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ILLINOIS POLLUTION CONTROL BOARD
November 06, 2024

DOUG AND GERI BOYER,)	
)	
Complainants,)	
)	
v.)	PCB 22-9
)	
MRB DEVELOPMENT, LLC)	
d/b/a COPPER FIRE,)	
RENAE EICHHOLZ AND MARK)	
EICHHOLZ)	
)	
Respondents.)	

Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62702

(Starting time of the hearing: 09:59 a.m.)

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* * * * *

1 HEARING OFFICER WEBB: We'll go back on
2 the record. Good morning. My name is Carol
3 Webb, and this is the continuation of the
4 hearing for PCB 22-9, Doug and Geri Boyer
5 versus MRB Development, LLC, doing business as
6 Copper Fire, Renae and Mark Eichholz. It's
7 November 6, and we are beginning at 10 a.m.

8
9 Again, there are no members of the public
10 present, but written public comment may be
11 filed with the clerk by November 20th. We will
12 begin with the Complainant's next witness.

13 MR. JACOBBER: Thank you. Should we close
14 the door?

15 HEARING OFFICER WEBB: Yeah, if it's
16 noisy, feel free to close the door.

17 MR. JACOBBER: For purposes of the record,
18 Geri Boyer is not here today. Ms. Boyer was --
19 is dealing with some health issues. She has
20 a -- they're not sure what it is yet. I don't
21 think there's a diagnosis yet, no, but a mass
22 in her abdomen, and she's in -- she's under a
23 lot of pain medication. She was not able to
24 make the trip today, so her daughter, Becca
25 Boyer, who was a witness, is here in her place

1 as a representative. And we would call Mike
2 Biffignani to the stand.

3 HEARING OFFICER WEBB: Sir, would you
4 please come have a seat right here. Up here.
5 Don't trip over the -- would the court report
6 please swear in the witness.

7 (Mike Biffignani sworn.)

8 DIRECT EXAMINATION

9 BY MR. JACOBBER:

10 Q Could you state your name for the record?

11 A **Mike Biffignani.**

12 Q Can you spell your last name for the
13 record?

14 A **Sure, B, as in Boy, i-f-f-i-g-n-a-n-i.**

15 Q Thank you. You're the president of a
16 company called Sondare Acoustics Group; is that
17 correct?

18 A **That's is correct.**

19 Q What is Sondare?

20 A **Sondare is an acoustics consulting company
21 and some product development and product testing.**

22 Q I'm sorry, say that again?

23 A **Product deadly weaponing and product
24 testing.**

25 Q Okay. Are you trained in the area of

1 sound and acoustics?

2 **A Yes.**

3 Q Tell us about your training.

4 **A I received a master's in acoustics from**
5 **Penn State in 2015 and started the consulting**
6 **company in 2016, and been doing a number of**
7 **consulting jobs since then.**

8 Q Okay.

9 **A The product testing I've done as far as**
10 **sound booths, and I've done product testing for**
11 **Rawlings Sporting Goods; for baseballs and for**
12 **baseball bats; and I had previously had a test**
13 **facility inside my office on Brentwood, in Brentwood**
14 **on Manchester. When Covid came, I don't have the**
15 **office anymore.**

16 Q And that's in St. Louis County?

17 **A Yes.**

18 Q Could you speak a little louder; I'm
19 having a hard time hearing you.

20 **A Sure.**

21 Q And are you presently employed?

22 **A Yes.**

23 Q In what capacities?

24 **A Well, I'm also an adjunct professor at**
25 **Webster University as an acoustics professor.**

1 Q Okay.

2 A And I teach musical instrument acoustics
3 and room acoustics.

4 Q Okay. And then you also work for Sondare?

5 A Yes.

6 Q Okay. So other than your master's degree
7 from Penn State, do you have any other formal
8 education in the acoustics area?

9 A Not specifically acoustics, but I
10 graduated with an electrical engineering degree from
11 University of Missouri-Rolla in 1979, and I took
12 some acoustics classes then.

13 Q Do you hold any certifications or
14 licenses?

15 A No.

16 Q Are none necessary in your line of work?

17 A Not for the consulting that I do.

18 Q Are you a member of any professional
19 associations?

20 A The Acoustics Society, and I'm the chair
21 of the St. Louis chapter of the Acoustics Society.

22 Q What is the Acoustics Society?

23 A Well, the national society promotes
24 acoustics nationally, education in several of the
25 committees, technical committees. That's

1 nationally. It covers publications. It covers if
2 someone wants to write a book, they can provide peer
3 reviews. It's a society of acoustics professionals.
4 I started the chapter for the St. Louis Society
5 about five years ago.

6 Q And to kind of take a step back, what is
7 acoustics?

8 A Well, it's a study of sound.

9 Q You did two sound studies in relation to
10 this case; is that correct?

11 A That's correct.

12 Q They're both in the Boyer loft located at
13 208 East Main Street in Belleville?

14 A That's correct.

15 Q What is a sound study?

16 A A sound study can be a lot of things. I
17 get -- well, in this particular case or in general?

18 Q Let's speak in general first, and then
19 we'll talk about this case.

20 A I do sound studies for good sound and bad
21 sound, which is called noise. So to me, it's all
22 sound. If it's unwanted sound, it's noise. So, I
23 can do studies on air-conditioning noise, people
24 noise, anything that people don't want to hear. I
25 can also do studies on good sound. So room

1 acoustics for people who want a study. Room
2 acoustics for home theaters. Room acoustics for
3 general conference rooms, make a room sound better.
4 So, I do a number of studies where I may do
5 analytical studies or I may do testing in addition
6 to the analytical studies, and then write up a
7 report, make recommendations to people on how to
8 improve whatever problem we're trying to solve with
9 sound, and that's the study.

10 Q Have you received any -- any specific
11 training in relation to doing sound studies?

12 A Other than during the master's program?
13 We did a lot of sound studies to prepare us for
14 environmental studies. We did outside noise.

15 Q During your master's program, how much
16 training did you do in relation to sound studies?

17 A Specific sound study? In the master's
18 program, we would take sound readings indoors and
19 outdoors, and then analyze the sound reading with
20 analytical tools and do frequency analysis and then
21 write up reports. So, I'd say they were usually
22 embedded within classes, not a specific sound study
23 class. So, I'd say half of the classes included
24 study and measurement of sound.

25 Q Okay. How many sound studies have you

1 conducted?

2 **A A hundred.**

3 Q At least a hundred?

4 **A I'm not sure the exact number.**

5 Q More than a hundred?

6 **A Could be more than a hundred.**

7 Q At least one hundred, though?

8 **A At least.**

9 Q And you kind of already talked about
10 determination if a sound is a nuisance or an
11 annoyance versus just a sound --

12 **A Unwanted is the term.**

13 Q Unwanted sound --

14 **A Unwanted sound is noise.**

15 Q Is part of your analysis whether the sound
16 that is being heard is at a reasonable level?

17 **A Reasonable is so subjective. There are**
18 **guidelines that I use locally or nationally that**
19 **help me to determine the subjectiveness of**
20 **reasonable.**

21 Q And what are those guidelines that you
22 might look at?

23 **A The main guideline is daytime-nighttime**
24 **sound levels. Nighttime meaning conducive to sleep.**
25 **Duration of the sound, the continuous noise. The**

1 main one that I run across is sleep. Usually the
2 World Health Organization, the EPA's local
3 ordinances, usually all agree on about 30 decibels
4 as a good level for sleep.

5 Q And we'll play some sound in a little bit,
6 but what -- generally speaking, what does 30
7 decibels mean to us as individuals?

8 A Give you an example?

9 Q Yeah.

10 A If we were all quiet in this room, it'd be
11 about -- my guess without a measure, about 35,
12 because of the air conditioner noise. But at
13 nighttime, the environment outside is quiet, you
14 might just have the air conditioner or the
15 refrigerator, real quietest is about 30.

16 Q Okay. And when you say "nighttime", what
17 do you mean by that? When specifically does
18 nighttime start?

19 A 7:00 o'clock, 10:00 o'clock.

20 Q So, you talked about community guidelines
21 and national guidelines. Are there any other
22 guidelines that you kind of rely on in relation to
23 sound levels?

24 A Well, the first thing I do when I have a
25 client is I ask them, where do they live because the

1 guidelines are sometimes specific to the location.
2 St. Louis County, St. Louis City, Kirkwood, Webster,
3 in the St. Louis area, the Illinois EPA or some of
4 the local jurisdictions have sound guidelines. So,
5 it depends on where the person is but they're a
6 lot -- and nationally, there's US EPA guidelines and
7 there's World Health Organization guidelines.

8 Q In this case, did you rely on any specific
9 guidelines in your analysis?

10 A I first looked locally at Belleville.
11 Then I went up to, I think, Madison County and then
12 to EPA.

13 Q Okay.

14 A Trying to find what guidelines might
15 apply.

16 Q Okay. So, we've already talked about
17 30 decibels or less being the recommended level for
18 sleeping --

19 A Sleep.

20 Q What about for just general living? Are
21 there different sound levels?

22 A General living during the day? A general
23 guideline might be 45.

24 Q Okay. And would that be -- could you
25 equate that to anything in particular, like as we

1 are talking or we --

2 **A Talking, a discussion like this is about**
3 **60. So, you can tell if in this room we're talking**
4 **at 60, if there's activity outside the room,**
5 **daytime, you might measure 45. But a normal daytime**
6 **indoors would be about 45.**

7 Q We've already referenced -- I'm sorry. It
8 is appropriate to ask Mr. Biffignani expert opinion
9 questions now that we've established --

10 HEARING OFFICER WEBB: Yes.

11 MR. JACOBBER: -- his credentials? Thank
12 you.

13 Q (By Mr. Jacobber) We've already
14 established that Sondare was hired to conduct two
15 sound studies, correct?

16 **A That's correct.**

17 Q And those were done on the -- the first
18 was done on April 23rd and April the 24th of 2021?

19 **A I don't recall the exact dates, but I**
20 **think that's correct. April and November, I**
21 **believe.**

22 Q And if you look in the book that's in
23 front of you, if you turn to Exhibit 22?

24 MR. PETRUSKA: Just while he's doing that,
25 I'll place my objection to any expert opinion

1 he has about compliance with Illinois EPA from
2 this report, because it's already ruled on by
3 the Board as to what is compliant in Illinois.
4 But I'll let him talk about the rest of the
5 stuff because that's fine.

6 HEARING OFFICER WEBB: Okay. Noted, thank
7 you.

8 Q (By Mr. Jacober) Have you looked at your
9 report?

10 A Okay.

11 Q And it's dated May 5th of 2021, correct?

12 A Right.

13 Q Is this for sound measurements that were
14 taken on April the 23rd and April the 24th?

15 A Yes, that's the first one that shows
16 Friday April 23rd, the band was playing. The 24th,
17 it looks like a Saturday, Friday.

18 Q Okay. And what did you do as part of this
19 sound study?

20 A I set up a sound level meter in the
21 apartment, away from the wall as to not have effects
22 of the wall. And I turned it on and recorded over a
23 period of time.

24 Q And you did this inside the Boyer's loft,
25 correct?

1 **A That's correct.**

2 Q Where were you when you set up your
3 equipment?

4 **A Outside the loft.**

5 Q I'm sorry?

6 **A I set up with a timer, then I left and
7 then it went on.**

8 Q But where was the sound meter, the
9 equipment set up? Was it right next to the --

10 **A I thought you said where was I, I'm sorry.**

11 Q I'm sorry?

12 **A I thought you said were was I when --**

13 Q Yeah, I did, so it's a bad question, I
14 apologize.

15 **A No problem.**

16 Q When did you set up the actual equipment
17 in the loft?

18 **A I set up the actual equipment away from
19 the wall, towards the center. I think there's a
20 small bar -- there's a small bar away from the wall.
21 So, away from the bar, that general vicinity.**

22 Q Was it siting on a table or on the ground?

23 **A No, I had a tripod.**

24 Q Okay.

25 **A A microphone on a tripod away from the**

1 wall.

2 Q And tell us about all the equipment that
3 you used as a part of the sound study.

4 A I used a calibrated microphone and a tool
5 called Audiotools that measures sound level over a
6 period of time.

7 Q And this calibrated microphone, who
8 calibrated it?

9 A It's calibrated automatically over -- from
10 the manufacturer of the microphone.

11 Q And was it -- was it operating within
12 specs --

13 A Yes.

14 Q -- at the time you used it? So, you set
15 up the equipment and then you left?

16 A I left.

17 Q Why did you leave?

18 A Because the microphone is very sensitive.
19 It will pick up foot fall, pick up my breathing. It
20 will pick up anything in the room.

21 Q So, your goal was to make sure it only
22 picked up the sound?

23 A That's correct.

24 Q You didn't want to be part of the sound --

25 A I didn't want to be part of the

1 **sound-noise problem.**

2 Q When you were in the loft, was there music
3 in Copper Fire playing when you were setting up?

4 A **I don't recall, but I don't -- I don't**
5 **recall.**

6 Q Okay. Did the equipment that you set up
7 record sound in the loft that was coming from Copper
8 Fire on Friday night?

9 A **Yes.**

10 Q And what was the decibel level that came
11 into the Boyer loft on that Friday evening, and it
12 looks like you measured the sound levels on Friday
13 from 3:55 to 4:00, and then again from 7:30 to
14 2:33 a.m. 7:30 p.m. to 2:33 a.m.

15 A **I'd have to look.**

16 Q That's why I wanted to have the report in
17 front of you. Take your time to look. I don't
18 expect you to remember those numbers.

19 A **Well, I should mention -- to go back to**
20 **answer your question, was there music playing? The**
21 **answer must be no because I measured the ambient**
22 **level.**

23 Q Okay.

24 A **That's usually what I do -- the first**
25 **thing I do is before the sound is on, I measure the**

1 ambient with the source off.

2 Q Is the ambient level what you measured
3 from 3:55 to 4:00 o'clock?

4 A It sounds like I measured ambient level
5 Friday afternoon about 30. And then nighttime
6 ambient, Friday and Saturday night at 1:00 a.m.,
7 which was when it was off -- it was off again; it
8 was 29.

9 Q So, without the music, at 1:00 o'clock in
10 the morning, the level was at this 30 or below
11 decibels that is ideal for sleep?

12 A That's correct.

13 Q And during the day, what did you say it
14 was?

15 A It says I measured about 30 during the
16 day, which is very, very quiet. Measured 30 during
17 the day.

18 Q And then you, again, measured from 7:30
19 p.m. onward on Friday evening, correct?

20 A That's correct.

21 Q What were the decibels in the Boyer loft
22 at 7:30 p.m. on -- in the Boyer loft on that Friday
23 evening?

24 A At 7:30? I -- I don't see a -- let's see.

25 Q I think it's on page 4 of your report.

1 **A** **On page 4. On page 4, I seen in the table**
2 **Friday night 10:00 p.m. Where do you see a 7:30**
3 **measurement?**

4 **Q** That's when you said you measured the --
5 at the beginning of the report, you say you measured
6 from 7:30 -- on Friday night, you measured from
7 7:30 p.m. to Saturday, 2:33 a.m, so I'm trying to
8 understand where that's recorded or where that shows
9 in your report what those levels were in that time
10 period?

11 **MR. PETRUSKA:** And at this point, I'll
12 object --

13 **THE WITNESS:** Okay, I see.

14 **MR. PETRUSKA:** It's not in the report.
15 He's got something on page 5 about his decibel
16 levels and it's all during a --

17 **HEARING OFFICER WEBB:** Yeah, I mean, I
18 don't see anything about 7:30. I mean, unless
19 you happened to -- in the report, I mean, if
20 you want to just ask him about it generally --

21 **MR. JACOBBER:** Yeah, I mean, the report
22 says that's when he started reporting.

23 **HEARING OFFICER WEBB:** Okay.

24 **THE WITNESS:** Right. I'm trying to recall
25 **back. I think I added -- I provided other**

1 information showing the time period from 7:30
2 covering the whole time period. Within the
3 report, I just quoted the 10:00 -- pieces of
4 that, 10:26 to 11:00.

5 Q (By Mr. Jacober) Okay. Let's talk about
6 what you provided in your report.

7 A I think I provided, if I remember
8 correctly, the actual screenshots of the time period
9 measurements.

10 Q Okay. Let's look at page 4.

11 A I see them now in the back.

12 Q Let's look at page 4. Let's start there.
13 At the bottom of page 4, there's a chart, correct?

14 A That's correct.

15 Q And what does that chart provide in that
16 middle column?

17 MR. PETRUSKA: At this point, I'm going to
18 object to that. I think this is irrelevant
19 because this is based on the Illinois EPA
20 standards; and it's already been determined
21 within the standards. If he wants to talk
22 about decibel levels, that's on the next page;
23 but I don't think it's relevant to talk about
24 these numbers that are based on the Illinois
25 EPA standards.

1 HEARING OFFICER WEBB: I understand there
2 has been a summary judgment order on that, but
3 I can't say it's not relevant, so I'm going to
4 overrule that. You can continue.

5 THE WITNESS: Right. The chart in figure
6 2 just shows the breakdown of the sound level
7 measures by octoban.

8 Q (By Mr. Jacober) Okay.

9 A Instead of --

10 Q Explain that to us.

11 A Okay. You can take measurements that are
12 the overall sound level that covers all the
13 frequencies range within the sound. Sometimes
14 you -- it's beneficial and sometimes it's required,
15 to measure the sound levels by octoban or one-third
16 octoban, which is even a finer slice of frequencies.
17 So in this case, I -- since the EPA specified
18 octobans, I took the measurements and summarized in
19 this chart in octobans.

20 Q Okay. And what do -- so in the middle
21 column or the column that starts with loft Friday
22 night after 10:00 p.m --

23 A Right.

24 Q -- paren, db, closed paren, correct?

25 A Right.

1 Q Is that where you're referring to the
2 different octobans?

3 A Well, you'll see the first one says "68
4 decibels" for the octoban of 32 hertz.

5 Q Okay.

6 A Which is low frequency.

7 Q So, that would be, like, base in a --

8 A Very low base.

9 Q Okay.

10 A 64 hertz -- I mean, 64 decibels at 63. 38
11 at 500, which is speech, singing. 1,000 and on up,
12 you can see the decibel levels for those.

13 Q So, the octoban frequencies are different
14 sound, not levels, but different sound frequencies?

15 A That's correct.

16 Q And then the decibel, I just want to make
17 sure that we understand your chart; the decibel
18 levels -- so, I'm sorry, the octoban frequencies is
19 what is represented on the very left column --

20 A That's correct.

21 Q -- of this chart?

22 A That's just a common -- that's common
23 octoban, not specific to EPA.

24 Q Got it. And the decibel measurements then
25 in the next three columns are what was recorded as

1 to those frequencies at different times, correct?

2 A The next -- skip the middle column or skip
3 the second column.

4 Q Right.

5 A In the second and third column is what was
6 measured in those octobans frequently ranges.

7 Q And actually the third and fourth column,
8 right?

9 A Third and fourth column, yeah, I'm sorry.

10 Q So, after 10:00 p.m. on April the 23rd,
11 you measured the octoban frequency of 32 hertz at 68
12 decibel levels?

13 A That's correct.

14 Q Is that conducive to sleep?

15 A You -- the 30 decibels that I told you is
16 conducive to sleep would be a decibel addition of
17 these decibel levels.

18 Q I don't understand what that means. Can
19 you explain that?

20 A Yeah, so if you add up in decibels, which
21 is a log scaling, these 68, 64, 49, all the way up
22 to 18? If you add those up, you get a number. That
23 number would be the number that you would use to say
24 is it greater or less than 30 decibels. Because the
25 frequencies that you hear, you hear some lows, some

1 **highs, some mids, when you add them all up, you get**
2 **a certain decibel level and that decibel level can**
3 **be conducive to sleep or not because it's 30 or**
4 **above. If it's not, if it's 30 or below, it is.**
5 **But it's an addition of all those levels.**

6 Q Okay. When you add up the different
7 octoban frequency hertz measurements from Friday
8 night, what is the decibel level that was observed
9 in the Boyer loft on April the 23rd?

10 A Well, I can't do it in my head, so if I
11 did it in a report, that would be neat.

12 Q Yes.

13 A Yeah, I did. So, let's see. I have on
14 the next page, figure 3 from 10:26 to 11:00 o'clock,
15 I said the equivalent level is 38 decibels.

16 Q So, what does the equivalent level mean?

17 A It means that over that time period from
18 10:26 to 11:00, I measured 38 decibels in total. It
19 consists of octoban measurements.

20 Q So, the different octobans, the microphone
21 might hear them at a higher level, but human ears
22 don't hear them at that higher lever, it's the sound
23 as a whole --

24 A No, a human ear would -- the measurement
25 that I took is conducive or similar to the human ear

1 in hearing.

2 Q Okay.

3 A That's what's the dBA is. The A behind
4 the DB is the same as what a human would hear.

5 Q Okay. And just talking about the 32 hertz
6 frequency that's at a 68-decibel --

7 A Uh-huh.

8 Q That doesn't automatically translate into
9 68 decibels being heard, is that what I'm
10 understanding?

11 A No. It does. To put this as an example,
12 if you were playing music, you would hear base
13 louder than you would hear in 18 decibels, 8,000
14 hertz, which is a real high frequency.

15 Q Okay.

16 A So, you would hear vocals at about 38, and
17 the 500 hertz frequency is a lot of times the same
18 as the overall when you add them together.

19 Q Okay.

20 A So, you can see that the 500 hertz was 38,
21 and when I add them all together, it's 38.

22 Q Okay. So is 38 decibels conducive to
23 sleep?

24 A No. The number I quoted you, 30, is the
25 overall number not broken down by octobans, is

1 conducive to sleep.

2 Q Okay. And can you -- we'll play sound --

3 A Uh-huh.

4 Q -- eventually, and we'll get it more
5 exact, but just in general can you -- can you give
6 an example of what 38 decibels sounds like in a
7 room?

8 A An example? This room that we're -- I'm
9 listening to air conditioning. This room could be
10 somewhere between 30 and 40, the room we're sitting
11 in right now.

12 Q Okay.

13 A If we're really, really quiet, the air
14 conditioner went off, we might measure 30. If
15 there's something going on in the hallway that would
16 make it louder, it would push it up towards 40. So,
17 just to answer the question, if it's really really
18 quiet and you're ready to sleep and there's no
19 outside noise or other noise on the other side of
20 the walls or ceiling or anything, it would be about
21 30. If there's something going on, you're going to
22 pick up and get -- approach 40. Daytime is in the
23 45 range. Speech like this is 60. TV on is, you
24 know, 65, could be 70. That gives you a general
25 idea. See, the sound is not just in the room. It's

1 what's going on the outside and sound travels
2 through the duct work from people doing things.

3 Q And were you able to determine if the
4 sound that was being heard in the Boyer's loft was
5 coming from Copper Fire?

6 MR. PETRUSKA: I'll guess I'll object
7 because he wasn't there, so he couldn't say
8 where the sound was actually coming from.

9 HEARING OFFICER WEBB: Well, I'll ask for
10 clarification: would you be able to say?

11 THE WITNESS: The only thing I would be
12 able to say -- the microphone picks up
13 everything. The only thing I would be able to
14 say is, when the music stopped, I was picking
15 up everything, and it was 30. After 1:00
16 o'clock. That's the only time I could get an
17 ambient reading is after this band stopped.
18 After the band stopped, I let it run, and at
19 1:00 o'clock in the morning, it was still
20 picking up everything. It was 30.

21 Q (By Mr. Jacober) It was what?

22 A 30 or 29.

23 Q Okay. So the ambient was only existing
24 when the band wasn't playing?

25 A So, the only thing I can say is, the

1 ambient of 29 or 30 was when the band was not
2 playing; and that's representative of other sounds
3 other than a band.

4 Q Okay. And on Friday you noted that there
5 was a six member acoustic country band; is that
6 correct?

7 A I think that's right there in the
8 beginning.

9 Q It's on the first page.

10 A Right.

11 Q And then Saturday, during the day, there
12 was a solo acoustic guitarist, Billy Barnett.

13 A Right.

14 Q And then a two-person acoustic band at
15 3:00 p.m., and a DJ doing an 80s playlist Saturday
16 evening, correct?

17 A That's correct.

18 Q And the sounds Saturday night were just a
19 little bit louder than they were on Friday night,
20 correct?

21 A That's correct.

22 Q One decibel more?

23 A Yeah.

24 Q Is the decibel scale just like a linear
25 going straight up a scale?

1 A It is not. It's a log scale.

2 Q What does that mean to those of us who
3 don't have a scientific background.

4 A Okay. So, if you -- the definition of a
5 decibel is if you take the log, if, you know, the
6 mathematical log of a ratio of two numbers. So, the
7 way it figures the log for sound, you can -- you can
8 take 10 dogs divided by one dog and take the log,
9 you get decibels and dogs. I mean, that's kind of a
10 silly example, but that's decibels is the ratio of
11 10 times the log of two numbers. So, you take the
12 sound pressure level that the microphone and the
13 meter measures, you divide it by a reference, you
14 take the log times 10 and that's the decibel meter.
15 So, the curve of log is this way, not straight
16 linear.

17 Q Okay.

18 A I'm not sure I'm giving you --

19 Q I think I understand.

20 A Okay.

21 Q But the point being 39 isn't --

22 A I'll give you another example: 10 decibel
23 change is perceived as twice as loud.

24 Q Okay. That's --

25 A Or 10 decibel less is perceived as twice

1 **as quiet.**

2 Q Okay. So, the difference between 30 and
3 38 is almost twice --

4 **A Almost, almost.**

5 Q Almost twice as louder. Now, did you
6 spend time looking generally at the Boyer's loft
7 when you were in there?

8 **A Other than it's a very beautiful loft. I**
9 **mean, I didn't inspect tables and chairs. I kind of**
10 **looked at general surroundings to how much**
11 **absorption and how much reflection in general.**

12 Q Okay. Did you note the brick wall that is
13 the adjoining wall to the Copper Fire location?

14 **A I noted that there was a brick wall.**

15 Q Okay. There's been some talk in this case
16 about there being holes or gaps in the brick wall.
17 And you were at the prior hearing, correct?

18 **A That's correct.**

19 Q So, are you familiar with what I'm
20 referencing?

21 **A Yes, I am.**

22 Q Did you notice any gaps that you thought
23 should be filled in to reduce the sound coming into
24 the Boyer loft?

25 **A I did not.**

1 Q Would gaps in the brick cause more sound
2 to come through or less sound to come through?

3 A This is a question of sound transmission,
4 so you can measure -- observe the structure that
5 sound has to go through and how much sound gets
6 reduced by going through that structure. You can
7 calculate that theoretically. In the field, it's
8 usually less because there's transmission on gaps
9 and holes and ventilation. So, it's usually a small
10 amount of transmission loss that's in the field that
11 equate to the theoretical. But I didn't observe any
12 one-inch holes or -- which is usually a test that
13 they would do. You can have a wall; you can measure
14 the transmission loss of, like, a regular office
15 wall. You put a one-inch hole in it, and it usually
16 drops quite a bit. But that's a big, big hole. But
17 there's always something that makes the field
18 transmission loss different than the theoretical.
19 And I've looked at what the brick would be, and then
20 I measured what the brick would be, and they made
21 sense.

22 Q Okay. Did you, as part of your analysis,
23 do you have any idea of what the wall is doing to
24 reduce the amount of sound that's coming into the
25 Boyer loft from Copper Fire?

1 A Yes.

2 Q Explain that.

3 A I -- the very first thing I did when I
4 went to the Boyer loft is I looked between into the
5 two buildings visually, and I observed what I
6 thought was an air space. I thought I observed some
7 air space, which gave me an idea how much
8 transmission loss we might be dealing with. So, I
9 then assumed by looking at the other wall where the
10 door was, the size of brick. So, I assumed there
11 might be an 8 to 12-inch brick wall at Copper Fire.
12 I assumed there might be an 8 to 12 inch space, and
13 another 8-inch to 12-inch wall. I did a theoretical
14 calculation, and I came up with somewhere around 55
15 to 60 decibels transmission loss theoretically.

16 Q Theoretically?

17 A Uh-huh.

18 Q So, does that mean --

19 A It's a very, very good wall.

20 Q It's a good wall?

21 A Uh-huh.

22 Q It's an old building, right?

23 A But because of the air space, it really
24 helps. 55 decibels or 60-decibels is a good
25 trans -- it's a good means for transmission to not

1 go through it.

2 Q So, does that mean if it reduces the
3 decibels being heard in the Boyer loft by
4 55 decibels, that you add the 55 decibels to the
5 38 decibels observed on Friday night, and that gets
6 you to what the decibel level is inside of Copper
7 Fire?

8 A That's directly, yes, and that's what I
9 did. So, I calculated, to make it easier, you know,
10 55 and 40, it is 95. So, I figured the sound must
11 be 95 decibels in Copper Fire.

12 Q Okay. How loud is 55 -- I'm sorry, is
13 95 decibels?

14 A Very loud.

15 Q Very loud as in -- can you equate it to
16 something that we might be familiar with?

17 A Well, in a room like this, you can't talk
18 to the person next to you. Can I share my
19 experience with hearing 95 in Copper Fire?

20 Q Yes.

21 A Okay, I was looking somewhere to have
22 lunch. I had in my mind that it could be 95. This
23 was during the day, so I went over and I had lunch
24 at Copper Fire.

25 Q Was this on April 24th?

1 A I think it was later.

2 Q A later study?

3 A I think it was. But the numbers were the
4 same. The later study.

5 Q Okay.

6 A And the numbers were the same in the
7 McClure study, too. The numbers in the loft, they
8 were -- all three were the same.

9 Q Okay.

10 A So, I went and had lunch at Copper Fire,
11 and the music was very loud. It was during the day.

12 Q This is on a Saturday?

13 A This is a Sunday afternoon.

14 Q Okay.

15 A So, I said, this is very loud. I had a
16 hard time ordering food from the waitress. She was
17 in my ear; I was in her ear. I was about -- I don't
18 know four or five tables back, kind of in the
19 middle, and it was very loud. And, so, I took out
20 my phone, which has a sound pressure meter on it.
21 It's not the same as the meters that I use, but it
22 gives me an idea. It was around 95, 96 decibels.
23 So, immediately, I said that equates to what I just
24 told you theoretically, of 95, 55, and we're getting
25 40 in the loft. So, it was a quick way for me to

1 kind of gauge where my theoretical calculations
2 were. The McClure study said the exact same thing.

3 Q Were you there eating lunch by yourself?

4 A Yes.

5 Q If you had been there with a guest, would
6 you have been able to talk across the table to a
7 guest?

8 A No. I observed a couple across the table
9 at another table, they were like up against each
10 other. 95 is very loud.

11 Q Is --

12 A The food was good.

13 Q Good. Is it rock concert loud?

14 A Well, I just had an experience. I went to
15 the Billy Joel-Sting concert, and I'm always curious
16 about sound levels. So, my family and people put up
17 with my measuring sound everywhere. And, so, I was
18 about 12 rows back from the sound speakers at the
19 Billy Joel concert, and I measured 95 to
20 100 decibels.

21 Q And where was that concert held?

22 A Busch Stadium.

23 Q Okay. It was outside?

24 A I was outside, but I was very close to the
25 speakers. I was 12 rows back.

1 Q Okay.

2 A **A big set of speakers. It was loud.**

3 Q And you couldn't speak to someone --

4 A **I couldn't speak to my daughter. That's a**
5 **reference.**

6 Q You would have to get to their ear --

7 A **You could scream in their ear.**

8 Q Okay. Is there an impact or an effect --
9 strike that. Is there a difference in the impact on
10 our ability as humans to hear sound, but not let it
11 disturb what we're doing as it -- between ambient
12 noise and other noise, like music or a TV or
13 something like that? Does that question make sense,
14 first of all?

15 A **It's kind of an acoustics psychological**
16 **question, because you might -- I might be doing**
17 **something and have music going on and it doesn't**
18 **bother me. You might have music on while you're**
19 **doing something and it really bothers you. It's**
20 **subjective.**

21 Q So, it depends on the person?

22 A **It depends on the person. Some people**
23 **like to study and do homework and have music on;**
24 **some people can't. It's so -- it's so subjective.**

25 Q I think you've already testified, Mike,

1 that when you measured the ambient noise both during
2 the day and then at 1:00 o'clock in the morning in
3 the Boyer loft, did you characterize it as very
4 quiet?

5 **A It was very quiet.**

6 Q Like any other home would be that isn't
7 located on a busy commercial street?

8 **A It was quieter than a lot that I measure,**
9 **because I have to measure ambient a lot for people**
10 **trying -- wanting to sleep. Sometimes you can't get**
11 **to 30 or 29, so I thought it was very good.**

12 Q So, given the level of decibels that you
13 read -- that you -- that you recorded on Friday at
14 10:26 to 11:00 p.m. then Saturday at 10:00 p.m. to
15 11:25, those levels are above what it is recommended
16 for sleep, correct?

17 **A That's correct.**

18 Q Would it be difficult for a normal person
19 to fall asleep with the sound at that level?

20 MR. PETRUSKA: I'll object as what
21 constitutes normal person.

22 HEARING OFFICER WEBB: I didn't hear you,
23 sorry.

24 MR. PETRUSKA: I would object as to what
25 constitutes a normal person. We already had

1 evidence in this case of a police officer who
2 said he needs noise to sleep. People have
3 noise makers to help them themselves sleep.

4 HEARING OFFICER WEBB: I understand. I'll
5 overrule it. You can give your opinion.

6 THE WITNESS: It's subjective. I don't
7 think I could say.

8 Q (By Mr. Jacober) But it is over the
9 suggested level?

10 A That's correct. There's -- I didn't
11 include them, but there are a lot of studies that
12 I've read, especially from health organizations, you
13 know, how it's -- how it doesn't promote good health
14 to not sleep, so a good sleep requires quiet.
15 There's a lot of community standards from the world
16 on down that state that.

17 Q And regardless of the decibel level, if
18 sound is just persistent, can that cause an
19 additional level of difficulty in sleeping or
20 difficulty in enjoying day-to-day activities?

21 A The repetitiveness and the continuousness
22 can. A lot of the ordinances that I deal with talk
23 about the duration of time that a level can be
24 tolerated at, and then the duration decreases the
25 levels, the tolerance changes. So, a real quick

1 burst out in the hallway, we can tolerate. But a
2 continuous noise out in the hallway, you can't
3 tolerate. The OSHA guidelines talk about exposure
4 to certain levels during the day for eight hours.
5 So, there's a lot of studies about the duration of
6 sound.

7 Q And, again, you -- based on your
8 observations of being in Copper Fire, you and then
9 your sound measurements as well, you estimate you
10 observed the sound in Copper Fire to be at about 94,
11 95 decibels?

12 A That's correct.

13 Q In that general range?

14 A Uh-huh.

15 Q Are you okay with us playing sound at that
16 level, because I can have a -- he can do his
17 measurement to make sure we get it up to that, but I
18 don't know if you need it --

19 HEARING OFFICER WEBB: I don't
20 necessarily -- I mean, the board members are
21 going to be deciding this case. I'm not sure,
22 are you -- is this something you're going to
23 offer into evidence?

24 MR. JACOBBER: I was going to offer it as a
25 demonstrative.

1 HEARING OFFICER WEBB: Were you going to
2 file it with the Board, like on a disk or
3 something, electronically.

4 MR. JACOBBER: I hadn't anticipated -- I
5 can do that certainly. It's the -- it's the
6 sound level that's a problem because most, you
7 know, computer speakers isn't going to get to
8 95 decibel levels. That's why I brought this
9 big --

10 HEARING OFFICER WEBB: I mean, if it's
11 just me, you know, the Board is not going to
12 hear it, there's not really any point in
13 playing it for me.

14 MR. JACOBBER: Understood, and I don't
15 think with the way it's being recorded that, it
16 would be --

17 HEARING OFFICER WEBB: Yeah.

18 MR. JACOBBER: And I don't want to blow
19 everyone's ears out either, but 95 decibels
20 sounds pretty loud. Now, in addition to
21 measuring the sound --

22 **THE WITNESS: Uh-huh.**

23 Q (By Mr. Jacobber) -- you were asked to
24 provide an opinion, form an opinion, as to how the
25 sound could be reduced inside of the Boyer loft,

1 correct?

2 A That's correct.

3 Q Okay. Do you have an opinion on that?

4 A My opinion is that to reduce the sound
5 between Copper Fire and the Boyer's loft, you need
6 to add mass to the structure. To give you an
7 example, to reduce -- if you doubled the mass, if
8 you added another eight-inch brick and another air
9 space, if you doubled it, you would get a lot of
10 reduction, obviously. But you can't do that. It's
11 already a good 55, 60-decibel reduction. So, I was
12 looking for ways to add mass that might add a little
13 bit of help, and I offered mass-loaded vinyl, but
14 there aren't very many things that are mass, right,
15 that would add a lot. Even a mass-loaded vinyl
16 would -- what I was looking at is you need
17 10 decibels to get from 40 to 30.

18 Q And what would be the best way to reduce
19 the sound that's heard in the Boyer loft by
20 10 decibels?

21 A I came to the conclusion since the wall is
22 good and since the options of adding mass on either
23 side is not going to get you much, not going to get
24 you 10, turn it down 10 decibels at the source.

25 Q It's that simple?

1 **A** **It's that simple. You look at the**
2 **blocking mechanism; you look at what it is over**
3 **here, and there's not much you can do, so you just**
4 **look at the source of the sound, in this case, the**
5 **perceived noise, and you turn it down 10 decibels.**

6 **Q** **So, instead of 95, you have it at --**

7 **A** **85 minus 55, and you would be at 30 in the**
8 **loft. It's that simple.**

9 **Q** **How loud is 85? Can you equate that to**
10 **something that we would be familiar with?**

11 **A** **It's still a loud band.**

12 **Q** **Maybe not a live rock show at Busch**
13 **Stadium --**

14 **A** **Right.**

15 **Q** **But it's still --**

16 **A** **It's live music.**

17 **Q** **It's still live music?**

18 **A** **Sure.**

19 **Q** **Would doing any work inside of the Boyer**
20 **loft allow you to reduce the sound level that's**
21 **heard inside the loft by 10 decibels?**

22 **A** **Not really. Because in acoustics, it's**
23 **the same question about what could you do in Copper**
24 **Fire, what could you do to absorb? The sound**
25 **between the source and the receiver in this case is**

1 the massey wall. So, if you put absorption panels
2 in either place, you can maybe absorb a little but
3 you're not going to block the sound from one place
4 to the other. It's the mass of the wall, the
5 dividing wall. So, the answer is, you're going to
6 get much by absorption panels or you're just going
7 to make it a little bit quieter.

8 Q You were in Copper Fire, correct?

9 A Uh-huh.

10 Q Did you notice any sound absorption or
11 sound deadening material in Cotton Fire when --

12 A I didn't observe any.

13 Q Okay. Is there anything that Copper Fire
14 could do and -- strike that. Is it better to have
15 the sound absorption or the sound deadening at the
16 source of the sound as opposed to where the sound is
17 being heard on the other side of the wall?

18 A The area of the source sound can get the
19 most reduction then -- but, again, a couple
20 questions you asked me. I observed that the band
21 was closest to the wall. So, one of the
22 recommendations I made, and I think I wrote it in an
23 e-mail or a report or something, move the band to
24 the other side. Get some of that direct sound away
25 from the wall. You had a sound traveling space

1 between the band over here, because when sound
2 travels, it reduces about 6 decibels per double
3 distance. That's another -- so even indoors, it may
4 reduce it by three or four decibels if the band is
5 further away from the wall. So, you might pick up
6 three or four there. The wall is what it is, but
7 you still have to turn it down. I mean, you could
8 line Copper Fire with acoustic panels, and you're
9 not going to get what you need.

10 Q Or similarly, you could line the Boyer
11 loft with acoustics panels, and it's not going to
12 get you 10 decibels?

13 A Transmission loss is a massy element.
14 It's mass. That's why the brick wall with air is
15 the best, and 55 is a good blocker.

16 Q And based on your years of studying sound,
17 is 84 decibels loud enough for people to hear music?

18 A Again, subjective, but I personally could
19 listen to music at 84 decibels.

20 Q I'm sorry?

21 A I personally could listen to music at 84
22 decibels. 84 decibels is loud.

23 Q Is that -- is it as loud as something like
24 a lawnmower?

25 A Do I have to look at some charts that I

1 have? It depends on how close you are to the
2 lawnmower, but I think the lawnmower might be higher
3 than that.

4 Q Okay.

5 A Or a leaf blower might be higher than
6 that, too.

7 Q Right.

8 A Right in the proximity of the sound
9 source. Like I said, if you move away, it
10 decreases.

11 Q Then you did this again, a sound study
12 again -- I'm sorry I would move admission into
13 evidence Exhibit 22.

14 MR. PETRUSKA: I will not object to
15 Exhibit 22 being admitted for factual basis,
16 but, again, I renew my objection to any
17 suggestion that his report is admissible to
18 show a violation of the Illinois EPA.

19 HEARING OFFICER WEBB: Noted. Exhibit 22
20 is admitted.

21 (Claimants' Exhibit C-22 admitted onto the hearing
22 record.)

23 Q (By Mr. Jacober) You did a sound study
24 again in November of 2021; is that correct?

25 A That's correct. Is that in here?

1 Q Yes, I would have you turn to tab 23 in
2 your book.

3 A Okay, yep.

4 Q Okay. Turning to Exhibit 23, this is your
5 report from November of 2021, correct?

6 (Claimant's Exhibit C-23 marked.)

7 **THE WITNESS: That's correct.**

8 Q (By Mr. Jacober) And this was --

9 A It look likes Sunday afternoon daytime.
10 Saloonatics was probably the band that I heard when
11 I was there at lunch. That's what I'm assuming.

12 Q So, the report that you provided, dated
13 November 26 of 2021, includes the information from
14 April as well; is that correct? Or at least you
15 note that you listened to those bands as well.

16 A Oh. It looks like the second column is
17 from 4/24, okay.

18 Q Yeah. So, if you could turn to page 3 of
19 your report, and here we're looking at that chart
20 again.

21 A Uh-huh.

22 Q You have the decibel readings that were
23 observed on Saturday night of April 24th that we've
24 already talked about. Then you have readings from
25 November 21st in the afternoon. November 21st in

1 the early evening, and then November 21st in the
2 evening, correct?

3 **A That's correct.**

4 Q And can you explain those -- those decibel
5 readings, and I think you'll have to turn to the
6 next page to figure 2 to give us the actual decibel
7 readings. Sorry, actually, you'll have to turn to
8 page 5, figure 3.

9 **A Okay, I think so looking at -- are you
10 referring to page 5, figure 3?**

11 Q Yes.

12 **A Page -- I remember in addition to the time
13 measurements that I took, I used another meter,
14 calibrated meter, and I went around the lot. So, I
15 went by the couch; I went by the table. I took
16 independent readings. Not by octoban, but total
17 decibels.**

18 Q Okay.

19 **A And that's at that table as well.**

20 Q And that was done from 4:00 to 5:00 p.m.
21 on November 21st, 2021, correct?

22 **A That's correct.**

23 Q And the ambient levels that you recorded
24 are in the last column, correct?

25 **A That's correct.**

1 Q Okay. All over 30 decibels?

2 A The ambient, it look likes the ambient is,
3 coffee table ambient, is 30.

4 Q Okay. So, maybe I'm not reading the chart
5 correctly. What is the column that says LEQA?

6 A Okay, I remember I mentioned the A note?
7 You can take measurements in different -- different
8 readings, different scales. If you take a reading
9 in the scale that's how we hear, it's an AE
10 weighting. So, what I have here is the LEQ
11 unweighted 57. The LEQ weighted of A is 34. That's
12 what that shows.

13 Q What does that -- what is the difference
14 between weighted and unweighted?

15 A Okay, so if you do an unweighted, it
16 emphasizes low frequencies. When we hear, we don't
17 hear the low frequencies the same. Because there's
18 music and there's low frequencies in base and drums,
19 I sometimes do the unweighted to give a flavor of
20 how loud the low frequencies might be. But then how
21 we hear it, we don't hear it quite that way. So, I
22 do the A and -- so, what we're looking at here, I
23 look at the A -- the right-hand column. So, you'll
24 see the right-hand column is 34, 36, 39, 37, 35, 36
25 were measurements of sound independent around the

1 apartment. Not over time, but the place where I set
2 the original up.

3 Q Understood.

4 A Then the ambient is 30.

5 Q Okay. And you -- I think I misspoke. The
6 ambient is when there is no noise playing.

7 A There's no noise.

8 Q Or no music playing. You walked around
9 and took measurements by the couch, by the table,
10 the dining room table, the kitchen island and the
11 bedroom dresser?

12 A That's right.

13 Q And those are all over 30?

14 A That's correct.

15 Q While music was playing?

16 A That's correct.

17 Q So, it's everywhere in the --

18 A Right. The reason I did that was because
19 I mentioned where I set up the time measurement was
20 away from the wall. Same place both times to be
21 consistent. But then I wanted to see what it was
22 around the loft.

23 Q Did you notice any significant difference
24 in the sound level from April of 2021, when you did
25 your first sound analysis, to November of 2021, when

1 you did your second?

2 A I have to -- in general, without looking
3 exactly at the numbers, no.

4 Q So, the sound wasn't turned down. There
5 was nothing done in that period of time?

6 A Which was -- to me, it was pretty amazing
7 because I think it's different bands, but the music
8 content, the level was the same. To go from April
9 to November, and the numbers were almost the same.
10 I mentioned -- I don't know when McClure did their
11 study, but it was a different study with different
12 bands and his numbers were identical.

13 Q So --

14 A He even came up with identical assumptions
15 for the transmission loss of the wall.

16 Q On November 21st, you have audio samples
17 that we like to play on the record, and this will be
18 provided on a thumb drive. And do you have -- we'd
19 like to play them at this 39 decibel level. Do you
20 have a sound meter available --

21 A I do.

22 Q Could you get that so we can --

23 A Sure.

24 Q -- get the sound at the right level?

25 A Just for the record, I calibrated this

1 **morning.**

2 Q Okay.

3 **A It depends on where you want --**

4 HEARING OFFICER WEBB: Okay. He'll repeat
5 that in case you didn't catch that.

6 MR. JACOBBER: I have -- yeah, I have a
7 couple questions I'm going to ask him.

8 HEARING OFFICER WEBB: Okay.

9 Q (By Mr. Jacobber) Now, Mike, I've asked you
10 to get a decibel reader, correct?

11 **A That's correct.**

12 Q Now, what did you get from your bag?

13 **A I got a simple SPL meter, an Amprobe**
14 **SM-10.**

15 Q And is that a decibel meter that you use
16 in your sound analysis?

17 **A I use it only to get simple number SPL --**
18 **this is not to do time averaging or --**

19 Q Okay.

20 **A This is just if we wanted to measure --**

21 Q At this moment?

22 **A -- 60 decibel speech.**

23 Q Got it. Where did you -- is that -- did
24 you buy that commercially?

25 **A You can.**

1 Q Is it something that needs to be
2 calibrated?

3 A I'm sorry, yes, it does.

4 Q Okay. When -- when was it most recently
5 calibrated?

6 A This morning.

7 Q Okay. So, give us a second to kind of
8 adjust the sound and you give us a thumbs-up when
9 we're at 39 decibels.

10 (Complainant's Exhibit C-24 marked. An excerpt of
11 Exhibit C-24 was played.)

12 THE WITNESS: Could I -- could I interject
13 something? We're already at a certain decibel
14 level, so if we were all quiet, I could tell
15 you what that is. So, the sound you're going
16 to play is additive to the ambient in the room.

17 Q (By Mr. Jacober) Okay. So, in other
18 words, this room is not as quiet as the Boyer's
19 loft?

20 A I don't know. I never measured the
21 ambient in this room, but what I'm saying is, if the
22 ambient in this room is 40 and you play music at 40,
23 what I'm going to measure is 43.

24 Q Okay. What's the ambient when no one is
25 talking?

1 **A 46.**

2 Q So, it needs to be relatively quiet to get
3 it to 39; is that what you're saying?

4 **A No, what I'm saying is, the room is**
5 **already at 46, and you're asking me to tell you when**
6 **the sound of -- coming out of there is 39.**

7 Q Oh, the room is 46. I thought you said
8 36.

9 **A 46. Which is what I would expect during**
10 **the daytime: 45, 46.**

11 Q Okay. And your report indicates that the
12 ambient sound -- the ambient sound level in the
13 Boyer loft was 30 --

14 **A Was 30.**

15 Q So, the Boyer loft is much quieter than
16 this room?

17 **A That is right.**

18 Q Okay. So, we're really not able to get it
19 to a level that -- because this room is louder?

20 **A That's right.**

21 Q Okay.

22 **A So, I hope you understand the log, if this**
23 **is 45 and you play music that's 45, what I'm going**
24 **to measure is 45 plus 45, 48.**

25 Q Okay.

1 **A That's the log.**

2 Q So, in this room, there's no way for us to
3 play the sound and to replicate the 39 decibels?

4 **A No.**

5 Q Okay, we'll turn it down, so it's on the
6 record that it was played, and I'll ask that we'll
7 move for admission of this.

8 (An excerpt of Exhibit C-24 was played.)

9 Q (By Mr. Jacober) What decibel did that get
10 to?

11 **A About 53. So, I'd have to do some math**
12 **that I can't do in my head.**

13 Q I'm not --

14 **A 53 minus 46 is what that would be.**

15 Q Okay. You -- were you in the loft when
16 music was playing?

17 **A I think at some point. I don't recall.**

18 Q You have to have been in November,
19 correct?

20 **A At some point, I was in the room when**
21 **music was playing.**

22 Q Was that level that I just played the
23 music at, was that about what you could hear inside
24 of the Boyer loft when you were in there taking
25 measurements?

1 **A Hard to tell with different -- different**
2 **ambient levels, and I can't answer.**

3 Q Okay. We would move for admission of
4 Exhibit 23 and Exhibit 24?

5 MR. PETRUSKA: I'll object to the
6 admission of this evidence. It's a sound --
7 unless it's played at the sound level that it
8 was recorded at, it doesn't mean anything. You
9 have to play it out of volume, so just
10 recording -- admitting this sound doesn't do
11 anything.

12 HEARING OFFICER WEBB: Could you further
13 explain is the Board going to -- I mean, I'm
14 not really sure how this works.

15 MR. JACOBBER: Well, it works to
16 demonstrate the level of sound that was
17 observed that was recorded by the sound study.
18 It's part of his sound study.

19 HEARING OFFICER WEBB: Okay.

20 MR. JACOBBER: So, it demonstrates the
21 level that sound was recorded at inside of the
22 Boyer loft.

23 HEARING OFFICER WEBB: Okay. Well, we're
24 talking about a nuisance provision, so I'm
25 going to admit it. I think it's arguably

1 relevant.

2 (Complainant's Exhibits C-23 and C-24 admitted onto
3 the hearing record.)

4 MR. JACOBBER: Okay, go ahead and play
5 C-25.

6 (Complainant's Exhibit C-25 marked. An excerpt of
7 C-25 was played.)

8 Q (By Mr. Jacobber) That's good. We just
9 played another clip of sound. Is that also a clip
10 of sound that was recorded as part of your sound
11 study?

12 A I assume it was.

13 Q Yes.

14 A Could I explain how the sound was
15 recorded?

16 Q Yes, that would be great.

17 A The software that I used allows you to not
18 only record the sound decibel levels, you can switch
19 it to record the actual audio. The way I use that,
20 a lot of times is to get a flavor of what type of
21 sound am I hearing or what type of sound is the
22 recorder recording. Not just decibel, what type.
23 And it could be significant if I'm recording, an
24 airplane flies overhead, I hear it, I know it's an
25 airplane, I subtract the data out. So, it's used a

1 lot of different ways. I don't use it a lot, but I
2 occasionally turn it on to let me know, here's
3 decibel levels is one thing, but here's the type of
4 sound.

5 Q Okay. And this -- that's what this
6 recording is evidence of?

7 A That's right.

8 Q You turned this part of the software on --

9 A That's right.

10 Q -- and this was recorded?

11 A And when I listen to what was actually
12 recorded from the software, I could sing along with
13 the music.

14 Q Okay. We're going to -- we're going to go
15 to that, because if you turn the page to tab 26.

16 A Which one? Oh, 26.

17 Q 26.

18 A Uh-huh.

19 Q Are these your handwritten notes --

20 (Complainants' Exhibit C-26 marked.)

21 **THE WITNESS: Uh-huh, yes, they are.**

22 Q (By Mr. Jacober) -- from listening to the
23 audio?

24 A Uh-huh, yes.

25 Q Okay.

1 **A** **Painfully so. Not listening to audio but**
2 **documenting.**

3 **Q** **Right. Right, yeah. You focus on time**
4 **ranges --**

5 **A** **Right.**

6 **Q** **So can you walk us through your notes to**
7 **we make sure we understand what your -- what your**
8 **notes mean?**

9 **A** **So, the term is audio capture in the**
10 **software.**

11 **Q** **Okay.**

12 **A** **So, I listen to the audio played back from**
13 **the software, and I could -- I wrote down the sample**
14 **of time; and I can hear, like, 2:04, I could hear**
15 **loud voices. I could hear the song Margaritaville.**
16 **I could hear a dog bark, so, okay, I can hear a dog**
17 **bark for a short period of time. I could hear**
18 **another song; I could hear Brown Eyed Girl. I hear**
19 **some noise. I hear some loud screaming. I hear a**
20 **train whistle. So, I picked up all the sounds, and**
21 **the ones that were from the band, I could tell you**
22 **the titles.**

23 **Q** **Okay. You know Brown Eyed Girl.**

24 **A** **Uh-huh.**

25 **Q** **Margaritaville, Proud Mary --**

1 A Some of them I didn't know the titles to.
2 I referenced some decibel levels, so I kind of -- I
3 correlated decibel levels with actual songs that I
4 could understand.

5 Q Okay.

6 A I could hear them clear enough, which I
7 was kind of surprised about.

8 Q Why were you surprised by that?

9 A Well, because when you listen to it, for
10 the frequencies of the sounds in the voice ranges to
11 come through that well to be able to hear them in
12 the loft is -- you could tell what song it was. It
13 wasn't just sound or music on the other side of the
14 wall. You could tell what it was.

15 Q And that means the sound in Copper Fire is
16 at a pretty high level, right?

17 A Yes. It's going through that 55 decibel
18 reduction wall.

19 Q And, so, your notes, the first page, is a
20 listing from 2:04 p.m., and then it ends at
21 2:50 p.m. on the next page, correct?

22 A Uh-huh, yeah.

23 Q And then you do the same thing from 3:57
24 to 4:52 p.m. on November 21st?

25 A That's correct.

1 Q Okay. And then finally you did -- I'm
2 sorry that's -- okay. So, those are contemporaneous
3 notes as you listened to the sound recordings?

4 A **That's right.**

5 Q Did you do this type of sound recording
6 in -- as part of your April of 2021 sound study?

7 A **I don't think I did.**

8 Q Okay, so that's why we don't have your
9 notes for your April --

10 A **Right, I think that's correct, because the**
11 **actual audio capture takes up a lot of memory in the**
12 **software. I kind of did a spot check to see if --**

13 Q Okay. If you go to the first page of your
14 notes, Mike?

15 A **Uh-huh.**

16 Q You've got at the top, "Sample audio wave
17 files provided", and that's 5:06 p.m. and 4:42 p.m.;
18 do you see that?

19 A **Yes.**

20 Q And you -- those are the two audio samples
21 that we just listened to, aren't they?

22 A **That you just played?**

23 Q Yeah. I'll represent to you those are the
24 two audio samples that you provided to us.

25 A **Okay.**

1 Q What does the -- at the end of those two
2 lines where there's bracketed 56 DB, slash, 37 dBA,
3 and then again 56 dBA, slash, 38 dBA, what do those
4 numbers mean?

5 A That meant the unweighted level was 56 and
6 the A weighted level is 37.

7 Q Okay. So, in other words, the amount that
8 the equipment is able to pick up is 56 decibels; the
9 amount that the equipment can pick up that a human
10 ear would hear is 37 decibels?

11 A That's correct.

12 Q We would move to admit Exhibit 25, which
13 is the second audio sample, if I didn't do that
14 already, and Exhibit 26?

15 MR. PETRUSKA: No objection.

16 HEARING OFFICER WEBB: Okay. Before we
17 move on, can I just revisit the exhibits we
18 just discussed for 22 and 23? Did you move to
19 admit Exhibit 23? I'm sorry.

20 MS. ROBBINS: Yes.

21 MR. JACOBBER: I believe I did.

22 HEARING OFFICER WEBB: Okay, for Exhibit
23 22 and 23, Respondents do not object to the
24 document, although you have a standing
25 objection in light of the prior board ruling on

1 the EPA rule violation --

2 MR. PETRUSKA: Yes.

3 HEARING OFFICER WEBB: Is that a fair
4 characterization?

5 MR. PETRUSKA: Yes.

6 HEARING OFFICER WEBB: Okay. So, 24, did
7 you -- you objected to 24 --

8 MR. PETRUSKA: Yes.

9 HEARING OFFICER WEBB: Okay. I admitted
10 that anyway. Same thing for C-25, I assume you
11 --

12 MR. PETRUSKA: I'm going to let 25, no
13 objection to that one.

14 HEARING OFFICER WEBB: All right.

15 (Complainant's Exhibit C-25 admitted onto the
16 hearing record.)

17 HEARING OFFICER WEBB: And C-26, no
18 objection?

19 MR. PETRUSKA: No objection.

20 HEARING OFFICER WEBB: All right, C-26
21 admitted, no objection.

22 (Complainant's Exhibit C-26 admitted onto the
23 hearing record.)

24 HEARING OFFICER WEBB: Okay, I've admitted
25 C-22, C-23, C-24, C-25 and 26. Okay, thank

1 you.

2 Q (By Mr. Jacober) And, Mike, looking at
3 your notes, you indicated you were able to hear the
4 songs, and when you could hear the songs and you
5 knew the title --

6 A **Yes.**

7 Q You actually wrote the title in your --

8 A **I wrote them down.**

9 Q Okay.

10 A **As best as my music ability --**

11 Q Sure. Maybe it's a genre you don't enjoy,
12 so you don't know the name of the song?

13 A **Uh-huh.**

14 Q Now, when you were in Copper Fire on
15 November 21st having lunch, we talked about that
16 earlier, correct?

17 A **Right.**

18 Q Was there a four-member Rock Pop band
19 playing at that time?

20 A **I'm sorry?**

21 Q There was a live band at that time,
22 correct?

23 A **That's correct.**

24 Q And four musicians.

25 A **I don't remember.**

1 Q Okay.

2 A I remember on the floor there were two big
3 speakers, and a band with a bass player and a
4 drummer.

5 Q Okay. Do you remember if the name was the
6 Saloonatics?

7 A I don't remember. Other than I noted that
8 was a band that played during that time.

9 Q Okay.

10 A Lunchtime.

11 Q Okay. After you had lunch, did you walk
12 outside of Copper Fire?

13 A I did.

14 Q Did you take any sound measurements when
15 you were on the street?

16 A I think I did. I don't remember what
17 report, but I think -- I think I took two other
18 measurements.

19 Q Yeah, if you look at page 5 --

20 A I went to the restroom.

21 Q If you look at page 5 of your report,
22 Mike?

23 A Which one?

24 Q Exhibit 23, page 5, and look at Informal
25 Measurements?

1 **A Did you say 23?**

2 HEARING OFFICER WEBB: Yes.

3 **Q (By Mr. Jacober) Exhibit 23, Page 5?**

4 **A Okay. Yeah, I went to the restroom, and**
5 **so the back of room I measured 84. This was on my**
6 **phone so it was really easy to do.**

7 **Q Right.**

8 **A Then I went -- sidewalk outside and behind**
9 **the glass, it looks like I measured 70.**

10 **Q So, you could hear the music on the**
11 **sidewalk at 70 decibels?**

12 **A That's correct. And, so, that note there,**
13 **Window STC, that means the blocking capabilities of**
14 **glass was about 24, and that's about correct.**

15 **Q And that's just in line with all the other**
16 **measurements --**

17 **A That's right.**

18 **Q In other words, all the measurements are**
19 **consistent?**

20 **A That's right.**

21 **Q The decibel level inside Copper Fire is**
22 **approximately 95?**

23 **A Right.**

24 **Q 94, 95 decibel?**

25 **A Minus 24 for glass is a sound blocker.**

1 Q Okay.

2 A And I got 70, so I'm like, okay.

3 Q And that's consistent with the measurement
4 you took inside Copper Fire with your phone?

5 A Exactly.

6 Q So, you're confident that the decibel
7 level inside of Copper Fire is in this 94, 95
8 decibel range?

9 A I'm as confident as I used my phone. To
10 be honest, I didn't have it calibrated in here. I
11 pulled out my phone, and the phone has got
12 microphones and it's not calibrated. I keep my
13 phone calibrated to meters, because I often do that,
14 but it's not a calibration process.

15 Q Understood.

16 A Okay.

17 Q I think we've -- we've addressed this, but
18 I want to make sure that -- that it's clear on the
19 record. Your opinion today is the best way to
20 reduce the sound that is heard inside of the Boyer
21 loft is simply turn down the music down by 10
22 decibels inside of Copper Fire?

23 A That's my best recommendation.

24 Q That's the best and the easiest way?

25 A Easiest way.

1 Q It actually costs no money, correct?

2 A I -- I don't know -- I can't if it
3 costs --

4 Q Well, as opposed to putting sound blocking
5 up --

6 A Oh, from an acoustics standpoint?

7 Q Or adding mass to the building --

8 A From an acoustics standpoint, yes.

9 Q There's no inherent charge that --

10 A No.

11 Q You would have to have a company come in
12 to do that?

13 A No.

14 Q Are there any sound blocking -- is there
15 any sound blocking construction or items that could
16 be added to either the Copper Fire space or the
17 Boyer loft to reduce the sound by 10 decibels to get
18 it at or below the accepted standard for sleeping?

19 A Add a lot mass to one or both sides of the
20 wall.

21 Q When you say "mass", you mean add more
22 wall?

23 A Steel plates because transmission is --
24 the mass is depending on the density of material.
25 So, steel has a higher density than brick does. So,

1 find somebody to find something that adds mass to
2 the wall in terms of steel or more brick or -- add
3 mass to the wall.

4 Q Okay.

5 A That's another study but add mass to the
6 wall. A lot of mass to the wall.

7 MR. JACOBBER: At this time, I have no
8 further questions. I'll reserve the right to
9 redirect.

10 HEARING OFFICER WEBB: Would anyone like
11 to take a 5 or 10-minute break before we start
12 cross?

13 MR. PETRUSKA: Yes.

14 HEARING OFFICER WEBB: All right, let's do
15 that. We'll take a break.

16 (Wherein, a short recess was taken.)

17 HEARING OFFICER WEBB: I think we're ready
18 to go back on the record, and we begin with
19 Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. PETRUSKA:

22 Q Mike, I want to thank you for coming. I
23 know you had to come all the way up to Springfield,
24 but you've given us some great testimony. I want to
25 talk to you about it.

1 **A Okay.**

2 Q On Exhibit C-26, do you have that in front
3 of you?

4 **A Tab 26, is that --**

5 Q Yeah, tab 26?

6 **A Okay.**

7 Q At 2:33 to 2:36, you have a dBA rating of
8 33 decibels, correct?

9 **A That's what I wrote down right here, yes.**

10 Q Okay. You can still hear the song?

11 **A What did I write -- what does say?**

12 Q Song 93.

13 **A Song 93, is that --**

14 Q I don't know what you put down. I'm just
15 trying to read it. You put something down?

16 **A I put something there.**

17 Q Okay. You could hear it, correct?

18 **A I assume so.**

19 Q The reason I'm asking you that, Mike, is
20 because you say -- your expert testimony in this
21 case is lower it to 85 and it will fix everything.
22 Do you realize what sound that is? What sound is 33
23 over in Copper Fire?

24 **A I don't understand the question.**

25 Q Add 55 to 33.

1 **A I'm sorry?**

2 Q Can you add 55 to 33 for me?

3 **A 55, where's -- where are you getting 55 --**

4 Q Mike, what does the wall reduce the sound
5 by?

6 **A Oh, 55.**

7 Q Thank you. Now, add 55 and 33 for me?

8 **A 88.**

9 Q Okay. We turned it down to 88 on this
10 song, and Geri would still complain because she
11 could hear it. Your solution won't even work. It
12 will not satisfy the problem. Do you understand
13 that?

14 **A No.**

15 Q Why not?

16 **A Because I don't know if she would hear or**
17 **complain or not.**

18 Q Okay. What if we have evidence today of
19 the sound being below 85 in our restaurant, and she
20 still is calling us, texting us and complaining.
21 Now, what would you say?

22 **A I don't know.**

23 Q We can't solve the problem, Mike. She's
24 going to complain. What do we do?

25 **A I don't know she'll complain. I can't**

1 **answer what she'll do.**

2 Q Well, I can prove it, okay? I can prove
3 it. So, now if that doesn't work, what's next?
4 What's the next solution?

5 MR. JACOBBER: I'm going to object to the
6 extent he's calling for speculation and asking
7 him what someone who's not even a witness at
8 this point may or may not do.

9 HEARING OFFICER WEBB: You know, maybe
10 clarify your questions a little bit.

11 Q (By Mr. Petruska) If the evidence that
12 Geri Boyer will still complain the sound level is at
13 85, then your solution doesn't work; is that
14 correct? If there is evidence showing that and your
15 solution doesn't work?

16 MR. JACOBBER: I'm going to once again
17 object. It's an improper hypothetical.

18 HEARING OFFICER WEBB: No, I'll allow it.
19 Go ahead.

20 MR. PETRUSKA: Do you want him to read the
21 question back?

22 **THE WITNESS: No, but my answer would be,**
23 **the only way to do that would be turn it down**
24 **to a level that's 84, and go to the loft and**
25 **remeasure.**

1 Q (By Mr. Petruska) We've done that. And --

2 **A I have not done that.**

3 Q But in this situation, in this situation,
4 I will show you that there's evidence in this case
5 of the sound level at Copper Fire being below 85 and
6 Geri texting while that's going on, complaining.
7 Now, if that evidence is admitted, would you agree
8 that your solution will not solve the complaint?

9 MR. JACOBBER: I'm going to object. It
10 calls for an improper hypothetical.

11 HEARING OFFICER WEBB: I mean, some of
12 this argument is best left for your brief. I
13 mean, can you just ask him questions, I mean,
14 based on the evidence --

15 Q (By Mr. Petruska) Let's just keep with
16 objective stuff. 28 decibels with no band playing
17 at 2:36, 45, correct? On C-26?

18 **A It looks like 28.**

19 Q Okay. At 2:33 to 2:36, 33 dBA, correct?

20 **A Right.**

21 Q At 4:42 above that, 37 dBA, correct?

22 **A I'm sorry, where?**

23 Q 4:42 above at the top of the page?

24 **A 4:42.**

25 Q 4:42.

1 **A Okay, 4:42 at the top?**

2 Q Correct. 37 dBA.

3 **A Okay.**

4 Q 5:06, 37 dBA; is that correct?

5 **A Right.**

6 Q Right?

7 **A Right.**

8 Q Okay. Next page, 2:38 to 2:42, I Just
9 Want to Fly, 36 dBA?

10 **A Okay.**

11 Q Is that correct?

12 **A That's what's written here, yeah.**

13 Q That's what you wrote down.

14 **A Right, okay.**

15 Q 2:43 to 2:47, 34 dBA, correct?

16 **A Okay.**

17 Q Yes?

18 **A Yes.**

19 Q 2:47 to 2:50, 37 dBA, correct?

20 **A That's correct.**

21 Q Your report at C-23, when you measured the
22 decibels in the apartment -- that's wrong. I got to
23 go back.

24 **A You said 23?**

25 Q Yeah, one second. C-22. Is that your May

1 5th one? Is that C-22?

2 **A C-22, okay.**

3 Q Is that your May 5th?

4 **A Yes.**

5 Q Okay. You did a measurement of the sound
6 level in the apartment at 10:26, correct? Page 5.

7 **A Okay.**

8 Q Is that correct?

9 **A That's correct.**

10 Q 38 dBA, correct?

11 **A Right.**

12 Q And on Saturday from 10:00 p.m. to
13 11:25 p.m. 39 dBA, correct?

14 **A That's correct.**

15 Q So, is it fair to say that this entire
16 lawsuit, this entire lawsuit, is about sound less
17 than 40 dBA?

18 MR. JACOBBER: I'm going to object.

19 Mr. Biffignani is an expert witness. He
20 doesn't know about the entire lawsuit. He's
21 here to provide his expertise to the Board
22 relating to sound that he observed during his
23 sound study.

24 MR. PETRUSKA: I will amend my question.

25 HEARING OFFICER WEBB: Okay.

1 Q (By Mr. Petruska) Mike, is it fair to say
2 that everything you studied, measured and found out,
3 shows that the sound level in the Boyer loft is
4 below 40 dBA with music playing?

5 A **Right, I only measured, as stated here, 38**
6 **and 39.**

7 Q And you have lower readings also?

8 A **Right, because this is an average.**

9 Q Right.

10 A **Those other ones you cited were snapshots.**

11 Q And we can't even get to that level of
12 sound in this room with the music because the sound
13 level in this room is above 38 dBA, correct?

14 A **We could get to a sound level of that in**
15 **this room. Not with that recording.**

16 Q With the air condition on, can we get to
17 38?

18 A **38 what?**

19 Q 38 dBA in this room.

20 A **We're already past 38.**

21 Q Right, that's that I'm saying. We can't
22 get to 38 dBA in this hearing room, correct?

23 A **I don't understand the question.**

24 Q The level -- if you use your meter right
25 now for two minutes, 10 minutes 30 minutes and the

1 air conditioner was on, would it stay above 40 dBA?

2 MR. JACOBBER: I'm going to object. It
3 calls for speculation.

4 HEARING OFFICER WEBB: You can answer if
5 you know.

6 THE WITNESS: Well, it's kind of apples
7 and oranges because the sound level with the
8 music off was 30.

9 Q (By Mr. Petruska) I'm talking about in
10 this room right now. You pulled your meter out, you
11 remember that?

12 A Yes.

13 Q And you measured the sound in this room,
14 correct?

15 A Okay, so what you're asking, though, is if
16 I turn the sound level meter on in this room and
17 it's 45.

18 Q Right.

19 A If we play music in this room and it got
20 up to 55, that would be equivalent to 0. 10 dBA
21 higher.

22 Q What I'm saying is, we can't even play
23 music at the 38 dBA level in this room because the
24 dBA in this room is above 38?

25 A The ambient level is higher -- the ambient

1 **is -- it's a reference.**

2 Q And Geri Boyer has filed this lawsuit
3 because she can't handle that level of noise.

4 MR. JACOBBER: I'm going to object. It
5 calls for speculation again.

6 HEARING OFFICER WEBB: Yeah, sustained.

7 MR. JACOBBER: Ms. Boyer isn't on the
8 stand --

9 HEARING OFFICER WEBB: I think some of
10 this is best reserved for the post-hearing
11 briefs. Maybe limit our questions to the
12 direct testimony.

13 MR. PETRUSKA: Sure.

14 Q (By Mr. Petruska) You testified on your
15 initial questions that you are often hired to solve
16 a problem with sound, right?

17 **A Right.**

18 Q Okay. And in this case, your solve -- the
19 way you solved this problem is, you want it reduced
20 to 85, correct?

21 **A That was a suggestion I made looking at
22 the other factors to get from 38 to 39 down to 30.**

23 Q Have you been in Copper Fire on a Friday
24 night without music?

25 **A I've only been to Copper Fire one time**

1 during lunch like I testified.

2 Q If I told you with 100 people in Copper
3 Fire, the sound level is 88 to 90 just with people
4 talking without music, would that make sense to you?

5 A I don't know. How many people --

6 Q You've done a lot of studies in your life?
7 A lot of sound studying?

8 A Yeah, but you're asking -- but I don't
9 make up numbers unless I go there and do testing. I
10 mean, I can't -- you can't say, Mike, what do you
11 think the sound level is going to be of 80 people
12 talking inside of Copper Fire. I have no idea.
13 I'll go measure for you.

14 Q Have you ever measured the sound level in
15 a loud bar with people talking, just people talking?

16 A Yes, I have.

17 Q Okay. What kind of numbers did you come
18 up with?

19 A It depends on what -- what kind of
20 absorption material is inside the bar. It could be
21 anywhere from 65, 70 to 80 something just throwing
22 out raw numbers.

23 Q Okay.

24 A It depends. A lot of bars are really bad.

25 Q So, it would not be uncommon for a bar

1 that's full of people to be in 80s?

2 **A Uncommon? I don't know.**

3 Q You were asked about what is reasonable
4 for sleep and your response was it's very
5 subjective; is that correct?

6 **A Could you repeat?**

7 Q You were asked what is reasonable for
8 sleep and you said that's very subjective, correct?

9 **A No, I have lots of references that say
10 good for sleep is 30.**

11 Q But for any person it could change based
12 on what they desire for sleep, correct?

13 **A Well, sure, but --**

14 Q But it could be subjective for those
15 people?

16 **A Sure.**

17 Q You've heard of -- have you heard of green
18 noise and brown noise for sleep?

19 **A And pink noise and white noise.**

20 Q Yes.

21 **A Yeah.**

22 Q So, some people like the noise to be
23 constant and it helps them sleep, correct?

24 **A That's a different type of noise.**

25 Q Correct, but it is adding noise to help

1 them sleep; is that correct?

2 **A That's correct. Again, it's a different**
3 **type of frequency noise.**

4 Q Are you aware of what Copper Fire has done
5 since they had a chance to review your May 5th,
6 2021, sound study?

7 **A I am not.**

8 Q So, if I told you Copper Fire has taken
9 numerous steps to turn down the sound, would you say
10 that's a good thing?

11 **A Sure.**

12 Q I'm going to hand what's been marked R-21
13 and R-22. I'm just going to ask it if those have
14 been provided to you at any point in time?

15 **A No.**

16 Q If I you told those are policies that
17 Copper Fire has put in to reduce the noise inside
18 the bar, can you review them for me?

19 **A Yeah, it looks like the top half of this**
20 **one is applicable. If they're being followed, yes.**

21 Q Would you agree that 85 to 89 would fall
22 reasonably within what you suggested?

23 **A No.**

24 Q Okay. Would you agree that it is a
25 reduction from 95?

1 **A It's a reduction from 95.**

2 Q Okay. And if Copper Fire has installed
3 those policies, they've turned down the sound,
4 right?

5 **A If the band is not playing at a --**

6 Q And I told you --

7 **A You could -- you could have a policy all**
8 **you want, but if the band is playing and somebody**
9 **goes in and measures, it depends on what's being**
10 **played and what's being measured.**

11 Q If I tell you there's evidence that Copper
12 Fire has contracts with their musicians saying they
13 must keep their sound below a certain decibel level
14 or they will not be asked back, would you say that's
15 a good thing?

16 **A If the band has a way to measure they're**
17 **following it, yeah.**

18 Q If I told you that Copper Fire has been
19 routinely measuring the sound on a phone app for a
20 while to determine what their baseline is, would you
21 say that's a good thing?

22 **A No.**

23 Q Is it not a good thing for them to have a
24 standard to determine from night to night what's
25 loud and what's not loud?

1 A Again, from an acoustics person, you can
2 show me standards; you can show me guidelines. I go
3 in and I measure what's actually the level being
4 played. And that's all I know. I mean, you could
5 say I gave the band a standard of 80 and they're
6 following it, and I go in and measure 95, so a piece
7 of paper is worth nothing. I don't do things like
8 that. I measure the actual levels.

9 Q I understand that, but you've given an
10 opinion that the best way to solve this problem is
11 to turn down the sound, right?

12 A Measurable sound level.

13 Q Okay. And what I'm telling you is Copper
14 Fire has measurably turned down the sound.

15 A Okay. I haven't --

16 Q Geri is still complaining, so what do we
17 do now?

18 A I have -- if I had evidence of -- if I
19 went in there, hired by Copper Fire, to measure and
20 show that it's that level, and I went over to Boyers
21 and I measured it was at 30, that's the only thing I
22 can say.

23 Q So --

24 A Or if somebody else did, McClure did or
25 they hired somebody like that, but to say a phone

1 **app and a piece of paper, I have no idea.**

2 Q If you measure -- if you got it back down
3 to 30 with the music on at Copper Fire, that would
4 be a solution to you?

5 MR. JACOBBER: Objection, it calls for
6 speculation. He's already said what it would
7 take for him to do that. It's an improper
8 hypothetical, if, if, if.

9 HEARING OFFICER WEBB: Yeah, sustained.

10 Q (By Mr. Petruska) Mike, if the evidence in
11 this case shows that Copper Fire has installed a
12 permanent decibel reader that the band can see in
13 the bar, so they could see what level they're at,
14 would you say that's a good thing?

15 A **What kind of meter, where's it at? Sure,**
16 **a good thing, yes.**

17 Q The reason I'm asking is the whole theory,
18 you heard Geri say the same thing, you were here for
19 her testimony, correct?

20 A **I was here for the last part of her**
21 **testimony.**

22 Q You hear her say just turn it down, right?

23 A **I think I've heard her say that.**

24 Q And you have already testified that if
25 they turned down the level it would help, correct?

1 **A Yeah, turn -- right, yes, I have.**

2 Q And then we -- if -- no, not if. When
3 evidence is presented that Copper Fire has taken
4 steps to turn down the sound and the problem has not
5 been resolved because we're still here today, we're
6 still here today, so my question to you is, what do
7 we do then?

8 MR. JACOBBER: I'm going to object. It
9 calls for speculation.

10 **THE WITNESS: I don't know.**

11 HEARING OFFICER WEBB: I mean, he's
12 testified about turning it down. I guess I'm
13 not really -- I don't know what you're seeking,
14 what you're really asking.

15 MR. PETRUSKA: What I'm asking is, he's
16 testified here today that the solution to the
17 problem is turning down the sound. When my
18 client testifies, she's going to talk about all
19 the steps they've done to turn down the sound,
20 and they have turned down the sound. But Geri
21 Boyer was very clear in her testimony: there's
22 been no difference. There's been no
23 difference. Nothing has changed. So, I want
24 to know from Mike, the expert, what do we do
25 then? If we turn down the sound and that

1 doesn't work, what's the next step? That's
2 what I want to know.

3 HEARING OFFICER WEBB: Okay. You're an
4 expert witness. You may answer that question.

5 THE WITNESS: I preface it by saying if
6 I -- if the band plays and I am measuring on my
7 equipment, and I measure 84, and I have -- take
8 the meter, I go to the loft and I measure 30,
9 then we've achieved what turning down the sound
10 would do, or if somebody else did it. But the
11 only way I could be convinced of it is if I had
12 the data and I did it on the same kind of
13 equipment, the same location to set up meters
14 or McClure does it. McClure was hired, and you
15 showed me a report from McClure, that said he
16 measured the band at 94 -- 84, and he went to
17 the loft just like he did before, and he
18 measured it at 10 dBA and less, and it's 30 dBA
19 all the time, then, yeah, I believe it. That's
20 the only way I do it, if I had objective
21 evidence.

22 Q (By Mr. Petruska) Right. And what I'm
23 saying is if that objective evidence --

24 A I haven't seen that.

25 Q If that objective evidence is produced and

1 Geri is still complaining, what do we do then?

2 MR. JACOBBER: Objection, calls for
3 speculation, Your Honor.

4 HEARING OFFICER WEBB: Well, I think the
5 question is, what more would you -- is there
6 anything you can ask them to do besides turn it
7 down? Is there anything -- do you have
8 other --

9 THE WITNESS: Well, I also suggested the
10 band further away from the wall. I suggested
11 that.

12 HEARING OFFICER WEBB: Okay.

13 THE WITNESS: You could move the band
14 away -- there's other things. You could move
15 the band location. You could tell them to turn
16 it down. You could move the band in the back
17 on the other side, the inside side wall, the
18 back corner, instead of up against the glass.
19 Those would be the first two things I would do,
20 and I'd get objective evidence that it's now 30
21 in the loft. If somebody is still complaining
22 that it's 30 in the loft and it's still too
23 loud, I honestly couldn't tell you what to do.

24 Q (By Mr. Petruska) 33 is three decibels
25 higher than 30, correct?

1 **A That's correct.**

2 Q In your report, you say that three
3 decibels is a barely perceivable difference to the
4 human ear, correct?

5 **A Yes. Six decibels is considered**
6 **perceivable.**

7 Q Okay.

8 **A Up and down.**

9 Q You have evidence from your own testing
10 that the sound has been 33 in her apartment during a
11 song?

12 **A A snapshot.**

13 Q Right. But that's your measurement?

14 **A Not average over time.**

15 Q Right. But that was your measurement,
16 correct?

17 **A Yes.**

18 Q And you could still hear the music?

19 **A Uh-huh.**

20 Q Yes?

21 **A Yes.**

22 Q Okay. You heard Geri testify that she
23 wants no sound; that's what she wants?

24 **A Okay.**

25 Q Is that correct, you hear her say that?

1 **A** **I don't -- no, I don't think I've heard**
2 **Geri say that. I think I hear you ask her that, but**
3 **I don't think that was her response.**

4 **Q** **If both parties took actions on both sides**
5 **of the wall to reduce sound with mass, would that**
6 **help?**

7 **A** **Lots of mass.**

8 **Q** **Would it help?**

9 **A** **It depends on how much mass.**

10 **Q** **Okay.**

11 **A** **I'm looking for 10 decibels.**

12 **Q** **Well, you had 38 and 39. Just to be**
13 **clear, mathematically, you had 38 and 39 in your**
14 **report?**

15 **A** **Okay, I'm looking for nine decibels.**

16 **Q** **Eight or nine decibels?**

17 **A** **Okay.**

18 **Q** **Then you also have 37 at different times.**

19 **A** **Okay. I'm looking to get to 30.**

20 **Q** **If you get to 30 then you'll be satisfied?**

21 **A** **I will be satisfied if we were in the**
22 **range of recommended levels for sleep.**

23 **Q** **Okay. What about during the daytime?**

24 **A** **During the daytime, there's lots of other**
25 **noise going on, so during the daytime, you know,**

1 **accepted levels are 44.**

2 Q But the transcript will show this very
3 clearly, but you heard Geri testify she doesn't even
4 go home after work from 6:00 to 9:00 because she
5 can't handle the noise; do you remember that? She's
6 not sleeping, is she?

7 A **This is, again, is subjective. I'm**
8 **looking with -- I'm measuring the levels. And the**
9 **main level I look at is 30 dB for sleep. Daytime is**
10 **a combination of the band and outside and other --**
11 **it could be other things.**

12 Q I'm going to ask you my last question.

13 A **It's subjective. It's so subjective**
14 **during the day.**

15 Q Agreed. Two last questions then. Do you
16 think the law should be subjective?

17 MR. JACOBBER: I'm going to object. It
18 calls for speculation. He is --

19 HEARING OFFICER WEBB: Yeah, sustained.

20 MR. JACOBBER: Thank you.

21 Q (By Mr. Petruska) Second question, what --
22 have you considered the possibility that Geri Boyer
23 will not be satisfied no matter what happens?

24 MR. JACOBBER: I'm going to object. It
25 calls for speculation well outside of his

1 expertise.

2 HEARING OFFICER WEBB: Yeah, sustained.

3 MR. PETRUSKA: No further questions.

4 MR. JACOBBER: May I proceed?

5 HEARING OFFICER WEBB: Yes.

6 REDIRECT EXAMINATION

7 BY MR. JACOBBER:

8 Q Mike, I want to go over some of the --
9 some of the questions you were asked on Cross. Is
10 there a difference in the decibel level between an
11 amplified band and people talking?

12 A Yes.

13 Q How so?

14 A People talking are in the frequency range
15 of maybe 5, 600 hertz. So, that's the narrow band
16 sound. Where a band is anywhere from low frequency
17 drums and base, 32, to high symbols and, you know,
18 so it's a broader band of frequency ranges with a
19 band.

20 Q So you can't -- you can't just say that
21 80 decibels of people talking is going to sound the
22 same on another side of the wall as 80 decibels of a
23 band playing?

24 A That's correct. You also have the
25 percussive of base drums (knocks table). I'm sorry.

1 You know, you also have that percussive part of it,
2 so, no, a band -- the band dynamics are different
3 than speech.

4 Q Thank you. Now, you had -- you were asked
5 questions about the white noise machines or brown
6 noise machines that people may use to sleep. Is
7 that, and you started to answer it but there wasn't
8 a lot of follow-up on it. Is that noise different
9 than noise from music?

10 A Yes, because the pink noise, white noise,
11 brown noise that people use to mask sound and to
12 sleep with, it's a consistent hiss. It's like
13 turning on your stereo in between stations. It's a
14 consistent broadband of continuous hiss. Okay, so
15 it becomes almost in the background, almost like
16 this air conditioner noise right here, right? It's
17 almost white noise. We don't notice it. A band is
18 up and down and percussive and stop and start, and
19 the band -- song and music are different than a
20 continuous white noise.

21 Q So, you can't do a comparison --

22 A No.

23 Q -- of white noise to a band?

24 A No.

25 Q Now, there was some discussion about

1 different decibel levels, and we've talked about the
2 manner in which the decibels isn't necessarily
3 linear -- I can't remember the phrase you used?

4 **A Log.**

5 Q A log. Is there -- what's the perceived
6 difference between 84 and 89 decibels?

7 **A Well, like I mentioned, five or six**
8 **decibel difference up or down is perceivable by**
9 **people.**

10 Q Okay. Is 89 louder than 84?

11 **A Yes. It would be perceived louder.**

12 Q Okay. Now, counsel asked you about
13 Exhibits R-21 and R-22.

14 HEARING OFFICER WEBB: Do you have an
15 extra copy of that?

16 MR. PETRUSKA: Yes.

17 MS. ROBBINS: They might be the same as
18 C-17 and C-18 in your binder.

19 HEARING OFFICER WEBB: Oh, okay, thank
20 you. Yes.

21 **THE WITNESS: Did you say C-21?**

22 Q (By Mr. Jacober) In the book, you can look
23 at C-21, yes.

24 MS. ROBBINS: No, C-17 and 18, sorry.

25 Q (By Mr. Jacober) C-17 and 18, sorry.

1 **A 17 and 18. Oh, okay, all right. Okay.**

2 **Those are the ones that Paul just showed me.**

3 Q Yes, and let's look at C-18. Let me know
4 when you have that in front of you.

5 **A Okay.**

6 Q This has decibel limits of -- in the
7 afternoons of 85 to 88 decibel levels, and then at
8 night of 88 to 92 decibels. Do you see that?

9 **A I do.**

10 Q Is that louder, the evening, when people
11 would be going to sleep, is that louder than what
12 you would recommend?

13 **A Given the 55 barrier wall?**

14 Q Correct.

15 **A What's the math? 92 minus 55 is what?**

16 Q 38?

17 **A 37, 38. Yes, greater than 30.**

18 Q When you were in Copper Fire on
19 November 21st of 2021, you've already testified that
20 it was so loud in there that you couldn't have
21 talked with someone who was sitting across the table
22 from you?

23 **A Right, I couldn't talk to the waitress**
24 **taking my order.**

25 Q Okay. When that -- I'm sorry, the sound

1 that you experienced in there, was that due to a
2 band playing that day?

3 **A Yes.**

4 Q Did that band ever take a break?

5 **A I don't remember.**

6 Q Did they stop playing in between songs?

7 **A I assume they did.**

8 Q Okay. Did the level of noise go down to a
9 level that was less than where it was when they were
10 playing?

11 **A All I can say --**

12 MR. PETRUSKA: I'll object, lack of
13 foundation, calls for speculation. He said he
14 can't remember if they took a break.

15 MR. JACOBBER: I asked if they stopped
16 playing in between songs, and he said yes.

17 HEARING OFFICER WEBB: Okay. That's okay.
18 Go ahead.

19 **THE WITNESS: I assume it went down. I**
20 **don't remember taking a reading.**

21 Q (By Mr. Jacobber) Okay.

22 **A Whatever it was.**

23 Q When you were in the Boyer loft and you
24 were doing those readings that you testified to in
25 Exhibit C-23 on page 5 and figure 3 --

1 **A Okay.**

2 Q And for purposes of the record, I'm
3 referencing the chart here on figure 3 where you
4 recorded 34 decibels dBA by the couch. 36 dBA by
5 the table by the wall?

6 **A Yes.**

7 Q 39 by the dining room table, et cetera, et
8 cetera?

9 **A Yes.**

10 Q You were in the loft at that point and
11 time, right?

12 **A Yes.**

13 Q You were walking down with a meter --

14 **A I was holding the meter.**

15 Q Were you able to hear --

16 **A I'm very, very careful about making sound.**
17 **So, I went like this with the meter on the table.**
18 **I'm very quiet because I know I'll be picked up.**

19 Q Okay. Were you able to hear music playing
20 at that level when you were taking these readings?

21 **A I don't recall.**

22 Q Okay. Do you recall if you were able to
23 hear talking inside of Copper Fire?

24 **A I don't recall when I was taking those**
25 **what I actually heard. I don't recall.**

1 Q In the analysis of the sound or the --
2 your notes of the sound, and that's on Exhibit C-26?

3 A 26?

4 Q Yes. These are your written notes, Mike.

5 A Okay, yeah.

6 Q I've looked through them several times,
7 and you talk -- you have a note or two in here about
8 talking, talking from the band, do you differentiate
9 the talking that you heard from the band that was
10 amplified as opposed to the group of people who were
11 in Copper Fire watching the band? Are you able to
12 distinguish between the two?

13 A The talking -- If I recall, the talking
14 was from a band member.

15 Q And talking over a microphone --

16 A Over a microphone --

17 Q -- that was amplified?

18 A Thanking the crowd for clapping,
19 announcing the next song, and occasionally I heard
20 crowd noise. Like 2:04, loud noises. I remember
21 hearing the crowd -- later on, I hear the crowd
22 singing along. I remember that.

23 Q Okay.

24 A But mainly it was when the band stopped,
25 you know, but the band leaders, thank you very much,

1 **here's the next song. I could hear that.**

2 Q Understood. One second here.

3 MR. JACOBBER: I have no further questions.

4 HEARING OFFICER WEBB: Okay.

5 MR. PETRUSKA: None from me.

6 HEARING OFFICER WEBB: All right, thank
7 you.

8 **THE WITNESS: You're welcome.**

9 MR. JACOBBER: May he be released?

10 HEARING OFFICER WEBB: Yes, absolutely.
11 You can go.

12 **THE WITNESS: Released as in drive my car**
13 **home?**

14 HEARING OFFICER WEBB: Let's go off the
15 record for a moment.

16 (Wherein, a lunch recess was taken.)

17 HEARING OFFICER WEBB: We'll go back on
18 the record now. It is 1:00 o'clock. We are
19 back from lunch, and we will pick up with the
20 Complainants' next witness.

21 MS. ROBBINS: The Complainants call Renae
22 Eichholz.

23 HEARING OFFICER WEBB: Would the court
24 reporter please swear in the witness?

25 (Renae Eichholz sworn.)

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DIRECT EXAMINATION

BY MS. ROBBINS:

Q Ms. Eichholz, can you state your full name and spell it for court reporter, please?

A **Renaë Eichholz, R-e-n-a-e, E-i-c-h-h-o-l-z.**

Q Would you prefer I call you Renaë or Mrs. Eichholz?

A **Renaë.**

Q Okay. Renaë, can you tell me a little bit about your employment history. Before you owned Copper Fire, what was your primary job?

A **I owned and am the founder and the president of Precision Practice Management.**

Q And how long have you been the owner of Precision Practice Management?

A **31 years.**

Q And what does Precision Practice Management do?

A **Medical billing and software for physicians in hospitals.**

Q And you still own and operate that company, correct?

A **Yes.**

Q Prior to Copper Fire opening, did you have

1 any history of running a restaurant, a bar or a live
2 music venue?

3 **A No.**

4 Q And how would you characterize Copper
5 Fire? Is it a restaurant or a bar or a live music
6 venue?

7 **A Bar, live music venue. Bar.**

8 Q Bar, live music --

9 **A With good food.**

10 Q You would agree that you're not a sound
11 expert, correct?

12 **A Correct.**

13 Q You had no special schooling in sound?

14 **A That's right.**

15 Q You're not a sound technician, correct?

16 **A Correct.**

17 Q Or a sound engineer, correct?

18 **A Correct.**

19 Q Did you consult with a sound expert before
20 signing on to build Copper Fire?

21 **A No.**

22 Q What is MRB Development, LLC?

23 **A It's the corporation that owns Copper
24 Fire. It's a DBA -- Copper Fire is a DBA of MRB
25 Development.**

1 Q And can you please identify all the owners
2 and investors of MRB/Copper Fire?

3 A My husband, Mark, myself and our son
4 Brett.

5 Q And do you have all equal ownership
6 percentages?

7 A No.

8 Q Can you tell us what each of those
9 percentages are?

10 A Mark and I each have 40 percent. Brett
11 has 20 percent.

12 Q When did you decide to open Copper Fire?

13 A 2016, the corporation was formed.

14 Q Okay. If you could turn in that book to
15 Exhibit C-2.

16 (Complainants' Exhibit C-2 marked.)

17 Q (By Ms. Robbins) Is Exhibit C-2 the
18 articles of incorporation for MRB Development?

19 A Yes.

20 Q It's from January -- it was filed
21 January 6th, 2016?

22 A Uh-huh, yes.

23 Q We move to admit Exhibit C-2.

24 MR. PETRUSKA: No objection.

25 HEARING OFFICER WEBB: Exhibit C-2 is

1 admitted.

2 (Complainants' Exhibit C-2 is admitted onto the
3 hearing record.)

4 Q (By Ms. Robbins) You formed Copper Fire,
5 or the LLC that owns Copper Fire, in 2016. When did
6 Copper Fire formally open?

7 A **March of 2018.**

8 Q Okay. That was on St. Patrick's Day,
9 right?

10 A **Yes.**

11 Q Why did you select the location where
12 Copper Fire is located?

13 A **We own the building.**

14 Q And when you say we say own the
15 building --

16 A **My husband and I.**

17 Q Did you own the building before 2016?

18 A **Yes.**

19 Q Okay. So, you owned the building when
20 there was a Quiznos and a coffee shop in the current
21 location?

22 A **Correct.**

23 Q Okay. And did either of those businesses,
24 the Quiznos or the coffee shop, have live music
25 performances?

1 **A No.**

2 Q When you selected the location, were you
3 aware that residential lofts were next door?

4 **A I don't remember if I remember.**

5 Q Before Copper Fire opened, were you aware
6 that there were residential lofts next door?

7 **A Yes.**

8 Q Okay. Did you consider the impact that
9 your business might have on your neighbors?

10 **A I really didn't.**

11 Q Now, going back to when you were first
12 constructing the building, changing from a Quiznos
13 and a coffee shop to Copper Fire, what were the
14 original building plans? What -- what -- the
15 construction plans. How did you plan on
16 constructing this space?

17 **A That ended up being Copper Fire?**

18 Q Yeah.

19 **A We hired an architect. It was going to be
20 a two story. It's already a two-story building in
21 that floor, but it also has a mezzanine. It was
22 going to be -- both the mezzanine and the first
23 floor would be part of the entire restaurant and
24 bar; but then we didn't have enough money to do
25 those plans. We scaled it down to just the first**

1 floor, which is really two floors but not excluding
2 the mezzanine.

3 Q Okay. So, just so we're clear, when you
4 originally hired an architect to build out this
5 space, the plan was to build the entire first and
6 second floor, and you ended up not having enough
7 money for the second floor, so it's just the first
8 floor and a mezzanine?

9 A The original space, Quiznos and Junction
10 were -- already a two story. It was a department
11 building a long, long time ago. And, so, it was --
12 it's already two stories just for the main area.
13 And there was a mezzanine, which is on the second
14 floor in the back that was going to be part of
15 Copper Fire. It is now our event space.

16 Q Okay. But it wasn't ever -- but it hasn't
17 been built down; it's just a separate event space?

18 A It's never had a wall there.

19 Q Okay. So, it's open air?

20 A On the first floor, it's never had a wall.
21 It's always had a wall on the second floor of the
22 mezzanine.

23 Q Okay, I understand. And did you discuss
24 sound mitigation as part of the building plans with
25 the architect?

1 **A No.**

2 Q Were sound mitigation measures installed
3 in the ceiling of Copper Fire?

4 **A No.**

5 Q Were any sound deadening devices
6 installed?

7 **A No.**

8 Q What about sound absorption?

9 **A Not initially.**

10 Q When you not initially, is there a sound
11 absorption device now?

12 **A Not a device, but we have done some sound
13 panels and some sponge-like sound absorption around
14 the entire perimeter of the ceiling.**

15 Q And who advised you about putting in those
16 devices or what are you saying -- you're saying it's
17 tiles on the ceiling?

18 **A They are sponge foam tiles around the
19 circumference of the second floor of the main bar.**

20 Q Okay. There's nothing on the first
21 floor --

22 **A It's all one room.**

23 Q Yeah.

24 **A There's no -- it's just like this would go
25 up another floor.**

1 Q Right. So, there's nothing on walls?

2 It's the ceiling. You're saying there are tiles --

3 A **It's on the corner of the top panels**
4 **sponge panels along the edge of the entire perimeter**
5 **of the roof.**

6 Q And when were those sponge tiles
7 installed?

8 A **Oh my goodness. After we opened, after**
9 **our complaints, probably, I'm guessing 2019.**

10 Q So the sponge tiles were they installed
11 before this lawsuit was filed?

12 A **Oh, I'm sure.**

13 Q Did the architect recommend any sound
14 mitigation?

15 A **I already said no.**

16 Q The live music at Copper Fire, all the
17 bands and the acoustic acts, they're all amplified
18 in some way, correct?

19 A **Meaning they have a microphone?**

20 Q Correct. And the instruments are
21 amplified or --

22 A **Not always, but, yes. They have a**
23 **microphone and sometimes a speaker.**

24 Q Okay. And Copper Fire plays live music or
25 sometimes it's a DJ five days per week on average?

1 **A It's a DJ, maybe, three or four times a**
2 **year.**

3 Q Okay. It's pretty much live music five
4 days a week?

5 **A Yes.**

6 Q And what are the live music times?

7 **A Wednesday, 6:00 to 9:00; Thursday 6:00 to**
8 **9:00; Friday, 8:00 to 11:00 p.m.; Saturday 2:00 to**
9 **5:00 and 8:00 to 11:00; Sunday 2:00 to 5:00.**
10 **Sometimes a Sunday evening if it's before a holiday.**

11 Q Okay. Just to make sure I have this
12 correct: Wednesday and Thursday, 6:00 to 9:00 p.m.;
13 Friday and Saturdays, 2:00 to 5:00 p.m.; and then --
14 sorry, Fridays, 8:00 to 10:00 p.m.; Saturday, 2:00
15 to 5:00 p.m. and then --

16 **A Friday and Saturday nights, 8:00 to**
17 **11:00 p.m.; Saturday and Sunday afternoons, 2:00 to**
18 **5:00 p.m.**

19 Q Okay. So, there's a weekend gap in music
20 on Saturday between 5:00 and 8:00?

21 **A Correct, and 9:00 a.m. to 2:00 p.m.**

22 Q You said that sometimes on Sunday evening
23 before a holiday it might go later?

24 **A Maybe three times a year.**

25 Q Can you please turn to Exhibit C-16?

1 (Complainants' Exhibit C-16 marked.)

2 Q (By Ms. Robbins) Do you recognize Exhibit
3 C-16?

4 A Yes.

5 Q Is this a list of live music that played
6 on June 6, 2020, to April 1st of 2022?

7 A Yes.

8 Q Did you create this list?

9 A Yes.

10 Q Are you aware that this list was created
11 in response to a discovery request that the
12 Complainant sent?

13 A Yes.

14 Q Are you aware that that request asked for
15 certain detail, including the style of the music,
16 the types of instruments played and whether or not
17 the performance was inside or outside of Copper
18 Fire?

19 A Yes, I didn't track that.

20 Q So, why did you fail to provide this
21 information as required?

22 A Because I didn't track it. This is what I
23 had that was easily able to submit.

24 Q You understand that we did ask your
25 counsel numerous times to update this information?

1 And you're now asserting, or your counsel has
2 asserted at the prior day of hearing, that certain
3 bands played outdoors but that information isn't
4 included in this spreadsheet?

5 **A Well, I'm looking at 2020, we weren't**
6 **allowed inside, so they were all outdoor.**

7 Q But that information wasn't provided in
8 the spreadsheet?

9 **A It wasn't in our responses.**

10 Q But not in the spreadsheet --

11 **A Correct.**

12 Q Okay. And you would agree that after
13 April 1st, 2022, live music has continued to play at
14 Copper Fire?

15 **A Yes.**

16 Q And it's with the similar frequency with
17 the average of five days per week?

18 **A It's not the same frequency, and it's not**
19 **the same time.**

20 Q What do you mean it's not the same
21 frequency and it's not the same time?

22 **A Well, during Covid, we could only be**
23 **outside and it was only certain -- we could only**
24 **have two musicians at a time. Then, when we resumed**
25 **indoors in 2021, we had water damage, so then we had**

1 no food. We reopened two weeks later, and we were
2 only live music and allowed people to come in to
3 listen to music and bring food in from other places
4 in the area. Throughout these years, I would say
5 the last couple years have been the hours that I
6 gave you, those are our consistent hours. Up until
7 that point, we were -- once in a while, we got until
8 midnight. We don't do that at all anymore. I think
9 our hours might have been different, too. So, I
10 tried to get more consistent in terms of Wednesday,
11 Thursday nights. This time, you'll see different
12 times all over. You'll also see, maybe, sometimes,
13 even then we would have two or three in a day. So,
14 they're not the same now as they were then.

15 Q Okay. When was the period of time when
16 Copper Fire was just a live music venue. Do you
17 remember the dates?

18 A Yeah, we had water damage in February of
19 '21. It was a Friday. And we shut down for two
20 weeks and reopened only as a bar, liquor, beer and
21 live music. We went another month or two where we
22 could actually serve cold sandwiches, chips, things
23 like that; and, then, as we rebuilt, parts of the
24 building and the kitchen, and then it was almost
25 exactly three months later, we reopened fully.

1 Q So --

2 A So, a couple months.

3 Q So, by, like, June you were open?

4 A It was sometime in June.

5 Q Okay.

6 A Early June, I think.

7 Q And you would agree that some of the times
8 on this spreadsheet extend, as you've mentioned,
9 until midnight, sometimes longer on the weekend,
10 daytime hours, do you agree?

11 A It's probably been at least two, maybe
12 three years.

13 Q Okay.

14 A At least two.

15 Q So, for example, if you go to Saturday,
16 April 24th, 2021 --

17 A Oh, April.

18 Q Yeah, on page 2. It's about halfway down?

19 A I'm sorry, April what?

20 Q April 24th. Saturday, April 24th?

21 A Yes.

22 Q On April 24th, music started at
23 11:00 a.m., correct?

24 A Yeah, every once in a while -- well, every
25 once in a while. There are a lot of events Downtown

1 **Belleville. Margarita walks, Bloody Mary walks,**
2 **things like that, and there are several of us that**
3 **will sometimes have music starting at 11:00.**

4 Q Okay. So, on April 24th, music went from
5 11:00 a.m. to 11:00 p.m., correct?

6 A **The 24th went from 11:00 to 2:00, 3:00 to**
7 **7:00 and 8:00 to 11:00.**

8 Q So, there was two one-hour gaps?

9 A **Correct. Plus the gaps for their breaks.**

10 Q If you go up just up a little bit to
11 April 10, 2021, that -- on that day, it looks like
12 it went until midnight, correct? The music?

13 A **Yeah, like I said, I did have -- it's**
14 **changed since then.**

15 Q Okay. But at least in this period of time
16 there were instances where you played beyond the
17 current schedule?

18 A **That would have been when we were down in**
19 **only live music.**

20 Q Okay. What about turning to the next
21 page, Saturday, July 17th, 2021. So, this would
22 have been after you were back to being a full
23 restaurant?

24 A **Yes.**

25 Q So, that one goes until midnight as well,

1 correct?

2 **A Yes, that was an event night if I had a**
3 **DJ.**

4 Q Okay. What about June 25th, 2021?

5 **A June 25th? Sorry, I'm looking at July.**
6 **June --**

7 Q Just up a little bit. Bottom third of the
8 way down the page.

9 **A That may have been -- oh, no, it was**
10 **the weather. It was inside. That was supposed to**
11 **be an outside event that because of the weather got**
12 **moved inside.**

13 Q Okay. On that day, a band played inside
14 until midnight?

15 **A Because, again, they were supposed to be**
16 **out on the street, and it got moved inside.**

17 Q Then turning to the next page, what about
18 Friday, August 20th?

19 **A Yes.**

20 Q Yeah, that's also went until midnight as
21 well?

22 **A Yes.**

23 Q Okay. If you do go down to near the
24 bottom of the page, Sunday, October 10th, that music
25 looks like it went until 10:00 p.m. on a Sunday?

1 **A Yes.**

2 Q Okay.

3 **A That's before Veterans Day. That's a**
4 **Sunday before a holiday.**

5 Q What about Sunday, February 6th, on page
6 6?

7 **A Sunday --**

8 Q It looks like the music went until 9:00.
9 Do you know why it went later?

10 **A Sunday, I don't.**

11 MS. ROBBINS: Okay. We move to admit
12 Exhibit C-16.

13 MR. PETRUSKA: No objection.

14 HEARING OFFICER WEBB: C-16 is admitted.

15 (Complainants' Exhibit C-16 admitted onto the
16 hearing record.)

17 Q (By Ms. Robbins) When the bands are
18 playing inside Copper Fire, you or sometime your
19 staff take videos of them playing, correct?

20 **A Yes.**

21 Q And those videos get played on Facebook or
22 your social media page?

23 **A Yes.**

24 Q Are you the person who typically takes the
25 videos or is it someone else?

1 **A** **Sometimes it's somebody from the band. I**
2 **grab it from them, but sometimes it's me.**

3 Q Are you the one who posts videos to
4 Facebook?

5 **A** **Yeah.**

6 Q Okay. Can you please turn to C-33?

7 **A** **C-33?**

8 Q Sorry -- yeah, C-33.

9 (Complainants' Exhibit C-33 marked.)

10 Q (By Ms. Robbins) Now, we'll play the video
11 if you like, but if you're able to identify it
12 without us playing the whole video, we will. So, if
13 you go to the first page it is just from the company
14 that pulled the video off the website, but you go to
15 the second page, it's a screenshot of a Facebook
16 page from Copper Fire on August 24th.

17 Does this look like a video you
18 posted on August 24th?

19 **A** **Yes, it should have been, yes.**

20 Q Okay. It's says 0 to 90?

21 **A** **Okay.**

22 Q Is that the name of the band?

23 **A** **Okay.**

24 Q Would you like us to play the video so you
25 can identify -- or from this can you identify this

1 is an accurate video you posted on your Facebook
2 page?

3 **A I can't tell if it was -- I shared it or I**
4 **posted it. I don't remember doing this, but I can't**
5 **tell. I have to see the actual post.**

6 **Q Well, the actual post is what -- the**
7 **actual post is what you see the screen grab of. So,**
8 **I will represent to you it's a screen grab from**
9 **Copper Fire's Facebook page.**

10 **A It wasn't shared or --**

11 **Q No. It was from -- it was on your page.**

12 **A Okay, I can't tell that.**

13 **Q And if you look in the top right hand**
14 **corner where, you know, above where it says**
15 **Overview, the person who owns the video -- posted**
16 **the video is Copper Fire, correct?**

17 **A I'm not going to say yes or no, because,**
18 **one, I don't remember doing it; and, two, I would**
19 **have to actually see the Facebook page to know if I**
20 **shared it from somewhere or if I did the video; but**
21 **I do a lot of posting.**

22 MS. ROBBINS: We'll move to admit C-33.

23 MR. PETRUSKA: No objection.

24 HEARING OFFICER WEBB: C-33 is admitted.

25 (Complainants' Exhibit C-33 admitted onto the

1 hearing record.)

2 MS. ROBBINS: Okay. Turning to C-38,
3 Renae, it's going to be similar.

4 (Complainants' Exhibit C-38 marked.)

5 Q (By Ms. Robbins) So, if you go to the
6 second page, again, a screen grab. It says Copper
7 Fire was live --

8 **A A Live, I would have absolutely done that.**

9 Q Okay. So, you would agree that --

10 **A Yeah.**

11 Q -- this was a video was posted on June 17,
12 2022?

13 **A Yes.**

14 MS. ROBBINS: Okay. We move to admit
15 C-38.

16 MR. PETRUSKA: No objection.

17 HEARING OFFICER WEBB: C-38 is admitted.

18 (Complainants' Exhibit C-38 was admitted onto the
19 hearing record.)

20 Q (By Ms. Robbins) Renae, when did you first
21 become aware the sound in the Copper Fire was an
22 issue?

23 **A The day we opened.**

24 Q When did you get your first noise
25 complaint from the Boyers?

1 **A The day we opened.**

2 Q In 2016, prior to opening, did the Boyers
3 have ever raise any concerns about noise coming from
4 Copper Fire during construction?

5 A **Yep, when my -- when Brett was working on
6 a wall to see what was behind the drywall.**

7 Q Okay.

8 A **It was about ten minutes in, she came into
9 the building, telling him to stop.**

10 Q Okay, so in 2016, when that happened, at
11 least as early as then, you were aware that
12 Ms. Boyer lived next door?

13 A **Yes.**

14 Q Okay.

15 A **Her business is right there. She wasn't
16 coming over that day about her -- where she lives.
17 She was coming that day about where she worked.**

18 Q Okay. But you were aware her business was
19 on the first floor?

20 A **Yes.**

21 Q As at least as early as then?

22 A **Yes.**

23 Q Okay. Did you ever mention this complaint
24 to the architect?

25 A **Nuh-huh, no.**

1 Q Did you become concerned that your
2 neighbors could hear what was happening inside
3 Copper Fire?

4 A He was using a sledgehammer, so, no, it
5 didn't cross my mind.

6 Q You mentioned previously that you got your
7 first complaint about -- once Copper Fire was opened
8 on the first day it opened in March of 2018,
9 correct?

10 A Yeah, on St. Patrick's Day.

11 Q On St. Patrick's Day. And I believe
12 that's March 17th --

13 A I think it actually fell on the 17th of
14 March that year, yes.

15 Q Okay. If we go to Exhibit C-3, please.
16 Okay. And Exhibit C-3 is an e-mail on March 17,
17 2018, from Geri Boyer to you, correct?

18 A Yes.

19 Q Okay. And she wrote, "It looks like
20 Copper Fire is a hit today. We're so glad you're
21 partially open, but the sound is very loud in our
22 second floor loft. Please talk to your architect
23 about acoustical remediation immediately." So, is
24 that the message you received from Ms. Boyer on the
25 17th, the first day you opened?

1 **A Yes.**

2 Q You responded to Geri saying that you'll
3 have them turn the music down, correct?

4 **A I did.**

5 Q And she responded, "Thanks, that helps."

6 **A Yes.**

7 Q Okay. Are you aware that Geri is a civil
8 engineer?

9 **A Yes.**

10 Q Did you talk to your architect at this
11 time about acoustical remediation like Geri
12 suggested?

13 **A No. We were already done.**

14 Q Did you -- did you implement acoustic
15 remediation after this incident?

16 **A This one e-mail? No. I said no.**

17 Q Oh, sorry, I didn't hear you. Do you
18 agree that turning the music down makes it quieter?

19 **A She said it helps.**

20 Q Okay. But when you turn music down, does
21 it make the music quieter?

22 **A Obviously.**

23 MS. ROBBINS: And following this, we move
24 to admit Exhibit C-3.

25 MR. JACOBBER: It's already in.

1 HEARING OFFICER WEBB: Yeah, it's already
2 admitted.

3 Q (By Ms. Robbins) Okay. Please go to C-4.
4 So, following this first incident, you would agree
5 that the Boyers continued to have issues with the
6 noise coming from Copper Fire; is that correct?

7 A Can you repeat?

8 Q I said following the first day that Copper
9 Fire opened in March of 2018, you would agree that
10 the Boyers continued to raise their concerns and
11 issues with the noise coming from Copper Fire?

12 A Yes.

13 Q Okay. And Exhibit C-4 is an e-mail that
14 starts with a thread from you to Ms. Boyer; is that
15 correct? On May 2, 2018?

16 A Yes.

17 Q Your e-mail starts with apologizing for
18 not calling Geri back, and then you mentioned that
19 we would have found something, although not cheap,
20 and that you want look at Taverns tomorrow night and
21 then make a decision?

22 A No.

23 Q Are you referring to sound mitigation
24 options in this e-mail?

25 A They were sound panels.

1 Q Sound panels, okay. And Tavern is another
2 bar on Main Street, correct?

3 A That does not have live music.

4 Q Then what were you going to go look at at
5 Taverns?

6 A Their sound panels, because Geri said that
7 once they installed those, everything was so much
8 better, is what she told me.

9 Q I'm a little confused by what was so much
10 better, for who?

11 A I don't know. I'm just telling you what
12 she told me.

13 Q Okay. You said that Tavern doesn't have
14 live music?

15 A Not inside.

16 Q Not inside. Did you talk with Tavern
17 about their sound panels?

18 A I did not.

19 Q Did you ever ask them how much it cost to
20 install them?

21 A No, we looked it up ourself.

22 Q Where did you look it up?

23 A I can't remember, online. You can put
24 dimensions in and it tells how much you need and
25 factors the cost online.

1 Q Online, but you don't know --

2 A **There's several of them.**

3 Q But you don't recall which?

4 A **I do not.**

5 Q -- online website vendor it was? Okay,
6 and you don't have a copy of that bid or that
7 estimate?

8 A **No.**

9 Q And how much it was?

10 A **Like 30, 40,000 dollars. Something crazy.**

11 Q Did you install anything after this e-mail
12 was sent and you investigated the paneling?

13 A **Like I said, we put those sponge sound
14 panel things up around the corners after that. I
15 just don't know exactly when.**

16 Q And those sponge things are not the same
17 paneling --

18 A **No.**

19 Q It's not the same paneling that Tavern
20 has, correct?

21 A **Correct.**

22 Q Okay. In your e-mail, you also said, "We
23 didn't have music last Saturday. How was the
24 sound?" And then Ms. Boyer responded, "Saturday was
25 good."

1 **A Where are you at?**

2 Q So, the last sentence on May 2, 2018, you
3 said, "We didn't have music last Saturday. How was
4 the sound?"

5 **A Yeah.**

6 Q And her response at the start of her email
7 was, "Saturday was good."

8 **A Uh-huh.**

9 Q She also said in her e-mail that she still
10 thinks you could have -- you could have music if you
11 did sound mitigation and just had the music around
12 80 decibels, correct?

13 **A Right.**

14 Q Okay. We move to admit C-4.

15 MR. JACOBBER: It's in.

16 MS. ROBBINS: Sorry, I don't have my sheet
17 in front of me.

18 MR. JACOBBER: That's okay.

19 Q (By Ms. Robbins) And following these
20 e-mails of May 2018, at other times Ms. Boyer
21 continued to inform you when the music was too loud;
22 is that correct?

23 **A In her opinion, yes.**

24 Q But she informed you, in her opinion, that
25 the music was too loud?

1 A Yes, she did. She texted me all the time.

2 Q What did you do to investigate her
3 complaints?

4 A We submitted all the texts and she has,
5 too, I responded to every one of her texts until
6 2022.

7 Q And responding to her texts was
8 investigating the sound issues at Copper Fire?

9 A I have listened to everything that she has
10 said and made decisions based on that. She's had
11 sound testing. I read that entire report. I've
12 looked at all the EPA and the World Health
13 Organization documents, and I've made decisions
14 based on taking all that in. I asked to hear it for
15 myself numerous times. I was not allowed to do
16 that, so my investigation was pretty limited only
17 because I only could take what I could hear in our
18 restaurant and what she's texting me; and a lot of
19 times, it didn't make sense. So, I tried to figure
20 this out myself. I talked to my musicians. I
21 talked to them -- some of them are sound acoustic
22 guys, and people were offering suggestions knowing
23 that I was having sound complaints from my neighbor.
24 I talked to numerous people. Albert is when -- he
25 and I talked several times. One of the biggest

1 complaints came on a day he and his wife were
2 playing, and he and I have talked numerous times
3 about what we can do with whatever is happening on
4 the other side of the wall.

5 So, I've done a lot of research and
6 investigating, as much as I can, without getting
7 anything from Geri Boyer other than it's too loud.

8 Q And would you agree the music is coming
9 from your side of the wall, correct?

10 A I honestly don't -- not always believe
11 that, because there is a band that will play from
12 across the street that will go right into her front
13 window. A lot of the complaints came after I saw
14 her, Geri or Becca, walking back from either dinner
15 or walking their dogs, right when they walked right
16 by our front window. I have texts where I will have
17 just seen them walk by, and then get a text that
18 says it's entirely too loud. I don't know. I often
19 thought that maybe the sound was getting confused as
20 to whether it was coming out of our window, back
21 into their window, or was it because they just
22 walked by and heard it. So, I did read research,
23 and I've always tried to stay within the legal
24 guidelines, and I've done that.

25 Q And you would agree that you're not a

1 lawyer?

2 **A Correct.**

3 Q And you would agree that you're not a
4 sound expert?

5 **A I do.**

6 Q And you would agree that Copper Fire plays
7 live music five nights a week?

8 **A Yes.**

9 Q Okay.

10 **A Downtown Belleville.**

11 Q We talked -- you mentioned text messages.
12 Please turn to C-11. Is this the text message chain
13 you were referencing between you --

14 **A They started in 2018, so this is just one
15 of them.**

16 Q This is -- I'll represent this was the
17 chain that was produced in this case --

18 **A Okay.**

19 Q -- between you and Ms. Boyer. So, if we
20 go look at November 6, 2020, at 11:58 p.m., she --
21 Ms. Boyer, texted, "Please turn the music off at
22 Copper Fire."

23 **A Okay.**

24 Q Okay. This is almost at midnight,
25 correct?

1 **A That was during Covid.**

2 Q Exactly. Were you allowed to play music
3 at Copper Fire during Covid until almost midnight?

4 **A We were only allowed inside a couple weeks**
5 **in July and a couple weeks in November. But, yes,**
6 **we were allowed -- if we were allowed inside.**

7 Q I think you previously said that you
8 always responded to Ms. Boyer every time?

9 **A I tried.**

10 Q Okay. But in this instance, it doesn't
11 look like --

12 **A I may have been asleep. I may have been**
13 **out. It's midnight.**

14 Q If -- hold on a second. If you go look at
15 Exhibit C-16.

16 **A Okay.**

17 Q That previous day we were looking at was
18 November 6, 2020. If we look at C-16, it looks like
19 Danny Kalaher (sic) was playing that night.

20 **A Yes.**

21 Q Okay.

22 **A That's what doesn't make sense because**
23 **he's an acoustics -- yes, he may be using a**
24 **microphone, solo musician.**

25 Q But he was -- according to your

1 spreadsheet, he was playing on the night that Geri
2 sent that message, correct?

3 **A Correct.**

4 Q Okay. And Mr. Kalaher actually he's
5 played at Copper Fire numerous times, correct?

6 **A It's been a few years, but he was playing**
7 **there.**

8 Q Okay. If we look at C-16 on June 9th of
9 2021 --

10 **A Okay.**

11 Q He was playing that day as well, correct?

12 **A Yes, I had him monthly for awhile.**

13 Q Okay. Can you look at Exhibit-30 for me?

14 (Complainants' Exhibit C-30 marked.)

15 **THE WITNESS: C-30.**

16 MS. ROBBINS: Yeah.

17 **THE WITNESS: Okay.**

18 Q (By Ms. Robbins) And C-30 is from June
19 9th, 2021, which we just established is when
20 Mr. Kalaher played, and this looks like a video
21 posted by Copper Fire of him playing; is that
22 correct?

23 **A Yeah.**

24 Q Okay. Would you agree this is a video you
25 posted of him?

1 **A Probably.**

2 MS. ROBBINS: Okay. We move to admit
3 Exhibit C-30.

4 MR. PETRUSKA: No objection.

5 HEARING OFFICER WEBB: C-30 is admitted.
6 (Complainants' Exhibit C-30 admitted onto the
7 hearing record.)

8 Q (By Ms. Robbins) Now, going back to C-11,
9 the text message thread. The next text is on
10 Friday, June 11th, 2021. I'm assuming it has to be
11 2021 because it's -- we already had 2020 happen, so
12 that's the assumption. You remember exchanging text
13 messages with Ms. Boyer in 2020 before the lawsuit
14 was filed, correct?

15 **A Yes.**

16 Q So, at 9:41 p.m., Geri tells you that she
17 had can hear the music tonight; and you said, "We
18 will ask them to turn it down." And she responded,
19 and then there was a few exchanges. You say, "We
20 asked them to turn it down. Better?" She responded
21 at the top of the next page, "Yes, thank you." So,
22 in this instance, you were willing to turn the music
23 down; is that correct?

24 **A Yes, I was willing whenever I could.**

25 Q Okay. And on June 13th, 2021, Ms. Boyer

1 texts that she could hear the music but it's not
2 offensive since we're just walking around but for
3 your understanding, we can hear Take a Load off
4 Benny now. So, she even told you in this
5 instance -- in this instance that she could identify
6 the exact song playing; is that correct?

7 A I actually remember this text, because I
8 called in because I wasn't there; and I even -- we
9 talked to -- I was talking to someone; and I said
10 where are you at; and they said I'm in the bar. I
11 couldn't hear the music behind them. I remember
12 this text. And I didn't understand it because --
13 and she said it's not offensive. I'm like, it's
14 lower than what it was last night, because I was
15 calling in, asking them what the decibels were; and
16 she goes, well, it just must be a different
17 frequency. That's why I called in, and I couldn't
18 understand how she could hear it when I couldn't
19 hear it when I was calling somebody and they're
20 standing in the bar. I couldn't even hear the music
21 behind them. So, I got a lot of texts that were
22 very confusing for me. And I was trying to figure
23 out what I could do.

24 Q And you would agree, though, you weren't
25 in the bar at that time on that day?

1 **A This is another example where she's --**

2 **Q That was not my question, Ms --**

3 **A I didn't hear you.**

4 **Q I said, you would agree you were not --**
5 **you weren't in bar, so you didn't personally hear**
6 **the music firsthand?**

7 **A Correct. But I'm reading the texts, and**
8 **then she even follows up with I walked by and it**
9 **could be heard to the other side of Main Street, the**
10 **doors closed. What does that have to do with what's**
11 **going on in her apartment? These were the kind of**
12 **things that were confusing for me.**

13 **Q Okay. If you could, going forward, listen**
14 **to my question and just try to answer it?**

15 **A Sure.**

16 **Q I'd appreciate it. After Ms. Boyer on the**
17 **13th told you she could hear the exact time -- the**
18 **exact song playing, why didn't you offer to turn the**
19 **sound down?**

20 **A I called in and talked to somebody, and I**
21 **couldn't even hear them. I also had them -- I**
22 **remember this day very well --**

23 **Q But you weren't inside the bar at the**
24 **time?**

25 **A But, no, I remember the exchange very**

1 well. I remember talking to them, asking what the
2 decibel was. It's like it's lower than it was --
3 this is what got very confusing. I couldn't even
4 hear the music behind them. I had them asking
5 customers, what it sounded like and everybody at the
6 bar near the music, said they could talk freely.
7 This was a very confusing exchange for me.

8 Q Okay. But you weren't in the bar that
9 night, so you didn't personally talk to any of the
10 customers, correct?

11 A No, I did not.

12 Q Okay. You weren't in Ms. Boyer's loft
13 that night so you couldn't hear --

14 A No, I've never been in her loft except one
15 time, listening to Chetch (sic) tunes.

16 Q Okay.

17 A Or not even hearing it actually.

18 Q So, you were -- you might have been
19 confused, you would agree that you're not a sound
20 expert, so this could be a confusing issue?

21 A What's confusing --

22 MR. PETRUSKA: I'm -- I'm going to object
23 to the form. I'm going to object to the form.
24 It's a compound question, but, also, she asked
25 the question but she doesn't like her answer,

1 so.

2 HEARING OFFICER WEBB: Okay. Please
3 re-ask your question.

4 Q (By Ms. Robbins) I can just move on to a
5 new question. Earlier, you said, when I asked you
6 about the first instance where you did turn the
7 volume down, you said I turned it down whenever I
8 could. What does that mean?

9 A Sometimes it's so busy inside that you
10 can't go any lower, meaning they wouldn't even hear
11 the musicians. So, if we're on a Friday-Saturday
12 night, there's a hundred people in there, the
13 decibel readings are already high. The music, you
14 can't hear them singing with all the chatter and all
15 the people that you can't turn the decibels down any
16 lower or they will not be able to hear the band.

17 Q And how do you know they won't be able to
18 hear the band?

19 A A lot of times I am there, and when I'm
20 not, they have to make a judgment. I've talked to
21 my staff. We know what the policies are. They have
22 a decibel reader, but there are times when we are so
23 busy, we cannot turn it down lower than, say, 90
24 because they cannot hear the band.

25 Q And this decibel reader you're talking

1 about, is a cell phone app; is that correct?

2 A No, we actually have a decibel reader that
3 is up on the serving station, so the musicians and
4 everybody on that side of the venue can see it.

5 Q Is that a calibrated decibel reader?

6 A It is a baseline for us, and it's been
7 working great for us.

8 Q When you say it's been working great for
9 you, explain that?

10 A Our customers see it. They want to know
11 what it's it about. Our musicians have a straight
12 line, like I can see that TV. There are rules
13 posted in the window for the musicians. It's well
14 known that we are monitoring our sound. So it's
15 worked out great to keep the levels low.

16 Q Okay. Is somebody staring and watching
17 the monitor on the wall at all times?

18 A Our musicians are.

19 Q So, when they're singing, the musician is
20 always just looking straight ahead at the monitor
21 and nowhere else?

22 A If it gets to the point when they can't
23 hear somebody's order, they're going to look at that
24 decibel reader, and they're going to know if it's
25 too high or too low. A manager will go talk to the

1 **band immediately.**

2 Q Okay.

3 **A Or their sound guy.**

4 Q So, the sound policy is that bands have to
5 keep it below a certain decibel. You would agree
6 with that, correct?

7 **A Yes.**

8 Q And the bands are the ones that control
9 their own volume, correct?

10 **A A lot of time, us.**

11 Q And it takes a server having issues
12 hearing an order to then go look at the sound meter
13 and turn the volume down?

14 **A We've been doing it so long, we know what
15 is -- we -- I can walk in and immediately know if
16 it's too high or too low. They are the same way.
17 They are there when the bands are there. So, it's
18 so visible you can see -- you can't miss it.**

19 Q When was the last time, in your opinion,
20 when you walked in too high?

21 **A It happens. Especially when they're
22 starting. But that's why they have a clear line of
23 sight of what that decibel reader is, and they know
24 I will not hire them back if they don't abide by our
25 rules.**

1 Q And how many times have you not hired a
2 band back?

3 A At least two, and I have not booked many.

4 Q And when you say at least two, it was
5 because their noise was too loud?

6 A Yes. I had them leave earlier, and they
7 got a cut in pay.

8 Q And when were these two bands playing
9 about?

10 A A couple years ago.

11 Q And there's been no other bands, other
12 than those two, that you've stopped earlier and told
13 them to leave?

14 A Then I actually had to ask them to leave.

15 Q And that was, as you said, sometime a
16 couple years ago?

17 A Right.

18 Q Okay. On -- if you go back to Exhibit
19 C-11, turn to page 8. Their are page numbers at the
20 bottom. They're kind of small.

21 A Okay.

22 Q At 9:50 p.m. on June 18, 2021, Geri says
23 she's just getting home and put the grandkids to bed
24 and the music is pretty bad; is that correct?

25 A Yes.

1 Q Then you responded, "It should be better
2 now."

3 A Yes.

4 Q And she agreed, "Yes, thanks." Was this
5 an instance where you willing to turn the sound
6 down?

7 A I don't remember if it was one where -- I
8 don't know.

9 Q Okay.

10 A I don't know. I could have been there.
11 It could have been my manager.

12 Q But with you saying it should be better
13 now means that you asked them to do something about
14 the noise in the restaurant?

15 A I probably -- if I wasn't there, I would
16 have been checking on it. If I was there, I did
17 something.

18 Q Okay. If we look at C-16, which is that
19 list of bands.

20 A Okay.

21 Q For June 18th, 2020, which I believe -- or
22 2021, sorry. June 18, 2021, I believe Buffalo Road
23 was playing; is that correct?

24 A Yes.

25 Q They played until midnight that night, it

1 looks like.

2 **A Looks like it.**

3 Q Okay. Can you turn to C-31 for me?

4 (Complainants' Exhibit C-31 marked.)

5 Q (By Ms. Robbins) And if you look at this
6 screenshot, it's from June 18, 2021. It says,
7 "Buffalo road is so good, we've having an awesome
8 Friday." Would this be the video of Buffalo Road
9 that was posted from June 18?

10 **A Yes, but I don't know if I took that video**
11 **or not because that was also in relation to my, at**
12 **the time, manager. She may have sent me the video,**
13 **then I posted it. So, I don't know if it was her or**
14 **I that did something about the music.**

15 Q But you would have been the one that
16 posted this video?

17 **A Yes, absolutely.**

18 MS. ROBBINS: Okay. We move to admit
19 Exhibit C-31?

20 MR. PETRUSKA: No objection.

21 HEARING OFFICER WEBB: C-31 is admitted.
22 (Complainants' Exhibit C-31 admitted onto the
23 hearing record.)

24 Q (By Ms. Robbins) From the image in C-31,
25 you can see that there's -- it looks like an

1 electrical guitar player, an acoustic guitar player,
2 a bass player and drums. Does that look accurate?

3 **A Yes.**

4 Q So, going back to C-11, sorry, to make you
5 jump around. Back on page 8, when you can get
6 there.

7 **A Okay.**

8 Q At the bottom of page 8, starting on
9 June 25th, 2021, at 10:22 p.m., Geri says that she
10 wants to go on the record that this is too loud; is
11 that correct?

12 **A That's what it says.**

13 Q Okay. If you go to the next page, you
14 said that we've turned it down over 10 decibels; is
15 that correct?

16 **A Yes.**

17 Q And then she goes on to say, "It's still
18 clear over here and it's after 11:00. Is it ending
19 soon?" Is that accurate?

20 **A That's what it says.**

21 Q You say, "We've turned it down twice since
22 10:00, and I can't bring it down more. It's
23 reasonable." Why was it reasonable?

24 **A I have to see what day of the week that
25 was, but my guess is, it's a weekend night.**

1 Q It was -- according to your text messages

2 --

3 A Friday night.

4 Q -- it was a Friday night?

5 A Meaning exactly what I just said earlier.

6 There are times when I can't bring it down any lower
7 or they can't hear it inside our place.

8 Q Do you know if on this instance -- on this
9 date, if you said you can't turn it down anymore,
10 did you try turning it down and then couldn't hear
11 it?

12 A Well, I said I already turned it down over
13 10 decibels.

14 Q Then you said you can't bring it down
15 anymore. Was it physically impossible to bring it
16 down anymore?

17 A Without hearing the band? Probably. I'd
18 have to see who the band is.

19 Q Did you try it?

20 A I don't know. I'm just saying what I did,
21 what I told her and why I couldn't go down any
22 further. I just explained earlier why there are
23 times we can't go down any lower.

24 Q And at the bottom, Geri then indicates
25 that she has a five-year-old up because it's not

1 quiet enough to sleep. And then you responded,
2 "We're doing everything we can to comply with the
3 law, and that's 63 decibels and below on your side,
4 which I think we've been doing." What were you
5 doing to comply with the law?

6 **A At this time, my understanding, I had**
7 **already looked at the EPA and the World Health**
8 **Organization, trying to understand what all that**
9 **meant; but my assumption was, as long -- to follow**
10 **the law was to stay under a certain decibel; and**
11 **that's what I worked to do this is entire time.**

12 **Q So, do you think that it's reasonable for**
13 **sound to be up 63 decibels inside Geri's loft after**
14 **11:00 p.m.?**

15 **A That's not for me to answer.**

16 **Q But that's seems to be what you -- you**
17 **said that it's 36 decibels and below on your side.**

18 **A It's reasonable to me.**

19 **Q So, you think reasonable can be up to**
20 **63 decibels inside Geri's loft?**

21 **A According to what I know about the law,**
22 **that's what I -- that's all I could go with.**

23 **Q I wasn't asking about the law; I was**
24 **asking about you personally. Do you reasonably**
25 **think --**

1 **A But that's what I --**

2 Q Yeah, do you think it's reasonable for
3 sound to be up to 63 decibels inside her loft?

4 **A I don't know what it sounds like on her**
5 **side, so I don't know. I'm just trying to be**
6 **reasonable by following the law. So, to me, I'm**
7 **being reasonable. So, she says it has nothing to do**
8 **with that, and it had everything to do with that for**
9 **me because that's all I had or have.**

10 Q And you weren't inside the Boyers loft at
11 the time you were sending these texts?

12 **A I was never allowed to go in there.**

13 Q So, you couldn't assess whether it was
14 reasonable on their side, correct?

15 **A It's reasonable on my side.**

16 Q If we go to C-16, and we look at
17 June 25th, 2021.

18 **A Yes.**

19 Q That's Wolfe & Nation, correct?

20 **A Yes.**

21 Q And they also -- it looks like they played
22 until midnight that night, correct?

23 **A Yes.**

24 Q Okay. And Wolfe & Nation has played at
25 Copper Fire other times, correct?

1 **A They haven't played in about three years.**

2 Q But they have -- on dates other than
3 January 25, you have them play at the bar more than
4 once, correct?

5 **A Yes, and I booked the last -- that might**
6 **have been the last inside one. I always try to book**
7 **them outside. The only reason that they were inside**
8 **that night was because of weather.**

9 Q Let's look -- why do you try to book them
10 outside?

11 **A Because they draw a huge crowd, and I want**
12 **to be able to accommodate them. We are allowed to**
13 **get street -- a street closure a couple times a**
14 **year, and I always saved it for them.**

15 Q Can you please go to Exhibit C-32?

16 (Complainants' Exhibit C-32 marked.)

17 Q (By Ms. Robbins) And, C-32, if you look at
18 it, it's a video posted by Copper Fire in May of
19 2021. It says, "Wolfe & Nation band warming up.
20 Wow, they are good."

21 **A Yes.**

22 Q Is this Wolfe & Nation?

23 **A Yes, I was there.**

24 Q So, that would have been the same band
25 that was playing inside the bar?

1 **A They were supposed to be outside, yes.**

2 Q And this was -- this was on a different
3 day, but June 25th, they also played inside?

4 **A That's the same people, yes.**

5 MS. ROBBINS: Okay, we move to admit
6 Exhibit C-32.

7 MR. PETRUSKA: No objection.

8 HEARING OFFICER WEBB: C-32 is admitted.
9 (Complainants' Exhibit C-32 admitted onto the
10 hearing record.)

11 Q (By Ms. Robbins) We're going to be going
12 back to C-11 then.

13 **A Which page.**

14 Q Page 10.

15 **A Okay.**

16 Q Okay. So, on Sunday, June 27th at 2021,
17 at 4:45 p.m. Geri sent you a text letting you know
18 she could hear the song Don't Stop Believing
19 playing; is that correct?

20 **A That's what it says.**

21 Q Okay. Then, on this date, you said, "It
22 can't go down lower." Is that correct?

23 **A Yes.**

24 Q Was it impossible to turn it down lower?

25 **A If I said I can't go lower, I'm saying I**

1 **can't go lower.**

2 Q Was it impossible to walk up to the volume
3 and crank it down at all?

4 A **I don't control their volume, but I'm**
5 **saying I couldn't -- I wouldn't be able to hear them**
6 **if I went down any lower.**

7 Q I think you previously said that would be
8 on Friday and Saturday nights when you have a big
9 crowd?

10 A **Usually, yes.**

11 Q This is a Sunday afternoon?

12 A **You get crowds on Sunday afternoons. I**
13 **don't know -- tell me who was playing and I can tell**
14 **you if it was a big crowd or not.**

15 Q Do you think it is reasonable for a
16 neighbor to hear an entire song through their
17 unattached building?

18 A **I can't answer that.**

19 Q If you look at the bottom of page 10 in
20 the text thread, you can see that it says Friday,
21 July 21st, 2022, 10:10 p.m., and then the text comes
22 on the next page.

23 A **Wait, July what?**

24 Q July 2nd, right?

25 A **Yeah.**

1 Q At 10:10?

2 A Yes.

3 Q And then it pushes over to the next page.
4 I just wanted to establish the date. On this date,
5 Geri asked you to turn the music down because the
6 kids are trying to sleep, do you see that?

7 A Yes.

8 Q And this time you didn't respond; is that
9 correct?

10 A Yes.

11 Q Did Geri text you every night bands were
12 playing?

13 A No.

14 Q Can you go to page 14 in Exhibit 11,
15 please?

16 A Yes.

17 Q And at 9:02 p.m. on September 2nd, 2021,
18 Ms. Boyer texted you that the band volume needs to
19 be turned down; is that correct?

20 A What year are we in?

21 Q This is still 2021; it's all the same
22 thread.

23 A Okay.

24 Q That -- did she ask for the band playing
25 to turn down; is that correct?

1 **A Yes.**

2 Q This is on a Thursday at 9:02 p.m.

3 **A Yes.**

4 Q And, in this instance, you also
5 didn't respond?

6 **A Yes. I was getting to the point where I
7 was done responding.**

8 Q If you go to the next page, page 15 in
9 Exhibit 11, December 22nd. Do you see that in 2021?

10 **A Yes.**

11 Q Geri texted you that her dying aunt is
12 suffering due to the music and asked you -- there
13 was some exchanges and asked you, if you go to the
14 next page, to stop disrupting their lives.

15 **A Yes.**

16 Q It looks like after these -- this
17 long-wind exchanges, if you kind of go forward, it
18 looks like at some point in late December, early
19 January, you might have blocked her?

20 **A I did.**

21 Q Okay. Why did you choose to block
22 Ms. Boyer?

23 **A Years of trying to make her happy, trying
24 to be responsive and nothing we did ever worked and
25 not always believing what she was telling me. So, I**

1 **have a long history with Geri.**

2 MS. ROBBINS: And we've touched on this --
3 oh, we move to admit Exhibit C-11.

4 MR. JACOBBER: It's in.

5 HEARING OFFICER WEBB: Yeah, it's in.

6 Q (By Ms. Robbins) So, if you turn to
7 Exhibit 17 and Exhibit 18? These are the live music
8 policies that we were talking about before.

9 (Complainants' Exhibits C-17 and C-18 marked.)

10 **THE WITNESS: Yes.**

11 Q (By Ms. Robbins) There's two versions of
12 these. Can you tell me, do you know when each one
13 was implemented?

14 **A No, I've been updating them. I probably**
15 **have had either on version four or five since 2021.**
16 **I started putting the dates on them.**

17 Q Before we talk about these further, going
18 back to the text messages, we've looked at the
19 messages and there was times you were willing to
20 turn it down; is that correct?

21 **A I was always willing to do something. I**
22 **have done nothing but try to do something.**

23 Q And when you -- on certain evenings when
24 Geri asked you to turn down and you did, she
25 acknowledged that it worked and said thanks,

1 correct?

2 **A Sometimes.**

3 Q Okay. So, why block her?

4 **A There's three years of -- that's just a**
5 **couple examples of our history. There's a lot more**
6 **to this story than just a couple texts.**

7 Q Going back to C-17, C-18. Are they in the
8 record?

9 MR. JACOBBER: They are not. You don't
10 have them noted, I think.

11 MS. ROBBINS: Is your version, Paul --

12 MR. PETRUSKA: I have used them. I have
13 not admitted them.

14 MR. JACOBBER: They are not admitted.

15 Q (By Ms. Robbins) So, these are two
16 versions of the Copper Fire noise policy; is that
17 correct?

18 **A Yes.**

19 MS. ROBBINS: Okay. We move to admit
20 Exhibit 17 and 18.

21 MR. PETRUSKA: No objection.

22 HEARING OFFICER WEBB: C-17 and C-18 are
23 admitted.

24 (Complainants' Exhibits C-17 and C-18 are admitted
25 onto the hearing record.)

1 Q (By Ms. Robbins) Is this policy given to
2 every band?

3 A It's posted in the window, so, yes.

4 Q Where in the window?

5 A Say I'm the band. The window is right
6 here. (Indicating)

7 Q So, to the side by the door?

8 A Yes.

9 Q How do you enforce the policy?

10 A I thought we already talked about that.

11 Q Besides the two bands that have a few
12 years ago you asked them to leave earlier?

13 A Before I even hire them, I go look in
14 videos. If I feel like they're going to be too
15 loud, I tell them, nope, you're not a good fit for
16 us. That's one way. A lot of these musicians I
17 have been working with four or five years. When I
18 bring a new band in, we have this conversation
19 before I even bring them in. When they first start,
20 they have to go to the bar, because in here, I think
21 it's -- I don't know if it's -- yeah, we have our
22 tabs. Each band or musician gets a tab. They go
23 and establish their tab before they even start music
24 and they're setting up. So, they may ask about it.
25 Our manager or whoever the bartender is, may tell

1 them; but they are very well aware of what our sound
2 rules are.

3 And as far as enforcing, they also
4 know -- I actually had a musician just message me a
5 week ago, asking if I haven't been bringing him back
6 because he was too loud.

7 Q Which musician was that?

8 A Roy Frye. Because he was asked to turn it
9 down, I don't know if it is a Sunday or whatever,
10 it's in the message, but he's -- he's upset that I
11 have not booked him, and he asked if it was
12 specifically because of this.

13 Q When did Roy Frye play most recently?

14 A Oh, a year or two ago.

15 Q Did you ask him to leave early?

16 A No.

17 Q And it looks like -- if you look at C-18,
18 the limits are 85 to 88 on Wednesday and Thursday,
19 Friday evenings and Saturday afternoons; and then it
20 also says 88 to 92 Friday and Saturday evenings?

21 A Yes, that was a typo.

22 Q Okay. Is the -- Friday evenings, should
23 that be removed from the --

24 A No, Fridays and Saturdays should -- I
25 allow a little bit higher decibel.

1 Q Okay. On Exhibit C-18, in the line that
2 says 85 to 88, Friday evenings should be not in that
3 line?

4 A We are on 18?

5 Q Yes, C-18. So the top line --

6 A I was on 17.

7 Q That's okay. I just see Friday on there
8 twice. I'm trying to establish, which -- which
9 group does it belong with? The top one?

10 A No, I just said the Friday and Saturdays,
11 I'll allow that one to go higher, so it should be in
12 the 88 to 92.

13 Q Okay. And how did you decide on 88 to
14 92 decibels?

15 A These all got established after I read the
16 sound report that Geri had from Mike, knowing that
17 there was a buffer between the two buildings, I knew
18 I had 50 -- I'll just said 50 was kind of my number,
19 even though he said 55, that if I could keep the
20 decibels, you know, even if they hit a hundred, I
21 would still be within the legal limits. I have been
22 continuing to bring this down over the years.

23 Q What are your current limits?

24 A They're very similar to this, but on
25 Friday and Saturday nights, especially when it's so

1 busy, 92 doesn't even sometimes -- they end up
2 getting closer to 95, but I feel like they're still
3 in our limits. I know Mike complained about how
4 loud it is, and, internally, a lot of it is with my
5 staff. If they can hear the orders, that is the
6 subjective part of this, in terms of making sure
7 that the bands and everybody -- the customers are
8 happy and the bands are staying within the limits
9 that my servers and bartenders can hear.

10 Q Have you investigated how low you could
11 have the decibel limits while still allowing the bar
12 to host live music?

13 A It depends on how many people are in
14 there. That's what it boils down to for us in terms
15 of monitoring the decibel limits. Say it's a
16 Wednesday night, not as many people, you are going
17 to be in the 80, 78 to 84 range. But the more
18 people you have in there, you can't -- they don't
19 sound -- they're not a band. They're not live
20 music. You can't even hear them. You can't hear
21 their words. You can't hear anything. You just
22 hear a muffle.

23 Q Have you been in the bar in instances
24 where you just hear muffle? From the band, as you
25 describe it. You said you just hear muffle.

1 A Well, when they're doing their sound
2 testings and they're getting started, you can hear
3 it go high. You can hear it go low. A lot of these
4 bands on Friday and Saturday nights have their own
5 sound guys. They're watching and they know they
6 have to stay in the decibel range as well, but
7 they're walking around the entire place. So, to go
8 any lower, when they're doing their testing, they
9 know when it's too low. And I've also told them,
10 and it says here, set and leave it, because a lot of
11 them will -- they hear the noise of everyone, you
12 know, coming in and it's getting louder and louder
13 because of the customers, the bands want to, like,
14 turn it up even more. And we try to do the balance
15 to where everybody can hear it, but then the
16 bands -- they shouldn't adjust until we ask them to
17 turn up. And there have been situations when we had
18 to ask them to turn up because our customers can't
19 even hear them.

20 Q And you said the bands control their own
21 sound; is that correct?

22 A Their own base or their -- yes.

23 Q And is someone monitoring the band at all
24 times to ensure that they aren't turning the volume
25 up without you telling them to?

1 **A I don't control their sound.**

2 Q And you talked about how you listen to the
3 people who also come to Copper Fire, your customers;
4 is that correct?

5 **A Uh-huh.**

6 Q Would you agree that Geri is not the only
7 person who has complained about the noise inside of
8 Cotton Fire?

9 **A Inside? No, of course.**

10 Q And customers have complained that's it
11 loud; is that correct?

12 **A Yeah.**

13 Q And as the owner-manager of Copper Fire,
14 you deal with a lot of those complaints; is that
15 correct?

16 **A I wouldn't say a lot.**

17 Q You're the one who handles the complaints
18 when they come in; is that correct?

19 **A Well, a lot are them -- are you talking
20 about just music, or are you just talking about any
21 kind of complaint.**

22 Q Any kind of complaint.

23 **A Well, there's all kind of complaints that
24 come through a restaurant and bar.**

25 Q If there's a complaint and you're at the

1 bar --

2 **A No, I don't normally handle it. It's**
3 **handled by our managers.**

4 Q What if there is a written complaint
5 online?

6 **A I handle those.**

7 Q And those online review sites, are those
8 Facebook, Yelp, Google?

9 **A Yes.**

10 Q Okay. And you --

11 **A And Facebook.**

12 Q Facebook, Yelp, Google. Are those the
13 three sites.

14 **A Yeah.**

15 Q And you manage Copper Fire's pages on all
16 three of those --

17 **A I do.**

18 Q Let's turn to Exhibit C-19.

19 (Complainants' Exhibit C-19 marked.)

20 Q (By Ms. Robbins) Can you go to Facebook 2
21 to start? This is a review that says it doesn't
22 recommend Copper Fire; it's from November 24th,
23 2021. It says foods, drinks, service were lousy and
24 music is way too loud. "We won't be back."

25 **A Yeah.**

1 Q It says Renae Eichholz responded. That's
2 you, correct?

3 A Yes.

4 Q So, you were aware of this review?

5 A Yes.

6 Q And you responded to the review; is that
7 correct?

8 A I did.

9 Q And a part -- if you go down to the third
10 line, you said, "If it was too loud, you may have
11 caught us just at the beginning as he fine tuned the
12 volume." Is that correct?

13 A Yes.

14 Q Do you remember the volume being an issue
15 on this night?

16 A No.

17 Q Going back to Facebook 1. This is from
18 December 4th, 2021, from a Diane Yarbrough who
19 doesn't recommend Copper Fire. This person posted,
20 "We were there at 5:00, and the music was blaring."

21 A Uh-huh.

22 Q And then it also looks like they can
23 select something, and it says "Noisy", do you see
24 that in a kind of bolder-colored black?

25 A I see it.

1 Q Okay. And it says on this post, Renae
2 Eichholz responded, and that's you, correct?

3 A Yes.

4 Q So, you saw this review, correct?

5 A Obviously, yes.

6 Q And you're aware that someone posted a
7 review saying that the music was blaring?

8 A Yes.

9 Q And it looks like in part of
10 your response, you said, "We had a music DJ from
11 3:00 to 6:00 and try to make every one aware prior
12 to visits on social media platforms." And then if
13 you go down to the bottom, you said, "If you decide
14 you'd like to try us again, please call in advance
15 to avoid times that are scheduled events and music."
16 Do you believe that if someone thinks that Copper
17 Fire is too loud they should just not come during
18 the live music times?

19 A I actually have that posted on my front
20 door. I actually have that we are a live music
21 venue. I've done so much, this is three years ago,
22 since then we also have a sign posted on the door
23 where we're actually in the process of turning
24 little signs on the tables, so that if someone comes
25 in at 4:00 o'clock or, say, 7:00 o'clock, and they

1 want dinner, I want them to know that there's going
2 to be live music starting in an hour to give them
3 forewarning.

4 I have -- this is three years ago.
5 Our one stars, especially about sound, are -- are
6 reviews now are so different than what they were
7 when we started, in 2021 and even now. Am I going
8 to get a music complaint? Absolutely. Am I'm going
9 to get a food complaint? Absolutely. We're a bar.
10 Everybody complains. But we have way more five
11 stars than we have one stars. So, I can't make
12 business decisions based on one or two reviews.

13 Q So, you think it's just one or two reviews
14 that have complained about the noise at Copper Fire?

15 A I'm not saying that we didn't have an
16 issue. We have worked very, very hard since we
17 opened, since we had the sound guys come in, hers
18 and ours. I've been constantly been updating and
19 working with our musicians, and I'm very selective
20 on the bands and musicians that we hire. I do have
21 the policies in place that we're following. I have
22 a decibel meter, you know. I don't know what else I
23 can do that's ever going to make Geri happy.

24 Q And none of your policies is to keep the
25 max decibel level at 84; is that correct?

1 **A Show me the noise policy again.**

2 Q Your noise policy --

3 **A The max, no, no.**

4 MS. ROBBINS: We move to admit C-19.

5 **THE WITNESS: It's not going to fix the**
6 **problem.**

7 MR. PETRUSKA: No objection.

8 MS. ROBBINS: Move to strike her last
9 comment as nonresponse.

10 HEARING OFFICER WEBB: C-19 is admitted.
11 (Complainants' Exhibit C-19 admitted onto the
12 hearing record.)

13 HEARING OFFICER WEBB: I don't remember
14 what the last comment was.

15 MS. ROBBINS: I asked a question. She
16 answered. As I went to enter the exhibit, she
17 made a comment that wasn't in response to any
18 question.

19 HEARING OFFICER WEBB: Okay, we can strike
20 that.

21 Q (By Ms. Robbins) Moving on to Exhibit
22 C-20, it's the next one.

23 (Complainants' Exhibit C-20 marked.)

24 Q (By Ms. Robbins) And just like before,
25 we're going to start at the back and work our way

1 toward --

2 **A Okay.**

3 Q -- chronologically. So, if you can go to
4 the Yelp 3, these are the Yelp reviews?

5 **A Okay.**

6 Q I know you said the other ones were from
7 2021 and three years ago. This first review, Yelp 3
8 from Joan C. is from December 3rd, 2022. So, that's
9 more recent than 2021, correct?

10 **A Right.**

11 Q Okay. And in this review, the reviewer
12 says, "The music is so loud, we couldn't talk to our
13 friends, and we were in the back." It looks like
14 there's a comment from Renae E. of Copper Fire Bar
15 and Eatery; that's you, correct?

16 **A Yes.**

17 Q All right. So, you saw this review?

18 **A I did.**

19 Q And you're aware that Copper Fire received
20 a review that said the music was so loud that they
21 couldn't talk to their friends when they were in the
22 back.

23 **A For some reason, I think Yelp removed.**

24 **I'd have to look. But, yeah, I remember this one.**

25 Q Okay. In response to this one at the

1 bottom, you said, "I'll hope you'll give us another
2 try on the hours we don't have live music."

3 **A I did.**

4 Q And as you say, you have a sign up telling
5 people if they don't want to listen to live music,
6 don't be there when the music is playing; is that
7 correct?

8 **A Yeah.**

9 Q Okay. Turn to the previous page, Yelp 2
10 Gracie L., this is from March.

11 **A Where?**

12 Q Just from one page earlier.

13 **A Oh, I'm sorry.**

14 Q You see Gracie L.?

15 **A Yes.**

16 Q There's a picture of food if that helps.
17 That's from March 3rd of 2023?

18 **A Yes.**

19 Q In her second sentence, this review says,
20 "When they have live music playing loud on their
21 indoor stage, the music is always unbearably loud
22 and unpleasant inside the restaurant." On March 18,
23 2023, it says Renae E., business owner, responded.
24 That's you, correct?

25 **A Yes.**

1 Q So, you saw this review?

2 A I did.

3 Q Okay. You responded, saying, "I'm happy
4 to hear you'll still come for the food and avoid the
5 live music times." Is that correct?

6 A Yes.

7 Q Then Yelp 1, this is from September of
8 this year; so, at this point, just a couple -- just
9 over a month ago. This is from September 18th,
10 2024, from Mark P. He says, "The atmosphere is poor
11 with very high ceilings that have no noise
12 dampening. It's so loud you can't talk to anyone
13 sitting next to you." Do you see that?

14 A Yes.

15 Q Okay. And --

16 A Wait, which one are we on?

17 Q Yelp 1.

18 A We're back to Yelp 1.

19 Q Yeah, we're chronologically moving later
20 to earlier. Yelp 1, Mark P., do you see that?

21 A Yes.

22 Q And Mark P. says, "When they have music
23 playing on their indoor stage, the music is always
24 unbearably loud and unpleasant inside the
25 restaurant."

1 **A Yes.**

2 Q And on that same day, it looks Renae E.
3 responded, that's you, correct?

4 **A Yes.**

5 Q You saw this review?

6 **A Yes.**

7 Q And you would agree that unlike the
8 Facebook reviews that we looked at earlier, this
9 review is actually only from September of this year?

10 **A Yeah.**

11 Q And in your response related to his
12 comment about the atmosphere, this is the second
13 paragraph, you said, "In terms of the atmosphere, we
14 know our tall ceilings can sometimes contribute to a
15 noisier environment when it's busy. While we
16 explored options for reducing sound, the unique
17 architecture of our space limits what we can do.
18 That said we are always mindful of this, and we did
19 what can to create a comfortable atmosphere for
20 everyone." Did I read that correctly?

21 **A Yes.**

22 Q So, you admit that Copper Fire is a noisy
23 environment?

24 **A I never said it wasn't.**

25 Q So, you agree that this is a noisier

1 environment?

2 **A Absolutely.**

3 Q Okay. And besides any of the options
4 we've discussed, because you say in here that
5 you've -- you've discussed or that you've explored
6 options for reducing sound, what are the -- is there
7 any other option that we haven't already discussed
8 today that you have explored for reducing the sound
9 inside Copper Fire?

10 MR. PETRUSKA: I'll object, vague. You
11 can answer if you can.

12 HEARING OFFICER WEBB: Okay.

13 **THE WITNESS: Just hearing suggestions**
14 **from all these sound musicians and acoustics**
15 **guys, sound guys.**

16 Q (By Ms. Robbins) And in this review, the
17 reviewer mentions a noise damper. Have you
18 considered installing a noise damper?

19 **A No.**

20 Q And how you been have mindful in creating
21 a comfortable atmosphere?

22 **A All the things that we put in place:**
23 **selective bands, working with our musicians,**
24 **monitoring their sound, not bringing back them if**
25 **they're too loud. Some people just don't like**

1 noise, period. So, I can't fix that. So, I am
2 mindful of trying to keep the music at a level that
3 people can hear and enjoy the music. We do not have
4 music during dinner, unless it's an event day
5 downtown or a holiday or whatever. But, yeah, I've
6 done everything I can do. I've tried to work with
7 Geri. I have tried to be responsive. I have tried
8 to follow the law, and I really don't know what else
9 I can do.

10 Q Just to follow up on one thing, you said,
11 you don't have music during dinner. What time do
12 you consider dinner?

13 A 4:00 to 7:00.

14 Q 4:00 to 7:00. But on Wednesdays and
15 Thursdays, there is music between 6:00 and 7:00?

16 A You're right. I misspoke.

17 Q Okay.

18 A I was thinking weekends.

19 Q 4:00 to 7:00. And there's music that also
20 goes until 5:00 p.m. much on Saturdays and Sundays?

21 A Yes.

22 Q So, there are gaps but the time you
23 potentially consider dinner could be -- there could
24 be live music during dinnertime?

25 A Older people like 4:00 o'clock, others

1 **like 7:30.**

2 Q Some people like 8:30 or 9:00.

3 **A Yeah.**

4 Q Okay. So, when you're saying dinnertime,
5 you're referring to those small gaps in the typical
6 schedule?

7 **A Uh-huh.**

8 Q I just to wanted to clarify.

9 **A They not small. They're three hours.**

10 MS. ROBBINS: We move to admit C-20.

11 MR. PETRUSKA: No objection.

12 HEARING OFFICER WEBB: C-20 is admitted.

13 (Complainants' Exhibit C-20 admitted onto the
14 hearing record.)

15 Q (By Ms. Robbins) Moving onto C-21.

16 (Complainants' Exhibit C-21 marked.)

17 Q (By Ms. Robbins) This is the Google
18 reviews. We're going to start at the last page
19 again.

20 **A Start at the last one?**

21 Q Yeah, the last page, so Google 16.

22 **A Okay.**

23 Q Again, we're going reverse chronological
24 order. So, this review looks like it's from five
25 years ago. And this reviewer says, "Went to listen

1 to a band, acoustics weren't good. Sound was
2 echoing."

3 **A Uh-huh.**

4 Q And there's a response from owner, would
5 that have been you?

6 **A Yes. Yes.**

7 Q Was there anyone who was responding to
8 Google reviews besides you?

9 **A Maybe the first weeks.**

10 Q Maybe the first few weeks. And
11 this response from the owner, it says, "We're still
12 trying to work on acoustics."

13 **A Yes.**

14 Q Okay. Turning back to Google 15, it's
15 Gordon Jenkins from three years ago.

16 **A Uh-huh.**

17 Q Gordon says, "The food was good. The
18 music inside was a bit too loud." In this one,
19 the response from the owner, looks like it was
20 signed by Renae, co-owner, so that's you.

21 **A Uh-huh.**

22 Q So, you wrote this response, correct?

23 **A Yes.**

24 Q And, three years ago, you wrote
25 a response, "We have a max on our level and

1 sometimes the bands ride right at the limit" --

2 **A Oh.**

3 Q -- "We gauge it based on our customer,
4 too, so thank you for your feedback."

5 **A Yes. Three years ago, that would have
6 been -- those policies were already in place.**

7 Q Okay. One of those policies. You're not
8 sure which version, correct?

9 **A We had a one -- yeah.**

10 Q So, a version of a sound policy was in
11 place?

12 **A Yes.**

13 Q You're mentioning the sound limits, so
14 that would be the limits of the decibels in the
15 policy? If bands are riding right at the limit, and
16 you're getting feedback it's too loud --

17 **A It says a bit too loud.**

18 Q Okay. Let's me repeat my question: if
19 bands ride right at the limit and you're getting
20 feedback that it's a bit too loud, isn't the limit
21 too high?

22 **A Who's to make that determination? I have
23 to make decisions based on a mass of people. Not
24 just one.**

25 Q So, you said you gauge it based on

1 customer feedback, too?

2 **A I do.**

3 Q So, it's correct that sound isn't
4 something that just can be set by looking at
5 decibels, you also have to listen to your customers?

6 **A But I can have five hundred people on that
7 day and I get one --**

8 Q Okay, but my question --

9 **A -- that says it's a bit too loud.**

10 Q My question, Renae, was different. Can
11 you read back my question?

12 (The requested portion of the record read back.)

13 Q (By Ms. Robbins) It can also be -- sound
14 isn't something that you look at by just looking at
15 decibels? Customer experience matters as well?

16 **A Sure.**

17 Q Going to Google 14, Ryan Diggs from three
18 years ago. It says, "The music is so loud inside
19 even the bartenders can't hear your order." On this
20 one, it looks like you responded as well, Renae,
21 co-owner, that's you, correct?

22 **A Yes.**

23 Q So, you're aware of this review that says
24 that the music is so loud bartenders can't even hear
25 you?

1 **A Yes.**

2 Q Correct?

3 **A I said yes.**

4 Q Okay. Sorry, I didn't hear your response,
5 apologies. In your response, you say, "So
6 everything was good except the music was too loud.
7 I know that drives us crazy because we work with
8 each group on their sound levels." So, you
9 acknowledge that sound levels drive you crazy
10 sometimes, too?

11 **A This was three years ago after I**
12 **understood more about what the law was, and I was**
13 **working on my policies and working with each of the**
14 **musicians. I said exactly what I thought.**

15 Q So, it is something you have to work on.
16 Sound is something you have to work on?

17 **A This is before I knew that we were already**
18 **following the law. I didn't know, and I wanted to**
19 **always follow the law. And that's why we put the**
20 **policies in place. I knew we had a 55-decibel**
21 **limit. I knew I had to work on that, and I have**
22 **been working on that. I feel like we've gotten**
23 **there. And I don't always believe -- I'm not saying**
24 **I don't believe these people; I'm just saying that**
25 **everybody has their own perspective on what's too**

1 loud -- I have people that come up and say turn it
2 up.

3 So, I have to make decisions based on
4 what I know, which is the law, and that's what I've
5 been doing. That's what -- I do care about what
6 people think and what they want, but I am never
7 going to make 100 percent of the people happy. So,
8 I have to make business decisions based on what I
9 know I can or cannot do, so.

10 Q And I believe you said along in
11 your response something about 55. You said the law
12 is 55?

13 A No, I said the buffer is 55.

14 Q Oh, okay. And you, once again, just to
15 establish, you're not a lawyer; you're not giving a
16 legal opinion, correct?

17 A No, I'm answering based on what I know.
18 I'm doing what -- I'm just doing it -- I'm trying to
19 figure it out. I'm getting this over here from the
20 neighbor, and I'm trying to balance running a
21 business.

22 Q Okay. You're getting complaints from the
23 neighbor, and you're also receiving reviews --

24 A Once in a while.

25 Q Once in a while, but, I mean, once in a

1 while is --

2 **A We see 65,000 people a year.**

3 Q Right. But not --

4 **A Ten bad reviews is nothing.**

5 Q But not all 65,000 people are writing a
6 review?

7 **A Correct. But I still have 65,000 people**
8 **coming in.**

9 Q Turning to Google 13.

10 **A 13, okay.**

11 Q Yep, so that's Joshua Showmaker from two
12 years ago. And this review, "The food and drinks
13 are great but the couple of times I've been here,
14 they've had live bands playing, which is cool but
15 they are incredibly loud. My wife and I sat on the
16 complete opposite corner of the restaurant from the
17 stage both times we've been there, and we had to
18 yell at each other, waiters, to communicate the
19 entire time. It's loud enough that it's now a
20 factor to consider when we want -- whether --
21 considered if we want to go there or not." Is that
22 correct?

23 **A That's what it says.**

24 Q And the response from Renae, co-owner,
25 that's you, correct?

1 **A Yes.**

2 Q Okay. So, you're aware that a review came
3 in two years ago that said music is incredibly loud?

4 **A Yes.**

5 Q And, in your response, you said, "As much
6 as we love live music, we have a hard time
7 controlling the musicians. The bar is two stories
8 and the sound level travels uncontrollably."

9 **A Uh-huh.**

10 Q Then you said, "We have a max decibel
11 limit and are installing a cancellation notice to
12 bands if they not abiding by our rules."

13 **A That is correct.**

14 Q And you then state, "Hang with us. We
15 truly listen to our customers and continue to
16 improve."

17 **A Yes.**

18 Q And you ask them to join you the times
19 that music -- that you don't have music until, and I
20 think you said, we, "Until we get this under
21 control."

22 **A I don't know when two years ago was, but
23 for 2024, I only hired the bands that I worked with
24 that are our favorites.**

25 Q But in two years ago which --

1 **A That is a change I made for 2024. I bring**
2 **in new bands, but, yes, I think it shows that I am**
3 **trying to figure this out.**

4 Q In two years ago, you would agree that you
5 said the sound was not under control?

6 **A Sometimes.**

7 Q And have -- what have you done to stop the
8 sound from traveling uncontrollably?

9 **A I can't. It's a two-story building.**

10 Q And the cancellation noise that you
11 reference in here, is that the band -- you telling
12 the bands to stop playing?

13 **A Yes.**

14 Q And we established you've done that twice?

15 **A Yes.**

16 HEARING OFFICER WEBB: May I interrupt for
17 a moment? Are you going to go through all of
18 these?

19 MS. ROBBINS: Yeah, if you want to take a
20 break after this one, we can.

21 HEARING OFFICER WEBB: Okay. I'd like you
22 to wrap up, like, within the next 30 minutes,
23 because I'd like to finish this hearing
24 tonight. I imagine he has quite a long, direct
25 testimony -- examination.

1 MR. JACOBBER: We can take a quick break.

2 HEARING OFFICER WEBB: You want to take a
3 break when you're done or right now?

4 MS. ROBBINS: Just with -- can I just
5 finish my questions on 13?

6 HEARING OFFICER WEBB: Yes, yes. Finish
7 your questions yes.

8 Q (By Ms. Robbins) So, in this post you said
9 you listened to your customers. So, if customers
10 continue to complain about the noise, you would
11 listen, correct?

12 A Yes.

13 MS. ROBBINS: Okay. We can take a break
14 now.

15 HEARING OFFICER WEBB: Okay.

16 (Wherein, a short recess was taken.)

17 HEARING OFFICER WEBB: All right. Let's
18 go back on the record.

19 Q (By Ms. Robbins) Renae, can you turn to --
20 in Exhibit 21, turn to Google 4-A. So, it would be
21 before the prior ones?

22 A Kendra?

23 Q Yeah, Kendra.

24 A Okay.

25 Q Okay. So, on 4-A, she says that, "It's an

1 obnoxiously loud bar."

2 **A Uh-huh.**

3 Q And you responded, if you need to look at
4 4-B to see that it says, Renae, co-owner, at the
5 bottom, that's why the second page just cut off, you
6 responded that, "This two-story room has been a
7 beast to control sound."

8 **A Yes.**

9 Q So, you agree that you've had issues
10 controlling sound at Copper Fire?

11 **A I've never said I didn't.**

12 Q And this review is from 4 months ago,
13 correct?

14 **A Yes.**

15 Q Okay. And can you turn to Google 2? And
16 there's a 2-A, B and C, and it's mostly because the
17 review got cut off. It's Danny H. Do you see that?

18 **A Yes.**

19 Q Okay. At the top of Danny H's review on
20 the 2-A page, the second paragraph, it says, "They
21 often have live music, but the music is always too
22 loud to enjoy it. There's no reason for that kind
23 of volume in the middle of the afternoon." And you
24 responded to this, if you go to 2-C you can see that
25 you responded, saying when the live music times

1 were; and in the middle of your paragraph, you say,
2 "Sometimes the musicians, especially if new,
3 struggle to get the sound right. Watch the events
4 and come at times we don't have music."

5 **A Uh-huh.**

6 Q And that was your response to this
7 reviewer?

8 **A Yes.**

9 Q What do you mean by struggle to get the
10 sound right?

11 **A I say especially if new, which I bring in**
12 **new but only occasionally, this year I did mostly**
13 **our favorites, and people I worked with a long time;**
14 **but I still try to bring in new music. We do work**
15 **with them, but they are worked with, and if they**
16 **aren't going to cut it, they don't come back.**

17 Q And in this case, if you look at 2-B, the
18 reviewer gave an update regarding the music, and
19 says, "I've been to this restaurant numerous times.
20 The food is good. Nearly every time they'd have
21 live music and the music is", in all caps, "always
22 too loud. Not sometimes. Always." Owner response
23 is not to come on Wednesday, Thursdays, Fridays,
24 Saturday or Sundays because of the live music. Do
25 you see that?

1 **A Yes.**

2 Q And then going to Google 1. This says
3 Chire Shepard from a few weeks ago. It says, "The
4 place is so loud you couldn't hear people at your
5 table."

6 **A Okay.**

7 Q So, as recently three weeks ago, you got
8 this review and responded at the bottom, "We realize
9 not everyone likes live music, try to keep -- and
10 try to keep everyone informed as to when we have
11 live music. Sorry, we aren't the place for you."

12 **A I do.**

13 Q So, you're aware that people have been
14 complaining about the noise at Copper Fire since you
15 opened in 2018?

16 **A My opinion on this is, I can't make
17 everybody happy, and everybody has their own
18 tolerance for sound.**

19 Q And you're aware that there are people --

20 **A Yeah.**

21 Q -- who have complained about the sound
22 since 2018?

23 **A Absolutely.**

24 Q To as recently as just a few weeks?

25 **A Same with our food.**

1 Q Okay. And your response is to tell people
2 to not come back when live music is playing?

3 A I'm giving them options. I'm telling them
4 there are so many more other hours, if you like our
5 food, you can come at times we don't have live
6 music. We are a live music venue.

7 Q So, your response is if people don't like
8 the live music is to come back when the music isn't
9 playing, correct?

10 A Sure.

11 Q Okay, what if you live next door?

12 A I'm not going to answer that. I don't
13 know how to answer that.

14 MS. ROBBINS: Can you please direct her to
15 give an answer as to what you should do if you
16 live next door?

17 THE WITNESS: I said I don't know how to
18 answer it. I did answer it.

19 HEARING OFFICER WEBB: She answered it.

20 Q (By Ms. Robbins) Are you closed on Mondays
21 and Tuesdays?

22 A Yes.

23 MS. ROBBINS: Renae, if you just quickly
24 look through the rest of C-21, we're going to
25 move to admit it. Mr. Petruska, if you want to

1 --

2 MR. PETRUSKA: I'll stipulate to -- you
3 can.

4 MS. ROBBINS: Okay. It's all one sheet
5 of --

6 MR. PETRUSKA: That's fine.

7 MS. ROBBINS: We move to admit C-21.

8 MR. PETRUSKA: No objection.

9 HEARING OFFICER WEBB: C-21 is admitted.

10 (Complainants' Exhibit C-21 admitted onto the
11 hearing record.)

12 Q (By Ms. Robbins) Okay. And throughout the
13 first day of the hearing, your counsel stated that
14 Copper Fire is just like other bars and restaurants
15 in Belleville. Do you remember that from the first
16 day of the hearing? I specifically think he
17 mentioned Bennie's Pizza, Margaritas, Tavern on
18 Main, Big Daddy's --

19 A **There's several bars downtown.**

20 Q Okay. But do you remember those four
21 getting mentioned?

22 A **Yes.**

23 Q Okay. And you're aware of all four of
24 these establishments and where they are located,
25 correct?

1 **A Yeah, there's more than four.**

2 Q But Bennie's Pizza, Margaritas, Tavern on
3 Main, Big Daddy's --

4 **A Yeah.**

5 Q Those are on Main Street within a few
6 blocks --

7 **A All on the other side of the street.**

8 Q Yeah, across the street but within a few
9 blocks of Copper Fire?

10 **A One block each way.**

11 Q Okay. So, Bennie's Pizza, we'll start
12 there, Bennie's Pizza is located on Main Street
13 across the street from Copper Fire and just about
14 half a block west, correct?

15 **A Yes.**

16 Q Okay. And Bennie's Pizza sometimes has
17 bands inside the restaurant; is that correct?

18 **A They usually just have one-to-three person
19 acts.**

20 Q And you don't think a one-to-three person
21 act is -- but they have live -- you don't think it's
22 a band if it's one-to-three people?

23 **A He doesn't have big bands.**

24 Q Okay. So, Bennie's doesn't have big
25 bands. Are you aware that Bennie controls the

1 sounds of his musicians?

2 **A With his house music?**

3 Q Are you aware that he controls --

4 **A No.**

5 Q -- the volume? Okay. Can you turn to
6 Exhibit C-43.

7 (Complainants' Exhibit C-43 marked.)

8 Q (By Ms. Robbins) Is C-43 an image on
9 Bennie's Pizza?

10 **A Yes.**

11 Q Okay. And to the west of Bennie's Pizza,
12 that's Blanquart Jewelers, right? Blanquart,
13 B-l-a-n-q-u-a-r-t?

14 **A They were to the west? I thought they
15 were to the east of them.**

16 Q I believe --

17 **A They could be, yeah.**

18 Q -- west is when you're looking --

19 **A Left.**

20 Q -- left. Copper Fire door faces --

21 **A Oh, yeah, yeah, Margaritas is on the other
22 side. Yep.**

23 Q Okay. So, that's a jeweler on that side?

24 **A Yes.**

25 Q And looking at this image, are there any

1 residential lofts in this?

2 **A I have no idea.**

3 Q Okay. Have you ever been inside the
4 jewelry store?

5 **A Yes.**

6 Q Okay. So --

7 **A A lot of these buildings are -- you can
8 look at our building and think it's two stories, and
9 it's actually four with a basement. So, a lot of
10 these buildings are deceiving. So, I have no idea
11 what's inside, above, next to them. I have no idea.**

12 Q To the right of Bennie's Pizza is
13 Margaritas, which is one of the other --

14 **A Yes.**

15 Q -- bars? Okay. And at Bennie's Pizza,
16 have you ever seen the live acts performing? Like
17 the one-to-three person --

18 **A I can't say that I have.**

19 Q Are you -- are you aware that those live
20 bands play, if you're looking at this image, on the
21 front left --

22 **A Yes.**

23 Q -- by the window?

24 **A Uh-huh.**

25 Q Okay. So, if you look at this -- if we

1 assume the jewelers does have not residential units,
2 and, additionally, to the right is Margaritas, but
3 there is -- you've been -- sorry, strike that
4 question. You've been -- have you been inside
5 Bennie's Pizza before?

6 **A It's an old Panera, yes.**

7 Q So, you've been inside and you're aware
8 that once you walk in, kind on the right where the
9 window ends just past it, is a wall?

10 **A There's an opening to a garage opening**
11 **area.**

12 Q And, yeah, that's kind of a second room
13 over there?

14 **A Yes.**

15 Q So, the bands are playing, or the
16 performance is happening, on the far side --

17 **A Yes.**

18 Q -- by the jeweler?

19 **A Uh-huh.**

20 Q Okay. Then, if you're also looking at
21 this image, Margaritas is the building that we
22 identified, the tan one just to the right of the
23 garage?

24 **A Yes.**

25 Q Isn't it true on the other side of

1 Margaritas, to the east, is a vacant commercial
2 space?

3 **A I have no idea. Probably.**

4 Q Are you aware that Margaritas hasn't had
5 any live music in three years?

6 **A They have a DJ.**

7 Q Are you aware that they stopped having
8 live music because the customers complained about
9 how loud it was?

10 **A I did not know that.**

11 Q Are you aware that Margaritas doesn't have
12 DJs anymore?

13 **A No.**

14 MR. PETRUSKA: I'm going -- I'm going to
15 object to lack of foundation. Margaritas is
16 not here. She's just throwing things in.

17 MS. ROBBINS: I'm asking about her
18 awareness that she is claiming are just like
19 Copper Fire.

20 HEARING OFFICER WEBB: You can go ahead.
21 You can ask it.

22 Q (By Ms. Robbins) So, are you aware that
23 Margaritas doesn't have any DJs either anymore?

24 **A No.**

25 MS. ROBBINS: We move to admit

1 Exhibit-C-43.

2 HEARING OFFICER WEBB: C-43, do you have
3 any objection?

4 MR. PETRUSKA: No objection.

5 HEARING OFFICER WEBB: It is admitted.
6 (Complainants' Exhibit C-43 admitted onto the
7 hearing record.)

8 MS. ROBBINS: Okay.

9 Q (By Ms. Robbins) Renae, can you turn to
10 C-44?

11 (Complainants' Exhibit C-44 marked.)

12 Q (By Ms. Robbins) And is C-44 a picture of
13 Tavern on Main?

14 A I guess so, yeah.

15 Q Okay. Tavern is located across the street
16 from Copper Fire and a block to the east, correct?

17 A Yes.

18 Q Okay. And Tavern is located on the
19 corner; is that correct?

20 A Yes.

21 Q So, there's nothing to the west of it,
22 except for Church Street, correct? No building?

23 A Correct.

24 Q On the east of it is the Eye on Design; is
25 that correct?

1 **A Yes.**

2 Q Okay. Are you aware of any residential
3 units adjacent to Tavern on Main?

4 **A I have no idea.**

5 Q Okay. Are you aware, and I think you
6 might have mentioned this earlier, the only live
7 music that Tavern on Main has is single musicians
8 that play inside -- they play outside on the patio
9 or in the bar area?

10 **A That is all that I'm aware of.**

11 Q And you talked about that they have even
12 installed sound panels, correct?

13 **A Yes.**

14 MS. ROBBINS: Okay. We move to admit
15 C-44.

16 MR. PETRUSKA: No objection.

17 HEARING OFFICER WEBB: C-44 is admitted.

18 (Complainants' Exhibit C-44 admitted onto the
19 hearing record.)

20 Q (By Ms. Robbins) And then turning to C-45.

21 (Complainants' Exhibit C-45 marked.)

22 Q (By Ms. Robbins) Is C-45 is a picture of
23 Big Daddy's?

24 **A Yes.**

25 Q And Big Daddy's is located across the

1 street and to the east of Copper Fire, and it's
2 actually just on the other side of Eye on Design,
3 correct?

4 **A Yes.**

5 Q So, that's what's to the west of Big
6 Daddy's and to the east is Liese Lumber; is that
7 correct?

8 **A Yes.**

9 Q Are you aware that Liese Lumber is a
10 commercial building that takes up the whole
11 building?

12 **A If that's what it is.**

13 Q Okay. Are you aware that Big Daddy's
14 doesn't have live music?

15 **A Yes.**

16 Q Okay. Are you aware that they do have
17 DJs, correct?

18 **A Right.**

19 Q And they control the volume of the DJ?

20 **A I guess, yeah.**

21 Q So, Copper Fire is the only bar restaurant
22 on Main Street that has live bands playing adjacent
23 to residential space?

24 **A If you say so.**

25 MS. ROBBINS: I have no further questions

1 subject to --

2 MR. JACOBBER: You didn't move --

3 MS. ROBBINS: Sorry, I move to admit C-45.

4 HEARING OFFICER WEBB: C-45 is admitted.

5 (Complainants' Exhibit C-45 admitted onto the
6 hearing record.)

7 MS. ROBBINS: I have no further questions
8 subject to any Redirect.

9 CROSS-EXAMINATION

10 BY MR. PETRUSKA:

11 Q Renae, what is Live Music Row?

12 A **It's a group of us that have live music,**
13 **and we post our music for the week, every week, on**
14 **Facebook, Instagram and the website.**

15 Q And where are the businesses that are part
16 of Live Music Row?

17 A **It's generally Papa Vito's, which is**
18 **behind us, us, Bennie's and Venue On Main, which is**
19 **on the other side of the Fountain on the 200 block**
20 **of West Main.**

21 Q And, so, it's a group of venues that have
22 live music, correct?

23 A **Yes.**

24 Q It's on Main Street?

25 A **Yes.**

1 Q And there are also bars that have loud
2 music, correct?

3 A Yes.

4 Q Okay. Do you think Copper Fire fits in
5 with the surrounding businesses?

6 A Yes.

7 Q Is Downtown Main Street a destination
8 place for entertainment now?

9 A I would say yes.

10 Q What is Spaces?

11 A Spaces is -- I would consider it an event
12 venue, but they do quite a few pop ups with
13 entertainment inside and outside. They hold
14 weddings. They hold parties inside and outside, but
15 they will often participate in the downtown events.

16 Q Okay. Do they have loud music coming from
17 their event space?

18 A Live?

19 Q Loud.

20 A Yes.

21 Q Okay. And they're right across the street
22 from Geri?

23 A Yes.

24 Q I'm going to go through a timeline of
25 events but before I do that, I want to ask some key

1 points, okay? When you found out that, after your
2 first day, when you found out you actually had
3 complaints about music coming from that, from Geri,
4 what did you want to have happen?

5 **A I have, like, two thoughts, because I**
6 **already kind of had a history with her; but I also**
7 **wanted to believe and hope that it was only because**
8 **it was our first day, it was St. Patrick's Day, you**
9 **know, 20,000 people downtown that day; and we had**
10 **the Bugle Band come in, because it was our --**
11 **unexpectedly from the parade; and I had just hoped**
12 **that was because of that.**

13 Q Okay. But after that, you had other
14 complaints from Geri about --

15 **A Yes.**

16 Q Okay. We already went through those
17 e-mails. I'm not going to go through them with you.
18 At some point in time, did you ask her can I come in
19 your apartment and hear it?

20 **A Oh, I asked all the time.**

21 Q How many times? Well, estimate, estimate.
22 You don't know exactly.

23 **A 25.**

24 Q Okay. Did she ever let you in except the
25 one time that we set it up?

1 A She let -- I was out of town one day,
2 flying out of town for work, but Mark was up there.
3 So, she let Mark in the bottom, and I've only been
4 up there one other time in a different -- with a
5 different attorney, a different lawsuit, where
6 she -- we had a cease-and-desist, because she said
7 she could hear -- she wanted us to stop all sound,
8 all music, TVs, our house sound, which is our
9 TouchTunes and all bands. And that's when the local
10 ordinance was getting reviewed. It was just, like,
11 chaotic, and we had a meeting and tested the
12 TouchTunes; and we were done with our meeting; but
13 then Doug called Geri and said he was up there and
14 he could hear it; so, you said, let's go. So, we
15 all went up there, and it was you and I, her
16 attorney and Geri went up, Doug was up there to
17 listen to the house sound that was turned up full
18 blast to see if we could hear something. We did not
19 hear anything, but that is the one and only time
20 I've ever been up in that loft.

21 Q And other times when she has texted,
22 you've asked to come over and hear it, right?

23 A Yes.

24 Q Do you remember eventually getting the
25 sound sampling from Geri that Mike did --

1 A Yes.

2 Q -- in the report?

3 A Yes.

4 Q Once you got that report, what was your
5 goal at that point in time? So, it explained the
6 Illinois EPA law. What was your goal from that
7 point forward?

8 A To always be below the allowed limits. We
9 took lots of different steps. I was serious. I am
10 serious, I still am, about always trying to provide
11 reasonable but great live music for our guests and
12 to minimize the sound on Geri's side; but I didn't
13 always believe what she was saying was real, because
14 a lot of times the texts and the timing and all that
15 didn't make sense.

16 But even with that, I still always
17 have tried to keep everything below the limit; and
18 when I read that report, and I thought it was kind
19 of what I already expected because I had been
20 talking to one of our musicians who is a sound guy,
21 he said there's definitely a buffer between the
22 buildings. I knew there was some kind of buffer but
23 that kind of like set it for me that I knew there
24 was 55.

25 And I felt like, gosh, at 55 and

1 staying in the limits, they could be over 100 and
2 I'm not breaking the law. But I still have worked
3 to keep lowering and lowering it, but there are
4 times on weekends or whatever and busy events, I
5 just can't; we're just busy; and people want to hear
6 the music; and I am -- we have become the music
7 place to go in the metropolitan area, just not
8 Belleville but St. Louis people. We have a 50-mile
9 radius that come to listen to our live music. So, I
10 took that report, and it has been my guide basically
11 to try to follow the law.

12 Q So, your goal has been compliance, right?

13 A Always.

14 Q And you looked at the standards that were
15 in the Illinois EPA, correct?

16 A I did.

17 Q Okay. You eventually hired someone to do
18 testing for you, correct?

19 A Yes.

20 Q And you found out you were in compliance?

21 MS. ROBBINS: Objection. At this point in
22 time, we've determined that the Illinois EPA
23 standards pursuant to their summary judgment
24 motion aren't relevant to this hearing.

25 MR. PETRUSKA: Under the Section 33

1 factors, the severity of the injury and the
2 defendants-respondents' efforts to address the
3 complaints are relevant --

4 HEARING OFFICER WEBB: Okay, all right.

5 Q (By Mr. Petruska) So, if you can answer,
6 the question was once you found about the
7 Illinois -- once your expert told you you were in
8 compliance, did you still make changes after that?

9 A Yes.

10 Q Okay. And you're making changes because?

11 A Because I want everyone to have a good
12 experience. I don't want to break the law, and I
13 certainly don't want to be a nuisance.

14 Q Okay. If the standard is, the law is,
15 that you annoy Geri you're breaking the law, can you
16 comply with that?

17 MS. ROBBINS: Objection, calls for
18 speculation.

19 HEARING OFFICER WEBB: Yeah, I really
20 don't understand the question.

21 Q (By Mr. Petruska) Okay. If the law is, if
22 the result of this hearing is that because you have
23 annoyed Geri that you have broken the nuisance
24 standard, is there any way you can comply with that?

25 MS. ROBBINS: Objection. Calls for

1 speculation. He's misstating the law.

2 HEARING OFFICER WEBB: Yeah, I don't
3 really --

4 MS. ROBBINS: Yeah, and misstating what we
5 are claiming --

6 HEARING OFFICER WEBB: I don't know what
7 you want her to say really.

8 Q (By Mr. Petruska) What standard -- what
9 standard would you follow to avoid being a nuisance?

10 **A The law.**

11 Q Okay. And that's the objective numbers in
12 the law, correct?

13 **A Yes.**

14 Q Outside of that, how you would avoid being
15 a nuisance?

16 **A I don't know. I came to that conclusion a
17 long time ago. I don't know what I can to satisfy
18 Geri's complaints.**

19 Q Okay. And we talk about some of those
20 texts. Well, I got some other things I've got to
21 cover real quick. You heard from their expert and
22 your expert that found on her side is 39 or lower
23 decibels, correct?

24 **A Yes.**

25 Q Okay. You're okay with that?

1 **A Yes.**

2 **Q What else happens on Main Street other**
3 **than just live venues? Do they have events down**
4 **there?**

5 **A Tons.**

6 **Q Okay. So, what kind of events are we**
7 **talking about?**

8 **A Oh, gosh. Some people close streets down**
9 **for class reunions. We've had just the bars and**
10 **Belleville Main Street, which is an organization a**
11 **lot of us are part of. We have Art and Wine Walk is**
12 **coming up this Saturday. We have Margarita Walks,**
13 **Bloody Mary's walk. We had a Pickle Palooza this**
14 **year. Admittedly, St. Patrick's Day, our**
15 **anniversary, favorite day of the year, is our**
16 **biggest downtown event. It's one day. We just came**
17 **out of Chili Cookoff. That's two days. October**
18 **Fest was before. That's two days. It's just -- not**
19 **every weekend, but it's pretty frequently. At least**
20 **once a month, maybe a couple times a month.**

21 **Q And how many people show up at like the**
22 **Chili Cookoff?**

23 **A Oh, my gosh. Thousands. Tens of**
24 **thousands.**

25 **Q Okay. St. Patrick's Day?**

1 **A Tens of thousands on a good day.**

2 Q Okay. It's loud?

3 **A Sure.**

4 Q At night, when you're playing -- when loud
5 music is going on, is there still noise out on the
6 street?

7 **A Oh, yeah.**

8 Q Like what?

9 **A Motorcycles, people, drunks, homeless,**
10 **yeah. Lots of noises.**

11 Q And, in your opinion, is Copper Fire
12 suitable for the area, where it is?

13 MS. ROBBINS: Objection, calls for an
14 expert opinion. She's not an expert on sound
15 or in properness of the location. He's asking
16 for her opinion like she's an expert witness.

17 HEARING OFFICER WEBB: What was your
18 question? What the question again?

19 MR. PETRUSKA: Well, she put the business
20 there. So, I'm asking her whether she thinks
21 it's suitable for the environment.

22 HEARING OFFICER WEBB: I -- you can answer
23 that.

24 **THE WITNESS: Yeah, I love Belleville. I**
25 **have always loved Belleville. I have two**

1 business in Belleville and two buildings in
2 Belleville. It's a corner on their downtown
3 Main Street. It's a staple, and we've been
4 told that. Yeah, I think it's very suitable
5 for downtown.

6 Q (By Mr. Petruska) I want to talk to you
7 about the steps you've taken to control the noise,
8 okay? So, let's back that up a second. Back in
9 2020, '21, did you have any controls in place before
10 you started instituting things? Did you have any
11 controls in place to control the sound?

12 A Not really. I didn't know -- I didn't
13 quite understand or, frankly, believe some of the
14 texts; and I just -- it was a little confusing.
15 Like, because I just didn't -- the timing of them, a
16 lot of times didn't make sense. So, you know, like
17 I said earlier, we would get texts -- oh, the
18 police, oh my goodness. We got so many calls
19 from -- police visits to the point where we didn't
20 even know they were happening, because we weren't
21 violating what they considered the law, which they
22 followed the EPA guidelines. So, there was just a
23 lot going on.

24 I was very worried. I did -- during
25 Covid, we couldn't be inside but six weeks out of

1 the entire year. So, everything was outside. And
2 less than two weeks after we reopened in 2021, it
3 was February when the state let us go back in, we
4 had the water damage. And all we had was the bar
5 and live music to generate enough revenue to get
6 through that, and that was a few months.

7 I don't know. I didn't start really
8 formulizing, because I didn't know exactly what I
9 was doing wrong, until I got that report is when --
10 well, we were working and going through some testing
11 periods with her, with the attorneys. But, you
12 know, we're trying to figure out how bad was it, so
13 I didn't want to change.

14 Q Then after you got the report, is that
15 when you started taking steps --

16 A Yes.

17 Q -- to start controlling the noise?

18 A Yes.

19 Q Okay. We've been through this, but I
20 think it's important to make sure it's clear on the
21 record: initially, were you using a phone app?

22 A Yes.

23 Q Okay. What was the purpose of that phone
24 app? Were you saying this is scientifically valid?

25 A No. Just to give us a baseline to -- so,

1 we could know how -- if it was out of line even
2 internally.

3 Q Right. So, from night to night, you could
4 look at a number?

5 A Yes.

6 Q And, basically, the phone was in the same
7 position?

8 A Yes. I always -- everything has always
9 been -- it's hard to explain. Where the band is, is
10 in the front window when you walk in to the left.
11 Straight back, and that's the same wall, against her
12 building; and then there's a service station; and
13 then there's a gaming room; and there's our kitchen.
14 We always put any of our decibel readings in the
15 same place. In the service station, I have the
16 decibel reader up on top so the musicians can see
17 it. We put it there for two reasons. Because it's
18 kind of like the center. Not right up against the
19 band but not too far in the back, and it's where we
20 think maybe her bedroom might start. So, we wanted
21 to be able to manage from that point.

22 Q Okay. And, so, you get a baseline
23 number --

24 A Yes.

25 Q -- each time a band played, correct?

1 A Yes.

2 Q And you were using that not to say
3 scientifically that was the decibel level, but to
4 know what the level was?

5 A Yes.

6 Q Okay. While monitoring that, that's how
7 you initially controlled bands, correct?

8 A Right. There was one thing that we had
9 tried before that, which was moving the band. It
10 was somewhere between right after Covid and -- so,
11 it had to have been early in 2021, where we -- we
12 always had the music where it is now. We moved them
13 over to the other side thinking, oh, maybe, that
14 will help. No, that's when Geri blew my phone up
15 and said everything is worse; everything is worse.
16 So, we moved them back.

17 I know there's been discussion here
18 today about put them over here, put them in the
19 back. It will just shoot right at her bedroom. We
20 tried to not shoot it. What I think happened is
21 when we moved the band from one window to the other
22 window, it was angled right at her. So, I can't
23 prove that; I'm not scientific, obviously, but she
24 said it made things worse, so we moved the band back
25 and to make sure the speakers are not like

1 pointing -- they point into the restaurant, not, you
2 know, making sure it's not pointing at her.

3 Q Right.

4 A So --

5 Q Okay. So, tried moving the bands. Then
6 you tried to monitor the phone app --

7 A Yes.

8 Q -- correct? Just to tell bands when they
9 were getting too loud, correct?

10 A Yes. We already had those spongy things
11 up around the thing, but Mark did get some very
12 large sound panels. 2021 is when we built -- that's
13 when we launched our kitchen, but it's also when we
14 opened our event room in July that year. So,
15 there's sound panels there. There are sound panels
16 up against that wall on the mezzanine. Big ones.
17 Not just little, puny ones.

18 Q Okay. Once you -- after attempting to
19 move the band and having the phone app and things
20 like that, did you also institute new policies after
21 that to continue to try to control the sound?

22 A Yes.

23 Q Okay. Tell me about the contracts with
24 the -- with the bands that you hired?

25 A Well, basically, they get talked to, and

1 they also have the rules posted there. I worked
2 with a lot of these bands for so long they've
3 already -- they've already been given all these
4 things. And I explained earlier how if we had a new
5 band, they have to set their tab up; and they are
6 talked to about their music and their sound. It's
7 pretty well known in the music industry community in
8 the St. Louis-Illinois area, all the bands seem to
9 know that we have these rules. A lot of them --
10 I've even posted when I'm looking for a band I'll
11 say energetic but not too loud or whatever.

12 I've done that before. A lot of them
13 will come to me now and just say, hey, I think we'll
14 be a perfect fit to our place. They know the
15 acoustics. They think they can be a perfect fit.
16 We get a lot of contacts that way, too. So, I'm
17 very -- because it's been so many years in
18 experiencing this, that we are very selective with
19 who we are work with. Along the way, one of our
20 bands told us there's probably nothing we could do
21 other than work with our bands. I did ask about how
22 sound and controlling the sound for them. Not one
23 musician -- a lot of musicians said no, no, no,
24 don't do that. People are going to get angry. It's
25 not really going to fix the problem. They'll just

1 go and turn it up. They'll change their side of
2 things. Yeah. And sometimes it's not even
3 whatever -- whatever knobs they're turning.
4 Sometimes it's their microphone, and we have to have
5 a conversation with them about their microphone and
6 their settings. So, anyway.

7 Q Then you also started instituting
8 policies, and we've already talked about two of them
9 today?

10 A Yes.

11 Q They were marked as C -- let's see. C-17
12 and C-18. I also marked an update one from 2024,
13 and I'm going to hand you what's been marked R-37?

14 (Respondents' Exhibit R-37 marked.)

15 THE WITNESS: It is not the same in here?

16 MR. PETRUSKA: It's not in there. This is
17 R-37. I'll give you a copy in one second.

18 HEARING OFFICER WEBB: Okay.

19 THE WITNESS: Yeah.

20 Q (By Mr. Petruska) That's the most recent
21 policy you put in place, correct?

22 A Yes.

23 Q Okay. So, we've heard testimony today
24 that -- even Mike said, he was in your bar and it
25 was 95 decibels at some point in time in 2021,

1 correct?

2 **A Yes.**

3 Q Has the sound come down since then?

4 **A Yes.**

5 Q Okay. In fact, you've instituted policies
6 such as R-37 which set lower numbers, correct?

7 **A Yes.**

8 Q And just for the record, can you explain
9 what numbers are on that policy?

10 **A For Wednesday, Thursday and Sunday**
11 **afternoons, 85 to 88. Friday and Saturday, 88 to**
12 **92. And I say we realize there may be instances**
13 **when the decibel rises above about 95, giving them**
14 **some grace; but we will not tolerate it to be above**
15 **95 for long and expect you to adjust immediately if**
16 **asked.**

17 Q Okay. Now, the 85 to 88, you heard Mike
18 say that three decibels is not really recognizable,
19 right?

20 **A But six is.**

21 Q And Mike said 85 is the number you should
22 be at, right? Has Geri complained when you've been
23 at 85?

24 MS. ROBBINS: Objection, calls for
25 speculation. They haven't established that she

1 measured the sound at the exact moment that
2 Ms. Boyer complained.

3 **THE WITNESS: Yes, she's complained --**

4 MS. ROBBINS: You blocked her phone number
5 --

6 **THE WITNESS: But we did --**

7 HEARING OFFICER WEBB: Do you know --

8 MR. PETRUSKA: I'll -- I'll establish it.

9 HEARING OFFICER WEBB: Yeah.

10 MR. PETRUSKA: Let me just ask the
11 question then I'll lay a foundation.

12 HEARING OFFICER WEBB: Okay.

13 Q (By Mr. Petruska) Have you -- had Geri
14 complained to you about sound when the decibel level
15 in your place was below 85?

16 **A Yes.**

17 Q I want -- at this point, go back to that
18 June -- what number is this for you?

19 MS. ROBBINS: C-11.

20 MR. PETRUSKA: C-11.

21 Q (By Mr. Petruska) Okay. So, this is C-11,
22 the text messages?

23 **A Yes.**

24 Q June 11th, is a special date. Do you
25 remember why it's a special date?

1 **A** **Is that the day -- hold on. Is the day --**
2 **can you tell which page?**

3 **Q** **I'm sorry, it's on the first page of it.**

4 **A** **Oh, the very first page. June 11th.**

5 **Q** **Do you remember the three-week test period**
6 **that we set up?**

7 **A** **Yes.**

8 **Q** **When did the three-week test period end?**

9 **A** **That Friday.**

10 **Q** **Okay. And what happened on that Friday?**

11 **A** **You sent them -- you sent them a letter**
12 **saying this is great. We -- it's been three weeks.**
13 **We didn't get any complaints. Everything must be**
14 **good and the complaints just started.**

15 **Q** **But June 11th, we started getting texts?**

16 **A** **Like crazy.**

17 **Q** **We've been through those texts, but then**
18 **also -- I'm going to hand you what's been marked**
19 **R-24 and R-25.**

20 **(Respondents' Exhibits 24 and 25 marked.)**

21 **Q** **(By Mr. Petruska) Okay. Can you tell me**
22 **what R-24 and R-25 are?**

23 **A** **This would have been when I got a**
24 **complaint from Geri and was texting with one of my**
25 **staff or managers at the time to give me screenshots**

1 of the decibels of what was going on while I was
2 getting a complaint.

3 Q And what's on -- on R-24, first page,
4 what's the decibel reading on the app?

5 A 83.8.

6 Q What's the -- on the second page of that,
7 what's the decibel reading?

8 A 85.9.

9 Q On the third page, R-25?

10 A 80.5.

11 Q Were you getting those when Geri was
12 complaining to you?

13 A Yes.

14 Q That's the reason you got them, right?

15 A Yes.

16 Q Do you believe there's anything you can do
17 to satisfy Geri?

18 MS. ROBBINS: Objection, calls for
19 speculation.

20 HEARING OFFICER WEBB: You can answer it.

21 THE WITNESS: No.

22 Q (By Mr. Petruska) There's been discussion
23 about you putting up, you know, sound panels and
24 things like that. Has Geri ever agreed that if you
25 did that, she'd drop this?

1 **A No.**

2 Q And would you do that without her saying
3 that?

4 **A Never.**

5 Q Because if you spent money, what would
6 happen?

7 MS. ROBBINS: Objection, calls for
8 speculation?

9 MR. PETRUSKA: What do you think would
10 happen?

11 **THE WITNESS: It still -- it still**
12 **wouldn't end.**

13 HEARING OFFICER WEBB: Were these from
14 June 11th?

15 MR. PETRUSKA: Those texts are from
16 June 12th, I believe.

17 HEARING OFFICER WEBB: Okay. Are Exhibits
18 R-24 and R-25 from June 12th?

19 MR. PETRUSKA: Yes.

20 HEARING OFFICER WEBB: Okay.

21 Q (By Mr. Petruska) We have a text message
22 exchange between yourself and Geri on June 12th on
23 page 2, correct? Of the text messages?

24 **A That's where it starts, yes.**

25 HEARING OFFICER WEBB: And this is 2021?

1 MR. PETRUSKA: Yes.

2 HEARING OFFICER WEBB: Okay.

3 Q (By Mr. Petruska) Have there been other
4 times that's she contacted you about excessive noise
5 and it's been, according to your reader, 85 or
6 around that number?

7 A Yes.

8 Q You saw Mike's testing where that, you
9 know, where at 33 decibels in her apartment and if
10 you add the 55 to them that's 88 and still hearing
11 music, right?

12 A Yes.

13 Q Do you remember in one of these texts
14 where Geri said to you, I'm not going for low noise,
15 I'm going for no noise?

16 A Yes.

17 Q Can you have no noise?

18 A No.

19 Q Can your business survive with no noise
20 standard?

21 A I don't think so.

22 Q You mentioned the police reports and them
23 coming to you. I just want to cover it in kind of a
24 summary fashion here. These are -- handing you R-14
25 through R-18.

1 (Respondents' Exhibits R-14, R-15, R-16, R-17 and
2 R-18 marked.)

3 Q (By Mr. Petruska) Do you recall getting
4 these copies of these reports?

5 A Yes.

6 Q And do you recall the police coming and
7 checking the nature of the complaint?

8 A I actually didn't know about all of them.
9 I only knew of a couple of them until I asked to see
10 all of them.

11 Q And did the police ever tell you that you
12 were in violation of the law?

13 A No.

14 Q And was that relevant to your decision
15 making in this case?

16 A Absolutely.

17 MR. PETRUSKA: While I'm thinking about
18 it, I would like to move to admit R-37, which
19 is the 2024 policy.

20 MS. ROBBINS: No objection.

21 MR. PETRUSKA: And I would like to move to
22 admit R-24 and R-25.

23 MS. ROBBINS: Those are --

24 MR. PETRUSKA: The pictures.

25 HEARING OFFICER WEBB: The screenshots.

1 MS. ROBBINS: We just put an objection on
2 the record to the extent they're being used as
3 some kind of scientific statement as what the
4 decibel reading was, but to the extent that
5 it's just notice on a cell phone app, no
6 objection.

7 HEARING OFFICER WEBB: Okay, noted. So
8 R-37 is admitted, and R-24 and R-25 are
9 admitted.

10 (Respondents' Exhibits R-24, R-25 and R-37 admitted
11 onto the hearing record.)

12 MR. PETRUSKA: One second. Sorry, a page
13 disappeared. Here we go.

14 Q (By Mr. Petruska) So, explain to me how
15 you ended up with this building in the first place?

16 A My mother -- my mom, my brother and I
17 bought it in 2009, I believe.

18 Q After you bought it, did Geri complain
19 about something?

20 A Right after we bought it, our large -- the
21 fourth floor tenant abruptly claimed bankruptcy, so
22 it was on the market to lease, and Geri actually
23 looked at it, but those negotiations went nowhere;
24 because she was in a lease somewhere else. It was
25 right after that, we got a call at -- it was

1 actually my uncle had to come and tell me that we
2 got a complaint from her, that our fire escape was
3 an eyesore and that it needed to be taken down and
4 cleaned up.

5 Q Okay. Did she follow up on that complaint
6 with the City?

7 A I took care of it. I cleaned up the fire
8 escape.

9 Q In 2014, did something happen with the
10 building?

11 A She wanted to -- first, she wanted to buy
12 the back lot, and then the conversation, e-mails,
13 turned quickly to, I want an easement; and I'm like,
14 I was somewhat confused, like, what do you want?
15 And then she wanted -- said something about a
16 storage shed; and then it went to, I'm putting a
17 deck on and I need to attach it to your building.
18 And I said, hey, you know, I don't own the building
19 by myself. I need to get approval from my brother
20 and my mom. I said, you know, my brother's a
21 contractor; you're -- she's an engineer.

22 I'm thinking, can we have the plans
23 so my brother can review it? She got very upset,
24 and I was just -- I sincerely -- I was going to help
25 her. I wasn't saying no. I was saying I can't make

1 that decision by myself. I just need to show my
2 brother and my mom what you're wanting to do, like
3 if you're going to poke a hole in our building or
4 not. She came back and said, nope, I've got this
5 figured out. I can do this without attaching to
6 your wall; but, in the end, she built these decks
7 they're beautiful, but they're on our property and
8 two of her pillars; and she must -- whoever did the
9 construction must have punctured a cistern where one
10 of her bases of her deck pillars are on our
11 property. Now, that's sinking, so we've got some
12 ongoing issues with that.

13 Q Right.

14 A But she really had no regard to me at, you
15 know, saying -- not being able to give her that
16 decision but then just doing it anyway.

17 Q So, she asked your permission and then
18 just did it anyway?

19 A Correct.

20 Q Quiznos was on that first floor. Did
21 something happen at the Quiznos once?

22 A Yes.

23 Q What happened?

24 A My brother called me one day because his
25 foreman was standing in line. At the time, Mike

1 Barron (sic) who owned -- who had the Quiznos
2 franchise, owned us a lot of money. I filed a lien.
3 He was making payments, and Geri and Mike were, I
4 guess, commiserating about me; and she called me the
5 C word publically while my brother's foreman was in
6 line. He called me to let me know, and I was, like,
7 nothing I can do about that. It was my real
8 indication how she publically did not care for me.

9 Q In 2016, why did you come up with the idea
10 of Copper Fire? Did something happen with Quiznos?

11 A Yes, they went bankrupt. They shut down
12 unexpectedly, and Junction Coffee only had, like, a
13 month-to-month lease, no commitment. So, that's
14 when we were like we got get this space filled. We
15 decided -- there was actually -- there was a
16 restaurant that was interested in potentially going
17 there, but we didn't think it was a good fit for
18 downtown. Didn't think our neighbors would like it,
19 so we decided to do what was supposed to be just a
20 shotgun small bar on the Quiznos side and ended up
21 turning into Copper Fire.

22 Q Okay. When you came up with the plan for
23 Copper Fire being more than just a shotgun bar, did
24 you have to go in front of a committee?

25 A Yes, we did.

1 Q Who served on that committee?

2 A **The Redevelopment Committee was run by**
3 **Geri.**

4 Q Okay. Did -- so, was it -- did you tell
5 Geri that you were planning on opening a destination
6 venue?

7 A So, the mayor -- we had meetings with the
8 mayor and everything had to be presented and then
9 run in front of people at city hall and some of
10 these committees. Yeah, the mayor was actually, at
11 the time, very excited about it and loved the idea
12 of having a destination -- that was exactly the term
13 used when we went in and said that we were doing
14 this. That we wanted to be a destination.

15 Q And, now, it's 2024, do you believe you've
16 become that destination venue?

17 A **I do. I do.**

18 Q We've already talked about the 2017
19 incident. I'm going to skip that. 2018, you opened
20 on which day?

21 A **St. Patrick's Day.**

22 Q Did you get a complaint from Geri?

23 A **Yes.**

24 Q Shortly thereafter, she brought in the
25 mayor, correct?

1 **A** Well, I got an e-mail coordinating a
2 meeting, and she had already coordinated it and
3 said, basically, hey, the mayor is free on this
4 date, like -- which was a little, like, what? So,
5 things were happening that I didn't even know were
6 happening with her and the mayor, all of a sudden
7 we're getting like called into a meeting.

8 **Q** Your brand new business, a couple months
9 old.

10 **A** Brand new.

11 **Q** 2021, you receive a cease-and-desist
12 letter; is that correct?

13 **A** I did.

14 **Q** Okay. That was just from an attorney. It
15 wasn't like a court order or anything?

16 **A** Correct.

17 **Q** And the demand was that you stop all music
18 including house music, correct?

19 **A** Yes.

20 **Q** Do you have any idea why house music was
21 included?

22 **A** No.

23 **Q** And have we since learned house music
24 plays no role in this, whatsoever?

25 **A** Just like the exposed brick we didn't

1 **have.**

2 Q Did you also get additional complaints
3 from Geri beyond noise?

4 **A About my staff and cigarette butts and**
5 **foul language from my staff, yeah.**

6 Q And then we have the barrage of police
7 reports all from Geri, correct?

8 **A Yeah.**

9 Q And she's texting you complaining about
10 noise, correct?

11 **A Yes.**

12 Q And would she ever let you come in and
13 investigate it?

14 **A No.**

15 Q Tell me what you know about the noise
16 ordinance, the new Belleville noise ordinance that
17 was put in place. What did you hear about it?

18 **A There was always an ordinance in place.**
19 **The -- he was not the chief of police at the time**
20 **but he is now, came to me and said, there are, you**
21 **know, your neighbors, you know, cannot help --**

22 MS. ROBBINS: Objection, hearsay.

23 **THE WITNESS: Well -- Okay.**

24 MR. PETRUSKA: The chief of police already
25 testified to this so I think --

1 HEARING OFFICER WEBB: Is it what he
2 testified to?

3 MS. ROBBINS: It is still hearsay --

4 HEARING OFFICER WEBB: It is hearsay. Can
5 you ask the question --

6 MR. PETRUSKA: No --

7 (Court reporter clarification.)

8 MR. PETRUSKA: If the witness has already
9 testified to the fact, it's not hearsay. It's
10 already been testified to.

11 MS. ROBBINS: It's still hearsay.

12 HEARING OFFICER WEBB: I still don't
13 recall of --

14 MS. ROBBINS: Yeah, we don't have a
15 transcript of every last word that he said, but
16 to the extent that she's -- the witness was
17 here and he testified about what was said; but
18 she doesn't just get to reiterate and bring in
19 hearsay about what he said.

20 MR. PETRUSKA: It's an out-of-court
21 statement made by a declarant --

22 HEARING OFFICER WEBB: Ask -- what was
23 your question again?

24 MR. PETRUSKA: I asked what she knew about
25 the new noise ordinance. That's what I asked.

1 HEARING OFFICER WEBB: What she knew about
2 the new ordinance? Okay, you can answer what
3 you knew about the new noise ordinance.

4 THE WITNESS: I purposely stayed out of
5 those final discussions, because I didn't
6 want -- I didn't want to be the reason or have
7 any influence on what changes got made. This
8 was all through Geri. There were a bunch of
9 people that got together to -- but what led up
10 to that was a whole lot of chaos between me and
11 the other bars. Bar owners very angry at me
12 because, you know, of Geri's complaints. The
13 police were coming to me, wanting to, like,
14 how -- let us be the liaison.

15 So, it all boiled to down to, you know,
16 redoing the all already in place noise
17 ordinance for Belleville, which was really
18 close to the EPA's. I think they ended up just
19 changing -- I don't even know the exact
20 changes.

21 Q (By Mr. Petruska) I won't ask that.

22 A Yeah.

23 Q I won't ask that. The chief has already
24 testified about that. I'll let it sit at that. Do
25 you have any reason to believe that Geri has walked

1 by the outside of Copper Fire and then complained to
2 you about the noise?

3 **A Yeah, it's in a couple texts.**

4 Q Okay. And that would be what I have
5 marked as R-4, which --

6 MS. ROBBINS: C-11.

7 Q (By Mr. Petruska) C-11, right? Correct?

8 **A Yes, and there would be so many times I**
9 **would be in the bar with the music going, and I**
10 **would see them either coming back from another place**
11 **or walking their dogs or something, walk by and then**
12 **we got the complaint.**

13 Q (By Mr. Petruska) Okay. Can you turn to
14 C -- page 3 of C-11?

15 **A Do I go -- okay. Yes.**

16 Q It's starts at the top, but I want you to
17 look at the last text at the bottom there. Can you
18 read that for me?

19 **A This is Geri. She said, "I walked by and**
20 **it could be heard to the other side of Main Street**
21 **with doors closed. That's a lot louder than the**
22 **music we tested and couldn't hear in loft." So,**
23 **that's talking about the TouchTunes. "Just take it**
24 **down a little more, you know, everyone can hear it**
25 **and it will be even more enjoyable."**

1 Q So, she is literally walking by your
2 restaurant-bar and complaining, correct?

3 A Yes. It was also like -- yeah, it was
4 just --

5 Q Your -- we talked about live music five
6 days a week, correct?

7 A Yes.

8 Q Let's make it clear: we already said the
9 hours but Wednesday is from when to when?

10 A 6:00 to 9:00 p.m.

11 Q What time do you open on Wednesdays?

12 A 11:00 a.m.

13 Q What time do you close?

14 A 10:00 or 11:00.

15 Q And Thursday, what time do you open?

16 A Same exact hours as Wednesday.

17 Q When did you have live music?

18 A 6:00 to 9:00 p.m.

19 Q And then Friday, what time do you open?

20 A 9:00 a.m.

21 Q What time does live music start?

22 A 8:00 p.m., unless it's the day after
23 Thanksgiving.

24 Q Do you remember that you have these noise
25 standards from 88 to 85, do you remember Geri

1 testifying she can't even go home to her apartment
2 during that time frame?

3 **A Yes.**

4 Q You're doing everything that you can to
5 control the noise even lower than you do all
6 weekends, right?

7 **A Wednesdays and Thursdays are generally a**
8 **solo, maybe a duo. I mean, very light, low music.**

9 Q Is that one of the reasons you're having
10 difficulty understanding the complaints in this
11 case?

12 **A Yes.**

13 Q Because you have lowered the sound, right?

14 **A Uh-huh, yes.**

15 Q They said turn it down. You've turned it
16 down?

17 **A Yes.**

18 Q And the complaints don't stop?

19 **A Yes.**

20 Q Has your -- how has Copper Fire been doing
21 as a business from 2018 to now?

22 **A We were terrible in 2018. That first year**
23 **was horrible. The second year, we did better. The**
24 **third year was Covid. The fourth year was water**
25 **damage, but then we had a new kitchen and the second**

1 floor event room; and we've just continued to keep
2 growing.

3 Q During your deposition, you were asked
4 whether you're making any money or anything like
5 that?

6 A Yeah.

7 Q Are you making any money yet?

8 A I feel like we've been making money, even
9 if it doesn't look like we're cash flowing well. I
10 mean --

11 Q Explain that for me.

12 A Yeah, it's a business. It's my second
13 business. My husband and I had to have this
14 conversation before, where when even if you have a
15 mortgage or a loan on it, to me, I feel like you are
16 making money when you can -- even if you just break
17 even because you're paying your debt, you're paying
18 the bills. So, to me, you're gaining collateral,
19 and this is a business that's been an investment. I
20 don't ever do anything like get rich quick kind of
21 thing. Everything I tend to do is a long-term
22 investment, so I've been very committed to Copper
23 Fire and trying to turn it around as a business. I
24 feel like it's always a work in progress, but it is
25 night and day what we are today versus what we were

1 **even two, three years ago.**

2 Q And you said 65,000 --

3 **A Yeah.**

4 Q -- attendees each year?

5 **A Minimum.**

6 Q Do people tell you they love the
7 environment at Copper Fire?

8 MS. ROBBINS: Objection, hearsay.

9 HEARING OFFICER WEBB: You can answer it.

10 **THE WITNESS: Yeah, I hear it. I see the**
11 **complaints. I see, you know, the foot traffic**
12 **is what tells me if we're doing something right**
13 **or wrong.**

14 Q (By Mr. Petruska) Because if no one liked
15 the environment, you wouldn't have 65,000 people?

16 **A That's right.**

17 Q Okay. You mentioned in your policies
18 about being short staffed from time to time. Are
19 you still short staffed?

20 **A No.**

21 Q Okay. That was a Covid issue, right?

22 **A Totally.**

23 Q Just took a while to get past it?

24 **A We had our first call off last week in**
25 **like over a year and a half. We're really well**

1 **staffed.**

2 Q If you're asked to turn the music down to
3 85 decibels, would you be able to have music on
4 weekends?

5 MS. ROBBINS: Objection, calls for
6 speculation.

7 HEARING OFFICER WEBB: What do you mean --

8 MR. PETRUSKA: I'll rephrase.

9 HEARING OFFICER WEBB: Okay.

10 Q (By Mr. Petruska) You have been monitoring
11 the sound in your restaurant-bar for quite some
12 time, correct?

13 **A Yes.**

14 Q You know what it's like to be at 85, 88,
15 according to your baseline on Wednesday and
16 Thursday, correct?

17 **A Correct.**

18 Q Could you use that sound on Friday and
19 Saturday?

20 **A No. We would be out of business, in my
21 opinion.**

22 Q The examples that have come up in this
23 case about certain bands being loud, would you
24 say -- in 2021, was it more like the Wild West for a
25 while?

1 **A Yes.**

2 Q Okay. And you've been doing everything
3 you can since then to bring it down?

4 **A Yes.**

5 Q Okay. Wolfe & Nation, that band in
6 particular?

7 **A Yeah.**

8 Q But when they showed up -- and they had a
9 video of them from May of 2021. Do you happen to
10 remember that?

11 **A Yeah.**

12 Q Okay. They showed up with some pretty big
13 speakers, right?

14 **A He thought he was a rock star.**

15 Q And even like Bennie and others were
16 looking at the size of the speakers -- you tell me,
17 what comments did you hear about Wolfe & Nation?

18 **A Oh, yeah.**

19 MS. ROBBINS: Objection, hearsay.

20 **THE WITNESS: Well, I -- okay.**

21 HEARING OFFICER WEBB: What comments --

22 MS. ROBBINS: Hearsay. Yeah, what
23 comments did you hear from other people about
24 the band. That's hearsay.

25 HEARING OFFICER WEBB: Well, I mean,

1 you're using it to show what?

2 MR. PETRUSKA: Lessons learned. Lessons
3 learned.

4 HEARING OFFICER WEBB: You can go ahead
5 and answer.

6 THE WITNESS: That was around the whole
7 ordinance time, too, I believe. Yeah, the
8 bands, the other bar owners were being very
9 critical, and they would make comments, like,
10 if our band had too big of speakers that I was
11 doing something wrong. Like I was trying to
12 hurt Geri, and that was just not the case.
13 Wolfe & Nation, though, they were hard to
14 control, and we haven't have them back in --
15 since an outdoor performance a few years ago.

16 Q (By Mr. Petruska) Even at that time, 2021
17 --

18 A Yeah.

19 Q -- after that incident, you tried to have
20 them outside, right?

21 A Right.

22 Q As part of the solution?

23 A Yeah.

24 Q And you're still doing things to try to
25 address it?

1 **A Yes.**

2 MR. PETRUSKA: That's all the questions I
3 have.

4 HEARING OFFICER WEBB: Before we move on
5 to you, I just want to ask: you did not move to
6 admit R-14 through R-18?

7 MR. PETRUSKA: Yes, I did not.

8 HEARING OFFICER WEBB: Okay. And R-4 was
9 just C-11?

10 MR. PETRUSKA: Yes, I believe it is. Let
11 me make sure.

12 MS. ROBBINS: The text messages.

13 MR. PETRUSKA: Yeah, the text messages.
14 The same one on there --

15 HEARING OFFICER WEBB: Okay, that's -- go
16 ahead.

17 REDIRECT EXAMINATION

18 BY MS. ROBBINS:

19 Q (By Ms. Robbins) I just have a few
20 follow-up questions, Renae. At the start,
21 Mr. Petruska listed a few venues: Papa Vito's,
22 Bennie's, Venue On Main and Spaces. Do you know any
23 of these bars have residential units directly
24 adjacent to them?

25 **A I have no idea.**

1 Q Okay. And isn't it true that Spaces,
2 which is the venue you talked about across the
3 street is only open about once per month?

4 A **Not in the summer. In the summer, they're**
5 **open quite frequently.**

6 Q What's quite frequently?

7 A **Every weekend.**

8 Q And what about in the winter? Are they
9 only open --

10 A **Special events.**

11 Q And you said during your testimony when
12 Mr. Petruska was asking you questions, is it true
13 that you believe the music in Copper Fire could,
14 quote, "be over 100 decibels", and you would be
15 compliant with the law?

16 A **There's a 55 decibel --**

17 Q It's a yes or no question?

18 A **I have to do the math.**

19 Q Okay.

20 A **100 minus 55? Yes, I believe I would be.**

21 Q And are you aware that the Illinois EPA
22 standards only list standards and decibel limits for
23 outside noise?

24 A **I am.**

25 Q And would you agree that the live events

1 in Belleville do not occur every night, correct?

2 **A I didn't say they did.**

3 Q And they're not five nights per week like
4 the live music at Copper Fire?

5 **A No.**

6 Q And you're aware that the Boyers did not
7 bring the lawsuit because of the one-day events but
8 because of the music at Copper Fire, correct?

9 **A I thought they brought it because they
10 could hear sound on their side of the wall.**

11 Q And they brought this lawsuit against
12 Copper Fire that's on the other side of the wall,
13 correct?

14 **A Correct.**

15 Q And going back to R-24 and R-25, those
16 were the pictures of the cell phone --

17 **A Yes.**

18 Q This was back -- this is just using a cell
19 phone app, correct?

20 **A Yes.**

21 Q Okay. And that's not a calibrated
22 application, correct? You listened to -- let me
23 clarify. You listened to Mr. Biffignani talk about
24 his sound assessments and what he does to calibrate
25 the systems. You don't do anything to calibrate the

1 iPhone app, correct?

2 A It was funny because he actually said one
3 time -- he uses his phone and then when he was asked
4 should we use the phone, he said absolutely not.
5 So, that was all we had as a baseline, and even your
6 sound guy said he uses his phone app for decibel
7 reading. So, that is what we decided to use as our
8 baseline to at least establish what works in our
9 space.

10 Q And you would agree that cell phone app is
11 not calibrated?

12 A I have no idea. I'm not a scientist.

13 Q And you mentioned that Copper Fire is a
14 destination venue, and you talked about the
15 Redevelopment Board meeting. Isn't it true that
16 Copper Fire was always presented as a restaurant,
17 not a music venue to the Redevelopment Board?

18 A I'm not sure how a restaurant all by
19 itself becomes a destination.

20 Q But isn't it true that it was presented as
21 a restaurant not a music venue to the Redevelopment
22 Board?

23 A It was presented as a bar and restaurant,
24 but you do not become a destination just based on
25 your cold beer or your burger.

1 Q So, you agree that it was presented as a
2 bar and restaurant to the Redevelopment Board?

3 A **The downtown is all about entertainment.**

4 Q My question was, you agree --

5 A **I don't know if we talked about it or not.
6 I really don't know. But we had music on the very
7 first day with a DJ and then somebody from the band.
8 So, there was never any doubt that we weren't going
9 to have music.**

10 Q You talked about implementing these
11 policies and lessons learned, but it's true that,
12 you know, within the last few months you responded
13 to a review saying that the two-story room has been
14 a beast to control for sound?

15 A **Sure. It's loud with people.**

16 Q And you would agree that different people
17 have different tolerances for sound?

18 A **Absolutely.**

19 MS. ROBBINS: I have no further questions.

20 RE-CROSS-EXAMINATION

21 BY MR. PETRUSKA:

22 Q The R-24 and R-25, you know that sound in
23 Copper Fire has been louder than that, correct?

24 A **Yes.**

25 Q Okay. Because you used that app all the

1 time?

2 **A Yes.**

3 Q So, based sed on other noise, music,
4 inside the Copper Fire, you know that's low for
5 Copper Fire, correct?

6 **A Yes.**

7 Q Yet you're still getting complaints from
8 Geri even at that low level?

9 **A Yes.**

10 Q That's really the point. That's all I
11 wanted to make. Thank you.

12 MS. ROBBINS: No further questions.

13 HEARING OFFICER WEBB: Okay, I think we're
14 done with this witness. Thank you.

15 **THE WITNESS: Thank you.**

16 HEARING OFFICER WEBB: Okay. Did you have
17 anything further to present as part of your
18 case?

19 MR. JACOBBER: We have no further
20 witnesses.

21 HEARING OFFICER WEBB: Okay. No further
22 exhibits?

23 MR. JACOBBER: No, I think we admitted all
24 of our exhibits.

25 HEARING OFFICER WEBB: Okay. All right,

1 does -- do the Respondents have anything
2 further they would like to present today?

3 MR. PETRUSKA: No, I rest.

4 HEARING OFFICER WEBB: Okay. I'll just
5 make some closing announcements. The
6 transcript is expected by November 21st and
7 will be posted on the Board's website.

8 Exhibits must be filed electronically within
9 five days, pursuant to section 101.627 of the
10 Board's procedural rules. The public comment
11 deadline is November 20th. Any public comment
12 must be filed in accordance with section
13 101.628 of the Board's procedural rules.

14 The Complainants' brief is due by December
15 18th and the Respondents' brief is due by
16 January 24th and Complainants' reply, if
17 anything, is due by February 7th. Would
18 anybody like to make a closing argument today?

19 MR. PETRUSKA: I have one. I want to make
20 a motion for directed verdict but I know you're
21 not going to grant that one, but I want to put
22 it on the record.

23 HEARING OFFICER WEBB: Okay.

24 CLOSING STATEMENT BY MR. PETRUSKA:

25 MR. PETRUSKA: That the motion for summary

1 judgment has already established that she was
2 in compliance with the law. We also know that
3 the decibel levels, based on their expert,
4 himself, is below 40. I believe based on that,
5 to find a nuisance based on those objective
6 numbers would be an unconstitutionally vague
7 application of the law and cannot be enforced
8 by this board. That with those objective
9 numbers, anyone, anyone, can file a complaint
10 against their neighbor and just say it bothers
11 me, and then you end up with a nuisance. And
12 if that's the law, it's wrong and it's
13 unconstitutionally vague and will not be
14 enforced on appeal.

15 So, that's my argument. I think a
16 directed verdict should be granted by the
17 Board; I realize it's not; but it should be
18 granted by the Board because we have enough
19 information now to know that this cannot
20 possibly qualify as a nuisance. Thank you.

21 HEARING OFFICER WEBB: Would you like to
22 make closing statements today?

23 MR. JACOBBER: No, we'll reserve our
24 closing arguments for the briefing.

25 HEARING OFFICER WEBB: Okay.

1 MR. JACOBBER: I did want to ask one
2 clarifying point, what you just went through:
3 the exhibits within five days; is that as of
4 today?

5 HEARING OFFICER WEBB: Uh --

6 MR. JACOBBER: Or --

7 HEARING OFFICER WEBB: Tomorrow would be
8 day one, so.

9 MR. JACOBBER: Okay. I had envisioned that
10 we would submit our exhibits in conjunction
11 with our brief, but you want them submitted --

12 HEARING OFFICER WEBB: Yes,
13 electronically.

14 MR. JACOBBER: Electronically, with our
15 brief, or electronically with our --

16 HEARING OFFICER WEBB: No, electronically
17 within five days from today.

18 MR. JACOBBER: Got it.

19 MR. PETRUSKA: Just to be clear, you want
20 the exhibits, the only ones that we admitted.
21 Not all exhibits.

22 HEARING OFFICER WEBB: The ones that were
23 either admitted -- were there ones that were
24 offered but not admitted?

25 MS. ROBBINS: There was one offer of

1 proof.

2 MR. JACOBBER: Yeah, there was one of proof
3 --

4 HEARING OFFICER WEBB: Oh, okay, yes.
5 Then that one also, and that goes to Don Brown,
6 the clerk of the Board. Not to me.

7 MR. JACOBBER: Okay, and I think because of
8 the number of exhibits and then some of them
9 are the videos and some sound files, they're
10 pretty big, is it okay if we load everything
11 into a box.com file and provide download
12 information?

13 HEARING OFFICER WEBB: The best person to
14 speak to about that would be Don Brown.

15 MR. JACOBBER: Okay.

16 HEARING OFFICER WEBB: I don't know.

17 MR. JACOBBER: We'll call Mr. Brown.

18 MR. PETRUSKA: He told me a jumpdrive
19 would work, too.

20 MR. JACOBBER: Oh, just FedEx a jumpdrive?

21 MR. PETRUSKA: Yeah.

22 MR. JACOBBER: Okay, we can do that, too.

23 HEARING OFFICER WEBB: Okay. So, at this
24 time, I will conclude the proceedings, and we
25 stand adjourned. Thank you all.

1 (Ending time of the hearing: 04:00 p.m.

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1 I, Colin Wallis, in and for the State of
2 Missouri do hereby certify that the witness
3 whose testimony appears in the foregoing
4 Examination Under Oath was duly sworn by me;
5 that the testimony of the said witness was
6 taken by me to the best of my ability and
7 thereafter reduced to typewriting under my
8 direction; that I am neither counsel for,
9 related to, nor employed by any of the parties
10 to the action in which this examination was
11 taken, and further that I am not relative or
12 employee of any attorney or counsel employed by
13 the parties thereto, nor financially or
14 otherwise interested in the outcome of the
15 action.

Colin Wallis

17 within and for the State of Missouri
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