

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

PHILIP BINCZYK, ZACH KREMER, BETH WARMATH,)	
CHAD RUIS, JULES VEROS, KATHRYN CRAWFORD,)	
KIERA PIES, ANGEL MONTOYA, CHASE KOLANDA,)	
JACK MEARS, SHANE BOTELER and MEGHAN GATES,)	
Plaintiffs,)	Case No. 18-2280
)	JURY DEMANDED
)	
v.)	
)	
CITY OF MEMPHIS,)	
)	
Defendant.)	

COMPLAINT

Plaintiffs PHILIP BINCZYK, ZACH KREMER, BETH WARMATH, CHAD RUIS, JULES VEROS, KATHRYN CRAWFORD, KIERA PIES, ANGEL MONTOYA, CHASE KOLANDA, JACK MEARS, SHANE BOTELER, and MEGHAN GATES (“Plaintiffs”), by and through their undersigned counsel, ADAMS AND REESE, LLP and EISENBERG & BAUM, LLP, as and for their Complaint against Defendants CITY OF MEMPHIS, (“Defendant”) hereby allege as follows:

PRELIMINARY STATEMENT

1. Since 2015, the City of Memphis has permitted visual artists, to create and display their work on the exterior of property it owns.

2. The plaintiffs are a renowned group of muralists who, at their own expense, installed artwork with permission from the City of Memphis for the people of the City, the country and the world to enjoy.

3. Without giving Plaintiffs a fair opportunity to remove and preserve their work, the City of Memphis suddenly decided to destroy it. The destruction was gratuitous, willful and wanton, and undertaken without regard to the feelings, reputations or financial interests of the plaintiffs, who now seek compensation for their devastating losses.

4. The City of Memphis also began attempting to pressure private property owners to destroy other similar outstanding works of street art displayed on private property.

5. The City of Memphis also made clear that it intended to destroy other works of visual art created by the plaintiffs without their permission.

6. Therefore Plaintiffs who had their work destroyed seek damages for the destruction and Plaintiffs who fear their work will be destroyed seek an injunction prohibiting any such action during their lifetimes.

NATURE OF THE CLAIMS

5. Plaintiffs seek declaratory, injunctive, and equitable relief, monetary damages, and attorneys' fees to redress Defendants' unlawful destruction of their works of art in violation of the Visual Artists Rights Act, 17 U.S.C. §106A *et seq.* ("VARA").

6. Plaintiffs also assert tort claims pursuant to the common law.

THE PARTIES

7. Plaintiff Philip Binczyk ("Binczyk") is a professional artist and resides in Los Angeles, California. Binczyk is the "author of a work of visual art" within the meaning of 17 U.S.C §106A.

8. Plaintiff Zach Kremer ("Kremer") is a professional artist and resides in Memphis, Tennessee. Kremer is the "author of a work of visual art" within the meaning of 17 U.S.C. §106A.

9. Plaintiff Beth Warmath ("Warmath") is a professional artist and resides in Clearwater, Florida, and is a professional artist. Warmath is the "author of a work of visual art" within the meaning of 17 U.S.C. §106A.

10. Plaintiff Chad Ruis ("Ruis") is a professional artist and resides in South Pasadena, Florida. Ruis is the "author of a work of visual art" within the meaning of 17 U.S.C. §106A.

11. Plaintiff Jules Veros ("Veros") is a professional artist and resides in Venice Beach, California. Veros is the "author of a work of visual art" within the meaning of 17 U.S.C §106A.

12. Plaintiff Kathryn Crawford ("Crawford") is a professional artist and resides in Asheville, North Carolina, and is a professional artist. Crawford is the "author of a work of visual art" within the meaning of 17 U.S.C. §106A.

13. Plaintiff Kiera Pies ("Pies") is a professional artist and resides in Nashville, Tennessee. Pies is the "author of a work of visual art" within the meaning of 17 U.S.C §106A.

14. Plaintiff Angel Montoya ("Montoya") is a professional artist and resides in Nashville, Tennessee. Montoya is the "author of a work of visual art" within the meaning of 17 U.S.C §106A.

15. Plaintiff Chase Kolanda ("Kolanda") is a professional artist and resides in Nashville, Tennessee, and is a professional artist. Kolanda is the "author of a work of visual art" within the meaning of 17 U.S.C §106A.

16. Plaintiff Jack Mears (“Mears”) is a professional artist and resides in Nashville, Tennessee. Mears is the “author of a work of visual art” within the meaning of 17 U.S.C §106A.

17. Plaintiff Shane Boteler (“Boteler”) is a professional artist and resides in Lincoln, Alabama. Boteler is the “author of a work of visual art” within the meaning of 17 U.S.C §106A.

18. Plaintiff Meghan Gates (“Gates”) is a professional artist and resides in Los Angeles, California. Gates is the “author of a work of visual art” within the meaning of 17 U.S.C §106A.

19. Defendant the City of Memphis is a government entity with an office and principal place of operation at Memphis City Hall, 125 North Main Street, #700, Memphis, TN 38103.

JURISDICTION AND VENUE

20. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 in that this civil rights action arises under federal law, *see* 29 U.S.C. § 621 et seq. The court has supplemental jurisdiction over plaintiffs’ state law claims under 28 U.S.C. §1367 and principles of pendent and/or ancillary jurisdiction.

21. This court has *in personam* jurisdiction over Defendant because it owns real property and conducts operations within, transacts business in and provides services within the City of Memphis, State of Tennessee.

22. Venue is proper in this district pursuant to 28 U.S.C. §1391(b)(2) because the events that give rise to the claim occurred in this district.

BACKGROUND

23. On April 18, 2017, Dr. Karen Golightly, Chief Executive Officer of Paint

Memphis, a 501(c)3 not-for-profit corporation, contacted Robert Knecht, Director of Public Works of the City of Memphis, via e-mail and requested permission to facilitate the installation of artwork on the underpass located on South Willett Street between Central Avenue and Lamar Avenue in Memphis (hereafter the “Paint Memphis” site).

24. Defendant authorized the installation of artwork to proceed in writing on that same day. No specific restrictions were placed on the type of content the artists could install and no request was made to approve any artwork in advance. Defendant provided a copy of the City of Memphis logo to Paint Memphis and authorized its inclusion in the works of art to show.

25. Each individual artist retained the copyright and ownership rights to the image(s) that she or he created for Paint Memphis.

26. Paint Memphis coordinated visits to the Paint Memphis site by numerous artists and they installed approximately 135 works of art on the site, including work by the plaintiffs and many other artists. The installation of the works at issue in this action was completed on or about October 1, 2017.

27. The works of art painted by the plaintiffs were located on a major public highway and were viewed by thousands upon thousands of people.

28. The works of art received news coverage and critical commentary and other forms of significant public attention and admiration, including being publicized on social media.

29. More than three months after the works of art had been fully installed, on January 22, 2018, Brooke D. Hyman sent an e-mail to Mr. Knecht on behalf of the Memphis City Councilwoman Swarengen stating that Councilwoman Swarengen was unilaterally requesting the removal of some of the works of art and providing a list of six specific works. Paint Memphis was not shown this e-mail until more than two weeks later, as described below. This was the first

written communication it received regarding any complaints from Defendant about its operations.

30. On or about January 31, 2018, upon information and belief, Defendant's "Beige Patrol," whose purpose is to destroy, distort, mutilate and/or modify illegal graffiti, were ordered to attack the Paint Memphis works of art and they destroyed, distorted, mutilated and/or modified legal works of art created by the plaintiffs as indicated below.

31. No notice was given to Dr. Golightly or to any of the plaintiffs that Defendant intended to proceed to attack the artwork on about January 31st. Defendant never attempted to set any specific deadline for Paint Memphis to remove any works of art and Paint Memphis had no reason to believe that Defendant would take any such action since such action had never been taken before and was not authorized by any agreement with Paint Memphis.

32. None of the works of art violated the terms of the plaintiffs' agreements with Paint Memphis.

33. On February 8, 2018, after the destruction of the artwork had already begun and more than four months after the works had been fully installed, Mr. Knecht sent an e-mail to Dr. Golightly stating that the defendant intended to destroy the works of art set forth in the e-mail from Ms. Hyman referred to above, forwarding the e-mail for the first time to Dr. Golightly. No date on which the destruction was planned was given.

34. Only one of the works created by the plaintiffs was on the list provided by Mr. Knecht to Dr. Golightly and was destroyed, distorted, mutilated and/or otherwise modified, namely the collaborative work identified below as "FYO Krew." Instead of destroying the works on the list, the defendant proceeded to wantonly and intentionally destroy other works created by the plaintiffs, which had not even been listed for destruction.

35. As indicated below, additional works of art created by Plaintiffs were destroyed on February 9, 2018, without their permission and, upon information and belief, less than 24 hours after Ms. Hyman's e-mail was transmitted to Dr. Golightly.

36. As indicated below, three works of art listed in the e-mail sent by Mr. Knecht have not yet been destroyed, but upon information and belief may be destroyed at any time.

37. There was no legal or factual basis for destroying "FYO Krew."

38. There is no legal or factual basis for destroying any of the works of art created by the plaintiffs in this case.

39. The works created by plaintiffs was destroyed, distorted, mutilated and/or otherwise modified in violation of applicable statutes.

40. Defendant's conduct evinced a gratuitous, willful and malicious mindset and otherwise justifies the imposition of maximum statutory damages under applicable federal law.

41. Defendant's conduct was particularly humiliating and damaging to the artists because the "Beige Patrol" was used to carry out the attack and the "Beige Patrol" is normally assigned to attack illegal graffiti.

42. Defendant's conduct was particularly humiliating and damaging to the artists because in attacking their artwork the "Beige Patrol" did not completely erase the images but rather mutilated them, leaving portions clearly visible and misleading to the public as to the nature of the artwork that the artists had created.

43. For street artists, it is an extreme insult and indignity to have their work painted over by work of lesser quality or simply "buffed," i.e., erased or partially erased. For street artists, one work of art should only be covered over by a greater work of art, and any other treatment is a form of aggressive public humiliation.

44. Thereafter, attorneys for Paint Memphis, Inc. transmitted a notice of the artists' legal rights to Defendant, and only on February 20, 2018, after Defendant had already destroyed and/or mutilated numerous works of art, did Defendant's City Council pass a resolution calling for the "immediate removal" of the remaining murals, including but not limited to those painted by Plaintiffs Veros, Crawford and Boteler, as described below.

III. The Works of Visual Art at Paint Memphis

45. The Plaintiffs are prominent muralists who agreed to install works of art for public enjoyment at the Paint Memphis site. Some of their works were destroyed, distorted, mutilated and/or modified by the defendants, and other works are threatened with such destroyed, distorted, mutilated and/or modified.

46. The works of art installed by the plaintiff artists were as follows:

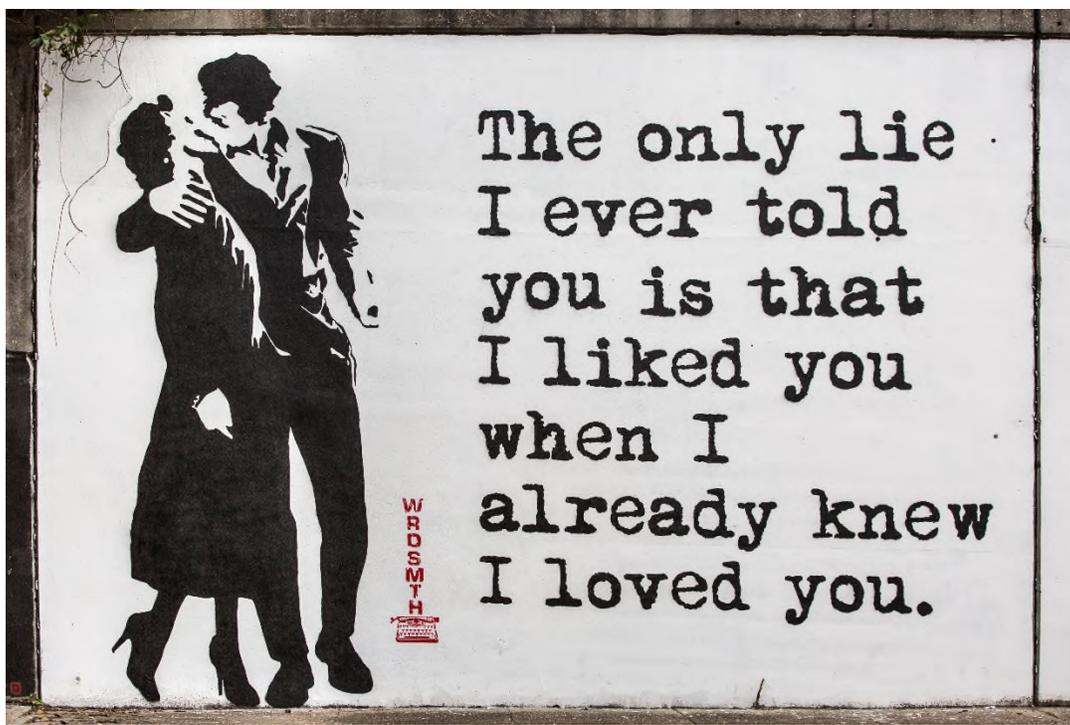
A. The Works of Art that were Destroyed, Distorted, Mutilated and/or Otherwise Modified

47. The works of art created by the plaintiffs that were wrongfully destroyed by Defendant are as follows.

i. Plaintiff Binczyk's Work of Visual Art at Paint Memphis

48. Plaintiff Binczyk had one work of visual art on or at the Paint Memphis site.

49. Plaintiff Binczyk's work of visual art on or at Paint Memphis was titled "The Only Lie." Below is an image of the work:



50. Plaintiff Binczyk's work of visual art on or at Paint Memphis was destroyed, distorted, mutilated and/or modified by the defendant. Below is an image of the destroyed, distorted, mutilated and/or modified work:



51. Plaintiff Binczyk's work of visual art was located on South Willett Street near the underpass at South Willett Street and Lamar Avenue in Memphis, Tennessee.

52. Plaintiff Binczyk's work of visual art was installed on September 30, 2017.

53. Plaintiff Binczyk's work of visual art was installed with the permission of the defendants.

54. Plaintiff Binczyk's work of visual art was installed without any fixed period of duration and was intended to last indefinitely.

55. Plaintiff Binczyk's work of visual art was a work of recognized stature. He is a prominent artist who has exhibited in numerous galleries and shows, and has been the subject of innumerable news articles and television interviews and his work was recognized as having stature by one or more experts, the art community and/or the general public.

56. Plaintiff Binczyk's has not executed or signed a written instrument that specifies that installation of "The Only Lie" may subject that work of visual art to destruction, distortion, mutilation, or other modification by the defendant for any reason, including removal.

57. The defendant destroyed, distorted, mutilated and/or modified Plaintiff Binczyk's work of visual art at the Paint Memphis site.

ii. Plaintiff Kremer's Work of Visual Art at Paint Memphis

58. Plaintiff Kremer had one work of visual art on or at the Paint Memphis site.

59. Plaintiff Kremer's work of visual art on or at Paint Memphis was titled "The Long Trek." Below is an image of the work:



60. Plaintiff Kremer's work of visual art on or at Paint Memphis was destroyed, distorted, mutilated and/or modified by the defendant. Below is an image of the destroyed, distorted, mutilated and/or modified work:



61. Plaintiff Kremer's work of visual art was located on the underpass wall on South Willett Street near South Willett Street and Lamar Avenue in Memphis, Tennessee.

62. Plaintiff Kremer's work of visual art was installed on September 30, 2017.

63. Plaintiff Kremer's work of visual art was installed with the permission of the defendants.

64. Plaintiff Kremer's work of visual art was installed without any fixed period of duration and was intended to last indefinitely.

65. Plaintiff Kremer's work of visual art was a work of recognized stature. He is a prominent artist who has exhibited in numerous galleries and shows, and has been the subject of innumerable news articles and television interviews and his work was recognized as having stature by one or more experts, the art community and/or the general public.

66. Plaintiff Kremer's has not executed or signed a written instrument that specifies that installation of "The Long Trek" may subject that work of visual art to destruction, distortion, mutilation, or other modification by the defendant for any reason, including removal.

iii. Plaintiff Warmath's Work of Visual Art at Paint Memphis

67. Plaintiff Warmath had a joint work of visual art on or at the Paint Memphis site.

68. Plaintiff Warmath's joint work of visual art on or at Paint Memphis was titled "Furious Panthera Tigris." Below is an image of the work:



69. Plaintiff Warmath's work of visual art on or at Paint Memphis was destroyed, distorted, mutilated and/or modified by the defendant. Below is an image of the destroyed, distorted, mutilated and/or modified work (including illegal graffiti vandalism which followed the defendant's action to partially paint over the work in beige, an incident which would not have happened but for the defendant's actions which invited it and which incident caused significant additional damage to Plaintiff Warmath):



70. Plaintiff Warmath's joint work of visual art was located on South Willett Street near the underpass at South Willett Street and Lamar Avenue in Memphis, Tennessee.

71. Plaintiff Warmath's joint work of visual art was installed on September 30, 2017.

72. Plaintiff Warmath's joint work of visual art was installed with the permission of the defendants.

73. Plaintiff Warmath's joint work of visual art was installed without any fixed period of duration and was intended to last indefinitely.

74. Plaintiff Warmath's joint work of visual art was a work of recognized stature. She is a prominent artist who has exhibited in numerous galleries and shows, and has been the subject of innumerable news articles and television interviews and her work was recognized as having stature by one or more experts, the art community and/or the general public.

75. Plaintiff Warmath has not executed or signed a written instrument that specifies that installation of “Furious Panthera Tigris” may subject that work of visual art to destruction, distortion, mutilation, or other modification by the defendant for any reason, including removal.

iv. Plaintiff Ruis’ Work of Visual Art at Paint Memphis

76. Plaintiff Ruis had a joint work of visual art on or at the Paint Memphis site.

77. Plaintiff Ruis’ joint work of visual art on or at Paint Memphis was titled “Furious Panthera Tigris.” *See* above.

78. Plaintiff Ruis’ work of visual art on or at Paint Memphis was destroyed, distorted, mutilated and/or modified by the defendant. *See* above.

79. Plaintiff Ruis’ joint work of visual art was located on South Willett Street near the underpass at South Willett Street and Lamar Avenue in Memphis, Tennessee.

80. Plaintiff Ruis’ joint work of visual art was installed on September 30, 2017.

81. Plaintiff Ruis’ joint work of visual art was installed with the permission of the defendants.

82. Plaintiff Ruis’ joint work of visual art was installed without any fixed period of duration and was intended to last indefinitely.

83. Plaintiff Ruis’ joint work of visual art was a work of recognized stature. He is a prominent artist who has exhibited in numerous galleries and shows, and has been the subject of innumerable news articles and television interviews and his work was recognized as having stature by one or more experts, the art community and/or the general public.

84. Plaintiff Ruis has not executed or signed a written instrument that specifies that installation of “Furious Panthera Tigris” may subject that work of visual art to destruction, distortion, mutilation, or other modification by the defendant for any reason, including removal.

v. Plaintiff Pies' Work of Visual Art at Paint Memphis

85. Plaintiff Pies had a joint work of visual art on or at the Paint Memphis site.

86. Plaintiff Pies' joint work of visual art on or at Paint Memphis was titled "FYO Krew." Below is an image of the work:



87. Plaintiff Pies' work of visual art on or at Paint Memphis was destroyed, distorted, mutilated and/or modified by the defendant. Below is an image of the destroyed, distorted, mutilated and/or modified work:



88. Plaintiff Pies' joint work of visual art was located on South Willett Street near the underpass at South Willett Street and Lamar Avenue in Memphis, Tennessee.

89. Plaintiff Pies' joint work of visual art was installed on September 30, 2017.

90. Plaintiff Pies' joint work of visual art was installed with the permission of the defendants.

91. Plaintiff Pies' joint work of visual art was installed without any fixed period of duration and was intended to last indefinitely.

92. Plaintiff Pies' joint work of visual art was a work of recognized stature. She is a prominent artist who has exhibited in numerous galleries and shows, and has been the subject of innumerable news articles and television interviews and her work was recognized as having stature by one or more experts, the art community and/or the general public.

93. Plaintiff Pies has not executed or signed a written instrument that specifies that installation of "FYO Krew" may subject that work of visual art to destruction, distortion, mutilation, or other modification by the defendant for any reason, including removal.

vi. Plaintiff Montoya's Work of Visual Art at Paint Memphis

94. Plaintiff Montoya had a joint work of visual art on or at the Paint Memphis site.

95. Plaintiff Montoya's joint work of visual art on or at Paint Memphis was titled "FYO Krew." *See* above.

96. Plaintiff Montoya's work of visual art on or at Paint Memphis was destroyed, distorted, mutilated and/or modified by the defendant. *See* above.

97. Plaintiff Montoya's joint work of visual art was located on South Willett Street near the underpass at South Willett Street and Lamar Avenue in Memphis, Tennessee.

98. Plaintiff Montoya's joint work of visual art was installed on September 30, 2017.

99. Plaintiff Montoya's joint work of visual art was installed with the permission of the defendants.

100. Montoya's joint work of visual art was installed without any fixed period of duration and was intended to last indefinitely.

101. Montoya's joint work of visual art was a work of recognized stature. He is a prominent artist who has exhibited in numerous galleries and shows, and has been the subject of innumerable news articles and television interviews and his work was recognized as having stature by one or more experts, the art community and/or the general public.

102. Plaintiff Montoya has not executed or signed a written instrument that specifies that installation of "FYO Krew" may subject that work of visual art to destruction, distortion, mutilation, or other modification by the defendant for any reason, including removal.

103. The defendant destroyed, distorted, mutilated and/or modified Plaintiff Montoya's joint work of visual art at the Paint Memphis site.

vii. Plaintiff Kolanda's Work of Visual Art at Paint Memphis

104. Plaintiff Kolanda had a joint work of visual art on or at the Paint Memphis site.

105. Plaintiff Kolanda's joint work of visual art on or at Paint Memphis was titled "FYO Krew." *See* above.

106. Plaintiff Kolanda's work of visual art on or at Paint Memphis was destroyed, distorted, mutilated and/or modified by the defendant. *See* above.

107. Plaintiff Kolanda's joint work of visual art was located on South Willett Street near the underpass at South Willett Street and Lamar Avenue in Memphis, Tennessee.

108. Plaintiff Kolanda's joint work of visual art was installed on September 30, 2017.

109. Plaintiff Kolanda's joint work of visual art was installed with the permission of the defendants.

110. Kolanda's joint work of visual art was installed without any fixed period of duration and was intended to last indefinitely.

111. Kolanda's joint work of visual art was a work of recognized stature. He is a prominent artist who has exhibited in numerous galleries and shows, and has been the subject of innumerable news articles and television interviews and his work was recognized as having stature by one or more experts, the art community and/or the general public.

112. Plaintiff Kolanda has not executed or signed a written instrument that specifies that installation of "FYO Krew" may subject that work of visual art to destruction, distortion, mutilation, or other modification by the defendant for any reason, including removal.

viii. Plaintiff Mears' Work of Visual Art at Paint Memphis

113. Plaintiff Mears had a joint work of visual art on or at the Paint Memphis site.

114. Plaintiff Mears' joint work of visual art on or at Paint Memphis was titled "FYO Krew." *See* above.

115. Plaintiff Mears' work of visual art on or at Paint Memphis was destroyed, distorted, mutilated and/or modified by the defendant. *See* above.

116. Plaintiff Mears' joint work of visual art was located on South Willett Street near the underpass at South Willett Street and Lamar Avenue in Memphis, Tennessee.

117. Plaintiff Mears' joint work of visual art was installed on September 30, 2017.

118. Plaintiff Mears' joint work of visual art was installed with the permission of the defendants.

119. Mears' joint work of visual art was installed without any fixed period of duration and was intended to last indefinitely.

120. Mears' joint work of visual art was a work of recognized stature. He is a prominent artist who has exhibited in numerous galleries and shows, and has been the subject of innumerable news articles and television interviews and his work was recognized as having stature by one or more experts, the art community and/or the general public.

121. Plaintiff Mears has not executed or signed a written instrument that specifies that installation of "FYO Krew" may subject that work of visual art to destruction, distortion, mutilation, or other modification by the defendant for any reason, including removal.

ix. Plaintiff Gates' Work of Visual Art at Paint Memphis

122. Plaintiff Gates had a work of visual art on or at the Paint Memphis site.

123. Plaintiff Gates' work of visual art on or at Paint Memphis was titled "Muddy."

Below is an image of the work:



124. Plaintiff Pies' work of visual art on or at Paint Memphis was destroyed, distorted, mutilated and/or modified by the defendant. Below is an image of the destroyed, distorted, mutilated and/or modified work:



125. Plaintiff Gates' work of visual art was located on South Willett Street near the underpass at South Willett Street and Lamar Avenue in Memphis, Tennessee.

126. Plaintiff Gates' work of visual art was installed on September 30, 2017.

127. Plaintiff Gates' work of visual art was installed with the permission of the defendants.

128. Gates' work of visual art was installed without any fixed period of duration and was intended to last indefinitely.

129. Gates' work of visual art was a work of recognized stature. She is a prominent artist who has exhibited in numerous galleries and shows, and has been the subject of innumerable news articles and television interviews and her work was recognized as having stature by one or more experts, the art community and/or the general public.

130. Plaintiff Gates has not executed or signed a written instrument that specifies that installation of "Muddy" may subject that work of visual art to destruction, distortion, mutilation, or other modification by the defendant for any reason, including removal.

B. The Works of Art that the Defendant intends to imminently Destroy, Distort, Mutilate and/or Otherwise Modify

131. The works of art created by the plaintiffs which have not yet been destroyed but which have been targeted by the defendants and which may be destroyed at any moment are as follows:

i. Plaintiff Veros' Work of Visual Art at Paint Memphis

132. Plaintiff Veros had one work of visual art on or at the Paint Memphis site.

133. Plaintiff Veros' work of visual art on or at Paint Memphis was titled "Elvis Unraveled." Below is an image of the work:



134. Plaintiff Veros' work of visual art was located on South Willett Street near the underpass at South Willett Street and Lamar Avenue in Memphis, Tennessee.

135. Plaintiff Veros' work of visual art was installed on September 30, 2017.

136. Plaintiff Veros' work of visual art was installed with the permission of the defendants.

137. Plaintiff Veros' work of visual art was installed without any fixed period of duration and was intended to last indefinitely.

138. Plaintiff Veros' work of visual art was a work of recognized stature. She is a prominent artist who has exhibited in numerous galleries and shows, and has been the subject of innumerable news articles and television interviews and her work was recognized as having stature by one or more experts, the art community and/or the general public.

139. Plaintiff Veros has not executed or signed a written instrument that specifies that installation of "Elvis Unraveled" may subject that work of visual art to destruction, distortion, mutilation, or other modification by the defendant for any reason, including removal.

140. The defendant intends to imminently destroy, distort, mutilate and/or modify the work of visual art created by Plaintiff Veros at the Paint Memphis site.

ii. Plaintiff Crawford's Work of Visual Art at Paint Memphis

141. Plaintiff Crawford had one work of visual art on or at the Paint Memphis site.

142. Plaintiff Crawford's work of visual art on or at Paint Memphis was titled "Recognition." Below is an image of the work:



143. Plaintiff Crawford's work of visual art was located on South Willett Street near the underpass at South Willett Street and Lamar Avenue in Memphis, Tennessee.

144. Plaintiff Crawford's work of visual art was installed on September 30, 2017.

145. Plaintiff Crawford's work of visual art was installed with the permission of the defendants.

146. Plaintiff Crawford's work of visual art was installed without any fixed period of duration and was intended to last indefinitely.

147. Plaintiff Crawford's work of visual art was a work of recognized stature. She is a prominent artist who has exhibited in numerous galleries and shows, and has been the subject of innumerable news articles and television interviews and her work was recognized as having stature by one or more experts, the art community and/or the general public.

148. Plaintiff Crawford has not executed or signed a written instrument that specifies that installation of "Recognition" may subject that work of visual art to destruction, distortion, mutilation, or other modification by the defendant for any reason, including removal.

149. The defendant intends to imminently destroy, distort, mutilate and/or modify the

work of visual art created by Plaintiff Crawford at the Paint Memphis site.

iii. Plaintiff Boteler's Work of Visual Art at Paint Memphis

150. Plaintiff Boteler had one work of visual art on or at the Paint Memphis site.

151. Plaintiff Boteler's work of visual art on or at Paint Memphis was titled "Holiday Freedom." Below is an image of the work:



152. Plaintiff Boteler's work of visual art was located on South Willett Street near the underpass at South Willett Street and Lamar Avenue in Memphis, Tennessee.

153. Plaintiff Boteler's work of visual art was installed on September 30, 2017.

154. Plaintiff Boteler's work of visual art was installed with the permission of the defendants.

155. Plaintiff Boteler's work of visual art was installed without any fixed period of duration and was intended to last indefinitely.

156. Plaintiff Boteler's work of visual art was a work of recognized stature. He is a prominent artist who has exhibited in numerous galleries and shows, and has been the subject of

innumerable news articles and television interviews and his work was recognized as having stature by one or more experts, the art community and/or the general public.

157. Plaintiff Boteler has not executed or signed a written instrument that specifies that installation of “Holiday Freedom” may subject that work of visual art to destruction, distortion, mutilation, or other modification by the defendant for any reason, including removal.

158. The defendant intends to imminently destroy, distort, mutilate and/or modify the work of visual art created by Plaintiff Boteler at the Paint Memphis site.

**AS AND FOR A FIRST CAUSE OF ACTION
(VARA DAMAGES)
(As to Plaintiffs BINCZYK, KREMER, WARMATH, RUIS,
PIES, MONTOYA, KOLANDA, MEARS, and GATES only)**

159. Plaintiffs repeat and reiterate each and every allegation set forth in the foregoing paragraphs of this Complaint with the same force and effect as if more fully set forth at length herein.

160. The artwork described works of visual art within the meaning of 17 U.S.C. §101 and constitute copyrightable subject matter.

161. Each of the Plaintiffs herein created, and maintained all ownership and copyright interests in, works of visual art subject to the protection of VARA, and installed those works on Defendant’s buildings with Defendant’s permission.

162. Without providing Plaintiffs with a reasonable opportunity to protect and preserve their artworks, Defendant destroyed, mutilated, modified and defaced each and every one of the works of art installed by Plaintiffs at the Paint Memphis site, including each work of art listed by name herein and other works of art not specifically identified or described herein.

163. Defendant did not provide Plaintiffs with notice in writing regarding their intent to destroy the artwork nor did they afford Plaintiffs, pursuant to 17 U.S. Code §113, a period of

90 days after receiving such notice either to remove the work or to pay for its removal.

164. Plaintiffs' works of art are of recognized stature and requisite professional standing within the meaning of VARA, are therefore entitled to the statute's protection. Their works were in high demand in the public marketplace, they attracted legions of admirers who visited them in situ, and the artists have high name recognition among the artistic community. The works are recognized by experts in the art field, by the artistic community and by the general public.

165. None of the plaintiffs has executed a written agreement that specifies that the installation of any of their individual works of visual art on or at the Paint Memphis site may subject those works to destruction, distortion, mutilation nor other modification.

166. Plaintiffs incurred significant financial losses as a result of the wanton destruction of their valuable works of art.

167. The destruction, distortion, mutilation, and/or modification of the work occurred in a manner prejudicial to the plaintiffs' honor and/or reputation, and causing them substantial harm in this regard.

168. Defendants' actions were willful, wanton and malicious.

**AS AND FOR A SECOND CAUSE OF ACTION
(VARA INJUNCTION)
(As to Plaintiffs VEROS, CRAWFORD, and BOTELER only)**

169. Plaintiffs repeat and reiterate each and every allegation set forth in the foregoing paragraphs of this Complaint with the same force and effect as if more fully set forth at length herein.

170. The artwork described works of visual art within the meaning of 17 U.S.C. §101 and constitute copyrightable subject matter.

171. Each of the Plaintiffs herein created, and maintained all ownership and copyright interests in, works of visual art subject to the protection of VARA, and installed those works on Defendant's buildings with Defendant's permission.

172. Plaintiffs' works of art are of recognized stature and requisite professional standing within the meaning of VARA, are therefore entitled to the statute's protection. Their works were in high demand in the public marketplace, they attracted many admirers who visited them in situ, and the artists have high name recognition among the artistic community. The works are recognized by experts in the art field, by the artistic community and by the general public.

173. None of the Plaintiffs has executed a written agreement that specifies that the installation of any of their individual works of visual art on or at the Paint Memphis site may subject those works to destruction, distortion, mutilation nor other modification.

174. Defendant intends to imminently destroy, distort, mutilate and/or modify the works of visual art created by the Plaintiffs.

175. The destruction, distortion, mutilation, and/or modification of the work planned by the defendants will occur in a manner prejudicial to the Plaintiffs' honor and/or reputation, and causing them substantial harm in this regard.

176. The harm to the Plaintiffs' honor and/or reputation will be irreparable.

177. Plaintiffs have no adequate remedy at law.

178. Pursuant to 17 U.S.C. §106(d)(3) each of the Plaintiffs has the right to prevent the destruction, distortion, mutilation or modification of his or her work of visual art for a term consisting of his or her life.

**AS AND FOR A THIRD CAUSE OF ACTION
(Property Damage)**

179. Plaintiffs repeat and reiterate each and every allegation set forth in the foregoing paragraphs of this Complaint with the same force and effect as if more fully set forth at length herein.

180. Defendant violated property rights held by Plaintiffs and destroyed artwork belonging to them contrary to their wishes and without their permission.

181. Defendants owed a duty to Plaintiffs not to destroy such property and negligently, recklessly and/or willfully breached that duty in destroying said property.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment against Defendants as follows:

- A) Enter a declaratory judgment, pursuant to Rule 57 of the Federal Rules of Civil Procedure, stating that Defendant's practices, policies and procedures are in violation of VARA;
- B) Enter a permanent injunction for the lifetime of Plaintiff Veros, Plaintiff Crawford, and Plaintiff Boteler prohibiting the destruction, distortion, mutilation or other modification of their artwork at the Paint Memphis site as described in paragraphs 133-134, 142-143 and 151-152, respectively;
- C) Award such actual damages as will compensate Plaintiffs fully for their financial losses and for the damage to their honor and reputation and for their humiliation, mental anguish, embarrassment, stress and anxiety, loss of self-esteem, self-confidence, personal dignity, shock, emotional distress, inconvenience, emotion pain and suffering and any other physical and mental injuries Plaintiffs suffered due to Defendants improper conduct pursuant to VARA and the common law;

- D) Award statutory damages to Plaintiffs pursuant to VARA;
- E) Award compensatory and punitive damages to the plaintiffs pursuant to the common law;
- F) Award reasonable costs and attorneys' fees pursuant to VARA;
- G) Grant such further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand trial by jury for all of the issues a jury properly may decide, and for all of the requested relief that a jury may award.

Dated: April 25, 2018

/s/ J. Bennett Fox, Jr.

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