

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**TAYLAN MCRAE-YU**

Plaintiff

- and -

**PROFITLY INCORPORATED, DMCB HOLDINGS INC., IVAN AVRAMENKO,  
ALEXANDRA STINSON, and JOHN DOE**

Defendants

Proceeding under the *Class Proceedings Act*, 1992

**RESPONDING PARTY'S FACTUM  
(MAREVA INJUNCTION)**

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and John Doe

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**PART I. OVERVIEW**

1. On June 15, 2023, the Plaintiff, Taylan McRae-Yu, successfully moved for an *ex-parte* *Mareva* Injunction Order (“**Mareva Order**”) against Profitly Incorporated, DMCB Holdings Inc., Ivan Avramenko (“Mr. Avramenko”), Alexandra Stinson (“Ms. Stinson”), and John Doe (collectively, the “**Boneheads Team**”). In granting the *Mareva* Order, the Honourable Justice Hooper found a “strong *prima facie* case”<sup>1</sup> of fraudulent misrepresentation in respect of the sale of Boneheads Non-Fungible Tokens (NFTs).

2. The *Mareva* Order froze assets of the Boneheads Team as outlined in Schedule “A” and “B” of the Order but was not a blanket freeze on all assets and bank accounts of the Boneheads Team. Rather, it froze assets “raised in connection with the sale of Boneheads NFTs”.<sup>2</sup> Under

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<sup>1</sup> *Taylan McRae-Yu v. Profitly Incorporated, DMCB Holdings Inc., Ivan Avramenko, Alexandra Stinson, and John Doe*, (19 June 2023), Ottawa, CV-23-00092340-00CP (ONSC) at para. 18.

<sup>2</sup> Tab 8, pg. 846 to the Responding Party’s Motion Record.

paragraphs 6 and 7, the *Mareva* Order required disclosure pertaining to the “nature, value, and location” of the Defendants’ worldwide assets.

3. On June 23, 2023, both parties agreed to an amendment of the *Mareva* Order (“**Amended *Mareva* Order**”), which was granted by the Honourable Justice Hooper. The Amended *Mareva* Order primarily modified the *Mareva* Order in two ways. Firstly, the Defendants were allowed full access to banking and credit facilities, even if funds in bank accounts were connected to the sale of Boneheads NFTs. Secondly, the Defendants were relieved of their disclosure obligation until a motion to have the *Mareva* injunction set aside was heard.

4. On this motion, the Plaintiff seeks to have the Amended *Mareva* Order continue in its current form, allowing the Defendants full access to banking and credit facilities, even if funds were obtained from the sale of the Boneheads NFT. However, the Plaintiff seeks that the Defendants make disclosure of the “nature, value, and location” of their assets worldwide “within 7 days of the Decision of the Court to dismiss the Defendants motion”<sup>3</sup> as specifically agreed to and outlined in the Amended *Mareva* Order.

5. In light of the overwhelming evidence of fraud in this matter, continuation of the *Mareva* injunction in the Amended *Mareva* Order format best balances the rights of all parties.

## **PART II. CREDIBILITY**

6. The allegations and statements made by the Defendants raise serious questions about the credibility of the Defendants and the weight that ought to be given to their evidence therein.

### ***Alexandra Stinson***

7. Mr. Avramenko’s Affidavit states that “Alexandra has never been involved in the development or conceptualization of the Boneheads project, nor has she ever been paid for

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<sup>3</sup> Tab 8, pg. 843 to the *Responding Motion Record*.

Boneheads related work (emphasis added)”<sup>4</sup> and that “Alexandra is not a co-founder of the Boneheads NFT project.”<sup>5</sup> This is directly contradicted by the following evidence:

- (i) Ms. Stinson received \$126,120.19 CAD on August 29, 2021, from the Boneheads NFT sale proceeds, as outlined in disclosure provided by the cryptocurrency exchange, Coinbase Canada Inc. (“Coinbase”);<sup>6</sup>
- (ii) On August 6, 2021, @ivybonee (“Mr. Avramenko”); @nikkibonee (“John Doe”); and @lexibone (“Ms. Stinson”) were introduced by the Boneheads Team on Twitter as the “creators” of Boneheads;<sup>7</sup>
- (iii) Ms. Stinson is one of two Directors for Profitly Incorporated who, according to the Defendant’s Claim in Belleville Small Claim’s Court, “provides on-going marketing services for the digital community known as “BONEHEADS””;<sup>8</sup> and
- (iv) On August 20, 2021, subscribers to the Boneheads “newsletter” received information about the Boneheads mint. The address in the footer of the email was 1034 County Road 3, Belleville, ON, K8N 4Z1<sup>9</sup> which is identical to the listed personal address for Ms. Stinson under the Profitly Incorporated incorporation documents.<sup>10</sup>

8. In addition, Mr. McRae-Yu has extensively outlined Ms. Stinson’s involvement with the Boneheads project and provided numerous pieces of evidence linking Ms. Stinson to Boneheads.<sup>11</sup>

Despite this, the Moving Parties’ Factum states:

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<sup>4</sup> Affidavit of Ivan Avramenko (Sworn September 1, 2023) (“Avramenko Affidavit”) at para. 15.

<sup>5</sup> Avramenko Affidavit at para. 5.

<sup>6</sup> Supplementary Affidavit of Taylan McRae-Yu (Sworn September 22, 2023) (“Supplementary McRae-Yu Affidavit”) at paras. 7-8; Exhibit “CS” to the Supplementary McRae-Yu Affidavit.

<sup>7</sup> Affidavit of Taylan McRae-Yu (Sworn June 6, 2023) (“McRae-Yu Affidavit”) at para. 52; Exhibit “AM” to the McRae-Yu Affidavit.

<sup>8</sup> Supplementary McRae-Yu Affidavit at para. 9; Exhibit “AZ” to the McRae-Yu Affidavit.

<sup>9</sup> McRae-Yu Affidavit at para. 53; Exhibit “AN” to the McRae-Yu Affidavit.

<sup>10</sup> Exhibit “AP” McRae-Yu Affidavit.

<sup>11</sup> McRae-Yu Affidavit at paras. 50-61; Exhibits “AM” – “AZ” to the McRae-Yu Affidavit; Supplementary McRae-Yu Affidavit at paras. 3-11; Exhibits “CR” – “CT” to the Supplementary McRae-Yu Affidavit.

With respect to the Defendant, Alexander Stinson, she has never been involved in the Bonehead business. She is not a director of Boneheads and has no knowledge of the matters in this action. No evidence was provided by the Plaintiff that suggests she was involved in the business (emphasis added).<sup>12</sup>

***DMCB Holdings Inc.***

9. Mr. Avramenko’s Affidavit and the Statement of Defence and Counterclaim both state “In or around early 2021, DMCB launched Boneheads”.<sup>13</sup> DMCB Holdings Inc. was incorporated on August 26, 2021,<sup>14</sup> *after* the Boneheads NFT mint on August 20, 2021 and could not have launched Boneheads, let alone in early 2021.

***Movement of Funds Post-Mint***

10. Mr. McRae-Yu evidenced how 950.5 Ether (“ETH”) generated from the Boneheads mint was distributed into three cryptocurrency wallets: 47.525 ETH went to an individual who “appears to be a software engineer paid for work on the project”; 95.05 ETH went to “West Coast NFT...a smart contract developer that was paid for their work on the Boneheads smart contract”; and “807.925 ETH was sent to “BONEHEADS: Deployer””.<sup>15</sup>

11. Mr. McRae-Yu then tediously outlined how the “BONEHEADS: Deployer” wallet dissipated funds, by transferring cryptocurrency assets between cryptocurrency wallets, purchasing NFTs, and moving funds into centralized exchanges.<sup>16</sup> For example, on August 29, 2021, the “BONEHEADS: Deployer” address sent 31 ETH (\$126,120.19 CAD) into the “Coinbase Exchange 1” address.<sup>17</sup> Following the service of the *Mareva* Order, Coinbase revealed that the identity of the individual who received this transfer was Ms. Stinson.<sup>18</sup>

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<sup>12</sup> Moving Parties’ Factum at para. 72.

<sup>13</sup> Avramenko Affidavit at para. 14; Tab 6, para. 11 to Responding Party’s Motion Record.

<sup>14</sup> Exhibit “AO” to the McRae-Yu Affidavit.

<sup>15</sup> McRae-Yu Affidavit at paras 35-36; Exhibits “AA” – “AB” to the McRae-Yu Affidavit.

<sup>16</sup> McRae-Yu Affidavit at paras. 64-77; Exhibits “BA” – “BT” to the McRae-Yu Affidavit.

<sup>17</sup> McRae-Yu Affidavit at para. 71; Exhibit “BE” to the McRae-Yu Affidavit.

<sup>18</sup> Supplementary McRae-Yu Affidavit at paras. 7-8; Exhibit “CS” to the Supplementary McRae-Yu Affidavit.

12. The Moving Parties' Factum states:

If the funds earned by Boneheads were not dispersed into separate centralized crypto wallets, the funds would have been automatically frozen. The Boneheads team was required to disperse the funds into separate crypto wallets in order to access those funds (emphasis added).<sup>19</sup>

13. Not only is this statement not substantiated by any evidence, it is directly contradicted by the extensive evidence shown in Mr. McRae-Yu's Affidavit showing the transfer of funds to, from, and between a number of cryptocurrency wallets that are not cryptocurrency exchanges. For example, the "BONEHEADS: Deployer" address has transferred 1,508.885 ETH to the "BNHDZVAULT" address between September 3, 2021 and January 25, 2023.<sup>20</sup> The "BNHDZVAULT" address has transferred 996.409 ETH back to the "BONEHEADS: Deployer" address between September 6, 2021 to March 17, 2022.<sup>21</sup> Neither are centralized exchange wallets.

### **PART III. FACTS**

#### ***Pre-Mint***

14. The Boneheads Team marketed Boneheads NFTs through three primary means: Twitter, Discord, and the Boneheads Website, starting in or around July 2021.<sup>22</sup>

15. In advance of the Boneheads NFT mint on August 20, 2021, the Boneheads Team made numerous representations to consumers regarding the benefits that would flow to them following the purchase of a Boneheads NFT:

- (i) On July 17, 2021, the Boneheads Team stated in Discord, "little unofficial leak...everyone that buys a Bonehead will get an opportunity to participate in a secondary credit sale for the chance to win \$1M";<sup>23</sup>

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<sup>19</sup> Moving Parties' Factum at para. 61.

<sup>20</sup> Exhibit "BD" to the McRae-Yu Affidavit; Exhibit "BG" to the McRae-Yu Affidavit.

<sup>21</sup> Exhibit "BD" to the McRae-Yu Affidavit; Exhibit "BG" to the McRae-Yu Affidavit.

<sup>22</sup> McRae-Yu Affidavit at para. 25.

<sup>23</sup> Exhibit "V" to the McRae-Yu Affidavit.

- (ii) On July 19, 2021, the Boneheads Team stated on Twitter, “wait so...and one lucky randomized token holder gets a monetary mystery box valued at a quarter million dollars, revealed instantly at the end of the mint...\$250K???????” (emphasis added);<sup>24</sup> and
- (iii) The Boneheads Website contained an “FAQ” page. One of the questions on this page was “When Will I Get Access to the App?”. This was answered as follows: “We are currently planning on releasing the Avatar Creation App Beta sometime within the next 8-12 months. We’ve been working on this in stealth mode for a year...”<sup>25</sup> This corresponds to a release date of April 2022-August 2022.

16. The benefits outlined by the Boneheads Team in advance of the mint are extensive and numerous and none have been delivered to date.<sup>26</sup>

***Mint and Post-Mint***

17. On August 20, 2021, within 40 minutes of its launch, the Boneheads NFT “mint” sold out, generating 950.5 ETH in revenue (\$4,005,047.38 CAD).<sup>27</sup> Purchasers of Boneheads NFTs included consumers from around the world:

- (i) Mr. Taylan McRae-Yu lives in Ottawa, Ontario, Canada and minted 36 Boneheads NFTs for 3.6 ETH (\$15,169.03 CAD);<sup>28</sup>
- (ii) Mr. Dominic Simpson lives in Peoria, Illinois, United States of America and purchased 28 Boneheads NFTs between August 20, 2021 and November 25, 2022 at a total cost of \$6,896 USD;<sup>29</sup>

<sup>24</sup> Exhibit “W” to the McRae-Yu Affidavit.

<sup>25</sup> Exhibit “U” to the McRae-Yu Affidavit.

<sup>26</sup> McRae-Yu Affidavit at paras. 27-31; Exhibits “R”-“W” to the McRae-Yu Affidavit.

<sup>27</sup> McRae-Yu Affidavit at paras. 32, 33, and 35; Exhibits “X”, “Y” and “AA” to the McRae-Yu Affidavit.

<sup>28</sup> McRae-Yu Affidavit at para. 34; Exhibit “Z” to the McRae-Yu Affidavit.

<sup>29</sup> Affidavit of Dominic Simpson sworn September 21, 2023 (“Simpson Affidavit”) at para. 4; Exhibit “A” to the Simpson Affidavit.



- (iii) Mr. Glen Wilde lives in London, United Kingdom, and minted 50 Boneheads NFTs on August 20, 2021, at a total cost of \$18,028.59 USD.<sup>30</sup>

18. Immediately following the mint, there was considerable panic among consumers who had purchased a Boneheads NFT for three reasons:

- (i) The Boneheads Discord was put to “slow mode” causing panic among consumers that the project was about to be rug-pulled. Individuals like Mr. McRae-Yu, who expressed concern about this were, without warning, banned from the Discord.<sup>31</sup>
- (ii) Less than one hour after the mint, the Boneheads Team abruptly announced they would be back on August 23, 2021 and told Discord members to not “let the FUD get to you”.<sup>32</sup> FUD is a common term used to refer to “Fear Uncertainty and Doubt”, and is often used to dismiss the frustrations of consumers by labelling their statements as FUD.<sup>33</sup> The fact that this announcement was made specifically supports that there was considerable panic or “FUD” amongst consumers following the mint; and
- (iii) Boneheads NFTs had art that was incomplete because many of the “Boneheads” were missing components of their outfit, such as shoes or pants.<sup>34</sup>

19. The months and years following the mint of the Boneheads NFTs demonstrate how consumers were repeatedly defrauded, deceived, and lied to in respect of both the completion of the Boneheads NFT art and benefits they would be receiving. These events are broadly categorized as: (1) **2D Reveal**; (2) **Anniversary Week**; and (3) **“Whitepaper / Monthly Drops”**.

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<sup>30</sup> Affidavit of Glen Wilde sworn September 21, 2023 (“Wilde Affidavit”) at para. 7; Exhibit “A” to the Wilde Affidavit.

<sup>31</sup> McRae-Yu Affidavit at para. 38.

<sup>32</sup> McRae-Yu Affidavit at para. 39; Exhibit “AD” to the McRae-Yu Affidavit.

<sup>33</sup> Simpson Affidavit at para. 27.

<sup>34</sup> Simpson Affidavit at para. 11.

## ***2D Reveal***

20. Because the art on many of the Boneheads NFTs was incomplete, the Boneheads Team announced that a “**2D Reveal**” or “Metadata Refresh” event would take place in October 2021 where NFT holders could upgrade the clothing on their Boneheads NFT on a website.<sup>35</sup> This promise was made across a number of outlets as follows:

- (i) Following the mint, the Boneheads Website was updated to state: “Pre-sale sold out. Complete collection to be revealed (Opensea Metadata Refresh) October 2021...Los Angeles Flagship Opening In Early 2022”;<sup>36</sup>
- (ii) On October 7, 2021, the Boneheads Team stated in the Boneheads Discord that the “current status is 2D’s October 31<sup>st</sup>, then right away we’re going to start teasing the 3D’s two weeks after that in the meantime we’re building up a massive promo campaign with hella celebs and artists”;<sup>37</sup>
- (iii) On October 10, 2021, in response to a question from a Discord user about what was next following the 2D Event, the Boneheads Team stated, “we’re going to have a \$100K ETH giveaway contest, with a physical component, initiates shortly after 2D reveal (emphasis added)”;<sup>38</sup> and
- (iv) On October 12, 2021, the Boneheads Team stated on Twitter, “full collection reveal October 31<sup>st</sup>, FUD thought we rugged...”<sup>39</sup>

21. On October 21, 2021, the Boneheads Team stated in Discord, “if you guys only knew what is in the works, and how big this is going to be”.<sup>40</sup> After this message, the Boneheads Team ceased

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<sup>35</sup> Simpson Affidavit at para. 12.

<sup>36</sup> Exhibit “C” to the Simpson Affidavit.

<sup>37</sup> Exhibit “E” to the Simpson Affidavit.

<sup>38</sup> Exhibit “G” to the Simpson Affidavit.

<sup>39</sup> Exhibit “E” to the Simpson Affidavit.

<sup>40</sup> Exhibit “K” to the Simpson Affidavit.

all communication from the Boneheads Discord and did not return until November 9, 2021.<sup>41</sup> The 2D Event never took place but the Boneheads Team continued to represent to consumers that a major event was forthcoming:

- (i) On January 28, 2022, the Boneheads Team stated in Discord “reveal will occur within Q1, that’s a certainty” and “100% before Q1 over (emphasis added)” referring to the 2D Event;<sup>42</sup> and
- (ii) On April 3, 2022, the Boneheads Team stated on Discord that the project was “getting closer to launch” and that “we’re dropping everything at once – site, refresh, marketplace, and the first collection (clothes + physicals).”<sup>43</sup>

### *Anniversary Week Event*

22. On June 11, 2022, a Boneheads Discord user by the name of “j0seph” shared a message in the Boneheads Forever Discord that he had received from Mr. McRae-Yu (@0xTAY\_) on Twitter, stating that Mr. McRae-Yu was looking to file a report with the department of justice regarding Boneheads.<sup>44</sup> Despite nearly 2 months of inactivity, the Boneheads Team immediately responded in Discord on June 13, 2022 with a sneak peek of a collection and stated “p.s. 69 days until reveal” on “August 20, 2022”.<sup>45</sup> This came to be known as the “Bonniversary week” or “**Anniversary Week**” event corresponding to the 1 year anniversary of the Boneheads NFT mint.<sup>46</sup>

23. Leading up to the Anniversary Week event, the following statements were made:

- (i) On July 10, 2022, the Boneheads Team stated in Discord “big big day on 1yr anniversary!!!!!!”,<sup>47</sup>

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<sup>41</sup> Simpson Affidavit at para. 20.

<sup>42</sup> Exhibit “T” to the Simpson Affidavit.

<sup>43</sup> Exhibit X” to the Simpson Affidavit.

<sup>44</sup> Simpson Affidavit at para. 39; Exhibit “Z” to the Simpson Affidavit.

<sup>45</sup> Simpson Affidavit at paras. 40, Exhibit “AA” to the Simpson Affidavit.

<sup>46</sup> Simpson Affidavit at para. 43.

<sup>47</sup> Simpson Affidavit at para. 41; Exhibit “AB” to the Simpson Affidavit.

- (ii) On July 14, 2022, Twitter user “ZachXBT”, who has a popular account dedicated to exposing cryptocurrency fraud, accused Boneheads of being a rug pull. In response, the Boneheads Team Tweeted, “wen biggest NFT rug accounts tweets and provide free publicity....BONNIVERSARY week it all officially begins, 10 Characters – 10 Seasons”,<sup>48</sup>
  - (iii) The Boneheads Team stated in Discord on July 15, 2022 that ZachXBT’s allegations were “pure BS” and “Bonniversary is the week when the machine is set in motion”;<sup>49</sup>
  - (iv) On July 18, 2022, the Boneheads Team outlined an extensive plan for Anniversary Week including a “\$BONE” cryptocurrency token; an “app”; “web 2 shopify”; marketplace store; that every Bonehead NFT “will get turned into an unrevealed state” in August 2022 and a character showcase would be available on the Boneheads website where Boneheads NFT holders would be able to “preview some traits, create some, and suggest traits”; and that Discord members would be given a “link to the mobile app in approximately two weeks”;<sup>50</sup> and
  - (v) On August 15, 2022, the Boneheads Team stated “no delays...white paper on anny week, site update sept 1, daily previews starting oct 1, drop november, reveal jan 1, app drops anny week for forevers and public push will start oct 1 in tandem with the previews”.<sup>51</sup>
24. On August 20, 2022, no drop or any other event took place. The Boneheads team simply wished everyone a happy anniversary and stated a whitepaper would be released within a week.<sup>52</sup>

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<sup>48</sup> Supplementary McRae-Yu Affidavit at para. 19; Exhibit “CW” to the Supplementary McRae-Yu Affidavit.

<sup>49</sup> Simpson Affidavit at para. 42; Exhibit “AC” to the Simpson Affidavit.

<sup>50</sup> Simpson Affidavit at para. 45; Exhibit “AD” to the Simpson Affidavit.

<sup>51</sup> Simpson Affidavit at para. 46, Exhibit “AE” to the Simpson Affidavit.

<sup>52</sup> Simpson Affidavit at para. 46; Exhibit “AE” to the Simpson Affidavit.

***Whitepaper / Monthly Drops***

25. On September 1, 2023, a “whitepaper”, which according to Mr. Simpson looks like it was put together in “all of about a few hours”<sup>53</sup> was released.

26. The whitepaper in question stated “Drop 1 Goes Live November 1st, 2022” and that there would be “Drops on the 1<sup>st</sup> of Every Month”.<sup>54</sup> The Boneheads Team, simultaneously with the release of their whitepaper, stated, “site and app dropping Oct 1, drop dropping Nov 1”.<sup>55</sup> This was followed by, in usual fashion, continued representations to consumers pertaining to benefits:

- (i) On September 3, 2022, the Boneheads Team stated that the 2D Event, which was originally intended for October 1, 2021, would take place “Jan 1st refresh 100% (emphasis added)” referring to January 1, 2023;<sup>56</sup>
- (ii) On September 23, 2022, the Boneheads Team stated that the website would be completed by October 1, 2022 and specifically used the phrase “signed sealed delivered” to indicate that this was already complete;<sup>57</sup>
- (iii) On November 2, 2022, the Boneheads team stated “we set an internal deadline that everything has to be out by xmas or we’re folding, and we’re not going to fold...regardless of whether or not think its “good enough”...and that won’t be pushed, 0% chance, I probably won’t be happy with it, but it’s what we all agreed on (emphasis added)”;<sup>58</sup>
- (iv) On November 13, 2022, the Boneheads Team stated: “can’t wait for Jan 1 and the first of every month onwards forward” which would include “full launch Jan 1”;<sup>59</sup>

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<sup>53</sup> Simpson Affidavit at para. 48; Exhibit “AG” to the Simpson Affidavit.

<sup>54</sup> Exhibit “AG” to the Simpson Affidavit.

<sup>55</sup> Simpson Affidavit at para. 47; Exhibit “AF” to the Simpson Affidavit.

<sup>56</sup> Simpson Affidavit at para. 49; Exhibit “AH” to the Simpson Affidavit.

<sup>57</sup> Simpson Affidavit at para. 49; Exhibit “AH” to the Simpson Affidavit.

<sup>58</sup> Simpson Affidavit at para. 50; Exhibit “AJ” to the Simpson Affidavit.

<sup>59</sup> Simpson Affidavit at para. 53; Exhibit “AL” to the Simpson Affidavit.

- (v) On December 31, 2022, the Boneheads Team stated that a Google document would be available “tomorrow” where individuals could fill out their information in order to receive the drop in question. No Google document came,<sup>60</sup> and
- (vi) On January 7, 2023, the Boneheads team stated the “drop” would be “shipping this month” and that Boneheads NFT holders would be “pleasantly surprised”.<sup>61</sup>

27. For many consumers, including Mr. Simpson, this was the “final straw”.<sup>62</sup> As of the date of this factum, the Boneheads team has not delivered a single benefit that they had promised to consumers, as outlined in the Boneheads Website, Twitter, and Discord. There has also been no 2D Event, no Anniversary Week event, and no “monthly drops”.

#### **PART IV. ISSUES**

28. There is one issue on this motion: whether the *Mareva* injunction against the Defendants should be set aside.

#### **PART V. LAW AND ARGUMENT**

##### ***MAREVA* INJUNCTION**

29. Subsection 101(1) provides the Superior Court of Justice with jurisdiction to grant an interlocutory injunction “where it appears to a judge of the court to be just or convenient to do so.”<sup>63</sup> A *Mareva* injunction is an equitable remedy.<sup>64</sup> The purpose underlying the grant of a *Mareva* injunction is to prevent a defendant from arranging their assets in an attempt to make themselves judgment proof.<sup>65</sup> As such, the following subsections outline jurisprudential factors that are

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<sup>60</sup> Simpson Affidavit at para. 54; Exhibit “AM” to the Simpson Affidavit.

<sup>61</sup> Simpson Affidavit at para. 55; Exhibit “AN” to the Simpson Affidavit.

<sup>62</sup> Simpson Affidavit at para. 54.

<sup>63</sup> *Courts of Justice Act*, RSO 1990, c C.43, s. 101(1).

<sup>64</sup> *SFC Litigation Trust (Trustee of) v. Chan*, [2017 ONSC 1815](#) at [para. 14](#).

<sup>65</sup> *Aetna Financial Services Ltd. v. Feigelman*, [\[1985\] 1 SCR 2](#) at [para. 25](#).

“guidelines for the Court to consider as opposed to rigid criteria”<sup>66</sup> before granting a *Mareva* Order. A review of these factors favours the continuation of the *Mareva* injunction in this case.

(i) STRONG PRIMA FACIE CASE

30. In order to establish a strong *prima facie* case, the moving party must show “on a balance of probabilities, that it is likely to succeed” but “does not require that the Plaintiff prove its case”.<sup>67</sup> The evidence establishes a strong *prima facie* case of fraudulent misrepresentation, comprised of four elements: (1) a false representation made by the defendant; (2) some knowledge of the falsehood of the representation on the part of the defendant (whether knowingly or recklessly); (3) the false representation caused the plaintiff to act; and (4) the plaintiff’s actions resulted in a loss.<sup>68</sup>

i. *False Representation*

31. The Boneheads Team made numerous and extensive representations which were specific, intentional, and many, such as the \$250,000 giveaway,<sup>69</sup> the 2D Event,<sup>70</sup> the Anniversary Week event,<sup>71</sup> the Los Angeles Flagship Store,<sup>72</sup> and the Monthly Drops,<sup>73</sup> had specific dates tied to them. Consumers were repeatedly told that these dates were a “100% certainty”.<sup>74</sup> These representations are unequivocally false. As of October 2023, not a single benefit that was promised to consumers has been delivered.

ii. *Knowledge of False of Representations*

32. The Boneheads Team knew of the falsehood of, or was reckless in making, these false representations. For example, the Boneheads Team made reckless promises of a \$1 million dollar

<sup>66</sup> *Ekaterina Ivanova Karpacheva v. Valery Vladimirovich Karpachev*, [2018 ONSC 4563](#) at [para. 34](#).

<sup>67</sup> *Voysus Connection Experts Inc. v. Shaikh*, [2019 ONSC 6683](#) at [para. 56](#).

<sup>68</sup> *Bruno Appliance and Furniture Inc. v. Hryniak*, [2014 SCC 8](#) at [para. 21](#).

<sup>69</sup> Exhibit “W” to the McRae-Yu Affidavit.

<sup>70</sup> Exhibit “C” to the Simpson Affidavit.

<sup>71</sup> Simpson Affidavit at paras 41-43; Exhibit “AC” to the Simpson Affidavit.

<sup>72</sup> Exhibit “C” to the Simpson Affidavit.

<sup>73</sup> Exhibit “AG” to the Simpson Affidavit.

<sup>74</sup> Exhibit “T” to the Simpson Affidavit.

giveaway,<sup>75</sup> a \$250,000 giveaway,<sup>76</sup> and a \$100,000 giveaway,<sup>77</sup> tied specifically to purchases and ownership of Boneheads NFTs.

iii. *The False Representations Caused the Plaintiff to Act*

33. Attached as Exhibit “M” to the Simpson Affidavit is a chart showing secondary volume on the Opensea marketplace for Boneheads NFT sales. Secondary volume “peaks” on this graph correspond with specific dates for delivery of benefits promised by the Boneheads Team. There were large purchases of Boneheads NFTs leading up to the 2D Event in October 2021,<sup>78</sup> following promises by the Boneheads Team in January that “reveal would occur within Q1...100% before Q1”,<sup>79</sup> and the Anniversary Week event.<sup>80</sup>

34. Mr. McRae-Yu<sup>81</sup> and Mr. Wilde<sup>82</sup> both purchased Boneheads NFTs in reliance of the extensive benefits promised by the Boneheads Team in advance of the mint.

iv. *The Plaintiff’s Actions Resulted in a Loss*

35. The Plaintiff is claiming special damages in the amount of \$4,117,119.83 CAD corresponding to the \$4,005,047.38 CAD from mint proceeds and the \$112,072.43 CAD in royalties<sup>83</sup> from secondary market sales. This amount directly corresponds to the amount depleted from the cryptocurrency wallets of thousands of consumers who minted a Boneheads NFT. Additionally, the volume of secondary sales for Boneheads NFTs is non-existent indicating that there is no market for Boneheads NFTs, with many having sold for \$0.<sup>84</sup>

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<sup>75</sup> Exhibit “V” to the McRae-Yu Affidavit.

<sup>76</sup> Exhibit “W” to the McRae-Yu Affidavit.

<sup>77</sup> Exhibit “G” to the Simpson Affidavit.

<sup>78</sup> Simpson Affidavit at para. 21; Exhibit “L” to the Simpson Affidavit.

<sup>79</sup> Simpson Affidavit at paras. 31 and 34.

<sup>80</sup> Simpson Affidavit at para. 42 and 44; Exhibit “AC” to the Simpson Affidavit.

<sup>81</sup> McRae-Yu Affidavit at para. 31.

<sup>82</sup> Wilde Affidavit at para. 8.

<sup>83</sup> McRae-Yu Affidavit at para. 37; Exhibit “AA” to the McRae-Yu Affidavit; Exhibit “AC” to the McRae-Yu Affidavit.

<sup>84</sup> Simpson Affidavit at para. 25; Exhibit “M” to the Simpson Affidavit.



(ii) DEFENDANTS HAVE ASSETS IN JURISDICTION

36. A *Mareva* injunction may be granted “where the party against whom the *Mareva* is sought is subject to the jurisdiction of the court personally, or s/he has property within the jurisdiction”.<sup>85</sup>

The Plaintiff clearly satisfies this requirement.

37. Profitly Incorporated and DMCB Holdings Inc. are both Canadian corporations with registered business addresses in Belleville, ON. Ivan Avramenko and Alexandra Stinson reside in Belleville, ON, making them subject to the Court’s jurisdiction. Cryptocurrency exchanges, namely Payward Canada Inc. (“Kraken”) and Coinbase Canada Inc., have received a total of \$651,842.64 CAD from the Boneheads Team and are located in Canada.<sup>86</sup>

(iii) REAL RISK OF DISSIPATION OF ASSETS

38. A real risk of dissipation of assets exists for two reasons. Firstly, a strong *prima facie* case of fraud establishes a real risk of dissipation of assets by inference. According to Justice Strathy:

[63] Rather than carve out an "exception" for fraud, however, it seems to me that in cases of fraud, as in any case, the *Mareva* requirement that there be risk of removal or dissipation can be established by inference, as opposed to direct evidence, and that inference can arise from the circumstances of the fraud itself, taken in the context of all the surrounding circumstances. It is not necessary to show that the defendant has bought an air ticket to Switzerland, has sold his house and has cleared out his bank accounts. It should be sufficient to show that all the circumstances, including the circumstances of the fraud itself, demonstrate a serious risk that the defendant will attempt to dissipate assets or put them beyond the reach of the plaintiff (emphasis added).<sup>87</sup>

39. Secondly, Mr. McRae-Yu’s Affidavit has nonetheless outlined in considerable detail how the Defendants have been slowly disposing of assets in a manner outside their ordinary course of business. According to the Supreme Court of Canada:

<sup>85</sup> *Ekaterina Ivanova Karpacheva v. Valery Vladimirovich Karpachev*, [2018 ONSC 4563](#) at [para. 38](#).

<sup>86</sup> Affidavit of McRae-Yu at para. 71; Exhibit “BD” to the McRae-Yu Affidavit; Supplementary Affidavit of McRae-Yu; Exhibit “CU” to the Supplementary Affidavit of McRae-Yu at para. 8.

<sup>87</sup> *Sibley & Associates LP v. Ross*, [2011 ONSC 2951](#).

The applicant must persuade the court by his material that the defendant is removing or there is a real risk that he is about to remove his assets from the jurisdiction to avoid the possibility of a judgment, or that the defendant is otherwise dissipating or disposing of his assets, in a manner clearly distinct from his usual or ordinary course of business or living, so as to render the possibility of future tracing of the assets remote, if not impossible in fact or in law (emphasis added).<sup>88</sup>

40. The Boneheads Team has purchased 100s of NFTs from the proceeds of the Boneheads sale, in a total amount in excess of \$1,786,169.95 CAD, completely outside the ordinary course of business.<sup>89</sup> For example, on November 29, 2021, the Boneheads team purchased \$581,551.53 CAD of “Inhabitants” NFTs.<sup>90</sup> On May 1, 2022, the Boneheads team purchased \$446,483.60 CAD worth of “Otherdeed” NFTs.<sup>91</sup>

41. According to Mr. Avramenko’s Affidavit, Ms. Stinson has never “been paid for Boneheads related work”.<sup>92</sup> If Ms. Stinson was not paid for Boneheads related work, then her personal receipt of \$126,120.19 CAD on August 29, 2021, from the Boneheads sale proceeds, further evidences that funds from the Boneheads mint were dissipated outside their ordinary course of business.

42. The Plaintiff agrees with the Defendants that a recent decision of this Court, *Kirschenberg v. Schneider*,<sup>93</sup> did not result in a *Mareva* injunction being granted within the cryptocurrency context because the Plaintiff failed to establish a real risk of dissipation of assets. However, in *Kirschenberg*, Justice Akbarali was “not satisfied...that there are sufficient indicators of fraud in this case to warrant such an inference (emphasis added)”.<sup>94</sup> Stated otherwise, the Plaintiff failed to prove the strong *prima facie* case of fraud needed to establish the inference of a real risk of dissipation in the first place.

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<sup>88</sup> *Aetna Financial Services Ltd. v. Feigelman*, [1985] 1 SCR 2 at para. 29.

<sup>89</sup> McRae-Yu Affidavit at paras. 73-74; Exhibits “BU” – “CH” of the McRae-Yu Affidavit.

<sup>90</sup> Exhibit “BU” to the McRae-Yu Affidavit; Exhibit “BX” to the McRae-Yu Affidavit.

<sup>91</sup> Exhibit “BU” to the McRae-Yu Affidavit; Exhibit “CH” to the McRae-Yu Affidavit.

<sup>92</sup> Affidavit of Ivan Avramenko (Sworn September 1, 2023) (“Avramenko Affidavit”) at para. 15.

<sup>93</sup> [2023 ONSC 2809](#) (“*Kirshenberg*”).

<sup>94</sup> *Kirschenberg* at [para. 44](#).

(iv) IRREPARABLE HARM IF INJUNCTION NOT GRANTED

43. Nearly \$1,000,000 worth of cryptocurrency tokens have been moved by Boneheads team to centralized cryptocurrency exchanges.<sup>95</sup> At least \$1.78 million have been used to fund extravagant NFT purchases.<sup>96</sup> The total value of all traceable digital assets that are subject to the *Mareva* injunction are less than \$500,000.<sup>97</sup> Without a continuing *Mareva* injunction, consumers and prospective class members like Mr. McRae-Yu, Mr. Simpson, and Mr. Wilde, face the real possibility of non-recovery of funds.

(v) THE BALANCE OF CONVENIENCE FAVOURS THE INJUNCTION

44. The Amended *Mareva* Order is intended to be an equitable resolution aimed at balancing the rights of all parties and will not freeze the bank accounts of the Defendants. Rather, it will allow for disclosure of the Defendants' assets so judgment can be enforced in the future and will preserve certain remaining assets given the real risk of their dissipation. Without a *Mareva* injunction in place, the Plaintiff and prospective class members face the risk that the Defendants will make themselves judgment proof, making it impractical or impossible to recover damages. The balance of convenience favors continuing the injunction.

(vi) UNDERTAKING AS TO DAMAGES

45. Rule 40.03 of the *Rules of Civil Procedure* requires the moving party to provide an undertaking as to damages "unless the court orders otherwise". In disposing of this requirement in the context of a prospective class action where a *Mareva* Order was sought, a recent decision of this Court stated "There is authority that it is appropriate to waive the undertaking in cases which

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<sup>95</sup> Supplementary McRae-Yu Affidavit at paras. 12-14; Exhibit "CU" to the Supplementary McRae-Yu Affidavit.

<sup>96</sup> McRae-Yu Affidavit at paras. 73-74; Exhibits "BU" – "CH" of the McRae-Yu Affidavit.

<sup>97</sup> McRae-Yu Affidavit at para. 78-80; Exhibits "CI" – "CK" of the McRae-Yu Affidavit.

have broad public interest significance...There is also authority that such an undertaking should not be required from a representative plaintiff acting for the benefit of a class”.<sup>98</sup>

46. This Court should exercise their discretion to waive the requirement for an undertaking as to damages for three reasons. Firstly, Mr. McRae-Yu is acting in a representative capacity for a class of claimants and it would be unfair for him to have to risk his personal assets by providing an undertaking as to damages. Secondly, there is a broad public consumer protection interest implicated in this case, particularly in the context of emerging cyber-fraud, anti-consumer friendly, and anti-competitive behavior related to blockchain technology, cryptocurrency, and NFTs.<sup>99</sup> Thirdly, the form of the *Mareva* injunction that is sought will not freeze the Defendants’ bank accounts, serving to mitigate damages to the Defendants from its attachment.

(vii) DUTY OF FULL AND FRANK DISCLOSURE

47. At the *ex-parte* hearing, the Plaintiff acknowledged the duty of full and fair disclosure of material facts<sup>100</sup> and disclosed all facts that would have been weighed or considered by the Court in deciding the issues, irrespective of whether the disclosure of those facts would have changed the outcome.<sup>101</sup>

*i. Boneheads Roadmap and Giveaways*

48. The Defendants allege that the Plaintiff “intentionally failed to disclose material facts about the Roadmap” which was “meant to show purchasers the direction Boneheads was going in and which products *might* have been developed over time” and “was not a binding promise”.<sup>102</sup>

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<sup>98</sup> *Li et. al. v. Barber et. al.*, [2022 ONSC 1176](#) at [para. 38](#).

<sup>99</sup> McRae-Yu Affidavit at paras. 81-83; Exhibit “CL” to the McRae-Yu Affidavit.

<sup>100</sup> Rules of Civil Procedure. R.R.O. 1990, Reg. 194, Rule 39.01(6).

<sup>101</sup> *Stans Energy Corp. v. Krygyz Republic*, [2015 ONSC 3236](#) at [para. 5](#).

<sup>102</sup> Moving Party’s Factum at para. 43.

49. The Boneheads website includes “Benefits”, “Roadmap”, “About”, and “FAQ” pages. In addition, the Boneheads Team promised giveaways and made other statements about benefits that would flow to consumers both on their Discord and Twitter. The totality of statements across all of these mediums encompass binding promises that must be resolved in favor of the consumer as per the *Consumer Protection Act*.<sup>103</sup>

**Ambiguities to benefit consumer**

11 Any ambiguity that allows for more than one reasonable interpretation of a consumer agreement provided by the supplier to the consumer or of any information that must be disclosed under this Act shall be interpreted to the benefit of the consumer. 2002, c. 30, Sched. A, s. 11.

50. The Defendants further allege that the Plaintiff “intentionally failed to disclose that the Giveaways were never listed on Boneheads’ website, nor were they ever part of the NFT smart contract”,<sup>104</sup> implying they did not constitute binding promises to consumers. Firstly, Mr. McRae-Yu’s Affidavit specifically testified that the July 17, 2021 giveaway of \$1 million was “stated on their Discord”.<sup>105</sup> Secondly, the Defendants’ position directly contradicts the Statement of Defence and Counterclaim where the Defendants admit that “DMCB marketed Boneheads primarily through the social media website Discord (emphasis added)”.<sup>106</sup>

ii. *Unconscionable Behavior by the Plaintiff*

51. The Defendants allege that the Plaintiff failed to impart a duty of full and frank disclosure because “he made numerous false and damaging statements about Boneheads through Discord, and as a result, was temporarily banned by Discord moderators”.<sup>107</sup> Other than Mr. Avramenko’s

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<sup>103</sup> 2002, S.O. 2002, c. 30, Sched. A.

<sup>104</sup> Moving Party’s Factum at para. 45.

<sup>105</sup> McRae-Yu Affidavit para. 30; Exhibit “V” to the McRae-Yu Affidavit.

<sup>106</sup> Tab 6, para. 14 to the Responding Party’s Motion Record.

<sup>107</sup> Moving Party’s Factum at para. 46.

personal testimony, no evidence of Mr. McRae-Yu's behavior on Discord has been included in the Moving Party's Motion Record.

52. Furthermore, Mr. Simpson, who was a voluntary moderator for the Boneheads Discord states that "dozens" of "individuals were banned because they expressed their frustration with non-delivery of roadmap items. In some cases, individuals were banned from the Boneheads Discord simply because they sold or liquidated their Boneheads NFTs".<sup>108</sup> For example, the Discord user "JP" was banned from Discord on December 11, 2021 for having expressed concern about the lack of delivery of Boneheads benefits.<sup>109</sup>

53. The Plaintiff made extensive and full disclosure in his Affidavit in support of the *ex-parte Mareva* hearing of all materials facts while recognizing the seriousness of an allegation of fraud.<sup>110</sup>

#### **PART VI. ORDER REQUESTED**

54. An interlocutory Order in the Amended *Mareva* Order format: (1) prohibiting the Defendants from dissipating, alienating, transferring, assigning, encumbering or in any way dealing with the Schedule "A" and B" assets; and (2) requiring disclosure within 7 days of all worldwide assets of the Defendants;

55. Costs of this motion on a substantial indemnity basis; and

56. Such further and other relief as counsel may request and this Honourable Court may deem just.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 27<sup>th</sup> day of October, 2023.



Sohaib Mohammad

<sup>108</sup> Simpson Affidavit at para. 10.

<sup>109</sup> Simpson Affidavit at para. 28; Exhibits "Q" to "R" of the Simpson Affidavit.

<sup>110</sup> McRae-Yu Affidavit at paras. 38, 63, and 100-101.

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## SCHEDULE “A”

### List of Authorities

1. *Aetna Financial Services Ltd. v. Feigelman*, [\[1985\] 1 SCR 2](#).
2. *Bruno Appliance and Furniture Inc. v. Hryniak*, [2014 SCC 8](#).
3. *Cicada 137 LLC v. Medjedovic*, [2022 ONSC 369](#).
4. *Ekaterina Ivanova Karpacheva v. Valery Vladimirovich Karpachev*, [2018 ONSC 4563](#).
5. *Kirschenberg v. Schneider*, [2023 ONSC 2809](#).
6. *Li et. al. v. Barber et. al.*, [2022 ONSC 1176](#).
7. *Taylan McRae-Yu v. Profitly Incorporated, DMCB Holdings Inc., Ivan Avramenko, Alexandra Stinson, and John Doe*, ([19 June 2023](#)), Ottawa, CV-23-00092340-00CP (ONSC).
8. *SFC Litigation Trust (Trustee of) v. Chan*, [2017 ONSC 1815](#).
9. *Sibley & Associates LP v. Ross*, [2011 ONSC 2951](#).
10. *Stans Energy Corp. v. Krygyz Republic*, [2015 ONSC 3236](#).
11. *Tracy v. Instaloans Financial Solutions Centres (B.C.) Ltd. et al*, [2006 BCSC 1018](#).
12. *United States of America v. Ethan Nguyen et. al.*, [Violations of 18 U.S.C. SS 1349, and 1956\(h\) \(22 mag 2478\)](#).
13. *Voysus Connection Experts Inc. v. Shaikh*, [2019 ONSC 6683](#).



## **SCHEDULE “B”**

### **TEXT OF STATUTES, REGULATIONS & BY-LAWS**

1. *Courts of Justice Act, RSO 1990, c C.43, s. 101.*

#### **Injunctions and receivers**

**101 (1)** In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

#### **Terms**

**(2)** An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

2. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, Rule 39.01(6); Rule 40.03.

### **Full and Fair Disclosure on Motion or Application Without Notice**

**39.01 (6)** Where a motion or application is made without notice, the moving party or applicant shall make full and fair disclosure of all material facts, and failure to do so is in itself sufficient ground for setting aside any order obtained on the motion or application. R.R.O. 1990, Reg. 194, r. 39.01 (6).

...

### **Undertaking**

**40.03** On a motion for an interlocutory injunction or mandatory order, the moving party shall, unless the court orders otherwise, undertake to abide by any order concerning damages that the court may make if it ultimately appears that the granting of the order has caused damage to the responding party for which the moving party ought to compensate the responding party. R.R.O. 1990, Reg. 194, r. 40.03.

3. *Consumer Protection Act*, 2002, S.O. 2002, c. 30, Sched. A., s. 11.

**Ambiguities to benefit consumer**

**11** Any ambiguity that allows for more than one reasonable interpretation of a consumer agreement provided by the supplier to the consumer or of any information that must be disclosed under this Act shall be interpreted to the benefit of the consumer. 2002, c. 30, Sched. A, s. 11.

Taylan McRae-Yu  
Plaintiff

Profitly Incorporated, et. al.,  
Defendants

Court File No.: CV-23-00092340-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

Proceeding under the *Class Proceedings Act, 1992*

**RESPONDING PARTY'S FACTUM**

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