

2024CI26782

CAUSE NO. 2024-_____

**IN RE:
AUBREY DRAKE GRAHAM,**

Petitioner,

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

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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.

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

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Myrna Flores on behalf of John Zavitsanos
Bar No. 22251650
mflores@azalaw.com
Envelope ID: 94693898
Filing Code Description: Petition
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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