

The Honorable Ricardo S. Martinez

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANITA WHITE,

Plaintiff,

v.

LADY A ENTERTAINMENT, LLC;  
CHARLES KELLEY; DAVID HAYWOOD;  
AND HILLARY SCOTT,

Defendants.

No. 2:20-CV-01360-RSM

**JOINT STATUS REPORT**

1 Pursuant to the Court's September 30, 2020, Order Regarding Initial Disclosures, Joint  
2 Status Report, and Early Settlement (Dkt. 14), the parties jointly submit this Joint Status Report.

3 **1. A statement of the nature and complexity of the case.**

4 Plaintiff Anita White is an independent music recording artist who alleges she has  
5 performed under the trademark LADY A for nearly three decades. Defendants Hillary Scott,  
6 Charles Kelley, and David Haywood are members of the country music band formerly known as  
7 LADY ANTEBELLUM. On June 11, 2020, the band announced that recent developments  
8 concerning issues of race in the United States had led them to rethink the LADY ANTEBELLUM  
9 name, and thereafter they would perform under the name and trademark LADY A. Ms. White  
10 alleges that use of the LADY A trademark by Defendants Scott, Kelley, and Haywood, and their  
11 company Lady A Entertainment, LLC infringes Ms. White's common law trademark rights in the  
12 LADY A trademark. Defendants deny these allegations.

13 **2. A proposed deadline for the joining of additional parties.**

14 December 31, 2020.

15 **3. The parties should indicate whether they agree that the Honorable Michelle L.  
16 Peterson may conduct all proceedings, including trial and the entry of judgment.**

17 The parties do not agree to have Judge Peterson conduct all proceedings.

18 **4. A discovery plan that states, by corresponding paragraph letters (A, B, etc.), the  
19 parties' views and proposals on all items in Fed. R. Civ. P. 26(f)(3), which includes the  
20 following topics:**

21 **(A) initial disclosures**

22 The parties exchanged initial disclosures on November 19, 2020.

23 **(B) subjects, timing, and potential phasing of discovery;**

24 The parties do not believe discovery should be completed in phases.

25 **Plaintiff:** Ms. White anticipates taking discovery regarding Defendants' use of the LADY  
26 A trademark; Defendants' marketing, promotion, and sales of any goods or services under the  
27 LADY A trademark, actual and/or likely consumer confusion caused by Defendants' use of the

1 LADY A trademark, Defendants' awareness of Ms. White and the LADY A trademark; injury to  
2 Ms. White caused by Defendants' use of the LADY A trademark, and any other matters that may  
3 be relevant based on the parties' claims and defenses.

4 **Defendants:** Defendants anticipate taking discovery regarding Ms. White's alleged  
5 common law trademark rights and her use any alleged trademarks; evidence supporting  
6 Ms. White's alleged lost sales, diminished brand identity, loss of goodwill, and any other alleged  
7 damages resulting from Defendants' alleged acts; and any other matters that may be relevant based  
8 on the parties' claims and defenses.

9 **(C) electronically stored information;**

10 The parties agree that a modified version of the Court's Model Agreement Regarding  
11 Discovery of Electronically Stored Information should apply to this action. The parties will draft  
12 a Stipulated ESI Discovery Agreement to present to the Court.

13 **(D) privilege issues;**

14 The parties do not believe that this case will involve unique or extensive issues concerning  
15 privilege or work product protection. The parties intend to include in their Stipulated ESI  
16 Discovery Agreement procedures for asserting privilege or work product claims for withheld  
17 discovery. The parties will agree to abide by Fed. R. Evid. 502(b) with respect to any inadvertently  
18 produced privileged or otherwise protected information. The parties also agree that neither party  
19 is required to log (a) communications with its outside counsel that occurred after the filing of the  
20 Complaint; (b) redactions so long as the basis for the redaction is clear in the redacted document;  
21 or (c) attorney-client privileged or work-product information generated after the filing of the  
22 Complaint.

23 **(E) proposed limitations on discovery;**

24 The parties do not suggest any limitations on discovery beyond those provided for in the  
25 Federal Rules of Civil Procedure and Local Civil Rules.

26 **(F) the need for any discovery related orders.**

1 The parties anticipate needing a protective order before the production of certain discovery,  
2 and will propose a form of protective order based on this District's model.

3 **5. The parties' views, proposals, and agreements, by corresponding paragraph letters**  
4 **(A, B, etc.), on all items set forth in Local Civil Rule 26(f)(1), which includes the following**  
5 **topics:**

6 **(A) prompt case resolution;**

7 The parties have been ordered to mediate their dispute in Tennessee no later than December  
8 10, 2020. That mediation, if successful, will also resolve this litigation.

9 **(B) alternative dispute resolution;**

10 The parties have been ordered to mediate their dispute in Tennessee no later than December  
11 10, 2020. That mediation, if successful, will also resolve this litigation.

12 **(C) related cases;**

13 Substantially the same issues between the same parties are pending in *Scott v. White*, 3:20-  
14 cv-00585 (M.D. Tenn.).

15 **(D) discovery management;**

16 The parties agree to work together to minimize discovery disputes and attempt to resolve  
17 such; disputes informally prior to involving the Court; to present discovery disputes to the Court  
18 by informal means; to serve and accept service of documents not filed using CM/ECF via email.

19 **(E) anticipated discovery sought;**

20 Ms. White anticipates taking discovery regarding Defendants' use of the LADY A  
21 trademark; Defendants' marketing, promotion, and sales of any goods or services under the LADY  
22 A trademark, actual and/or likely consumer confusion caused by Defendants' use of the LADY A  
23 trademark, Defendants' awareness of Ms. White and the LADY A trademark; injury to Ms. White  
24 caused by Defendants' use of the LADY A trademark, and any other matters that may be relevant  
25 based on the parties' claims and defenses.

26 Defendants anticipate taking discovery regarding Ms. White's alleged common law  
27 trademark rights and her use any alleged trademarks; evidence supporting Ms. White's alleged lost

1 sales, diminished brand identity, loss of goodwill, and any other alleged damages resulting from  
2 Defendants' alleged acts; and any other matters that may be relevant based on the parties' claims  
3 and defenses.

4 **(F) phasing of motions;**

5 The parties foresee no need to phase motions at this time.

6 **(G) preservation of discoverable information;**

7 The parties have taken reasonable and proportional steps to preserve relevant information  
8 and documents in their custody, possession, and control.

9 **(H) privilege issues;**

10 The parties agree to return any inadvertently disclosed privileged or otherwise protected  
11 information to the disclosing party under Fed. R. Evid. 502(b).

12 **(I) Model Protocol for Discovery of ESI;**

13 The parties are in the process of drafting a Stipulated ESI Discovery Agreement, adapted  
14 from the Model Protocol, to present to the Court.

15 **(J) alternatives to Model Protocol.**

16 An alternative is unnecessary because the parties anticipate adapting the Model Protocol  
17 in a Stipulated ESI Discovery Agreement.

18 **6. The date by which discovery can be completed.**

19 Plaintiff's position: The parties' litigation in the Middle District of Tennessee is the subject  
20 of a pending motion to dismiss or transfer that is likely to be meritorious. Because discovery in  
21 that proceeding has been stayed pending the motion, which is unlikely to be decided on for several  
22 months or longer, Ms. White requests that fact discovery be permitted to proceed in this forum.  
23 Should discovery proceed, Ms. White believes that fact discovery can be completed by May 26,  
24 2021, and expert discovery can be completed by July 29, 2021.

25 Defendants' position: Substantially similar litigation is pending in the Middle District of  
26 Tennessee. Defendants believe that no discovery cutoff or trial date should be scheduled in this  
27 matter until the Court in that case schedules trial, as that case was filed before the instant case.

1 The Tennessee Court has not set a trial date but has suggested trial will occur no sooner than early-  
2 2022. In the event the Court nonetheless decides to set a discovery cutoff and trial date, Defendants  
3 believe discovery can be completed by August 30, 2021.

4 **7. Whether the case should be bifurcated by trying the liability issues before the**  
5 **damages issues, or bifurcated in any other way.**

6 The parties agree that bifurcation is unwarranted.

7 **8. Whether the pretrial statements and pretrial order called for by Local Civil Rules**  
8 **16(e), (h), (i), and (k), and 16.1 should be dispensed with in whole or in part for the sake of**  
9 **economy.**

10 The parties do not waive the Pretrial Statement and Pretrial Order requirements.

11 **9. Any other suggestions for shortening or simplifying the case.**

12 The parties will work cooperatively to identify any opportunities to streamline this case.

13 **10. The date the case will be ready for trial. The Court expects that most civil cases**  
14 **will be ready for trial within a year after filing the Joint Status Report and Discovery Plan.**

15 Plaintiff's position: Ms. White believes that the parties can be ready for trial by November  
16 2021, if not sooner.

17 Defendants' position: Substantially similar litigation is pending in the Middle District of  
18 Tennessee. Defendants believe that no discovery cutoff or trial date should be scheduled in this  
19 matter until the Court in that case schedules trial, as that case was filed before the instant case.

20 The Tennessee Court has not set a trial date but has suggested trial will occur no earlier than early  
21 2022. Defendants believes that the parties' claims and counterclaim can be decided on dispositive  
22 motions and no trial will be necessary. In the event the Court nonetheless decides to set a discovery  
23 cutoff and trial date, Defendants believe the case can be ready for trial by November 30, 2021.

24 **11. Whether the trial will be jury or non-jury.**

25 Ms. White demands a trial by jury.

26 **12. The number of trial days required.**

27 The parties anticipate that a trial, if any, will require approximately six days.

1 **13. The names, addresses, and telephone numbers of all trial counsel.**

2 **A. Plaintiff's counsel**

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6 **B. Defendants' counsel**

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10 1000 Louisiana Street, Suite 1700

11 Houston, Texas 77002

12 Telephone: 713.374.3570

13 **14. The dates on which the trial counsel may have complications to be considered in**  
14 **setting a trial date.**

15 Plaintiff's position: At this time, Plaintiff's counsel are unaware of any dates on which trial  
16 counsel may have complications to be considered in setting a trial date.

17 Defendants' position: Substantially similar litigation is pending in the Middle District of  
18 Tennessee. Defendants believe that no discovery cutoff or trial date should be scheduled in this  
19 matter until the Court in that case schedules trial, as that case was filed before the instant case. At  
20 that time, Defendants' counsel will provide information about possible conflicts with a trial date.

21 **15. If, on the due date of the Report, all defendant(s) or respondents(s) have not been**  
22 **served, counsel for the plaintiff shall advise the Court when service will be effected, why it**  
23 **was not made earlier, and shall provide a proposed schedule for the required FRCP 26(f)**  
24 **conference and FRCP 26(a) initial disclosures.**

25 Plaintiff has attempted to serve Defendant Charles Kelley at his home address, but was  
26 unable to locate a current address. Defendant's counsel declined to disclose Mr. Kelley's address  
27 or accept service on his behalf, and agreed instead to accept a waiver of service pursuant to Fed.



1 R. Civ. P. 4. Plaintiff's counsel provided Mr. Kelley's counsel with the waiver of service summons  
2 on November 17, 2020. Plaintiff's counsel is awaiting Mr. Kelley's return of the signed form.  
3 Because Mr. Kelley is represented by the same counsel as the other defendants, and is similarly  
4 situated to the other defendants, the parties agree that another FRCP 26(f) conference is  
5 unnecessary, and that Defendants may provide amended initial disclosures to account for Mr.  
6 Kelley within 30 days of filing the executed waiver of service

7 **16. Whether any party wishes a scheduling conference before the Court enters a**  
8 **scheduling order in the case.**

9 Defendants request a conference with the Court before the Court sets the schedule for this  
10 case.

11 **17. List the date(s) that each and every non-governmental corporate party filed its**  
12 **disclosure statement pursuant to Fed. R. Civ. P. 7.1 and Local Rule 7.1.**

13 Defendant Lady A Entertainment LLC filed its disclosure statement on November 17,  
14 2020.

15  
16 Respectfully submitted on November 30, 2020.

17 Cooley LLP

18 *By/s/ Judd Lauter*

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*Attorneys for Defendants Lady A  
Entertainment LLC, David Haywood, and  
Hillary Scott*

**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record were served with a copy of the foregoing through the Court's CM/ECF system on November 30, 2020.

*/s/ Judd Lauter*  
Judd D. Lauter

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