

**GUARANTY BROADCASTING
COMPANY OF BATON ROUGE, L.L.C.**

VERSUS

WALTON & JOHNSON, L.L.C.

NUMBER _____ SECTION _____

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

PETITION

NOW INTO COURT, through undersigned counsel, comes the plaintiff, Guaranty Broadcasting Company of Baton Rouge, L.L.C. ("Plaintiff"), who respectfully alleges:

1.

Plaintiff is a limited liability company duly formed, organized and in good standing under the laws of the State of Louisiana, with its principal place of business and its registered office located in Baton Rouge, Louisiana.

2.

Made defendant herein is Walton & Johnson, L.L.C. ("Defendant"), a foreign limited liability company, duly formed, organized and in good standing under the laws of the State of Delaware, with a registered office in Wilmington, Delaware, with its principal place of business having formerly been located within the State of Louisiana, but now located in the State of Texas. Defendant regularly conducts its business within the State of Louisiana. As such, Defendant is subject to personal jurisdiction within the State of Louisiana, and within the jurisdiction of this Honorable Court.

3.

Defendant is not registered with the Office of the Louisiana Secretary of State as a foreign limited liability company duly authorized and admitted to conduct business within the State of Louisiana, and thus has no agent for service of process appointed within the state. Accordingly, venue over this action is proper within the Parish of East Baton Rouge, State of Louisiana, pursuant to La. C.C.P. art. 42(5), because this is the parish of Plaintiff's domicile.

4.

Plaintiff is engaged in the business of radio broadcasting and, among others, currently

operates radio station WDGL(FM), broadcasting from FM radio frequency 98.1 MHz, and doing business as radio station "Eagle 98.1."

5.

Defendant is engaged in the business providing syndicated radio programming of the "Walton & Johnson Show," a radio talk show featuring radio personalities John Walton and Steve Johnson. Plaintiff has carried the Walton & Johnson Show on Eagle 98.1 since at least 1998 under various contractual arrangements. For many years, Defendant, John Walton and Steve Johnson were based in New Orleans, later relocating to Houston, Texas.

6.

Defendant currently provides Walton & Johnson Show programming pursuant to an Affiliation Agreement dated March 1, 2006 (the "W&J Affiliation Agreement"). The W&J Affiliation Agreement provides in Section 2, entitled "Initial Term and Renewal Terms" as follows:

- (A) The Initial Term of this Agreement shall be from March 1, 2006 through the last day of the month of February, 2011, or as adjusted from the actual on-air date as may be agreed to by the parties in writing.
- (B) Subject to the other provisions hereof, this Agreement shall be automatically renewed for successive periods of two years in length ("Renewal Terms") unless either party shall give written notice not less than 90 days prior to the expiration of the then-current term that it elects not to renew the Agreement. Network and Station shall enter into good faith negotiations no later than 150 days prior to the end of the Initial Term or any Renewal Term to establish the Base Monthly Fee and Bonus Fee for an upcoming Renewal Term. During each Renewal Term, unless otherwise stated herein, the terms and conditions of this agreement shall apply.
- (C) This Agreement is non-cancelable by the Station during the Initial Term and subsequent Renewal Terms; provided however, that if Network fails to retain the services of either John Walton ("Walton") or Steven Johnson ("Johnson"), Station may terminate this Agreement upon 30 days' notice to Network.

7.

The W&J Affiliation Agreement was amended by the parties in 2009, pursuant to an Amendment to Affiliation Agreement dated August 20, 2009 (the "First Amendment"). The First Amendment amended and restated Section 2 of the W&J Affiliation Agreement to read as follows:

- (A) The Initial Term of this Agreement was March 1, 2006

through the last day of the month of February, 2011, or as adjusted from the actual on-air date as may be agreed to by the parties in writing. Pursuant to the terms of this Amendment, this Agreement shall be extended through December 31, 2016.

- (B) Subject to the other provisions hereof, this Agreement shall be automatically renewed for successive periods of two years in length ("Renewal Terms") unless either party shall give written notice not less than 90 days prior to the expiration of the then-current term that it elects not to renew the Agreement. Network and Station shall enter into good faith negotiations no later than 150 days prior to the end of the Initial Term or any Renewal Term to establish the Base Monthly Fee and Bonus Fee for an upcoming Renewal Term. During each Renewal Term, unless otherwise stated herein, the terms and conditions of this agreement shall apply.
- (C) This Agreement is non-cancelable by the Station during the Initial Term and subsequent Renewal Terms; provided however, that if Network fails to retain the services of either John Walton ("Walton") or Stephen Johnson ("Johnson"), Station may terminate this Agreement upon notice to Network.

8.

The W&J Affiliation Agreement was amended again by the parties in 2016, pursuant to a Second Amendment to Affiliation Agreement dated February 1, 2016 (the "Second Amendment"), which Second Amendment modified the Base Monthly Fee and Spring and Fall Bonus Fee provisions but did not modify the provisions of Section 2 regarding the Initial Term and Renewal Terms.

9.

Through 2016, the parties to the W&J Affiliation Agreement negotiated further with respect to the compensation amounts provided under the agreement, as amended. Plaintiff sought concessions from the Defendant with respect to a requested reduction of the Base Fee amount in exchange for a longer contract term. The Defendant was unwilling to agree to such changes. These discussions continued into October and November of 2016.

10.

Notwithstanding Plaintiff's continued efforts at negotiation in October and November, neither party ever gave to the other any written notice of intent to terminate or not renew the W&J Affiliation Agreement, as amended; as required under Section 2(B) of the agreement in order to avoid the automatic renewal of the contract for an additional two years pursuant thereto. Indeed,

it was never Plaintiff's intention not allow the contract to automatically renew according to its terms if they were unable to obtain an amendment of the contract.

11.

Consequently, as of October 2, 2016, the W&J Affiliation Agreement was renewed for an additional two year term effective on January 1, 2017.

12.

Although nothing has yet been provided by Defendant to Plaintiff in writing relative thereto, Defendant has indicated to Plaintiff in oral discussions in December of 2016 that they do not intend to provide Walton & Johnson programming for broadcast by Plaintiff after December 31, 2016.

13.

By virtue of the automatic renewal of the W&J Affiliation Agreement, as amended, for an additional two year term, Defendant is obligated to continue providing such programming for the two year period running from January 1, 2017 to December 31, 2018.

14.

The foregoing considered, Plaintiff is entitled to and requests of this Court entry of a declaratory judgment declaring that the W&J Affiliation Agreement, as amended, was automatically renewed as of October 2, 2016 for an additional two year term commencing January 1, 2017.

15.

The foregoing considered, Plaintiff is entitled to and requests of this Court entry of a judgment ordering the Defendant to specifically perform its obligations under the W&J Affiliation Agreement, as amended, throughout the additional two year term commencing January 1, 2017, provided that Plaintiff performs its obligations under the agreement.

16.

Alternatively, should Defendant discontinue providing Walton & Johnson Show programming as it has threatened to do on December 31, 2016, then Plaintiff will suffer considerable damages in an amount to be proven at trial on the merits of this matter, for which Plaintiff is entitled to a monetary judgment.

WHEREFORE, Plaintiff prays that Defendant be served with a certified copy of this Petition

and cited to appear and answer same, and that after legal delays and due proceedings have been had, there be judgment rendered in their favor and against the Plaintiffs as follows:

- (1) Entry of a declaratory judgment declaring that the W&J Affiliation Agreement, as amended, was automatically renewed as of October 2, 2016 for an additional two year term commencing January 1, 2017;
- (2) Entry of a judgment of specific performance, ordering the Defendant to specifically perform its obligations under the W&J Affiliation Agreement, as amended, throughout the an additional two year term commencing January 1, 2017, provided that Plaintiff performs its obligations under the agreement; and
- (3) Alternatively, should Defendant discontinue providing Walton & Johnson Show programming as it has threatened to do on December 31, 2016, then Plaintiff prays for entry of judgment in its favor for a monetary sum compensating Plaintiff for damages in such amount as may be proven at trial on the merits of this matter.

Plaintiff prays, further, for judicial interest at the legal rate on any monetary award from the date of judicial demand until paid, together with reasonable attorney fees pursuant to Section 14 of the W&J Affiliation Agreement, as amended, for all costs of these proceedings, and for any and all other relief to which they may be entitled at law or in equity in the premises.

Respectfully submitted:

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**PLEASE PREPARE SERVICE
VIA LONG ARM STATUTE TO:**

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