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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91209857
Party	Plaintiff Deford Bailey LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DEFORD BAILEY LLC,)	
Opposer,	)	OPPOSITION NO. 91209857
)	
-vs-	)	APPLICATION SERIAL NO. 85304626
)	
CARLOS DEFORD BAILEY and	)	Published in the Official Gazette on
DEFORD BAILEY III, Applicants.	)	February 19, 2013

NOTICE OF FILING

Opposer, Deford Bailey LLC, hereby provides notice of the filing of the following:

1. Transcript of testimony of Shemika Wiley;
2. Transcript of testimony of DeFord Bailey, III;
3. Transcript of testimony of Carlos Lamont Bailey, Sr.; and
4. Exhibits 1-13 to the foregoing depositions.

Respectfully submitted,

s/ Maria A. Spear

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served via electronic mail and U.S. Mail, postage prepaid, on this 1st day of May, 2015.

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s/ Maria A. Spear _____
Maria A. Spear

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DeFORD BAILEY, LLC,)
)
)
) Opposer,) Opposition
) No. 91209857
 vs.)
) Application Serial
) No. 85304626
)
)
) Applicants.)

Testimony of
SHEMIKA WILEY
January 29, 2015
Commencing at 10:10 a.m.

ORIGINAL

Reported by: Jerri L. Porter, RPR, CRR
Tennessee LCR No. 335
Expires: 6/30/2016

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Also Present: Carlos Bailey
DeFord Bailey, III

The testimony of SHEMIKA WILEY, taken on the 29th day of January, 2015, in the offices of the Everhart Law Firm, 1400 Fifth Avenue North, Nashville, Tennessee, for all purposes under the United States Patent and Trademark Office Rules of Civil Procedure.

It is agreed that Jerri L. Porter, being a Notary Public and Court Reporter for the State of Tennessee, may swear the witness.

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I N D E X

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1 P R O C E E D I N G S

2 S H E M I K A W I L E Y ,

3 was called as a witness, and after having been first
4 duly sworn, testified as follows:

5 D I R E C T E X A M I N A T I O N

6 B Y M S . E V E R H A R T :

7 Q Good morning, Ms. Wiley. You know me as Amy
8 Everhart, your attorney in this matter, correct?

9 A Yes.

10 Q And can you please give me your full name.

11 A Shemika Monique Wiley.

12 Q What is your maiden name?

13 A Turnley. Shemika Monique Turnley.

14 Q What is your occupation?

15 A I'm a stay-at-home mom.

16 Q What is the last year of education you've
17 completed?

18 A My junior year in college.

19 Q Where did you go to school?

20 A Tennessee State University.

21 Q Is that here in Nashville?

22 A Yes.

23 Q Are you taking any medication or substances
24 today that would prevent you from testifying
25 truthfully?

1 A No.

2 Q Do you understand we're here today because
3 DeFord Bailey, LLC has challenged the application
4 for trademark registration of the mark DeFord
5 Bailey?

6 A Yes.

7 Q Are you familiar with DeFord Bailey, Sr.?

8 A Yes.

9 Q Who is he?

10 A He's my great-grandfather.

11 Q Is he still living?

12 A No, he isn't.

13 Q When did he pass?

14 A 1982.

15 Q Did you know him?

16 A I knew of him. I only met him maybe a
17 couple of times at cookouts, but I really wasn't
18 around him a lot.

19 Q How old were you when he passed?

20 A Ten years old.

21 Q What was his occupation?

22 A He was a musician. He was the first star to
23 perform on the Grand Ole Opry. And he's also in the
24 Country Music Hall of Fame.

25 Q You said he was a musician. What instrument

1 did he play --

2 A Harmonica.

3 Q -- or instruments? Did he play more than
4 one?

5 A Yes, but his main one was the harmonica.
6 They called him the Harmonica Wizard.

7 Q Who is they?

8 A People of the -- actually, the country music
9 -- the Grand Ole Opry, everybody entitled him as the
10 Harmonica Wizard. It was on his grave and also in
11 the Country Music Hall of Fame.

12 Q You mentioned the Grand Ole Opry. We're all
13 here in Nashville and are very familiar with the
14 Grand Ole Opry. The Trademark Office, I assume,
15 will have heard about it, but can you tell me a
16 little bit more about what that is?

17 A The Grand Ole Opry is a place where a lot of
18 country stars perform and people all over the world
19 know the Grand Ole Opry. It's just where country
20 stars go and perform and put on a show for the Opry.

21 Q And was your great-grandfather, DeFord
22 Bailey, Sr., a member of the Grand Ole Opry, to your
23 knowledge?

24 A Yes. He actually helped found it. He was
25 one of the first stars on the Opry, on the Grand Ole

1 Opry.

2 Q You mentioned the Country Music Hall of
3 Fame. What is that?

4 A That's where a lot of country music stars --
5 it's like once they get to a certain fame, they put
6 them in the Hall of Fame for their stardom. And
7 he's in there for being famous for playing his
8 harmonica on the Grand Ole Opry.

9 Q Is that located here in Nashville?

10 A It is.

11 Q Do you know if your great-grandfather
12 received any other awards for his musicianship?

13 A I'm sure he has. That's one of the main
14 ones I know of, but I'm pretty sure he has other
15 ones, I just don't know all of them.

16 Q Based on your knowledge of him, would you
17 consider him to have been a famous man?

18 A Oh, yeah, he was very famous.

19 Q Now, when he passed away, was he married?

20 A No, he wasn't.

21 Q Had he ever been married?

22 A He did. My great grandmother was Ida Lee
23 Haynes. He married her.

24 Q Were they divorced then at the time of his
25 death?

1 A Yes.

2 Q Did they have any living children at the
3 time of his death?

4 A Yes. Three.

5 Q What were their names?

6 A Christine Craig, Dezoral Thomas, and DeFord
7 Bailey, Jr.

8 Q And Dezoral, is that D-e-z-o-r-a-l?

9 A Yes.

10 Q Are all three of those children still living
11 today?

12 A All but my grandfather, DeFord Bailey, Jr.

13 Q Do you know who the heirs to -- let me start
14 over with that question. I understand you're not an
15 attorney, so any questions I ask today I'm not
16 asking you to give an attorney's opinion.

17 A Okay.

18 Q Just based on your layperson's
19 understanding, do you know who the heirs to DeFord
20 Bailey, Sr.'s estate are?

21 A It was three heirs, the three kids that he
22 had left: Christine Craig, Dezoral Thomas, and
23 DeFord Bailey, Jr.

24 Q Do you know if anyone in the Bailey family
25 has ever contested that they were the three heirs?

1 A No.

2 Q Do you know if DeFord Bailey, Sr. died with
3 a will?

4 A No. DeFord Bailey, Sr., I don't think, died
5 with a will.

6 Q You mentioned DeFord Bailey, Jr. is your
7 grandfather?

8 A Yes.

9 Q And you mentioned he's no longer living.

10 A No, ma'am.

11 Q When did he pass?

12 A September of 2013.

13 Q And was he married at the time?

14 A No.

15 Q Did he have children?

16 A He did.

17 Q How many?

18 A Ten.

19 Q I won't ask you to name all of them. One of
20 his children was, obviously, your parents. Which
21 one?

22 A Quinetta Sims.

23 Q How do you spell that?

24 A Q-u-i-n-e-t-t-a, Sims, S-i-m-s.

25 MR. BENJAMIN: How do you spell the

1 last name again.

2 THE WITNESS: S-i-m-s.

3 MR. BENJAMIN: Just one M?

4 THE WITNESS: Yes.

5 BY MS. EVERHART:

6 Q How do you know Carlos Bailey?

7 A He's my uncle, my mother's brother.

8 Q Your mother's brother?

9 A Uh-huh.

10 Q So DeFord Bailey, Jr. was his father?

11 A Yes.

12 Q And DeFord Bailey, Sr. was his grandfather?

13 A Yes.

14 Q And how do you know DeFord Bailey, III?

15 A He's my uncle also.

16 Q Okay. Was he also a son of DeFord Bailey,
17 Jr., then?

18 A Yes.

19 Q And grandson of DeFord Bailey, Sr.?

20 A Yes.

21 Q I'd like to talk about DeFord Bailey, Jr.,
22 your grandfather. What kind of relationship did you
23 have with him?

24 A We were really close. We've always been
25 close.

1 Q How many grandchildren did he have?

2 A There's about 30 of us.

3 Q And where did you fall in the rank of
4 grandchildren?

5 A I was the first. I'm his oldest grandchild.

6 Q Have you ever seen DeFord Bailey, Jr.'s
7 signature?

8 A I have, uh-huh.

9 Q Frequently, not frequently?

10 A Not lately, but of course when he was living
11 I seen it a few times. Not frequently, but I've
12 seen it a few times.

13 Q Were you ever present with him when he
14 signed legal documents?

15 A Yes.

16 Q Which legal documents that you can recall?

17 A Let's see. Well, when we started the LLC, I
18 saw him sign that one. I don't know the names of
19 the -- actual legal names of documents.

20 I've seen him sign a will. I've seen him
21 sign a couple more papers when we hired you. There
22 are some more papers. I just really don't know all
23 of them, but I have seen him sign papers.

24 Q Okay. And you mentioned the LLC. What LLC?

25 A We formed a company called DeFord

1 Bailey, LLC.

2 Q Okay. And we'll talk about that in more
3 detail in a minute.

4 Then you mentioned the will. Is that your
5 grandfather's will?

6 A Yes.

7 Q Okay. And we'll talk about that more in a
8 minute as well.

9 What was your grandfather's occupation?

10 A He was a musician.

11 Q What did he play?

12 A He played mostly the bass, but he could play
13 piano, bass, harmonica. He could play a lot of
14 stuff.

15 Q Now, you have testified about DeFord
16 Bailey, LLC. Is that a company in which you have an
17 ownership interest?

18 A Yes.

19 Q What was your initial ownership interest in
20 that company?

21 A Ten percent.

22 Q Who were the other initial owners?

23 A The other heirs. Well, my grandfather,
24 DeFord Bailey, Jr., was the other owner.

25 Q Did he own 90 percent then at the time?

1 A He did.

2 Q And what is your understanding of your
3 current ownership interest in the company?

4 A A hundred percent.

5 Q Do you know when the ownership interest
6 changed?

7 A When he passed away.

8 Q And again, I know you're not a lawyer. Do
9 you have an understanding of how the ownership
10 interest changed?

11 A Well, since I had 10 and he had 90, when he
12 passed away, I guess the other 90 went over to me
13 since we were the only two owners. That's my
14 understanding.

15 Q How did the idea for forming the LLC come
16 about?

17 A Well, my Uncle Carlos, he had brought this
18 guy named Ron Bailey to an event that we had
19 honoring my grandfather at the airport. The whole
20 time there, he kept saying that Ron wanted to talk
21 to me and all the heirs and all of us afterwards
22 about something; we just didn't know what.

23 So, after it was over, we all went to my
24 aunt's house, one of the heirs, Dezoral Thomas, and
25 he met with all of us. He was up there talking

1 about he had some harmonicas and he wanted to sell
2 them. And he wanted all of the heirs, all three
3 heirs, to go with him that day down to downtown to
4 sign some papers to form a foundation so that they
5 could sell these harmonicas. And all he really
6 wanted was his money back for the harmonicas.

7 My family didn't go because they didn't --
8 never met this man ever before. Didn't even know
9 who he was. The only person that knew him was
10 Carlos.

11 And my grandfather -- they actually gave my
12 grandfather and me an idea, like we can start a
13 company instead of you going with somebody who you
14 don't really even know and never met before. If you
15 want to do something where people have to do
16 something to come through us with name and likeness,
17 we can do our own and keep it in the family.

18 And so, I prayed on it for about a week,
19 and then I said, let's do it. And we started our
20 own LLC.

21 Q Okay. Let me back up a little bit and ask
22 you some detailed questions.

23 You mentioned a man named Ron Bailey, who
24 ironically has the same last name as the family.

25 A Yes.

1 Q Do you know if he's related to the family?

2 A He's not.

3 Q Is that the first time you had met him?

4 A It was, yes.

5 Q You mentioned that it was your understanding
6 that the only other family member who had met him
7 previously was Carlos Bailey?

8 A To my knowledge, yes.

9 Q Do you have an understanding of how long
10 Carlos had known him?

11 A No. No, I don't know how long he had known
12 him.

13 Q What was the event at the airport?

14 A This lady was inspired by my grandfather, by
15 his music. And she put up a big musical note, like
16 a wave representing my grandfather, his music. And
17 from him -- from her being inspired by his harmonica
18 playing, she just put up a big -- it's still there.
19 It's a big monument over the -- I think it's
20 American Airlines.

21 We just all went out there to -- they talked
22 good about my grandfather. She was just talking
23 about how she was inspired by his music. And all of
24 the heirs were there, me and some of my other
25 family. We just went out there for that.

1 Q Was that the Nashville airport?

2 A It was in Nashville, yes.

3 Q You mentioned Ron Bailey wanted the three
4 heirs to go with him to form a foundation. Are you
5 talking about the three children?

6 A Yes.

7 Q The three surviving children?

8 A Yes.

9 Q And to be clear, was it your understanding
10 he did not want to have an ownership interest in the
11 foundation or that he did?

12 A He wanted to have an ownership in it, but he
13 just said, like percentages. He was just saying
14 like they could have so much and all he wanted was a
15 small percentage to pay for his harmonicas. I guess
16 he had already purchased some. He was saying how
17 much money he had already put into them and he just
18 wanted to get his money back from it.

19 Q So did any of the heirs ever go along with
20 his plan?

21 A No, they didn't.

22 Q You had already discussed that you and your
23 grandfather thought it would be good to keep it in
24 the family. Do you have an understanding of why the
25 other two heirs did not go along with it?

1 A Because they didn't know him. They didn't
2 want to go start something or deal with somebody who
3 they hadn't even met before and put their signature.
4 They didn't -- no, that wasn't a smart thing to do.

5 Q You mentioned you wanted to keep it in the
6 family. When you contemplated initially forming the
7 this LLC, was it just the two of you, you and your
8 grandfather, or others? Who was interested
9 initially?

10 A Initially all three heirs. We all did it
11 ourselves. We -- it was all three heirs and me. We
12 started the LLC.

13 Q Were the other two heirs ever members of the
14 LLC?

15 A Yeah, the other two were. They were
16 supposed to be members of it. At first they signed
17 the papers saying that they wanted to be a part of
18 it, yes.

19 Q Do you know if they ever were ultimately a
20 part of it, if you remember?

21 A I can't really remember, but I think they
22 were. I'm not for sure.

23 Q Okay. So, what's your understanding of what
24 the purpose of the LLC was?

25 A It's for anybody who wanted to use the name

1 and likeness of DeFord Bailey, Sr., they have to go
2 through the LLC first. Meaning, we don't mind if
3 they do anything; they just have to come through us
4 first so we can have a part of it or we can approve
5 of it.

6 Q Now, you mentioned that you initially had a
7 10 percent ownership interest in the company. Do
8 you have an understanding of why you, as a
9 grandchild, and not one of the original heirs, would
10 have any ownership interest in the company?

11 A Well, he -- well, since me and him started
12 the company -- we were really close and he trusted
13 me. I mean, me and him, we did a lot of stuff
14 together. I've been close to him since I was a
15 little girl.

16 So, you know, since we were the only two
17 that owned the company, you know, he trusted me to
18 handle everything after he was gone because he knew
19 that I would do right by it.

20 Q Did you have a history of working with him
21 in similar matters in the past?

22 A Yes.

23 Q Give me some examples.

24 A Well, after he actually got sick, of course
25 I was the one taking him back and forth to the

1 doctors. I mean, his own kids could be there, but
2 he would call me.

3 He just felt better and trusted me to be
4 with him wherever he went, you know, like as far as
5 to the doctors and to, you know, sometimes maybe to
6 play his bass at the place where he goes or to
7 church sometimes. He just always called me to go
8 places. Family events, he'd ride with me most of
9 the time.

10 I mean, I took him food almost every other
11 day over there to eat. You know, I was just really
12 close to him.

13 Q Do you remember when the company was formed?

14 A It was in April of -- June of 2011.

15 Q And did you hire an attorney to help you
16 form the company?

17 A I did.

18 Q Who did you hire?

19 A You, Amy Everhart.

20 Q Okay. Let me start with some exhibits.

21 MS. EVERHART: If you would please mark
22 this Exhibit 1.

23 (Marked Exhibit No. 1.)

24 BY MS. EVERHART:

25 Q You have before you what's been marked

1 Exhibit 1. Take a minute to glance at it.

2 A (Reviewing document.)

3 Q Have you seen this document before?

4 A I have.

5 Q What's your understanding of what this
6 document is?

7 A This is the document -- when we filed to
8 open the LLC, this is the document that we used to
9 file to open our -- this is the Articles of
10 Organization to file our DeFord Bailey, LLC.

11 Q What is the date of formation, if you can
12 see it on here?

13 A 6/28/2011.

14 Q Okay. June 28, 2011?

15 A Uh-huh.

16 MS. EVERHART: Please mark that
17 Exhibit 2.

18 (Marked Exhibit No. 2.)

19 BY MS. EVERHART:

20 Q You've been handed a document marked
21 Exhibit 2. Please take a minute to glance at it and
22 tell me if you've seen that document before.

23 A (Reviewing document.)

24 Yes.

25 Q And what is your understanding of what this

1 document is?

2 A This is our Operating Agreement.

3 Q Is that for the limited liability company?

4 A Yes, ma'am.

5 Q And if you would look at section 1.4 on the
6 first page, it states, "The initial Members of the
7 LLC are DeFord Bailey, Jr., who will hold
8 90 percent, and Shemika Wiley, who will hold
9 10 percent."

10 Do you see that?

11 A Yes.

12 Q Does that help to clarify for you the
13 initial owners of the company?

14 A Yes.

15 Q So, you don't see either of the other heirs'
16 names on there, do you?

17 A No.

18 Q Then if you'll look at section 2.1, the
19 Purpose. It states, "The purpose of the LLC is to
20 hold and manage certain intellectual property assets
21 descended from the estate of DeFord Bailey, Sr., and
22 any other lawful business on which the Members may
23 agree."

24 Do you see that?

25 A Yes.

1 Q Is that your understanding of what the
2 purpose of the LLC was?

3 A Yes.

4 Q If you would look at page 4, section 7.1.
5 And I'll read a portion of that paragraph.

6 "Rights to Intellectual Property. Except as
7 otherwise agreed in a writing signed by all of the
8 Members, the LLC, and not any individual Member,
9 shall own, and the Members hereby assign to the LLC,
10 all rights, title and interest of any or all Members
11 in and to the intellectual property descended from
12 DeFord Bailey, Sr., including, without limitation,
13 copyrights, trademarks, service marks, the names
14 DeFord Bailey and DeFord Bailey, Sr., all goodwill
15 associated with all such names and marks, rights of
16 publicity and name and likeness, patents, and domain
17 names, renewal rights thereto, and the rights to sue
18 for infringement thereof."

19 Do you see where I just read that?

20 A Yes.

21 Q Do you have -- again, I'm just asking for
22 your layperson's understanding. Do you have any
23 understanding of what that provision means?

24 A It's the rights to the intellectual
25 property.

1 Q Okay. So, is it your understanding that
2 those rights to the intellectual property were
3 assigned to the LLC?

4 A Yes.

5 Q Did you and your grandfather ever discuss
6 his wishes in that regard? Let me ask that question
7 a different way.

8 Do you know if it was his desire to transfer
9 his rights to the DeFord Bailey name to the LLC?

10 A Yes.

11 Q Did he ever express that to you?

12 A Yes, he did.

13 Q And more than once?

14 A Yeah. He always said that.

15 MR. BENJAMIN: I object as to hearsay.

16 BY MS. EVERHART:

17 Q If you would turn to page 9. Do you see
18 signatures on this page?

19 A I do.

20 Q Do you know whose signatures they are?

21 A Mine and my grandfather's, DeFord
22 Bailey, Jr.

23 Q Were you present for the signing of this
24 document --

25 A Yes.

1 Q -- by your grandfather?

2 A Yes.

3 Q Do you have any reason to believe that is
4 not his signature?

5 A No.

6 Q So, you witnessed him signing this?

7 A I did.

8 Q Do you have any reason to believe he was not
9 mentally competent on the day he signed this
10 agreement?

11 A No. He was in his right mind all the way to
12 the day he passed. He was never out of his mind.

13 MR. BENJAMIN: I object.

14 THE WITNESS: Oh, I'm sorry.

15 BY MS. EVERHART:

16 Q That's okay. You can respond. You might
17 hear him object, but that doesn't mean you don't
18 have to answer it. He's just making legal
19 objections that we'll discuss later with the
20 trademark panel.

21 A Oh, okay.

22 Q So it's okay.

23 So, based on your understanding and your
24 observations of him, was he of full mental capacity
25 on the day he signed this agreement?

1 A Yes, he was.

2 Q Do you know if this agreement was ever
3 explained to him by his attorney?

4 A It was.

5 Q Was that done that day?

6 A That day.

7 Q Were you present for that explanation?

8 A Yes, I was.

9 Q Do you recall if he asked any questions
10 about what the agreement meant?

11 A No. You explained everything to him fully.

12 Q Okay.

13 (Marked Exhibit No. 3.)

14 BY MS. EVERHART:

15 Q You've been handed Exhibit 3. Please take a
16 moment to look at it.

17 A (Reviewing document.)

18 Q Have you ever seen this document before?

19 A Yes.

20 Q And what is your understanding of what this
21 document is?

22 A The Intellectual Property Assignment.

23 Q Do you see signatures at the bottom of this
24 document?

25 A Yes, I do.

1 Q Do you recognize the signatures?

2 A I know it's my grandfather's, DeFord
3 Bailey, Jr.'s.

4 Q Were you present for the signing of this
5 document by him?

6 A Yes, I was.

7 Q Do you have any reason to believe that's not
8 his signature?

9 A No.

10 Q Do you see a witness signature line as well?

11 A Yes.

12 Q Do you recognize that particular signature?

13 A I see what it says. I recognize it, but --
14 and I was there, but yes.

15 Q Do you recall there being a witness present
16 other than you --

17 A Yes.

18 Q -- when your grandfather signed this
19 document?

20 A Yes.

21 Q Did you know that witness?

22 A I didn't know her.

23 Q Do you know where she came from?

24 A She came from your office.

25 Q Okay. Do you know her name?

1 A Looks like Sandra.

2 Q You don't have to speculate.

3 A No, I don't.

4 Q Had you ever met her before?

5 A No.

6 Q Do you know if your grandfather had ever met
7 her before?

8 A No.

9 Q And the date of this assignment is
10 June 28th, 2011, correct?

11 A Correct.

12 (Marked Exhibit No. 4.)

13 BY MS. EVERHART:

14 Q You've been handed Exhibit 4. Have you seen
15 this document before?

16 A Yes.

17 Q Let's look at the first page. Do you have
18 an understanding of what this document is?

19 A Yes.

20 Q What is your understanding?

21 A This is where we hired you to represent
22 DeFord Bailey, LLC. The Operating Agreement to
23 purchase the membership interests in the LLC, that's
24 what this is.

25 Q Let me read to you the main text of this

1 document, of this, what appears to be a letter.

2 "I write on behalf of DeFord Bailey, LLC to
3 notify the Estate of DeFord Bailey, Jr. that it
4 hereby exercises the option under the LLC Operating
5 Agreement to purchase DeFord Bailey, Jr.'s
6 membership interest in the LLC."

7 Do you see that?

8 A Yes.

9 Q Do you recall at any point exercising an
10 option to purchase your grandfather's share in the
11 LLC after his death?

12 A Yes.

13 Q If you would look at the next page. It
14 states, Action by Written Consent of the Members of
15 DeFord Bailey, LLC.

16 Do you see that?

17 A Yes.

18 Q And if you look at the second resolved
19 paragraph, it states, "Resolved, that the
20 appropriate officers of the Company (or any of them)
21 are hereby authorized, empowered and directed to
22 take all necessary or appropriate action, including
23 the expenditure of funds, in order to fully and
24 expeditiously complete the purpose and intent of the
25 foregoing resolutions."

1 Do you see that?

2 A Yes.

3 Q I should have read the first resolution
4 first. So, take a look at the first resolved
5 paragraph.

6 It states, "Resolved, that the company shall
7 exercise its option to purchase the Membership
8 Interest of DeFord Bailey, Jr."

9 Do you see that?

10 A Yes.

11 Q Now, do you see a signature --

12 A Yes.

13 Q -- at the bottom of this document?

14 A Yes.

15 Q Do you recognize the signature?

16 A Yes.

17 Q Whose signature is that?

18 A It's mine.

19 Q Do you recall signing this document?

20 A I do.

21 Q Again, I understand you're not a lawyer, but
22 what is your understanding of who owns the name and
23 likeness rights of DeFord Bailey, Sr. today?

24 A DeFord Bailey, LLC.

25 Q Is it your understanding that DeFord

1 Bailey, LLC owns 100 percent of the name and
2 likeness rights?

3 A Yes.

4 Q Do you have any -- do any of the other heirs
5 have any interest or rights?

6 A Well, the other two, they have one-third of
7 the name and likeness rights to it.

8 Q Do they collectively share one-third or do
9 each of them have --

10 A Each of them have one-third apiece.

11 Q Okay. Make sure to let me finish my
12 question before you respond --

13 A Oh, I'm sorry.

14 Q -- just because the questions and answers
15 will appear in writing.

16 A Okay.

17 Q Thanks.

18 Do you know if your grandfather died leaving
19 a will?

20 A He did.

21 Q Have you ever seen the will?

22 A Yes.

23 (Marked Exhibit No. 5.)

24 BY MS. EVERHART:

25 Q You have before you Exhibit 5. Do you

1 recognize this document?

2 A Yes.

3 Q What do you recognize it to be?

4 A This is his will.

5 Q DeFord Bailey, Jr.?

6 A DeFord Bailey, Jr.'s will.

7 Q If you would look at page 2, paragraph 8, it
8 states, "Appointment. I appoint the following

9 persons to serve as the Executor of this Will, with
10 such persons to act successively but not
11 simultaneously, in the order named."

12 Do you see that under paragraph 8?

13 A Uh-huh.

14 Q And then the first person named in
15 section (a) is Shemika Wiley.

16 A Yes.

17 Q Do you see that?

18 A Yes.

19 Q And then the second person named is Dorothy
20 Hall?

21 A Yes.

22 Q Did you accept appointments to act as
23 co-executor of your grandfather's will?

24 A Yes.

25 Q And who is Dorothy Hall?

1 A That's my aunt. That's one of my mom's
2 sisters.

3 Q Do you know if she accepted the appointment
4 to act as executor of his will as well?

5 A Yes.

6 Q Were you aware before your grandfather died
7 that you were named as a co-executor of his will?

8 A Yes.

9 Q Were you with your grandfather when this
10 will was signed?

11 A Yes.

12 Q Was your grandfather represented by legal
13 counsel in creating this will?

14 A He was.

15 Q Do you know who legal counsel was?

16 A You.

17 Q Are you sure?

18 A Oh, no. That guy.

19 Q Go ahead and take a look at page 4 and see
20 if that refreshes your recollection.

21 A I know his name is -- Keith Gordon? It was
22 a man. I remember his name. I think his name was
23 Keith Gordon, but he was a man. And there was
24 another lady, Maria Spear. She was part of this
25 office as well.

1 Q Okay. And do you know if Maria Spear was an
2 attorney for your grandfather in connection with the
3 will or was she a witness signing the will?

4 A She was a witness.

5 Q And you were present for the signing of this
6 will?

7 A Yes, I was.

8 Q Do you see on page 4 a signature that
9 appears to be that of DeFord Bailey, Jr.?

10 A Yes.

11 Q Do you recognize that to be your
12 grandfather's signature?

13 A That is.

14 Q Do you recall witnessing that signature?

15 A I did.

16 Q If you would look at page 2 again,
17 paragraph 7, it states, "Special Considerations -
18 Intellectual Property. Any and all intellectual
19 property rights of DeFord Bailey, Jr. in the estate
20 of DeFord Bailey, Sr. have been transferred, in
21 full, to DeFord Bailey, LLC, a Tennessee Limited
22 Liability Company."

23 Do you see that?

24 A Yes.

25 Q And I'll continue reading. "Any residual

1 effects or property rights in said estate of DeFord
2 Bailey, Sr. held or deemed to be held by DeFord
3 Bailey, Jr. at his death shall be transferred to
4 DeFord Bailey, LLC and shall not be considered a
5 portion of this estate."

6 Do you see that?

7 A Yes.

8 Q Do you know if anyone contested this will?

9 A No.

10 Q And how long has it been since your
11 grandfather passed away?

12 A September of 2013.

13 Q So more than two years; is that right? Or
14 more than a year?

15 A More than a year. About a year and a half.

16 Q To your knowledge, has Carlos Bailey ever
17 contested the will?

18 A Not to my knowledge.

19 Q Has DeFord Bailey, III ever contested this
20 will?

21 A No, not to my knowledge.

22 (Marked Exhibit No. 6.)

23 BY MS. EVERHART:

24 Q You've been handed Exhibit 6. Do you
25 recognize this document?

1 A Yes.

2 Q What do you recognize it to be?

3 A This is the Name and Likeness Licensing
4 Agreement.

5 Q Okay. And I'll direct you to the first
6 paragraph. It appears to be between DeFord
7 Bailey, LLC and Carlos Bailey. Do you see that?

8 A Yes.

9 Q Is that your understanding of the parties to
10 this agreement?

11 A Yes.

12 Q If you would go ahead and look at the last
13 page, page 3, you'll see signatures on this
14 document.

15 A I do.

16 Q Do you recognize those signatures?

17 A Yes.

18 Q Who's the first signature?

19 A Mine.

20 Q Okay. Shemika Wiley?

21 A Shemika Wiley, yes.

22 Q Then it states DeFord Bailey, LLC?

23 A Yes.

24 Q Were you signing this document on behalf of
25 DeFord Bailey, LLC?

1 A I was, yes.

2 Q And you recognize that to be your signature,
3 correct?

4 A It is.

5 Q Do you recall signing this document?

6 A Yes.

7 Q Where did you sign it?

8 A It was at my house.

9 Q Do you recall the date that you signed it?

10 A I just remember it was hot. But no, I don't
11 remember the date.

12 Q Okay. And let me take you back to the first
13 page for a minute. It states that the effective
14 date of this agreement shall be April 18th, 2012.

15 A Yes.

16 Q Do you see that?

17 A Yes, ma'am.

18 Q Do you know if this agreement was signed
19 before or after that date or on that date?

20 A It was on -- it was right after this date,
21 like a couple of days, a few days. It was not on
22 that date. It was maybe like a week or something
23 like that. It was within that month. It was within
24 April.

25 Q Of 2012?

1 A Of 2012, yes.

2 Q Then if you'd turn back to the signature
3 page, page 3. You mentioned that you signed this
4 agreement at your house. Was anyone else present
5 when you signed it?

6 A Carlos Bailey.

7 Q Was it just the two of you?

8 A Yes.

9 Q And do you recognize the second signature?

10 A Yes.

11 Q Whose signature is that?

12 A Carlos Bailey.

13 Q Did you witness Carlos Bailey sign this
14 document?

15 A Yes.

16 Q Go ahead and turn back to the first page, if
17 you would, please.

18 How did this agreement come about?

19 A We was having an event to honor my
20 grandfather. It was like a fundraiser. And Carlos
21 wanted to sell harmonicas at that event that had
22 DeFord Bailey's name on it. And I was letting him
23 know that, you know, with the name and likeness,
24 he'd have to go through us before doing anything
25 like that for it to be legal for him to sell his

1 harmonicas.

2 And that's why he signed this, so he could
3 be able to, you know, sell his harmonicas and to be
4 able to -- so he would -- you know, he agreed that
5 that's what he'd have to do in order to do anything
6 in DeFord Bailey's name. This was the agreement
7 that he needed to sign to do that.

8 Q Did Carlos Bailey have an opportunity to
9 read this agreement that day?

10 A He did.

11 Q Did he express objections to any of the
12 statements in the agreement that day?

13 A No.

14 Q Did he ever express to you that he
15 considered this agreement to only apply to that
16 day's event?

17 A No.

18 Q Did you force Carlos Bailey to sign this
19 agreement?

20 A No.

21 Q Did you force Carlos Bailey to sell his
22 products at the event?

23 A No.

24 Q Did he ultimately then sell products at the
25 event?

1 A He did.

2 Q What products?

3 A He sold some harmonicas that had DeFord
4 Bailey's name on it.

5 Q Do you know how many he sold?

6 A I don't know exactly how many he sold.

7 Q If you would, look at paragraph 3 on the
8 first page of the agreement. It states, "Fees. CB
9 shall pay Licensor royalties equal to 20 percent of
10 the gross receipts derived from the sale of the
11 Products."

12 Do you see that?

13 A Yes.

14 Q Did you ever receive any payment from Carlos
15 Bailey in connection with sales of the harmonicas by
16 him that day?

17 A Yes.

18 Q Do you recall how much?

19 A I can't recall how much. I just remember
20 him coming over there to the tent where I was and
21 giving me some money.

22 MR. BENJAMIN: He needs to be excused
23 to use the restroom.

24 MS. EVERHART: Sure. Why don't we go
25 ahead and take a break.

1 (Recess observed.)

2 BY MS. EVERHART:

3 Q Ms. Wiley, have you ever had conversations
4 with Carlos Bailey regarding his trademark
5 application filed for the DeFord Bailey mark?

6 A I have had a little bit, yeah.

7 Q Do you recall the substance of those
8 conversations?

9 A Well, I mean, we talk as family, but, you
10 know, as far as the trademark, he would say
11 something like, you know, he's going to get those
12 harmonicas. He'll say something like that. Or he
13 don't have to go through us to do nothing. You
14 know, just little stuff like that.

15 Q And I'll ask the same question with regard
16 to DeFord Bailey, III. Have you had conversations
17 with him about the trademark application?

18 A Just briefly here and there. I helped him
19 maybe like a couple of months ago. He was over at
20 my house, and I was helping him with some
21 information he needed me to help him with. I kind
22 of just threw it out there and asked him about it.

23 And he said, like, I'm really for the
24 family. You know, like he's not trying to do
25 anything to go against the family, and that he had

1 never even met Ron before. That's what he told me,
2 that he hadn't even met Ron. Just give him papers
3 and he signed them.

4 So that's all we really talked about as far
5 as the trademark.

6 Q Do you mean Ron Bailey?

7 A Ron Bailey.

8 Q Do you have an understanding of whether Ron
9 Bailey is involved in this trademark application?

10 A Yes. I'm sure he is.

11 Q Do you have any understanding or knowledge
12 of that?

13 A Well, he was the one, you know, trying to
14 get them to sign in the beginning. And as far as I
15 know, he's working with Carlos and Bubba with the
16 trademark trying to get it.

17 Q Who is Bubba?

18 A Oh, I'm sorry. DeFord Bailey, Jr. I call
19 him Bubba.

20 Q DeFord Bailey, Jr.?

21 A I mean, III. DeFord Bailey, III, my uncle.

22 Q Now, there were some allegations made
23 personally against you in this action. Do you
24 recall -- you don't have to tell me what the
25 allegations are, but do you recall some allegations

1 being made against you personally?

2 A Yes.

3 Q Did you have any discussions with DeFord
4 Bailey, III about that?

5 A I did. Well, I was kind of hurt, you know,
6 because my family is close. Regardless of this
7 trademark, we see each other on a regular basis at
8 family gatherings and stuff.

9 And when those allegations were made against
10 me, it kind of hurt me, because I was like, why
11 would y'all lie on me like that? You know, I
12 haven't lied on them or did anything against them
13 this whole time we've been going through this. And
14 for them to make up a lie that big, it kind of hurt
15 me.

16 So I was just asking him, you know, why
17 would you do that? And he said, don't look at me.
18 I would never say nothing like that. He said, that
19 was Carlos. He said, that wasn't me. I didn't lie
20 on you. I wouldn't do that. He said, I'm for the
21 family. So I just left it at that.

22 Q Are you aware that Carlos Bailey has been
23 performing for some years with the professional name
24 Carlos DeFord Bailey?

25 A Yes.

1 Q Have you ever objected to him using DeFord
2 in his name?

3 A Yes. Well, me and my grandfather, because
4 it had DeFord Bailey in his name. And my granddaddy
5 didn't want him to keep using that name because it
6 affected him as well when he's using --

7 MR. BENJAMIN: I object.

8 BY MS. EVERHART:

9 Q You can keep testifying.

10 A Okay. It had his name in it as well, so it
11 was sort of like representing him as well as Carlos.
12 But he said, you know, he'd been using it, so -- and
13 he wasn't going to stop using it, so he was going to
14 keep using it.

15 Q Has Carlos DeFord Bailey, to your knowledge,
16 ever used the stage name DeFord Bailey without
17 Carlos before it?

18 A I'm not aware of that. It was always Carlos
19 DeFord Bailey.

20 Q Do you know if DeFord Bailey, III has ever
21 performed just as DeFord Bailey?

22 A Not to my knowledge. I think he's always
23 performed as hisself, you know, like, with his own
24 name.

25 Q DeFord Bailey, III?

1 A Yes.

2 Q Until you filed this trademark application,
3 were you ever aware of Carlos Bailey selling
4 harmonicas using DeFord Bailey's name?

5 A No, not before -- not before -- well, they
6 had the harmonicas then. But I didn't know anything
7 about it until they came to us that day at the
8 thing, talking about selling harmonicas. That was
9 the first that I heard about harmonicas was the day
10 of my -- of that event when I met Ron.

11 Q Do you know if Carlos Bailey ever sold any
12 other products using the DeFord Bailey name before
13 then?

14 A I've never -- I'm not aware of him selling
15 anything else, to my knowledge.

16 Q Has DeFord Bailey ever communicated to you
17 that he did not originally authorize the filing of
18 this trademark application?

19 A Well, in the beginning he used to say stuff
20 like, I didn't know what I was signing. You know,
21 they just gave me a paper and I signed it. So, to
22 me, it sounded like he didn't really know that he
23 was doing it.

24 (Marked Exhibit No. 7.)

25

1 BY MS. EVERHART:

2 Q You've been handed Exhibit 7. If you'll
3 take a minute to glance at it and then let me know
4 if you've seen this document before.

5 A (Reviewing document.)

6 Yes.

7 Q What do you recognize this document to be?

8 A This is -- this come from the Trademark
9 Office. This is like us against them, the trial,
10 oppositions. This is where they were saying all
11 those allegations and stuff at that time.

12 Q So, you had mentioned earlier that you and
13 DeFord Bailey, III had some discussions about some
14 allegations made by him and Carlos in this
15 proceeding, correct?

16 A Yes.

17 Q Do you understand this document to have
18 those allegations?

19 A Yes.

20 Q If you would turn to paragraph 7. I'll read
21 it to you. It states, "DeFord Bailey, Jr. was an
22 81-year-old man, with a sixth grade education, who
23 could not have read and understood the alleged
24 assignment of his rights to certain intellectual
25 property."

1 Do you see that?

2 A Yes.

3 Q Do you agree with that statement?

4 A No.

5 Q Why not?

6 A I mean, he went further than the sixth
7 grade. He didn't graduate, but he at least went to
8 the eighth or ninth grade. And he did understand
9 everything that he has put on -- that he had signed
10 his signature to.

11 MR. BENJAMIN: I object.

12 BY MS. EVERHART:

13 Q Do you have any reason to believe that he
14 did not understand what he was signing?

15 A No. Because if he ever had any questions,
16 he would ask, and then it would be explained.

17 Q Be explained by who?

18 A Either me or --

19 MR. BENJAMIN: I object.

20 THE WITNESS: -- counsel.

21 BY MS. EVERHART:

22 Q Based on your observations, were you ever
23 present when explanations were made to him about
24 those agreements?

25 A I'm sorry?

1 Q Let me ask that again.

2 Were you present when explanations of those
3 agreements were made?

4 A Yes.

5 MR. BENJAMIN: I object.

6 BY MS. EVERHART:

7 Q Who were they made by?

8 A They was explained by counsel.

9 Q Okay. In your presence?

10 A In my presence.

11 Q If you would turn to paragraph 17. I'll
12 read it. "After Carlos used and promoted the name
13 of DB, Sr. for 15 years, a Bailey family member,
14 Applicants believe to be Shemika Wiley, Applicant's
15 niece, used DeFord Bailey, LLC to take over any
16 monetary proceeds from the likeness and music of
17 DB, Sr."

18 Do you see that?

19 A Yes.

20 Q Do you agree with that allegation?

21 A No.

22 Q Why not?

23 A Because I didn't try to take over no -- I
24 didn't try to like use my grandfather or anything or
25 try to take over anything. I mean, I -- to my

1 knowledge, this is saying that I tried to use him or
2 something, and I didn't. I never used my
3 grandfather for anything. He wanted me to be a part
4 of this.

5 Q And what's your basis --

6 MR. BENJAMIN: I object.

7 BY MS. EVERHART:

8 Q What's your basis for that statement?

9 A Because he wanted me to be a part of the
10 LLC, and after he was gone, he trusted me to
11 continue it. I didn't --

12 MR. BENJAMIN: I object.

13 MS. EVERHART: Let me ask the basis for
14 it to see if I can rectify that objection.

15 BY MS. EVERHART:

16 Q Did he ever tell you those things?

17 A Yes.

18 Q Let's go to paragraph 18. It states,
19 "Shemika Wiley has little credibility due to a
20 record of three felony convictions, attempted
21 murder, and two cases of drug trafficking whom
22 applicant's allege manipulating the 81-year-old
23 DeFord Bailey, Jr. into signing an alleged
24 assignment."

25 Do you see that?

1 A Yes.

2 Q Do you agree with those allegations?

3 A No.

4 Q What, if anything, is incorrect about those
5 allegations?

6 A First of all, three convictions. I did not
7 have three convictions. I had two. Second of all,
8 I have never murdered nobody, attempted to murder
9 nobody, or none of that.

10 I was in my late 20s. And yes, I made a bad
11 choice. And I did try to take some marijuana into a
12 prison to my cousins, and I got charged twice with
13 intro of contraband into a penal facility. And then
14 I did, you know, do my time for that. And that was
15 it. I mean, that was years ago.

16 Now I'm a stay-at-home mom. I'm married.
17 I'm in the church. I mean, my whole life has
18 changed. I don't even think on that level anymore.
19 So that was then and this is now.

20 Q How old were you then?

21 A I was in my late 20s. That happened back
22 1999, 2000. I'm 43 now. That was years ago.

23 Q So let me break this down. There's an
24 allegation here that you had three felony
25 convictions. Are you stating that you had --

1 A I only had two.

2 Q And what were they for?

3 A Intro of contraband into a penal facility.

4 Q And you were never convicted for attempted
5 murder?

6 A Never.

7 Q Were there ever any criminal charges brought
8 against you for attempted murder?

9 A Never.

10 Q Do you have any idea where this allegation
11 came from?

12 A He had to have just made it up, just to, I
13 guess, make me look bad on here, because I've never
14 done that.

15 Q Who is he?

16 A Carlos Bailey, whoever put it in this form.

17 Q Did you manipulate your grandfather into
18 signing an alleged assignment of the name and
19 likeness rights?

20 A I've never manipulated my grandfather to
21 sign or do anything. This is what he wanted.

22 MR. BENJAMIN: I object.

23 BY MS. EVERHART:

24 Q Did he express to you his intentions in
25 connection with the name and likeness rights?

1 A Yes.

2 MR. BENJAMIN: I object.

3 BY MS. EVERHART:

4 Q On more than one occasion?

5 A All the time.

6 MR. BENJAMIN: Object.

7 THE WITNESS: We always talked about
8 this.

9 MS. EVERHART: I have no further
10 questions on direct and reserve time to redirect.

11 CROSS-EXAMINATION

12 BY MR. BENJAMIN:

13 Q Okay. When was the exact dates of your
14 convictions?

15 A I want to say -- the day that we went to
16 court was in 2002.

17 Q Okay. And when did you get out of prison?

18 A 2004.

19 Q So, at the time that you had your
20 grandfather to sign those documents was within
21 ten years of when you got out of prison; is that
22 correct?

23 A 2011 from 2002, nine years.

24 Q What about since 2004 when you got out?

25 A What about it? What was your question? I'm

1 sorry.

2 Q 2011 from 2004 would be seven years; isn't
3 that correct?

4 A That's after I got out, but I was convicted
5 in 2002.

6 Q So, it was seven years from the time that
7 you got out?

8 A Correct.

9 MS. EVERHART: Objection.

10 BY MR. BENJAMIN:

11 Q DeFord Bailey, Sr. died when you were
12 ten years old; is that correct?

13 A Yes.

14 Q In 1982?

15 A Uh-huh.

16 Q Did DeFord Bailey, Sr. have a will?

17 A Not to my knowledge.

18 Q Was there ever any Court determination as to
19 who were the legal heirs of DeFord Bailey, Sr.?

20 A I'm not sure, but not -- I mean, not that I
21 know of.

22 Q Okay. Now, let's go back. Carlos DeFord
23 Bailey has used that name for as long as you can
24 remember, hasn't he?

25 A Well, I mean, back a long time ago -- I've

1 only known him seriously as Carlos Bailey, my uncle.
2 Not until, you know, when all this stuff come up and
3 I see him with Carlos Bailey, then I just realize,
4 yeah, he use Carlos Bailey now. I've never just
5 known him as Carlos DeFord Bailey.

6 Q Have you ever been to his shoeshine shop?

7 A No.

8 Q You've never been to his shoeshine shop?

9 A No.

10 Q So you wouldn't know that at his shoeshine
11 shop he has a sign that says Carlos DeFord Bailey?

12 A No, I didn't know that.

13 Q Have you ever been to his musical
14 performances?

15 A I have been to some of his musical
16 performances.

17 Q At his musical performances, did he not use
18 the name Carlos DeFord Bailey?

19 A At some of them.

20 Q Yes. As far as you know, at the concerts
21 before the first one you went to, he could have used
22 the name Carlos DeFord Bailey, couldn't he?

23 MS. EVERHART: Objection.

24 BY MR. BENJAMIN:

25 Q As far as you know.

1 A He could have. I don't know.

2 Q Okay. When was the first time you saw him
3 perform on stage as Carlos DeFord Bailey?

4 A Actually, by -- the day of that -- the day
5 that we actually met Ron, he had Carlos DeFord
6 Bailey up there. That's when I -- I think that's
7 the first time I ever seen Carlos DeFord Bailey.
8 Because normally when he performed, I didn't see any
9 name. You don't see a name just sitting up there.
10 So, really, that was the first time was in 2011.

11 Q Okay. In 2011, when you saw him perform as
12 Carlos DeFord Bailey, did you object to him using
13 that name?

14 A Yes.

15 Q How did you object?

16 A We always said, can you not use that name?
17 We'd ask him, but --

18 Q When you said we --

19 MS. EVERHART: I'm going to pause it.
20 She wasn't finished with her testimony. So if you
21 would allow her to finish her answer, please.

22 THE WITNESS: We've always asked him,
23 meaning me and my grandfather, DeFord Bailey, Jr.,
24 at that time, could he not use the DeFord Bailey
25 part, just to use the Carlos Bailey part, even after

1 that. But he'd always say he's been using it. He
2 can do it whenever he wants.

3 So, yes, I did object at that time.

4 BY MR. BENJAMIN:

5 Q Okay. You first heard of it when Ron Bailey
6 came to present to you and the family this idea
7 about selling harmonicas under the name of DeFord
8 Bailey; is that correct?

9 A That's correct.

10 Q Okay. And that was in what year? What
11 date?

12 A That was in 2011. And I can't remember the
13 exact date. Whatever date that event was. It was
14 right after that event.

15 Q When you refer to the event, you're
16 referring to the event where the bust of DeFord
17 Bailey, Sr. was unveiled at the airport?

18 A Yes.

19 Q Okay. Now, Ron Bailey brought some
20 harmonicas at that time; is that correct?

21 A He didn't bring any, but he discussed them,
22 talking about them that day.

23 Q Okay. At that time that Ron Bailey
24 presented the idea of -- let me just -- I'll retract
25 the question.

1 Did anyone in your family come up with the
2 idea of selling harmonicas in the name of DeFord
3 Bailey before Ron Bailey came up with the idea and
4 presented it to the family?

5 MS. EVERHART: Objection. You can
6 respond.

7 THE WITNESS: My grandfather did. He
8 told me that he had told Carlos way before then that
9 he always wanted to sell harmonicas with my
10 grandad's name on it. And he even designed it and
11 told me what all he wanted on it and everything.
12 But I didn't have no idea of that, but he said he
13 always told Carlos.

14 BY MR. BENJAMIN:

15 Q Do you have any documentation to that fact,
16 alleged fact?

17 A Oh, no.

18 Q Do you know anything that was done prior to
19 2011 when Ron Bailey presented the harmonica idea to
20 you that any efforts were made to manufacture or
21 sell harmonicas under the name of DeFord Bailey?

22 A I'm sorry. What was that question again?

23 Q Prior to 2011 when Ron Bailey presented the
24 idea of selling harmonicas under the name of DeFord
25 Bailey, did anyone make any efforts to sell

1 harmonicas under the name of DeFord Bailey, to your
2 knowledge?

3 A No, not to my knowledge.

4 Q Okay. So, would it be safe to say that the
5 idea came from Ron Bailey?

6 A It wouldn't be safe to say that, because my
7 grandfather said he had that idea already.

8 Q Okay. Do you know what year DeFord
9 Bailey, Sr. was inducted into the Grand Ole Opry
10 Country Music Hall of Fame?

11 A 2005.

12 Q 2005?

13 A Yes.

14 Q Do you know that your uncle, Carlos DeFord
15 Bailey, is the one who spearheaded that?

16 MS. EVERHART: Objection.

17 THE WITNESS: No.

18 BY MR. BENJAMIN:

19 Q Do you know who spearheaded that idea?

20 A I know Dave had some part in it.

21 Q When you say Dave, you're referring to who?

22 A I forgot his last name. Dave -- what is his
23 name? No, I don't know exactly who.

24 Q Okay. Do you know of any awards that was
25 given to DeFord Bailey, Sr. besides the Hall of Fame

1 award?

2 A Not to my knowledge. I'm pretty sure he got
3 other awards, but I can't specifically just name a
4 lot of awards that he's gotten. But I'm sure he's
5 gotten other awards.

6 Q Are you familiar with the DeFord Bailey
7 Memorial Gardens?

8 A Oh, yes.

9 Q Do you know when that was established?

10 A Not exactly. I mean, I've seen pictures and
11 I kind of know about it, but I don't know exactly
12 when it was established.

13 Q Do you know who spearheaded that effort to
14 start the Memorial Gardens?

15 A I know Sizwe Herring had something to do
16 with it. I kind of want to say Dave had something
17 to do with that, too. But I'm not for sure. It
18 could have been multiple people. I just don't know
19 everybody who had a part in it.

20 Q Okay. Now, you agree that Christine Craig
21 and Dezoral Thomas has rights to the DeFord Bailey
22 name and likeness?

23 A Yes.

24 Q And that you agree that DeFord Bailey, Jr.
25 does not have exclusive rights to the name and

1 likeness of DeFord Bailey. Do you agree?

2 A I agree.

3 Q So, do you agree that even though -- or even
4 if -- let me retract that.

5 Do you agree that even if DeFord Bailey, Jr.
6 objected to Carlos DeFord Bailey using the name and
7 likeness of DeFord Bailey, that Christine Craig and
8 Dezoral Thomas could give him that right?

9 MS. EVERHART: Objection.

10 THE WITNESS: No. I mean, they could.

11 BY MR. BENJAMIN:

12 Q Okay. What would be the basis for you to
13 think -- or let me ask, do you think that DeFord
14 Bailey, Jr. is the only person who has the right to
15 give permission to use the name and likeness of
16 DeFord Bailey?

17 MS. EVERHART: I'll object just to the
18 extent it calls for a legal opinion.

19 THE WITNESS: No. I don't know. I
20 don't know really.

21 BY MR. BENJAMIN:

22 Q Okay. So, you agree that Christine Craig
23 and Dezoral Thomas are heirs of DeFord Bailey, Sr.,
24 correct?

25 A Yes.

1 Q Okay. Was DeFord Bailey, Sr.'s estate ever
2 probated as far as you know?

3 A What do you mean? What is -- what do you
4 mean? No, I don't know.

5 Q Okay. Now, let's get to DeFord Bailey, Jr.
6 How many children did he have?

7 A Ten.

8 Q Okay. How many grandchildren does he have?

9 A I want to say around 30. It's so many of
10 us. It's around 30, though.

11 Q Thirty grandchildren?

12 A And about 12 great.

13 Q Okay. So, are you alleging today that
14 DeFord Bailey, Jr. preferred to give you all of the
15 rights that he had and leave out all other 29 of his
16 grandchildren?

17 A He wasn't leaving them out. He did give me
18 the right to the LLC. But the purpose of that is so
19 it can stay in our family. That way it can go down
20 generation and generation and stay within our
21 family. So, basically, it's for the whole family.
22 It's not just for me.

23 Q Then why didn't you put it in the name of
24 the whole family and not just your name?

25 A That would be a big mess having all of those

1 people on an LLC. I mean, we'd have to get along
2 with everybody doing that.

3 Q Aren't you in a position to -- I'll retract
4 that.

5 Would you allege that you're in a position
6 to reap all the benefits of his rights with regard
7 to intellectual property of the name of DeFord
8 Bailey and his likeness?

9 A I'm sorry. What was your question again?
10 I'm sorry.

11 Q Do you not agree that you solely have the
12 right or -- I'm sorry. Retract that again.

13 Do you allege that you solely have the right
14 to reap all the benefits from the intellectual
15 property of the name of DeFord Bailey and his
16 likeness?

17 MS. EVERHART: Objection.

18 THE WITNESS: I do as far as the LLC.
19 Not for the name and likeness, but as far as, you
20 know, the rights. But no, the heirs still have
21 their name and likeness. They're part of the name
22 and likeness rights as well.

23 BY MR. BENJAMIN:

24 Q Okay. So you agree that Christine Craig and
25 Dezoral Thomas has rights to the name of DeFord

1 Bailey, Sr. and his likeness?

2 A Yes.

3 Q Okay. So, on what basis would you require
4 Carlos DeFord Bailey to pay you for using that name?

5 MS. EVERHART: Objection.

6 THE WITNESS: Because it's part of the
7 LLC. That's what the LLC is there for. Anyone
8 using name and likeness has to go through the LLC
9 before using --

10 BY MR. BENJAMIN:

11 Q Is it your belief that the LLC also controls
12 the rights of Christine Craig and Dezoral Thomas?

13 A Okay. What was that again?

14 Q Do you allege or believe that the LLC
15 controls the intellectual property rights of
16 Christina Craig and Dezoral Thomas?

17 A Well, they're not like actually part of the
18 LLC. They have the name and likeness rights, but
19 they're not actually part of the LLC.

20 Q So that would mean the LLC doesn't control
21 their rights; isn't that correct?

22 A I'm not sure. I don't know.

23 Q Okay. Now, your LLC cannot control the
24 rights of this DeFord Bailey sitting here, can it?

25 MS. EVERHART: Objection.

1 THE WITNESS: If it pertains to DeFord
2 Bailey, Sr.

3 BY MR. BENJAMIN:

4 Q Okay. In your personal opinion, does this
5 DeFord Bailey sitting here have the right to use the
6 name DeFord Bailey?

7 MS. EVERHART: Objection.

8 THE WITNESS: I mean, that's his name.
9 I don't know. That's his name.

10 BY MR. BENJAMIN:

11 Q Do you object to this DeFord Bailey sitting
12 here to using the name DeFord Bailey?

13 A No. His name is DeFord Bailey, III, but I
14 mean, I don't object to that.

15 Q He's the only DeFord Bailey living now;
16 isn't that right?

17 A Yes. As far as I'm concerned in our family,
18 with our rundown with the first, second, third, and
19 fourth.

20 Q There was a DeFord Bailey, Sr.?

21 A Uh-huh.

22 Q There was your grandfather, DeFord Bailey?

23 A Yes.

24 Q There's this DeFord Bailey sitting here.

25 A Correct.

1 Q And there was DeFord Bailey, his son?

2 A Correct.

3 Q All of the other three DeFord Baileys are
4 deceased; isn't that correct?

5 A That's correct.

6 Q So, if anyone referred to DeFord Bailey now,
7 it would obviously have to be him because he's the
8 only one living; isn't that correct?

9 MS. EVERHART: Objection.

10 THE WITNESS: No.

11 BY MR. BENJAMIN:

12 Q Okay. Isn't it true that your grandfather
13 could not read?

14 A My grandfather or my great-grandfather?

15 Q Your grandfather.

16 A No. He could read. He just -- he could
17 read.

18 Q Isn't it true that your grandfather did not
19 read any of these documents that was presented here
20 this morning?

21 MS. EVERHART: Objection. Lack of
22 personal knowledge.

23 THE WITNESS: That's not true.

24 BY MR. BENJAMIN:

25 Q On the documents you say that you witnessed

1 his signature, isn't it true that he could not read
2 these documents?

3 A He could.

4 Q Isn't it true he did not, in fact, read
5 these documents before he signed them?

6 MS. EVERHART: Objection.

7 THE WITNESS: That's not true.

8 BY MR. BENJAMIN:

9 Q Did you not testify that he trusted you?

10 A He trusted me.

11 Q And that you had to explain to him what was
12 in these documents?

13 A I didn't say that. I said he trusted me,
14 and he was explained everything. That didn't mean
15 he didn't read it as well.

16 Q Okay. Didn't you try to explain to him what
17 all of these documents mean?

18 A If he had any questions, if he needed help,
19 we would answer, but...

20 Q Isn't it a fact that he relied on what you
21 said about the documents and signed it because of
22 that?

23 A No.

24 Q You were his favorite grandchild, right?

25 A I wouldn't say favorite, because he loved

1 all of us, but -- well, I could be. They put in his
2 obituary that I was the most dedicated grandchild,
3 so...

4 Q Isn't it true that this DeFord Bailey here
5 spent a lot of time with your grandfather prior to
6 his death?

7 A Yes. All his kids did. Well, most of them.

8 Q Starting January 2013, wasn't this DeFord
9 Bailey here around your father on a weekly basis --
10 grandfather on a weekly basis?

11 A Yes. A lot of his kids were.

12 Q Okay. And would this DeFord Bailey sitting
13 here have had the opportunity to see if your
14 grandfather was of sound mind in order to sign
15 documents during that time?

16 A I guess.

17 Q He was able to observe your grandfather as
18 much as you or more, wasn't he?

19 A He could have.

20 Q Yes. And he would be in a position to state
21 whether your grandfather was competent enough or had
22 -- could properly reach conclusions to sign these
23 documents; isn't that correct?

24 A I don't know.

25 Q Okay. With DeFord Bailey, LLC, you own

1 10 percent, DeFord Bailey, Jr. owned 90 percent; is
2 that correct?

3 A Correct.

4 Q That means no one else owned anything in the
5 DeFord Bailey, LLC; isn't that correct?

6 A Yes.

7 Q You and your -- if you and your grandfather
8 owned 100 percent, that means no one else owned
9 anything regarding that, correct?

10 A Correct. We started the company.

11 Q Okay. Now, who were the officers -- who are
12 all the officers in DeFord Bailey, LLC?

13 A Me and DeFord Bailey, Jr.

14 Q Okay. So, when DeFord Bailey, Jr. passed
15 away, then it was only you who made the decisions;
16 is that correct?

17 A Correct.

18 Q So it was you who made the decision that
19 everything should be passed over to you; isn't that
20 correct?

21 MS. EVERHART: Objection to form.

22 THE WITNESS: No.

23 MS. EVERHART: Objection.

24 BY MR. BENJAMIN:

25 Q You have a document here that says that all

1 of the intellectual property of the -- of DeFord
2 Bailey, Jr. should go to DeFord Bailey, LLC; isn't
3 that correct?

4 MS. EVERHART: Can you point her to the
5 exhibit you're referring to?

6 MR. BENJAMIN: Exhibit 3.

7 MS. EVERHART: And then once she has
8 it, can you re-ask your question, please.

9 (At which time the witness was
10 presented with Exhibit No. 3.)

11 BY MR. BENJAMIN:

12 Q Do you have before you Exhibit 3?

13 A Yes, I have it.

14 Q Exhibit 3, doesn't it show that all of the
15 intellectual property of DeFord Bailey, Jr. is
16 assigned to DeFord Bailey, LLC?

17 A Yes.

18 Q And this was done on June 20, 2011.

19 A Correct.

20 Q And after DeFord Bailey died, then all of
21 the intellectual property ended up belonging to you
22 since you were the only officer in DeFord
23 Bailey, LLC; is that correct?

24 MS. EVERHART: Objection.

25 THE WITNESS: It belonged to DeFord

1 Bailey, LLC.

2 BY MR. BENJAMIN:

3 Q And you were the sole person in control of
4 DeFord Bailey, LLC; isn't that correct, at that
5 time?

6 A Yes.

7 Q Okay. There was no one else who could make
8 a decision regarding DeFord Bailey, LLC besides you
9 after DeFord Bailey, Jr. died; isn't that correct?

10 A Correct.

11 Q Okay. Now, Ms. Everhart has been
12 representing you from -- ever since back in 2011
13 when you and your grandfather formed the LLC; isn't
14 that correct?

15 MS. EVERHART: Objection.

16 THE WITNESS: Correct.

17 BY MR. BENJAMIN:

18 Q Ms. Everhart has been representing you since
19 2011?

20 A Yes.

21 Q Okay. When did you first know that a
22 harmonica was made with DeFord Bailey's name on it?

23 A At that event, after Ron talked to everybody
24 in that room and he said he had harmonicas.

25 Q Okay. And at that time, you rejected -- I'm

1 sorry.

2 And you're alleging that at that time you
3 and your grandfather objected to him selling the
4 harmonicas; is that right?

5 A Yes.

6 Q But you never said that you and your
7 grandfather objected to the manufacture of those
8 harmonicas, did you?

9 A I'm sorry?

10 Q You and your grandfather never objected to
11 the manufacture of those harmonicas, did you?

12 A We didn't know that it was being
13 manufactured.

14 Q If he had -- if he had the harmonicas, they
15 had to have been manufactured, didn't they?

16 A Yes. But how could we object if they had
17 already been made?

18 Q Okay. So that means you didn't object; is
19 that right?

20 MS. EVERHART: Objection.

21 THE WITNESS: I didn't know anything
22 about it.

23 BY MR. BENJAMIN:

24 Q Okay. Now, after the harmonicas were
25 manufactured and were being sold, isn't it true that

1 DeFord Bailey, Jr. was given a harmonica?

2 A Carlos gave them to the whole family.

3 Q Okay. And isn't it true that when DeFord
4 Bailey, Jr., your grandfather, received his
5 harmonica, he didn't object to it?

6 MS. EVERHART: Objection. Lack of
7 personal knowledge.

8 THE WITNESS: And he did.

9 BY MR. BENJAMIN:

10 Q Isn't it true that your grandfather, DeFord
11 Bailey, Jr., played that harmonica at an event?

12 A No, that's not true. He may have played his
13 harmonica. But he didn't play that one, because as
14 soon as he gave it to him, he gave it to me because
15 he didn't want it. And it's at my house right now.
16 So he never played that harmonica.

17 Q Isn't it true -- you said earlier that he
18 gave it to all of the family. That means he gave
19 one to Christine and he gave one to Dezoral,
20 correct?

21 A I don't know who all he gave one to, but I
22 seen him passing them out to several people at his
23 birthday party. He was just kind of giving people
24 one.

25 Q Okay. So, to your knowledge, the only

1 person who you allege objected to the harmonica is
2 you and/or your grandfather; isn't that correct?

3 MS. EVERHART: Objection.

4 THE WITNESS: I'm not sure. I don't
5 know.

6 BY MR. BENJAMIN:

7 Q Isn't it true that Christine played the
8 harmonica, that DeFord Bailey harmonica?

9 A She could have.

10 Q Now, when Ron Bailey came that you mentioned
11 at the event to present the DeFord Bailey harmonica
12 idea, wasn't he trying to get all of the family
13 involved in the DeFord Bailey harmonica?

14 A He was trying to get all the family to sign
15 a paper with him to form a foundation.

16 Q So, he told all the family about it,
17 correct?

18 A All the ones that was sitting there in that
19 room, yes.

20 Q And he gave all of them an opportunity to
21 voice their opinion about it, correct?

22 A Yes.

23 Q And so, as you allege, you and your
24 grandfather are the only ones who objected?

25 MS. EVERHART: Objection.

1 THE WITNESS: No, we weren't the only
2 ones.

3 BY MR. BENJAMIN:

4 Q Who else objected at that time?

5 A First of all, one of the other heirs,
6 Dezoral did, because she wanted him out of her house
7 when he started talking like that. So I know
8 definitely she didn't want it.

9 My cousin didn't want it. A lot of people
10 objected because he said he was going to do it with
11 or without our help or anything. So, mostly
12 everybody objected at that point.

13 Q So, how many of your relatives joined in
14 with you and objected to this trademark?

15 A What do you mean? I mean, we discussed it,
16 but what do you mean? In the trademark?

17 Q How many of your relatives officially joined
18 in with you in your objection to this trademark?

19 A The trademark was just between the LLC and
20 Carlos. So we kept it between us in the family,
21 just between us as far as the trademark went.

22 Q But the DeFord Bailey, LLC is only you and
23 your grandfather.

24 A Correct.

25 Q So you and your grandfather are the only two

1 people who is officially objecting to this
2 trademark; isn't that correct?

3 A On paper. But, I mean, we've heard people
4 verbally saying that, you know, he shouldn't sell
5 them. But we don't have anything in writing saying
6 that.

7 Q Isn't it true, as a matter of fact, that you
8 tried to get Dezoral and Christine to join you with
9 the DeFord Bailey, LLC and they refused?

10 A Actually, they did do it at first, and then
11 they changed their mind.

12 Q Do you have any paperwork or document to
13 show that they was a part of the DeFord Bailey --
14 wanted to be a part of the DeFord Bailey, LLC?

15 A Yes.

16 Q What documents do you have?

17 A I don't know the name of it, but in the
18 beginning they did agree that they wanted to be a
19 part of it.

20 Q Do you have any such documents to present
21 today?

22 A I'd have to talk to my attorney. No, I
23 don't have anything today.

24 Q Okay. Let's get to -- I'll refer your
25 attention to April 18th when you presented the

1 license to Carlos DeFord Bailey. Do you recall that
2 time?

3 A Yes. I'm looking for that paper, but yes, I
4 do remember that day. I'm sorry. Which exhibit was
5 that?

6 Q Exhibit 6.

7 (At which time the witness was
8 presented with Exhibit No. 6.)

9 THE WITNESS: Okay.

10 BY MR. BENJAMIN:

11 Q Now, this agreement is dated April 18, 2012;
12 is that correct?

13 A That's correct.

14 Q Isn't that also the date of the event that
15 Carlos DeFord Bailey sold the harmonicas?

16 A No. It wasn't on that day.

17 Q What date was the event?

18 A I can't remember the exact date. It was in
19 that month. That's all I remember.

20 Q It was in the same month?

21 A Yes.

22 Q Okay. Now, this event was considered to be
23 your event, correct?

24 A Actually, no. It was -- Sizwe was holding
25 that event. I just set up a little tent in honor of

1 DeFord Bailey, LLC to fry fish and stuff. It was
2 like we just set up there since he was talking about
3 different -- it wasn't all just about my granddaddy.
4 He was representing different trees of other people
5 as well. I was just being a part of it, just to set
6 up there.

7 Q So, Carlos DeFord Bailey wanted to be a part
8 of your tent representing DeFord Bailey, Sr.,
9 correct?

10 A No, he didn't want to be a part of my tent.
11 He was on his own. He had his own section.

12 Q Okay. Now, you never contacted this DeFord
13 Bailey here regarding this license agreement, did
14 you?

15 A He didn't ask to sell any harmonicas. Just
16 Carlos.

17 Q Okay. So, would you agree that this DeFord
18 Bailey here would not agree to signing this license
19 agreement?

20 A I wouldn't know that. I don't know.

21 Q Wouldn't you allege that Carlos DeFord
22 Bailey was selling the harmonicas on his behalf and
23 his brother, DeFord Bailey's behalf?

24 MS. EVERHART: Objection.

25 THE WITNESS: He never said that.

1 BY MR. BENJAMIN:

2 Q I'm sorry?

3 A He never said that.

4 Q Okay. On this last page, page 3, you have
5 alleged that the signature there is Carlos Bailey's
6 signature. Had you seen his signature before that
7 time?

8 A Yes.

9 Q Okay. Isn't it true that this signature is
10 not anything like his signature?

11 A It is his signature. I saw him sign it.

12 MR. BENJAMIN: Let me see several
13 documents with your signature on it.

14 Let's take a little break. I need to
15 speak with my client.

16 MS. EVERHART: Sure.

17 (Recess observed.)

18 BY MR. BENJAMIN:

19 Q Okay. Again referring you back to
20 Exhibit C --

21 MS. EVERHART: If I could correct you,
22 it's actually Exhibit Number 6.

23 MR. BENJAMIN: 6. I'm sorry.

24 BY MR. BENJAMIN:

25 Q The Name and Likeness Licensing Agreement,

1 at the date that you allege Carlos DeFord Bailey
2 signed this agreement, isn't it true that you did
3 not give him a copy of it?

4 A No. I did give him a copy of it.

5 Q Isn't it also true that you only showed him
6 the last page; you didn't show him the other two
7 front pages?

8 A He read all the pages that came with it.

9 Q Isn't it true that he had concern about
10 signing that agreement and whether it was for that
11 specific day, and you tried to assure him that it
12 was?

13 A No.

14 Q Isn't it true that on the date that you
15 signed this agreement, you called your attorney to
16 allow him to talk to your attorney; isn't that
17 correct?

18 A That is correct.

19 Q And the reason why you called your attorney
20 for him to talk to your attorney was so your
21 attorney could assure him it was for that one day;
22 isn't that correct?

23 A He had a question, and I just can't remember
24 the exact question it was. I didn't think I could
25 explain it right, so I just called my attorney so he

1 could have the full knowledge of it.

2 Q And your attorney told him that it was for
3 one specific day; isn't that right?

4 A No.

5 MS. EVERHART: Objection.

6 BY MR. BENJAMIN:

7 Q You were standing there when he was talking
8 to your attorney; isn't that right?

9 A That's correct.

10 Q And you could decipher the conversation
11 between him and your attorney, could you not?

12 A No.

13 Q Okay. Did you hear him ask her about
14 whether this agreement was for one specific day?

15 A No.

16 Q Isn't it true that it was only after talking
17 to your attorney that he agreed to sign -- allegedly
18 agreed to sign this document?

19 A That's true.

20 Q Okay. Let's go on to your allegation that
21 this DeFord Bailey did not agree to the trademark
22 application.

23 A I'm sorry. What was your question?

24 Q Let's get on to the issue that you allege
25 that this DeFord Bailey did not join in on the

1 trademark application.

2 Isn't it true that you don't know if this
3 DeFord Bailey signed the trademark application or
4 not, do you?

5 A No.

6 Q Okay. Isn't it true that you did not
7 consult him regarding whether he should be a part of
8 the trademark application?

9 A What was the question?

10 Q Isn't it true that you did not discuss with
11 him whether he should be a part of the trademark
12 application?

13 A No, I didn't discuss that with him.

14 Q Okay. Now, this exhibit --

15 MR. BENJAMIN: Did you try to offer the
16 document that he signed, that he allegedly signed?

17 MS. EVERHART: The -- which document?

18 MR. BENJAMIN: That he allegedly signed
19 that he didn't want to be a part of the trademark.

20 MS. EVERHART: His affidavit, I haven't
21 submitted it yet because she wouldn't be able to
22 authenticate it. I do have a copy. Do you want to
23 use a copy as an exhibit?

24 MR. BENJAMIN: Yes. Not only the
25 affidavit, but also there --

1 MS. EVERHART: I have both. Did you
2 want those marked as exhibits?

3 MR. BENJAMIN: Yes.

4 MS. EVERHART: Do you want to look at
5 them first? I just want to keep my copy of it.

6 Do you want her to mark those as the
7 next two exhibits?

8 MR. BENJAMIN: Well, at this point let
9 me personally look at it before we mark it.

10 MS. EVERHART: I'll give those to you.
11 Here are copies that are not yet marked that you can
12 use.

13 (At which time the witness was
14 presented with Exhibit No. 8.)

15 (At which time the witness was
16 presented with Exhibit No. 9.)

17 BY MR. BENJAMIN:

18 Q You've been handed two documents, one, a
19 Declaration of DeFord Bailey, III, and another, a
20 letter to Walter Benjamin, dated June the 2nd,
21 2011. Do you see those two documents?

22 A I do.

23 Q Have you seen these documents before?

24 A Yes.

25 Q Let's start with the Declaration of DeFord

1 Bailey, III. Is this a document that you had your
2 grandfather to have this DeFord Bailey to sign?

3 MS. EVERHART: Objection.

4 THE WITNESS: I'm sorry. What was that
5 again?

6 BY MR. BENJAMIN:

7 Q This document, Declaration of DeFord
8 Bailey, III, did you have anything to do with DeFord
9 Bailey, III signing this document?

10 A Well, we -- my grandfather gave this to him.

11 Q Okay. Did you give it to your grandfather?

12 A I did.

13 Q Who prepared this document?

14 MS. EVERHART: Objection.

15 THE WITNESS: My attorney.

16 BY MR. BENJAMIN:

17 Q Do you know who prepared the document?

18 A My attorney.

19 Q What attorney prepared the document?

20 A Amy J. Everhart.

21 Q Okay. And so, isn't it true that DeFord
22 Bailey didn't -- DeFord Bailey didn't verbally make
23 these statements but rather the statements was made
24 by your attorney?

25 MS. EVERHART: Objection.

1 THE WITNESS: No, that's not true.

2 BY MR. BENJAMIN:

3 Q Why is it that you had your grandfather to
4 give that to DeFord Bailey and you not give it to
5 him yourself?

6 A Because he knew where he was at that time
7 and I didn't.

8 Q I'm sorry?

9 A He knew where he was and I didn't.

10 Q Have you, since this time, spoken with this
11 DeFord Bailey whether he agreed to the -- whether he
12 agreed to the application for trademark for DeFord
13 Bailey?

14 A I know that I've spoken with him and he said
15 he had never met you or Ron before.

16 Q Okay. Did he ever tell you that he was
17 involved with the trademark?

18 A Well, I mean, I knew through the forms that
19 he was because his name was on it.

20 Q Okay. So you knew that he had filed for the
21 trademark, correct?

22 A After it was filed I knew.

23 Q Yes. And was this document made before or
24 after it was filed, to your knowledge?

25 A I can't remember.

1 Q Referring you to the last line in this
2 document, it says, it was "Executed this 2nd day of
3 June, 2011," correct?

4 A Correct.

5 Q Okay. So, if that's the date -- if that is
6 a date after it was filed and you were a part of
7 getting DeFord Bailey to sign this, you had him to
8 sign it after you knew he had already signed the
9 application for the trademark, correct?

10 MS. EVERHART: Objection.

11 THE WITNESS: I can't remember.

12 BY MR. BENJAMIN:

13 Q Isn't it true that the reason why you had
14 your grandfather to present this to this DeFord
15 Bailey is because you knew he would sign it if his
16 father gave it to him?

17 A No.

18 MS. EVERHART: Objection.

19 BY MR. BENJAMIN:

20 Q Now, let me refer you to the other letter
21 dated June the 2nd, addressed to Walter Benjamin,
22 attorney at law. Do you see that document?

23 A I do.

24 Q And who typed up this letter?

25 MS. EVERHART: Objection.

1 BY MR. BENJAMIN:

2 Q If you know.

3 A I believe my attorney did.

4 Q Okay. And do you know if DeFord Bailey
5 signed this document?

6 A Yes. It looks like his signature on there.

7 Q Do you have personal knowledge of him
8 signing the document?

9 A Yeah. Yes. I seen him sign this one.

10 Q I'm sorry?

11 A Yes. Yes, he signed this one.

12 Q How do you know that he signed this
13 document?

14 A I believe -- I believe I gave him this one.

15 Q You personally gave him this document?

16 A I think it was mailed to him. This was
17 mailed to him.

18 Q But you don't remember one way or the other?

19 A No.

20 Q Okay. Now let's get over to your
21 grandfather's will, Exhibit Number 5.

22 (At which time the witness was
23 presented with Exhibit No. 5.)

24 BY MR. BENJAMIN:

25 Q Has this will been probated?

1 A I'm sorry. What do you mean?

2 Q Has Exhibit Number 5 been probated?

3 A What do you mean by that?

4 Q Put into court to have a Court make rulings
5 on the will?

6 MS. EVERHART: Objection.

7 THE WITNESS: I don't know.

8 BY MR. BENJAMIN:

9 Q Was this will filed with the Court, to your
10 knowledge?

11 A Yes.

12 Q And when it was filed, was there a court
13 date concerning a hearing on the will, to your
14 knowledge?

15 A I don't -- it wasn't a hearing on it. I
16 don't know.

17 Q Okay.

18 A I don't remember.

19 Q Did you give notice to Carlos DeFord Bailey
20 or this DeFord Bailey, notice about this will being
21 filed in court?

22 A No.

23 Q Okay. So, isn't it true that Carlos DeFord
24 Bailey nor the DeFord Bailey sitting here ever had a
25 chance to see this will?

1 MS. EVERHART: Object to form. Object.

2 THE WITNESS: No, they didn't see the
3 will, but they knew there was a will there.

4 BY MR. BENJAMIN:

5 Q Okay. Please tell us how is it that they
6 knew there was a will.

7 A Because I had to call each one of them to
8 get their birthdates to go on here. And I was
9 telling them that we needed their birthdates for
10 Granddaddy's will. Because I didn't know
11 everybody's exact year and date. So I had to like
12 kind of call each one, or if somebody didn't know,
13 they'd tell me the other one.

14 Q But you didn't tell them you were needing
15 the birthdate for the purpose of the will, did you?

16 A Yeah.

17 Q Did you tell them what was in the will?

18 A They didn't ask.

19 Q Did you tell them that your grandfather was
20 leaving everything to you?

21 MS. EVERHART: Objection.

22 THE WITNESS: No.

23 BY MR. BENJAMIN:

24 Q Did you tell Carlos DeFord Bailey or this
25 DeFord Bailey here that the will was leaving

1 everything to you?

2 MS. EVERHART: Objection.

3 THE WITNESS: No.

4 BY MR. BENJAMIN:

5 Q Did you tell Carlos DeFord Bailey or DeFord
6 Bailey here that the will was leaving anything to
7 DeFord Bailey, LLC?

8 A Well, everybody sort of knew that I was part
9 of the LLC, so I'm pretty sure they knew that I was
10 a part of it, but I don't know.

11 Q Did they specifically know that the will was
12 granting anything to the DeFord Bailey, LLC?

13 A Some of the family members did, yes.

14 Q Did Carlos DeFord Bailey know?

15 A I don't know.

16 Q Did this DeFord Bailey know?

17 A I don't know.

18 Q So, isn't it true that Carlos DeFord Bailey
19 and this DeFord Bailey never had an opportunity to
20 object to the will?

21 MS. EVERHART: Objection.

22 THE WITNESS: I don't know.

23 BY MR. BENJAMIN:

24 Q Other than being notified concerning the
25 dates, you didn't notify -- other than notifying

1 them on the dates of birth -- asking them for the
2 date of birth, you didn't communicate to either of
3 these people sitting here anything else about the
4 will; isn't that correct?

5 A Well, actually, no, that isn't correct.
6 Because all they said that the bass -- we always
7 said what went to who. You know, like -- because my
8 Uncle Anthony, he left the bass to him. So they
9 sort of knew like what was going to who. They knew
10 there was a will, because we talked about it while
11 he was living about who would get what.

12 Q When you say we, who do you mean?

13 A Oh, like the family itself. Like Dorothy
14 Hall knew that she was getting the car. My uncle,
15 Anthony Bailey, knew that he was getting the bass.
16 Bubba and Carlos, you know, they got suits and
17 stuff.

18 I mean, we talked about the will before he
19 even passed on who was going to get what. He made
20 sure people knew while he was alive what they were
21 going to get.

22 Q So are you saying that this will spells out
23 that Carlos was to get some suits?

24 MS. EVERHART: Can you repeat that
25 question?

1 THE WITNESS: It does have it -- it
2 should have it --

3 MS. EVERHART: Wait. Don't answer yet.
4 I didn't understand the last part. Do you want her
5 to read it?

6 BY MR. BENJAMIN:

7 Q Are you saying that the will is leaving
8 Carlos Bailey some suits?

9 A I'm not sure. Whatever is in here. It has
10 specifically who gets what, and it's in here. It's
11 in the will who gets what.

12 Q And you're alleging that you told Carlos
13 that he was getting suits from his grandfather?

14 A No, I didn't tell Carlos that.

15 Q And no one else told him that, isn't that
16 correct, as far as you know?

17 A I don't know that.

18 Q And as far as you know, there are no court
19 dates set for a hearing on this will?

20 A Not that I know of. I don't know.

21 Q So let's get back to one of your convictions
22 where you tried to take marijuana into a penal
23 institution. That felony charge was a federal
24 charge?

25 A No.

1 Q A state charge?

2 A Yes.

3 Q And that -- and the allegation in that
4 charge was you did not tell the officials what you
5 had on you when you entered the institution; isn't
6 that correct? You did not tell them the truth
7 regarding what you had on you when you entered into
8 the institution?

9 A Nobody asked me, so I didn't lie. But no, I
10 didn't tell them either.

11 Q So, are you saying they didn't find out
12 until you were searched?

13 A Correct.

14 Q But you were trying to conceal it from them,
15 were you not?

16 A Yes.

17 Q That is deceptive, isn't it?

18 A I'm not sure. I guess.

19 Q Do you agree?

20 A Maybe. Yes, I agree.

21 Q But yet, you're saying now you're not
22 involved in any kind of deception?

23 A That's correct.

24 Q And that your grandfather, of his
25 30 grandchildren, wanted to leave the rights to the

1 DeFord Bailey name to the LLC corporation which you
2 would eventually own 100 percent?

3 MS. EVERHART: Objection.

4 THE WITNESS: Yes.

5 BY MR. BENJAMIN:

6 Q So, I'll ask you again, finally the last
7 question: You have no document or any kind of proof
8 today to show that anyone other than you and your
9 grandfather objected to Carlos DeFord Bailey and
10 this DeFord Bailey getting the trademark on the
11 DeFord Bailey name?

12 MS. EVERHART: Objection. Asked and
13 answered.

14 THE WITNESS: No.

15 MR. BENJAMIN: Okay. No further
16 questions.

17 MS. EVERHART: I have a few redirect
18 questions.

19 REDIRECT EXAMINATION

20 BY MS. EVERHART:

21 Q Ms. Wiley, you were asked on
22 cross-examination when I was retained to represent
23 you. Was I retained to represent you or the LLC?

24 A The LLC.

25 Q Was I ever retained to represent you,

1 personally?

2 A Not me personally.

3 Q Now, you testified that you, at a certain
4 point, learned that DeFord Bailey, III had filed the
5 trademark application at issue here. Do you recall
6 that?

7 A Yes.

8 Q Do you have personal knowledge of whether he
9 authorized that application to be filed?

10 A No.

11 Q What's the basis for your knowledge
12 initially that he filed that application?

13 A When I received the paperwork with his name
14 on it.

15 Q So you simply saw his name on the
16 application?

17 A Yes.

18 Q I'm going to refer you back to the
19 two documents that have not been made exhibits, but
20 the letter from Walter Benjamin -- I'm sorry -- to
21 Walter Benjamin from DeFord Bailey dated June 2,
22 2011, and the declaration of DeFord Bailey, III of
23 the same date.

24 Do you have those in front of you?

25 A I do.

1 Q Do you have any personal knowledge of who
2 prepared those documents?

3 A I don't have any personal knowledge of
4 exactly who prepared them.

5 Q Were you present to see those documents
6 being prepared?

7 A No.

8 Q Did you prepare those documents?

9 A No.

10 Q Do you have any knowledge -- do you have any
11 personal knowledge of the will of your grandfather,
12 DeFord Bailey, Jr., being filed with the Court?

13 A I don't have any knowledge of that.

14 Q Do you know for certain whether it was filed
15 with the Court?

16 A Well, it has the stamp from the notary --
17 Tennessee notary public that stamped it.

18 Q Okay. Do you know what the legal
19 significance of that is?

20 MR. BENJAMIN: I object.

21 THE WITNESS: No.

22 BY MS. EVERHART:

23 Q You can answer the question.

24 A No.

25 Q Does your grandfather, DeFord Bailey, Jr.'s

1 will leave everything to you?

2 A No, it doesn't leave everything to me, not
3 his will. Just the LLC part.

4 MS. EVERHART: No further questions.

5 RE-CROSS-EXAMINATION

6 BY MR. BENJAMIN:

7 Q Just one question. As far as you know, the
8 will did leave all of the intellectual property to
9 the LLC; isn't that correct?

10 A Correct.

11 MR. BENJAMIN: No further questions.

12 MS. EVERHART: Nothing further from me.

13 FURTHER DEPONENT SAITH NOT.

14 (Proceedings concluded at 12:25 p.m.)

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1 REPORTER'S CERTIFICATE

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I, Jerri L. Porter, RPR, CRR, Notary Public and Court Reporter, do hereby certify that I recorded to the best of my skill and ability by machine shorthand all the proceedings in the foregoing transcript, and that said transcript is a true, accurate, and complete transcript to the best of my ability.

I further certify that I am not an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

SIGNED this 3rd day of April, 2015.

Jerri L. Porter
Jerri L. Porter, RPR, CRR



My Notary commission expires: 2/19/2018
Tennessee LCR No. 335
Expires: 6/30/2016

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DeFORD BAILEY, LLC,)
)
) Opposer,) Opposition
) No. 91209857
vs.)
) Application Serial
CARLOS DeFORD BAILEY, and) No. 85304626
DeFORD BAILEY, III,)
)
) Applicants.)
)

Testimony of
DeFORD BAILEY, III
January 29, 2015
Commencing at 12:45 p.m.

ORIGINAL

Reported by: Jerri L. Porter, RPR, CRR
Tennessee LCR No. 335
Expires: 6/30/2016

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Also Present: Shemika Wiley
Carlos Bailey

The testimony of DeFORD BAILEY, III was taken on the 29th day of January, 2015, in the offices of the Everhart Law Firm, 1400 Fifth Avenue North, Nashville, Tennessee, for all purposes under the United States Patent and Trademark Office Rules of Civil Procedure.

It is agreed that Jerri L. Porter, being a Notary Public and Court Reporter for the State of Tennessee, may swear the witness.

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1 P R O C E E D I N G S

2 DeFORD BAILEY, III,

3 was called as a witness, and after having been first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. EVERHART:

7 Q Good afternoon, Mr. Bailey.

8 A Good afternoon.

9 Q We met earlier today. I'm Amy Everhart. I
10 represent DeFord Bailey, LLC in this dispute, and
11 I'm going to ask you a few questions.

12 Can you please give your full name.

13 A DeFord Bailey.

14 Q And are you DeFord Bailey, III?

15 A DeFord Bailey, III.

16 Q And what is your occupation?

17 A Music.

18 Q Are you a musician?

19 A Drummer.

20 Q I'm sorry? A drummer?

21 A Yes.

22 Q Do you also sing?

23 A Yes.

24 Q Do you play any other instruments?

25 A That's it.

1 Q Are you taking any medication or substances
2 that would prevent you from testifying truthfully
3 today?

4 A No.

5 Q Do you understand we're here today because
6 DeFord Bailey, LLC has challenged the application
7 for trademark registration of the mark DeFord
8 Bailey?

9 A Yes.

10 Q You're the grandson of DeFord Bailey, Sr.,
11 correct?

12 A Yes.

13 Q And he passed away in 1982?

14 A Uh-huh.

15 Q How old were you when he passed away?

16 A I'm 59 now.

17 Q I won't make you do the math. And your
18 father was DeFord Bailey, Jr.?

19 A Uh-huh.

20 Q And he passed away in 2013, correct?

21 A Yes.

22 Q Shemika Wiley is your niece?

23 A Yes.

24 Q And Carlos Bailey is your brother, correct?

25 A Yes.

1 Q Is it true that DeFord Bailey, Sr. was the
2 first African American performer at the Grand Ole
3 Opry?

4 A Yes, he was.

5 Q And he was a very talented harmonica player,
6 correct?

7 A Yes.

8 Q Do you play the harmonica?

9 A A little bit.

10 Q And DeFord Bailey, Sr. was particularly
11 known for playing the harmonica, correct?

12 A Yes.

13 Q And his name was associated with the
14 harmonica?

15 A Uh-huh.

16 Q Is that yes?

17 A Yes.

18 Q And DeFord Bailey, Sr. has been inducted
19 into the Country Music Hall of Fame?

20 A As long as I can remember. Years.

21 Q Okay. DeFord Bailey died leaving
22 three children, correct?

23 A Yes.

24 Q And what are their names?

25 A Dezoral Thomas, Christine Craig, DeFord

1 Bailey, Jr.

2 Q And is it Christine Craig or Greg?

3 A Craig.

4 Q Have you heard the name Christine Lamb
5 before?

6 A Christine Lamb? Well, that was her first --
7 no. I can't recall.

8 Q Okay. And do you understand those three
9 children to be the sole heirs of DeFord Bailey, Sr.?

10 A Uh-huh. Yes.

11 Q Do you claim to be an heir to DeFord
12 Bailey, Sr.?

13 A Yes.

14 Q Okay. In what way?

15 A His son.

16 Q I'm sorry. DeFord Bailey, Sr.

17 A His grandson.

18 Q Okay. But are you the son of DeFord
19 Bailey, Sr.?

20 A No.

21 Q You're the grandson?

22 A I'm the grandson.

23 Q Okay. Christine Craig and Dezoral Thomas
24 are still living, correct?

25 A Yes.

1 Q And your father passed away in -- was it
2 September of 2013?

3 A September 2013.

4 Q What did he -- I'm sorry to ask these
5 questions because I know they're personal, but what
6 was the cause of his death?

7 A Prostate cancer.

8 Q Do you know when he was diagnosed with
9 prostate cancer?

10 A It was in -- I want to say going into 2013,
11 but 2012, going into 2013.

12 Q So, he did not have that diagnosis in 2011?

13 A Not to my knowledge.

14 Q And you were present this morning for the
15 deposition of Shemika Wiley, correct?

16 A Yes.

17 Q Did you hear testimony or questions
18 suggesting that you spent weekly time with your
19 father as he got closer to his death?

20 A Yes, I did.

21 Q Okay. And when did you start doing that?

22 A Well, 2012, he had gotten a job at
23 Carol Ann's playing bass, and I would take him every
24 Sunday all the way up until he couldn't play again.
25 Then at times I'd have to take him to the hospital.

1 And then when I can't get him to the club to
2 play his bass, which was Carol Ann's, but when I
3 couldn't make it because I was in church, and I told
4 him, if he get there, once I get out of church,
5 because sometimes -- a lot of times we go from
6 church to church to sing. Then I have to have a
7 sister or her to pick him up.

8 But basically, he request me to have him
9 there on time and pick him up. And I did that -- I
10 think he got the job in 2012.

11 By October or November, going into that
12 Christmas going into 2013, and he never missed a
13 Sunday until I watched him just, you know, go down
14 and go down and go down, until I used to have to --
15 I'd never leave the club.

16 I never left because, as he was getting
17 sicker and sicker and sicker, and then one night we
18 was there and he started playing wrong notes on the
19 bass. I mean, he was playing the notes and as a few
20 months go by -- some months went by, he started
21 hitting wrong notes. So he was getting sicker.

22 Q And when, approximately, was that? Was that
23 in 2012, 2013?

24 A 2013.

25 Q Before 2013, did you notice any decline in

1 his mental capabilities?

2 A Well, I noticed he wasn't driving anymore.

3 Q When did that happen?

4 A That happened in 2013. About the beginning
5 of 2013, because I used to drive him everywhere.

6 Q Okay. Did you notice any other decline in
7 his mental capacity before 2013?

8 A No. Are we speaking of 2013?

9 Q Yes.

10 A I noticed he was showing me the sign of
11 sickness, like he would forget some things like --
12 like the way we be going to Carol Ann's, he like
13 might ask me, where are we? I'd say, well, we're on
14 Murfreesboro Road. He'd say, we don't go this way.
15 I would say, yes, we go this way.

16 Q And when was that?

17 A I'd say like around by April.

18 Q Of 2013?

19 A Uh-huh. April.

20 Q Are you familiar with a company called
21 DeFord Bailey, LLC?

22 A Yes.

23 Q And DeFord Bailey claims that it owns DeFord
24 Bailey's share of rights to the DeFord Bailey name,
25 correct? Do you understand that, what the claim is

1 in that case?

2 A Say this again.

3 Q Sure. That was confusing. A lot of
4 Baileys.

5 DeFord Bailey, LLC claims that it owns the
6 name and likeness rights to DeFord Bailey. Is that
7 your understanding of what the claim is?

8 Do you understand that DeFord Bailey, LLC
9 claims to own rights to the DeFord Bailey name?

10 A I didn't really know.

11 Q Okay. That's fine. Let me show you an
12 exhibit. It's Exhibit 5.

13 (At which time the witness was
14 presented with Exhibit No. 5.)

15 BY MS. EVERHART:

16 Q Have you seen this document before? Take a
17 minute to look at it.

18 A See, I don't have my glasses. This just
19 looks bleary to me.

20 MR. CARLOS BAILEY: Try these. Look
21 and see if it helps (tendering).

22 BY MS. EVERHART:

23 Q Are you able to see it better?

24 A Can you read this?

25 Q Can I read it? Yes, I can read it, but I

1 need for you to be able to see it. Do we need to
2 take a break and get some glasses?

3 A No. You can go ahead.

4 Q Are you able to read it with those glasses?

5 A Uh-huh.

6 Q Okay. Why don't I have you read -- can you
7 just read the first line for me, please?

8 A Well, I'm -- my reading is not that good.

9 Q I'd like to just see -- I want to be able to
10 see what you can read.

11 A DeFord Bailey, Jr., an adult resident of
12 Davidson County, Tennessee, being more than 18 years
13 of age and of sound and disposing mind, memory, and
14 do Harvey make -- Harvey make, publish, and -- is
15 that declare? -- declare this document to be my last
16 will and statement --

17 Q And you can stop there. I just wanted to
18 make sure that you can see it if I'm going to ask
19 you other questions about documents.

20 So you're able to see it enough to read it,
21 at least you feel comfortable, or would you like to
22 get your own glasses?

23 A I don't have no glasses.

24 Q Oh, you just have trouble seeing generally
25 anyway?

1 A Right.

2 Q I see. Okay. Were you aware that DeFord
3 Bailey, Jr. had a will?

4 A No.

5 Q Okay. This is the first time today you've
6 learned of that; is that correct?

7 A Well, today -- well, today is -- yes, today
8 is the first day about the will.

9 Q You never knew before today that he had a
10 will?

11 A Well, I heard that he had a will, but I knew
12 nothing about a will.

13 Q Who did you hear that from?

14 A Just my sister, Dorothy, said something
15 about, well, Daddy left a will, but that was it.

16 Q Did you ever ask to see the will?

17 A No.

18 Q Why not?

19 A Because at the time it was just -- well, it
20 was like -- really, no, I didn't know nothing about
21 a will.

22 Q Okay. You knew your father passed away?

23 A I knew he passed away.

24 Q You never asked to see a will?

25 A Huh-uh.

1 Q Okay. Have you ever seen any documents in
2 which your father assigned his rights to the DeFord
3 Bailey name to anyone?

4 A No.

5 Q Okay. Did you ever witness your father sign
6 any such documents?

7 A No.

8 Q So you have no personal knowledge of whether
9 he did so or not, correct?

10 A Correct.

11 Q And if he did so, you have no personal
12 knowledge of the circumstances under which he did
13 so, correct?

14 A Correct.

15 Q At some point you became aware that Carlos
16 Bailey had decided to sell harmonicas with the
17 DeFord Bailey name, correct?

18 A Correct.

19 Q And he asked you to become involved in that
20 project?

21 A Well, yes.

22 Q Okay. When was that?

23 A This was like -- this has been like -- it's
24 been some -- it's been some years talking about
25 harmonicas.

1 Q Do you have any estimate of what year you
2 might have learned it?

3 A I want to say -- I'm looking at probably
4 15 years or so.

5 Q Okay. And what do you recall about those
6 initial discussions?

7 A When he was playing harmonica, he was like
8 trying to sing through a harmonica. I always say he
9 going to blow harmonica and said that he could sell
10 some harmonicas, but that never was in the picture.
11 But he had been saying that he wanted to sell
12 harmonicas.

13 Q Do you know if he eventually did sell
14 harmonicas with the DeFord Bailey name?

15 A Yes.

16 Q When did that occur, to your knowledge?

17 A Well, I want to say 2011 or '12. I want to
18 say 2011.

19 Q Do you know why he wanted to use the DeFord
20 Bailey name on the harmonicas?

21 A Yeah. For foundation -- I mean, the
22 trademark as in harmonicas as a trademark like --
23 say like a DeFord Bailey trademark is like
24 McDonald's or something. You can have the name to
25 have something that you can say that this is DeFord

1 Bailey, like trademark.

2 Q Okay. Like a brand?

3 A Yeah.

4 Q And why the name DeFord Bailey?

5 A It's the name of my grandfather and it
6 carries the name DeFord Bailey. And with a
7 trademark, when the name is DeFord Bailey, the
8 family, that way it can go on down.

9 Q What was significant about using the name
10 DeFord Bailey as the brand?

11 A It's music, like singing.

12 Q Is it because -- I'm sorry. Were you
13 finished? I don't want to cut you off. Go ahead.

14 A It was basically about the music and, you
15 know, having like a name DeFord Bailey, say like a
16 DeFord Bailey business or, you know.

17 Q Is it because DeFord Bailey, Sr. was so well
18 known in connection with the harmonica?

19 A That's true.

20 Q Now, at some point Carlos Bailey engaged
21 Attorney Walter Benjamin to file a trademark
22 application for the DeFord Bailey trademark; is that
23 correct?

24 A Correct.

25 Q When did you learn of that?

1 A 2011.

2 Q And did you also engage Attorney Walter
3 Benjamin to include your name on the application?

4 A Yes.

5 Q Did you do it before the application was
6 filed?

7 A Yes.

8 Q And was that in 2011?

9 A Uh-huh.

10 Q Okay. When did you first meet Walter
11 Benjamin?

12 A I just met him.

13 Q You just met him when? Today?

14 A Yesterday. I have spoken with him over the
15 phone quite a bit.

16 Q When did you first speak with him on the
17 phone?

18 A Oh, I want to say sometime in 2011.

19 Q Did you speak with him over the phone before
20 the trademark application was filed?

21 A After.

22 Q Had you ever spoken with Walter Benjamin
23 before the trademark application was filed?

24 A Yes.

25 Q If you didn't speak with him via phone or in

1 person, how did you speak with him?

2 A Phone.

3 Q Okay. You just said it was after the
4 trademark application was filed.

5 A Oh, I didn't understand what you were
6 saying.

7 Q Am I confusing you?

8 A Yes.

9 Q Let me ask it again. When was the first
10 time you spoke with Walter Benjamin on the phone?
11 Was it after the trademark application was filed or
12 before?

13 A It was after the trademark.

14 Q You did not authorize Walter Benjamin to
15 file the application before it was filed, did you?

16 A I'm trying to --

17 Q Do you understand my question?

18 A Yes. Yes.

19 Q You did authorize him to do so?

20 A Uh-huh.

21 Q How did you communicate that to him?

22 A By being DeFord Bailey and I had signed off
23 -- somebody said I signed off, which I didn't
24 realize I had signed off on.

25 Q What did you sign; do you recall? Was it a

1 letter?

2 A Yeah. Something that I didn't realize that
3 I had signed off.

4 Q Okay. Do you recall how the document was
5 put in front of you or how you received that
6 document?

7 A No. I never read it. I never read it today
8 until something said I had signed off. He had told
9 me that I signed off on an agreement of the
10 trademark. I said, no, I didn't.

11 You know, when the word got to me that I got
12 a piece of paper saying -- well, my father gave me a
13 piece of paper, which he just came over to the house
14 and said -- and I was given -- I needed him -- well,
15 he just popped up. He said, hey, sign this for
16 Daddy. I said, okay. I said, Daddy, take me to the
17 store. He said, okay. Sign this right here.

18 So I did. That was it. Never read nothing.
19 Then we went to the store. That was it. Brought me
20 back. Because my son was sick at the time, DeFord
21 Bailey. And I really couldn't leave him long
22 because he was sick with cancer.

23 And after that, I -- saying that I had
24 signed off. And then I talked to him. He had told
25 me that I signed off. And he said -- I said, I

1 haven't signed off on anything. Yeah, you signed
2 off on the trademark, he said. And I said, well, I
3 didn't know that.

4 And I had signed something that I wasn't
5 aware of because I never read it and my daddy never
6 told me. So, by him giving me something, I don't
7 know if he knew because he didn't -- I didn't read
8 it. And he just give it to me. That was it.

9 Q And are you talking about a document that
10 authorized Walter Benjamin to file your trademark
11 application?

12 A Uh-huh.

13 Q Okay. And so, you believe that there may
14 have been a document that you didn't know what you
15 were signing?

16 A That's correct. I never read it. I just
17 got a -- saying that I signed off. I said, I
18 haven't signed off on anything. After that, I
19 wouldn't sign anything else. And that's not unless
20 it was read.

21 Q Have there been other documents that you
22 signed but didn't read?

23 A No.

24 MS. EVERHART: Okay. If we could mark
25 these next two documents, 8 and 9.

1 (Marked Exhibit No. 8.)

2 (Marked Exhibit No. 9.)

3 BY MS. EVERHART:

4 Q Mr. Bailey, you're being handed two
5 documents marked Exhibits 8 and 9. Take a look at
6 those. Do you need to use your glasses again? Take
7 a minute to study those.

8 A (Reviewing document.)

9 Q Do you recognize the first document,
10 Exhibit 8?

11 A Are you talking about B?

12 Q And it also says -- actually, Exhibit A, it
13 will say at the top as well, but it's marked with a
14 sticker as Exhibit 8. Do you see the one marked as
15 Exhibit 8?

16 A Yeah.

17 Q Do you recognize that document?

18 A Wait a minute. (Reviewing document.)

19 I don't remember this.

20 Q You don't remember this document, Exhibit 8?

21 A I'm trying to -- huh-uh. No, ma'am.

22 Q And do you actually see two signatures at
23 the bottom of this document?

24 A Uh-huh.

25 Q Do you recognize those signatures?

1 A That's not my handwriting. I never signed
2 this.

3 Q Okay. So your testimony today is that
4 that's not your handwriting, that you didn't sign
5 that document?

6 A No, ma'am.

7 Q Okay. That's okay. That's your answer.
8 Are you done with your answer? You just look
9 uncertain.

10 A No. I'm sure.

11 Q Okay. I'd like for you to look at -- you'll
12 see Exhibit B at the top, but it's also marked
13 Exhibit 9 on the sticker, which is the other
14 document in front of you.

15 Go ahead and -- do you feel you've
16 sufficiently looked at that document? You had
17 looked at it a bit earlier here.

18 A (Reviewing document.)

19 I didn't -- this --

20 Q Do you recognize that?

21 A Huh-uh.

22 Q Do you see some signatures on that document
23 as well?

24 A Yes, I do.

25 Q Okay. And do you recognize those to be your

1 signature?

2 A No, ma'am.

3 Q Okay. So your testimony today is that the
4 signatures on Exhibit 9 are not your signature,
5 correct?

6 A Yes, ma'am. (Reviewing document.)

7 Q Have you ever seen the trademark application
8 that was filed, an actual copy of the application?

9 I'm moving on from that document, unless
10 you're not done with your answer.

11 A I'm trying to read.

12 Q My question is with regard to the signature.
13 Do you feel you're not able to sufficiently see it?
14 Do you need me to read it to you?

15 A If you don't mind.

16 Q Sure, I'll read it to you. Give me just one
17 second and I'll pull it back out here.

18 A I guess it's something that I read that is
19 not true on this.

20 Q You're looking at Exhibit 9?

21 A Yeah.

22 Q Okay. Well, your testimony is that you did
23 not sign this document, correct?

24 A This -- Mr. Benjamin has spoken to him to
25 authorize this. Yes.

1 Q Okay. That's not my question. I already
2 asked you that question.

3 So my question is with regard to this
4 document and whether that's your signature on this
5 document. And my understanding is that you've said
6 it's not. Do you want to change that testimony?

7 A It's not my signature.

8 Q Okay.

9 A Yeah.

10 Q Okay. You're saying it's not?

11 A I'm getting confused with just reading. My
12 reading ain't...

13 (Reviewing document.)

14 Q So, the only question pending right now is
15 whether or not you signed those documents. Do you
16 feel that you haven't responded to those questions,
17 because otherwise, I'd like to move on.

18 A (Reviewing document.)

19 I don't understand what I'm reading. Can
20 you read this, please?

21 Q I can read it to you, but I need an answer
22 to my question about the signatures first. I'm
23 asking you if those are your signatures, and
24 you have testified today that those are not your
25 signatures. Is that your testimony on

1 Exhibits 8 and 9?

2 A Yes. (Reviewing document.)

3 This ain't my handwriting.

4 Q Okay. And that's my question. So if that's
5 not your handwriting, I'm not going to ask you
6 further questions about those documents.

7 Let me get to my next question that I had
8 asked. Have you ever seen the trademark application
9 that was filed in connection with the DeFord Bailey
10 mark, a copy of the written application?

11 A Yes.

12 MS. EVERHART: Okay. If you would
13 please hand him Exhibit 7. Wait. I take that back.
14 I actually want to mark a new one. Sorry about
15 that.

16 THE WITNESS: I know everything I
17 signed.

18 BY MS. EVERHART:

19 Q There's no question pending right now, so
20 unless you want to change your answer to the last
21 question, then there's no question pending right
22 now.

23 Do you recall physically signing the
24 trademark application?

25 A Yes.

1 Q Okay. Do you know when you did that?

2 A 2011.

3 Q Was the application read to you?

4 A Yes.

5 Q Okay. Who read it to you?

6 A My brother.

7 Q Who's your brother? Carlos?

8 A Uh-huh.

9 Q Did he read it to you in person?

10 A Yes.

11 Q But do you know if you signed that before it
12 was filed?

13 A Yes.

14 Q Do you have a copy of what you signed?

15 A No. He kept all the copies of everything.

16 Q Okay. You were just handed a document.

17 MS. EVERHART: Do you want me to take a
18 look at that or --

19 MR. BENJAMIN: Yes.

20 MS. EVERHART: -- are you handing him
21 that to refresh his recollection?

22 MR. BENJAMIN: Yes.

23 MS. EVERHART: Actually, I'll make a
24 copy of these to use as an exhibit. I'll wait until
25 a break and then I'll ask more questions about that

1 after that.

2 MR. BENJAMIN: Okay.

3 BY MS. EVERHART:

4 Q Have you ever met Ron Bailey?

5 A Once.

6 Q When?

7 A I want to say sometime in -- sometime
8 in 2011.

9 Q Was it at the airport event that you've
10 heard testimony about today?

11 A It was at my brother's house.

12 Q Okay. Did you meet him at the airport
13 event?

14 A No.

15 Q Were you at that event?

16 A No.

17 Q And so you met him at your brother's house
18 sometime in 2011?

19 A Uh-huh.

20 Q Do you know if that was before the trademark
21 application was filed?

22 A It was after it was filed.

23 Q What was the substance of the meeting?

24 A He come to talk to my brother and I, but
25 when I spoken to him, he said he was just working on

1 the trademark. That was it.

2 Q What is Ron Bailey's involvement in the
3 trademark?

4 A Supposed to have been like helping, but that
5 was it.

6 Q I'm sorry?

7 A I was talking to Mr. Benjamin.

8 Q I'm a little confused by your answer. Can
9 you repeat it?

10 A He was no longer with us.

11 Q No longer with you at what time?

12 A 2011.

13 Q So, is Ron Bailey, today, involved in the
14 trademark project?

15 A Not that I know of, no.

16 Q Did he ever get involved in it or was he
17 just planning to be -- to participate, to your
18 knowledge?

19 A To my knowledge, no. Because I didn't
20 actually communicate with him like I did
21 Mr. Benjamin. After I had found out that I had
22 signed off on something I didn't realize that I
23 signed off, I said, well, I won't sign nothing else.

24 Because if I didn't read that, you know,
25 that I had signed off, I didn't realize because it

1 was like saying -- it hurt me because I didn't
2 realize I done signed something that -- because I
3 never would have signed it if I had read it. I
4 would have said, I'm not signing this. I know what
5 I did. Never read it.

6 Q Do you know if Ron Bailey had any
7 involvement in the trademark application process?

8 A No.

9 Q You don't know or he did not?

10 A He did not.

11 MS. EVERHART: I'm going to have you
12 look at Exhibit 7.

13 (At which time the witness was
14 presented with Exhibit No. 7.)

15 BY MS. EVERHART:

16 Q Have you seen any of the documents that were
17 filed in the Trademark Office in this dispute, the
18 legal documents?

19 A The legal documents?

20 Q Filed with the Trademark Office.

21 A Yes.

22 Q Okay. Is this -- take a minute to look at
23 this. Is this one of those documents?

24 MR. BENJAMIN: After he answers this
25 question, can we take a break?

1 MS. EVERHART: I have just a couple of
2 questions before we do that. I'd like to finish up
3 with this line of questioning, and then I'm ready
4 for a break.

5 THE WITNESS: (Reviewing document.)
6 Yes.

7 BY MS. EVERHART:

8 Q Okay. If you would turn to, it's going to
9 be paragraph 18. I'm going to read that to you.
10 It's way at the bottom of the page.

11 It states, "Shemika Wiley has little
12 credibility due to a record of three felonies
13 convictions - attempted murder, and two cases of
14 drug trafficking whom applicants allege manipulated
15 the 81-year-old DeFord Bailey, Jr. into signing an
16 alleged assignment."

17 You heard testimony earlier today about
18 allegations that Ms. Wiley had three felony
19 convictions, correct?

20 A Correct.

21 Q Is it your understanding that she did not
22 have three felony convictions?

23 A Yes.

24 Q Do you know if she was ever convicted for
25 attempted murder?

1 A No.

2 Q You don't know or she was not?

3 A No.

4 Q Okay. Do you know if she was ever convicted
5 of drug trafficking?

6 A Yes.

7 Q Okay. And did you -- do you know who
8 supplied to the attorney in this case a suggestion
9 that she was convicted of attempted murder?

10 A No.

11 Q Did you do that?

12 A No.

13 Q Do you agree with that allegation?

14 A What, that I know this?

15 Q That she was convicted of attempted murder.

16 A No.

17 Q Did you read this document before it was
18 filed with the Trademark Office?

19 A Yeah, I read it.

20 Q Did you voice an objection to including the
21 allegation about the attempted murder conviction?

22 A No, I didn't.

23 Q Why not?

24 A That's my niece, but I never -- you know,
25 that ain't got nothing to do with the trademark, in

1 my knowledge.

2 Q Based on your knowledge, was that truthful,
3 that statement?

4 A Yes.

5 Q That she was convicted of felony murder --
6 I'm sorry, of attempted murder?

7 A No.

8 Q That was not truthful?

9 A (Witness moves head side to side.)

10 Q Did you mean to say no? That was not
11 truthful to state that she was convicted of
12 attempted murder, correct?

13 A No.

14 Q Has your address ever been 515 Basswood
15 Avenue?

16 A Not mine, no.

17 Q No?

18 A No. That's the address where the mail went
19 to.

20 Q I'm sorry?

21 A Where the mail went, to my brother's house.

22 Q You get your mail there, so that's a mailing
23 address for you?

24 A Well, both of us.

25 Q Right. I'm just asking about you, though.

1 But that has been a mailing address for you?

2 A Uh-huh.

3 Q Okay. Do you know how many harmonicas with
4 the mark DeFord Bailey have been sold?

5 A No, I don't know how many.

6 Q Have you sold any yourself?

7 A No. I didn't sell any.

8 Q Do you know if Carlos has sold any?

9 A Yes.

10 Q And do you know if anyone else has sold any?

11 A I know he gave my father a few, that
12 somebody wanted some. You know, he didn't actually
13 give them to them.

14 Q Okay. You don't know that -- those were not
15 sold, to your knowledge, correct?

16 A Well, the ones that I know I was with him
17 when my daddy said, I need a couple of them
18 harmonicas, because a few of his friends wanted some
19 harmonicas.

20 Q But you don't know if those were sold?

21 A No, I don't know.

22 Q Do you know who Carlos Bailey sold his
23 harmonicas to?

24 A Like -- yeah. Like a few musicians that I
25 know of.

1 Q Here in Nashville?

2 A Uh-huh.

3 Q Do you know their names?

4 A Jimmy Church, Lucius Talley. They wanted a
5 harmonica because -- you know, he was -- he had had
6 harmonicas and really got the harmonicas and said
7 that's what he wanted to do was to sell them. I
8 said, you're really selling them.

9 So, you know, it was like with the name
10 DeFord, it could be like DeFord harmonicas, you
11 know, like a trademark.

12 Q So he did sell some, though?

13 A Uh-huh.

14 Q Okay. To Jimmy Church was one example?

15 A Yes.

16 Q Can you think of others he sold them to?

17 A Well, I wasn't with him all the time.

18 Q Well, I'm just asking of any others that
19 you're aware of, any other people that purchased
20 them from him.

21 A Yes. You asked me how many?

22 Q No. I'm now asking if you know of any other
23 names. You gave Jimmy Church as a name. Do you
24 have any other names of individuals that bought
25 harmonicas from Carlos Bailey?

1 A Billy Cannon.

2 Q Billy Cannon?

3 A He got one. That's about it, basically,
4 that I know of.

5 Q Okay. Have you ever been convicted of a
6 crime?

7 A No.

8 Q Have you ever been charged with a crime?

9 A No.

10 Q Okay. Have you ever done illicit drugs?

11 A No.

12 Q Never?

13 A Huh-uh.

14 MS. EVERHART: Okay. I think I'm ready
15 for a break. I'm just going to have a few questions
16 after the break, but why don't we go ahead and eat
17 lunch, and then I'll ask my questions after lunch.

18 (Luncheon recess observed.)

19 BY MS. EVERHART:

20 Q Mr. Bailey, I'm going to continue on with a
21 few more questions after our break.

22 Have you ever filed a trademark application
23 for DeFord Bailey, III, for that mark?

24 A Yes.

25 Q Not DeFord Bailey, but for DeFord

1 Bailey, III?

2 A Yes.

3 Q Where?

4 A It was -- what building? It was a building
5 uptown.

6 Q Did you file a Tennessee State trademark
7 application for DeFord Bailey, III?

8 A Uh-huh.

9 Q Do you know when that happened?

10 A Everything was in like 2011.

11 Q Okay. Did you file it on your own or did
12 someone join you in that application?

13 A Me and my brother.

14 Q You filed that here in Tennessee?

15 A Uh-huh.

16 Q In Nashville?

17 A (Witness moves head up and down.)

18 Q Was that granted? Did you get a
19 registration in that mark?

20 A Yes.

21 Q Okay. Was it in connection with harmonicas?

22 A Yes.

23 Q And did you have an attorney represent you
24 in filing that?

25 A Yes.

1 Q Who was the attorney?

2 A It was -- what was his name? The same -- my
3 mind.

4 THE WITNESS: What was the guy's name
5 that we -- Mr. Benjamin.

6 MR. BENJAMIN: Are you talking about
7 Ron Bailey?

8 THE WITNESS: Ron Bailey.

9 BY MS. EVERHART:

10 Q Is that who filed that application for you?

11 A Well, we sent it off. When we sent it off,
12 and he signed it. I think that's how it went.

13 Q Okay. And that was an application different
14 than the one we're here about today?

15 A Uh-huh.

16 Q Do you know if Ron Bailey is an attorney?

17 A Yes.

18 Q He is an attorney?

19 A Uh-huh.

20 Q Okay.

21 A No. No.

22 Q You don't know?

23 A No.

24 Q And did Walter Benjamin have any role in
25 filing that state trademark application for you?

1 A Yes.

2 Q Okay. Did he represent you in filing the
3 application?

4 A Yes.

5 Q Did you find it -- did you sign any legal
6 documents in connection with that application?

7 A Yes.

8 Q What did you sign?

9 A I can't recall. I can't remember
10 everything.

11 MS. EVERHART: All right. I'm going to
12 hand you a new exhibit.

13 (Marked Exhibit No. 10.)

14 BY MS. EVERHART:

15 Q If you'd take a look at Exhibit 10 that's
16 just been handed to you. I'll represent to you this
17 was a document that was handed to you by Carlos
18 Bailey sitting next to you, I believe, when I was
19 questioning you earlier. Or maybe Mr. Benjamin
20 handed the document to you.

21 So take a look at it and let me know if
22 you've seen this document before.

23 A (Reviewing document.) Yes.

24 Q And what do you recognize this document
25 to be?

1 A Well, being filed under 15 U.S. Section 105.
2 I believe application to be -- he read most of it to
3 me.

4 Q Who read it to you?

5 A My brother.

6 Q When did he read it to you? Did you discuss
7 it just now before we got back in here?

8 A No.

9 Q So, did he read it to you in the past?

10 A Uh-huh.

11 Q Okay. What do you understand this to be?

12 A I want to say it was like the trademark.

13 No, no, no. Yeah, that's right.

14 Q Is this -- do you recognize it to be the
15 last page of the federal trademark application?

16 A Yes.

17 Q Do you see signatures on this page?

18 A Yes, ma'am.

19 Q And do you see your signature?

20 A Yes, ma'am.

21 Q Do you recall signing this?

22 A Yes, ma'am.

23 Q Is that your signature?

24 A Yes, ma'am.

25 Q And do you know when you signed it?

1 A 2011.

2 Q It states -- there's a date, if you look
3 closely. It states April 26, 2011. Is that when
4 you signed it?

5 A Yes, ma'am.

6 Q And where did you sign it?

7 A I want to say it was -- it was uptown. It
8 was uptown at this -- I can't think of the name of
9 the building. It was uptown off of Broad.

10 Q So you think you signed this somewhere in
11 some office building or some building in Nashville?

12 A Yes, in Nashville.

13 Q Okay. Did Carlos Bailey sign this document
14 in your presence?

15 A Yes, ma'am.

16 Q And did he sign it at the same place that
17 you signed it?

18 A Uh-huh.

19 Q Okay. If you would, take a look at previous
20 Exhibits 8 and 9. What I want to do is compare
21 Exhibits 8, 9, and 10. So if you could have all
22 three of them in front of you.

23 I would like for you to compare the
24 signature on Exhibit 10 that you state is your
25 signature, with the signatures on Exhibits 8 and 9.

1 A I wasn't aware of what I was signing.

2 Q Are you --

3 A Yeah, these are my signatures.

4 Q They are your signature?

5 A Yeah, but I've signed so much.

6 Q So you're changing your testimony now as to
7 Exhibits 8 and 9, and it's your testimony you did
8 sign those documents?

9 A Yes, ma'am.

10 Q Okay. Would you consider --

11 A I wasn't aware --

12 Q Go ahead.

13 A Go ahead.

14 Q Okay. Do you know if a trademark
15 application has ever been filed for the mark Carlos
16 DeFord Bailey?

17 A Yes.

18 Q For the trademark Carlos DeFord Bailey?

19 A Uh-huh.

20 Q Did you file one of those?

21 A Yes.

22 Q Okay. I don't want to confuse you. We're
23 talking today about a trademark application for the
24 mark DeFord Bailey.

25 A Right.

1 Q So not whether an application was filed by
2 Carlos DeFord Bailey, but whether an application has
3 been filed for registration of a trademark Carlos
4 DeFord Bailey. Does my question make sense?

5 A No.

6 Q So, I'm talking about -- you talked about
7 using DeFord Bailey as a brand for the harmonica,
8 right?

9 A Yes.

10 Q Has it -- to your knowledge, has an
11 application been filed to use Carlos DeFord Bailey
12 as a brand?

13 A Yes. No.

14 Q And to your knowledge, has an application
15 been filed to use DeFord Bailey, III as a brand as
16 opposed to just DeFord Bailey?

17 A DeFord Bailey.

18 Q Not DeFord Bailey, III?

19 A Right. DeFord Bailey, III. DeFord
20 Bailey, III.

21 Q I'm sorry?

22 A DeFord Bailey, III.

23 Q Yes. Has an application ever been used to
24 use DeFord Bailey, III as a brand?

25 A Yes.

1 Q And it's the state application that you
2 testified to earlier?

3 A Yes.

4 Q Okay. Would you consider yourself a famous
5 musician?

6 A Yes.

7 Q Okay. Describe in what sense.

8 A A very good drummer.

9 Q Okay. You're a good musician.

10 A Yes.

11 Q Have you ever been inducted into the Grand
12 Ole Opry?

13 A No.

14 Q Or the Country Music Hall of Fame?

15 A No.

16 Q Would you consider your great-grandfather,
17 DeFord Bailey, Sr., far more famous than you?

18 A Yes.

19 Q And far more famous than your brother,
20 Carlos?

21 A Yes.

22 Q Do you think that someone in California
23 would know who you are?

24 A Would know who my grandfather is.

25 Q They would know who your grandfather is.

1 So to use the name DeFord Bailey on a
2 harmonica might attract more attention to someone in
3 California because of your grandfather --

4 A Yes.

5 Q -- than you, correct?

6 A Yes.

7 Q And remind me, your age is 59?

8 A Uh-huh.

9 MS. EVERHART: I have no further
10 questions, but I reserve the right to redirect.

11 CROSS-EXAMINATION

12 BY MR. BENJAMIN:

13 Q Okay. Let's start off by referring you to
14 Documents 8 and 9 you have in front of you.
15 Document 8 and 9 in front of you. I want you to
16 look back at them again.

17 Exhibit 8 says --

18 A Oh, 8?

19 Q Letter to Walter Benjamin saying that,
20 "I understand that you have filed a federal
21 trademark application on my behalf for the mark
22 DeFord Bailey. I have never spoken with you or
23 authorized you to represent me or file a trademark
24 application on my behalf."

25 Did you authorize anyone to type that for

1 you?

2 A No, sir.

3 Q Was there any time that you did not want a
4 trademark application to be filed on your behalf for
5 the mark DeFord Bailey?

6 A No.

7 Q Did you ever speak to Shemika or anyone else
8 that you did not want to have a trademark
9 application filed on your behalf for the mark DeFord
10 Bailey?

11 A No.

12 Q This document, Exhibit 8, that you claimed
13 -- just recently claimed you signed, did you read it
14 before you signed it?

15 A No. You're talking about 9?

16 Q Exhibit 8, starting with Exhibit 8. Did you
17 read it before you signed it?

18 A Yes. No, I didn't read this.

19 Q Okay. It says, I have never spoken with
20 you, Walter Benjamin, to authorize you to represent
21 me in filing a trademark application.

22 Did you read that? Or did you, in fact,
23 speak to me about not representing you on that?

24 A Yes.

25 Q And you said that you never signed this. Or

1 never agreed to this, isn't that correct, when you
2 spoke to me?

3 A Yes.

4 Q Let's refer to Exhibit 9. Did you authorize
5 anyone to type this on your behalf for you to sign?

6 A No.

7 Q If you signed it when you signed it, had you
8 read it before you signed it?

9 A No, I didn't read it.

10 Q Could this be the document that your father
11 gave to you to sign and you didn't read, you just
12 signed it?

13 A Maybe. I really don't know what I signed
14 what my father gave me.

15 Q Why don't you know what you signed?

16 A Because I never read it.

17 Q Why did you not read it?

18 A That's my father. When he gave it to me, he
19 just said, will you sign this? No. I just walked
20 to the door. He said, sign this for Daddy. Just
21 like that. And I said, oh, okay. And I signed it.
22 He said, sign right here. Then we went to the
23 store. Came back.

24 Q Okay.

25 A Then maybe a few weeks or so down the line,

1 said I had signed off on something.

2 Q When you say signed off, what do you mean?

3 A I'd signed off on the trademark, saying that
4 -- I said, I didn't sign off on no trademark. Then
5 he said, yes, you did. I said, how? He said, who
6 give you something to sign? I said, Dad. He said,
7 well, you signed off. I said, no. I said, he
8 didn't give me nothing to sign off.

9 Then that's the only thing I knew.

10 Q Okay. So, was that the first time you
11 learned that you had --

12 A Yes.

13 Q -- actually signed off on the trademark?

14 A Yes. And it upset me, because if I had
15 looked at it and said I'm signing off on something
16 knowing it's a family thing that's DeFord Bailey, I
17 wouldn't have signed it.

18 Q All right. So, is it safe to say that you
19 were in agreement with applying for the trademark
20 from the time it was applied for up until today?

21 A Yes, sir.

22 Q Okay. You mentioned earlier that your
23 father requested that Carlos give him two harmonicas
24 to sell to his friend; is that correct?

25 MS. EVERHART: Objection.

1 THE WITNESS: He gave him two
2 harmonicas. Because he asked me, he needed a few
3 harmonicas.

4 BY MR. BENJAMIN:

5 Q As a result of your father having a
6 conversation with your brother, did your brother
7 give your father two harmonicas for two individuals?

8 MS. EVERHART: Objection.

9 THE WITNESS: Yes.

10 BY MR. BENJAMIN:

11 Q Okay. Were you there to witness your
12 brother giving your father those two harmonicas?

13 A Yeah. I was with him.

14 Q Okay. And were you with him when your
15 father requested them?

16 A Yes.

17 Q Okay. And at the time your brother, Carlos
18 DeFord Bailey, gave your father those two harmonicas
19 for two other individuals, did your father object to
20 DeFord Bailey being on those harmonicas?

21 A No.

22 Q Okay. Did Carlos DeFord Bailey give your
23 father a harmonica?

24 A Yes.

25 Q When Carlos DeFord Bailey gave your father a

1 harmonica, did he object to DeFord Bailey being on
2 the harmonica?

3 MS. EVERHART: Objection.

4 THE WITNESS: No.

5 BY MR. BENJAMIN:

6 Q Were you there or were you present when
7 Carlos gave your father a harmonica with DeFord
8 Bailey on it?

9 A No. Daddy had showed me the harmonica.
10 When he gave my daddy a harmonica, my daddy said,
11 look what Carlos got, had made. Took it out of the
12 box and showed it to me. Your brother had
13 harmonicas made with DeFord Bailey on it.

14 Q When your father showed you that, did he
15 object to DeFord Bailey being on that harmonica?

16 A No. He was like saying, it don't blow like
17 mine.

18 Q I bet. Did you ever see him blow that
19 harmonica?

20 A Yeah. He said, this don't blow like mine.
21 He said, I got a harmonica. He had a harmonica. He
22 took his out. He said, it ain't nothing like mine.

23 Q Okay.

24 A He said, mine got a good sound. He said,
25 this isn't --

1 (Overlapping speech.)

2 Q So, is it safe to say that the only thing he
3 didn't like about the harmonica was the sound --

4 A Yeah.

5 Q -- and not because it had DeFord Bailey on
6 it?

7 A Yes. He was joking about the harmonica.

8 Q Do you know if Carlos DeFord Bailey gave
9 Christine or Dezoral one of those harmonicas --

10 A Yes.

11 Q -- with DeFord Bailey on it?

12 A Yes.

13 Q Did you witness Christine or Dezoral playing
14 the harmonica that had DeFord Bailey on it?

15 A I witnessed my Aunt Christine blowing it.

16 Q Okay.

17 A It was at -- if I'm not mistaken, she blowed
18 it at Carol Ann's.

19 Q Okay. And Carol Ann's is a lounge, a
20 restaurant?

21 A Yeah. Like every Tuesday night, he called
22 everybody up. But I think he had give a -- he gave
23 a show that night at Carol Ann's and he called her
24 up to blow the harmonica. And she came up and
25 blowed the harmonica. Everybody liked it.

1 Q And the harmonica she blowed, you knew it
2 was a harmonica with DeFord Bailey on it?

3 A That he gave her, uh-huh.

4 Q Okay. Did you have an opportunity to see
5 how Christine reacted to your brother giving her one
6 of those harmonicas?

7 A She was happy. She had a good time that
8 night.

9 Q Okay.

10 A She loved to blow harmonica. She could blow
11 it.

12 Q Was your father there that night when she
13 got up and blew the DeFord Bailey harmonica?

14 A Yes, he was there.

15 Q Did he have an opportunity to see her blow
16 the DeFord Bailey harmonica?

17 A Uh-huh.

18 Q Did he object to her blowing the DeFord
19 Bailey harmonica?

20 A No. He said, she can't blow, stuff like
21 that. She can't blow that harp.

22 Q So his comment didn't have anything to do
23 with a disagreement with DeFord Bailey being on the
24 harmonica; is that right?

25 A Not to my knowledge.

1 Q Okay. Now, you saw this agreement that --
2 or let me just show you this intellectual property.

3 (At which time the witness was
4 presented with Exhibit No. 6.)

5 BY MR. BENJAMIN:

6 Q I'm going to show you Exhibit 6, which is
7 the exhibit -- show you Exhibit 6, which is the
8 exhibit that Shemika earlier testified that your
9 brother signed to pay her for using the name DeFord
10 Bailey. Do you remember hearing that testimony?

11 A I remember hearing it.

12 Q Okay. Would you agree to that agreement?

13 MS. EVERHART: Objection.

14 THE WITNESS: No.

15 BY MR. BENJAMIN:

16 Q Would you agree to your brother signing that
17 agreement?

18 MS. EVERHART: Objection.

19 THE WITNESS: No.

20 BY MR. BENJAMIN:

21 Q Would you agree to any agreement requiring
22 your brother or yourself to pay Shemika money for
23 using the name DeFord Bailey?

24 MS. EVERHART: Objection.

25 THE WITNESS: No.

1 BY MR. BENJAMIN:

2 Q Okay. There was testimony about Shemika
3 having two felony convictions. That would indicate
4 that she could be lying about things.

5 MS. EVERHART: Objection.

6 BY MR. BENJAMIN:

7 Q Are you in agreement that Shemika having
8 two felony convictions is an indication that she is
9 a liar?

10 MS. EVERHART: Objection.

11 THE WITNESS: I don't understand.

12 BY MR. BENJAMIN:

13 Q Okay. You do agree that she had at least
14 two felony convictions, correct?

15 A Uh-huh.

16 Q And that they had to do with drugs; is that
17 correct?

18 A Right.

19 Q Okay. You disagreed with the felony
20 conviction regarding shooting someone.

21 A Yes.

22 Q Okay. And you heard her admit that she had
23 those two felony convictions, correct?

24 MS. EVERHART: Objection.

25 THE WITNESS: Yes.

1 BY MR. BENJAMIN:

2 Q Okay. How long have you known your brother
3 to use the name Carlos DeFord Bailey?

4 A Fifteen years, or more than that.

5 Q And in what capacity did he use those names
6 for those fifteen years that you recall?

7 A Singing on stage as Carlos DeFord Bailey.

8 Q Okay. And being out in the singing
9 community, what have you learned that the singing
10 community know him as?

11 A As singing.

12 Q What name do they know him as?

13 A Carlos DeFord Bailey, the shoeshine man, and
14 Carlos DeFord Bailey, the singer.

15 Q Okay. Now, your grandfather was also a
16 shoeshine man, correct?

17 A That's correct.

18 Q Is it also that your grandfather had the
19 same shoeshine shop that your brother Carlos has or
20 a different one?

21 A A different one.

22 Q Oh, okay. So, what name does your brother
23 Carlos have at his shoeshine stand?

24 A Carlos DeFord Bailey.

25 Q And to your knowledge, how long --

1 A Shoeshine man.

2 Q Where is the shoeshine shop located?

3 A Off of West End and White Bridge Road.

4 West End and White Bridge Road.

5 Q Is that in downtown Nashville?

6 A Well, it's further out, like almost going to

7 like --

8 Q Is it in a place where the public at large
9 can see the name Carlos DeFord Bailey?

10 A No. It's inside where -- employs.

11 Q Okay. People walking inside the building
12 would be able to see that?

13 A Yeah. They walk right in and go straight
14 into it.

15 Q And you see the name Carlos DeFord Bailey?

16 A Uh-huh. There's a sign sitting right there.

17 Q Okay. Do you know if your brother has any
18 cards that he hands out for his shoeshine?

19 A Yeah. He had some.

20 Q Okay. What name is on the cards he hands
21 out for his shoeshine?

22 A Carlos DeFord Bailey.

23 Q Okay. Do you know that he has handed those
24 cards out, and widespread, to people?

25 MS. EVERHART: Objection.

1 THE WITNESS: Yes.

2 BY MR. BENJAMIN:

3 Q Do you know people who have been given cards
4 from him?

5 A Just the people that I don't know that come
6 in his shoeshine shop. He had a shoeshine shop that
7 wasn't in that building. He was uptown --

8 Q Were you ever there when the people come
9 into the shoeshine shop?

10 A In that shoeshine shop where he is now,
11 maybe twice, because at the time I was working and
12 on the road playing music.

13 Q Okay. Has he given you one of his cards?

14 A No, he never given me a card.

15 Q But you've seen the card?

16 A Yeah.

17 Q Okay. Do you know if any of the family
18 members objected to him using the name Carlos DeFord
19 Bailey for the 15 years that he's been using the
20 name?

21 A No.

22 Q Did your father at any time, to your
23 knowledge, object to Carlos using the name Carlos
24 DeFord Bailey?

25 A No.

1 Q Did Shemika, to your knowledge, object to
2 Carlos using the name Carlos DeFord Bailey prior to
3 this case we have here today?

4 A Not the case.

5 Q When is the first time you know that Shemika
6 has objected to Carlos using the name Carlos DeFord
7 Bailey?

8 A When everything started with the trademark.

9 Q Okay. Which was 2011; is that right?

10 A Yes.

11 Q Okay. Now let's get to the point of the
12 time you spent with your father during his last
13 sickness. I'm going to direct you to that time you
14 testified where -- that his sickness began to affect
15 him. Do you recall testifying that earlier?

16 A I know we was -- he would change and would
17 call everybody and say like things, you're always
18 trying to tear my car up. You hit everything in the
19 road. I said, Daddy, I'm not tearing up your car.
20 I've been driving you everywhere you go. I said,
21 why would I do something like that? I said, I'm not
22 going to tear your car up.

23 I go on and explain it to my sister, my
24 sister, Dorothy, which she lived there. And I lived
25 there with my sister Dorothy until I moved into my

1 own apartment. And she said, now, you got to
2 realize, Daddy is sick. He'll say anything, and you
3 need to watch him.

4 Q So what was around the date and time that
5 this happened?

6 A About March of 2013.

7 Q Okay. So, at what date did your father
8 noticeably begin playing the wrong notes to show
9 that he had mental problems?

10 A Right about -- let's see. My birthday is in
11 May. I want to say it was like going into May.

12 Q Okay.

13 A He was actually getting sick and was still
14 wanting to play his bass, but it got down to the
15 point where Ms. Carol Ann -- where he could just
16 play one song. And I would tell him, Daddy, you
17 can't stand up with your bass.

18 No. This was like, I want to say April,
19 because I told Daddy, you can't hold that bass no
20 more. And I told Carol Ann, my daddy need to sit
21 down and play his bass. He can't hold that bass no
22 more, because he's missing notes. That particular
23 night, he played out of key that night.

24 See, like this Sunday, he playing in key.
25 The next Sunday, I'm watching him play because I

1 know my music. I said, Dad, you're playing in the
2 wrong key, but the band's still playing.

3 So when we got ready to go home and I said,
4 Daddy, you were playing in the wrong key tonight up
5 and down your bass. I said, did you notice? No,
6 no, I was in the right key. And I said, no, no, you
7 wasn't.

8 And at that time, that's when I was telling
9 Ms. Carol Ann, Daddy need to sit down and play bass.

10 So come that next Sunday, he would sit down
11 -- he would sit down and play bass. Starting that
12 Sunday. Then it got to where he could only play one
13 song and she would still pay him. She wouldn't send
14 him home because he still want to go. I don't care
15 how sick he got. But we would tell him, Daddy, you
16 don't need to go.

17 But all this was beginning --

18 Q You said it was about April 2013?

19 A Uh-huh.

20 MS. EVERHART: Objection.

21 BY MR. BENJAMIN:

22 Q So, how much time did you spend with your
23 father between January 2013 and September 2013?

24 A Every week. I was living with him and my
25 sister.

1 Q How many days a week were you with him?

2 A Every week.

3 Q Every day?

4 A Every day. I was with him every day,
5 because I was living with my sister, going into that
6 Christmas and January.

7 Q In your opinion, based upon the time that
8 you were living with your father during that time,
9 when did you feel that he did not have capacity to
10 carry out business such as signing documents?

11 MS. EVERHART: Objection.

12 THE WITNESS: I want to say 2013.
13 Because when I moved with my sister in 2013 is when
14 things started really changing.

15 BY MR. BENJAMIN:

16 Q Okay. So, can you tell us what date --

17 A I really couldn't say what date.

18 Q Or what month that he --

19 A After Christmas.

20 Q -- lost his mental capacity?

21 MS. EVERHART: Objection.

22 THE WITNESS: We was taking -- we all
23 took pictures that year. January. January,
24 February.

25

1 BY MR. BENJAMIN:

2 Q Okay. What was the date that he got
3 confused about where you were when you were driving
4 to the club? Month?

5 A I want to say February.

6 Q What year?

7 A 2013.

8 Q Okay.

9 A He had really gotten -- well, in 2012 --
10 2012, I had taken him to the hospital and he had
11 went in and said he wasn't feeling good. So I want
12 to say November, going into Christmas in 2012,
13 because he went in and walked out of the hospital
14 and I had to sign papers. I told him, Daddy, you
15 can't sign papers and walk out this hospital.

16 So I called everybody in the family and they
17 said, keep him there until we get there. By the
18 time I got down to the room, he done got his clothes
19 on. So I went back and told them, he's got his
20 clothes on.

21 Then the doctor came and he was ready to go.
22 He said, sign -- he said, if he sign out, you got to
23 sign out, too. So me and my daddy signed out.

24 But he went back the next day because he was
25 sick, and he had walked out with the fluid around

1 his heart. Then after that -- after that, he
2 carried on -- I don't remember when --

3 Q Okay. That's enough to answer that
4 question.

5 Let me ask you, do you recall Shemika saying
6 that the reason why she had your father to give you
7 that document was because she couldn't find you? Do
8 you remember her saying that?

9 A Yes.

10 Q Was there ever a time that you were out of
11 pocket -- let me give you the date.

12 The 2nd of June 2011, was there a time you
13 was out of pocket when she couldn't find you to have
14 you sign this document?

15 A No. I was with my son.

16 Q And where were you and your son living?

17 A I was living in his apartment with him
18 because he was sick.

19 Q Okay. Where was your father?

20 MS. EVERHART: Objection.

21 THE WITNESS: I don't know who he was
22 staying with at the time.

23 BY MR. BENJAMIN:

24 Q Where was your father on the 2nd of
25 June 2011?

1 MS. EVERHART: Objection.

2 THE WITNESS: 2011?

3 BY MR. BENJAMIN:

4 Q Where was he living, maybe I should ask, on
5 that date?

6 A I want to say with my sister, Dorothy.

7 Q Okay. Now, did Shemika know where you were
8 living at that time, to your knowledge?

9 A Yes.

10 Q And she could have brought the document to
11 you to where you lived?

12 MS. EVERHART: Objection.

13 THE WITNESS: Yes.

14 BY MR. BENJAMIN:

15 Q Okay. So, the statement that Shemika made
16 that the reason why she didn't bring that document
17 to you to sign, but rather had your father to bring
18 it to you, is not true --

19 MS. EVERHART: Objection.

20 BY MR. BENJAMIN:

21 Q -- because she couldn't find you?

22 A That's not true.

23 Q Okay. Could your father read?

24 A No.

25 Q Why do you say that?

1 A My father ain't able to read since I
2 know him. He was my father. He couldn't even read
3 this (indicating).

4 Q Okay. Have you ever seen your father
5 attempt to read?

6 A Yeah.

7 Q Was he able to read when he was attempting
8 to read?

9 A Yeah. He'd joke about it. When he went to
10 read something, it was always a joke. Like pick up
11 something like a joke. Like say he going to read
12 something even though he's not reading it. But
13 he'll tell you, I can read that sign up there. Like
14 go, stuff like that. But when it come to sentences
15 and stuff, no. No.

16 Q Okay. And that was the case ever since you
17 could remember knowing him, right?

18 A Right. As long as he been my daddy.

19 Q Okay. Last question is: Do you remember
20 being up in a tower in Nashville with your brother
21 and Ron Bailey?

22 A Tower?

23 Q Uh-huh. A tall building where you can look
24 out.

25 A No.

1 Q Okay. You testified earlier that there was
2 a person present when you and your brother Carlos
3 signed the trademark application. Was that person
4 Ron Bailey?

5 A When we signed the application?

6 Q When you and your brother signed the
7 trademark application, you stated there was a third
8 person there. Was that third person Ron Bailey?

9 A Yeah. But I -- yeah. It was uptown off of
10 Broad.

11 Q Okay. Now, so there was a time when you met
12 with Ron Bailey, then?

13 A I remember meeting him at Carlos' house. I
14 know he said, we're going to sign these papers. It
15 could have been in a building.

16 Q Okay.

17 A But it was someone that we went to sign
18 this --

19 (Overlapping speech.)

20 Q But my question is: You remember there was
21 a time that you did meet Ron Bailey?

22 A Uh-huh.

23 Q Okay. You may not remember exactly when it
24 was.

25 A Correct.

1 Q But would it have been in the year 2011?

2 A Yeah, it was 2011.

3 Q Okay. Can you play the harmonica?

4 A A little bit.

5 Q Would you want to get a trademark in the
6 name of DeFord Bailey without the "III" on it?

7 A Yes (inaudible).

8 COURT REPORTER: I'm sorry?

9 THE WITNESS: Yes.

10 COURT REPORTER: I thought you said
11 something after yes.

12 MS. EVERHART: He did, I believe.

13 COURT REPORTER: I couldn't hear it.

14 MS. EVERHART: Can you repeat what you
15 said?

16 THE WITNESS: Yeah. I said without the
17 "III." Yeah, that's what I was saying. Just DeFord
18 Bailey.

19 BY MR. BENJAMIN:

20 Q Would you mind a trademark being applied for
21 where a picture of yourself playing the harmonica is
22 on a harmonica?

23 A Picture of myself?

24 Q Yes.

25 A No. Picturing myself holding...

1 Q I'm sorry?

2 A (No response.)

3 MR. BENJAMIN: Okay. No further
4 questions.

5 MS. EVERHART: I have just a couple.

6 REDIRECT EXAMINATION

7 BY MS. EVERHART:

8 Q Mr. Bailey, why would you want a trademark
9 in just DeFord Bailey without "III," as you just
10 testified?

11 A Well, DeFord is DeFord to me. I mean, like,
12 you know, my granddaddy was Jr. and my daddy is Sr.,
13 and I'm going to be the III, and my son the IV. I'm
14 the only DeFord Bailey. Don't need a III. I'm the
15 only DeFord Bailey that's left. If there's another
16 DeFord Bailey, I would like to know him. This
17 DeFord is using a stage name, so I understand that.

18 Q But he's not using DeFord Bailey. He's
19 using Carlos DeFord Bailey, correct?

20 A Carlos DeFord Bailey. So I'm just DeFord
21 Bailey.

22 Q Okay.

23 A And at times, you know, it's just DeFord
24 Bailey. It becomes DeFord Bailey, III. It's been a
25 habit of DeFord Bailey, III.

1 Q How much have you performed in the last
2 year?

3 A Well, I'm in church. So I sing in the
4 choir. So I perform every week because I sing in
5 the choir every week.

6 Q Okay. Have you performed professionally in
7 the last year?

8 A No. Yeah, at church.

9 Q Okay. Other than singing in the choir, have
10 you performed professionally as a musician in the
11 last year?

12 A Yeah. I did -- I did a tribute at -- I was
13 called in to do a tribute at Carol Ann's. I
14 performed during a show down there, because they
15 wanted a DeFord Bailey and Carlos DeFord Bailey, and
16 they wanted us to perform. So they tributed us down
17 there and gave us an award for both of us singing.
18 Took his band, you know. The band already knew my
19 songs. So I played the drums and sung. And I got
20 up front and sung as the other drummer played.

21 Q When was that?

22 A That was in -- I want to say between --
23 around about September or October.

24 Q Of --

25 A No. I was living in my apartment, wasn't I?

1 Q Was that 2014?

2 A Yes.

3 Q Okay. Is that the only time you've
4 performed professionally in the last year?

5 A Yes.

6 Q Did you perform professionally the year
7 before?

8 A Yes. Only when I played with my brother.

9 Q How many times?

10 A We did -- was it -- no, I was in -- yeah.
11 Once. That was at my granddaddy's rose garden.
12 Wait a minute. No.

13 The last time I performed was at my
14 granddaddy's rose garden. That was in -- I want to
15 say 2011 or '12. 2011 or 2012. I want to say '11.

16 Q And in those performances, did you go by
17 DeFord Bailey or DeFord Bailey, III?

18 A Just DeFord Bailey. I never just say out
19 DeFord Bailey, III.

20 Q Okay.

21 A Usually I say DeFord, and then Bailey.
22 So now anytime I say DeFord Bailey, III, if I'm
23 signing something. Other than that, then I'm just
24 DeFord at the time.

25 Q Is it fair to say that in the last couple of

1 years, you've only performed maybe two times
2 professionally?

3 A Uh-huh.

4 Q Now, the time you mentioned that they wanted
5 you and your brother Carlos DeFord Bailey to perform
6 because you were DeFord Bailey -- both of you use
7 that in your name -- do you know why they wanted
8 someone with that name?

9 A Well, that's where my father played. My
10 father, that was the last place he played his bass,
11 on that stage.

12 So we -- he kind of talked about my father
13 as I went up to play. So when we got down there and
14 they wanted us to perform, you know, and let them
15 know that this is where our father played on this
16 stage was the last time he performed. You know, so
17 he called us down and honored us after speaking of
18 my father.

19 Q Because of your father?

20 A Yeah.

21 Q Okay.

22 A So he called us in, you know.

23 Q Not to honor you, but to honor your father?

24 A Uh-huh. Well, no. To honor us.

25 Q But because of your father's reputation,

1 correct?

2 A Uh-huh.

3 Q Now, you testified to being aware that
4 harmonicas were given to the three heirs, DeFord
5 Bailey, Jr., Dezoral, and Christine Craig, correct?

6 A Uh-huh.

7 Q And those were the harmonicas that had
8 DeFord Bailey's name on them --

9 A Yes.

10 Q -- is that correct?

11 Do you have any knowledge of whether or not
12 any of those individuals were required to pay for
13 those harmonicas?

14 A No. They didn't have to pay.

15 Q Okay. They were just given to them?

16 A Yes.

17 MS. EVERHART: Okay. No further
18 questions.

19 MR. BENJAMIN: I just have one
20 question.

21 RE-CROSS-EXAMINATION

22 BY MR. BENJAMIN:

23 Q When you play for your church, are you paid?

24 A Only when I play drums.

25 Q Okay. How often do you do that?

1 A I'm backup drummer. We have a regular. I
2 used to be the regular drummer, but --

3 (Overlapping speech.)

4 Q When you were the regular drummer, were you
5 paid?

6 A Yeah, I was --

7 (Overlapping speech.)

8 Q Okay. When were you regular drummer and
9 when did you stop being regular drummer?

10 A Oh, I think that was in like -- since 2008.
11 Because I had a major -- I had an operation.

12 Q How often do you play the backup drummer?

13 A Not that much. Hardly ever.

14 Q Once a month, once every two or
15 three months?

16 A Yeah.

17 Q Once a year, twice a year?

18 A No.

19 Q What?

20 A Maybe about three or four -- about five --
21 maybe about five times out of the year.

22 Q Okay. And are those five times out of the
23 year you were paid?

24 A Yeah. If I played the drums.

25 Q And was that true for 2014? You played

1 five times in 2014 and you were paid?

2 A Well, no, I can't say that I played
3 five times. Because I'm usually playing at a
4 funeral. When the drummer don't show up, they
5 might -- like this past week here -- in the last two
6 weeks, I have played three times because I --

7 Q And each of those times you were paid?

8 A Well, no. This time I did it for my church
9 because, see, I belongs to the church. The other
10 drummer don't belongs to --

11 (Overlapping speech.)

12 Q I'm talking about the times you were paid.
13 How many times last year did you play where you were
14 paid?

15 A Paid probably about three times.

16 Q Okay. How many times this year were you
17 paid?

18 A The same. Because I just did --

19 Q You've already played three times this year?

20 A Yeah.

21 Q So it sounds like you're going to play a lot
22 more this year than you did last year.

23 MS. EVERHART: Objection.

24 THE WITNESS: That's if the drummer lay
25 out. He don't never lay out unless it's a funeral

1 or something. When it comes to programs and stuff,
2 he's there. If I do a program, it probably be maybe
3 once, twice --

4 (Overlapping speech.)

5 BY MR. BENJAMIN:

6 Q Are you also -- are you also a singer at the
7 church?

8 A I'm definitely a singer. I sings in the
9 choir.

10 Q Okay. Do you get paid as a singer --

11 A No.

12 Q -- for the church?

13 A No.

14 MR. BENJAMIN: Okay. No further
15 questions.

16 MS. EVERHART: I have a couple of
17 questions.

18 FURTHER REDIRECT EXAMINATION

19 BY MS. EVERHART:

20 Q So, your testimony is that you've played
21 three times as a drummer in 2015 and were paid by
22 your church for all three performances?

23 A 2015?

24 Q Yes.

25 A This year?

1 Q Yes.

2 A Yes.

3 Q Okay. And so the three performances did not
4 include the funeral performance?

5 A Yeah. They was funerals.

6 Q So you were paid for the funeral
7 performance.

8 A Yeah. I wasn't -- I didn't know I was going
9 to get no money, because when I play, I don't really
10 ask for money. Because, see, I belongs to the
11 church. And when they know the drummer is not going
12 to be there, then they'll say, I have it and I play.
13 Then they'll walk up and pay me.

14 Q So you did get paid?

15 A Yeah. Yes, I did.

16 Q Although it seemed a moment ago you were
17 saying you did not get paid, that you did it for the
18 church. Which is it?

19 A Well, yes. I get paid if I play the drums.

20 Q Okay.

21 A But I don't get paid for singing in the
22 choir. I only get -- I get paid if the drummer lay
23 out, because I'm backup drummer.

24 Q Okay. And when you're drumming, are you
25 supporting other musicians or are you playing the

1 drums solo?

2 A No. I'm playing with the musicians.

3 Q And then are they typically --

4 A And we play behind the choir. The band
5 plays for the choir.

6 Q Okay. So they're supporting the choir?

7 A Yeah, we're supporting the choir.

8 Q So you're in a backup band?

9 A No. I'm in -- I sings in the choir. I'm a
10 choir member.

11 Q But when you play the drums?

12 A No. That's -- yeah.

13 Q For the church?

14 A Only for the church. Only for the church.

15 Q You're playing in a backup role?

16 A Yeah. Only for the church.

17 MS. EVERHART: Okay. No further
18 questions.

19 FURTHER RECROSS-EXAMINATION

20 BY MR. BENJAMIN:

21 Q So, when you played for funerals in 2014,
22 did they voluntarily give you money?

23 A Yes.

24 Q So, how many --

25 A Really, the musician, the drummer supposed

1 to pay me.

2 Q Okay.

3 A Because he gets paid out of a check. I
4 don't. So when he don't -- when he don't play, when
5 he get paid, he supposed to pay me for sick, for
6 playing in his spot.

7 Q But what I'm referring to is special
8 occasions like funerals and things like that when
9 you play. How many times did you do that in 2014?

10 A Probably about no more than -- no more than
11 about three. I would say about three.

12 Q So you played in 2014 a total of six times,
13 three times for funerals and three times for
14 substituting for the backup -- for the drummer; is
15 that correct?

16 A I only played for the funeral because he
17 don't hardly miss programs.

18 Q Okay.

19 A And because he has a job. And I don't have
20 a job. I don't work.

21 MR. BENJAMIN: All right. No further
22 questions.

23 MS. EVERHART: I have one more
24 question. At least one.

25

FURTHER REDIRECT EXAMINATION

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BY MS. EVERHART:

Q So, have you ever performed as a solo artist, either as a singer or a musician?

A Just a solo, no.

Q Just drum solos within a song?

A By myself?

Q Yes.

A No.

Q So, unlike your grandfather, you haven't ever been a solo artist, correct?

A Well, like by myself and with another band that backs me up?

Q Right.

A Like I did at Carol Ann's.

Q So, when you were at Carol Ann's, was someone backing you up singing?

A Yeah. The band backed me up.

Q Okay.

A It wasn't my band. They just knew my songs that I do and backed me up.

Q And you sing on those occasions?

A Yeah, I have.

Q Okay. So you have led a band before as a solo artist?

1 A Yes.

2 Q Okay. Would you consider yourself a solo
3 vocalist or a drummer or both?

4 A Both.

5 Q Okay. Are you known in the music industry
6 as a solo artist?

7 A No. I'm known as a drummer.

8 Q As a drummer. And as a drummer as a member
9 of a band?

10 A Uh-huh.

11 MS. EVERHART: No further questions.

12 FURTHER DEPONENT SAITH NOT.

13 (Proceedings concluded at 3:05 p.m.)

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REPORTER'S CERTIFICATE

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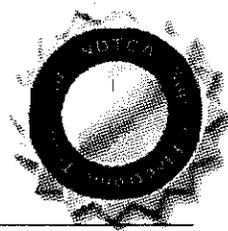
I, Jerri L. Porter, RPR, CRR, Notary Public and Court Reporter, do hereby certify that I recorded to the best of my skill and ability by machine shorthand all the proceedings in the foregoing transcript, and that said transcript is a true, accurate, and complete transcript to the best of my ability.

I further certify that I am not an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

SIGNED this 3rd day of April, 2015.



Jerri L. Porter



Jerri L. Porter, RPR, CRR

My Notary commission expires: 2/19/2018
Tennessee LCR No. 335
Expires: 6/30/2016

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DeFORD BAILEY, LLC,)
)
) Opposer,) Opposition
) No. 91209857
vs.)
) Application Serial
CARLOS DeFORD BAILEY, and) No. 85304626
DeFORD BAILEY, III,)
)
Applicants.)
)

Testimony of
CARLOS LAMONT BAILEY, SR.
January 29, 2015
Commencing at 3:05 p.m.

ORIGINAL

Reported by: Jerri L. Porter, RPR, CRR
Tennessee LCR No. 335
Expires: 6/30/2016

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Also Present: Shemika Wiley
DeFord Bailey, III

The testimony of CARLOS LAMONT
BAILEY, SR. was taken on the 29th day of January,
2015, in the offices of the Everhart Law Firm, 1400
Fifth Avenue North, Nashville, Tennessee, for all
purposes under the United States Patent and
Trademark Office Rules of Civil Procedure.

It is agreed that Jerri L. Porter,
being a Notary Public and Court Reporter for the
State of Tennessee, may swear the witness.

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1 P R O C E E D I N G S

2 CARLOS LAMONT BAILEY, SR.,

3 was called as a witness, and after having been first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. EVERHART:

7 Q Good afternoon, Mr. Bailey. By now you know
8 I'm Amy Everhart, here representing the interests of
9 DeFord Bailey, LLC in this trademark dispute.

10 You have been present today for the
11 depositions of Shemika Wiley, correct?

12 A Correct.

13 Q And the deposition of your brother, DeFord
14 Bailey, III, correct?

15 A Correct.

16 Q Please give me your full legal name.

17 A Carlos Lamont Bailey, Sr.

18 Q And you have used the name Carlos DeFord
19 Bailey professionally, correct?

20 A Uh-huh.

21 Q How long have you done that?

22 A Since '98.

23 Q Have you ever used the name DeFord Bailey
24 professionally without Carlos?

25 A No.

1 Q What is your occupation?

2 A I'm a shoe groomer and a solo artist of
3 country music.

4 Q As a solo artist, are you a singer or
5 musician or both?

6 A Singer.

7 Q Do you play any musical instruments?

8 A No.

9 Q You play country music, correct?

10 A Correct.

11 Q How old are you?

12 A I'm 55.

13 Q I apologize that some of my questions will
14 be repetitive. You just happen to get to go last.

15 You are the grandson of DeFord Bailey, Sr.,
16 correct?

17 A Correct.

18 Q And he passed away in 1982?

19 A Yes.

20 Q And your father is DeFord Bailey, Jr.?

21 A Correct.

22 Q And he passed away in September 2013?

23 A Correct.

24 Q Shemika Wiley is your niece, correct?

25 A (Witness moves head up and down.)

1 Q If you can respond with a verbal yes or no.

2 A Yes.

3 Q DeFord Bailey, III is your brother, correct?

4 A Yes.

5 Q And you would agree that DeFord Bailey, Sr.

6 was the first African American performer at the

7 Grand Ole Opry?

8 A First.

9 Q Do you consider that a huge accomplishment?

10 A Absolutely.

11 Q And he was also one of the first members of

12 the Grand Ole Opry?

13 A He was the first member of the Grand Ole

14 Opry. How that came about, the fact that George

15 D. Hay -- they was renaming the Grand Ole Opry.

16 First it was the Grand Opry. And he said, for the

17 next hour you'll be listening to the Grand Ole Opry.

18 That's when he brought granddad on stage. So that

19 name stuck.

20 So he was the first that ever performed on

21 the Grand Ole Opry itself.

22 Q When it was called the Grand Ole Opry?

23 A Uh-huh.

24 Q And I guess his main instrument was the

25 harmonica, correct?

1 A Correct.

2 Q So, is he well known for playing the
3 harmonica?

4 A He's known as the Harmonica Wizard.

5 Q Do you know who assigned him that nickname?

6 A George D. Hay.

7 Q And again, who was George D. Hay?

8 A He was the radio announcer for WSM radio
9 back in 1926.

10 Q And is WSM radio the radio station where the
11 Grand Ole Opry was first transmitted?

12 A Yes.

13 Q Is that here in Nashville?

14 A Uh-huh.

15 Q Have you been a fan of the Grand Ole Opry
16 your whole life?

17 A Well, not my whole life. I started singing
18 country music back in '97.

19 Q Did you do other music before then?

20 A Yes. R&B.

21 Q R&B. Why did you switch to country?

22 A Well, I met Dobie Gray prior to that,
23 because my brother was his drummer. And Marty
24 Stuart was a good friend of my father's and Dobie
25 Gray. Dobie know that I could sing and wanted me to

1 meet Marty Stuart. I went and did a rendition for
2 Marty Stuart and for Polygram Records. And he told
3 me I was a natural.

4 So I didn't go there to become a country
5 music artist. I went there to do the interview with
6 Marty Stuart because he wanted a rendition of three
7 guys doing something like Boyz II Men, but country.
8 So, at that point when I walked out, I was pitched
9 three songs from Polygram Records. And that started
10 my country music career.

11 Q Have you had a record deal?

12 A Yes. I've had several.

13 Q With what companies?

14 A Red SunDown Records.

15 Q So you've had several deals with that
16 company?

17 A Silent Slice Records. Independent record
18 labels.

19 Q Any others?

20 A No.

21 Q Do you currently have a record deal?

22 A No.

23 Q How many records have you released to the
24 public as a solo artist?

25 A Ten.

1 Q Ten. All under the name Carlos DeFord
2 Bailey?

3 A Yes, ma'am.

4 Q Not DeFord Bailey?

5 A No. Carlos DeFord Bailey.

6 Q Have you ever applied for a trademark
7 registration of the mark Carlos DeFord Bailey?

8 A No.

9 Q Why not?

10 A Well, I wasn't as famous as my grandfather.
11 And what I wanted to do after I really learned who
12 my grandfather was, to keep his legacy alive after
13 he passed away. And so, actually, after I'd
14 known -- actually grewed up and knew who my
15 grandfather was and what he was about and what he
16 accomplished and his contribution to country music,
17 I decided to stay with that field.

18 Q Now, you've heard testimony today that there
19 were three children surviving when DeFord
20 Bailey, Sr. passed away, correct?

21 A (Witness moves head up and down.)

22 Q Again, it's DeFord Bailey, Jr., Christine
23 Craig, and Dezoral Thomas, correct?

24 A Correct.

25 Q And DeFord Bailey, Jr. was your father.

1 A Yes.

2 Q Do you agree that those three children were
3 the sole heirs of DeFord Bailey, Sr.?

4 A Yes, they were.

5 Q You've also heard testimony today about a
6 company called DeFord Bailey, LLC, correct?

7 A Yes.

8 Q And when did you first learn of that
9 company?

10 A In 2011 we had a function that we attended
11 at the DeFord Bailey Memorial Rose Garden.

12 Q And how did you learn of the existence of
13 the LLC?

14 A Shemika.

15 Q She told you at that function?

16 A Uh-huh.

17 Q Did you understand what the purpose of the
18 LLC was?

19 A I know what LLC is, but I didn't know --
20 understand that she had filed the LLC for the DeFord
21 Bailey.

22 Q So when she told you about the LLC, did she
23 explain what the purpose of that LLC was?

24 A No.

25 Q Did you ask?

1 A No.

2 Q And in 2012, you signed an agreement with
3 DeFord Bailey, LLC, correct?

4 A I sure did.

5 Q Okay. It's Exhibit 6?

6 MS. EVERHART: I'll hand you Exhibit 6
7 and have you take a look at that.

8 (At which time the witness was
9 presented with Exhibit No. 6.)

10 BY MS. EVERHART:

11 Q My question for you is: Is this the
12 agreement that you signed with DeFord Bailey, LLC?

13 A That's my signature.

14 Q Do you recall signing it?

15 A Not this exact -- no. I signed something
16 else, agreeing to -- on April the 20th of 2012,
17 when we was doing the function at the DeFord Bailey
18 Rose Garden for a day at 20 percent if I was going
19 to sell harmonicas. That's what I read. That's the
20 day that I talked with you, and I agreed to sign it
21 for that day. I'm not quite sure if that's the one,
22 but I did sign it.

23 Q Okay. So you're --

24 A I signed one.

25 Q You acknowledge --

1 A I signed one page.

2 Q Okay. So, take a look at the third page of
3 this document. Let's just start with that.

4 A (Reviewing document.)

5 Q Do you agree that that is your signature?

6 A Yeah, that looks like my signature.

7 Q Okay. Do you recall signing this page?

8 A (Reviewing document.)

9 I can't say. I can't say. It looks totally
10 different. This very well could be the one that I
11 signed, but I don't know. But that's my signature.

12 MS. EVERHART: Actually, I need to take
13 a quick break because this is not a complete
14 exhibit. I need to get my assistant to make a copy
15 of this for me.

16 (Pause in the proceedings.)

17 MS. EVERHART: We will mark this as
18 Exhibit 11, please.

19 (Marked Exhibit No. 11.)

20 MS. EVERHART: Then this is Exhibit 12.

21 (Marked Exhibit No. 12.)

22 THE WITNESS: (Reviewing document.)

23 BY MS. EVERHART:

24 Q Mr. Bailey, you've been handed two exhibits
25 marked 11 and 12. Please take a look and let me

1 know if you've seen these documents before.

2 A Which one is 11 and 12?

3 Q They're marked on the blue stickers. You'll
4 see exhibits marked 11 and 12 on the blue stickers.

5 MR. BENJAMIN: Which one is 11?

6 MS. EVERHART: 11 is the request and 12
7 is the response.

8 THE WITNESS: Yes, I've seen them.

9 BY MS. EVERHART:

10 Q Have you seen these documents before?

11 A I don't know if I've seen this. Yes, I
12 have.

13 Q Okay. And Document 11 is Opposer's First
14 Set of Requests for Admission, and then we also have
15 some other questions. Do you see that?

16 A Uh-huh.

17 Q And then Document Number 12 is Applicant's
18 Response to Opposer's Request for Admissions. Do
19 you see that?

20 A Uh-huh.

21 Q So I'll have you turn in Document 11 to
22 request number -- actually, I'll tell you the page
23 number first. If you'll look at page 12. Look at
24 request number 5.

25 A Uh-huh.

1 Q It states, "Admit that Carlos Bailey signed
2 the document entitled 'Name and Likeness Licensing
3 Agreement' attached hereto as Exhibit A."

4 Do you see that?

5 A Yes.

6 Q Then if you'll turn to Exhibit A, which is
7 right behind it in the same document, you'll see a
8 copy of --

9 A Page 13?

10 Q It doesn't have a page number at the bottom.
11 It's actually after page 13.

12 A Exhibit A, uh-huh.

13 Q Take a look at that document. That's
14 another version of the Name and Likeness Licensing
15 Agreement, correct?

16 A (Reviewing document.)

17 Okay.

18 Q Since you've now taken a look at that
19 document, if it will help to go back again,
20 paragraph 5 states, "Admit that Carlos Bailey signed
21 the document entitled 'Name and Likeness Licensing
22 Agreement' attached hereto as Exhibit A."

23 A I didn't read this.

24 Q Okay. You didn't read what?

25 A This document here, Exhibit A. I'll go back

1 again and say what I read at first. I read --

2 (Overlapping speech.)

3 Q Okay. You're not responding -- I don't have
4 a question pending, so you're just kind of giving me
5 testimony. Let me ask my question.

6 A Go ahead.

7 Q Okay. So I've asked you if you've seen that
8 request for admission and asked if you signed this
9 document, not whether you read it.

10 A No, no.

11 Q And your answer is you did not sign this
12 document?

13 A Exactly.

14 Q Okay. Then if you'll look at Exhibit 12.

15 A Okay.

16 Q These are Applicant's Response to Opposer
17 Request for Admissions, correct?

18 A Okay.

19 Q Look down at number 5 on the first page.

20 "Admit that Carlos Bailey signed the document
21 entitled 'Name and Likeness Licensing Agreement'
22 attached hereto as Exhibit A."

23 Do you see that?

24 A Uh-huh.

25 Q And the response is "Admitted," correct?

1 A That's right.

2 Q Now, are you one of the applicants in this
3 trademark proceeding?

4 A Yes.

5 Q Are you able to read? Do you read?

6 A Yes, ma'am.

7 Q And you do recall signing a license
8 agreement?

9 A I signed something for a license agreement
10 for the day that we performed at the rose garden.

11 Q Okay. And where did you sign that?

12 A I signed it at Ms. Shemika's house.

13 Q And did you do it in her presence?

14 A Yes, I did.

15 Q Did she force you to sign it?

16 A No.

17 Q Did she force you to sell products at the
18 event?

19 A No.

20 Q Was anyone else present besides Shemika?

21 A No.

22 Q Did you --

23 A I had you on the phone when I signed it and
24 Shemika was standing there.

25 Q Okay.

1 A I was talking with you.

2 Q On the phone?

3 A Uh-huh.

4 Q I wasn't physically present, correct?

5 A Exactly.

6 Q Did you pay -- give money to Shemika Wiley
7 in connection with -- well, let me back up.

8 Did you sell products at that event?

9 A Uh-huh.

10 Q What did you sell?

11 A Harmonicas.

12 Q How many?

13 A Maybe about nine to ten.

14 Q What did you charge for each one?

15 A Twenty dollars.

16 Q So, how much money did you make?

17 A I believe I made about \$200.

18 Q And what did you pay for the harmonicas?

19 A I don't recall what we paid. They were sent
20 from Oklahoma.

21 Q Who sent them?

22 A Ron Bailey.

23 Q Did he have them manufactured?

24 A Yes.

25 Q Do you know where he had them manufactured?

1 A At Hohner.

2 Q At Hohner? And did he charge you, then, for
3 any of the expenses?

4 A No.

5 Q Did he ever tell you how much they cost to
6 manufacture?

7 A Yes.

8 Q How much?

9 A I guess he said about \$3 apiece.

10 Q And did you pay any money to Shemika Wiley
11 in connection with --

12 A I did.

13 Q -- the sale of harmonicas that day?

14 A I did.

15 Q How much?

16 A I believe it was \$40.

17 Q How did you come up with that amount?

18 A Because I counted what I made, and it was
19 20 percent of what I made, and I give it to Shemika.

20 Q And where does the 20 percent come from?

21 A That's what was read on that first page that
22 I read about the licenses that day.

23 Q So the license you signed required you to
24 pay 20 percent --

25 A For that day.

1 Q -- to Shemika for the harmonicas?

2 A Uh-huh.

3 Q When your father passed away, DeFord
4 Bailey, Jr., were you aware that he left a will?

5 A No.

6 Q Did you ever inquire as to whether he left a
7 will?

8 A I've asked about a will several times, and
9 my daddy didn't have a will. So I asked him would
10 he get a will. And a lot of us kids was telling him
11 he needed to get a will because -- actually, he
12 didn't have that much, as far as the cars, a few
13 clothes, some possessions.

14 We just felt like that if there was going to
15 be an argument, at least we would know where
16 everything needed to go, which we never did push the
17 issue on that. But he didn't have a will. He felt
18 like he didn't need a will.

19 Q So you asked him before he passed away --

20 (Overlapping speech.)

21 A Did he have a will.

22 Q Did you ever ask after he passed away of
23 anyone whether he had a will?

24 A I asked my sister Jeanette where he presided
25 when he passed away.

1 Q Where he presided?

2 A Uh-huh. He lived there when he passed away.

3 Q Oh, I see. You asked her at the location at
4 which he resided whether he had a will?

5 A Uh-huh.

6 Q And her answer was?

7 A She said, yeah. If he do, Shemika know
8 about it.

9 Q Did you ask Shemika?

10 A No, I didn't.

11 Q Why not?

12 A Because Shemika and I, since the trademark
13 application come up, I just actually felt like that
14 Daddy was pushed into signing something that he had
15 no knowledge of signing and felt like she was trying
16 to take control of this or whatever we had put into
17 our music careers.

18 After we learned about the trademark and did
19 file the trademark, all commotions and confusion
20 broke out. So I just left that alone.

21 Q Did you ever witness your father, DeFord
22 Bailey, Jr., sign any legal documents in connection
23 with the DeFord Bailey, LLC?

24 A No.

25 Q You were never present for any such

1 signings?

2 A No.

3 Q So, if he did sign any documents, you don't
4 know the circumstances under which he would have
5 done so?

6 A No.

7 Q You've heard testimony today about your
8 giving harmonicas with the DeFord Bailey name to
9 several family members, correct?

10 A Yes.

11 Q Did you charge them money for them?

12 A No.

13 Q I want to talk about your use of the DeFord
14 Bailey name on any products that you've sold.

15 A Uh-huh.

16 Q You talked about selling harmonicas with the
17 name. When was the first time you did that?

18 A The first time I got them in 2011, March
19 of 2011.

20 Q Was that the date of your first sale was
21 March of 2011?

22 A No. I kind of held back on them for
23 promotions. But immediately I gave the family each
24 individual harmonicas.

25 And the night that I gave Christine hers, we

1 was all at the -- it was the tribute for Daddy,
2 because he had gotten sick, and they did a tribute
3 for him at Carol Ann's Restaurant and Lounge. That
4 night we all was performing. Those are the first
5 harmonicas that I gave away.

6 Q And you just gave those away?

7 A Uh-huh.

8 Q When did you first sell a harmonica with the
9 DeFord Bailey name?

10 A At the rose garden.

11 Q Do you remember the approximate date of
12 that?

13 A I want to say it was around April.

14 Q Of 2011?

15 A Of 2011.

16 Q Have you sold harmonicas since that event?

17 A No.

18 Q So just those, I guess, nine harmonicas?

19 A I sold a little more than nine harmonicas.
20 I believe I had 50 harmonicas. I gave the family
21 members some. I think I gave away around 15 of
22 them. I sold about -- maybe about nine or ten of
23 them at the rose garden. Sold a few to some
24 friends.

25 Q Do you recall the friends' names?

1 A I can name some that I sold them to. I had
2 them sign a receipt bill showing that they brought
3 one from this state here, state there, and whatnot,
4 and here in Nashville.

5 Q Did you do that to establish use of the
6 trademark in commerce?

7 A Absolutely, yes.

8 Q Okay. What other products, if any, have you
9 sold using the DeFord Bailey name?

10 A My CDs.

11 Q Your CDs with the name Carlos DeFord Bailey,
12 correct?

13 A Right.

14 Q And you did not sell CDs with the name
15 DeFord Bailey?

16 A No.

17 Q Have you sold any other products with the
18 name DeFord Bailey?

19 A No.

20 Q No T-shirts?

21 A No.

22 Q Nothing else?

23 A (Witness moves head side to side.)

24 Q So you've used the name Carlos DeFord Bailey
25 to perform over the years, but you did not start

1 selling any commercial products until April of 2011
2 with the name DeFord Bailey?

3 A Right.

4 Q Did you seek -- well, let me ask this
5 question.

6 You mentioned that you sold a handful of
7 harmonicas at the rose garden event pursuant to the
8 license agreement, correct?

9 A Uh-huh.

10 Q And then in addition to that, the only
11 others you've sold were maybe how many?

12 A As I said, I had 50. I gave away the
13 majority of them. I probably sold about
14 15 altogether.

15 Q So 15, including those sold at the rose
16 ceremony?

17 A No. 15 in all.

18 Q Okay. So if you sold nine at the -- maybe
19 six more?

20 A I had 50. I gave probably about 15 or 20 of
21 them away. I know I sold maybe nine or ten at the
22 rose garden. The rest of them I sold. And I kept
23 giving to friends and promoters.

24 Q Free ones?

25 A Free ones, yeah.

1 Q Okay.

2 A I ended up with a couple of them. Here's
3 one of them here.

4 Q So you still have --

5 (Overlapping speech.)

6 A I've got one.

7 Q You just have one left?

8 A Uh-huh. And I'm going to keep that one. We
9 was planning on having more.

10 Q And what are your -- well, let me ask this
11 question first.

12 Is Ron Bailey involved in your plans to sell
13 harmonicas with the DeFord Bailey name?

14 A As of now, right now, yes. We started this
15 together. It was his idea. He found me on the
16 computer because he was reading about DeFord Bailey.
17 I'm the only one he could find. He found me on
18 YouTube.

19 So, he and I talked about it time and time
20 again. He finally came to Nashville. He's been to
21 Nashville here several times. He met my father
22 before he even got sick. My father has been having
23 cancer, I guess about 20 years. It was in remission
24 for like 15 years. And in 2011, he come out of
25 remission, and a year later, he was taking chemo.

1 Q In 2012?

2 A Yeah.

3 Q Okay. When did Ron Bailey reach out to you?
4 Approximately what year was that?

5 A It was 2010 at the blues festival.

6 Q Okay. So, I am confused now just because of
7 the testimony I've heard today. He's currently
8 involved in the venture?

9 A He was with us when we filed for the
10 trademark.

11 Q And is he still involved?

12 A Yes.

13 Q Is he a business partner or what would you
14 consider his involvement?

15 A He's a business partner.

16 Q Do you all have an arrangement, the three of
17 you, DeFord Bailey, III, you, and Ron, financially
18 as to how you'll split money and profits in
19 connection with the harmonicas?

20 A No.

21 Q And what are your plans for selling them in
22 the future?

23 A We wanted to sell harmonicas. First of all,
24 we wanted to have the trademark established, like
25 sell harmonicas and move on with it. We was going

1 to come up with all the other ideas after we had the
2 trademark in our hand. But we was definitely going
3 to sell some harmonicas.

4 Once we got that established, we would have
5 made arrangements to go on with what we was going to
6 do about the business.

7 Q So, where does that stand right now?

8 A Standstill. Up in litigation.

9 Q You've paused it because of the litigation?

10 A Absolutely.

11 Q If you would take a look at Exhibit 7.

12 (At which time the witness was
13 presented with Exhibit No. 7.)

14 BY MS. EVERHART:

15 Q Let me ask you a preliminary question before
16 we get into this document.

17 Do you know if Ron Bailey is an attorney?

18 A No, he's not.

19 Q Has he purported to be an agent of yours in
20 connection with the trademark application?

21 A No.

22 Q Why has he not -- why is his name not on the
23 trademark application, to your knowledge?

24 A Why is it not on there?

25 Q Yes. As an applicant.

1 A I thought it was.

2 Q Well, it's just you and your brother, DeFord
3 Bailey, III, as the applicants, correct?

4 A Correct, yes.

5 Q Do you know why Ron Bailey was not included?

6 A Well, he was on there as a business partner.

7 Q Where?

8 A I don't see it.

9 Q Why did you include your brother in this
10 business venture, DeFord Bailey, III?

11 A We actually needed DeFord to file a
12 trademark with me because I explained to him what a
13 trademark was and what we could do with the
14 trademark and how we can keep the legacy of the
15 family going of DeFord Bailey, and he agreed to do
16 that.

17 And since I wasn't a DeFord, I needed my
18 brother to -- I needed to include him in that in
19 order for us to get a trademark where it would be
20 legal.

21 Q And why did you want to, in the first place,
22 use DeFord Bailey to sell harmonicas, the name?

23 A That's a famous name. He's known throughout
24 the world. He's worldwide.

25 Q Who is he?

1 A My grandfather, DeFord Bailey, Sr.

2 Q Do you have an understanding as to why Ron
3 Bailey reached out to you to use DeFord Bailey on
4 harmonicas?

5 A Well, he knew that we could pull this off by
6 using DeFord Bailey.

7 Q What was it about the name that made him
8 want to use it in connection with harmonicas, if you
9 know?

10 A He's a legacy. He's an icon of country
11 music.

12 Q Again, he being?

13 A DeFord Bailey, Sr. He's an icon of country
14 music. He was the first to ever perform on the
15 Grand Ole Opry. So that meant a lot to him. And
16 something he had an idea of doing. I thought it was
17 a good idea.

18 Q If you would look again at Exhibit 7, the
19 first page. This might be what you were looking for
20 earlier. There's a correspondence section that's on
21 the very first page.

22 A Okay.

23 Q There's an e-mail address of
24 ronbailey8@gmail.com. Do you see that?

25 A Uh-huh.

1 Q Have you ever corresponded with Ron Bailey
2 via e-mail?

3 A No.

4 Q Do you have any idea if that's his e-mail
5 address?

6 A No.

7 Q Do you have any idea why -- or whose e-mail
8 address that is?

9 A It says Ron Bailey.

10 Q Okay. And do you see, then,
11 wabenj@netzero.com next to it, that e-mail address?

12 A Below it?

13 Q To the right of it.

14 A Uh-huh.

15 Q Do you know whose e-mail address that is?

16 A I don't.

17 Q Okay. Now, if you'd look inside Exhibit 7,
18 a number of allegations have been made by the
19 applicants in this case about various things,
20 correct?

21 A Uh-huh.

22 Q Including personal allegations against
23 Shemika Wiley, correct?

24 A Uh-huh.

25 Q If you would look at paragraph 18. It's

1 toward the back. You've heard testimony today about
2 the allegations that she has had three felony
3 convictions, correct?

4 A Uh-huh.

5 Q Do you have any awareness of her having
6 three felony convictions?

7 A Two.

8 Q You're aware that she has two. Are you
9 aware of any felony conviction of her for attempted
10 murder?

11 A No. I knew she got shot and shot a guy.

12 Q Okay.

13 A I don't know how that turned out. I didn't
14 hear any more about it.

15 Q Okay. You don't have any knowledge of --

16 A No. I don't know if she was convicted of
17 that or not, no.

18 Q Okay. So, do you have any understanding as
19 to why there's an allegation here that she was
20 convicted of a felony for attempted murder?

21 A I didn't say she was convicted of -- a
22 convicted felon of attempted murder.

23 Q Did you provide that information to Walter
24 Benjamin?

25 A A drug charge, I did.

1 Q Okay. Did you review this document --

2 A I might have mentioned it to Mr. Benjamin
3 about she got shot and she shot a guy. They shot
4 each other at the same time, like simultaneous.

5 Q Okay. So you don't know the circumstances
6 of whether she had any legitimate defenses in that
7 situation, correct?

8 A What are you saying?

9 Q You don't know -- you said you're aware she
10 shot a guy and the guy shot her. But you don't know
11 if she had a self-defense --

12 (Overlapping speech.)

13 A I don't know what -- no.

14 Q In fact, you didn't witness that personally,
15 did you?

16 A No.

17 Q So you don't know if it even occurred; you
18 just are --

19 A Yeah, I know it occurred --

20 Q Okay.

21 (Overlapping speech.)

22 A -- because she was in the hospital.

23 Q Were you there personally?

24 A No.

25 Q Okay. So you don't know anything more about

1 that, and you know there was no conviction?

2 A I don't know if there was a conviction or
3 not. I wasn't around that much --

4 Q Okay.

5 A -- at that time. I just heard what was
6 going on.

7 Q Did you review this document before it was
8 filed with the Trademark Office?

9 A Yes, I did.

10 Q Okay. Did you ever ask Walter Benjamin to
11 change the allegation as to a felony charge in
12 connection with -- I'm sorry, a felony conviction in
13 connection with attempted murder?

14 A No. I don't even recall --

15 Q So which is it? No, you didn't ask him to
16 correct it --

17 A No, I didn't.

18 Q -- or you don't recall?

19 A No, I didn't.

20 Q Do you know how much education, I guess, the
21 last year of education that DeFord Bailey, Jr. had?

22 A To my knowledge, it was between the sixth
23 and eighth grade. I'm not quite sure.

24 Q Okay. Were you present when your brother,
25 DeFord Bailey, III, signed the trademark

1 application?

2 A Yes.

3 Q Where did that occur?

4 A At the state office building downtown on
5 Seventh Avenue North.

6 Q Why did it occur there?

7 A Because that's where we had to go sign.

8 Q Okay. Are you familiar with a trademark
9 application having been filed in the State of

10 Tennessee for the DeFord Bailey mark?

11 A Yes.

12 Q Would it surprise you to learn that there's
13 no record of that in the Tennessee Secretary of
14 State?

15 A Yes, it is.

16 Q Okay. It would surprise you to learn that
17 or it would not?

18 A No, it wouldn't surprise me that it's there.

19 Q Okay. It's your testimony --

20 A It would surprise me if it was not there.

21 Q Okay. So it's your testimony that there was
22 a State application filed for the DeFord Bailey
23 mark?

24 A Yes.

25 Q In connection with harmonicas?

1 A Yes.

2 Q Was that approximately in the same time as
3 the application about which you're here to testify
4 today?

5 A Yes. Because once you get a trademark
6 application, they suggest that you go immediately
7 down there and have it registered with the state
8 secretary.

9 Q Who represented you in that application?

10 A We had -- we didn't have an attorney then.
11 We was led to Mr. Walter Benjamin, indicating that
12 we were going to need an attorney to present this to
13 the trademark company. So we did.

14 Q Did Ron Bailey file that state trademark
15 application with you?

16 A Yes.

17 Q Okay.

18 A The state secretary. I was showing her
19 these letters from them.

20 MR. BENJAMIN: Can I see it?

21 THE WITNESS: (Tendering.) And I have
22 a most recent one now that --

23 MS. EVERHART: I would like to see
24 those, too, since he offered them to me.

25 THE WITNESS: -- that I got in the mail

1 on last week where it needs to be re-signed. It's
2 still active.

3 BY MS. EVERHART:

4 Q So let me ask you a question. I guess maybe
5 I'll know once I see these. Are you actually
6 referring to forming a company in the name of DeFord
7 Bailey as opposed to filing a state trademark
8 application?

9 A Absolutely.

10 Q Okay. So, it's not a case that you filed a
11 state trademark application for DeFord Bailey; you
12 formed a company in the name of DeFord Bailey,
13 correct?

14 A Yes.

15 MS. EVERHART: Okay. We'd like to get
16 copies of those at the next break.

17 BY MS. EVERHART:

18 Q And so, your intention in connection with
19 this company that you formed in the name of DeFord
20 Bailey is to do what?

21 A Sell harmonicas, T-shirts, CDs, trinkets.
22 Just whatever we can come up with, think that we
23 could sell of DeFord Bailey. That's what we had in
24 mind.

25 Q Have you done anything with the company

1 since forming it?

2 A No.

3 Q And when did you form it?

4 A When did I?

5 Q Yes.

6 A It was in 2011. May the 19th, 2011.

7 Q Okay. What's the name of the company?

8 A The DeFord Bailey Group and the DeFord
9 Bailey Foundation.

10 Q What's the difference? Tell me about the
11 two companies.

12 A The DeFord Bailey Group would be for profit,
13 and the DeFord Bailey Foundation is for nonprofit.
14 And what the DeFord Bailey Group does, it pays the
15 DeFord Bailey Foundation to keep that company going.

16 So, actually the DeFord Bailey Group is for
17 profit, and the DeFord Bailey Foundation is for
18 nonprofit.

19 Q Has the DeFord Bailey Group been formed?

20 A Yes.

21 Q Do you have documents in connection with the
22 DeFord Bailey Group as well?

23 A Yes.

24 Q Do you have those with you?

25 A No. Actually, I just got them in the mail.

1 Let me see. I may have one here. Just a second.

2 (Pause in the proceedings.)

3 BY MS. EVERHART:

4 Q You can look for it at a break. Let me ask
5 you a few more questions here and then we'll stop,
6 just in the interest of time.

7 A All right.

8 Q You're not related to Ron Bailey, are you,
9 to your knowledge?

10 A Pardon me? I'm sorry.

11 Q You're not related to Ron Bailey, are you,
12 to your knowledge?

13 A Not to my knowledge, no.

14 Q Have you ever been charged with a crime?

15 A No.

16 Q Have you ever -- obviously, then, never been
17 convicted of a crime.

18 A No.

19 Q Have you ever done elicited drugs?

20 A No.

21 MS. EVERHART: Let me take a quick
22 break. I might not have anything further. I just
23 want to double-check.

24 (Recess observed.)

25 (Marked Exhibit No. 13.)

1 BY MS. EVERHART:

2 Q I'll ask you to look at this exhibit,
3 please. Before the break, you had been testifying
4 about DeFord Bailey Foundation and DeFord Bailey
5 Group. Correct?

6 A Uh-huh.

7 Q And then you provided me with some documents
8 in connection with those entities, correct?

9 A Uh-huh.

10 Q Are these those documents? You can go ahead
11 and glance through them.

12 A Yes.

13 Q And I'll direct you to the first page. It
14 states, "Annual Report Now Due For: DeFord Bailey
15 Foundation, Inc." Do you see that? Right at the
16 top, the bold language at the top.

17 A Yeah.

18 Q Okay. And it states that the date this
19 company was formed is May 23rd, 2011, correct?

20 A Correct.

21 Q Then if you turn to the second page, it
22 looks like the president of the company is you,
23 correct?

24 A Correct.

25 Q And the secretary is Ron Bailey?

1 A Right.

2 Q And then, is that 515 Basswood, is that your
3 personal address?

4 A Uh-huh. That's the address we use for the
5 company also.

6 Q Okay. And as you've mentioned, you've done
7 nothing with this company other than continue to pay
8 and file the annual reports?

9 A Exactly. Looks like it needs to be filed
10 now.

11 Q I see on the second-to-last page here
12 there's a bill to the DeFord Bailey Group, LLC.

13 A Uh-huh.

14 Q And that's -- do you see that, the
15 second-to-last page, invoice, from the Tennessee
16 Secretary of State?

17 A Uh-huh.

18 Q And the date on it is May 19, 2011.

19 A Uh-huh.

20 Q Do you know if the annual reports have been
21 filed in connection with this company to continue to
22 maintain it?

23 A What company are you pertaining to?

24 Q DeFord Bailey Group, LLC.

25 A You mean has it been paid on?

1 Q Yes.

2 A It should have been.

3 Q You don't know sitting here today?

4 A No. To my knowledge, Ron said that he had
5 paid it up and wouldn't be anything to worry about.
6 But I knew I had no need to pay on it because to my
7 knowledge he paid on it. And I've just been paying
8 on the DeFord Bailey Foundation.

9 Q And you've been -- you've done nothing with
10 the DeFord Bailey Group since formation in
11 connection with any business?

12 A No.

13 MS. EVERHART: No further questions. I
14 reserve the right to redirect.

15 CROSS-EXAMINATION

16 BY MR. BENJAMIN:

17 Q All right. Mr. Carlos DeFord Bailey, let's
18 start with Opposer's Exhibit 6, which is the Name
19 and Likeness Licensing Agreement. Do you recall
20 that?

21 A Uh-huh.

22 Q And you testified that you did sign it or
23 that looks like your signature at the end; is that
24 correct?

25 A Yes, sir.

1 Q And you also testified that you don't
2 remember the other part of the agreement?

3 A No, I don't.

4 Q At the time you signed this agreement, did
5 Ms. Wiley give you a copy of it?

6 A No.

7 Q Did she ever give you a copy of it at any
8 time after that?

9 A No. She said she would, but I never
10 received it.

11 Q Okay. So, you don't -- okay.

12 Now, just before you signed this, there was
13 testimony that you had a question for Ms. Everhart;
14 is that correct?

15 A Correct.

16 Q And that pursuant to that, Shemika Wiley
17 made a telephone call to Ms. Everhart; is that
18 correct?

19 A Yes.

20 Q Okay. And then she gave the phone to you to
21 ask your question?

22 A Yes.

23 Q What question did you ask Ms. Everhart?

24 A I asked her was this just pertaining to the
25 day of the event, what we're about to attend, and

1 she said, yes, it was. And wasn't nothing to be
2 alarmed about --

3 MS. EVERHART: Objection.

4 THE WITNESS: -- signing that, and that
5 it would be just for that day.

6 MS. EVERHART: Objection.

7 BY MR. BENJAMIN:

8 Q Okay. Now, would you have signed this
9 agreement but for the conversation you had with
10 Ms. Everhart?

11 MS. EVERHART: Objection.

12 THE WITNESS: Absolutely not.

13 BY MR. BENJAMIN:

14 Q Did Ms. Everhart inform you that -- to
15 consult an attorney before taking her advice?

16 A No.

17 MS. EVERHART: Objection.

18 BY MR. BENJAMIN:

19 Q Do you have any reason to believe that the
20 person on the other line was not Ms. Everhart?

21 A I believe it was. I don't know for sure. I
22 know I talked with a young lady on the telephone.

23 Q Okay. Shemika told you she had dialed
24 Ms. Everhart's number, correct?

25 A Correct, yes.

1 MS. EVERHART: Objection.

2 BY MR. BENJAMIN:

3 Q Whose number did Shemika tell you she had
4 dialed?

5 A Ms. Everhart, her attorney.

6 Q Okay. Now, as far as your understanding of
7 that agreement, it was to pertain to when and what?

8 A It was pertaining to selling harmonicas at
9 the ground breaking -- I mean, the ribbon cutting at
10 the DeFord Bailey Memorial Rose Garden. To my
11 knowledge, it was supposed to be for that day, from
12 the time we began to the time we end. I think it
13 was from noon to 6:00. Basically, that was it.

14 Q After signing that agreement, did you have
15 any reason to believe that you were to give her --
16 pay her for the use of DeFord Bailey on any other
17 day besides that day?

18 MS. EVERHART: Can I clarify her?
19 Because you were just testifying about Ms. Everhart.

20 MR. BENJAMIN: Oh, okay.

21 BY MR. BENJAMIN:

22 Q Did you understand that you were to pay
23 Shemika Wiley only for harmonicas sold on that day
24 and no other day?

25 A Only for that day.

1 Q Okay. And I think you testified that you
2 did pay her for that day; is that correct?

3 A Correct, yes.

4 Q And after that, you sold other harmonicas,
5 did you?

6 A I did.

7 Q Did you pay her for the harmonicas you sold
8 for other than that day?

9 A No.

10 Q Did she ask you for paying for harmonicas
11 for any day other than that day?

12 A No.

13 Q And from your testimony, I think you said
14 other than -- that you sold ten at that event and
15 that you sold maybe -- how many besides that at
16 other events?

17 A Probably two or three here, three or four
18 there. The majority of them I gave away.

19 Q A total of how many did you sell is what I'm
20 interested in.

21 A Probably 20 or 22.

22 Q Okay. So, there was at least 10 or 12 that
23 you sold that you did not pay Shemika for; is that
24 correct?

25 A Correct.

1 Q Okay. Now, let's go to the will. When was
2 the first time that you learned about a will from
3 your father?

4 A Today.

5 Q So that means that Shemika did not give you
6 any notice about a will; is that correct?

7 MS. EVERHART: Objection.

8 THE WITNESS: No, sir, she didn't.

9 BY MR. BENJAMIN:

10 Q Did Shemika give you any notice about a
11 will?

12 A No, sir.

13 Q Now that you have seen the will, is that
14 something you would contest?

15 A I didn't actually read all of it. I seen
16 some names and birthday dates on there, but I don't
17 think there's anything on there that needs to be
18 contested.

19 Q Would you contest the part where your
20 father --

21 MS. EVERHART: Objection to leading.

22 BY MR. BENJAMIN:

23 Q What about the part that says --

24 MS. EVERHART: Objection to leading.

25 THE WITNESS: That he left everything

1 to her, to the DeFord Bailey, LLC?

2 MS. EVERHART: Objection to that
3 statement and move to strike it.

4 THE WITNESS: No, I wouldn't agree with
5 that at all. I don't agree with -- about him
6 leaving and signing everything that he left over to
7 the DeFord Bailey, LLC. I don't think he would do
8 that.

9 He had ten other kids. He got
10 35 grandkids, 15 great grandkids. So why would he
11 just take what he had and just sign it over to
12 DeFord Bailey, LLC and just give everything to
13 Shemika?

14 BY MR. BENJAMIN:

15 Q Okay. Let me refer you to Opposer's
16 Exhibit 5, which is the will.

17 (At which time the witness was
18 presented with Exhibit No. 5.)

19 BY MR. BENJAMIN:

20 Q I'll refer your attention to number 7 on
21 page 2. It says, "Any and all intellectual property
22 rights of DeFord Bailey, Jr., in the estate of
23 DeFord Bailey, Jr. have been transferred, in full,
24 to DeFord Bailey, LLC, a Tennessee limited liability
25 company. Any residual effects, or property rights

1 in said estate of DeFord Bailey, Sr., held, or
2 deemed to be held by DeFord Bailey, Jr. at his death
3 shall be transferred to DeFord Bailey, LLC and shall
4 not be considered a part of this estate."

5 Do you agree with that?

6 A No.

7 Q Do you agree to the transfer that it refers
8 to that had been made before this will?

9 A No.

10 Q And your reason for disagreeing with that is
11 what?

12 A Turn over any property to the DeFord
13 Bailey, LLC with this regard, the rest of his heirs,
14 of his kids.

15 Q Okay. There was testimony before that he
16 had 30 grandchildren; is that correct?

17 A Yes.

18 Q How many great grandchildren did he have?

19 A As of now we have 16.

20 Q Okay. What kind of relationship did you and
21 your brother have with your father?

22 A We had a great relationship all my life with
23 my father.

24 Q Did your father ever do anything that gave
25 you the indication that he was against you getting

1 the trademark?

2 A No.

3 Q Okay. Let's go into detail about things
4 that you did and X number of years in using the name
5 Carlos DeFord Bailey.

6 A Uh-huh.

7 Q How many years did you use that name?

8 A I've been using that name 18 years.

9 Q Okay. And during that 18 years, what did
10 you do, if anything, with regard to the name DeFord
11 Bailey?

12 A I used it as my stage name, and basically
13 that was it. I just used it on stage. In the last
14 decade-and-a-half, the people that I hadn't met knew
15 me as Carlos Lamont Bailey, but I was never called
16 Carlos Lamont Bailey. I was always called Carlos,
17 and that was it. They knew I was DeFord Bailey's
18 son and DeFord Bailey's grandson.

19 For the last 17 years, everybody that I met
20 in the music industry or the people saw me perform
21 or even around me to this day, they know me as
22 Carlos DeFord Bailey, and that's all they know.

23 Q Okay. Now, why did you put the name DeFord
24 in your name?

25 A Well, actually, when I signed with Red

1 SunDown Records, she said, you know, nobody is using
2 your grandfather's name that is really out there
3 performing that's in the public eye except for
4 yourself. She said, we should call you Carlos
5 DeFord Bailey. And she said, that way you can keep
6 the legacy of your granddaddy, the legacy going, and
7 follow on down the road.

8 And then, he hadn't been inducted into the
9 Country Music Hall of Fame yet. And that name was
10 really kept quiet there. He had passed away for the
11 last 20 years. That's when that book come along,
12 "A Lost Legend."

13 So I thought that was a good idea. So
14 actually, Red SunDown Records, that was their idea,
15 that I use it for a stage name.

16 Q So, at her suggestion for you to use it to
17 promote your father's name?

18 A Yes.

19 Q Was that the reason why you did it?

20 A Absolutely. And myself.

21 Q Okay. So, what kind of events did you put
22 on to promote your father's name with the name
23 Carlos DeFord Bailey?

24 A I did multiple concerts. I did interviews.

25 Q How many concerts a year?

1 A Wow. I probably did a concert every week,
2 every weekend. That was back in -- Shemika, you was
3 just coming up, really.

4 Back in '97, I was performing at Tootsie's,
5 Cadillac Ranch, Legends Corner, Wild Horse Saloon.
6 I got documentation of all of that, but I don't have
7 it with me.

8 Q Okay. Now, are you still doing performances
9 every week to promote your name, DeFord Bailey?

10 A Yes.

11 Q Did you do it last year on a regular basis?

12 A Yes.

13 Q So, is it safe to say that you did it every
14 year since 1998?

15 A Yes.

16 Q Okay. Were there any other family members
17 doing anything during that period since 1998 until
18 the present to promote your DeFord Bailey name?

19 A No. I got a younger brother. He has
20 continued to do R&B, but he's just Hershel Bailey.

21 Q What about your brother, DeFord Bailey? Did
22 he do anything with his name to promote your
23 father's name?

24 A He used to be my drummer.

25 Q As your drummer, did he do anything

1 specifically to promote your father's name?

2 A No. He's just always been DeFord
3 Bailey, III.

4 Q And the people who watch your -- tell us
5 what period of time he was your drummer.

6 A 2008, 2010.

7 Q Okay. Did you do anything to promote the
8 rose garden memorial?

9 A Yes.

10 Q What did you do to promote that?

11 A I just performed there. Every concert that
12 I did after the rose garden came about, I would just
13 kind of mention it, about the DeFord Bailey Rose
14 Garden, you need to go out there and see the DeFord
15 Bailey Rose Garden.

16 Now, we did -- we did a function out there
17 every year from that point on.

18 Q What, if anything, did you do to promote his
19 being inducted into the Country Music Hall of Fame?

20 A DeFord Bailey's daddy, which was honored
21 back in 1982 after he passed away, was signed by the
22 mayor declaring it DeFord Bailey day here in
23 Nashville, Tennessee. I started doing a concert in
24 honor of DeFord Bailey --

25 Q For DeFord Bailey day?

1 A Yes, DeFord Bailey's day. It was honored
2 for December the 14th, but I did a concert around
3 August because it was warm. And it was too cold to
4 do anything on December the 14th.

5 Q What family members, if any, assisted you in
6 promoting DeFord Bailey's name in those events?

7 A They was all for it, 100 percent.

8 Q What active participation did they --

9 A They were just -- they would just come to
10 the concerts.

11 Q Okay. When you say they, who specifically?

12 A All my nieces and nephews, brothers and
13 sisters.

14 Q Your father?

15 A She might have been to a few concerts I
16 performed. My father. My father played on a lot of
17 concerts that I performed because my band do other
18 than country. They do blues also.

19 So I would come on and I had the show where
20 I would come on and open up with about eight songs.
21 I would go off and change. And I would bring Daddy
22 on, and they'd kind of blues it up for a couple of
23 songs while I would change. And that went on for a
24 long time.

25 Q Okay. Now, did any of the family members

1 object to you using the name Carlos DeFord Bailey?

2 A No.

3 Q Okay. Now let's get to what's been
4 mentioned as the airport event. How were you
5 involved with that?

6 A The CEO of the Airport Authority that's over
7 the events program that they have out there, she had
8 been trying to get in touch with somebody about the
9 unveiling for the -- actually, that's the music
10 notes from the Pan American train.

11 Q What is the Pan American train?

12 A It's the song that he wrote and blowed that
13 actually made him famous. He was famous for that
14 song.

15 Q What are the musical notes that you're
16 talking about?

17 A The notes that's in that song.

18 Q Okay. How is that at the airport?

19 A They had it made. It's a Chinese lady from
20 Korea, she was here, and she was trying to find
21 somebody at that time that knew DeFord Bailey. She
22 was trying to find out who she needed to go through
23 to have this done, which then it wasn't a
24 foundation. It wasn't a DeFord Bailey Group or
25 anything.

1 So she took it in her own hands to do it
2 herself, which I would have done the same thing. So
3 they finally got in touch with me somehow.

4 Q When you say they, who are you talking
5 about?

6 A The lady from the airport. She called me
7 one day and -- because she got my name off my
8 T-shirt on YouTube, the same as Ron did. She asked
9 me was I kin to DeFord Bailey, and I told her, yes,
10 that was my grandfather.

11 And she told me what they was doing, and
12 asked me would it be all right -- did I think that
13 it would be all right for them to do that. So --

14 Q Let me stop you there. Did they contact any
15 other family members besides you regarding this?

16 A No.

17 Q Okay. Who informed the family members about
18 this?

19 A I did.

20 Q Okay. Did the family members attend the
21 event?

22 A Yes.

23 Q What family members attended?

24 A Everybody. Dezoral, Christine, brothers and
25 sisters. We all was there that day.

1 Q Was your father there?

2 A Yes.

3 Q Was Ron Bailey there?

4 A Yes.

5 Q Okay. Did anyone object to you approving
6 them doing that at the airport?

7 A No.

8 Q Okay. Besides the rose garden, induction to
9 the Country Music Hall of Fame, and the airport
10 unveiling, what other major thing did you do to
11 promote your father -- your grandfather's name,
12 DeFord Bailey?

13 A I did the CMA this last 2013.

14 Q You did the what?

15 A The CMAs.

16 Q CMA, what is that?

17 A Country Music Association, the show that
18 comes to town every year.

19 Q So what did you do at the CMA?

20 A I promoted the harmonica.

21 Q How did you promote the harmonica?

22 A I was on the concert that morning with the
23 ambassador, Mr. Davis, invited me out for his part
24 of the concert on that morning. And I promoted
25 myself as well as my grandfather. Talked about

1 being inducted into the Country Music Hall of Fame
2 with Glen Campbell and Alabama in 2005. Had a
3 chance to blow harmonica for everybody.

4 Q Okay. Did your brother here ever blow the
5 harmonica for --

6 MS. EVERHART: Objection.

7 THE WITNESS: No.

8 BY MR. BENJAMIN:

9 Q Were you ever present when your brother blew
10 the harmonica in favor -- to promote your
11 grandfather's name?

12 A No.

13 Q Okay. Did anyone ever object to you doing
14 that?

15 A No.

16 Q Okay. Was any of your family members there?

17 A No.

18 Q Now let me just ask you: Was your father
19 able to read?

20 MS. EVERHART: Objection.

21 THE WITNESS: He could read some
22 things. He could read words. Like if you showed
23 him his daughter's name or if you showed him
24 Shemika's name, he'd say that's Shemika. Or if you
25 showed him a stop sign, that say stop, or go. But

1 he couldn't read a sentence.

2 BY MR. BENJAMIN:

3 Q How do you know he couldn't read a sentence?

4 A Because I've submitted him some paperwork as
5 far as reading when the induction had come up, and I
6 had to read to him at the meeting what this was
7 about, that Granddaddy is being inducted into the
8 Country Music Hall of Fame. I never seen him read a
9 whole sentence.

10 Q Okay. What else has he --

11 (Overlapping speech.)

12 A I read a lot of his mail for him. The whole
13 thing.

14 Q Did you see other people read his mail for
15 him?

16 A Uh-huh, sure.

17 Q Did you ever see him read his own mail?

18 A No. I seen him look at it.

19 Q Now let's get to when the trademark
20 application was applied for.

21 A May 19, 2011.

22 Q Okay. Who signed the application?

23 A Bubba and I.

24 Q Who was there when you and he signed it?

25 A Ron Bailey.

1 Q Okay. Now, we had this document that was
2 the last page of the trademark application that has
3 been introduced. Do you recall that page?
4 Opposer's Exhibit 10?

5 MS. EVERHART: Why don't we use the
6 real exhibit.

7 MR. BENJAMIN: Okay.

8 (At which time the witness was
9 presented with Exhibit No. 10.)

10 BY MR. BENJAMIN:

11 Q Okay. Did you and your brother sign this
12 before the trademark application was sent in?

13 A No.

14 Q It says you signed it on 4 --

15 A 4/26/2011.

16 Q So if that was before you filed the
17 trademark application, it would have been before.

18 A Okay.

19 Q So was it before or after?

20 A It was before.

21 Q Okay. And after you signed it, what did you
22 do with this document, as far as your attorney is
23 concerned?

24 A Good question.

25 Q Do you remember how you transmitted it to

1 me? By what means did you transmit it to me?

2 A For you to look at? I think I faxed this to
3 you.

4 Q Okay. And after you faxed that to me, then
5 I filed it the same day; is that correct?

6 MS. EVERHART: Objection.

7 THE WITNESS: Yes.

8 BY MR. BENJAMIN:

9 Q After you faxed that to me, when did I file
10 it?

11 MS. EVERHART: Objection. Lack of
12 personal knowledge.

13 THE WITNESS: That following week.

14 BY MR. BENJAMIN:

15 Q Okay. Let me just ask you -- well, the
16 record will speak for itself when it was filed.
17 I'll withdraw that question.

18 Okay. Who introduced the idea about selling
19 harmonicas with the name DeFord Bailey on them?

20 A Ron Bailey.

21 Q Were there any family members prior to that
22 time who mentioned or, to your knowledge, promoted
23 anything concerning selling harmonicas with the name
24 DeFord Bailey on it?

25 A No.

1 Q I think there was testimony that said that
2 Ron Bailey introduced the idea at the time of the
3 airport unveiling.

4 A Uh-huh.

5 Q Okay. How did he go about disclosing that
6 idea to y'all?

7 A Well, after the concert, we all went back to
8 Dezoral's house. It was supposed to be a meeting
9 among myself, Ron, Christine, Dezoral, and my
10 father.

11 Q To your knowledge, what was the purpose of
12 having those people at the meeting?

13 A About doing a DeFord Bailey trademark and
14 having a DeFord Bailey Foundation.

15 Q Who did Ron include in being a part of the
16 trademark application at that time?

17 A Christine, Dezoral, and my father.

18 Q Did they follow up on being part of the
19 application?

20 A They was really interested in that.
21 Christine, Daddy, and Dezoral, we was about to leave
22 at that time to get the car and go file it for the
23 trademark and the DeFord Bailey Foundation. And
24 they was intercepted by Ms. Wiley and my cousin,
25 Dezoral Thomas.

1 So they decided at that point, we're going
2 to wait. We're not going to do it right now.
3 Because we was all outside getting ready to go. And
4 so, Christine said, no, you know, we're just going
5 to hold up. We're going to wait until a later date.
6 She said she would get back with Ron and I.

7 Then the next thing I know, I guess they had
8 filed for a DeFord Bailey, LLC.

9 Q When you say they, you're talking about who?

10 A Shemika and Daddy. I know Shemika for a
11 fact.

12 Q So, did Dezoral and Christine, to your
13 knowledge, want to be involved with opposing your
14 trademark application?

15 A No.

16 Q To your knowledge, did your father want to
17 oppose your trademark application?

18 A No.

19 Q Now, tell me a little bit about the state
20 application for the DeFord Bailey, III mark.
21 Actually you didn't apply for a mark. You applied
22 for an LLC and the DeFord Bailey Foundation; is that
23 correct?

24 A Correct.

25 Q So, you didn't mean that you filed for a

1 DeFord Bailey, III mark?

2 A No. We filed for a DeFord Bailey Foundation
3 and DeFord Bailey trademark.

4 Q Okay. Do you think that's also what your
5 brother was referring to when he said he filed for a
6 DeFord Bailey, III --

7 MS. EVERHART: Objection.

8 THE WITNESS: Yes.

9 BY MR. BENJAMIN:

10 Q Okay. Those companies, were they filed
11 before or after Shemika filed her -- for her DeFord
12 Bailey, LLC?

13 A Before.

14 Q Okay. Did you make her aware that you had
15 filed those?

16 A Not to my knowledge.

17 Q Okay. Can you play the harmonica?

18 A Somewhat.

19 Q Have you played harmonica in front of
20 audiences?

21 A Yes.

22 Q Have you played the DeFord Bailey harmonica
23 in front of audiences?

24 A Yes.

25 Q Have you played the DeFord Bailey harmonica

1 in front of audiences when your family members were
2 present?

3 A Yes.

4 Q What family members were present?

5 A That night, Christine was there, Daddy was
6 there. I've done that at functions, get-togethers
7 for the family, just kind of goofing off.

8 Q Okay. Did you make it known to them -- or
9 were they aware that it was the DeFord Bailey
10 harmonica that you were blowing?

11 A Yes.

12 Q How did they become aware of that?

13 A Because I was so excited I had them, I just
14 started showing it to everybody. I'm going like,
15 this is one of the DeFord Bailey harmonicas. I even
16 gave it to them to kind of pass around.

17 Everybody said, you got another one? So I
18 started giving everybody harmonicas. Everybody got
19 one.

20 Q Okay. And you gave -- I understand your
21 testimony, I understand you gave Christine a
22 harmonica?

23 A I gave her one the night of the show that I
24 got them.

25 Q Okay. And you gave Dezoral one?

1 A Uh-huh.

2 Q And you gave your father one?

3 A Uh-huh.

4 Q And I think there was testimony that your
5 father had you to sell two to his friends.

6 A Absolutely.

7 Q Did your father object to you selling two of
8 them to his friends?

9 A No. I don't know if I even sold them to
10 him. I think I gave them to him. I want to say I
11 gave it to them, because he asked me for them.

12 We was going to a Christmas party that he
13 and I had been doing for the last ten years. And I
14 want to say I gave them their harmonicas. I can't
15 say I sold it to them.

16 Q But he didn't -- your father didn't object
17 to you giving it to them?

18 A No. He was more excited about the harmonica
19 even than I was. All of them acted like they was
20 happy about it. They asked me how did I get them
21 made. And I said, well, you know I filed for the
22 DeFord Bailey trademark. We've got the DeFord
23 Bailey Foundation. And that's when everybody got to
24 going like, what? Hold up.

25 And everything just start -- not getting

1 ugly, but it was just kind of a family thing went on
2 there for a minute. It was like I was fixing to get
3 rich overnight and just poop on everybody.

4 So I kind of just left it alone after we
5 first got the harmonicas made. Because we went to
6 have more pressed, and they said it was being
7 contested by a family member. I was going like,
8 well, who could have done this? I couldn't think
9 who would do such a thing.

10 Q Okay. And hearing all of the testimony that
11 you heard today, is there anything that was said or
12 done that you'd like to correct?

13 A Pardon?

14 Q Considering all of the testimony that was
15 done today, was there anything said or done that
16 you'd like to correct?

17 A No.

18 Q Other than your testimony?

19 A That's it. Other than what I filed for that
20 -- only for that day. What did I file? Did I file
21 something that I shouldn't have filed or did I file
22 something that just giving her authorizations to go
23 on and do whatever she needed to do other than for
24 that day?

25 MS. EVERHART: I object to that

1 question. Move to strike that testimony.

2 BY MR. BENJAMIN:

3 Q I don't -- I don't really understand your --
4 I really don't understand your --

5 (Overlapping speech.)

6 A Okay. The license agreement that Shemika
7 had me sign for the day of April the 20th.

8 Q What about it?

9 A Should I have signed that? Other than for
10 that day? Did I sign something leading you all to
11 say, well, he signed this saying in order to use the
12 DeFord Bailey name anytime anywhere he go. Because
13 I was told by Ms. Wiley, whatever I do, I can't use
14 the DeFord Bailey name on stage, on my CDs, or
15 anything that I go stick my neck out to do.

16 So, basically, she was telling me, I'm just
17 going to slide the rug from up under you. No matter
18 what you done for the last 17 years, you can't do it
19 no more. And I'm going like --

20 (Overlapping speech.)

21 MS. EVERHART: And I'm going to object
22 to that testimony and move to strike it.

23 MR. BENJAMIN: Yeah. It's really not
24 proper at this time.

25 THE WITNESS: Okay.

1 BY MR. BENJAMIN:

2 Q I just asked you if there was anything that
3 you wanted to refute --

4 A No.

5 Q -- that has been said --

6 A No.

7 Q -- that is untrue or needs to be corrected.

8 A Now, that about the will, we didn't know
9 anything about a will until it was presented today.

10 Q Okay.

11 A And I don't think he ever had anything, any
12 paperwork that important that I didn't have
13 knowledge of or had wind of before it was released.

14 Q Did you have knowledge of the paperwork that
15 -- Exhibit 8 and 9 that they allege that your
16 brother signed?

17 A No.

18 MR. BENJAMIN: No further questions.

19 MS. EVERHART: All right. I have a few
20 questions.

21 REDIRECT EXAMINATION

22 BY MS. EVERHART:

23 Q When was the last time you requested a copy
24 of the license agreement from Shemika Wiley?

25 A I left it alone. I didn't. I have not.

1 Q To your knowledge, was Shemika Wiley aware
2 of your sales of the harmonicas other than those
3 sold at the rose garden ceremony?

4 A Yes.

5 Q How did she become aware of those?

6 A I'm sure she seen folks lined up over there
7 after the concert buying harmonicas. And she was
8 aware of that the day that I signed that contract
9 that I was going to be selling harmonicas there.

10 Q Okay. And I'm talking about the other
11 harmonicas, not the ones sold there. You mentioned
12 there were a few harmonicas you sold to individuals
13 outside of that event, correct?

14 A No, that wasn't to her knowledge. Not at
15 all, no.

16 Q Are you known as the Harmonica Wizard?

17 A No.

18 Q Are you known for playing the harmonica?

19 A No.

20 Q Is your brother, DeFord Bailey, III, known
21 for playing the harmonica?

22 A No.

23 Q Has he ever played a harmonica in concert,
24 to your knowledge?

25 A No.

1 Q Have you ever toured nationally as Carlos
2 DeFord Bailey?

3 A Yes.

4 Q Okay. When is the last time you did that?

5 A On last Sunday.

6 Q Where were you?

7 A It was at the coffee shop. I don't know the
8 name of it. Off of Chestnut. Chestnut Coffee Shop
9 over by Greer stadium.

10 Q Here in Nashville?

11 A Yes.

12 Q Okay. My question was: Have you ever
13 toured nationally? Have you ever toured outside of
14 Tennessee as Carlos DeFord Bailey as a musician?

15 A Absolutely. Yes.

16 Q Okay. When was the last time you did that?

17 A This past July, I did the Terry Street
18 Festival, which I do every year.

19 Q Where is that?

20 A Ripley, Mississippi.

21 Q All right. What about outside of
22 Mississippi?

23 A Uh-huh. Kentucky. Louisville, Kentucky.

24 Q When, approximately?

25 A 2013.

1 Q More than once?

2 A Oh, yeah.

3 Q Okay. More than once in that year?

4 A Uh-huh.

5 Q Okay. Have you ever toured outside the
6 south as Carlos DeFord Bailey?

7 A Outside the south?

8 Q Yeah. The southern United States.

9 A Yeah, sure.

10 Q Where?

11 A South is going like Knoxville?

12 Q Well, so, you've mentioned Mississippi and
13 Kentucky and Tennessee performing.

14 A Okay. Is that south?

15 Q Do you consider it the south?

16 A No.

17 Q Question for you. You don't consider those
18 states southern states?

19 A Yes. Yes, I do.

20 Q Okay.

21 A Yes, I do.

22 Q Have you toured in any states that you
23 consider to be states outside the south?

24 A No.

25 Q Do you know if DeFord Bailey, Sr. did?

1 A Yes.

2 Q You testified in this last set of testimony,
3 cross-examination by your counsel, that you used
4 DeFord Bailey as a stage name.

5 A No.

6 Q You did not?

7 A No. I've always used Carlos DeFord Bailey.
8 Most of the time when they bring me to the stage,
9 they acknowledge, we have DeFord Bailey grandson
10 with us tonight, the legend of the Grand Ole Opry,
11 Grand Ole Opry legacy and icon. They'll probably
12 say -- the last two shows they say, he's wearing his
13 medallion. This is the Country Music Hall of Fame
14 medallion at the induction for the 2005 induction.
15 So I inherited this through my father. He wanted me
16 to have it.

17 Q Okay.

18 A And so, they make a big scene on that and
19 then bring me to the stage. So, it's always DeFord
20 Bailey come up before they bring Carlos DeFord
21 Bailey on stage.

22 Q Meaning they're focusing on your
23 grandfather?

24 A And myself, yes.

25 Q Okay. But when they talk about you, they --

1 (Overlapping speech.)

2 A Yeah. But they --

3 Q Let me finish the question.

4 -- they talk about Carlos DeFord Bailey --

5 A Uh-huh.

6 Q -- correct?

7 And then they always start by talking about
8 DeFord Bailey in reference to your grandfather and
9 his legacy, correct?

10 A Yes.

11 Q Now, today is not the first time you've
12 learned that DeFord Bailey, LLC claims rights to the
13 DeFord Bailey name, correct?

14 A Yes.

15 Q It is the first time you've learned that?

16 A Yes.

17 Q So, you're aware that DeFord Bailey, LLC has
18 opposed your trademark application, correct?

19 A What do you mean? As far as that's been
20 handed down to the DeFord Bailey, LLC?

21 Q Yes.

22 A No, I didn't know that.

23 Q Okay. What is your understanding for why
24 we're even here today?

25 A Because the trademark has been -- it was

1 testified against.

2 Q Who testified against it?

3 A Shemika.

4 Q And were you -- when did you become aware
5 that Shemika had formed DeFord Bailey, LLC?

6 A 2011.

7 Q Okay. And is it your understanding that
8 it's DeFord Bailey, LLC that has challenged the
9 trademark?

10 A Oh, absolutely, yes.

11 Q So today is not the first time that you've
12 had that understanding that that's DeFord
13 Bailey, LLC's position?

14 A Yes.

15 Q Okay. So, to see something like that in the
16 will, that fact is not a surprise to you.

17 A Yes, absolutely it was.

18 Q Okay. But you just testified that you've
19 been aware since 2011 --

20 A Yeah. But I didn't know he was going to get
21 a will.

22 Q Okay. Let me finish my question.

23 A I never knew a will.

24 Q Let me finish it.

25 -- that DeFord Bailey, LLC opposed your use

1 of the trademark claiming it owned the rights,
2 correct?

3 A Uh-huh.

4 Q Now, you mentioned performing at the CMAs.
5 Did you mean the CMA Awards or the CMA Festival?

6 A The festival.

7 Q The one held in the summer --

8 A Yes.

9 Q -- in downtown Nashville?

10 A Uh-huh.

11 Q You didn't actually sell harmonicas at that
12 event, did you?

13 A No.

14 Q By promoting harmonicas, do you mean that
15 you played a DeFord Bailey harmonica?

16 A Yes.

17 Q Okay. And you didn't market those for sale
18 at that event?

19 A No.

20 Q Now, you weren't present for the signing of
21 any will by your grandfather, DeFord Bailey, Jr.,
22 correct?

23 A No.

24 Q You don't know if he actually signed a will?

25 A No.

1 Q You don't know if he was represented by
2 counsel, if he did so?

3 A No.

4 Q You don't know if counsel drafted the will?

5 A No.

6 Q You don't know what his mental capacity was,
7 if he did sign a will on that day?

8 A No.

9 Q You mentioned that in that initial meeting
10 with Ron Bailey at the airport, or after the
11 airport, he included your father, Christine, and
12 Dezoral in his request, correct?

13 A Yes.

14 Q Do you have an understanding why he included
15 those three?

16 A They was the heirs of DeFord Bailey, Sr.

17 Q So, is it your understanding he felt he
18 needed their permission?

19 A Well, actually, he wanted them on the
20 trademark application.

21 Q Was Ron Bailey, did he express that he was
22 expecting a financial interest in the sale of the
23 harmonicas when he first proposed this to the
24 family?

25 A I can't remember if he did or not.

1 Q You talked about --

2 A I think he just wanted to see it happen, you
3 know.

4 Q But you don't recall?

5 A No.

6 Q And at this point, again, you've mentioned
7 he's still in the venture with you in connection
8 with the plans to sell the harmonicas?

9 A Yes.

10 Q And at this point is it your understanding
11 he expects to share in the financial recovery from
12 the sales?

13 A Yes.

14 Q And you haven't reached an agreement as to
15 splits?

16 A No.

17 Q You talked about a DeFord Bailey Day in
18 Nashville?

19 A Uh-huh.

20 Q Is that something that's still commemorated
21 each year?

22 A Uh-huh.

23 Q And what day is it?

24 A It was signed by Mayor Phil Bredesen for
25 DeFord Bailey's day for December 14th.

1 Q And what year was that signed; do you
2 recall?

3 A When was Mr. Bredesen in office? I want to
4 say '80. I don't know. But I've got the
5 certificate, but I don't have it with me. So what I
6 did, I just started doing concerts during the
7 summertime to hold out that date, because it was too
8 cold to do anything on December 14th. And I made
9 that known every show I did.

10 Q Okay. Do you know if that was before or
11 after your grandfather passed away that the day was
12 declared?

13 A That was after.

14 Q It was after?

15 A Uh-huh.

16 Q So sometime after 1982?

17 A Uh-huh.

18 Q And was that day declared in honor of your
19 father, DeFord Bailey, Sr.?

20 A Yes.

21 Q Not in honor of you?

22 A No.

23 Q Or DeFord Bailey, III?

24 A No.

25 Q You mentioned that it was -- Ron Bailey

1 approached -- I'm sorry. That the airport
2 representatives approached you in connection with
3 their request to do the airport ceremony and
4 unveiling, correct?

5 A Yes.

6 Q And before you responded to them, did you
7 ask the other family members their thoughts?

8 A Yeah. I related it to my father. I said,
9 the lady called me from the airport and said that
10 they was going to do an unveiling and asked me would
11 I come out and look at it and see what did I think.

12 Me and my father went out there together.
13 We looked at it. We kind of toured the airport.
14 The whole meeting is on YouTube.

15 And that day, I was asked to perform. They
16 asked, was any other member keeping their granddaddy
17 legacy alive. I said I was the only one doing
18 Country Music.

19 Q Okay. And before we get there, because I
20 think you're moving beyond the time period I'm
21 asking about, at some point you agreed to the
22 request, correct?

23 A Absolutely, yes.

24 Q Did you feel it necessary to get the
25 permission of any other family members before you

1 could do that?

2 A No.

3 Q So, if you had just said yes without asking
4 their permission, do you feel that would have been
5 sufficient?

6 A Yes.

7 Q Why did you then involve your father?

8 A Well, because -- me and my father, we did a
9 lot of things together, and I just wanted to bring
10 that to his attention what was about to happen.

11 Q Why?

12 A Because I've always done that with him.

13 Q Okay.

14 A He would call me and ask me certain things.
15 You think this might be all right if I go down here
16 to this dinner with so-and-so and so-and-so? Well,
17 I would end up going with him. So I consulted him
18 with that, and I told him what they wanted to do.
19 He was fine with that.

20 Q Okay. And you agree that he was one of the
21 heirs to DeFord Bailey, Sr.'s name and likeness
22 rights, correct?

23 A Yes.

24 Q You've never -- you just testified today,
25 you've not read the whole will even today, correct?

1 A No.

2 Q Okay. To your knowledge, does the will
3 leave everything to the DeFord Bailey, LLC?

4 A It do.

5 Q Everything?

6 A That's what I read.

7 Q Okay. And you haven't read the whole will,
8 correct? You just testified you've not read the
9 whole will today, correct?

10 A I read enough of it to see that everything
11 was left to the DeFord Bailey, LLC.

12 Q So it's your position that the will provides
13 that everything was left to the DeFord Bailey, LLC?

14 A To my knowledge.

15 Q All right. And it's based on that knowledge
16 that you suggest you would contest the will?

17 A Yes, absolutely.

18 Q You were testifying that he, and you used
19 the word he, was made famous for "Pan American
20 Blues." By he, did you mean DeFord Bailey, Sr.?

21 A Yes.

22 MS. EVERHART: I have no further
23 questions, subject to any additional questions by
24 Mr. Benjamin.

25 MR. BENJAMIN: No further questions.

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MS. EVERHART: Thank you so much for
your time.

THE WITNESS: Thank you.

FURTHER DEPONENT SAITH NOT.

(Proceedings concluded at 4:45 p.m.)

REPORTER'S CERTIFICATE

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I, Jerri L. Porter, RPR, CRR, Notary Public and Court Reporter, do hereby certify that I recorded to the best of my skill and ability by machine shorthand all the proceedings in the foregoing transcript, and that said transcript is a true, accurate, and complete transcript to the best of my ability.

I further certify that I am not an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

SIGNED this 3rd day of April, 2015.



Jerri L. Porter

Jerri L. Porter, RPR, CRR



My Notary commission expires: 2/19/2018

Tennessee LCR No. 335

Expires: 6/30/2016

Exhibits

Bailey
v.
Bailey

Opposition No. 91209857

Exhibits 1-13

Taken: January 29, 2015
Original





BILL GARRETT, Davidson County

Trans: T20110043258 CHARTER

Recvd: 07/18/11 15:25 2 pgs
Fees: 7.00 Taxes: 0.00



20110718-0054913

STATE OF TENNESSEE
Tre Hargett, Secretary of State
Division of Business Services

William R. Snodgrass Tower
312 Rosa L. Parks AVE, 6th FL
Nashville, TN 37243-1102

DEFORD BAILEY LLC
4019 RIDGEMONT DRIVE
Nashville, TN 37207

June 28, 2011

Filing Acknowledgment

Please review the filing information below and notify our office immediately of any discrepancies.

Control # :	661673	Formation Locale:	Davidson County
Filing Type:	Limited Liability Company - Domestic	Date Formed:	06/28/2011
Filing Date:	06/28/2011 8:38 AM	Fiscal Year Close:	12
Status:	Active	Annual Rpt Due:	04/01/2012
Duration Term:	Perpetual	Image # :	6910-0633
Managed By:	Member Managed		

Document Receipt

Receipt # : 502263	Filing Fee:	\$300.00
Payment-OSBR - AMY EVERHART , Nashville, TN		\$300.00

Registered Agent Address

SHEMIKA WILEY
4019 RIDGEMONT DRIVE
Nashville, TN 37207

Mailing Address

ATTN: SHEMIKA WILEY
4019 RIDGEMONT DRIVE
Nashville, TN 37207

Congratulations on the successful filing of your **Articles of Organization** for **DEFORD BAILEY LLC** in the State of Tennessee which is effective on the date shown above. You must also file this document in the office of the Register of Deeds in the county where the entity has its principal office if such principal office is in Tennessee.

You must file an Annual Report with this office on or before the Annual Report Due Date noted above and maintain a Registered Office and Registered Agent. Failure to do so will subject the business to Administrative Dissolution/Revocation.

Tre Hargett
Tre Hargett
Secretary of State

Processed By: Danielle Crocker



Bailey LLC v. Bailey

State of Tennessee



Department of State
 Corporate Filings
 312 Eighth Avenue North
 6th Floor, William R. Snodgrass Tower
 Nashville, TN 37243

**ARTICLES OF ORGANIZATION
 (LIMITED LIABILITY COMPANY)**

For Office Use Only

FILED

0910.0033

The Articles of Organization presented herein are adopted in accordance with the provisions of the Tennessee Revised Limited Liability Company Act and the Tennessee Revised Nonprofit Limited Liability Company Act.

1. The name of the Limited Liability Company is: DEFORD BAILEY LLC
 (NOTE: Pursuant to the provisions of TCA § 48-249-106, each limited Liability Company name must contain the words "Limited Liability Company" or the abbreviation "LLC" or "L.L.C.")

2. The name and complete address of the LLC's initial registered agent and office located in the State of Tennessee is:

SHEMIKA WILEY
 (Name)
4019 RIDGEMONT DRIVE NASHVILLE TN, 37207
 (Street Address) (City) (State/Zip Code)
DAVIDSON
 (County)

3. The Limited Liability Company will be: Member Managed

4. Number of members at the date of filing, if more than six: Not Applicable

5. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date and time are:
 _____ (Not to exceed 90 days.)
 (Date and Time)

6. The complete address of the Limited Liability Company's principal executive office is:
4019 RIDGEMONT DRIVE NASHVILLE TN, DAVIDSON, 37207
 (Street Address) (City) (State/County/Zip Code)

7. Period of Duration if not perpetual:

8. Other Provisions:

<u>06/27/2011</u> Signature Date	<u>I Certify - Electronic Signature</u> Signature
<u>ATTORNEY</u> Signer's Capacity (if other than individual capacity)	<u>AMY EVERHART as authorized representative for SHEMIKA WILEY</u> Name



Bill Garrett

Davidson

CUSTOMER RECEIPT - RECORDING SERVICES

Receipt Number: T20110043258
Date/Time: 07/18/2011 15:25:42
Method Received: Mail
Clerk: fanderson

Customer Name : EVERHART LAW FIRM PLC

MAILING ENVELOPE - POSTAGE

Transaction Detail

Table with columns: Instrument Number, Instrument Type, Gen. Fee, Equip. Fee, Transfer Tax, Mortgage Tax, Copy, Cert. Copy, Total Copy Fee, # Pgs, Consideration, Subtotal. Includes details for Charter instrument for State of Tennessee and Deford Bailey LLC.

Payment Information

Table with columns: Method of Payment, Payment Control ID, Authorized Agent, Company, Amount. Shows a check payment of \$7.00.

AMOUNT PAID: \$7.00
LESS AMOUNT DUE: \$7.00
CHANGE RECEIVED: \$0.00



STATE OF TENNESSEE
Tre Hargett, Secretary of State
Division of Business Services
William R. Snodgrass Tower
312 Rosa L. Parks AVE, 6th FL
Nashville, TN 37243-1102

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Nashville, TN 37207

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Duration Term:	Perpetual	Image # :	6910-0633
Managed By:	Member Managed		

Document Receipt

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Payment-OSBR - AMY EVERHART , Nashville, TN		\$300.00

Registered Agent Address

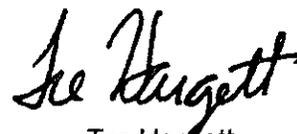
SHEMIKA WILEY
4019 RIDGEMONT DRIVE
Nashville, TN 37207

Mailing Address

ATTN: SHEMIKA WILEY
4019 RIDGEMONT DRIVE
Nashville, TN 37207

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Tre Hargett
Secretary of State

Processed By: Danielle Crocker

State of Tennessee



Department of State
Corporate Filings
312 Eighth Avenue North
6th Floor, William R. Snodgrass Tower
Nashville, TN 37243

ARTICLES OF ORGANIZATION
(LIMITED LIABILITY COMPANY)

For Office Use Only

FILED

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(Name)
4019 RIDGEMONT DRIVE NASHVILLE TN, 37207
(Street Address) *(City)* *(State/Zip Code)*
DAVIDSON
(County)

3. The Limited Liability Company will be: Member Managed

4. Number of members at the date of filing, if more than six: Not Applicable

5. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date and time are:
(Not to exceed 90 days.)
(Date and Time)

6. The complete address of the Limited Liability Company's principal executive office is:
4019 RIDGEMONT DRIVE NASHVILLE TN, DAVIDSON, 37207
(Street Address) *(City)* *(State/County/Zip Code)*

7. Period of Duration if not perpetual:

8. Other Provisions:

06/27/2011
Signature Date

I Certify - Electronic Signature
Signature

ATTORNEY
Signer's Capacity (if other than individual capacity)

AMY EVERHART as authorized representative for SHEMIKA WILEY
Name

010.0033



OPERATING AGREEMENT

of

DEFORD BAILEY LIMITED LIABILITY COMPANY

SECTION 1

Name, Place of Business, Term, Initial Members

1.1 Name. The name of the Limited Liability Company ("LLC") is DEFORD BAILEY LLC.

1.2 Principal Place of Business. The principal place of business of the LLC shall be located at 4019 Ridgmont Drive, Nashville, TN 37207, or such other place as the Members may collectively from time to time designate in writing and submit to the Tennessee Secretary of State.

1.3 Term. The LLC begins on the date of filing its Articles of Organization with the Tennessee Secretary of State, and continues until dissolved by an act specified in Section 9 of this Agreement or a date or act specified by the LLC's Articles of Organization.

1.4 Initial Members. The initial Members of the LLC are DeFord Bailey, Jr., who will hold 90%, and Shemika Wiley, who will hold 10% (the "LLC Percentage(s)").

SECTION 2

Purposes of the Business

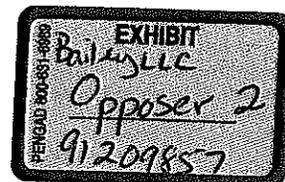
2.1 Purpose. The purpose of the LLC is to hold and manage certain intellectual property assets descended from the estate of DeFord Bailey, Sr., and any other lawful business on which the Members may agree.

2.2 Non-LLC Activities. Each Member is permitted to engage in one or more non-LLC businesses, but only to the extent that such activities do not directly interfere with the business and obligations of the LLC. Neither the LLC nor any Member will have any right to any income or profit derived by another Member from any non-LLC business activity permitted under this Section.

SECTION 3

Management

3.1 Management. Each Member has a vote in the management and conduct of the LLC business.



Bailey LLC v. Bailey

3.2 Vote Required. If this Agreement does not specify the amount of the vote of the LLC Percentages needed to make a decision, the decision may be made by an affirmative vote of all the Members.

3.3 Officers.

- (a) The LLC may designate one or more officers, such as a President, Vice President, Secretary and Treasurer. Persons who fill these positions need not be members of the LLC.
- (b) Such positions may be compensated or non-compensated according to the nature and extent of the services rendered for the LLC as a part of the duties of each office and by agreement of the Members, not to be unreasonably withheld. Any officer may be reimbursed by the LLC for reasonable out-of-pocket expenses paid by the officer in carrying out the duties of his or her office.
- (c) The Members hereby unanimously elect Shemika Wiley as the initial President of the LLC, to serve until the first annual meeting of the Members and until her respective successor shall be duly elected and qualified. The President is responsible for carrying out the day-to-day managerial requirements of the LLC except to the extent such duties are delegated by the Members to other officers.

3.4 All Necessary Acts. The Members and officers of this LLC are authorized to perform all acts necessary to perfect the organization of this LLC and to carry out its business operations expeditiously and efficiently. The Secretary of the LLC, or other officers, or all Members of the LLC, may certify to other businesses, financial institutions and individuals as to the authority of one or more Members or officers of this LLC to transact specific items of business on behalf of the LLC.

SECTION 4

Deadlock

4.1 General. If the Members are divided on any aspect of the management of the property, business or affairs of the LLC, and the deadlock is preventing action or non-action by the LLC, then the LLC may submit the deadlock to mediation in accordance with Section 4.2.

4.2 Mediation. If the Members are unable to resolve the deadlock itself, upon written request of Members owning 50% of the LLC Percentages, the Members agree to submit the dispute to mediation, and the following guidelines shall apply:

- (a) The Members agree to have the dispute mediated by a mutually acceptable mediator.
- (b) The Members agree to follow the mediation procedure selected by the mediator.

- (c) Mediation shall terminate upon the written request of the mediator or Members owning 50% of the LLC Percentages.

SECTION 5

Members' Powers and Limitations

5.1 Bank Accounts. The LLC may maintain a bank account in such bank as it selects.

5.2 Acts Beyond Powers of Member. No Member may, without unanimous consent:

- (a) Dispose of the Intellectual Property or goodwill of the LLC or convey, encumber, or lease any other asset of the business outside the ordinary course of business;
- (b) Cause the LLC to be converted to another form of business entity;
- (c) Do any act that would make it impossible to carry on the ordinary business of the LLC;
- (d) Cause the LLC to be merged with another business; or
- (e) Cause the admission of a new Member.

SECTION 6

Contributions to Capital and Profits and Losses

6.1 Capital Contributions. Exhibit A attached hereto and incorporated herein by reference sets forth the capital contributions to be made by the respective Members and the nature of their respective contributions.

6.2 Additional Capital. Whenever it is determined by the unanimous approval of the Members that the capital of the LLC is likely to become insufficient for the conduct of the LLC business, the Members shall make additional capital contributions in the proportions in which such Members are then entitled to share in the profits of the LLC.

6.3 Withdrawals of Capital. No Member may withdraw capital from the LLC without the unanimous agreement of the Members.

6.4 Capital Accounts. An individual capital account shall be maintained for each Member and his or her capital contribution shall be credited to that account. Except by unanimous vote of the Members, Members may not withdraw from the Capital Accounts or add to their Capital Accounts. No interest shall be paid on any Capital Account.

6.5 Distribution of Net Profits. The Members shall share in all net profits and bear all losses of the LLC in their respective LLC Percentages. Net profits shall be distributed in

cash to the Members from time to time but only as expressly authorized by the unanimous consent of the Members. The aggregate amounts distributed to the Members from the LLC's profits shall not, however, exceed the amount of cash available for distribution, taking into account the LLC's reasonable working capital needs as determined by the unanimous vote of the Members.

SECTION 7

Intellectual Property

7.1 Rights to Intellectual Property. Except as otherwise agreed in a writing signed by all of the Members, the LLC, and not any individual Member, shall own, and the Members hereby assign to the LLC, all rights, title and interest of any or all Members in and to the intellectual property descended from DeFord Bailey, Sr., including, without limitation, copyrights, trademarks, service marks, the names DEFORD BAILEY and DEFORD BAILEY, SR., all goodwill associated with all such names and marks, rights of publicity and name and likeness, patents, and domain names, renewal rights thereto, and the rights to sue for infringement thereof; the content of all websites, photographs, articles and artwork created by or on behalf of the LLC; and any other intellectual property created during the term of this Agreement for purposes of promoting or effectuating the business of the LLC (collectively, the "Intellectual Property"). The Members shall execute any documents necessary to effectuate the terms of this provision.

7.2 Rights upon Dissolution. Upon dissolution the Intellectual Property shall be the joint property of each of the Members but shall not be used in any manner by any Member alone or with other Member(s) without the written consent of all of the Members.

SECTION 8

Assignment and Resignation

8.1 Assignment Generally. Except as provided in Sections 8.2, 8.3, and 8.4 of this Agreement, each Member hereby covenants and agrees that he will not sell, assign, transfer, mortgage, pledge, encumber, hypothecate or otherwise dispose of all or any part of his interest in the LLC (a "Membership Interest") to any person, firm, corporation, trust or other entity without first offering in writing to sell such interest to the LLC. The LLC shall have the right to accept the offer at any time during the 30 days following the date on which the written offer is delivered to the LLC. The consent of all the Members shall be required to authorize the exercise of such option by the LLC. If the LLC shall fail to accept the offer within the 30-day period, such interest may during the following 60 days be disposed of free of the restrictions imposed by this Agreement; provided, however, that the purchase price for such interest shall not be less and the terms of purchase for such interest shall not be more favorable than the purchase price and terms of purchase that would have been applicable to the LLC had the LLC purchased the interest. Any interest not so disposed of within the 60-day period shall thereafter remain subject to the terms of this Agreement. Notwithstanding the preceding sentences, no assignee of a Membership Interest shall become a Member of the LLC except upon the consent of all of the Members.

8.2 Gift to Family Members. Notwithstanding Sections 8.1 or 8.4, a Member shall not be required to offer to sell his Membership Interest to the LLC prior to transferring his

Membership Interest to his spouse or any of his descendants, or to a trust the sole beneficiaries of which are one or more of his spouse and his descendants, provided that such transfer is by way of *inter vivos* gift or testamentary or intestate succession. Notwithstanding the preceding sentence, no assignee of a Membership Interest by way of *inter vivos* gift shall become a Member of the LLC except upon the consent of all of the Members.

8.3 Transfers from Custodianships. Notwithstanding Sections 8.1 or 8.4, any Membership Interest that is held by a custodian for a minor under the laws of the State of Tennessee or any other state shall be fully transferable and assignable to the minor, without an offer being made to the LLC, when the minor reaches the age of termination of such custodianship under the applicable statute.

8.4 Purchase of Certain Membership Interests.

- (a) If an Option Event (as defined below) occurs with respect to any Member (an "Option Member"), the LLC shall have the option to purchase the Option Member's Membership Interest upon the terms and conditions set forth in this Section 8.4. An "Option Event" shall mean (i) the death of a Member, (ii) the inability of a Member to pay his debts generally as they become due, (iii) any assignment by a Member for the benefit of his creditors, (iv) the filing by a Member of a voluntary petition in bankruptcy or similar insolvency proceedings, or (v) the filing against a Member of an involuntary petition in bankruptcy or similar insolvency proceeding that is not dismissed within ninety (90) days thereafter. The term "Option Member" shall include an Option Member's personal representative or trustee in bankruptcy, to the extent applicable.
- (b) Upon any Option Event occurring to an Option Member, the Option Member shall deliver written notice of the occurrence of such Option Event to the LLC. The LLC shall have the option, but not the obligation, to purchase the Option Member's Membership Interest at any time during the sixty (60) day period immediately following the date on which it receives notice of the occurrence of the Option Event. Such option shall entitle the LLC to purchase such Membership Interest for the fair market value of such Membership Interest. The fair market value of the interest shall be the amount that the Option Member would receive in exchange for his entire interest in the LLC if the LLC sold all of its assets, subject to their liabilities, at their fair market value as of the date on which the Option Event occurred and distributed the net proceeds from such sale in complete liquidation of the LLC. The consent of all the Members shall be required to authorize the exercise of such option by the LLC. Such option must be exercised by delivery of a written notice from the LLC to the Option Member during the aforementioned period. Upon delivery of such notice the exercise of such option shall be final and binding on the LLC and the Option Member.
- (c) If the foregoing option is not exercised, the business of the LLC shall continue, and the Option Member shall retain his Membership Interest.
- (d) The fair market value of the Option Member's Membership Interest shall be determined as expeditiously as possible by an accountant selected by

the remaining Members other than the LLC's regular accountant, and other than the personal accountant of any Member, which accountant shall be familiar with the music industry. The accountant shall make said determination in accordance with generally accepted accounting practices and principles, taking into consideration, among other factors, the fair market value of the assets of the LLC, its liabilities, and its past profits and losses.

- (e) If the option to purchase the Option Member's Membership Interest is exercised by the LLC, then not later than thirty (30) days after the date on which the appraisal described above is complete (the "Appraisal Date"), the LLC shall make a distribution of property (which may be cash or other assets of the LLC) to the Option Member with a value equal in amount to the fair market value of the Option Member's Membership Interest; provided, however, that at the election of the Company such distribution to the Option Member may be made by a promissory note drawn on the LLC. The promissory note will provide for equal monthly payment of principal and interest at the rate of 12% per annum. Such payments will be paid over a period of 12 months, starting with one month after the date of the promissory note. The promissory note will provide for no prepayment penalty and will be immediately due and payable if there is a failure to make a timely payment of principal or interest and such payment is not made within 20 days of the date written demand to make payment is received.

8.5 Absolute Prohibition. Notwithstanding any other provision in this Article 8, the Membership Interest of a Member, in whole or in part, or any rights to distributions therefrom, shall not be sold, exchanged, conveyed, assigned, pledged, hypothecated, subjected to a security interest or otherwise transferred or encumbered, if, as a result thereof, the LLC would be terminated for federal income tax purposes in the opinion of counsel for the LLC or such action would result in a violation of federal or state securities laws in the opinion of counsel for the LLC.

8.6 Members Acquiring Membership Interest from LLC. No person or entity, other than the initial Members, who acquires a Membership Interest from the LLC shall be admitted as a Member of the LLC, except upon the unanimous consent of the Members.

8.7 Resignation. Any Member may elect to resign from the LLC and to sell his entire interest in the LLC to the LLC at any time by serving written notice of such election on the LLC. Such notice shall set forth the date on which such resignation shall become effective, which shall be not less than sixty (60) days and not more than ninety (90) days from the date of such notice. The purchase price for a Resigning Member's interest in the LLC shall be One Dollar (\$1.00).

8.8 Effect of Prohibited Action. Any transfer or other action in violation of this Article shall be void *ab initio* and of no force or effect whatsoever.

8.9 Rights of an Assignee. If an assignee of a Membership Interest is not admitted as a Member because of the failure to satisfy the requirements of Sections 8.1, 8.2 or 8.5 hereof, such assignee shall nevertheless be entitled to receive such distributions from the LLC as the assigning Member would have been entitled to receive under this Operating Agreement

with respect to such Membership Interest had the assigning Member retained such Membership Interest.

SECTION 9

Dissolution

9.1 Events of Dissolution. The LLC shall be dissolved upon the first to occur of the following:

- (a) Any event under law or the Articles of Organization that requires dissolution of the LLC, provided that the death, resignation, retirement, expulsion, bankruptcy, or dissolution of a Member or occurrence of any other event that terminates the continued membership of a Member in the LLC shall not cause the dissolution of the LLC;
- (b) The unanimous written consent of the Members to the dissolution of the LLC; and
- (c) The entry of a decree of judicial dissolution of the LLC.

9.2 Articles of Dissolution. Upon the dissolution and the commencement of winding up of the LLC, the LLC shall file Articles of Dissolution with the Secretary of State.

9.3 Procedure. Upon dissolution, the affairs of the LLC will be wound up upon dissolution by liquidating the assets of the LLC. The liabilities of the LLC will rank in order of payment as follows:

- (a) Those owing to creditors including Members, other than liabilities to Members for distributions pursuant to Section 8.
- (b) Those owing to any Members pursuant to Section 8.

Any remaining funds or assets, including those discussed in Section 7.2 if applicable, will be then distributed to the Members in accordance with their LLC Percentages.

SECTION 10

Indemnification and Limitation of Liability

10.1 Mandatory Indemnification. Subject to Section 10.2, the LLC shall indemnify a Member and an officer for judgments, settlements, penalties, fines, or expenses (including reasonable attorneys' fees) incurred in a proceeding to which an individual is a party because the individual is or was a Member or an officer.

10.2 Limitations on Indemnification. The LLC may not indemnify a Member or an officer from liability for

- (a) The amount of a financial benefit received by a Member or an officer to which the Member or the officer is not entitled;
- (b) An intentional infliction of harm by the Member or the officer on the LLC or its Members;
- (c) An intentional violation of criminal law by the Member or the officer; or
- (d) An unlawful distribution by the Member.

10.3 Limited Liability. The Members and the officers shall perform their duties in good faith, in a manner they reasonably believe to be in the best interests of the LLC, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. No Member or officer, by reason of being or having been a Member or officer, shall be liable to the LLC or to any other Member or officer for any loss or damage sustained by the LLC or any other Member or officer unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct, or a wrongful taking by that Member or Officer. No Member or officer shall be individually liable for the debts, liabilities, contracts or any other obligations of the LLC to third parties.

SECTION 11

Miscellaneous

11.1 Books and Records. The LLC shall keep at its principal place of business, available for inspection by any Member upon reasonable notice:

- (a) A current list of the full name and last known business street address of each Member;
- (b) A copy of the Articles of Organization and all certificates of amendment to them, together with executed copies of any powers of attorney pursuant to which any certificate of amendment has been executed;
- (c) Copies of the LLC's federal, state and local income tax returns and reports, if any, for the three most recent years;
- (d) Copies of any financial statements of the LLC, if any, for the three most recent years; and
- (e) A copy of this Operating Agreement and any amendments thereto.

11.2 Annual Meeting. The Members shall meet annually at noon on the last Sunday of each year at the principal place of business of the LLC or as otherwise agreed by all of the Members. They may meet at such other times as any Member requests in a written notice mailed or personally delivered to each other Member at least five days before the meeting.

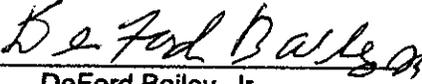
11.3 Amendment. The Members may amend this Agreement only upon execution of a written amendment signed by all of the Members.

11.4 Fiscal Year. The LLC's fiscal year shall be a calendar year.

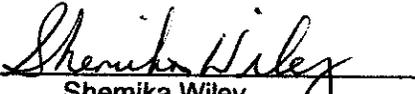
11.5 Governing Law. This Agreement is governed by the laws of the State of Tennessee.

This Operating Agreement is signed on June 28, 2011.

By:


DeFord Bailey, Jr.
1233 Bellshire Drive
Nashville, TN 37207

By:


Shemika Wiley
4019 Ridgemont Drive
Nashville, TN 37207



INTELLECTUAL PROPERTY ASSIGNMENT

This **INTELLECTUAL PROPERTY ASSIGNMENT** (this "Agreement") is entered into on June 28, 2011, by and between **DeFord Bailey, Jr.** ("Assignor") and **DeFord Bailey LLC**, a limited liability company organized and existing under the laws of the State of Tennessee ("Assignee").

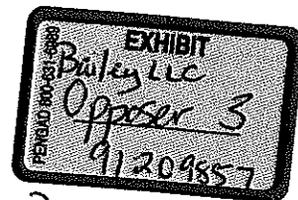
Assignee desires to acquire and Assignor desires to transfer Assignor's entire right, title and interest in and to the intellectual property descended from DeFord Bailey, Sr., including, without limitation, copyrights, trademarks, service marks, the name DEFORD BAILEY AND DEFORD BAILEY, SR., all goodwill associated with all such names and marks, rights of publicity and name and likeness, patents, and domain names, renewal rights thereto, and the rights to sue for infringement thereof (collectively, the "Intellectual Property").

NOW, THEREFORE, in exchange for mutual promises and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

Assignor does hereby assign, transfer as legal and beneficial owner unto Assignee all of Assignor's rights, title and interest in and to the Intellectual Property, including, without limitation, any pending applications for the Intellectual Property, registrations issuing therefrom and common law rights established in connection therewith, together with that part of the goodwill of its business in connection with which the Intellectual Property were used, as well as the right to recover damages and profits for past infringement therefor, said rights to be held and enjoyed by Assignee, for its own use and benefit and for the use and benefit of its successors, assigns or other legal representatives as fully and entirely as the same would have been held and enjoyed by Assignor if the parties hereto had not entered into this Agreement. Assignor further agrees to execute any and all documents and do any such further acts that shall be required in order for Assignee to secure such rights.

By: DeFord Bailey, Jr.
DeFord Bailey, Jr.

Witness: Angela C. West



Bailey LLC v. Bailey

EVERHART
LAW FIRM

October 15, 2013

Estate of DeFord Bailey, Jr.
Attention: Shemika Wiley, Executor
4019 Ridgemont Drive
Nashville, TN 37207

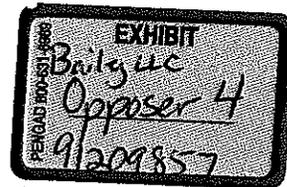
Dear Ms. Wiley:

I write on behalf of DeFord Bailey LLC to notify the Estate of DeFord Bailey, Jr. that it hereby exercises the option under the LLC Operating Agreement to purchase DeFord Bailey, Jr.'s membership interest in the LLC.

Sincerely,

Amy J. Everhart
Amy J. Everhart
Everhart Law Firm PLC
Counsel for DeFord Bailey LLC

By: *Shemika Wiley*
Shemika Wiley, President
DeFord Bailey LLC



Bailey LLC v. Bailey

Amy J. Everhart
1400 5th Avenue North
Nashville, TN 37208
p(615)800-8925
f(615)800-8918
amy@everhartlawfirm.com

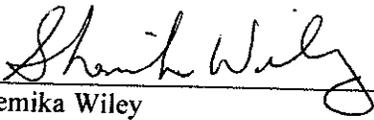
**ACTION BY WRITTEN CONSENT
OF THE MEMBERS OF DEFORD BAILEY LLC**

In lieu of a meeting of the Members of DeFord Bailey LLC, a Tennessee limited liability company (the "Company"), as of October 15, 2013, the Members hereby consent to taking action without a meeting, by written consent, and hereby take the following actions:

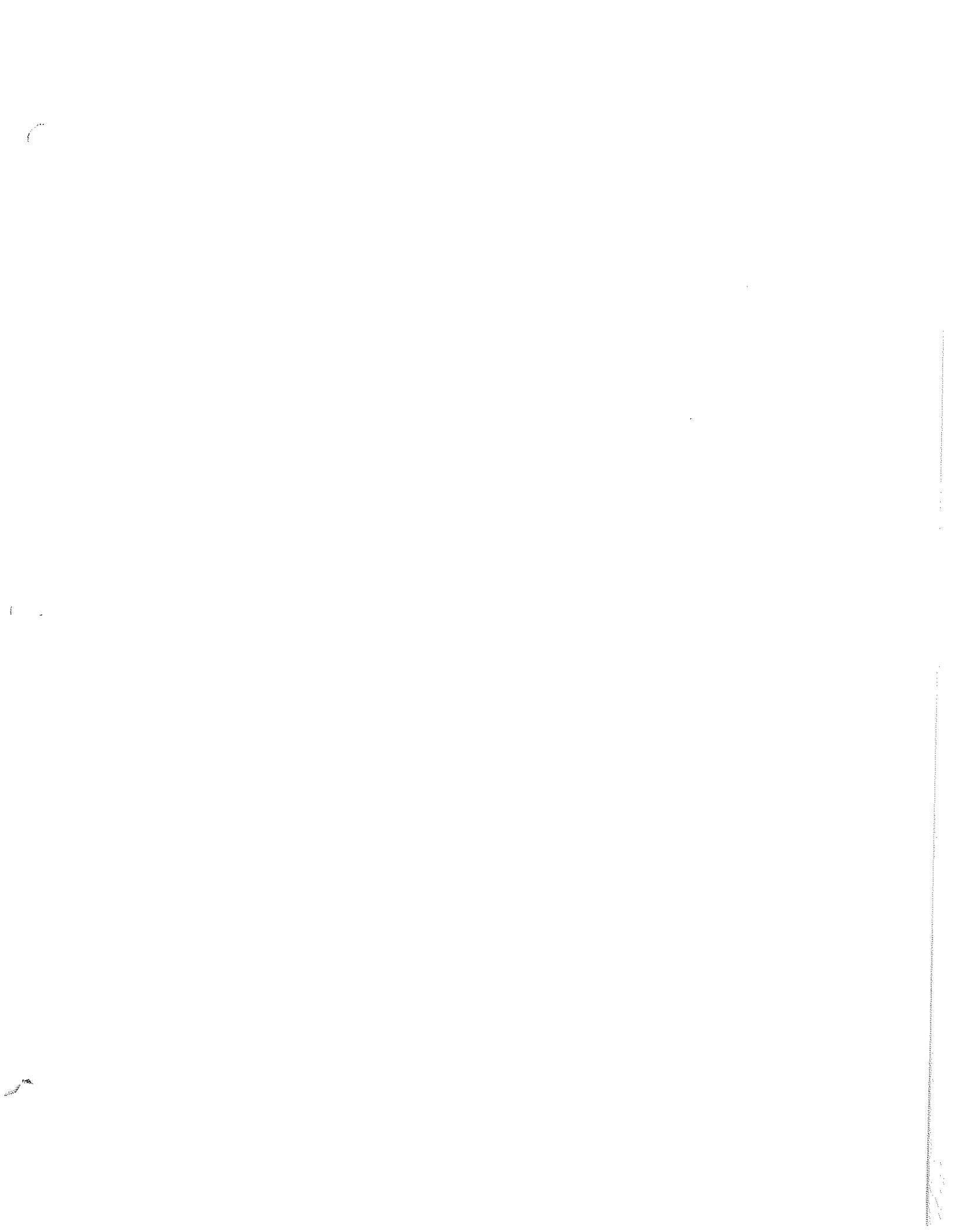
RESOLVED, that the Company shall exercise its option to purchase the Membership Interest of DeFord Bailey, Jr.

RESOLVED, that the appropriate officers of the Company (or any of them) are hereby authorized, empowered and directed to take all necessary or appropriate action, including the expenditure of funds, in order to fully and expeditiously complete the purpose and intent of the foregoing resolutions.

The undersigned waives all notice of the date, time, place and purpose of a meeting of the Members and agrees to the transaction of the business hereinabove set forth by written consent in lieu of such meeting. This consent shall be included in the minute book of the Company.



Shemika Wiley



*Last Will & Testament
Of
DeFord Bailey, Jr.*

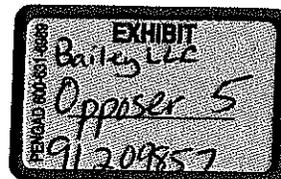
I, DeFord Bailey, Jr., an adult resident of Davidson County, Tennessee, being more than eighteen (18) years of age and of sound and disposing mind, memory and understanding, do hereby make, publish and declare this document to be my Last Will and Testament ("Will") dated February 16, 2012 and do hereby revoke all previous wills, codicils and testamentary instruments that I have made.

IMMEDIATE FAMILY

1. **Spouse.** I am not currently married.
2. **Children.** References in this Will to "Child" or "Children" are to include any of the current or future children of my marriage to my Spouse whether such current or future children be my biological children or legally adopted children. Currently my living children are:
 - (a) LaTanya Garrison DOB 4/14/1953
 - (b) Quinetta Sims DOB 6/8/1954
 - (c) DeFord Bailey, III DOB 5/12/1955
 - (d) Elfreida Bailey DOB 2/14/1957
 - (e) Dorothy Hall DOB 12/16/1957
 - (f) Carlos L. Bailey DOB 10/7/1959
 - (g) Charisse Houston DOB 6/23/1961
 - (h) Herschel Bailey 10/9/1962
 - (i) Anthony Bailey 9/1/1963
 - (j) Rhonda Kennedy 8/17/1964
3. **Issue.** References to "Issue" in this Will shall refer to both natural-born and adopted descendants. Unless otherwise provided herein, all Issue shall take by representation (i.e. "per stirpes"), with the initial division into shares for such purpose to be the first generation below me.

BEQUESTS

4. **Tangible Personal Property.** I hereby bequeath to Anthony Bailey, three bass guitars (electric), one amplifier, and one banjo. I hereby bequeath to Dorothy Hall my automobile(s). I hereby bequeath my suits and shoes to Carlos L. Bailey, DeFord Bailey III, and Herschel Bailey, to be divided among them as they may agree, but if they cannot agree, then my Executor, exercising an absolute discretion, shall divide the property among them in as equal shares as practicable.
5. **Residuary Estate.** I bequeath all of the rest of the property that I own at my death ("Residuary Estate") as follows:
 - (a) To my Spouse, if my Spouse survives me;



Bailey LLC v. Bailey

(b) If my Spouse predeceases me, I bequeath my Residuary Estate to:

(i) Dorothy Hall.

6. **Beneficiaries.** Any person bequeathed Tangible Personal Property or a portion of the Residuary Estate herein may be referred to herein as a "Beneficiary" or "Beneficiaries".

7. **Special Considerations- Intellectual Property.** Any and all intellectual property rights of DeFord Bailey, Jr., in the estate of DeFord Bailey, Sr. have been transferred, in full, to DEFORD BAILEY, LLC, a Tennessee Limited Liability Company. Any residual effects, or property rights in said estate of DeFord Bailey, Sr., held, or deemed to be held by DeFord Bailey, Jr. at his death shall be transferred to DEFORD BAILEY, LLC and shall not be considered a portion of this estate.

EXECUTOR

8. **Appointment.** I appoint the following persons to serve as the Executor of this Will, with such persons to act successively but not simultaneously, in the order named:

(a) Shemika Wiley (granddaughter), 4019 Ridgemont Drive, Nashville, TN 37207;

(b) Dorothy Hall, 1233 Bellshire Drive, Nashville, TN 37207.

9. **Co-Executor.** In the event that it is deemed necessary or appropriate to name a Co-Executor who is a resident of the State of Tennessee, then in such event I direct that my named Executor make such appointment and that no bond shall be required of such Co-Executor unless so required by the person making the appointment.

10. **Duties & Powers.**

(a) **No Bond, Inventory or Accountings.** To the extent permitted by applicable law, no Executor shall be required to furnish bond, file any inventory (unless such inventory filing is demanded by any of the residuary distributees or legatees of my estate) or file any accountings with respect to the faithful performance of the Executor's duties. If any bond is required by law, no surety shall be required on such bond.

(b) **Power to Transfer Property.** I authorize and empower my Executor to sell and dispose of any or all of my real property and personal property in accordance with the terms of this Will, at public or private sale, at such times and on such terms and conditions as my Executor shall deem proper, and to execute, acknowledge and deliver all paper-writings, deeds of conveyance and transfers therefor.

(c) **Power to Borrow Money & Pledge Property.** I give to my Executor full power and authority to borrow such sums of money and for such periods of time and upon such terms and conditions as my Executor shall deem advisable, and to pledge as security for the repayment thereof any part of my estate, real or personal, in order to provide for payment of estate and inheritance taxes and the expense of administration.

- (d) **Statutory Powers.** In addition to the powers specifically listed in this Will, the Executor, in the exercise of a reasonable discretion with respect to all property, real and personal, at any time forming a part of my estate, may exercise any and all of the powers set forth in TCA § 35-50-110, to the extent applicable, all of which provisions and powers are incorporated herein by reference (as set out in this statute on the date that I sign this Will), even if this statute is amended or repealed hereafter and even if my estate is administered in a state other than Tennessee.
- (e) **Power to Withhold Reserves.** When required to make a distribution or transfer of all or part of the assets of my estate, my Executor may retain therefrom assets sufficient in the Executor's reasonable judgment to cover any liability which may then or later be imposed upon it, including, without limitation, its liability for estate, income or other taxes, until such liability shall have been finally determined.
- (f) **Fiduciary Duties.** My Executor shall be charged with the duty of good faith and reasonable care in the management of the estate, but shall not be responsible for losses, if any, resulting from honest mistake or judgment.
- (g) **Distributions to Minors.** If my Executor determines that any distribution (other than those distributions subject to the testamentary trust described above) shall be paid to a minor, person under legal disability or person not adjudicated incompetent, but who, by reason of illness or mental or physical disability is, in the reasonable opinion of my Executor, unable to properly administer such distribution, then such distribution may be satisfied by my Executor in any of the following ways as my Executor deems best and the receipt of such distribution by any such person shall discharge my Executor from any further responsibility with respect to such distribution: (a) distributed directly to such beneficiary; (b) distributed to the legally appointed guardian or conservator of such beneficiary; (c) retained by my Executor using such amounts directly for the benefits of such beneficiary; (d) distributed to some relative or friend for the care, support, education and welfare of such beneficiary.

ADMINISTRATIVE PROVISIONS

11. **Debts, Administration Expenses & Taxes.** I direct that all of my legally enforceable debts (except secured debts, which may be paid or retained in the reasonable discretion of the Executor, and if paid shall be without right of contribution from my Spouse), funeral expenses, the cost of a suitable monument at my grave, the expense of my last illness, expenses of administration of my estate (both domiciliary and ancillary) and estate, inheritance and other death taxes (including interest and penalties thereon) shall be paid by my Executor as soon as practicable after my death. My Executor shall pay out of property which would otherwise become part of my residuary estate all estate, inheritance and other death taxes (including interest and penalties thereon) which shall become payable by reason of my death, whether in respect of property passing under this Will or otherwise, as an expense of administration, without apportionment.
12. **Real Property.** Any real property that I own at my death is to be part of my probate estate and treated as forming part of my personal estate for purposes of administration.
13. **Life Insurance.** The proceeds of any life insurance payable to my Executor or my estate are to be free from the claims of creditors, and are to be held and distributed as provided by the terms of this Will. My Executor may use (but shall not be required to use) any portion of such proceeds as

my Executor deems advisable for the payment of debts, expenses and taxes, but only if my Executor deems such use of the proceeds to be in the best interests of my legatees hereunder.

- 14. **Casualty Insurance.** Each casualty insurance policy covering an item of property passing under this Will passes with such property. If any item of property passing under this Will has been destroyed or damaged, the insurance proceeds recovered or recoverable therefrom are to be paid to the recipient of such damaged or destroyed item in place of any destroyed item and in addition to any damaged item.
- 15. **Captions.** The captions and headings of this Will are for convenience only and shall not define or limit the provisions contained herein.
- 16. **No Contest Clause.** In the event that any beneficiary under this Will seeks to obtain in any proceeding in any court an adjudication that this Will or any of its provisions is void, or seeks otherwise to void, nullify, or set aside this Will or any of its provisions, then the right of that person to take any interest given to him or her by this Will shall be determined as it would have been determined had such person predeceased the execution of this Will without issue.

IN WITNESS WHEREOF, I sign this Will, and for the purpose of identification, I have signed or initialed each page, all in the presence of the persons witnessing it, at my request, on February 16, 2012 at Nashville, Tennessee.

DeFord Bailey, Jr.
DeFord Bailey, Jr., Testator

ATTEST, that the foregoing instrument was signed, published and declared by DeFord Bailey, Jr. ("Testator"), to be such person's Last Will and Testament ("Will") in the presence of each of us simultaneously. We further attest to the sound and disposing mind of Testator and to the Testator's acknowledgment and execution of this Will at the place and on the date hereinabove set out. We further attest that, at the Testator's request and in the Testator's presence and in the presence of each other, we have subscribed our names as witnesses to this Will.

WITNESS:

WITNESS:

R. Keith Gordon
R. Keith Gordon

Maria Spear
Maria Spear

This Last Will & Testament was Prepared By:
R. Keith Gordon, Esq.
Lodestone Legal Group, PLLC
198 E. Main Street, Suite 4
Franklin, Tennessee 37064

AFFIDAVIT

STATE of TENNESSEE)
COUNTY of DAVIDSON)

Personally appeared before me, the undersigned notary public, R. Keith Gordon and Maria Spear, who after being duly sworn according to law, depose and say that:

1. They are both adults being more than eighteen (18) years of age each;
2. R. Keith Gordon is an adult citizen and resident of Williamson County, Tennessee and Maria Spear is an adult citizen and resident of Davidson County, Tennessee.
3. They witnessed the execution of the Last Will and Testament ("Will") of DeFord Bailey, Jr. ("Testator"), dated February 16, 2012, to which this Affidavit is attached, and that this Affidavit is being made at the request of the Testator.
4. The Testator signed said document as and for Testator's Last Will and Testament in their sight and presence at one and the same time.
5. Their signatures are affixed to the Will; they signed or affixed the Will at the instance and at the request of the Testator and in Testator's presence, and in the presence of each other, at the place and on the date recited in the Will.
6. At the time they witnessed the Will, the Testator was, in their opinion, more than eighteen (18) years of age, of sound mind and disposing memory, and did not appear to be under any undue influence.
7. Neither witness hereto is an "interested witness" meaning that this will does not give to either witness hereto any personal or beneficial interest.

WITNESS:

WITNESS:

[Signature]
R. Keith Gordon

[Signature]
Maria Spear

Sworn to and subscribed before me by the two (2) persons whose signatures are affixed hereto on February 16, 2012.



[Signature]
Jennifer A. Lawson Notary Public

My Commission Expires: March 3, 2014

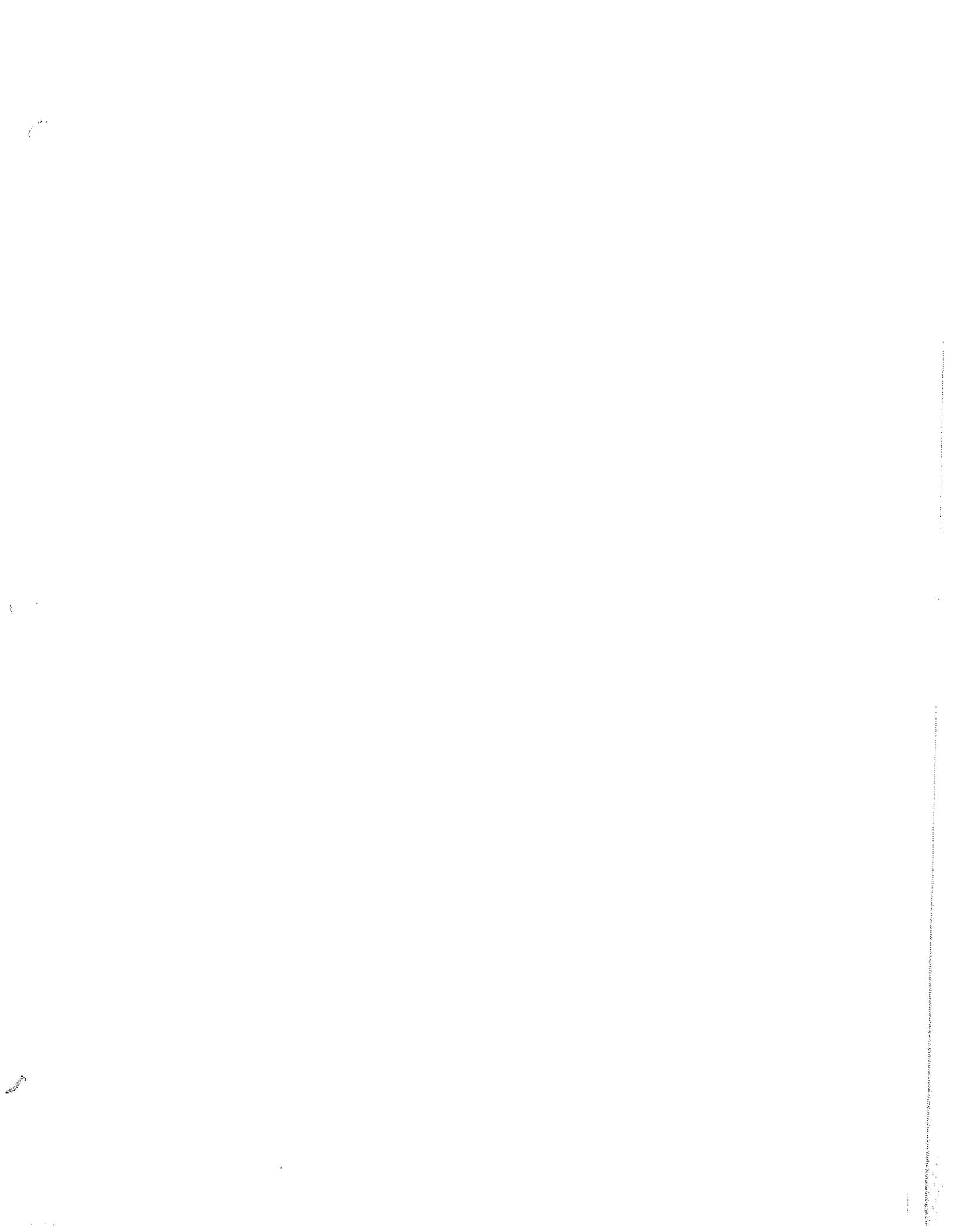


EXHIBIT C

NAME AND LIKENESS LICENSING AGREEMENT

THIS NAME AND LIKENESS LICENSING AGREEMENT (the "Agreement") is by and between DeFord Bailey LLC ("Licensor"), a Tennessee Limited Liability Company, and Carlos Bailey ("CB"). The effective date of this Agreement shall be April 18, 2012 (the "Effective Date").

WHEREAS, the parties desire that CB pay Licensor royalties for the use of DeFord Bailey's name and likeness in connection with CB's marketing, sale, and distribution of products bearing the DeFord Bailey name, specifically, t-shirts and harmonicas.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Certain Definitions.

1.1 "Licensed Property" means the name DEFORD BAILEY and the goodwill appurtenant thereto.

1.2 "Products" means the t-shirts and harmonicas marketed, sold, distributed, displayed and/or produced by or for CB in existence as of the Effective Date or created thereafter.

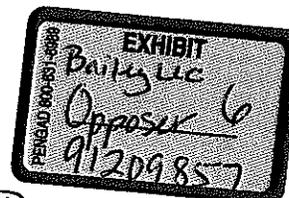
2. License.

2.1 Grant of License. Licensor hereby grants to CB the non-exclusive license and right to use the Licensed Property in connection with the Products.

2.2 Reservation of Rights. Use of Licensed Property, and the goodwill associated therewith, shall inure solely to Licensor. Except for the license granted hereunder and as otherwise provided herein, (a) as between the parties, Licensor retains any right, title and interest in and to the Licensed Property, and (b) CB acknowledges and agrees that it will not have any right, title or interest in or to the Licensed Property, and CB shall not make any claim of ownership or interest in or to such Licensed Property.

3. Fees. CB shall pay Licensor royalties equal to twenty percent (20%) of the gross receipts derived from the sale of the Products. Payment of the royalty amounts shall be accompanied by reasonable written detail of the basis for the payment. Such royalty amounts shall be payable within fourteen (14) days of the sale of the Products.

4. Product Approval. CB shall provide Licensor with a sample of each Product before selling any such Product. Licensor has the right to refuse the sale of any such Product for any reason within Licensor's discretion.



Bailey LLC v. Bailey

5. **Representations and Warranties.** Each party represents and warrants that:

(a) it has full power (corporate or otherwise) and authority to enter into and perform its obligations under this Agreement, and all actions necessary to authorize the execution, delivery and performance of this Agreement have been taken by such party; and

(b) neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated herein will conflict with or result in any breach of or event of termination under any of the terms of, or constitute a default under or result in the termination of or the creation or imposition of any encumbrance pursuant to, the terms of any contract or agreement to which it is a party or by which it or any of its assets and properties are bound.

6. **Term.** This Agreement shall commence on the Effective Date and may be terminated at any time upon written notice by either party. Upon termination, CB must cease the production of new Products including the Licensed Production but shall have three (3) months to sell off any (pre-approved) Products including the Licensed Property existing as of the date of termination.

7. **Indemnification.** Each party (the "Indemnifying Party") will indemnify, defend, and hold harmless the other party, and the other party's affiliates, subsidiaries, successors and assigns (as applicable), and any of their respective officers, directors, employees and agents (each, an "Indemnified Party"), from and against any and all damages, liabilities, costs and expenses, including reasonable legal fees and expenses, in any third party lawsuit or proceeding based upon or otherwise arising out of a breach or alleged breach of the Indemnifying Party's representations, warranties or covenants contained herein. Each Indemnified Party will (a) promptly notify the Indemnifying Party of such claim; (b) provide the Indemnifying Party with reasonable information, assistance and cooperation in defending the lawsuit or proceeding; and (c) give the Indemnifying Party full control and sole authority over the defense and settlement of such claim, subject to the Indemnified Party's approval of any such settlement, which approval will not be unreasonably withheld or delayed.

8. **Limitation of Liability.** EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS HEREUNDER, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST DATA, LOST PROFITS, LOST REVENUE, LOST BUSINESS, ANTICIPATED PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT (INCLUDING PRODUCTS LIABILITY, STRICT LIABILITY AND NEGLIGENCE), AND WHETHER OR NOT SUCH PARTY WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN.

9. Miscellaneous

8.1 Successors and Assigns. CB may not assign this Agreement without Licensor's consent. This Agreement shall be assignable by Licensor, and inure to the benefit of and be binding upon the successors, legal representative, heirs and assigns of Licensor. Except as explicitly specified in this Section, this Agreement is not assignable.

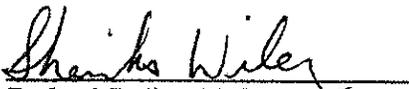
8.2 Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto or their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

8.3 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Tennessee, without regard to principles of conflicts of law.

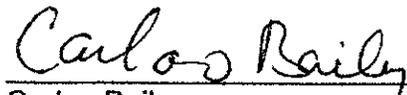
8.4 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

8.5 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereto and no party shall be liable or bound to another party in any manner by any warranties, representations or covenants except as specifically set forth herein. This agreement may not be amended except in a writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.



Deford Bailey LLC
By: Shemika Wiley, Member



Carlos Bailey

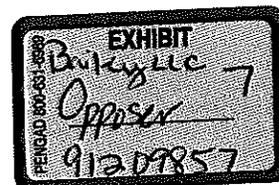


ESTTA Tracking number: **ESTTA626528**

Filing date: **09/11/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91209857
Party	Defendant Carlos Deford Bailey and Deford Bailey III
Correspondence Address	WALTER M BENJAMIN PO BOX 6099 TULSA, OK 74148 UNITED STATES ronbailey8@gmail.com, wabenj@netzero.com
Submission	Answer
Filer's Name	Walter M. Benjamin
Filer's e-mail	wabenj@juno.com, wabenj@netzero.com
Signature	/s/ Walter M. Benjamin
Date	09/11/2014
Attachments	BaileyDefordTrademarkOppositionAnswer.pdf(40238 bytes)



Bailey LLC v. Bailey

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DEFORD BAILEY, LLC,)	
Opposer,	)	OPPOSITION NO. 91209857
)	
-vs-	)	APPLICATION SERIAL NO. 85304626
)	
CARLOS DEFORD BAILEY,	)	Published in the Official Gazette on
Applicant.	)	February 19, 2013

ANSWER TO AMENDED OPPOSITION

COMES NOW Applicants, Carlos Deford Bailey and Deford Bailey III, by and through their attorney, Walter M. Benjamin, and for their Answer to the Amended Opposition, submit the following:

1. Applicants deny each and every allegation of Opposer, Deford Bailey, LLC (“DB LLC”) except for that which is specifically admitted herein and require strict proof of all allegations denied by Applicants.
2. Applicants admit to paragraph 1;
3. Applicants are without knowledge or information sufficient to form a belief as to the truth of paragraph 2 and therefore deny the allegation of paragraph 2. Applicants formed the “Deford Bailey Foundation” a non profit corporation on May 23, 2011 and “Deford Bailey Group, LLC” on May 19, 2011, both prior to the time Opposer’s organization was formed;
5. That Opposers have not engaged in any activity that is likely to be confused with the

sale of Applicant's harmonicas;

6. Applicants denies paragraph 3 except Applicants admit that Deford Bailey, Jr., Christine Lamb and Dezoral Thomas are the heirs of Deford Bailey, Jr. Applicants asserts that Christine Lanb and Dezoral Thomas are not in agreement with the present opposition.
7. Deford Bailey, Jr. was an 81 year old man with a 6th grade education who could not have read and understood the alleged assignment of his rights to certain intellectual property.
8. Applicants specifically deny allegations of Paragraphs 4 - 11.
9. With regard to paragraph 9, further states that the licensing agreement is not valid; that Opposer did not have the exclusive right to the subject of the licensing agreement; That Applicant Deford Bailey III did not sign or agree to the licensing agreement;
10. Further with regard to paragraph 9, the invalid license agreement came about when Applicant Carlos Deford Bailey was invited to an event to perform in honor and benefit his aging father, Deford Bailey Jr. At the said event Applicant Carlos Deford Bailey wanted to sell harmonicas and t-shirts honoring his Grandfather, Deford Bailey. Shameka Wiley, who planned the event, insisted that if Carlos Deford Bailey was to sell items, at her event, he should pay a percentage to the event. Carlos Deford Bailey agreed to sign a agreement for the one day event. Shameka Wiley produced the invalid licensing agreement which Carlos Deford Bailey, an meager educated man, signed thinking it was a one time agreement for the one event. The invalid licensing agreement was signed on the exact day of the event. Similarly,

Shameka Wiley required others to give a percentage of their proceeds to the event.

11. Additionally with regard to paragraph 9, by signing the invalid licensing agreement, Shameka Wiley and opposers acknowledged the legitimacy of the name of "Carlos Deford Bailey".

AFFIRMATIVE DEFENSES

8. The Bailey family is a musically talented family, beginning with DB Sr., deceased, who was an African American who principally played Country and Western music, however his heirs strictly performed rhythm and blues or blues music to today.
9. However, starting the year 1998 to the present Carlos to the exclusion of the rest of the family included country and western music in his performances. He began referring to himself on stage as Carlos Deford Bailey instead of Carlos Bailey for the express purpose of promoting the name of DB, Sr. No family member objected to this. Carlos is known in Nashville, TN as "Carlos Deford Bailey".
10. Carlos began promoted the name of DB Sr., deceased, by various means, first of all by singing the country and western songs DB Sr. wrote and performed. No family member objected to this.
11. Over a 15-year span, Carlos did many things to promote DB Sr.'s legacy, including the change in his name, promoting DB Sr.'s songs, performed at numerous events playing the harmonica in the manner his grandfather played, promoted DB, Sr.'s name to be inducted in the Country Music Hall of Fame as well as other substantial means well known by the family. Carlos (as Carlos Deford Bailey) performed DB Sr.'s songs during the induction ceremony in 2005. Carlos donated DB Sr. Items to

museums, Carthage, TN museum and the Roy Bailey museum.

12. Carlos used the money from those events to promote the name of DB Sr.
13. All of the Bailey family were aware of what Carlos was doing, but were not very interested because they weren't drawn to country and western music. On a very few occasions the heirs would assist Carlos in promoting the name of DB, Sr.
14. DB Sr.'s name was forgotten - the basis of the PBS special "Deford Bailey, A Legend Lost" based upon the book written by David Morton and Charles Wolfe, "A Black Star in Early Country Music". However as a result of the book and the work done by Carlos, the name of DB, Sr. began to increase in value culminating in DB, Sr. being inducted into the Country Music Hall of Fame along with Glen Campbell and the singing group, Alabama.
15. In the midst of other promotions, Carlos decided to promote DB Sr. by selling harmonicas with the likeness of DB thereon. Carlos had his brother DB, III to join him in the registration of the trademark, "Deford Bailey" for the musical instrument, harmonica. Both applicants physically signed the application.
16. Applicant, Deford Bailey, III exclusively played drums, for well known artists, but agreed to join in with his brother in pursuing the trademark of the likeness of his name, Deford Bailey.
17. After Carlos used and promoted the name of DB, Sr. for 15 years, a Bailey family member, Applicants believe to be Shameka Wiley, Applicant's niece, used Deford Bailey, LLC to take over any monetary proceeds from the likeness and music of DB, Sr.
18. Shameka Wiley has little credibility due to a record of three felonies convictions-

attempted murder, and two cases of drug trafficking whom Applicants allege manipulated the 81 year old Deford Bailey, Jr. into signing an alleged assignment.

19. DB, Sr. has been deceased for over 30 years.
20. Applicants overcame a likelihood of confusion rejection by the Examiner citation of the trademark "D Deford" by Applicants entering into a coexistence agreement with the cited trademark owner, Emerson Deford. Opposers, nor any of its members filed any opposition against the "D Deford" trademark application.
21. Applicant Deford Bailey III derived the rights to the name Deford Bailey from his father by virtue of being given that name. His father derived the right to that name from his grandfather. That right cannot be taken away by subsequently granting that right to a third party.
21. Based upon the above allegations and statements, Applicants assert the affirmative defenses of Laches, Estoppel and Acquiescence.

WHEREFORE, Applicants, Carlos Deford Bailey and Deford Bailey III pray that the Amended Opposition No. 91209857 be denied in favor of Applicants and the trademark "Deford Bailey" be allowed on the principal register.

Respectfully submitted,
Carlos Deford Bailey
Deford Bailey, III

By: /s/ Walter M. Benjamin
Walter M. Benjamin
Attorney for Applicants
P.O. Box 6099
Tulsa, OK 74148
(918) 694-7891
Fax: (877) 532-0369
wabenj@netzero.com

Certificate of Service

I, Walter M. Benjamin, hereby certify that on the 10th day of September, 2014, he sent by e-mail and he placed in the U.S. Mail with proper postage thereon a true and correct copy of the foregoing Answer to the Amended Opposition addressed to:

Maria A. Spear
Amy J. Everhart
Everhard Law Firm, PLC
1400 Fifth Ave. North
Nashville, TN 37208

/s/ Walter M. Benjamin
Walter M. Benjamin

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EXHIBIT A

June 2, 2011

Walter M. Benjamin
Attorney at Law
P. O. Box 6099
Tulsa, OK 74148-0099

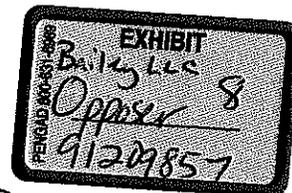
Dear Mr. Benjamin:

I understand that you have filed a federal trademark application on my behalf for the mark DEFORD BAILEY. I have never spoken with you or authorized you to represent me or file a trademark application on my behalf. I demand that you immediately withdraw the application.

Sincerely,

DeFord Bailey III
DeFord Bailey III

DeFord Bailey III



Bailey LLC v. Bailey

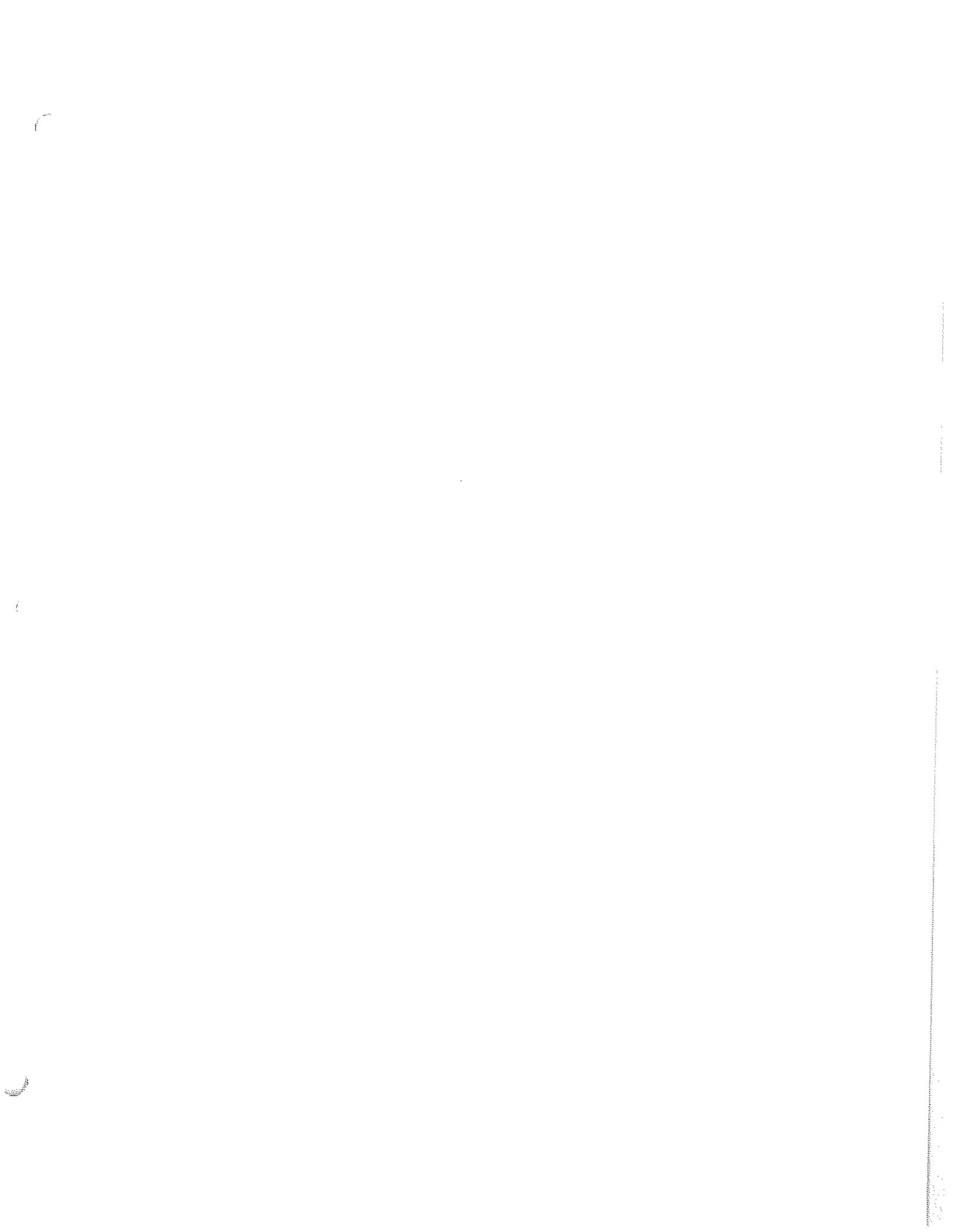


EXHIBIT B

DECLARATION OF DEFORD BAILEY III

I, DeFord Bailey III, of full age, hereby declare as follows:

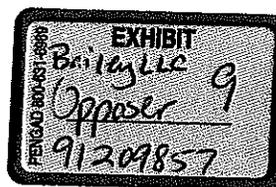
1. I have learned that attorney Walter M. Benjamin has filed an application for registration of the trademark DEFORD BAILEY in connection with harmonicas with the U.S. Patent and Trademark Office, application number 85304626.

2. I have never met or communicated with Mr. Benjamin and did not authorize him to file the application on my behalf or represent me in connection with any legal matters.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2 day of June, 2011.

DeFord Bailey III
DeFord Bailey III

DeFord Bailey III



Bailey LLC v. Bailey



United States

The applicant's current Correspondence Information:

Walter M. Benjamin
Walter M. Benjamin, Attorney at Law
P.O. Box 6099
Tulsa, Oklahoma 74148-0099
(918) 694-7891(phone)
(877) 532-0369(fax)
wabenj@juno.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

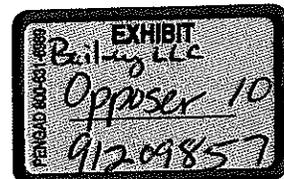
The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Walter M. Benjamin/ Date Signed: 04/26/2011
Signatory's Name: Walter M. Benjamin OBA 702
Signatory's Position: Attorney of record

Signature: /Carlos Deford Bailey/ Date Signed: 04/26/2011
Signatory's Name: Carlos Deford Bailey
Signatory's Position: owner *Carlos Deford Bailey*

Signature: /Deford Bailey/ Date Signed: 04/26/2011
Signatory's Name: Deford Bailey III
Signatory's Position: owner *Deford Bailey III*

RAM Sale Number: 9520
RAM Accounting Date: 04/26/2011



Bailey LLC v. Bailey



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

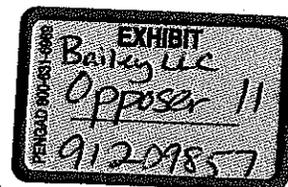
DEFORD BAILEY LLC,)	
Opposer,	)	Opposition No. 91209857
)	
v.	)	Application Serial No. 85304626
)	
CARLOS DEFORD BAILEY and	)	Published in the Official Gazette on
DEFORD BAILEY III,	)	February 19, 2013
Applicants.)	

**OPPOSER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION
OF DOCUMENTS AND REQUESTS FOR ADMISSION TO APPLICANTS**

Pursuant to Rules 26, 33, 34 and 36 of the Federal Rules of Civil Procedure, Opposer, Deford Bailey LLC, propounds the following Interrogatories, Requests for Production of Documents and Requests for Admission on Applicants, Carlos Deford Bailey and DeFord Bailey III.

I. INSTRUCTIONS

1. Unless otherwise specified, the information and documents requested below are requested for the time period January 1, 2011, to the present.
2. You must respond to each interrogatory and request separately and fully in writing under oath unless it is objected to, in which event the reasons for objection shall be stated in lieu of a response. You must serve a copy of the response and any objections within thirty (30) days after the date of service hereof.
3. The interrogatories and requests are continuing in nature and require supplemental responses if the responding party obtains further information after responding to these interrogatories and requests. Demand for supplementation is hereby made.



Bailey LLC v. Bailey

4. Terms not defined in the Definitions section below shall have the respective meanings ascribed to such terms in the Opposition or, if not defined in the Opposition, shall be ascribed their ordinary and usual meanings.

5. All responses to these interrogatories and requests shall include such documents as are in the custody, possession or control of the responding party, including documents held by the party, employees, agents, attorneys, accountants or other representatives acting on the party's behalf.

6. Documents produced in response to these interrogatories and requests should be identified as to the particular interrogatory or request to which the document is responsive.

7. If any documents that refer or relate to anything about which these interrogatories and requests ask have been destroyed, identify each such document, the date of destruction and the name of the person who ordered or authorized the destruction.

8. If you claim that any of the documents requested are privileged, identify the document by date, author and recipient (if any) and substance, and state the applicable privilege.

9. If any documents requested herein are in the possession, custody or control of another, please identify the person having each such document in his possession, custody or control.

10. The use of the singular form of any word includes the plural and vice versa.

II. DEFINITIONS

11. "You" and "your" refers to Carlos Deford Bailey, DeFord Bailey III, and any of their present or former employees, counsel, agents, representatives, or other persons acting or purporting to act on their behalf or under their control.

12. "DB LLC" refers to Deford Bailey LLC and any of its present or former officers, directors, owners, employees, in-house and outside counsel, agents, representatives, or other persons acting or purporting to act on its behalf or under its control, as well as any predecessor or successor company, parent company, subsidiary or affiliate and including, without limitation, Shemika Turnley Wiley and Deford Bailey, Jr.

13. The Pending Application refers to that pending trademark application on the Principal Register of the United States Patent and Trademark Office for the mark DEFORD BAILEY, U.S. Serial No. 85304626.

14. The term "document" shall have the broadest meaning defined by Fed. R. Civ. P. 34(a) and applicable case law, and shall include, without limitation, anything on or in which any information is fixed and can be perceived, reproduced or otherwise communicated, with or without the aid of any machine or device, and regardless of the medium of expression in which the information is fixed (e.g., print, video, audio or other medium of expression), including, without limitation, contracts, agreements, papers, photographs, tape recordings, transcripts, checks, checkbooks, check stubs, check statements, bank statements, deposit slips, journals, general and subsidiary ledgers, worksheets, accounts, bills, promissory notes, invoices, punch cards, purchase orders, acknowledgements, authorizations, sales slips, receipts, shipping papers, letters or other forms of correspondence, telex, TWX and other teletype communications, computer printouts, any other printout sheets, movie film, slides, microfilm, memoranda, reports, studies, summaries, minutes, minute books, circulars, notes (whether typewritten, handwritten or otherwise), agenda, bulletins, notices, announcements, proofs, sheets, instructions, charts, tables, manuals, brochures, magazines, pamphlets, lists, visitors' logs, schedules, price lists, telegrams, engineering and/or architectural drawings, other drawings, sketches, plans, blueprints,

specifications, diagrams, drafts, books and records, desk calendars, notebooks, diaries, registers, appointment books, budgets, analyses, projections, minutes of meetings, conferences or discussions of any kind, tax returns, and any other data compilations from which information can be obtained or translated.

15. The term "document" includes any copy or copies of any of the foregoing on which any mark, alteration or additional writing or other change from the original, or from any other copy, has been made; and includes any and all documents in your possession or the possession of any other person or entity acting on your behalf.

16. "Oral communication" means any utterance heard by another person, whether in person, by telephone, or otherwise.

17. "Identify" and "identification" and "the identity of" means as follows:

- a. When used in reference to an individual person, it means his or her full name, present or last known business affiliation and position, present or last known residential and business address and present or last known address, telephone number, facsimile number and email address.
- b. When used in reference to a corporation, firm or other entity, it means its full name, form of organization, and present or last known address and telephone number.
- c. When used in reference to a document, it means the type of document (e.g., letter, memorandum, telegram, chart, contract, prospectus, newspaper article, or the like), its author or originator, the date it was originated, its recipients, its present location by address, and its custodian;

and if the document was, but is no longer, in your possession or subject to your control, to state what disposition was made of it.

d. When used in reference to a meeting or conference, it means the date of the meeting or conference, the place of the meeting or conference, and the full name and the present or last known position, business affiliation and residential address of each person attending the meeting or conference.

e. When used in reference to an oral communication, it means the full name of the participants to the oral communication, their business affiliation and business address at the time, their present or last known position, business affiliation and residential address, the location of each participant at the time the oral communication took place, which participants initiated the oral communication and when the oral communication took place.

18. The term "person" includes an individual, a corporation, a partnership or joint venture or any other entity.

19. The "Opposition" means the Notice of Opposition filed on March 20, 2013, by DB LLC, and any and all amendments thereto.

20. The "Answer" means the Answer to Notice of Opposition filed on April 13, 2013, and any and all amendments thereto.

III. INTERROGATORIES

1. Identify all persons who provided information, or any other assistance, used in responding to these interrogatories and document requests, and, with respect to each person, state the substance of information provided by that person.

RESPONSE:

2. Identify all persons with knowledge of any facts alleged in the Opposition or Answer and, for each such person, describe the subject(s) and the substance of each person's knowledge.

RESPONSE:

3. Identify all oral and written communications between Carlos Bailey and Deford Bailey III reflecting, referring or relating to the events that are the subject of the Opposition and/or Answer, including all parties to each such communication, a detailed description of the topics discussed during each such communication, and the date of each such communication.

RESPONSE:

4. Identify all oral and written communications between you and any other person or entity reflecting, referring or relating to the events that are the subject of the Opposition and/or Answer, including all parties to each such communication, a detailed description of the topics discussed during each such communication, and the date of each such communication.

RESPONSE:

5. Identify the date of first use and describe the manner in which you first began using the mark DEFORD BAILEY in connection with harmonicas.

RESPONSE:

6. Identify all documents, including, without limitation, marketing materials, correspondence, print-outs from the Internet, and/or brochures, evidencing your use of the mark DEFORD BAILEY in connection with harmonicas.

RESPONSE:

7. Identify all documents reflecting, referring or relating to the formation of the Deford Bailey Foundation mentioned in Paragraph 3 of the Answer.

RESPONSE:

8. Identify all documents reflecting, referring or relating to the formation of Deford Bailey Group, LLC mentioned in Paragraph 3 of the Answer.

RESPONSE:

9. State all facts that support or disprove your claim that Deford Bailey III joined Carlos Deford Bailey in applying for registration of the mark DEFORD BAILEY, as stated in Paragraph 14 of the Answer.

RESPONSE:

10. State all facts that support or disprove your affirmative defenses of laches, estoppel, and/or acquiescence.

RESPONSE:

11. State the number of harmonicas sold by or on behalf of you to date using the mark DEFORD BAILEY, and identify, for each sale:

- a. The date of each sale;
- b. The method of each sale;
- c. The income received for each sale;
- d. The expense incurred in connection with each sale; and
- e. The location of each sale.

RESPONSE:

12. State the last known contact information for Ron Bailey, including his address, phone number and email address.

RESPONSE:

IV. REQUESTS FOR PRODUCTION OF DOCUMENTS

Produce the following documents at the office of Everhart Law Firm PLC, 1400 Fifth Avenue North, Nashville, TN 37208.

1. All documents referenced in answering or requested to be identified in the preceding interrogatories and/or that reflect, refer or relate to any information identified in your answers to the preceding interrogatories.

RESPONSE:

2. All documents concerning the facts or events alleged in the Opposition and/or the Answer.

RESPONSE:

3. All documents reflecting or concerning any meetings, correspondence or other communications between Carlos DeFord Bailey and Deford Bailey III in connection with the events alleged in the Opposition and/or the Answer.

RESPONSE:

4. All documents reflecting or concerning any meetings, correspondence or other communications between you and Ron Bailey in connection with the events alleged in the Opposition and/or the Answer.

RESPONSE:

5. All documents reflecting or concerning any meetings, correspondence or other communications between you and any other person or entity in connection with the events alleged in the Opposition and/or the Answer.

RESPONSE:

6. All documents reflecting or relating to the registration or attempted registration of the mark DEFORD BAILEY by or on behalf of you.

RESPONSE:

7. The Deford Bailey Foundation's corporate charter, bylaws, and/or articles of incorporation.

RESPONSE:

8. Deford Bailey Group, LLC's corporate charter, bylaws, and/or articles of incorporation.

RESPONSE:

9. All documents evidencing your use of the mark DEFORD BAILEY from January 1, 2011, to the present.

RESPONSE:

10. A copy of all trial, hearing, or deposition transcripts including the testimony of either of you.

RESPONSE:

11. Documents sufficient to reflect all members of Deford Bailey Group, LLC.

RESPONSE:

12. Documents sufficient to reflect all officers and directors and/or board members of the Deford Bailey Foundation.

RESPONSE:

13. All agreements related to or in connection with the mark DEFORD BAILEY, including, without limitation.

RESPONSE:

14. All documents reflecting the use in commerce by you of the mark DEFORD BAILEY.

RESPONSE:

V. REQUESTS FOR ADMISSION

1. Admit that the Pending Application was filed without the prior authorization of Deford Bailey III.

RESPONSE:

2. Admit that the Pending Application was filed without the knowledge of Deford Bailey III.

RESPONSE:

3. Admit that attorney Walter Benjamin, had never met or communicated with Deford Bailey III before the Pending Application was filed.

RESPONSE:

4. Admit that the Answer was filed without the prior authorization of Deford Bailey
III.

RESPONSE:

5. Admit that Carlos Bailey signed the document entitled "Name and Likeness
Licensing Agreement" attached hereto as Exhibit A.

RESPONSE:

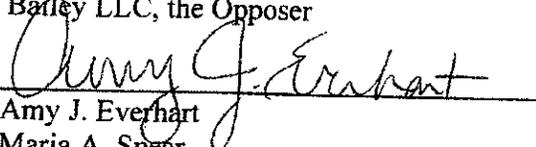
6. Admit that DeFord Bailey III signed the declaration attached hereto as Exhibit B.

RESPONSE:

Respectfully submitted,

Deford Bailey LLC, the Opposer

By:


Amy J. Everhart

Maria A. Spear

Everhart Law Firm PLC

1400 Fifth Avenue North

Nashville, TN 37208

(615) 800-8919

Facsimile: (615) 800-8918

amy@everhartlawfirm.com

maria@everhartlawfirm.com

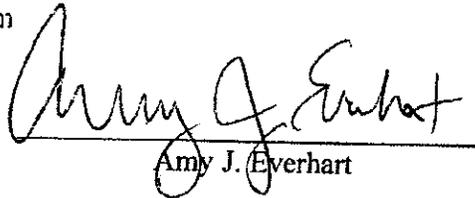
Attorneys for Opposer,

Deford Bailey LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served via electronic mail, facsimile and U.S. Mail, postage prepaid, on this 22nd day of October, 2013.

Walter M. Benjamin
P.O. Box 6099
Tulsa, OK 74148
wabenj@netzero.com



Amy J. Everhart

NAME AND LIKENESS LICENSING AGREEMENT

THIS NAME AND LIKENESS LICENSING AGREEMENT (the "Agreement") is by and between DeFord Bailey LLC ("Licensor"), a Tennessee Limited Liability Company, and Carlos Bailey ("CB"). The effective date of this Agreement shall be April 18, 2012 (the "Effective Date").

WHEREAS, the parties desire that CB pay Licensor royalties for the use of DeFord Bailey's name and likeness in connection with CB's marketing, sale, and distribution of products bearing the DeFord Bailey name, specifically, t-shirts and harmonicas.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Certain Definitions.

1.1 "Licensed Property" means the name DEFORD BAILEY and the goodwill appurtenant thereto.

1.2 "Products" means the t-shirts and harmonicas marketed, sold, distributed, displayed and/or produced by or for CB in existence as of the Effective Date or created thereafter.

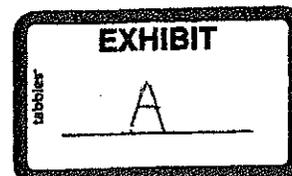
2. License.

2.1 Grant of License. Licensor hereby grants to CB the non-exclusive license and right to use the Licensed Property in connection with the Products.

2.2 Reservation of Rights. Use of Licensed Property, and the goodwill associated therewith, shall inure solely to Licensor. Except for the license granted hereunder and as otherwise provided herein, (a) as between the parties, Licensor retains any right, title and interest in and to the Licensed Property, and (b) CB acknowledges and agrees that it will not have any right, title or interest in or to the Licensed Property, and CB shall not make any claim of ownership or interest in or to such Licensed Property.

3. Fees. CB shall pay Licensor royalties equal to twenty percent (20%) of the gross receipts derived from the sale of the Products. Payment of the royalty amounts shall be accompanied by reasonable written detail of the basis for the payment. Such royalty amounts shall be payable within fourteen (14) days of the sale of the Products.

4. Product Approval. CB shall provide Licensor with a sample of each Product before selling any such Product. Licensor has the right to refuse the sale of any such Product for any reason within Licensor's discretion.



5. **Representations and Warranties.** Each party represents and warrants that:

(a) it has full power (corporate or otherwise) and authority to enter into and perform its obligations under this Agreement, and all actions necessary to authorize the execution, delivery and performance of this Agreement have been taken by such party; and

(b) neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated herein will conflict with or result in any breach of or event of termination under any of the terms of, or constitute a default under or result in the termination of or the creation or imposition of any encumbrance pursuant to, the terms of any contract or agreement to which it is a party or by which it or any of its assets and properties are bound.

6. **Term.** This Agreement shall commence on the Effective Date and may be terminated at any time upon written notice by either party. Upon termination, CB must cease the production of new Products including the Licensed Production but shall have three (3) months to sell off any (pre-approved) Products including the Licensed Property existing as of the date of termination.

7. **Indemnification.** Each party (the "Indemnifying Party") will indemnify, defend, and hold harmless the other party, and the other party's affiliates, subsidiaries, successors and assigns (as applicable), and any of their respective officers, directors, employees and agents (each, an "Indemnified Party"), from and against any and all damages, liabilities, costs and expenses, including reasonable legal fees and expenses, in any third party lawsuit or proceeding based upon or otherwise arising out of a breach or alleged breach of the Indemnifying Party's representations, warranties or covenants contained herein. Each Indemnified Party will (a) promptly notify the Indemnifying Party of such claim; (b) provide the Indemnifying Party with reasonable information, assistance and cooperation in defending the lawsuit or proceeding; and (c) give the Indemnifying Party full control and sole authority over the defense and settlement of such claim, subject to the Indemnified Party's approval of any such settlement, which approval will not be unreasonably withheld or delayed.

8. **Limitation of Liability.** EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS HEREUNDER, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST DATA, LOST PROFITS, LOST REVENUE, LOST BUSINESS, ANTICIPATED PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT (INCLUDING PRODUCTS LIABILITY, STRICT LIABILITY AND NEGLIGENCE), AND WHETHER OR NOT SUCH PARTY WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN.

9. Miscellaneous.

8.1 Successors and Assigns. CB may not assign this Agreement without Licensor's consent. This Agreement shall be assignable by Licensor, and inure to the benefit of and be binding upon the successors, legal representative, heirs and assigns of Licensor. Except as explicitly specified in this Section, this Agreement is not assignable.

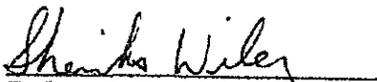
8.2 Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto or their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

8.3 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Tennessee, without regard to principles of conflicts of law.

8.4 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

8.5 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereto and no party shall be liable or bound to another party in any manner by any warranties, representations or covenants except as specifically set forth herein. This agreement may not be amended except in a writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.


Deford Bailey LLC
By: Shemika Wiley, Member


Carlos Bailey

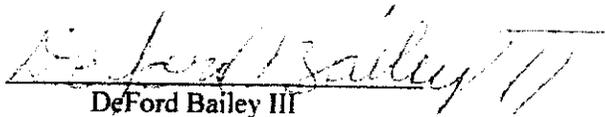
DECLARATION OF DEFORD BAILEY III

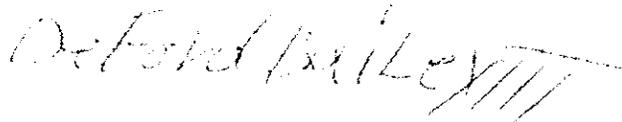
I, DeFord Bailey III, of full age, hereby declare as follows:

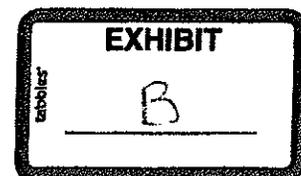
1. I have learned that attorney Walter M. Benjamin has filed an application for registration of the trademark DEFORD BAILEY in connection with harmonicas with the U.S. Patent and Trademark Office, application number 85304626.

2. I have never met or communicated with Mr. Benjamin and did not authorize him to file the application on my behalf or represent me in connection with any legal matters.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2 day of June, 2011.


DeFord Bailey III





June 2, 2011

Walter M. Benjamin
Attorney at Law
P. O. Box 6099
Tulsa, OK 74148-0099

Dear Mr. Benjamin:

I understand that you have filed a federal trademark application on my behalf for the mark DEFORD BAILEY. I have never spoken with you or authorized you to represent me or file a trademark application on my behalf. I demand that you immediately withdraw the application.

Sincerely,

DeFord Bailey III
DeFord Bailey III

DeFord Bailey III



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DEFORD BAILEY, LLC,
Opposer,

-vs-

CARLOS DEFORD BAILEY,
Applicant.

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OPPOSITION NO. 91209857

APPLICATION SERIAL NO. 85304626

Published in the Official Gazette on
February 19, 2013

APPLICANT'S RESPONSE TO OPPOSER REQUEST FOR ADMISSIONS

COMES NOW Applicants, Carlos Deford Bailey and Deford Bailey III, by and through their attorney, Walter M. Benjamin, and for their Answer to Opposer's Request for Admissions, submits the following:

1. Admit that the pending application was filed without the prior authorization of Deford Bailey III.

RESPONSE: Not Admitted.

2. Admit that the pending application was filed without the knowledge of Deford Bailey III.

RESPONSE: Not Admitted.

3. Admit that Attorney Walter M. Benjamin had never met or communicated with Deford Bailey III before the pending application was filed.

RESPONSE: Not Admitted.

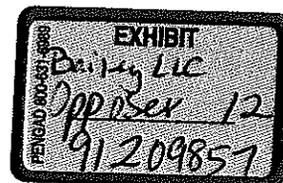
4. Admit that the Answer was filed without the prior authorization of Deford Bailey III.

RESPONSE: Not Admitted.

5. Admit that Carlos Bailey signed the document entitled "Name and Likeness Licensing Agreement" attached hereto as Exhibit "A".

RESPONSE: Admitted.

6. Admit that Deford Bailey III signed the declaration attached as "Exhibit B".



Bailey LLC v. Bailey

RESPONSE: Not Admitted.

Respectfully submitted,
Carlos Deford Bailey
Deford Bailey, III

By: Walter M. Benjamin
Walter M. Benjamin
Attorney for Applicants
P.O. Box 6099
Tulsa, OK 74148
(918) 694-7891
Fax: (877) 532-0369
wabenj@netzero.com

Verification

STATE OF TENNESSEE)
)
County of) ss.

We, Carlos Deford Bailey and Deford Bailey III, state that we have read the foregoing Responses to Opposers Request for Admissions, and that the responses are true and correct to our knowledge and belief.

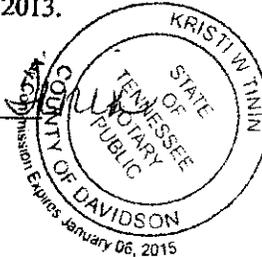
Carlos Deford Bailey
Carlos Deford Bailey

Deford Bailey III
Deford Bailey III

Subscribed and sworn to before me this 22nd day of November, 2013.

Kristi W. [Signature]
Notary Public

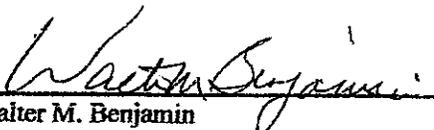
My commission expired Jan. 06, 2015



Certificate of Service

I, Walter M. Benjamin, hereby certify that on the 19th day of November, 2013, he placed in the U.S. Mail with proper postage thereon a true and correct copy of the foregoing Applicants Response to Opposers Request for Admissions addressed to:

Maria A. Spear
Amy J. Everhart
Everhard Law Firm, PLC
1400 Fifth Ave. North
Nashville, TN 37208


Walter M. Benjamin





STATE OF TENNESSEE
Tre Hargett, Secretary of State
Division of Business Services
William R. Snodgrass Tower
312 Rosa L. Parks AVE, 6th FL
Nashville, TN 37243-1102

DeFord Bailey Foundation, Inc.
APT N131
515 BASSWOOD DR
NASHVILLE, TN 37209-1634

December 1, 2013

Annual Report Now Due For: DeFord Bailey Foundation, Inc.

File Annual Reports Online at: <http://TNBear.TN.gov/AR>

Control Number: 659008
Corporation Non-Profit
Formation Locale: TENNESSEE

Due on or Before: 04/01/2014
Date Formed: 05/23/2011
Fiscal Year Closing Month: 12

Dear Business Entity:

Entities registered in Tennessee must file an Annual Report with the Secretary of State. Your Annual Report is now due. It must be filed by the close of business on the due date shown above. Failure to file the Annual Report will result in the administrative dissolution/revocation of your business.

If you are no longer transacting business, you must file dissolution and termination (or withdrawal) documents along with the required fees to terminate your business with the Secretary of State's Office prior to the annual report due date listed above or you will be required to file the annual report.

You need the following information in order to file your Annual Report on-line:

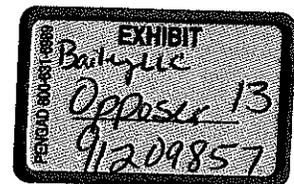
Control Number (see above)
Name and business address of principal officers, governors, directors or managers
Credit card

For your convenience, you can file your Annual Report electronically through our website at <http://TNBear.TN.gov/AR>. If you prefer to send in a paper form, visit the same website and fill out and print your Annual Report form using the control number shown above.

If we can be of assistance, please call the Business Services Division at the number below.

Sincerely,

Tre Hargett
Secretary of State



Bailey LLC v. Bailey



Tennessee Corporation Annual Report Form

File online at: <http://TNBear.TN.gov/AR>

Due on/Before: 04/01/2013

Reporting Year: 2012

Return completed form within 30 days to:

Tennessee Secretary of State

Attn: Annual Reports

William R. Snodgrass Tower

312 Rosa L. Parks AVE, 6th FL

Nashville, TN 37243-1102

Phone: (615) 741-2286

Annual Report Filing Fee Due:

\$20 if no changes are made in block 3 to the registered agent/office, or

\$40 if any changes are made in block 3 to the registered agent/office

SOS Control Number: 659008

Corporation Non-Profit - Domestic

Date Formed: 05/23/2011

Formation Locale: TENNESSEE

Name and Mailing Address:

DeFord Bailey Foundation, Inc.

APT N131

515 BASSWOOD DR

NASHVILLE, TN 37209-1634

(1) Add or Change Mailing Address:

Principal Office Address:

APT N131

515 BASSWOOD DR

NASHVILLE, TN 37209-1634

DAVIDSON COUNTY

(2) Change Principal Office Address:

Registered Agent (RA) and Registered Office (RO) Address:

CARLOS BAILEY

APT N131

515 BASSWOOD DR

ASHVILLE, TN 37209-1634

DAVIDSON COUNTY

(3) Change RA and/or RO Address (\$20 fee):

Note: The Registered Office address must be a physical Tennessee address (no postal box).

(4) Name and business address (with zip code) of the President, Secretary and other principal officers. Attach additional sheet if necessary.

Title	Name	Business Address	City, State, Zip
PRESIDENT	CARLOS BAILEY SR	515 Basswood AN	NASHVILLE TN 37209
SECRETARY	RON BAILEY	///	APT N131

(5) Board of Directors names and business address (with zip code). Attach additional sheet if necessary.

Same as above officers, None, or listed below.

Name	Business Address	City, State, Zip
CARLOS BAILEY SR	515 Basswood AN	NASHVILLE TENN 37209
DE FORD BAILEY III	///	///

(6) This section applies to non-profit corporations ONLY.

A. Our records reflect that your non-profit corporation is a public benefit or a mutual benefit corporation as indicated.

If blank or incorrect, please check appropriately: Public Mutual

B. If a Tennessee religious corporation, please check here if blank: Religious

(7) Signature: Carlos Bailey sr

(8) Date: 10-17-13

(9) Type/Print Name: CARLOS BAILEY SR

(10) Title: C.E.O / PRESIDENT

Instructions: Legibly complete the form above. Enclose a check made payable to the Tennessee Secretary of State. Sign and date this form and return to the address provided above.

7250.0629, 10/17/2013, 13:51:36, Received by Tennessee Secretary of State Tre Hargett



STATE OF TENNESSEE
Tre Hargett, Secretary of State
Division of Business Services
William R. Snodgrass Tower
312 Rosa L. Parks AVE, 6th FL
Nashville, TN 37243-1102

DeFord Bailey Foundation, Inc.
APT N131
515 BASSWOOD DR
NASHVILLE, TN 37209-1634

March 24, 2014

Annual Report Acknowledgment

Please review the filing information below and notify our office immediately of any discrepancies.

Control # : 659008 Status: Active
Filing Type: Corporation Non-Profit - Domestic

Document Receipt

Receipt # : 1396625	Filing Fee:	\$20.00
Payment-Cash - DeFord Bailey Foundation, Inc., NASHVILLE, TN		\$20.00

Annual Report Due Date: 04/01/2014
Annual Report Date Filed: 03/24/2014

Next Annual Report Due: 04/01/2015
Image # : 7306-2753

This will acknowledge the filing of the attached annual report. When corresponding with this office or submitting documents for filing, please refer to the control number given above.


Tre Hargett
Secretary of State

Processed By: Carol Dickerson



Tennessee Corporation Annual Report Form

File online at: <http://TNBear.TN.gov/AR>

Due on/Before: 04/01/2014

Reporting Year: 2013

Return completed form within 30 days to:

Tennessee Secretary of State
Attn: Annual Reports
William R. Snodgrass Tower
312 Rosa L. Parks AVE, 6th FL
Nashville, TN 37243-1102
Phone: (615) 741-2286

Annual Report Filing Fee Due:

\$20 if no changes are made in block 3 to the registered agent/office, or
\$40 if any changes are made in block 3 to the registered agent/office

SOS Control Number: 659008

Corporation Non-Profit - Domestic

Date Formed: 05/23/2011

Formation Locale: TENNESSEE

Name and Mailing Address:

DeFord Bailey Foundation, Inc.
APT N131
515 BASSWOOD DR
NASHVILLE, TN 37209-1634

(1) Add or Change Mailing Address:

FILED

Principal Office Address:

APT N131
515 BASSWOOD DR
NASHVILLE, TN 37209-1634
DAVIDSON COUNTY

(2) Change Principal Office Address:

Registered Agent (RA) and Registered Office (RO) Address:

CARLOS BAILEY
APT N131
515 BASSWOOD DR
NASHVILLE, TN 37209-1634
DAVIDSON COUNTY

(3) Change RA and/or RO Address (\$20 fee):

Note: The Registered Office address must be a physical Tennessee address (no postal box).

(4) Name and business address (with zip code) of the President, Secretary and other principal officers. Attach additional sheet if necessary.

Title	Name	Business Address	City, State, Zip
PRESIDENT	CARLOS BAILEY sr	515 Basswood An	NASHVILLE TN 37209
SECRETARY	RON BAILEY	515 Basswood An	APT N131

(5) Board of Directors names and business address (with zip code). Attach additional sheet if necessary.

Same as above officers, None, or listed below.

Name	Business Address	City, State, Zip
CARLOS BAILEY sr	515 Basswood An	NASHVILLE TN 37209
PRESIDENT DEFORD BAILEY III		

(6) This section applies to non-profit corporations ONLY.

A. Our records reflect that your non-profit corporation is a public benefit or a mutual benefit corporation as indicated.

If blank or incorrect, please check appropriately: Public Mutual

B. If a Tennessee religious corporation, please check here if blank: Religious

Signature: Carlos Bailey sr

(8) Date: 3-24-2014

Name/Print Name: CARLOS BAILEY sr

(10) Title: CEO/PRESIDENT

Instructions: Legibly complete the form above. Enclose a check made payable to the Tennessee Secretary of State. Sign and date this form and return the address provided above.

7306:2753, 03/24/2014 11:52:00, Received by Tennessee Secretary of State Tre Hargett

SECRETARY OF STATE
 312 ROSA L. PARKS AVENUE
 7TH FL. TN TOWER
 NASHVILLE TN 37243-1102
 615-741-0532

Invoice / Receipt

Invoice	285540
Date	3/24/2014
Page	1

Bill To:

CASH CUSTOMER

CUSTOMER COPY ONLY

Purchase Order No.	Customer ID	Payment Terms	Req Ship Date	Master No.
	1000000052	C.O.D.	3/24/2014	288,802

Qty	Item Number	Description	Unit Price	Ext. Price
1	COR000	corporate documents AR DEFORD BAILEY FOUNDATION INC 515 BASWOOD DR APT N131 NASHVILLE TN 37209	\$20.00	\$20.00

Subtotal	\$20.00
Tax	\$0.00
Freight	\$0.00
Total	\$20.00
Payment Rec'd	\$20.00
Amt Remaining	\$0.00

Check Number

SECRETARY OF STATE
 312 ROSA L. PARKS AVENUE
 7TH FL. TN TOWER
 NASHVILLE TN 37243-1102
 615-741-0532

Invoice / Receipt

Invoice	191088
Date	5/19/2011
Page	1

CUSTOMER COPY ONLY

Bill To:

DEFORD BAILEY GROUP LLC 515 BASSWOOD AVE APT N-131 NASHVILLE TN 37209
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Purchase Order No.	Customer ID	Payment Terms	Req Ship Date	Master No.
	1000165781		5/19/2011	193,540
Qty	Item Number	Description	Unit Price	Ext. Price
1	LLC000	LLC documents	\$300.00	\$300.00

Subtotal	\$300.00
Tax	\$0.00
Freight	\$0.00
Total	\$300.00
Payment Rec'd	\$300.00
Amt Remaining	\$0.00

Check Number



Bill Garrett

Davidson

CUSTOMER RECEIPT - RECORDING SERVICES

Receipt Number: T20110029799
Date/Time: 05/19/2011 10:10:48
Method Received: Walk-In
Clerk: bwells

Customer Name : CARLOS BAILEY

HOLD AT COUNTER

Transaction Detail

Table with columns: Instrument Number, Instrument Type, Gen. Fee, Equip. Fee, Transfer Tax, Mortgage Tax, Copy, Cert. Copy, Total Copy Fee, # Pgs, Consideration, Subtotal. Row 1: 201105190038295, CHARTER, \$5.00, \$2.00, \$0.00, \$0.00, N, N, \$0.00, 2, \$7.00.

First Party Name
STATE OF TENNESSEE

Second Party Name
DEFORD BAILEY GROUP LLC

Payment Information

Table with columns: Method of Payment, Payment Control ID, Authorized Agent, Company, Amount. Row 1: Cash, , , , \$7.00.

AMOUNT PAID: \$7.00
LESS AMOUNT DUE: \$7.00
CHANGE RECEIVED: \$0.00