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7 Attorneys for COSIMO CAVALLARO  
8 and ART ABOVE GROUND

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 COSIMO CAVALLARO and ART  
ABOVE GROUND,  
12 Plaintiff,  
13  
14 vs.  
15 SLSCO, LTD. and Ultimate Concrete  
LLC  
16 Defendants.

Case No.  
COMPLAINT FOR DAMAGES  
  
JURY TRIAL DEMANDED

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1 Plaintiff Cosimo Cavallaro and Art Above Ground (together “Plaintiffs”),  
2 through their undersigned counsel, hereby bring this Complaint against SLSCO Ltd.  
3 (“SLSCO”) and Ultimate Concrete LLC (“Ultimate Concrete”) (together  
4 “Defendants”) for infringing Cavallaro’s rights under the Visual Artists Rights Act,  
5 17 U.S.C. § 106A, and for conversion, nuisance, trespass to chattels, and trespass.  
6 This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 17  
7 U.S.C. § 106A, and supplemental jurisdiction over Plaintiffs’ state law claims under  
8 28 U.S.C. § 1367. Cavallaro alleges, on personal knowledge as to himself and  
9 information and belief as to others, as follows:

### 10 INTRODUCTION

11 1. Cavallaro is a renowned visual artist whose work has been exhibited in  
12 museums, galleries, and art festivals all over the world. His work often involves  
13 sculptures in perishable materials, commenting on concepts such as the absurdity of  
14 effort, waste and decay. In late 2018, Cavallaro began work on a piece of art he  
15 called “Cheese Wall.” He leased a portion of private property near the United States-  
16 Mexico border, and began construction on the piece, made entirely out of “bricks” of  
17 Cotija cheese. Cavallaro made the cheese himself, formed the bricks, salted and  
18 drained them of water, and formed them into the shape of a wall. Cavallaro intended  
19 the piece to comment on the nearby border wall, made of steel. As he told the Los  
20 Angeles Times, “You see the waste in my wall, but you can’t see the waste in  
21 [President Trump’s] \$10-billion wall, which in time will be removed?” During its  
22 construction, the Cheese Wall garnered significant attention, and its message  
23 resonated with many.

24 2. Despite months of effort and expense, Defendants deprived Cavallaro of  
25 his work and prevented him from completing the Cheese Wall. On information and  
26 belief, on or around October 2019, Defendants, with wanton disregard or intentional  
27 hostility to the Cheese Wall, its status as piece of art, and its location on private  
28 property, destroyed the Cheese Wall. Using heavy, land-moving machinery,

1 Defendants' employees or agents, buried the Cheese Wall, destroying it beyond  
2 repair. SLSCO has been hired by the federal government to fortify the wall  
3 separating the United States and Mexico near the site of the Cheese Wall and, on  
4 information and belief, Ultimate Concrete is a subcontractor to SLSCO on this  
5 project. But that work did not require driving through and over the Cheese Wall,  
6 which was on private property ten yards off the access road to the border wall.

7 3. The destruction of the Cheese Wall harmed the honor and reputation of  
8 Cavallaro as an artist. The destruction of his work has caused Cavallaro to suffer  
9 significant emotional distress and has also caused him significant financial loss due  
10 to the lost profits and recognition that the completed work on the Cheese Wall would  
11 have attracted. Because Cavallaro's rights as an artist have been decimated, he has  
12 no choice but to seek compensatory and punitive damages under the Visual Artists  
13 Rights Act and the common law.

#### 14 PARTIES

15 4. Plaintiff Cosimo Cavallaro is an artist and resident of Los Angeles,  
16 California. Cavallaro is the "author of a work of visual art" within the meaning of 17  
17 U.S.C. § 106A.

18 5. Plaintiff Art Above Ground is a California non-profit public benefit  
19 corporation with the mission of providing socially relevant public art installations.

20 6. Defendant SLSCO Ltd. is a Texas corporation with its principal place of  
21 business at 6702 Broadway, Galveston, Texas.

22 7. Defendant Ultimate Concrete LLC is a Texas corporation with its  
23 principal place of business at 14300 Montana Ave., El Paso, Texas.

#### 24 JURISDICTION AND VENUE

25 8. This Court has jurisdiction over the subject matter of this action  
26 pursuant to 28 U.S.C. § 1331 and 17 U.S.C. § 106A. The court has supplemental  
27 jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367.

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1 **Planning and Creation of Cheese Wall**

2 14. Cavallaro has contemplated using cheese to create art in the shape of a  
3 wall for many years. After President Trump announced his intention to build and  
4 fortify a wall along the United States-Mexico border, Cavallaro felt compelled to  
5 create a wall made out of cheese near the border and set a plan in motion to do so.

6 15. Cavallaro conceptualized his piece as a wall made of cheese standing  
7 directly in front of the so-called "Trump wall." His intention was to encourage  
8 people to think of the "Trump wall" differently by considering the ephemerality of  
9 walls and the waste inherent in building any wall, whether made of cheese or steel.  
10 He planned to build a 1,000-foot wall out of blocks of cheese near the government's  
11 border wall. Cavallaro hoped that his work would highlight the perils of sunk cost  
12 fallacy at all levels.

13 16. He also planned, after the wall had stood for some period of time, to sell  
14 the blocks that had been part of the Cheese Wall and to create bronze casts of the  
15 cheese blocks. He expected to display the bronze casts in museums or galleries  
16 around the world, where they would be accessible to more people. This display  
17 would have been a culmination of the work, rather than a new work, and would have  
18 brought Cavallaro's message about walls to greater numbers of people. Cavallaro  
19 also intended to sell these bronze casts, so people could own a permanent part of the  
20 Cheese Wall.

21 17. Cavallaro selected an area near a portion of the existing border wall in  
22 southern San Diego County for his project. Art Above Ground, a nonprofit  
23 organization supporting Cavallaro's work, entered into a lease with a private  
24 landowner for a 14-acre piece of land in this area (the "site").

25 18. Construction on the wall began in March 2019 and continued in phases.  
26 Cavallaro used over 400 blocks of Cotija, a hard Mexican cheese, to begin building  
27 the Cheese Wall. Each block of cheese weighed over fifty pounds. Cavallaro crafted  
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1 the cheese himself. To prepare the blocks for use in the wall, he salted each block  
2 and drained it of water.

3 19. By August 18, 2019, the Cheese Wall was approximately six feet tall at  
4 its highest point, three feet wide, and almost 70 feet long. As shown in the picture  
5 below, portions that were built earlier hardened and turned brown, just as copper  
6 sculptures oxidize.



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15 20. Due to the expense of building the Cheese Wall, Cavallaro and Art  
16 Above Ground launched a campaign to raise money for supplies and labor to  
17 continue the construction.

18 21. Although unfinished, the Cheese Wall garnered significant attention  
19 from both the mainstream press and art publications. BBC News, the Los Angeles  
20 Times, USA Today, the Sacramento Bee, and the Huffington Post were among the  
21 many news outlets that published articles on the Cheese Wall. Wire services  
22 including Reuters also wrote about the Cheese Wall, and outlets around the world  
23 republished these stories. The Cheese Wall also received coverage from television  
24 programs including The Late Late Show with James Corden and Telemundo, and  
25 Cavallaro was interviewed for CBC Radio. In addition to this mainstream press,  
26 many art publications including artnet News, Apollo Magazine, and designboom  
27 reported on the project.

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1 **Defendants' Unlawful Actions**

2 22. SLSCO has a contract to construct a portion of a wall along the United  
3 States-Mexico border in San Diego County, California. On information and belief,  
4 Ultimate Concrete is a subcontractor performing part of this work for SLSCO.

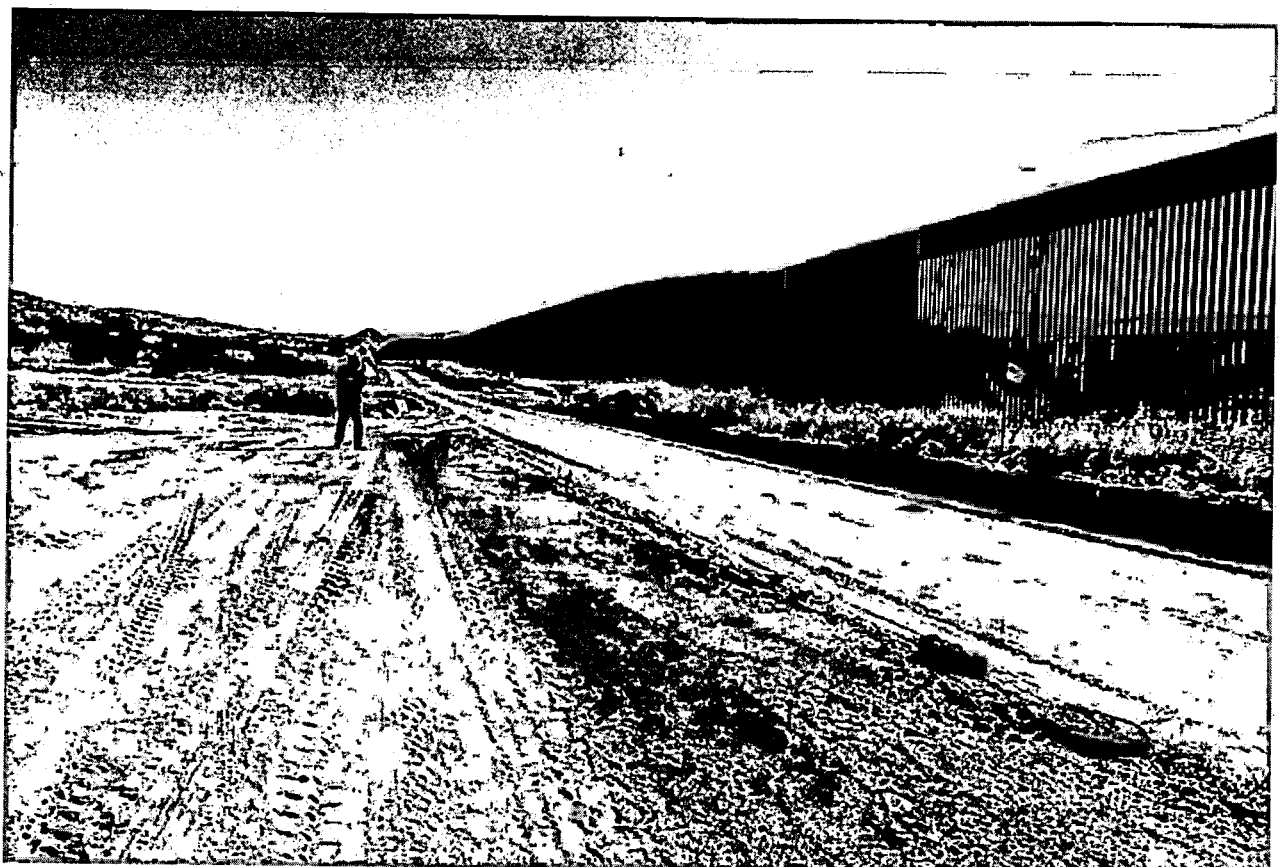
5 23. Defendants knew of Cavallaro's construction of the Cheese Wall before  
6 its destruction, and were aware that it was a piece of art. In fact, Israel Evans, an  
7 employee of Ultimate Concrete, donated to the fundraising campaign for the Cheese  
8 Wall in March 2019, thus demonstrating his knowledge of its status. Indeed, the  
9 fundraising campaign webpage through which the employee donated expressly  
10 informed all viewers and potential donors that "[t]he Cheese Wall is [Cavallaro's]  
11 latest art project" and included pictures of Cavallaro in the process of creating the  
12 Cheese Wall as well as coverage of the sculpture by various media outlets.

13 24. On information and belief, on or about October 2019, Defendants or  
14 their employees and agents knowingly and willfully trespassed onto the site and  
15 destroyed the Cheese Wall. SLSCO and Ultimate Concrete used large construction  
16 vehicles to dismantle the wall, which was then over six feet tall at its highest point,  
17 and to plow many of the blocks of cheese into the ground. Other blocks were  
18 removed from the site entirely. These actions destroyed the Cheese Wall, and only  
19 rubble and dirt remained.

20 25. On October 23, 2019, Evans contacted Cavallaro, who was not at the  
21 site, by telephone, and asked whether Cavallaro would like SLSCO to remove the  
22 Cheese Wall. Cavallaro declined.

23 26. On November 16, 2019 Cavallaro returned to the site and discovered the  
24 Cheese Wall had been entirely destroyed. There were tire tracks on the site from  
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1 heavy machinery, and earth—including portions of the Cheese Wall—had been  
2 moved in a way that evinced use of heavy machinery, as shown in the picture below.



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17 27. Metal slats used for the border wall had also been left on Art Above  
18 Ground's site, despite the fact that it was private property that neither SLSCO,  
19 Ultimate Concrete, nor the government had permission to access. The Cheese Wall  
20 had not been obstructing access to the border wall construction site.

21 **Emotional and Monetary Harm**

22 28. The destruction of the Cheese Wall has caused great distress to  
23 Cavallaro. His artistic vision has been left unfulfilled. Cavallaro has been deprived  
24 of the opportunity to communicate his artistic message through the Cheese Wall—a  
25 message he has spent years contemplating—and to see the Cheese Wall, at its full  
26 length, stand in contrast to the border wall. He is also unable to observe and invite  
27 others to observe the Cheese Wall in person. The destruction of the Cheese Wall  
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1 also means that Cavallaro will no longer be able to cast the bricks in bronze and  
2 display them in museums and galleries around the world to reach an international  
3 audience.

4 29. Cavallaro has also suffered economic harm. He has lost the cost of the  
5 materials, which were completely destroyed or removed by SLSCO and Ultimate  
6 Concrete. He has also lost the economic benefit of continued exposure to others of  
7 his work. Cavallaro anticipated news coverage and donations for the Cheese Wall to  
8 increase as he lengthened the wall. Cavallaro intended to sell some blocks of cheese  
9 that made up the Cheese Wall to raise money for his future artistic endeavors.  
10 Because the blocks were destroyed, buried, or removed, he cannot do so. Finally,  
11 Cavallaro was not able to recover the \$2,000 security deposit from his lease of the  
12 site because the landlord complained about the buried bricks of cheese left behind by  
13 Defendants' destruction of the Cheese Wall.

#### 14 **FIRST CAUSE OF ACTION**

15 **(Visual Artists Rights Act, 17 U.S.C. § 106A; against SLSCO and Ultimate**  
16 **Concrete)**

17 30. Plaintiffs incorporate herein by reference each and every averment  
18 contained in paragraphs 1 through 37 inclusive.

19 31. On information and belief, Defendants violated Cavallaro's right to  
20 prevent the intentional distortion, mutilation, and modification of the Cheese Wall  
21 and to prevent the destruction of a work of recognized stature, in violation of 17  
22 U.S.C. § 106A.

23 32. Cavallaro was the author of the Cheese Wall, a work of visual art under  
24 VARA.

25 33. The intentional distortion, mutilation, and modification of the Cheese  
26 Wall was prejudicial to Cavallaro's honor and reputation.

27 34. The Cheese Wall was a work of recognized stature, and Defendants'  
28 destruction of the Cheese Wall was an intentional and/or grossly negligent act.

1 35. Defendants induced, encouraged, or supported the destruction of the  
2 Cheese Wall.

3 36. Defendants contributed to the infringement because it had knowledge,  
4 reason to know, or was willfully blind to the destruction of the Cheese Wall, and  
5 caused, inducted, or materially contributed to its destruction.

6 37. Defendants had the right and ability to supervise the activity that led to  
7 the destruction of the Cheese Wall, and had a direct financial interest in the  
8 destruction of the Cheese Wall.

9 38. Cavallaro incurred significant financial losses as a result of the wanton  
10 destruction of his valuable work of art.

## 11 **SECOND CAUSE OF ACTION**

### 12 **(Conversion; against SLSCO and Ultimate Concrete)**

13 39. Plaintiffs incorporate herein by reference each and every averment  
14 contained in paragraphs 1 through 37 inclusive.

15 40. As more fully set forth above, Cavallaro was the creator and owner of  
16 the Cheese Wall. Cavallaro did not relinquish his ownership or title rights to the  
17 Cheese Wall.

18 41. On information and belief, Defendants intentionally interfered with  
19 Cavallaro's rights of ownership and control of the Cheese Wall. Defendants' actions  
20 permanently changed the essential character of the Cheese Wall and constitute a  
21 conversion under California law.

22 42. The Cheese Wall had particular value to Cavallaro because of its unique  
23 economic value as a piece of art. Absent its destruction, Cavallaro would have  
24 continued to profit from the Cheese Wall through exposure, donations, and,  
25 eventually, selling some of the blocks of cheese and casts of the blocks.

26 43. On information and belief, the conduct of Defendants in converting  
27 Cavallaro's property was carried on by Defendants in conscious disregard of  
28 Cavallaro's rights.



