

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

JAMES HAYDEN,	)	CASE NO. 1:17-cv-02635-CAB
	)	
Plaintiff,	)	JUDGE CHRISTOPHER A. BOYKO
	)	
v.	)	
	)	<b>FOURTH AMENDED COMPLAINT</b>
2K GAMES, INC., a Delaware corporation,	)	
	)	
and	)	
	)	
TAKE-TWO INTERACTIVE SOFTWARE,	)	
INC., a Delaware corporation,	)	
	)	
Defendants.	)	
	)	

JAMES HAYDEN (“HAYDEN”), by and through undersigned counsel, for his Fourth Amended Complaint <sup>1</sup> against Defendants, 2K GAMES, INC, (“2K”), and TAKE-TWO INTERACTIVE SOFTWARE, INC, (“TAKE-TWO”), states as follows:

**NATURE OF ACTION, JURISDICTION, AND VENUE**

1. This is a civil action for copyright infringement pursuant to 17 U.S.C. § 501 *et seq.*
2. This case is about the unauthorized use of HAYDEN’s registered tattoos in Defendants’ highly successful video games, known as NBA 2K16, NBA 2K17, NBA 2K18, NBA 2K19, NBA 2K20, and NBA2K Mobile (herein the “Infringing Games”) and Defendants’ resulting ongoing willful violation of HAYDEN’s rights.

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<sup>1</sup> Plaintiff files this Fourth Amended Complaint with Defendants’ consent, by and through counsel, under Federal Rule of Civil Procedure 15(a)(2).

3. HAYDEN seeks preliminary and permanent injunctive relief and appropriate damages from the Court.

4. This Action is proper under the Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.* (the “Copyright Act”).

5. The Court has original subject matter jurisdiction over HAYDEN’s Copyright claims pursuant to 17 U.S.C. §§ 101 *et seq.* and 28 U.S.C. §§ 1331 and 1338.

6. The Court has personal jurisdiction over Defendants under, *inter alia*, O.R.C. § 2307.382.

7. Upon information belief, each of the Defendants has transacted business in this state.

8. Further, each of Defendants have acted in concert to develop, promote, distribute and market the Infringing Games, and to contract to supply the Infringing Games in this State.

9. Each of the Infringing Games has been sold in this State.

10. By infringing HAYDEN’s copyrights and/or inducing others to infringe HAYDEN’s copyrights, each of the Defendants has caused injury in this state.

11. Venue is proper in this District under 28 U.S.C. § 1391(b)(2), as a substantial part of the events that gave rise to this Complaint occurred in this District.

12. For example, HAYDEN created the tattoos in issue in Cleveland, Ohio.

13. In the alternative, venue is also proper under 28 U.S.C. § 1391(b)(1) and 1391(c).

### **PARTIES**

14. HAYDEN is a tattoo artist who does business as FOCUSED TATTOOS, having an address at 12745 Cedar Road, Cleveland Heights, Ohio, 44118.

15. Upon information and belief, Defendant 2K is a Delaware corporation with a principal address at 10 Hamilton Landing, Novato, CA 94949. According to public records, the registered office address is 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833.

16. Upon information and belief, Defendant, TAKE-TWO is a Delaware corporation with a principal address at 622 Broadway, New York, NY 10012. According to public records, the registered office address is 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833.

17. Upon information and belief, TAKE-TWO is a major developer, publisher and marketer of interactive entertainment and video games around the globe, including the Infringing Games.

18. Upon information and belief, 2K sells and ships video games around the globe, including the Infringing Games.

19. Upon information and belief, each of the named Defendants has a direct financial interest in the creation and sale of the Infringing Games.

20. Upon information and belief, each of the named Defendants is connected with the matters alleged herein and is liable to HAYDEN.

21. Upon information and belief, each Defendant was the agent, servant, employee, partner and/or joint venturer of each of the other Defendants; the acts of each Defendant were within the scope of such agency, service, employment, partnership or joint venture; in committing the acts and omissions alleged herein, each Defendant acted with knowledge, permission and/or consent of every other Defendant; and each Defendant aided, abetted, and/or conspired with the other Defendants in the acts and omissions alleged herein.

### **FACTUAL ALLEGATIONS**

22. HAYDEN is an established visual artist and lifelong resident living in this District.

23. Among HAYDEN's artistic creations are original tattoos for the most recognized basketball players in the world. HAYDEN'S clients include superstars such as LeBron James, Shaquille O'Neal, Kyrie Irving, Danny Green, Dion Waiters, Mo Williams and Tristan Thompson.

24. HAYDEN'S tattoos are original and expressive.

25. HAYDEN'S tattoos are reduced to a tangible medium.

26. HAYDEN is recognized as one of the world's most talented tattoo artists.

27. For example, among tattoo artists around the world, the publication "Complex" named HAYDEN as one of "50 Tattoo Artists You Need to Know." See **Exhibit A**, 1/05/15 Article.

28. In addition, HAYDEN has been commissioned to create art by some of the most successful companies in the world. For example, Nike, Inc. commission HAYDEN to create the limited edition Artist Series Nike Air Max LeBron VII sneakers, and since then, has repeatedly recognized and sought out HAYDEN's artistic talent. See **Exhibit B**, 8/22/09 Article.

### **HAYDEN's Original Designs**

29. LeBron James is a star player for the Los Angeles Lakers, a former star player for the Cleveland Cavaliers, and one of the most popular NBA players of all time.

30. Mr. James has several tattoos.

31. Over approximately the past decade, HAYDEN has created many tattoos for LeBron James.

32. Danny Green is a player for the Los Angeles Lakers and a former player for the Cleveland Cavaliers.

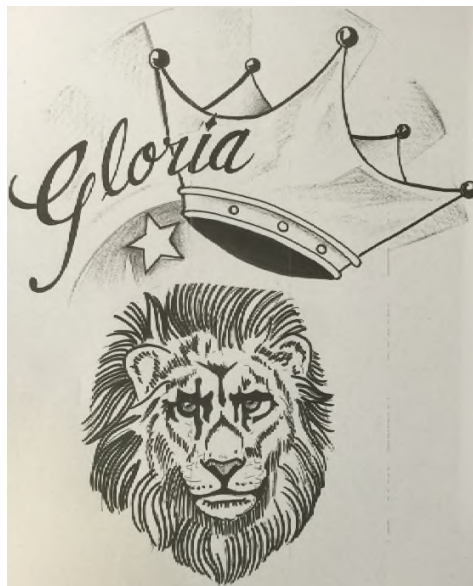
33. Mr. Green also has several tattoos.

34. Over approximately the past decade, HAYDEN has created various tattoos for Mr. Green.
35. Tristan Thompson is a player for the Cleveland Cavaliers.
36. Mr. Thompson also has several tattoos.
37. Over approximately the past decade, HAYDEN has created various tattoos for Mr. Thompson.

### **HAYDEN's Works**

#### Gloria

38. For example, in 2007 HAYDEN created the design below (herein the “Gloria Design”) which appears on Mr. James’s right shoulder:



39. HAYDEN is the author of the Gloria Design.
40. The Gloria Design is an original work of authorship by HAYDEN.
41. The Gloria Design is expressive.
42. The copyright in the Gloria Design is registered, having the Registration Number V Au 1-263-888.



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