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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

VICTOR CHAPA, P/K/A “REYES,” an individual; and MILES MACGREGOR, P/K/A “EL MAC,” an individual;

Plaintiff,

v.

KROTO, INC., D/B/A ICANVAS ART, an Illinois corporation; and DOES 1-10 inclusive.

Defendants.

Case No.

**COMPLAINT FOR DAMAGES,
RESTITUTION AND INJUNCTIVE
RELIEF**

DEMAND FOR JURY TRIAL

Plaintiffs Victor Chapa, p/k/a “Reyes” (“Chapa,” or “Reyes”), and Miles MacGregor, p/k/a “El Mac” (“MacGregor,” or “El Mac”) (collectively, “Plaintiffs”) hereby complain against Defendants Kroto, Inc., d/b/a iCanvas Art (“iCanvas”); and Does 1-10 inclusive (collectively referred to as “Defendants”) as follows.

JURISDICTION AND VENUE

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2 1. Plaintiffs bring this action for copyright infringement (17 U.S.C.
3 Section 101 et seq.); and malicious prosecution under California law.

4 2. This Court has original subject matter jurisdiction over this action and
5 the claims asserted herein, pursuant to 28 U.S.C. Section 1331 (“federal question
6 jurisdiction”) and 1338(a)-(b) (“patent, copyright, trademark and unfair competition
7 jurisdiction”) in that this action arises under the laws of the United States and, more
8 specifically, Acts of Congress relating to patents, copyrights, trademarks, and unfair
9 competition. This Court has subject matter jurisdiction over the state law claims
10 pursuant to 28 U.S.C. Section 1367(a) (“supplemental jurisdiction”) in that they are
11 so related to the federal law intellectual property claims in the action that they form
12 part of the same case or controversy under Article III of the United States
13 Constitution.

14 3. Defendants are subject to the personal jurisdiction of the Court because
15 they do or transact business in, have agents in, or are otherwise found in and have
16 purposely availed themselves of the privilege of doing business in California and in
17 this District, and because the alleged misconduct was directed to California and this
18 district. In addition, Defendants infringed Plaintiffs’ work in California, and offered
19 their infringing works for sale in California.

20 4. Venue is proper in this District pursuant to 28 U.S.C. Section
21 1391(b)(1)-(3) because a substantial part of the events or omissions giving rise to
22 the claims occurred in this District in that, *inter alia*, the infringing advertising was
23 used here.

THE PARTIES

24
25 5. Plaintiff Victor Chapa is a world-renowned artist, producing works
26 under the pseudonym “Reyes.” Reyes’s work has been featured in numerous art
27 galleries in cities across the world, including New York, San Francisco, Tokyo, and
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1 Montreal. Reyes is perhaps most well known for his outdoor murals, which were
2 celebrated in a 2010 cover story in the San Francisco Chronicle.

3 6. Plaintiff Miles MacGregor is a world-renowned artist, producing works
4 under the pseudonym “El Mac.” El Mac has been commissioned to paint murals
5 across the United States, as well as in Mexico, Denmark, Sweden, Canada, South
6 Korea, Belgium, Italy, Puerto Rico, Spain, France, Singapore, Germany, Ireland, the
7 United Kingdom, and Vietnam.

8 7. Defendant Kroto, Inc. is an Illinois corporation operating under the
9 fictitious business name “iCanvas.” Through its website, iCanvas advertises and
10 sells goods to residents of Los Angeles County, including the infringing goods at
11 issue in this case.

12 8. Plaintiff is ignorant of the true names and capacities of the Defendants
13 sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such
14 fictitious names. Plaintiff will amend this Complaint to allege the true names and
15 capacities when the same has been ascertained. Plaintiff is informed and believes,
16 and thereon alleges, that each fictitiously-named Defendant is responsible in some
17 manner for the occurrences herein alleged, and that Plaintiff’s damages as herein
18 alleged were proximately caused by their conduct.

19 9. Each of the Defendants acted as an agent for each of the other
20 Defendants in doing the acts alleged and each Defendant ratified and otherwise
21 adopted the acts and statements performed, made or carried out by the other
22 Defendants so as to make them directly and vicariously liable to the Plaintiff for the
23 conduct complained of herein.

24 **GENERAL ALLEGATIONS**

25 10. In or about 2006, Plaintiffs collaborated on the creation of a graffiti
26 mural on the side of a building located at 888 Turk St. in San Francisco, California
27 (the “Mural”). Like many of Reyes’s and El Mac’s outdoor works, this Mural was
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1 very popular, and widely photographed by Plaintiffs' fans, and the general public
2 alike. Although it was painted over when the building was refurbished in 2011, the
3 fact that the Mural (shown below) remained for nearly five years is a testament to
4 the Mural's popularity, as well as that of both Reyes and MacGregor's work in
5 general.



17 11. In or about 2016, without Plaintiffs' knowledge, authorization, or
18 consent, Defendants obtained a photograph of the Mural, and produced low quality,
19 mass-market reproductions of Plaintiff's work, which Defendants advertised and
20 sold on their website under the title "Burning Graffiti." Although Defendants knew
21 that Plaintiffs Reyes and El Mac were the creators of the Mural, they sought to
22 conceal their infringement by attributing Plaintiffs' work to the popular, reclusive
23 street-artist Banksy.

24 12. Worse still, Defendants sold these low quality, mass-produced copies
25 of Plaintiffs' Work through mass-market, "big-box" retailers, including Walmart,
26 and Amazon.com. Nothing is more antithetical to the outsider "street cred" that is
27 essential to graffiti artists—or any fine artist, for that matter—than association with
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1 cheap, mass-market products peddled by iCanvas, and with “big-box” retailers like
2 Walmart and Amazon.com. To anyone who recognizes their work, Plaintiffs are
3 now wide open to career-ending charges of “selling out.”

4 13. Plaintiffs are informed and believe, and thereon allege, that
5 Defendants’ alleged conduct was, and continues to be, intentional, deliberate,
6 willful, wanton, committed with the intention of injuring Plaintiffs, and depriving
7 Plaintiffs of Plaintiffs’ legal rights; was, and is, despicable conduct that subjects
8 Plaintiffs to a cruel and unjust hardship; and was, and continues to be, undertaken
9 with oppression, fraud and malice. Accordingly, Plaintiffs are entitled to an award
10 of punitive or exemplary damages.

11 14. Defendants’ actions have caused, and will continue to cause, damage
12 and irreparable harm to Plaintiffs (as described above) and are likely to continue
13 unabated, thereby causing further damage and irreparable harm to Plaintiffs, unless
14 preliminarily and permanently enjoined and restrained by the Court.

15 15. Defendants infringed as described above, and used copies of Plaintiffs’
16 pseudonym and signature, in interstate commerce.

17 **First Claim For Relief For Copyright Infringement**
18 **(Against All Defendants)**

19 16. Plaintiffs incorporate herein by this reference paragraphs 1 through 15
20 as if set forth in full in this cause of action.

21 17. Plaintiffs’ graphic expression, as shown in the image above, is an
22 original work of authorship and constitutes copyrightable subject matter under the
23 laws of the United States. The image was fixed in a tangible medium of expression,
24 as described above. An application for a federal registration of the artwork has been
25 filed with the Register of Copyrights, dated July 17, 2017; and the deposit,
26 application, and fee required for registration have been delivered to the Copyright
27 Office in proper form. The case number associated with the application is 1-
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1 5635590011.

2 18. At all times since the creation of the graphic expression, Plaintiffs have
3 complied with all aspects of the Copyright Acts of 1909 and 1976 and all other laws
4 governing copyright, and secured the exclusive rights and privileges in and to the
5 graphic expression. Plaintiffs are the sole owner of all rights, title, and interest in
6 and to the copyright in the graphic expression.

7 19. Subsequent to Plaintiffs' creation of the graphic expression and (on
8 information and belief) with full knowledge of the rights of Plaintiffs, Defendants
9 infringed Plaintiffs' copyright by copying and reproducing, as described above, the
10 artwork and selling such copied images, and derivative works.

11 20. All of Defendants' acts were performed without the permission, license
12 or consent of Plaintiffs.

13 21. By reason of Defendants' acts of copyright infringement as alleged
14 herein, Plaintiffs have suffered and will continue to suffer substantial damage to
15 their businesses in the form of diversion of trade, loss of profits, and a diminishment
16 in the value of Plaintiffs' works, rights, and reputation, in part as described above,
17 all in amounts that are not yet ascertainable but not less than the jurisdictional
18 minimum of this court.

19 22. By reason of their infringement of Plaintiffs' copyright as alleged
20 herein, Defendants are liable to Plaintiffs for the actual damages incurred by
21 Plaintiffs as a result of the infringement, and for any profits of Defendants directly
22 or indirectly attributable to such infringement.

23 23. Defendants' copying was willful, as alleged above.

24 **Second Claim For Relief For Falsification, Removal and Alteration of**
25 **Copyright Management Information in Violation of 17 U.S.C. § 1202**
26 **(Against All Defendants)**

27 24. Plaintiffs incorporate herein by this reference paragraphs 1 through 23
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1 as if set forth in full in this cause of action.

2 25. On information and belief, Defendants knew that Plaintiffs Reyes and
3 El Mac created the Mural because, *inter alia*, the source of the photograph that
4 Defendants used to produce the infringing goods specifically attributed the Mural to
5 Plaintiffs.

6 26. Defendants intentionally falsified copyright management information
7 related to the Work with the intent to induce, enable, facilitate, or conceal an
8 infringement of Plaintiffs' rights under the Copyright Act. Specifically, on
9 Defendants' iCanvas.com website, and on third-party retailer websites selling
10 iCanvas's infringing goods, Defendants have supplied inaccurate copyright
11 management information that falsely identifies another artist, Defendants, or another
12 person or entity, that has no copyright ownership interest as the owner of copyright
13 in the Mural.

14 27. Defendants' conduct constitutes a violation of 17 U.S.C. § 1202(a), and
15 1202(b).

16 28. Defendants' falsification, removal and/or alteration of that copyright
17 management information was done without Plaintiffs' knowledge or authorization.

18 29. Defendants' falsification of said copyright management information
19 was done by Defendants intentionally, knowingly, and with the intent to induce,
20 enable, facilitate, or conceal Defendants' infringement of Plaintiffs' copyright in the
21 Work. Defendants also knew, or had reason to know, that such removal and/or
22 alteration of copyright management information would induce, enable, facilitate, or
23 conceal Defendants' infringement of Plaintiffs' copyright in the Work.

24 30. Plaintiffs have sustained significant injury and monetary damages as a
25 result of Defendants' wrongful acts as hereinabove alleged, and as a result of being
26 involuntarily associated with Defendants. Plaintiffs are at present unable to ascertain
27 the full extent of the monetary damages Plaintiffs have suffered by reason of said
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1 acts. In order to determine the full extent of such damages, including such profits of
2 Defendants as may be recoverable under 17 U.S.C. § 1203, Plaintiffs will require an
3 accounting from each Defendant of all monies generated from their wrongful
4 falsification, removal and alteration of copyright management information.

5 31. In the alternative, Plaintiffs may elect to recover statutory damages
6 pursuant to 17 U.S.C. § 1203(c)(3) in a sum of not more than \$25,000 from each
7 Defendant for each violation of 17 U.S.C. § 1202.

8 **PRAYER**

9 WHEREFORE, Plaintiffs pray judgment against Defendants as follows:

10 1. That Plaintiffs are awarded all damages, including future damages, that
11 Plaintiffs have sustained, or will sustain, as a result of the acts complained of herein,
12 subject to proof at trial;

13 2. That Plaintiffs are awarded their costs, attorneys' fees and expenses in
14 this action;

15 3. That Plaintiffs are awarded pre-judgment interest;

16 4. For an order permanently enjoining Defendants and their employees,
17 agents, servants, attorneys, representatives, successors, and assigns, and any and all
18 persons in active concert or participation with any of them, from engaging in the
19 misconduct referenced herein;

20 5. That Defendants be ordered to immediately recall and remove any and
21 all infringing goods from the marketplace; and any and all remaining locations,
22 physical or digital;

23 6. That Defendants be ordered to file with this Court and serve upon
24 Plaintiffs' counsel within thirty (30) days after services of the judgment demanded
25 herein, a written report submitted under oath setting forth in detail the manner in
26 which they have complied with the judgment;

27 8. For disgorgement of all proceeds, and restitution of the moneys
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1 wrongfully received by Defendants as the result of their wrongful conduct, including
2 copyright and trademark infringement, and unfair competition;

3 9. For punitive damages in an amount sufficient to deter Defendants, and
4 each of them, from their wrongful conduct; and

5 10. For further relief, as the Court may deem appropriate.

6 DATED: July 18, 2017

GLUCK LAW FIRM P.C.

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9 By: /s/
10 Jeffrey S. Gluck
11 Attorney for Plaintiffs
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