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Tracii Guns and Philip Lewis

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12
13 TRACII GUNS, an individual; and
PHILIP LEWIS, an individual,

14 Plaintiffs,

15 v.

16 STEPHEN RILEY, an individual;
SCOTT GRIFFIN, an individual;
17 KELLY NICKELS, an individual;
KURT FROHLICH, an individual;
18 ERIC BAKER, an individual;
DANIEL SULLIVAN BIGG,
19 an individual; HARDCORE, INC.,
a California corporation d/b/a RIVERTON
20 ONE MUSIC; EPIC RIGHTS, LLC,
a California Limited Liability Company,
21 previously registered as Epic Rights, Inc.,
a California corporation; NEW BREED
22 LLC, a California Limited Liability
Company; BIGG TIME
23 ENTERTAINMENT, INC., a California
corporation; GOLDEN ROBOT GLOBAL
24 ENTERTAINMENT PTY LTD,
an Australia proprietary limited company;
25 STEPHEN RILEY AND TRACI [sic]
GUNS PARTNERSHIP, a purported
26 entity of unknown form; and
DOES 1 through 10, inclusive,

27 Defendants.
28

Case No. 2:20-cv-00270

COMPLAINT FOR:

- (1) **DECLARATORY JUDGMENT;**
- (2) **UNFAIR COMPETITION AND TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1125;**
- (3) **FALSE ADVERTISING UNDER 15 U.S.C. § 1125;**
- (4) **UNFAIR COMPETITION UNDER CAL. CIV. CODE § 17200 et seq.;**
- (5) **CALIFORNIA COMMON LAW UNFAIR COMPETITION;**
- (6) **UNAUTHORIZED USE OF LIKENESS UNDER CAL. CIV. CODE §3344 AND CALIFORNIA COMMON LAW;**
- (7) **BREACH OF CONTRACT;**
- and
- (8) **CONVERSION**

DEMAND FOR JURY TRIAL

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1 Plaintiffs Tracii Guns and Philip Lewis (“Plaintiffs), by and through their
2 attorneys, assert this Complaint against Defendants Stephen Riley, Scott Griffin,
3 Kelly Nickels, Kurt Frohlich, Eric Baker, Daniel Sullivan Bigg, Hardcore, Inc.,
4 Epic Rights, LLC, New Breed LLC, Bigg Time Entertainment, Inc., Golden Robot
5 Global Entertainment Pty Ltd, the Stephen Riley and Traci [sic] Guns Partnership,
6 and DOES 1 through 10 (collectively “Defendants”) as set forth below.

7 **THE PARTIES**

8 1. Plaintiff Tracii Guns is a resident of Los Angeles County, California.

9 2. Plaintiff Philip Lewis is resident of Clark County, Nevada.

10 3. On information and belief, Defendant Stephen Riley (“Riley”) is a
11 resident of Los Angeles County, California.

12 4. On information and belief, Defendant Scott Griffin is a resident of the
13 State of Nevada and has substantial connections with the State of California,
14 including frequently performing for money as a member of a rock and roll band in
15 the State of California, recording “masters” for various rock and roll albums in the
16 State of California, and entering into related contracts in the State of California.

17 5. On information and belief, Defendant Kelly Nickels is a resident of the
18 State of New York and has substantial connections with the State of California,
19 including frequently performing for money as a member of a rock and roll band in
20 the State of California, recording “masters” for various rock and roll albums in the
21 State of California, and entering into related contracts in the State of California.

22 6. On information and belief, Defendant Kurt Frohlich is a resident of the
23 State of Florida and has substantial connections with the State of California,
24 including frequently performing for money as a member of a rock and roll band in
25 the State of California, recording “masters” for various rock and roll albums in the
26 State of California, and entering into related contracts in the State of California.

27 7. On information and belief, Defendant Eric Baker is a resident of the
28 State of California.

1 8. On information and belief, Defendant Daniel Sullivan Bigg is a resident
2 of the State of California.

3 9. Defendant Hardcore, Inc. is a corporation formed and operating in the
4 State of California and occasionally doing business as Riverton One Music.

5 10. Defendant Epic Rights, LLC. (“Epic Rights”) is a limited liability
6 company formed and operating in the State of California. Epic Rights was previously
7 registered as Epic Rights, Inc. a California corporation. It converted to a limited
8 liability company in our about December, 2018.

9 11. Defendant New Breed LLC is a limited liability company, formed and
10 operating in the State of California.

11 12. Defendant Bigg Time Entertainment, Inc. is a corporation formed and
12 operating in the State of California.

13 13. Defendant Golden Robot Global Entertainment Pty Ltd is a proprietary
14 limited company formed in Australia and operating in the State of California. On
15 information and belief, Defendant Golden Robot Global Entertainment Pty Ltd
16 contracts with musicians to record “masters” in the State of California and then
17 controls distribution of those recordings throughout the State of California.

18 14. Defendant Stephen Riley and Traci [sic] Guns Partnership, an entity of
19 unknown form, is not and was never a valid entity (but is listed as the owner of U.S.
20 Trademark Registration Number 2,287,358 (“the ’358 Registration”), the federal
21 trademark registration at issue herein).

22 15. The Defendants designated as DOES 1-10, in their true capacities, are
23 corporations or other business entities are currently unknown to Plaintiffs. Therefore,
24 Plaintiffs sue them by fictitious names. Plaintiffs are informed and believe, and
25 therefore allege, that each of the Defendants designated as a DOES 1-10 are involved
26 in and/or responsible for the acts complained of herein, and Plaintiffs will ask leave
27 of this Court to amend their Complaint to insert the true names and capacities of
28 DOES 1-10 when they have been ascertained.

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1 JURISDICTION AND VENUE

2 16. This is an action for declaratory relief, unfair competition and trademark
3 infringement under the Lanham Act, 15 U.S.C. § 1125, false advertising under the
4 Lanham Act, 15. U.S.C. § 1125, California State statutory unfair competition under
5 California Business and Professions Code § 17200 et seq., California State common
6 law unfair competition, California State unauthorized use of likeness under
7 California Civil Code §3344 and California common law, breach of contract, and
8 conversion.

9 17. This Court has jurisdiction over the subject matter of this lawsuit
10 pursuant to, *inter alia*, 28 U.S.C. §§ 1331 and 1338(a). The Court also has jurisdiction
11 over the subject matter of this lawsuit pursuant to 15 U.S.C. § 1119, and the
12 Declaratory Judgment Act, 28 U.S.C. § 2201. The state law claims in this action arise
13 from the same common nucleus of operative facts and transactions, such that they
14 form part of the same case or controversy and a plaintiff would ordinarily be expected
15 to try them all in a single judicial proceeding. Accordingly, this Court has
16 supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C.
17 § 1367.

18 GENERAL ALLEGATIONS

19 ***Plaintiff Tracii Guns Forms L.A. Guns, Naming the Band After Himself***

20 18. In or about 1983, Plaintiff Tracii Guns formed a rock and roll band.
21 He named it “L.A. Guns.” The original band consisted of Plaintiff Tracii Guns (lead
22 guitar), Mike Jagosz (lead singer), Ole Beich (bass guitar), and Rob Gardner (drums).

23 19. Plaintiff Tracii Guns is the owner of common law trademark rights for
24 the standard character word mark, L.A. GUNS, and any related design mark or other
25 mark incorporating the L.A. GUNS word mark, throughout the United States, with a
26 first use in commerce date of March 1983, for goods and services including but not
27 limited to musical sound recordings; audio-visual recordings; clothing; entertainment
28 services in the nature of live musical performances; entertainment services in the

1 nature of visual and audio performances by a musical artist; entertainment services,
2 namely, live music concerts; and entertainment services in the nature of live traveling
3 tours by a musical entertainer.

4 20. Plaintiff Guns has used the L.A. GUNS mark on the above goods and
5 services continuously since 1983, Plaintiff Guns has invested substantial resources
6 in using and promoting the mark to the public, and the public associates the mark
7 with Plaintiff Guns as to the goods and services listed above.

8 21. In 1984, the original members of L.A. Guns recorded their debut
9 extended play record (“EP”) titled, *Collector’s Edition No. 1*. The EP was released
10 in 1985. Defendants Riley, Griffin, Nickels, and Frohlich (collectively, “Infringing
11 Band Members”) did not participate in recording this EP.

12 22. In 1985, Plaintiff Tracii Guns joined with Axl Rose to form a new band.
13 The newly formed group combined the names of the two bands to create Guns N’
14 Roses. However, Plaintiff Tracii Guns’s participation in Guns N’ Roses was short-
15 lived. After a falling out with Axl Rose, Plaintiff Tracii Guns left Guns N’ Roses.

16 23. The same year, Plaintiff Tracii Guns reformed L.A. Guns. With the
17 exception of himself, none of the original band members remained.

18 24. In 1987, Plaintiff Philip Lewis replaced Paul Black as lead singer.

19 25. In 1987, L.A. Guns recorded their debut, full-length, self-titled album,
20 *L.A. Guns*.¹ The album was released in 1987 and spent 33 weeks on the U.S.
21 *Billboard 200*. *L.A. Guns* featured both Plaintiffs Tracii Guns and Philip Lewis. Of
22 the Infringing Band Members, only Defendant Kelly Nickels participated in
23 recording the entire album, *L.A. Guns*. Defendant Stephen Riley contributed to a
24 single track on the album.

25
26
27 ¹ To avoid confusion between the band L.A. Guns and the self-titled album,
28 *L.A. Guns*, all references to the album (and all other album titles) appear herein
italized, while the band name appears in standard typeface.

1 ***Defendant Stephen Riley Joins L.A. Guns***

2 26. Between the time *L.A. Guns* was recorded and the time it was released,
3 Defendant Stephen Riley replaced Nickey Alexander as the drummer for L.A. Guns.
4 As a consequence, Defendant Riley was listed as the band's drummer in the album's
5 liner notes. Nickey Alexander was still credited as the drummer for the recorded
6 tracks.

7 27. In 1989, L.A. Guns recorded and released their second full-length
8 album, *Cocked and Loaded*. Plaintiffs Tracii Guns, Philip Lewis, and Defendant
9 Stephen Riley all appeared on the album. Defendants Griffin and Frohlich did not
10 contribute to the album. *Cocked and Loaded* spent 56 weeks on the U.S. *Billboard*
11 *200*. The album quickly "went gold" (selling over 500,000 copies nationwide) and
12 eventually reached platinum status (1,000,000 copies). One review focused heavily
13 on the Band's namesake: "Wildman guitarist Tracii Guns isn't exactly known for his
14 subtlety, but he comes up with some tasty stuff here—check out his acoustic riffing,
15 and the electric solo that wraps itself around your ears on the gypsy-ish
16 'Magdalaine.'"² The album also included one of L.A. Guns most recognizable hits,
17 "The Ballad of Jayne."

18 28. In 1991, L.A. Guns released their third full-length album, *Hollywood*
19 *Vampires*. *Hollywood Vampires* peaked at number 62 on the *Billboard Hot 100*.

20 ***L.A. Guns Membership Fluctuates***

21 29. In 1992, L.A. Guns fired Defendant Riley from the band for assaulting
22 Plaintiff Philip Lewis.

23 30. In 1995, the band released its fourth full-length album, *Vicious Circle*,
24 with its new drummer, Michael "Bones" Gershima. The album continued to feature
25 Plaintiff Tracii Guns on lead guitar and Plaintiff Philip Lewis on lead vocals. Of the
26

27 ² Janiss Garza, *Other Metal Releases*, CASH BOX MAGAZINE, Sept. 2, 1989,
28 <https://www.americanradiohistory.com/hd2/IDX-Business/Music/Archive-Cash-Box-IDX/80s/1989/CB-1989-09-02-OCR-Page-0011.pdf>

1 Infringing Band Members, only Defendant Kelly Nickels participated in recording
2 the album.

3 31. Plaintiff Philip Lewis left the band shortly after the release of
4 *Vicious Circle*.

5 32. In 1996, Defendant Riley rejoined the band. Between 1996 and 1999,
6 L.A. Guns, still featuring Plaintiff Tracii Guns on lead guitar, released two more
7 albums, *American Hardcore* (1996), *Shrinking Violet* (1999). Of the Infringing Band
8 Members, only Defendant Stephen Riley participated in recording these albums.

9 33. The band released *Man in the Moon* in 2001, which featured the return
10 of Plaintiff Philip Lewis, along with Plaintiff Tracii Guns and Defendant Stephen
11 Riley. The three also appeared on *Waking the Dead*, released in 2002. Of the
12 Infringing Band Members, only Defendant Stephen Riley participated in recording
13 these albums.

14 34. In all, Plaintiff Tracii Guns appeared on each of L.A. Guns first eight
15 full-length albums as well as two Eps and several compilations and re-releases
16 (as well as two subsequent full-length albums released in 2017 and 2019).

17 35. In June 1996, Defendant Riley incorporated Defendant Hardcore, Inc.
18 in the State of California. Defendant Riley alone controlled and currently controls
19 Defendant Hardcore, Inc. Shortly thereafter, he began operating Riverton One
20 Music, a fictitious firm name for Hardcore, Inc. Working with various record labels
21 and publishers, he assigned Riverton One (1) the right to collect performance and
22 mechanical royalties of the L.A. Guns albums and performances and (2) the
23 obligation to disperse those royalties to the members of the bands who participated
24 in each respective album.

25 ***Defendant Stephen Riley Asserts Control Over the L.A. Guns Trademark, Falsely***
26 ***Declaring the Existence of a Partnership***

27 36. In October, 1999, purporting to “help” Plaintiff Tracii Guns protect the
28 name of the band bearing Plaintiff Tracii Guns’s own name, Defendant Riley

1 registered a federal trademark for a design mark incorporating the words
2 “L.A. Guns”, U.S. Reg. Number 2,287,358 (“the ’358 Registration”). Though
3 Plaintiff Tracii Guns created the L.A. GUNS mark, was the first to use the mark on
4 the asserted goods and services, to this day continues to be the owner of all such
5 common law trademark rights, and Defendant Riley was not even in the band when
6 Plaintiff Tracii Guns created and first began use of the mark, Defendant Riley
7 registered the mark with the “Stephen Riley and Traci [sic] Guns Partnership” as the
8 listed owners of the mark.

9 37. In support of the trademark application Defendant Riley submitted a
10 declaration, under penalty of perjury, which contained knowingly false
11 representations regarding the creation and ownership of the mark. Similarly,
12 Defendant Riley continued to file Statements of Use affirming these false
13 representations.

14 38. For example, on the trademark application, Defendant Riley declared
15 that “he/she believes the applicant to be the owner of the trademark/service mark
16 sought to be registered.” Defendant Riley listed the applicant as a partnership
17 between himself and Plaintiff Tracii Guns. This was knowingly false for two reasons.
18 First, no such partnership was ever formed. Second, Plaintiff Tracii Guns never
19 agreed to share ownership of the L.A. GUNS trademark with Defendant Stephen
20 Riley or any such partnership.

21 39. Moreover, on the trademark application, Defendant Riley declared that
22 the “[d]ate of the first use of the mark in commerce” was 1987. Not coincidentally,
23 Defendant Riley joined the L.A. Guns band in 1987. But the mark had been in use
24 since Plaintiff Tracii Guns formed the band in 1983—a fact that Defendant Riley
25 knew. Defendant Riley’s declaration to the contrary was knowingly false.

26 40. Plaintiff Tracii Guns never agreed to allow Defendant Riley to share
27 ownership of the mark. Nevertheless, Defendant Riley asserts that he is a 49 percent
28 owner, and that Plaintiff Tracii Guns is a 51 percent owner of the registered mark.

1 41. The “Stephen Riley and Traci [sic] Guns Partnership” does not exist.
2 Plaintiff Tracii Guns never agreed to enter into a partnership with Defendant Stephen
3 Riley. Plaintiff Tracii Guns never intended to convey any ownership interest to
4 Defendant Stephen Riley (or any partnership) in the L.A. Guns Mark. Defendant
5 Stephen Riley and Plaintiff Tracii Guns had no written partnership agreement. Nor
6 did they have an oral partnership agreement. Nor did they act in a manner consistent
7 with the intent to create a partnership pertaining to the ownership of any LA Guns
8 mark.

9 42. The purported “Stephen Riley and Traci [sic] Guns Partnership” never
10 registered a fictitious business name, as is required under California law. Nor has
11 the purported partnership registered to do business in any manner, in any jurisdiction.

12 43. The purported “Stephen Riley and Traci [sic] Guns Partnership” never
13 filed a tax return.

14 44. The purported “Stephen Riley and Traci [sic] Guns Partnership” has no
15 bank accounts.

16 45. The purported “Stephen Riley and Traci [sic] Guns Partnership” has no
17 accounting records of any kind.

18 ***While Plaintiff Tracii Guns Was Working on Another Project, Defendant Riley***
19 ***Tours and Produces Music Under the L.A. Guns Name Without Plaintiff Tracii***
20 ***Guns’s Consent***

21 46. In late 2002, Plaintiff Tracii Guns decided that L.A. Guns would take a
22 brief hiatus from live performances and recording new music so that he could work
23 with Nikki Sixx on an album for an all-star “superband,” Brides of Destruction.
24 Because L.A. Guns was synonymous in the public mind with Plaintiff Tracii Guns
25 and could not effectively tour without him, L.A. Guns canceled a tour with Alice
26 Cooper.

27 47. Plaintiff Tracii Guns initially agreed to allow Defendant Riley to
28 continue to tour and perform with a band using the L.A. Guns mark, for a two-year

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1 period, at which point, Plaintiff Tracii Guns would return to the band. However,
2 shortly thereafter, Plaintiff Tracii Guns discovered that Defendant Riley had
3 embezzled and/or converted royalties due and owing to Plaintiff Guns and other
4 performers and song-writers (addressed in detail *infra*).

5 48. Still in 2002, upon discovering Defendant Riley's wrongful confiscation
6 of the royalties, Plaintiff Tracii Guns revoked Defendant Riley's license to use any
7 L.A. Guns mark.

8 49. Nevertheless, without the consent of Plaintiff Tracii Guns, Defendant
9 Riley brought in a revolving door of lead guitarists and continued touring and
10 producing records under the L.A. Guns name ("the Infringing L.A. Guns").

11 50. In 2005, without Plaintiff Tracii Guns, Defendant Riley released *Tales*
12 *from the Strip* under the L.A. Guns name. In 2012, after a seven-year gap, Defendant
13 Riley similarly released *Hollywood Forever*.

14 ***Plaintiff Tracii Guns Re-Forms L.A. Guns, Which Now Must Compete with the***
15 ***Infringing L.A. Guns***

16 51. Because of the falling out between Plaintiff Tracii Guns and Defendant
17 Stephen Riley, Plaintiff Tracii Guns was not interested in rejoining the unauthorized
18 version of L.A. Guns. Instead, he reformed the L.A. Guns band and began touring.
19 During the time that Plaintiff Tracii Guns paused the band's live performances, the
20 mark continued to be used with respect to goods and services other than live
21 performances, and Plaintiff Guns intended to continue to use the mark going forward
22 in connection with live performances and the other goods and services identified
23 above.

24 52. At various times since 2006 (including up to the filing of this
25 Complaint), two bands have been touring as L.A. Guns—the band with the namesake
26 Plaintiff Tracii Guns, and the Infringing L.A. Guns with Defendant Stephen Riley
27 and now including the Infringing Band Members.
28

1 ***Plaintiff Philip Lewis Leaves the Infringing L.A. Guns and Rejoins L.A. Guns***

2 53. In 2016, L.A. Guns’s “classic” lead singer, Plaintiff Philip Lewis,
3 rejoined its namesake lead guitarist, Plaintiff Tracii Guns.

4 54. In 2017, the Plaintiff Tracii Guns version of L.A. Guns (with Plaintiffs
5 Tracii Guns and Philip Lewis) released a new album titled *The Missing Peace*.
6 And in March 2019, they released another album, *The Devil You Know*.

7 ***The Infringing L.A. Guns Band Creates Confusion in the Marketplace***

8 55. Since Plaintiffs Tracii Guns and Philip Lewis reunited in the “real” L.A.
9 Guns (i.e., the Tracii Guns version), the band has performed over approximately 230
10 shows in 17 countries, all around the world. Approximately, 175 of these shows
11 occurred in the United States.

12 56. In contrast, on information and belief, the Infringing L.A. Guns has
13 performed only a few shows in the United States over the same time period.

14 57. Scotty Ludwick, the former tour manager of L.A. Guns (the Tracii Guns
15 version) and the current manager of the band, has frequently encountered questions
16 and confusion when attempting to book the band for live performances. For example,
17 various booking agents of the venues have asked him questions like, “Are you guys
18 the *real* L.A. Guns or those *other* guys?” On information and belief, the manager of
19 the Infringing L.A. Guns receives similar inquiries and informs venues that their
20 version of the band is the real L.A. Guns.

21 58. Defendant Riley created and manages a Facebook page at
22 [www.facebook.com /officiallaguns](http://www.facebook.com/officiallaguns), purporting to be the “official” Facebook page
23 for the band. On occasion, the event section of the page features a picture—not of
24 Defendant Riley’s version of the band—but of the Plaintiffs Tracii Guns and Philip
25 Lewis version of the band.

26 59. As just one of many similar examples, the Infringing L.A. Guns
27 performed a show at Sunset Station Casino Hotel & Casino (“Sunset Station”) in
28 Henderson, Nevada on July 27, 2019. The promotional materials for the show

1 included images of Plaintiffs Tracii Guns and Philip Lewis, who, of course, are not
2 in the infringing version of the band. Patrons who purchased a ticket expecting to
3 see the real L.A. Guns, based upon these pictures and perhaps even a lack of
4 knowledge of Defendant Riley’s competing band, were disappointed to find that the
5 band they would see had neither the “classic” lead singer of the band nor its namesake
6 lead guitarist. At least one such patron discovered the bait and switch in advance of
7 the show and sought a refund from the venue. Sunset Station refused to refund the
8 ticket price.

9 60. Upon discovering that Sunset Station was promoting the Infringing L.A.
10 Guns with pictures of Plaintiffs Tracii Guns and Philip Lewis, counsel for Plaintiff
11 Tracii Guns wrote a cease and desist letter to Sunset Station. No response was
12 received.

13 61. The Infringing L.A. Guns band currently consists of Defendants
14 Stephen Riley, Scott Griffin, Kelly Nickels, and Kurt Frohlich.

15 62. Plaintiff Tracii Guns has not authorized the Infringing L.A. Guns band’s
16 use of the L.A. GUNS trademark.

17 ***The Infringing L.A. Guns Announces It Will Record Another Album and Begin***
18 ***Another Tour Under, Both Using the L.A. Guns Mark Without Authorization***

19 63. In November, 2019, the Infringing L.A. Guns announced it will be
20 recording a new album and beginning a new tour:

21 We are so pleased to formally announce that we have
22 signed with New Breed Management and Biggtime Inc. is
23 now our Booking Agency. But... it gets better, we have also
24 signed a new record deal with Golden Robot Records and
25 we'll be heading into the studio to record a new album later
26 this month, which should be out sometime next spring. We
27 are very grateful for this opportunity and we want to thank
28 you all for your support throughout the years. Also we are
looking forward to seeing you all on tour in 2020.

26 64. On information and belief, the Infringing L.A. Guns has partnered with
27 Defendants Daniel Sullivan Bigg and Bigg Time Entertainment, Inc., with these
28 Defendants acting as booking agents for the Infringing L.A. Guns. Defendant Bigg

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1 Time Entertainment, Inc.’s website prominently features the L.A. Guns word mark,
2 along with a stylized version of L.A. Guns mark, and is using the L.A. Guns marks
3 to advertise a tour by the Infringing L.A. Guns, without authorization from Plaintiff
4 Tracii Guns, the rightful trademark owner.

5 65. On information and belief, the Infringing L.A. Guns has partnered with
6 Defendants Eric Baker and New Breed LLC, with these Defendants acting as
7 agents/managers for the Infringing L.A. Guns. Plaintiff Tracii Guns did not authorize
8 Eric Baker or New Breed LLC to use the L.A. GUNS trademark.

9 66. On information and belief, the Infringing L.A. Guns has partnered with
10 Golden Robot Global Entertainment Pty Ltd, with the latter agreeing to record and
11 produce the Infringing L.A. Guns’s forthcoming album. Plaintiff Tracii Guns did not
12 authorize Golden Robot Global Entertainment Pty Ltd to use the L.A. GUNS
13 trademark.

14 67. Plaintiff Tracii Guns has not authorized the use of the L.A. GUNS mark
15 for this forthcoming album or tour.

16 68. Plaintiff Tracii Guns, through his counsel, sent cease and desist letters
17 to each of the Infringing Band Members, Bigg Time Entertainment, Inc., New Breed
18 LLC, and Golden Robot Global Entertainment Pty Ltd, informing each of Plaintiff
19 Tracii Guns’s ownership of the L.A. GUNS mark, that their use of the mark is
20 unauthorized and infringing, and demanding that each immediately cease use of the
21 mark.

22 69. In response to the cease and desist letters, counsel for Plaintiffs received
23 a letter from Cole Riley, who, although not apparently licensed to practice law
24 claimed, “I represent L.A. Guns as legal counsel.” The letter indicated that
25 Defendants intended to continue using the mark without the authorization of Plaintiff
26 Tracii Guns.

27
28

1 ***The Tracii Guns Version of L.A. Guns Is the Real Version of the Band in the***
2 ***Public’s Mind***

3 70. As of the filing of this Complaint, the second sentence of the Wikipedia
4 page for L.A. Guns states, “The band currently consists of Tracii Guns (lead guitar),
5 Phil Lewis (lead vocal), Ace Von Johnson on (rhythm guitar, backing vocals, Johnny
6 Martin (bass guitar, backing vocals, and Scot Coogan (drums).” In other words, it
7 describes the band as the Tracii Guns version of the band. This, even though the
8 same article acknowledges that the Infringing Band Members are touring with a band
9 of the same name. And while Wikipedia is user-edited and not always 100%
10 accurate, it is a community-sourced publication. In other words, the rock and roll
11 public believes that L.A. Guns consists of the Tracii Guns version of the band.

12 71. The band is named after Plaintiff Tracii Guns for good reason. He is a
13 world-renowned guitar player. IMDB describes him “one of the most influential
14 guitarists to emerge out of the 80’s Hollywood scene.” Over the years, he has
15 partnered with various premium guitar builders to create Tracii Guns labeled guitars.
16 For example, he has partnered with Kramer Guitars, Dean Guitars, and Epiphone (the
17 maker of the esteemed Les Paul guitars), releasing the “Gunslinger” and the “Tracii
18 Guns Signature Nash Vegas” lines of guitars to name a couple.

19 72. When the public goes to see L.A. Guns, or thinks they are going to see
20 L.A. Guns, they go to see the band containing its namesake, Plaintiff Tracii Guns,
21 the founder of the band and world-renowned guitar player. And they go to hear the
22 signature voice of Plaintiff Philip Lewis, who recorded the lead vocals on nearly
23 every L.A. Guns album. They do not go to hear Defendant Riley, a drummer who,
24 though admittedly played on a number of L.A. Guns albums, is neither the face nor
25 the sound of L.A. Guns.

26 ///

27 ///

28 ///

1 ***Defendant Riley, Through Defendant Hardcore, Inc., Has Failed to Pay Any***
2 ***Royalties Due***

3 73. Plaintiff Tracii Guns entered into a written agreement with Defendant
4 Hardcore, Inc., whereby Defendant Hardcore, Inc. agreed to be responsible for
5 publishing administration, including receiving royalty payments owed to Plaintiffs
6 Tracii Guns, Philip Lewis, and other members of L.A. Guns, and then paying those
7 royalties to the appropriate song-writers and/or performers. On information and
8 belief, the terms of this written agreement required Defendant Hardcore, Inc. to
9 conform to industry standards regarding payment schedules.

10 74. Since Defendant Riley created Defendant Hardcore, Inc. in 1996,
11 Defendant Hardcore Inc. has received the mechanical and performance royalties for
12 a number of L.A. Guns albums and songs. On information and belief, Defendant
13 Hardcore, Inc. has been paid over \$200,000 in such mechanical and performance
14 royalties from just one record label, as well as additional amounts from other sources.

15 75. Neither Defendant Riley nor Defendant Hardcore, Inc. have paid
16 royalties to any musicians who are due payments, including Plaintiffs.

17 76. Neither Defendant Riley nor Defendant Hardcore, Inc. have paid
18 royalties to any songwriters who are due payments, including Plaintiffs.

19 77. Neither Defendant Riley nor Defendant Hardcore, Inc. have provided
20 any accounting of the finances of Hardcore, Inc. (including accounts of royalties
21 received from publishers and record labels, balance sheets, profit and loss statements,
22 income and expense reports, accounts receivable, or accounts payable) to any L.A.
23 Guns songwriters or musicians, including Plaintiffs.

24 78. On information and belief, Defendant Riley, through Defendant
25 Hardcore, Inc., has paid himself all of the performance and mechanical royalties that
26 have been owed to Plaintiffs Tracii Guns and Philip Lewis since the foundation of
27 Defendant Hardcore Inc. in 1996.
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1 79. On information and belief, Defendant Hardcore, Inc. continues, to this
2 day, to receive performance and mechanical royalties from publishers and record
3 labels for various L.A. Guns albums and songs, and to which both Plaintiffs Tracii
4 Guns and Philip Lewis are entitled, yet still pays all profits only to Defendant
5 Stephen Riley.

6 ***Defendants Riley and Epic Rights Have Sold L.A. Guns Merchandise Without***
7 ***Sharing Profits with Plaintiff Tracii Guns***

8 80. In August, 2015, Defendants Riley and Epic Rights entered into a
9 contract where Defendant Riley licensed Defendant Epic Rights the rights to sell L.A.
10 Guns merchandise. Defendant Epic Rights paid Defendant Riley an advance of
11 \$13,750 along with continuing payments thereafter.

12 81. Defendant Riley falsely represented to Defendant Epic Rights that he
13 was “the sole and exclusive owner” of the L.A. Guns mark.

14 82. In the alternative, even if it is determined that Defendant Riley owns
15 some interest in any L.A. Guns trademark with Plaintiff Tracii Guns, by Defendant
16 Riley’s own statement, Plaintiff Tracii Guns is entitled to 51 percent of all profits
17 derived from the sale of L.A. Guns merchandise. Moreover, Defendant Riley was
18 required, but did not obtain, Plaintiff Tracii Gun’s consent to license the L.A. Guns
19 mark for sale on merchandise.

20 83. L.A. Guns manager, Scotty Ludwick, contacted Defendant Epic Rights
21 and informed Defendant Epic Rights that Defendant Riley did not have the authority
22 to license the L.A. Guns mark for use on merchandise (or for any other purpose).
23 Though given this notice, Defendant Epic Rights continues to sell unauthorized
24 merchandise containing the L.A. Guns mark.

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COUNT I

(Declaratory Judgment that the Existing Registered L.A. Guns Trademark Is Invalid and Must Be Canceled– Asserted by Plaintiff Tracii Guns Against Defendant Stephen Riley and Fictitious Defendant Stephen Riley and Traci [sic] Guns Partnership)

84. Plaintiff Guns repeats and realleges the allegations of all preceding paragraphs as if fully set forth here.

85. The '358 Registration is invalid because the partnership listed as the registered owner (i.e., Stephen Riley and Traci [sic] Guns Partnership) is not, and was never the owner of the trademark.

86. The '358 Registration is separately invalid because the purported entity that purportedly owned the registration never existed and is not a valid entity. No such partnership ever existed.

87. The '358 Registration is separately invalid based on fraud on the United States Patent and Trademark Office (“USPTO”). The declaration, made under penalty of perjury by Defendant Riley, contained knowingly false representations as to the owner of the registration and the existence of the purported owner, as did the subsequent communications to the USPTO asserting that the purported partnership owned and continued to use the mark, as shown in several Statements of Use.

88. As a result of the invalidity of the '358 Registration, an actual controversy now exists between Plaintiff Guns and Defendants regarding the right of Defendants to use and profit from use of the mark.

89. Plaintiff Guns is entitled to and seeks a judicial declaration that the '358 Registration is invalid and must be canceled.

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COUNT II

(Unfair Competition and Trademark Infringement of a Common Law Trademark Under the Lanham Act 15 U.S.C. § 1125 – Asserted by Plaintiff Tracii Guns Against All Defendants)

90. Plaintiff Guns repeats and realleges the allegations of all preceding paragraphs as if fully set forth here.

91. The above-cited acts by Defendants constitute unfair competition and trademark infringement in violation of 15 U.S.C. § 1125.

92. Plaintiff Guns has been injured by Defendants’ unfair competition by reason of the likelihood that customers, potential customers, businesses, retailers, and distributors are likely to be confused as to the source or affiliation, sponsorship or approval of the two competing bands.

93. By reason of Defendants’ actions alleged herein, Plaintiff Guns has suffered irreparable injury to his goodwill.

94. On information and belief, Defendants’ acts of unfair competition and trademark infringement have been willful and taken without regard to the established rights of Plaintiff Guns.

COUNT III

(False Advertising Under the Lanham Act 15 U.S.C. § 1125 –Asserted by Plaintiff Tracii Guns Against All Defendants)

95. Plaintiff Guns repeats and realleges the allegations of all preceding paragraphs as if fully set forth here.

96. The above-cited acts by Defendants constitute false advertising in violation of 15 U.S.C. § 1125. For example, Defendants have used images of Plaintiffs to advertise and promote upcoming shows of the infringing L.A. Guns band with the intent to trick and confuse consumers to purchase tickets believing they would see Plaintiffs perform, when in fact, Plaintiffs will not be performing at such shows. In addition, Plaintiffs have falsely promoted the infringing L.A. Guns band

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1 as the “official” L.A. Guns band, again with the intent of tricking and confusing
2 consumers into believing that the infringing L.A. Guns band is the original Guns
3 version of the L.A. Guns band.

4 97. Plaintiff Guns has been injured by Defendants’ false advertising by
5 reason that Defendants have misrepresented the nature, characteristics, qualities, or
6 geographic origin of the two competing bands.

7 98. By reason of Defendants’ actions alleged herein, Plaintiff Guns has
8 suffered irreparable injury to his goodwill.

9 99. On information and belief, Defendants’ acts have been willful and taken
10 without regard to the established rights of Plaintiff Guns.

11 **COUNT IV**

12 **(Unfair Competition Under Cal. Civ. Code §17200 et seq. – Asserted by**
13 **Plaintiff Tracii Guns Against All Defendants)**

14 100. Plaintiff Guns repeats and realleges the allegations of all preceding
15 paragraphs as if fully set forth here.

16 101. The above-cited acts by Defendants constitute unfair competition in
17 violation of California Business and Professions Code § 17200 et seq.

18 102. Plaintiff Guns has been injured by Defendants’ unfair competition by
19 reason of the likelihood that customers, potential customers, businesses, retailers, and
20 distributors are likely to be confused as to the source or affiliation, sponsorship or
21 approval of the two competing bands. Such actions are unfair, unlawful and
22 fraudulent.

23 103. By reason of Defendants’ actions alleged herein, Plaintiff Guns has
24 suffered irreparable injury to his goodwill.

25 104. On information and belief, Defendants’ acts of unfair competition have
26 been willful and taken without regard to the established rights of Plaintiff Guns.
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COUNT V

**(California Common Law Unfair Competition – Asserted by Plaintiff
Tracii Guns Against All Defendants)**

105. Plaintiff Guns repeats and realleges the allegations of all preceding paragraphs as if fully set forth here.

106. The above-cited acts by Defendants constitute unfair competition and passing off in violation of the California common law.

107. Plaintiff Guns has been damaged by Defendants’ unfair competition by reason of the likelihood that customers, potential customers, businesses, retailers, and distributors are likely to be confused as to the source or affiliation, sponsorship or approval of the two competing bands.

108. By reason of Defendants’ actions alleged herein, Plaintiff Guns has suffered harm including damages and irreparable injury to its goodwill.

109. On information and belief, Defendants’ acts of unfair competition have been willful and taken without regard to the established rights of Plaintiff Guns.

COUNT VI

**(Unauthorized Use of Likeness Under Cal. Civ. Code §3344 and California
Common Law – Asserted by Both Plaintiffs Against Defendant Riley)**

110. Plaintiffs repeat and reallege the allegations of all preceding paragraphs as if fully set forth here.

111. The above-cited acts by Defendant constitute unauthorized use of likeness under Cal. Civ. Code §3344 and California common law.

112. Plaintiffs have been damaged by Defendant’s unauthorized use of their likenesses by reason of Defendant’s knowing uses of Plaintiffs’ name, photograph, or likeness, for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without Plaintiff’s prior consent.

113. By reason of Defendant’s actions alleged herein, Plaintiffs have suffered harm including damages and irreparable injury to their goodwill.

1 114. Plaintiffs are also entitled to recover any of Defendant's profits from
2 these unauthorized uses of their likenesses.

3 115. On information and belief, Defendant's acts have been willful and taken
4 without regard to the established rights of Plaintiff Guns.

5 **COUNT VII**

6 **(Breach of Contract – Asserted by Both Plaintiffs Against Defendants Riley
7 and Hardcore, Inc.)**

8 116. Plaintiffs repeat and reallege the allegations of all preceding paragraphs
9 as if fully set forth here.

10 117. Plaintiffs and Defendants formed a valid contract.

11 118. Plaintiffs fully performed under the contract.

12 119. Defendants breached that contract by, among other things, failing to pay
13 past royalties owed to Plaintiffs.

14 120. Defendants breach is ongoing, and Plaintiffs are entitled to past damages
15 for at least the last four years.

16 121. As a direct and proximate result of Defendants' breach, Plaintiffs have
17 suffered damages in an amount to be proven at trial.

18 **COUNT VIII**

19 **(Conversion – Asserted by Both Plaintiffs Against Defendants
20 Riley and Hardcore, Inc.)**

21 122. Plaintiffs repeat and reallege the allegations of all preceding paragraphs
22 as if fully set forth here.

23 123. Plaintiffs had the right to possess mechanical and performance royalties
24 from each album on which they performed and/or wrote the music. Defendants
25 wrongfully accepted and retained all such royalties.

26 124. As a result of Defendants' wrongful acts, Plaintiffs have suffered
27 damages in an amount to be determined at trial.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for:

1. A judicial declaration that the '358 Registration is invalid and must be canceled from the Trademark Register;

2. A permanent injunction restraining Defendants, their officers, directors, agents, employees, representatives and all persons acting in concert with Defendants, from engaging in any use of the L.A. Guns mark or any other confusingly similar mark, from using any likeness or image of Plaintiffs for any purpose, and from advertising or promoting themselves as the "official" or "original" L.A. Guns band;

3. A declaration that Plaintiff Tracii Guns is the sole owner of the common law trademark rights for the mark L.A. GUNS and any related design marks throughout the United States, for the goods and services as alleged above;

4. For an accounting by Defendants, actual damages sustained by Plaintiff Guns and all profits realized by Defendants by reason of their infringement of Plaintiff Tracii Guns's L.A. Guns mark, and that such damages and/or profits be trebled and/or enhanced to the maximum amount provided by law, all as pursuant to 15 U.S.C. Section 1117(a);

5. All damages sustained by Plaintiffs as a result of Defendants' actions;

6. An award to Plaintiffs of their costs in this action, including its reasonable attorneys' fees under at least 15 U.S.C. § 1117, and any other applicable authority;

7. Recovery of any gains, profits and advantages Defendants have obtained as a result of their unlawful actions;

8. Punitive damages; and

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9. Such other and further relief as the Court deems proper.

Dated: January 9, 2020

LEWIS ROCA ROTHGERBER
CHRISTIE LLP

By /s/G. Warren Bleeker
G. Warren Bleeker
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Tracii Guns and Philip Lewis

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JURY DEMAND

Plaintiffs demand a jury trial on all issues for which a jury trial is permitted.

Dated: January 9, 2020

LEWIS ROCA ROTHGERBER
CHRISTIE LLP

By /s/G. Warren Bleeker
G. Warren Bleeker

*Attorneys for Plaintiffs
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