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NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PIXLWORKS PRODUCTIONS INC.

PLAINTIFF

AND:

COTALA CROSS-MEDIA INC., and JAIDEN McADIE, also
known as JAIDEN EMERIE

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a Counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-noted registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the Plaintiff,

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by order of the court, within that time.

Part 1: STATEMENT OF FACTS

A. The Parties

1. The Plaintiff PixlWorks Productions Inc. (“**PixlWorks**”) is a company incorporated under the laws of British Columbia with an address for service in this proceeding of 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.

2. The Defendant Cotala Cross-Media Inc. (“**Cotala**”) is a company incorporated under the laws of British Columbia with a registered and records office of 201 – 20353 64th Avenue, Langley B.C., V2Y 1N5.

3. The Defendant Jaiden McAdie (“**McAdie**”), also known as Jaiden Emerie, is an individual resident in British Columbia, having a residential address of 8258 Viola Place, Mission, British Columbia, V2V 5P4.

B. PixlWorks’ Business

4. PixlWorks is in the business of providing scanning, floor plan and drafting services, among other services relating to high-definition digital scanning, measurement, 2D and 3D renderings, and the design, reproduction and marketing of such renderings. PixlWorks operates in the commercial and residential real estate industries, as well as in the entertainment, transportation, construction, and insurance industries, among others.

5. PixlWorks was founded by Jamie Henry in or around August 2019. At that time, Henry caused portions of the business and clients of DOS Scan and Measure Inc. (“**DOS SM**”) (of which Henry was then the sole director) to be transferred to PixlWorks. As a result,

PixlWorks is the successor in right to the proprietary business information and intellectual property previously held by DOS SM (including through its predecessor, DOS Design Group Inc.) in relation to all matters relevant to this proceeding.

6. An important aspect of PixlWorks' business is the production of floorplans for use primarily, but not exclusively, in real estate marketing materials (the "**Floorplans**"). The Floorplans are 2D drawings that generally show walls, room dimensions, interior/exterior spaces, windows, doors, fixtures and fittings.

7. Customers who engage PixlWorks to produce Floorplans include, among others: (a) real estate developers, who require measurements of units or other interior/exterior spaces as-built; and (b) real estate agents, who intend to include the Floorplans (and the associated measurements) in real estate listing materials. Accordingly, it is essential to PixlWorks' business that it be able to efficiently produce the Floorplans to a high degree of measurement accuracy.

8. PixlWorks produces approximately 8,000 to 10,000 Floorplans annually.

C. Proprietary Business Methods and Intellectual Property

9. In producing the Floorplans, PixlWorks deploys a series of confidential and proprietary business methods which, individually and collectively, are necessary to maintaining its competitive position in the market.

10. These methods include the following:

- (a) Techniques for performing 3D scanning of interior spaces in order to generate 3D scanned data that may be transferred to a raw floorplan format;
- (b) Techniques for manipulating the scanned data to correct for errors and distortions, so as to ensure the accuracy of the dimensions represented in the raw floorplan format;

- (c) Techniques for creating Floorplans from the raw floorplan format, including to rapidly, efficiently and accurately calculate dimensions, and to label and represent rooms and objects; and
- (d) Techniques for formatting the Floorplans into a final product that is visually appealing and that may be readily incorporated by the customer into digital and print marketing materials in various dimensions and formats, which techniques generate a final product that bears a “hallmark” or “signature” aesthetic of a Pixlworks-produced Floorplan.

(collectively, the “**Proprietary Techniques**”).

11. The Proprietary Techniques were developed using skill, ingenuity and mental effort and are trade secrets that PixlWorks guards assiduously. PixlWorks has at times taken all reasonable steps within its power to enforce and maintain the confidentiality of the Proprietary Techniques.

12. In adding object representations to the floorplan images (as set out at para. 10(c) above), PixlWorks makes use of a proprietary library of static and dynamic digital objects (the “**Object Library**”) that is saved in a format compatible with AutoCAD, a commercial computer assisted design and drafting software application, which is standard software used in the drafting industry. The Object Library is also referred to as the “AutoCAD blocks”.

13. PixlWorks acquired ownership of the Object Library from DOS SM in or about August 2019.

14. PixlWorks has developed a proprietary layout within AutoCAD to facilitate the workflow requirements of adding objects from the Object Library to draft floorplan images (including to right-size the dynamic objects within the Object Library) (the “**AutoCAD Layout**”). Use of the Object Library, both in general, and in conjunction with the AutoCAD Layout, form part of the Proprietary Techniques.

15. As the Object Library consists of relatively small sized, simplified digital images in .dwg format, it is subject to copying or transfer without use of specialized technology or equipment. PixlWorks and its predecessors have, at all times, taken all reasonable steps to

maintain exclusive ownership of the Object Library and to prevent its unauthorized use or distribution.

16. PixlWorks holds copyright in the Object Library and AutoCAD Layout, as literary works, including as they existed in September and October 2022. Before August 2019, DOS SM held the copyright in the Object Library and AutoCAD Layout as it existed at that time.

17. Ownership of the Object Library and the AutoCAD Layout, and their use as part of the Proprietary Techniques are necessary to PixlWorks maintaining its competitive position in the market.

D. Unauthorized Use of Proprietary Techniques, Object Library and AutoCAD Layout

18. Cotala is in the business of providing residential real estate marketing services and printing. Cotala also arranges real estate photography, virtual video tours, and floor plan services from third parties. Until recently, and as described in more detail below, Cotala's business did not include production of real estate floorplans directly.

19. Beginning in or around August 2019, and continuing thereafter, Cotala engaged PixlWorks to create Floorplans for Cotala's customers. PixlWorks did so on a regular basis, and in so doing made use of the Proprietary Techniques, the Object Library and the AutoCAD Layout to create the Floorplans.

20. At that time, Cotala lacked the knowledge, expertise and software to produce floorplans at all; or, in the alternative, to do so in a commercially competitive manner. On at least one occasion, Cotala sent a floorplan it had outsourced to an overseas company to PixlWorks for correction.

21. In or about September 2022, Cotala developed a plan to unlawfully appropriate the Proprietary Techniques, the Object Library and the AutoCAD Layout, and to use these in combination to produce floorplans in a commercially competitive manner, either in-house or through other subcontractors that Cotala intended to retain and train (the "**Appropriation Scheme**").

22. The elements of the Appropriation Scheme, the full details of which are unknown to the Plaintiff, but are known to the Defendants, included, among other things, the following:

- (a) Cotala would acquire the Object Library and the AutoCAD Layout through improper means (*e.g.*, without the appropriate license or permissions), the details of which are unknown to the Plaintiff but are known to Cotala;
- (b) Cotala would work with one or more current or former partners, employees, contractors or subcontractors of PixlWorks, or of PixlWorks' predecessors, that Cotala believed had knowledge of and/or access to the Proprietary Techniques and/or PixlWorks' intellectual property (including the Object Library and the AutoCAD Layout);
- (c) Cotala would induce that person or those persons to breach their contractual and/or other obligations to PixlWorks;
- (d) Through that person or persons, Cotala would unlawfully gain access to some or all of the Proprietary Techniques and PixlWorks' intellectual property, including the Object Library and the AutoCAD Layout;
- (e) That person or those persons would train Cotala's other employees, contractors and subcontractors in some or all of the Proprietary Techniques; and
- (f) Cotala would begin to produce and/or subcontract the production of floorplans, thereby: (i) supplanting PixlWorks as a contractor for its floorplans; (ii) improperly competing with PixlWorks through the unauthorized use of PixlWorks' Proprietary Techniques and intellectual property, all to further Cotala's own commercial aims.

23. Cotala began to carry out the Appropriation Scheme in or around late September or early October 2022. Details of the Appropriation Scheme that are currently known to the Plaintiff include the following:

- (a) In or around late September or early October 2022, Cotala engaged the defendant McAdie as an employee or contractor while she was still employed as a contractor with PixlWorks;
- (b) Cotala took advantage of McAdie's contractor relationship with PixlWorks by using her as a conduit for knowledge of the Proprietary Techniques, or aspects thereof, during the period of working notice that she had provided to PixlWorks;
- (c) Cotala directed McAdie to instruct its employees, contractors and subcontractors in the Proprietary Techniques, or aspects thereof; and
- (d) Cotala acquired the Object Library and AutoCAD Layout, doing so through improper means, without the appropriate license or permissions, and began using these together with the Proprietary Techniques to produce its own floorplans for commercial purposes, either directly or through CADD House, an India-based subcontractor it had contracted with for the purpose of furthering the Appropriation Scheme.

24. By the time Cotala began producing floorplans, either directly or through CADD House, it had not mastered the Proprietary Techniques. As a result, the Cotala floorplans were of inferior quality to the PixlWorks Floorplans. Among other deficiencies, they included significant measurement errors. Nevertheless, those floorplans used the visual aesthetic associated with the Proprietary Techniques, such that they appeared to bear the "hallmark" or "signature" of the PixlWorks Floorplans. In many instances, the Proprietary Techniques were copied to the extent of Pixlworks being expressly misidentified by third parties as the floorplan author, including by realtors in the MLS system.

25. PixlWorks received a number of complaints from clients of Cotala regarding incorrect measurements in floorplans they had received, which those clients believed had been created by PixlWorks. Cotala did not advise these clients that the floorplans were drafted overseas or internally at Cotala, but allowed them to believe that PixlWorks was continuing to prepare floorplans for Cotala.

E. McAdie's Participation in the Appropriation Scheme

26. By written contractor services agreement dated on or about September 24, 2021, PixlWorks engaged McAdie in the position of Field Technician (the "**Contractor Agreement**").

27. The Contractor Agreement included the following provisions respecting confidentiality of the PixlWorks information that McAdie would obtain or access in providing contractor services to PixlWorks:

10. CONFIDENTIAL INFORMATION

The Contractor acknowledges that all information regarding drafting floor plans from matterport 3d scans and/or techniques related to producing those floor plans are proprietary to PixlWorks and will not be used to produce the same/similar products for other companies. The Contractor agrees not to disclose any of such information to anyone outside of PixlWorks , except where such disclosure is necessary for the proper and bona fide execution of the Contractor's duties he re under, without the prior written consent of PixlWorks. The Contractor's obligation not to disclose such information with prior written consent will continue to apply after this Agreement has terminated until such time as the information becomes public knowledge through no fault of the contractor.

...

13. DATA STORAGE AND SECURITY

Data created, collected and /or manipulated under the Agreement must be stored securely by the Contractor. Data Transmitted or stored on computers, portable devices, or other media must be protected using secure procedures (i.e. password protection, etc.).

When the Agreement ends, whether through expiry or termination, the Contractor will provide all data to PixlWorks in a method to be determined at the time. The Contractor will be required to delete all data from any computers, servers, portable devices, or media under its control after confirming transmission of all such data to PixlWorks.

28. In the course of providing contractor services to PixlWorks, McAdie was trained and instructed in the Proprietary Techniques relating to the scanning of data, as described at paragraphs 10(a) above.

29. In or around late September or early October 2022, McAdie agreed with Cotala to join in the Appropriation Scheme. McAdie knew that the Appropriation Scheme was in breach of

her obligations to PixlWorks, including under the Contractor Agreement, or, in the alternative, was reckless or wilfully blind with respect to her obligations to PixlWorks, but nevertheless willingly participated in the Appropriation Scheme.

30. Beginning in or around late September or early October 2022, and continuing thereafter, McAdie disclosed the Proprietary Techniques, or aspects thereof, to Cotala, and to Cotala's employees, contractors and subcontractors. As PixlWorks did not consent or agree to such disclosure of its confidential information and property, McAdie's disclosure was contrary to her obligations to PixlWorks, including under the Contractor Agreement.

31. On or around October 11, 2022, McAdie advised PixlWorks that she intended to terminate the Contractor Agreement on two weeks' notice. McAdie dishonestly concealed from PixlWorks that she was already providing services to Cotala, and that her "notice period" would be used to further access and disclose confidential PixlWorks information and intellectual property to Cotala, without colour of right, and for the purpose of competing with PixlWorks by unlawful means.

F. Harm to PixlWorks

32. As set out above, soon after Cotala and McAdie began to implement the Appropriation Scheme and produce floorplans for sale to third parties, PixlWorks received complaints with respect to the Cotala floorplans. Although PixlWorks' representatives explained that PixlWorks had not produced those floorplans, the inferior floorplans produced through the Appropriation Scheme has nevertheless caused harm and damage to PixlWorks' business and reputation, including loss of goodwill. This harm arises from, among other things, customers' particular sensitivity to measurement errors in floorplans, which can give rise to significant liabilities for customers.

33. PixlWorks has further suffered loss of customers and loss of profits as a result of the Appropriation Scheme. The harm suffered by PixlWorks will be irreparable if permitted to continue.

34. On or around December 5, 2022, PixlWorks, through counsel, demanded that Cotala and McAdie cease and desist from the use of the Proprietary Techniques and destroy all

PixlWorks property in their possession (which includes the Object Library and the AutoCAD Layout).

35. To date, Cotala and McAdie have refused or neglected to comply with PixlWorks' demand.

Part 2: RELIEF SOUGHT

36. Interim, interlocutory, and permanent injunctions requiring the Defendants, and each of them, to:

- (a) Immediately cease all use and disclosure of the Proprietary Techniques and all PixlWorks property in their possession (including the Object Library and the AutoCAD Layout);
- (b) Return any documents, files, communications, or other media, hard copy, electronic or otherwise, containing information of the Proprietary Techniques and/or PixlWorks property (including the Object Library and the AutoCAD Layout);
- (c) Further, or in the alternative, permanently and irretrievably delete or destroy any and all documents, files, communications, copies or other media, hard copy, electronic or otherwise, containing information of the Proprietary Techniques and/or PixlWorks property (including the Object Library and the AutoCAD Layout);
- (d) Immediately cease procuring, selling, using or otherwise passing off any floorplans or other materials substantially similar to PixlWorks' designs;
- (e) Provide copies of any and all correspondence between any of the Defendants and any other person or organization regarding the use of the Proprietary Techniques and/or PixlWorks property in any manner;
- (f) Provide the names and contact information of any and all people and organizations to whom:

- (i) The Proprietary Techniques and/or PixlWorks property has been disclosed to or provided to;
- (ii) the Defendants have provided training with using, or otherwise in respect of the Proprietary Techniques; and
- (iii) the Defendants have provided products or services created using the Proprietary Techniques and/or PixlWorks' property.

37. An accounting and tracing of all profits obtained by the Defendants as a result of or in furtherance of the Appropriation Scheme and an order for disgorgement of such profits; or in the alternative, damages for lost past and future revenues, and loss of goodwill to PixlWorks' business.

38. Damages against the Defendants, and each of them, for conversion, conspiracy and unjust enrichment.

39. Damages against the Defendants, and each of them, for copyright infringement in accordance with s. 35 of the *Copyright Act*, R.S.C. 1985, c. C-42. In the alternative, and without currently electing such damages, statutory damages in accordance with s. 38.1 of the *Copyright Act*, R.S.C. 1985, c. C-42.

40. As against McAdie, damages for breach of the Contractor Agreement and breach of confidence.

41. Special damages.

42. Aggravated, punitive, and exemplary damages.

43. Special costs, or alternatively, costs.

44. Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

45. Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS**A. Conversion**

46. Through the Appropriation Scheme, the Defendants have misappropriated and converted to their own uses:

- (a) Copies of intellectual property owned by PixlWorks, including the Object Library and the AutoCAD Layout;
- (b) Corporate opportunities belonging to PixlWorks;
- (c) Software and design files belonging to PixlWorks; and
- (d) PixlWorks' proprietary business information and systems, including the Proprietary Techniques.

47. The Defendants have no ownership rights in or authority to use this confidential information and property.

B. Copyright Infringement

48. Through the Appropriation Scheme, the Defendants have infringed PixlWorks' copyright in the Object Library and AutoCAD Layout.

49. PixlWorks pleads and relies upon the *Copyright Act*, R.S.B.C. 1996, c. 79, including ss. 35(1) thereof, and, in the alternative, s. 38.1.

C. Conspiracy

50. The Defendants acted in concert and with a common design in developing and implementing the Appropriation Scheme. The predominant purpose of the Appropriation Scheme was to cause harm and injury to PixlWorks. In the alternative: (a) the Appropriation Scheme involved unlawful conduct, in the misappropriation of PixlWorks' confidential business information and intellectual property; and (b) the Defendants knew or ought to have known that PixlWorks would suffer loss, damage and expense as a result.

D. Passing Off

51. PixlWorks has developed significant goodwill with respect to the quality of measurements and distinctiveness of its Floorplans generated through use of the Proprietary Techniques.

52. Cotala had historically used PixlWorks' Floorplans, but since October 2022 has produced inferior floor plans that are nearly identical to PixlWorks' Floorplans in their aesthetic. Among other confusion, this has led to PixlWorks being mislabeled as the author of Cotala-produced floorplans in the MLS System. However, the Cotala floorplans are not prepared to the same standards and quality of PixlWorks' Floorplans, and errors resulting from improper measuring techniques or calculations have and will cause harm and damage to PixlWorks.

53. Cotala, by passing off Cotala's substandard floor plans as PixlWorks products, has engaged in the unauthorized use of PixlWorks' goodwill, causing damage to PixlWorks through the loss of control over its goodwill.

E. Breach of Contractor Agreement and Breach of Confidence

54. At all material times, McAdie owed contractual obligations and common law duties to PixlWorks, which included the following:

- (a) To protect the confidentiality of the Proprietary Techniques, the Object Library and the AutoCAD Layout, which information she obtained in confidence and solely through her role as a contractor for Pixlworks; and
- (b) To refrain from using her position as a contractor with PixlWorks to compete with PixlWorks (or to assist a competitor in so doing), including, without limitation, through the breach of her confidentiality obligations to PixlWorks.

55. Through the Appropriation Scheme, McAdie breached the above contractual and common law obligations owed to PixlWorks, causing loss, damage and expense to PixlWorks.

F. Unjust Enrichment

56. Further, or in the alternative, as a result of the Appropriation Scheme, the Defendants have been or will be unjustly enriched to the detriment of PixlWorks. Among other things, the Defendants have gained or attempted to gain, without lawful authority, the use of and profits generated by:

- (a) the Proprietary Techniques; and
- (b) PixlWorks' reputation, designs, systems and intellectual property.

57. PixlWorks has suffered a corresponding deprivation in the loss of business, reputation, goodwill, customers and profits. There is no juristic reason for the Defendants to have profited from the Appropriation Scheme at PixlWorks' expense.

G. Injunctive Relief

58. The Defendants' conduct has caused and continues to cause harm to PixlWorks, which harm cannot be compensated in damages. This harm includes, but is not limited to, loss of goodwill and reputation, and irreparable harm to PixlWorks' business with ongoing harm to a significant revenue source.

59. Under the *Law and Equity Act*, R.S.B.C. 1996, c. 254, s. 39 and at common law and under Part IV of the *Copyright Act*, PixlWorks is entitled to injunctive relief, both interlocutory and permanent, to restrain the Defendants from continuing to misuse and profit from the Proprietary Techniques and from PixlWorks' intellectual property, including the Object Library and AutoCAD Layout.

Plaintiff's address for service is c/o the law firm of Lawson Lundell LLP, whose place of business and address for service is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2 (Attention: Gordon Brandt and Rachel Wollenberg).

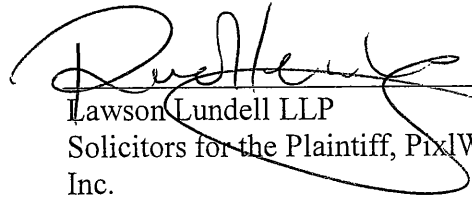
Fax number address for service is: (604) 669-1620.

E-mail address for service is: gbrandt@lawsonlundell.com

Place of Trial: Vancouver

The address of the Registry is: 800 Smithe Street, Vancouver,
British Columbia V6Z 2E1

Dated at the City of Vancouver, in the Province of British Columbia, this 21st day of August,
2023.


Lawson Lundell LLP
Solicitors for the Plaintiff, PixlWorks Productions
Inc.

This Notice of Civil Claim is filed by Gordon Brandt and Rachel Wollenberg, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Misuse of intellectual property and copyright, breach of contractor agreement.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

PART 4:

NO.
VANCOUVER REGISTRY

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INC.

PLAINTIFF

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DEFENDANTS

NOTICE OF CIVIL CLAIM



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1600 Cathedral Place
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Attention: Gordon Brandt / Rachel Wollenberg

GBB/RAW