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13 and PEGZDAO

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 HALSTON THAYER,  
17  
18 Plaintiff,

19 v.

20 MATT FURIE, CHAIN/SAW LLC,  
21 and PEGZDAO  
22 Defendants.

} Case No. 2:22-cv-01640  
} **ANSWER TO COMPLAINT**  
} **JURY TRIAL DEMANDED**

**ANSWER**

Defendants Matt Furie, Chain/Saw LLC and PegzDAO (collectively, “Defendants”), by their attorneys, hereby file this Answer to the Complaint by Plaintiff Halston Thayer’s (“Plaintiff”) as follows:

**INTRODUCTION**

Defendants deny each and every allegation made in the Introduction.

**PARTIES**

1. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 1, and therefore deny them.

2. Defendants admit that Matt Furie (“Furie”) is an individual residing in California and that Furie is an artist. Defendants deny the remainder of the allegations in Paragraph 2.

3. Defendants admit that Chain/Saw LLC (“Chain/Saw”) is a company registered in Delaware and owned and/or operated by Frank Musarra. Defendants deny the remainder of the allegations in Paragraph 3.

4. The allegations in this paragraph contain legal conclusions and, on that basis, Defendants deny those allegations. Defendants deny any factual allegations in Paragraph 4.





5. The allegations in this paragraph contain legal conclusions and, on that basis, Defendants deny those allegations. Defendants deny any factual allegations in Paragraph 5.

6. Defendants admit that (a) the Pepe NFT<sup>1</sup> provides access to the cryptographic private key that controls a cryptographic wallet on the Counterparty

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<sup>1</sup> The ERC-721 token corresponding to Ethereum contract address 0x82C7a8f707110f5FBb16184A5933E9F78a34c6ab and tokenID 21034271228834581.

1 platform<sup>2</sup> that holds a non-fungible token minted on the Bitcoin blockchain (the  
2 “Plaintiff’s XCP Pepe NFT”) that corresponds to a digital image of Furie’s artwork  
3 (such digital image, the “Pepe Artwork”); (b) Chain/Saw conducted an auction of  
4 the Pepe NFT (the “Auction”) at the URL <https://rarepepe.chainsaw.fun/> in October  
5 2021 (the “Auction Site”); (c) immediately before the close of the Auction,  
6 PegzDAO controlled 100 unique non-fungible tokens (“NFTs”) minted on the  
7 Bitcoin blockchain, each of which corresponded to the Pepe Artwork (collectively,  
8 the “FEELSGOODMAN NFTs”), which included the Plaintiff’s XCP Pepe NFT;  
9 and (d) the Auction Site displayed the Pepe Artwork. Defendants deny the  
10 remainder of the allegations in Paragraph 6.

11 7. Defendants admit that the Auction Site stated, “500 cards issued ,  
12 400 burned , 99 will remain in the PegzDAO , and ONE is being auctioned  
13 here .

14 8. Defendants deny each and every allegation made in Paragraph 8.

15 **JURISDICTION AND VENUE**

16 9. Defendants admit that this action purports to arise under 28 U.S.C.  
17 § 1332. Defendants deny the remainder of the allegations in Paragraph 9.

18 10. Defendants admit that this Court has personal jurisdiction over Furie.  
19 To the extent Paragraph 10 contains any other allegations, Defendants deny them.

20 11. Defendants deny each and every allegation made in Paragraph 11.

21 12. Defendants deny each and every allegation made in Paragraph 12.

22 13. Defendants admit that Furie resides within the Western Division of the  
23 Central District of California. Defendants deny the remainder of the allegations in  
24 Paragraph 13.

25  
26 \_\_\_\_\_  
27 <sup>2</sup> Counterparty is a peer-to-peer financial platform and distributed, open-  
28 source Internet protocol built on top of the Bitcoin blockchain. *See*  
[https://en.wikipedia.org/wiki/Counterparty\\_\(platform\)](https://en.wikipedia.org/wiki/Counterparty_(platform)).

**GENERAL ALLEGATIONS**

14. Defendants admit that Furie created a character known as “Pepe the Frog,” which debuted in a web comic titled *Boy’s Club* in or about 2005. Defendants deny the remainder of the allegations in Paragraph 14 and the footnotes.





15. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 15 and the footnote, and therefore deny them.

16. Defendants admit that the website located at <https://www.chainsaw.fun/about> includes the statement “[a]s an NFT marketplace, Chain/Saw ...” and that Chain/Saw operates such website. Defendants deny the remainder of the allegations in Paragraph 16 and the footnote.

17. Defendants admit that the website located at <https://www.pegz.fun/about> includes the statements “PEGZ is a series of 100 unique collectables, each one of a kind and drawn digitally by Matt Furie,” and “The PEGZ project ... provides a unique opportunity for collectors to get into his vast universe of bizarre mutants and characters, the same universe that single-handedly [sic] spawned the most iconic internet creature of all time, Pepe the Frog.” Defendants deny the remainder of the allegations in Paragraph 17 and the footnote.

18. Defendants admit that the websites located at <https://www.pegz.fun/faq> and <https://www.chainsaw.fun/faq> each contain the following statement: “NFTs, or Non Fungible Tokens, are unique assets that live on the Ethereum blockchain. NFTs can be anything—drawings, GIFs, videos, music, text. When you purchase an NFT artwork, you are owning a unique contract attributing both the creator and collectors of said artwork.” Defendants deny the remainder of the allegations in Paragraph 18.

19. Defendants admit that: (a) in October 2021, Chain/Saw advertised the Auction at the Auction Site; (b) such website remained active as of the filing of the Complaint; and (c) such website contains the statements: (i) “SOLD to KlausStortebeker (0x2d8e...7800) for 150 ETH!,” (ii) “@0x2d8e...7800 placed a bid

1 of 150.0 ETH on October 08 @ 3:30 PM,” (iii) “Rare Pepe Card, a piece of  
2 blockchain history, originally minted in 2016,” and (iv) “500 cards issued , 400  
3 burned , 99 will remain in the PegzDAO , and ONE is being auctioned here  
4 .

5 Defendants deny the remainder of the allegations in Paragraph 19 and the  
6 footnote.

6 20. Defendants admit that PegzDAO posted through the @PegzDAO  
7 Twitter account the statement referenced in Paragraph 20 as shown in Exhibit B to  
8 the Complaint. Defendants are without information or knowledge sufficient to form  
9 a belief as to the truth of the remainder of the allegations in Paragraph 20, and  
10 therefore deny them.

11 21. Defendants admit that the person controlling the private key for  
12 Ethereum address 0x2d8eD3D49F1b31F9f5FC45e8011D3D5b7Fe27800 placed a  
13 bid on the Pepe NFT for 150 Ether (“ETH”) and that such person won the Auction  
14 for the Pepe NFT. Defendants are without information or knowledge sufficient to  
15 form a belief as to the truth of the remainder of the allegations in Paragraph 21, and  
16 therefore deny them.





17 22. Defendants admit that PegzDAO allocated 46 FEELSGOODMAN  
18 NFTs on October 22, 2021. Defendants deny the remainder of the allegations in  
19 Paragraph 22.

20 23. Defendants admit that in the letter addressed to Defendants dated  
21 February 4, 2022, attached as Exhibit C to the Complaint, Plaintiff sought to rescind  
22 the contract of sale for the Pepe NFT by tendering the Pepe NFT back to Defendants  
23 and demanding that Defendants refund Plaintiff \$537,084.00. Defendants admit that  
24 Chain/Saw rejected Plaintiff’s request for rescission in a letter dated March 10,  
25 2022, attached to this Answer as Exhibit A. Defendants deny the remainder of the  
26 allegations in Paragraph 23.

**FIRST CLAIM FOR RELIEF**

**(FRAUDULENT INDUCEMENT AGAINST ALL DEFENDANTS)**

24. Defendants repeat and incorporate the admissions and denials of Paragraphs 1 through 23, as if set forth at herein.

25. Defendants admit that the Auction Site contained the statement, “500 cards issued , 400 burned , 99 will remain in the PegzDAO , and ONE is being auctioned here 

26. Denied.

27. Denied.

28. Denied.

29. Defendants admit that Plaintiff seeks the remedies described in Paragraph 29. Defendants deny the remainder of the allegations in Paragraph 29.

**SECOND CLAIM FOR RELIEF**

**(INTENTIONAL MISREPRESENTATION AGAINST ALL DEFENDANTS)**

30. Defendants repeat and incorporate the admissions and denials of Paragraphs 1 through 29, as if set forth at herein.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Defendants admit that Plaintiff seeks the remedies described in Paragraph 37. Defendants deny the remainder of the allegations in Paragraph 37.

1 **THIRD CLAIM FOR RELIEF**  
2 **(NEGLIGENT MISREPRESENTATION AGAINST ALL DEFENDANTS)**

3 38. Defendants repeat and incorporate the admissions and denials of  
4 Paragraphs 1 through 37, as if set forth at herein.

5 39. Denied.

6 40. Denied.

7 41. Denied.

8 42. Denied.

9 43. Denied.

10 44. Denied.

11 45. Defendants admit that Plaintiff seeks the remedies described in  
12 Paragraph 45. Defendants deny the remainder of the allegations in Paragraph 45.

13 **FOURTH CLAIM FOR RELIEF**

14 ***IN THE ALTERNATIVE***

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

17 46. Defendants repeat and incorporate the admissions and denials of  
18 Paragraphs 1 through 45, as if set forth at herein.

19 47. The allegations in this paragraph contain legal conclusions to which  
20 Defendants have no obligation to respond. Defendants deny any factual allegations  
21 contained in Paragraph 47.

22 48. The allegations in this paragraph contain legal conclusions to which  
23 Defendants have no obligation to respond. Defendants deny any factual allegations  
24 contained in Paragraph 48.

25 49. Denied.

26 50. Denied.

27 51. Defendants admit that Plaintiff seeks the remedies described in  
28 Paragraph 51. Defendants deny the remainder of the allegations in Paragraph 51.

**FIFTH CLAIM FOR RELIEF**

***IN THE ALTERNATIVE***

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

52. Defendants repeat and incorporate the admissions and denials of Paragraphs 1 through 51, as if set forth at herein.

53. The allegations in this paragraph contain legal conclusions to which Defendants have no obligation to respond. Defendants deny any factual allegations contained in Paragraph 53.

54. The allegations in this paragraph contain legal conclusions to which Defendants have no obligation to respond. Defendants deny any factual allegations contained in Paragraph 54.

55. Denied.

56. Denied.

57. Denied.

58. Defendants admit that Plaintiff seeks the remedies described in Paragraph 58. Defendants deny the remainder of the allegations in Paragraph 58.

**SIXTH CLAIM FOR RELIEF**

***IN THE ALTERNATIVE***

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

59. Defendants repeat and incorporate the admissions and denials of Paragraphs 1 through 58, as if set forth at herein.

60. The allegations in this paragraph contain legal conclusions to which Defendants have no obligation to respond. Defendants deny any factual allegations contained in Paragraph 60.

61. The allegations in this paragraph contain legal conclusions to which Defendants have no obligation to respond. Defendants deny any factual allegations contained in Paragraph 61.



1           62.     The allegations in this paragraph contain legal conclusions to which  
2 Defendants have no obligation to respond. Defendants deny any factual allegations  
3 contained in Paragraph 62.

4           63.     Denied.

5           64.     Denied.

6           65.     Defendants admit that Plaintiff seeks the remedies described in  
7 Paragraph 65. Defendants deny the remainder of the allegations in Paragraph 65.

8                                   **SEVENTH CLAIM FOR RELIEF**

9                                   *IN THE ALTERNATIVE*

10                               **(BREACH OF CONTRACT AGAINST ALL DEFENDANTS)**

11           66.     Defendants repeat and incorporate the admissions and denials of  
12 Paragraphs 1 through 65, as if set forth at herein.

13           67.     The allegations in this paragraph contain legal conclusions to which  
14 Defendants have no obligation to respond. Defendants deny any factual allegations  
15 contained in Paragraph 67.

16           68.     The allegations in this paragraph contain legal conclusions to which  
17 Defendants have no obligation to respond. Defendants deny any factual allegations  
18 contained in Paragraph 68.

19           69.     Denied.

20           70.     Denied.

21           71.     Defendants admit that Plaintiff seeks the remedies described in  
22 Paragraph 71. Defendants deny the remainder of the allegations in Paragraph 71.

23                                   **EIGHTH CLAIM FOR RELIEF**

24                                   *IN THE ALTERNATIVE*

25                               **(BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR  
26 DEALING AGAINST FURIE, PEGZDAO, & CHAIN/SAW)**

27           72.     Defendants repeat and incorporate the admissions and denials of  
28 Paragraphs 1 through 71, as if set forth at herein.

1 73. The allegations in this paragraph contain legal conclusions to which  
2 Defendants have no obligation to respond. Defendants deny any factual allegations  
3 contained in Paragraph 73.

4 74. The allegations in this paragraph contain legal conclusions to which  
5 Defendants have no obligation to respond. Defendants deny any factual allegations  
6 contained in Paragraph 74.

7 75. The allegations in this paragraph contain legal conclusions to which  
8 Defendants have no obligation to respond. Defendants deny any factual allegations  
9 contained in Paragraph 75.

10 76. Denied.

11 77. Denied.

12 78. Defendants admit that Plaintiff seeks the remedies described in  
13 Paragraph 78. Defendants deny the remainder of the allegations in Paragraph 78.

14 **NINTH CLAIM FOR RELIEF**

15 ***IN THE ALTERNATIVE***

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

17 79. Defendants repeat and incorporate the admissions and denials of  
18 Paragraphs 1 through 78, as if set forth at herein.

19 80. The allegations in this paragraph contain legal conclusions to which  
20 Defendants have no obligation to respond. Defendants deny any factual allegations  
21 contained in Paragraph 80.

22 81. Denied.

23 82. Defendants admit that immediately before the close of the Auction,  
24 PegzDAO controlled 100 unique FEELSGOODMAN NFTs and that PegzDAO  
25 continues to control 53 FEELSGOODMAN NFTs. Defendants deny the remainder  
26 of the allegations in Paragraph 82.

27 83. Defendants admit that Plaintiff seeks the remedies described in  
28 Paragraph 83. Defendants deny the remainder of the allegations in Paragraph 83.

1 **PRAYER FOR RELIEF**

2 Defendants deny that Plaintiff is entitled to any relief claimed in the  
3 Complaint.

4 **AFFIRMATIVE DEFENSES**

5 **FACTUAL BACKGROUND**

6 84. PegzDAO is a blockchain-based distributed autonomous organization.  
7 One becomes a member of the PegzDAO by purchasing certain NFTs featuring  
8 artwork by Defendant Furie called “PEGZ” and contributing ETH to the PegzDAO  
9 treasury. The PegzDAO can use the treasury resources to support its activities. The  
10 market value of ETH in US Dollar terms is volatile. As of May 16, 2022, the value  
11 was approximately \$2,140 per ETH.

12 85. Defendant Chain/Saw is a Delaware limited liability company. Its  
13 business consists primarily of producing and operating online auctions of NFTs for  
14 third parties, like PegzDAO.

15 86. Defendant Furie created original digital artwork featuring the Pepe the  
16 Frog character to be associated with and sold as NFTs and donated the resulting  
17 FEELSGOODMAN NFTs to the PegzDAO to be auctioned by Chain/Saw. For  
18 reasons having nothing to do with Furie, the Pepe character has become a popular  
19 symbol with certain factions of the “Alt-Right” on the Internet. Furie created the  
20 Pepe Artwork and donated the resulting FEELSGOODMAN NFTs to the PegzDAO  
21 for auction, in part, to wrest the Internet narrative about his character away from  
22 such political extremists. NFTs featuring Pepe the Frog are sometimes referred to as  
23 “cards” because some NFTs created by fans of the Pepe character resemble trading  
24 cards.





25 87. The Pepe NFT is unique, the same way a numbered edition of a print is  
26 unique, that is, it has a unique number or “tokenID.”  
27  
28

1 88. On information and belief Plaintiff understood while the Auction was  
2 being conducted that the Pepe NFT was a unique instance in an edition of 100  
3 FEELSGOODMAN NFTs.

4 89. The use of the word “rare” in “Rarepepe” does not connote rarity but  
5 refers to a class or type of NFTs featuring variations on the Pepe the Frog character  
6 known as “Rarepepes.”

7 90. On information and belief, Plaintiff understood while the Auction was  
8 being conducted that “Rarepepe” does not connote rarity but refers to a class or type  
9 of NFTs featuring variations on the Pepe the Frog character known as “Rarepepes.”

10 91. In October 2021, Chain/Saw auctioned one NFT titled  
11 “FEELSGOODMAN,” a reference to the original 2005 Furie cartoon in which the  
12 Pepe character first appeared. Originally, 500 FEELSGOODMAN NFTs were  
13 created (“minted”). In preparation for the Auction, PegzDAO destroyed (“burned”)  
14 four hundred of the FEELSGOODMAN NFTs. To “burn” an NFT means to transfer  
15 the unique cryptographic code associated with the NFT to an inaccessible account  
16 (“wallet”), thus making it permanently unavailable to transfer or trade.

17 92. Chain/Saw described the Auction in part as follows, “500 cards issued  
18 , 400 burned , 99 will remain in the PegzDAO , and ONE is being  
19 auctioned here .

Chain/Saw never promised to burn the remaining 99 un-  
20 auctioned FEELSGOODMAN NFTs or to keep them off the market forever.

21 93. As shown in Exhibit B to the Complaint, on or about October 8, 2021,  
22 before the Auction was concluded, PegzDAO responded to an online post stating,  
23 “got a buddy gettn 3 from his pegz,” by posting the following tweet on its Twitter  
24 account (@PegzDAO):

25 “Heads up, this was forwarded to us

26 This is not correct

27 1 [FEELSGOODMAN NFT] to 1 member of PegzDAO

28 rest are being held indefinitely

1 happy bidding”

2 94. Because Plaintiff was aware of the statement “1 [FEELSGOODMAN  
3 NFT] to 1 member of PegzDAO” referenced in Paragraph 93 above, and because  
4 Plaintiff was not a member of the PegzDAO, Plaintiff understood while the Auction  
5 was being conducted that other FEELSGOODMAN NFTs would be allocated to  
6 PegzDAO members after the Auction.

7 95. Plaintiff claims that he won the Auction by placing a bid of 150 ETH.<sup>3</sup>

8 96. On or about October 8, 2021, at 4:39 PM ET, Plaintiff sent a direct  
9 message via Twitter from his account @KlauStortebeker to PegzDAO, stating:

10 “Hey? Just curious and want to confirm. When you say “1 RP card to  
11 1 member of PegzDAO and the rest are held indefinitely” Are you  
12 saying that every member of the PegzDAO gets 1 card, or that only 1  
13 card gets raffled off to the DAO members and you hold the other 98.  
14 *Wouldn't have changed my bid as I think 150 [ETH] is a good deal,*  
15 *but curious. Thanks” (Emphasis added.)*

16 97. Less than ten minutes later, on or about October 8, 2021, at 4:48 PM  
17 ET, PegzDAO responded to Plaintiff, stating:

18 “Hey! Congrats! We’re giving 1 RP car to every member of the  
19 PegzDAO (right now about 40+ people)... from what I can tell in  
20 discord, 80% are saying theyre holding for years minimum  
21 So I dont expect any to come on the market anytime soon.. Tbh, I do  
22 think you got a good deal, these will rise!”

23 98. Plaintiff responded to PegzDAO later that evening, on or about 9:48  
24 PM ET, stating: “I’m assuming that buying Pegz now is too late to get the RP card  
25

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26 <sup>3</sup> Plaintiff claims to have placed the successful bid of 150 ETH, which, if  
27 true, would mean that Plaintiff controlled the private key for Ethereum address  
28 0x2d8eD3D49F1b31F9f5FC45e8011D3D5b7Fe27800. Defendants have no reason  
to doubt this claim but cannot confirm whether it is true.

1 as well? I probably should've researched more before I yolo'd 150, *but still glad I*  
2 *got it either way...*" (Emphasis added.)

3 99. *Two weeks after* Plaintiff received responses to his two inquiries  
4 following the Auction and failed to raise any objections to the terms of the Auction,  
5 on or about October 22, 2021, PegzDAO allocated one FEELSGOODMAN NFT to  
6 each of the 46 members of the PegzDAO.

7 100. On or about October 24, 2021, two days after PegzDAO allocated the  
8 FEELSGOODMAN NFTs to members of the PegzDAO, one of them was traded for  
9 a "CryptoPunk" NFT which in turn was sold on October 29, 2021, for 103.03 ETH.  
10 At the time of the sale, 103.03 ETH was worth \$455,124.72.

11 101. Plaintiff did not attempt to notify Defendants that he was dissatisfied  
12 with his purchase of the Pepe NFT until February 4, 2022, over three months  
13 following the allocation of FEELSGOODMAN NFTs to PegzDAO members and  
14 nearly four months after Plaintiff's purchase of the Pepe NFT and after the  
15 cryptocurrency and NFT markets had dropped considerably. PegzDAO could have  
16 delayed or cancelled the allocation of the FEELSGOODMAN NFTs if it had known  
17 that Plaintiff was dissatisfied with his purchase of the Pepe NFT.

18 102. On information and belief, immediately following the Auction,  
19 Plaintiff was free from duress, menace, undue influence, and disability and,  
20 assuming Plaintiff were entitled to rescission, which Defendants deny, aware of his  
21 alleged right to rescind.

22 103. Plaintiff's delay in seeking rescission was substantially prejudicial to  
23 Defendants.

24 104. Contrary to Paragraph 23 of the Complaint, in the letter from Plaintiff's  
25 counsel of February 4, 2022, Plaintiff's counsel did not demand a refund of the 150  
26 ETH that Plaintiff paid for the Pepe NFT, but instead demanded that Defendants  
27 "refund Mr. Plaintiff the value of 150 ETH as of close of October 6, 2021, which is  
28 \$537,084.00." (Emphasis in original.)

1           105. On or about April 13, 2022, after this action was filed, Plaintiff  
2 purchased an NFT known as the Nakamoto Rarepepe Card (Series 1, Card 1) (the  
3 “Nakamoto Card”) in an edition of 300 (three times the number of existing  
4 FEELSGOODMAN NFTs) for 70 ETH, or \$218,421.00 at the time of purchase.

5           106. It is not unusual for NFT prices to fluctuate more than 20% during a  
6 three-week period, or even on a single day.

7           107. Based upon the above facts, Defendants raise the affirmative defenses  
8 below without conceding any matter on which the burden of proof is on Plaintiff.

9                                   **FIRST AFFIRMATIVE DEFENSE**

10           The Complaint fails to state a claim upon which relief may be granted against  
11 Defendants.

12                                   **SECOND AFFIRMATIVE DEFENSE**

13           Plaintiff’s First, Second, Fourth, and Fifth Causes of Action are barred, in  
14 whole or in part, because the Defendants’ allegedly false statements were verifiably  
15 true while the Auction was being conducted and remain so.

16                                   **THIRD AFFIRMATIVE DEFENSE**

17           Plaintiff’s First, Second, Third, and Fifth Causes of Action are barred, in  
18 whole or in part, because Plaintiff’s did not rely on Defendants’ statements as  
19 alleged in Paragraphs 27, 34, 42, and 57 of the Complaint. This lack of reliance is  
20 demonstrated by Plaintiff’s direct messages to PegzDAO immediately following the  
21 Auction, in which he stated: “Are you saying that every member of the PegzDAO  
22 gets 1 card, or that only 1 card gets raffled off to the DAO members and you hold  
23 the other 98. *Wouldn’t have changed my bid as I think 150 is a good deal...*”; and “I  
24 probably should’ve researched more before I yolo’d 150, *but still glad I got it either*  
25 *way...*” (Emphasis added.)

26                                   **FOURTH AFFIRMATIVE DEFENSE**

27           Plaintiff’s Third, Fourth, Fifth, Seventh, Eighth and Ninth Causes of Action  
28 are barred, in whole or in part, because Plaintiff neither suffered injury or damages



1 nor lost money or property related to the allegations set forth in the Complaint, as  
2 shown by (1) a trade of a FEELSGOODMAN NFT following the allocation of  
3 FEELSGOODMAN NFTs to PegzDAO members for a CryptoPunk NFT, which  
4 was worth over \$455,000 on or about the time of the trade and (2) Plaintiff's  
5 purchase of the Nakamoto Card in an edition of three times that of the  
6 FEELSGOODMAN NFTs for nearly half the amount Plaintiff paid for the Pepe  
7 NFT.

#### 8 **FIFTH AFFIRMATIVE DEFENSE**

9 Plaintiff's First, Second, and Sixth Causes of Action are barred, in whole or in  
10 part, because, assuming Plaintiff were entitled to rescission, which Defendants deny,  
11 Plaintiff did not give notice of rescission to Defendants promptly upon discovering  
12 the facts which allegedly entitle him to rescind and Plaintiff was free from duress,  
13 menace, undue influence and disability and aware of his alleged right to rescind, and  
14 such delay was substantially prejudicial to Defendants. Instead, Plaintiff waited to  
15 demand rescission until February 4, 2022, over three months following the  
16 allocation of FEELSGOODMAN NFTs to PegzDAO members and nearly four  
17 months after Plaintiff's purchase of the Pepe NFT.

#### 18 **SIXTH AFFIRMATIVE DEFENSE**

19 Plaintiff's First, Second, and Sixth Causes of Action are barred, in whole or in  
20 part, because, assuming Plaintiff were entitled to rescission, which Defendants deny,  
21 Plaintiff did not restore to Defendants everything of value which he had received  
22 from Defendants under the contract or offer to restore the same upon condition that  
23 the other party do likewise, but instead demanded that Defendants "refund Mr.  
24 Thayer ... \$537,084.00."

#### 25 **SEVENTH AFFIRMATIVE DEFENSE**

26 Plaintiff's First, Second, and Sixth Causes of Action are barred, in whole or in  
27 part, because Plaintiff's consent was not given by mistake, or obtained through  
28 duress, menace, fraud, or undue influence, exercised by or with the connivance of



1 the party as to whom he rescinds, or of any other party to the contract jointly  
2 interested with such party, as required by Cal. Civ. Code § 1689(b)(1). To the  
3 contrary, while the Auction was being conducted, Plaintiff was aware that  
4 PegzDAO intended to allocate FEELSGOODMAN NFTs to members of the  
5 PegzDAO.

6 **EIGHTH AFFIRMATIVE DEFENSE**

7 Plaintiff's Sixth Cause of Action is barred, in whole or in part, because  
8 Plaintiff's consent was not caused by mistake or, in the alternative, any mistake  
9 Plaintiff made was caused by Plaintiff's neglect of Plaintiff's legal duty to perform  
10 due diligence before making a purchase. Such lack of due diligence is demonstrated  
11 by Plaintiff's direct message to PegzDAO immediately following the Auction, in  
12 which he stated: "*I probably should've researched more before I yolo'd 150, but*  
13 *still glad I got it either way...*" (Emphasis added.)

14 **NINTH AFFIRMATIVE DEFENSE**

15 Each of Plaintiff's causes of action are barred, in whole or in part, under the  
16 equitable doctrines of estoppel and/or laches because Plaintiff failed to raise timely  
17 objections to the terms of the Auction or request any relief whatsoever after  
18 discovering the facts that Plaintiff contends were fraudulently concealed at the time  
19 of the Auction. On the contrary, Plaintiff expressed *satisfaction* with his purchase  
20 after learning of such facts. Defendants reasonably relied on Plaintiff's failure to  
21 complain and his expressed satisfaction to their detriment when they proceeded to  
22 allocate instances of the FEELSGOODMAN NFTs to the members of the PegzDAO  
23 over a week later. Had Plaintiff raised any such objections, Defendant PegzDAO  
24 could have canceled such allocations.

25 **TENTH AFFIRMATIVE DEFENSE**

26 Each of Plaintiff's causes of action are barred under the equitable doctrine of  
27 unclean hands.  
28

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff’s Fifth Claim for Relief under the California Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *Et Seq.* (“CLRA”) is barred, *inter alia*, because the NFT purchased by Plaintiff is intangible and therefore not a good or service within the meaning for the CLRA and no participants in the transaction about which Plaintiff complains is a resident of California.

**RESERVATION OF RIGHTS**

Defendants reserve the right to assert further defenses as they become evident through discovery or further investigation.

WHEREFORE, Defendants pray for judgment against Plaintiff, and respectfully seeks the entry of an order:

- I. In favor of Defendants and against the Plaintiff;
- II. For an award of Defendants’ reasonable attorney’s fees and costs; and
- III. For such other relief as the Court deems just and equitable.

**JURY DEMAND**

Defendants demand trial by jury of all issues so triable.

Respectfully requested,

Dated: May 17, 2022

MAURIEL KAPOUYTIAN WOODS LLP

By: /s/ Jason R. Bartlett

Jason R. Bartlett  
Sherman W. Kahn

*Attorneys for Defendants*  
MATT FURIE, CHAIN/SAW LLC,  
and PEGZDAO