

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MACHELL SHERLES, as Successor Executor  
and Trustee in the ESTATE OF ANN R. RULE,  
King County, Washington Probate Cause No.  
15-4-04420-3 KNT

Plaintiff,

v.

FOLEY AGENCY, INC. a New York  
corporation, and JOANN FOX, a Florida  
Resident

Defendants.

CASE NO.

**COMPLAINT DECLARATORY  
JUDGMENT, UNFAIR COMPETITION,  
DAMAGES, AND EQUITABLE RELIEF**

Plaintiff alleges:

**PARTIES**

1. **Plaintiff.** Plaintiff is Machell Sherles, as Successor Executor and Trust of the Estate of Ann R. Rule, King County, Washington Probate Cause No. 15-4-04420-3 KNT whose residence address is 25210 234<sup>th</sup> Ave. SE, Maple Valley, WA 98038 (Estate).

2. **Defendants.** Defendants are:

2.1. Foley Agency, Inc., is a New York corporation, with a principal place of

business at 34 East 38th Street, Apt. 1B, New York, NY 10016 (Foley Agency).

2.2. JoAnn Fox, who is the president of Foley Agency, Inc., resides at 1450 Palomino Way, Oviedo, FL 32765 (Fox).

### **JURISDICTION AND VENUE**

3. Defendants are subject to the jurisdiction of this Court which arises under: (i) the Lanham Act, 15 U.S.C. §§ 1051 *et seq.* Jurisdiction is conferred by 15 U.S.C. § 1121 and 28 U.S.C. § 1331. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1338, 2201(Declaratory Judgment) and 1400(b) and supplemental or pendant jurisdiction over the remaining claims under 28 U.S.C. §§ 1367(a) and 1332; and (ii) diversity of citizenship jurisdiction under 28 U.S.C. § 1332 as the parties are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c) in that a substantial part of the property that is the subject of the action is situated in this District.

### **FACTS**

5. Ann Rule, who was a prolific true crime author with many bestselling books, died on July 26, 2015. At the time of her death, all of her copyrights passed to her probate estate, including fifty-four registered copyrighted works, many of which were and are still in print and sold under license to major publishing houses, *inter alia*, Simon & Schuster, WW Norton, Penguin Random House and Michel Lafon (Paris).

6. Machell Sherles is the Successor Executor and Trustee. Please see Exhibit A attached.

7. For many years Joan Foley and the Foley Agency were the literary agents for Ann Rule. Joan Foley died on March 30, 2016. After the death of Joan Foley, defendant, JoAnn Fox,

1 assumed the position of the president of the Foley Agency. Please see Exhibit B, attached hereto.  
2 The provenance of Fox's claim to the presidency of the Foley Agency is unknown even though  
3 requests for documentation of corporate action and Fox's interest in the corporation have been  
4 made and no response received.  
5

6 8. No written agreement has been found by the Estate or produced by defendants,  
7 and on information and belief, no written agency agreement ever existed between the Foley  
8 Agency, or Joan Foley, and Ann Rule. Under Washington law an oral agency is terminated on  
9 the death of the principal. *Valentine v. Duke*, 128 Wash. 128, 131, 222 P. 494, 495 (1924) "It  
10 may be accepted as a general rule that the death of the principal terminates the agency. *Long v.*  
11 *Thayer*, 150 U. S. 520, 14 Sup. Ct. 189, 37 L. Ed. 1167; *Gilmore v. Continental Casualty Co.*,  
12 58 Wash. 203, 108 Pac. 447. . . ." Further, after the death of Joan Foley and when no written  
13 agency agreement was produced, the Estate gave notice that no agency continued between the  
14 Estate and Foley Agency effective the date of Ann Rule's death. An unwritten agency may be  
15 terminated at any time by any party. *Hoon v. Harmer Steel Products & Supply Co.*, 278 F.2d  
16 427, 433 (9<sup>th</sup> Cir. 1960).  
17  
18

19 9. After the death of Ann Rule and until the death of Joan Foley, the Foley Agency  
20 continued to receive royalties due Ann Rule. The Foley Agency deducted a ten percent agency  
21 fee and purportedly paid to the estate the net amount.  
22

23 10. After the death of Joan Foley, the Foley Agency, and/or JoAnn Fox, received the  
24 gross royalties due Ann Rule from her publishers, deducted ten percent and purportedly paid to  
25 the Estate the net amount remaining after the deduction of agency fees. As no accounting has  
26 been produced by the Foley Agency, and/or JoAnn Fox, the Estate does not know if all royalties  
27 due Ann Rule's estate have been received and paid by the Foley Agency, and/or JoAnn Fox to  
28

1 the Estate.

2 11. On information and belief, JoAnn Fox has no experience acting as a literary agent  
3 and has no ability to represent the works of Ann Rule to publishers. The usual and accustomed  
4 services to be performed by a literary agent have not and are not being performed by the Foley  
5 Agency, and/or JoAnn Fox.  
6

7 12. While the Foley Agency is *de jure*, its telephone number has been disconnected  
8 and JoAnn Fox, as its registered Agent, resides in Florida. On information and belief, the Foley  
9 Agency is no longer an operating, *de facto*, entity and is no longer performing any functions as  
10 a literary agent.  
11

12 13. The publishers with whom Ann Rule, and now her estate have licensed works,  
13 are now withholding for deferred payment all or some of the royalties due the Estate based upon  
14 conflicting instructions from the Estate and JoAnn Fox. For example, please see Exhibit C  
15 attached hereto. Simon & Shuster are currently holding in excess of \$98,000 in royalties due  
16 the Estate.  
17

18 14. On October 31, 2017, the Estate obtained from the Probate Court citations issued  
19 to the Foley Agency and JoAnn Fox, please see Exhibit D attached hereto. JoAnn Fox and the  
20 Foley Agency have willfully refused to respond to the Citations as ordered.  
21

22 15. The Estate has engaged Alan Nevins and Renaissance Literary & Talent is the  
23 exclusive literary agents for the Estate. Claims by JoAnn Fox that the Foley Agency is the  
24 literary agent for the Estate, conflicts with the instructions and directions to the publishers of  
25 Ann Rule's works and are likely to cause confusion, mistake and deceit.  
26

27 **FIRST CLAIM FOR RELIEF**  
**(Declaratory Judgment)**  
28

16. Plaintiff realleges and incorporates the allegations set forth in paragraphs 1

1 through 15 above.

2 17. The Foley Agency, and/or JoAnn Fox, have willfully refused to acknowledge the  
3 termination of the agency relationship between the Estate and the Foley Agency even though the  
4 same was terminated by law upon the death of Ann Rule.  
5

6 18. The Estate is entitled to and therefore respectfully requests a declaratory  
7 judgment and order declaring that any agency relationship between the Estate and the Foley  
8 Agency, and/or JoAnn Fox, was terminated as a matter of law on July 26, 2015, the date of Ann  
9 Rule's death.  
10

11 19. The Estate is further entitled to and therefor respectfully requests a declaratory  
12 judgment and order directing that all royalties payable to the Estate are to be paid directly to  
13 Machell Sherles as the Successor Executor and Trustee and that neither the Foley Agency nor  
14 JoAnn Fox may receive on behalf of the Estate any royalties due Ann Rule under any license  
15 with any publisher of any works of Ann Rule.  
16

17 **SECOND CLAIM FOR RELIEF**  
18 **(False Claim of Agency Relationship)**

19 20. Plaintiff realleges and incorporates the allegations set forth in paragraphs 1  
20 through 19 above.

21 21. Defendants continue to represent to the publishers of Ann Rule works that they  
22 are the literary agents of Ann Rule, which is a misrepresentation of fact and has and will lead to  
23 a likelihood of confusion, mistake or deceit as to agency representation conduct of the Foley  
24 Agency, and/or JoAnn Fox, violates Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).  
25

26 22. Defendants continue to represent to publishers of Ann Rule's books that they are  
27 entitled to receive, as agent, all royalties from the sale of Ann Rule books.  
28

23. Plaintiff has no adequate remedy of law. By representing to publishers holding

1 licenses with Ann Rule and the Estate of Ann Rule, Defendants have irreparably injured and are  
2 likely to continue to irreparably injure Plaintiff and Plaintiff is entitled to and therefore requests  
3 that a permanent injunction be entered under 15 U.S.C. § 1116. .  
4

5 **THIRD CLAIM FOR RELIEF**  
6 **(Unfair Competition RCW 19.86.010 *et seq.*)**

7 24. Plaintiff realleges and incorporates the allegations set forth in paragraphs 1  
8 through 23 above.

9 25. This claim arises under the Washington Consumer Protection Act, RCW  
10 19.86.010 *et seq.* and the common law.

11 26. The acts of Defendants as alleged herein constitute unfair methods of competition  
12 and unfair or deceptive acts or practices in the conduct of trade or commerce under RCW  
13 19.86.020. Defendant's violations of the Consumer Protection Act are harmful to the public  
14 interest. Defendant's misuse of the former and now terminated agency relationship with Ann  
15 Rule or the Estate has and has had the capacity to harm other persons.  
16

17 27. Because of the foregoing violations of the Consumer Protection Act, Plaintiff has  
18 suffered severe and irreparable injury and damages, as well as costs and attorney's fees.  
19

20 28. Pursuant to RCW 19.86.090, Plaintiff is entitled to and therefor demands  
21 injunctive relief as well as an award of damages as determined at trial, which should be trebled  
22 in the discretion of the Court, together with the costs of suit and Plaintiff's attorney's fees.  
23

24 **FOURTH CLAIM FOR RELIEF**  
25 **(Accounting and Damages.)**

26 29. Plaintiff realleges and incorporates the allegations set forth in paragraphs 1 – 28  
27 above.

28 30. Defendants have received royalties from publishers that were payable to the

1 Estate after the date of Ann Rule's death. Defendants have failed to account for payments  
2 received, books sold and provide required Form 1099 forms to permit the Estate to prepare tax  
3 returns.

4  
5 31. Defendants, after the death of Ann Rule, and having been placed on notice, have  
6 continued to retain agency fees from royalty payments received by the Foley Agency from the  
7 publishers payable to the Estate.

8 32. Plaintiff is entitled to and therefore demands that the Foley Agency, and/or JoAnn  
9 Fox, prepare an accounting of all royalties received on behalf of Ann Rule or the Estate.

10 33. Plaintiff is further entitled to recover from the Foley Agency, and/or JoAnn Fox,  
11 as damages, all agency fees retained from royalties paid by publishers on or after July 26, 2015.  
12 On information and belief, the amount of improperly retained agency fees exceeds the amount  
13 of \$100,000 and in such amount as may be proven at trial.  
14

15  
16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays:

18 A. For a declaratory judgment that the oral agency of defendants terminated as a  
19 matter of law on July 26, 2015, the date of death of Ann Rule;  
20

21 B. For a declaratory judgment and order that all royalties due under license  
22 agreements with Ann Rule are to be paid directly to the Estate, including any royalties, or a  
23 portion thereof, that are being deferred by any publisher;  
24

25 C. For permanent injunctive relief pursuant to 15 U.S.C. § 1116 prohibiting the  
26 Foley Agency, and/or JoAnn Fox, from representing that either or both are literary agents of the  
27 Estate;  
28

1 D. For an award of damages in an amount of not less than \$100,000 or such amount  
2 as is proven at trial;

3 E. For an award of damages pursuant to R.C.W. 19.86.090, including enhanced  
4 damages as provided therein;

5 F. For an award of attorney's fees and costs of suit pursuant to 15 U.S.C. § 1117 and  
6 R.C.W. 19.86.090; and  
7

8 G. For such other relief as the Court deems just and equitable.  
9

10 DATED: January 5, 2018.

11 By: s/ Rex B. Stratton  
12 Rex B. Stratton, WSBA No. 1913; VBA # 5683  
13 LYNCH & FOLEY, P.C.  
14 7 Washington Street  
15 Middlebury, Vermont 05753  
16 T: (802) 388-7933 – F: (802) 388-9200  
17 [rstratton@lynchandfoley.com](mailto:rstratton@lynchandfoley.com)  
18 Attorneys for Plaintiff  
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20  
21  
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25  
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