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TAYLOR WHITLEY AND
7 WTF.INDUSTRIES, LLC

8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 TAYLOR WHITLEY, and
12 WTF.INDUSTRIES, LLC,

13 Plaintiffs,

14 v.

15 CLARE MAGUIRE, JAKE
16 NYGARD, ANTONIUS
17 WIRIADJAJA, DONGLEE HAN,
and DOES 1-10, Inclusive.

18 Defendants.

Case No. 2:22-cv-01837-ODW (JEMx)

**FIRST AMENDED COMPLAINT
FOR
(1) COPYRIGHT INFRINGEMENT;
(2) VICARIOUS AND/OR
CONTRIBUTORY COPYRIGHT
INFRINGEMENT;
(3) NEGLIGENT
MISREPRESENTATION - HAN;
(4) NEGLIGENT
MISREPRESENTATION - OTHERS
(5) BREACH OF IMPLIED
CONTRACT;
(6) BREACH OF FIDUCIARY
DUTY;
(7) DISSOLUTION OF IMPLIED
PARTNERSHIP;
(8) MONEY HAD AND RECIEVED;
(9) CONVERSION;
(10) DEFAMATION;
(11) DEFAMATION; AND
(12) UNFAIR COMPETITION.**

DEMAND FOR JURY TRIAL

1 Plaintiffs Taylor Whitley (“Whitley”) and WTF.Industries, LLC
2 (“WTF.Industries”) (collectively “Plaintiffs”) complain and allege against Clare
3 Maguire (“Maguire”), Cake Nygard (“Nygard”), Antonius Wiriadjaja (“Wiriadjaja”),
4 Donglee Han (“Han”), and DOES 1-10 (collectively “Defendants”) as follows:

5 **NATURE OF THE ACTION**

6 1. This action arises from Plaintiff Taylor Whitley’s wrongful ouster from
7 the digital art community he founded and nurtured, ultimately resulting in the loss of
8 years of his own work, along with an extensive list of lucrative projects which he was
9 instrumental in creating.

10 2. Whitley, like other entrepreneurial artists, created and sold art by using
11 his curated community of digital art collectors and collaborators.

12 3. Whitley has now been forced to bring this action because some of those
13 same collaborators betrayed him and have hijacked his community, renamed it and
14 exploited it for their own pecuniary gain. They have exploited the community
15 Whitley developed in order to sell their own art, all while infringing Whitley’s
16 intellectual property, and keeping him and the company he formed from reaping the
17 considerable financial rewards that now flow from his work and community.

18 4. Defendants also have engaged in a campaign of defamation to devastate
19 Plaintiff’s reputation, harm him both professionally and personally, and prevent him
20 from competing within the digital art space. Defendants’ actions have robbed
21 Whitley of opportunities he cultivated over years as a digital artist, and Defendants
22 have indicated a willingness to continue to do so unless enjoined.

23 5. As a result of Defendants’ tortious and wrongful conduct, Whitley lost
24 access to years of collected art and music assets, confidential business plans and
25 future projects, his client list, and engagement data, directly impacting his ability to
26 work as a digital artist.

27 6. Further, Whitley’s art community lost tremendous goodwill associated
28 with it, and prices associated with community projects dropped precipitously, all due

1 to Defendants’ careless rebranding and wanton usage. Such conduct can only be
2 remedied with monetary damages to compensate Plaintiff for his economic losses in
3 the joint projects and his removal from his digital arts community, payment to
4 compensate him for revenue from other projects in which benefited from his network,
5 community, and marketing skills, and injunctive relief to stop Defendants from
6 continuing to tarnish Plaintiffs’ good name.

7 **THE PARTIES**

8 7. Plaintiff Taylor Whitley is an individual resident of Arizona.

9 8. Plaintiff WTF.Industries LLC is a limited liability company organized
10 under the laws of the state of Delaware and with its place of operations in Arizona.

11 9. Defendant Clare Maguire, on information and belief, is an individual
12 residing in England.

13 10. Defendant Jake Nygard, on information and belief, is an individual
14 residing in Minnesota.

15 11. Defendant Antonius Wiriadjaja, on information and belief, is an
16 individual residing in New York City, New York.

17 12. Defendant DongLee Han, on information and belief, is an individual
18 residing in Los Angeles, California.

19 13. The true names and capacities of defendants sued herein as DOES 1
20 through 10, inclusive, are unknown to Plaintiff, who therefore sues said defendants
21 by fictitious names. Plaintiff will amend this complaint to allege their true names and
22 capacities when they are ascertained.

23 **JURISDICTION AND VENUE**

24 9. This action arises in prominent part under the Copyright Act of 1976,
25 Title 17 U.S.C. §101 *et seq.*

26 10. This Court has federal question jurisdiction over the subject matter and
27 parties pursuant to 28 U.S.C. §§1331 and 1338(a) and (b). This Court has
28 supplemental jurisdiction over the remaining causes of act pursuant to 28 U.S.C.

1 §1367(a) because the other claims are so related to claims in the action within such
2 original jurisdiction that they form part of the same case or controversy. Further, this
3 Court has jurisdiction under 28 U.S.C. §§1332(a)(1) because there is complete
4 diversity of citizenship between Plaintiffs and the various Defendants and the amount
5 in controversy is over \$75,000.

6 11. Plaintiff is informed and believes, and on that basis alleges, that this
7 Court has personal jurisdiction over Defendants because Plaintiffs and Defendants
8 have caused digital art products described herein to be advertised, promoted, and sold
9 in the State of California and this judicial district. They have also filed suit in this
10 district against Whitley relating to many of the same facts, agreements and
11 transactions that give rise to the claims stated herein.

12 12. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because
13 Defendants’ tortious conduct has occurred in this judicial district and a substantial
14 portion of the events or omissions giving rise to Plaintiff’s claims occurred in this
15 district.

16 **FACTUAL BACKGROUND**

17 **PLAINTIFF CREATES A THRIVING ONLINE ARTS COMMUNITY**

18 13. Plaintiff Whitley is a creative artist working in visual, performance, and
19 digital media. He has been a Voisey App featured producer and has spoken at art
20 conferences such as NFT NYC Conference due to his digital art world renown¹. His
21 work has been displayed all over the world including at the Official MF Doom
22 CryptoVoxel Gallery, the Sino NFT project and Start Art Gallery in Hong Kong, and
23 at The Global NFT Art Exhibition in Dubai. He has developed thriving social media
24 accounts including on Instagram (Tayl0rWTF – 6,000 followers, Caked Apes –
25

26
27 ¹ Non-Fungible Tokens (“NFTs”) are digital assets that correspond to a unique
28 digital or real world item and serve as a proof of ownership or bill of sale for that
item by describing the item in metadata. Transactions involving NFTs are recorded
to the same distributed digital ledger as common cryptocurrencies.

1 14,800 followers), Twitter (Tayl0rWTF – 38,000 followers, Caked Apes – 31,700
2 followers), and has led Discord groups with thousands of members each.

3 14. Discord is an internet platform which provides persistent voice and chat
4 services, as well as digital distribution via the transferal of media and other computer
5 files. It has approximately 350 million total registered users, 150 million monthly
6 active users, and commonly serves as the central organization, marketing, and
7 communications hub for its users.

8 15. Beginning in spring 2021, Whitley began promoting a new online
9 community for digital artists using his contacts on social media platforms and in the
10 Non-Fungible Token (“NFT”) community. During this time Whitley developed and
11 marketed his new online community by hosting and contributing to online social
12 ‘rooms’ on Clubhouse (a social media app where artists, collectors and other
13 individuals met and spoke about NFTs and the crypto art economy) among other
14 online marketing activity.

15 16. In June of 2021, Whitley set up a Discord server entitled discord.art (the
16 “Art Discord”) and purchased a corresponding web domain (<https://discord.art/>). A
17 Discord “server” is an online community commonly focused on a single topic or
18 interest. Discord servers can contain multiple “channels” which act as subsets for the
19 overall topic that the server was organized for, each with their own discussion.

20 17. NFT projects commonly use Discord to organize their community of
21 buyers and to plan and centralize their messaging and release strategy. Discord serves
22 as the message board for formal announcements, promotions and giveaways, votes
23 on community issues, and conduit for other business. Moreover, Discord is where
24 artists and platform can communicate directly with their collectors.

25 18. Using his notoriety as a digital artist and by exerting significant hours
26 on Clubhouse and the Art Discord promoting it, Whitley was able to attract users to
27 the Art Discord, including users within weeks of launching. Whitley also began using
28 the Art Discord to promote his own work and digital goods for sale. Among

1 Whitley's digital goods were his Floppy Disk editions, a collection of digital art and
2 music assets which others could use in their own projects.

3 19. Through his effort, Whitley became a prominent digital artist and stood
4 at the center of the Art Discord - one of the most important platforms for NFT artists
5 and their collectors - all before any individual Defendant became involved.

6
7 **PLAINTIFF HIRES DEFENDANTS AND OTHER STAFF AND PLANS FUTURE PROJECTS**

8 20. After launching the Art Discord, Whitley was contacted by Defendant
9 Wiriadjaja (using his handle "Foodmasku"). Wiriadjaja asked if Whitley would allow
10 him to open up a channel on the Art Discord in order to market Wiriadjaja's NFTs,
11 as Wiriadjaja lacked a comparably-sized platform or collector population. Whitley
12 agreed and created the channel.

13 21. Later in June 2021, as the Art Discord's needs grew, Whitley hired a
14 community manager for the Art Discord, website developers to build a website to
15 accompany the Art Discord, and coders to create automated moderation tools for
16 the Art Discord. Whitley, for the first time, had a small paid staff to manage social
17 media accounts related to the Art Discord and market and promote artists that are on
18 the Art Discord.

19 22. Throughout the next few months, Whitley exhaustively marketed the
20 Art Discord, the community, and the artists who were now contained within each.
21 Wiriadjaja assisted Whitley's promotion of the Art Discord, and the two developed
22 a strong working relationship.

23 23. On August 23, 2021, Whitley, feeling the deleterious effects of his work
24 marketing and promoting the Art Discord and the artists who labored in it, decided
25 to take a temporary step back from active moderation and recuperate. In order to ease
26 his day-to-day burden, he transferred "ownership" of the Art Discord to Wiriadjaja.
27 Whitley did not suggest that he was stepping back permanently, or that he would not
28 have the same leadership role that he had taken on previously (including his

1 renumeration of all employees hired to operate the Art Discord).

2 24. It is important to note that “owner” in the context of the web-platform
3 Discord does not reflect legal ownership, or even an intent to alienate one’s rights to
4 the platform. Instead, the “owner” has the highest level of access and control of
5 anyone presently existing on that server. “Owners” can dole out permissions to other
6 users, including promoting users all the way up to Administrator, which allows
7 unfettered access and control to the server, second only to the “owner” herself.
8 Administrators can moderate the chat and spoken word tools, and membership lists,
9 and even change server settings should anything need changing or fixing.

10 25. Whitley never intended to leave the Art Discord, and remained
11 instrumental in hiring and promotion decisions after transferring “ownership.”
12 Further, nothing in Whitley’s transfer alienated his continued interest in the Art
13 Discord, its contents, its value as a marketing platform, or the community that he had
14 developed in it.

15 26. In accordance with Whitley’s request, Wiriadjaja began maintaining
16 continuity with the community.

17 27. Importantly, Whitley did *not* remove from himself any administrative
18 privileges or control of the Art Discord, he merely transferred the “ownership” to
19 Wiriadjaja temporarily on the web-platform for the Art Discord and then he gave
20 Wiriadjaja “Administrator” access to the website. No changes were made as to
21 ownership or control of the website or any social media accounts or other Art
22 Discord-related .

23 28. In fact, immediately after the “transfer” Whitley directly supervised and
24 led the hiring of 24 people - Wiriadjaja recommended only a single hire. Whitley
25 remained primarily in charge of compensating the staff - including well-compensated
26 community managers. Whitley, Wiriadjaja, and Whitley’s employees began
27 discussing the possibility of using Art Discord and the community Whitley had
28

1 grown as a means of increasing the potential scope of the project and introducing it
2 to new collectors and users in the general public.

3 29. Due primarily to Whitley’s efforts and management, by mid-October
4 2021, the Art Discord was booming – thousands of members were contributing to the
5 community and a full staff were in place to manage it. Whitley announced
6 promotional efforts for a number of artists and projects hosted by the Art Discord,
7 the sales of which would benefit Whitley and Wiriadjaja and the Art Discord.
8 Wiriadjaja and Whitley agreed that they were “co-creators” of the Art Discord and
9 that each had played critical roles in its growth and development.

10 30. The Art Discord continued to grow – Defendant Maguire was hired as a
11 community manager on or about October 19, 2021.

12 31. Throughout November, the Art Discord hosted multiple art releases,
13 launched new artist channels, and saw continuing growth in membership, artists and
14 NFT sales, and excitement. Wiriadjaja, Maguire, and Whitley were working closely
15 along with the other staff members to promote the various NFT releases and continue
16 developing the Art Discord, the community, and the value of each. Defendant Han
17 joined at the end of November 2021.

18 32. Late in 2021, Whitley formed Plaintiff WTF.Industries to function as a
19 digital art agency, which would be responsible for developing, marketing, promoting,
20 and profiting from the sales of digital assets, like NFTs and other collections.
21 WTF.Industries would take revenue cuts of the projects it supported, whether that
22 was with the team that Whitley was already working with or third parties who sought
23 to have institutional support for their releases. Whitley is the sole member of
24 WTF.Industries.

**PLAINTIFFS AND DEFENDANTS LAUNCH THEIR OWN NFT COLLECTION AND
PLAINTIFF IS OUSTED FROM HIS ARTS COMMUNITY**

33. In line with Whitley’s ambitions, on December 16, 2021, the Art Discord was rebranded to “WTF Industries”.

34. On the same day, Han’s NFT project Pixel Tots launched. Before this launch, Han and Whitley had agreed that Whitley and WTF.Industries would market Pixel Tots for two months in exchange for 25% of revenue from the initial launch, followed by 60% of all revenue earned through secondary sales² and 60 NFTs from the collection. Despite this agreement, neither Whitley nor WTF.Industries received any money from the Pixel Tots sale. To date, hundreds of Pixel Tots NFTs have been transacted generating tens of thousands of dollars of revenue for the project.³

35. At the same time, Whitley and Defendant Nygard readied their own NFT collection for launch which they called Caked Apes. Caked Apes were originally conceived of by Whitley, who also advised on the elements to include in the various NFTs, backgrounds to use, and contributed a background story for the collection. Whitley and Nygard ultimately collaborated on the final collection. Whitley invested nearly \$200,000 of his own money to launch the product and provided intellectual property.⁴

36. Additionally, Whitley, alone, created a series of logo designs which he uses to identify himself and his work to third parties. (“the Subject Design”). Representative samples can be seen below:

² NFTs are often bought and transferred using the Ethereum cryptocurrency system. That system allows for the initial seller to automatically receive a percentage royalty on subsequent sales of the same NFT. Therefore, creators are incentivized to continue marketing to their buyers and collectors, as maintaining high resale prices results in creators getting larger royalty payments.

³ Pixel Tot sales take place on the OpenSea NFT sales platform, and sales records are publicly recorded and available online:
<https://opensea.io/collection/pixeltots?tab=activity>.

⁴ Certain NFT can include a license allowing the purchaser to reuse the image in their own projects. Several NFTs owned by Whitley formed the basis for various elements used in the ultimate Caked Apes NFT collection.

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37. On or about January 7, 2022, Whitley and Defendants Maguire, Nygard, and Wiriadjaja agreed that Whitley was to receive 10% of all revenue generated from Caked Apes primary and secondary sale royalties, and WTF.Industries was to receive 30% of all Caked Apes primary sales and 45% of all Caked Apes secondary sale royalties.

38. Whitley and Defendants launched a website (<https://www.cakedapes.wtf/>), and social media accounts (<https://twitter.com/CakedApes>, <https://www.instagram.com/CakedApes/>) to promote the Caked Apes NFT project. The Caked Apes project was put on OpenSea to sell (<https://opensea.io/collection/cakedapesofficial>) and opened for presale on January 10, 2022. Each of which identified both Whitley and Nygard as creators.

39. Unbeknownst to Whitley when he agreed to the above revenue split, Defendants Maguire, Nygard, and Wiriadjaja created a “multi-signature wallet” to receive funds derived from the Caked Apes NFT launch and send Whitley the 10% he was due.⁵ However, Defendants Maguire, Nygard, and Wiriadjaja have never distributed revenue from the Caked Apes NFT project to a wallet owned by

⁵ A multi-signature wallet is software used to send and receive cryptocurrencies whereby at least two authorized individuals must approve each transaction.

1 WTF.Industries for its share of the revenue according to the agreement the parties
2 came to.

3 40. Since launch, the Caked Apes NFTs have sold out of their original run,
4 generating an estimated \$1.9 million in primary sale revenue and \$225,000 in
5 royalties from secondary sales.

6 41. To date, WTF.Industries has received none of the revenue generated by
7 Caked Apes. On information and belief, all revenue that was not sent to
8 WTF.Industries either remains in the multi-signature wallet or has been distributed
9 to and used by Defendants. Neither Whitley nor WTF.Industries has authorized any
10 expenses be paid with Caked Apes NFT project revenue.

11 42. Whitley later learned that WTF.Industries had not received any Caked
12 Apes NFT revenue and further that Defendant Maguire had contacted
13 WTF.Industries accountants to add directors to WTF.Industries. Immediately,
14 Whitley directed his representatives to convene a meeting with Defendants to resolve
15 any disputes related to the WTF.Industries brand, and their various projects, revenue
16 splits.

17 43. Defendants never responded and this meeting never took place.

18 44. On January 28, 2022, on information and belief, Defendants revoked
19 Whitley's access to all social media accounts related to the Caked Apes NFT project.
20 On January 30, 2022, on information and belief, Defendants terminated Whitley's
21 access to the Art Discord.

22 45. Art Discord functioned as Whitley's source of income and as marketing
23 for both his projects and as a means to support other artists. The Art Discord contains
24 significant amounts of Plaintiff's art and music assets, data and contact information
25 about the community and collectors, a client list, and his future art project plans -
26 crucial data for his ability to work as an artist. The Art Discord also contains
27 communications between Whitley and Defendants, financial records, and other
28 information at issue here.

**DEFENDANTS PURSUE A CAMPAIGN OF SLANDER AGAINST PLAINTIFF
AFTER REMOVING HIM FROM THE ART DISCORD**

46. Since Plaintiff was removed from the Art Discord, social media accounts associated with Nygard and Maguire as well as anonymous social media accounts have harassed and made false and slanderous statements about Whitley to the public, and to specific prominent individuals and entities in the digital art world. These messages make plainly false claims about Whitley. Representative examples can be seen below:



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<  **clare maguire** [verified] 
claremaguire

claremaguire · Instagram
52K followers · 171 posts
You don't follow each other on Instagram

View profile

Tuesday 5:10 PM

Hi escargot, I do not know you.

Can you tell me what it is I said about you because i know Taylor despises you but I don't know who you are.



Accept message request from clare maguire (**claremaguire**)?

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Clare Maguire ✓
@ClareMaguire

Replying to @AkashaCoin and @CakeNygard

The caked apes collection was DMCA'd by **Taylor** Whitley aka **Taylor** wtf because he chose to abuse Cake and an entire community of holders of Caked Apes.

9:35 AM · 3/16/22 · [Twitter for iPhone](#)

1 Retweet 1 Quote Tweet 7 Likes



47. Maguire previously admitted to Plaintiff that she used anonymous social






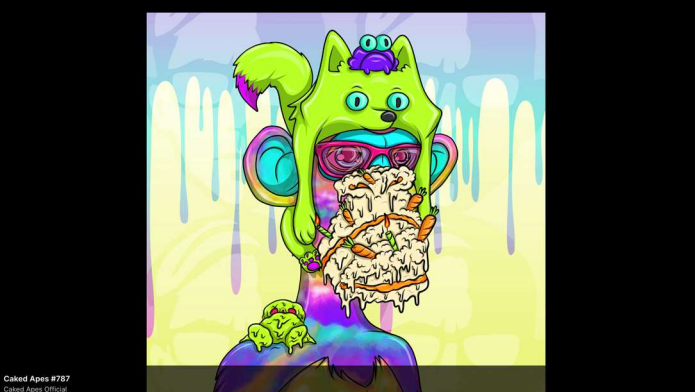
1 media accounts in other ways, such as to build hype for the Art Discord or its projects,
2 or for nefarious tasks like harassing social media profiles she does not like. On
3 information and belief, numerous of the above slanderous messages were made
4 directly by Maguire on anonymous accounts she controls, or at her behest, and were
5 made to impact Plaintiff's reputation in the art world and among potential collectors.
6 Reputation is particularly important in the NFT space, as the value of NFT projects
7 Plaintiff promotes, associates with, or sells directly are directly related to Plaintiff's
8 reputation among collectors and among the broader populace who rely upon that
9 reputation (and the scarcity of the desired objects) to lead to high valuations and
10 lucrative resales.

11 48. Despite the above malfeasance, in order to attempt to maintain the
12 sinking value of Plaintiff's assorted investments, the value of the Art Discord overall,
13 and the prices of art promoted by the Art Discord, Plaintiff has continued to pay
14 required maintenance fees for the Art Discord in the hope that he would one day be
15 able to retain its goodwill and the assets stored therein.

16 49. Whitley registered the Subject Design with the United States Copyright
17 Office covering the Subject Design, and received Registration No. VA0002291227.

18 50. Many of the Caked Ape NFTs incorporate the Subject Design,
19 including, but not limited to, Caked Ape #787, Caked Ape #5099, and Caked Ape
20 #1798 seen below, each of which use the Subject Design in the background of the
21 image. Whitley's authorization for the use of the Subject Design in the Caked Apes
22 NFT project was contingent on the revenue split to being paid to him and
23 WTF.Industries, as well his continued involvement with and management of the
24 Caked Apes NFT project.

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Subject Design	Infringing Use
	
	
	

51. Whitley is informed and believes, and thereon alleges that Defendants have sold Caked Ape NFTs incorporating the Subject Design since Caked Aped NFTs launched on January 10, 2022, and continued to sell them after Whitley was removed the Art Discord, after Whitley’s access to the Caked Apes social media

1 accounts was revoked, and after Defendants failed to pay Plaintiffs their entire
2 portion of the proceeds from the Caked Apes revenues.

3 52. Now, Plaintiff seeks judicial intervention into the operation of his
4 lucrative art community in order to recover Plaintiff's rightful share of proceeds from
5 the Caked Apes NFT project, and for Whitley's loss of access to the Art Discord and
6 to remedy Defendant's wrongful acts which have not only injured the value of the
7 community itself, but the individual projects, and Whitley's very reputation and
8 future involvement in the digital art world.

9 **FIRST CLAIM FOR RELIEF**

10 **(Copyright Infringement against all Defendants, and Each)**

11 53. Plaintiff incorporates and re-alleges the allegations contained in
12 paragraphs 1-52 of this Complaint as if fully set forth herein.

13 54. Whitley alleges that Defendants, and each of them, had access to the
14 Subject Design stemming from Whitley's collaboration and involvement as co-
15 creator of the Caked Apes NFT project.

16 55. Whitley's authorization to use the Subject Design was contingent on
17 receiving his agreed upon portion of revenue from the Caked Apes NFT project and
18 WTF.Industries receiving its share, and his ongoing involvement with and
19 management of the Caked Apes NFT project. When WTF.Industries did not receive
20 its agreed-upon share and when Whitley was removed from the Art Discord and his
21 access to the Caked Apes social media accounts was removed, his authorization to
22 use the Subject Design was revoked.

23 56. Due to Defendants' acts of infringement, Whitley suffered substantial
24 damages to his professional reputation and opportunities.

25 57. Due to Defendants' acts of infringement, Whitley has suffered general
26 and special damages in an amount to be established at trial.

27 58. Due to Defendants' acts of copyright infringement as alleged herein,
28 Defendants, and each of them, have obtained direct and indirect profits they would

1 not otherwise have realized but for their infringement of the Subject Design. As such,
2 Whitley is entitled to disgorgement of Defendants’ profits directly and indirectly
3 attributable to Defendants’ infringement of Whitley’s rights in the Subject Design in
4 an amount to be established at trial.

5 **SECOND CLAIM FOR RELIEF**

6 **(Vicarious and/or Contributory Copyright Infringement against all**
7 **Defendants, and Each)**

8 59. Whitley incorporates and re-alleges the allegations contained in
9 paragraphs 1-57 of this Complaint as if fully set forth herein.

10 60. Whitley is informed and believes and thereon alleges that Defendants
11 knowingly induced, participated in, aided and abetted in, and profited from the illegal
12 reproduction and/or subsequent sales of NFTs featuring the Subject Design alleged
13 herein.

14 61. Whitley is informed and believes and thereon alleges that Defendants,
15 and each of them, are vicariously liable for the infringement alleged herein because
16 they had the right and ability to supervise the infringing conduct and because they
17 had a direct financial interest in the infringing conduct.

18 62. By reason of the Defendants’, and each of their acts of contributory and
19 vicarious infringement as alleged above, Whitley has suffered and will continue to
20 suffer substantial damages to his professional reputation and opportunities in an
21 amount to be established at trial, as well as additional general and special damages,
22 in an amount to be established at trial.

23 63. Due to Defendants’, and each of their acts of copyright infringement as
24 alleged herein, Defendants, and each of them, have obtained direct and indirect
25 profits they would not otherwise have realized but for their infringement of the
26 Subject Design. As such, Whitley is entitled to disgorgement of Defendants’ profits
27 directly and indirectly attributable to Defendants’ infringement of Whitley’s rights in
28 the Subject Design, in an amount to be established at trial.

THIRD CLAIM FOR RELIEF

(Intentional Misrepresentation against Defendant Han)

64. Whitley incorporates and re-alleges the allegations contained in paragraphs 1-63 of this Complaint as if fully set forth herein.

65. Whitley alleges that, on December 16, 2021 when Defendant Han represented to Whitley that, in exchange for marketing services, Whitley and WTF.Industries would receive 25% of revenue from the initial launch of her Pixel Tot NFL project, followed by 60% of all revenue earned through secondary sales and 60 Pixel Tot NFTs, Han knew that those representations were false.

66. Han’s assertions as to the revenue split were material to Whitley’s decision to host the Pixel Tots project on the Art Discord and provide marketing and promotional services for it.

67. Han intended for Whitley and WTF.Industries relied on her representation that Whitley and WTF.Industries would receive 25% of revenue from the initial launch of her Pixel Tot NFL project, followed by 60% of all revenue earned through secondary sales and 60 Pixel Tot NFTs.

68. Whitley did not have knowledge of Han’s misrepresentations and omissions as to the foregoing issues, and reasonably and justifiably relied on her false and incomplete statements in providing marketing services and the use of the Art Discord to support the Pixel Tots NFT project.

69. As a direct and proximate result of Han’s misrepresentations and omissions, Whitley agreed to, and performed said marketing and promotional services for the Pixel Tots NFT project, resulting in high sales volumes but preventing Whitley from engaging with other projects at the same time.

70. Whitley, in addition to the unpaid revenue from the Pixel Tots NFT launch, was damaged in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF

(Intentional Misrepresentation against Defendants Maguire, Nygard, and Wiriadjaja)

71. Plaintiffs incorporate and re-allege the allegations contained in paragraphs 1-70 of this Complaint as if fully set forth herein.

72. Whitley alleges that, on January 7, 2022, Defendants Maguire, Nygard, and Wiriadjaja represented to Whitley that 10% of revenue from the Caked Apes NFT project (both primary sales and secondary royalties) would be sent to Whitley and 30% of revenue from primary sales of the Caked Apes NFT project would be sent to WTF.Industries and 45% of secondary sale royalties of the Caked Apes NFT project would be sent to WTF.Industries, Defendants Maguire, Nygard, and Wiriadjaja knew those representations were false.

73. Defendants Maguire, Nygard, and Wiriadjaja’s assertions related to the revenue split were material to Whitley’s decision to launch the Caked Apes NFT project and use his intellectual property for it.

74. Defendants Maguire, Nygard, and Wiriadjaja intended for Whitley and WTF.Industries to rely upon their representations that 10% of revenue from the Caked Apes NFT project (both primary sales and secondary royalties) would be sent to Whitley and 30% of revenue from primary sales of the Caked Apes NFT project would be sent to WTF.Industries and 45% of secondary sale royalties of the Caked Apes NFT project would be sent to WTF.Industries.

75. Whitley did not have knowledge of Defendants Maguire, Nygard, and Wiriadjaja’s misrepresentations and omissions as to the foregoing issues and reasonably and justifiably relied on her false and incomplete statements in agreeing to launch the Caked Apes NFT project and use his intellectual property for it.

76. As a direct and proximate result of Defendants Maguire, Nygard, and Wiriadjaja’s misrepresentations and omissions, Whitley agreed to use his intellectual

1 property in and support the launch of the Caked Apes NFT Project, resulting in
2 enormous sales but preventing Whitley from pursuing other opportunities at the time.

3 77. Whitley was damaged in an amount to be proven at trial.

4 **FIFTH CLAIM FOR RELIEF**

5 **(Breach of Implied Contract against Defendants)**

6 78. Plaintiffs incorporate and re-allege the allegations contained in
7 paragraphs 1-77 of this Complaint as if fully set forth herein.

8 79. Whitley, WTF.Industries, and Defendants joined together to earn profit
9 and share loss from projects created by each other and others in the Art Discord and
10 promoted by the Art Discord and its social media accounts. In addition to the explicit
11 Caked Apes NFT project revenue split agreed to above, Whitley, WTF.Industries,
12 and Defendants planned to collectively produce and market other NFT projects in
13 order to collect revenue those future projects generate as well as leverage the Art
14 Discord to develop the community of potential buyers for those NFT projects.

15 80. Through their actions in promoting projects such as the Caked Apes
16 NFT project for the benefit of the Art Discord in order to receive a portion of the
17 revenue from those projects and the absence of a formal writing establishing its terms,
18 Whitley alleges that both he and Defendants understood themselves to have formed
19 an implied partnership. Accordingly, pursuant to California Corporations Code §
20 16101(9), Plaintiffs and Defendants were in an implied partnership.

21 81. As such, California Corporations Code § 16103(b) provides a number
22 of duties which govern the relation of Plaintiffs and Defendants’ implied partnership,
23 specifically stating that the partnership agreement may not “unreasonably restrict the
24 right of access to books and records...” and “eliminate the duty of loyalty...” among
25 other imposed duties.

26 82. Defendants breached the implied partnership agreement by, *inter alia*:

- 27 • Removing Whitley from the Art Discord on January 30, 2022 and
28 not returning control or reinstating him - preventing Whitley from

1 including a duty of care, a duty of loyalty, and an obligation of good faith and fair
2 dealing.

3 87. Defendants breached these duties by, *inter alia*:

- 4 • Removing Whitley from the Art Discord on January 30, 2022 and
5 not returning control or reinstating him - preventing Whitley from
6 accessing his stored client lists, customer engagement data, future
7 projects, and collected assets;
- 8 • Removing Whitley from the Caked Apes social media profiles and
9 refusing access;
- 10 • Failing to distribute to Whitley his portion of revenue from the Pixel
11 Tots NFT project;
- 12 • Failing to distribute to WTF.Industries its portion of revenue from
13 the Caked Apes NFT project.

14 88. Defendants are intimately familiar with the Art Discord, the community
15 that uses it, the projects that are being developed on it, and how much the community
16 depends on access to Whitley and Whitley's assurances as to the value of the assorted
17 projects. Defendants have each acknowledged how vital Whitley's contribution and
18 involvement is because of the general association the digital art and NFT world have
19 with Whitley.

20 89. Additionally, Defendants' conduct negatively impacted the Art Discord,
21 which has significant independent value and future projects associated with it. By
22 preventing Whitley from accessing the Art Discord, Defendants prevented their user
23 community from accessing one of the prime assets they bargained for when they
24 joined the Art Discord or bought any NFTs sold independently by Whitley.
25 Defendants' actions have depressed the prices of NFTs sold by artists promoted by
26 the Art Discord and harmed their resale value, which negatively impacts
27 WTF.Industries revenues for existing and future projects and the value of the Art
28 Discord as a tool to profit off of future NFT projects. Accordingly, Defendants'

1 breaches of their fiduciary duties to Plaintiffs have directly and proximately damaged
2 Plaintiffs in the firm of lost profits, opportunities for future projects, the Art Discord’s
3 goodwill, and other related damages.

4 90. As a direct and proximate cause of Defendants’ conduct, Plaintiffs have
5 been damaged in an amount to be proven at trial.

6 91. Defendants’ conduct will cause further damages to Plaintiffs until such
7 time as Defendants honor their fiduciary duties. The longer Whitley is kept locked
8 out of the Art Discord and away from the community he founded, the more damage
9 that will be done, both as the prices of community-sold NFTs will be harmed, but
10 similarly, the reputation and goodwill of the Art Discord and community will be
11 harmed because part of the rights and benefits of membership are access to Whitley
12 and his work and without those, the community and Plaintiff’s main collectors will
13 hold him personally responsible.

14 **SEVENTH CLAIM FOR RELIEF**

15 **(Dissolution of Implied Partnership against Defendants)**

16 92. Plaintiffs incorporates and re-alleges the allegations contained in
17 paragraphs 1-91 of this Complaint as if fully set forth herein.

18 93. Whitley, WTF.Industries, and Defendants joined together to earn profit
19 and share loss from projects created by each other and others in the Art Discord and
20 promoted by the Art Discord and its social media accounts. In addition to the explicit
21 Caked Apes NFT project revenue split agreed to above, Whitley, WTF.Industries,
22 and Defendants planned to collectively produce and market other NFT projects in
23 order to collect revenue those future projects generate as well as leverage the Art
24 Discord to develop the community of potential buyers for those NFT projects.

25 94. Through their actions in promoting projects such as the Caked Apes
26 NFT project for the benefit of the Art Discord in order to receive a portion of the
27 revenue from those projects and the absence of a formal writing establishing its terms,
28 Whitley alleges that both he and Defendants understood themselves to have formed

1 an implied partnership. As such, California Corporations Code §§16405(b) provides
2 a series of bases on which a partner of an implied partnership may maintain an action
3 against a partner, including but not limited to “[t]he partner’s right to compel a
4 dissolution and winding up of the partnership business under Section 16801...” and
5 “[t]he partner’s right on dissociation to have the partner’s interest in the partnership
6 purchased pursuant to Section 16701 or 16701.5...”

7 95. Defendants’ actions have unreasonably frustrated the economic purpose
8 of the implied partnership described herein, and engaged in conduct relating to the
9 partnership business that makes it not reasonably practicable to carry on the business
10 in partnership with Defendants. Specifically, by preventing Whitley from accessing
11 the Art Discord and preventing the Art Discord community from accessing Plaintiff,
12 Defendants have inhibited one of the prime assets Art Discord community bargained
13 for when they joined the Art Discord or bought any NFTs sold by Whitley.

14 96. Defendants also have depressed the prices of NFTs sold by artists
15 promoted by the Art Discord and harmed their resale value, which negatively impacts
16 Plaintiffs’ revenues for existing and future projects. Therefore, it is not otherwise
17 reasonably practicable to carry on the partnership business.

18 97. Accordingly, Plaintiffs are entitled to dissolution of the partnership and
19 a winding up of its affairs, pursuant to California Corporations Code §16801 *et seq.*
20 and seek a judicial order for such dissolution to occur.

21 **EIGHTH CLAIM FOR RELIEF**

22 **(Money Had and Received against Defendants)**

23 98. Plaintiffs incorporate and re-allege the allegations contained in
24 paragraphs 1-97 of this Complaint as if fully set forth herein.

25 99. Defendants requested that Whitley market and promote the Pixel Tots
26 and Caked Apes NFT collections using Whitley’s notoriety in the NFT art space,
27 skills as a marketer and/or promoter, and also the community in Whitley’s Art
28

1 Discord. No written contract existed where Defendants and Whitley agreed to
2 compensation for Whitley's contribution.

3 100. Whitley did market and promote the Pixel Tots and Caked Apes NFT
4 collections, leading each to massive revenues obtained by Defendants.

5 101. Defendants have not compensated Whitley for his work promoting
6 and/or marketing the Pixel Tots and Caked Apes NFT collections, instead just
7 returning the amount he had invested into the projects.

8 **NINTH CLAIM FOR RELIEF**

9 **(Conversion against Defendants)**

10 102. Plaintiffs incorporate and re-allege the allegations contained in
11 paragraphs 1-101 of this Complaint as if fully set forth herein.

12 103. The Art Discord, which Whitley created, developed, managed, and hired
13 all staff for (including bringing in all of Defendants who have wrongfully converted
14 it) and all data contained therein is Plaintiff Whitley's property.

15 104. Further, the social media accounts, which were created by Whitley's
16 employees, at Whitley's instruction to promote the Art Discord and projects it
17 supported, are Plaintiff Whitley's property.

18 105. Defendants intentionally and substantially interfered with Plaintiffs'
19 property by terminating Plaintiff's access to the Art Discord and the information and
20 data contained therein and by revoking his access to the Art Discord's social media
21 accounts.

22 106. Plaintiff did not consent to Defendants taking any of the property
23 specified in this Complaint for their personal or any other use except as specified
24 herein.

25 107. Defendants have not returned any of that property to Plaintiffs.

26 108. Plaintiffs have been damaged in an amount to be proven at trial as a
27 result of Defendants' actions in converting and misappropriating Plaintiffs' property.
28

1 109. In addition, Plaintiffs’ damages are ongoing and increasing due to the
2 loss of value of goodwill associated with the Art Discord and the lowered ability to
3 profit off of the NFT community Whitley developed there.

4 **TENTH CLAIM FOR RELIEF**

5 **(Defamation against Maguire)**

6 110. Whitley incorporates and re-alleges the allegations contained in
7 paragraphs 1-109 of this Complaint as if fully set forth herein.

8 111. In making a series of posts on social media, including, but not limited
9 to on Twitter and the Art Discord that “someone I was asked to help build community
10 for abused me and tried to kill me[,]” and “The caked apes collection was DMCA’d
11 by Taylor Whitley aka Taylor wtf because he chose to abuse Cake and an entire
12 community of holders of Caked Apes” and “ Can you tell me what it is I said about
13 you because i know Taylor despises you but I don’t know who you are.”

14 112. Maguire expressed purportedly factual statements about Whitley and
15 implied that there was a factual basis to evaluate Whitley’s mental health, friendships,
16 and work. Further still, on information and belief, Maguire has told various of
17 Whitley’s contacts (both other artists and collectors of Whitley’s projects) that he
18 threatened to kill her and that an audio recording of such threat exists in her
19 possession.

20 113. The relevant public familiar with Whitley, the Art Discord, and
21 Defendants understands Maguire to be referring to Whitley, even without naming
22 him. For example, in various tweets where Maguire refers to “crackheads” she also
23 mentions “Hollywood” which is where Whitley and Maguire spent time together.

24 114. On information and belief, Maguire used social media accounts under
25 other people’s names or identities or using fake identities, or caused other people to
26 make similar posts and defamatory statements about Whitley on social media and on
27 the Art Discord.

28

1 115. On information and belief, Maguire intentionally communicated these
2 specific statements to the public at large and individuals in the NFT community on
3 social media.

4 116. On information and belief, the individuals to whom Maguire sent these
5 messages to or caused messages to be sent to understood these statements to refer to
6 Whitley, and specifically to mean that Whitley should not be associated with by
7 others in the NFT community.

8 117. These statements were false. Maguire was a valued member of the Art
9 Discord team whose opinion had been eagerly sought throughout its development
10 and Whitley was unfailingly polite and kind to Maguire. Maguire's statements, and
11 those Maguire caused others to make, are themselves express false statements of fact,
12 and they falsely imply knowledge that had come from others and was known to
13 people who associate with Whitley.

14 118. No factual basis for these statements exist however, and more so,
15 without access to the Art Discord, Whitley cannot know the extent to which further
16 statements have been made about him by Maguire or others on her behalf.

17 119. Maguire made the above-described defamatory statements with actual
18 malice – i.e. with knowledge of their falsity, or, alternatively, with a reckless
19 disregard for their falsity.

20 120. Maguire made these statements without privilege or justification.

21 121. The above-described statements concerning Whitley directly injured
22 him by diminishing his reputation in his profession and among his peers in the NFT
23 art world, which has a natural tendency to lower his earnings – much of which are
24 based on his reputation amongst his peers and NFT collectors.

25 122. The above-described statements convey a defamatory meaning. They
26 harm Whitley's reputation as to lower it.

27 123. It was Maguire's expectation and intent that the defamatory statements
28 would injure Whitley economically, including by lessening his earnings.

1 Art Discord, Whitley cannot know the extent to which further statements have been
2 made about him by Nygard or others on her behalf.

3 131. Nygard made the above-described defamatory statements with actual
4 malice – i.e. with knowledge of their falsity, or, alternatively, with a reckless
5 disregard for their falsity.

6 132. Nygard made these statements without privilege or justification.

7 133. The above-described statements concerning Whitley directly injured
8 him by diminishing his reputation in his profession and among his peers in the NFT
9 art world, which has a natural tendency to lower his earnings – much of which are
10 based on his reputation amongst his peers and NFT collectors.

11 134. The above-described statements convey a defamatory meaning. They
12 harm Whitley’s reputation as to lower it.

13 135. It was Nygard’s expectation and intent that the defamatory statements
14 would injure Whitley economically, including by lessening his earnings.

15 136. Whitley has not discovered, and may not be able to discover, the extent
16 to which any lessening of his reputation has occurred as a result of Nygard’s
17 defamatory statements. Whitley may have lost out on the opportunity to collaborate
18 with other NFT artists, or to market or promote other projects in exchange for shares
19 of revenue generated – similar to how he worked with Defendants.

20 **TWELFTH CLAIM FOR RELIEF**

21 **(Violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.* against Defendants)**

22 137. Plaintiff incorporates and re-alleges the allegations contained in
23 paragraphs 1-136 of this Complaint as if fully set forth herein.

24 138. Defendants, by wrongfully removing Whitley from the Caked Apes
25 social media accounts and withholding the Art Discord and the revenue generated by
26 the Pixel Tots and Caked Apes NFT launches, have engaged in unlawful and unfair
27 business practices that have injured and will continue to injure Plaintiff’s business
28 and property in violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*

1 139. Plaintiff has been, and will continue to be, irreparably harmed by
2 Defendants' conduct unless Defendants are enjoined by this Court. Plaintiff has no
3 adequate remedy at law, in that the amount of damage to Plaintiff's business and
4 reputation and the diminution of the goodwill associated the Art Discord is difficult
5 to ascertain with specificity. Plaintiff is therefore entitled to injunctive relief.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 8 a) For judgment in favor of Plaintiffs on each of their claims for relief;
- 9 b) For injunctive relief; specifically, that Defendants and all of their
10 officers, agents, servants, representatives, employees, attorneys, parent and
11 subsidiary corporations, assigns and successors in interest, and all other persons
12 acting in concert with them be preliminarily and permanently enjoined from (i) acting
13 on behalf of or in any way representing themselves to be the Art Discord or its
14 predecessors with Plaintiff's consent; (ii) withdrawing any funds (whether in US
15 Dollars or in any cryptocurrency) that were earned as a result of the same of any art
16 project created by members of, or that was supported in any way, by the Art Discord
17 or its predecessors without Plaintiffs' consent; and (iii) making any statements,
18 whether anonymously or identified by any individual Defendant's name or in the
19 name of the Art Discord or its predecessors, that defames Whitley or injures his
20 reputation in any way;
- 21 c) An order that the implied partnership described herein be dissolved and
22 all partnership affairs be wound up within 30 days of judgment, including all
23 partnership records be turned over to Plaintiff and that affairs be settled and
24 distribution made to the partners in a proportion that will be proven at trial;
- 25 d) An award in favor of Plaintiff and against Defendants for all damages
26 suffered as a result of Defendants' wrongdoing, in an amount to be proven at trial;
- 27 e) For compensatory and punitive damages in an amount to be proven at
28 trial;

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f) For disgorgement of Plaintiffs’ portion of all revenue obtained from, or in connection with, the Pixel Tots NFT project and the Caked Apes NFT project on or after January 1, 2022, and lost profits Plaintiff would have attained had his access not been deleted;

g) For attorneys’ fees;

h) For pre-judgment and post-judgment interest;

i) For costs of this suit; and

j) For such other relief in law or equity as the court deems just and proper.

Plaintiffs hereby demand trial by jury on all issues pursuant to Fed. R. of Civ. Proc. 38 and the 7th Amendment to the United States Constitution.

Dated: May 6, 2022

ARENTFOX SCHIFF LLP

By: /s/John S. Purcell
John S. Purcell
Jake Gilbert
Attorneys for Plaintiffs
TAYLOR WHITLEY and
WTF.INDUSTRIES, LLC