

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**CITADEL BROADCASTING
COMPANY,**

Plaintiff,

V.

RYAN HANEY,

Defendant.

CIVIL ACTION NO.

VERIFIED COMPLAINT

Plaintiff Citadel Broadcasting Company ("Citadel"), through its undersigned counsel, brings the following Complaint for both injunctive and monetary relief against Defendant Ryan Haney ("Defendant"). In support of its Complaint, Citadel alleges as follows:

PARTIES

1. Plaintiff Citadel Broadcasting Company is a Nevada corporation with its principal place of business in Atlanta, Georgia. It is an indirect, wholly-owned subsidiary of Cumulus Media Inc. For diversity purposes, Citadel is a citizen of the States of Nevada and Georgia.

2. Defendant Ryan Haney is a former operations manager for Citadel's Birmingham, Alabama cluster of radio stations and program director for WJOX-

FM, Citadel's Birmingham sports-talk station. Upon information and belief, Defendant is a citizen and resident of the State of Alabama.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because Citadel is diverse from Defendant and the amount in controversy and pecuniary effect of the relief sought exceed the jurisdictional amount of \$75,000.

4. Venue is proper because the Defendant resides in this District and because the events or occurrences giving rise to these claims occurred in this District.

FACTUAL ALLEGATIONS

5. Citadel is engaged in the business of operating and managing broadcast media services, including the operation of several FM-radio stations in the Birmingham, Alabama broadcast area, including WJOX-FM, WSPZ-AM, WAPI-FM, WUHT-FM, and WZRR-FM. Citadel's Birmingham offices, the site where a substantial part of the events giving rise to the claims asserted herein occurred, are located at 244 Goodwin Crest Drive, Birmingham, Alabama 35209.

6. Defendant commenced his employment with Citadel's predecessor in Birmingham, Dick Broadcasting Company, on October 12, 1998. Since November 15, 2004, Defendant has acted as the Program Director for WJOX-FM. In his capacity as Program Director, Defendant was responsible for organizing and

developing programming on Citadel's WJOX-FM station, including working with affiliates and advertisers for the Paul Finebaum Radio Network. Since January 1, 2009, he has acted as Operations Manager for Citadel's entire cluster of radio stations in Birmingham, including WJOX-FM. In his capacity as Operations Manager, Defendant was involved in all aspects of the operations of Citadel's Birmingham operation, including contracts with content providers, advertisers, radio personalities, and employees, business and marketing strategies, programming strategies, and management of key business relationships.

7. During the course of his employment with Citadel, Defendant discovered and acquired intimate knowledge of the operations and strategies used by Citadel in conducting its business and became personally acquainted with Citadel's content providers, advertisers, radio personalities, and employees.

8. During the course of his employment with Citadel, Defendant created and had access to confidential and proprietary information of Citadel.

A. Defendant's Employment Agreement

9. As a condition of his employment with Citadel, Defendant executed an Employment Agreement on December 31, 2008 (the "Employment Agreement"). A true and accurate copy of the Employment Agreement is attached in redacted form as Exhibit "A".

10. The original term of the Employment Agreement was January 1, 2009 through December 31, 2010. The Employment Agreement, however, provided for continued employment after the term of the agreement on an at-will basis subject to all provisions of the Employment Agreement:

In the event the Employee continues to provide services to the Company beyond the end of the Term, then such continued employment shall be on an "at-will" basis and may be terminated by either party at any time for any reason, and all terms and conditions set forth of this Agreement shall continue to remain in full force and effect and shall be binding on both Employee and Employer until such time as Employee's employment with the Company is terminated.

(Employment Agreement, Ex. A, at ¶ 2.)

11. The Employment Agreement mandates that, upon termination for any reason, Defendant is required to "return to Employer within five (5) business days of termination all property of Employer or Station then in Employee's custody, possession or control." (*Id.* at ¶ 8(e).)

12. The Employment Agreement contains limitations on Defendant's ability to negotiate with third parties and provides Citadel with rights of first negotiation and first refusal:

(a) Solicitation or Offer From a Third Party: Employee agrees to immediately notify Employer in writing of all offers of employment received by Employee at any time while employed by the Company from any third party to perform broadcasting services or any duties described in Section 3 herein. In addition, Employee agrees to

immediately notify Employer in writing if at any time while employed by the Company any third party solicits Employee to perform broadcasting services or any duties described in Section 3 herein.

* * *

(c) Right of First Refusal: During the Term of this Agreement or within six (6) months after any termination of Employee's employment with the Company for *any* reason, and subject to Section 12 hereof, Employee shall not enter into employment by or perform services for, or agree to enter into the employment of or perform services for, any other radio station or radio entity unless Employee has first offered to enter into an agreement for Employee's services with the Company on terms and conditions at least as favorable to Employer as those (i) offered to Employee by such other station or (ii) offered to such other station by Employee. . . . Notice to Employer of any such offer must be in writing, set forth all details of such offer and contain the signature of both the offeror and the offeree, acknowledging the validity of the offeror's offer and the offeree's willingness to accept such offer. Employer shall be required to match and shall be deemed to have accepted Employee's offer by acceptance of all terms thereof that are reducible to a determinable amount of money. The terms of this Section shall survive any termination or expiration of this Agreement.

(*Id.* at ¶ 11.)

13. Moreover, the Employment Agreement contains a non-compete provision:

(a) The parties acknowledge and agree that Employer is engaged in the business of owning and operating radio stations. . . . Employee acknowledges and agrees that by virtue of the position Employee shall have access to confidential, proprietary information and shall be

involved in important decisions and broadcasting for Employer which shall impact the business operation, including all areas in the Restricted Area. Employee further acknowledges and agrees that it would be impossible for Employee to work in a similar capacity for a competitor of Employer without drawing on and utilizing valuable business information and goodwill gained during employment with Employer.

(b) . . . Employee agrees that while employed by the Company and following termination of Employee's employment for any reason that for a period of at least three (3) months, plus an additional three (3) months for each additional year of employment with the Company, not to exceed a maximum of one (1) year, Employee shall refrain, directly or indirectly, whether as principal, agent, consultant, contractor, employee, or otherwise, alone or in association with or on behalf of other(s), from (i) performing or providing services similar to those provided to Employer pursuant to this Agreement to any radio station located within the Restricted Area For purposes of this Section 12(b), "any radio station located within [] the Restricted Area" shall be defined to mean a radio station whose main transmitter is located within a sixty (60) mile radius of the Station's main transmitter. The terms of this Section shall survive any termination or expiration of this Agreement. Employee acknowledges and agrees that the obligations set forth in this Section 12 will not in any way preclude Employee upon termination of employment from engaging in a lawful profession, trade, or business of any kind, or from becoming gainfully employed. Employee understands and agrees that ten percent (10%) of Employee's salary as set for above in Section 4 is being paid by Employer in consideration for the post-term protection and exclusivity provisions of this Agreement as well as for the other covenants set forth in this Agreement.

(*Id.* at ¶ 12.)

14. The Employment Agreement prohibits Defendant from soliciting any of Citadel's customers and employees for a set period of time following termination:

(a) Non-Solicitation of Customers: Employee agrees that during his/her employment with the Company and for a period of one (1) year following termination of Employee's employment with the Company, for any reason, Employee will not, without the express written consent of Employer, directly or indirectly, either on Employee's own or on behalf of any other person or entity, contact, solicit, call upon, communicate with, or attempt to communicate with any employee, contractor, or agent of any customer of Employer for purposes of providing any service competitive with Employer's business. The terms of this Section shall survive any termination or expiration of this Agreement.

(b) Non-Solicitation of Employees: Employee agrees that during his/her employment with the Company and for a period of one (1) year following termination of Employee's employment with the Company, for any reason, Employee will not directly or indirectly, either on Employee's own or on behalf of any other person or entity, Solicit (defined below) any person who is at the time or who within the immediately preceding thirty (30) days was an employee of Employer.

(*Id.* at ¶ 13.)

15. The Employment Agreement also acknowledges that Defendant, in connection with his employment, would have access to confidential proprietary information and prohibits Defendant from disclosing such information to others for a specified period of time following termination:

Employee acknowledges that, in the course of Employee's employment, Employee shall have access to and be entrusted with confidential information, trade secrets, records, data, specifications and secret inventions and other knowledge, including, but not limited to, business plans, marketing plans and methods, special pricing or rate arrangements, programming strategies, studies or surveys, proprietary research, financial affairs, personnel information of Employer, play lists, customer or advertising lists, current or prospective customer/advertiser contacts and preferences, and programming or promotional plans (hereinafter collectively referred to as "Confidential Information") owned by or in the possession of Employer. . . . Employee agrees that during his/her employment with the Company and for a two (2) year period after Employee's termination of employment for any reason, Employee shall not, without the prior written consent of Employer, disclose to any individual or entity for any reason or purpose whatsoever, or use for his own benefit or for the benefit of any other person or business, other than in the regular course of business of Employer, any Confidential Information of Employer. The terms of this Section shall survive any termination or expiration of this Agreement.

(*Id.* at ¶ 16.)

16. Defendant further acknowledged and agreed that his services to Citadel were unique and that Citadel could seek relief, including injunctive relief, for any breach of the Employment Agreement:

Employee recognizes that the services to be rendered by Employee hereunder are of special, unique, unusual, extraordinary and intellectual character, are of an artistic and professional nature, require skill of the highest order, and further are of peculiar value, the loss of which cannot be adequately compensated for in damages.

Notwithstanding the provisions of Section 22, in the event of any breach of the provisions of this Agreement by the Employee, Employer shall be entitled, if it so elects, to institute and prosecute proceedings in any court of competent jurisdiction to obtain damages, attorneys' fees, costs, to enforce specific performance of such provisions, to restrain and/or enjoin Employee from conduct, or to obtain any other relief, or any combination of the foregoing, that Employer may elect to pursue. Because a remedy at law for any breach of this provision may be inadequate, Employee agrees that in addition to any and all of the remedies available to Employer, Employer shall have the remedies of a restraining order, injunction or other equitable relief to enforce the provisions hereof without posting bond and without the showing of irreparable injury.

(*Id.* at ¶ 18.)

17. The Employment Agreement should be interpreted and enforced pursuant to Alabama law. (*See id.* at ¶ 25(b).)

18. In exchange for the commitments and covenants contained in the Employment Agreement, Citadel (1) employed Defendant in the position of Operations Manager/Program Director; (2) paid Defendant his salary and bonuses as set forth in the agreement; (3) provided Defendant with opportunities to develop professionally and advance, including access to confidential information and on-air time; and (4) other good and valuable consideration. Defendant continued to receive his compensation and other benefits set forth in the Employment Agreement as an "at-will" employee following the expiration of the original term of the Agreement.

B. Defendant Abruptly Resigns from Citadel to Work for a Direct Competitor

19. At 8:00 a.m. on Monday, January 21, 2013, Defendant voluntarily resigned his employment with Citadel without prior notice and effective immediately. Before tendering his resignation, Defendant took possession of all files and other paperwork stored in his office at Citadel, including employment contracts and contracts with customers.

20. That same day, January 21, 2013, Citadel sent a letter to Defendant reminding him of his obligations under his Employment Agreement. (See January 21, 2013 Letter from A. Herd to R. Haney, attached as Exhibit B.)

21. Upon information and belief, on January 28, 2013, Defendant began working as the program director for 97.3 The Zone. 97.3 The Zone is a sports-talk radio station owned by Cox Media Group that competes directly with Citadel and its sports-talk radio station, WJOX-FM, of which Defendant was the former program director with intimate knowledge of the programming strategy. These two stations are the only FM sports-talk radio stations in the Birmingham area. 97.3 The Zone is within sixty (60) miles of Citadel's Birmingham, Alabama office and transmitter.

C. Defendant's Wrongful Conduct

22. Upon information and belief, Defendant has and continues to violate the Employment Agreement by providing the same or essentially the same services

for 97.3 The Zone, a competing business within the Restricted Area as defined in the Employment Agreement, as he performed for Citadel. (*See, e.g.*, Ex. A at ¶¶ 11, 12, 13, 16.)

23. Upon information and belief, Defendant received an offer of employment or was otherwise solicited by Cox before tendering his resignation to Citadel. Prior to resigning, Defendant did not notify Citadel that he was being solicited by another company to perform services similar to those he was performing for Citadel as required by the Employment Agreement. (*See id.* at ¶ 11(a).) Likewise, upon information and belief, Defendant negotiated with a competing business for employment. Defendant did so without notifying Citadel or receiving its consent. (*See id.* at ¶ 11(b).)

24. Defendant entered the employment of a competing radio station within six (6) months of resigning from Citadel without providing Citadel an opportunity to match the offer of the competing station as required by the Employment Agreement. (*See id.* at ¶ 11(c).)

25. Defendant entered the employment of a competing radio station within the Restricted Area as defined by the Employment Agreement to perform and/or provide services similar to those he provided to Citadel in violation of the non-competition provision of the Employment Agreement. (*See id.* at ¶ 12(b).)

26. Upon information and belief, Defendant has, directly or indirectly, assisted his new employer with the solicitation of Citadel's customers and/or employees. (*See id.* at ¶ 13.)

27. Upon information and belief, Defendant is prepared to use, has used, and continues to use Confidential Information belonging to Citadel, as defined in the Employment Agreement, in direct violation of the Employment Agreement. (*See id.* at ¶ 16.)

28. Upon information and belief, Defendant has failed to return the property of Citadel, including but not limited to contracts executed by Citadel with other employees, content providers, and advertisers, within the time frame allotted by the Employment Agreement. (*See id.* at ¶ 8(e).)

D. Citadel's Efforts to Avoid Litigation

29. On January 28, 2013, Citadel sent a letter to David Dubose of the Cox Media Group notifying Cox of the restrictive covenants contained in Defendant's Employment Agreement and demanding that Cox immediately terminate its relationship with Defendant and disclose any and all confidential information provided by Defendant. Citadel requested a response to its correspondence by February 1, 2013. (*See* January 28, 2013 Letter from A. Herd to D. Dubose, attached as Exhibit C.)

30. On January 29, 2013, Citadel sent a letter to Defendant notifying him that he had materially breached several provisions of his Employment Agreement and demanded that he cease and desist such actions. As with its letter to Mr. Dubose, Citadel requested a response on or before February 1, 2013. (*See* January 29, 2013 Letter from A. Herd to R. Haney, attached as Exhibit D.)

31. On January 30, 2013, Citadel received a response from Mr. Dubose claiming that Defendant did not have an enforceable Employment Agreement with Citadel and refusing to comply with Citadel's request to cease and desist employment of Defendant. (*See* January 30, 2013 Letter from D. Dubose to A. Herd, attached as Exhibit E.) Mr. Dubose also threatened to sue Citadel if it chose to exercise its contractual rights against Defendant. (*See id.*)

32. On January 31, 2013, Citadel responded to Mr. Dubose's letter with evidence of the enforceability of the Employment Agreement and provided the relevant provisions setting forth the restrictive covenants in the Employment Agreement. (*See* January 31, 2013 Letter from A. Herd to D. Dubose, attached as Exhibit F.)

33. Defendant did not respond to Citadel's letter in writing, but evidenced his intent to continue in violation of the Employment Agreement through a phone call from his counsel.

34. Defendant's conduct represents an attempt to obtain and to convert to his personal use and gain the information contained in the records of Citadel, the property of Citadel, the names and addresses and other confidential customer information used to conduct business at Citadel, and the goodwill generated, directly or indirectly, by Defendant's association with Citadel, and to do so by means of providing such confidential information to a direct competitor of Citadel to be used to solicit clients and customers of Citadel and otherwise harm Citadel's business in the Birmingham, Alabama area.

COUNT I – BREACH OF DUTY OF LOYALTY

35. Citadel re-alleges and incorporates by reference the preceding paragraphs of this Complaint as if restated fully herein.

36. Defendant, as an employee of Citadel, was an agent of Citadel and owed a duty of loyalty to discharge his responsibilities and to act at all times in the best interest of Citadel. Defendant also had a duty to avoid placing himself, during the agency, in a position that was adverse to that of Citadel. The confidential relationship that existed between Defendant and Citadel afforded Defendant the power and means to take undue advantage of Citadel.

37. Defendant breached his duty of loyalty to Citadel by failing to pursue opportunities for the benefit of Citadel and/or positioning himself to act on corporate opportunities for the benefit of himself and/or 97.3 The Zone; engaging

in self-dealing; and failing to disclose and/or actively concealing information from Citadel.

38. Defendant also breached his duty of loyalty by using company time, money, and other resources while still employed by Citadel to, at a minimum, misappropriate and otherwise use Citadel's confidential and proprietary information.

39. The above-described actions were taken in bad faith, lacked the care that an ordinarily prudent person in a like position would exercise, and were contrary to the best interests of Citadel, in violation of Alabama law. Said actions were perpetrated while Defendant was still employed by Citadel and were done in anticipation of future competition against Citadel.

40. As a direct and proximate cause of Defendant's actions, Citadel has suffered damages including those resulting from lost income and diminished competitive advantage. Citadel was also injured by continuing to place trust and authority in Defendant, allowing him access to their confidential proprietary information including business plans, marketing plans and methods, special pricing or rate arrangements, programming strategies, proprietary research, financial affairs, customer or advertising lists, prospective customer/advertiser contacts, and employment contracts.

41. Defendant's actions were taken intentionally, maliciously, and with intent to injure and/or oppress Citadel, thereby entitling Citadel to punitive damages.

42. Citadel has been required to retain the services of counsel to pursue this action and should be granted reasonable costs and attorneys' fees pursuant to Section 18 of the Employment Agreement.

43. Citadel has no adequate remedy at law for Defendant's actions since the damages Citadel will suffer as a result of the breach of duty will undermine Citadel's current and prospective customer relationships and the divulgence of its confidential proprietary information, as well as the loss of its competitive position and customer goodwill, are incapable of exact proof.

44. Unless Defendant is restrained preliminarily and permanently, Defendant will continue to violate Citadel's rights and to ignore duties owed to Citadel. Accordingly, an Order of this Court requiring a preliminary and permanent injunction restraining Defendant from continuing his actions is a necessary remedy if Citadel is to obtain meaningful relief.

COUNT II – BREACH OF CONTRACT

45. Citadel re-alleges and incorporates by reference the preceding paragraphs of this Complaint as if restated fully herein.

46. As set forth herein, the Employment Agreement entered into by Citadel and Defendant is a binding and enforceable contract between the parties and is supported by valuable consideration. In executing the Employment Agreement, Defendant agreed to certain legally binding covenants and obligations to Citadel.

47. As set forth herein, Defendant has violated the express terms of the Employment Agreement, including Section 8(e) (Return of Citadel's property), Section 11(a) (Solicitation or Offer from a Third Party), Section 11(b) (First Negotiation), Section 11(c) (Right of First Refusal), Section 12 (Non-Competition), Section 13 (Non-Solicitation), and Section 16 (Confidentiality).

48. Defendant is continuing to violate and breach the Employment Agreement.

49. Citadel has fully performed its obligations pursuant to the terms and conditions of the Employment Agreement.

50. As a direct and proximate result of Defendant's material and ongoing breaches, Citadel has and will continue to be irreparably injured and suffer financial damages.

51. Citadel has no adequate remedy at law for Defendant's actions since the damages Citadel will suffer as a result of the material breaches of the Employment Agreement will undermine Citadel's current and prospective

relationships with content providers and advertisers, and the divulgence of its confidential proprietary information, as well as the loss of its competitive position and customer good will, are incapable of exact proof.

52. Unless Defendant is restrained preliminarily and permanently, Defendant will continue to violate Citadel's rights and to ignore duties owed to Citadel. Accordingly, an Order of this Court requiring a preliminary and permanent injunction restraining Defendant from continuing his actions is a necessary remedy if Citadel is to obtain meaningful relief.

53. Due to Defendant's actual and/or potential divulgence of confidential proprietary information, as well as loss of Citadel's competitive position, good will and sales as a result of Defendant's violations, Citadel has been damaged.

RELIEF

WHEREFORE, Citadel respectfully requests:

(1) that a Temporary Restraining Order and/or Preliminary Injunction Order issue immediately, enjoining Defendant, directly or indirectly, until hearing and thereafter until further Order of this Court:

(a) from working for any other radio station in the Restricted Area (as defined by the Employment Agreement) for a period of one (1) year as set forth in the Employment Agreement;

(b) from soliciting any of Citadel's customers and/or employees for a period of one (1) year as set forth in the Employment Agreement;

(c) from disclosing or sharing confidential proprietary information of Citadel with any other person or entity for a period of two (2) years set forth in the Employment Agreement;

(d) requiring Defendant to return Citadel's property, including confidential and proprietary information; and

(e) requiring Defendant to provide Citadel with the opportunity to match the offer made by Cox and 97.3 The Zone as required by section 11(c) of the Employment Agreement;

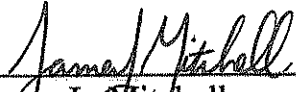
(2) That after trial of this cause, a permanent injunction be entered against Defendant enjoining the conduct set forth above;

(3) That this Court issue an order requiring Defendant to immediately turn over to Citadel any writing, document, recording, and/or electronic data that contains or relates to in any way the confidential proprietary information of Citadel;

(4) That this Court enter an order requiring specific performance of Defendant's contractual obligations to Citadel;

(5) That Citadel be awarded all of its damages caused by Defendant's wrongful conduct, including compensatory and punitive damages, along with costs and attorneys' fees incurred in bringing this action; and

(6) That Citadel be given such other equitable and legal relief as is just and proper under the circumstances.


James L. Mitchell
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Attorneys for Plaintiff
Citadel Broadcasting Company

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**DEFENDANT TO BE SERVED BY PROCESS SERVER AT THE
FOLLOWING ADDRESS:**

Ryan Haney
WZNN-FM
2700 Corporate Drive, Suite 115
Birmingham, Alabama 35242

[Verification on following page]

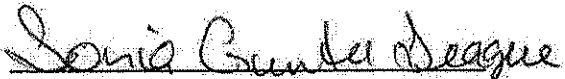
VERIFICATION

I, John Walker, as General Manager and authorized agent of Citadel Broadcasting Company, hereby verify that I have reviewed the foregoing Verified Complaint and authorized its filing and that the foregoing is true and correct to the best of my knowledge, information, and belief.


John Walker

SWORN to and subscribed before

me this 4 day of February 2013.



Notary Public for the State of Alabama

My Commission Expires: 06/14/2016