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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
13 **WESTERN DIVISION**

14 Halston Thayer,
15
16 Plaintiff,
17 v.
18 Matt Furie; Chain/Saw LLC; and
19 PegzDAO,
20 Defendants.

Case No. 2:22-cv-01640

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

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22 Plaintiff Halston Thayer (“Plaintiff”), by and through his attorneys, Holland
23 & Hart LLP, hereby files this Complaint and Demand for Jury Trial against
24 Defendants Matt Furie, Chain/Saw LLC, and PegzDAO¹ (collectively,
25 “Defendants”), as follows:

26 ¹ A DAO, or “decentralized autonomous organization,” is “an organization
27 represented by rules encoded as a transparent computer program, controlled by the
28 organization members, and not influenced by a central government.” Because “the
rules are embedded into the code, no managers are needed, thus removing any

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INTRODUCTION

This action arises from Defendants’ unlawful, unfair, and fraudulent business practices, which includes their unfair, deceptive, untrue, and misleading advertising and wrongful actions with respect to an auction for a particular non-fungible token (“NFT”) that led Plaintiff and others to grossly overbid on the NFT. Plaintiff therefore brings this action for fraudulent inducement, intentional and negligent misrepresentation, unfair competition and unlawful business acts and practices, breach of contract, breach of the implied covenant of good faith and fair dealing, and unjust enrichment.

PARTIES

1. Plaintiff is an individual residing in Las Vegas, Nevada.

2. Upon information and belief, Defendant Matt Furie (“Furie”) is an individual residing in Los Osos, California. Furie is a popular cryptoartist who is well known to be located and doing business in California.

3. Upon information and belief, Defendant Chain/Saw LLC (“Chain/Saw”) is a web-based company registered in Delaware and owned and/or operated by Furie from his resident state of California and Frank Musarra from his resident state of New York.

4. Upon information and belief, Defendant PegzDAO (“Pegz”) is a web-based DAO with its principal place of business in California that is owned and operated by Furie and/or Chain/Saw. The purpose of Pegz is to feature and sell Furie’s cryptoart, which Furie creates in his resident state of California.

bureaucracy or hierarchy hurdles.” *What Are DAOs And Why You Should Pay Attention*, Cathy Hackl, FORBES, June 1, 2021, available at <https://www.forbes.com/sites/cathyhackl/2021/06/01/what-are-daos-and-why-you-should-pay-attention/?sh=61d61b7b7305>.

1 5. Upon information and belief, Defendants are agents of one another
2 who have acted and continue to act on each other’s behalf with respect to the
3 allegations herein.

4 6. Defendants conspired together to facilitate and conduct an auction in
5 October 2021 of a purportedly “rare” and “unique” NFT by using Furie’s name and
6 reputation to widely advertise the auction; by featuring Furie’s artwork in the NFT
7 that was auctioned; by utilizing Pegz to store the NFT being auctioned as well as
8 99 other NFTs identical to the auctioned NFT; and by hosting the October 2021
9 auction on the Chain/Saw website, featuring and representing a connection with
10 well-known California cryptoartist, Furie.

11 7. Defendants further conspired and committed wrongful conduct by
12 engaging in a scheme to artificially inflate the value of the Pepe NFTs by which
13 they advertised the auctioned NFT as the only one of the existing 100 that would
14 be auctioned—promising that the remaining 99 would be withheld from circulation
15 indefinitely—in order to increase the bid amount, even though they fully intended
16 to distribute 46 identical NFTs for free almost immediately after the close of the
17 October 2021 auction.

18 8. As a result of Defendants’ conspiracy and wrongful conduct, Plaintiff
19 suffered damages in the amount of more than \$507,084.00 when the value of the
20 NFT he purchased from the auction for \$537,084.00 plunged to less than
21 \$30,000.00 upon Defendants’ disbursement of 46 identical Pepe NFTs for free.

22 **JURISDICTION AND VENUE**

23 9. This Court has diversity jurisdiction over the subject matter of this
24 action pursuant to 28 U.S.C. § 1332 because the parties are diverse and the amount
25 in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.

26 10. Upon information and belief, this Court has personal jurisdiction over
27 Furie because he is a resident of California, the forum state.

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1 Pepe NFT called PEPENOPOULOS was auctioned off by Sotheby’s for
2 \$3.6 million.⁴

3 16. According to the “About” page on Chain/Saw’s website,⁵ it is a
4 marketplace for NFTs that was created in 2021.

5 17. According to the “About” page on Pegz’s website,⁶ “PEGZ is a series
6 of 100 unique collectables, each one of a kind and drawn digitally by Matt Furie,”
7 the artist who “single-handedly [sic] spawned the most iconic internet creature of
8 all time, Pepe the Frog.”

9 18. The FAQ on the websites for both Chain/Saw and Pegz explain that
10 the NFTs available for purchase “are *unique assets* that live on the Ethereum
11 blockchain. . . . When you purchase an NFT artwork, you are owning a unique
12 contract attributing both the creator and collectors of said artwork.” (emphasis
13 added).

14 19. On or about October 5, 2021, Furie, Pegz, and/or Chain/Saw began
15 advertising an auction of “Matt Furie’s FEELSGOODMAN Rare Pepe Card” NFT
16 (the “Pepe NFT”) online at rarepepe.chainsaw.fun.⁷ See archived webpage,
17

18 ⁴ See *Debut Sotheby’s ‘Metaverse’ auction sees record-breaking NFT sales*,
19 Sean Dickens, YAHOO! FINANCE, October 27, 2021, available at
20 https://finance.yahoo.com/news/debut-sotheby-metaverse-auction-sees-102103038.html?guccounter=1&guce_referrer=aHR0cHM6Ly9lbi53aWtpcGVkaWEub3JnLw&guce_referrer_sig=AQAAAD38Keg4gYrk1OCNj_gPOUrLXjwKQeNBk8zcZkM5TqJplIqP3TyqvdgxKZncNk0lXAwkQGt_ntj_JfJzda8x840WaKDt5FBfhBrLRep7tn24EduREu189_ijR6TMG9xl48SMpMbptVv4G45sRji4gEObGW9lOOAb4Umr1ZqfzJFA.
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24 ⁵ The “About” page on the Chain/Saw website is located at
<https://www.chainsaw.fun/about>.

25 ⁶ The “About” page on the Pegz website is located at
26 <https://www.pegz.fun/about>.

27 ⁷ This website remains live as of the filing of this Complaint, and it now states
28 that KlausStortebeker—Plaintiff’s username—won the auction for 150ETH,
placing his winning bid on October 8, 2022.

1 attached hereto as **Ex. A**. The Pepe NFT was touted in the advertisement as “a
2 piece of blockchain history, originally minted in 2016.” The advertisement
3 explained that 500 of this Pepe NFT were “issued,” 400 were “burned” (i.e.,
4 destroyed), “99 will remain in the PegzDAO,” and only “ONE is being auctioned
5 here.” **Ex. A** (all caps in original).

6 20. On or about October 8, 2021, a Twitter user posted a tweet
7 referencing the auction of the Pepe NFT and stating, “got a buddy gettn 3 from his
8 pegz.” *See* Twitter screenshot, attached hereto as **Ex. B**. Pegz responded from its
9 Twitter account, stating that “this is not correct,” clarifying that “1 RP card to 1
10 member of PegzDAO” and the “rest are being held indefinitely,” and closing with
11 “happy bidding!” *See Ex. B*.

12 21. Relying on Defendants’ representations that only *one* Pepe NFT
13 would be auctioned and the other existing 99 would remain in the PegzDAO
14 “indefinitely,” Plaintiff placed a winning bid on the Pepe NFT for 150 ethereum
15 (“ETH”), which was equivalent to \$537,084.00 when Plaintiff placed his bid on
16 October 8, 2021.

17 22. Despite Defendants’ previous statements and repeated representations
18 that the NFT was a “rare Pepe” and “unique asset,”—i.e., a one-of-a-kind NFT—
19 on October 24, 2021, Defendants released 46 of the 99 remaining Pepe NFTs,
20 significantly devaluing Plaintiff’s Pepe NFT to less than \$30,000.00, hundreds of
21 thousands of dollars less than what he paid for this purportedly “unique asset.”
22 Upon information and belief, those 46 NFTs were given away for free.

23 23. In a letter to Defendants dated February 4, 2022, attached hereto as
24 **Ex. C**, Plaintiff sought to rescind the parties’ contract by tendering his Pepe NFT
25 back to Defendants and demanding in return the 150ETH (\$537,084.00) he paid at
26 the October 2021 auction. Defendants rejected Plaintiff’s request for rescission in
27 a letter dated March 10, 2022.

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FIRST CLAIM FOR RELIEF

(FRAUDULENT INDUCEMENT AGAINST ALL DEFENDANTS)

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3 24. Plaintiff restates all preceding allegations as though set forth fully
4 herein.

5 25. Defendants advertised that only one of the 100 Pepe NFTs remaining
6 in existence would be sold at the October 2021 auction, and the other 99 Pepe
7 NFTs would “remain in the PegzDAO.” Pegz further reiterated this during the
8 October 2021 auction when it tweeted that only “1 RP card” would be auctioned,
9 and the “rest are being held indefinitely.” Defendants made these representations
10 with the knowledge that they were false because Defendants always planned to
11 release at least 46 of the remaining 99 Pepe NFTs for free, and indeed did so days
12 after Plaintiff won the auction.

13 26. Defendants intended to deceive and induce the reliance of potential
14 bidders—like Plaintiff—on the purported rarity of the one Pepe NFT being
15 auctioned in order to artificially inflate the ultimate sale amount.

16 27. Plaintiff justifiably relied upon the knowingly false representations of
17 Defendants that only one Pepe NFT would be sold and the rest would be “held
18 indefinitely” in the PegzDAO because he believed the rarity of only one Pepe NFT
19 in circulation would render it far more valuable than the 150ETH (\$537,084.00) he
20 paid for it.

21 28. Defendants’ false representations resulted in damages to Plaintiff
22 because the Pepe NFT he purchased is now worth less than \$30,000.00 due to the
23 free giveaway of 46 of the 99 Pepe NFTs that Defendants stated would be “held
24 indefinitely” in the PegzDAO, leading to an immediate loss to Plaintiff of more
25 than \$507,084.00.

26 29. Plaintiff therefore seeks to rescind the parties’ contract per Cal. Civ.
27 Code § 1689, consistent with Plaintiff’s tendering of the auctioned Pepe NFT in
28 the February 4, 2022 letter to Defendants and demanding in exchange a full refund

1 of the \$537,084.00 purchase price. In the alternative, Plaintiff seeks money
2 damages equivalent to the total loss in value of the Pepe NFT resulting from the
3 wrongful actions of Furie, Pegz, and Chain/Saw. Plaintiff further seeks punitive
4 damages for the oppressive, fraudulent, and/or malicious nature of Defendants’
5 conduct.

6 **SECOND CLAIM FOR RELIEF**

7 **(INTENTIONAL MISREPRESENTATION AGAINST ALL DEFENDANTS)**

8 30. Plaintiff restates all preceding allegations as though set forth fully
9 herein.

10 31. Defendants misrepresented in their October 2021 advertisement for
11 the auction of the Pepe NFT purchased by Plaintiff that it was the only “ONE . . .
12 being auctioned” and that the other existing “99 [would] remain in the PegzDAO.”
13 Pegz further reiterated this during the October 2021 auction when it tweeted that
14 only “1 RP card” would be auctioned, and the “rest are being held indefinitely.”
15 The falsity of these statements was made evident when, on October 24, 2021,
16 Defendants gave away for free 46 of the 99 remaining NFTs that were purportedly
17 going to “remain in the PegzDAO.”

18 32. Defendants knew their statements in the October 2021 advertisement
19 were false at the time they were made because they always intended to give away
20 at least 46 of the 99 remaining Pepe NFTs for free. They made these false and
21 misleading statements in an effort to artificially inflate the price of the Pepe NFT.
22 Indeed, while Plaintiff paid the equivalent of \$537,084.00 for the auctioned Pepe
23 NFT—what he reasonably believed reflected the minimum value of the
24 purportedly “rare” Pepe NFT—its value dropped to less than \$30,000.00 upon the
25 disbursement of 46 identical Pepe NFTs at no cost to the recipients.

26 33. Defendants intended to induce the reliance of bidders like Plaintiff—
27 who reasonably understood that the auctioned Pepe NFT would “indefinitely” be
28 the only one in circulation, and therefore a “unique asset” as stated on the

1 Chain/Saw and Pegz websites—in order to obtain the highest possible price for the
2 auctioned Pepe NFT.

3 34. Plaintiff actually and justifiably relied upon Defendants’
4 representation that only “ONE” of the 100 Pepe NFTs would be auctioned when he
5 bid the equivalent of \$537,084.00 with the understanding that only one would be in
6 circulation, which would render Plaintiff’s Pepe NFT a valuable “rare Pepe”
7 potentially worth millions of dollars.

8 35. Furthermore, based upon Defendants’ representation that the
9 auctioned Pepe NFT would be the only one in circulation, Plaintiff had a
10 reasonable belief that the value of the Rare Pepe NFT would match or exceed his
11 bid and would further increase in value over time. Indeed, the one-of-a-kind
12 PEPENOPOULOS NFT sold for \$3.6 million that same month. If Defendants had
13 disclosed in their advertisement that they intended to give away nearly half the
14 existing Pepe NFTs for free, Plaintiff would have bid significantly less, if at all.

15 36. Plaintiff suffered damages in the amount of more than \$507,084.00 as
16 a result of Defendants’ misrepresentations because he purchased the Pepe NFT for
17 \$537,084.00, and it is now worth less than \$30,000.00.

18 37. Plaintiff therefore seeks to rescind the parties’ contract per Cal. Civ.
19 Code § 1689, consistent with Plaintiff’s tendering of the auctioned Pepe NFT in
20 the February 4, 2022 letter to Defendants and demanding in exchange a full refund
21 of the \$537,084.00 purchase price. In the alternative, Plaintiff seeks money
22 damages equivalent to the difference between what he paid for the Pepe NFT and
23 the actual value of the Pepe NFT once Defendants wrongfully released 46 identical
24 Pepe NFTs for free. Plaintiff further seeks punitive damages for the oppressive,
25 fraudulent, and/or malicious nature of Defendants’ conduct.

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THIRD CLAIM FOR RELIEF

(NEGLIGENT MISREPRESENTATION AGAINST ALL DEFENDANTS)

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3 38. Plaintiff restates all preceding allegations as though set forth fully
4 herein.

5 39. As stated in Plaintiff’s Second Claim for Relief, Defendants
6 misrepresented in their October 2021 advertisement for the auction of the Pepe
7 NFT purchased by Plaintiff that it was the only “ONE . . . being auctioned” and
8 that the other existing “99 [would] remain in the PegzDAO.” Pegz further
9 reiterated this during the October 2021 auction when it tweeted that only “1 RP
10 card” would be auctioned, and the “rest are being held indefinitely.” The falsity of
11 these statements was made evident when, on October 24, 2021, Defendants gave
12 away 46 of the 99 remaining Pepe NFTs that were supposed to be “remain in the
13 PegzDAO.”

14 40. If Defendants believed their statements in the October 2021
15 advertisement were true, they had no reasonable grounds for such a belief because
16 they made those statements in an effort to artificially inflate the price of the Pepe
17 NFT. Indeed, while Plaintiff paid the equivalent of \$537,084.00 for the auctioned
18 Pepe NFT, its value dropped to less than \$30,000.00 upon the disbursement of 46
19 of the remaining Pepe NFTs at no cost to the recipients.

20 41. Defendants intended to induce the reliance of bidders like Plaintiff—
21 who reasonably understood that the auctioned Pepe NFT would “indefinitely” be
22 the only one in circulation, and therefore a “unique asset” as stated on the
23 Chain/Saw and Pegz websites—in order to obtain the highest possible price at
24 auction.

25 42. Plaintiff actually and justifiably relied upon the representation of
26 Defendants that only “ONE” of the existing Pepe NFTs would be auctioned and
27 that the “99 [would] remain in the PegzDAO” when he bid 150ETH (\$537,084.00)
28 with the understanding that only one Pepe NFT would be in circulation.

1 43. Furthermore, based upon Defendants’ representations suggesting that
2 the auctioned Pepe NFT would be the only one in circulation, Plaintiff had a
3 reasonable belief that the value of the Pepe NFT would match and likely far exceed
4 his bid. Indeed, the one-of-a-kind PEPENOPOULOS NFT sold for \$3.6 million
5 that same month. If Defendants had disclosed in their advertisements that they
6 intended to give away nearly half the existing Pepe NFTs for free, Plaintiff would
7 have bid significantly less, if at all.

8 44. Plaintiff suffered damages in the amount of more than \$507,084.00 as
9 a result of Defendants’ misrepresentations because the Pepe NFT he purchased for
10 \$537,084.00 is now worth less than \$30,000.00.

11 45. Plaintiff therefore seeks money damages equivalent to the difference
12 between what he paid for the Pepe NFT and the actual value of the Pepe NFT once
13 Defendants wrongfully released 46 identical Pepe NFTs for free.

14 **FOURTH CLAIM FOR RELIEF**

15 ***IN THE ALTERNATIVE***

16 **(VIOLATION OF THE UNFAIR COMPETITION LAW,
17 CAL. BUS. & PROF. CODE § 17200 *ET SEQ.* AGAINST ALL DEFENDANTS)**

18 46. Plaintiff restates all preceding allegations as though set forth fully
19 herein.

20 47. California’s Unfair Competition Law (“UCL”) prohibits persons from
21 engaging in unfair competition and allows “a person who has suffered injury in
22 fact and has lost money or property as a result of the unfair competition” to sue for
23 injunctive and restitutionary relief. Cal. Bus. & Prof. Code §§ 17203, 17204.

24 48. “Unfair competition” is defined in the UCL as including “any
25 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue
26 or misleading advertising[.]” Cal. Bus. & Prof. Code § 17200.

27 49. Defendants have engaged in unfair competition by utilizing unfair,
28 deceptive, untrue, or misleading advertising as part of a scheme to artificially

1 inflate the price at the October 2021 auction of the Pepe NFT. Defendants
2 specifically did this by repeatedly stating that the NFT being auctioned was a “rare
3 Pepe” and a “unique asset,” i.e. a one-of-a-kind piece of cryptoart. Those
4 statements proved to be blatantly false when Defendants gave away 46 of the
5 remaining 99 Pepe NFTs for free, rendering Plaintiff’s Pepe NFT anything but
6 “rare” or “unique,” and devaluing it by over \$507,084.00.

7 50. Plaintiff is a person who has suffered injury in fact and has lost money
8 or property as a result of the unfair competition engaged in by Defendants because
9 he paid approximately \$537,084.00 for an asset that is now worth less than
10 \$30,000.00 as a result of Defendants’ unfair competition.

11 51. Plaintiff seeks to obtain restitution of all monies generated as a result
12 of Defendants’ unlawful, unfair, and/or fraudulent acts and practices; to enjoin
13 Defendants from releasing any more of the remaining Pepe NFTs that purportedly
14 were to remain indefinitely in the PegzDAO and from otherwise engaging in any
15 further unlawful, unfair, and/or fraudulent acts and practices; and all other relief
16 allowed under California Business & Professions Code §17200.

17 **FIFTH CLAIM FOR RELIEF**

18 *IN THE ALTERNATIVE*

19 **(VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT,**
20 **CAL. CIV. CODE § 1750 ET SEQ. AGAINST ALL DEFENDANTS)**

21 52. Plaintiff restates all preceding allegations as though set forth fully
22 herein.

23 53. The Consumers Legal Remedies Act makes unlawful certain unfair
24 methods of competition and unfair or deceptive acts or practices, including
25 “[a]dvertising goods or services with intent not to sell them as advertised” and
26 “[r]epresenting that goods or services are of a particular standard, quality, or
27 grade.” Cal. Civ. Code § 1770(7), (9).

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1 54. Any consumer who suffers any damages as a result of another person
2 engaging in a “a method, act, or practice declared to be unlawful by Section 1770
3 may bring an action against that person to obtain,” *inter alia*, actual damages, an
4 injunction, restitution, punitive damages, and any other relief the court deems
5 proper. Cal. Civ. Code § 1780(a).

6 55. Defendants have engaged in acts declared unlawful by Section 1770,
7 namely by advertising that the Pepe NFT sold at the October 2021 auction would
8 be the only “ONE” of the 100 existing Pepe NFTs auctioned and in circulation as
9 part of a scheme to artificially inflate the price while fully intending to give away
10 46 of the Pepe NFTs for free shortly thereafter.

11 56. Defendants further engaged in acts declared unlawful by Section 1770
12 by falsely representing to the public—including Plaintiff—that the Pepe NFT was
13 a one-of-a-kind “rare Pepe,” that is, a “unique asset.” The free giveaway of 46
14 Pepe NFTs rendered the Pepe NFT purchased by Plaintiff anything but “rare” or
15 “unique.”

16 57. Plaintiff has suffered damages as a result of Defendants’ use of
17 unlawful methods, acts, and practices because, in reliance upon their false
18 advertising and misrepresentations, he paid approximately \$537,084.00 for an asset
19 that is now worth less than \$30,000.00.

20 58. Plaintiff seeks to obtain restitution and disgorgement of all monies
21 generated as a result of Defendants’ unlawful, unfair, and/or fraudulent acts and
22 practices; to enjoin Defendants from releasing any more of the remaining Pepe
23 NFTs that purportedly were to remain indefinitely in the PegzDAO and from
24 otherwise engaging in any further unlawful, unfair, and/or fraudulent acts and
25 practices; to be awarded actual damages equivalent to the total loss in value of the
26 Pepe NFT resulting from Defendants’ wrongful actions; the imposition of punitive
27 damages for the oppressive, fraudulent, and/or malicious nature of Defendants’
28 conduct; and/or all other relief allowed under Cal. Civ. Code § 1780.

1 **SIXTH CLAIM FOR RELIEF**

2 ***IN THE ALTERNATIVE***

3 **(MISTAKE OF FACT AGAINST ALL DEFENDANTS)**

4 59. Plaintiff restates all preceding allegations as though set forth fully
5 herein.

6 60. To the extent Plaintiff's reasonable belief that the remaining 99 Pepe
7 NFTs would remain in the PegzDAO indefinitely was a mistake, such a mistake
8 was material to Plaintiff's contract with Defendants.

9 61. Such a mistake was not the result of any neglect of a legal duty on the
10 part of Plaintiff because it was reasonably based upon Defendants' statements that,
11 of the 100 Pepe NFTs in existence, "99 will remain in the PegzDAO," only "ONE
12 is being auctioned," and the "rest are being held indefinitely."

13 62. Enforcement of Plaintiff's contract with Defendants as made would be
14 unconscionable because it means that Plaintiff will have paid more than half a
15 million dollars for a piece of cryptoart that is now worth less than \$30,000 and will
16 further decline in value if Defendants release more of the remaining Pepe NFTs
17 into circulation.

18 63. Defendants can easily be returned to the status quo through Plaintiff's
19 return of the Pepe NFT to Defendants and Defendants return to Plaintiff the
20 \$537,084.00 he paid.

21 64. After taking a reasonable amount of time to assess his situation and
22 retain and consult his attorneys, Plaintiff gave Defendants prompt notice of his
23 election to rescind the parties' contract and offered to restore to Defendants the
24 Pepe NFT in return for his payment of \$537,084.00. One month after receiving
25 Plaintiff's notice of his election to rescind, Defendants refused to accept the Pepe
26 NFT or refund any of the \$537,084.00 that Plaintiff paid for a purportedly "rare"
27 and "unique" Pepe NFT.

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1 65. Plaintiff therefore seeks to rescind the parties’ contract per Cal. Civ.
2 Code §§ 1577 and 1689, consistent with Plaintiff’s tendering of the auctioned Pepe
3 NFT in the February 4, 2022 letter to Defendants and demanding in exchange a full
4 refund of the \$537,084.00 purchase price.

5 **SEVENTH CLAIM FOR RELIEF**

6 *IN THE ALTERNATIVE*

7 **(BREACH OF CONTRACT AGAINST ALL DEFENDANTS)⁸**

8 66. Plaintiff restates all preceding allegations as though set forth fully
9 herein.

10 67. The parties entered into a valid, enforceable contract when Defendants
11 agreed to produce a single Pepe NFT (holding the remaining 99 in the PegzDAO
12 indefinitely), and Plaintiff agreed to pay 150ETH in exchange. Indeed, Pegz and
13 Chain/Saw have conceded to this by stating the following on their websites:
14 “When you purchase an NFT artwork, you are owning a unique *contract*.”
15 (emphasis added).

16 68. Plaintiff performed all his duties and obligations under the contract by
17 paying Defendants 150ETH.

18 69. Defendants breached the contract by giving away 46 of the existing
19 Pepe NFTs for free rather than withholding all 99 Pepe NFTs from circulation
20 indefinitely, as promised.

21 70. As a result of Defendants’ breach, Plaintiff bid far more than he
22 otherwise would have (if at all), causing him to incur at least \$507,084.00 in
23 damages.

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26 ⁸ Plaintiff acknowledges that he cannot obtain both rescission on his fraud-based
27 claims as well as damages and/or specific performance on his breach of contract
28 claims. He therefore raises such claims and corresponding remedies in the
alternative.

1 71. Plaintiff therefore seeks the following alternative remedies: money
 2 damages equivalent to the total loss in value of the Pepe NFT resulting from
 3 Defendants’ wrongful actions; or an order requiring Defendants to collect the 46
 4 freely released Pepe NFTs and withhold them from circulation indefinitely, as
 5 originally promised.

6 **EIGHTH CLAIM FOR RELIEF**

7 *IN THE ALTERNATIVE*

8 **(BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
 9 **AGAINST FURIE, PEGZ, & CHAIN/SAW)**

10 72. Plaintiff restates all preceding allegations as though set forth fully
 11 herein.

12 73. The implied covenant of good faith and fair dealing is implied by law
 13 in every contract.

14 74. The parties entered into a valid, enforceable contract when Furie,
 15 Pegz, & Chain/Saw agreed to produce a single Pepe NFT (holding the remaining
 16 99 in the PegzDAO indefinitely), and Plaintiff agreed to pay 150ETH in exchange.
 17 Indeed, Pegz and Chain/Saw have conceded to this by stating the following on
 18 their websites: “When you purchase an NFT artwork, you are owning a unique
 19 *contract*.” (emphasis added).

20 75. Implied in the Furie, Pegz, & Chain/Saw’s agreement to sell Plaintiff
 21 the “rare” and “unique” Pepe NFT was that they would act in good faith by
 22 withholding the remaining 99 Pepe NFTs from circulation indefinitely in order to
 23 maintain the rarity, uniqueness, and ultimate value of the Pepe NFT that Plaintiff
 24 purchased.

25 76. Furie, Pegz, & Chain/Saw engaged in conduct that frustrated
 26 Plaintiff’s rights to the benefits of the parties’ agreement by distributing 46 Pepe
 27 NFTs for free, which reduced the value of Plaintiff’s Pepe NFT by hundreds of
 28 thousands of dollars to less than \$30,000.00.

1 77. As a result of Furie, Pegz, & Chain/Saw’s breach of the implied
2 covenant of good faith and fair dealing, Plaintiff has suffered damages in the
3 amount of more than \$507,084.00.

4 78. Plaintiff therefore seeks the following alternative remedies: money
5 damages equivalent to the difference between what Plaintiff paid for the Pepe NFT
6 and the actual value of the Pepe NFT resulting from Furie, Pegz, & Chain/Saw’s
7 wrongful actions; or an order requiring Furie, Pegz, & Chain/Saw to collect the 46
8 freely released Pepe NFTs and withhold them from circulation indefinitely, as
9 originally promised.

10 **NINTH CLAIM FOR RELIEF**

11 *IN THE ALTERNATIVE*

12 **(UNJUST ENRICHMENT AGAINST ALL DEFENDANTS)**

13 79. Plaintiff restates all preceding allegations as though set forth fully
14 herein.

15 80. Plaintiff conferred a monetary benefit upon Defendants Furie, Pegz,
16 and/or Chain/Saw by paying 150ETH (\$537,084.00) for the Pepe NFT auctioned
17 off by Defendants in October 2021, which Plaintiff reasonably believed was valued
18 at or above the amount he paid.

19 81. Defendants have unjustly retained Plaintiff’s \$537,084.00 because the
20 Pepe NFT he received in exchange is now worth hundreds of thousands of dollars
21 less than what Plaintiff paid as a result of Furie, Pegz, & Chain/Saw’s free release
22 of 46 of the same Pepe NFT.

23 82. Defendants had possession, custody, and/or control of the remaining
24 99 Pepe NFTs at the time they engaged in their scheme to artificially inflate the
25 price of the auctioned Pepe NFT, and, upon information and belief, they continue
26 to hold at least 53 of the remaining Pepe NFTs. As a result of Defendants’ scheme
27 and the artificially inflated auction price it caused, the value of each of the
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1 remaining Pepe NFTs has increased substantially, to the benefit of Defendants and
2 at the expense of Plaintiff.

3 83. Plaintiff therefore seeks restitution for the difference between what he
4 paid for the Pepe NFT and the actual value of the Pepe NFT once 46 identical Pepe
5 NFTs were released for free. Alternatively, Plaintiff seeks an order requiring
6 Furie, Pegz, & Chain/Saw to collect the 46 freely released Pepe NFTs and
7 withhold them from circulation, as originally represented.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff Halston Thayer requests that the Court enter
10 judgment in his favor as follows:

11 A. Allowing Plaintiff to rescind the parties' contract per Cal. Civ. Code
12 § 1689, such that Defendants return to Plaintiff the \$537,084.00 he paid for the
13 Pepe NFT and Plaintiff return to Defendants the Pepe NFT he purchased; or, in the
14 alternative,

15 B. Ordering Defendants to pay Plaintiff monetary damages in an amount
16 equivalent to the difference in the amount Plaintiff paid for the Pepe NFT
17 (\$537,084.00) and the actual value of the Pepe NFT; or, in the alternative,

18 C. Ordering Defendants to collect the outstanding 46 Pepe NFTs and to
19 withhold all 99 Pepe NFTs from circulation; or, in the alternative,

20 D. Ordering that Defendants account for and pay Plaintiff restitution and
21 any additional profits Defendants received as a result of their wrongful conduct,
22 amounting to no less than the difference between what Plaintiff paid for the Pepe
23 NFT (\$537,084.00) and the actual value of the Pepe NFT.

24 WHEREFORE, Plaintiff Halston Thayer further requests that the Court enter
25 judgment in his favor as follows:

26 E. Imposing punitive damages against Defendants for their oppressive,
27 fraudulent, and/or malicious conduct; and

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1 F. Awarding to Plaintiff reasonable attorneys’ fees and costs incurred in
2 bringing this action; and

3 G. Awarding to Plaintiff pre-judgment and post-judgment interest on all
4 moneys recovered by or awarded to it; and

5 H. Granting such other and further relief as the Court deems just,
6 equitable, and appropriate.

7 **JURY DEMAND**

8 Plaintiff Halston Thayer demands a trial by jury of all issues so triable.

9
10 Dated: March 12, 2022

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