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1 2 3 4 5 6 7 8 9	Robert C. Ryan, Esq. (NV Bar #7164) Jerry M. Snyder, Esq. (NV Bar #6830) HOLLAND & HART LLP 5441 Kietzke Lane, Second Floor Reno, Nevada 89511 Telephone: (775) 327-3000 Facsimile: (775) 786-6179 rcryan@hollandhart.com jsnyder@hollandhart.com Attorneys for Steve Liguori and Bruno Liguori Turquoise Trading, Inc.
10	UNITED STATES DISTRICT COURT
11	DISTRICT OF NEVADA
12	STEVE LIGUORI, an individual; and BRUNO
13	LIGUORI TURQUOISE TRADING, INC., a Nevada corporation, Case No. 2:10-cv-00384
ы ¹⁴	Plaintiffs,
oH pu 15	VS. COMPLAINT
Holland & Hart LLP 5441 Kietzke Lane, Second Floor 81 keno, Nevada 89511 61 81 21 91 91 71 71	BERT HANSEN, individually and doing business as HOOVER DAM SNACKETERIA or the HIGH SCALER CAFE; KAWANA POHE, individually and doing business as the HOOVER DAM STORE; and DOES 1 through 10,
145 19	Defendants.
20	/
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22	Plaintiffs STEVE LIGUORI and BRUNO LIGUORI TURQUOISE TRADING, INC.
23	allege as follows:
24	INTRODUCTION
25	1. Steve Liguori is a noted artist and sculptor whose large-scale works have been commissioned by a number of public entities, including the City of Las Vegas and the United
26	States Government. Defendants, recognizing the quality of Liguori's original artwork,
27	commissioned him to build a large scale sculpture of a worker on Hoover Dam. This work,
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Reno, Nevada 89511

called the High Scaler, remains in place near gift shops and restaurants that Defendants own and operate near Hoover Dam. The largest part of Liguori's compensation for creating this artwork was an agreement under which Liguori and his company, Bruno Liguori Turquoise Trading, Inc. ("BLTT") licensed to defendants the rights to manufacture and sell souvenirs based on Liguori's work in exchange for a 17% royalty on all licensed products.

2. Liguori proceeded to build and install the High Scaler work near Defendants' businesses. Defendants have exploited Liguori's work to their great commercial advantage. Defendants have manufactured and sold, and continue to sell, a significant volume of souvenirs that utilize Liguori's and BLTT's works. Defendants have even used Liguori's works in a number of ways which go far beyond the licensed purposes. For instance, Defendants operate a restaurant known as the High Scaler Café which utilizes Liguori's work in its marketing materials, menu, signage, and other items.

3. However, despite the fact that Defendants have recognized a very substantial benefit from the use of Liguori's work, they have utterly refused to fulfill their obligations under the License Agreement, including without limitation their obligation to pay royalties to BLTT, their obligation to provide audited royalty statements, their obligation to obtain BLTT's and Liguori's approval before manufacturing and selling licensed products, and their obligation to register copyrights on all licensed products. As such, Defendants have breached their contractual obligations to BLTT and have infringed BLTT's and Liguori's copyrights.

THE PARTIES

4. Plaintiff Steve Liguori ("Liguori") is a resident of the State of Nevada.

5. Plaintiff Bruno Liguori Turquoise Trading, Inc. ("BLTT") is a corporation duly formed and in good standing under the laws of the state of Nevada.

Plaintiffs are informed and believe, and on that basis allege, that Defendant Bert
Hansen, individually and doing business as the Hoover Dam Snacketeria, is a resident of the
State of Nevada. The Hoover Dam Snacketeria was a retail gift shop and restaurant located near
Hoover Dam. The Hoover Dam Snacketeria has been replaced by the High Scaler Café, which is
also owned and operated by Hansen or by a corporate entity owned by Hansen.

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1 7. Plaintiffs are informed and believe, and on the basis alleges, that Defendant 2 Kawana Pohe, individually and doing business as the Hoover Dam Store, is a resident of the 3 State of Nevada. The Hoover Dam Store is a retail gift shop located near Hoover Dam. 4 JURISDICTION AND VENUE 5 8. Plaintiffs incorporate the allegations of Paragraphs 1-7 as though fully set forth 6 herein. 7 9. As this Complaint alleges claims for copyright infringement, this Court has 8 exclusive jurisdiction pursuant to 28 U.S.C. § 1338. 9 10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because (1) the 10 Defendants reside within the District of Nevada, and (2) a substantial part of the events or 11 omissions giving rise to the subject claims occurred within the District of Nevada. 12 **GENERAL ALLEGATIONS** 13 11. Plaintiffs incorporate the allegations of Paragraphs 1-10 as though fully set forth 14 herein. 15 12. In 1995, Hansen and Liguori discussed ideas for a sculpture commemorating Reno, Nevada 89511 16 laborers who worked on Hoover dam. These discussions led to Liguori creating a bronze 17 sculpture, approximately two feet in height, called the "Hoover Dam High Scaler," or the "High 18 Scaler." A photograph depicting this work is attached to this Complaint as **Exhibit 1.** 19 13. Liguori subsequently transferred rights in the High Scaler to BLTT. On or about 20 July 27, 1998, BLTT registered its copyright in the High Scaler sculpture as Copyright 21 Registration No. VA 893-398. 22 14. In 1999, Liguori created a series of sketches and drawings known as the "Hoover 23 Dam Series." These included designs for chess pieces, medallions, charm, key rings, thimbles, 24 souvenir spoons, ornaments, and related items. 25 In 2000, Liguori created a drawing called the "High Scaler Drawing." 15. On 26 November 6, 2000, Liguori registered his copyright in the High Scaler Drawing as Copyright 27 Registration No. VA 1-062-321. A copy of the High Scaler Drawing is attached hereto as 28 Exhibit 2.

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Also in 2000, Liguori created a monument-scale version of the High Scaler called
 the "High Scaler Sculpture." The circumstances of the creation of this work are discussed more
 thoroughly below. On November 6, 2000, Liguori registered his copyright in the High Scaler
 Sculpture as Copyright Registration No. VA 1-672-432. A photograph depicting the High Scaler
 Sculpture is attached hereto as Exhibit 3.

17. In 2002, Liguori created a drawing of Hoover Dam called "Hoover Dam 1931-1935." On July 28, 2003, Liguori registered his copyright in the Hoover Dam 1931-1935 as
Copyright Registration No. VA 1-198-450. A copy of the Hoover Dam 1931-1935 Drawing is attached hereto as Exhibit 4.

18. Plaintiffs are informed and believe, and on that basis allege, that Liguori has created and registered additional copyrighted works relating to Hoover Dam. Plaintiffs will amend this complaint as such additional information is acquired.

19. Both High Scaler Sculptures, the Hoover Dam Series, the High Scaler Drawing, the Hoover Dam 1931-1925 Drawing, the works created by Liguori relating to Hoover Dam, and any of Liguori's additional copyrighted Hoover Dam works are referred to collectively herein as the "Hoover Dam Works."

20. In 1998, Defendants Hansen and Pohe contacted Liguori for the purpose of commissioning him to design, fabricate, and install a monument scale version of the Hoover Dam High Scaler near Hoover Dam.

21. Liguori advised Hansen and Pohe that the cost to create and install the monument scale "High Scaler" would be approximately \$500,000.00.

22 22. Hansen and Pohe suggested that that instead of an initial payment of \$600,000.00,
23 Liguori and BLTT agree to create and install the "High Scaler" for a fee of approximately
24 \$166,000, and an opportunity to share in the proceeds of selling merchandise based on the "High
25 Scaler" sculpture and the Hoover Dam Series.

26 23. As a result of these negotiations, on or about June 12, 2000, BLTT entered into a
27 Retail Licensing Agreement with Hansen and Pohe (the "Agreement"). A true and correct copy
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of the Agreement is attached hereto as Exhibit 5. A number of the terms of the Agreement are
relevant:

3 a. Hansen and Pohe agreed to pay BLTT a royalty of 17% of the gross selling price 4 of all "Licensed Products delivered or shipped." Payments for royalties were to 5 be made on a quarterly basis within 15 days of the end of each calendar quarter. 6 b. Hansen and Pohe agreed to provide BLTT with a complete and accurate royalty 7 statement at the time each quarterly royalty payment was made. 8 c. Hansen and Pohe agreed to provide, at their own expense, annual royalty 9 statements prepared by and audited by an independent certified public accountant. 10 d. Hansen and Pohe agreed that no licensed product could be manufactured, 11 distributed, or sold, before (1) a prototype of the product was to be provided to 12 BLTT, and (2) BLTT provided written approval of the product and the packaging. 13 e. Hansen and Pohe agreed to secure world-wide copyright protection, in BLTT's 14 name, for all licensed products, including United States copyright registration. 15 f. Hansen and Pohe agreed to actively manufacture, advertise, and distribute the Reno, Nevada 89511 16 licensed products. 17 24. Liguori proceeded to create and install the large scale High Scaler sculpture. 18 25. After entering into the Agreement, Hansen and Pohe obtained written approval 19 from Liguori for the manufacture and sale of a number of licensed products, including products 20 called: 21 Hoover Dam Chess Piece, a. 22 Hoover Dam Wing Small Statue, b. 23 Hard Hat Thimble, c. 24 Hoover Dam Key Ring, d. 25 Hard Hat Charm, e. 26 f. Hard Hat Chess Piece and Charm, 27 Hoover Dam Bell Wings, g. 28 h. Hoover Dam Eagle Buckle, Page 5 of 9

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	i. Hoover Dam Eagle Charm,
	2 j. Hoover Dam Eagle Keyring,
	k. Hoover Dam Bell, and
	1. Hoover Dam Spoon.
	5 26. Hansen and Pohe thereafter began selling certain licensed products and have been
	5 selling such products since 2000.
	7 27. In addition, Hansen and Pohe have caused products to be manufactured and
	distributed which are based on the Hoover Dam Works but for which neither BLTT nor Liguori
	provided written approval. For instance, Hansen and/or Pohe have used the High Scaler
1	sculpture and the High Scaler Drawing works on a number of souvenirs and other items,
1	l including:
1	2 a. Plastic Bags,
1	b. The window, menu, and receipts for a restaurant known as the "High Scaler
100 1	4 Café,"
Hart LLP e, Second Floor ada 89511	5 c. Business cards for Hansen,
Holland & Kietzke Lan Reno, Neva	
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1	q. Paper weights,
2	r. Baseball caps,
3	s. Liquor flasks,
4	t. Books,
5	u. Coasters, and
6	v. Souvenir hard hats
7	28. Attached hereto as Exhibit 6 is a series of photographs showing a number of
8	products that Pohe and/or Hansen have caused to be manufactured, distributed, and sold which
9	use the High Scaler sculpture and the High Scaler drawing works.
10	29. Despite the fact that Hansen and Pohe have sold products which are based on
11	Liguori's and BLTT's licensed artwork for several years, they have made only minimal royalty
12	payments.
13	30. Hansen and Pohe have never provided a quarterly royalty statement to BLTT.
1 4	31. Despite the fact that BLTT and Liguori have specifically requested that
& Hart LLP ane, Second Floor evada 89511 2 91 51 4 41	Defendants provide audited royalty statements, as required by the License Agreement, Hansen
Lane, Second Vevada 89511 21 21 21 21 21 21 21 21 21 21 21 21 2	and Pohe have refused to do so.
Holland & Kietzke Lat Reno, Nev 12	32. Hansen and Pohe have caused a number of items utilizing the High Scaler
—	sculpture and High Scaler drawing works to be manufactured, distributed, and sold without
	obtaining authorization from Liguori and/or BLTT.
20	33. Hansen and Pohe have taken no steps to secure world-wide copyright protection
21	for either the approved or unapproved licensed artwork, nor have they registered copyrights for
22	these works in the Untied States.
23 24	FIRST CAUSE OF ACTION – BREACH OF CONTRACT
24 25	34. Plaintiffs incorporate the allegations of Paragraphs 1-33 as though fully set forth herein.
25 26	35. The License Agreement is a valid and enforceable contract.
20	35. The License Agreement is a valid and emorecable contract. 36. Through the conduct set forth above, Hansen and Pohe have failed to satisfy a
28	number of their obligations under the Agreement.
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	1	37. As a result of Hansen and Pohe's breach of the License Agreement, Plaintiffs
	2	have incurred damages in an amount in excess of \$75,000.00.
	3	38. As a further result of Hansen and Pohe's breach of the License Agreement,
	4	Plaintiffs have incurred irreparable harm.
	5	39. As a further result of Hansen and Pohe's breach of the License Agreement,
	6	Plaintiffs have incurred attorney's fees and litigation costs in an amount to be determined at trial.
	7	SECOND CAUSE OF ACTION – BREACH OF THE IMPLIED COVENANT OF GOOD
	8	FAITH AND FAIR DEALING
	9	40. Plaintiffs incorporate the allegations of Paragraphs 1-39 as though fully set forth
	10	herein.
	11	41. There existed in the License Agreement, as with every contract entered into
	12	within the State of Nevada, an implied covenant of good faith and fair dealing.
	13	42. Through the conduct set forth above, Hansen and Pohe breached the implied
001	14	covenant of good faith and fair dealing.
& Hart LLP ane, Second Floor	15 ¹⁵	43. As a result of Hansen and Pohe's breach of the implied covenant, Plaintiffs have
& Hart LLP ane, Second	Reno, Nevada 89511 81 0.1 81 0.1 810 0.1 81 0.1 810	incurred damages in an amount in excess of \$75,000.00.
and & ke Lan	Nex:	44. As a further result of Hansen and Pohe's breach of the License Agreement,
Holland 8 5441 Kietzke La	Reno	Plaintiffs have incurred irreparable harm.
5441	19	45. As a further result of Hansen and Pohe's breach of the License Agreement,
	20	Plaintiffs have incurred attorney's fees and litigation costs in an amount to be determined at trial.
	21	THIRD CAUSE OF ACTION – COPYRIGHT INFRINGEMENT
	22	46. Plaintiffs incorporate the allegations of Paragraphs 1-45 as though fully set forth
	23	herein.
	24	47. As set forth herein, Liguori and/or BLTT are the owners of the copyrights in the
	25	Hoover Dam Works.
	26	48. As set forth above, Hansen and Pohe had viewed Liguori's original artwork for
	27	the High Scaler sculpture and the High Scaler drawing, and they were aware that Liguori and/or
	28	BLTT owned the copyrights to those works.
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	1	49. Hansen and Pohe have caused to be manufactured and sold a number of articles
	2	bearing an image which is substantially similar to the High Scaler sculpture and the High Scaler
	3	drawing.
	4	50. As a result of Hansen and Pohe's copyright infringement, Plaintiffs have
	5	incurred damages in an amount in excess of \$75,000.00.
	6	51. As a further result of Hansen and Pohe's copyright infringement, Liguori and/or
	7	BLTT have incurred and will incur irreparable harm.
	8	WHEREFORE, Liguori and BLTT request judgment against Defendants, and each of
	9	them, and all those acting in concert with them as follows:
	10	1. A temporary restraining order, preliminary injunction, and permanent injunction
	11	restraining and enjoining Defendants from manufacturing, distributing, or selling all infringing
	12	items;
	13	2. A mandatory injunction requiring Defendants to provide an audited accounting
Floor	14	of all licensed products sold and royalties owed since the date of the License Agreement, to be
LLP cond F	11 15	prepared by an independent certified public accounting of Plaintiffs' choice;
Holland & Hart LLP 5441 Kietzke Lane, Second Floor	12 12 12 12 12 12 12 12 12 12 12 12 12 1	3. An order requiring an impounding and disposition of all infringing articles;
land & zke La	17 17	4. Compensatory damages in an amount to be proven at trial,
Ho H		5. Punitive damages;
544	19	6. Reasonable attorneys' fees, expenses, and litigation costs;
	20	7. Such other and further relief as this court deems appropriate.
	21	Dated: March 19, 2010.
	22	<u>/s/</u>
	23	Robert C. Ryan, Esq. (NV Bar #7164) Jerry M. Snyder, Esq. (NV Bar #6830)
	24	HOLLAND & HART LLP 5441 Kietzke Lane, Second Floor
	25 26	Reno, Nevada 89511 Telephone: (775) 327-3000
	20 27	Facsimile: (775) 786-6179
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