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9 UNITED STATES DISTRICT COURT FOR  
10 THE CENTRAL DISTRICT OF CALIFORNIA  
11 WESTERN DIVISION

12 VICTOR HENDERSON,  
13 Plaintiff,

14 v.

15 RALPH ZIMAN, JOHN ROE  
16 and DOES 1-10, inclusive,  
17 Defendants.

) Case No. CV

) COMPLAINT FOR:

- (i) VIOLATION OF THE VISUAL ARTISTS ACT OF 1990 (17 U.S.C. § 106A);
- (ii) VIOLATION OF THE CALIFORNIA ART PRESERVATION ACT (Cal. Civ. Code § 987(c) (1));
- (iii) CONVERSION; and
- (iv) NEGLIGENCE.

JURY DEMANDED

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1 Plaintiff Victor Henderson (“Henderson” or “Plaintiff”) complains and  
2 alleges against Defendant Ralph Ziman, John Roe and Does 1-10 (collectively,  
3 “Defendants”), on personal knowledge as to his own actions and on information  
4 and belief as to the actions of others, as follows:

5 **JURISDICTION AND VENUE**

6 1. This action arises under section 106A of the Copyright Act of 1976, as  
7 amended in 1990 to include the Visual Artists Rights Act (“VARA”). This Court  
8 has jurisdiction over matters arising under VARA pursuant to 28 U.S.C. § 1331  
9 (federal question actions), 28 U.S.C. § 1338 (a) (exclusive jurisdiction over  
10 copyright actions) and 17 U.S.C. § 501 (remedies for copyright infringement  
11 include rights under VARA). This Court has supplemental jurisdiction pursuant to  
12 28 U.S.C. § 1367 over the state law claims because they arise from the same facts  
13 and concern the same subject matter as the federal claims.

14 2. Defendants are subject to the personal jurisdiction of this Court  
15 inasmuch as they are located in California or have purposefully availed themselves  
16 of the privileges of doing business in California with regard to the actions alleged  
17 herein, and such jurisdiction is reasonable.

18 3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1),  
19 28 U.S.C. § 1391(b)(2) and 28 U.S.C. § 1391(b)(3).

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21 **PARTIES**

22 4. Plaintiff Henderson is an individual residing in Los Angeles County,  
23 California. Henderson is an accomplished muralist and artist who, along with the  
24 late Terry Schoonhoven, created the mural known as the “Brooks Avenue Painting”  
25 that is at issue in this action.

26 5. On information and belief, Defendant Ralph Ziman is an individual  
27 residing in the Venice neighborhood of Los Angeles, California.

28 6. On information and belief, Defendant John Roe is a California licensed

1 contractor that performs pressure washing and sand blasting services. On  
2 information and belief, John Roe is the party responsible for actually pressure  
3 washing the mural from the wall.

4 7. Plaintiff is unaware of the true names and capacities, whether  
5 individual, corporate, associate or otherwise, of defendants Does 1 through 10,  
6 inclusive, or any of them, and therefore sues these defendants, and each of them, by  
7 fictitious names. Plaintiff will seek leave of this court to amend this complaint  
8 when the status and identities of these defendants are ascertained.

9 8. Plaintiff is informed and believes, and on that basis alleges, that at all  
10 relevant times mentioned in this Complaint, Defendants were acting in concert and  
11 active participation with each other in committing the wrongful acts alleged herein,  
12 and were agents of each other and were acting within the scope and authority of that  
13 agency and with knowledge, consent and approval of one another.

14 9. Plaintiff is informed and believes, and on that basis alleges, that at all  
15 relevant times mentioned in this Complaint, Defendants were acting wantonly,  
16 oppressively and/or with malice.

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19 **GENERAL ALLEGATIONS**

20 A. Henderson’s Work as a Muralist

21 10. Victor Henderson is a noted artist and muralist. In 1963, he earned a  
22 bachelor’s degree in fine art from San Francisco State University and began a long  
23 and successful career in the arts. In 1969, he, along with the late Terry  
24 Schoonhoven (“Schoonhoven”) founded the Los Angeles Fine Arts Squad. The  
25 Los Angeles Fine Arts Squad painted five murals in Southern California and one at  
26 the 1971 Biannual de Paris.

27 11. Henderson’s work was shown in MOCA’s “Under the Big Black Sun”  
28 exhibition in 2011. He has also been part of group shows in the Riverside Museum

1 of Art, the Los Angeles County Museum of Art, the Otis Arts Institute and many  
2 more galleries and museums.

3 12. Henderson has lectured at UCLA, Cal State Long Beach, UC Irvine,  
4 the Claremont Colleges and elsewhere.

5 13. One purpose of the Los Angeles Fine Arts Squad was to call attention  
6 to and question the assumptions underlying the established culture of contemporary  
7 fine arts. A means of achieving this goal was to paint museum-quality work  
8 outside, in a public setting, and make it freely available to everyone to view.

9 14. With its goals in mind, the Los Angeles Fine Arts Squad painted  
10 several high quality, photorealistic murals around Los Angeles, including “Venice  
11 in the Snow”, “Brooks Avenue Painting” and “Isle of California.”

12 15. The importance of the Los Angeles Fine Arts Squad has been noted by  
13 critics such as Christopher Knight and Robert Clement. The Los Angeles Fine Arts  
14 Squad has been recognized by artists like Robert Rauschenberg. Kent Twitchell,  
15 one of the preeminent living muralists in the world, has specifically noted the  
16 influence of the Los Angeles Fine Arts Squad on his work.

17 16. The “Brooks Avenue Painting” was the first painting by the Los  
18 Angeles Fine Arts Squad. (A copy of a picture of “Brooks Avenue Painting” is  
19 attached hereto as Exhibit “A”.) At the time it was destroyed, Defendant Ziman  
20 owned the building. It had a deep impact on other artists and was a mural of major  
21 historical significance. “Brooks Avenue Painting” signaled a sea change in  
22 muralism in Los Angeles. It was not a work with political or socio-economic  
23 overtones. Rather, it was a piece of realism done with an accurate perspective,  
24 depicting a street scene in Venice. Notes, drawings and papers of the Los Angeles  
25 Fine Arts Squad have been exhibited at Cardwell Jimmerson Museum of  
26 Contemporary Art in Culver City and the Betty Gold Gallery in Los Angeles.

27 17. Even though the work of the LA Fine Arts Squad can be seen as a  
28 catalyst to the mural movement in Los Angeles, few of its works remain.

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C. Defendants’ Desecration of the “Brooks Avenue Painting.”

18. On information and belief, during the summer of 2013, Defendant Ziman ordered that “Brooks Avenue Painting” be destroyed or desecrated on his wall, as part of a plan to reinstall the mural on his wall with a painting of the band the Doors in front of the mural. The Doors had famously been photographed standing in front of the mural. The mural was water blasted with no notice to Henderson, and Los Angeles lost a key piece of mural history.

19. Defendant John Roe was the contractor who did the destruction. Defendants could have contacted Henderson. The mural is noted on the web page of the Los Angeles Mural Conservancy. Neighbors in the area know who Henderson is. On information and belief, Defendants did not attempt to contact Henderson.

20. Because the mural was destroyed without notice, Henderson was not able to document the mural further. Nor was he allowed to speak with Defendant about possibly restoring the mural, removing the mural or garnering support from the community for the mural.

21. Instead it is now gone forever and has been replaced by a replica that does not reflect the quality work of Henderson and Schoonhoven.

22. On information and belief, “Brooks Avenue Painting” could have been removed from the building without substantial physical defacement, mutilation, alteration or destruction.

23. On information and belief, employees or agents of Defendant John Roe painted over the mural and had the right and ability to supervise painting out of the mural.

24. On information and belief, Ziman or employees or agents of Defendant John Roe painted over the mural and had knowledge of that activity or induced, caused or materially contributed to the conduct of the individuals who painted over

1 the mural.

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FIRST CAUSE OF ACTION

4 (Infringement of Right of Integrity (17 U.S.C. § 106A) Against All Defendants)

5 25. Plaintiff realleges and reincorporates paragraphs 1-24 above, as  
6 though set forth fully herein.

7 26. Plaintiff is the author of a work of visual art entitled “Brooks Avenue  
8 Painting.” “Brooks Avenue Painting” is a work of visual art.

9 27. On or about August 1, 2013, Defendants willfully and intentionally  
10 distorted, mutilated or otherwise modified “Brooks Avenue Painting” in a way that  
11 would be prejudicial or harmful to Plaintiff’s honor and reputation, all in violation  
12 of Plaintiff’s right of integrity, as set forth in Title 17, Section 106A(a)(3)(A) and  
13 Section 106A(a)(3)(B) of the United States Code. Defendants did so by, among  
14 other things, blasting away the mural and painting over the mural completely.  
15 Defendants’ acts were at least grossly negligent. On information and belief,  
16 Defendants were on notice as to Plaintiff’s legal right of integrity and its  
17 protection under the laws of the United States and California. Plaintiff has not  
18 waived any of his rights of integrity under 17 U.S.C. § 106A.

19 28. “Brooks Avenue Painting” could have been removed without the  
20 destruction, distortion, mutilation or other modification described in section 106A.

21 29. None of the Defendants made a diligent or diligent good faith attempt  
22 to notify Plaintiff of the intent to paint over “Brooks Avenue Painting.”

23 30. Defendants’ acts described above were willful and intentional and/or  
24 grossly negligent. Defendants’ desecration, distortion, mutilation and other  
25 modification of “Brooks Avenue Painting” is the proximate cause of prejudice to  
26 Plaintiff’s honor or reputation.

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SECOND CAUSE OF ACTION

(Intentional Desecration of Fine Art – Cal. Civ. Code § 987(c) (1) Against All Defendants)

31. Plaintiff incorporates paragraphs 1-24, above, as though set forth fully herein.

32. As more fully set forth above, Plaintiff created the “Brooks Avenue Painting,” a work of fine art and of recognized quality, located at 55 Brooks Avenue, Venice, California.

33. On or about August 1, 2014 Defendants willfully and intentionally defaced, mutilated, altered or destroyed, or authorized the mutilation, alteration or destruction of, ”Brooks Avenue Painting,” in violation of Plaintiff’s right of integrity, as set forth in Cal. Civ. Code § 987. Defendants did so by, among other things, painting over the mural completely, without notice. Defendants were on notice as to Plaintiff’s right of integrity, as protected both under the laws of the United States and California.

34. Defendants’ willful and intentional distortion, mutilation and other modification of Plaintiff’s mural is the proximate cause of damage in the amount of at least \$250,000.

35. In committing the acts described in this complaint, Defendants, and each of them, acted in conscious disregard of the rights of Plaintiff and without taking advantage of preservation techniques that would have saved the mural for future enjoyment. The conduct of Defendants warrants an assessment of punitive damages to the extent such damages are available against each Defendant, in an amount appropriate to punish Defendants and deter others from engaging in similar wrongful conduct.

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THIRD CAUSE OF ACTION

(Conversion Against All Defendants)

36. Plaintiff incorporates paragraphs 1 - 24 above, as though set forth fully herein.

37. As more fully set forth above, in 1969, Plaintiff painted the “Brooks Avenue Painting” in Los Angeles, California. Plaintiff did not relinquish his ownership or title rights to “Brooks Avenue Painting.”

38. On or about August 1, 2013 Defendants intentionally deprived of those rights by ultimately desecrating Defendants’ acts constitute a permanent deprivation of Plaintiff’s rights and constitute a conversion under California law.

39. On information and belief, the conduct of Defendants in converting Plaintiff’s property was carried on by Defendants in conscious disregard of Plaintiff’s rights. The conduct of Defendants was so malicious, fraudulent and oppressive as to warrant an assessment of punitive damages, to the extent such damages are available against each Defendant, in an amount appropriate to punish Defendants and deter others from engaging in similar wrongful conduct.

FOURTH CAUSE OF ACTION

(Negligence Against All Defendants)

40. Plaintiff incorporates paragraphs 1-24, above, as though set forth fully herein.

41. As more fully set forth above, Plaintiff is the owner of all rights in the “Brooks Avenue Painting,” located at 55 Brooks Ave. in Los Angeles, California.

42. By buying the building at 55 Brooks Ave., and by undertaking work on the mural, Defendants took on a duty of due care to Plaintiff to preserve the mural.

43. On or about August 1, 2013, Defendants breached their duty of due care by authorizing the destruction of the mural and painting completely over the



1 wall that displayed the mural.

2 44. As a foreseeable and proximate result of those acts, Plaintiff has lost  
3 all of his property rights in the “Brooks Avenue Painting” mural, and has suffered  
4 great harm to his professional reputation.

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6 PRAYER FOR RELIEF

7 WHEREFORE, Plaintiff prays for judgment in his favor and against  
8 Defendants as follows:

9 a. That the Court order Defendants to pay to damages sufficient to  
10 compensate him for all damages resulting from desecration, distortion, mutilation  
11 and alteration of mural, including, but not limited to deprivation of Plaintiff’s  
12 property rights and damage to his honor and reputation;

13 b. That the Court order Defendants to pay to Plaintiff damages sufficient  
14 to compensate him for all damages proximately caused by their negligence;

15 d. That the Court assess punitive damages against Defendants sufficient  
16 to punish others from engaging in similar conduct in the future;

17 e. That the Court award Plaintiff statutorily mandated costs of this action,  
18 which include expert fees and attorneys’ fees; and

19 f. That the Court grants such other and further relief as the  
20 Court deems just and equitable.

21  
22 DATED: April 21, 2014

KARISH & BJORGUM, PC

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26 By: \_\_\_\_\_  
27 A. Eric Bjorgum  
28 Attorneys for Plaintiff  
VICTOR HENDERSON

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**REQUEST FOR JURY TRIAL**

Pursuant to Fed.R.Civ.P. 38(b), Plaintiff hereby requests a trial by jury of all issues raised by its counterclaims which are properly triable to a jury.

Dated: April 21, 2014

Respectfully submitted,

By:         /s/ A. Eric Bjorgum        

A. Eric Bjorgum

Marc Karish

KARISH & BJORGUM PC

Attorneys for Plaintiff

# EXHIBIT A



