

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

HILLARY SCOTT, CHARLES	)	
KELLEY, DAVID HAYWOOD, AND	)	
LADY A ENTERTAINMENT LLC,	)	No. 3:20-cv-00585
	)	
Plaintiffs,	)	District Judge William L. Campbell, Jr.
	)	Magistrate Judge Barbara D. Holmes
v.	)	
	)	<b>JURY DEMAND</b>
ANITA WHITE,	)	
	)	
Defendant.	)	
	)	

**DECLARATORY DEFENDANT ANITA WHITE'S  
ANSWER TO THE COMPLAINT AND COUNTERCLAIMS**

Declaratory Defendant Anita White (“Ms. White”), by and through counsel, hereby responds to the original complaint (“Complaint”) filed by Plaintiffs Hillary Scott (“Scott”), Charles Kelley (“Kelley”), David Haywood (“Haywood”), and Lady A Entertainment LLC (“LAE”) (together, “Plaintiffs”). Unless specifically admitted, Ms. White denies each of the allegations in the Complaint, including but not limited to any assertions made in any section headings and subheadings in the Complaint.

**I. PARTIES**

1. Ms. White lacks information or knowledge sufficient to form a belief as to the truth of the allegation in Paragraph 1, and on that basis denies such allegation.
2. Ms. White lacks information or knowledge sufficient to form a belief as to the truth of the allegation in Paragraph 2, and on that basis denies such allegation.
3. Ms. White lacks information or knowledge sufficient to form a belief as to the truth of the allegation in Paragraph 3, and on that basis denies such allegation.

4. Ms. White lacks information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 4, and on that basis denies such allegations.

5. Ms. White denies that she is a resident of Seattle, Washington because Ms. White is, more specifically, a resident of Kent, Washington. Ms. White admits the remaining allegations in Paragraph 5.

## **II. NATURE OF THE ACTION**

6. Ms. White admits Plaintiffs seek a declaratory judgment that their use of trademarks incorporating “Lady A” do not infringe any of Ms. White’s trademark rights in the LADY A trademark. Ms. White admits that Plaintiffs have not stated a claim for monetary damages in this action. Ms. White denies the remaining allegations in Paragraph 6.

## **III. JURISDICTION AND VENUE**

7. To the extent a response is required, Ms. White admits that the Complaint purports to be a declaratory judgment action involving violations of the Lanham Act. Ms. White also admits that this Court has subject matter jurisdiction over this action. Except as expressly admitted, Ms. White denies the remaining the allegations in Paragraph 7.

8. The allegation that the Court has specific personal jurisdiction over Ms. White because Ms. White has purposefully availed herself of doing business in Tennessee is a legal conclusion to which no response is required. Ms. White admits she has performed in concerts in Tennessee. Ms. White admits she has advertised musical concerts in Tennessee. Ms. White admits she performed at the “Her Majesty Presents 2020 Showcase” in Memphis, Tennessee, in January of 2020. Ms. White admits she retained an attorney, Bruce Newman, on a pro bono basis, who on information and belief, resides in or around Memphis, Tennessee. Ms. White admits that Mr. Newman communicated with Plaintiffs on her behalf. Ms. White admits she communicated with

and participated in a telephone conference and a Zoom videoconference with the Plaintiffs, who on information and belief, were located in Tennessee. Ms. White denies the remaining allegations in Paragraph 8.

9. Ms. White admits that this Court has concluded that it has personal jurisdiction over Ms. White in connection with this action, and that venue is proper in this forum in connection with this action. Except as expressly admitted, Ms. White denies the remaining allegation in Paragraph 9.

#### **IV. FACTUAL ALLEGATIONS**

10. Ms. White admits that Scott, Kelley, and Haywood are members of a musical band that previously identified itself under the brand name “Lady Antebellum.” Ms. White admits that on June 11, 2020, Plaintiffs made a public announcement that they would discontinue using the “Lady Antebellum” brand and would thereafter use the trademark LADY A. Ms. White admits that publicly accessible records on file with the U.S. Patent & Trademark Office (“PTO”) indicate that the trademarks LADY ANTEBELLUM and LADY A are federally registered. Ms. White lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in Paragraph 10, and on that basis denies such allegations.

11. Ms. White lacks information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 11, and on that basis denies such allegations.

12. Ms. White lacks information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 12, and on that basis denies such allegations.

13. Ms. White lacks information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 12, and on that basis denies such allegations.

14. Ms. White admits that publicly accessible records on file with the PTO indicate that (i) on May 18, 2010 Lady A'D Productions, Inc. applied to register the trademark LADY A in International Class 41 for entertainment services, including live musical performances and a website featuring musical performances; (ii) the application was assigned to Plaintiff LAE on August 30, 2010; (iii) the application was published for opposition on October 19, 2010 and no oppositions were filed; (iv) the claimed date of first use was 2006 and the date of first use in commerce was 2008; (v) on July 26, 2011 the application matured to U.S. Registration Number 4,004,006; (vi) on May 1, 2017, a combined Declaration of Use and Incontestability under Sections 8 & 15 was filed with the PTO in connection with U.S. Registration Number 4,004,006, which was accepted by the PTO on June 28, 2017, at which time the registration received incontestable status. Ms. White lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in Paragraph 14, and on that basis denies such allegations

15. Ms. White admits that publicly accessible records on file with the PTO indicate that (i) on May 18, 2010, Lady A'D Productions, Inc. applied to register the trademark LADY A in International Class 9 for musical recordings; (ii) Application Serial No. 85042047 was assigned to Plaintiff LAE on August 30, 2010; and (iii) said application was published for public opposition on October 19, 2010 and matured to U.S. Registration Number 4,292,685 without any oppositions having been filed. Ms. White lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in Paragraph 15, and on that basis denies such allegations.

16. Ms. White admits that publicly accessible records on file with the PTO indicate that (i) on July 21, 2010 Lady A'D Productions, Inc. applied to register the trademark LADY A in International Class 25 for clothing; (ii) Application Serial No. 85089816 was assigned to Plaintiff LAE on August 30, 2010; (iii) said application was published for opposition on July 12, 2011, and

matured to U.S. Reg. No. 4030752 on September 27, 2011 without any oppositions having been filed; and (iv) on September 26, 2017, a combined Declaration of Use and Incontestability under Sections 8 & 15 was filed with the PTO in connection with U.S. Reg. No. 4004006, which was accepted by the PTO on December 4, 2017, at which time the registration received incontestable status. Ms. White lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in Paragraph 16, and on that basis denies such allegations.

17. Ms. White admits the allegation in Paragraph 17.

18. Ms. White admits the allegation in Paragraph 18.

19. Ms. White admits that prior to 2020, Ms. White did not challenge Plaintiffs' use of any trademark. Ms. White denies the remaining allegations in Paragraph 19.

20. Ms. White denies the allegations in Paragraph 20.

21. Ms. White denies that Plaintiffs have become one of the twenty-first century's premier vocal groups, blending deeply-felt emotions with classic Country sounds. Ms. White lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in Paragraph 21, and on that basis denies such allegations.

22. Ms. White admits that she is a blues, soul, and funk artist who works and performs in Seattle, Washington, among other places, and resides in the greater Seattle area. To the extent that Plaintiffs allege that Ms. White resides in Seattle, Washington, Ms. White denies the same because she is, more specifically, a resident of Kent, Washington. Ms. White admits she performs under the stage name and trademark LADY A, and has performed under this name in the Pacific Northwest, Louisiana, Mississippi, Tennessee, and elsewhere. Ms. White admits that she performed on and released musical albums under the LADY A trademark in 2010, 2013, 2016, and 2018. Ms. White admits that both Ms. White and Plaintiffs offer music on the Spotify

platform. Ms. White denies that each party's music is immediately distinguishable to consumers on Spotify. Ms. White admits that her artist profile page on Spotify features four albums Ms. White released under the LADY A trademark (including album artwork), and includes a photo of Ms. White. Ms. White lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in Paragraph 22, and on that basis denies such allegations.

23. Ms. White denies the allegations in Paragraph 23.

24. Ms. White admits the allegations in Paragraph 24.

25. Ms. White denies the allegations in Paragraph 25.

26. Ms. White admits that Plaintiffs contacted Ms. White and arranged a videoconference with Ms. White. Ms. White denies the allegation that the parties shared use of the LADY A trademark for 14 years. Ms. White lacks information or knowledge sufficient to form a belief as to Plaintiffs' purpose in contacting Ms. White, and on that basis denies such allegation. Ms. White admits the remaining allegations in Paragraph 26.

27. Ms. White admits the allegations in Paragraph 24

28. Ms. White denies that Plaintiffs' counsel prepared and delivered a draft agreement that accurately memorialized the discussions between Plaintiffs and Ms. White. Ms. White admits the remaining allegations in Paragraph 28.

29. Ms. White admits that her counsel continued to negotiate a draft settlement agreement with Plaintiffs' counsel. In a draft agreement prepared by Plaintiffs, Plaintiffs agreed to compensate Ms. White's counsel up to \$10,000. Ms. White denies this constitutes a "nominal" reimbursement. Ms. White admits the remaining allegations in Paragraph 29.

30. Ms. White admits that Cooley LLP ("Cooley") began representing her on a pro bono basis and replaced her former counsel, Mr. Newman. Ms. White admits that on July 25th at

or around 10:27 pm EST Cooley counsel contacted Plaintiffs' counsel and stated that "Cooley LLP represents Ms. White in connection with trademark litigation matters. Please direct all future communications concerning the dispute between Lady Antebellum and Ms. White to us" and "[w]e possess what we believe is the latest proposed settlement agreement. We are reviewing the agreement now. We will respond in due course." Ms. White lacks information or knowledge sufficient to form a belief as to the remaining allegation in Paragraph 30, specifically the significance of Plaintiffs' reference to the "next day," and on that basis denies such allegation.

31. Ms. White admits that this Court has subject matter jurisdiction under 28 U.S.C. §§ 2201 and 2202. Ms. White denies the remaining allegations in Paragraph 31.

32. Ms. White admits that the Complaint does not request monetary damages. Ms. White admits that publicly accessible records on file with the PTO indicate that Plaintiff LAE is the owner of U.S. Registration Nos. 4004006, 4030752, and 4292685, which are designated as incontestable. Ms. White lacks information or knowledge sufficient to form a belief as to the remaining allegations in Paragraph 32, and on that basis denies such allegations.

33. Ms. White admits that the Complaint states that "Plaintiffs seek a declaratory judgment that, among other things, their use of their trademarks incorporating 'Lady A' do not infringe any of White's alleged trademark rights in 'Lady A.' Plaintiffs do not seek monetary damages through this action." Ms. White lacks information or knowledge sufficient to form a belief as to the remaining allegations in Paragraph 33, and on that basis denies such allegations.

## **V. CAUSE OF ACTION**

### **(DECLARATORY JUDGMENT UNDER 28 U.S.C. § 2201)**

34. Ms. White incorporates by reference Paragraphs 1 through 33 above as though fully set forth herein.

35. Ms. White admits the allegations in Paragraph 35.
36. Ms. White admits the allegations in Paragraph 36.
37. Ms. White admits the allegations in Paragraph 37.
38. Ms. White admits the allegations in Paragraph 38.
39. Ms. White admits the allegations in Paragraph 39.

#### **VI. PRAYER FOR RELIEF**

40. Ms. White denies that Plaintiffs are entitled to any relief whatsoever, including but not limited to the relief sought in the section of the Complaint titled “Prayer for Relief.” To the extent that this section contains any allegations, Ms. White denies the same.

#### **PRAYER FOR RELIEF ON PLAINTIFFS’ COMPLAINT**

WHEREFORE, Ms. White requests that judgment be entered in her favor and against Plaintiffs as follows:

- a. That the Court deny Plaintiffs’ prayer for relief in its entirety and that the Court dismiss the Complaint with prejudice and enter judgment in Ms. White’s favor;
- b. That the Court award Ms. White costs of the action, along with its reasonable attorneys’ fees and expenses incurred in this action; and
- c. That the Court award Ms. White such other and further relief that it deems appropriate.

## **COUNTERCLAIMS**

Declaratory Defendant and Counter-Plaintiff Anita White (“Ms. White”), by and through her counsel, asserts the following counterclaims against Plaintiffs Hillary Scott, Charles Kelley, David Haywood, and Lady A Entertainment LLC (together, “Lady Antebellum” or “Counter-Defendants”).

## **PARTIES**

1. Ms. White is an individual who is a citizen and a resident of Kent, Washington.
2. Counter-Defendant Hillary Scott (“Scott”) is an individual who is a citizen and resident of Brentwood, Tennessee.
3. Counter-Defendant Charles Kelley (“Kelley”) is an individual who is a citizen and resident of Nashville, Tennessee.
4. Counter-Defendant David Haywood (“Haywood”) is an individual who is a citizen and resident of Nashville, Tennessee.
5. Counter-Defendant Lady A Entertainment (“LAE”) is a Tennessee limited liability company with its principal place of business at 2300 Charlotte Avenue, Suite 103, Nashville, Tennessee 37203.

## **JURISDICTION AND VENUE**

6. The Court has original jurisdiction under 28 U.S.C. § 1331, as this is a civil action arising under 15 U.S.C. § 1125(a). The Court has supplemental jurisdiction over all other claims pursuant to 28 U.S.C. § 1367 insofar as all claims alleged herein form part of the same case or controversy under Article III of the United States Constitution.

7. On information and belief, this Court has personal jurisdiction over Counter-Defendants because (i) Counter-Defendants conduct business within the state of Tennessee and

this judicial district, and (ii) Counter-Defendants have caused services to be advertised, offered, and promoted in the state of Tennessee and this judicial district. Further, by filing their Complaint in this judicial district, Counter-Defendants have submitted to this Court’s personal jurisdiction.

8. On information and belief, venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because (i) Counter-Defendants reside and conduct business within the State of Tennessee and this judicial district, and (ii) Counter-Defendants have caused services to be advertised, offered, and promoted in the State of Tennessee and this judicial district. Further, by filing its Complaint in this judicial district, Counter-Defendants have consented to this venue for litigation.

## **FACTUAL ALLEGATIONS**

### **THE REAL LADY A**

9. For nearly thirty years, Ms. White has performed and provided music under the stage name and trademark LADY A.

10. Ms. White began her career as a karaoke singer in Seattle, Washington in the late 1980s. Shy about singing in those early days, Ms. White held herself out as “LADY A” rather than perform under her given name. Shortly thereafter, she began performing original music as LADY A, and it was not long before the LADY A name came to embody the goodwill associated with Ms. White’s music and performances.

11. Over the course of her career, Ms. White has performed with dozens of bands, in thousands of performances—always as LADY A.

12. During the 1990s, Ms. White performed as LADY A extensively throughout the State of Washington and the Pacific Northwest. Ms. White also traveled to perform elsewhere in the United States, including in Utah and Florida.

13. In the 2000s, as Ms. White continued to build her profile and the LADY A brand, she performed under the LADY A mark across the South, including in Tennessee.

14. For many years, Ms. White has regularly performed as LADY A at music festivals throughout the United States, such as the Waterfront Blues Festival, the Winthrop Blues Festival, and the Chicago Blues Festival, among others.

15. Ms. White has also performed under the trademark LADY A in Tennessee, including the International Blues Challenge, BB King's Blues Club, and Rum Boogie Café, among others.

16. To date, Ms. White has released six albums as LADY A—the first a limited release in 2006 titled “Can I Get My Breakfast?” which was put out by Lady A and the Baby Blues Funk Band.

17. In 2010, Ms. White released her second album, “Bluez in the Key of Me”, under the LADY A mark. The album was nominated for a Blues Music Award, and helped launch her music career abroad. In the years that followed, Ms. White performed in the Netherlands, Denmark, France, Sweden, Belgium, and Germany.

18. Ms. White's music has been available for download and streaming over the Internet under the LADY A mark throughout the United States since at least as early as the release of “Bluez in the Key of Me.”

19. Ms. White has accrued common law rights in the LADY A trademark in connection with music and entertainment services as a result of her long, continuous, and prominent use of the LADY A mark since at least the early 1990s. Ms. White's rights in the LADY A trademark are particularly strong in the State of Washington and the Pacific Northwest, where most of her performances have occurred; however, her rights also extend nationwide by virtue of Ms. White's

numerous performances and music sales under the LADY A trademark throughout the United States. Ms. White's nationwide common law trademark rights date to at least as early as the early 2000s, when she first began performing extensively outside of the State of Washington.

#### **LADY ANTEBELLUM**

20. On information and belief, Counter-Defendants Scott, Kelley, and Haywood formed the band Lady Antebellum in 2006.

21. Counter-Defendants have explained in interviews that the name "LADY ANTEBELLUM" had its origin in a 2006 Franklin, Tennessee photoshoot, during which Counter-Defendants posed in period dress in front of a pre-Civil War plantation. Drawing on inspiration from the shoot, Counter-Defendant Kelley suggested the name "Lady Antebellum." According to one interview with Counter-Defendant Haywood, the band was drawn to the word "antebellum" because it felt "kind of country and nostalgic."

22. Since then, Counter-Defendants have performed under the trademark LADY ANTEBELLUM, and have come to be known by that name.

23. The word "antebellum" derives from the Latin phrase *ante bellum*, which translates to "before the war." Today, the word is commonly used to refer to the period of U.S. history prior to the Civil War, and is particularly associated with the pre-Civil War South.

24. For example, on information and belief, in 2010, Outback Concerts commissioned the following poster to promote a Lady Antebellum show in Cary, North Carolina:



On information and belief, the imagery of the plantation and soldiers was intended to evoke the word “antebellum” in the LADY ANTEBELLUM mark.

25. On information and belief, the LADY ANTEBELLUM mark has long courted controversy due to the association of its mark with a glorification of the pre-Civil War South.

#### **LADY ANTEBELLUM CO-OPTS “LADY A”**

26. On May 25, 2020 in Minneapolis, Minnesota, Mr. George Floyd, a 46-year old African American, was suffocated by a police officer while being restrained during his arrest. The traumatic footage of Mr. Floyd’s death drew unprecedented attention to police violence against African Americans and systemic racism more broadly and sparked an explosion of public outrage.

27. On information and belief, against this backdrop, the LADY ANTEBELLUM trademark became a public-relations liability that Counter-Defendants could no longer ignore.

28. On June 11, 2020, in a statement posted by Counter-Defendants to the band's Twitter account, Counter-Defendants represented that: "After much personal reflection, band discussion, prayer, and many honest conversations with some of our closest black friends and colleagues, we have decided to drop the word 'antebellum' from our name . . . ." Counter-Defendants asserted that they would thereafter perform under the trademark LADY A, a "nickname" they purport to have been given by fans.

29. Ms. White is informed and believes, and on that basis alleges, that Counter-Defendants never performed as LADY A prior to June 11, 2020.

30. On information and belief, prior to June 11, 2020, Counter-Defendants always performed as LADY ANTEBELLUM, and consistently displayed the LADY ANTEBELLUM trademark in marketing and promotional materials.

31. Shortly after the band's June 11 announcement, Ms. White's began receiving texts from friends expressing concern that her name was being taken. Ethan Millman, a reporter at Rolling Stone magazine, also contacted Ms. White about Counter-Defendants' announcement. Rolling Stone published an article the following day titled "Lady Antebellum Is Now 'Lady A.' But So Is a Blues Singer Who's Used the Name for 20 Years."

32. The effect of the name change on Ms. White's ability to distinguish her music in the marketplace was overwhelming. Internet and social media searches for "Lady A," which had readily returned results for her music, were now dominated by references to Counter-Defendants. Ms. White's LADY A brand had been usurped and set on the path to erasure.

33. Concerned about the impact that Counter-Defendants' use of the LADY A mark had, and will continue to have, on her ability to perform as LADY A, Ms. White secured the assistance of pro bono counsel to help her defend her LADY A brand.

34. Ms. White did not have to seek out Counter-Defendants. Shortly after publication of the Rolling Stone article mentioned above, Counter-Defendants' management company contacted Ms. White to discuss the possibility of coexistence. Counter-Defendants proposed that the parties participate in a videoconference on June 15, 2020 to discuss Ms. White's concerns, and Ms. White agreed.

35. During the meeting, the parties considered ways of addressing Ms. White's concerns. The parties were unable to reach a resolution, but that did not stop Counter-Defendants' lawyers from promptly sending Ms. White a draft coexistence agreement.

36. In response to Counter-Defendants' draft agreement, Ms. White, through her pro bono counsel, sought to negotiate an amicable resolution with Counter-Defendants. The parties had discussed the possibility of Counter-Defendants promoting Ms. White's work, or even collaborating on a song, in exchange for coexistence. Ms. White never committed to such an arrangement.

37. In the days that followed, Ms. White came to believe that the agreement being negotiated by her original pro bono counsel was not in her best interests. Specifically, the agreement would have allowed Counter-Defendants to continue using the LADY A mark while providing no compensation to Ms. White—only the promise that Counter-Defendants would make “best efforts” to assist her career and to reimburse Ms. White's pro bono counsel up to \$10,000 for legal fees associated with negotiating a resolution of the parties' dispute and trademark filings for Ms. White's LADY A mark.

38. Ms. White retained new pro bono counsel at Cooley LLP, who promptly attempted to resume negotiations with Counter-Defendants with the aim of protecting the LADY A brand established by Ms. White. To that end, Ms. White's new pro bono counsel shared a draft settlement agreement with Counter-Defendants on July 6, 2020.

39. Instead of responding to the offer, and without warning, Counter-Defendants filed the above-captioned declaratory judgment action against Ms. White on July 8, 2020 ("Complaint").

40. In the Complaint, Counter-Defendants allege that they have used LADY A as a trademark for music related offerings since as early as 2008. Counter-Defendants further allege that Counter-Defendant LAE is the owner of U.S. Registration Nos. 4,004,006, 4,030,752, and 4,292,685 for LADY A. According to Counter-Defendants, the parties' LADY A marks can coexist, notwithstanding the fact that they are identical, are used in connection with the same goods and services, and are rendered through the same channels of trade.

41. On information and belief, prior to June 11, 2020, Counter-Defendants did not perform as LADY A and did not make use of the fan-originated "LADY A" nickname as a trademark.

42. On information and belief, even if Counter-Defendants had used LADY A as a trademark, Ms. White possesses superior common law trademark rights, which precede the existence of Counter-Defendants' band, and their alleged LADY A mark. To the extent that any prior coexistence occurred, it was only because Counter-Defendants' use was limited, lacked prominence, and would have been overshadowed by the well-known LADY ANTEBELLUM mark.

43. Since June 11, 2020, however, Counter-Defendants have widely and prominently used the LADY A mark to sell music and tickets to musical performances, among other offerings. The domain name [www.ladyamusic.com](http://www.ladyamusic.com) was registered on or about June 10, 2020, and now serves as the location of Counter-Defendants' website. Their website now prominently features the LADY A trademark at the top in large distinct lettering and offers music, tickets to Counter-Defendants' concerts, and other goods. Counter-Defendants have also replaced references to the LADY ANTEBELLUM mark with the LADY A mark on their pages on major digital music platforms. Counter-Defendants offer the following songs or albums on various digital music platforms, e.g., Spotify, iTunes Store, Apple Music, Amazon Music, Pandora, etc., whose album covers prominently display the LADY A mark: (i) "Like a Lady"; (ii) "Ocean"; (iii) "Champagne Night"; and (iv) "On this winter's night". Counter-Defendants are currently selling tickets on their website to "Lady A" performances which are scheduled to take place this year throughout the United States, including in Franklin, Tennessee on August 27, 2021.

44. As a result of Counter-Defendants' use of an identical LADY A trademark in connection with performing and selling music, consumers in search of Ms. White's offerings under her LADY A mark are diverted to Counter-Defendants' offerings, resulting in initial interest confusion and reverse confusion, resulting in lost profits and diminution of good will.

### **FIRST CAUSE OF ACTION**

#### **(Trademark Infringement Under Lanham Act, 15 U.S.C. § 1125(a)(1)(A))**

45. Ms. White realleges and incorporates by reference paragraphs 1 through 44, inclusive, as if fully set forth here.

46. Since at least as early as the early 1990s, Ms. White has continuously used the LADY A trademark in connection with music and entertainment services in the nature of musical performances. Over the course of her career, and prior to 2006, Ms. White performed under the

LADY A mark across the United States and developed strong, nationwide common law rights in the trademark LADY A.

47. Ms. White's common law trademark rights in the LADY A mark predate any rights in the LADY A mark allegedly owned by Counter-Defendants.

48. The LADY A trademark used by Counter-Defendants is identical to Ms. White's LADY A trademark.

46. Both Counter-Defendants and Ms. White perform concerts and sell music under the LADY A trademark.

47. Both Counter-Defendants and Ms. White offer their products and services through the same channels of trade, namely via Internet websites such as Spotify and iTunes, popular social media platforms, at concert venues, and at music festivals throughout the United States.

48. Those seeking Ms. White's music in online market places and on social media are now diverted to Counter-Defendants' content under an identical mark, thereby causing initial interest confusion.

49. Counter-Defendants' popularity and resources have enabled them to saturate the market with their LADY A mark and overwhelm the brand identity that Ms. White has developed during decades of use. Under these circumstances reverse confusion is inevitable. Counter-Defendants' use of the LADY A mark has injured and will continue to injure Ms. White by causing the public to be confused or mistaken into believing that Ms. White's music originates from, is sponsored by, endorsed by, or is otherwise associated with Counter-Defendants, resulting in the usurpation of Ms. White's brand identity under the LADY A mark.

50. Counter-Defendants' use of the LADY A mark is likely to deceive the public regarding the source, sponsorship, and/or affiliation of Counter-Defendants with Ms. White and vice versa. As such, Counter-Defendants are liable to Ms. White for infringement under 15 U.S.C. §1125(a)(1)(A).

51. As demonstrated by Counter-Defendants' refusal to cease use of the LADY A trademark, Counter-Defendants' acts as alleged above, if not enjoined, will continue. Ms. White

has no adequate remedy at law.

52. Because of Counter-Defendants' infringement of the LADY A trademark, Ms. White has incurred damages in an amount to be proven at trial consisting of, among other things, lost sales, diminished brand identity, and diminution in the value of and goodwill associated with the mark.

### **SECOND CAUSE OF ACTION**

#### **(COMMON LAW TRADEMARK INFRINGEMENT UNDER WASHINGTON STATE LAW)**

53. Ms. White realleges and incorporates by reference paragraphs 1 through 52, inclusive, as if fully set forth here.

54. Counter-Defendants' acts alleged herein infringe Ms. White's nationwide common law trademark rights in the LADY A mark, which predate any rights that Counter-Defendants allegedly possesses.

55. Counter-Defendants' knowing and willful use of the identical trademark LADY A is likely to lead to both initial interest confusion and reverse confusion among the parties' audiences, both within the State of Washington and throughout the United States. Counter-Defendants' conduct thus constitutes common law trademark infringement under Washington law.

56. Counter-Defendants' conduct has caused and will continue to cause injury to Ms. White in the form of lost sales, diminished brand identity, and diminution and loss of goodwill in the LADY A trademark.

57. Counter-Defendants' acts as alleged above, if not enjoined, will continue. Ms. White has no adequate remedy at law.

58. In view of the foregoing, Ms. White is entitled to an injunction against Counter-Defendants, compensation for actual damages, as well as all other remedies available under Washington State law.

### **THIRD CAUSE OF ACTION**

#### **(UNFAIR COMPETITION IN VIOLATION OF REV. CODE WASH. § 19.86.020)**

59. Ms. White realleges and incorporates by reference paragraphs 1 through 58,

inclusive, as if fully set forth here.

60. Counter-Defendants' acts alleged herein infringe Ms. White's exclusive trademark rights in the LADY A mark.

61. Counter-Defendants' knowing and willful use of the identical trademark LADY A is likely to lead to both initial interest confusion and reverse confusion among the parties' consumers, both within the State of Washington and throughout the United States. Counter-Defendants' conduct thus constitutes unfair competition under Rev. Code Wash § 19.86.020.

62. Counter-Defendants' conduct has caused and will continue to cause injury to Ms. White in the form of lost sales, diminished brand identity, and diminution and loss of goodwill in the LADY A trademark.

63. Counter-Defendants' acts as alleged above, if not enjoined, will continue. Ms. White has no adequate remedy at law.

64. In view of the foregoing, Ms. White is entitled to an injunction against Counter-Defendants, compensation for actual damages, as well as all other remedies available under Rev. Code Wash § 19.86.020

### **PRAYER FOR RELIEF**

WHEREFORE, Ms. White prays that the Court enter judgment:

- a. In favor of Ms. White on her Counterclaims;
- b. For injunctive relief; specifically, that Counter-Defendants and all of their officers, agents, servants, representatives, employees, attorneys, parents and subsidiary corporations, assigns and successors in interest, and all other persons acting in concert with them be preliminarily and permanently enjoined from using the LADY A trademark;
- c. For compensatory damages;
- d. For disgorgement of profits attributable to Counter-Defendants' infringing use of the LADY A mark;

- e. For a reasonable royalty fee for any sales of Counter-Defendants' music or musical performances rendered under the LADY A mark;
- f. For trebling of the disgorgement of profits and damages;
- g. For pre-judgment and post-judgment interest;
- h. For costs of this suit; and
- i. For such other relief as the court deems just and proper.

**JURY DEMAND**

Ms. White respectfully requests a trial by jury on all issues so triable.

Dated: May 27, 2021

Respectfully submitted,

**COOLEY LLP**

By: /s/ Judd Lauter

Judd D. Lauter (*Pro Hac Vice*)

3175 Hanover Street

Palo Alto, CA 94304

Tel.: (650) 843-5960

Fax: (650) 843-7400

Email: [jlauter@cooley.com](mailto:jlauter@cooley.com)

Brendan J. Hughes (*Pro Hac Vice*)

Jane van Benten (*Pro Hac Vice*)

1299 Pennsylvania Avenue NW, Suite 700

Washington, D.C. 20004-2446

Tel.: (202) 842-7800

Fax: (202) 842-7899

Email: [bhughes@cooley.com](mailto:bhughes@cooley.com)

[jvanbenten@cooley.com](mailto:jvanbenten@cooley.com)

Joseph M. Drayton (*Pro Hac Vice*)

1114 Avenue of the Americas

New York, NY 10036

Tel.: (212) 479-6000

Fax: (212) 479-6275

Email: [jdrayton@cooley.com](mailto:jdrayton@cooley.com)

**BRADLEY ARANT BOULT CUMMINGS LLP**

Junaid Odubeko (BPR No. 23809)

1600 Division Street, Suite 700

Nashville, TN 37203

Telephone: 615.252.4635

Facsimile: 615.248.3035

Email: [jodubeko@bradley.co](mailto:jodubeko@bradley.co)

*Counsel for Declaratory Defendant White*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 27, 2021, I electronically filed the foregoing Declaratory Defendant Anita White's Answer to the Complaint and Counterclaims with the Clerk of the Court by using the CM/ECF system. I further certify that a copy of the foregoing has been served upon the following counsel of record via the Court's electronic filing system:

**GREENBERG TRAUIG LLP**

Mary-Olga Lovett (*Pro Hac Vice*)  
Aimee Housinger (*Pro Hac Vice*)  
1000 Louisiana Street, Suite 1700  
Houston, Texas 77002  
Telephone: 713.374.3570  
lovettm@gtlaw.com  
housingera@gtlaw.com

**NEAL & HARWELL, PLC**

William T. Ramsey (TN BPR #9245)  
Moziano S. Reliford III (BPR #36170)  
1201 Demonbreun St., Suite 1000  
Nashville, TN 37203  
(615) 244-1713  
wtr@nealharwell.com  
treliford@nealharwell.com

By: /s/ Judd Lauter  
Judd Lauter