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11 Turquoise Trading, Inc.

12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 STEVE LIGUORI, an individual; and BRUNO
15 LIGUORI TURQUOISE TRADING, INC., a
16 Nevada corporation,

Case No. 2:10-cv-00384

17 Plaintiffs,

COMPLAINT

18 vs.

19 BERT HANSEN, individually and doing business
20 as HOOVER DAM SNACKETERIA or the
21 HIGH SCALER CAFE; KAWANA POHE,
22 individually and doing business as the HOOVER
23 DAM STORE; and DOES 1 through 10,

24 Defendants.

25 Plaintiffs STEVE LIGUORI and BRUNO LIGUORI TURQUOISE TRADING, INC.

26 allege as follows:

27 **INTRODUCTION**

28 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
States Government. Defendants, recognizing the quality of Liguori's original artwork,
commissioned him to build a large scale sculpture of a worker on Hoover Dam. This work,

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

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

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

20 **THE PARTIES**

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

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

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

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

6 17. In 2002, Liguori created a drawing of Hoover Dam called “Hoover Dam 1931-
7 1935.” On July 28, 2003, Liguori registered his copyright in the Hoover Dam 1931-1935 as
8 Copyright Registration No. VA 1-198-450. A copy of the Hoover Dam 1931-1935 Drawing is
9 attached hereto as **Exhibit 4**.

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

13 19. Both High Scaler Sculptures, the Hoover Dam Series, the High Scaler Drawing,
14 the Hoover Dam 1931-1925 Drawing, the works created by Liguori relating to Hoover Dam, and
15 any of Liguori’s additional copyrighted Hoover Dam works are referred to collectively herein as
16 the “Hoover Dam Works.”

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

20 21. Liguori advised Hansen and Pohe that the cost to create and install the monument
21 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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1 of the Agreement is attached hereto as **Exhibit 5**. A number of the terms of the Agreement are
2 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
- 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 a. Hoover Dam Chess Piece,
- 22 b. Hoover Dam Wing Small Statue,
- 23 c. Hard Hat Thimble,
- 24 d. Hoover Dam Key Ring,
- 25 e. Hard Hat Charm,
- 26 f. Hard Hat Chess Piece and Charm,
- 27 g. Hoover Dam Bell Wings,
- 28 h. Hoover Dam Eagle Buckle,

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- 1 i. Hoover Dam Eagle Charm,
- 2 j. Hoover Dam Eagle Keyring,
- 3 k. Hoover Dam Bell, and
- 4 l. Hoover Dam Spoon.

5 26. Hansen and Pohe thereafter began selling certain licensed products and have been
6 selling such products since 2000.

7 27. In addition, Hansen and Pohe have caused products to be manufactured and
8 distributed which are based on the Hoover Dam Works but for which neither BLTT nor Liguori
9 provided written approval. For instance, Hansen and/or Pohe have used the High Scaler
10 sculpture and the High Scaler Drawing works on a number of souvenirs and other items,
11 including:

- 12 a. Plastic Bags,
- 13 b. The window, menu, and receipts for a restaurant known as the “High Scaler
14 Café,”
- 15 c. Business cards for Hansen,
- 16 d. Coloring books,
- 17 e. Water bottles,
- 18 f. Medallions, T-Shirts,
- 19 g. Stemware,
- 20 h. Figurines,
- 21 i. Zippo cigarette lighters,
- 22 j. Plaques,
- 23 k. Keychains,
- 24 l. Stuffed animals
- 25 m. Collectors plates
- 26 n. Patches
- 27 o. Coffee mugs,
- 28 p. Hot sauce

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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.

14 31. Despite the fact that BLTT and Liguori have specifically requested that
15 Defendants provide audited royalty statements, as required by the License Agreement, Hansen
16 and Pohe have refused to do so.

17 32. Hansen and Pohe have caused a number of items utilizing the High Scaler
18 sculpture and High Scaler drawing works to be manufactured, distributed, and sold without
19 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 **FIRST CAUSE OF ACTION – BREACH OF CONTRACT**

24 34. Plaintiffs incorporate the allegations of Paragraphs 1-33 as though fully set forth
25 herein.

26 35. The License Agreement is a valid and enforceable contract.

27 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
14 covenant of good faith and fair dealing.

15 43. As a result of Hansen and Pohe's breach of the implied covenant, Plaintiffs have
16 incurred damages in an amount in excess of \$75,000.00.

17 44. As a further result of Hansen and Pohe's breach of the License Agreement,
18 Plaintiffs have incurred irreparable harm.

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.

