

SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

COME NOW Plaintiff, MEGAN AROON DUNCANSON, by and through her undersigned counsel, and hereby file this complaint against Defendants, WINE AND CANVAS IP HOLDINGS LLC, WINE AND CANVAS DEVELOPMENT, LLC; WNC OF CINCINNATI LLC; WNC OF COLUMBUS LLC; WNC OF DAYTON LLC; WNC OF DETROIT LLC; WNC OF DES MOINES LLC; WNC OF FORT WAYNE LLC; WNC OF LAS VEGAS LLC; WNC OF NAPA SONOMA LLC; WNC OF ODESSA LLC; WNC OF PORTLAND

LLC; WNC OF SOUTH BEND LLC; WNC OF SAN FRANCISCO LLC; TAMARA McCRACKEN a/k/a TAMRA SCOTT; and ANTHONY SCOTT, for damages and injunctive relief, and, in support hereof, states:

SUBJECT-MATTER JURISDICTION

1. This is an action arising under the United States Copyright Act pursuant to 17 U.S.C. §§ 101 et seq., and includes claims for direct, vicarious, and contributory copyright infringement. Plaintiffs seek recovery of damages, costs, injunctive relief, and attorney's fees under the Copyright Act.

PARTIES, PERSONAL JURISDICTION, AND VENUE

2. Plaintiff, MEGAN DUNCANSON, is an individual who is a resident of and is domiciled in Florida.

3. Defendants WINE AND CANVAS IP HOLDINGS LLC, WINE AND CANVAS DEVELOPMENT, LLC; WNC OF CINCINNATI LLC; WNC OF COLUMBUS LLC; WNC OF DAYTON LLC; WNC OF DETROIT LLC; WNC OF DES MOINES LLC; WNC OF FORT WAYNE LLC; WNC OF LAS VEGAS LLC; WNC OF NAPA SONOMA LLC; WNC OF ODESSA LLC; WNC OF PORTLAND LLC; WNC OF SOUTH BEND LLC; WNC OF SAN FRANCISCO LLC are limited liability companies formed in the state of Indiana, thereby granting this Court personal jurisdiction over same.

4. Venue is proper herein, as Defendants WINE AND CANVAS IP HOLDINGS LLC; WINE AND CANVAS DEVELOPMENT, LLC;

TAMARA McCRACKEN a/k/a TAMRA SCOTT; and ANTHONY SCOTT are located within this jurisdiction.

5. Venue is further proper herein as some of the causes of action herein accrued with this jurisdiction.

6. Defendants WINE AND CANVAS IP HOLDINGS LLC and WINE AND CANVAS DEVELOPMENT, LLC are limited liability companies that are both based in Indiana.

7. The following Defendants are considered "Licensees" of WINE AND CANVAS IP HOLDINGS LLC. Each is an Indiana company formed in Indiana, and each has done some business in Indiana and pays monthly royalties into Indiana. However, their main places of business vary.

"The Licensees"

Licensee	Primary Location
i. WINE AND CANVAS DEVELOPMENT, LLC	Indianapolis, Indiana
ii. WNC OF CINCINNATI LLC	Ohio
iii. WNC OF COLUMBUS LLC	Ohio
iv. WNC OF DAYTON LLC	Ohio
v. WNC OF DES MOINES LLC	Iowa
vi. WNC OF DETROIT LLC	Michigan
vii. WNC OF FORT WAYNE LLC	Fort Wayne, Indiana
viii. WNC OF LAS VEGAS LLC	Nevada
ix. WNC OF NAPA SONOMA LLC	California
x. WNC OF ODESSA LLC	Texas
xi. WNC OF PORTLAND LLC	Oregon
xii. WNC OF SAN FRANCISCO LLC	California
xiii. WNC OF SOUTH BEND LLC	Indiana

8. Defendant TAMARA ANN McCracken, a/k/a TAMRA SCOTT, is a founder of the Wine and Canvas business model and the Art Director of WINE AND CANVAS DEVELOPMENT, LLC and WINE AND CANVAS IP HOLDINGS, LLC.

9. Defendant ANTHONY SCOTT is a founder of the "Wine and Canvas" business model.

10. When each Licensee was founded, Scott took a role as manager, member, or managing member of that company, which he kept for at least a year.

11. At all times relevant herein, Scott has maintained a lead management, officer, or director position of WINE AND CANVAS IP HOLDINGS, LLC, which maintains a licensing contract with each Licensee.

FACTUAL ALLEGATIONS

Plaintiff & the Subject Works

12. Plaintiff, Duncanson, is a visual artist.

13. Duncanson is the owner of multiple original visual works. She is a prolific artist who makes a living off her artwork and her reputation as an artist.

14. Duncanson is the registered owner, through the United States Copyright Office, of the following works of art. Proof of registration is attached hereto as exhibits.

<u>Title of Work</u>	<u>Registration No.</u>	<u>Effective Date of Regist.</u>
<i>Bubbling Joy Collection</i>	VA 1-860-451	March 2, 2013
<i>Fine Wine</i>	VA 1-872-069	August 13, 2013
<i>Spring Shine</i>	VA 1-872-068	August 9, 2013
<i>Birds of a Feather</i>	VA 1-872-072	August 14, 2013
<i>Tropical Goodbye</i>	VA 1-951-595	February 27, 2015
<i>Visionary Delight</i>	VA 1-965-292	June 14, 2015
<i>First Snow Fall</i> ¹	(Pending)	(Pending)

Duncanson registered the following two works as part of collections titled "Published Paintings 2006" and "Published Paintings 2008," respectively:

<u>Title of Work</u>	<u>Registration No.</u>	<u>Effective Date of Regist.</u>
<i>Tropical Energy</i>	VA 1-860-474	March 3, 2013
<i>Out West</i>	VA 1-905-186	July 30, 2013

15. As owner and author of the above-listed works and pursuant to section 106 of the Copyright Act, Plaintiff has the exclusive rights to reproduce her works, prepare derivative works of them, distribute copies to the public, and display her works publicly.

16. Pursuant to United States copyright law, Plaintiff obtained copyright registrations for all of the above-

¹Registration application No. 1-3169194199 for this work was submitted to the United States Copyright Office on February 29, 2016.

mentioned works, which are the Subject Works at issue in this lawsuit. True and correct copies of the certificates of registration or registration information for the Subject Works are attached hereto as Exhibits.

The "Wine & Canvas" Paint Parties

17. All Defendants are engaged in the business of operating "paint parties" under the brand "Wine and Canvas."

18. The paint parties are commercial classes, advertised to the public, where students pay a fee to take a painting class while enjoying cocktails.

19. Each class is hosted and put on by one of the above-named Licensees who contracts with Wine and Canvas IP Holdings, LLC (hereinafter, "IP Holdings") as the "Licensor."

20. IP Holdings has a relationship with the Licensees in the same way that a Franchisor would relate to its Franchisees.

21. IP Holdings receives direct benefit from Licensees' acts because it receives percentages of Licensees' sales.

22. IP Holdings financially benefits indirectly from Licensees' acts by receiving payment of upfront franchise or license fees.

23. McCracken and Scott receive financial benefit from IP Holdings based on its income, and McCracken receives additional financial benefit from licensee WINE AND CANVAS DEVELOPMENT, LLC.

24. Each Wine and Canvas class involves a "Featured Painting" that the students paint.

25. Except for each Licensee's grand opening class, when IP Holdings and McCracken generally choose the Feature Painting, the Feature Painting is selected by the Licensee.

26. IP Holdings maintains a Portfolio, in which multiple pieces of artwork are available for use by the Licensees as a Feature Painting in their classes.

27. After the Licensee selects the Featured Paintings for the events, the Licensee forwards it to IP Holdings and McCracken for approval, and IP Holdings and McCracken give their approval before the class can take place.

28. Prior to each class, a copy of the Feature Painting is posted to the respective Licensee's calendar on IP Holdings's website, at www.wineandcanvas.com, in an effort to advertise the upcoming class.

29. When each Feature Painting is published to the public and offered for a class, IP Holdings and the respective Licensee represent to the public that the Featured Painting is

an authorized copy created by an artist hired by IP Holdings and/or the respective Licensee.

30. IP Holdings emphasizes the "Wine and Canvas" branding over identity of individual authorship in such a manner that it often credits the author of the painting as simply "Wine and Canvas."

31. To sign up for a paint party at any Wine and Canvas location or for any Defendant, students visit www.wineandcanvas.com, choose their city, and select a painting from the online calendar. Then, through the website, they each pay a fee, usually about \$35, and schedule their attendance at the class. The website is owned, hosted, and operated by IP Holdings.

32. When each student arrives at the scheduled paint party class, s/he is supplied with a blank canvas and paints, plus the use of brushes, easel, and an apron.

33. In each class, the students receive detailed instruction, guidance, coaching, and encouragement as an "artist" teacher instructs the students step-by-step, through the students' own recreation of a visual paint-on-canvas work of art that each student can take home.

34. After the class, each student takes home his or her student painting. Many such students make further take

photographs of their paintings and share them via social media, such as Instagram, or blogs.

35. It is part of the Wine and Canvas business model, as pushed by IP Holdings, that each Licensee have a public Facebook page to promote the Wine and Canvas brand and the Licensee.

36. Usually, after a class, the Licensee who hosted the class takes photographs of the students with their paintings, which that Licensee posts to its public Facebook page. These photographs are disseminated over the Facebook network as the students "like," "tag," and "share" the images.

Notice of Infringement

37. On or about April 12, 2012, Duncanson sent notice of infringement to all of the Wine and Canvas entities.

38. On or about February 7, 2013, Duncanson sent a second notice of infringement.

39. On May 5, 2014, Plaintiff filed a complaint against Wine and Canvas Development, LLC and related entities in the Middle District of Florida, Orlando Division, thereby providing additional notice of infringement. IP Holdings was later named as a Defendant and also noticed.

40. All prerequisites to filing this action have been met, or Defendants have waived them.

41. Plaintiffs have incurred attorney fees and costs in the prosecution of this action.

PLAINTIFF'S CLAIMS

Direct, Contributory, and Vicarious Contributory Copyright Infringement of Plaintiffs' Rights to Reproduce, Make Derivative Works, and Publicly Display their Subject Works

42. Plaintiff realleges Paragraphs 1 through 39 as if fully pleaded and incorporated herein.

43. Plaintiff's multiple counts against Defendants, respectively, are as numbered below.

44. Each Count, as numbered below, contains the same basic set of circumstances, though the date, place, Subject Work, and Licensee differ.

45. For each Count, as numbered below, on the date indicated, the Licensee held a Wine and Canvas "Paint Party" class where, in exchange for a fee, the Licensee taught students to paint, and students did paint as the class's Featured Painting, unauthorized reproductions or derivative works of the respective Original Work. After the class, each student took the painting he or she made home to keep.

46. For each count, the Licensee picked the Featured Painting for that particular class date, showed IP Holdings its chosen calendar (with Featured Painting) prior to the

class, and IP Holdings approved the Licensee's use of the Featured Painting. Each such time IP Holdings issued its approval, McCracken was IP Holdings's "Art Director" who reviewed the chosen Featured Painting and issued such approval.

47. In some of the Counts, including but not necessarily limited to those involving *Spring Shine*, *Tropical Energy*, *Bubbling Joy*, and *Birds of a Feather*, the Featured Painting was taken from a Portfolio maintained by IP Holdings and McCracken.

48. For each Count, the Licensee marketed the class with help, support, and additional marketing by IP Holdings through its website, www.wineandcanvas.com, iPhone app, and/or other media.

49. For each Count, the Licensee hosted and conducted the class.

50. For each Count, each student paid an admission fee to enter the class to IP Holdings and Licensee.

51. For each count, the Licensee and IP HOLDINGS both received direct financial benefit from the class, with the Licensee receiving the majority of and IP Holdings a percentage of the sales.

52. For each count, IP Holdings, McCracken, and Scott had the right and ability to supervise the Licensee.

53. For each count, prior to the Paint Party, IP Holdings and McCracken affirmatively approved the Licensee's use of the Featured Painting for that event.

54. The Licensees acted willfully and knowingly, and should have known that each Featured Painting was an unauthorized copy.

55. Where the act of infringement occurred after notice, the Licensee was especially willful.

56. Because IP Holdings, McCracken, and Scott had control over approval of each Licensee's calendar and which works the Licensees chose to use, and because IP Holdings failed to disallow the infringements and did nothing to stop the infringements occurring, even after receiving notice, second notice, and after receiving notice of the lawsuit filed in Orlando, their involvement, and liability, was willful.

Duncanson's Claims (Counts 1-36)

Counts 1-7 (Infringements Before Registration)

Count	Original Work	Date of Infringement	Licensee / Location
1	<i>Spring Shine</i>	4/11/13	WNC OF COLUMBUS, LLC Columbus
2	<i>Spring Shine</i>	6/6/13	WNC OF FORT WAYNE LLC Fort Wayne, Ind.

3	<i>Spring Shine</i>	6/24/13	WNC OF SAN FRANCISCO LLC San Francisco
4	<i>Twisting Love</i>	6/27/13	WINE AND CANVAS DEVELOPMENT, LLC Indianapolis
5	<i>Tropical Energy</i>	7/25/13	WNC OF SOUTH BEND LLC South Bend
6	<i>Tropical Energy</i>	9/4/13	WNC OF COLUMBUS, LLC Columbus, OH
7	<i>Tropical Goodbye</i>	4/3/14	WNC OF DAYTON, LLC Dayton, Ohio

Counts 8-36 (Infringements After Registration)

Count	Original Work	Date of Infringement	Licensee / Location
8	<i>Bubbling Joy</i>	4/20/13	WNC OF FORT WAYNE LLC Fort Wayne, Indiana
9	<i>Bubbling Joy</i>	4/27/13	Sioux Falls, S.D. ²
10	<i>Bubbling Joy</i>	5/13/13	WNC OF FORT WAYNE LLC Fort Wayne, Indiana
11	<i>Tropical Energy</i>	6/25/13	WNC OF SOUTH BEND, LLC South Bend, Indiana
12	<i>Spring Shine</i>	8/10/13	WNC OF SAN FRANCISCO San Francisco, California
13	<i>Twisting Love</i>	11/22/13	WNC OF SOUTH BEND, LLC South Bend, Indiana
14	<i>Spring Shine</i>	2/5/14	WNC OF SAN FRANCISCO San Francisco, California
15	<i>Tropical Energy</i>	2/27/14	WNC OF DETROIT Detroit, Michigan
16	<i>Bubbling Joy</i>	3/12/14	WNC OF NAPA SONOMA LLC Napa/Sonoma
17	<i>Tropical Energy</i>	5/14/14	WNC OF SOUTH BEND, LLC South Bend, Indiana
18	<i>Tropical Energy</i>	6/7/14	WNC OF DETROIT Detroit, Michigan

² Count 9 is raised only against IP Holdings and McCracken and Scott.

19	<i>Tropical Goodbye</i>	6/28/14	WNC OF CINCINNATI LLC Cincinnati
20	<i>Spring Shine</i>	7/3/14	WNC OF FORT WAYNE LLC Fort Wayne, Indiana
21	<i>Birds of a Feather</i>	7/23/14	WINE AND CANVAS DEVELOPMENT, LLC Indianapolis
22	<i>Fine Wine</i>	7/23/14	WNC OF FORT WAYNE LLC Fort Wayne, Indiana
23	<i>Bubbling Joy</i>	7/26/14	WNC OF FORT WAYNE LLC Fort Wayne, Indiana
24	<i>Spring Shine</i>	7/30/14	WNC OF SAN FRANCISCO San Francisco, California
25	<i>Bubbling Joy</i>	8/6/14	WNC OF SOUTH BEND, LLC South Bend, Indiana
26	<i>Birds of a Feather</i>	8/21/14	WNC OF LAS VEGAS, LLC Las Vegas
27	<i>Bubbling Joy</i>	8/29/14	WNC OF FORT WAYNE LLC Fort Wayne, Indiana
28	<i>Birds of a Feather</i>	8/30/14	WNC OF SOUTH BEND, LLC South Bend, Indiana
29	<i>Birds of a Feather</i>	10/14/14	WNC OF ODESSA LLC Odessa, Texas
30	<i>Birds of a Feather</i>	11/14/14	WNC OF DES MOINES LLC Des Moines
31	<i>Birds of a Feather</i>	12/17/14	WNC OF SAN FRANCISCO San Francisco, California
32	<i>Out West</i>	1/14/15	WNC OF PORTLAND LLC Portland, Oregon
33	<i>Bubbling Joy</i>	5/19/15	WNC OF NAPA SONOMA LLC Napa/Sonoma Calendar
34	<i>Birds of a Feather</i>	5/25/15	WNC OF SAN FRANCISCO San Francisco, California
35	<i>Visionary Delight</i>	6/27/15	WNC OF PORTLAND LLC Portland, Oregon
36	<i>First Snowfall</i>	3/8/16	WNC OF DAYTON LLC Dayton, Ohio

57. Deriving from actions taken at the Paint Parties, each above-listed count is against:

a. The respective, above-listed Licensee for that count for:

- (1) Direct Copyright infringement for the respective Plaintiff's § 106(1) **Right to Reproduce** or § 106(2) **Right to Prepare Derivative Works** and § 106(5) **Right to Publicly Display** the respective work, committed when an authorized agent of that Licensee sat at the front of the class in the role of an "Art Teacher" or "Artist" and painted an unauthorized reproduction or derivative work before a classroom;
- (2) For each and every student in the class, a separate claim of Contributory Copyright infringement for the respective Plaintiff's § 106(1) **Right to Reproduce** or § 106(2) **Right to Prepare Derivative Works** and § 106(5) **Right to Publicly Display** the respective work, when the Licensee received money from the student for the class then directed, instructed, and encouraged that to create an unauthorized reproduction or derivative work, and to display that work in the classroom and, later, on Facebook and/or other social media; and
- (3) Direct Copyright infringement for the respective Plaintiff's § 106(1) **Right to Reproduce** or § 106(2) **Right to Prepare Derivative Works** and § 106(5) **Right to Publicly Display** the respective work, committed when an authorized agent of that Licensee posted photograph(s) of the infringing work onto www.wineandcanvas.com calendar, and, sometimes later, Facebook or elsewhere publicly; and

b. Defendants IP Holdings, McCracken, and Scott for their vicarious contributory infringement of the Licensee's acts of infringement.

58. For Counts 4 and 21, McCracken is directly liable, jointly and severally, with WINE AND CANVAS DEVELOPMENT, LLC because at all times relevant herein she was its manager/member and had joint control over all its actions.

59. For Counts 1-36, IP Holdings and McCracken exercised control over approval of the Licensee's calendar and which work the Licensee chose to use for the respective class.

60. For Counts 1-36, IP Holdings, McCracken, and Scott could have, but failed to, disallow the infringements and did nothing to stop the infringements from occurring, even after receiving notice, second notice, and after receiving notice of a related lawsuit filed in Orlando.

61. For Counts 1-36, IP Holdings, McCracken, and Scott possessed the right and the ability to supervise the infringing conduct.

62. For Counts 1-36, IP Holdings, McCracken, and Scott had an obvious and direct, as well as an indirect, financial interest in the exploitation of the copyrighted materials.

Plea for Relief

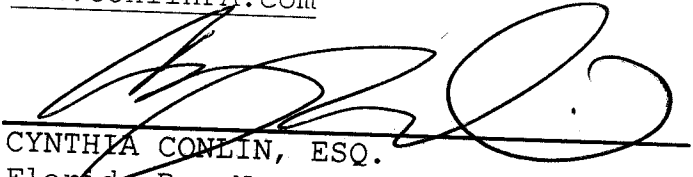
WHEREFORE, Plaintiff, MEGAN AROON DUNCANSON, prays for judgment against Defendants as follows:

- a. For each act of infringement, permanent injunctive relief, pursuant to 17 U.S.C. § 502, enjoining, for each count listed above, the respective named Licensee for that count; IP Holdings (including their agents, officers, employees, and assigns); McCracken; and Scott from infringing, inducing infringement of, or contributing to infringement of the work;
- b. For each count and act of infringement, an accounting of all gains and profits derived by the Licensee and IP Holdings, through infringement of copyright;
- c. For each act of infringement in Counts 1-7, judgment against the respective Licensee, IP Holdings, McCracken, and Scott, jointly and severally, for Duncanson's actual damages suffered as a result of the infringements, plus disgorgement of any profits attributable to the infringements;
- d. For each act of infringement in Counts 8-36, judgment against the respective Licensee, IP Holdings, McCracken, and Scott, jointly and severally, for Duncanson's Maximum Statutory Damages under the Copyright Act, including a finding that those infringements were WILLFUL and for maximum statutory damages of up to \$150,000 per infringement;
- e. Recovery of full costs, including attorney's fees, pursuant to the Copyright Act; prejudgment and post-judgment interest on the damages awarded; and such other and further relief as this Court may deem equitable.

Respectfully submitted on April 8, 2016, by

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