

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

ANITA WHITE,

Plaintiff,

v.

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

Defendants.

Case No. 2:20-CV-01360-RSM

**OPPOSITION TO DEFENDANTS' MOTION TO  
DISMISS, OR IN THE ALTERNATIVE, TO  
TRANSFER OR STAY**

**NOTE ON MOTION CALENDAR:  
FRIDAY, NOVEMBER 6, 2020**

**JURY DEMAND**

**TABLE OF CONTENTS**

		<b>Page</b>
1	I. INTRODUCTION .....	1
2	II. STATEMENT OF FACTS .....	2
3	III. ARGUMENT .....	3
4	A. Ms. White’s Motion to Dismiss is Likely to Succeed. ....	4
5	B. A Stay Would Prejudice Ms. White by Delaying a Resolution.....	8
6		
7	IV. CONCLUSION.....	9
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
1 <b>Cases</b>	
2 <i>Alltrade, Inc. v. Uniweld Prods., Inc.</i> ,	
3 946 F.2d 622 (9th Cir. 1991) .....	1, 4
4 <i>America’s Collectibles Network, Inc. v. Scorpiniti</i> ,	
5 2007 WL 470351 (E.D. Tenn. Feb. 8, 2007) .....	6
6 <i>AmSouth Bank v. Dale</i> ,	
7 386 F.3d 763 (6th Cir. 2004) .....	7
8 <i>Catholic Health Partners v. CareLogistics, LLC</i> ,	
9 973 F. Supp. 2d 787 (N.D. Ohio 2013).....	7
10 <i>Int’l Union, United Automobile, Aerospace &amp; Agric. Implement Workers of Am.-</i>	
11 <i>UAW v. Dana Corp.</i> , 1999 WL 33237054 (N.D. Ohio 1999) .....	7
12 <i>J.M. Smucker Co. v. Promotion in Motion, Inc.</i> ,	
13 420 F. Supp. 3d 646 (N.D. Ohio 2019).....	5
14 <i>Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.</i> ,	
15 342 U.S. 180 (1952).....	4
16 <i>Ontel Prods. Corp. v. Mindscope Prods.</i> ,	
17 220 F. Supp. 3d 555 (D.N.J. 2016) .....	5
18 <i>Pacesetter Sys., Inc. v. Medtronic, Inc.</i> ,	
19 678 F.2d 93 (9th Cir. 1982) .....	4
20 <i>Power Sys., Inc. v. Hygenic Corp.</i> ,	
21 2014 WL 2865811 (E.D. Tenn. June 24, 2014).....	5
22 <i>Tempco Elec. Heater Corp. v. Omega Eng’g, Inc.</i> ,	
23 819 F.2d 746 (7th Cir. 1987) .....	7
24 <i>Upstart Grp. LLC v. Upstart Grp. Inc.</i> ,	
25 2020 WL 869743 (W.D. Wash. Jan. 2, 2020).....	8
26 <i>Upstart Grp. LLC v. Upstart Grp. Inc.</i> ,	
2020 WL 1934059 (W.D. Wash. Apr. 22, 2020).....	8, 9
<i>Zide Sport Shop of Ohio, Inc. v. Ed Tobergate Assocs.</i> ,	
16 F. App’x 433 (6th Cir. 2001) .....	7
<b>Statutes</b>	
28 U.S.C. § 1404(a) .....	4

1 Plaintiff Anita White, through her undersigned counsel, hereby submits this Opposition to  
2 Defendants' Motion to Dismiss, or in the Alternative, to Transfer or Stay (Dkt. 26), filed on behalf  
3 of Defendants Lady A Entertainment, LLC, David Haywood, and Hillary Scott (together "Lady  
4 Antebellum").

5 **I. INTRODUCTION**

6 Ms. White is a Seattle-based independent recording artist, who has used the trademark  
7 LADY A for nearly thirty years. In June, Lady Antebellum changed their band name to LADY A  
8 in violation of Ms. White's trademark rights. The band then pre-emptively sued Ms. White for  
9 declaratory relief in the United States District Court for the Middle District of Tennessee (the  
10 "Tennessee Action"), after she had rejected coexistence terms that the band had, on their own  
11 initiative, reached out to her to propose.

12 Lady Antebellum now invokes the "first-to-file" rule as grounds for the Court to dismiss,  
13 transfer, or stay Ms. White's substantive trademark infringement action. But the "first-to-file" rule  
14 should not be applied when, as is the case here, the first-filed action is an improper anticipatory  
15 lawsuit made for the purpose of depriving the natural plaintiff of her choice of forum. As Lady  
16 Antebellum acknowledges, Ms. White has moved to dismiss the Tennessee Action for lack of  
17 personal jurisdiction and on the ground that it is an improper anticipatory lawsuit (the "Motion to  
18 Dismiss"). If Ms. White is successful on these arguments, which is likely, then there effectively  
19 is no first-filed action to justify dismissal. Under these circumstances, the "jurisdictional  
20 uncertainty" of the first-file case renders dismissal on first-to-file grounds improper. *See Alltrade,*  
21 *Inc. v. Uniweld Prods., Inc.*, 946 F.2d 622, 628-29 (9th Cir. 1991).

22 In addition, equity militates against staying this proceeding pending a determination of the  
23 Motion to Dismiss. The Middle District of Tennessee has already stayed substantive discovery in  
24 that action until a decision is reached on the Motion to Dismiss. If this action is also stayed, Ms.  
25 White's claims will effectively be placed in hibernation while the ongoing harm caused by Lady  
26 Antebellum's use of the LADY A mark continues unabated.

1 **II. STATEMENT OF FACTS**

2 Ms. White is an independent recording artist and a resident of Seattle, Washington. Dkt.  
3 27-19 (“White Decl.”) ¶¶ 2-3. For nearly thirty years, Ms. White, an independent artist, has  
4 performed music under the trademark and stage name LADY A. *Id.* ¶ 2. Throughout her career  
5 as a performing artist, Ms. White has been based out of the Seattle, Washington area. *Id.* ¶ 3.

6 After the death of George Floyd on May 25, 2020, and the protests that followed, Lady  
7 Antebellum announced on June 11, 2020 that it would no longer perform as “Lady Antebellum.”  
8 *Id.* ¶ 5. Thereafter, they would perform as “Lady A.” *Id.* Ms. White learned of Lady Antebellum’s  
9 name change from texts from friends. *Id.* ¶ 6. Ms. White, as an independent artist of limited  
10 means, and having no experience with trademark disputes, she retained pro bono counsel in  
11 Memphis, Tennessee based on a referral from a friend. *Id.* ¶ 8.

12 The next day, Ms. White was contacted by Lady Antebellum’s management team, who  
13 invited her to participate in a call with Lady Antebellum’s counsel and Defendant Hillary Scott.  
14 *Id.* ¶ 9. This call led to a further invitation from Lady Antebellum for Ms. White to attend a June  
15 15, 2020 Zoom meeting with the band to discuss her concerns about their use of the LADY A  
16 mark. *Id.* ¶ 10. Although Ms. White agreed to explore the possibility of coexistence, she remained  
17 deeply concerned that use of the LADY A name, in particular by a large, well-known and well-  
18 financed group like Lady Antebellum, would overwhelm and erase the brand identity that she had  
19 developed over decades of work. *Id.* ¶¶ 2, 8. Immediately after the June 15 meeting, Lady  
20 Antebellum had a draft agreement at the ready, *id.* ¶ 12, one that did not address the concerns that  
21 Ms. White had expressed. Dkt. 27-5 (the “Declaratory Compl.”) ¶ 28.

22 Over the next week, Ms. White’s pro bono counsel continued to negotiate with Lady  
23 Antebellum. White Decl. ¶ 13. But the revised agreement that she received on June 24, 2020  
24 included payment of up to \$10,000 “attorneys’ fees and trademark filing fees incurred in the  
25 resolution of this dispute,” without any compensation for her injury, or any concrete solution for  
26 the inherent conflict of the parties sharing the same name and trademark. *Id.* ¶ 14. Ms. White

1 concluded that her counsel was not adequately representing her interests, and retained new pro  
2 bono counsel at Cooley LLP. *Id.* ¶ 15.

3 On June 25, 2020, Ms. White’s new counsel, Brendan Hughes, contacted Lady  
4 Antebellum’s attorneys to advise them of her new representation. Declaratory Compl. ¶ 30. Mr.  
5 Hughes identified himself as trademark litigation counsel and asked that Lady Antebellum’s  
6 attorneys direct further communications concerning the dispute to Cooley. *Id.*

7 On July 6, Mr. Hughes provided Lady Antebellum with a revised draft settlement  
8 agreement. Declaration of Judd Lauter (“Lauter Decl.”), Ex. A ¶ 4. This was only the second  
9 email communication between Lady Antebellum and Ms. White’s new counsel, and the first  
10 substantive correspondence. *Id.* Without warning, Lady Antebellum filed the Complaint on July  
11 8th. *See* Declaratory Compl.; Lauter Decl., Ex. A ¶ 5.

12 Ms. White filed a motion to dismiss or, in the alternative transfer, the Tennessee Action on  
13 September 16, 2020. *See* Dkt. 27-18. Ms. White seeks dismissal of Lady Antebellum’s complaint  
14 on the grounds that the Middle District of Tennessee lacks personal jurisdiction over Ms. White,  
15 and because Lady Antebellum’s complaint seeking declaratory relief was an improper anticipatory  
16 lawsuit. *Id.* On September 28, 2020, Lady Antebellum requested the opportunity to conduct  
17 jurisdictional discovery, which was granted. Lauter Decl. ¶ 3. Based on the schedule for  
18 jurisdictional discovery set by the Court, and the deposition of Ms. White scheduled for November  
19 23, 2020, the Motion to Dismiss will not be fully briefed until at least December 14, 2020. *Id.* ¶  
20 4-5. During the Initial Case Management Conference in the Tennessee Action, Magistrate Judge  
21 Barbara D. Holmes warned the parties that litigation in Tennessee is moving slowly, and the  
22 presiding judge may not render a decision on the Motion to Dismiss until April or later. *Id.* ¶ 6.  
23 She further cautioned that a firm trial date is unlikely if the action remains in Tennessee. *Id.*

### 24 **III. ARGUMENT**

25 The first-to file rule is “a generally recognized doctrine of federal comity which permits a  
26 district court to decline jurisdiction over an action when a complaint involving the same parties

1 and issues has already been filed in another district.” *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678  
2 F.2d 93, 94-95 (9th Cir. 1982). If the rule applies, the court in the second-filed action may transfer,  
3 dismiss, or stay the proceeding to allow the court in the first suit the opportunity to determine  
4 whether to keep the dispute. *Alltrade*, 946 F.2d at 622.

5 However, the rule is not to be applied mechanically. *Id.* at 627-28 (quoting *Kerotest Mfg.*  
6 *Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183 (1952)). A court “can, in the exercise of [its]  
7 discretion, dispense with the first-filed principle for reasons of equity.” *Id.* at 628. “The  
8 circumstances under which an exception to the first-to-file rule typically will be made include bad  
9 faith, anticipatory suit, and forum shopping.” *Id.* (internal citations omitted.)

10 The record before the Court reflects precisely those circumstances in which the first-to-file  
11 rule should be excepted. Ms. White is seeking dismissal of the Tennessee Action because the court  
12 lacks personal jurisdiction over her, and because Lady Antebellum’s lawsuit was anticipatory and  
13 intended to deprive Ms. White of the opportunity to litigate in her home forum. As explained in  
14 further detail below, the Motion to Dismiss is likely to succeed, and thus dismissal or transfer of  
15 this action is unwarranted. Moreover, given that substantive discovery in the Tennessee Action  
16 has been stayed pending the Motion to Dismiss, a stay here will result in a lengthy and indefinite  
17 delay in resolving the parties’ dispute on the merits. To avoid this, discovery should proceed.

18 **A. Ms. White’s Motion to Dismiss is Likely to Succeed.**

19 Defendants, in describing the Motion to Dismiss the Tennessee Action, grossly  
20 mischaracterize (and even invent) the facts and ignore the law. It is simply not true that “the  
21 Tennessee MTD is based largely on the existence of this action”—it is not based on this action *at*  
22 *all*. Ms. White has asserted two grounds for dismissal of the Tennessee Action: (1) lack of  
23 personal jurisdiction over Ms. White, and (2) Defendants’ complaint in Tennessee is an improper  
24 anticipatory lawsuit. In the alternative, Ms. White has requested transfer of the Tennessee Action  
25 “[f]or the convenience of parties and witnesses, in the interest of justice,” under 28 U.S.C.  
26 § 1404(a). As set forth below, each of these claims is likely to succeed on the merits.

1           **The Middle District of Tennessee Lacks Personal Jurisdiction over Ms. White:** In a  
 2 declaratory judgment action, the relevant inquiry for establishing specific jurisdiction is “the extent  
 3 to which a defendant purposefully directed enforcement activities at residents of the forum, and  
 4 the extent to which the declaratory judgment claim arises out of or relates to those activities[.]”  
 5 *Power Sys., Inc. v. Hygenic Corp.*, 2014 WL 2865811, at \*6 (E.D. Tenn. June 24, 2014) (internal  
 6 quotations and citations omitted). This is because claims for declaratory relief arise from the  
 7 defendant’s enforcement efforts, and the extent to which enforcement activities were directed to  
 8 the forum, rather than the allegedly non-infringing activity. *Id.* at \*6-7. Under this analysis, a  
 9 declaratory defendant’s business activities in the forum state have no bearing on the issues giving  
 10 rise to the claim for declaratory relief. *Id.* See e.g. *J.M. Smucker Co. v. Promotion in Motion, Inc.*,  
 11 420 F. Supp. 3d 646, 654-55 (N.D. Ohio 2019) (internal citation omitted) (finding no purposeful  
 12 availment despite “massive sales, marketing, and promotional activities targeting Ohio  
 13 consumers”); *Ontel Prods. Corp. v. Mindscope Prods.*, 220 F. Supp. 3d 555, 561 (D.N.J. 2016)  
 14 (explaining that “the relevant contacts relate to the defendant’s enforcement activities, not to where  
 15 the defendant commercialized its products.”).

16           Lady Antebellum states in a conclusory manner that Ms. White has a “strong history and  
 17 connection with Tennessee” based solely on allegations that she has had a few performances in  
 18 the State and because, in the immediate aftermath of Lady Antebellum’s name change and for a  
 19 period of less than two weeks, she accepted the help of pro bono counsel located in Memphis. Dkt.  
 20 26 at p. 10:12-13 (“Mot.”). Lady Antebellum does not cite a single legal precedent in this section  
 21 of their brief, let alone one that supports their position. The law is clear, however: Ms. White’s  
 22 business activities in Tennessee do not materially bear on the jurisdictional analysis, because they  
 23 are unrelated to her enforcement activity in the state; and her communications with Lady  
 24 Antebellum, including through counsel, are insufficient, without more, to support the exercise of  
 25 personal jurisdiction. It is well established that “a non-resident defendant who sends infringement-  
 26 based letters and makes infringement-based telephone calls to a trademark infringing resident



1 plaintiff does not, by those acts alone, purposefully avail himself of the benefits and protections of  
2 the laws of the resident plaintiff's state sufficient under due process to be" subject to specific  
3 jurisdiction. *America's Collectibles Network, Inc. v. Scorpiniti*, 2007 WL 470351, at \*3 (E.D.  
4 Tenn. Feb. 8, 2007) (citing cases).

5 Lady Antebellum makes much of Ms. White's fleeting engagement of counsel located in  
6 Memphis. But by Lady Antebellum's own admission, the actions of her prior pro bono counsel  
7 are unrelated to their alleged need to seek declaratory relief. His only involvement in this matter,  
8 which lasted less than two weeks, was limited to negotiation of an agreement that had a payment  
9 of up to \$10,000 in legal fees while failing to address his client's concerns. White Decl. ¶ 14. As  
10 Lady Antebellum represents in their complaint in the Tennessee Action, it was the combination of  
11 statements made by Ms. White (located in Seattle, Washington), *id.* ¶ 2, and actions by new counsel  
12 (located in Washington, D.C.), that allegedly "giv[es] rise" to the Middle District of Tennessee's  
13 "jurisdiction under 28 U.S.C. §§ 2201 and 2202." Declaratory Compl. ¶ 31.

14 The facts and the law favor Ms. White, and she is likely to succeed on the merits of her  
15 motion to dismiss for lack of personal jurisdiction.

16 **The Tennessee Action is an Improper Anticipatory Lawsuit:** Ms. White also seeks  
17 dismissal of the Tennessee Action on the ground that it is an improper anticipatory lawsuit. Shortly  
18 after Ms. White retained trademark litigation counsel at Cooley, and upon Cooley's first  
19 substantive communication with Lady Antebellum's attorneys—a revised draft settlement  
20 agreement—Lady Antebellum immediately initiated the Tennessee Action in the forum most  
21 convenient for them. *See* Declaratory Compl. ¶ 30; Lauter Decl., Ex. A ¶¶ 4-5. At that point, the  
22 parties' discussions regarding the LADY A mark had lasted roughly three weeks in total. *See*  
23 White Decl. ¶¶ 9-10. In circumstances like these, courts in the Sixth Circuit have not hesitated to  
24 dismiss a first-filed declaratory judgment claim in favor of the subsequently filed substantive  
25 complaint. Indeed, courts "take a dim view of declaratory plaintiffs who file their suits mere days  
26 or weeks before the coercive suits filed by a 'natural plaintiff' and who seem to have done so for

1 the purpose of acquiring a favorable forum.” *AmSouth Bank v. Dale*, 386 F.3d 763, 788 (6th Cir.  
2 2004).

3 For example, in *Zide Sport Shop of Ohio, Inc. v. Ed Tobergate Assocs.*, the Sixth Circuit  
4 affirmed the district court’s decision to dismiss a declaratory judgment action that the plaintiffs  
5 brought a day before a negotiation deadline extension expired without informing the other side.  
6 16 F. App’x 433, 437 (6th Cir. 2001). Quoting the district court’s finding, the Sixth Circuit  
7 explained in language equally applicable here: “If Plaintiffs’ conduct was not mere deceptive  
8 gamesmanship, then they would have informed Defendants that they did not intend to make  
9 another settlement offer and would prefer to seek a judicial resolution.” *Id.* at 438. *See also*  
10 *AmSouth Bank*, 386 F.3d at 789-90 (holding that the factual record supported the “unavoidable  
11 conclusion that procedural fencing had occurred” when declaratory judgment plaintiffs filed the  
12 action during ongoing discussions with defendants regarding the course of litigation); *Catholic*  
13 *Health Partners v. CareLogistics, LLC*, 973 F. Supp. 2d 787, 795 (N.D. Ohio 2013) (“If plaintiffs  
14 wanted court intervention, they should have been clear about their intentions.”); *Int’l Union,*  
15 *United Automobile, Aerospace & Agric. Implement Workers of Am.-UAW v. Dana Corp.*, 1999  
16 WL 33237054, at \*6 (N.D. Ohio 1999) (“Dana’s decision to sue before responding, as Mr. Waders  
17 had told Mr. Werking that it would, to the union’s request for further information shows that it  
18 wanted to get to the courthouse before the union knew the race was underway.”).

19 Lady Antebellum is guilty of the same kind of deceptive gamesmanship criticized by courts  
20 in the cases cited above. Accordingly, the Middle District of Tennessee is unlikely to reward Lady  
21 Antebellum for rushing to the courthouse to secure a convenient forum. *Dana*, 1999 WL  
22 33237054, at \*3 (“The federal declaratory judgment is not a prize to the winner of the race to the  
23 courthouse.”) (quoting *Tempco Elec. Heater Corp. v. Omega Eng’g, Inc.*, 819 F.2d 746, 749-50  
24 (7th Cir. 1987)).

25 **In the Alternative, Transfer is Warranted:** Lady Antebellum does not address the  
26 substance of Ms. White’s request for transfer in the alternative. Instead, the band claims that Ms.

1 White filed the present action solely as a pretext to argue that transfer is warranted. Mot. at p.  
2 11:12-16. But Ms. White’s justification for seeking transfer is self-evident. First, as explained  
3 above, Ms. White’s relevant connections with the State of Tennessee are *de minimis*. Second, and  
4 as Lady Antebellum knows, Ms. White is an independent artist of limited means who resides in  
5 *this* forum. White Decl. ¶¶ 2-3, 8. As she has represented in the Tennessee Action, the Western  
6 District of Washington is where all of the evidence in her possession is located, as well as most of  
7 the non-party witnesses whom she anticipates calling upon. *Id.* ¶ 17. The Western District of  
8 Washington is the obvious choice of forum for Ms. White. If the Tennessee Action is not  
9 dismissed outright, transfer is warranted given, among other reasons, the location of third-party  
10 witnesses and the significant disparity in the parties’ abilities to litigate in distant forums. *See id.*  
11 ¶¶ 17-18.

12 **B. A Stay Would Prejudice Ms. White by Delaying a Resolution.**

13 Staying this action will delay adjudication of Ms. White’s claims, even as Ms. White  
14 continues to suffer ongoing injury from Lady Antebellum’s misconduct. Lady Antebellum argues  
15 that a stay is warranted because it would “eliminate risks associated with duplicative litigation,  
16 such as wasting judicial resources and the risk of conflicting results.” Mot. at p. 11. But the  
17 possibility of inconsistent results, which is minimal given Ms. White’s likelihood of success on  
18 the Motion to Dismiss and the early posture of each proceeding, is far outweighed by the certain  
19 dormancy that would follow a stay.

20 Judge Jones’ decision to stay the action in *Upstart Grp. LLC v. Upstart Grp. Inc.* is  
21 instructive. 2020 WL 1934059, at \*1 (W.D. Wash. Apr. 22, 2020). That matter, like this one,  
22 concerned allegations of trademark infringement; and there, as here, the complaint in Washington  
23 was filed subsequent to a declaratory judgment action in another state, Illinois, which was the  
24 subject of a pending motion to dismiss for lack of personal jurisdiction and on the ground that the  
25 earlier complaint was an improper anticipatory lawsuit. *Id.* On the recommendation of Judge  
26 Tsuchida (*see Upstart Grp. LLC v. Upstart Grp. Inc.*, 2020 WL 869743, at \*3 (W.D. Wash. Jan.

1 2, 2020)), Judge Jones stayed the action in Washington pending the outcome of the motion to  
 2 dismiss in Illinois. *Upstart*, 2020 WL 1934059 at \*1. Since then, it appears from the public record  
 3 that there has been no progress in either proceeding. Lauter Decl. ¶ 7.

4 The same fate is likely to befall Ms. White and Lady Antebellum if this action is stayed.  
 5 Magistrate Judge Holmes in the Middle District of Tennessee has warned the parties that litigation  
 6 in Tennessee is moving slowly. *Id.* ¶ 6. Judge Holmes made it a point to share with the parties  
 7 that the presiding judge may not render a decision on the Motion to Dismiss until April or later,  
 8 and cautioned that a firm trial date is unlikely. *Id.* The very real risk of putting the parties' dispute  
 9 into hibernation for a period of six months or more, far outweighs the possibility of reaching an  
 10 inconsistent result with the Middle District of Tennessee. Discovery should be permitted to  
 11 proceed.

#### 12 IV. CONCLUSION

13 For the reasons set forth above, Ms. White respectfully requests that Defendants' Motion  
 14 to Dismiss or in the Alternative, to Transfer or Stay be denied.

15 Dated: November 2, 2020

16 Respectfully submitted,

17 /s/ Judd D. Lauter

Judd D. Lauter (*pro hac vice*)

18 COOLEY LLP

3175 Hanover Street

19 Palo Alto, CA 94304

20 Tel.: (650) 843-5960

Fax: (650) 843-7400

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

22 Christopher B. Durbin (WSBA #41159)

23 COOLEY LLP

1700 Seventh Avenue, Suite 1900

24 Seattle, WA 98101-1355

25 Tel.: (206) 452-8700

Fax: (206) 452-8800

26 Email: [cdurbin@cooley.com](mailto:cdurbin@cooley.com)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Brendan J. Hughes (*pro hac vice*)  
Jane Van Benten (*pro hac vice*)  
COOLEY LLP  
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)  
Email: [jvanbenten@cooley.com](mailto:jvanbenten@cooley.com)

Joseph M. Drayton (*pro hac vice*)  
COOLEY LLP  
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)

Counsel for Plaintiff ANITA WHITE