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1 **COMP**
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FILED

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CR. [Signature]
CLERK OF THE COURT

8 Attorneys for Plaintiff

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 Dennis J. Kucinich,
12 Plaintiff,

CASE NO: A555207
DEPT NO: XXIII

13 vs.

14 NBC UNIVERSAL, Inc.
15 Defendant.

16 **COMPLAINT**

17 **COMES NOW**, Plaintiff, **DENNIS J. KUCINICH**, 12217 Milan Avenue, Cleveland, Ohio
18 44111, by and through his attorney, **WILLIAM W. McGAHA, ESQ.**, and the law firm of
19 **DeLANOY, SCHUETZE & McGAHA, P.C.**, and for his Complaint, hereby requests the Court
20 to issue an emergency Temporary Restraining Order against Defendant, NBC Universal, Inc.
21 to allow full participation by Dennis J. Kucinich in a nationally televised debate in the
22 Democratic Party primary election for the office of President of the United States scheduled
23 for the evening of January 15, 2008, beginning at 6:00 p.m., PST, televised by MSNBC, and
24 held at the Cashman Center in Las Vegas, Nevada. For his Complaint, Plaintiff more
25 specifically states as follows:

- 26
27 1. Complainant, Dennis J. Kucinich, ("Kucinich") is a candidate for the Democratic Party
28 nomination for the office of President of the United States, and Kucinich for President

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2008, Inc. is his official presidential campaign committee.

2. NBC Universal, Inc. ("NBC") is a national broadcasting company, which is 80% owned by General Electric and 20% owned by Vivendi. NBC owns and operates a portfolio of news and entertainment networks, and is televising and sponsoring, along with the U.S. Hispanic Chamber of Commerce, IMPACTO, 100 Black Men of America, the African American Democratic Leadership Council, the College of Southern Nevada, and the Nevada Democratic Party, the nationally televised prime-time Democratic Party presidential primary debate from 6:00 p.m. to 8:00 p.m., PST, on Tuesday, January 15, 2008 in Nevada ("Debate"). The debate will be held at the Cashman Center in Las Vegas on and will be televised on MSNBC, one of NBC's networks.

3. Kucinich is a credible and serious national candidate for President, which is highlighted by the fact that he has fully qualified under 26 U.S.C. §9033 for Presidential candidate primary election federal matching funds.

4. Kucinich is a credible and serious candidate in Nevada, where he is actively and vigorously campaigning and has a statewide headquarters in Las Vegas.

5. Kucinich also receives widespread national support and has been the winner in national online polls conducted by Democracy for America (receiving almost 50,000 votes while the closest competitor only received 38,000), Virginia State Democratic Party (receiving 30% of the Democratic vote while the closest competitor received 27%), Independent Voters (75% of the Democratic vote out of 80,000 online voters), as well as polls by Progressive Democrats of America and the Nation. In an ABC News poll, Kucinich received the most support from 42,487 voters (garnering 35% of the vote to 22% for the next closest candidate) who were asked who won the Democratic presidential primary debate on August 19, 2007. On January 14, 2008, a poll of presidential candidates

1 was published by the Washington Post-ABC News and Kucinich placed fourth out of
2 Democratic candidates and former New York Mayor, Rudolph Giuliani, placed fourth
3 out of Republican candidates. Kucinich is a successful candidate because of his anti-
4 war message and strong criticism of the American healthcare system, issues that are
5 not championed by his presidential primary opponents. In these and other policy
6 issues, his opponents share very similar policy platforms that differ from Kucinich.
7

8 6. On January 9, 2008, Defendant invited Kucinich to participate in the Debate. The
9 invitation is discussed in the Affidavit by Steven Cobble, which is attached as Exhibit
10 1 to the Motion for a Temporary Restraining Order, and the email invitation is attached
11 as Exhibit 2 to the Affidavit. As stated by Defendant's representative, Jenny Backus,
12 in the above-referenced email, Kucinich had "met the criteria set by NBC and the
13 Debate Sponsors." Kucinich, through his representative accepted Defendant's
14 invitation on the same day, and therefore entered into a contract.
15

16 7. Kucinich had met the criteria for participation in the Debate by placing in the top four
17 in a national news media poll conducted since the Iowa Caucus. As an example, the
18 results of the *USA Today/Gallup* poll from January 4-6, 2008 are attached to the Motion
19 as Affidavit Exhibit 3. The criteria for the Debate are discussed in the email sent by
20 NBC to Kucinich on January 7, 2008, and it is included with the Motion as Affidavit
21 Exhibit 1, along with other email correspondence from NBC regarding the Debate.
22

23 8. On January 11, 2007, NBC's political director, Chuck Todd, verbally informed a
24 representative of Kucinich that it was excluding Plaintiff Kucinich from the Debate and
25 was revising the criteria for participation. The reason for the revised and exclusionary
26 criteria provided by Chuck Todd was that NBC only wanted the participation of the top
27 3 candidates.
28

- 1 9. The exclusion of Kucinich undermines the purpose of the Federal Communications Act
2 ("Act") and is a blatant violation of the Act because of the media's obligation to operate
3 in the public interest. Section 315 of the Act (47 U.S.C. Section 315) specifically
4 requires broadcasters such as NBC "to operate in the public interest and to afford
5 reasonable opportunity for the discussion of conflicting views of issues of public
6 importance." NBC revised its criteria to specifically exclude the diverse and anti-war
7 voice of Kucinich and his grass-roots supporters. This specific exclusion is further
8 highlighted by the fact that NBC has not provided Kucinich with any revised criteria.
9
- 10 10. Kucinich is the only Democratic presidential candidate who has qualified for Federal
11 matching funds who is being excluded by NBC.
- 12 11. The Debate is not a true presidential primary debate without including all credible
13 candidates, but instead is effectively an endorsement of the candidates selected by
14 NBC. In addition, if NBC is given the liberty to designate every appearance with two
15 candidates as "news," then no third candidate will have the ability to enforce the equal
16 time requirement, which is inconsistent with the intent of Congress in enacting Section
17 315.
18
- 19 12. Kucinich's exclusion causes irreparable harm to the public interest by robbing the
20 voters of the opportunity to hear his policy platform, including his pro-peace initiatives.
21 As FCC Commissioner Susan Ness said in 2000 when NBC and Fox decided not to air
22 the first presidential debate: "As a member of our national community, I urge all
23 broadcast licensees to consider their civic duty to inform the public."
24
- 25 13. Although NBC would prefer to only report on easily described and well-known
26 candidates, the proper enforcement of the Federal Communications Act ensures
27 America's voters that they will have the ability to vote for candidates with varied and
28

1 new ideas and policies.

2 **COUNT I – BREACH OF CONTRACT**

- 3 14. Plaintiff incorporates by reference paragraphs 1 through 13 as if fully set forth here.
- 4 15. The facts set forth herein establish that there is a contractual relationship between the
- 5 parties, whereby Defendant promised to Plaintiff the opportunity to participate in the
- 6 Debate based upon pre-set criteria, Plaintiff accepted the invitation under the pre-set
- 7 criteria and agreed to participate in the Debate.
- 8
- 9 16. Defendant is in breach of its contract.
- 10 17. Monetary damages are not adequate compensation for the breach. Plaintiff will be
- 11 harmed by Defendant's breach unless specific performance is ordered.

12 **COUNT II – BREACH OF DUTY UNDER FEDERAL COMMUNICATIONS ACT**

- 13 18. Plaintiff incorporates by reference paragraphs 1 through 17 as if fully set forth here.
- 14 19. Based on the facts set forth herein, Defendant will be in breach of its duty to serve the
- 15 public interest, as required by Section 315 of the Federal Communications Act. NBC
- 16 is required "to operate in the public interest and to afford reasonable opportunity for the
- 17 discussion of conflicting views of issues of public importance" and NBC violates this
- 18 requirement with its revised criteria that was specifically drafted to excluded Mr.
- 19 Kucinich and his message.
- 20

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs respectfully demand judgment including the following:

- 23
- 24 a. That a Temporary Restraining Order and Preliminary and Permanent Injunctions
- 25 be issued ordering Defendant, NBC, Inc., its subsidiaries, employees, agents
- 26 and affiliate stations to permit full participation by Plaintiff Dennis J. Kucinich in
- 27 the debate among candidates for the Democratic Party nomination for the office
- 28

1 President of the United States to be conducted and televised by Defendant the
2 evening of January 15, 2008.

3 b. That Defendant NBC perform its contractual obligations with Plaintiff Kucinich
4 and grant the specific performance of his full participation in the debate among
5 candidates for the Democratic Party nomination for the office President of the
6 United States to be conducted and televised by Defendant the evening of
7 January 15, 2008.

8
9 c. For the costs of this proceeding;

10 d. Plaintiffs be awarded their reasonable attorneys' fees and costs; and

11 e. For other such relief as deemed appropriate by this Court.

12 **DATED** this 15th day of January, 2008.

13 **DeLANOY, SCHUETZE & McGAHA, P.C.**

14
15 By 

16 **WILLIAM W. McGAHA, ESQ.**

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