.

13 60. The allegations in Paragraph 60 of the Complaint are not directed to  
14 Defendant and therefore no response is required. Further, Paragraph 60 states legal  
15 conclusions and, therefore, no response is required.

16 61. The allegations in Paragraph 61 of the Complaint are not directed to  
17 Defendant and therefore no response is required. Further, to the extent Paragraph 61  
18 states legal conclusions, no response is required. To the extent any response is required,  
19 Defendant denies the same.

20 62. The allegations in Paragraph 62 of the Complaint are not directed to  
21 Defendant and therefore no response is required. Further, to the extent Paragraph 62  
22 states legal conclusions, no response is required. To the extent any response is required,  
23 Defendant denies the same.

24 63. The allegations in Paragraph 63 of the Complaint are not directed to  
25 Defendant and therefore no response is required. To the extent any response is required,  
26 Defendant denies the same.

27 64. The allegations in Paragraph 64 of the Complaint are not directed to  
28 Defendant and therefore no response is required. Further, to the extent Paragraph 64



1 states legal conclusions, no response is required. To the extent any response is required,  
2 Defendant denies the allegations in Paragraph 64 of the Complaint.

3 **COUNT THREE**

4 **(Interference with Business Expectancy)**

5 65. In Answering Paragraph 65 of the Complaint, Defendant incorporates  
6 herein the foregoing responses to Paragraphs 1-64 of the Complaint.

7 66. To the extent Paragraph 66 of the Complaint states legal conclusions, no  
8 response is required. To the extent any response is required, Defendant lacks knowledge  
9 or information sufficient to form a belief as to the truth of the allegations in Paragraph 66  
10 of the Complaint, and therefore denies the same.

11 67. Defendant denies the allegations in Paragraph 67 of the Complaint.

12 68. Defendant denies the allegations in Paragraph 68 of the Complaint.

13 69. Defendant denies the allegations in Paragraph 69 of the Complaint.

14 70. Defendant denies the allegations in Paragraph 70 of the Complaint.

15 **COUNT FOUR**

16 **(Conversion)**

17 71. In Answering Paragraph 71 of the Complaint, Defendant incorporates  
18 herein the foregoing responses to Paragraphs 1-70 of the Complaint.

19 72. Defendant denies the allegations in Paragraph 72 of the Complaint.

20 73. Defendant denies the allegations in Paragraph 73 of the Complaint.

21 74. Defendant denies the allegations in Paragraph 74 of the Complaint.

22 **COUNT FIVE**

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

24 75. In Answering Paragraph 75 of the Complaint, Defendant incorporates  
25 herein the foregoing responses to Paragraphs 1-74 of the Complaint.

26 76. Defendant denies the allegations in Paragraph 76 of the Complaint.

27 77. Paragraph 77 of the Complaint states legal conclusions and, therefore, no  
28 response is required. To the extent any response is required, Defendant denies the same.



1 93. All allegations of the Complaint not specifically admitted herein are denied.

2 **ADDITIONAL AND AFFIRMATIVE DEFENSES**

3 94. Plaintiffs are not entitled to an award of any relief against Defendant, as  
4 alleged, or at all.

5 95. Plaintiffs' Complaint and each cause of action thereof fails to state a claim  
6 against Defendant upon which relief can be granted.

7 96. Plaintiffs' damages, if any, were caused or contributed to by persons or  
8 entities other than Defendant, including persons or entities not named in this lawsuit.

9 97. Plaintiffs' claims are barred in whole or in part because they failed to  
10 mitigate any damages they suffered.

11 98. Plaintiffs' claims are barred in whole or in part because they contributed to  
12 their own damages, if any.

13 99. Plaintiffs' claims are barred to the extent that Defendant is entitled to  
14 recoupment and/or to offset of any liability of Plaintiffs to Defendant.

15 100. Any statements made by Defendant were truthful.

16 101. Barrett Jackson is a public figure and any statements made by Defendant  
17 regarded matters of public concern.

18 102. Any statements or actions by Defendant were privileged. Any statements  
19 or actions by Defendant after the sale of the Car were reasonably intended to put  
20 Plaintiffs and Kazamek on notice of his legitimate objections to the sale and to attempt to  
21 mitigate his own damages.

22 103. Any statements by Defendant were non-actionable opinions.

23 104. 47 U.S.C. § 230 is an absolute defense to some or all of the claims herein.

24 105. Plaintiffs lack standing to assert some of the claims asserted herein.

25 106. Defendant hereby alleges and incorporates such other affirmative defenses  
26 as may be established through discovery and the continuing development of the facts and  
27 claims, including all affirmative defenses identified in Rule 8(c), Federal Rules of Civil  
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1 Procedure. Defendant hereby reserves the right to allege those defenses identified in  
2 Rule 12(b), Federal Rules of Civil Procedure.

3 **JURY TRIAL DEMANDED**

4 Defendant hereby demands a trial by jury of any issue in this lawsuit triable of  
5 right by a jury.

6 WHEREFORE, Defendant David L. Clabuesch requests judgment on Plaintiffs'  
7 Complaint as follows:

8 A. That the Complaint and all claims therein be dismissed with prejudice and  
9 that the Plaintiffs take nothing thereby;

10 B. That Defendant be awarded his costs and reasonable attorneys' fees; and

11 C. For such other and further relief as the Court deems just and proper.

12 DATED this 16<sup>th</sup> day of April 2007.

13 LEWIS AND ROCA LLP

14  
15 By s/Brian J. Pollock  
16 Brian J. Pollock  
17 Marvin C. Ruth  
18 Attorneys for Defendant David L. Clabuesch  
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 16, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

- **George Ian Brandon , Sr.**  
gbrandon@ssd.com; brios@ssd.com; phxdocketmb@ssd.com
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s/Emma M. Vega  
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