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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUSQUEHANNA RADIO, LLC,

Plaintiff,

VS.

JACOB KEMP and DANIEL
McDOWELL,

Defendants.

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CASE NO. 3:23-cv-01746-S

TRANSCRIPT OF MOTION HEARING
HEARD BEFORE THE HONORABLE KAREN GREN SCHOLER
UNITED STATES DISTRICT JUDGE

SEPTEMBER 15, 2023

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P R O C E E D I N G S

(Call to order of the court.)

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2
3 THE COURT: The Court calls Civil Action
4 3:23-cv-01746-S, Susquehanna Radio, LLC, formerly known as
5 Susquehanna Radio Corp, versus Jacob Kemp and Daniel McDowell.

6 Counsel, please make your appearance on the
7 record by -- and I'd like lead counsel to stand up and make
8 your appearance on the record and who's with you today.

9 MR. PERNINI: Thank you, Your Honor.

10 David Pernini of Wargo, French, Singer. With me
11 today is David Anderson of Baker Hostetler. Tyler Dysart,
12 also --

13 THE COURT: Well, hold on.

14 MR. PERNINI: Sorry.

15 THE COURT: And you'll be taking lead today,
16 Mr. Pernini?

17 MR. PERNINI: Well, Mr. Anderson will be doing opening
18 and questioning some of the witnesses and then I'll be
19 questioning some of the witnesses.

20 THE COURT: Okay. I've got you, Mr. Pernini.
21 Mr. Anderson.

22 MR. ANDERSON: Yes, Your Honor.

23 THE COURT: And?

24 MR. PERNINI: Mr. Dysart.

25 THE COURT: Okay.

1 MR. PERNINI: And then Brian Jorgensen is also in the
2 courtroom today. He will not necessarily be taking --

3 THE COURT: Good morning, Mr. Jorgensen.

4 MR. JORGENSEN: Good morning.

5 MR. PERNINI: He will not necessarily be taking a role
6 in the presentation of evidence, but if there's any NLRB issues
7 that the Court has questions about, he's available.

8 THE COURT: I don't really see that NLRB has anything
9 to do with this hearing this morning, so --

10 MR. PERNINI: Oh. I'll disagree but --

11 THE COURT: -- you know, I'm here on a temporary -- I
12 mean, a preliminary injunction matter and the issues are pretty
13 narrow. But I know people are trying to throw the NLRB in
14 this, but I don't really see it being relevant today at all.

15 So you've got limited time. I intend to have you
16 all be focused on the time. I've got a criminal sentencing
17 later this afternoon that I intend to keep on time. And so use
18 your time wisely. But I'm telling you right now I'm focused on
19 the elements and the burden that you all have on the
20 preliminary injunction.

21 Who's behind you?

22 MR. PERNINI: I'm sorry, Your Honor. With me today
23 also -- this is Daniel Bennett.

24 THE COURT: Yes. He was here last time.

25 MR. PERNINI: That's right. And then Jeff Catlin.

1 THE COURT: Jeff -- what did you say his last name was?

2 MR. PERNINI: Catlin, C-a-t-l-i-n.

3 THE COURT: He was here last time. Okay.

4 MR. PERNINI: And then Mr. Larry Rosin, who was not
5 here last time.

6 THE COURT: And Mr. Rosin's relationship to the --

7 MR. PERNINI: Mr. Rosin is an expert in the area of --

8 THE COURT: Oh. So he's going to be a witness?

9 MR. PERNINI: He's going to be a witness yes, Your
10 Honor.

11 THE COURT: All right. Is that everybody on your team?
12 Look around 'cause there's been at least one additional --
13 people have come in.

14 MR. PERNINI: Yeah.

15 THE COURT: Pardon?

16 MR. PERNINI: That's it for our side.

17 THE COURT: Okay. And then on behalf of the
18 Defendants.

19 MR. KINGSTON: Good morning, Your Honor. Philip
20 Kingston, Sheils Winnubst. With me is Frank Cawley of the
21 Cawley Law Group.

22 THE COURT: Ms. Griffin.

23 MR. KINGSTON: Ms. Griffin from Clark Hill, Your Honor.

24 You met Jacob Kemp last time. Daniel --

25 THE COURT: Yes. Good morning, Mr. Kemp.

1 MR. KINGSTON: -- McDowell -- I'm sorry, Your Honor.

2 THE COURT: And Mr. McDowell.

3 MR. KINGSTON: Mr. McDowell was traveling.

4 THE COURT: Right. And he's present today.

5 MR. KINGSTON: He's present. We did not make Will set
6 up anything for no reason again.

7 Sorry about that, Will.

8 And later you will hear from Adam Romo, who's not
9 here yet, but we didn't think it was necessary for him to be
10 here at the start.

11 THE COURT: Okay. Thank you.

12 I view today as a continuation of the hearing we
13 started several weeks ago, but we stopped to allow the parties
14 at their request to start mediation or complete -- start and
15 complete mediation before this hearing began. So I am not
16 going to repeat all the instructions and the communications
17 that I had given the lawyers before, except there's a couple
18 that worth -- are worth bear repeating.

19 First, just so we're clear. Today before the
20 Court is ECF Document Number 9 titled, Plaintiff's Renewed
21 Application for Temporary Restraining Order and Request for
22 Preliminary Injunction. I understand that at this time the
23 Plaintiff is not seeking a TRO, of course. And then at least
24 the allegation relative to anti-solicitation will not be before
25 the Court.

1 Am I correct?

2 MR. PERNINI: You are correct, Your Honor.

3 THE COURT: In response to this document, this
4 application, I have before me Defendants' amended response and
5 opposition to Plaintiff's original and renewed application for
6 injunctive relief as well as ECF 26 -- if I didn't say so, the
7 one I just said was ECF 19 -- is Plaintiff's reply for
8 Defendants' responses an opposition to injunctive relief.

9 I have -- you all have been working fast and
10 furious and filing things left and right. I do have in front
11 of me something that was filed, I believe, in the last
12 48 hours, the Defendants' motion to dismiss pursuant to
13 Rule 12(b)(1) and Rule 12(b)(6). I haven't looked at this
14 because it's not ripe and that's not before the Court right
15 now, but I just want to let you know that that's not something
16 I believe is appropriate to review.

17 But I have received, kind of unfortunately,
18 ECF 43 which is titled, Plaintiff's Factual Update and
19 Supplemental Bench Brief in Support of Preliminary Injunction
20 Hearing as well as Defendants' Response to Plaintiff's Factual
21 Update and Bench Brief in Support of Preliminary Injunction.

22 I question whether these should have been filed,
23 whether statements should have been made. Maybe the best
24 interest of your respective clients were not at the heart of
25 all this. I think it's inappropriate to go into mediation and

1 I'm just going to -- I've read it but I think, quite frankly,
2 the -- these -- these two documents make the lawyers look like
3 they're fighting in the sandbox. Okay? And that's not a good
4 impression. And so I'm going to set that aside and we're going
5 to start anew.

6 So what I also want to tell you today is that
7 this -- the evidence received on this motion for preliminary
8 injunction shall become part of the trial record. As you know,
9 you're set for trial in December. I don't need to go into the
10 dates and the pretrial conferences, but that's still set. And
11 I know that there are no remote witnesses today because nobody
12 asked for them, so we've taken down the need and the
13 electronics for that.

14 There's one other thing. We're going to go
15 straight through. My court reporter and I tend to go longer
16 than people need breaks, but if anybody needs a break, you just
17 raise your hand and say that we need a break. Okay? I want to
18 try to get this all done today. I'm prepared to go into the
19 evening.

20 I will stop at approximately 2:30 to allow my
21 criminal sentencing to proceed on time. It should not be a
22 long one. You all can take a break.

23 My hope is that we get all the evidence and
24 opening and whatever before my criminal sentencing. I'll do
25 that, you take a break, and then you come back with closing

1 argument. But this is a dynamic situation. I may change my
2 mind on exactly how it plays out, but I just want to tell you
3 that's the plan today.

4 Any questions about the plan on behalf of the
5 Plaintiff?

6 MR. PERNINI: No, Your Honor.

7 THE COURT: On behalf of the Defendants?

8 MR. KINGSTON: We're good, Your Honor. Thank you.

9 THE COURT: Okay. Thank you.

10 All right. Then at this time I'm going to take
11 up opening statements. Pursuant to instructions that you all
12 received earlier, I believe each side gets 15 minutes. I won't
13 cut you off in the middle of a sentence. You know, this is
14 pretty much a mini bench trial. But keep in mind that, you
15 know, we need to get through this today. All right?

16 If you wonder whether I prefer the podium or
17 counsel table, that's your preference. Just stand when you're
18 addressing the Court. If you have an objection, just stand.
19 I'll acknowledge you.

20 Witnesses, I have a slight preference for you to
21 stay at counsel table, but really that's up to you. I know a
22 lot of other federal judges are much pickier on that, but
23 that's up to you.

24 With respect to approaching the witness, you ask
25 me the first time if you want to approach the witness, but

1 you'll have continuing permission to approach the witness after
2 I give you permission the first time. Okay?

3 Any questions on behalf of Plaintiff?

4 MR. ANDERSON: No, Your Honor.

5 THE COURT: Defendants?

6 MR. KINGSTON: We understand, Your Honor.

7 THE COURT: Okay. Then at this time, let's go ahead
8 with opening statement for the preliminary injunction by the
9 Plaintiff. Go ahead.

10 MR. ANDERSON: Good morning, Your Honor. May it please
11 the Court.

12 Your Honor, we're here seeking an injunction on
13 behalf of Susquehanna, which I'm going to refer to often today
14 as the The Ticket. We're here today because certain
15 Defendants --

16 THE COURT: It's easier to pronounce, so that's great.

17 MR. ANDERSON: Yes, Your Honor.

18 THE COURT: Do you mind if I refer to it that way?

19 MR. ANDERSON: That'd be fantastic.

20 THE COURT: Your client that way?

21 MR. ANDERSON: Perfect.

22 THE COURT: Okay.

23 MR. ANDERSON: Thank you, Your Honor.

24 Susquehanna -- The Ticket, it's referred to as a
25 radio station, but it's much more than that. It's an audio

1 media company.

2 I think there was a time, Your Honor, when we all
3 thought about a commercial radio station as that -- as the
4 thing we tuned in our radios to, whether we're in the car,
5 whether we're sitting around the fire at home, but that's not
6 really what a commercial radio station is today. Things
7 evolve, as has radio stations.

8 And they have a very -- the concept of radio
9 station has a very different meaning today than it did 50 years
10 ago, 25 years ago, and definitely within this past decade.
11 We've seen significant changes in what it does. It's an audio
12 media company today. It does a lot more than broadcast on
13 radio. And that's true for The Ticket.

14 The Defendants here are former employees of The
15 Ticket. They were on-air talent. They weren't always on-air
16 talent. Defendant McDowell was. But Defendant Kemp had other
17 roles and then ended up being an on-air talent. And they had a
18 show from 12:00 to 3:00, Monday through Friday, called the Hang
19 Zone. They had that from February 2020 until they left
20 employment here at mid-July 2023.

21 As part of that show, which was broadcast on the
22 radio, it was also -- there was streaming available from the --
23 that people could listen to it from their phones. They could
24 listen to the Hang Zone. And then portions of the Hang Zone
25 were broadcast or uploaded into podcasts. Various -- two to

1 three podcasts from The Ticket, which would contain excerpts
2 and this, that, and the other from the Hang Zone that contained
3 both Defendants talking.

4 In addition to the Hang Zone, the Defendants also
5 did provided some original content outside of the Hang Zone for
6 The Ticket. And we'll get into that with the evidence today,
7 Your Honor.

8 But I think that's important, that these weren't
9 just two folks on a radio station from 12:00 to 3:00. They
10 also did a number of other functions and things for the
11 station, including providing original content for podcasts for
12 the station.

13 And I think one critical part of that, Your
14 Honor, is that what -- when they were doing all that, not just
15 the 12:00 to 3:00 show, Your Honor, but also providing content
16 and going to events and promotions and providing content for
17 original podcasts, that was all part of their job duties. And
18 as we'll see today in their employment agreements, it's right
19 there listed as part of their job duties.

20 Again, this isn't -- you know, The Ticket is not
21 just a, you know, particular number on a dial. It is a brand.
22 It is an audio media company. And these folks, the Defendants,
23 in connection with their job duties and responsibilities, had
24 to do a lot more, including provide content for podcasts.

25 Now, there were some contract negotiations that

1 took place, Your Honor, the past few months leading up to their
2 departure in July. Suffice it to say, they couldn't come to an
3 agreement and they left. That's all well and good.

4 But the moment they left, Your Honor, they
5 immediately started up a competing podcast and it -- you know,
6 that's one thing. But to add insult to injury, the podcast was
7 the exact same show they did for The Ticket. But instead of
8 calling it the Hang Zone, they called it the Dumb Zone, which,
9 as you'll hear today in the evidence, Your Honor, that name was
10 used frequently during the Hang Zone episodes for The Ticket.

11 So they basically take the same show, changed the
12 name ever so slightly to use a name they were already using at
13 times for the Hang Zone, and then start uploading podcasts that
14 have the same format, same kind of show content, marketed to
15 the same kind of listener base. It's just a copycat, the same
16 show, but now they're doing it outside The Ticket in a podcast
17 forum.

18 You're going to get to hear today from the
19 evidence, Your Honor, whether it's podcast or whether they got
20 a YouTube channel, it all competes.

21 I think one really important thing you'll hear
22 today is that, you know, any average listener has only a finite
23 amount of time that they're going to devote each day to
24 listening to audio content. Right? And so for me, for
25 example, that might be 40 minutes a day driving a car,

1 listening to podcast on my phone or listening to streaming.

2 But whatever an average person devotes to a day,
3 you know, any audio content that they're going to listen to,
4 it's -- you're competing with something else. So if you're
5 going to listen to 40 minutes of -- of a podcast, that means
6 less time for radio and things of that nature.

7 So everybody that's providing audio content
8 within this Dallas-Fort Worth area is competing for a person's
9 attention. Right? Just their -- the amount of time they'll
10 give a day for -- to give attention to whatever audio they want
11 to listen to 'cause we got to work.

12 Now, they're going to argue today, I think, Your
13 Honor, 'cause they have in pleadings, that because they are a
14 fee subscription podcast behind a paywall, how can that
15 possibly compete with -- with free programming from The Ticket.
16 And it's real easy, Your Honor. They are directly competitive.
17 You'll see evidence today that listeners are leaving The Ticket
18 to go follow the Defendants to their podcast regardless of
19 whether or not it's fee based.

20 And -- and, again, they're all competing for the
21 same time. And I think a big piece here is it's not just a
22 12:00 to 3:00 time slot. Because the Defendants' podcast can
23 be uploaded anytime, now it's not just a 12:00 to 3:00 you're
24 competing with. Listeners can listen to that anytime. So now
25 you're talking about competing with The Ticket's morning show,

1 evening show. And it's cutting into all that.

2 Now, competing is one thing but then using that
3 competitive -- in violation of their noncompetes, using this
4 competitive podcast to not only compete but also to throw
5 The Ticket under the bus, to disparage them, to talk -- to cast
6 them in a negative light all in an attempt to garner more of
7 The Ticket's listener base so that they'll go over there and
8 pay these fees for the Defendants' podcast, it's adding insult
9 to injury.

10 And the net result of all that, Your Honor, is
11 that my client is being irreparably harmed. Their damaged
12 reputation. Their goodwill and reputation is being drugged
13 through the mud. And how do you put a value to that? How do
14 you put a number, a dollar amount on someone's reputation?

15 Listeners -- as you'll see today, Your Honor,
16 listeners have been sending hateful e-mails, communications to
17 my client. Their reputation is not just being tarnished, it's
18 being greatly hindered. And you'll hear evidence today that
19 their ratings are falling as a result of that.

20 There's not any possible way I can think of that
21 the -- the measure of harm that my client sustained could be
22 calculated in some, you know, monetary dollars and cents that
23 would encapsulate the total harm. You might be able to
24 pinpoint, okay, there's a loss here and a loss there, but not
25 the full harm. You just can't do it. The harm is irreparable.

1 And it's immediate. It's happening. It's been happening.

2 I wish now we would have had this hearing three
3 weeks ago because we need this action stopped. We need their
4 podcast stopped. But the -- I want to draw your attention --

5 THE COURT: Wait a minute. You all agreed between last
6 time and this time to an order that the Court signed, which was
7 agreed to by you all -- I didn't have much to do except signing
8 the order. -- as to what would be acceptable and what wouldn't.
9 So the conduct you wanted stopped was agreed to by you and your
10 client. So I want to make that perfectly clear.

11 So your statement that you wish it would have
12 been done multiple weeks ago and now, you all had me sign an
13 order, then had me sign another order where you reached
14 agreement. So I don't find that very persuasive of an argument
15 right there.

16 MR. ANDERSON: Your Honor, all -- apologies. All I
17 meant by that -- not trying to do anything to the Court. Just
18 knowing what I know now about how the last couple of weeks were
19 going to go, I wish we would have just gone forward. That's
20 all I'm saying.

21 THE COURT: Okay. I don't think that's what you said,
22 but I just wanted to make sure that -- all right. Then I
23 understand what you meant to say. Continue.

24 MR. ANDERSON: So let's look at the noncompete for just
25 a second. It's six months. It's -- it is a very short time

1 compared to, as Your Honor knows, a lot of noncompetes that are
2 enforced in this state, whether by federal courts or state
3 courts, of a year, year and a half, two years. This is a
4 six-month window. And you'll hear evidence today as to why
5 that's a minimum amount of time. It's a very short time that
6 it is necessary to protect the company's interests. So that is
7 with respect to the noncompete, Your Honor.

8 But it doesn't stop there. Their conduct goes
9 beyond that. There were websites and social media accounts
10 created with respect to the Hang Zone. I believe the
11 Defendants are going to argue, well, we paid for that stuff, so
12 it's ours. And that couldn't be farther from the truth, Your
13 Honor, because under their contracts whatever is created in
14 connection with their jobs belongs to The Ticket. And if
15 they -- and they had a budget for their jobs at The Ticket.

16 And if there were costs associated with websites
17 or social media or whatnot, all they had to do was seek
18 reimbursement and there was a budget for it and it would have
19 been reimbursed. But they didn't seek reimbursement.

20 They don't get the benefit of saying, well,
21 because I didn't seek reimbursement, I get to keep it. So they
22 hijacked the Hang Zone website and social media accounts,
23 changed them to the Dumb Zone in order for customers that used
24 to go to Hang Zone to now find the Dumb Zone.

25 I think, Your Honor, just to -- just to wrap it

1 up, what we're asking for is a very short preliminary
2 injunction in terms of six months. We're going to have trial
3 before six months. Six months from when they left, or from
4 when they first violated it, will be mid-January. We're going
5 to have trial before then, so that makes a preliminary
6 injunction entered today even that much more reasonable. We'll
7 get to the trial before we get to the end of that six months.
8 So it's more than fair.

9 It's very geographically reasonable because it's
10 just in the Nielsen rated Dallas-Fort Worth area market, which
11 is roughly nine counties or so, within the -- around the DFW
12 area. It's six months. And it's -- it wouldn't prevent them
13 from doing a podcast available to somewhere, you know, in
14 Austin or Houston. But I get that they want to do it here.

15 But their noncompetes don't allow for it.
16 They're in direct violation of it. We have a likelihood of
17 success on the merits for both the noncompete violations and
18 for their -- the taking of the websites, the taking of the
19 property.

20 For those reasons, Your Honor, we are asking for
21 a preliminary injunction to be entered today and to be held in
22 force through trial. Thank you.

23 THE COURT: Okay. Thank you.

24 Opening on behalf of the Defendants.

25 MR. KINGSTON: Yes, Your Honor.

1 THE COURT: And thank you, Counsel, for giving back
2 some of the time.

3 MR. ANDERSON: Yes, Your Honor.

4 THE COURT: All right.

5 MR. KINGSTON: Your Honor, we have a very simple story
6 here. These guys worked at The Ticket for a long time and they
7 ultimately couldn't reach an agreeable contract for their next
8 however long they were going to work at The Ticket, and they
9 simply left.

10 As is often the case in a contested case, Your
11 Honor, our view of the facts is quite different from
12 Mr. Anderson's good presentation.

13 What my clients have said to me over and over is
14 that what they were trying to do when they left was be cool.
15 They didn't want to hurt The Ticket. They have friends at
16 The Ticket. You're also going to hear today that they were,
17 apparently, very reasonably frightened of litigation.

18 So what they did was they put their work behind a
19 paywall. They don't do a live broadcast. They don't even
20 publish the podcast in their own time slot, the old time slot
21 that they had for The Ticket.

22 I thought Mr. Anderson's statement that the --
23 the fact that you can listen to the Dumb Zone anytime means
24 that it's competing with the entire Ticket content is a very
25 odd thing to say. We view it the exact opposite way. We're --

1 we're not competing with them.

2 Mr. Anderson also referred to the listeners of
3 The Ticket as customers. And that's going to be a key
4 difference today, Your Honor. The Ticket's customers are not
5 listeners. The Ticket's listeners are the product.
6 The Ticket's customers are advertisers.

7 You will hear today -- well, I don't know what
8 you're going to hear today, Your Honor. We have a sworn
9 pleading that I don't believe will be backed up by sworn
10 testimony in your court today. I believe that Plaintiff has
11 finally come to the realization that Dan and Jake do not
12 advertise and have not interfered with the advertisers of
13 The Ticket. So, I don't know, we'll see what we'll hear today.

14 This is a different audience that Dan and Jake
15 are seeking. You'll hear them explain what the difference is.
16 The Ticket seeks a very narrow audience. They seek a much
17 broader audience.

18 You're going to hear that Susquehanna -- I'm
19 sorry to use that name. I know it's not as friendly as
20 The Ticket. But Susquehanna owns many, many radio stations.
21 It is not The Ticket. It is a large organization.

22 The reason that's important for the Court is
23 because the Plaintiff continually promotes the wrong measure of
24 irreparable harm in this Court. This Court is applying the
25 federal standard of irreparable harm which includes, as Judge

1 Kinkeade has taught us, if you are alleging loss of revenue as
2 a business, you must also allege and prove that you risk
3 bankruptcy or financial ruin from the competitive activity. I
4 don't think any witness will back that up today, Your Honor.

5 They're not disparaging their former colleagues,
6 their friends, the work that they do. I think the Court has
7 probably already listened to the clips that we have sent to the
8 Court. I think you probably listened to the clips that
9 Plaintiff has pointed to as disparagement. And in no case are
10 these disparaging. In fact, they're quite complimentary.

11 Even when my clients have discussed their
12 departure from The Ticket, they have done so in ways that I
13 think are designed to treat it as a business dispute, not
14 intended to harm The Ticket in any way.

15 You're going to hear from Adam Romo today, Your
16 Honor. He's the CEO of Eatzi's, a very important advertiser
17 for The Ticket. What you're going to hear is that podcasting
18 is so important to The Ticket that he never, ever heard from
19 The Ticket about their podcast, that he was never asked to
20 advertise in a podcast. And the podcast were never monetized
21 for Eatzi's.

22 You're also going to hear Mr. Romo talk about his
23 relationship with Dan McDowell, and you're going to hear him
24 tell the Court that Dan McDowell specifically told him to
25 continue to advertise with The Ticket. The exact opposite of

1 this entire, very lengthy series of allegations from the
2 Plaintiff.

3 And then you're going to hear the Plaintiff's
4 allegations. I don't know to what extent they'll be backed up
5 by witness testimony, but I can say three things about what has
6 been filed with this Court. It is false, it is sworn, and it
7 has not been withdrawn or amended. I think those are three bad
8 things.

9 The other thing I would like to draw the Court's
10 attention to is the definition of a podcast. It is true that
11 Susquehanna's parent corporation runs a network of podcasting.
12 It is not true that Susquehanna makes money from podcasting.
13 That -- that will be interesting today.

14 We agree with the Court that the definition of
15 immediate risk of irreparable harm is very hard to meet when
16 the Plaintiff has agreed to a month of the conduct that it now
17 contends to the Court threatens its business. The -- the Court
18 will hear about the magnitude of the revenue that Defendants
19 are generating compared to the magnitude of the revenue that
20 Plaintiff generates. And I think that is interesting both from
21 the standpoint of irreparable harm but also from the
22 standpoint, as I discussed earlier, of whether this actually
23 threatens the existence of Susquehanna.

24 Last thing I just wanted to mention because I
25 think you'll be interested to hear it, and it will be

1 ultimately the subject of a -- an affirmative defense or maybe
2 even a counterclaim. My learned brother said that the -- the
3 Defendants had a budget that they could pay for these websites
4 and social media accounts that they created to promote
5 Plaintiff's business, and that's not true. We'll hear more
6 about that later.

7 Your Honor, just to finish off the opening. No
8 good deed goes unpunished, and that's what you're going to hear
9 from the witnesses today.

10 THE COURT: Thank you, Counsel.

11 And thank you, also, on giving back time to the
12 Court.

13 I just want to make clear that today is the
14 evidentiary hearing on the application for temporary --
15 preliminary injunction. So what is presented today by both
16 sides is critical to the Court on making a determination.
17 Reliance on pleadings or what counsel says and statements or
18 argument is not what I consider evidence. So this is a very
19 factually based determination by the Court and so that's how
20 I'm viewing today.

21 So call your first witness.

22 MR. ANDERSON: Yes, Your Honor. Plaintiff calls Jeff
23 Catlin.

24 THE COURT: Thank you.

25 Sir, if you'll take the stand over here. Raise

1 your right hand.

2 (Whereupon, the oath was administered by the Court.)

3 THE COURT: Please have a seat. Make yourself
4 comfortable. Bring the microphone in front of your mouth. And
5 when you and counsel are ready, go ahead.

6 MR. ANDERSON: Your Honor, do you mind if I -- do you
7 have a preference if I stand or sit?

8 THE COURT: You can do either one when you're examining
9 the witness in this bench trial. Go ahead.

10 MR. ANDERSON: Thank you, Your Honor.

11 (WHEREUPON, **JEFF CATLIN** was called as a witness, and
12 having been duly sworn, testified as follows:)

13 DIRECT EXAMINATION

14 BY MR. ANDERSON:

15 Q. Good morning, Mr. Catlin.

16 A. Good morning.

17 Q. Will you please state your full name for the record?

18 A. Jeff Catlin.

19 Q. Mr. Catlin, where do you currently work?

20 A. I work at The Ticket, Susquehanna media corporation.

21 Q. What's your title there?

22 A. Operations manager.

23 Q. Okay. When did you first begin at The Ticket?

24 A. March 1st of 1994.

25 Q. Mr. Catlin, as a preliminary matter, you know, you're here

1 today on behalf of Plaintiff Susquehanna Radio, LLC?

2 A. Yes.

3 Q. And so I oftentimes may use that interchangeably with
4 The Ticket. That's the station you're the operations manager
5 for?

6 A. That's correct.

7 Q. If I mention The Ticket, you'll know I'm talking about
8 Susquehanna as well?

9 A. Yes.

10 Q. With respect to your current role -- I'm sorry. When did
11 you first begin at The Ticket?

12 A. March 1st of 1994.

13 Q. Okay. And what was your job title at that time?

14 A. I was afternoon producer.

15 Q. How long did you have that position?

16 A. Until 2000.

17 Q. What -- what position did you take at that time in 2000?

18 A. In 1996 I was promoted to assistant program director. In
19 2000 I stayed with the same company but moved to Kansas City
20 where I was a program director for 710AM KCMO. And I returned
21 again, same company, in March of 2003 to become the program
22 director of The Ticket. In 2008 I was promoted to operations
23 manager for the cluster of the stations that we had in Dallas,
24 and I've held that position ever since 2003.

25 Q. What are your job duties and responsibilities as the

1 operations manager?

2 A. I oversee all the on-air content, all the on-air
3 programming, all the on-air talent, the support personnel, such
4 as producers and board ops and anchors, any of the on-air
5 commercial production, station events, station marketing and
6 branding, the brand manager, those kind of things.

7 Q. Just briefly. You know the Defendants, obviously?

8 A. Yes.

9 Q. Mr. McDowell and Mr. Kemp. It's fair to say you were
10 their boss?

11 A. Yes.

12 Q. They reported to you?

13 A. Yes.

14 Q. As the operations manager for The Ticket, can you please
15 explain what The Ticket is?

16 A. The Ticket is a brand. It's a media company. It provides
17 entertainment and content throughout Dallas-Fort Worth to -- to
18 listeners.

19 Q. Ever heard the term "commercial radio station"?

20 A. Yes.

21 Q. What's that mean to you?

22 A. It's a broadcast entity that provides content in the
23 market, whether that's on air or podcasting or streaming. And
24 we do events. We do a variety of things.

25 Q. Now, when I grew up listening -- driving down the road

1 when I first turned 16, I listened to radio in my car or in a
2 boom box I had in my room. And that's what I viewed as a radio
3 station.

4 Do you view The Ticket as being -- under that definition,
5 is The Ticket a radio station within that confine?

6 A. Yes.

7 Q. Is it anything beyond that?

8 A. Yes, it is.

9 Q. For the things you just mentioned here?

10 A. Correct.

11 Q. You said some things about podcasts and streaming. Do all
12 those things -- just to click off some things I heard. You
13 said a brand?

14 A. Yes.

15 Q. Concert promoter?

16 A. Uh-huh.

17 Q. Events?

18 A. Yes.

19 Q. Did you say podcast?

20 A. I did.

21 Q. Did you say streaming?

22 A. Yes.

23 Q. Did you say social media?

24 A. I did not. But we do have social media presence, yes.

25 Q. Are all those things, those functions, do those fit within

1 what you would define as a commercial radio station?

2 A. Yes.

3 Q. Does that fit the description of The Ticket?

4 A. Yes, it does.

5 Q. In what formats does The Ticket provide its content?

6 A. We broadcast live over the air on a radio, as you
7 mentioned. We also provide on demand audio in podcast form
8 across a variety of platforms. We stream our content online
9 through apps and websites 24 hours day, seven days a week.

10 Q. All right. We've heard a lot about podcast. We'll hear a
11 lot more, I suspect.

12 Do you know what podcast is?

13 A. Yes, I do.

14 Q. What is a podcast?

15 A. Podcast is on demand content that you can save and listen
16 to at any time you would like.

17 Q. Is it -- I think of it like talk radio, which you can
18 listen to on demand. How do you feel about that definition?

19 A. Correct.

20 Q. What's the difference between podcast versus traditional
21 radio broadcast?

22 A. Radio broadcast traditionally is happening in real-time.
23 If you don't listen to it at that moment, you've missed it. A
24 podcast is audio content that's available. And you can
25 download it and save it and listen to it at your convenience,

1 whenever you want and as often as you want.

2 Q. You mentioned, also, streaming. Can you explain the
3 difference between podcast versus streaming?

4 A. Yes. Again, podcast is something that is on demand that
5 you can save and listen to later or listen to as many times as
6 you want. Streaming is a digital version, an online version,
7 of a radio broadcast that's happening online in the moment
8 live. You can't save it and you can't download it.

9 Q. But the streaming, can you listen to that on a phone?

10 A. Yes.

11 Q. Can you listen to traditional radio broadcast by phone?

12 A. No.

13 Q. Podcast, can you listen to that by phone?

14 A. Yes.

15 Q. Does The Ticket stream any of its shows or content?

16 A. Yes, it does.

17 Q. Does The Ticket provide any of its shows or content on
18 podcasts?

19 A. Yes.

20 Q. Can you elaborate on that? What podcasts does The Ticket
21 put out?

22 A. The Ticket has three different podcast channels. One of
23 them is called The Ticket Top 10, and we provide daily
24 highlights of all of our prime time, Monday through Friday, 6A
25 to 7P shows on that channel. We have another channel which we

1 provide special content, original, never before aired content
2 in podcast form on that channel. And then we have a third
3 channel that is a daily repeat of a segment that happens on the
4 air called Why Today Doesn't Suck.

5 Q. The one that has original content on it, do you know what
6 that one's called?

7 A. It's called Sports Radio 96.7 and 1310 The Ticket.

8 Q. You mentioned some original podcast content?

9 A. Yes.

10 Q. What kind of original content podcast does The Ticket
11 traditionally put out?

12 A. Well, depending on the season, we could do special
13 original content, say, around the NFL draft, maybe around the
14 Super Bowl. We do in-season shows for the Texas Rangers, the
15 Dallas Mavericks, the Dallas Stars, college football that are
16 all original content podcasts available only on that channel
17 that have never been on the radio station before through the
18 traditional method.

19 Q. With respect to whether it's radio broadcast or streaming
20 or podcast, do you charge a fee for that?

21 A. No.

22 Q. Do you try to monetize that?

23 A. Yes. To my knowledge, yes.

24 Q. Each one of those?

25 A. I believe so, yes.

1 Q. How long has The Ticket been streaming its broadcast?

2 A. Around 1996.

3 THE COURT: I don't -- I don't know what you mean and
4 the witness means by you try to monetize that. So since I'm
5 the one who needs to understand --

6 MR. ANDERSON: Your Honor --

7 THE COURT: -- you might ask a followup question.

8 MR. ANDERSON: I will, Your Honor. I'm just recalling
9 that's more of a Dan Bennett question, my next witness.

10 THE COURT: Well, you asked this witness. I have no
11 idea what that means --

12 MR. ANDERSON: Yes, Your Honor.

13 THE COURT: -- in the context of this litigation. But
14 go on.

15 MR. ANDERSON: I'll follow up.

16 Q. Mr. Catlin, we're just -- when I -- when you said that The
17 Ticket tries to monetize using its different audio formats,
18 what does that mean?

19 A. We have ads in our podcast channels, yes.

20 Q. Can you elaborate a little bit more on how you monetize
21 using ads?

22 A. We place ads within the podcasts and our sales team would
23 sell those to clients.

24 Q. So if a -- if a listener wanted to obtain a podcast from
25 The Ticket, listen to it, how would they go about doing that?

1 A. They could do it a variety of ways. Our podcasts are
2 available on our website. You could do it through Apple
3 podcast app or a Spotify app or any third-party podcast service
4 that you could get on your phone, you could listen to it there.
5 The podcasts are also available on our station, specific apps,
6 SportsDay TALK app or The Ticket's Susquehanna app.

7 Q. So if a listener using one of those methods you just
8 mentioned downloaded or accessed one of
9 The Ticket's podcasts and listened to it, would they likely
10 hear an advertisement?

11 A. They likely would, yes.

12 Q. And so, for example, you mentioned earlier I think -- let
13 me ask you this: Were any portions of the Hang Zone that the
14 Defendants were the host of, were any portions of the Hang Zone
15 put into podcast form for The Ticket?

16 A. Yes, they were.

17 Q. And were there any advertisements played in those
18 podcasts?

19 A. Yes.

20 Q. And those advertisements would be a way for The Ticket to
21 make money?

22 A. Correct.

23 Q. On podcasts involving the Defendants' content -- not their
24 content but the Hang Zone?

25 A. Correct.

1 Q. How long -- and I apologize. I think I asked this but I
2 don't recall your answer. How long has
3 The Ticket been streaming its broadcasts?

4 A. Since around 1996 or '97.

5 Q. Okay. What percentage of its broadcasts are streaming
6 versus traditional radio broadcast?

7 A. I'm sorry. I don't understand your question.

8 Q. Sure. Of its broadcasts, you know, there's traditional
9 radio, there's streaming?

10 A. Okay.

11 Q. What percentage, if you know, of is the streaming?

12 A. 100 percent.

13 Q. Of the content that's put out by -- I get from your answer
14 that a hundred percent of its content is streamed?

15 A. Uh-huh.

16 Q. So streaming versus just radio, have you seen, from a
17 listener standpoint, more listeners for traditional radio, more
18 listeners for streaming, or do you track that?

19 A. We do track it. About 25 percent of our listening
20 audience listens on the stream. That's been as high as
21 50 percent of our audience streaming the station during the
22 pandemic. But, generally speaking, it's about 25 percent.

23 Q. And how about the podcasts, when did The Ticket first
24 start uploading podcasts?

25 A. I mean, probably around 2009.

1 Q. Mr. Catlin, you've got an exhibit notebook in front of
2 you.

3 A. Yes.

4 Q. If you -- right there to your left. If you'll take that
5 and open that up to Exhibit 11. I'll ask you to take a look at
6 that for a second and ask if you -- do you know how e-mails
7 are, when there's multiple e-mails sometimes you have to start
8 at the bottom and work your way up?

9 A. Yes.

10 Q. If you're looking at that, Mr. Catlin, do you recognize
11 that document?

12 A. I do.

13 Q. What is this document?

14 A. This is an e-mail to me -- from me to several Ticket
15 employees from October 9th, 2019, regarding the use and
16 distribution of content across The Ticket podcast channels.

17 Q. And the date of the original e-mail, October of 2019?

18 A. Correct.

19 Q. And I see -- is that Defendant Kemp on the e-mail chain?

20 A. Yes, he is.

21 Q. And just in short, what are you trying to -- what are you
22 trying to convey in this e-mail?

23 A. I'm trying to make sure that the right Ticket podcast
24 content is going to the right podcast channel.

25 Q. And the podcasts referenced here, these are the same kind

1 of three podcast channels you referenced earlier?

2 A. Yes.

3 Q. So we know that -- it's fair to say -- I think you said
4 earlier that you started uploading podcasts in 2009?

5 A. Approximately.

6 Q. And we know that at least in 2019, you've got what looks
7 like at least three podcast channels?

8 A. Yes.

9 MR. ANDERSON: Your Honor, I'm going to try to save
10 time today. We haven't really conferred with opposing counsel
11 on the preadmission of certain exhibits. I'll move to admit
12 Exhibit 11 into evidence.

13 THE COURT: All right. Let's do this. Let's stop the
14 time.

15 If there are exhibits by -- I have notebooks up
16 here, one on behalf of -- a new -- a substituted one by the
17 Plaintiffs. It has a total of 37 exhibits. And the other
18 one -- I have an exhibit binder on behalf of the Defendants,
19 and it has -- it's the same binder that was given to me weeks
20 ago by the Defendants.

21 If you know which ones are agreed to for purposes
22 of the hearing -- and I think they should -- we should all
23 agree to whatever the exhibits are for the hearing. But if you
24 will state them by number and just offer them, I -- in total, I
25 offer -- listen, the Court's talking. Okay?

1 If you offer exhibits -- I'm doing a
2 hypothetical -- 1 through 26 on behalf of the Plaintiff, and
3 you know there's no objections, the other side will say no
4 objections, and this will switch to them, and they'll be
5 admitted for purposes of this hearing. Also, you know it's
6 trial exhibit, too.

7 If there are some that are agreed to but not all,
8 then state the numbers. You know you have agreements to 1
9 through 13, 20 through 22, you'll say no objections, and
10 they'll be admitted and then you don't have to do anything
11 further.

12 Does that make sense?

13 MR. ANDERSON: It does, Your Honor.

14 THE COURT: Do you know how many -- so go ahead and
15 offer those to which you know there's agreement.

16 MR. PERNINI: Well, Your Honor, we have not conferred
17 with -- that's what he was saying, we have not conferred --
18 either side has not conferred with each other about which ones
19 are objectionable or not.

20 THE COURT: Then, have you given the exhibit binders
21 to --

22 MR. PERNINI: Yes.

23 THE COURT: Have you exchanged them?

24 MR. PERNINI: We have.

25 THE COURT: Do you have objections to any of their

1 exhibits?

2 MR. CAWLEY: I do not have any objections to any of
3 their exhibits with the caveat that there are two exhibits that
4 there's some hearsay in. I don't have a problem with the --
5 the exhibit coming in, just to note that -- I think it -- I
6 think it's being -- the documents are being used for something
7 other than to prove the truth of the matter asserted.

8 THE COURT: Well, when those exhibits come in, you can
9 make your objection. But -- and what documents are those?
10 What numbers?

11 MR. CAWLEY: Exhibit 20 -- 21 and 23. And I don't have
12 any objections to the remainder.

13 THE COURT: Okay. So other than -- so at this time,
14 Plaintiff, go ahead and offer as exhibits, carving out those.
15 And we'll do it in a nice, clean way.

16 MR. ANDERSON: Your Honor, at this time Plaintiff move
17 for admission of physical Exhibits 1 through 37 and audio
18 Exhibits A1 through 18.

19 THE COURT: I'm sorry?

20 MR. ANDERSON: Well, there's physical exhibits of 37.
21 There's audio --

22 Are we moving to admit those?

23 MR. PERNINI: There's audio, Your Honor, of the
24 Defendants speaking. So, you know, whether that's an exhibit
25 or just something to...

1 MR. ANDERSON: We might just play it, Your Honor.

2 THE COURT: I'm going to hold off unless there are --
3 as far as exhibits go, if you don't talk about it, you don't
4 have a witness talk about a specific exhibit -- this is what I
5 do in my jury and bench
6 trials -- the witness actually needs to address them. Okay?

7 So subject to a witness addressing or talking or
8 reviewing very quickly or thoroughly, you're offering 1 through
9 37. And?

10 MR. ANDERSON: That's it for now, Your Honor.

11 THE COURT: Excluding?

12 MR. ANDERSON: Oh.

13 MR. CAWLEY: 21 and 23.

14 MR. ANDERSON: 21 and 23.

15 THE COURT: Okay. Excluding Exhibits 21 and 23, any
16 objections to 1 through 37 at this time?

17 MR. CAWLEY: No objections, Your Honor.

18 THE COURT: Admitted for this hearing.

19 (Plaintiff's Exhibit Numbers 1 through 20, 22, 24
20 through 37 admitted.)

21 THE COURT: Let's go ahead and take care of the
22 Defendants' exhibits. Same procedure.

23 Are you -- which ones are you offering?

24 MR. CAWLEY: We're offering Exhibit 1 through 27.

25 THE COURT: The Court only has 25 here.

1 MR. CAWLEY: 26 is an audio clip. That's on a flash
2 drive.

3 THE COURT: All right. We got that.

4 MR. CAWLEY: And then I provided a -- a paper copy of
5 27.

6 THE COURT: Okay. And that was brought to my
7 attention. Yes.

8 Any objections to those?

9 MR. PERNINI: I don't know that I got the paper copy of
10 27.

11 Your Honor, from the point of view of
12 authenticity, we have no objection.

13 THE COURT: Oh. I'm just -- look, you want to do it
14 the easy way -- this is the way I do it. Any objections
15 through 1 through 27 for the purposes of this hearing? And if
16 there are objections, then we'll carve those out; if not, we're
17 going to admit them. So you don't -- so both sides can do this
18 as quickly and efficiently as possible.

19 MR. PERNINI: Just give me one moment on this exhibit.

20 THE COURT: I'll tell you what. Is the only one you're
21 worried about Number 27?

22 MR. PERNINI: Yes, Your Honor.

23 THE COURT: How about 1 through 26, any objections?

24 MR. PERNINI: We do not, Your Honor.

25 THE COURT: All right. The Court admits Exhibits

1 Number 1 through 26. I think since 27 was a new exhibit.
2 Plaintiff's counsel are entitled, maybe at the next break, to
3 look at it to see if they have any objections.

4 So at this time, we'll go back to questioning the
5 witness, and the timekeeping will begin.

6 (Defendants' Exhibit Numbers 1 through 26 admitted.)

7 THE COURT: So continue.

8 MR. ANDERSON: Thank you, Your Honor.

9 Q. (By Mr. Anderson) Mr. Catlin, so if I understand you
10 correctly, there are three channels now that The Ticket
11 broadcast its podcasts?

12 A. Correct.

13 Q. Is that correct?

14 Are there any other ways, avenues for a listener to get
15 other podcasts from The Ticket or is it only those three
16 channels?

17 A. Those three channels plus we have a YouTube channel as
18 well.

19 Q. On the -- do you know how long the -- The Ticket's had a
20 YouTube channel?

21 A. Yes, I do. Since 2014.

22 Q. And if we look at Exhibits 4 -- well, start with 4. I'll
23 ask if you recognize that.

24 A. Yes.

25 Q. What is that?

1 A. That is a screenshot of The Ticket's YouTube channel.

2 Q. Okay. And is this representative of the YouTube channel
3 you had since 2014?

4 A. Yes.

5 Q. And looking at Exhibit 5. See if you recognize that
6 document.

7 A. I do.

8 Q. What is that?

9 A. That is another screenshot of content that was uploaded to
10 The Ticket's YouTube channel.

11 Q. And looking at some of these screenshots, the top left
12 screenshot, do you see Defendant Kemp there?

13 A. Yes.

14 Q. Is that podcast related to the Hang Zone?

15 A. No.

16 Q. What is that?

17 A. That's a podcast related to a Cowboys' halftime show. We
18 do a special podcast-only, online-only version of Cowboys'
19 halftime for every Cowboys' game.

20 Q. Is this one of the original content podcasts you mentioned
21 earlier?

22 A. Yes, it is.

23 Q. How about the lower left corner, the hooded figure there,
24 is that Defendant McDowell?

25 A. Yes, it is.

1 Q. And do you have any understanding as to what that podcast
2 relates to?

3 A. Yes. That was an original content podcast uploaded to
4 YouTube around a station event called
5 The Ticket Compound.

6 Q. Was this part and parcel of the Hang Zone show he did?

7 A. No.

8 Q. Were the -- the creation of these original content
9 podcasts for The Ticket part of the duties and responsibilities
10 for Defendant McDowell and Defendant Kemp in connection with
11 their employment?

12 A. Yes.

13 Q. They had to do that as part of their job for you?

14 A. That's correct.

15 Q. How far back can a listener go if they want to find
16 podcasts that would have been issued, published by The Ticket,
17 how far back can that listener find podcasts?

18 A. Many years. I just did a research project the other day,
19 and it went back -- the podcast I looked for was from 2016 and
20 it was still accessible. So I know at least as far back as
21 2016, but probably before that.

22 Q. Let's switch gears a little bit, Mr. Catlin. Have you
23 ever heard of the word "geofencing"?

24 A. Yes.

25 Q. Can you spell that?

1 A. G-e-o-f-e-n-c-i-n-g.

2 Q. I was testing you. Good job.

3 What is geofencing?

4 A. Geofencing is something you can do online in a digital
5 form to put a digital barrier around certain areas.

6 Q. From a broadcasting standpoint, radio, podcast, streaming,
7 whatnot, how could you -- does geofencing have any relation to
8 those components?

9 A. Yes, it does.

10 Q. How?

11 A. You could limit the ability of people to listen or watch
12 programming based on a geofence that was set up. In fact, The
13 Ticket streams the NFL games, but we have to create geofencing
14 to make sure that certain areas of the country can't listen to
15 the games via the stream.

16 Q. So it restricts access within certain geographic areas?

17 A. That's correct.

18 Q. In this kind of situation here what we're about -- what
19 we're here about today, if the Defendants were to create a
20 podcast here in Dallas from their home and broadcast that,
21 could geofencing be used to make sure no one in the Dallas-Fort
22 Worth area could access it?

23 A. Yes.

24 Q. But listeners outside the Dallas-Fort Worth area could
25 access it?

1 A. That's correct.

2 Q. And have you had experience -- you have had experience
3 doing that with football games?

4 A. Yes.

5 Q. Let's talk about Mr. McDowell and Mr. Kemp.
6 How long have you known Mr. McDowell?

7 A. Since 2000.

8 Q. How about Mr. Kemp?

9 A. Sometime after that, maybe 2003 or 2004.

10 Q. How is it you came to know Mr. McDowell?

11 A. I was the assistant program director of The Ticket and he
12 came to town to interview for a job and -- at The Ticket, and I
13 met him at that time through that process.

14 Q. Were you part of the process to hire him to the station?

15 A. Yes.

16 Q. Was he always a talk show host for The Ticket?

17 A. Yes.

18 Q. And how about Mr. Kemp, was -- what was -- what was the
19 nature of your first meeting him?

20 A. He was an intern for The Ticket at that time.

21 Q. And how about his job? Was he -- he was an on-air talent
22 at the time he left?

23 A. That's correct.

24 Q. Can you walk us through, briefly, kind of the different
25 roles he had?

1 A. Sure. He would have been an intern first and then we
2 hired him as a part-time person, probably to run the board,
3 maybe be a show producer. And then he was promoted to
4 full-time, again, to run the control board. He was promoted
5 again to host The Ticket Top 10, which is our nighttime show.
6 He was then promoted again to be a board op during the weekdays
7 and then promoted again to be the producer of what was known at
8 the time as the BaD Radio Show, Monday through Friday noon to
9 3:00. And then, finally, in February of 2020, he was promoted
10 again to be a cohost of what became known as the Hang Zone. He
11 held that position until just a few months ago.

12 Q. Fantastic job with clarity. I might ask that you slow
13 down a little bit for the court reporter's benefit just to make
14 sure that, you know --

15 A. Yeah.

16 Q. -- we're able to get everything down.

17 Okay. So at some point Defendant McDowell and Defendant
18 Kemp began to do the Hang Zone together?

19 A. That's correct.

20 Q. And when was that?

21 A. That would have been February of 2020.

22 Q. And was there a predecessor show that Mr. McDowell's
23 already a part of?

24 A. Yes.

25 Q. Is that the BaD Radio you talked about?

1 A. Yes.

2 Q. What was the BaD Radio?

3 A. It was BaD Radio. It was an acronym for Bob and Dan
4 Radio. It was weekdays, noon to 3:00, with Dan McDowell and
5 Bob Sturm.

6 Q. Was there any circumstance that happened that led you to
7 bring on Jake Kemp to partner with Dan McDowell for the show?

8 A. Yes. We had another on-air talent at The Ticket retire
9 and so we had an opening. And at that time I moved Dan's
10 current partner Bob Sturm to another day part, creating an
11 opening noon to 3:00.

12 Q. And Jake Kemp took that spot?

13 A. Yes.

14 Q. So when the -- sorry. When the show started, was it
15 called the Hang Zone?

16 A. No.

17 Q. Was it still BaD Radio?

18 A. Yes.

19 Q. Why didn't it get called the Hang Zone from the beginning
20 in February of 2020?

21 A. Because show names tend to come up organically. When a
22 new show is put together, new personalities work together, they
23 need time to evaluate and grow and see what show name would fit
24 their show best. And so at that time they kept using BaD
25 Radio.

1 Q. Who made the decision to put Defendant McDowell and Kemp
2 together?

3 A. I did.

4 Q. Now, have you been a part of the -- creating new shows and
5 content in the past?

6 A. Yes, I have.

7 Q. And in your experience, how long does it typically take
8 for a new program or show for the -- for The Ticket to kind of
9 get up and running?

10 A. I would say at least six months to a year, sometimes
11 longer.

12 Q. You mentioned it taking a while -- well, let me ask this:
13 You said it took a while for the Hang Zone name to be used. It
14 was the Hang Zone what replaced the name BaD Radio?

15 A. That's correct.

16 Q. Do you know approximately when that happened?

17 A. Yeah. About almost a year later. Maybe January of 2021.

18 Q. So for -- if the show started in February 2020, for almost
19 a year it operated as BaD Radio with Mr. McDowell and Mr. Kemp?

20 A. That's correct. Among other names.

21 Q. And then there were other names used in addition to BaD
22 Radio?

23 A. BaD Radio was one, Super BaD Radio was another.

24 Q. And then how did the Hang Zone name came to be?

25 A. It was just created, I'm sure, through those two

1 Defendants talking about it, consulting with me, getting
2 feedback from other people. It was one of many names
3 considered at the time for the show.

4 Q. Let's look at Exhibit 12, Mr. Catlin, in your notebook
5 there.

6 I ask you if you recognize that document?

7 A. I do.

8 Q. What is that document?

9 A. That's an e-mail from Dan McDowell to me, January of 2021,
10 asking me to record a script for
11 The Ticket's voice talent.

12 Q. It's, roughly, 11 months after the show creation?

13 A. That's right.

14 Q. And I note that -- that the attachment states "Conrad
15 script Hang Zone 1-18-21." Do you see that?

16 A. Yes.

17 Q. And if we look at that attachment, the next page, what do
18 you understand that attachment to be?

19 A. That's a copy of script that we were going to have our
20 Ticket voice talent record with various names for the Hang Zone
21 that were under consideration.

22 Q. All right.

23 A. Including the Hang Zone and the Dumb Zone.

24 Q. All right. Those were names that would -- were -- I know
25 it was eventually called the Hang Zone. Were any of these

1 other names used from time to time in connection with the show?

2 A. Yeah. The Dumb Zone was used from time to time, from that
3 point all the way through the conclusion of the show, just a
4 few months ago.

5 Q. How was the Dumb Zone used?

6 A. As a joke. As a punctuator. As an on-air reference when
7 any of the guys or someone on the show said something dumb,
8 they would say the Dumb Zone. They would play this piece of
9 audio that was recorded from our voice talent to make fun of
10 it.

11 MR. ANDERSON: So we got an audio clip, Your Honor. I
12 just want to play and see if this is the same thing he's
13 talking about.

14 Play A8.

15 (Plaintiff's Audio Exhibit 18 played.)

16 A. That's it.

17 Q. That's what you were talking about?

18 A. Yes.

19 Q. And that would play during the -- during the broadcast of
20 the Hang Zone that Dumb Zone drop would happen?

21 A. Yes.

22 Q. All right. If we look at Exhibit 14.

23 And see if you recognize that document.

24 A. I do.

25 Q. What is that?

1 A. That's the Hang Zone website.

2 Q. In connection with that website, I note in the top left
3 corner, do you see where there's a little banner that hangs
4 down with the Dumb Zone crossed out?

5 A. I do.

6 Q. Is that -- from your recollection, is that always the case
7 when the Hang Zone website, this website got put up, it had
8 that Dumb Zone name in the background?

9 A. Yes.

10 Q. All right. Did -- did Mr. McDowell and Mr. Kemp have any
11 budget allotment for the nature of their work for The Ticket?

12 A. Yes, they did.

13 Q. Can you elaborate on that?

14 A. Yeah. They had a -- what we call a show promotion budget
15 specifically for their show but it was through the overall
16 Ticket programming budget through my department. And they
17 could use that to spend on things like travel, regular guests
18 for their show, production value music, promotional items and
19 giveaways, things of that nature.

20 Q. Those are the types of expenses?

21 A. Yes.

22 Q. How about -- would cost for hosting websites be something
23 that can be included within the budget?

24 A. Yes.

25 Q. How about expenses related to any social media to promote

1 the show?

2 A. Yes.

3 Q. If -- if the Defendants wanted to get reimbursed for any
4 such expenses, how would they do that?

5 A. They would bring the receipts in, fill out an expense
6 report, turn it in to me. I would sign it and approve the
7 expenses and turn it in to the business office and they would
8 get reimbursed.

9 Q. To the best of your recollection -- first, you'd be the
10 person that would oversee or approve the expenses?

11 A. Yes.

12 Q. To the best of your recollection, did Defendants ever seek
13 reimbursement for securing or hosting the website for the Hang
14 Zone or any cost related to the social media accounts for
15 promoting the Hang Zone?

16 A. Not to my recollection, no.

17 Q. If it happened, you likely would be the person that would
18 know?

19 A. Yes. They would have turned it in to me.

20 Q. Did they ever seek reimbursement for any other types of
21 operational or promotional expenses related to the Hang Zone?

22 A. Yes, they did.

23 Q. What type of things?

24 A. As I mentioned, production value music for the show,
25 promotional items to give away to their guests and listeners,

1 those kind of things.

2 Q. And did The Ticket reimburse them for expense
3 reimbursements?

4 A. Yes.

5 Q. Does The Ticket have confidential information that it
6 deems proprietary and confidential to itself?

7 A. Yes, it does.

8 Q. What types of information does The Ticket deem to be its
9 proprietary and confidential information?

10 A. Ratings information and ratings analysis, marketing plans,
11 marketing and listener research, competitive analysis, those
12 kind of things.

13 Q. With respect to ratings, are those public?

14 A. No. The ratings are only available to those stations or
15 groups that participate and pay for the information.

16 Q. And -- and does The Ticket pay for that information?

17 A. Yes.

18 Q. And then the reports The Ticket gets with respect to
19 ratings, who does it get those from?

20 A. Nielsen.

21 Q. And is there -- is it the report itself that -- that a
22 company deems confidential?

23 A. No. The raw data is not confidential but what is
24 confidential is the way that that data is interpreted and then
25 used to help grow the -- the radio station's listener base and

1 the individual shows that are on the radio station. We analyze
2 that ratings and help the individual shows grow.

3 Q. Did The Ticket provide any or all of that type of
4 confidential information to the Defendants in connection with
5 their job?

6 A. Yes.

7 Q. Why?

8 A. Because it would help them grow their audience. It would
9 help them do their job and perform their job better and, in
10 turn, that would help The Ticket grow its audience and perform
11 at its best ability.

12 Q. Has any of that type of information that you just
13 described as the confidential information, that that
14 information that would have been shared with the Defendants, is
15 that the type of information that you would -- that the company
16 would want a competitor to have?

17 A. Absolutely not.

18 Q. Why not?

19 A. It's like giving our competitor the playbook and they
20 would know the plays that we were going to run.

21 Q. Would the disclosure of that type of confidential
22 information by others outside The Ticket, could that cause the
23 company harm?

24 A. Yes, it could.

25 Q. How so?

1 A. Well, it would give our competitors an unfair advantage to
2 compete against us.

3 Q. Let's talk more about the Hang Zone. I think we're going
4 to touch on -- touched on it briefly earlier. I just want to
5 make sure.

6 With respect to the Hang Zone -- the Hang Zone show hosted
7 by Mr. McDowell and Mr. Kemp, were portions and segments of
8 that available via podcasts uploaded by The Ticket?

9 A. Yes. Every day we uploaded segments of their show and
10 they were available as podcasts.

11 Q. And with respect to the use of the Hang Zone content for
12 the podcast, did that happen immediately when the show started
13 in February 2020 or sometime thereafter?

14 A. Immediately that day.

15 Q. Let's look at Exhibit 6.

16 I ask you if you recognize that document.

17 A. I do. It's a screenshot of The Ticket's podcasting
18 platform from February of 2020 -- I mean -- yeah, February of
19 2020.

20 Q. I see the top notation, BaD Radio Weekly Wrap Up, 2/28/20.
21 Do you see that?

22 A. Yes.

23 Q. By this point, is BaD Radio, is that the -- the program
24 that Mr. Kemp and Mr. McDowell were doing together?

25 A. Yes.

1 Q. Sort of the predecessor name to the Hang Zone?

2 A. Yeah. That was when it was still being referred to as BaD
3 Radio.

4 Q. All right. So like you said, right out of the gate you
5 were putting out podcasts available for download that included
6 their content?

7 A. That's correct.

8 Q. Approximately, how many podcasts of Hang Zone content have
9 been uploaded on to The Ticket's podcast platforms?

10 A. 2,000.

11 Q. Let's look briefly at Exhibit 9.

12 I ask you if you recognize that document.

13 A. I do.

14 Q. What is that document?

15 A. It's another screenshot of The Ticket's podcast platform.

16 Q. So I look down and I note that about three entries down,
17 do you see where it says Cowboys NFL Draft Preview 2023 -
18 Episode 7?

19 A. I do.

20 Q. And underneath that, Ticket's April 2023. And I see
21 Mr. Kemp's name. Do you see that?

22 A. I do.

23 Q. Is that in relation to the Hang Zone?

24 A. No, it's not.

25 Q. What is that?

1 A. That's an original content podcast that Jake Kemp and Bob
2 Sturm did leading up to the NFL draft earlier this spring in
3 April of 2023.

4 Q. Would that have been something that listeners could have
5 heard the same thing listening to the radio?

6 A. No. It was original podcast content only.

7 Q. Are those podcasts still -- that we see on this page still
8 available now?

9 A. Yes, they are.

10 Q. And let's look at Exhibit 7.

11 Ask you if you recognize that.

12 A. Yes.

13 Q. What is that?

14 A. It's an e-mail from me to Jake Kemp and Bob Sturm from
15 February 12, 2020, asking those two guys to create some
16 original content podcasts around the NFL draft.

17 Q. All right. So this is original content for Jake --
18 original podcast content for Jake Kemp to participate and help
19 create in February 2020?

20 A. That's correct.

21 Q. And if we look next at Exhibit 8.

22 Does that look to be about the same thing but for the next
23 year, 2021?

24 A. That's -- that's right.

25 Q. And did Mr. Kemp participate in the creation of original

1 podcast content for The Ticket in relation to these documents?

2 A. Yes, he did.

3 Q. Was that part of his job?

4 A. Yes.

5 Q. Did Mr. McDowell -- I think we touched on this earlier.
6 Did Mr. McDowell create original content for pod- -- for The
7 Ticket's podcasts as well?

8 A. Yes, he did.

9 Q. Can you summarize, then, the nature of the type of
10 original content podcasts he did?

11 A. Yes. He would have participated in our Cowboys' halftime
12 show. As I mentioned earlier, we do an original podcast at
13 halftime of every Cowboys game. He would have participated in
14 several of those.

15 We also do original content podcasts around our events,
16 such as The Ticket Compound. He would have participated in
17 that. And then on the show, we also created podcasts and
18 streams from special event broadcasts like Super Bowl or
19 Cowboys Training Camp.

20 Q. Was that part of Mr. McDowell's job duties for the company
21 as well?

22 A. Yes.

23 Q. Do you recall any -- did you ever have discussions with
24 Mr. McDowell and Mr. Kemp about the fact that original podcast
25 content was -- was needed from them and part of their job?

1 A. Yes.

2 Q. Can you elaborate on that?

3 A. Yes. I would discuss this in meetings with them with
4 other guys about what our plan would be and how we would
5 execute it.

6 Q. Going to the Dumb Zone, Mr. Catlin. You understand that
7 the Defendants have a podcast out today called the Dumb Zone?

8 A. Yes, I do.

9 Q. When did they leave their jobs at The Ticket?

10 A. July 14th of 2023.

11 Q. And when was the last time, to the best of your
12 recollection, they did a Hang Zone episode?

13 A. July 1st of 2023.

14 Q. Do you know why they -- they left?

15 A. Yes. They couldn't reach terms on a new employment
16 agreement.

17 Q. Were you part of those contract negotiations?

18 A. No. I wasn't part of it. I was just kept informed.

19 Q. With respect to the Dumb Zone, how did you first learn
20 about their podcast, the Dumb Zone podcast?

21 A. I'm sure one of my employees told me about it.

22 Q. When did you first hear about it?

23 A. It would have been shortly after the 17th of July,
24 sometime that week.

25 Q. Have you listened to Dumb Zone podcasts?

1 A. I have.

2 Q. Multiple?

3 A. Yes.

4 Q. Let me ask you, have you tried accessing the Hang Zone --

5 MR. ANDERSON: Scratch that.

6 Q. Let me ask you this: With respect to the Dumb Zone
7 podcasts you listened to, based on what you heard, would you
8 characterize the content of what you heard on the Dumb Zone
9 podcast to be the same, similar, or different to the content
10 they did for the Hang Zone shows?

11 A. I would say it's exactly the same. It's a clone of the
12 show they were doing on The Ticket.

13 Q. Why do you say that?

14 A. It's the same content, the same sports content. They do a
15 new segment like they did on The Ticket. They do a segment
16 called This Day in History, which is exactly the same as they
17 did on The Ticket. They have Produced Open. They talk about
18 the news. It's the same show in podcast form as what they were
19 doing on The Ticket.

20 Q. Is there -- based on the episodes you've heard so far, is
21 there anything in those Dumb Zone podcasts that you thought was
22 false or misleading or painted
23 The Ticket in a negative light?

24 A. Yes. I've heard a few things.

25 Q. What's the first one that comes to mind?

1 A. The first one that comes to mind is an episode where they
2 had a guest on and a story was relayed about Jake Kemp not
3 receiving a raise when he was promoted from producer to talk
4 show host. And the Defendants didn't do anything to correct
5 that mischaracterization. It's absolutely false. Jake Kemp
6 did get a raise when he was promoted from producer to talk show
7 host.

8 And that makes the radio station, The Ticket sound cheap
9 and sound like it didn't value its employees.

10 MR. ANDERSON: We have an audio clip here, Your Honor,
11 we'd like to play.

12 THE COURT: Excuse me?

13 MR. ANDERSON: We have an audio clip we'd like to play.

14 THE COURT: Go ahead. Identify it.

15 MR. ANDERSON: Sorry. This is A1, the Akaash Singh
16 episode.

17 (Plaintiff's Audio Exhibit A1 played.)

18 Q. What about -- do you recognize that clip?

19 A. Yes.

20 Q. Is that something you heard before?

21 A. Yes.

22 Q. Where -- was that from a Dumb Zone podcast?

23 A. Yes.

24 Q. Did you recognize the voices?

25 A. Yes.

1 Q. Which voices did you recognize?

2 A. Well, Jake Kemp and then the guest's name, Akaash Singh.

3 Q. Do you know who Akaash Singh is?

4 A. Yes.

5 Q. Who is he?

6 A. He's a comedian.

7 Q. Does it sound like he was making a joke to you on there?

8 A. No.

9 Q. Is there anything about the -- the dialogue that you
10 disagree with?

11 A. Yes. As I mentioned, I think it's not true. It wasn't
12 corrected. I know that Jake got a raise when he was made a
13 talk show host from when he was a producer.

14 Q. Did the information -- do you consider the information you
15 heard on broadcast on that podcast to be false?

16 A. I would.

17 Q. In connection with podcasts involving Defendants, are
18 there any other -- any other content you can recall that you
19 felt was false, misleading, or negatively directed at
20 The Ticket?

21 A. Yes. Jake Kemp was a guest on another podcast and they
22 were relaying a story about the radio station, The Ticket,
23 during COVID. At that time during COVID, as a lot of companies
24 did, employees had to voluntarily take temporary pay cuts or
25 employees had to do a temporary furlough, and that was the case

1 of The Ticket.

2 But in this particular instance in the story he was
3 relaying, he made it seem like The Ticket was cheap and
4 The Ticket did not take care of its employees at that time
5 because Jake Kemp and Dan McDowell were forced to pay some
6 other lesser compensated employees out of their own pocket.
7 And that's not exactly true.

8 There were several employees at that time that worked at
9 The Ticket that got together and pooled their money together
10 and all paid for those lesser compensated employees. It wasn't
11 just the two Defendants that did that. But in that particular
12 episode in that particular clip, they seem to take all the
13 credit for that.

14 And again, it's a position where it makes The Ticket seems
15 cheap and it makes The Ticket seem like it doesn't value its
16 employees and doesn't take care of its employees, and that's
17 not the case. They participated in that with their teammates.
18 It wasn't just those two.

19 It's my understanding that of the eight or so people that
20 contributed money to those funds, Jake Kemp didn't contribute
21 any money to it.

22 Q. Well, I'm going to ask a followup question on that in a
23 minute. I'd like to play an audio clip real quick and see if
24 this is an audio that you've heard from the podcast.

25 MR. ANDERSON: Can we play A3, please.

1 (Plaintiff's Audio Exhibit A3 played.)

2 Q. So is that the clip you heard before?

3 A. Yes.

4 THE COURT: Let me stop, just a technical evidentiary
5 point. I believe on behalf of Plaintiff, you only offered
6 exhibits that were the hard copy exhibits, not the audio.

7 MR. ANDERSON: Correct, Your Honor.

8 THE COURT: And do you want to do so? 'Cause I don't
9 think they had objections to it.

10 MR. ANDERSON: I would love to move both the prior
11 audio clip, A1, A2, and A3 into evidence.

12 THE COURT: Did you have others? Do you want to do all
13 at once?

14 MR. ANDERSON: I would love to. I didn't know if you
15 want to hear them first or if we --

16 THE COURT: No. I meant -- I think you indicated there
17 were no objections.

18 MR. CAWLEY: I don't have any objections to any audio.

19 MR. ANDERSON: So Plaintiffs move to admit --

20 THE COURT: So we'll offer them so they're admitted so
21 I don't have any issues on whether you -- I dotted all the Is
22 and crossed all the Ts. You want to offer them?

23 MR. ANDERSON: Yes, Your Honor. Thank you. Plaintiffs
24 move to admit audio Exhibits A1 through A18.

25 THE COURT: Any objection?

1 MR. CAWLEY: No objections, Your Honor.

2 THE COURT: Admitted.

3 (Plaintiff's Audio Exhibit Numbers A1 through A18
4 admitted.)

5 THE COURT: Continue.

6 MR. ANDERSON: Thank you, Your Honor.

7 Q. So Mr. Catlin, you said you've heard that clip before, A3?

8 A. Yes.

9 Q. And what about that that you disagree with?

10 A. As I mentioned, I make -- it makes it seem like only two
11 people participated in helping out some of the other employees
12 at The Ticket when in fact it was a larger group of employees
13 that all should be getting credit for that.

14 Q. And which voices did you recognize, if any?

15 A. I heard Akaash Singh, a guest again, and I heard Jake
16 Kemp.

17 Q. And with respect to Jake Kemp, is he the one that said,
18 "I'm not trying to be a white knight here"?

19 A. Yes.

20 Q. That they take care of their employees?

21 A. Yes.

22 Q. Following up on a prior comment you made, what was it you
23 said about your understanding as to when people pooled their
24 funds together with respect to Jake Kemp?

25 A. My understanding was that several Ticket employees pooled

1 their funds together to help the lesser compensated employees
2 and that Jake Kemp didn't participate in that at all.

3 Q. And in terms of how that -- what impact that might have on
4 The Ticket, what impact would that have, in your opinion, if
5 any?

6 A. Like I said, it would make -- it makes
7 The Ticket seem cheap. It makes The Ticket seem ungrateful to
8 its employees. It makes The Ticket seem unfair and that they
9 don't take care of their people.

10 Q. Let me ask you this: Does The Ticket have competitors?

11 A. Yes.

12 Q. What would you consider to be a competitor to The Ticket?

13 A. Any radio station in Dallas-Fort Worth, any podcast, any
14 audio company, any media company that's putting out audio
15 content would be a competitor. Anybody that's trying to get
16 the same listening audience that The Ticket is trying to get.

17 Q. So based on what you said, do you believe podcasts can
18 compete with broadcast radio and streaming?

19 A. I do.

20 Q. How so?

21 A. There's a very limited amount of time that listeners can
22 spend listening to audio in their day-to-day life. And so
23 that -- they're competing with that, for that listener's
24 attention and ear. Whether it's a podcast on demand or
25 streaming or radio, we're all competing for the same attention

1 and the same listener group.

2 Q. Do you believe that the Defendants' Dumb Zone podcast is
3 competitive with The Ticket?

4 A. I do.

5 Q. Why's that?

6 A. Because it's a clone of the same show and it was being
7 done immediately after they left The Ticket employment. And
8 it's going after the same audience, and it's the same format of
9 the show that they were doing on The Ticket.

10 Q. Well, do you know whether the -- the Dumb Zone podcast, is
11 it free? Do you have to pay for it? Or do you know?

12 A. It's behind a paywall.

13 Q. What does that mean for us novices?

14 A. You have to pay to download the podcast to access it.

15 Q. Gotcha. Is -- how about The Ticket, do you have to pay to
16 access The Ticket?

17 A. No, you don't.

18 Q. All right. Based on your experience in the industry, does
19 the fact that Defendants' podcast is available behind a
20 paywall, a subscription fee mean that it's not competitive with
21 The Ticket's freely provided content?

22 A. No. I think it's all competitive.

23 Q. How's that?

24 A. I think that the customers, the listeners are used to
25 paying for content that they want, whether it's audio or video

1 or anything else. They're used to paying that fee. It's a
2 very low barrier for them.

3 Q. Based on your experience in the industry, are The
4 Ticket's -- and specifically with The Ticket, are The Ticket's
5 listeners -- I think we talked about this a little bit with the
6 streaming aspect and whatnot. But do you know -- do you track
7 or know if the listeners are listening via radio or phones?

8 First off, do you listen to The Ticket?

9 A. Yes, I do.

10 Q. How do you listen to The Ticket?

11 A. I listen to it on the radio and on my phone.

12 Q. Are you -- you do podcasts?

13 A. Yes.

14 Q. You listen to podcasts?

15 A. Yes.

16 Q. All right. So based on your experience with The Ticket,
17 do you track in any way the level of the listener base that's
18 listening via streaming -- not streaming, but phones versus
19 traditional radio?

20 A. The only way we do track that is, as you mentioned,
21 through streaming. We know that people -- that about
22 25 percent of our audience streams. And I would say that based
23 on my experience, the great majority of that 25 percent are
24 streaming on their phone. Although you could do it on a laptop
25 or a tablet as well, but most people do it on their phone.

1 Q. I want to direct your attention to Exhibits 29 and 30.
2 Let's start with 29. And ask you to look at that.

3 And of course, it's -- with the e-mail thread that it is,
4 let's just focus on the bottom there. I ask you if you
5 recognize that e-mail.

6 A. Yes. It's an e-mail from a listener to me, July 20th of
7 2023.

8 Q. Do you recall getting this e-mail?

9 A. Yes.

10 Q. Was this immediately after the Defendants left The Ticket?

11 A. Yes.

12 Q. And kind of looking at that sort of last couple of
13 sentences right above "Regards, Jacob in Denver." Can you read
14 that last, starting with, "Please make this work"?

15 A. [As read:] "Please make this work. I hate for the
16 station to fall off every day after 10:00 a.m. And I don't
17 want to have to spend \$10 on a Dan and Jake podcast, but I
18 would."

19 Q. So do you have an understanding after reading that -- do
20 you interpret this e-mail as this listener being willing to go
21 spend -- leave the free content of The Ticket and move over to
22 the Defendants' podcast even if he's got to pay for it?

23 A. That's how I interpret it, yes.

24 Q. Is that consistent with your testimony earlier that a paid
25 subscription podcast still competes with free radio?

1 A. Yes.

2 Q. Let's look at Exhibit 30.

3 Looking at bottom e-mail there, do you recognize that
4 e-mail?

5 A. Yes.

6 Q. Is this another listener?

7 A. Yes, it is.

8 Q. E-mailed to you and Mr. Bennett, July 20th?

9 A. That's correct.

10 Q. And looking at that last paragraph, do you see where it
11 says, [As read:] "However, I haven't listened at all since Dan
12 and Jake have been off the air, and I'll continue to go
13 somewhere else for my sports talk until they return. I will
14 follow them wherever they land next, even if that's to a
15 competitor."

16 Do you see that?

17 A. Yes.

18 Q. Is this also consistent with your testimony that listeners
19 will leave the free content of The Ticket to go follow the
20 Defendants even if they have to pay a subscription fee?

21 A. That's correct. That's my interpretation of this, yes.

22 Q. Based on what you've heard so far on the Dumb Zone
23 podcast, do you have an opinion on whether the -- what the
24 Defendants are doing with that Dumb Zone podcast is the same as
25 what they were doing in connection with their duties or

1 responsibilities while at The Ticket?

2 A. Yes, I do. I do believe it's the same.

3 Q. Can you elaborate on that?

4 A. Yes. It's -- the podcast they're doing now in the Dumb
5 Zone is an exact copy or clone of the show they were doing on
6 The Ticket called the Hang Zone. It's the same content
7 delivered in the same way by the same two guys that has the
8 same benchmark caught segments in there -- the news, This Day
9 in History, they talk about the same sports content they would
10 have talked about on The Ticket, and other content as well.
11 It's the same show.

12 Q. Since the Defendants have left The Ticket, have you -- and
13 we've just seen a couple of listener feedback. Was that all
14 the listener feedback you got?

15 A. No.

16 Q. You smiled there.

17 A. I've gotten dozens, maybe a hundred or more e-mails from
18 listeners about this.

19 Q. Were they positive?

20 A. No. Pretty much all negative.

21 Q. All negative?

22 A. Yes.

23 Q. How would you describe The Ticket's fan base?

24 A. Very passionate. Very involved.

25 THE COURT: How many of those hundreds of e-mails

1 say -- they were negative because the Defendants started up a
2 competing podcast versus them no longer working for you?

3 THE WITNESS: A pretty significant portion. I don't
4 know the percentage, but more than half.

5 THE COURT: Do you have anything you can show the
6 Court? 'Cause the one that was Exhibit 30 only shows that the
7 listener was unhappy that they left the show. It didn't say
8 because they started a new show. It may or may not be
9 competing. I'm now leaving your show. I mean, there's a
10 nuance in there.

11 So what -- of your hundreds of letters, I'm
12 assuming you showed me the best ones.

13 MR. ANDERSON: We still have a few more, Your Honor.

14 THE COURT: Okay. I'll be interested in seeing those.

15 MR. ANDERSON: Yes, Your Honor.

16 Q. Let's talk about more -- more feedback. Let's look at
17 Exhibit 25.

18 MR. ANDERSON: Your Honor, apologies to the Court.
19 There's some graphic language in some of these e-mails.

20 Q. Looking at the -- do you recognize Exhibit 25?

21 A. Yes. It's a listener e-mail to me from July of 2023,
22 July 19th.

23 Q. Kind of focusing in on that last paragraph before he signs
24 off.

25 "The way that Cumulus executives have handled this

1 situation is a slap in the face to not only the P1s" -- first
2 off, what's a P1?

3 A. A Ticket passionate listener.

4 Q. Okay. "But the staff as well. For The Ticket to be one
5 of Cumulus most valuable assets and not to have that reflected
6 in the compensation of your employees is disgusting."

7 Do you see that?

8 A. Yes.

9 Q. What's your -- how did you interpret that as to, you know,
10 the compensation issue being relative to the Defendants'
11 podcast?

12 A. I think that this listener listened to the same podcast
13 episode of the Dumb Zone I did and heard the disparaging
14 comments that were made and is now believing that.

15 Q. Is this a situation where you interpret this as based on
16 listeners hearing false information on the competing podcast,
17 they have written to you in disgust and anger?

18 A. Yes. As he says, "The more this drags on, the more
19 listeners you will lose."

20 Q. Let's look at Exhibit 28.

21 And looking at that bottom e-mail. I note that it says
22 it's to The Ticket Comments. Who gets those?

23 A. The Ticket Comments' e-mail box goes directly to me.

24 Q. Okay. So you read this e-mail?

25 A. Yes.

1 Q. All right. And looking at -- is this another Ticket
2 listener?

3 A. Yes.

4 Q. And I'm reading here that he writes, "Get your heads out
5 of your asses and bring back Dan and Jake! Quit penny pinching
6 and pay your talent a living wage."

7 Do you see that?

8 A. Yes.

9 Q. It goes on to say, "It would hurt to delete this app, but
10 I stand behind Dan and Jake and will completely move over to
11 Spotify out of principle."

12 Do you see that?

13 A. Yes.

14 Q. Do you interpret this as this listener being upset based
15 on compensation being paid to these -- to the Defendants?

16 A. Yes, I do. And that he would -- he's going to follow Dan
17 and Jake wherever they go, Spotify being a podcast platform
18 where you could listen to their podcast.

19 Q. Well, has The Ticket put out anything publicly about not
20 paying its employees or specifically with respect to Dan and
21 Jake about compensation issues?

22 A. No.

23 Q. So do you have any idea where this listener might have
24 gotten the idea that you're not paying your folks?

25 A. Probably from listening to the Dumb Zone.

1 Q. The same one -- the same episode you did?

2 A. Probably, yes.

3 Q. Let's go to Exhibit 27.

4 Just looking -- it looks like two e-mails, same day from,
5 I think, the same person. Do you recognize that?

6 A. Yes.

7 Q. This is another Ticket listener?

8 A. Yes.

9 Q. August 18, 2023?

10 A. Correct.

11 Q. Less about the compensation issues here. But looking at
12 that top e-mail, "I hope you keep filing lawsuits and continue
13 to antagonize your listeners as well as your on-air
14 personalities who genuinely care for Dan and Jake.

15 "You made this bed, Company Man."

16 Do you see that?

17 A. Yes.

18 Q. How does it make you feel?

19 A. That makes me feel bad.

20 Q. 'Cause why?

21 A. Because it's not true. And it's just very negative.

22 Q. Have you put out anything -- has The Ticket put out
23 anything casting Defendants Kemp or McDowell in any negative
24 light?

25 A. Not to my knowledge, no.

1 Q. Would you authorize something like that?

2 A. No.

3 Q. These e-mails that we're looking at, does it appear to you
4 that they're -- they're angry -- do you interpret these e-mails
5 as folks being angry, just the fact that the Defendants left?
6 Just the simple fact that they're gone?

7 A. No, I don't. I take it as they're maybe upset that they
8 left, but the fact that The Ticket is being thrown under the
9 bus is what's got them fired up and angry.

10 Q. Well, let's look at Exhibit 31.

11 Do you recognize that one?

12 A. Yes.

13 Q. Okay. So just directing you to a couple of spots here.
14 But looking at that first paragraph -- well, let's look at the
15 opening paragraph.

16 "Read through the lawsuit and most recent filing against
17 Dan and Jake and saw you guys have had an influx of 'hate
18 mail.' I just thought I'd throw one more e-mail on that pile."

19 Do you see that?

20 A. Yes.

21 Q. It says a derogatory thing about Cumulus. Do you see
22 that?

23 A. Yes.

24 Q. And, "To think that you have the right to control
25 someone's life the way Cumulus does is a textbook example of

1 corporate overreach."

2 Do you see that?

3 A. Correct.

4 Q. Okay. So, again, like the other e-mails, how do you
5 interpret -- what -- what comes up for you in terms of that
6 statement that you think you have the right to control
7 someone's life?

8 A. Yeah. I just don't think that's accurate. We don't have
9 the right to control people's lives, but this negative feedback
10 from listeners like this is just being fueled by what's being
11 put out online and in the podcast.

12 Q. By who?

13 A. The Defendants.

14 Q. With the Dumb Zone podcast?

15 A. Yes.

16 Q. Another list- -- this is an example of another listener
17 that you're losing as a result of the podcast?

18 A. Yes.

19 Q. Let's look at 33.

20 Now, this is a lengthy one. We're not going to go through
21 the whole thing by any means. But do you recognize this --
22 this e-mail?

23 A. Yes, I do.

24 Q. From another listener?

25 A. Correct. From August 24th of 2023.

1 Q. So kind of looking at the -- there's a lot there about
2 characterizing what -- the lawsuit between The Ticket and
3 Defendants is sort of a divorce between the mom, the dad, and
4 the kids. Do you recall that?

5 A. Yes.

6 Q. And so looking at that middle paragraph, I'm just going to
7 read the sentence. "And since The Ticket has the money, we
8 view you as the dad and view Dan and Jake as the mom."

9 Do you see that?

10 A. Yes.

11 Q. Do you view it the same way?

12 A. No, I don't.

13 Q. Yeah. So look at that final paragraph.

14 "I, personally, will stop listening and do everything I
15 can to stop other people from listening, just to prove a point.
16 I have enough money and time to spend on social media to
17 disparage Cumulus. I'm not sure how successful I will be, but
18 I will not stop, that is for sure. Unfortunately, you and your
19 on-air staff will be the only ones to suffer and Cumulus will
20 continue to be the big, shitty conglomerate that they are."

21 Do you see that?

22 A. Yes.

23 Q. How did that make you feel?

24 A. Terrible.

25 Q. Can you elaborate?

1 A. Yeah. Because, again, this is something that's being put
2 out that this listener heard that is not true. It's the fact
3 that Cumulus is being painted as cheap or that it doesn't take
4 care of its employees.

5 Q. And where do you think this listener is getting that
6 information?

7 A. From the Dumb Zone podcast.

8 Q. Do you feel threatened by this e-mail?

9 A. Yes. It's threatening my livelihood, my job.

10 Q. He says he's going to go after and try to disparage you
11 and get people to convert over, huh?

12 A. Correct. Yes.

13 Q. All right. Now, let's talk for a second. We've seen a
14 handful. Do you think we can be here all day looking at
15 listener e-mails if we wanted to?

16 A. Quite a while.

17 Q. Are these -- are these the only e-mails you received?

18 A. No.

19 Q. Is the nature of the other e-mails you received similar
20 and the same to the ones we've just gone over?

21 A. Yes, they are.

22 Q. Is that normal feedback from listeners in your experience
23 at The Ticket?

24 A. No, it's not. We get feedback all the time from
25 listeners, but the tone and tenor and the language of these

1 e-mails is definitely different.

2 Q. Well, you've had other on-air talent leave The Ticket
3 before to go elsewhere, right?

4 A. Yes.

5 Q. Do you get these kind of responses and those kind of
6 scenarios?

7 A. Not to this level, no.

8 Q. What's different about this, if you know?

9 A. These e-mails, like I said, the language being used, the
10 threats, it's quite a bit different. Quite a bit more
11 negative.

12 Q. What do you attribute as to the, if anything, as to the
13 cause of why the content, the tone of these listener e-mails
14 being more egregious than typical ones in the past?

15 A. Because the narrative --

16 MR. CAWLEY: I'll object to that as speculation.

17 MR. ANDERSON: How he interprets it, Your Honor.

18 MR. CAWLEY: And relevance, too.

19 THE COURT: Rephrase your question, Counsel.

20 MR. ANDERSON: Yes, Your Honor.

21 Q. These -- these e-mails that we've gone over have a more --
22 I think -- I forgot the word you used, but a more serious tone,
23 a more negative tone; is that correct?

24 A. Yes.

25 Q. And they're saying more than just they're upset just by --

1 just -- they're upset on things more than just that the
2 Defendants have left, fair?

3 A. Yes.

4 Q. Issues of compensation and what you pay your employees and
5 trying to control their lives. Those are the kind of things
6 that have been mentioned?

7 A. How they've been treated, yes.

8 Q. And have you gotten those kind of e-mails in the past when
9 other talent left?

10 A. No.

11 Q. To what do you attribute this elevated level of tone from
12 these recent communications after the Defendants left? Do you
13 attribute that to anything?

14 A. Yeah. I attribute it to the narrative that The Ticket has
15 been cheap and The Ticket was not compensating its employees.
16 And that if it was -- it was a money issue with the Defendants,
17 and that if The Ticket would have simply just paid them what
18 they wanted, then they would have all been taken care of.

19 Q. And where is that narrative coming from?

20 A. I believe it's coming from the Dumb Zone podcasts.

21 Q. Has -- since the Defendants left and started this Dumb
22 Zone podcast, has there been any negative impact on The Ticket,
23 to your knowledge?

24 A. Yes.

25 Q. And has it impacted the ability to start a replacement

1 show?

2 A. Yes, it has.

3 Q. Can you elaborate on that?

4 A. Generally it takes six months, a year, sometimes longer,
5 to establish a new show. Even looking back at the start of the
6 Hang Zone, it took them almost a year before they even settled
7 on the name that they would have eventually used. That period
8 of time is critical to build and grow a new show.

9 And when we're trying to build and grow a relationship
10 with the audience with the new shows that we've put in place in
11 that time slot, to have the Defendants immediately start a
12 competing podcast doing a copycat of the same show they were
13 doing on the air in podcast form really impacts our ability to
14 launch and develop and grow a new show in much the same way
15 that they had the benefit of in 2020.

16 Q. Do you consider that harm to the company?

17 A. Yes, I would.

18 Q. Any way for you to quantify through monetary terms what
19 those harm's worth, as you sit here today?

20 A. I have no idea because there's no way to know. All this
21 behavior is ongoing right now. It's not stopped. It's still
22 happening. And there's no way to measure it.

23 Q. Do you believe The Ticket is losing listeners as a result
24 of the Defendants' podcast?

25 A. Yes, I do.

1 Q. Do you believe that any of your listeners are leaving
2 The Ticket to go listen to the podcast -- the Defendants'
3 podcast instead of The Ticket?

4 A. Yes, I do. Just a few examples of the e-mails here and
5 the ones that I've seen, they say that. And there's no way to
6 then quantify how many other people that feel the same way are
7 exhibiting the same behavior but don't take the time to e-mail
8 in. Sometimes the e-mails, they can represent 50, 100, 150
9 people. I have no way to know that.

10 Q. There's another question I forgot to ask earlier.

11 With respect to -- well, you said it great. Let me ask
12 you this: Do you track in any way, shape, or form, do you
13 track or quantify the -- can you -- let me rephrase it.

14 Can you track or quantify the loss of -- the number of
15 loss of listeners? I didn't say that very well. Can you track
16 or quantify the listener base being lost that's leaving
17 The Ticket to go to the Defendants' podcast?

18 A. Yes, but only partially at this point.

19 Q. How so?

20 A. We have a Nielsen ratings reports that come out and we can
21 see the loss of audience that we've had, but it's only -- first
22 of all, it's already in the past and there's still ratings
23 happening right now. But in the first ratings report that we
24 saw for that time slot, noon to 3:00, Monday through Friday,
25 the ratings were down at that point 45 percent. But it's still

1 an ongoing situation. We're still in ratings that are
2 happening right now.

3 Q. What is down 45 percent?

4 A. From the prior month. The ratings for the prior month
5 were down 45 percent.

6 Q. For the whole --

7 A. For the time slot noon to 3:00, Monday through Friday.

8 Q. How about for The Ticket in general?

9 A. The Ticket was down 30 percent month to month, and that
10 time slot was down 45 percent.

11 Q. All right. Let's talk about that for a second. If --
12 let's say for the last three months -- looking at the last
13 three months. Do you know the impact of ratings -- or do you
14 know what the ratings have been going from three months ago to
15 today if they stayed -- for the station itself as a whole, have
16 stayed the same, gone up, or gone down?

17 A. They've gone down.

18 Q. By what percent?

19 A. About 30 percent.

20 Q. And with respect to that particular time slot that the
21 Defendants did the Hang Zone, the 12:00 to 3:00, that same time
22 frame in the last three months, have ratings -- can you track
23 ratings for that portion as well?

24 A. Yes.

25 Q. And have ratings gone up, down, or stayed the same?

1 A. They've gone down.

2 Q. By how much?

3 A. About 45 percent.

4 Q. So that particular time slot that Defendants have a show
5 has gone down significantly more than the decreasing ratings
6 from the station as a whole?

7 A. That's correct.

8 Q. So 30 percent for the station, 45 percent for the 12:00 to
9 3:00 spot?

10 A. That's right.

11 Q. Do you believe that the Defendants in their competing Dumb
12 Zone podcast has had a negative impact on The Ticket's goodwill
13 or reputation?

14 A. Yes, I do. The Ticket has a -- had a sterling reputation.
15 It's the gold standard for sports talk radio shows across the
16 country, and this is something that's been very damaging to the
17 brand.

18 Q. Have you seen that in some of the e-mails so far?

19 A. Yes.

20 Q. Can you put a dollar amount, if you had to sit here and
21 fill in the blank, a dollar amount, dollars and cents to
22 compensate you for the damage to your reputation, would you be
23 able to do that?

24 A. No. I think it's impossible. There's no way to put a
25 dollar figure on the damage to someone's reputation, especially

1 a brand that's held in such high esteem as The Ticket has been.

2 Q. Wrapping up here, Mr. Catlin.

3 As you sit here today, can you just -- you run the -- you
4 run The Ticket, correct?

5 A. Yes.

6 Q. You were close with Defendants, correct?

7 A. Yes.

8 Q. You oversaw them and supervised them in their day-to-day
9 responsibilities for the company, correct?

10 A. Yes.

11 Q. With respect to their creation of a competing podcast, can
12 you tell the Court how you believe the Defendants' Dumb Zone
13 podcast is harming The Ticket?

14 A. It's the exact same show they were doing for The Ticket
15 that they're doing now in podcast form. It's a clone of the
16 show. It's damaging to the brand and to the reputation of
17 The Ticket. It started immediately. It's competing for the
18 same audience and listeners that The Ticket has and using the
19 same basic formatic elements that they used on The Ticket to do
20 so.

21 Q. You're aware that the Defendants had a noncompete in their
22 contracts?

23 A. Yes.

24 Q. Are noncompetes for on-air talent like them important for
25 The Ticket?

1 A. Yes, they are.

2 Q. Why?

3 A. Because it takes time to develop a new replacement show.
4 So in the event an employee leaves employment, such as the
5 Defendants, then it becomes The Ticket's responsibility to
6 replace that time slot with a new show. And it takes anywhere
7 from six months to a year, sometimes longer, to be able to grow
8 an audience and develop a new show in that particular time slot
9 to be the replacements.

10 Q. So if an on-air talent like Defendants left the employment
11 of The Ticket and were able to immediately start -- just carry
12 over the same show or substantially same show immediately,
13 would that hurt The Ticket's ability to get a new show in place
14 for the -- the vacated time slot?

15 A. Yes, because it would be competing for the same audience
16 at the same time.

17 Q. Is that, in part, the need for having a noncompete period
18 in the first place?

19 A. Yes.

20 Q. Last thing, Mr. Catlin.

21 Just again, as you sit here today, we talked about a lot
22 of different harms to the company. Is there any way for you to
23 quantify the full measure of harm being caused by Defendants'
24 actions to The Ticket?

25 A. No, there's not. Because I think it's still ongoing.

1 It's been ongoing. And as I mentioned, The Ticket's reputation
2 has been great and so this has been very damaging and there's
3 no way to know how damaging it's been across all of our
4 business entities.

5 MR. ANDERSON: We pass the witness.

6 THE COURT: Okay. Cross.

7 MR. CAWLEY: Your Honor, would it be possible to take a
8 restroom break real quick?

9 THE COURT: Sure. Before we break, it's 10:30 right
10 now. The -- there's a set of restrooms down the hall on this
11 floor. Let's go ahead and take a 15-minute break from 10:30 to
12 10:45. We'll pick up with the cross of this witness.

13 Let me see if there's anything else I was going
14 to add. Oh. Question. Are you all comfortable as far as
15 temperature goes? It was very cold when we came in, but I'm
16 very cold natured. They adjusted it a little bit. Are you all
17 comfortable?

18 MR. ANDERSON: Feels great to me.

19 MR. CAWLEY: Feels good, Your Honor.

20 THE COURT: I'm looking at the sole female that's on
21 that side.

22 MS. GRIFFIN: I'm fine, Your Honor.

23 THE COURT: Let's go off the record.

24 (Court is in recess.)

25 THE COURT: Okay. We will pick up with

1 cross-examination of this witness. Go ahead.

2 MR. CAWLEY: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. CAWLEY:

5 Q. Mr. Catlin, you talked at length about the fact that you
6 believe that the -- what I'll call the cheap narrative about
7 what you're getting e-mails is a result of stuff that was put
8 on the -- that was on the podcast. You remember that?

9 A. Yes.

10 Q. Okay. Well, first, you'll be glad to know I am a P1.
11 Isn't it true that the hosts throughout the years have bagged
12 on The Ticket as being cheap?

13 A. Possibly.

14 Q. Yeah. And in fact, there's a particular drop, is there
15 not, when somebody mentions something about The Ticket, about
16 somebody being cheap or poor, they play a drop that says "a
17 Cumulus station," right?

18 A. Sure. Yes.

19 THE COURT: Counsel, I hate to interrupt your flow, but
20 I've got to understand all this.

21 MR. CAWLEY: Okay.

22 THE COURT: Can you clarify what you believe the
23 witness means by "the hosts"? Are you talking about the two
24 Defendants or just hosts in general or -- please clarify.

25 MR. CAWLEY: Yes, Your Honor.

1 Q. I'm a P1 and we talk the same language a little bit about
2 The Ticket lingo. But when -- the hosts are the -- are your
3 employees that are the on-air talent, right?

4 A. Yes.

5 Q. And you'd agree with me that The Ticket is sort of a
6 sports and jocular type station?

7 A. Yes.

8 Q. And the hosts often get into topics that are -- that are
9 not sticking to sports, right?

10 A. That's correct.

11 Q. And sometimes those topics talk about somebody who's cheap
12 or poor or not doing well monetarily and the board -- the
13 person who -- let's describe what drops are. Drops are sound
14 effects that somebody called a board operator plays through
15 your system, right?

16 A. That's correct.

17 Q. And a board operator, one of the things that's -- that, I
18 think, The Ticket probably started. It's -- it's ubiquitous
19 now. But one of the things is that the board -- part of the
20 comedy is what drop -- what audio the board operator will play
21 given a particular scenario that's being discussed by the host,
22 right?

23 A. Correct.

24 Q. It's called a --

25 THE COURT: What's a board operator?

1 MR. CAWLEY: Yeah.

2 Q. A board -- I'll just ask you to explain it to the Court.
3 What's a board operator?

4 A. A board operator is someone in the radio control studio
5 that puts the audio from the control studio out to the
6 transmitter through the control board.

7 THE COURT: Thank you.

8 Q. And one of the things, just to -- to edify, Your Honor.
9 One of the things that the board operators do -- I mean,
10 they're responsible for the sound, getting the commercials, all
11 that kind of stuff, right?

12 A. Yes. That's their primary responsibility.

13 Q. Right. But The Ticket has taken board operator jobs a
14 little bit further, and they're sort of part of the show in
15 terms of what kind of audio clips they play during the show,
16 right?

17 A. Yes.

18 Q. And those are called drops?

19 A. Yes.

20 Q. And so something will be going on that's timely and if
21 the -- if you've got a good board operator, the board operator
22 will think of an audio clip that's in your system that pertains
23 to whatever the hosts are talking about and they'll play that
24 clip, right?

25 A. They could.

1 Q. And that's common, right?

2 A. It's common, yes.

3 Q. And the -- the clip that I was talking about a little -- a
4 little earlier, "a Cumulus station," that's a drop that's often
5 used to make fun of The Ticket for being cheap, right?

6 A. Yes.

7 Q. That's been going on since well before the Dumb Zone was
8 even a thing, right?

9 A. Yes.

10 Q. I'm going to show you what has been marked as Exhibit 25
11 that Mr. Anderson showed you just a little while ago.

12 Do you remember looking at this exhibit with Mr. Anderson?

13 A. Yes.

14 Q. And this is an exhibit that you testified was evidence of
15 the fact that listeners were mad because of the cheap narrative
16 being put out there by the Dumb Zone, right?

17 A. Yes.

18 Q. Do you remember the date of the first Dumb Zone episode
19 made public?

20 A. I don't remember the exact date. It was sometime the week
21 of July 17th, I believe.

22 Q. It was July 24th.

23 What's the date of this e-mail?

24 A. July 19th.

25 Q. That's before the Dumb Zone even came out as a podcast,

1 isn't it?

2 A. According to what you just said, yes.

3 Q. So it's not possible for this e-mail to be evidence of the
4 Dumb Zone giving rise to that cheap narrative that you talk
5 about, is it?

6 A. I'm sorry, I don't understand your question.

7 Q. Yeah. I mean, if it came out before the Dumb Zone did, if
8 this e-mail was sent to you before the Dumb Zone even existed,
9 then the Dumb Zone clearly could not have been the cause of
10 this listener's angst, right?

11 A. I suppose.

12 Q. All right. It's not possible, right? If you get this
13 e-mail on July 19th but the Dumb Zone podcast doesn't come out
14 for another five days, then the listener's complaint cannot be
15 related at all to what they heard on the Dumb Zone, can it?

16 A. Yes.

17 Q. So when you testified earlier that you interpreted this
18 e-mail, Exhibit 25, from Travis Williams as evidence that the
19 Dumb Zone's disparagement was causing harm to The Ticket, that
20 was just not true, was it?

21 A. That's my interpretation is that it was.

22 Q. Well, if this person hadn't heard the Dumb Zone, which he
23 could not have if he sent this e-mail on July 19th, then this
24 e-mailer's complaints could not in any way be related to
25 disparagement on the Dumb Zone, could it?

1 A. No.

2 Q. Okay. Let's go to Exhibit 26.

3 I don't know -- I don't remember Mr. Anderson showing you
4 this one, but this is something that you guys --

5 THE COURT: Defendants' or Plaintiff's Exhibit 26?
6 Defendants'?

7 MR. CAWLEY: This is Plaintiff's Exhibit 26.

8 THE COURT: Plaintiff's. Okay.

9 Q. This is exhibits submitted to the Court by your
10 attorney -- your attorneys.

11 And it's an e-mail from a Bryan Thompson that simply says
12 "pay them," right?

13 A. Yes.

14 Q. Does it look like that e-mailer is sending that e-mail
15 because he think that The Ticket's cheap?

16 A. Yes.

17 Q. When did he send that e-mail to you?

18 A. July 20th.

19 Q. Before The Ticket -- the Dumb Zone came out, right?

20 A. Yes.

21 Q. So, once again, the Dumb Zone and any alleged
22 disparagement that you contend existed on the Dumb Zone did not
23 cause this person to believe the cheap narrative regarding
24 The Ticket, right?

25 A. Yes.

1 Q. So what you testified earlier to was completely wrong --

2 MR. ANDERSON: Objection.

3 Q. -- with regard to the Dumb Zone being the genesis of the
4 cheap narrative of The Ticket, right?

5 THE COURT: Hold on.

6 MR. ANDERSON: Your Honor, I object. Mischaracterizes
7 the witness' prior testimony. He went through -- the witness
8 went through a number of documents earlier.

9 THE COURT: All right. Save the long objection.

10 I -- I do think it's argumentative. Remember,
11 I'm not the jury. I've been on your side of the bench for
12 30 years. So your point has been made. Continue.

13 MR. CAWLEY: And I don't want to belabor the point,
14 Your Honor.

15 THE COURT: Yes, you do.

16 MR. CAWLEY: Caught me.

17 Q. But I just want to make sure that it's clear, because you
18 testified you blame Dumb Zone for the cheap narrative regarding
19 The Ticket.

20 Exhibit 28. The e-mailer says, "Quit penny pinching and
21 pay your talent a living wage."

22 Is that the cheap narrative you were talking about?

23 A. Yes, it is.

24 Q. Again, what's the date of that e-mail?

25 A. July 18th.

1 Q. Before the Dumb Zone ever came out, right?

2 A. Before July 24th, yes.

3 Q. Again, the Dumb Zone wasn't the genesis of the cheap
4 narrative regarding The Ticket. You'd agree with that, right?

5 A. I would not.

6 Q. You think the Dumb Zone -- Zone was the genesis of the
7 idea that The Ticket's cheap?

8 A. I'm sorry, I don't understand your question.

9 Q. You think that the -- that nobody believed that The Ticket
10 was cheap until the Dumb Zone came along and told everybody?

11 A. I can't speak for everybody.

12 Q. Well, you talked about these -- these e-mails that you
13 were getting as some big example of the P1 listening public is
14 now thinking that The Ticket is cheap because of what Dan and
15 Jake said on the Dumb Zone. You remember doing that, right?

16 A. Yes.

17 Q. And we just looked through these e-mails that you cited as
18 examples for that, but they preexisted the Dumb Zone, right?

19 A. Yes.

20 Q. All right. Let's talk about your podcast. You said
21 that -- well, do you believe that The Ticket is in the podcast
22 space?

23 A. Yes.

24 Q. You talked about the thousands of podcasts that The Ticket
25 uploads, right?

1 A. Yes.

2 Q. The vast majority of those, would you agree with me, are
3 repurposed on-air segments?

4 A. The majority of them are.

5 Q. The vast majority, right?

6 A. The majority of them are.

7 Q. We'll talk about that.

8 And you -- you put them into three channels?

9 A. Correct.

10 Q. You got The Ticket Top 10, right?

11 A. Yep.

12 Q. And that's a daily set of podcasts that somebody creates
13 for all the segments throughout the -- the day, right?

14 A. More or less.

15 Q. I probably wasn't -- wasn't artfully describing what it
16 is. But it's -- somebody puts together kind of a -- a best of,
17 of the day, right?

18 A. Correct.

19 Q. Who puts that together?

20 A. Various Ticket employees. It changes.

21 Q. And just generally speaking, what level Ticket employee
22 puts that together?

23 A. I don't understand your question.

24 Q. Is it a board op, is it a producer, is it a -- who -- what
25 person does that?

1 A. Generally speaking, it's The Ticket Top 10 show producer.

2 Q. Is that -- is that an entry-level position at The Ticket?

3 A. No.

4 Q. Do you have a hand in selecting what is the best of that
5 day to put on the podcast?

6 A. Sometimes, yes; sometimes no.

7 Q. How often do you do that?

8 A. Periodically. It depends on the news of the day.

9 Q. I'm probably not going to be able to tie you down on that,
10 I can tell. But wouldn't you agree with me that the repurposed
11 on-air segments makes up more than 75 percent of the podcasts
12 you guys post?

13 A. I don't know the answer to that.

14 Q. And -- and just for the -- the Court's edification, when
15 I'm talking about repurposed on-air segments, that as opposed
16 to original content, right?

17 A. Correct.

18 Q. Original content is stuff that somebody sits down and does
19 a dedicated podcast for, right?

20 A. That's correct.

21 Q. And the stuff we're talking about here is just somebody
22 going and clipping segments of the -- the host on-air shift?

23 A. Yes.

24 Q. So the -- the host who did the -- who created the content
25 for the podcast isn't involved in creating the podcast itself,

1 right?

2 A. I'm sorry, I don't understand your question.

3 Q. Well, you said it's put together by some -- by the Top 10
4 producer, I think you said, right?

5 A. Uh-huh.

6 Q. That person just goes back through the -- the archive for
7 the day and takes clips and puts them in a podcast, right?

8 A. That's correct.

9 Q. So the -- the hosts don't go and sit in a studio room and
10 create a podcast for you to put on the website, do they?

11 A. They do from time to time, yes.

12 Q. Well, that's -- I'm talking -- that's original content
13 stuff. Right now I'm talking about the repurposed on-air
14 shifts. That's just the host doing their job and then somebody
15 else takes that and puts it on your website, right?

16 A. That's right.

17 Q. Now let's talk about the original content.

18 You -- how often do you do original content?

19 A. We do original content every day. That's what The Ticket
20 does.

21 Q. No, I mean original content podcasts.

22 A. Can you restate the question?

23 Q. Yeah. You talked about different types. The draft,
24 right?

25 A. Yes.

1 Q. And that happens once a year, right?

2 A. Yes.

3 Q. And I think for the last -- for 2001 -- 2021 and 2022, you
4 had -- you had Jake and Bob Sturm do the draft podcast, right?

5 A. That's correct.

6 Q. And you asked them to do it, didn't you?

7 A. Yes.

8 Q. You didn't demand that they do that, did you?

9 A. Okay. I asked them to do it.

10 Q. You said -- well, and what I'm getting to is you said that
11 creating original content is part of the job duties and
12 requirement of on-air host, right?

13 A. Yes.

14 Q. So if that's true, we're going to see original content
15 podcast creation in the job duties in their contract, right?

16 A. I'm not familiar with every letter of their contract.

17 Q. Well, their job duties are set out in the contract and
18 that's what defines the terms of their noncompete agreement.
19 Is that your understanding? Or do you know anything about
20 that?

21 A. I'm not sure I know what you're talking about.

22 Q. But their job duties in the contract should encompass what
23 they're required to do as a minimum -- as in the minimum
24 performance of their job, right?

25 A. Okay.

1 Q. And so if original -- if the creation of original podcast
2 content is not in the job duties, then that's not formally a
3 part of their job, is it?

4 A. I guess that would be up to interpretation.

5 Q. Okay. Fair enough.

6 Do all the hosts do original content podcasting?

7 A. I would think from time to time, yes, they do. And, yes,
8 they have.

9 Q. You talked about an e-mail earlier where you were kind of
10 chiding your employees because they were putting a podcast in
11 their own feed channels, right?

12 A. Uh-huh.

13 Q. Is that a yes?

14 A. Yes. I'm sorry.

15 Q. I'm not fussing at you, but the court reporter's got to
16 hear a verbal answer.

17 A. Yes.

18 Q. It was Exhibit 11.

19 And you're talking about your distinct podcasts, feeds,
20 channels, and that's -- that's the Top 10, Why Today Doesn't
21 Suck, and the BaD Radio Wrap Up Podcast, right?

22 A. That -- in this e-mail, that's what I'm talking about,
23 yes.

24 Q. Okay. And I think you said you started doing podcasts
25 around -- posting podcasts to the website around 2009?

1 A. That's correct.

2 Q. And this e-mail's in 2019, right?

3 A. Yes.

4 Q. And you kind of chide yourself a little bit and said
5 you're disappointed in yourself you didn't have a better handle
6 on what's going on.

7 Did you pay much attention to the podcast channel before
8 2019?

9 A. Yes.

10 Q. But this just caught you off guard that they were doing it
11 wrong?

12 A. I would say that some employees were freelancing.

13 Q. And what do you mean by freelance?

14 A. They were making their own decisions about what content
15 was going to go in what channel and I wanted them to follow the
16 distinct pattern.

17 Q. And you talked about advertising on your podcasts. Is it
18 your understanding that -- that your salespeople pitch your
19 advertisers on advertising in the podcast?

20 A. That's not part of my job. I don't know.

21 Q. So earlier when you were talking about -- I mean, I think
22 Mr. Anderson -- and the record will be -- reflect it. But I
23 think Mr. Anderson asked you a question about your advertisers
24 paying for podcast time. You don't know anything about that,
25 do you?

1 A. I'm sorry, I don't understand your question.

2 Q. Do advertisers -- let me -- let me rephrase.

3 Advertisers pay for time in your on-air broadcasts, right?

4 A. Yes, they do.

5 Q. Do you know whether advertisers pay for time during
6 your -- during the podcast?

7 A. It is my understanding they do.

8 Q. And -- and there's different types of advertising.

9 There's passive advertisements on things like YouTube, right?

10 A. I define passive advertising --

11 Q. You can turn on a button and have -- and have ads
12 automatically come on there. And if you get enough listens,
13 you get passive -- you get income from YouTube, right?

14 A. I'm not aware of that, but okay.

15 Q. Okay. You're not aware of that. Do you know how -- do
16 you know how podcasts are monetized?

17 A. Yes.

18 Q. How?

19 A. Well, you could sell ads or you can put them behind a
20 paywall and get subscriptions.

21 Q. And it's your testimony here today that The Ticket
22 actively solicits advertisement dollars specifically for its
23 podcasts?

24 A. I know that on our podcast channels we're required to put
25 ads -- ad markers in the podcasts for clients.

1 Q. Okay. Do you do that for original content podcasts?

2 A. Yes.

3 Q. Okay. The original content podcasts that we saw on your
4 YouTube page -- and let's pull that up.

5 This is Exhibit 4. This is your YouTube page, right?

6 A. Yes.

7 Q. Do you do a lot to promote your YouTube page?

8 A. Yes.

9 Q. How many YouTube subscribers does The Ticket DFW have?

10 A. 3.49K.

11 Q. A little over 3,000 subscribers, right?

12 A. That's what it says, yes.

13 Q. Is that a lot?

14 A. It seems like it is to me.

15 Q. And on the views of the -- the podcasts that are listed
16 there, you got one with 30 views, 41 views, 205 views, and 97
17 views, right?

18 A. Yes.

19 Q. Is that a lot?

20 A. I guess it depends on your definition of a lot.

21 Q. Those -- those original content podcasts that people are
22 doing there that are on your YouTube -- well, what -- before I
23 do that. What's an RSS feed?

24 A. My understanding of an RSS feed is something that you can
25 copy and embed into a website so you can access that same

1 content every day automatically.

2 Q. What's an RSS feed with respect to podcasts?

3 A. It's a way that you could subscribe to a channel, I
4 believe.

5 Q. Right. And so if you -- if you upload a -- if you upload
6 a podcast to an RSS feed server, it goes out to the various
7 podcast platforms that are out there, things like Spotify,
8 Pandora, iTunes?

9 A. That's my understanding.

10 Q. Okay. Do these original content podcasts that you're
11 putting up here on YouTube, do those go -- get served -- do
12 those get uploaded to RSS server?

13 A. I don't believe so.

14 Q. So these are just on YouTube, right?

15 A. No.

16 Q. Or Facebook, I think you also put them on. Right?

17 A. Can you please restate your question?

18 Q. Yeah. These original -- on Exhibit 4.

19 A. Uh-huh.

20 Q. These things that we're seeing, these four Cowboy training
21 camp podcasts, those are not uploaded to an RSS server to be
22 distributed out to the various podcast platforms, right?

23 A. Not to my understanding, no.

24 Q. Okay. So these are -- these are viewed only on
25 The Ticket's YouTube page, right?

1 A. That's incorrect.

2 Q. Okay. Where else would they be?

3 A. Facebook Live and The Ticket's Twitch feed.

4 Q. Okay. And we'll get to Twitch in just a second.

5 But they're not put on traditional podcast platforms,
6 right?

7 A. Not to my knowledge, no.

8 Q. Okay. And I'm going to show you -- Exhibit 5 is another
9 one you looked at.

10 And these are original content podcasts for halftime of
11 the Saints' game -- or post-game. A Mavericks' playoff game,
12 the Compound [sic], and 49er's halftime show, right?

13 A. Yes.

14 Q. Again, these aren't -- these aren't uploaded to an RSS
15 server to be pushed out to all the platforms for live
16 distribution, are they?

17 A. The live distribution is through YouTube, Twitch, and
18 Facebook Live.

19 Q. But there are bigger -- what are the biggest podcast
20 platforms out there?

21 A. I don't know that factually.

22 Q. You don't? You don't know? Is Spotify a big podcast
23 platform?

24 A. That would be one of my answers.

25 Q. Is Pandora?

1 A. I don't know about that.

2 Q. Okay. What about Apple podcast?

3 A. Yes.

4 Q. These aren't -- and those are the very biggest platforms,
5 right?

6 A. I would say so, yes.

7 Q. And these aren't pushed to those, right?

8 A. No.

9 Q. Okay. And you could do that by just pushing it through
10 the RSS feed, right?

11 A. I suppose, yes.

12 Q. All right. Now, I -- I asked you if -- if the sales team
13 sells ad for podcasts, and you said to your knowledge, and then
14 at another time you said that's not really your area. You
15 don't know what sales folks do, do you?

16 A. I do.

17 Q. I mean, you don't -- well, do you know what they sell, how
18 they sell it? Well, let me -- let me back up.

19 Between you and Mr. Bennett, who's more knowledgeable
20 about the sales aspect of The Ticket?

21 A. Mr. Bennett.

22 Q. Oh, okay. We'll just wait for him then.

23 In the -- do you know how many subscribers The Fan has on
24 their YouTube account?

25 A. What's The Fan?

- 1 Q. You don't know what The Fan radio station is?
- 2 A. There are many Fan radio stations, sir.
- 3 Q. The one here in DFW.
- 4 A. Can you please reask the question?
- 5 Q. 105.3 The Fan. You know that station, right?
- 6 A. Yes, I do.
- 7 Q. It's your main competition --
- 8 A. Yes.
- 9 Q. -- in this market, isn't it?
- 10 A. Yes.
- 11 Q. You know who I was talking about. The Fan, right?
- 12 A. 105.3 The Fan, yes, I know who that is.
- 13 Q. I'll make sure to use the 105.3.
- 14 Do you know how many subscribers they have on their
- 15 YouTube account?
- 16 A. No, I don't.
- 17 Q. 42,000. Do you keep up with that?
- 18 A. Not directly, no.
- 19 Q. Well, one of the things that you talked about in terms of
- 20 confidential information that you give to your show hosts is
- 21 that you keep a -- you give them information about strategy and
- 22 long-term planning and how to compete, how to keep up with
- 23 competition, right?
- 24 A. Correct.
- 25 Q. You don't do that on the podcast side, do you?

1 A. Podcasts are part of that, yes.

2 Q. You don't even know how many YouTube subscribers your main
3 competition in DFW has, do you?

4 A. No.

5 Q. You don't know how many The Freak has -- how many
6 subscribers The Freak has on their YouTube page?

7 A. The Freak?

8 Q. The station that Mike Rhyner started.

9 A. I'm sorry. I don't understand your question.

10 Q. 97.1. You don't know what The Freak is, Mr. Catlin?

11 THE COURT: Well, Counsel, let's not be argumentative.

12 MR. CAWLEY: Okay. All right.

13 THE COURT: And you know, perhaps the Judge you're
14 trying to make impression on doesn't know what The Freak is.
15 Okay? So why don't you back off and, you know, dumb it down
16 for me, then.

17 MR. CAWLEY: Certainly, Your Honor.

18 THE COURT: Okay.

19 MR. CAWLEY: I apologize.

20 Q. The Freak is a sports radio station here in DFW, 97.1,
21 right?

22 A. I disagree that it's a sports station but, yes, it
23 broadcasts on 97.1 FM.

24 Q. What is it? So --

25 A. The format of the station is guy talk, is what I would

1 say.

2 Q. Guy talk. So you're drawing a distinction between
3 The Freak and The Ticket because they're -- they're less
4 sportsy?

5 A. Correct.

6 Q. Oh, okay. But for -- for the Judge's benefit, it's a
7 competing station in the market?

8 A. Yes.

9 Q. Oh, okay. Do you keep up with what they're doing in their
10 podcasts?

11 A. Only limited.

12 Q. What does that mean?

13 A. I know that they offer all of their shows for -- in a
14 podcast form every day.

15 Q. And so you -- you've given the Court your opinion that you
16 believe that even though it's a behind the paywall podcast,
17 that the Dumb Zone competes with The Ticket, correct?

18 A. That's correct.

19 Q. So that would be the same of any podcast out there,
20 understanding Mr. Anderson said in his opening that there's
21 only so much time and that the pie is a certain size, the
22 competition for the -- the listener's ear, any behind the
23 paywall podcast, according to y'all, is competition for
24 The Ticket, right?

25 A. I would say so, yes.

1 Q. So if your employees have podcasts, that's competition
2 with you, your current employees, right?

3 A. It depends on what it was.

4 Q. Well, I mean, I've heard the reasoning being that because
5 there's only so much time in a day that the -- that the amount
6 of audio that a listener can spend listening to is limited,
7 right?

8 A. Yes.

9 Q. So would you agree with me that any, under that rationale,
10 any podcast competes with The Ticket?

11 A. Yes.

12 Q. And I think I used the -- I used the -- the limitation
13 behind the paywall. But any podcast would, whether it's behind
14 the paywall or not, right?

15 A. Yes.

16 Q. Okay. One of your current hosts is a guy named Dave Lane,
17 right?

18 A. Yes.

19 Q. He works for The Ticket right now?

20 A. That's correct.

21 Q. He's a show host?

22 A. That's correct.

23 Q. He has his own outside podcast, doesn't he?

24 A. That's correct.

25 Q. And he has an outside podcast that -- some of which is

1 behind the paywall?

2 A. Correct.

3 Q. On Patreon, just like the Dumb Zone, right?

4 A. That, I'm not aware of, but...

5 Q. But he's monetized his podcast outside The Ticket, right?

6 A. Yes.

7 Q. Gordon Keith. Who's Gordon Keith?

8 A. He's one of the cohosts of The Ticket's morning show.

9 Q. Been there a long time, huh?

10 A. Yes.

11 Q. He's kind of the station's golden child. Would you agree
12 with me?

13 A. Perhaps.

14 Q. Well, let's just put it this way: When he -- when Mike
15 Rhyner started The Freak on 97.1, one of the things that y'all
16 did was that you had Gordon Keith, the morning show host, go
17 and sit in with other shows to try to increase their ratings,
18 right?

19 A. I disagree with the premise of that question.

20 Q. You had Gordon Keith go to other shows and cohost with
21 them for segments?

22 A. Among other employees, yes.

23 Q. Okay. Gordon Keith currently operates a Twitch account,
24 doesn't he?

25 A. Yes, he does.

1 Q. A Twitch stream?

2 A. Yes.

3 Q. And for the benefit of the people who don't know what a
4 Twitch stream is, that's a live streaming video platform,
5 right?

6 A. Correct.

7 Q. And it's behind a paywall?

8 A. It can be or it can be free.

9 Q. Well, Gordon's is behind a paywall, right?

10 A. That, I'm not sure of.

11 Q. And Gordon does not post videos on demand on his Twitch.
12 You're aware of that, right?

13 A. I am.

14 Q. Okay. And what that means is on the Twitch stream, on
15 Gordon's Twitch stream, you have to watch it while he's doing
16 it live or you don't get to see it unless somebody tapes it?

17 A. Correct.

18 Q. Okay. In other words, he doesn't put a VOD, or video on
19 demand, option on his Twitch page for people to come back and
20 look at, right?

21 A. That's correct.

22 Q. All right. And so anytime he's operating a Twitch stream,
23 the people who want to catch that have to ignore other forms of
24 video -- audio, video listening or viewing, right?

25 A. That's right.

1 Q. When -- and I think we've established Gordon has this
2 outside of The Ticket, right?

3 A. Yes.

4 Q. And he's monetized it?

5 A. Yes.

6 Q. Just like the Dumb Zone, but he's a current employee,
7 right?

8 A. Yes, he's a current employee.

9 Q. When he -- when he went to the Dumb Zone -- I mean, to the
10 Hang Zone to do the little cohosting thing you did, he played
11 that live on his Twitch stream, didn't he?

12 A. I don't understand your question.

13 Q. Remember when he went and cohosted with Dan and Jake on
14 the Hang Zone?

15 A. On The Ticket?

16 Q. Yes.

17 A. Yes, I remember that.

18 Q. Isn't it true -- and I think he did that for about six
19 weeks. I'm not going to hold you to it, but it's somewhere
20 around there. He went week after week for a period of time,
21 right?

22 A. Yes.

23 Q. Are you aware that when he would go on the Hang Zone, he
24 would -- he would stream that live on his Twitch feed?

25 A. I'm aware that he did that a few times, yes.

1 Q. And so when he was doing that, he was requiring the
2 listener to go away from The Ticket if they wanted to watch him
3 on Twitch, right?

4 A. If they wanted to watch him, but it was the same audio
5 content available on both platforms.

6 Q. Right. But they had to go away from The Ticket radio
7 station, didn't they?

8 A. No. They could have listened to the exact same thing on
9 The Ticket.

10 Q. Oh, simulcasting?

11 A. Yes.

12 Q. But wouldn't you agree with me that the idea for Gordon
13 was to have people go to his Twitch stream and watch what they
14 were doing, the fun and the high jinx?

15 A. I would not agree with that, no.

16 Q. But nevertheless, he was directing listeners to The Ticket
17 to his live stream?

18 A. Okay.

19 Q. You agree?

20 A. Not necessarily, no.

21 Q. What's -- what's IJB?

22 A. IJB is an acronym that stands for It's Just Banter.

23 Q. And what is It's Just Banter?

24 A. A podcast.

25 Q. And who's on that podcast?

1 A. To my knowledge, it's the Defendant Jake Kemp and a
2 cohost, TC Fleming.

3 Q. How long have they been doing that podcast?

4 A. I'm not really sure. I would say maybe over ten years.
5 Maybe longer.

6 Q. So Jake -- Jake was doing the IJB podcast the entire
7 time -- well, for at least ten years while he was at
8 The Ticket, right?

9 A. Yes.

10 Q. That's something you knew about, right?

11 A. Yes. He came to me and told me about it, and I gave him
12 permission because I didn't view it as competitive at the time.

13 Q. So just back then you didn't think it was competitive,
14 right?

15 A. Back then, right.

16 Q. But you think it's competitive now, right?

17 A. It's not really competitive because it's not the same
18 format. It's not the same content as what The Ticket provides.

19 Q. But -- I guess I'm confused. Mr. Catlin, I understood
20 Mr. Anderson to say -- and an expert is going to come up here
21 and testify -- that the basis of your contention that the Dumb
22 Zone competes with The Ticket is because of the finite amount
23 of time that people have to devote to audio, time spent
24 listening, right?

25 A. Yes.

1 Q. So it doesn't matter the content. As long as it's an
2 audio program that takes them away from The Ticket, right?

3 A. You're leaving out an important piece, which is the
4 audience that these particular podcasts or radio shows or radio
5 podcasts target.

6 Q. Oh, okay. So the -- so you're saying that the topic -- I
7 guess what I'm hearing you say is that the -- the topic
8 brings -- targets the same demographic, right?

9 A. I don't understand your -- what you're asking me.

10 Q. I'm trying to understand exactly what you're saying. What
11 you're saying is that the -- the topic of the podcast is
12 relevant because it defines the market you're going after; is
13 that right?

14 A. In part, yes.

15 Q. Okay. And so if the market that they're going after is
16 the same as The Ticket, you believe that that -- that means
17 that they're in competition with you?

18 A. Correct.

19 Q. Is -- is The Ticket entitled to -- to immunity from
20 competition?

21 A. Absolutely not.

22 Q. You got to earn competition -- you got to earn customers,
23 right?

24 A. Absolutely.

25 Q. All right. And in all -- in these e-mails that you get,

1 aside from the fact that they didn't show the cheap narrative,
2 they also -- wouldn't you agree with me that a lot of those
3 people were angry?

4 A. Yes.

5 Q. That Susquehanna filed this lawsuit, right?

6 A. Yes.

7 Q. Not because of anything that Jake and Dan did, not because
8 they went and started their own website. And even before they
9 started the Dumb Zone, people were mad that y'all filed this
10 lawsuit, right?

11 A. Yes.

12 Q. That's not Dan and Jake's fault, right?

13 A. No.

14 Q. Okay. And so part of -- some of the damages that you
15 talked about from losing listeners, like the folks that we saw
16 e-mailing you, is because they're angry at The Ticket for
17 The Ticket's actions, not because of anything these guys did,
18 right?

19 A. I didn't understand the question.

20 Q. Okay. You talked about the harm that's befalling
21 The Ticket because of these listeners who are abandoning
22 The Ticket, right?

23 A. Uh-huh. Yes.

24 Q. Okay. And we just established that a lot of the reason
25 for -- for these people leaving is that they're mad at

1 The Ticket, right?

2 A. Yes.

3 Q. And so a lot of these losses that you were talking about
4 are because of what The Ticket did, not because of anything Dan
5 and Jake did, right?

6 A. Yes.

7 Q. All right.

8 THE COURT: I want to make sure I understand your
9 answer. Are you saying correct, what he just said?

10 THE WITNESS: I'm saying correct by the way he's asking
11 me the question, Your Honor.

12 THE COURT: All right. Thank you.

13 Q. What's The UnTicket?

14 A. The UnTicket is a fan website.

15 Q. What's uSave.it?

16 A. USave.it is a part of UnTicket.

17 Q. Okay. And when you say UnTicket is a fan website, they
18 post podcasts taken directly from The Ticket, right?

19 A. Yes.

20 Q. They do exactly what y'all do, right, in terms of taking
21 clips from your audio broadcast and putting it in a podcast,
22 right?

23 A. Yes.

24 Q. Y'all don't pay them for that, do you?

25 A. No.

1 Q. That's another piece of competition out there for you,
2 isn't it?

3 A. No.

4 Q. Same -- a minute ago you just -- well, you just told me
5 that in addition to the time spent listening, all the finite
6 amount of time in a day, all that stuff, in addition, the topic
7 is important because it -- it addresses the demographic that
8 that podcast is going after, right?

9 A. Yes.

10 Q. And if they're taking stuff directly off of your radio
11 station, they're getting the exact same topics y'all are,
12 right?

13 A. It's the same content, that's why it's not competition.
14 It's The Ticket's content.

15 Q. Okay. Well, I mean, it's competition in the sense that it
16 takes time, that finite piece of time that people have to
17 audio, right, and it directs it over to The UnTicket instead of
18 over to The Ticket radio station, right?

19 A. It directs them there, but in terms of the ratings credit
20 that The Ticket would get, depending on what time that was
21 listened to, The Ticket would get ratings credit through
22 Nielsen from listening to that content because it is
23 The Ticket's content.

24 Q. Okay. I didn't want to get too inside baseball but you
25 raised the issue.

1 On these rebroadcasts of the air -- of the on-air
2 segments, there's a way for you to get Nielsen credit for your
3 radio station, right?

4 A. Yes.

5 Q. And that's if people listen within 24 hours of the airing
6 of that content?

7 A. That's correct.

8 Q. And after that 24 hours, you no longer get any credit for
9 that, right?

10 A. That's correct.

11 Q. And for -- for you to get credit for that -- let's -- I'll
12 call it catch-up listening. Have you ever heard of that?

13 A. No. I call it time shifted.

14 Q. Time shifted. Okay. We'll go with that.

15 When you get -- well, let's -- let's go -- let's back up a
16 little bit so that we can -- we can educate the folks who
17 aren't understanding what we're talking about.

18 The way Nielsen works is -- is they have people who carry
19 around PPMs, right?

20 A. Yes.

21 Q. Okay. And the PPM's a portable people meter?

22 A. Yes.

23 Q. And these people carry around -- I think they put it on
24 their belt or wear it somehow. And anytime they're interacting
25 with, listening to radio, there is a code -- you guys encode

1 your -- your audio so that when that -- that PPM hears it, it
2 knows what station that person is listening?

3 A. That's correct.

4 Q. And when -- when you put these podcasts onto your website,
5 does it have the encoding?

6 A. Yes.

7 Q. Okay. And that's how you get credit for your radio
8 station, is if somebody listens to that podcast within 24 hours
9 of the airing of the original content, you can get credit for
10 that?

11 A. That's correct.

12 Q. Otherwise, you don't?

13 A. Well, if you listen to it live, we also get credit for it.

14 Q. Well, of course. Good point.

15 So you can listen live, you get ratings credit, right?

16 A. Yes.

17 Q. Or you can listen to the podcast within 24 hours and get
18 ratings credit for the radio station, right?

19 A. Correct.

20 Q. That's not ratings with respect to the podcast, right?

21 A. I don't understand what you mean.

22 Q. Well, is there a -- is there a podcast rating system?

23 A. No. It's all the same -- same rating system.

24 Q. Now, what you're saying is -- on The UnTicket, is -- is
25 that encoded as well?

1 A. I don't know that.

2 Q. So what you said a minute ago that you would get Nielsen
3 credit for what goes on The UnTicket, that's not true. They
4 don't encode that audio, do they?

5 A. I don't know if they do.

6 Q. Okay. USave.it. What is that?

7 A. As far as I know, it's a component of The UnTicket.

8 Q. Well, let me back up -- let me back up and finish up with
9 The UnTicket.

10 So if you're not getting credit for it because they don't
11 encode the podcast to allow the -- the Nielsen PPM to pick it
12 up, if you're not getting credit for it, it's competing with
13 you, isn't it?

14 A. I don't view it as competition because it's the same
15 Ticket content, it's Ticket brand.

16 Q. And you don't mind -- you call -- you call your broadcast
17 your intellectual property, right?

18 A. Yes.

19 Q. And you don't mind that these people just take your
20 intellectual property and use it for their own financial gain?

21 A. I'm not sure they get financial gain from it.

22 Q. That's why we'll move to uSave.it.

23 What does uSave.it do?

24 A. I think it's a radio DVR.

25 Q. Okay.

1 A. In layman's terms.

2 Q. And they put the full broadcast day of The Ticket on their
3 site every day, right?

4 A. They time shifted by 24 hours.

5 Q. And that's -- it's because of the Nielsen stuff, right?

6 A. Correct.

7 Q. Okay. But within 24 hours of a day, let's -- let's just
8 take today's broadcast. That will be up, today's full Ticket
9 broadcast from 5:30 a.m. to 7:00 p.m., that will be up on
10 uSave.it on Monday?

11 A. I don't know the answer to that question.

12 Q. Well, typically it is, right? They've got every single
13 day.

14 A. Sir, you said uSave.it and I don't know the answer to
15 that. I don't know that.

16 Q. All right. But that's a subscription-based service,
17 right?

18 A. I think it's a radio DVR.

19 Q. But you have to subscribe to it to listen to the radio?

20 A. I think you do.

21 Q. Okay. Yeah.

22 So the -- uSave.it is taking The Ticket's original on-air
23 content and making money on it, right?

24 A. I don't know the answer to that.

25 Q. Well, I mean, if they're making subscription -- if they're

1 getting subscriptions, they're probably making money, right?

2 A. I don't know the answer to that.

3 Q. Okay. You've never talked to the owner of uSave.it?

4 A. No, not to my knowledge.

5 Q. Do you know his name?

6 A. No.

7 Q. You talked about ratings a minute ago. Did The Ticket's
8 ratings normally have a little bit of a dip this time of year?

9 A. Define "this time of year."

10 Q. You know, the May, June, July, August time frame and
11 there's not many sports going on and the Cowboys hadn't started
12 yet?

13 A. That's incorrect.

14 Q. It doesn't go down?

15 A. Not by the way you asked me the question, sir.

16 Q. Okay. Well, you tell me. I know there's a lot of ways to
17 look at ratings. You tell me. Is there a time when you expect
18 ratings to be lower than normal?

19 A. The ratings month of July and the ratings month of
20 December.

21 Q. Okay.

22 A. And the ratings month of March would be lower than typical
23 months.

24 Q. And you would -- you would anticipate that the -- the
25 ten -- that the noon to 3:00 time slot that -- that the Hang

1 Zone used to operate in with the new host is going to have,
2 like you said, a six-month, year, or maybe even more period
3 where they -- they're not going to do as well, right?

4 A. I don't have any way to know that right now.

5 Q. Well, I mean, that's your experience, right?

6 A. My experience is it takes six months or a year to grow a
7 new show.

8 Q. And so you would -- you would expect that those guys are
9 going to have -- it's Sean Bass and David Mino, right?

10 A. What's your question, sir?

11 Q. I stopped my question 'cause I want to make sure you know
12 who I'm talking about. It's Sean Bass and David Mino, right,
13 that are hosts?

14 A. They are hosts, yes.

15 MR. ANDERSON: Your Honor, I'm objecting. I'm not
16 sure -- I'm asking for clarity. It's vague and ambiguous as to
17 what Mr. Cawley is asking.

18 Are you asking for the 12:00 to 3:00 time slot or
19 what?

20 I'm just kind of lost on the questions, Your
21 Honor.

22 MR. CAWLEY: I'll clear it up. I stopped a question in
23 the middle, so I understand. Let me clear it up.

24 Q. The -- the Hang Zone used to operate noon to 3:00, right?

25 A. That's correct.

1 Q. I think you changed the times now, right? You got a 12:00
2 to noon -- or a 12:00 to 1:00 and a 1:00 to 3:00 now; is that
3 right?

4 A. No, that's not right.

5 Q. Okay. How is it working now?

6 A. How is what working, sir?

7 Q. What are your day parts between 10:00 a.m. and 3:00 p.m.

8 A. 10:00 to 1:00 and 1:00 to 3:00, weekdays.

9 Q. Okay. And the 1:00 to 3:00 is sort of the -- where the
10 Hang Zone used to be, right?

11 A. Partly.

12 Q. Yeah. And so wouldn't it be natural for ratings to be a
13 little lower for the -- the new guys starting in that spot
14 right now?

15 A. My answer is, no, not necessarily.

16 Q. Okay.

17 MR. CAWLEY: Your Honor, I pass the witness.

18 THE COURT: Any redirect?

19 MR. ANDERSON: Just a little bit redirect, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. ANDERSON:

22 Q. Mr. Catlin, just quickly. With respect to the -- the
23 testimony at the beginning of your cross where you talked about
24 the on-air talent sometimes refers to the Cumulus or The Ticket
25 being cheap. Do you recall that?

1 A. Yes.

2 Q. Does that -- is that intended to be in jest and fun?

3 A. Yes, it's intended to be humorous.

4 Q. And when you heard the commentary on the competing
5 podcast, the Dumb Zone, about same kind of issues of payment
6 and whatnot, did that appear to be funny to you?

7 A. It was not funny to me, no.

8 Q. Did it appear to be intended to be funny?

9 A. No.

10 Q. Very different than what was broadcast by your own on-air
11 talent?

12 A. Correct.

13 Q. Okay. With respect to the podcasts -- I think you were
14 asked earlier about if you do it directly, is it RSS?

15 A. Yes.

16 Q. You do -- you were asked about just the specific ones that
17 we saw here in these exhibits. I believe four and five, these
18 particular YouTube podcasts. But does The Ticket push some of
19 its other original content podcasts directly through RSS?

20 A. Yes.

21 Q. You talked about the notion of this, we're all competing
22 for the same time, correct? Remember that?

23 A. Correct. Yes.

24 Q. And if another podcast that is a true crime podcast,
25 still, because it's a podcast available in Dallas-Fort Worth

1 area, can compete for time, correct?

2 A. It can compete for time, yes.

3 Q. Do you view that as competitive with The Ticket?

4 A. Not necessarily because it would be trying to reach a
5 different target audience than The Ticket's, with different
6 content.

7 Q. In other words, in your experience, if someone is trying
8 to listen to a true crime podcast for the amount of time they
9 want to listen to audio content for the day, are those the same
10 folks likely to go try to listen to The Ticket?

11 A. Probably not.

12 Q. So back on the -- when you have current employees from
13 The Ticket doing original content podcasts outside of
14 The Ticket, is the subject matter of those podcasts different
15 than what they do for The Ticket?

16 A. Yes, it is.

17 Q. And hence, not competitive with The Ticket?

18 A. Correct.

19 Q. And lastly, Mr. Cawley asked you about when the -- when
20 the listeners seem angry about Susquehanna filing the lawsuit
21 and you cannot blame the Defendants for that. Let me ask you
22 this: Do you blame the Defendants for their conduct that led
23 to the lawsuit?

24 A. Yes.

25 Q. And so you feel -- you were compelled to file the lawsuit

1 as a result of the Defendants' conduct?

2 A. That's correct.

3 Q. So if the Defendants are -- I'm sorry. If the listeners
4 are mad at The Ticket for filing a lawsuit, that's a direct
5 result of the Defendants' conduct, correct?

6 A. That's what I think, yes.

7 Q. So they are at fault, correct?

8 A. Yes.

9 MR. ANDERSON: Pass the witness, Your Honor.

10 THE COURT: Anything further?

11 MR. CAWLEY: Just briefly, Your Honor.

12 RE-CROSS-EXAMINATION

13 BY MR. CAWLEY:

14 Q. I want to play you something -- a minute ago you said that
15 you wouldn't allow anything to go out over the air that was in
16 any way negative towards Dan and Jake or the Dumb Zone, right?

17 A. I don't recall what exactly I said. Can you refresh my
18 memory?

19 Q. Yes. Mr. Anderson asked you when he was trying to say
20 that the Dumb Zone has horribly disparaged The Ticket, and he
21 followed that up with you would never do that, would you?

22 MR. ANDERSON: Your Honor, I need to object. This goes
23 outside the scope of my redirect.

24 THE COURT: Overruled.

25 Q. Do you remember?

1 A. Can you please ask the question again?

2 Q. Yeah. And I'm not trying to trick you here, Mr. Catlin.
3 Mr. Anderson asked you a question to the -- along the lines --
4 and I don't have the transcript here so I don't know exactly
5 what was asked. But it was along the lines of you wouldn't
6 allow any disparagement to go on with respect to Mr. Kemp and
7 Mr. --

8 A. Correct.

9 Q. Right? Okay.

10 I want to play something for you and see if you recognize
11 what this is.

12 THE COURT: What exhibit is it?

13 MR. CAWLEY: It is Exhibit 26.

14 THE COURT: Of who? Defendants?

15 MR. CAWLEY: Defendants' Exhibit 26. Sorry, Your
16 Honor. I have the sound off.

17 All right. Let's start it over.

18 (Defendant's Audio Exhibit Number 26 playing).

19 Q. Was that at all aimed at Jake and Dan's Dumb Zone podcast?

20 A. No, it was not.

21 Q. So all the free -- you don't have to pay a subscription,
22 not behind a paywall, all that is just coincidental that that's
23 going on with them, right?

24 A. Not only is it coincidental, that promo was written,
25 produced, and put on the air while Dan and Jake were still

1 employed at The Ticket prior to the Dumb Zone podcast. Dan's
2 voice is in there at 24 seconds.

3 Q. Right. He was -- well, I don't need to go into that.

4 MR. CAWLEY: That's all I have, Your Honor. Thank you.

5 THE COURT: Okay. Anything further?

6 MR. ANDERSON: No, Your Honor.

7 THE COURT: Okay. You can step down.

8 I think you're supposed to keep the notebook
9 there, right?

10 MR. ANDERSON: Yes, Your Honor.

11 THE COURT: Thank you.

12 Call your next witness, please.

13 MR. ANDERSON: Thank you, Your Honor. Plaintiff calls
14 Dan Bennett.

15 THE COURT: Okay. Mr. Bennett.

16 (Whereupon, the oath was administered by the Court.)

17 THE COURT: Have a seat.

18 And you may proceed when you and your witness are
19 ready.

20 MR. ANDERSON: Was he sworn in already?

21 THE COURT: Yes.

22 MR. ANDERSON: I apologize. I was --

23 THE COURT: I know. Everyone's busy today.

24 MR. ANDERSON: Thank you, Your Honor.

25 (WHEREUPON, **DAN BENNETT** was called as a witness, and

1 having been duly sworn, testified as follows:)

2 DIRECT EXAMINATION

3 BY MR. ANDERSON:

4 Q. So, Mr. Bennett, will you please state your name for the
5 record?

6 A. Dan Bennett.

7 Q. Mr. Bennett, what's your current title?

8 A. Regional vice president, Dallas, Houston Cumulus Media.

9 Q. And who --

10 A. Which is the parent company for Susquehanna, LLC.

11 Q. You work for Susquehanna?

12 A. I work for Susquehanna.

13 Q. And oversee its stations, which would include The Ticket?

14 A. It includes The Ticket, six stations in Dallas, and one in
15 Houston.

16 Q. How long have you been in this audio media industry?

17 A. 52 years.

18 Q. All right. And just briefly, what are your job
19 responsibilities as a regional vice president?

20 A. Well, I'm responsible for the license of our properties,
21 ratings, revenue, employees. All of the department heads
22 report to me.

23 Q. How would you describe The Ticket's listener base?

24 A. Very passionate. Super target is 25- to 54-year-old men.

25 Q. And do you know Defendants, Mr. McDowell and Mr. Kemp?

1 A. Of course, yes.

2 Q. How long have you known Mr. McDowell?

3 A. Since we hired him in 2003, I believe.

4 Q. And how about Mr. Kemp?

5 A. Or 2000. Maybe it was -- I'm sorry. It was 2000.

6 Q. Okay. And for Mr. Kemp?

7 A. Well, I first met him when he was an intern, but he became
8 an employee, I believe, in 2009.

9 Q. Were you involved at all in the negotiation of any of
10 their employment contracts, the Defendants' employment
11 contracts?

12 A. Yes.

13 Q. Let's look at Exhibit 1 in front of you. You have the
14 notebook, Mr. Bennett.

15 I believe this is Mr. McDowell's, the last executed
16 employment contract he had with Susquehanna?

17 A. Yes.

18 Q. All right. And let me ask you this: Do all -- does
19 the -- do all employment contracts between The Ticket and its
20 employees have noncompete clauses in them?

21 A. The on-air talent.

22 Q. Mainly the on-air talent?

23 A. Mainly on-air talent.

24 Q. Was there any typical time frame -- first off, you -- are
25 you responsible or take part in the negotiation for most of the

1 contracts with the on-air talent for The Ticket?

2 A. I am, but I do have to get corporate approval before we
3 finalize it.

4 Q. You get final say-so from --

5 A. Yes.

6 Q. Okay. And who do you get final say-so from?

7 A. That would be Dave Milner.

8 Q. But you do most of the negotiating on behalf of
9 The Ticket?

10 A. Yes.

11 Q. Who typically executes the employment contracts on behalf
12 of The Ticket?

13 A. It would be -- well, the legal team, obviously, puts them
14 together.

15 Q. I'm sorry. Who signs them on behalf of --

16 A. Oh, who signs them? I sign them.

17 Q. Okay. And this first exhibit, the McDowell employment
18 agreement, you see it's dated June 2018. The very first page
19 of Exhibit 1?

20 A. Yes.

21 Q. And if you just flip to the -- towards the back. You
22 signed this agreement, correct?

23 A. Correct.

24 Q. Now, with respect to the noncompetes in -- in the
25 employment contracts for The Ticket, is there any typical time

1 frame the company -- for the duration of its noncompetes?

2 A. Noncompetes generally are six months.

3 Q. Is there any rationale from the company's perspective as
4 to why six months versus some other time frame?

5 A. Mainly because when you start a new show -- and Jeff
6 Catlin alluded to it in his testimony -- that it takes anywhere
7 from six months to a year to get a new show up and going. And
8 we feel it necessary to have that period without the former
9 on-air talent being in any kind of audio media.

10 Q. Let me touch on that. So from -- from the company's
11 perspective, what do you consider the purpose of the
12 noncompetes in your employment contracts?

13 A. Well, the purpose of the noncompetes is to protect our
14 business, to protect our ratings, to protect our revenue.
15 Again, to get us an opportunity to get a new talent up and
16 established and create a bond and a connection to the listener.

17 Q. And how does the noncompete provisions help you accomplish
18 that?

19 A. Well, it keeps the departing talent from appearing on
20 another audio media.

21 Q. For a period of time?

22 A. For a period of six months.

23 Q. During which time you develop that relationship with
24 the -- with the listener base?

25 A. Correct.

1 Q. Let's look at the agreement here, Mr. McDowell's --
2 Exhibit 1, Mr. McDowell's last known employment agreement.

3 If you look at Section 1.1, it defines company business.
4 Do you see that?

5 A. I do.

6 Q. It's the operation, promotion, and marketing of commercial
7 radio stations. What is -- what -- can you define for me,
8 based on your 50 some odd years in the industry, what's the
9 definition of a commercial radio station?

10 A. Commercial radio stations have certainly evolved. It is
11 terrestrial radio. It's streaming. It's podcasting. It's
12 promotions. It's events. It's concerts. It's a variety of
13 things that help us create revenue.

14 Q. Those -- that list of different components and functions
15 you just listed for a commercial radio station, is that what
16 The Ticket provides as well?

17 A. Yes.

18 Q. Does it try to monetize any of those functions?

19 A. We try and monetize everything.

20 Q. Fair enough.

21 Podcasts included?

22 A. Yes.

23 Q. How do you -- how does the company try to monetize
24 podcasts?

25 A. What we do with our podcasts is we bundle them with other

1 digital assets. And what we do is we bundle it, we charge the
2 client a certain amount of money and -- but it usually is in
3 a -- we usually don't -- with our digital assets, we usually
4 don't sell it separately. We usually bundle it with some other
5 things.

6 Q. Can you elaborate? What do you mean by "bundle it"?

7 A. What I mean by it is combine it with other things.

8 Q. So unlike a radio station, for broadcasting, and a
9 commercial for a car dealership, for example?

10 A. Yes. Yeah.

11 Q. How might that look different in advertisement for
12 podcasts?

13 A. Well, what you do is you -- many times we'll combine it.
14 You'll give them an on-air schedule. You'll give them
15 streaming. You'll give them maybe an event, an appearance at a
16 car dealership. It could be a variety of things.

17 Q. And so if a listener's listening to one of the podcasts
18 put out by The Ticket, would it be typical for that listener to
19 hear some sort of advertisement in that podcast?

20 A. Yes.

21 Q. Looking at 1.2, business area, in the next page. It
22 defines business area as a 50-mile radius from the company's
23 radio station KTCK-AM in the Dallas designated market area as
24 defined by Nielsen Audio. Do you know what the Dallas
25 designated market area as defined by Nielsen audio is?

1 A. Yes, I do. It is an 11-county metro area. However, the
2 counties of Dallas, Tarrant, Collin, and Denton make up
3 88 percent of that coverage.

4 Q. So the business area being within a 50-mile radius of that
5 range?

6 A. Yes.

7 Q. All right. Now, I want to turn your attention to the next
8 section, competing business, 1.3. It's defined as any person,
9 including employee, or entity carrying on a business that is
10 the same or essentially the same as the company business. Do
11 you see that?

12 A. I do.

13 Q. And company business, as we saw in the prior page, is that
14 how you define all those various functions of radio, streaming,
15 podcast, events, promotions, things of that nature?

16 A. Yes.

17 Q. All right. Let's look down at Section 1.5 for
18 Mr. McDowell's employment contract. It's listed job duties.
19 Do you see that?

20 A. I do.

21 Q. And we're not, obviously, going to read this word for
22 word. But in here, do you see -- I'm going to say about a
23 third of the way down, it's talking about working on show
24 preparation and production, including preparing and delivering
25 live and recorded commercials. Do you see that?

1 A. I do.

2 Q. And then it goes on to say, "cooperating with company to
3 create podcasts." Do you see that?

4 A. Yes.

5 Q. "Of employee's on-air shifts." Do you see that?

6 A. Yes.

7 Q. Okay. So part of Mr. McDowell's employment duties, job
8 duties were to help with the creation of podcasts for the
9 company?

10 A. Yes.

11 Q. And then further on, later on it says, "engaging in social
12 media activities, posting social media content." Do you see
13 that?

14 A. I do.

15 Q. All that was part of Mr. McDowell's job duties for
16 The Ticket, correct?

17 A. Correct.

18 Q. Now, let's look at Section 7 with respect to the,
19 noncompete, which is on Page 9.

20 Do you see Section 7?

21 A. I do.

22 Q. All right. So let's break this down. The big reason why
23 we're here today, Mr. Bennett, this noncompete section.

24 "While employed by the company, and for six months
25 following termination of such employment, employee shall" --

1 which is Mr. McDowell -- "shall not, directly or indirectly,
2 engage in any activities the same or essentially the same as
3 employee's job duties for any competing business located or
4 selling advertising" -- "located or selling advertising within,
5 or broadcasting to the business area."

6 Do you see that?

7 A. Yes.

8 Q. And the job duties that we talked about earlier and you
9 heard Mr. Catlin -- you heard Mr. Catlin's testimony today?

10 A. Yes.

11 Q. And part of Mr. McDowell's job duties would have been, you
12 know, not only hosting the -- the Hang Zone but also creating
13 podcast content?

14 A. Yes.

15 Q. And with respect to the six-month time period, is that
16 six-month time period the same -- well, let me ask you this:
17 Why was the six-month term necessary for this noncompete? Or
18 why was it chosen?

19 A. It was necessary because if they were to leave, which they
20 made the decision to do that, if they were able to go to
21 another audio platform immediately, it would hurt us. It
22 would -- it could hurt us ratings-wise and it could hurt us
23 financially.

24 Q. So using your definition we just looked at and went over,
25 and given Mr. McDowell's job duties for the company, including

1 the creation of podcasts, when you signed off on this contract
2 on behalf of The Ticket, was it your understanding that when
3 Mr. McDowell's employment came to a close, he would not be able
4 to create podcasts accessible within the Dallas-Fort Worth
5 market area for a period of at least six months?

6 A. Yes.

7 Q. And looking in that same paragraph, the next sentence,
8 Mr. McDowell acknowledges that in the event of his employment
9 terminates for any reason, he agrees he'll be able to earn a
10 livelihood without violating the restrictions in this
11 agreement, correct?

12 A. Yes.

13 Q. And if we look at Section 11 at the bottom of that page,
14 injunctive relief. Do you see where it says Mr. McDowell was
15 agreeing that with respect to -- that certain sections,
16 including the noncompete we just looked at, were "reasonable
17 and necessary to protect the company's property and business"?
18 Do you see that?

19 A. Yes.

20 Q. And he's agreeing here that -- that his breach of any
21 provision, including that noncompete, that he was agreeing to
22 injunctive relief. Do you see that?

23 A. Yes.

24 MR. KINGSTON: Objection, Your Honor. It -- it's
25 Mr. Anderson's time, but I'm -- I'm not certain what the

1 witness's opinion of contract is leading us to.

2 THE COURT: Overruled. Overruled.

3 Just to let both sides know -- I meant to tell
4 you a little bit ago before this witness came to the stand --
5 the Plaintiff had taken approximately an hour and ten minutes
6 of his time and Defendants approximately 45 minutes. So, you
7 know, this includes cross and direct. You can use your time
8 however you want. Know that I read the contract. Okay?

9 MR. ANDERSON: Yes, Your Honor.

10 Q. Mr. Bennett, with respect to these provisions that we just
11 talked about, did The Ticket -- Susquehanna believe that these
12 restrictions were necessary to protect its goodwill and
13 business interest at the time it entered this contract?

14 A. Yes.

15 Q. All right. Let's look at Agreement Number 2. This is --

16 A. I'm sorry, look at what?

17 Q. I'm sorry. Exhibit 2 in the notebook, the next document.

18 And this is Mr. Kemp's current version of the employment
19 contract?

20 A. Yes.

21 Q. And it's dated April 1st, 2022?

22 A. Yes.

23 Q. Did you negotiate this with Mr. Kemp?

24 A. No. I negotiated it with a representative that he had.

25 Q. Okay. But on behalf of -- I apologize. On behalf of

1 Susquehanna, you negotiated this contract?

2 A. Yes.

3 Q. You signed this contract?

4 A. Yes.

5 Q. Okay. If we look at company business at the bottom. This
6 one actually includes podcasting in the description, correct?

7 A. Yes.

8 Q. But with respect to Mr. McDowell's, I believe your
9 testimony was part of the definition of radio station or
10 company business include the podcasting even in Mr. McDowell's
11 contract?

12 A. Yes.

13 Q. Looking at Section 1.5, his duties and responsibilities.
14 Do you see that same language about cooperating with the
15 company to create podcasts?

16 A. Yes.

17 Q. Looking at Section 7 on Page 9. By and large, the same --
18 or substantially similar noncompete provision as to
19 Mr. McDowell's?

20 A. I'm sorry. It took me a minute to get to Page 9. What
21 section -- Section 7?

22 Q. Section 7, the noncompete.

23 A. Yes.

24 Q. Substantially the same as the provision for Mr. McDowell
25 as well?

1 A. Yes.

2 Q. Between Mr. Kemp and Mr. McDowell?

3 A. Yes.

4 THE COURT: And, sir, you can also see it on the screen
5 right next to you, too.

6 THE WITNESS: Okay. Thank you.

7 THE COURT: Both should be accessible.

8 MR. ANDERSON: Thank you, Your Honor.

9 THE COURT: At least today.

10 Q. And what I want to ask you there, Mr. Bennett, is same
11 reasons on behalf of the company as to why this six-month time
12 duration was included in Mr. Kemp's noncompete?

13 A. Yes.

14 Q. With respect to the geographic location for both
15 contracts, is it -- is it your understanding it was the intent
16 to just -- to keep it restricted to the Dallas-Fort Worth
17 market areas as defined by Nielsen?

18 A. Yes.

19 Q. So if they want to do a podcast down in Austin or Houston,
20 Texas or Tulsa, Oklahoma, could they do that?

21 A. Yes. Or a radio show, too. They could do it in an
22 outside market from here.

23 Q. As long as it wasn't accessible within the Dallas-Fort
24 Worth market?

25 A. Correct.

1 Q. And same question with respect to Mr. Kemp -- Mr. Kemp's
2 contract. At the time you signed Mr. Kemp's employment
3 agreement, did you believe that the noncompete provision was
4 reasonable as to the time duration, geographic region, and
5 activity to be restrained?

6 A. Yes.

7 Q. For both contracts?

8 A. Yes.

9 Q. And at the time you signed Mr. Kemp's contract, did you
10 believe that the restrictions contained therein, specifically
11 including the noncompete provision, was necessary to protect
12 The Ticket's goodwill and reputation?

13 A. Yes.

14 Q. And business interest? And business interest?

15 A. Yes.

16 Q. Okay. If we can briefly look at Section 6.6. Sorry. 6.3
17 at the bottom of Page 8.

18 Is this the provision pursuant to which your -- you have
19 an understanding that Mr. Kemp agreed not to disparage the
20 company?

21 A. Yes.

22 Q. All right. With respect to -- you're aware the Defendants
23 have the Dumb Zone podcast?

24 A. Yes.

25 Q. Have you -- have you heard some testimony earlier about

1 some angry listeners?

2 A. Yes.

3 Q. Did you receive any of those kind of e-mails?

4 A. Yes.

5 Q. Is it typical in your experience that when talent leaves,
6 that you get angry e-mails from listeners?

7 A. You'll get some, but this was more than I've ever
8 received.

9 Q. Can you clarify that? What was different about the kind
10 of content or e-mails from listeners in this matter regarding
11 the Defendants versus typical e-mails you might get from
12 listeners when on-air talent leaves?

13 A. Much of it was profanity laden, talked about us being
14 cheap. I think they automatically assume that we wouldn't pay
15 them the money they wanted.

16 Q. Based on your experience in the industry, I think the
17 52 +years I think you said, have you ever experienced this type
18 of listener reaction on behalf of the company that you've been
19 receiving since the Defendants left and their listeners have
20 chimed in?

21 A. Not this negative, no.

22 Q. With respect to the Dumb Zone podcast, what's your
23 understanding as to the nature of what that podcast is?

24 A. Well, my understanding -- and, you know, again, I also
25 rely on Jeff Catlin's opinion, who heads up content for our

1 group -- - is that it is basically a reenactment of their radio
2 show.

3 Q. Reenactment of the Hang Zone they did for The Ticket?

4 A. Of the Hang Zone, yes. Uh-huh.

5 Q. Do you believe it's competitive to the Hang Zone?

6 A. I do believe.

7 Q. That it competes with The Ticket?

8 A. Yes.

9 Q. Why do you believe that?

10 A. It's relatively the same show. It can be accessed pretty
11 much anytime. It can take away time away from somebody who
12 wants to listen to The Ticket.

13 Q. Do you believe that the Dumb Zone podcast being done by
14 the Defendants had had any harmful effect on The Ticket?

15 A. Yes.

16 Q. And please elaborate. What kind of harm?

17 A. Well, there's two things that -- that I look at. And I,
18 obviously, look at the ratings. Jeff Catlin detailed what's
19 happened on the ratings.

20 The other thing I look at is I pay very close attention,
21 obviously, to what's going on with our revenue. And in the
22 month of June, before they left, our revenue for The Ticket was
23 pacing down two percent versus prior year.

24 In July, which is the month that they really weren't on
25 much but for all intents and purposes, they were still employed

1 until the 14th of July. So in the month of July, our revenue
2 was down two percent versus prior year. Then August, it was
3 down four percent. And then September, we were pacing down
4 12 percent.

5 So when I look at those numbers, both ratings and revenue,
6 it was a cause for concern.

7 Q. You said ratings. Have the ratings dipped?

8 A. Yes.

9 Q. From the June through August time frame, do you know
10 the -- the drop in ratings?

11 A. Yes, I do.

12 Q. What are they?

13 A. June -- from June to August, the radio station -- and
14 sorry for the industry speak here. But it's what we call
15 prime, and that is 6A to 7P, Monday through Friday. And in
16 that period, with men 25-54, which is our target demographic,
17 we were down about 30 percent. For the old Hang Zone time
18 slot, which is noon to 3:00, we're down 45 percent.

19 Q. Does that have any impact on what you think the -- or in
20 correlation to the harm to the company's business reputation
21 and goodwill?

22 A. Sure. I think it does.

23 Q. Do you attribute any of that to the Defendants' podcast?

24 A. I can't sit here today and prove it, but it is very
25 coincidental that we're losing both audience share and we are

1 losing ground on our revenue.

2 Q. And you saw -- if we look at the e-mails that we went
3 through with Mr. Catlin, you saw direct evidence that customers
4 are saying they are leaving The Ticket to go to the Defendants'
5 podcast?

6 A. Yes.

7 Q. So you do have evidence that listeners are leaving
8 The Ticket to go to the Defendants' podcast?

9 A. Yes.

10 Q. Is there any way, as you sit here today, to -- and I
11 appreciate what -- how you describe the harm that the company's
12 facing as a result of the podcast. From a dollars and cents
13 standpoint, drop in ratings, revenue down, can you -- do you
14 know how much of that revenue decreased or ratings decreased
15 that you can with any degree of certainty attribute
16 specifically to the Defendants' competing podcast?

17 A. I think it's hard to quantify.

18 You know, the other thing that we haven't talked about is
19 our business reputation. I don't know how that's going to
20 affect us in the future. Our reputation that we have with our
21 listeners, it's hard to say how that's going to affect us in
22 the future. I just know the early signs are signs that I'm
23 concerned about.

24 Q. And are those early signs indicative that your reputation
25 is being hurt by their podcast?

1 A. Well, it certainly makes us believe that it is, yes.

2 Q. And do the e-mails you've seen appear to corroborate that?

3 A. Yes.

4 Q. Is there any way from a dollars and cents standpoint, if
5 you had to fill in a blank with a dollar sign to compensate the
6 company for the totality of the harm being caused by the
7 Defendants, would that be possible?

8 A. Today, it would not be possible, I don't think.

9 MR. ANDERSON: Pass the witness.

10 THE COURT: Okay. Cross examination.

11 MR. KINGSTON: Thank you, Your Honor.

12 THE COURT: And you heard me before that you used up
13 48 minutes on this side, roughly.

14 MR. KINGSTON: I did, Your Honor.

15 THE COURT: And we have -- I know you've got some
16 witnesses you're going to call, so...

17 You can spend your time however you want. Go
18 ahead.

19 CROSS-EXAMINATION

20 BY MR. KINGSTON:

21 Q. Hi, Mr. Bennett. Can you see Section 1.5 of Dan
22 McDowell's contract on your screen?

23 A. Yes.

24 Q. It's Plaintiff's Exhibit 1 if you prefer to look at it on
25 paper.

1 The highlighting and Mr. Anderson's reading of this are
2 interesting. Am I right in reading that it says, "cooperating
3 with company to create podcasts." That's the highlighted part,
4 right?

5 A. Yes.

6 Q. Is the next words "of employee's on-air shifts"?

7 A. I'm sorry. I don't -- what's your question?

8 Q. Is the full statement that the employee's job duty is
9 to -- is cooperating with company to create podcasts of
10 employee's on-air shifts?

11 A. That's what it says.

12 Q. So that's not what the Defendants are doing.

13 A. If they are reenacting their radio show, then maybe that
14 is what they're doing.

15 Q. You don't think it's deceptive to highlight "cooperating
16 with company to create podcasts" when it is then limited by "of
17 employee's on-air shifts"?

18 A. I'm not the one that highlighted it.

19 Q. But it was not Dan McDowell's job duty to create podcasts,
20 it was simply to cooperate with the company to put his on-air
21 content on a podcast, right?

22 A. On-air personality's job is to do a variety of things, and
23 podcast is one of them. And they also do many other things for
24 us. They do appearances and they do endorsements.

25 Q. You said you try to monetize everything. The content that

1 is published by The UnTicket and uSave.it is actually just
2 taken by those operators and then resold with no revenue to
3 The Ticket, correct?

4 A. We don't get any revenue from them, correct.

5 Q. What was the revenue last year of The Ticket?

6 A. When you say "last year," what year are you talking about?

7 Q. Fiscal '22.

8 A. It was right at \$22 million.

9 Q. What was net revenue?

10 A. That's net revenue. We always go by net.

11 Q. Okay. Given the -- the trend you're seeing in revenue and
12 ratings, will Susquehanna Radio, LLC, go bankrupt in the near
13 future?

14 A. I can't answer that.

15 Q. What portion of Susquehanna's revenue is produced by
16 The Ticket?

17 A. Are you talking about Susquehanna Dallas?

18 Q. No. I'm talking about the employer of you and the
19 Defendants, Susquehanna Radio, LLC.

20 A. LLC?

21 Q. The company we're here about today.

22 A. What's that?

23 Q. The company we're here about today.

24 A. Yes. There's two different radio stations under that LLC.
25 It is The Ticket and Hot 93.3.

1 Q. Are you headed for bankruptcy?

2 A. Not that I'm aware of, no.

3 Q. Mr. Anderson directed your attention to both of the
4 noncompetes, both in Dan's contract and in Jake's contract.
5 Why is Jake's contract different?

6 A. It is a much more recent contract, and it's not uncommon
7 for our legal department to change and modify over the years.

8 Q. But you would agree that Mr. McDowell is under different
9 restrictions than Mr. Kemp?

10 MR. ANDERSON: Objection, Your Honor.

11 A. I don't know that I would agree with that.

12 MR. ANDERSON: It's vague and ambiguous as to which
13 restrictions.

14 THE COURT: Overruled.

15 Q. Mr. McDowell's contract doesn't list YouTube, for
16 instance, as a medium that he has to avoid during the period of
17 his noncompete, does it?

18 A. Not that I'm aware of.

19 Q. So Mr. McDowell, his old time slot is noon to 3:00 and
20 we're at 12:15 right now. He could -- if he didn't have this
21 proceeding, he could be live streaming on YouTube or Twitch or
22 any of the other video mediums that are out there from noon to
23 3:00 every day right now under his contract?

24 A. I disagree.

25 Q. What would stop that?

1 A. Well, we are clear about other medium that compete with
2 our company, anybody who is in a similar business to our
3 company. And -- and I think that would encompass that.

4 Q. And -- but there's actually a definition in here. It
5 looks like competing business under 1.3 means any person,
6 including employee or entity, carry on a business that is the
7 same or essentially the same as the company business. Do you
8 see that?

9 A. Yes.

10 Q. And if we look at what the company business is under 1.1,
11 company business means the operation, promotion, and marketing
12 of commercial radio stations.

13 A. And I have explained what commercial radio stations do now
14 as opposed to 10 or 15 years ago.

15 Q. So --

16 A. They are into many more audio platforms.

17 Q. So the change in the business of the employer over time
18 changes the requirements of the contract regardless of whether
19 the language changes?

20 A. Rephrase your question, please.

21 Q. If Cumulus or Susquehanna Radio or The Ticket starts doing
22 something new, that automatically becomes part of the
23 noncompete that its employees must refrain from competing with?

24 A. If it is part of the company business, yes.

25 Q. So Susquehanna has a historical relationship with

1 Pfaltzgraff. Are you saying that Dan can't go make china?

2 A. We don't own Pfaltzgraff anymore.

3 Q. So that would come out of his noncompete. He can now go
4 make china?

5 A. Yes. He can make china, yeah.

6 Q. Yeah. Let's look at something else you required because I
7 had a question about it for a while. Section 2.4.

8 I think this is saying that the employees are required to
9 use and operate the designated company-owned social media
10 platforms in furtherance of the job duties. What -- what
11 company-owned social media platforms are there?

12 A. Well, we have -- you know, we -- we're involved in
13 Facebook, Twitter where we have our air personalities use those
14 different platforms.

15 Q. Do you -- what -- well, what platform is owned by the
16 company?

17 A. I -- I'm not -- I'm not aware of one.

18 Q. So if it was a requirement for the company to provide a
19 company-owned social media platform to the employees for the
20 furtherance of their job duties, that's something that the
21 company has not done?

22 A. I'm not aware that they have.

23 Q. I mean, Susquehanna doesn't own a social media platform,
24 right?

25 A. I don't think so.

1 Q. Okay. And so you're not -- so it'd be impossible to
2 provide the employees with the social media platform that you
3 don't own, correct?

4 A. Yes.

5 Q. Have you listened to the Dumb Zone?

6 A. I have listened to excerpts of the Dumb Zone, yes.

7 Q. Approximately, how much excerpt have you listened to?

8 A. Just various things that involve things that we were
9 concerned about.

10 Q. Could you estimate a number of minutes?

11 A. I couldn't. I would say probably -- excerpts, probably a
12 half an hour's worth.

13 Q. Okay. And that -- that half an hour's worth was enough
14 for you to determine that it was a competitive enterprise?

15 A. Yes.

16 Q. Do you know what the -- so The Ticket targets males 18 to
17 54, correct?

18 A. 25-54 --

19 Q. 25-54.

20 A. -- but we'll take males, 18-25.

21 Q. Okay. What is the demographic of the Dumb Zone listener?

22 A. I would imagine it's the same demographic.

23 Q. Do you know?

24 A. No. I haven't seen data on it yet. But since we feel
25 that it is a reenactment of the radio show, we assume it would

1 attract the same type of people.

2 Q. Well, the Judge is going to be able to listen to the radio
3 show to her heart's content 'cause I think we've given her a
4 lot of audio. You're saying she's going to listen to that and
5 it's going to sound like a reenactment of the Hang Zone?

6 A. Yes.

7 Q. We'll see.

8 You said ratings were down 30 percent overall and
9 45 percent in the -- the midday day part?

10 A. 30 percent in the month of August, specifically in that
11 month. And it is down 30 percent, 6:00 a.m. to 7:00 p.m.,
12 Monday through Friday, with 25-54 men.

13 Q. And I think Mr. Catlin said that the midday day part is
14 down 45 percent?

15 A. He did.

16 Q. Okay. How many people is that?

17 A. Well, we go by quarter hours of listening. We don't go by
18 what's called a cumulative audience. The ratings -- in other
19 words, you can have a smaller cumulative audience. Let's say
20 300,000 people. And you can theoretically beat a radio station
21 with 600,000 listeners because your people listened way more in
22 terms of core hours.

23 Q. Gotcha. But you used an example of 300,000 people. Am I
24 right in thinking that the typical Ticket segment has, over the
25 course of time, somewhere between 100' and 300,000 listeners?

1 A. When you say the typical segment.

2 Q. I would say the median segment. I think you probably have
3 more listeners in drive time, but over the course of the day,
4 how many people are listening to The Ticket?

5 A. In any given 15-minute period or...

6 Q. However you want to define it, Mr. --

7 A. Well, we reach around 350,000 people a week.

8 Q. Okay. Have you seen how many listeners the Dumb Zone has?

9 A. Yes. In terms of listeners, what I mean by that is I've
10 seen how many people they have that have signed up for it.

11 Q. And there's no other way to listen to it other than to pay
12 for it, right?

13 A. Correct.

14 Q. Okay. So it's less than 5,000 right?

15 A. Correct.

16 Q. Okay. So the 30 percent falloff in the last month could
17 equate to as many as a hundred thousand people?

18 A. Could.

19 Q. Okay. So where did they go?

20 A. Well, I think you're -- I think you're missing something.
21 The people --

22 Q. I'm sorry?

23 A. The people generally who will listen to a podcast, come to
24 an event, get super engaged with our air personalities, they
25 are the same type of people that have more of a propensity to

1 fill out or to be a part of a Nielsen survey. So when you can
2 get those very passionate, maniacal people, which I would
3 imagine people who would sign up for a podcast are, they could
4 be much more valuable than, let's say, a passive listener.

5 Q. So the damage here is Dan and Jake have somehow managed to
6 find the special secret formula for recruiting ultra important
7 listeners?

8 A. Very well could be, yes.

9 Q. That's not how Nielsen ratings work, is it?

10 A. Nielsen -- actually, when you look at the total quarter
11 hours of listening, it is the 80/20 rule. About 20 percent of
12 your people account for about 80 percent of the listening.

13 Q. I don't know. 5,000 seems like a lot less than a hundred
14 thousand to me. Wouldn't you agree?

15 A. It is a lower number.

16 Q. Okay. Let's look at the complaint real quick. Oh. Wait.
17 Let me do one more thing on Nielsen.

18 If a listener sends you an angry e-mail full of profanity
19 and says that they're leaving The Ticket and they're never
20 coming back, does that affect your ratings?

21 A. It could.

22 Q. The only way it could is if that person has a PPM,
23 correct?

24 A. People meter, yes.

25 Q. Okay. How many PPM users e-mailed you to say they were

1 mad and never coming back?

2 A. It is illegal for me to ask them if they are on a survey
3 panel, so I have no idea.

4 Q. Okay. Thank you.

5 Let's turn to the complaint. This is the last page of the
6 Plaintiff's original complaint that started this lawsuit. Is
7 that your signature?

8 A. Yes.

9 Q. And when you signed that, did you mean to represent that
10 the facts alleged in this document were true?

11 A. Yes.

12 Q. One of the things it says in here is that Dan and Jake are
13 soliciting The Ticket's advertisers to leave The Ticket and
14 support the Dumb Zone. That's one of the things that you swore
15 to in this pleading. But you now know that not to be true,
16 right?

17 A. No. I don't know that to not be true.

18 Q. What was the basis for you swearing that they are
19 soliciting Ticket advertisers?

20 A. My director of sales, RJ Lane, sent me an e-mail and said
21 it's very apparent that they're going after our listeners.

22 We know that they contacted the Tito's client. We know
23 they contacted Alamo Drafthouse. We know that they contacted
24 Prosper Ford. The net result was \$157,000 in losses that we
25 saw almost immediately from that.

1 And in that list, they basically -- the director of sales
2 basically told me that he was extremely concerned, didn't
3 understand why they were picking up the phone and calling our
4 clients.

5 Q. So your contention is not that they were trying to get
6 advertisers, your contention is that they were interfering with
7 your advertisers out of, what, spite?

8 A. No, not necessarily. The Tito's client made a reference
9 to the rep, that he inferred that there was something about
10 sponsoring their podcast. And he said that he wasn't going to
11 sponsor their podcast because he thought it was too -- too
12 small of an audience.

13 Q. But you're aware the podcast has no advertising?

14 A. I am aware that they have no advertising at this point.
15 It doesn't mean they can't in the future.

16 Q. Well, I think you're going to hear from Adam Romo in a
17 minute, who's going to say that -- far from discouraging him
18 from advertising with The Ticket, Dan actually encouraged him
19 to keep advertising with The Ticket.

20 A. Well, that's great.

21 MR. ANDERSON: Objection, Your Honor. Is that a
22 question?

23 Q. So why would you swear to the opposite?

24 A. Because of what my director of sales told me about how
25 they were contacting our clients and how it was implied that

1 they made some reference to the Tito's client about sponsoring
2 a podcast.

3 Q. I pulled up Paragraph 13 of the complaint where it details
4 the supposedly proprietary confidential information that was
5 provided to Dan and Jake.

6 Were there weekly show meetings where Defendants and
7 Susquehanna employees discussed content strategy?

8 A. Jeff Catlin handled that.

9 Q. I think you're going to hear testimony later today that
10 there were very rarely all staff meetings. But this says that
11 there were all staff meetings several times a year. Were you
12 at those?

13 A. When you say "all staff," do you mean programming staff?
14 Do you mean the total staff?

15 Q. I'm reading your complaint, sir, the one you signed.

16 THE COURT: Counsel, I don't know how this relates to
17 evidence that the Court should look at --

18 MR. KINGSTON: We'll move along.

19 THE COURT: -- with respect to the issues before the
20 Court. So if you want to use up your time -- and you won't get
21 any more time -- by going over a complaint that's not part of
22 the evidentiary hearing but part of the record, you can do so.
23 But I just want to let you know I'm scratching my head about
24 it.

25 MR. KINGSTON: Very -- I'm going to take that direction

1 to heart, Your Honor, and move on.

2 THE COURT: Okay.

3 MR. KINGSTON: It was a credibility thing, just to
4 explain.

5 THE COURT: Okay.

6 Q. You handled negotiations with Dan McDowell over his
7 employment contracts for most of the time he was employed at
8 The Ticket, correct?

9 A. No.

10 Q. Did you handle his 2013?

11 A. No. That was John Dickey, our COO of our company.

12 Q. And you didn't have any involvement?

13 A. Well, he was the one that did it with our agent. They had
14 an agent at the time.

15 Q. Is it fair for me to say, just to speed things along, that
16 you did not consider Dan McDowell to be one of the more
17 valuable hosts on The Ticket?

18 A. No, that's not true.

19 Q. Did you ever try to get Bob Sturm, his show host -- his
20 cohost on his show to negotiate separately from Dan McDowell
21 for the purpose of reducing Dan McDowell's salary?

22 A. No. What happened was in 2013, they got an offer from
23 another company and we had a right to match. And our COO told
24 me that we weren't -- we weren't going to be able to -- to
25 match both of them, that we would only match one of them.

1 Q. And is it also true that the conclusion of those
2 negotiations, both Bob Sturm and Dan McDowell took a pay cut?

3 A. Not from what we were paying them.

4 Q. I see. And you did not try six or seven times to get Bob
5 Sturm to negotiate separately from Dan McDowell?

6 A. Well, the thing is, is that what we had talked to them
7 about -- and, again, you're talking about a very long time
8 ago -- where there might be a situation where in order to make
9 the money work, we would have to pay one more than the other.
10 And we did talk to them about that.

11 Q. Did you talk to Dan about that?

12 A. No.

13 Q. So this was just Bob?

14 A. Yes.

15 Q. Okay. And did you use words such as "you should think of
16 your family"?

17 A. I don't recall.

18 MR. KINGSTON: Pass the witness, Your Honor.

19 THE COURT: Okay. Any redirect?

20 MR. ANDERSON: Just briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. ANDERSON:

23 Q. Mr. Bennett, looking back at the Exhibit 1, Mr. McDowell's
24 employment contract, Section 1.5. It's the very first document
25 of Exhibit 1. Page 2, 1.5. Mr. Kingston was trying to make

1 some points about the -- the podcast part. Do you recall that?

2 A. Yes.

3 Q. And then the highlighting being, "cooperating with company
4 to create podcasts of employee's on-air shifts." Do you see
5 that?

6 A. Yes.

7 Q. And then keep going. The next line down towards the end
8 of that line, "and other programming requirements." Do you see
9 that?

10 A. Yes.

11 Q. Is part of what -- what The Ticket was doing at the time
12 of this contract was creating podcasts?

13 A. Yes.

14 Q. And is creation of podcasts part of other programming
15 requirements?

16 A. Yes.

17 Q. So under that description there, cooperate -- and other
18 programming requirements, that could and would include
19 podcasts, the creation of podcasts?

20 A. Yes.

21 Q. Thank you.

22 MR. ANDERSON: No further questions, Your Honor.

23 THE COURT: Thank you.

24 MR. KINGSTON: Nothing, Your Honor.

25 THE COURT: Anything? Okay.

1 Sir, you can step down.

2 We are going to take a break now. But stay
3 seated. I've got a little bit of talking to do.

4 Let me explain time management -- management
5 today. Okay? I would prefer to take as short a break as
6 possible which is now, traditionally, the lunch hour. I'm
7 going to get input from both sides. You will have an
8 opportunity to take a longer break at about 2:30 to about 3:15.
9 Okay?

10 So if you want or need a longer lunch break, it's
11 not going to be something -- I think I told you last time that
12 you needed to come prepared to -- if you need a snack or if you
13 need lunch, to bring it. So my preference is to take a short
14 break now, you know, 15, 20 minutes. Maybe 20 minutes -- it's
15 12:30 -- and then get going.

16 Do you have -- you have at least one other
17 witness, right?

18 MR. PERNINI: Yes, Your Honor. We're going to call
19 both the Defendants for cross-examination and then one other
20 witness.

21 THE COURT: Okay.

22 MR. PERNINI: My understanding is we have approximately
23 an hour and 25 minutes left. Does that sound right?

24 THE COURT: About an hour and a half. Okay?

25 And so we can also -- I'd like you to talk among

1 the two of you on whether it should be -- the Defendants called
2 by direct exam followed by cross, I don't much care. I'll have
3 to think about it. Okay?

4 So let's go back to the break question. Is there
5 anyone that can't live -- that needs more than 20 minutes right
6 now so we can keep going?

7 MR. KINGSTON: No, Your Honor.

8 MR. CAWLEY: I think 20 minutes is fine.

9 THE COURT: 20 minutes okay? And you each have your
10 own conference rooms. So what we'll do is we'll break for
11 20 minutes and then we'll go -- let's see. I don't think we're
12 going to go all the way to 2:30, but we might. So we'll take
13 another long testimony.

14 Have your witnesses.

15 Yours. If they end up calling as adverse
16 witnesses on their side -- I mean, everybody's going to be able
17 to ask their questions within their time frame. Then we'll
18 take a longer break. And whether that means additional
19 witnesses or closing.

20 I have arranged for air conditioning to continue
21 and security to continue past the usual close of business in
22 this courthouse, which is around 5:00 or 5:30, and we'll go on
23 for -- I've got it reserved till 7:00 or 7:30 if we need it.
24 Hopefully, we don't but -- it's really hard to get that help
25 when I ask at the last minute rather than plan ahead.

1 So, Mr. Parson, on behalf of your crew, is the
2 plan okay to take 20 minutes and then a longer one when I have
3 my criminal sentencing?

4 MR. PERNINI: Yes --

5 THE COURT: I'm sorry. Mr. Pernini.

6 MR. PERNINI: Mr. Pernini.

7 Yes. That's fine, Your Honor.

8 THE COURT: Mr. Anderson -- Pernini, Anderson -- that's
9 fine with you all?

10 MR. ANDERSON: Yes.

11 THE COURT: And over here?

12 MR. KINGSTON: We're good, Your Honor.

13 THE COURT: You're good?

14 All right. Then let me tell you real quick. The
15 official timekeeper and -- look, if you go a little bit over,
16 I'm not going to be cutting you off mid sentence or whatever.
17 I want you all to have a general idea of where you are so we
18 can end today. Okay?

19 So I'm -- my official timekeeper is roughly an
20 hour and 20 minutes for Plaintiff and roughly -- a little
21 smidge over an hour for the Defendants. And that's where you
22 are.

23 Is there anything we need to take up right now
24 before we take this 20-minute break?

25 MR. PERNINI: Not for Plaintiffs, Your Honor.

1 MR. KINGSTON: No, Your Honor.

2 THE COURT: So it is 12:35 right now. Please be ready
3 to begin again with your next witness at 12:55.

4 One other thing while you're leaving. One of the
5 thing -- one question that I will be asking both sides is -- I
6 have, somewhere on all the paperwork up here, the order that I
7 signed off on about three weeks ago that you all prepared and
8 gave to me, which was a -- kind of a limited injunction order.

9 So one of the questions I'm going to have at the
10 end of this is if that order, or some variation of it, would be
11 something that the Defendants would be willing to continue by
12 agreement on.

13 And you all as well. Okay?

14 MR. PERNINI: Thank you, Your Honor.

15 THE COURT: And so if you could -- you are welcome to
16 talk to each other. But that is the question I'm going to be
17 asking you, and I'd like an answer today. All right?

18 MR. PERNINI: Thank you, Your Honor.

19 THE COURT: All right. Anything further? No?
20 You're excused.

21 SECURITY OFFICER: All rise.

22 (Court is in recess.)

23 THE COURT: We're on the record.

24 (Whereupon, the oath was administered by the Court.)

25 THE COURT: And when the witness is ready and you are,

1 you can proceed.

2 MR. KINGSTON: Thank you, Your Honor.

3 (WHEREUPON, **ADAM ROMO** was called as a witness, and
4 having been duly sworn, testified as follows:)

5 DIRECT EXAMINATION

6 BY MR. KINGSTON:

7 Q. Mr. Romo, full name and address, please.

8 A. Adam Edward Romo, Jr., [REDACTED], Dallas,
9 Texas 75225.

10 Q. How are you employed, sir?

11 A. I'm the CEO of EBG, LLC. It's the holding company of the
12 operating businesses of Eatzi's, Slow Bone, and a few other
13 entities.

14 Q. Okay. And are you a -- in your profession, do you
15 advertise on The Ticket?

16 A. Yes.

17 Q. How long has that gone on?

18 A. Oh, God. Almost -- ten years, almost.

19 Q. Do you have an account representative that you interface
20 with at The Ticket?

21 A. Yes, I do.

22 Q. Who's that currently?

23 A. Kevin Rachel.

24 Q. Has he been your rep for a long time?

25 A. Yes. Almost since the beginning.

1 Q. Okay. Has Mr. Rachel ever attempted to sell you podcast
2 services?

3 A. No, he has not.

4 Q. When Mr. Rachel interfaces with you about what kind of
5 advertising your business needs, what -- what is he selling
6 you?

7 A. Post-sponsorship on the radio shows.

8 Q. Are you also a listener?

9 A. I've been a P1 day one. From the beginning. Yeah, day
10 one. I'm a huge fan.

11 Q. Are you still a listener?

12 A. I am.

13 Q. Have you also listened to the Dumb Zone?

14 A. Only recently. I'm not -- I noticed a change in the
15 midday. Obviously, I was a huge fan of Dan and Jake, Bob and
16 Dan before that. And all of the shows, actually. But I have
17 never really listened to any podcast, to be honest with you.

18 So I wasn't really sure what that role was like. And when
19 I finally did -- actually, it was just this past week I
20 listened to a couple of shows, and it's a very different
21 experience.

22 Q. How so?

23 A. It's -- I don't know how to describe it. It's really --
24 it's not as visceral as the -- the shows that they do at
25 The Ticket. Those are more theatrical. They're -- you know,

1 they've got all the support teams with the board ops and the
2 producers interacting. And here you have really -- to me, the
3 impression -- at least on this one. I never heard any other
4 podcast. But to me, the impression is you just got two guys
5 talking. And it didn't remind me at all of the show that I
6 heard at the Hang Zone and before that, BaD Radio. I mean,
7 like night and day.

8 So -- and I was kind of expecting to hear, you know, what
9 the -- the previous shows. But it just wasn't. It wasn't the
10 same.

11 Q. And did you become a Ticket advertiser because of Dan
12 McDowell? Do I remember that story right?

13 A. Yeah. It was funny. Coincidentally, the way I met him is
14 after I came back -- I moved back from California after working
15 out there for about five years. And got reengaged to
16 The Ticket, 'cause I don't think they were streaming back then.
17 It was a long time ago. And I actually ran into -- I knew who
18 Dan was and I knew what he looked like. He was actually at
19 Eatzi's eating.

20 And I stopped by and I pulled up a chair and introduced
21 myself very obnoxiously, and I said, "Hey, I'm a huge fan, I
22 love your show. I love them all but I really like your show."
23 He goes, "Oh, thanks." And we just talked for a minute. And
24 he said, "Have you ever thought about advertising on
25 The Ticket," and I said, "No, I actually never thought about

1 it." He said, "Yeah, you'd be great. I love Eatzi's."

2 We kind of had that connection.

3 So once we got a couple more stores open and we have
4 the -- we have the scale to do that, I went ahead and signed on
5 to advertise with them.

6 Q. Did you speak to Dan after he left employment with
7 The Ticket?

8 A. Yeah, I did once. And I was pretty upset when that went
9 down. Well, actually, Kevin Rachel's the one that told me,
10 "Hey, it's official. Dan's gone." So I didn't know that until
11 Kevin told me.

12 And I was -- I was shocked because I really -- in my gut,
13 I thought that the two sides would reach a common ground. In
14 my view, in all my years of business, it's -- you know, it
15 takes both sides to reach the common -- a common ground, you
16 know. Most sides have to give a little. Both sides have to
17 get a little, give a little for it to be a good deal. And I
18 was shocked, so -- to say the least. I was pretty upset.

19 Q. Did Mr. McDowell say anything about your continued
20 advertising on The Ticket?

21 A. Well, he did. And it was in this context. So when my rep
22 reached out to me, he explained to me, "Hey, look, we don't
23 know who the midday is going to be." And I said, "Well, do you
24 have any idea?" And he said, "No, but we are working on some
25 big names," blah, blah, blah.

1 And I just said, "Well, I don't think I have an interest
2 in midday." I said I would -- you know, I -- I had a really,
3 really strong advocate for my brand. That's important to me.
4 Spent a lot of money for that and I get a lot for it, so I
5 recognize that.

6 I said it'd need to be somebody morning or afternoon, you
7 know, one of the other big names. And he said, "Yeah. Yeah,
8 we can work that out. You know it'll cost you more," and --
9 and I'm thinking, okay. So I just lost a person who is
10 organically a longtime customer and a big advocate, and it came
11 through in the ads. I mean, it was very apparent how much he
12 really genuinely was a customer of my brand.

13 So I lose that and then -- but now I got to pay more. I
14 mean, it was like salt in the wound. And so that was like --
15 and I think that was an early, mid-afternoon call. And that
16 night, I -- when I got home, I sat -- I was thinking about the
17 whole thing and how it was affecting me and my brand. And I
18 just basically sent him an e-mail terminating our services.

19 Look, you know -- and I explained. I said, "You know,
20 just lost this. The midday 's a mess. Norm just left, now
21 this. You know, now I get to pay more." I mean, I said, "I'm
22 done. You know, we can maybe discuss this again if you -- once
23 you guys figure this out." And he reached out a couple of
24 weeks later.

25 Oh. Then I spoke to Dan. I said, "Hey, I quit." He

1 goes, "You did?" And he was shocked. And he said -- I said,
2 "Yeah, the whole thing is ridiculous." He goes, "Look," he
3 goes, "You need to do what's good for your business. Don't do
4 this for me or Jake." He said, "What I'm doing is good for me
5 and my family, I believe." He goes, "You need to do what's
6 good for you and your business."

7 And I was really surprised to hear him say that. I mean,
8 that's the first discussion that we had about any of this in
9 any depth.

10 And so, I said, "Well, look, I appreciate it." Like I
11 said, I was really surprised to hear that. And I said, "Okay,
12 well, thanks for that."

13 And so I -- I guess Kevin reached back out to me maybe two
14 or three weeks later, said, "Hey, I got a plan. Here's what I
15 would do. You know, hold your rates steady. We'll do this."
16 I said, "Well, how about this." You know, I said, "Well, I got
17 thoughts on another person." 'Cause I said "This guy's a real
18 -- he's a fan."

19 I'm trying to get what I lost, right, somebody who's an
20 organic, you know, really zealot of our brand and that shops
21 there already. So -- which is what Dan was. And so we talked
22 about it and -- and then I reengaged. So -- yeah.

23 And Dan never asked me to advertise. I didn't ask him
24 about it. He didn't offer to me about -- again, this whole
25 podcasting world is different to me -- new to me. It's very

1 different. I think it's a whole different world. It's just
2 kind of interesting listening. I didn't realize what -- what I
3 hear -- like, I listen to the Top 10. I don't -- actually, I
4 asked this once a long time ago. Why -- it's not a podcast.
5 Why do you guys call it a podcast? I go, it's just a replay of
6 other -- of what's already transpired.

7 So I was very confused as a -- you know, reading, as an
8 avid listener and then, you know, all -- all forms of the media
9 that they present. So that was new to me. So I never thought
10 of it as a podcast because it's just a replay of the, you know,
11 the day's Top 10 segments, if you will.

12 Q. Thank you, Mr. Romo.

13 MR. KINGSTON: Pass the witness, Your Honor.

14 THE COURT: Okay. Cross.

15 MR. PERNINI: Just short, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. PERNINI:

18 Q. Mr. Romo, you said that you did host sponsorships on the
19 Hang Zone?

20 A. Yes.

21 Q. Okay.

22 A. Well, I mean -- yeah, I was an advertiser.

23 Q. Right. I thought you said -- if I was wrong, please
24 correct me -- the type of advertising you did was a host
25 sponsorship?

1 A. I guess I considered all those synonymously. I mean,
2 whether you're a sponsor or an advertiser or you're engaging
3 the hosts. I mean, it may not -- the vernacular may be
4 different. I don't know, you tell me.

5 Q. And that's one of the questions I have for you. So the
6 host in this case of the Hang Zone was Dan McDowell, or one of
7 them, right?

8 A. Yes.

9 Q. And did he personally promote your business on the show?

10 A. Yes, but he was paid to.

11 Q. Right. That's what I mean.

12 A. Okay.

13 Q. It wasn't like you had an ad with a paid person coming on
14 saying here's my business. You had the actual host of the show
15 promote your business, right?

16 A. Yes.

17 Q. Okay. And that's what you called a host sponsorship,
18 right?

19 A. Yes.

20 Q. And that's what you were interested in selling for your
21 business, right?

22 A. Yes.

23 Q. Okay.

24 A. Yes.

25 Q. You didn't ask Mr. -- is it Rachel?

1 A. Kevin.

2 Q. Kevin Rachel?

3 A. Uh-huh.

4 Q. You didn't say to him, "I want to know every type of
5 advertisements available," right?

6 A. No, but he would offer me other things as well. Like,
7 I've done some advertising on KSCS. They're the country
8 station. I've done some spots on -- what's the talk radio --
9 or the Mark Davis, I think, is one of the stations that you
10 guys have, I think.

11 So I've done some on their other -- he's offered those.
12 He's never offered a podcast or anything else. So I think
13 he's -- he's -- the context is I'm always trying to give you as
14 much reach as you can. So you may not be interested and don't
15 feel pressured, but I'm giving you opportunities if you think
16 they make sense for you. So those things with these other
17 stations, I've done that.

18 Q. Okay. You said you listened to their podcast last week --

19 A. Yes.

20 Q. -- is that right?

21 And that was after you've been asked to come and testify,
22 right?

23 A. Yes.

24 Q. Okay. Which -- which episodes did you listen to?

25 A. Oh, I don't remember. It was -- I don't remember. It

1 was... it was one day in the last week. I can't remember.

2 Q. Okay. You mentioned that when you found out that they --

3 A. I had to pay to -- to sign up, though. So...

4 Q. You mentioned that you -- when you found out that Mr. Kemp
5 and Mr. McDowell were leaving The Ticket, that you were upset?

6 A. Very.

7 Q. Okay. And I think you made the comment that, you know,
8 both sides have to get common ground, right?

9 A. Yes.

10 Q. It is fair to say that you don't know what happened in the
11 negotiations between The Ticket and Mr. Kemp and Mr. McDowell,
12 right?

13 A. No. But I've read the -- the complaint and I've read --
14 it's all online. You know, all those threaten -- all those
15 threats of -- and these -- these, you know -- the foul
16 language. Yeah, I read all that stuff.

17 Q. Let me make sure we're talking about the same thing.

18 A. Sure.

19 Q. So you said you were upset when you found out that the
20 relationship between Kemp and McDowell and The Ticket ended?

21 A. Yes.

22 Q. That they were no longer going to be on the show?

23 A. That's correct.

24 Q. And you said you thought that people needed to reach
25 common ground for them to stay together as an ongoing show,

1 right?

2 A. That's my philosophy in business, yes.

3 Q. You don't know about what the negotiations were to try and
4 keep them on the show that ended up not working, right?

5 A. I think I have an idea.

6 Q. Why do you think you have an idea? Did Mr. McDowell or
7 Mr. Kemp tell you what happened?

8 A. No. No.

9 Q. Okay. And you didn't speak to anyone at The Ticket
10 either, right?

11 A. Just a lot of rumors are floating around.

12 Q. Okay. Rumors?

13 A. Yeah.

14 Q. Anything other than rumors?

15 A. No.

16 Q. Okay.

17 MR. PERNINI: That's all I have, Your Honor.

18 THE COURT: Any redirect?

19 MR. KINGSTON: Can he be excused, Your Honor?

20 THE COURT: Not yet.

21 MR. KINGSTON: Sorry.

22 THE COURT: Any further questions?

23 MR. KINGSTON: No further questions, Your Honor.

24 THE COURT: Let's go off the record.

25 (Off the record.)

1 THE COURT: On the record.

2 Counsel, off the record I brought up whether I
3 can instruct the court reporter to strike the mention of
4 Mr. Romo's -- hold on, sir -- personal address. Any objection
5 to that?

6 MR. KINGSTON: No, Your Honor.

7 MR. PERNINI: No, Your Honor.

8 THE COURT: Okay. So, Madam Court Reporter, so
9 stricken.

10 At this time does anybody object to this witness
11 being totally excused?

12 MR. PERNINI: No, Your Honor.

13 THE COURT: Okay. You may go. Thank you, Mr. Romo.

14 MR. KINGSTON: And our thanks to Mr. Pernini.

15 THE COURT: I'm sorry?

16 MR. KINGSTON: Our thanks to Mr. Pernini for the
17 accommodation.

18 THE COURT: Thank you.

19 Call your next witness.

20 MR. PERNINI: We call Jacob Kemp.

21 THE COURT: All right. Mr. Kemp.

22 MR. PERNINI: For cross-examination.

23 (Whereupon, the oath was administered by the Court.)

24 THE COURT: Please have a seat.

25 And when the witness and you are ready, Counsel,

1 you may proceed.

2 (WHEREUPON, **JACOB MATTHEW KEMP** was called as a witness,
3 and having been duly sworn, testified as follows:)

4 CROSS-EXAMINATION

5 BY MR. PERNINI:

6 Q. Good afternoon, Mr. Kemp.

7 A. Hello, sir.

8 Q. Can you state your full name for the record?

9 A. Jacob Matthew Kemp.

10 Q. And, Mr. Kemp, when you were employed by Susquehanna
11 originally, your goal was to be on-air talent, correct?

12 A. Yes, sir. Ultimately.

13 Q. And you wanted to have the opportunity to create a
14 platform and create a following for a show that you hosted,
15 right?

16 A. Yes, sir.

17 Q. Okay. And The Ticket ultimately gave you that opportunity
18 with the show that turned out to be the Hang Zone, correct?

19 A. I would like to think that I had a hand in proving myself
20 worthy of that opportunity, but yes.

21 Q. Sure. And that's fair. So you proved yourself The Ticket
22 but then they gave you the opportunity, correct?

23 A. Sure. Yes, sir.

24 Q. And through being on that show, you developed a level of
25 local celebrity. Would you agree?

1 A. Perhaps, yes.

2 Q. I mean, you're seen -- you're seen and noticed in public,
3 that kind of thing?

4 A. At times.

5 Q. And you developed that as part of being on the show with
6 The Ticket broadcast, right?

7 A. Yes, part of that.

8 Q. Now, you understand that on-air talent at the -- at
9 The Ticket generally has noncompetes, right?

10 A. Yes, sir.

11 Q. And you understand what a noncompete is, right?

12 A. I know a lot more about it now than I ever wanted to know,
13 but, yes, sir.

14 Q. Sure. But even before this lawsuit, you were familiar
15 with what a noncompete was, right?

16 A. The concept, yes, sir.

17 Q. Okay. And turn, if you would, to -- there's a notebook in
18 front of you.

19 A. Yes, sir.

20 Q. And that Exhibit 2 is an employment agreement.

21 THE COURT: And it's also on your monitor to your
22 right.

23 THE WITNESS: Oh, okay.

24 THE COURT: As well. It should be.

25 Q. And I just want to -- if you would turn to Page 15, just

1 to confirm that's your signature.

2 A. Yes, sir.

3 Q. Okay. And this agreement is dated the first day of
4 April 2022, right?

5 A. Yes, sir.

6 Q. So that was just last year, right?

7 A. Yes, sir.

8 Q. Okay. Now, when you negotiated this agreement, at the
9 time you were negotiating this you were a host of the Hang
10 Zone, right?

11 A. Yes, sir. I had been for a period of about two years and
12 two months at that time.

13 Q. Okay.

14 A. Yeah.

15 Q. And your salary was upwards of, for the year of 2021 was
16 upwards of \$140,000, was it not?

17 A. Yes, sir. All total. I don't know if it was -- if that
18 counts salary or everything, but, yeah, total comp.

19 Q. That's correct. Total comp?

20 A. Yeah.

21 Q. And when you got this salary, you got an increase -- or
22 sorry. When you entered this new employment agreement, you got
23 an increase in your base salary, correct?

24 A. Yes, sir.

25 Q. Okay. And when you negotiated this, you were represented,

1 right?

2 A. Yes, sir.

3 Q. Okay. And you were represented by Mr. Randy Bowman?

4 A. Correct, sir.

5 Q. He's an attorney?

6 A. Yes.

7 Q. And also an entertainment agent?

8 A. Yes. He represents a number of clients at The Ticket.

9 I'm -- that I'm aware of. I don't know who else he represents,
10 but yes.

11 Q. And he has great deal of experience in the area, wouldn't
12 you say?

13 A. Yes, sir. I assume.

14 Q. Okay.

15 A. I believe he once represented Vanilla Ice.

16 Q. Okay. And you had a chance to negotiate the terms of this
17 agreement, right?

18 A. Well, some terms. I think it's understood that there are
19 some terms that are nonnegotiable.

20 Q. Okay. Who told you that?

21 A. Well, pursuant to our most recent negotiations,
22 Mr. Bennett represented to us that certain things that we
23 wanted to negotiate on were not going to be topics that would
24 be negotiated. But I did in fact, obviously, negotiate the
25 compensation and the duration of the term.

1 Q. Okay. And one of it was the noncompete that was in this
2 agreement, correct?

3 A. Yes, sir.

4 Q. And, in fact, you didn't try to negotiate that back in
5 2022, did you?

6 A. No.

7 Q. You didn't object to it, right?

8 A. No. I mean, it's just kind of understood that there's no
9 point in objecting to it because it's -- if you want to work
10 there, you're going to have to sign that.

11 Q. Okay. And -- but you did not object to it, right?

12 A. No, sir.

13 Q. You didn't say it was overly broad?

14 A. No, sir.

15 Q. You didn't say it was barred by the NLRB, right?

16 A. I had no idea what that was at the time.

17 Q. Okay. Now, let's look at that language.

18 MR. PERNINI: Can we pull up the page.

19 A. Yes, sir.

20 Q. And this is Section 7.

21 Now, you've read this before, correct?

22 A. Yes, sir.

23 Q. And you understood that you're agreeing not to use your --
24 any activities that were the same or essentially the same as
25 your job duties for any competing business within the business

1 area.

2 Did I read that correctly?

3 A. Yes, sir.

4 Q. Okay. And your job duties at the time you signed this
5 included hosting a show with Mr. McDowell, right?

6 A. Yes, sir.

7 Q. That was being transmitted to listeners in the Dallas-Fort
8 Worth area, right?

9 A. Correct, sir.

10 Q. And that's exactly what's happening with the Dumb Zone,
11 isn't it?

12 A. I would disagree with that.

13 Q. You would disagree.

14 A. Yes.

15 Q. Are you hosting a show with Mr. McDowell?

16 A. Yes. We are hosting a paywall podcast which accepts no
17 advertisement, and the format of which is quite different.
18 Frankly, it's not very good. So I would say that what we're
19 doing now is different.

20 Q. Let's --

21 A. Nowhere in the company is there a -- a subscription-based
22 podcast service. So that's why I believe this is obviously why
23 we're here today, my interpretation of it is what we're doing
24 is different.

25 Q. Okay. So right now you're not doing a podcast that's

1 available free; is that your testimony?

2 A. Yes, sir.

3 Q. Okay. In fact, after you left the company, you did do
4 free podcast, didn't you?

5 A. I believe we did maybe two, possibly three, episodes that
6 were uploaded on YouTube. You still had to go to the Patreon
7 website to access them. But they were not uploaded, I don't
8 believe, to, like, Apple podcast or Spotify or anything like
9 that. I don't believe so.

10 Q. But you didn't have to pay to listen to them, right?

11 A. I believe there were three that -- yes.

12 Q. Those three -- so every week you had one free podcast that
13 you were doing, right?

14 A. Yes, sir.

15 Q. In fact, it was your intent to continue doing that until
16 this litigation came up, right?

17 A. I don't know that we had many discussions about that, but
18 we did put them on YouTube a few times.

19 Q. Okay. Let me ask it this way: The reason you stopped
20 doing the uploading of the live not behind the paywall podcast
21 is because of this litigation; isn't that correct?

22 A. I would say that's accurate. However, I would also point
23 out that they were never live.

24 Q. Sorry. You're correct. I said live. That is not
25 correct?

- 1 A. Which we were very intentional about.
- 2 Q. They were podcasts that were free?
- 3 A. A couple of them, yes, sir.
- 4 Q. Once every week, right?
- 5 A. I believe for the first three weeks. I believe, sir.
- 6 Q. So as I understand what you're saying, your view is
7 because it is behind a paywall, it therefore is not the same as
8 being on The Ticket, correct?
- 9 A. Yes, sir.
- 10 Q. Is that the only distinction you have between what you're
11 doing now and what's barred by the noncompete?
- 12 A. I believe that's the chief distinction.
- 13 Q. Okay.
- 14 A. But -- so yes, sir.
- 15 Q. Now, you said that you are not doing a live streaming,
16 correct?
- 17 A. Correct, sir.
- 18 Q. Okay. When you left The Ticket, you did a YouTube -- or
19 YouTube episode, correct?
- 20 A. Yes, sir. We filmed a short video just simply explaining
21 that, you know, we were no longer going to be employed there.
22 And we ran that concept by Mr. Bennett before we did it.
- 23 Q. Okay.
- 24 A. That we needed to say something.
- 25 Q. So you had a YouTube that you broadcast, right?

1 A. It was not live, no, sir.

2 Q. It was not live?

3 A. Yes.

4 Q. In fact, right now you're talking about streaming again,
5 aren't you?

6 A. Can you clarify that question?

7 Q. Sure. You discussed on the air that you were considering
8 doing streaming, live streaming again, correct?

9 A. That came up in mediation, yes, sir.

10 Q. I'm talking about -- I'm not talking about mediation.

11 A. Okay.

12 Q. I'm talking about, have you told listeners that one of the
13 things you're considering doing is live streaming?

14 A. Very, very far in the future. Yes, that would be an idea
15 that we would consider. Certainly not something we're doing
16 now.

17 Q. It's not something you're doing now, but you've indicated
18 you have an intent to do it, correct?

19 A. Perhaps one day way down the road.

20 Q. Are you sitting here today saying you won't do it for the
21 next six months?

22 A. I believe that's probably a question for my attorneys.
23 But we have no -- I don't even know that we're technically
24 capable of doing that right now, to be honest with you, sir.

25 Q. Okay.

1 A. Pretty bare bones operation.

2 Q. You agree that your contract did provide that you could
3 not work for other podcasters, right?

4 A. That I cannot work for other podcasters. I suppose so,
5 yes. But as mentioned in earlier testimony, I've been doing a
6 small podcast on the side with a guy I used to work at
7 The Ticket since 2010, and that was permitted by my boss at the
8 time, Jeff Catlin.

9 Q. That's right. And that was --

10 A. It's just --

11 Q. -- IJB; is that right?

12 A. Yes, sir.

13 Q. I wanted to ask you about that. You did go to Mr. Catlin
14 and say I'm doing this podcast?

15 A. I believe I asked and --

16 Q. Right.

17 A. -- was -- yes, sir.

18 Q. And he said you could, right?

19 A. Yes, sir.

20 Q. The reason you asked is because you knew that it
21 potentially could compete with The Ticket, right?

22 A. I suppose so. It was a very long time ago. But it was
23 probably more just that I wanted him to be apprised of
24 everything that I was doing. Same with if I go write for
25 D Magazine or something like that, it's just an understood

1 thing that you're going to run that by him.

2 Q. Well, D Magazine is a written article, not a podcast,
3 right?

4 A. Correct, sir.

5 Q. Okay. So -- and Mr. Catlin said you could do this one-off
6 podcast because he listened to it and decided that it did not
7 have the same content that he felt was competing with
8 The Ticket, correct?

9 A. I can't be certain his reasoning. I just know that he
10 didn't object to it at all.

11 Q. Okay. You would agree, though, while you worked at
12 The Ticket, you were involved in a lot of podcasts, right?

13 A. Outside of IJB?

14 Q. Yeah. I mean, at The Ticket. Part of your job duties
15 included a lot of podcasts, right?

16 A. I would say the term "a lot," I'm not sure about. I think
17 we did -- three years in a row we did maybe seven episodes
18 leading up to the NFL draft.

19 Q. Okay.

20 A. And I believe that's possibly the only ones I was ever
21 involved in.

22 Q. That's the original content ones, right?

23 A. Yes, sir. Correct. Obviously, there's archival material
24 that is --

25 Q. You heard Mr. --

- 1 A. -- part of our shows.
- 2 Q. I'm sorry. You heard Mr. Catlin say that there's over
3 2,000 podcasts out there of the Hang Zone, right?
- 4 A. Yes, sir.
- 5 Q. You don't dispute that, right?
- 6 A. I mean, I have no idea to know the number, but no.
- 7 Q. Okay.
- 8 A. Those are, like I said --
- 9 Q. You also did --
- 10 A. -- segments of our show that get posted. Sorry.
- 11 Q. You also did a YouTube channel recordings for The Ticket,
12 right?
- 13 A. Yes, sir. During Cowboys season, we would do halftime.
14 It was about a seven-minute video that I would probably do six,
15 seven times a season. But those videos, like the content of
16 that, was never posted on a podcast platform.
- 17 Q. Okay.
- 18 A. It was, I believe, YouTube and Facebook.
- 19 Q. It was YouTube, right?
- 20 A. Yes, sir.
- 21 Q. Okay. Speaking of Facebook, there were some questions by
22 your attorney about the social media platforms. You remember
23 that?
- 24 A. Yes, sir.
- 25 Q. Okay. And Facebook is a social media platform, right?

1 A. Yes, sir.

2 Q. So is Twitter, right?

3 A. Yes, sir.

4 Q. You're aware that there's a Twitter account for
5 The Ticket, right?

6 A. Yes, sir.

7 Q. You're aware that there's a Facebook account for
8 The Ticket, right?

9 A. I will take you at your word. I'm not a Facebook user.
10 So that was never a part of my job.

11 Q. You understood that those were company-owned platforms for
12 The Ticket, right?

13 A. I think we're getting into a distinction between the term
14 "account" and "platform."

15 Q. Okay.

16 A. I would think more of the platform being the actual
17 business, right, like X is now known would be the platform.
18 The account, I would not consider the platform. But perhaps
19 this is minutiae. I'm not sure.

20 Q. Looking at your agreement, I want to point to another
21 point. There's an Exhibit A. It's on Page 16.

22 A. Okay. Yes, sir.

23 Q. Okay. And this is a quarterly bonus compensation, right?

24 A. I think I'm looking at the wrong thing. Oh, we're back to
25 the -- I'll just look on the screen. Yes, sir.

1 Q. Do you recognize this document?

2 A. Yes, sir.

3 Q. This basically said as the ratings of The Ticket reached a
4 certain level, you would share in profits -- not share in
5 profits. You'd get a bonus based on that, right?

6 A. Yes, sir.

7 Q. So, basically, the success of The Ticket was also a
8 financial success for you, right?

9 A. Sure.

10 Q. And if The Ticket was less successful, then that also
11 would affect you, right?

12 A. Yes, sir.

13 Q. So part of the goal in working for The Ticket was to
14 develop the goodwill of the company and so the ratings would go
15 up, correct?

16 A. My goal was to do a good show every day and then, you
17 know, hopefully that works out in the ratings game.

18 Q. Sure. And isn't part of the goal to make sure that the
19 company's goodwill is increased?

20 A. Sure.

21 Q. And the listenership is increased?

22 A. Yes, sir.

23 Q. And then if it was, you were financially rewarded for
24 that?

25 A. At times, yes, sir.

1 Q. And that's what this document shows, is that you were
2 going to specifically be financially rewarded if the ratings
3 went up, right?

4 A. Yes, sir.

5 Q. Okay.

6 A. Over a three-month period.

7 Q. Right.

8 A. So yeah.

9 Q. Now, when you signed the noncompete back in 2022, a year
10 ago, did you intend to comply with it?

11 A. Yes, sir. I suppose it's just a matter of distinction of
12 what exactly it would preclude, but, yes, sir.

13 Q. Okay. And, in fact, everything you said in this
14 agreement, you believed was true at the time, right?

15 A. Yes, sir.

16 Q. Now, you know the noncompete was limited to six months,
17 right?

18 A. Yes, sir.

19 Q. And you would agree with Mr. Catlin's testimony that it
20 takes about six months to get a new show back on its feet at
21 The Ticket, right?

22 A. He would probably know that better than me. You know, I'm
23 not in management. I might say it took us more than six
24 months, but sure.

25 Q. Okay. You certainly understood that that's why there was

1 a six-month period in the noncompete, right?

2 A. I'm not sure that I ever really considered why, that --
3 that that's why it's there, is to give a new show an
4 opportunity. I never really thought about it, to be honest
5 with you.

6 Q. Okay. Now, and you -- your last day at the -- you were
7 last paid by The Ticket on July 14th of 2023, right?

8 A. I would have to check on that because I believe we
9 actually earned a bonus for Q2 that was then paid later.

10 Q. Okay.

11 A. Even though we were no longer employed there because we
12 had -- you know, we finished number one for those three months.

13 Q. And part of the reason that you left The Ticket is because
14 you wanted to do your own show with Mr. McDowell, right?

15 A. I think we wanted to expand what we were doing a little
16 bit, very similar to what a lot of people who are currently
17 employed there and under contract are doing. So if we perhaps
18 wanted to do like a one-hour interview show or something like
19 that, we wanted the opportunity to do that. And, yeah, I mean,
20 there are other people there that are profiting on their own
21 side bits right now.

22 Q. But you were not fired from The Ticket?

23 A. No, sir.

24 Q. And you left of your own volition?

25 A. Yes, sir.

1 Q. And once you left, you and Mr. McDowell wanted to take the
2 show you were doing and continue doing it, correct?

3 A. I would not fully agree with that, sir, no. Because, I
4 mean, the show that we were doing, we had the aforementioned
5 drops that have been discussed, we had a producer, we had a
6 crew. So it's different to me.

7 Q. It's different in the sense you didn't have the producer
8 around doing everything for you?

9 A. Right. Or any production value, really, of any sort.

10 Q. But you still did talk about local sports?

11 A. Sometimes, yes. I would say less now.

12 Q. Local politics?

13 A. Maybe. I mean, I'm not -- we kind of try to stay away
14 from that a little bit.

15 Q. Pop culture?

16 A. Yes, sir.

17 Q. Okay. You had the same -- some of the same sections as
18 was in the Hang Zone, correct?

19 A. Yes, sir. I would state that those are primarily just
20 generic segments that every radio show or radio station in
21 America does, like the news.

22 Q. But you fully expected that the people that listened to
23 the Hang Zone would start listening to your show, right?

24 A. I don't know that I thought that through that much there.
25 I just -- we just started talking to each other.

1 Q. You just started talking to each other. I don't --

2 A. Myself and Mr. McDowell. We didn't, you know -- I don't
3 know that we thought too much about whether we were going to be
4 getting the same audience or not. I mean...

5 Q. Are you saying it was not important to you to have the
6 same followers?

7 A. I'm saying that I'm not sure that we ever had that
8 conversation.

9 Q. Okay.

10 A. Obviously, it's going to be a much, much smaller audience,
11 as has been represented in some of the testimony today.

12 Q. Now, you actually started recording podcasts before you
13 left The Ticket, correct?

14 A. We did sit down. And I would kind of describe it as more
15 of like an audio diary because it was a very intense time. And
16 he and I sat down and just talked and recorded it to kind of
17 save for posterity's sake. But, obviously, we never published
18 those.

19 Q. And when you started the show, you didn't have to talk
20 about The Ticket, did you?

21 A. No, sir. But I'd been there for 20 years. And it's a
22 pretty huge part of my life and it was all playing out very
23 publicly, so we did discuss it.

24 Q. Well, in fact, that was your intent to discuss The Ticket,
25 right?

1 A. I think it's our intent to just discuss what is happening
2 kind of in our lives. That's kind of our job.

3 Q. You intended -- sorry. Sorry.

4 A. No, no. Go ahead. I'm sorry.

5 Q. You intended to talk about The Ticket on literally every
6 show, didn't you?

7 A. I did not. I think it just -- it perhaps happens
8 organically, but it's not something that we go into thinking
9 that we're going to spend a bunch of time on. But I'm aware
10 that it has occurred.

11 Q. I'm going to play for you a clip, Audio A7. Why don't you
12 listen to it and tell me if you recognize the voices.

13 A. Okay.

14 (Plaintiff's Audio Exhibit Number A7 played.)

15 Q. Whose voice is that?

16 A. Mr. McDowell's.

17 Q. Do you recall him saying that on the Dumb Zone?

18 A. I actually do not, but I -- it's a common thing, I think,
19 in media where I kind of forget what happened on that day's
20 show every day. But, obviously, that's Mr. McDowell, yes, sir.

21 Q. Okay. In fact, on the Dumb Zone, you talked about
22 The Ticket on every episode until this lawsuit was filed,
23 correct?

24 A. I will take your word on that.

25 Q. In fact, weren't some of your episodes the only thing you

1 talked about was The Ticket, correct?

2 A. Again, I will take your word. I don't recall that. But I
3 feel like every episode we do a mix of stuff, but perhaps I'm
4 recalling that incorrectly.

5 Q. And you did stop talking about The Ticket once there was
6 an agreement and an order from this Court telling you to do
7 that, correct?

8 A. Yes, sir.

9 Q. And if there had not been an order from this Court, you
10 would not stop talking about The Ticket, correct?

11 A. No, sir, probably not. It's my opinion that most of the
12 things that we said were not necessarily wrong, you know, that
13 we were complimentary at times.

14 Q. Okay. We'll come back to that in a moment.

15 A. Okay.

16 Q. When you set up the podcast, you didn't make any efforts
17 to make sure that the same audience that was listening to the
18 Hang Zone couldn't hear the Dumb Zone podcast, right?

19 A. Other than the -- the paywall.

20 Q. Okay. But you're aware that you could have done that.
21 There's such thing -- you heard the phrase "geofencing"?

22 A. I have now. I was not aware of that before.

23 Q. Well, you're involved in sports radio, right?

24 A. Yes, sir.

25 Q. Okay. So you certainly heard about online gambling,

1 right?

2 A. Yes, sir.

3 Q. Okay. So you're aware that online gambling sites are able
4 to prevent people in a certain location from accessing that
5 website, right?

6 A. Yes, sir.

7 Q. Did you do any looking in to see is there a way we can do
8 a podcast that doesn't go into the Dallas-Fort Worth area as
9 our contract requires?

10 A. No, sir. I had never really put those things together,
11 that that same application to gaming sites could be applied to
12 a podcast. That was news to me.

13 Q. And part of the reason you didn't is because you wanted to
14 start your show with the same listeners that you had at the
15 Hang Zone; isn't that correct?

16 A. I think we just wanted to start recording. But we did not
17 engage in this geofencing, so...

18 Q. You wanted to start with an audience, right?

19 A. Sure. Yes, sir.

20 Q. Okay. And that audience, the most likely audience for you
21 was the audience that you developed while The Ticket put you on
22 as cohost of the Hang Zone, right?

23 A. Yes, sir.

24 Q. And, in fact, you wanted the listeners who were listening
25 to the Hang Zone to come listen to your show, right?

1 A. Yes, sir. I suppose.

2 Q. And if a listener's only going to listen to two hours of
3 audio a day, you wanted those listeners to listen to the Dumb
4 Zone, not to whatever The Ticket's putting on; isn't that
5 correct?

6 A. I'm not sure that we ever thought that through, either.
7 Very similar to the idea of guys who work at the station who
8 were doing podcasts, I would think that would apply to that as
9 well. Guys who are using Twitch video streaming during our
10 show, I would think that would apply to that as well. So --
11 sorry.

12 Q. Okay. You said -- earlier we talked streaming and you
13 said that you had plans to stream but you didn't know when
14 you'd start, right?

15 A. Yes, sir.

16 Q. Isn't the reason that you're not streaming now because of
17 this lawsuit?

18 A. I don't know, like I said, that we're even technically
19 capable of live streaming a show right now. But it's just not
20 something we considered in our immediate future at all.

21 Q. Did you recall being on a show called The Mom Game?

22 A. Yes, sir.

23 Q. What is The Mom Game?

24 A. It is a podcast posted by two individuals, one of which
25 used to work at our radio station, and the other one who works

1 for the Texas Rangers' broadcast.

2 Q. Okay. We're going to play you a clip for you on that
3 show.

4 A. Okay.

5 MR. PERNINI: And this is audio clip A12.

6 (Plaintiff's Audio Exhibit Number A12 played.)

7 Q. You said we're having to desist. You're referring there
8 to the cease and desist letter that Cumulus sent you, right?

9 A. Yes, sir. Of course.

10 Q. So on that clip, you're saying the reason we're not doing
11 live streaming is because we got a cease and desist letter from
12 Cumulus, correct?

13 A. I guess that's correct, sir. Yes, sir.

14 Q. In fact, again, your goal is to start live streaming as
15 soon as you can, correct?

16 A. I'm not exactly sure how quickly that would even be
17 technically possible, but perhaps one day way down the line.
18 Perhaps.

19 MR. PERNINI: Play audio clip A14.

20 (Plaintiff's Audio Exhibit Number A14 played.)

21 Q. You recall that from the Dumb Zone?

22 A. I do not, but obviously I just heard it.

23 Q. Okay. It indicates that live stream is coming soon,
24 doesn't it?

25 A. I don't know that I said "soon," but maybe I missed it

1 there.

2 Q. That was the tweet that Mr. McDowell was going to send
3 out, right?

4 A. I don't know -- I don't know. I never saw that tweet. I
5 don't believe that it actually was ever posted.

6 Q. Now, you said before that you had given podcasts not
7 behind the paywall until this lawsuit began, right?

8 A. Yes, sir.

9 Q. And it's your intent and desire to do that again, correct?

10 A. One day perhaps way down the line.

11 Q. One day perhaps way down the line?

12 A. Yes, sir. I'm not -- I'm not -- we have not discussed
13 that matter. We've been a bit tied up.

14 Q. Okay. Now, part of the reason -- you choose the name the
15 Dumb Zone for the show, right?

16 A. Yes, sir.

17 Q. Part of the reason you chose that name is because you knew
18 that people that listen to the Hang Zone would be familiar with
19 that phrase, right?

20 A. Yes, sir, in part, but also just that we're not smart
21 individuals and it kind of fits our show quite well. But,
22 yeah. I think we could have probably -- I don't know. I will
23 agree with your assessment, yes, sir.

24 Q. That's my point. You could have picked any name in the
25 world, right?

1 A. Sure.

2 Q. Instead, you picked a name that was developed while you
3 were at The Ticket, right?

4 A. Yes, sir.

5 Q. And you understand that listeners to the Dumb Zone
6 consider it to have the same content or format as the Hang
7 Zone, right?

8 A. I do not agree with that. So how would I be getting that
9 information?

10 Q. Okay. Well, do you follow -- you know what a subreddit
11 is?

12 A. Yes, sir. Unfortunately.

13 Q. Can you describe for the Court what a subreddit is?

14 A. It's basically just like a message board on Reddit.

15 Q. So where people can post things?

16 A. Yes, sir.

17 Q. And you follow The Ticket subreddit, don't you?

18 A. I do not.

19 Q. You do not?

20 A. I have not looked at it in several, several months. It's
21 bad for your health.

22 Q. Do you follow any subreddits?

23 A. No.

24 Q. Well, I'll going to show you Exhibit 21.

25 A. Possibly a Dallas Mavericks or NFL one, but I just don't

1 really use Reddit as part of my daily information consumption,
2 though.

3 Q. I'm going to show you Exhibit 21.

4 MR. CAWLEY: This is one we haven't agreed on yet.

5 MR. PERNINI: Oh, I'm sorry. Okay.

6 MR. CAWLEY: 21 and 23.

7 MR. PERNINI: I would like to see if he recognizes it.
8 If he doesn't, we'll move on.

9 MR. CAWLEY: Okay.

10 Q. Do you recognize this?

11 A. From -- from the evidentiary filing, yes, sir.

12 Q. Okay. You hadn't seen it before seeing the evidentiary
13 filing?

14 A. Absolutely not. I stayed away from it.

15 MR. PERNINI: I'm done.

16 THE COURT: You're done with the exhibit?

17 MR. PERNINI: I'm done with that exhibit.

18 Q. You understand that your agreement had a specific
19 provision that said you're not supposed to disparage --

20 A. Yes, sir.

21 Q. -- The Ticket, correct?

22 A. Yes, sir.

23 Q. Or Susquehanna, correct?

24 A. Correct, sir.

25 Q. And when you signed that, you intended to abide by that,

1 correct?

2 A. Yes, sir.

3 Q. Okay. And that is Section 6.3.

4 A. Yes, sir.

5 Q. And it says that you cannot disparage or encourage or
6 induce others to disparage, correct?

7 A. Yes, sir.

8 Q. Now, you control what ends up in the podcast that you send
9 out, correct?

10 A. Typically Mr. McDowell is the one who does the editing,
11 but by proxy I suppose so, yes.

12 Q. You could say we don't want that in there, right?

13 A. Yes, sir.

14 Q. There's never been an instant where you couldn't decide
15 what content is taken up, correct?

16 A. Yes, sir, that's fair.

17 Q. You heard the video -- the audio you heard earlier today
18 by the comedian. What was his name?

19 A. Akaash Singh.

20 Q. Akaash Singh.

21 You heard that, right?

22 A. Yes, sir.

23 Q. By the way, that wasn't live broadcast, right?

24 A. No, sir.

25 Q. So in other words, that was recorded. You had the time to

1 listen to it and you decided to broadcast it, right?

2 A. That's correct, sir.

3 Q. Okay. And when Mr. Akaash said you had never gotten a
4 raise, that was untrue, right?

5 A. He misrepresented the duration of time. Because it
6 actually is true that in February of 2020, that's when I became
7 a host. At the time I was making \$50,000 a year, and I did not
8 receive a pay raise until July of 2020. So he said a year,
9 which is incorrect, but it is true that I worked for a period
10 of five months on my previous salary.

11 Q. Well, we can play it again real quick because he also said
12 you didn't get a raise after that, right? Let's play it.

13 A. Yeah. He's -- yeah.

14 MR. PERNINI: So this is A1?

15 MR. DYSART: A1.

16 (Plaintiff's Audio Exhibit Number A1 played.)

17 MR. PERNINI: Pause it there. Is there a way to get
18 back?

19 Q. Did you hear where he said, "and then they didn't give you
20 a raise" on the second part?

21 A. Yes, sir.

22 Q. Okay. And that's not true, right?

23 A. I believe what he's doing is conflating two different
24 negotiations. Because when my pay raised from the \$50,000 a
25 year to the \$80,000 a year after five months, the next year I

1 was back in negotiations and my initial offer was no raise on
2 that one. Does that make sense?

3 Q. It does. But my question is: What he said is not true,
4 right?

5 A. He is conflating two different negotiations, yes, sir.
6 And he also absolutely misrepresented the duration of time, but
7 yes.

8 Q. And you didn't correct him?

9 A. No, sir.

10 Q. And you chose to put that on your show?

11 A. Yes, sir.

12 Q. You could have made the decision not to talk about
13 The Ticket at all in that show, right?

14 A. Yes, sir.

15 Q. Now, your counsel made an issue that there is a long
16 reputation of The Ticket being cheap. Do you remember that
17 questioning?

18 A. Yes.

19 Q. Okay. And if you didn't start it, you certainly, by
20 including this in your podcast, were throwing gas in the fire,
21 weren't you?

22 A. I didn't necessarily see it that way because again, like I
23 said, I've worked there for over half my life and it's kind of
24 always been a running joke.

25 Q. You thought this was funny?

1 A. No. I just mean the narrative that the company -- or
2 The Ticket is a little bit cheap.

3 Q. You knew that having Mr. Akaash on the show -- Mr. Akaash?

4 A. Akaash, yes.

5 Q. Akaash. I'll get it.

6 A. Yeah.

7 Q. You knew that having Mr. Akaash on your show talking about
8 you not getting paid would have a negative impact on
9 The Ticket, didn't you?

10 A. I didn't know. I didn't necessarily think it through, but
11 that is a fair assessment, yes, sir.

12 Q. It's a fair -- if you had thought it through, you would
13 have realized it would have a negative effect?

14 A. Sure.

15 Q. And yet you chose to go forward with it?

16 A. Yes, sir.

17 Q. Okay. And in fact --

18 THE COURT: All right. So, Counsel, you read the
19 definition of -- if we're going into --

20 MR. PERNINI: Sure.

21 THE COURT: -- 6.3. "Employee agrees not to disparage
22 or encourage or induce others to disparage the company." You
23 stopped, and the Court has read this whole section.

24 MR. PERNINI: Right.

25 THE COURT: And disparage -- "For purposes of

1 Section 6.3, the term 'disparage' includes" -- and then I'm
2 skipping -- "case is intended to, or can be reasonably expected
3 to, damage any of the company's parties."

4 So I'm looking at whether either of the
5 Defendants intended to or can reasonably expected to damage.
6 And you didn't focus on that, but that is the focus of the
7 Court. And I'm not seeing real evidence of an intention to
8 damage. It's very specific how it's worded. So I just want to
9 let you know where I'm heading.

10 MR. PERNINI: I appreciate that, Your Honor.

11 THE COURT: And, you know, putting words in his mouth,
12 it's clear from observing the demeanor of the witness, is not
13 advancing your cause on this section.

14 MR. PERNINI: Okay. Thank you, Your Honor. I
15 appreciate that.

16 Q. You've had other -- in fact, you have indicated on the
17 web -- on the podcast that you would like to bag on the
18 company, right?

19 A. I think I made a joke about that once I found out how
20 nondisparagement clauses work when I was told that,
21 essentially, it has to be something untrue. However, I made
22 that joke -- obviously, I saw in the evidentiary filing, we had
23 not, like, gone through with that, I would say.

24 Q. Okay. All right. Now you're saying you haven't gone
25 through with that. But your testimony -- and we can play that

1 clip, if we would.

2 (Plaintiff's audio exhibit playing.)

3 Q. So if you were told it's okay to bag on the company, you
4 bag on the company?

5 A. No, sir. I mean, we're -- we're doing jokes sometimes.
6 So I don't -- I don't believe that I've actually made any
7 negative comments about The Ticket because I still love it very
8 deeply. And so it's not my intention -- I have a lot of
9 friends that work there and I don't want to make life any more
10 difficult -- or I don't -- I did not have any intention to
11 speak negatively about anybody at The Ticket.

12 Q. Okay. And you could understand why someone from
13 The Ticket hearing that might think that, in fact, you're
14 planning to bag on the company, right?

15 A. Yes, sir.

16 Q. That's not unreasonable, right?

17 A. I understand, yes, sir.

18 Q. And, in fact, you made comments that you -- in this last
19 period of time. So after there was an agreement that allowed
20 you to continue broadcasting again, you had an agreement that
21 you weren't supposed to speak about the company, correct?

22 A. Yes, sir.

23 Q. Okay. And, in fact, you made comments on the podcast that
24 you are looking forward to this opportunity to speak about the
25 company again, correct?

1 A. I believe we were just looking forward to the opportunity
2 to, at some point, produce content without, you know, being too
3 worried about how it could be taken by someone.

4 Q. So, for example, if someone took the statements about a
5 podcast -- The Ticket being cheap as defamatory, you're trying
6 to avoid that?

7 A. Yes, sir. I don't -- yes, sir.

8 Q. Now, you understand that this noncompete would only last
9 for six months, right?

10 A. Yes, sir.

11 Q. Okay. And when you left, you didn't try to go to another
12 market, right?

13 A. No, sir.

14 Q. You could though, right?

15 A. I suppose we -- I could move my family, yes, sir, but...

16 Q. You didn't even have to move your family to go to another
17 market anymore. You could broadcast remotely?

18 A. I think that's probably pretty uncommon, I believe.

19 Q. It is common in the industry to move from market to market
20 though, right?

21 A. Yes.

22 Q. I mean, that's what on-air talent does. It's not an
23 unreasonable thing, right?

24 A. Sure.

25 Q. In fact, Mr. McDowell came here from Cleveland, right?

1 A. Yes, sir.

2 Q. Now, in your contract you said you were financially able
3 to survive the six-month noncompete, and I understand that's
4 contract language. But, in fact, you've already said that
5 you're financially able to take the risk on starting a new
6 venture -- new venture even if it doesn't turn out, right?

7 A. Yes.

8 Q. And, in fact, you have a lot of other ways to make money,
9 right?

10 A. I -- I write.

11 Q. You write.

12 A. Yes.

13 Q. You get income from that?

14 A. Very small amount. It's more of a passion project.

15 Q. You could do broadcast with geofencing, for example,
16 correct?

17 A. I'm now aware of that. Yes, sir.

18 Q. Okay.

19 A. I was not previously.

20 Q. You have your other podcast that's not competing with
21 The Ticket, the IJB. You can get money from that, right?

22 A. Yes, sir. My cohost primarily keeps any revenue generated
23 from that.

24 Q. Okay. And you also went on The Mom Game and said that
25 you're financially okay, right?

1 A. Yes, sir.

2 Q. Okay. And let's play that clip.

3 (Plaintiff's Audio Exhibit playing.)

4 Q. Let me pause that there.

5 MR. PERNINI: Why are we having this feedback problem?

6 MR. DYSART: It's the click share.

7 MR. PERNINI: It's the click share?

8 MR. DYSART: Just give it a second. It'll go down.

9 MR. PERNINI: Okay. Try it one more time.

10 I apologize. I don't know why the

11 technology's --

12 THE COURT: That's okay.

13 (Plaintiff's Audio Exhibit playing.)

14 MR. PERNINI: Can we just unplug it and play it from
15 your computer and turn it up real loud?

16 MR. DYSART: This is as loud as it will go.

17 MR. PERNINI: Start from the beginning.

18 (Plaintiff's Audio Exhibit playing.)

19 MR. PERNINI: Can you hear that?

20 Can the Court hear that?

21 THE COURT: Well, you can pull the microphone next to
22 it.

23 (Plaintiff's Audio Exhibit playing.)

24 Q. That was you speaking, correct?

25 A. Yes, sir.

1 Q. And so if you're asked -- or told by the Court that you
2 have to wait starting this podcast for just six months and
3 can't disparage Cumulus, you can financially survive that,
4 right?

5 A. It would certainly be for anyone, I would imagine,
6 difficult. But as I stated there, yes, I don't believe I would
7 end up, you know, destitute.

8 MR. PERNINI: Pass the witness, Your Honor.

9 THE COURT: Okay. I guess your direct.

10 MR. CAWLEY: I am directing, yes. Thank you, Your
11 Honor.

12 DIRECT EXAMINATION

13 BY MR. CAWLEY:

14 Q. Mr. Kemp, we don't have a lot of time here. Normally what
15 I would do in the beginning of this is kind of talk to you
16 about your background, your past, and all that kind of stuff to
17 introduce you to the -- to the people making decisions about
18 you, but we don't really have -- have time for that. But I do
19 want to just briefly touch on -- on who you are and what you
20 do.

21 Are you married?

22 A. Yes, sir.

23 Q. Kids?

24 A. Yes, sir. I have a four and a half-year-old and a
25 11-month-old.

1 Q. 11 months. Okay.

2 And I didn't -- I didn't tell you I was going to ask you
3 about this, but you had some issues with the birth of your son,
4 health-wise, right?

5 A. That is accurate.

6 Q. He's all right now, right?

7 A. He is.

8 MR. PERNINI: Your Honor, if he needs to take a break.

9 THE WITNESS: No, it's fine. I just was not planning
10 on this.

11 MR. CAWLEY: He's fine now.

12 THE COURT: Are we back on the record?

13 Q. Are you ready, Mr. Kemp?

14 A. Yes, sir.

15 Q. I didn't mean to spring that on you. I just thought of it
16 when the questions were being asked about you being
17 sidelined --

18 A. Yes.

19 Q. -- for six months and you'll be just fine.

20 Do you have -- you have an 11-month-old who had some
21 health problems that you had to take care of, right?

22 A. Yes, sir. It was quite expensive.

23 Q. Let's -- let's move on to your history at The Ticket.

24 Just briefly blow through your rise through the -- the levels
25 at The Ticket, would you?

1 A. Yes, sir. I was hired as an intern shortly out of high
2 school, maybe a couple of months out, in 2003. I interned for
3 two years for the afternoon program at the time, The Hardline,
4 developed a lot of great relationships there, then I went away
5 for my final two years of school. And I came back. And I
6 would say sometime within about a year, year and a half of me
7 coming back, I was hired by Mr. Catlin to work overnights on
8 the weekend and occasionally, Sunday night, you know,
9 6:00 to midnight, something like that. But it was -- it was --
10 it's an entry-level position, but it was a dream.

11 And then, yeah, from there I just sort of steadily did
12 every single job at the radio station. You know, I would do
13 Ticket Tickers, which is our sports update. I would do
14 producing, which is just helping out shows on the weekend. I
15 eventually -- my first full-time job was of the aforementioned
16 Ticket Top 10, hosting a recap show at night.

17 And then from there, was hired to be the afternoon board
18 operator; from there, was hired to be the producer of the
19 Bob and Dan show; and from there, once the light up changes
20 that we talked about occurred, I was promoted to hosting a show
21 in February of 2020.

22 Q. Sounds like you held darn near every position they've got
23 at that station?

24 A. I believe I might be the only person who's done every
25 single job there.

1 Q. The only job you've ever had?

2 A. Outside of, you know, working for a small family business,
3 yes.

4 Q. You want to be here today?

5 A. Absolutely not.

6 Q. If you had your druthers, would you -- you'd be still
7 working at The Ticket, wouldn't you?

8 A. Yes, sir.

9 Q. Do you -- let's talk about that. Why did you leave
10 The Ticket? It was your dream job, wasn't it?

11 A. Yes, sir, it was.

12 Q. Why did you leave?

13 A. Well, there were a couple of different reasons that kind
14 of came to a head at once, one of which was, as we've talked
15 about, Mr. McDowell and myself had expressed a desire to
16 possibly be able to produce some audio content, possibly video
17 content akin to what other people at the station were already
18 doing. And, you know, we had some back and forth on that.

19 I believe Mr. Bennett initially thought there was a chance
20 that might be doable. That ended up being something that was
21 just not really going to happen. Until the very, very end,
22 there was kind of a vague offer with no details attached to it.
23 But things had kind of broken down negotiations-wise at that
24 point.

25 And then the other thing that occurred during the time

1 that we were negotiating, you know, we had asked possibly about
2 some raises for our crew, which ultimately -- I believe at the
3 very end there was a -- there were small raises agreed to for
4 them.

5 And the reason I brought up those raises is because I was
6 made aware sometime in the last year that three employees
7 making between 26' and \$36,000 had signed compensation memos
8 that included noncompetes. And I never heard of that before
9 because I used to make that amount of money and I didn't have a
10 competition so I didn't have a noncompete. And that -- that
11 upset me.

12 And I raised this issue with Mr. Bennett. He expressed
13 shock that those restrictive covenants were in agreements for
14 employees making \$26,000 a year.

15 So I don't know if he knew about it or not. He did sign
16 the documents. He got back to us a couple of days later and
17 said that he had spoken with legal for Cumulus and was told
18 they didn't ask us not to put these in here. And I then asked
19 those employees a series of times over the next couple of
20 months if those restrictive covenants had been removed, 'cause
21 I was told that they would be, and they, to my knowledge, had
22 not been.

23 And at that point probably the negotiations just got a
24 little sideways and emotional, but I was no longer really
25 comfortable working there.

1 Q. Okay.

2 A. It's my understanding that those -- those employees have
3 not been notified that they no longer have noncompetes.

4 Q. There was an insinuation by Mr. Catlin earlier today -- I
5 took it as Jake didn't contribute, that when -- when the
6 pandemic hit and everybody pulled their money together,
7 Mr. Catlin said you did not participate in helping pay the
8 staff; is that true?

9 A. No. So, essentially, we all signed salary reduction
10 memos. And I definitely was a part of that. I think it might
11 have been 25 percent off of our pay for three months. I
12 believe that document might be -- have been presented in one of
13 our filings. But I definitely did that.

14 Again, at the time I was still making my previous salary.
15 So the guys -- 'cause this was, like, maybe April, I would say.
16 The guys told me, like, you don't need to chip in on this extra
17 when we pool our money together. So that part is true, but I
18 also definitely took a 25 percent pay cut for a period of three
19 or four months.

20 It's also the case that for a number of -- a number of
21 different occasions, Mr. McDowell and myself -- I can't speak
22 to what everyone else did -- we would send people money during
23 the pandemic. Anytime we ever receive a bonus, we pay our
24 employees out of our own pockets. You know, proportionate to
25 how much each one of us make, but... I mean, we've always done

1 that.

2 Q. Well, was that at a time when you were a show host making
3 the same base salary as you did as a producer?

4 A. I'd have to go back and look. I believe that's the case.
5 But if not, once I got my pay bump, it went from 50' to 80',
6 which is still vastly lower than what those other guys were
7 making. So they kind of jumped in and said, look, you don't
8 have to do this. But I did participate in the salary
9 reduction.

10 Q. Okay. You mentioned in -- you've heard it in here before
11 and you -- you talked about it with Mr. Pernini. You had a
12 podcast called IJB, right?

13 A. Yes, sir.

14 Q. Approved by The Ticket, right?

15 A. Correct, sir.

16 Q. And I think Mr. Catlin testified that he approved it
17 because at the time he didn't think it was competitive with
18 The Ticket. But at any -- you ran -- you were working that
19 podcast up till the day you left The Ticket earlier this year,
20 right?

21 A. Yes.

22 Q. Did anybody in 2023 tell you, you're competing with
23 The Ticket, stop doing IJB?

24 A. No.

25 Q. And you're aware that -- and we've gone through it and I

1 don't want to spend the time doing it here. There are other
2 employees at The Ticket that do side podcasts for money?

3 A. Side podcasts, video streams, the like, yes.

4 Q. You're aware of competitors' employees who do the same
5 thing?

6 A. Yes. In fact, that aforementioned Mom Game podcast, Julie
7 Dobbs works for 97.1, The Freak. They have a couple of other
8 employees that do -- that do podcasts. So it's not an uncommon
9 thing.

10 Q. And I was going to ask you about that 'cause Mr. Catlin
11 mentioned that The Freak uploads their podcast every day,
12 right?

13 A. I believe that's true.

14 Q. Okay. He made it sound as if they do a good job of -- of
15 podcasting their content. You agree with that -- or do you
16 even know?

17 A. I don't really know but I do believe they put their entire
18 shows up, which is also a common practice.

19 Q. And Ms. Dobbs is an on-air talent at The Freak, right?

20 A. Yes, sir. She hosts the afternoon show, I believe.

21 Q. And she does an outside podcast?

22 A. Yeah.

23 Q. And, apparently, The Freak lets her do it; is that right?

24 A. Yes, sir.

25 Q. I don't want to spend a lot of time on -- on this

1 disparaging thing, Jake. But have you ever intended to
2 disparage The Ticket or its employees?

3 A. No, sir. Like I said earlier, it's been my whole life.
4 And, you know, the guys that got those jobs when we left are --
5 they are some of my best friends, and I'm super proud of them.
6 So it's not my intention.

7 MR. CAWLEY: Your Honor, I pass the witness.

8 THE COURT: Okay. Thank you.

9 Any recross?

10 MR. PERNINI: Just one second, Your Honor.

11 No recross, Your Honor.

12 THE COURT: Sir, you may step down.

13 THE WITNESS: Thank you, ma'am -- or, Your Honor.

14 THE COURT: Next witness.

15 MR. PERNINI: We call Dan McDowell.

16 THE COURT: Okay. Mr. McDowell.

17 MS. GRIFFIN: Your Honor, can we take a short bathroom
18 break? Mr. Kemp would like to run to the restroom.

19 THE COURT: It's probably a good idea. The only
20 problem --

21 MR. PERNINI: We have a 2:30 stop, right?

22 MS. GRIFFIN: I'm sorry.

23 THE COURT: Mr. Kemp can exit and come back.

24 MR. CAWLEY: Thank you, Your Honor.

25 THE COURT: Would that be okay with this group?

1 MR. KINGSTON: It is, yes.

2 THE COURT: There's no such thing as a five-minute
3 break for -- I mean, but okay. I got to swear you in.

4 (Whereupon, the oath was administered by the Court.)

5 THE COURT: Please have a seat. And when you're ready,
6 go ahead.

7 MR. PERNINI: Thank you, Your Honor.

8 THE COURT: Let's go off the record.

9 (Off the record.)

10 THE COURT: Go back on the record.

11 Go ahead.

12 (WHEREUPON, **DANIEL McDOWELL** was called as a witness,
13 and having been duly sworn, testified as follows:)

14 CROSS-EXAMINATION

15 BY MR. PERNINI:

16 Q. State your name for the record.

17 A. Daniel McDowell.

18 Q. Mr. McDowell, you -- how long were you employed by
19 The Ticket?

20 A. Since 1999.

21 Q. Okay.

22 A. For those who got it wrong.

23 Q. And you started -- you started your career in Cleveland,
24 correct? Your radio hosting career?

25 A. No.

1 Q. Okay.

2 A. I bounced -- I started in Ohio. I bounced around the
3 state of Ohio.

4 Q. Okay. And ultimately landed up in Dallas?

5 A. Yes.

6 Q. That's not uncommon for radio hosts to move to different
7 markets, correct?

8 A. I -- I'm not very sure, but I would say it's not too
9 uncommon, yeah.

10 Q. And you've had noncompete agreements with Susquehanna
11 since the beginning, correct?

12 A. Probably. I do not recall my first couple of contracts.

13 Q. You agree that they're common in the industry for on-air
14 talent, right?

15 A. I would agree.

16 Q. Take a look at Exhibit 1, which we'll also have on the
17 screen. This is your employment agreement.

18 And there's your signature on Page 14; is that correct?

19 A. I'm sure it is.

20 Q. Okay.

21 A. When you get down to it. Yes.

22 Q. And this was -- at the time you negotiated this, you were
23 the host of the -- one of the hosts of the Bob and Dan show,
24 correct?

25 A. Yes.

1 Q. Which was also called BaD Radio?

2 A. Yes.

3 Q. And your salary at that time was well in excess of six
4 figures, correct?

5 A. I don't see it on there. Yes. Probably.

6 Q. Even before?

7 A. It was over six figures.

8 Q. Even before you signed this, you were making over six
9 figures, right?

10 A. Yes.

11 Q. Did you have an attorney to advise you on this?

12 A. We did have an attorney look over this contract, yes.

13 Q. Okay. And so you had the opportunity for someone to
14 explain all the terms to you, right?

15 A. Yes.

16 Q. And you understood the terms and intended to abide by them
17 when you signed it, correct?

18 A. Yes.

19 Q. Okay. And when you negotiated this, you didn't challenge
20 the noncompete agreement, correct?

21 A. I did not.

22 Q. Okay. You didn't discuss it with them, right?

23 A. With The Ticket?

24 Q. Yes.

25 A. No.

1 Q. Okay. If you look at Exhibit A -- sorry. Not Exhibit A.
2 Appendix A.

3 This is similar to the agreement that you had with -- or
4 that we talked about with Mr. Kemp, correct?

5 A. Similar, yes.

6 Q. Okay. And this basically says as the -- as there was more
7 listeners and goodwill built up at The Ticket, you'd get a
8 bonus based on that, right?

9 A. It does not say anything about goodwill built up at
10 The Ticket.

11 Q. Okay. It certainly has listeners, correct?

12 A. Yes. It just indicates if we get number one ratings, we
13 get that.

14 Q. Okay. Part of --

15 A. So we could have less listeners -- for instance, I think
16 recently the -- the ratings had gone down by a certain percent
17 but they're still number one.

18 Q. Okay.

19 A. So...

20 Q. You agree with me generally, ratings rise as goodwill
21 rises, correct?

22 A. I do not understand that, no.

23 Q. You don't understand that?

24 A. No.

25 Q. You don't think a reputation of a station has anything to

1 do with how its ratings are?

2 A. No.

3 Q. Okay. Do you think the reputation of the station has any
4 bearing on the company?

5 A. I don't understand that. When you try to tie ratings with
6 goodwill, I mean, Howard Stern got great ratings and a lot of
7 people think Howard Stern is very vulgar.

8 Q. Okay.

9 A. And so his ratings didn't build up goodwill for that.

10 Q. Well, Howard Stern is a show, right?

11 A. The relationship we have with the listeners, I don't know.
12 I'm just having understand -- excuse me. I got to slow down.
13 I'm having a hard time understanding the goodwill being related
14 to ratings.

15 Q. Let's work on that then.

16 A. Okay.

17 Q. Certainly the goodwill with its listeners, correct? You
18 understand that concept. If a station has goodwill with its
19 actual listeners, that will increase the number of listeners.
20 And if it has -- if that goodwill is harmed, the number of
21 listeners will go down?

22 A. I would also disagree with that in a way just because the
23 goodwill thing feels very subjective. For instance, one of
24 our -- what we view as a competitor -- our -- sorry. When I
25 worked with The Ticket, we would view the -- The Freak as a

1 competitor.

2 Q. Uh-huh.

3 A. They have great will. They're very nice people. They
4 really do a lot for their listeners. They get a terrible,
5 terrible rating. They're rated 25th in the market or 30th or
6 something. So they had built up lots of goodwill. They're
7 very friendly with their listeners, but it doesn't translate to
8 ratings, necessarily.

9 So I'm not sure that there is any correlation. That --
10 I -- I apologize for -- I'm just not understanding that that's
11 a correlation.

12 Q. That's fair.

13 You agree that the reputation of the station is important?

14 A. Sure.

15 Q. Okay. When you were employed there, it mattered to you
16 what people thought about the station, right?

17 A. In a way. What mattered to me was getting good ratings.

18 Q. That was it?

19 A. Pretty much. If you thought we were garbage but we got
20 great ratings, then I was pretty happy.

21 Q. Okay.

22 A. That's what I got paid for, to get good ratings.

23 Q. Now, the noncompete you signed, that's in Section 7,
24 right?

25 MR. PERNINI: You can pull it up.

1 A. Probably.

2 Q. You understood you were not supposed to do the same job
3 duties for a competing business, right?

4 A. Yes.

5 Q. And you understand competing business were commercial
6 radio stations, right?

7 A. That's correct.

8 Q. And you understood that commercial radio stations in 2018
9 did both on-air live broadcasts through radio waves but also
10 streaming and podcasts, right?

11 A. Can you say that again, please.

12 Q. Sure. In 2018, you're aware that commercial radio
13 stations did broadcasts through radio waves, also did
14 streaming, and also did podcasting, right?

15 A. I took that to mean broadcasting.

16 Q. Not my question. Did you understand that commercial radio
17 stations in 2018 did streaming?

18 A. Yes.

19 Q. Okay. And did you understand that commercial radio
20 stations in 2018 did podcasting?

21 A. Yes, I guess. The definition of podcast is up for debate,
22 I suppose.

23 Q. If we use the definition of podcast as an audio clip that
24 can be downloaded and listened to at any time, you were doing
25 podcasts back then, right?

1 A. If that is the definition, yes.

2 Q. Okay. Do you have another definition of podcast?

3 A. Yeah. I think generally people that listen to podcasts
4 are listening for unique content and kind of like a full --
5 full show, not like a downloaded clip that you can listen to at
6 any time. That's --

7 Q. That's your --

8 A. As a podcast listener myself to different podcasts, I
9 would say, hey, I listened to a podcast today, this -- the Joe
10 Rogan podcast. If I listen to a clip from another radio
11 station, I wouldn't say, hey, I listened to their podcast.

12 Q. While you were at The Ticket you helped create podcasts,
13 right?

14 A. Excuse me?

15 Q. While you were at The Ticket you helped create podcasts,
16 correct?

17 A. No.

18 Q. It wasn't part of your job duties to prepare podcasts of
19 your on-air shifts?

20 A. No. I didn't do that.

21 Q. Okay. That's in your contract though, right?

22 A. Where does it say that?

23 Q. Sure. Section 1.5.

24 This is Section 1.5 of your agreement. And you can see
25 about five lines down it says part of your job duties include

1 "cooperating with company to create podcasts of employee's
2 on-air shift and/or to visually record or stream such air
3 shifts for distribution?"

4 Did I read that correctly?

5 A. Yeah. Well, it says I would cooperate with the company.

6 Q. Okay. And so part of your job duties was to cooperate
7 with the company to create podcasts, right?

8 A. Of our on-air shifts, I suppose. Yeah.

9 Q. And so that's --

10 A. I just took that to mean I wouldn't complain if they took
11 our on-air shift and made it a podcast.

12 Q. That's not what it says though, is it?

13 A. I think it is.

14 Q. And it defines podcast there as podcast of on-air shifts,
15 right?

16 A. Yes.

17 Q. Okay. And you were just saying a moment ago you didn't
18 think that would be a podcast?

19 A. That's what my definition of podcast would be, yes.

20 Q. But the agreement you signed says podcast includes that,
21 right?

22 A. Yes, it does.

23 Q. Okay. And you had a chance to read this when you signed
24 it in 2018, right?

25 A. Yes.

1 Q. Okay. And you did podcasts for -- or were on podcasts for
2 The Ticket while you were employed there, right?

3 A. No.

4 Q. You understood -- you heard Mr. Catlin's testimony that
5 there were over 2,000 podcasts of the BaD Radio and --

6 A. Oh, I'm sorry. So repurposed show. Yes, then I was on a
7 podcast.

8 Q. If that's the definition of podcast, then you were on
9 almost 2,000 podcasts, right?

10 A. Okay.

11 Q. When you read -- got this contract, did you have any
12 questions? Did you ask about what a podcast was?

13 A. No.

14 Q. You understood that the company also streamed their
15 broadcast, correct?

16 A. Yes.

17 Q. Okay. Take a look, if you would, at Exhibit 6.

18 And this is a listing of the various different podcasts of
19 the BaD Radio Weekly Wrap Up. BaD Radio is Bob and Dan, right?

20 A. Yes.

21 Q. You see on the left it says playlists, podcast, right?

22 A. Yes.

23 Q. Okay. Have you seen this before?

24 A. No.

25 Q. Okay. Were you -- you were aware that these episodes were

1 provided in podcast form for people to listen to, correct?

2 A. Yes.

3 Q. Okay. And if you look at the side, there's a download
4 number there. Do you see that?

5 A. Yes.

6 Q. Okay. For the BaD Radio Weekly Wrap Up of 2-7-20. 6.8k,
7 right?

8 A. Yes.

9 Q. That's downloads of that podcast. You understand, right?

10 A. Yes.

11 Q. And at that point this was actually the Hang Zone, right,
12 or the show that would become the Hang Zone?

13 A. 2-7 -- no. 2-11 is when Jake and I started doing our
14 show.

15 Q. Okay. So the one right above it?

16 A. Yeah, yeah, yeah. I'm sorry. I was looking at the bottom
17 one. And this is something we just put together. This was not
18 put together by the station. We -- we paid the guy out of our
19 own pocket to put that together just to try to promote the
20 show.

21 Q. So you paid a guy out of your own pocket to do these -- to
22 create these podcasts?

23 A. Yeah.

24 Q. Okay. And that was at the time, right?

25 A. Excuse me?

1 Q. You did that at the time?

2 A. Yeah, yeah. We -- we paid a guy to just do the weekly
3 podcasts. It's where he would take a bunch of segments from
4 our show. To my knowledge, this isn't done for all the shows
5 on The Ticket. We did it to help grow our show and promote our
6 show. So he would put together a lot of different segments of
7 what we had done during the week and then would upload it
8 through The Ticket's website. Yeah.

9 Q. Upload it in podcast form?

10 A. Yep.

11 Q. You talked about The Freak earlier. You're aware that
12 The Freak radio station also has podcasts, right?

13 A. I am aware that they repackage their shows. I think put
14 them out full shows, or maybe segment by segment.

15 Q. And you're aware that the -- The Ticket also does original
16 content podcasting, right?

17 A. I am becoming more aware of that.

18 Q. You knew your partner did that, right?

19 A. I really wasn't aware of what he did, no. I wasn't -- no.
20 I learned a lot more in just the past month that he -- I had no
21 real idea that he did, like, these draft podcasts, no.

22 Q. And you did YouTube videos, right?

23 A. That's a stretch. I -- when we were broadcasting on
24 location, I was pulled aside and asked, hey, do you want to
25 record a video and say how the week's been and I said, sure.

1 But, apparently, they loaded that up onto YouTube. But I did
2 not consider that doing a podcast.

3 Q. Now, you left Susquehanna in July, right?

4 A. June 30th, I think was our last day, yeah.

5 Q. You got paid through July 14th, correct?

6 A. Yes.

7 Q. And, again, that was your own volition, right?

8 A. Well, my contract ended so I didn't leave.

9 Q. Okay. You also weren't fired, is what I'm trying to say.

10 A. That's correct.

11 Q. The negotiations just didn't work out?

12 A. That's correct.

13 Q. And then after that, you started doing the Dumb Zone
14 podcast, right?

15 A. That's correct.

16 Q. And you agree with Mr. Kemp that the Dumb Zone was a
17 phrase that was used on the Hang Zone, right?

18 A. Very early on. Like you guys played an audio drop. I
19 don't know that those drops were played much past the first,
20 you know -- as we were trying to decide on a name, as you can
21 see from that list you showed earlier, we -- we were just
22 throwing out a bunch of funny things. And the Dumb Zone was
23 one of the funny things that we threw out.

24 Q. The list that you talked about, that was developed while
25 you were at The Ticket, right?

1 A. Uh-huh.

2 Q. Okay. So those were names you came up and developed while
3 at The Ticket?

4 A. Yes. But, you know, I don't think that would preclude us
5 from using any of those in the future.

6 Q. Okay.

7 A. Or do you? Perhaps it would. I don't know. I guess
8 that's for the Court to decide.

9 Q. Okay.

10 MR. PERNINI: Sorry. Just a moment.

11 THE COURT: I'm going to take a pause real quick while
12 you're getting it up.

13 (Off the record.)

14 THE COURT: Back on the record.

15 Go ahead. Is there a question?

16 MR. PERNINI: Not yet. I was about to ask one.

17 Q. If you look on your screen, you see Section 15.1 of your
18 agreement?

19 A. Uh-huh.

20 Q. And this says that the property rights of every program,
21 announcement, event, and promotion with which employee renders
22 and services, the titles and content thereof, including every
23 format, idea, theme, script, characteristic, element thereof,
24 belongs to the company.

25 Do you recall that being part of your contract?

1 A. Yes. I do now.

2 Q. Okay. All right. And so, certainly, the names you
3 thought up would fit under that, correct?

4 A. So you're saying every comedy name that we thought -- like
5 even the tenth name on that list, that -- like, we can't ever
6 use those? That's what's being alleged?

7 Q. My question is: The Dumb Zone was one of the names on
8 there, correct?

9 A. It was, yeah.

10 Q. And it was in fact on the website, wasn't it?

11 A. I've learned that today.

12 Q. Okay.

13 A. It was crossed out, I guess, because of all the -- I guess
14 the guy who made our website must have --

15 Q. Right.

16 A. -- heard our comedy segment on these are the names we're
17 not using, but we are using the Hang Zone.

18 Q. Okay. And the reason you picked the Dumb Zone was because
19 it's a name that Hang Zone listeners would be familiar with,
20 right?

21 A. I'll go with Jake's answer, which was we also think we're
22 two pretty dumb guys. We just thought it would fit.

23 Q. You didn't try to find a name that would disassociate
24 yourself from the Hang Zone?

25 A. Well, I mean, we would like to use the Hang Zone, but I

1 was pretty sure we couldn't use the Hang Zone.

2 Q. Of course you'd like to use the Hang Zone.

3 A. Yeah.

4 Q. Right. Because you want to have the same audience that
5 you had at The Ticket, right?

6 A. Just the Hang Zone kind of describes two guys just hanging
7 out, more than just because it would get us the same audience.

8 Q. So it's not only 'cause it gets you the same audience, but
9 that's one of the reasons?

10 A. Well, no. I don't think it was one of the reasons, no.

11 Q. Okay. Now, when you left the company, you wanted to do
12 the same show that you were doing by podcast you were doing at
13 The Ticket, right?

14 A. That is incorrect.

15 MR. PERNINI: Let's play Audio A10.

16 (Plaintiff's Audio Exhibit Number A10 played.)

17 Q. "It feels good to do this again." That was his comment,
18 correct?

19 A. Well, I think what he's referring to is making fun of me
20 for not being able to pronounce something because I'm an idiot.

21 Q. You think he stopped making fun of you when you weren't on
22 air?

23 A. What do you mean? Oh, no. He didn't stop making fun of
24 me. He makes fun of me all the time.

25 Q. So what felt good is to be doing the podcast?

1 A. To be publicly making fun of me again.

2 Q. Okay. On the podcast. Just like he was doing on the Hang
3 Zone?

4 A. Yeah.

5 Q. Now, you got a cease and desist letter from Cumulus,
6 right?

7 A. Yes.

8 Q. And fair to say that you mocked that cease and desist
9 letter on your show?

10 A. I suppose the term "mocked" -- we joked about it, sure.

11 Q. Okay. And would it be reasonable for someone to think if
12 you're joking about it, that you weren't going to follow it?

13 A. Well, I mean, if we were on the air broadcasting, reading
14 it, then that indicates that we didn't follow it, yeah.

15 Q. Okay. And --

16 A. We didn't think it was valid.

17 Q. Okay.

18 MR. PERNINI: Why don't we play A19.

19 (Plaintiff's Audio Exhibit Number A19 played.)

20 Q. Do you recall that -- that broadcast?

21 A. I do now, yes.

22 Q. Okay. You had a choice to put any content on that
23 podcast, right?

24 A. Yes.

25 Q. That's what you chose to put on, though?

1 A. That is, apparently, what I chose.

2 Q. Do you have --

3 A. A lot of it stream consciousness talking. Yeah.

4 Q. You would agree that a reasonable person would not
5 consider that to be complimentary to The Ticket, correct?

6 THE COURT: I think, really, you've been asking lay
7 witnesses legal questions, and I just think that's
8 inappropriate. I think it's for me to decide what is
9 reasonable in light of the context of the contract, not with
10 what you're doing on cross-examination right here.

11 So that's the way I feel. If you want to keep
12 asking this question -- I just think it's improper.

13 MR. PERNINI: I appreciate it.

14 THE COURT: I'm just being honest with you.

15 MR. PERNINI: I appreciate your feedback. We'll move
16 on.

17 THE COURT: Let's go off.

18 (Off the record.)

19 THE COURT: Back on the record.

20 Go ahead.

21 Q. Under your contract, you had a budget that you could use
22 to pay for expenses for the Hang Zone, correct?

23 A. Correct.

24 Q. And it was 12.5 for you, correct? 12. -- 12,500 for you,
25 correct?

1 A. Yes.

2 Q. And that could be used to get reimbursement for any
3 expenses related to promoting the Hang Zone, right?

4 A. Eventually that was the case, yes.

5 Q. Okay. Eventually at the time of 2018 that was the case,
6 right?

7 A. Not really, no.

8 Q. Okay. Why do you say not really?

9 A. Up until after the pandemic, the budget was only used for,
10 like, if we got a weekly guest type thing. Or possibly we
11 could use it for a road show, just approved -- something
12 approved by my boss, Jeff Catlin. And that was pretty much the
13 discussion, would be about those -- those type of things but
14 not about anything else.

15 Q. Turn to Exhibit 14.

16 And this is the website for the Hang Zone, correct?

17 A. Right. Correct.

18 Q. And this was developed after the Hang Zone was -- got its
19 name while you were at The Ticket, correct?

20 A. Yes.

21 Q. So this is after the pandemic -- or I guess in the middle
22 of the pandemic, right?

23 A. I guess -- yeah. This probably didn't debut until 2021, I
24 would guess.

25 Q. And you could have sought reimbursement for this, right?

1 A. I guess. I don't know. Perhaps at the time we did this,
2 I was under the impression we could not. I'm going to have to
3 look at a timeline.

4 Q. Okay. And when you left the company and started the Dumb
5 Zone -- I'd like you to look at Exhibit 15. -- you for some
6 time redirected if someone went to the Hang Zone, they would be
7 sent to this website that says the Dumb Zone, right?

8 A. Yes.

9 Q. And these have the links of all your different Patreon
10 accounts, right?

11 A. Our different social media accounts, yes.

12 Q. So if someone said I want to see what the Hang Zone is and
13 typed in www.hangzone.com, they would see we're now the Dumb
14 Zone, correct?

15 A. Thehangzone.com.

16 Q. Thehangzone.com.

17 A. It was not hangzone.com.

18 Q. You would redirect them so that they would now be sent to
19 the Dumb Zone, right?

20 A. Yeah. We wanted to take off the -- the audio that we
21 assumed was intellectual property of The Ticket. We didn't
22 want to be posting that anymore.

23 Q. Right. But the www.thehangzone.com, you redirected,
24 correct?

25 A. That's correct.

1 Q. I will ask you this because we don't know. Sometime it
2 redirects, sometimes it doesn't. Have you made any changes to
3 that since this litigation began?

4 A. I have not. But I know what you're talking about.

5 Q. Okay.

6 A. 'Cause I went there a few days ago and I saw the audio and
7 then I went there last night and I saw this.

8 Q. And if you go --

9 A. So it --

10 Q. Sorry.

11 A. -- it might have to do something with our guy in Austin
12 who hosts the server. I don't know.

13 Q. Okay. And if you go to the Twitter account listed on the
14 Hang Zone, that link will lead you to the Dumb Zone Twitter
15 account now, right?

16 A. The name of the account is now the Dumb Zone, yeah.

17 Q. Okay. And that's an important point. The name of the
18 account is the Dumb Zone but it's still the account that was
19 the Hang Zone account, right?

20 A. Yes.

21 Q. So there were followers to the Hang Zone Twitter account?

22 A. Well, it's my personal account that I would use to promote
23 the show I was in.

24 Q. Okay. And you called it the Hang Zone, right?

25 A. Yeah.

1 Q. That you acknowledge is the intellectual property of
2 The Ticket, right?

3 A. I acknowledge what I did on the air was the intellectual
4 property of The Ticket, sure.

5 Q. So you're denying that the Hang Zone is that?

6 A. That the Twitter account was?

7 Q. The name the Hang Zone?

8 A. Using that on the air for sure, yeah.

9 Q. But when you decided to switch names, you didn't want to
10 just start a new Twitter account. You wanted to have
11 thehangzone@thehangzone.com followers, the people who were
12 following that Twitter account now be following the Dumb Zone,
13 right?

14 A. Well, it was my Twitter account. Yeah.

15 Q. When you say it was your Twitter account, the name on it
16 was the Hang Zone? Right? At the Hang Zone?

17 A. That's right.

18 Q. You could have gotten reimbursed for it but you didn't
19 ask, right?

20 A. It didn't cost any money.

21 Q. Okay. So it didn't cost you any money to have it. You
22 just set it up using thehangzone.com?

23 A. Yes. No one asked me to set it up.

24 Q. Okay. And let's --

25 MR. PERNINI: Do we have audio on that?

1 (Plaintiff Audio Exhibit playing.)

2 Q. Your goal there was to not lose the followers, right?

3 A. Yeah. Correct.

4 Q. Not lose the followers of the Hang Zone?

5 A. Right.

6 Q. Okay.

7 A. Of that account, sure.

8 Q. Right. And you also changed the Facebook page for the
9 Hang Zone to the Dumb Zone, right?

10 A. Yeah. But the Hang Zone Facebook page was set up by me
11 for sure. Jake is not on Facebook. Again, probably when we
12 first started to call it the Hang Zone. But that was, then,
13 the last day I touched it until -- until we started the Dumb
14 Zone. So...

15 Q. And --

16 A. I didn't do anything to promote that, ever. In fact, it
17 might have been dark. It might have been dormant. I'm not
18 even sure it was active.

19 Q. If you look at Exhibit 16.

20 A. Okay.

21 Q. This is the Facebook page that's been -- pardon -- the
22 Facebook thread for that has now been changed to the Dumb Zone?

23 A. Okay.

24 Q. You see how it still has Hang Zone content on it?

25 A. Yeah. Promoting the movie, yeah.

1 Q. Okay. 'Cause that's what --

2 A. That must have been, like, the only thing I did on there.

3 Q. Is to switch the name?

4 A. No, no, no. I mean like whenever I set this up, we might
5 have tried promoting one thing and then I totally lost
6 interest. I don't know.

7 Q. Okay.

8 A. So yes.

9 Q. You were trying to capture the same audience, right?

10 A. We wanted those people to know where -- like I said, I
11 didn't think we had an audience on Facebook.

12 Q. You wanted, generally, the audience to know, the people
13 who were listening to the -- people who used to listen to the
14 Hang Zone to know to come listen to the Dumb Zone, right?

15 A. Yes.

16 Q. Okay. And let's show you Exhibit 36.

17 THE COURT: Okay. Counsel, it's clear that we're not
18 going to be finished with this witness by 2:45, which is when I
19 have a criminal sentencing scheduled. We're running late on
20 that. So I'm going to recess this until after my sentencing.

21 Let's go off the record for a second.

22 (Off the record.)

23 THE COURT: Back on the record.

24 Let's go and finish the cross-examination. Go
25 ahead.

1 Q. Okay. Exhibit 36.

2 This is a tweet from a Stephanie Mills that you respond
3 to. You've seen this before?

4 A. I saw it last night.

5 Q. Okay.

6 A. Apparently, I saw it on -- sorry -- August 12th.

7 Q. On August 12th.

8 And Ms. Mills -- is it Mills? First of all, do you know
9 Ms. Mills?

10 A. No.

11 Q. Okay. She tweets, "Gutted about the Hang Zone. I need to
12 know where your podcast is. It's totally F'ed up my day and I
13 need my noon to 3:00 p.m. kick back."

14 Did I read that correctly?

15 A. Yes.

16 Q. Okay. And she's basically saying I am missing the Hang
17 Zone, where is your podcast, and you respond by tweet and say
18 come to the Dumb Zone, that's where it is, right?

19 A. Yeah.

20 Q. So you knew this was a listener of the Hang Zone that
21 wanted to find your podcast and you were happy to have her join
22 on?

23 A. Yes.

24 Q. Now, your noncompete is for six months, correct?

25 A. Yes.

1 Q. Did you ever consider just waiting for six months to start
2 this endeavor?

3 A. The podcast?

4 Q. Yep.

5 A. No.

6 Q. Did you ever consider podcasting it not in the Dallas
7 area?

8 A. I never heard of that before today.

9 Q. You never looked into it, right?

10 A. I don't think it exists.

11 Q. Okay. And you've been --

12 A. I don't think it's a real thing you can do with a podcast,
13 but... like, I don't --

14 Q. You have no idea though, do you, sir?

15 A. Yeah. I never heard of a podcast that does that, no.

16 Q. And you've not looked into it, right?

17 A. Have you heard of a podcast that does that?

18 Q. Sir, I'm the one asking the questions.

19 A. Oh, sorry. I have not.

20 Q. Okay. My question was: You didn't look into it, right?

21 A. I had not -- did not look into something I had never heard
22 of.

23 Q. And at the time, did you do --

24 MR. PERNINI: Strike that.

25 I pass the witness, Your Honor.

1 THE COURT: Okay. Let's go off the record.

2 (Off the record.)

3 THE COURT: Back on the record.

4 Counsel, we are going to take a recess in this
5 case. We'll pick up with the direct examination of
6 Mr. McDowell. I believe we'll be ready to go at 3:30. You're
7 excused.

8 SECURITY OFFICER: All rise.

9 (Court is in recess.)

10 THE COURT: Mr. McDowell, I believe, is on the stand.
11 If you can come back.

12 And we're still in the process of doing cross,
13 right?

14 MR. PERNINI: No. We passed the witness, Your Honor.

15 THE COURT: You did pass.

16 MR. PERNINI: Yes.

17 THE COURT: Okay. It's too late on Friday.

18 Have a seat. We'll go on the record.

19 Go ahead.

20 MR. KINGSTON: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. KINGSTON:

23 Q. Full name, Mr. McDowell?

24 A. Daniel McDowell.

25 Q. Who are your immediate family members?

1 A. My wife Cathy. My daughters are Ava and Eden.

2 Q. What do Ava and Eden do?

3 A. They are in college.

4 Q. And college is famously affordable these days, correct?

5 A. It is very expensive.

6 Q. Are you the primary breadwinner in your house?

7 A. Yes.

8 Q. Let's talk a little bit about how you got to Dallas and
9 some of your negotiations over the years with The Ticket. You
10 came in 1999. Who hired you?

11 A. Bruce Gilbert. He was the program director back then.

12 Q. And you came here to start a new show with Bob Sturm; is
13 that right?

14 A. Yes.

15 Q. So at that time the two of you negotiated your contracts
16 with Mr. Gilbert working together?

17 A. Yes.

18 Q. What -- did Mr. Gilbert give you any advice about contract
19 negotiation?

20 A. We were a new show starting out together. His advice was,
21 I want you guys to have the exact same contract because it's
22 very important, in his opinion, for -- what would you call it?
23 I don't know if it would be morale or just -- he, you know --
24 he had seen in the past or heard in the past about other, you
25 know, radio shows where one guy made a little more than the

1 other guy or one guy found out, you know, that it would cause a
2 friction between them, which would spill over onto the air and
3 affect the product in a negative way.

4 So he thought it just best overall -- he said, you know,
5 you guys should have the exact same contract and -- and, you
6 know, work that way as -- as you go into the future 'cause this
7 is a 50/50 proposition. You both are working just as hard on
8 the show.

9 Q. Did The Ticket's attitude toward negotiating jointly
10 change after Mr. Gilbert departed?

11 A. Yeah, I guess. Just in the sense that it was referred to
12 earlier. But my partner over the years would tell me that he
13 was pulled aside on a number of occasions and offered the
14 chance to negotiate on his own without me because it would be
15 more beneficial to him in the long run financially.

16 Q. Can you take us through what happened in the 2013 contract
17 negotiation?

18 A. At that time we had an agent. And I believe he was
19 talking to the owner of the company. And at that time, he --
20 our initial -- you know, we had been on the air together now,
21 Bob and Dan, for 14 years.

22 And he -- apparently, our agent was told -- well, our
23 offer was a pay cut from the year prior. And the explanation
24 was, well, I know both of these guys have, you know, young kids
25 in school, they're probably not going to want to pick up and

1 move out of the market. I don't believe any of the other
2 stations in the market would offer them anything. So, you
3 know, we don't need to offer them a -- a raise of any sort.

4 Q. Is that when you went to speak to The Fan?

5 A. Yes. That's when we went -- we actually called both of
6 the other bigger stations in town that The Ticket considered
7 their competition. It was the Fan and ESPN radio. We
8 contacted both of them and met with them.

9 Q. And did you get an offer from The Fan?

10 A. Yes. The Fan offered us a contract.

11 Q. How did it compare to what you were being offered at
12 The Ticket?

13 A. It was quite a bit more. Probably would average about a
14 hundred thousand dollars a year more.

15 Q. But you didn't leave. Why was that?

16 A. In the end -- well, during the negotiation our agent,
17 apparently, you know, told The Ticket or the owner of the
18 station that we had this offer. And he was told, well, if you
19 present the offer to me -- like if you give me -- if you guys
20 sign the offer, we will match one of them. And it was told to
21 Bob behind the scenes, we'll match your contract. We'll match
22 you so we'll sign you to that offer.

23 I have -- in my contract, I have a right to match --
24 Cumulus has a right to match. So they just -- I guess it
25 was -- we viewed it as a threat that, you know, they knew we

1 liked working together and we wouldn't want to break up, so
2 I'll just match Bob so Bob will make that money. He'll work
3 here, and Dan, you can go work over there by yourself.

4 The other station probably didn't want just one of us.
5 They wanted a show. So it was certainly a threat that, you
6 know, worked.

7 Q. The contract you ultimately signed in 2013, what was the
8 pay compared to the year before?

9 A. It was a pay cut from the year before.

10 Q. Have you heard a lot of employees remaining with an
11 employer after receiving a pay cut?

12 A. Have I -- can you say that again? I'm sorry, I didn't
13 catch it.

14 Q. You ever hear stories of people staying at an employer
15 after they get a pay cut?

16 A. No. I can't say that I have.

17 Q. What was the structure of that contract? Didn't it have
18 different compensation for years going forward?

19 A. Yes, it did have pay increases --

20 THE COURT: Hold on.

21 A. -- each year.

22 MR. PERNINI: Your Honor, he's talking about the 2013
23 contract. I mean, I know we sort of let a lot go this late in
24 the day. I don't know what the relevance would possibly be for
25 the --

1 THE COURT: Overrule the objection.

2 MR. PERNINI: That's fine.

3 Q. I think -- and I'm going to try to -- I think Mr. Pernini
4 has a good point. We can try to move this along if I don't ask
5 such open-ended questions.

6 That contract was a three- or four-year contract that had
7 higher pay in each succeeding year, correct?

8 A. Yes.

9 Q. But the pay was dependent on the station hitting certain
10 revenue goals?

11 A. Factually, there was higher pay on the base salary each
12 year. The first couple of years, yes. I believe starting in
13 year three, then it would have -- the station would have to
14 meet a certain revenue goal in order for the contract to go up.
15 And it -- yes.

16 So I guess it didn't go up after that 'cause we -- we
17 never -- or we were always told the station did not hit those
18 revenues goals.

19 Q. Did you ever receive any kind of accounting for whether
20 the station had hit the revenue goals?

21 A. No. We would just receive a letter that said, for
22 example, your contract said we have to hit
23 22 million this year and we hit 21,900,000. It would always
24 be they had fallen somewhat short. You know, close but short.

25 Q. So you mentioned earlier that they continually tried to

1 negotiate separately with your cohost Bob Sturm. At some
2 point, did you feel the need to meet separately with Dan
3 Bennett to explain to him what you do?

4 A. Yes. In 2017 -- so before signing this most recent
5 contract that's been shown, my 2018 through 2023 contract, Bob,
6 I guess, had been talking to people in higher management. He
7 was getting the intimation or the direct word that, you know,
8 Bob and Dan together -- the inference was that I wasn't
9 liked -- I wasn't viewed as valuably as -- as Bob was, and that
10 in the event Bob ever wanted to be in drive time, that probably
11 wouldn't happen.

12 Drive time is, you know, when more cars are on the road.
13 So it's morning and afternoon. Midday is when there's less
14 vehicles on the road. And I guess in drive time, you know,
15 cars on the road equals more listeners usually. So there are
16 more listeners morning and drive -- and afternoon.

17 So that's kind of a progression sometimes in radio people
18 want to work. If I work middays, I would want to work in drive
19 time because there's more listeners and more money. But I
20 guess the word Bob got was that, you know, you're not going to
21 go to drive time with Dan.

22 So I wanted to -- although I had worked there 18 years, I
23 thought it was important to, you know -- I just didn't feel
24 like Dan Bennett knew me very well, I didn't think he knew what
25 I did behind the scenes, and he was the guy that we would be

1 talking contract with the following year. So I asked him for
2 an offsite meeting. We did.

3 We went and met and I just basically pitched him myself,
4 told him what I, you know, put into the station, what the radio
5 meant to me. I just did not think he knew me at all and
6 understood what I brought to the show. So I -- I just had an
7 offsite meeting just to kind of tell him how important radio
8 was to me and how much I did for the show and for the station
9 overall. And just kind of trying to pitch myself so that,
10 moving forward, they would want to continue to keep Bob and Dan
11 as a show.

12 THE COURT: All right. Let me pause here. We'll go
13 off the record.

14 (Off the record.)

15 THE COURT: Go back on the record.

16 I believe I interrupted your questioning. So go
17 ahead.

18 MR. KINGSTON: That's just fine, Your Honor.

19 Q. Let's see.

20 THE COURT: Do you want your last question read, or are
21 you good?

22 MR. KINGSTON: Oh, I think he answered it, Your Honor.

23 THE COURT: Well, I just needed to know if you needed
24 me to remind you where you were.

25 MR. KINGSTON: No. Thank you very much.

1 THE COURT: Okay.

2 Q. Dan, can you see this on the screen? It's Defendants'
3 Exhibit 3.

4 A. Yes.

5 Q. Do you recognize this document?

6 A. Yes. It looks like a redlined -- in our current -- most
7 recent contract negotiations, a redlined version of the
8 contract.

9 Q. Well, in the -- the 1.3 appears to be identical to the
10 competing business definition that -- that you have in your
11 2018 contract. It appears they're trying to add more things
12 that were competing businesses, correct?

13 A. Yes.

14 Q. And do you see the note there from Olga, whose last name
15 I'm not going to attempt, and the indication that they --
16 Cumulus will not agree to limit competing business definition
17 to terrestrial radio.

18 A. Yes.

19 Q. That was -- and she wrote that because your previous
20 contract definitely is limited to terrestrial radio, correct?

21 A. Well, that appears to be what she's intimating. Not
22 intimating. Saying.

23 Q. The other thing -- I think you said and Mr. Kemp said is
24 that there are aspects of these contracts that really --
25 The Ticket refuses to negotiate. You've seen a lot of e-mail

1 and text from me -- I'm not -- I'm not -- I don't think I super
2 often capitalize both letters of "no" when I'm answering your
3 questions, do I?

4 A. You do not. That would indicate being very firm.

5 Q. One other thing I needed to clean up.

6 MR. KINGSTON: I'm pulling up 27, Counsel.

7 Your Honor, this is the exhibit that we added and
8 so -- we just needed them to sign off on it. I wanted to give
9 them a chance to say whatever they need to do.

10 THE COURT: Go ahead and offer it and tell me if they
11 have any objections.

12 MR. KINGSTON: We offer 27 -- Defendants' 27 for the
13 record.

14 THE COURT: Any objection?

15 MR. PERNINI: No objection, Your Honor.

16 THE COURT: Pardon?

17 MR. PERNINI: No objection. We were trying to find it
18 on the table.

19 MR. KINGSTON: Sorry about that.

20 MR. PERNINI: That's all right.

21 (Defendants' Exhibit Number 27 admitted.)

22 Q. Dan, you've seen this e-mail before, correct?

23 A. Yes.

24 Q. I'm just trying to clean up what seems to be a hard thing
25 to nail down. When did you quit?

1 A. Well, we thought our last day was June 30th. I believe
2 that's a Friday. I believe Friday is June 30th. So that is
3 what we thought our end date was.

4 Q. Okay.

5 A. We were asked -- after going through negotiations -- you
6 know, continuing to negotiate, we thought we had come to the
7 end of the road on Monday, July 17th. And we called Dan
8 Bennett and said we don't, you know, think that -- whatever,
9 that this isn't going anywhere and we're ready to be done. And
10 he asked us to send in a formal resignation. So I thought that
11 was kind of weird, but we did it because he asked us to.

12 Q. Okay. Let's talk about your plan for the Dumb Zone. When
13 did you start planning to publish a podcast?

14 A. Let's see. So Monday, the 17th, is when we were asked to
15 send that resignation. Later in the week, The Ticket actually
16 talked about it, some on the air, and we felt that that was
17 then officially official if The Ticket is acknowledging it
18 publicly. And then probably that weekend we decided to --
19 let's -- let's record something and call it the Dumb Zone.

20 Q. You described to me your attitude in creating the Dumb
21 Zone as your desire to be cool. What did you mean by that?

22 A. Well, I thought based on my contract, I was able to do a
23 lot more than just what we were doing. But --

24 Q. Like what?

25 A. Like I could have -- I feel I could have started a video

1 streaming show every day from noon to 3:00 on YouTube. I
2 thought I could have worked for a podcast company that
3 podcasted in Dallas. I mean, podcasts just gets submitted
4 everywhere. So -- but I have talked to a few podcast
5 companies. And -- you know, that sold advertising. Because my
6 contract does say I can't solicit advertisers from The Ticket.
7 So I thought it would be just fine to do a podcast with ads.

8 But I, again, didn't -- didn't do that for a couple of
9 reasons. One, I feared litigation because, you know, Cumulus
10 has -- anyway, it's a thought that -- that they might, you
11 know, come after us if -- even if we got an advertiser that
12 wasn't solicited.

13 But also I had a lot of friends that work at The Ticket.
14 I worked with Cat for so many years. Jeff Catlin, I'm sorry.
15 His nickname is Cat. And Dan Bennett. I didn't want to have
16 even the impression that we were attempting to -- or to compete
17 with them or to harm them in any way.

18 If I might -- I don't know if I should even say this.
19 This is why -- I didn't want -- you're talking about our
20 contract negotiations. I asked for our initial, this hearing
21 date, to be pushed back to do mediation first because I
22 didn't -- when getting into all this legal staff, I didn't
23 realize all this is on the record, everything is very public.

24 And I don't want to be saying things. I have gone to
25 great lengths to not say anything negative about The Ticket

1 even if I have some negative thoughts.

2 As we said in our -- our goodbye video, the week of the
3 17th, I love The Ticket. I want people to keep listening to
4 The Ticket. That's what we said on the video. That's what we
5 said publicly. We said don't be upset with management, don't
6 be upset with the station at all. This is just a business
7 thing. We made the decision, they made the decision.

8 I don't want to be up here saying how I was treated during
9 negotiations. That's part of the being cool. And part of it
10 was, look, let's just go podcast behind a paywall. It won't
11 affect their customers. Their customers are advertisers, our
12 customers are direct -- direct consumers.

13 So we're -- we're not messing with their customers. We're
14 not messing with their revenue at all. We're not messing with
15 their ratings, 'cause we publish at various times. We're not
16 live streaming. I could live stream; I'm not going to live
17 stream. That was my goal going in and it continues to be
18 today, that that's not in the plans, the immediate plans.

19 Six months from now, who knows what we'll do. But, yeah,
20 I -- I don't like that we're here.

21 Q. Well --

22 THE COURT: Hold on.

23 MR. KINGSTON: Yes.

24 THE COURT: Come on in.

25 (Off the record.)

1 THE COURT: We'll go back on the record.

2 Please proceed. And I apologize.

3 MR. KINGSTON: Thank you, Your Honor.

4 Q. What are the differences between the shows that you
5 produced at The Ticket and the Dumb Zone?

6 A. Well, the show on The Ticket was very good. I think. It
7 was just a big sounding show. There's a lot of sound. There's
8 more voices. It sounds like a well-produced, you know,
9 machine. It's formatted in a certain way. You know, you have
10 to take breaks every -- let's say, approximately, 20 minutes or
11 so throughout an hour. You have to start the show at the very
12 same time. You end the show at the very same time. It's live
13 so anything can happen type -- type of a thing.

14 The -- the content as far -- you know, the content is
15 different as well as far as, you know, you -- on The Ticket,
16 you know, our boss would have us, you know -- like the first
17 big segment of the day is we would consider 12:30. We have to
18 have a big sports story of the day there. There has to be big
19 sports story of the day.

20 And then, you know, the news would be at exactly 1:30 and
21 then 1:35 or so, then the -- you know -- you know, we had to go
22 back after the news, had to be another sports segment type of
23 thing.

24 So, you know, it was sports-based and it was pretty much,
25 you know, like I said, formatted. Whereas now, you know, we

1 have no format at all. We have no clock. We could go as long
2 or as short as we want. We are just two guys. There's not a
3 lot of sound and not a lot of production value.

4 Let's see. We might start -- like, hey, let me give you a
5 couple of birthdays that are today, and we do that for three
6 minutes, and then we'll go on to a news story I saw. And then
7 we'll go on -- you know, there is no format, is -- is basically
8 the answer.

9 Q. And then the paywall's a significant difference in how
10 revenue is generated?

11 A. Sure. Yeah.

12 Q. And to be clear, you have had -- well, let me ask you:
13 Have you had people offer to advertise on the Hang Zone?

14 A. Yes.

15 Q. I mean, the Dumb Zone. My apologies.

16 A. Sorry. Yes.

17 Q. And those advertisers are not Ticket advertisers?

18 A. That is correct.

19 Q. Did you have an experience with an all staff meeting at
20 the -- at The Ticket? When would those occur?

21 A. A variety of times throughout the years. It might be
22 for -- you know, we have some big events coming up and we want
23 to brainstorm for that, or it might be because a new competitor
24 has hit the scene.

25 Q. So when --

1 A. And let's all have a big meeting and talk about that.

2 Q. So when The Freak started broadcasting, did you have one
3 of these meetings?

4 A. When The Freak started, yes, for sure.

5 Q. What was the content of that meeting?

6 A. Just letting us know there is a new competitor featuring
7 Mike Rhyner. Mike Rhyner -- he's the guy who started
8 The Ticket back in 1994. So he was a longtime Dallas
9 broadcaster who started The Ticket. And he was a legendary --
10 he's a Radio Hall-of-Famer, legendary broadcaster. He retired
11 in 2020. That is what set the events in motion, which had, you
12 know, Cat moved -- excuse me. Jeff Catlin, my boss, moved my
13 partner, Bob, to the afternoon drive show. He moved Jake from
14 producer as our show up to cohost of what would become the Hang
15 Zone. Anyway, Mike Rhyner retired back then, left radio.

16 But then, apparently, he came out of retirement to start
17 another radio station called
18 The Freak last year, I believe, in the fall sometime, October,
19 November. And, yes, that caused us to have an all staff
20 meeting so we could talk about the fact that Mike is over there
21 now and it's to be taken seriously. And let's tighten our act
22 up and make sure that we're just doing everything -- everything
23 we can just to reiterate all the -- the things we'd always talk
24 about that, you know, we want to make sure we're putting out
25 the best product we can so that we can defeat this competitor.

1 Q. Well, radio legend Mike Rhyner also started a podcast in
2 2020, didn't he?

3 A. He did at some point, yes.

4 Q. Was there an all staff meeting about that?

5 A. No, there was not.

6 Q. Has the station ever given you an indication that it
7 considered podcasting to be competitive?

8 A. No. Never had a meeting because a podcast has jumped on
9 the scene.

10 Q. So, in your mind, the things that you did to create a
11 separation between the Dumb Zone and your work at The Ticket
12 were intended to protect The Ticket. It's part of being cool,
13 right?

14 A. Yes. I wanted to protect The Ticket and avoid litigation.

15 Q. How is that going for you?

16 A. You can see.

17 Q. Okay. Let's talk about a few of the things that Plaintiff
18 has said that you either violated or in danger of violating.
19 It's a little unclear on some of these.

20 One of the things that they say that they have done in
21 order to extract from you the promise of not competing is to
22 give you a bunch of confidential information. What -- what
23 would that be?

24 A. I don't know.

25 Q. Do show hosts receive a lot of confidential information

1 from The Ticket?

2 A. In my opinion, no.

3 Q. Did you have a password where you could access nonpublic
4 files?

5 A. No.

6 Q. Is the planning that show hosts do for
7 The Ticket like trade secret or is -- is any of that material
8 kept confidential?

9 A. No.

10 Q. Another thing that they said that they gave to you in
11 order to get these restrictive covenants back from you was
12 goodwill. Where do you think goodwill comes from?

13 A. Again, I'm -- we talked about goodwill a little earlier.
14 I'm fuzzy on really what goodwill means. It's very subjective.
15 So I don't know where goodwill comes from.

16 Q. Did -- let's put it this way: Did The Ticket give you
17 your audience?

18 A. I would not say so. I think we built the audience
19 ourselves there, our radio show did.

20 Q. So if goodwill is somehow related to audience, it's
21 basically generated by the on-air talent?

22 A. Okay. Again, I'm fuzzy on what goodwill really means. If
23 you can actually quantify what goodwill is. But if -- if it is
24 a thing you can generate, then, yes, I would have to agree with
25 that.

1 Q. The other thing that they say they gave you in order to
2 extract these promises from you was training. What kind of
3 training did you receive at The Ticket?

4 A. I don't feel I received training at The Ticket.

5 Q. There wasn't periodic continuing education?

6 A. No.

7 Q. Did somebody teach you how to do -- how to make that big
8 sound that you referred to in your Hang Zone program?

9 A. No. I mean, I got hired in 1999. I had already been
10 doing a talk show for a few years, four or five years in
11 various different areas. I think I was hired because I could
12 do a show.

13 Q. What would you like going forward, Mr. McDowell?

14 A. I supposed to be just left alone to kind of keep doing
15 what we're doing. And -- and that's it. I -- I want to leave
16 them alone and they have -- and us be left alone.

17 I don't feel like we're doing anything that competes with
18 The Ticket. I certainly don't want to take any of their
19 revenue away. I want my friends who work at The Ticket to
20 continue to be successful. And I feel like we can -- we're
21 learning about a new -- a whole different area, a whole
22 different medium. Just even the feel of doing a show, it's
23 like we're learning how to do a show in a podcast medium. It's
24 just a different thing.

25 And I want them to continue to do their thing and succeed

1 and, hopefully, we can succeed as well.

2 MR. KINGSTON: Pass the witness, Your Honor.

3 THE COURT: Thank you.

4 Anything further?

5 MR. PERNINI: Yes, Your Honor.

6 THE COURT: Questions on your part? Go ahead.

7 MR. PERNINI: Yes.

8 RE-CROSS-EXAMINATION

9 BY MR. PERNINI:

10 Q. Just a few questions, Mr. McDowell. You said that at the
11 end you just want to be left alone, right? That's what you
12 just said, correct?

13 A. Yes.

14 Q. Okay. When you started the podcast, you started talking
15 about The Ticket immediately, correct?

16 A. We did talk about The Ticket, yes.

17 Q. In fact, you heard the testimony in Mr. Kemp's case that
18 that was on every episode until this litigation began, right?

19 A. I don't know if that's true. I do know that, you know,
20 every time we talked about The Ticket was -- is in evidence,
21 right?

22 Q. No. Just the parts we played.

23 A. Oh, okay. I'm sorry. I thought it was five or six times
24 we talked about The Ticket, but I don't know how many episodes
25 we did before.

1 Q. You had entire episodes talking about
2 The Ticket; isn't that true?

3 A. That is not true. I heard -- when you said that earlier,
4 I was thinking no. I mean, when we had Akaash on we talked a
5 lot about The Ticket, but we also had a good amount of talk
6 about his history and how he became a comedian and what it's
7 like to do that.

8 Q. Okay. And you have indicated that you want to talk more
9 about this litigation on your podcast, right?

10 A. I would like to, yes. It's just very interesting going
11 through this process. For sure. I think people are interested
12 in hearing about it.

13 Q. All right. The only reason you haven't been talking about
14 The Ticket is because of this litigation at this point?

15 A. Yes. We've been told not to.

16 Q. You said that you think you built the audience, correct?

17 A. I think we had a good -- I had a good hand in that, yes.

18 Q. Sure. Of course you did.

19 And part of the reason you were able to build an audience
20 is because The Ticket gave you a platform and allowed you to
21 broadcast in the Dallas-Fort Worth area, right?

22 A. I am being paid -- was being paid. I'm sorry, to
23 broadcast on their platform, yes.

24 Q. So both --

25 A. They didn't give me -- yeah.

1 Q. Both of you benefitted from it, fair?

2 A. Yes.

3 Q. You got celebrity, you got a following, The Ticket also
4 got a following, correct?

5 A. Yes.

6 Q. Okay. You have a confidentiality clause in your
7 agreement, right?

8 A. I don't know.

9 Q. Okay. Let me rephrase that. You said you don't know if
10 you got confidential information, correct?

11 A. I don't feel that I have, no. I can't think of anything
12 that would be.

13 Q. Did you get -- you got ratings information, correct?

14 A. Yes.

15 Q. And you got -- you were told what the station's strategy
16 was to do with those ratings, correct?

17 A. I'm fuzzy on what that exactly means.

18 Q. Okay. Well, let me --

19 A. Strategy on what to do with those ratings. I mean, we --
20 I would -- you know, they would talk about things, but our main
21 goal was just to go out and create a good show every day. I...

22 Q. Okay. And you got feedback on that show from -- you
23 called him Cat -- Mr. Catlin?

24 A. Yes.

25 Q. He would give you feedback on the show as it went along,

1 correct?

2 A. Sure.

3 Q. You didn't consider that to be training, though, in your
4 mind?

5 A. No, I don't.

6 Q. Okay. But it is feedback that was provided from the
7 station to make the show better, correct?

8 A. Sure. We worked together to try to make the show better,
9 yeah.

10 Q. And you said that you tried to put the show behind a
11 paywall. You heard Mr. Kemp's testimony, the show is not only
12 behind a paywall, right?

13 A. That's right. We would put one out on YouTube.

14 Q. And you still intend to do that, right?

15 A. I would like to do that, yeah.

16 MR. PERNINI: No more redirect, Your Honor.

17 THE COURT: Anything further?

18 MR. KINGSTON: Just a brief, brief, Your Honor.

19 THE COURT: Go ahead.

20 MR. KINGSTON: Sorry.

21 REDIRECT EXAMINATION

22 BY MR. KINGSTON:

23 Q. We need to clean this up because I think Mr. Catlin tried
24 to say that ratings are private or confidential. Are ratings
25 all over the Internet all the time?

1 A. I know that at least some version of it usually is posted
2 by one of our -- one of The Ticket's, you know -- our coworkers
3 would post that on the -- on Reddit, that we've already
4 referred to Reddit. Right?

5 Yeah, I believe in some form they're available, yeah.

6 Q. And if you did well in a month or in a quarter, you might
7 actually really advertise what the ratings are?

8 A. Sure.

9 MR. KINGSTON: Pass the witness, Your Honor.

10 THE COURT: Anything further?

11 MR. PERNINI: No questions further, Your Honor.

12 THE COURT: Mr. McDowell, you can step down.

13 THE WITNESS: Okay. Thank you.

14 THE COURT: I believe you have one more witness.

15 MR. PERNINI: Yes, Your Honor.

16 THE COURT: Please call your next witness.

17 MR. PERNINI: We call Larry Rosin, Your Honor. Mr.
18 Rosin is going to provide expert testimony regarding -- he does
19 surveys. And I've spoken with opposing counsel. They
20 basically are not objecting to his qualifications to testify
21 for this preliminary injunction hearing but they want to
22 reserve the possibility if it goes to trial.

23 THE COURT: I'll let them articulate their objection.
24 So what -- you called him to the stand.

25 Raise your right hand, I'm going to swear you in.

1 (Whereupon, the oath was administered by the Court.)

2 THE COURT: Okay. Take the stand.

3 And let's just start asking questions. If
4 there's an objection, they can state it as opposed to you
5 articulating what their objection is.

6 MR. PERNINI: I was trying to cut through the laying of
7 the foundation of him being an expert.

8 So I'll start --

9 THE COURT: You have 27 minutes left. But if you want
10 to articulate on the record what your agreement is, you can do
11 that. But, you know, I --

12 If you're reserving the objection, I'd rather you
13 tell the Court what you're reserving.

14 MR. CAWLEY: Yes, Your Honor.

15 THE COURT: Go ahead.

16 MR. CAWLEY: I will stipulate to his qualifications to
17 testify as an expert on the limited topic of his research. I
18 reserve the right -- and just to move this along, I reserve the
19 right to object to his qualifications. I mean, not to his
20 qualifications. To the reliability and the relevance of his
21 opinions. I believe his opinions are not relevant, they
22 don't -- there's an analytical gap between the opinions he's
23 going to give and the issues in this case.

24 But for the purposes of moving this along, I want
25 Your Honor to hear his -- I understand you --

1 THE COURT: All right. Will you succinctly state your
2 objection? You have no objection to the qualification of this
3 witness, and if you have any further objections, you are
4 reserving them.

5 MR. CAWLEY: Yes, Your Honor.

6 THE COURT: Is that right?

7 MR. CAWLEY: That is it, Your Honor.

8 THE COURT: Ask your questions.

9 MR. PERNINI: Thank you.

10 (WHEREUPON, **LARRY ROSIN** was called as a witness, and
11 having been duly sworn, testified as follows:)

12 DIRECT EXAMINATION

13 BY MR. PERNINI:

14 Q. Can you state your name for the record?

15 A. Larry Rosin.

16 Q. Mr. Rosin, what is your position?

17 A. I'm president of Edison Research.

18 Q. What is Edison Research?

19 A. We're a survey, research, polling, market research
20 company.

21 Q. And how long have you been with Edison Research?

22 A. I'm their cofounder. We started in 1994.

23 Q. Okay. What kind of polling does Edison Research do?

24 A. We do a broad variety of different things. We are best
25 known as the company that does the exit polls for the national

1 election pool, which is a consortium of ABC News, NBC News, CBS
2 News, and CNN, which has contracted with us for over 20 years
3 to provide election night, election day and night polling. The
4 exit polls that you see on those four networks. They're also
5 on newspapers around the country. We also do the vote count
6 for those four networks, so we tally the votes. So all the
7 data you see on election night comes through us on those four
8 networks.

9 And then we do many other kinds of polling and survey
10 research, but we have a very strong concentration in anything
11 to do with the world of audio.

12 Q. Okay. So you do audio polling?

13 A. Of various kinds, yes.

14 Q. How long have you done that?

15 A. Since our founding in 1994.

16 Q. Okay. And do you currently have a survey that you do what
17 you call Share of Ear?

18 A. Yes.

19 Q. Okay. And can you tell the Court what that is and when
20 you started it?

21 A. Yes. So Share of Ear is, to the best of our knowledge, a
22 unique survey where we're trying to measure the entire audio
23 sphere, all the different ways people could listen to audio.
24 We've been doing it since 2014. It's a diary-based study. We
25 draw a random national sample of Americans age 13 and older.

1 We recruit them to, like I said, represent the U.S. population.
2 And we ask people to keep a very detailed diary of all their
3 audio listening in every form for one day.

4 Q. I'm going to interrupt you there. I'm going to put up
5 what's been marked as Exhibit 37.

6 And this is from Edison Research, correct?

7 A. Yes.

8 Q. And this gives some of the examples of the methods you
9 were just talking about, correct?

10 A. Yes.

11 Q. Okay. What is the ultimate goal of this survey?

12 A. To understand everything that people are listening to in
13 terms of audio. And of course to transit over time to look at
14 the changes that have happened.

15 Q. Okay. And you've been doing this since what time?

16 A. Since 2014.

17 Q. Okay. Who subscribes to this report?

18 A. Many, many of the biggest companies in the audio world.
19 So big radio companies like iHeart, Odyssey, Cumulus, Hubbard.
20 All the major streamers, Apple Music, Amazon Music, Google,
21 Spotify, Pandora, Sirius XM. A number of advertising agencies,
22 some financial firms. We have a broad list of clients for this
23 data.

24 Q. How is this different than Nielsen ratings?

25 A. So Nielsen ratings are measuring local listening in

1 markets around the country, including, of course, here in
2 Dallas. And doing it at the station level, so how many people
3 are listening to one station or another. We're doing a much
4 more global look at the entire world of audio. So we're
5 measuring radio but just radio, not individual radio stations.
6 We're measuring nationally, not locally.

7 And then we're able to compare total listening of radio to
8 listening of other forms of audio like Sirius XM or people's
9 owned music or podcasts, audiobooks, anything.

10 Q. Has your survey shown an average amount of time that
11 people listen to audio?

12 A. Right. So people keep this very detailed 24-hour diary.
13 And they -- we go through lots of -- lots of methods to make
14 sure it's representative, like I said. And we total up how
15 much listening they record over the course of a day. Some
16 people record very little, some will record a lot, of course.
17 And on average, our estimate is four hours and 11 minutes of
18 listening per day among all Americans 13 and older.

19 Q. Has that changed -- well, let me put it this way: During
20 the course of the survey, have you seen whether that amount
21 stays the same, is it growing, is it lessening?

22 A. It certainly changes a little bit every time we update it,
23 but in general there's not been significant changes in the
24 amount of listening. In fact, our current estimate is exactly
25 the same as what it was the first time we reported in 2014 or

1 within, you know, a tiny little differential.

2 Our current estimate is four hours and 11 minutes, like I
3 said. The first time we recorded it, it was four hours and
4 17 minutes in 2014. There has been some variation over time
5 but it's traded within a very narrow band.

6 Q. Is there any evidence that the total use of audio was
7 growing?

8 A. No. Like I said, it's really stayed relatively stable
9 over the course of time we've done the survey.

10 Q. Is there a difference between measuring the amount of time
11 looking at audio and looking at video in terms of how much it
12 can grow?

13 A. Well, we're not measuring video in our survey. But one, I
14 think, significant difference between audio and video is in
15 video, you know, I monitor a lot of the research there and
16 there's a phenomenon referred to as a second screen. Maybe
17 some people here engage in this behavior. They'll have a big
18 screen, TV perhaps, in front of them in their living room that
19 they're watching and at the same time they might have their
20 phone or a tablet or something that they're also, you know,
21 using in some fashion. You know, looking up information about
22 what they're watching or just texting or whatever.

23 So there are cases of sort of a second screen phenomenon,
24 even people watching two different things. You know, the
25 football game here while they're watching a TV show there. So

1 there is sort of a cumulative world in video that really
2 doesn't exist in audio.

3 You can't -- the human brain doesn't work that way. You
4 can't listen to one thing in your left ear and one thing in
5 your right ear simultaneously. So there's no real second
6 screen phenomenon in audio.

7 Q. Turn if you would to Slide Number 4.

8 And this shows the current results of Share of Ear?

9 A. Correct.

10 Q. And can you just explain to the Court what it shows,
11 generally?

12 A. So, like I said, we total up all the listening that people
13 do and this is our estimate, our current estimate of listening
14 by platform. So you can imagine this like a clock or what have
15 you. How many minutes in an average hour are going to each of
16 these types of audio.

17 So starting on the left, the big blue -- the biggest
18 section, the blue section is listening to broadcast radio
19 content, whether it's over the air or streaming. That's
20 36 percent. A little over a third of all listening right now
21 goes to the radio.

22 And then if you go clockwise around the circle, you see
23 our estimates for all the other different kinds of audio. So
24 streaming music, that's from the -- what we call the peer
25 plays, Spotify, Pandora, Amazon Music, Apple Music, et cetera,

1 is 18 percent of all listening. YouTube. And YouTube, we're
2 looking at very specifically just listening to music or
3 watching music videos on YouTube. It's a big factor,
4 14 percent.

5 And then on from there, owned music, people's CDs or
6 digital file, seven percent. Sirius XM, eight percent.
7 Podcasting is ten percent. TV music channels, that's like
8 Music Choice, is three percent. Audiobooks, three percent.
9 And then there's lots of little things that make up another one
10 percent.

11 Q. And have you been able to track over time whether the
12 growth of one audio source has affected the strength of another
13 audio source?

14 A. Right. So, you know, on the --

15 Q. This is --

16 A. -- next page of our document -- as I said, we've been
17 doing the same survey the same way, using the same methodology
18 since we started. And we continuously roll the data forward,
19 if you will. And you can see the changes over time.

20 So year by year you see that listening to radio has
21 declined. It was more than half of all listening when we
22 started in --

23 Q. And just to speed things along. We're focusing mostly on
24 podcasts here, as you've heard.

25 A. Right. So you see that radio has declined and podcasting

1 has grown dramatically. It was two percent when we started.
2 It's grown fivefold. It's now ten percent of all audio
3 consumption per our estimates.

4 Q. Do you have an opinion as to whether this shows that
5 podcasting has taken listeners away from radio?

6 A. Yes, certainly. There's -- there's, to me, really no
7 doubt that podcasting is -- has taken away from radio. It's
8 not the only reason that AM, FM radio has dropped. As you can
9 see, other things have grown as well, but it's certainly one of
10 the reasons that AM, FM listening has dropped.

11 Q. And turn, if you would, to -- looking back at -- go back
12 to Slide 5.

13 What percentage of growth has there been for podcasts over
14 the past nine years?

15 A. So it's grown fivefold, like I said. It was two percent
16 of all listening and now it's ten percent of all listening. So
17 let me do that in my head. That would be a 400 percent
18 increase.

19 Q. Okay. And has any other platform grown that much?

20 A. In terms of percentage point change, YouTube has grown the
21 same number of percentage points. But in terms of percentage
22 growth, what I just calculated, no. As you can see, it's by
23 far the biggest percentage growth of any platform.

24 Q. Okay. Now, certainly if someone could listen to -- make
25 sure we understand what the survey is showing. It is possible

1 that someone could listen to more than four hours of audio a
2 day, right?

3 A. Many people do. As I said, that was the average. That's
4 the middle made up of people listen more and people listen
5 less.

6 Q. But is there any indication that people are actually doing
7 that, listening -- because they're listening to more podcasts,
8 they're still listening to the radio at the same amount?

9 A. I'm not sure I understand your question. Can you ask it
10 again, please.

11 Q. Is there any indication that, as the podcasts have grown,
12 that it hasn't affected how many people listen to radio?

13 A. On the contrary. There's evidence that as podcasting has
14 grown, that listening to the radio has gone down.

15 Q. Turn to Slide 6, if you would.

16 And can you describe to the Court what this slide is
17 showing?

18 A. Yes. This is the same information that we were looking at
19 on the previous couple of pages. It's just collecting together
20 all sort of online audio sources from -- so it's music plus
21 podcasts from sort of the big players: Amazon, Apple, Spotify,
22 Pandora, et cetera.

23 And it's mainly collected this way to show that the
24 combined total of these online companies and online services
25 has surpassed the listening to radio.

1 Q. Okay. So more people are listening to the audio online,
2 right?

3 A. Yes. From these online audio sources than over the air
4 radio.

5 Q. Which --

6 A. Or streamed radio.

7 Q. Which would allow them to listen to podcasts, right?

8 A. Podcasts is part of that. Absolutely.

9 Q. Is there a difference in the age?

10 Let's turn to paragraph -- or Slide 7.

11 A. Yes. That would be a surprise to many people, but there's
12 a significant difference if you look by age groups. Somewhat
13 conveniently, the U.S. population right now is almost in equal
14 thirds, 13- to 34-year-olds versus 35- to 54-year-olds versus
15 55 plus. And if you just look at the comparison of radio to
16 these online services, in total, as you saw, it surpassed
17 54 percent to 46 percent. But you see the huge difference by
18 age.

19 So young people 13- to 34-year-olds overwhelmingly
20 listening online. The -- interestingly, 35-44-year-olds are
21 exactly the same as the total, the 46-54. And then 55 plus,
22 again, probably not surprisingly, more legacy-type behaviors
23 doing what, you know, has existed for a long time. Some
24 switching to online, but big majority to AM, FM radio.

25 Q. And for the age group that we're talking about at

1 The Ticket, which was, I think, age 22 to 55, what is the
2 majority of them, listen to radio or online services?

3 A. So I think they would say men 25 to 54. And for that
4 group, it's definitely already made this -- you know, majority
5 is happening online as compared to radio.

6 Q. So it's certainly easing them making the switch over from
7 listening to The Ticket to a podcast, correct?

8 A. Well, certainly, yes.

9 Q. Is there any distinction in your report for podcasting
10 being behind a paywall?

11 A. No. If someone's listening to a podcast and following the
12 instructions of our survey, and we test them a lot, they would
13 just put all of that under podcasting. We don't ask them to
14 make such a distinction.

15 Q. Okay. Do you have any reason to believe that something
16 being behind a podcast -- behind a paywall would change the --
17 change the amount of time people would listen to it?

18 A. No. Change how they access it, but it certainly wouldn't
19 change how they'd listen to it.

20 Q. Okay. Describe for the Court what Slide 8 is showing.

21 A. Right. So I'm -- we're asking lots of questions about
22 what they listen to. Up till now I've been showing the
23 platform, if you will, that they're listening to. We also say
24 what device are you listening to that audio on.

25 And what you see here is the biggest chunk of listening is

1 now on, essentially, the phone, mobile device. This would also
2 include tablets. But it's overwhelmingly the phone at 37
3 percent. The AF/FM radio receiver, as distinguished from what
4 I've shown before, is any listening to AM/FM radio, whether
5 you're listening over the air or through the stream. But the
6 receiver itself is 32 percent.

7 And then you can go on around the circle as well to see
8 the other devices that someone might be using: A computer, a
9 Sirius XM satellite receiver as compared to a terrestrial radio
10 receiver, through their television, smart speaker. It's
11 something like Music Choice to the audio channel, CD player,
12 and other.

13 Q. Okay. And, again, did you -- going to the next slide,
14 have you seen a trend on this over time?

15 A. Yes. There's been a dramatic shift in the device that
16 people use over the nine or so years that we've been doing the
17 survey. As you can see, in -- because of changes that we made
18 in the survey, we date this one to 2015 where everything is
19 exactly consistent.

20 And as you can see, the radio receiver had well past
21 double the amount of listening on the phone and the phone has
22 grown by quite a bit every year. And just last year surpassed
23 the -- the radio receiver for the first time and keeps sort of
24 galloping forward and now has a five point percentage margin on
25 listening to a radio set -- or listening to over the air radio.

1 Q. And from a practical point of view, one of the main
2 differences on the phone, you can listen to a podcast or you
3 can listen to streaming of a radio station, correct?

4 A. Or many other things as well but, yes, absolutely correct.

5 Q. Versus only AM radio receiver where you couldn't listen to
6 a podcast?

7 A. AM/FM radio receiver, you can only listen to AM/FM radio.

8 Q. And the trend shows that that's a shrinking area, correct?

9 A. Correct.

10 Q. Go to Slide 10.

11 Can you explain to the Judge what is shown in Slide 10?

12 A. Yes. So every graph we've looked up till now was looking
13 at function of time, how much time do you spend with these
14 different platforms of audio.

15 This is a percentage of people, not -- on this graph. So
16 this is what percentage of people who filled out this diary
17 recorded at least some listening on their single day of -- of
18 recording to each of these platforms. So for instance,
19 63 percent of all respondents say they listen to the radio at
20 some point on their diary day, 39 percent to streaming music,
21 and then a quarter to podcasts and on down the list.

22 Q. And, again, have you tracked this over time?

23 A. Yes.

24 Q. Is that shown on Slide 11?

25 A. Yes.

1 Q. And what does Slide 11 show us?

2 A. It shows that the reach or what I was talking about, the
3 percentage of people say they listen each day for radio. And
4 this will be total radio, including over the air and their
5 streams, has gone down, as you can see, from just about
6 74 percent to just over 63 percent of people.

7 Meanwhile, podcasts has really surged forward. When we
8 first -- our tracking this data from 2015, it was five and a
9 half percent and has grown quite a lot. Now over 24 percent.

10 Q. So this indicates that the trend is that more people are
11 listening to podcasts and less people are listening to the
12 radio, correct?

13 A. On a daily basis, yes.

14 Q. And turn to Slide Number 12.

15 And can you explain to the Judge what this shows?

16 A. Yes. So this is another one of the really big sort of
17 megatrends that -- that we've seen in our data, which is
18 track -- putting together everything that's -- would be
19 considered a linear form of audio. In other words, kind of
20 like any sort of legacy media, like television or -- or radio
21 where you tune in and you just consume whatever happens to be
22 there at that time versus on demand, which would be podcasts,
23 to be sure, or, say, Spotify's premium service where you can
24 say I want to hear this song right now. Podcasts, I want to
25 listen to this show right now, whatever it might be.

1 You can see the convergence of these two lines. In 2015
2 it was a 38 percentage point gap between linear and on demand.
3 And the gap is close and close and close. And then just for
4 the first time in our most recent report, the two lines crossed
5 actually.

6 And so now by a tiny margin, a majority of all listening
7 is happening on demand as compared to linear. And I think -- I
8 always hesitate to project into the future, but I think it's a
9 very safe bet that these two lines will continue in this
10 direction and perhaps seven and a half years from now, you'd
11 have a 38-point gap in the other direction.

12 Q. So currently more people are listening to on-demand items
13 like podcasts than are listening to live streams or live radio?

14 A. Correct.

15 Q. And that trend has been continuing since you started the
16 survey?

17 A. You can see the trend has been consistent. And like I
18 said, I think it's likely to continue into the future.

19 Q. Based on your survey results and the time you've done --
20 you've heard the Defendants say that they think because they
21 were doing a podcast, they weren't taking listeners away from
22 the radio station. Did you hear that testimony?

23 A. Yes.

24 Q. Does the survey results support that position?

25 A. No. The -- you know, like I said earlier, you can't

1 listen to two things at the same time. So if someone's
2 listening to a podcast, almost by definition they're not
3 listening to the radio. And you can see from our data that
4 listening to podcasts in general has taken time away from
5 listening to the radio.

6 We can also look at things more specifically in our survey
7 about -- among the things they tell us is were you listening to
8 music or were you listening to, essentially, spoken word
9 content. And radio used to have an overwhelmingly dominant
10 percentage of spoken word content, and that gap has closed very
11 dramatically with podcasts taking that time.

12 And we can look even more specifically at the spoken word
13 content being news or what we call talk or personalities or
14 sports. And in all three cases, podcast has grown dramatically
15 and radio has declined dramatically.

16 Q. And there's no indication that people are listening to
17 that -- or increasing their total audio listening time to
18 listen to more podcasts?

19 A. Correct. They're shifting their time. They're not
20 increasing the amount of time.

21 MR. PERNINI: Pass the witness, Your Honor.

22 THE COURT: Okay. Any questions?

23 MR. CAWLEY: Yes, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. CAWLEY:

1 Q. Just so I understand exactly what opinion you're giving
2 us, you're giving us the general opinion that from a time spent
3 listening standpoint, because podcasts are becoming
4 increasingly popular, and there's a finite amount of time
5 people listen to audio, then therefore podcasts compete with
6 radio. Is that a fair summarization of your opinions?

7 A. Yes.

8 Q. Okay. Strictly on a time basis, right?

9 A. That's what we're measuring in our survey, is time. But
10 it's -- we're also, like I said, measuring reach on those
11 couple of graphs that you saw was true for that as well.

12 Q. Okay. And it's very general. You're just taking all of
13 broadcast radio, every format within broadcast radio as
14 compared to podcasting, correct?

15 A. You're speaking of format as in like a country station
16 versus a rock station and things like that?

17 Q. Exactly.

18 A. Yes.

19 Q. Okay. So you -- would you agree with me that there are
20 certain formats within radio that are declining more rapidly
21 than others?

22 A. Again, I -- I see some Nielsen data. We don't have that
23 in our surveys.

24 Q. Okay.

25 A. But I've seen Nielsen data that shows -- and it's been

1 true by history of radio, at any given time some are going up
2 and some are going down.

3 Q. So just so I understand, you're not comparing specifically
4 podcasting versus sports radio, for example?

5 A. Right. We -- when --

6 Q. Okay. And -- and you're specifically not comparing
7 podcasting to The Ticket?

8 A. Correct.

9 Q. Okay. So, for example, you're not saying that the Dumb
10 Zone actually competes with The Ticket, are you?

11 A. I don't have specific data that speaks to that. I think
12 it is clear from our data that all podcasting competes with all
13 other forms of audio, so certainly in this case with radio.

14 Q. Well, I mean, you don't break it down by category -- by
15 format, i.e., sports versus Top 40 versus country versus NPR
16 type talk; is that correct?

17 A. Correct.

18 Q. And you don't break it down by market, Dallas-Fort Worth
19 versus New York City versus Chicago versus L.A., right?

20 A. Correct.

21 Q. And -- and you don't know the history of
22 The Ticket and its ratings in the DFW market, do you?

23 A. No.

24 Q. So your very general opinion that podcasting is cutting
25 into radio -- broadcast radio listenership may or may not apply

1 specifically to The Ticket in Dallas, Texas, correct?

2 A. Correct.

3 Q. All right.

4 MR. CAWLEY: No further questions.

5 THE COURT: I think you could have stipulated to the
6 general. I mean -- okay.

7 Any further questions?

8 MR. PERNINI: No, Your Honor.

9 THE COURT: Any further witnesses?

10 MR. PERNINI: No, Your Honor.

11 THE COURT: Okay. You can step down.

12 MR. PERNINI: Can he be excused?

13 THE COURT: Why don't you grab that notebook and hand
14 it back to counsel.

15 MR. PERNINI: Can Mr. Rosin be excused?

16 MR. CAWLEY: Yes, Your Honor.

17 THE COURT: Okay. You may go. Thank you.

18 THE WITNESS: Thank you.

19 THE COURT: Thank you.

20 Let's go off the record.

21 (Off the record.)

22 THE COURT: Let's go on the record.

23 Counsel, I changed my mind about something.

24 Usually -- I don't really have that many evidentiary injunction
25 hearings. It's pretty rare. I mean, maybe one every couple of

1 years. But I have bench trials and I have jury trials and
2 usually my practice is if you don't talk about an exhibit
3 through a witness, it's not going to be considered. 'Cause,
4 you know, on those bench trials sometimes I'll get exhibits
5 this high and rooms full of them, notebooks filled. And if you
6 don't explain it to me, I'm not going to go through.

7 But your exhibits are two manageable binders and
8 some audio. And so I put you on a pretty strict time limit.
9 So I will consider -- and I have considered some -- I have the
10 notebooks, except for an update, for a while now. And there's
11 no big surprises in there. Even though I believe I said they
12 won't be considered unless a witness discusses it, it's a
13 bench -- it's a mini bench trial, as far as I'm concerned, and
14 I will. I'm sure nobody has an issue with that 'cause both
15 sides didn't talk about all their exhibits. We good?

16 MR. PERNINI: Yes, Your Honor.

17 THE COURT: Yes?

18 MR. CAWLEY: Yes, Your Honor.

19 THE COURT: So for those that each side offered and was
20 admitted, those will be part of the record.

21 All right. Let's start with your full closing.
22 And it's not going to be set up like it's a trial where there's
23 rebuttal time. Just give me your best shot. You have up to
24 30 minutes, but it's okay if you take less time. Okay?

25 MR. ANDERSON: Thank you, Your Honor.

1 Your Honor, it's been a long day. And based on
2 the evidence put forth so far today -- well, throughout this
3 day with both the -- the testimony of the witnesses and the
4 documents presented to Your Honor, I believe The Ticket has met
5 its burden and established its right to a preliminary
6 injunction. On that, I'd like to start with the -- the claim
7 on the breach of the covenant not to compete.

8 The covenants not to compete at issue in this
9 case are, we've established, both through the documented
10 evidence, the contracts themselves, and in the testimony of
11 Mr. Catlin and Mr. Bennett that the covenants not to compete --
12 in Mr. Kemp's contract and Mr. McDowell's contract, they are
13 ancillary to or part of an otherwise enforceable agreement.
14 Here, their employment agreements.

15 The noncompete provisions, although slightly
16 different between the two defendants, are substantially the
17 same and they both deal with -- have reasonable time,
18 geographical area, and scope of activity to be restrained
19 provisions within it. They're reasonable and, in fact, they're
20 very narrowly tailored. We'll start with the time component.

21 As Your Honor's aware, it's six months, as the
22 documents show. And as the witnesses have established, both
23 Mr. Bennett and Mr. Catlin, the six-month window is a very
24 reasonable time frame. It's very short in any noncompete case.

25 That time provision, as Mr. Catlin testified, is

1 necessary to let them get a replacement show up and going to
2 give them time to solidify the relationship with their
3 listeners so that when Mr. Kemp and Mr. McDowell come back to
4 the market to compete, after the six months, that they will --
5 The Ticket will have had time to -- to strengthen its
6 relationship with the listeners before that competition takes
7 place.

8 So the time component, extremely reasonable at
9 just six months.

10 And in fact, it's even more -- an injunction here
11 makes even more sense, Your Honor, because the six months won't
12 even happen because the -- if you take when their final date of
13 employment with
14 The Ticket is in mid-July, six months takes them to
15 mid-January. This Court will have conducted a full trial on
16 the merits by then. So a preliminary injunction granted today
17 would even give less than the six-month time provided for in
18 the employment agreements for the noncompetes.

19 The geographical area is also narrowly tailored,
20 Your Honor. It's the -- it's basically the Dallas-Fort Worth
21 market area, surrounding counties. It's basically a 50-mile
22 radius around Dallas-Fort Worth. Why? Well, that's -- the
23 specific nature of that is because, as Mr. Bennett and
24 Mr. Catlin testified, that is where the -- The Ticket's
25 listener base is. They're not trying to restrain Defendants

1 from other markets and globally or all throughout Texas.

2 In fact, even under the noncompetes as scripted,
3 the Defendants could go do whatever they want to in terms of
4 Austin and Houston, other local markets or beyond, but just not
5 Dallas-Fort Worth. Not in content that's accessible within the
6 same Dallas-Fort Worth market area in the contract. So that
7 provision, the geographical area, extremely narrowly tailored
8 and reasonable.

9 And just to add on to that, we heard testimony
10 today from Mr. Catlin about the possibility of geofencing and
11 how they could not even have to move -- move to another town.
12 They could create their podcast here and in their homes in
13 Dallas and have it broadcast in other markets and, with
14 geofencing, have it restricted to where it's not accessible
15 within the Dallas-Fort Worth area. Again, for the six-month
16 period.

17 These restrictions, Your Honor, are no more than
18 what's necessary to protect the goodwill and the business
19 interest of The Ticket. You heard that from both Mr. Catlin
20 and from Mr. Bennett today. The contracts themselves are the
21 best evidence of the reasonableness of the provisions, and the
22 testimony of Mr. Catlin and Mr. Bennett. So the provisions
23 themselves are reasonable.

24 Now, I want to talk about the fact that the
25 Defendants are in violation of those provisions. You heard a

1 lot of testimony today, Your Honor, about whether or not
2 podcasts compete with radio. You heard from Mr. Catlin the
3 fact that the station is losing listeners. We saw e-mails from
4 angry listeners that they are leaving The Ticket to go to the
5 Defendants' competing podcast. So we know it's happening.

6 Do we know the full measure? No. Nor can we
7 right now. But we know it is happening. So we know the
8 podcasts are competing with The Ticket. We know that the
9 Defendants' podcasts are competing with
10 The Ticket. Not only do you have the expert saying podcasts,
11 Mr. Rosin saying podcasts are competing with radio, but you
12 have the best evidence at all, the listeners themselves.

13 The listeners from the Hang Zone e-mailing the
14 station and saying, hey, Ticket, we're leaving you to go follow
15 Mr. Kemp and Mr. McDowell wherever they go, even if we have to
16 pay a subscription fee. That's an important piece because
17 we've heard from Defendants today that, well, we can't be
18 competing because we have a -- a fee subscription-based podcast
19 behind a paywall.

20 That doesn't matter. That's irrelevant because
21 the customers are going to go there regardless of whether or
22 not they have to pay. So that's more of a red herring what
23 we've heard today.

24 It's not just that they're doing a podcast. But
25 as we heard from the testimony from -- from Mr. Catlin today

1 and just hearing some of the clips from the podcast of the Dumb
2 Zone itself, it's the same show. It's -- it's the Hang Zone
3 but just called the Dumb Zone. The only difference is they
4 don't have a production crew supporting them now like they did
5 at
6 The Ticket.

7 But you heard from Mr. McDowell and Mr. Kemp and
8 the recordings from -- the audio recordings from the Dumb Zone
9 that they're just trying to take that show and keep it going.
10 They want the same listener base. They're targeting the same
11 listener base. They've changed the Hang Zone website to -- you
12 know, from Hang Zone to Dumb Zone. The Twitter feeds and
13 the -- all social media apps to just changing the names so they
14 can keep the same subscribers, the same listeners that they had
15 when they were at The Ticket. They are competing.

16 And all the evidence today from Mr. Bennett and
17 from Mr. Catlin, from the audio recordings of the Defendants
18 themselves, the e-mails from the customers, all of this point
19 to one thing: This podcast, the Dumb Zone, is directly
20 competing with The Ticket.

21 And another significant point today, Your Honor,
22 is that the Defendants were doing podcasts while they were at
23 The Ticket. Part of that in terms of the noncompete
24 provisions, they are engaged in activities that are the same or
25 substantially similar as the activities they did in connection

1 with their jobs at
2 The Ticket. How do we know that? Because the contracts
3 themselves -- there's been some -- there's been some testimony
4 today from the Defendants, okay, well, maybe Mr. McDowell's
5 doesn't say podcast in the description of what a commercial
6 radio station is, but the fact that it doesn't include the word
7 "podcast" in the description of commercial radio station is --
8 is of no import, really.

9 You heard the testimony from folks that run radio
10 stations that know -- who know best about what a commercial
11 radio station is. Dan Bennett, Jeff Catlin, and on -- and in
12 their testimony, Your Honor, they testified that a commercial
13 radio station is not just terrestrial radio, as Defendants
14 would have you believe. It's much more. It's podcasts. And
15 this is for the past decade. It's podcasts. It's streaming.
16 It's promotional shows. It's events. It's -- it is
17 commercial -- it is terrestrial radio as well but it's so much
18 more.

19 And that was the case at the time Mr. McDowell
20 entered his contract, certainly the case at the time Mr. Kemp
21 entered his contract. And when you look at the description of
22 their job duties in Section 1.5 of the employment agreements
23 for both Mr. McDowell and for Mr. Kemp, you see that podcasts
24 are a part of their job duties, and other content that the
25 station requires them to do. And as we heard Mr. Catlin say in

1 his testimony, that was one of the things he required of both
2 Mr. McDowell and Mr. Kemp as part of their job duties, was help
3 with the creation of podcasts.

4 So it was -- so them doing a podcast now is the
5 same or substantially similar to the activities they did as
6 part of their job duties for The Ticket. So they're in direct
7 violation of the noncompete provisions of their employment
8 agreement.

9 And they didn't wait six months before they did
10 this. They did it immediately. So their employment ended in
11 mid-July, and within a week or so, they had their first podcast
12 released. Their podcast is accessible to listeners within the
13 DFW market. In fact, it's geared towards them. As reflected
14 in evidence by the e-mails from the angry listeners we've seen
15 today, and those are just some, those listeners are willing to
16 leave The Ticket to go listen to Defendants' podcast even if it
17 means paying a fee.

18 I think, Your Honor, based on all that, we have
19 established a likelihood of success on the merits for our claim
20 for breach of the restrictive covenant -- or breach of the
21 noncompete of their employment agreements. And Mr. Pernini
22 will get up in a few minutes and explain to Your Honor the
23 likelihood of success and the merits for the claim for
24 conversion and disparagement.

25 I'd like to, last, address the irreparable harm

1 piece. There were a lot of testimony on that today from --
2 from Mr. Bennett and from Mr. Catlin, Your Honor, that the
3 damage is being done to their reputation and their goodwill
4 of -- of the -- of the station. There's no way to put a price
5 on that.

6 What we've seen is this: You heard Mr. Bennett
7 testify that ratings have dropped in the past three months
8 since Defendants have left and joined -- left The Ticket to
9 start this competing podcast. We've seen revenues go down,
10 ratings go down, and we've seen e-mails and evidence from angry
11 listeners saying we're leaving to go to the Defendants'
12 competing podcast.

13 So there's damage to the relationship with the
14 listeners and there's damage to the reputation and goodwill of
15 the business. And you heard both Mr. Bennett and Mr. Catlin
16 testify that there's no way that they know of that they can sit
17 here and quantify the full measure of damages in terms of
18 dollar and cents to compensate them for the harm being caused
19 by the Defendants. It's irreparable. It's happening and it's
20 happening now and it's been ongoing and we're asking the Court
21 for an injunction to prevent the Defendants from continuing
22 their podcast for a period through trial.

23 And for them to not be able to put up a podcast,
24 whether it's behind a wall or anything else, any podcast or
25 audio content that was the same or similar to what they did for

1 The Ticket that is accessible within the DFW market, they
2 should not be able to do now through trial, Your Honor.

3 Here, Your Honor, I'll pass to Mr. Pernini.

4 THE COURT: Okay. Thank you.

5 MR. PERNINI: Thank you, Your Honor.

6 I'd like to address two separate areas. First,
7 the conversion claim regarding their use of the Hang Zone's
8 social media and the website in order to lead people to the --
9 the Dumb Zone. And, Your Honor, it's very clear the Hang Zone
10 was clearly the name of the show developed at The Ticket.
11 Section 15.1 of their agreements says that intellectual
12 property developed while they're at the -- at The Ticket
13 remains the property of Susquehanna.

14 The only argument they really made in this
15 regard -- first of all, the evidence shows that so we have the
16 hangzone.com. As soon as they left, they changed it so that
17 anybody who went to the hangzone.com will be transferred over
18 to the dumbzone.com. They did the same thing with the social
19 media account. So when it says the Twitter account for the
20 Hang Zone, those people will be sent to the Dumb Zone. Again,
21 this is all part of, as Mr. Anderson talked about, them trying
22 to get the same audience pulled over to the Dumb Zone.

23 Their main argument they've made in their
24 briefing, Your Honor, is, well, that's intangible property.
25 But, Your Honor, the case law is very clear that when you take

1 intangible property, you tie it into a website or you tie it
2 into a social media account, that becomes subject -- a property
3 subject to conversion under Texas law.

4 There are two cases I'd cite to Your Honor that
5 we have cited in the papers. The *Domain Protection v. Sea Wasp*
6 case is probably directly on point. That's 426 F. Supp. 3d
7 355. They say the same argument. They said that intangible
8 property is not convertible but when it was merged into a
9 website like when it's merged into a document, it becomes
10 convertible.

11 Similarly, Your Honor, the McGuire --
12 *McGuire-Sobrino* case, which is 2020 WL 4581649 involves the
13 same thing, doing a change to a website and to social media
14 accounts.

15 The evidence is really undisputed that that's
16 exactly what they did. They took these websites, they took
17 these social media accounts. As soon as they left, they said
18 if you wanted to go to the Hang Zone and find out about
19 The Ticket, we're not letting you go there anymore. We want
20 you to go to our show to develop our audience. And the
21 evidence has clearly shown that we've done that.

22 And they're continuing to do that. And there's
23 no way to track how many people go or how many people have
24 been -- fell through for that. So there's no way to determine
25 what damages could be caused by that other than those people

1 are being lost in the way that is uncalculable [sic].

2 I'd like to switch also, Your Honor, to the
3 disparagement claim. Now, Your Honor made out the point that
4 you didn't -- you did not feel that Mr. Kemp was -- by his
5 testimony was meaning to hurt The Ticket. And, Your Honor, I
6 appreciate the Court's view on that and, obviously, you're the
7 factfinder, but I would make two points.

8 First of all, the agreement itself does say that
9 it -- as it reads, it says any public statement that is in case
10 intended to or can be reasonably expected to.

11 So intent is certainly an object, but it's not
12 required. So if, in fact, what he does is reasonably expected
13 to disparage The Ticket, then that would meet the category.
14 And, Your Honor, to this point I would say that Mr. Kemp's
15 actions speak louder than his words on the stand today. If he
16 really didn't want to harm The Ticket, there's a simple answer.
17 Just don't talk about The Ticket. But they wanted to talk
18 about The Ticket.

19 And that's what the evidence has really shown
20 today. They didn't just start a competing podcast. You heard
21 that Mr. McDowell say on the podcast we're going to talk about
22 The Ticket every single time. We really want to talk about
23 The Ticket.

24 They brought in guests to talk about The Ticket.
25 When those guests misspoke or materially misstated what was

1 happening at The Ticket, they didn't correct them, they didn't
2 edit it out. They still played it. Mr. Kemp himself said he
3 was looking forward to bagging on the company once he's told
4 it's okay.

5 Now, on the stand today, he said, well, I was
6 kind of joking. But you heard the language. It didn't sound
7 like he was joking. It doesn't seem like a joke.

8 So they have disparaged us. They have indicated
9 they want to continue to disparage us. So we will have -- we
10 have a likelihood of success on the merits on that claim
11 against Mr. Kemp.

12 I think similarly, Your Honor, it's impossible to
13 determine the amount of damages that would be calculable to
14 that. It goes to our reputation. They're calling us cheap,
15 they're calling us -- treating our people bad. How does that
16 affect our goodwill with our people? How does that affect our
17 reputation in the community? That's something that cannot be
18 developed and shown.

19 And with that, Your Honor, one of the other
20 things that Texas law allows you to look for, for irreparable
21 harm is, are they taking off the common celebrity of the
22 parties, and that's exactly what has happened here. The reason
23 that people know about Dan -- Dan Kemp and -- Dan McDowell and
24 Jacob Kemp is because they're on The Ticket. So The Ticket
25 gave them a platform and they used that platform, The Ticket

1 and them together, to grow the show and to get celebrity.

2 Now, they went to go someplace else. That's
3 fine. But we are not -- what the law say is we can say you can
4 go someplace else but we have a chance to get our celebrity
5 back. We have a chance to basically build up the show. And
6 that's all we're asking for, is six months to see will our new
7 show work, and then they can come in with the celebrity that
8 they earned while on The Ticket and see if they can compete
9 with us. If they can, good on them. They've done their job.

10 What the law does allow us to do is provide some
11 protection as we build up these people together and build their
12 fame and build their goodwill, but they cannot then just leave
13 and use that goodwill against us. And that's what has happened
14 here.

15 They -- these are -- they have presented this
16 case originally as these poor guys that -- you know, being
17 attacked by the big company. But the evidence has shown is
18 they're very well-compensated individuals, represented by
19 counsel at the time that they reached this agreement. They
20 knew what they were agreeing to.

21 When they left, they took the show that they were
22 doing and went and did it on a podcast, the same show. And
23 while they did it, they decided to go ahead and attack
24 The Ticket.

25 And while they said we wanted to be behind a

1 paywall, in fact, the evidence has shown that they weren't
2 behind a paywall. They did at least one show a week not behind
3 a paywall, and they want to do more shows not behind a paywall.

4 So, Your Honor, it's taken us a long time to get
5 here. But the evidence, I think, is undisputed that what has
6 happened in this case is they're taking a show that they did on
7 The Ticket, doing it on the podcast, and listeners are leaving
8 The Ticket to go there. That is exactly what a -- the
9 noncompete law in Texas is created to prevent.

10 So we would ask the Court for the reasonable
11 relief of having a temporary -- a preliminary injunction to
12 prevent them from doing that so we can go to trial on this and
13 get a permanent injunction if necessary. But in that meantime,
14 if we don't have further damages cause, it will not -- will
15 never be redressable.

16 THE COURT: Okay.

17 MR. PERNINI: Thank you, Your Honor.

18 THE COURT: Thank you very much.

19 Closing on behalf of the Defendants.

20 MR. CAWLEY: Yes, Your Honor.

21 Susquehanna just doesn't want competition.
22 That's what this case boils down to, Your Honor. They think a
23 noncompete is designed to protect them from competition.
24 That's not the purpose of the noncompete. The noncompete is an
25 exception to the general rule that any agreement in restraining

1 a trade is illegal.

2 It's an exception. The noncompete act is. And
3 the noncompete act is not designed to protect a competitor from
4 competition. It's designed to protect competitors from grossly
5 unfair competition.

6 And, here, we have a situation where we've got
7 two different contracts. And what Susquehanna's doing is
8 they're attempting to use an overly broad, unreasonable, and
9 vague contract as a cudgel to keep these guys from working
10 anywhere in the audio-video communications industry.

11 I say audio and video because in Jake's contract,
12 it says that he's not allowed to work in television. So while
13 we've been talking about audio, audio, the audio industry in
14 this -- in this trial today, they -- they don't even recognize
15 that they snuck in television into Jake's contract. So Jake
16 can't work anywhere in the audio-video communications industry
17 at all.

18 What's even more pernicious is the use -- again,
19 the noncompete act is designed to be an exception to the
20 general rule that -- that you can't -- you can't limit
21 somebody's employability. The -- and the statute lays out
22 certain parameters that there's got to be reasonable
23 limitations in time, in scope, and geography. And it's got to
24 be narrowly tailored as -- as much as possible.

25 What they -- what they've done is they've got

1 vague and ambiguous terms in this contract that they used --
2 that they used to increase the scope of the noncompete. For
3 example, Dan's contract simply says that the company's business
4 is operating a commercial radio station. But now they say
5 commercial radio station doesn't mean commercial radio station
6 because the industry has changed, you see. And so commercial
7 radio station now means everything that goes along with that,
8 including streaming and podcasting.

9 So the point there is how is a person who signs
10 that agreement supposed to know how it's going to evolve over
11 time if the industry changes? Well, that's not what these
12 agreements are designed to do. They're supposed to be
13 definite. They're supposed to apprise the employee of exactly
14 what they're giving up post-employment.

15 And what they want to do is -- is say that in
16 radio -- commercial radio station now means a podcasting
17 business. Or -- or really anything that competes for the time
18 of the listener. Audiobook business. I mean, according to
19 their expert, time spent listening to any form of audio
20 programming competes with broadcast radio.

21 So if Dan and Jake wanted to go and start reading
22 audiobooks for blind people, under their rationale, that would
23 be prohibited because time spent by people listening to an
24 audiobook cuts into the time they have available to listen to
25 The Ticket. That's not what the noncompete act is designed to

1 do.

2 We -- we're talking -- Mr. Catlin on the stand
3 said that creating original content podcasts is part of the job
4 responsibility of an on-air host at The Ticket. Well, the
5 noncompete act says that the employee will be prohibited from
6 engaging in activities the same or essentially the same as the
7 employee's job duties.

8 I'll go ahead and pull this up.

9 Job duties is capitalized. Meaning it's a
10 defined term. So the job duties as defined in this contract
11 create the contours, the outer limits of what can be subject to
12 the noncompete agreement.

13 And let's look at what -- how the -- at what job
14 duties means. And I'm going to pull this up. Hopefully
15 it'll -- it's kind of hard to -- to read.

16 But -- but in the job duties -- I've got them
17 side-by-side, Dan McDowell's and Jake Kemp's. The only
18 difference between the job duties in Dan's contract in 2018, in
19 Jake's contract in 2020, is the stations. They added the FM
20 frequency to the stations. KTCK and FM and AM stations on --
21 and so forth. There's no substantive difference between the
22 job responsibilities, the job duties of Dan McDowell and the
23 job duties of Jake Kemp.

24 The only mention of podcast in the job duties
25 definition is that they are supposed to cooperate with the

1 company to create podcast of their on-air show. They're not
2 required to podcast at all. They're not required to do
3 anything except for cooperate in the snipping of their on-air
4 stuff and putting it on The Ticket's website. There's nothing
5 in here about creating original content.

6 Sure, Jake did some original content by agreement
7 with his employer. He did it as a good soldier and a good
8 employee. But the fact that he voluntarily did something he
9 was not required to do under the terms of his contract doesn't
10 mean that the station gets to then prevent him from working in
11 the area that he volunteered to do.

12 The analogy I draw to that, Your Honor, is if Dan
13 and Jake had agreed to, as an accommodation, to go pick up
14 guests from the airport to bring to the radio station to do an
15 interview, could then The Ticket then preclude them from
16 driving for Uber at the -- at the termination of their
17 employment because they did that? No. Of course they
18 couldn't.

19 Same here. The fact that Dan and Jake -- that
20 Jake -- Dan never did any original content podcasting. But the
21 fact that Jake agreed to do it at the request of Mr. Catlin
22 doesn't mean that all of a sudden now podcasting is part of his
23 responsibilities. It never was. It's not in the definition of
24 job duties under the contract.

25 The -- now, here's a side-by-side comparison of

1 competing business. And -- and one of the things I want to
2 point out also, Your Honor, is Mr. Anderson said that the
3 provisions in the contracts were slightly different. They
4 aren't slightly different.

5 The Dan McDowell contract defines a competing
6 business merely as any person, including employee or entity
7 carrying along a business that is the same or essentially the
8 same -- the same as company business. And that's commercial
9 radio station in Dan's contract.

10 I will point out that I believe that this -- that
11 the "or essentially the same" facially, facially invalidates
12 this provision. Because what they're saying there is you can't
13 work in the same business, same industry as The Ticket, or a
14 different one, but they're essentially the same. They're two
15 different things. And so they're saying not only can you not
16 work in our business, but in a different business if we
17 determine that it's essentially the same business. That's
18 number one, overbroad.

19 And number two, it's wholly indefinite. It
20 doesn't apprise an employee about what business they can or
21 can't work in. It's up to them at the time that they decide
22 they want to file for injunctive relief whether they believe
23 that the -- the offending business is essentially the same.

24 But what's more important here, Your Honor, is --
25 you see Jake's -- Jake Kemp's competing business. Now it is --

1 it has -- in the two-year period between the signing of these
2 two contracts, it has -- it has expanded to include, without
3 limitation -- so this isn't -- this isn't all inclusive list --
4 all commercial audio outlets such as radio stations, radio
5 networks, television stations, cable operators, podcasters,
6 Internet/streamed audio and Internet/streamed programs
7 programming, and other current and future audio platforms.

8 Now, remember that it's the -- it's the scope of
9 the job duties of the employee that -- that creates the outer
10 limits of what they can be precluded from doing post-employment
11 with The Ticket. So in order to expand the definition of a
12 competing business the way that you see here, it would stand to
13 reason that the job duties must have changed. Because it's the
14 job duties definition that tells us what competing business is
15 being targeted here.

16 But as we saw just a minute ago, the job duties
17 didn't change. They remained the exact same. Radio hosts.
18 But somehow over time, all of a sudden there's all these other
19 industries and businesses that Mr. Kemp cannot be involved in.

20 So my -- my point there is, number one,
21 Mr. McDowell did not breach any contract. There is nothing
22 that -- in that -- in his contract that prohibits him from
23 working in the podcast space. Nothing. The noncompete does
24 not address podcasting, period, end of story, with respect to
25 Mr. McDowell.

1 The analysis is a little bit different with
2 respect to Mr. Kemp. Mr. Kemp, they've got this gigantic
3 litany of businesses he can't work in. So technically,
4 according to the literal words in his contract, he's not
5 supposed to go work on a podcast. But that's why the Texas
6 noncompete act requires judges to look past the wording in the
7 contract and to look at the reality of the situation to
8 determine whether the noncompete scope and time and geography
9 are reasonable. And in this case, it's clearly not.

10 Mr. -- like I said, in the job duties definition,
11 there's no difference from when Mr. McDowell started as a host
12 and when Mr. Kemp started as a host. The only difference is
13 the words they put in the contract to prevent competition.
14 That's the only difference. They did -- Dan McDowell and Jake
15 Kemp did the exact same thing day after day, but somehow a
16 bunch of words got put in Mr. Kemp's contract that precludes
17 him from making a living.

18 The words in the contract don't matter. It's the
19 reality of the situation that matters. And under the job
20 duties definition, it's exactly the same. There is no
21 justification for the wildly expansive application of
22 company -- of competing business in -- in Mr. Kemp's contract
23 as opposed to Mr. McDowell's contract.

24 So Dan didn't breach the contract at all.
25 Jake -- Jake's contract is wildly overbroad in scope. And it's

1 vague and ambiguous with respect to, you know, "or essentially
2 the same business."

3 I thought this was particularly instructive, Your
4 Honor, Exhibit 3 that Mr. Kingston addressed with -- with
5 Mr. McDowell. In that -- talking about that very same topic,
6 the definition of competing business. This is Mr. McDowell's
7 proposed contract here in his latest round of negotiations.
8 And we know that that first sentence was the only thing that
9 was in it in the past, and the Plaintiff is wanting to include
10 that long list of things that they put into Jake's contract.

11 Mr. Kingston is negotiating a deal and he takes
12 it out and the lawyer, Olga -- and I'm not going to try to
13 pronounce her last name, either -- the lawyer for Cumulus or
14 The Ticket group says, no, the language should stay. Competing
15 businesses to Cumulus are no longer limited to just terrestrial
16 radio.

17 And then the last sentence is, "Cumulus will not
18 agree to limit competing business definition to terrestrial
19 radio." Right there, their lawyer's saying the definition as
20 it existed under Dan's contract in 2018 applies only to
21 terrestrial radio.

22 And so the attempts by Susquehanna to somehow
23 expand the application of the noncompete agreement outside of
24 terrestrial radio into podcasts under the auspices of the radio
25 station -- commercial radio station, the definition has changed

1 because the industry has changed, that's a courtroom
2 contrivance.

3 In negotiations they understand that Dan's
4 contract only applies to terrestrial radio. Only when they
5 come into the courthouse do they change that argument.

6 I want to address -- well, there -- there are
7 three claims, as I understand it, that are subject to the
8 hearing today. It's the breach of the noncompete agreement,
9 it's nondisparagement by --

10 THE COURT: I'm going to tell you, though, you only got
11 about ten minutes.

12 MR. CAWLEY: Okay.

13 THE COURT: Actually, less.

14 MR. CAWLEY: I will hurry it along, Your Honor.

15 THE COURT: All right.

16 MR. CAWLEY: Irreparable harm. They wholly failed to
17 satisfy their burden on irreparable harm. They have to
18 establish that the damages are not hard to measure, not
19 difficult to measure, immeasurable. And if the damages are not
20 immeasurable, they have to prove that they're in danger of
21 financial ruin. There hasn't been any evidence of that.

22 In fact, they've -- what's different about this
23 case, Your Honor, and -- and why sometimes I was pulling my
24 hair out doing a research on other cases is because there's
25 something in this case that doesn't exist in most industries --

1 ratings.

2 These guys know exactly how they're doing. They
3 know exactly when their -- when their business is dipping.
4 They see it on these ratings. They've got Nielsen ratings to
5 look at every single month. And I think they even get them on
6 a weekly basis in some circumstances. And they closely monitor
7 that. They -- all this stuff about, well, we just -- we just
8 can't figure out how we've been harmed by the fact that these
9 guys are operating a podcast is just litigation contrivance.
10 They know exactly where they are in ratings.

11 And they know exactly how much money they make.
12 You heard -- you heard Mr. Bennett get up here and talk about
13 two percent down in August, four percent -- or in July, four
14 percent down in August. They know how to crunch these numbers.
15 They know how to figure out what's going on.

16 I think the real issue is they can't -- they
17 can't pin that on Dan and Jake. That's what I got Mr. Catlin
18 to admit on the stand. When he was going through all those
19 e-mails, the listeners are mad. See, this is all this
20 irreparable harm. These listeners are mad at us. But he
21 couldn't say that they were mad at -- that they were mad at
22 what Jake and Dan did. He admitted that they could be mad at
23 what Cumulus did. Filing a lawsuit was wildly unpopular.

24 They put in -- like they said, they just put in a
25 smattering of the tweets and the Reddit posts. If you wanted

1 to go down a rabbit trail and jump on Reddit, you could see
2 tons of posts of people just angry that this big company is
3 attempting to use a noncompetitor as a cudgel to prevent Mr. Kemp
4 and Mr. McDowell from operating a little podcast behind a
5 Patreon paywall. That's got people really upset. And I think
6 Mr. Catlin admitted that on the stand. I think he was candid
7 in that.

8 The point is, they haven't shown that the harm is
9 immeasurable. We don't have it in the exhibit, but in their
10 brief yesterday, that they filed yesterday, they linked to a
11 10-K. And I went and looked at that 10-K. And I don't know a
12 whole lot about accounting stuff so I'm not going to purport to
13 know exactly what it means. But in that 10-K, they measured
14 the value of the goodwill of Cumulus Media, Inc.

15 There's a section in there that talks about the
16 value of the goodwill of the company. They've got accountants
17 out there crunching the numbers to figure that stuff out. Now,
18 maybe it's done with accounting tricks, I don't know. But
19 that's what they have in their 10-K. Now, that's Cumulus
20 Media, Inc., the -- the big overseer of all the Cumulus
21 Susquehanna nation. But somehow somehow they were able to
22 calculate goodwill.

23 In any event, they haven't established
24 irreparable harm because they have -- they have -- the standard
25 for a TR0 is clearly showing all four elements: Success on the

1 merits, irreparable harm, the balance of injury between the
2 parties, which is usually a wash, and the -- the -- whether an
3 injunction will -- will be a disservice to the public.

4 They haven't done that with respect to
5 irreparable harm. They haven't met that high burden of clearly
6 establishing -- not -- not just, hey, it looks like we've
7 established it. Clearly establishing it. And so let me -- let
8 me quickly move on to the other claims.

9 Disparagement. Again, they have to clearly show
10 that -- that only Jake -- 'cause Dan doesn't have a
11 nondisparagement clause in his contract. Only Jake intended to
12 damage or harm the company. Or reasonably expected to damage
13 or harm the company.

14 You saw Mr. Kemp's testimony. He was about as
15 forthright and credible as you could be. He loves those
16 people. Those are his buddies that are still at that station.
17 He -- he doesn't want to hurt -- vicariously hurt them because
18 of what the company's doing to him. He's not. He didn't ever
19 intend or expect to disparage The Ticket.

20 The conversion claim. They own the website.
21 They -- again, this is another place where they just rely on an
22 overbroad, vague, and ambiguous terms of their contract.
23 They -- they fit it in some -- they fit in ownership of the
24 website that previously belonged to Mr. McDowell and social
25 media accounts that previously belonged to Mr. McDowell and

1 say, well, because you used them for work purposes now we own
2 them. They -- there's no justification for that in their
3 contract.

4 But beyond that, I didn't hear Mr. Pernini say
5 one word about the irreparable harm that allegedly stemmed from
6 the conversion. Not one word. I didn't hear one piece of
7 evidence from the stand or in the documents that there was any
8 irreparable harm because they can't use the Hang Zone website.

9 They don't even have a show called the Hang Zone
10 anymore. Why do they need a website? Why do they need a Hang
11 Zone Twitter account?

12 THE COURT: You got four minutes.

13 MR. CAWLEY: Okay. So they -- they haven't even
14 attempted to establish irreparable harm on the conversion.

15 And I'll give you back three.

16 THE COURT: Okay. Thank you.

17 MR. CAWLEY: Thank you, Your Honor.

18 THE COURT: While I have you up, though --

19 MR. CAWLEY: Sure.

20 THE COURT: -- Counsel. I'm looking back at the agreed
21 temporary order restraining Defendants and continuing
22 preliminary hearing that you all prepared. I marked up just a
23 little bit on the first page and signed on August 21, 2023. I
24 think -- I learned that you subsequently agree to extend that
25 date in view of the long going -- the mediation continuing.

1 There are three paragraphs that the Defendants
2 agreed that they would stop. I'm -- what I want to focus on
3 right now is if any of these three paragraphs are items that --
4 these are only, I think, going to extend to today, right?

5 And going backwards, Defendants cease commenting
6 on or publishing any social media posts or public posts
7 concerning this litigation, The Ticket, the Plaintiff, or any
8 employee or affiliate of the Plaintiff. Then there were
9 some -- on Paragraph 2 -- I'm going backwards -- already
10 posted. Defendants aren't required to remove them but will not
11 promote or otherwise discuss. And then the first one is
12 immediately cease uploading any podcast audio available or any
13 other platform.

14 Any of these at this time, before I rule,
15 Defendants are willing to agree into?

16 MR. CAWLEY: I would like Ms. Griffin to address this
17 issue.

18 THE COURT: Sure.

19 MR. CAWLEY: If you don't mind.

20 THE COURT: I was hoping Ms. Griffin will say something
21 today. Let's go.

22 What's your agreement, if any?

23 MS. GRIFFIN: I wanted to address the -- so the -- the
24 first piece, which is to --

25 THE COURT: Honestly, I just want to know if there's

1 agreement on 1, 2, or 3. It's 6:00. I'm ready to rule, but I
2 want to know if there's any agreement.

3 MS. GRIFFIN: Okay. They do want to be able to
4 podcast.

5 THE COURT: Okay. So that takes out Number 1.

6 MS. GRIFFIN: And the -- the issue about not mentioning
7 The Ticket, the lawsuit, or any employee, I know that was part
8 of the -- well, I don't want to say what was part of the
9 mediation agreement. But you can tell in the -- in the podcast
10 they published since --

11 THE COURT: You're not answering my question. Okay?
12 Let me read it to you.

13 Defendants will cease commenting and publishing
14 any social media posts or other public posts concerning this
15 litigation, The Ticket, the Plaintiff, and any other employee
16 or affiliate of the Plaintiff.

17 So, in other words, is the Defendants, Mr. Kemp
18 and Mr. McDowell, and their lawyers agree to refrain from
19 talking about this litigation publicly?

20 MS. GRIFFIN: Yes.

21 THE COURT: Okay. That's it. You want to continue --
22 you want to be able to podcast?

23 MS. GRIFFIN: Yes. And --

24 THE COURT: Okay. And what else?

25 MS. GRIFFIN: Sorry. The --

1 THE COURT: I don't really care about the reasons. I
2 just want to know what the agreement is.

3 MS. GRIFFIN: Yes. The only issue with that second
4 piece I think is just the being able to mention The Ticket or
5 employees since they are still friends with them.

6 THE COURT: Sure.

7 MS. GRIFFIN: It's really hard to not mention any --

8 THE COURT: That's why I limited my -- I think it's
9 kind of broad here. And I have free speech concerns, quite
10 frankly. But are you agreeing not to talk about the
11 litigation, what's going on in the litigation?

12 MS. GRIFFIN: Yes.

13 THE COURT: Mr. Kemp?

14 DEFENDANT KEMP: Yes, Your Honor.

15 THE COURT: Mr. McDowell?

16 DEFENDANT McDOWELL: Yes, Your Honor.

17 THE COURT: Will you tell your lawyers not to talk
18 about it?

19 DEFENDANT McDOWELL: Yes, we will, Your Honor.

20 THE COURT: Okay. Thank you.

21 And then with the rest of it, not agreeing to
22 today, correct?

23 MS. GRIFFIN: Yes.

24 THE COURT: All right. And I'm assuming you won't
25 oppose them agreeing not to talk about litigation. It goes two

1 ways. It's you too.

2 MR. PERNINI: Yes, Your Honor.

3 THE COURT: That's the only agreement we have.

4 MR. PERNINI: That's correct, Your Honor.

5 THE COURT: Now, I'm ready to rule.

6 I'm just telling you, talking about this
7 litigation, there's no upside for either party but I'm not
8 going to impose that on you. But you all agreed to it of your
9 own free will.

10 Your company people are here -- and I asked
11 Mr. McDowell and Mr. Kemp. Who can speak for the company here?

12 MR. PERNINI: Mr. Bennett.

13 THE COURT: You agree with that?

14 MR. BENNETT: Yes, Your Honor.

15 THE COURT: Okay. You can talk about -- I guess it
16 might come up in conversation that you know about Dumb Zone or
17 Mr. Kemp or Mr. McDowell, but we're not talking about the
18 litigation. Don't get into the gray area to get me all
19 annoyed. But right now we're not going to talk about
20 litigation, like somebody did earlier. Okay? All right.

21 I'm ready to rule.

22 Under Fifth Circuit law, as recently as this --
23 last month and a couple of months ago, it's real clear -- just
24 some of the cases is *Mock v. Garland*, that was a Fifth Circuit,
25 August 1, 2023. *Direct Biologics v. McQueen*, that was just a

1 couple of months ago, too, April 3, 2023. And, of course,
2 there's the *Planned Parenthood Association* case, Fifth Circuit
3 in 2012.

4 But up until, I guess, last month, it's been real
5 clear what the standard is for this Court in awarding -- or
6 granting preliminary injunctions. And it is as follows:

7 A preliminary injunction is an extraordinary
8 remedy -- emphasize extraordinary remedy -- which should not --
9 emphasize the word "not" -- be granted unless the party seeking
10 it has clearly -- I'm emphasizing the word "clearly" -- carried
11 the burden of persuasion on all four requirements. That's
12 straight out of Fifth Circuit law.

13 Again, a preliminary injunction is an
14 extraordinary and drastic remedy. That's straight from the
15 *Direct Biologics* case, Fifth Circuit, a few months ago.

16 The four elements are: Substantial likelihood
17 the movant will prevail on the merits. Substantial likelihood.
18 That's a big burden that the movant will prevail on the merits.

19 Number two, a substantial threat that irreparable
20 harm will result if the injunction is not granted or likely to
21 suffer irreparable harm in the absence of preliminary relief.
22 And as part of irreparable harm, there is law from the Fifth
23 Circuit that says in general, a harm is irreparable when there
24 is no adequate remedy at law, such as monetary damages. That's
25 straight from the words of the Fifth Circuit in

1 *Janvey v. Alguire* case in 2011. That's longstanding. And it's
2 also the law from the state of Texas as well.

3 Third, threatened injury to the movant outweighs
4 the threatened injury to the defendant. In other words, that
5 the balance of equity's tipped in the favor of the movant and
6 the granting of preliminary injunction will not disserve the
7 public interest.

8 So the Court denies the application for
9 preliminary injunction.

10 The Court finds that on one or more elements that
11 are required -- in all four elements are required, that the
12 movant has to clearly carry the burden of persuasion on all
13 four requirements. This is not an "or," this is not a "one out
14 of four," this is an "and." I submit there has been a failure
15 to clearly carry the burden of persuasion to me on probably all
16 of the elements.

17 Let's start with the fourth one, the granting of
18 the preliminary injunction will not disserve the public
19 interest. There's been no discussion. There's been no
20 argument. There's no evidence at all that discusses in --
21 other than a very conclusory form to date. And there have been
22 no discussion on it during this evidentiary hearing on that
23 topic. Because the burden is on the movant, which is the
24 Plaintiff, fails completely that I -- I heard no evidence on
25 that one.

1 On three, threatened injury to the movant
2 outweighs the threatened harm for the defendant. Again,
3 very -- I really haven't heard much. And I gave both sides the
4 ability to talk about all four elements but, really, neither
5 side even talked about it.

6 Then -- and with respect to three and four, of
7 course I'm going to issue more particularized findings as
8 required by law in the next couple of weeks, but I've got some
9 matters ahead of you. But I thought it would be helpful to all
10 the parties to understand where the Court is. This is -- this
11 is an order that I'm denying your temporary injunction, but I
12 will give particularized ruling -- I'll give you particularized
13 findings soon.

14 I have real concerns about free speech on
15 Item Number 3 and 4. And if I have concerns -- I'm not saying
16 the Defendants win on this and I'm not saying the Plaintiff
17 loses on this, but the burden's on the Plaintiff and the
18 parties seeking to clearly carry the burden of persuasion. And
19 I'm not persuaded -- I didn't hear any argument, any persuasion
20 on Item Number 3. Especially when we're talking about free
21 speech. Nobody really went into the balancing test either.

22 Threatened injury to the movant. I'm hearing
23 potential damage to reputation, potential damage to revenues,
24 and that outweighs the threatened harm to the Defendants, which
25 is to pursue a livelihood, free speech.

1 I thought many times today I don't really
2 understand why a couple guys can't joke about things when it's
3 clearly a joke. But, you know, that's for the jury or the
4 trier of fact to go into.

5 I'm not saying these are bad points, but you have
6 the burden and you have to have -- to carry the burden clearly
7 on all four requirements.

8 Let's go into the -- the second one. Substantial
9 threat that irreparable harm will result if the injury --
10 injunction is not granted. There are so many findings I can
11 make on this. The Plaintiff put forth e-mails from listeners
12 purporting to show that the Dumb Zone and the alleged
13 disparaging comments recorded on the Dumb Zone caused Plaintiff
14 to lose listeners and listener goodwill. However, most of the
15 e-mails were sent before Defendants released the first episode
16 of their podcast. The rest were sent after the filing of the
17 lawsuit. Specifically citing the Plaintiff's filing of the
18 lawsuit is the reason for the listeners' anger, not the
19 Defendants' conduct.

20 Much of the rest of the testimony and evidence
21 was conclusory and contradictory on this. I heard no evidence
22 that -- what was the Plaintiff, The Ticket, Susquehanna's
23 reputation, what was your goodwill? And how can you say
24 goodwill is -- you're losing goodwill if you don't even put
25 forth what it was before.

1 There was only one witness that came forward and
2 it was put on by the Defendants. Nobody came up here on the
3 stand -- I was expecting maybe one or two saying, yeah, I moved
4 because I listened to their podcast and I moved because I liked
5 it better. I mean, just something but there was none. Zero.

6 And irreparable harm, I disagree with the
7 Plaintiff. I think instead of spending the time and money to
8 have somebody tell what's obvious, which is that podcasts are
9 moving in on the media market -- there's nothing in the
10 expert's testimony with respect to this case or these
11 Defendants' actions. Yes, I think it -- there was no attempt
12 by the Plaintiff. Probably if there was, they didn't tell the
13 Court about it.

14 But I have so many notes here from what I
15 listened to all day. Well, there's no reliable evidence that I
16 heard today or I read of what the goodwill was and how it's
17 being reduced.

18 I did hear evidence of the business interest of
19 The Ticket and how percentages are going down. I even heard a
20 number of \$157,000, which tells me it's answerable in damages.
21 But not one witness came in -- an accountant, somebody to
22 crunch the numbers -- and say this is what -- how things went
23 down. There's been nobody to come in to persuasively argue to
24 the Court that the dip in revenues and the dip in ratings had
25 to do with what the Defendants did versus them not getting

1 rehired.

2 In fact, the only witness that came in today,
3 Mr. Romo said he was upset they weren't rehired and that's why
4 he very methodically told the Court he didn't want to be paying
5 more during the same time period where organically someone
6 couldn't talk about why they should go to his business,
7 somebody who already eats there. To me, that doesn't really
8 have much to do with the podcast. So, again, you failed to
9 meet that on Number 2.

10 And one, substantial likelihood the movant will
11 prevail on the merits. I think it's a tossup. I think the
12 Defendant, one or more, can lose on this but they can also win,
13 which is why you should have settled this case. Because it's a
14 tossup. And I don't know -- but you didn't -- I find that -- I
15 cannot decide here today that there's a substantial likelihood
16 that the movant will prevail on the merits because there's too
17 many factual disputes. There's too many disputes.

18 I'll just give you one example. In Mr. Kemp's
19 contract it talks about the intent to damage. That's
20 subjective. That's a fact issue. I can't state today that
21 there will be a substantial likelihood of success on the merits
22 on that.

23 Then on the same anti-disparagement paragraph,
24 and I'm doing it straight from memory, so I may have the words
25 garbled a little bit. It talks about reasonably to expect.

1 All right. That's something that either the Court decides, but
2 I can't decide it today, that there was disparagement.

3 So I don't even think I have -- I know I talked
4 to you all about this when we were in my jury room, that I had
5 concerns that the contract was overbroad with respect to,
6 especially, Mr. Kemp. And we talked that the -- Texas law
7 requires me to reform the contract. I don't even think I have
8 to get there because you haven't reached the other three
9 elements and Number 1. So more particularized findings will
10 follow.

11 Let me just make sure that I made my points.

12 I don't find a handful of e-mails pushes the
13 needle to support damaged reputation or goodwill or ties it to
14 what it needs to be tied, which is, I believe, the podcast.
15 They could be tied to the fact that they didn't get re-upped.
16 It could be tied to the lawsuit being filed, which your people
17 are entitled to file lawsuits. And people are entitled to file
18 good lawsuits and people can file bad lawsuits. I'm not making
19 a comment about that. Like I said, the merits, it's a tossup.

20 But what I do know is there was testimony,
21 undisputed, that The Ticket joked about it being cheap. Okay.
22 You know, so your reputation before was, you know, tongue in
23 cheek, you're cheap. And now someone says you're cheap.

24 People can say the same thing about me. You
25 know, I -- I like a good deal. I buy things on sale. So, you

1 know, I -- I don't know. But there's a heavy, heavy, heavy
2 burden when you come in wanting injunctive relief.

3 Again, I mentioned not one witness said they
4 moved over in sworn testimony. I see that there's e-mails, but
5 as far as I'm concerned it's hearsay right now that you
6 received it. But there's not one witness said that they moved
7 over because of wrongful conduct.

8 And I can keep going, but that gives you a
9 snapshot. I don't want the Defendants to think that this is
10 the end of the road. This is -- I'm not going to enter an
11 injunction. You've agreed not to talk about each other, which
12 I think just harms it even -- each other even more. But I do
13 think trial is a tossup.

14 So we'll see what happens, whether there's a lot
15 more evidence that will come in. I don't know if it's going to
16 be before me or if it's going to be a jury trial.

17 Oh. One thing I do want to tell the Defendants
18 is I think I have jurisdiction, but I haven't done a thorough
19 job on it. If you want to decide now that I don't have
20 jurisdiction, maybe you ought to talk to your clients. Okay?

21 And I don't think irrespective -- I've got to
22 find a responsive briefing, but I don't think the NLRB is going
23 to come and tell -- there's something called separation of
24 powers. I don't think the NLRB is going to, you know, tell
25 this Court to cease and desist. So I just -- I'm not going to

1 go to their area and I don't think they're going to come to my
2 area, but we'll see. I just don't think the Fifth Circuit will
3 expand the NLRB's powers, I will tell you that. But, again, I
4 got a lot of research to do on that.

5 What I would suggest at this point is, something
6 I've done in very few cases, and that is maybe the business
7 people on both sides, business people on Susquehanna and maybe
8 Mr. Kemp and Mr. McDowell themselves kind of put your lawyers
9 aside and see if you can reach a deal. Because I don't think
10 you guys want to continue this lawsuit. And I don't think you
11 all do either.

12 There's a lot of lawyering that's gotten -- and
13 the lawyers are doing a good job for their clients, being
14 zealous advocates, but I feel in my heart that if you all just
15 get together, maybe with your mediator to help you, that you
16 can reach a deal that's equally unpleasant for both of you to
17 walk away from. So I encourage you to do that.

18 Oh, and by the way, the Federal Rules of Civil
19 Procedure and the local rules do anticipate that a district
20 judge will be available for settlement discussion. It only
21 tells -- it only says the only restriction in our local rules
22 is that in nonjury cases the presiding judge, that would be me,
23 will not discuss settlement figures unless requested to do so
24 by all concerned parties.

25 So I can get involved in the settlement. And I

1 think you should continue to try to do so because I think
2 getting this dispute behind you is good for both sides. So...

3 I think I've said everything that I want to say.
4 I had it all bottled up inside of me so I know it didn't make a
5 lot of sense.

6 But the bottom line is the temporary injunction
7 is denied. I will make particularized findings in writing in
8 the next couple of weeks, as soon as I can get to it. I
9 encourage you to continue to try to resolve this case;
10 otherwise, we'll see you in trial in December.

11 Is there anything further that you would like to
12 state on the record or request from this Court?

13 MR. PERNINI: Your Honor, just a clarification on the
14 last comment you made about the Court being involved in
15 mediation discussions. I wasn't -- I wasn't sure exactly the
16 point the Court was making on that.

17 THE COURT: I'm just telling you I'm available.

18 MR. PERNINI: So the parties could mediate with the
19 Court, basically, is what you're saying?

20 THE COURT: No. I'm just saying that that's what
21 the -- I can talk to the mediator if I want. My position is I
22 don't really talk numbers of whether it's a jury or a nonjury
23 trial. But in state court, what I did is I would get involved
24 and I -- if the parties asked me to, but they have to state on
25 the record that they waive any objection for me continuing.

1 That's what's in the rule.

2 I just wanted to throw that out --

3 MR. PERNINI: Understood.

4 THE COURT: -- that if you need me to get involved, and
5 I probably will get involved before the trial if it continues
6 to -- I'll make an attempt, especially if it's a jury trial.
7 Okay? But I can't run numbers if it's a nonjury trial, so...

8 MR. PERNINI: Understood.

9 THE COURT: It's just an offer and to tell you what the
10 law is in this Northern District local rules and in the federal
11 rules.

12 MR. PERNINI: Thank you, Your Honor.

13 THE COURT: It's different in Texas state rules.

14 Yes, sir.

15 MR. KINGSTON: Nothing further from us, Your Honor.

16 THE COURT: Let's go off the record.

17 (Off the record.)

18 THE COURT: We're back on the record.

19 Counsel, I appreciate all of the efforts that
20 lawyers made today and their professionalism before the Court
21 and each other today. I know you worked very, very hard. I
22 know you also worked really hard to resolve this thing multiple
23 times. I continue to urge you to do so. But, otherwise, I
24 think we're going to go to trial in December.

25 Is there anything else right now?

1 MR. PERNINI: Well, the only issue we have, Your Honor,
2 is we have a motion to dismiss. I -- putting the -- the
3 discussions of settlement aside --

4 THE COURT: Yes.

5 MR. PERNINI: -- which we will engage in. If they were
6 not to happen, you know, we have status conference, get
7 discovery started, that kind of thing. And they haven't even
8 answered yet, so --

9 THE COURT: That's true.

10 MR. PERNINI: Yes. So we need to --

11 THE COURT: Well, it may have to be moved, but that
12 just prolongs the --

13 MR. PERNINI: I don't think --

14 THE COURT: -- the pain on both sides.

15 MR. PERNINI: I think it's a matter of if we're not
16 going to move it, obviously, we need to do expedited discovery
17 and we'll have to discuss it.

18 THE COURT: I'll let you all try to talk to each other.
19 We needed to get this out of the way, so... But that's a good
20 point. Okay? I'm making this case a priority, if you haven't
21 figured that out. All right? And I will continue to do so.

22 April Spencer is -- every time she writes to you,
23 just assume it's coming straight from me. Okay? So I just
24 want to make that very clear.

25 MR. PERNINI: Thank you, Your Honor.

1 THE COURT: And then I read every response that's sent
2 back to her. So she's here if you need a telephone call, a
3 conference, or if you need to come back and we have a little
4 meeting. But please communicate through April. She's making
5 this a high priority for me.

6 Anything else over here? I'm sorry you didn't
7 prevail -- well, I'm not sorry.

8 MR. PERNINI: I understand, Your Honor.

9 THE COURT: But you did a great job for your clients.
10 Okay.

11 MR. PERNINI: Thank you.

12 Over here, anything?

13 MS. GRIFFIN: Nothing further.

14 THE COURT: We are adjourned.

15 SECURITY OFFICER: All rise.

16 (WHEREUPON, the proceedings were adjourned.)

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REPORTER'S CERTIFICATE

I, Thu Bui, CRR, RMR, Official Court Reporter, United States District Court, Northern District of Texas, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled and numbered matter.

 /s/ Thu Bui
Official Court Reporter