

CAUSE NO. 2024CI26782

IN RE:
AUBREY DRAKE GRAHAM,
Petitioner,

REQUESTING DEPOSITIONS OF:
IHEARTMEDIA, INC. &
UMG RECORDINGS, INC.

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IN THE DISTRICT COURT

225TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

PETITIONER’S MOTION FOR DISCOVERY UNDER THE TEXAS CITIZENS
PARTICIPATION ACT (“TCPA”) AND MOTION FOR CONTINUANCE OF TCPA
HEARING

I. INTRODUCTION & FACTUAL BACKGROUND

Petitioner Aubrey Drake Graham (“Drake”) files this motion seeking limited discovery from UMG Recordings, Inc. (“UMG”) pursuant to Civil Practice & Remedies Code § 27.006(b) and would show as follows.

Drake filed a petition under Texas Rule of Civil Procedure 202 seeking narrow pre-suit discovery into the conduct of UMG and iHeartMedia, Inc.¹ in connection with UMG’s unlawful efforts to turn the song “Not Like Us” into a viral mega-hit. Ex. A (“Petition”).² UMG holds exclusive control over licensing the song and, as the Petition alleges, engaged in deliberate, irregular, and inappropriate business practices—including covert and illegal pay-to-play (“payola”) deals—to create a record-shattering spread of “Not Like Us.” *Id.* ¶¶ 10–17. Drake’s concerns regarding UMG’s apparent misconduct are detailed in his Petition, but also supported by

¹ Drake and iHeartMedia, Inc. reached a settlement satisfactory to both sides and Drake withdrew the Petition as to iHeartMedia, Inc. on February 26, 2025.

² See Ex. A (Graham’s Verified Petition for Rule 202 Depositions) (incorporated by reference herein).

widespread concerns regarding industry practices, including in Texas. Recently, on February 6, 2025, the Federal Communications Commission (“FCC”) issued an “enforcement advisory” regarding the “*covert manipulation of radio airplay*” in violation of FCC’s payola rules.³ Just last week, on February 24, 2025, the FCC made clear that its regulatory interests touch on conduct in this District—indeed, the FCC made public a request it sent to iHeartMedia regarding compliance with payola rules in connection with upcoming events in Texas.⁴ Along these lines, Drake’s Petition sought pre-suit discovery because he believes UMG’s improper promotional conduct vis-à-vis the “Not Like Us” song may give rise to claims of civil fraud, racketeering, or other causes of action against UMG and its many (as of yet) unidentified co-conspirators.⁵

Determined to resist discovery (however limited) into its secret promotional tactics at all costs, on January 23, 2025, UMG filed a motion to dismiss Drake’s Petition under the Texas Citizens Participation Act (Tex. Civ. Prac. & Rem. Code § 27.001 *et seq.* “TCPA”) (the “TCPA Motion”), arguing that Drake’s Petition is foreclosed by the TCPA because, *inter alia*, the Petition is allegedly related to UMG’s “core free speech” protected by the First Amendment, and because the “commercial speech” exception of the TCPA—which exempts certain types of commercial conduct from the TCPA regime—does not apply.

³ Public Notice, *FCC Enforcement Advisory* (February 6, 2025) available at <https://docs.fcc.gov/public/attachments/DA-25-104A1.pdf> (emphasis added).

⁴ iHeart Country Music Festival ’25—FCC Sponsorship Identification Requirements, FCC (February 24, 2025) available at <https://docs.fcc.gov/public/attachments/DOC-409718A1.pdf>.

⁵ Since filing the Petition, Drake has initiated litigation in the United States District Court of the Southern District of New York that asserts only three claims: Defamation; Harassment in the Second Degree; and violation of New York General Business Law § 349. Complaint, *Graham v. UMG Recordings, Inc.*, No. 1:25-cv-00399 (S.D.N.Y. Jan. 15, 2025) (“SDNY Complaint”). Consistent with the Petition, the SDNY Complaint does not include claims of civil fraud and racketeering. *Compare id.*, with Petition ¶ 17 (explaining that Drake “has amassed sufficient facts to pursue certain tortious claims against UMG, including, but not limited to, a claim for defamation” but lacks sufficient factual support to determine whether to bring claims of civil fraud and racketeering).

Drake will respond to the merits of this TCPA Motion in due course.⁶ However, under the clear language of the TCPA (and reinforced by the case law), Drake is entitled to discovery on UMG's sweeping assertions made in the TCPA Motion. Specifically, Section 27.006(b) of the TCPA provides for "limited discovery relevant to" a motion to dismiss under the TCPA. This provision acts as a critical check against defendants using the TCPA as a blunt instrument to snuff out meritorious suits. Tex. Civ. Prac. & Rem. Code § 27.006(b); *see also In re IntelliCentrics, Inc.*, No. 02-18-00280-CV, 2018 WL 5289379, at *4 (Tex. App.—Fort Worth Oct. 25, 2018, no pet.). That is exactly what UMG is trying to do here. Thus, Drake respectfully moves the Court for permission to take a corporate representative deposition (not to exceed 4 hours) and the production of limited categories of documents that go to the factual basis of UMG's TCPA-related claims. Without this discovery, Drake cannot fairly test or refute the factual basis for UMG's claims that, for example, it was acting merely as a "clearinghouse" in promoting the song, or that it was not doing so in its "capacity as a seller" of goods or services.

Finally, because Drake is entitled to pre-hearing discovery under Section 27.006(b), Drake requests a continuance of the hearing on the TCPA Motion, currently set for March 24, 2025, to afford a reasonable amount of time to complete discovery. *See* Tex. Civ. Prac. Rem. Act § 27.004(c) ("If the court allows discovery under Section 27.006(b), the court may extend the hearing date to allow discovery under that subsection, but in no event shall the hearing occur more than 120 days after the service of the motion under Section 27.003.").

⁶ Ironically, the TCPA Motion complains about the burden imposed on UMG in preparing a corporate representative to sit for a four-hour deposition in response to the limited topics requested by the Petition. TCPA Mot. at 22–23; Pet. at ¶ 29; Tex. R. Civ. P. 202.4(a). A four-hour deposition, on the topics of UMG's non-public promotional conduct, could have *already occurred* with minimal burden to UMG. Instead, UMG has launched a legal process under a free speech law that will create (at least) months of additional litigation, if accepted as legitimate. *See* TCPA Mot. at 1, 23. By doing so, UMG has made certain that this proceeding will be more burdensome both to UMG and Drake.

II. LEGAL STANDARD

The TCPA is not “a tool always ready to obtain the early dismissal of every objectionable case or controversy.” *Beving v. Beadles*, 563 S.W.3d 399, 408 n.8 (Tex. App.—Fort Worth 2018, pet. denied). Instead, the TCPA exists both to protect the rights of plaintiffs with meritorious lawsuits as well as to safeguard freedom of speech. Tex. Civ. Prac. & Rem. Code § 27.002. To ensure meritorious lawsuits are not dismissed, the TCPA explicitly authorizes discovery prior to a hearing on a TCPA motion to dismiss: “[o]n a motion by a party or on the court's own motion and on a showing of good cause, the court may allow specified and limited discovery relevant to the motion.” *Id.* at § 27.006(b). Trial courts are afforded considerable discretion in granting pre-hearing discovery; the decision to grant such TCPA discovery is subject to an abuse of discretion standard on appeal. *See In re IntelliCentrics, Inc.*, 2018 WL 5289379 at *2; *Walker v. Schion*, 420 S.W.3d 454, 458 (Tex. App.—Houston [14th Dist.] 2014, no pet.). Texas courts routinely affirm the decisions of trial courts granting TCPA discovery where the movant was in possession of most of the materials the non-movant might use to defeat the TCPA motion. In *In re SSCP Mgmt., Inc.*, 573 S.W.3d 464 (Tex. App.—Fort Worth 2019, no pet.), the Fort Worth Court of Appeals affirmed the decision to grant TCPA discovery in a fraud case in which defendants had “the vast majority of the information in their possession.” *Id.* at 471. Likewise in *In re Great Lakes Ins. SE*, No. 13-19-00577-CV, 2019 WL 6870352 (Tex. App.—Corpus Christi–Edinburg Dec. 16, 2019, no pet.), another Court of Appeals similarly upheld the decision of the trial court to grant TCPA discovery where the evidence of fraudulent intent again was “exclusively within the possession of Defendant and its counsel.” *Id.* at *6.

III. ARGUMENT

Drake has good cause to seek limited discovery “relevant to” the TCPA Motion, in particular because the factual information necessary to conclusively refute the factual basis of several of UMG’s claims is in UMG’s sole possession.

A. Pre-Hearing Discovery Will Permit Drake to Disprove UMG’s Arguments and Defenses.

The TCPA Motion makes several arguments which can be disproven with limited factual discovery permitted by § 27.006(b).

First, UMG asserts that its conduct in promoting “Not Like Us” is a protected communication under the First Amendment and the TCPA. TCPA Motion at 10–12.⁷ This argument relies on the factual predicate that the covert (*i.e.*, not disclosed in public) promotional activities in which UMG engaged in order to distribute and encourage the publication of “Not Like Us” in Texas constitute “core free speech.” TCPA Mot. at 16. In making its argument, UMG cites *Cinevision Corp. v. City of Burbank*, 745 F.2d 560 (9th Cir. 1984). In *Cinevision*, the Ninth Circuit extended First Amendment protections to a concert promoter, who had alleged that the City Council of Burbank had violated an agreement with the promoter that gave it the right to “present” shows and performances in the Starlight Bowl, based on its holding that the promoter’s activities vis-à-vis these public performances amounted to operating like a “clearinghouse” for protected expression and the public’s access to the same. *Id.* at 568–69.

⁷ Importantly, UMG is not claiming, nor could it, that all conduct related to the music industry is protected free speech. Were all conduct promoting and distributing music protected speech, UMG would have, for example, had no need to settle prior charges of violating the Communications Act of 1934. *See* 47 U.S.C. §§ 317, 508; Pet. at 5; *see also* Jeff Leeds, *Universal Music Settles Big Payola Case*, N.Y. Times (May 12, 2006), <https://www.nytimes.com/2006/05/12/business/12payola.html?smid=url-share> [<https://web.archive.org/web/20240131004539/https://www.nytimes.com/2006/05/12/business/12payola.html>].

Whether UMG's secret activities with private companies in Texas to promote a song (over which UMG was and is the exclusive license holder) makes it remotely analogous to the kind of "clearinghouse" described in *Cinevision* is a factual issue clearly "relevant to" the TCPA Motion, and therefore Drake is entitled to limited discovery in connection therewith. UMG, not Drake, possesses *all* of the relevant factual information that would enable Drake to rebut UMG's assertion. For example, Drake does not know the terms, scope, or purpose of any agreements or arrangements UMG may have had with iHeartMedia (or others in this District for that matter), and whether those agreements placed UMG in the same position that *Cinevision* occupied vis-à-vis its counterparty (the City Council of Burbank) of a "clearinghouse." Furthermore, the essence of the legal claims Drake seeks to assert against UMG is *not* that UMG merely promoted "Not Like Us," as *Cinevision* did, but that it used prohibited, improper, and/or misleading means (which, of course, could not possibly receive First Amendment protection) to do so. Discovery is therefore essential to be able to determine whether the application of the TCPA is appropriate in the first instance. *In re SSCP Mgmt., Inc.*, 573 S.W.3d at 471–72. Such information, whether in the form of documents or deposition testimony, is the best evidence of the precise nature of UMG's conduct—and UMG should not be permitted to escape discovery under Section 202, and to pursue fee shifting under the TCPA, based on nothing other than its own conclusory statements of the nature of its conduct that assume answers to the precise questions on which Drake has sought discovery.

Second, UMG argues that the conduct at issue in the Petition does not fall into the TCPA's exception for "commercial speech." TCPA Mot. at 15–17. The TCPA's commercial speech exemption applies where:

- (1) the defendant was primarily engaged in the business of selling or leasing goods, (2) the defendant made the statement or engaged in the conduct on which the claim is based in the defendant's capacity as a seller or lessor of those goods or services, (3) the

statement or conduct at issue arose out of a commercial transaction involving the kind of goods or services the defendant provides, and (4) the intended audience of the statement or conduct were actual or potential customers of the defendant for the kind of goods or services the defendant provides.

Castleman v. Internet Money Ltd., 546 S.W.3d 684, 688 (Tex. 2018).

It is likely that the commercial speech exception would cover the conduct and statements UMG made to iHeart and others in connection with licensing the song. Indeed, on their face, the ways in which UMG covertly promoted “Not Like Us” to radio stations and online streaming services—i.e., an organization engaged in the business of selling music paying radio stations to play music—appear to be textbook commercial speech. *See generally id.* But, absent discovery, Drake would be forced to rely upon UMG’s conclusory and self-serving statements, rather than actual facts, in determining the exception’s applicability. Thankfully, the TCPA does not permit UMG to impose liability on Drake based solely on its say so. Drake is entitled to discovery into whether, for example, UMG was acting as a “seller” when it was engaged in the promotional activities that form the basis for the Petition. Drake is also entitled to discovery into whether UMG’s conduct in covertly promoting “Not Like Us” arose out of a “commercial transaction” involving the sale of music, or whether the intended audience of the covert conduct was music consumers. Just as with the applicability of “core free speech” protections, whether UMG’s conduct satisfies the commercial exception is best determined not by UMG’s conclusory, “trust us” attestations, but by actual evidence.

Third, UMG argues that Drake cannot overcome the TCPA challenge because Drake filed in an improper venue. TCPA Mot. at 18–20. As an initial matter, Drake disagrees with UMG’s interpretation of Rule 202’s residency requirements and will raise those substantive objections in his opposition to the TCPA Motion. But putting that aside, Drake can separately defeat UMG’s arguments as to venue, if this Court can establish personal jurisdiction over UMG either through

substantial ties or through waiver of that objection. *See* Tex. R. Civ. P. 202.2(b) (venue appropriate in “proper court” where anticipated suit may lie); *In re Doe (Trooper)*, 444 S.W.3d 603, 608 (Tex. 2014) (orig. proceeding) (a “proper court” under Rule 202 has personal jurisdiction over the potential defendants). Thus, Drake is entitled to limited discovery on personal jurisdiction. Specifically, Drake requests discovery into whether all or a substantial part of the events or omissions giving rise to his Petition occurred in Texas.

B. Drake Seeks Only Narrow Pre-Hearing Discovery as Expressly Permitted by the TCPA.

Pre-hearing TCPA discovery is intended to be specified and narrow, and that is precisely what Drake seeks here, well within the scale permitted by Texas Courts. The Fort Worth Court of Appeals has succinctly collected caselaw on this issue:

Although the TCPA does not specifically define the scope of “specified and limited discovery relevant to the motion to dismiss,” Texas courts, including this court, have allowed non-movants to conduct abbreviated discovery, such as a short deposition of the TCPA movant or very truncated document production. *See, e.g., [In re] IntelliCentrics [Inc.]*, 2018 WL 5289379, at *5 [(Tex. App.—Fort Worth Oct. 25, 2018, no pet.)] (allowing the non-movant to serve eleven document requests); *In re Bandin*, 556 S.W.3d 891, 895 (Tex. App.—Houston [14th Dist.] 2018, orig. proceeding) (allowing two, two-hour depositions of movants); *Lane v. Phares*, 544 S.W.3d 881, 889 n.1 (Tex. App.—Fort Worth 2018, no pet.) (noting that trial court allowed three-hour deposition of TCPA movant); *Warner Bros. Entm’t, Inc. v. Jones*, 538 S.W.3d 781, 789 (Tex. App.—Austin 2017, pet. filed) (allowing “limited discovery, including document production” and the deposition of one of the TCPA movants).

In re SSCP Mgmt., Inc., 573 S.W.3d at 472–73. Drake’s TCPA discovery requests fall squarely in line with this pattern. Each of Drake’s pre-hearing discovery requests is narrowly tailored to address a specific argument lodged by UMG in its TCPA Motion.

IV. DISCOVERY REQUESTS

Drake requests the following TCPA discovery prior to a hearing on UMG's motion to dismiss:

- 1) A deposition of UMG via corporate representative which shall last no longer than four hours, and be on the following topics:
 - a. UMG's private promotion strategy for "Not Like Us" to determine whether such communications are "core free speech" and/or "commercial speech," including but not limited to: (1) any agreements UMG had with iHeartRadio and/or its radio stations; (2) agreements UMG had with streaming services and other radio stations in the state of Texas; (3) promotional agreements with influencers and other third parties in the state of Texas; (4) methods for tracking and boosting engagement on social media sites (such as by using bots) in the state of Texas; and (5) the intended audience of the promotional activities.
 - b. UMG's commercial ties to and business relationships within the state of Texas.
 - c. How often UMG employees travel to Texas on UMG-related business and whether any UMG employees reside in Texas.
- 2) Production of the following documents from UMG:
 - a. Records sufficient to show UMG's promotion strategy for "Not Like Us" to determine whether such communications are "core free speech" and/or "commercial speech," including but not limited to (1) any agreements UMG had with iHeartRadio and/or its radio stations; (2) agreements UMG had with streaming services and other radio stations in the state of Texas; (3) promotional agreements with influencers and other third parties in the state of Texas; (4) methods for tracking and boosting engagement on social media sites (such as by using bots) in the state of Texas; and (5) the intended audience of the promotional activities in the state of Texas.
 - b. Records sufficient to show the number of contracts UMG has with companies and/or individuals located in the state of Texas.
 - c. Records sufficient to show the number of UMG employees who resided in Texas for at least some period between January 1, 2024 and the present.
 - d. A list of all meetings held in Texas since January 1, 2024 at which UMG personnel were present and at which Drake, Kendrick Lamar, or "Not Like Us" were discussed.

- e. Records of all financial transactions between UMG and companies and/or individuals located in the state of Texas.
- f. Records sufficient to show revenues gained by UMG directly or indirectly related to the licensing and promotion of “Not Like Us” in the state of Texas.
- g. Records sufficient to show the revenue earned by UMG from the distribution, playing, licensing or other use of any music owned by UMG within the state of Texas from January 1, 2024 to present.

V. REQUEST FOR CONTINUANCE OF TCPA HEARING

UMG noticed its TCPA Motion for a hearing on March 24, 2025. Drake therefore asks the Court to continue the hearing on that motion pursuant to Tex. Civ. Prac. Rem. Act § 27.004(c) until discovery can be completed. The discovery described above will be completed in enough time to allow the court to conduct a hearing on or before the 120-day deadline. *See id.*

VI. CONCLUSION

For the above reasons, Drake respectfully asks this Court to grant his request for the pre-hearing discovery and continue the hearing for the TCPA Motion.

Dated: March 3, 2025

Respectfully submitted,

AHMAD, ZAVITSANOS, & MENSING PLLC

/s/ John Zavitsanos

John Zavitsanos
Texas Bar No. 22251650
jzavitsanos@azalaw.com
Daryl Moore
Texas Bar No. 14324720
dmoore@azalaw.com
Monica Uddin
State Bar No. 24075195
muddin@azalaw.com
Michael Killingsworth
State Bar No. 24110089
mkillingsworth@azalaw.com
1221 McKinney Street, Suite 2500
Houston, Texas 77010
Telephone: (713) 655-1101

Michael J. Gottlieb
mgottlieb@willkie.com
Meryl C. Governski
mgovernski@willkie.com
WILLKIE FARR & GALLAGHER LLP
1875 K Street NW
Washington, DC 20006
Telephone: (202) 303-1000

M. Annie Houghton-Larsen
mhoughton-larsen@willkie.com
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019
Telephone: (212) 728-8000

**ATTORNEYS FOR PETITIONER
AUBREY DRAKE GRAHAM**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record pursuant to the Texas Rules of Civil Procedure, on March 3, 2025.

/s/ Monica Uddin

2024CI26782

CAUSE NO. 2024-_____

IN RE:

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IN THE DISTRICT COURT

____ **JUDICIAL DISTRICT**

BEXAR COUNTY, TEXAS

AUBREY DRAKE GRAHAM'S VERIFIED PETITION FOR RULE 202 DEPOSITIONS

Petitioner Aubrey Drake Graham ("Petitioner" or "Drake") requests an order authorized under Texas Rule of Civil Procedure 202 to take pre-suit depositions of the corporate representatives of iHeartMedia, Inc. ("iHeartMedia") and UMG Recordings, Inc. ("UMG"), which includes Interscope Records ("Interscope"), a wholly owned division of UMG, for which Petitioner respectfully shows as follows:

1. Pursuant to Tex. R. Civ. P. 190.4, Petitioner requests that discovery be conducted under a Level 3 discovery control plan.

FACTUAL BACKGROUND

2. Respondent UMG is one of a handful of companies that dominate the multibillion-dollar music industry. When it comes to the release of new music by its most prominent artists, UMG is meticulous in its planning and execution of the music it releases, promotes, and backs with its considerable financial resources. That is true not just because of the amount of money on the line for UMG and its shareholders, but also because UMG's executives are eligible to receive incentive bonuses based on the revenue generated by their respective divisions.

EXHIBIT

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exhibitsticker.com

3. Earlier this year, one of the artists that UMG has under contract presented UMG with a new song called “Not Like Us.” Before it approved the release of the song, UMG knew that the song itself, as well as its accompanying album art and music video, attacked the character of another one of UMG’s most prominent artists, Drake, by falsely accusing him of being a sex offender, engaging in pedophilic acts, harboring sex offenders, and committing other criminal sexual acts. Specifically, the song calls Drake a “certified pedophile,” a “predator,” and someone whose name should “be registered and placed on neighborhood watch.”

4. Pursuant to its rights under various contracts, UMG has exclusive control over the licensing of “Not Like Us” and could have refused to release or distribute the song or required the offending material to be edited and/or removed. But UMG chose to do the opposite. UMG designed, financed, and then executed a plan to turn “Not Like Us” into a viral mega-hit with the intent of using the spectacle of harm to Drake and his businesses to drive consumer hysteria and, of course, massive revenues. That plan succeeded, likely beyond UMG’s wildest expectations.

5. UMG released the song “Not Like Us” on May 4, 2024, and its music video on July 4, 2024. UMG relied on its exclusive licensing rights and, in coordination with known and unknown third parties, utilized every tool in its arsenal to spread “Not Like Us.”

6. UMG made “Not Like Us” available for radio play, including to iHeartMedia, a mass media corporation headquartered in San Antonio, Texas. iHeartMedia boasts that it is “the number one audio media company in the U.S. based on consumer reach.”¹ iHeartMedia claims that it reaches “9 out of 10 Americans every month” and has more “reach than any other media company in the U.S.”² iHeartMedia owns iHeartRadio, a freemium broadcast, podcast, radio-

¹ iHeartMedia, Inc., Annual Report (Form 10-K) (Feb. 29, 2024).

² *We are iHeartMedia*, iHeartMedia, <https://www.iheartmedia.com/> [<https://web.archive.org/web/20241119003308/https://www.iheartmedia.com/>] (last visited Nov. 20, 2024).

streaming, and music-streaming platform. Radio stations all over the country, including stations owned by iHeartMedia, have played “Not Like Us.”

7. UMG and iHeartMedia have a long-standing, symbiotic business relationship whereby iHeartMedia pays UMG to license and collect royalties for UMG artists’ songs over radio airplay and streaming services.³ As demonstrated by iHeartMedia’s bankruptcy filings in 2018, the amount of money exchanged between iHeartMedia and UMG is substantial. In the last quarter of 2023, UMG, through its recorded music and music publishing divisions, had an ownership interest in more than *60 percent* of the 100 songs listed on the Billboard Hot 100 radio charts.⁴ Without its business deals with UMG, iHeartMedia would lose access to a majority of its top radio hits.

8. On the first week of its release, “Not Like Us” ranked first on Billboard’s Hot 100 with “5 million radio airplay audience impressions.”⁵ In the week that the “Not Like Us” music video was released, “Not Like Us” played on the radio an additional 40 million times.⁶ Four months later, the iHeartRadio Leaderboard reported that “Not Like Us” was among the top two songs “with the most plays on iHeartRadio Stations”⁷ and explained in a newsletter that it had been

³ Press Release, iHeartMedia Revolutionizes Live Radio And Introduces On Demand With New Services ‘iHeartRadio Plus’ And ‘iHeartRadio All Access’, iHeartMedia (Sept. 23, 2016), <https://www.iheartmedia.com/press/iheartmedia-revolutionizes-live-radio-and-introduces-demand-new-services-iheartradio-plus-and> [<https://perma.cc/9PZZ-KCGJ>].

⁴ Glenn Peoples, *UMG’s TikTok Standoff Affects Over 60% of the Most Popular Songs*, Billboard (Mar. 1, 2024), <https://www.billboard.com/pro/universal-music-tiktok-fight-affects-majority-most-popular-songs/> [<https://perma.cc/2WMN-BNJJ>].

⁵ Gary Trust, *Kendrick Lamar’s ‘Not Like Us’ Blasts In at No. 1 on Billboard Hot 100*, Billboard (May 13, 2024) <https://www.billboard.com/lists/kendrick-lamar-not-like-us-hot-100-number-one-debut/not-like-us-no-1/> [<https://perma.cc/MR9G-WVL5>].

⁶ Gary Trust, *Kendrick Lamar’s ‘Not Like Us’ Returns to No. 1 on Billboard Hot 100*, Billboard (July 15, 2024), <https://www.billboard.com/lists/kendrick-lamar-not-like-us-number-one-second-week-hot-100/> [<https://perma.cc/74FN-6EXN>].

⁷ *iHeartRadio Leaderboard – Songs With The Most Plays on iHeartRadio Stations*, iHeart Radio (Sept. 27, 2024), <https://perma.cc/6UUX-M59D>; *iHeartRadio Leaderboard – Songs With The Most Plays on iHeartRadio Stations*,

heard more than 25 million times across iHeartRadio’s platforms alone. As of the date of this filing, the iHeartRadio Leaderboard still reports “Not Like Us” as among the most widely played songs on iHeartRadio Stations.⁸ Billboard reported that, as of October 7, 2024, “Not Like Us” reached “45.4 million in total audience impressions” on radio with “15 nonconsecutive weeks in charge of the R&B/Hip-Hop Airplay list.”⁹

9. Radio was only one of the mediums on which UMG relied to spread “Not Like Us.” Within a week of its initial release, “Not Like Us” broke the record for the most-streamed song in a seven-day period, with *96 million streams*.¹⁰ On October 7, 2024, “Not Like Us” broke the record for the most weeks—21—at number one on Billboard’s Hot Rap songs based on streaming, sales and radio airplay.¹¹ Since its initial release, “Not Like Us” has been seen and heard *billions* of times.

10. The record-shattering spread of “Not Like Us” on streaming, sales, and radio play was deliberate, and appears to have relied upon irregular and inappropriate business practices.

iHeart Radio (Nov. 20, 2024), <https://www.iheart.com/playlist/iheartradio-leaderboard-312064750-2AL8dU5D7GquY5KGTcNwUm/> [<https://web.archive.org/web/20241120182335/https://www.iheart.com/playlist/iheartradio-leaderboard-312064750-2AL8dU5D7GquY5KGTcNwUm/>].

⁸ *iHeartRadio Leaderboard – Songs With The Most Plays on iHeartRadio Stations*, iHeart Radio (Nov. 20, 2024), <https://www.iheart.com/playlist/iheartradio-leaderboard-312064750-2AL8dU5D7GquY5KGTcNwUm/> [<https://web.archive.org/web/20241120182335/https://www.iheart.com/playlist/iheartradio-leaderboard-312064750-2AL8dU5D7GquY5KGTcNwUm/>].

⁹ Trevor Anderson, *Kendrick Lamar’s ‘Not Like Us’ Breaks Record for Most Weeks at No. 1 on Hot Rap Songs Chart*, Billboard (Oct. 7, 2024), <https://www.billboard.com/music/chart-beat/kendrick-lamar-not-like-us-number-1-record-rap-songs-chart-1235794635/> [<https://perma.cc/4XBV-SUQG>].

¹⁰ Cedric Thornton, *Kendrick Lamar’s ‘Not Like Us’ Breaks Streaming Record, Passes Cardi B and Taylor Swift*, Black Enterprise (May 16, 2024), <https://www.blackenterprise.com/kendrick-lamar-not-like-us-streaming-record/> [<https://perma.cc/WG7G-2WBM>].

¹¹ Anderson, *supra* note 9.

11. According to one inside source known to Petitioner, UMG made covert payments to a number of platforms, including radio stations, to play and promote “Not Like Us” without disclosing those payments to listeners. This practice, known as “payola,” is prohibited by the Communications Act of 1934 (*see* 47 U.S.C. §§ 317, 508), and has been the subject of regulatory scrutiny.¹² In 2006, UMG agreed to pay \$12 million in a settlement with the New York Attorney General following an investigation involving accusations that UMG executives had used a broad array of “pay for play” tactics to secure radio airplay for music.¹³ Separately, in 2005, UMG was sued by two radio promotion companies alleging fraudulent pay-to-play practices.¹⁴

12. Petitioner has learned of at least one UMG employee making payments to an independent radio promoter, who had agreed to transfer those payments to certain radio stations and/or radio station employees. These radio stations subsequently played “Not Like Us,” and to Petitioner’s knowledge, did so without disclosing to their listeners that they had been paid by UMG to do so.

13. Petitioner has been unable to confirm whether any iHeartRadio stations were among the stations paid as part of UMG’s pay-to-play scheme or whether there were any direct payments from UMG to iHeartRadio to promote “Not Like Us.” Given iHeartMedia’s status as

¹² Preventing payola in the music industry has been a top priority for the federal government. For example, in January 2020, the Federal Communications Commission sent a letter to three music companies, including Universal Music Group, seeking prompt information regarding each company’s practices. Letter from Comm’r of Fed. Comm. Comm’n to Sony Music Ent., Warner Music Grp. & Universal Music Grp. (Jan. 16, 2020), <https://docs.fcc.gov/public/attachments/DOC-361998A1.pdf>.

¹³ Jeff Leeds, *Universal Music Settles Big Payola Case*, N.Y. Times (May 12, 2006), <https://www.nytimes.com/2006/05/12/business/12payola.html?smid=url-share> [<https://web.archive.org/web/20240131004539/https://www.nytimes.com/2006/05/12/business/12payola.html>].

¹⁴ *UMG Sued For Fraud*, Pollstar (Apr. 28, 2005, 2:20 AM), <https://news.pollstar.com/2005/04/28/umg-sued-for-fraud/> [<https://perma.cc/6QH7-T8K2>].

the “number one audio company” in the country, Petitioner believes that UMG engaged in similar tactics to drive radio play of “Not Like Us” on iHeartMedia stations.

14. UMG also directed its digital marketing team to use discretionary funds provided or reimbursed by UMG to pay unknown third parties to share the “Not Like Us” song and video in the days after they were released. The purpose of UMG’s payments to third parties was to inflate artificially the metrics reported relating to “Not Like Us” to encourage media and music critic commentary, and, ultimately, to make it go viral.

15. One whistleblower whose identity is unknown revealed publicly that “someone from management” paid him thousands of dollars on May 6, 2024 to use “bots” to achieve 30,000,000 streams of “Not Like Us” on Spotify in the days immediately after its release to turn “Not Like Us” into “a crazy hit.”¹⁵ Bots appear to be real social media accounts, but are in fact software programs designed to mimic human behavior.

16. Petitioner has received information that UMG also paid certain third-party “influencers” to promote “Not Like Us.” In order to create incentives for high-visibility influencers to spread “Not Like Us,” in what appears to be a radical departure from longstanding internal policy at UMG, UMG removed copyright restrictions on “Not Like Us” on YouTube and Twitch, thereby “whitelisting” the song.

17. Petitioner brings this action for a discrete and specific purpose: to understand whether, and how, UMG funneled payments to iHeartRadio and its radio stations as part of a pay-to-play scheme. Petitioner has amassed sufficient facts to pursue certain tortious claims against

¹⁵ Jambisco Don (@JambiscoDon), *Kendrick Lamar EXPOSED by DJ Akademiks and HACKER Epic for BOT streams*, YouTube (June 18, 2024), <https://www.youtube.com/watch?si=PoazLqeHTyBePEiq&v=rCsW2wteW0c&feature=youtu.be> [<https://perma.cc/8QKB-MX9V>].

UMG, including, but not limited to, a claim for defamation, but currently lacks factual support necessary to determine whether he may bring claims of civil fraud and racketeering against UMG and its many (as of yet) unidentified co-conspirators who violated payola laws and accepted illicit payments, and other things of value, from UMG without disclosure.

PARTIES AND DEPONENTS

18. Drake is an individual domiciled and residing in Washington County, Texas.

19. iHeartMedia is an audio media company incorporated in Delaware and with a primary place of business in San Antonio, Texas. iHeartMedia's principal executive officers are located in San Antonio, Texas. iHeartMedia, through its radio division iHeartRadio, operates more than 60 radio stations in Texas, including nine in San Antonio, eight in Dallas, and seven in Houston.¹⁶ iHeartMedia may be served via its registered agent, CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 78258.

20. UMG is a wholly owned subsidiary of Universal Music Group N.V., a publicly-owned limited liability company incorporated under the laws of the Netherlands. Interscope is a division of UMG. UMG regularly conducts business in Texas, including through contracts and agreements with iHeartMedia, and other music-related corporations in the state. UMG may be served through the Texas Secretary of State.

¹⁶ *Listening Platform: Our Stations – Houston Stations*, iHeartMedia (Nov. 20, 2024), <https://www.iheartmedia.com/stations?market=HOUSTON-TX> [<https://perma.cc/WG7G-2WBM>].

JURISDICTION AND VENUE

21. This Court has personal jurisdiction over iHeartMedia because it maintains its principal place of business in San Antonio, Texas.

22. This Court has personal jurisdiction over UMG. This petition arises out of UMG's continuous and extensive business activities in the State of Texas, including doing business and entering into contracts with Texas-based iHeartMedia for the specific purpose of misleading the residents of Texas about how radio stations are choosing what songs to play and the songs' popularity. UMG also avails itself of Texas by: directing distribution, marketing, licensing, and other business activities to Texas residents, such that Texas residents may purchase, download, and stream music, including "Not Like Us" in the State; and selling, promoting, and paying third parties, some of whom are believed to be in the State, to play songs, including "Not Like Us," for radio airplay. UMG seeks out and derives substantial benefits and profits from these activities in the State and in San Antonio. Accordingly, UMG is subject to personal jurisdiction under the provisions of the Texas Long Arm Statute, Tex. Civ. Prac. & Rem. Code § 17.041 *et seq.* It would be reasonable for this Court to exercise jurisdiction consistent with principles underlying the U.S. Constitution, and the exercise of jurisdiction by this Court would not offend traditional notions of fair play and substantial justice.

23. This Court has jurisdiction over this matter because a substantial part of the events giving rise to the claims that Petitioner seeks to investigate occurred in Bexar County and these potential claims are within the jurisdictional limits of this Court.

24. Venue is proper in Bexar County pursuant to Texas Civil Practice and Remedies Code §§ 15.002(1) and (3) and Texas Rule of Civil Procedure 202.2 because a substantial part of the underlying events that would give rise to the claims being investigated occurred in Bexar County and iHeartMedia resides in Bexar County.

REQUEST TO DEPOSE

25. Rule 202 permits a party to investigate potential claims via pre-suit depositions. Rule 202 functions “in aid of a suit which is anticipated and ancillary to the anticipated suit.” *In re Wolfe*, 341 S.W.3d 932, 933 (Tex. 2011) (per curiam). Depositions under Rule 202 “are governed by the rules applicable to depositions of non-parties in a pending suit [Rule 199.2(b)(5) and] the scope of discovery in depositions authorized by this rule is the same as if the anticipated suit or potential claim had been filed.” Tex. R. Civ. P. 202.5.

26. Here, the limited Rule 202 depositions Petitioner proposes are the most efficient method for him to understand the role of iHeartMedia in UMG’s scheme to unlawfully promote “Not Like Us.” Based on the minimal information already available to Petitioner, the testimony sought is necessary for Petitioner to understand and evaluate his potential claims.

27. Because Petitioner only seeks this limited testimony, the benefit of allowing Petitioner to take the requested depositions outweighs any associated burden or expense to iHeartMedia and UMG. Moreover, the interest of justice is served by allowing Petitioner to investigate potential claims before filing—these depositions are necessary, as part of the requirements of Texas Rule of Civil Procedure 13, for Petitioner to make an informed decision about any future legal action.

28. Petitioner seeks an oral deposition of iHeartMedia via corporate representative(s) to investigate evidence of UMG’s provision of financial benefits to iHeartMedia in exchange for obtaining airplay of “Not Like Us” to spread the song to billions of listeners, and to learn the identities and practices of any direct participants in a pay-to-play scheme, including any intermediaries who may have been involved.

- a. iHeartMedia, Inc.
20880 Stone Oak Parkway
San Antonio, Texas 78258
(210) 822-2828

29. Petitioner seeks an oral deposition of UMG via corporate representative(s) to investigate evidence of UMG's conspiracy to increase radio play for "Not Like Us" by providing iHeartMedia with financial benefits and to learn the identities and practices of any direct participants in a pay-to-play scheme, including any intermediaries who may have been involved.

- b. UMG Recordings, Inc.
2220 Colorado Avenue
Santa Monica, California 90404
(814) 389-6361

30. Critical evidence relevant to Petitioner's potential claims, including the identities of potential defendants, is not available to him. The benefit of allowing the requested deposition outweighs the burden or expense of the procedure.

31. Tex. R. Civ. P. 202 enables a person to "petition the court for an order authorizing the taking of a deposition [] to investigate a potential claim or suit." Tex. R. Civ. P. 202.1(b). A court must order a deposition requested if it finds that the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure. Tex. R. Civ. P. 202.4(a)(2).

32. Critical evidence relevant to Petitioner's potential claims, including, but not limited to, the identities of unknown defendants, is not available to him and, without the requested deposition, he may be unable to pursue such claims.

33. For the reasons set forth above, Petitioner avers that the likely benefit of allowing Petitioner to take the requested deposition to investigate potential claims outweighs the burden or expense of the procedure.

AUTHORITY FOR DEPOSITIONS

34. Tex. R. Civ. P. 202 enables a person to “petition the court for an order authorizing the taking of a deposition [] to investigate a potential claim or suit.” Tex. R. Civ. P. 202.1(b). A court must order a deposition requested if it finds that the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure. Tex. R. Civ. P. 202.4(a)(2).

OTHER INTERESTED PERSONS

35. Petitioner is unaware of other interested persons at this time.

PRAYER FOR RELIEF

36. Petitioner respectfully requests that the Court issue an order setting a date for hearing on this Petition with at least 15 days’ notice, and after that hearing, issue an order:

- a. requiring iHeartMedia’s corporate representative(s) to testify by oral deposition related to the matters described herein;
- b. requiring UMG’s corporate representative(s) to testify by oral deposition related to the matters described herein; and
- c. for all other relief at law or in equity, to which Petitioner may be shown to be justly entitled.

November 21, 2024

Respectfully submitted,

AHMAD, ZAVITSANOS, & MENSING P.L.L.C.

/s/ John Zavitsanos

John Zavitsanos

Texas Bar No. 22251650

jzavitsanos@azalaw.com

Daryl Moore

Texas Bar No. 14324720

dmoore@azalaw.com

Monica Uddin

State Bar No. 24075195
muddin@azalaw.com
Michael Killingsworth
State Bar No. 24110089
mkillingsworth@azalaw.com
1221 McKinney Street, Suite 2500
Houston, Texas 77010
Telephone: (713) 655-1101
Facsimile: (713) 655-0062

**ATTORNEYS FOR PETITIONER
AUBREY DRAKE GRAHAM**

Michael J. Gottlieb
mgottlieb@willkie.com
Meryl C. Governski
mgovernski@willkie.com
WILLKIE FARR & GALLAGHER LLP
1875 K Street NW
Washington, DC 20006
Telephone: (202) 303-1000

M. Annie Houghton-Larsen
mhoughton-larsen@willkie.com
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019
Telephone: (212) 728-8000

CAUSE NO. 2024-

IN RE: AUBREY DRAKE GRAHAM, <i>Petitioner,</i> REQUESTING DEPOSITIONS OF: IHEARTMEDIA, INC. & UMG RECORDINGS, INC.	§ § § § § § § § § §	IN THE DISTRICT COURT _____ JUDICIAL DISTRICT BEXAR COUNTY, TEXAS

VERIFICATION

1. My name is Aubrey Drake Graham. I am over the age of eighteen and my business address is 10960 Wilshire Blvd., 5th Floor, Los Angeles, CA 90024
2. I have read the above and foregoing Rule 202 Petition. Based on my personal knowledge, the factual information contained therein is true and correct.
3. I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 21, 2024.



Aubrey Drake Graham

Automated Certificate of eService

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Myrna Flores on behalf of John Zavitsanos

Bar No. 22251650

mflores@azalaw.com

Envelope ID: 94693898

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Status as of 11/26/2024 8:18 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Angela Keniston		akeniston@azalaw.com	11/25/2024 4:21:21 PM	NOT SENT
Michael Killingsworth		mkillingsworth@azalaw.com	11/25/2024 4:21:21 PM	NOT SENT
Myrna Flores		mflores@azalaw.com	11/25/2024 4:21:21 PM	NOT SENT
Monica Uddin		muddin@azalaw.com	11/25/2024 4:21:21 PM	NOT SENT
John Zavitsanos		jzavitsanos@AZALAW.COM	11/25/2024 4:21:21 PM	NOT SENT