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Attorneys for Plaintiff Quest Software, Inc.

UNITED STATES DISTRICT COURT  
 DISTRICT OF OREGON  
 PORTLAND DIVISION

QUEST SOFTWARE, INC., a Delaware corporation,  <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> NIKE, INC., an Oregon corporation,  <p style="text-align: center;">Defendant.</p>	Case No.:  COMPLAINT
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For its complaint against Nike, Inc., plaintiff Quest Software, Inc. alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for breach of software license agreements, copyright infringement 17 U.S.C. §§ 501 *et seq.*, and violation of the Digital Millennium Copyright Act, 17 U.S.C. §§1201 *et seq.* (“DMCA”).

**THE PARTIES**

2. Quest Software, Inc. (“Quest”) is a Delaware corporation with its principal place of business in Aliso Viejo, California.

3. Nike, Inc. (“Nike”) is an Oregon corporation with its principal place of business in Beaverton, Oregon.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of Quest’s claims under 28 U.S.C. §§ 1331, 1332 and 1338. Quest’s breach of contract claim is between diverse parties and exceeds \$75,000. Quest’s copyright infringement and DMCA claims arise out of federal law.

5. This Court has pendant jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).

6. Venue is proper in this District under 28 U.S.C. 1391(b) and (c), and 28 U.S.C. § 1400(a).

### **FACTS**

7. Founded in 1987, Quest is a software company with over 100,000 customers worldwide. Quest develops and supports software used by database professionals for cloud management, security, workforce mobility and data-driven insight.

8. Quest software offerings comprise a toolset for database management, providing solutions for developers, administrators and analysts to simplify workflow and internal processes to optimize database platforms.

9. Quest does not sell its software to customers. Instead, customers purchase licenses for the Quest software, either directly from Quest or from authorized resellers and distributors.

10. Each Quest software product licensed is subject to license agreements that govern the limited terms and conditions under which the licensee or customer is permitted to deploy, install, use or provide access to the licensed software.

11. As a result of Quest's extensive efforts, Quest software constitute valuable, proprietary products, and the software, its structure, sequence and origin are highly confidential trade secrets belonging to Quest.

12. Quest software contains material wholly original to Quest and consist of copyrightable subject matter under the U.S. Copyright Act of 1976, 17 U.S.C. § 101 *et. seq.*

13. Quest owns U.S. Copyright Registrations for prior and current versions of Quest software products.

14. Over time, Quest has developed and licensed to customers a variety of software products, including but not limited to versions of the following software products: Benchmark Factory for Databases, SQL Optimizer for Oracle, SQL Optimizing for Oracle Xpert Trial, SQL Navigator for Oracle Development Suite, SQL Navigator for Oracle Expert, Toad Data Modeler, Toad Data Point Professional, Toad for Oracle Base, Toad for Oracle Xpert, Toad for Oracle Professional, Toad for Oracle Xpert with DB Admin Module, Toad for Oracle Trial, Toad for SQL Server Xpert, Toad for SQL Developer Suite Trial, Toad for SQL Server Trial, Toad for Mac Freeware, Toad for Apache Hadoop, Toad Data Point, Toad for Data Analysis, Code Tester for Oracle Trail (the "**Quest Software Products**").

15. To protect the intellectual property contained in the Quest Software Products, Quest employs a built-in security system that requires customers to enter specific, proprietary license keys issued by Quest to access and unlock the functionality of the Quest Software Products (hereafter referred to as the "Quest License Key System").

16. Quest maintains a database containing all valid license keys for the Quest License Key System and tracks the authentic keys it has provided to customers. Quest has records of all authorized license keys that it has issued for the Quest Software Products.

17. Without Quest's knowledge or authorization, certain third-parties "cracked" Quest's License Key System, and made pirated license keys available online for illegal download for those who might seek to avoid paying the proper license fees for Quest Software Products.

18. Upon information and belief, to obtain a pirated key for Quest Software Products, customers must affirmatively seek out and obtain pirated keys on download sites known to traffic in counterfeit or illegally downloaded intellectual property, such as BitTorrent.

19. Once a customer downloads a pirated key, the customer must enter the illegally-obtained license key into an installation of the Quest Software Products to access its functionality thus bypassing Quest's License Key System.

20. The customer's input of the pirated license key creates a residual file path evidencing the use of the unauthorized key for access to the Quest Software Products.

21. In November 2001, Quest and Nike entered into a software license agreement ("SLA") which provides the permissible scope of Nike's deployment of Quest Software.

22. Nike acquired licenses from Quest by purchasing fixed numbers of licenses for specific versions of the Quest Software Products.

23. The parties' SLA provides that Nike will permit Quest to review Nike's deployment of Quest software for compliance with terms of the SLA.

24. Pursuant to this audit right, in January 2017, Quest conducted an audit of Nike's software environment.

25. That audit revealed that Nike had deployed Quest Software Products far in excess of the scope allowed by the parties' SLA.

26. The audit also revealed that Nike had used pirated keys to bypass the Quest License Key System and made unauthorized copies of certain Quest Software Products by breaking the technological security measures Quest had in place.

27. Upon information and belief, Nike knew or had reason to know that its circumvention of the Quest License Key System was unauthorized and violated Quest's exclusive rights to the Quest Software Products.

28. Upon information and belief, Nike failed to control properly manage or control its software environment in a way that limited or restricted access to the Quest Software Products.

29. Despite further communications between the parties, Nike has refused to purchase the additional licenses necessary to bring its deployments of the Quest Software Products into compliance with the parties' SLA.

30. Quest's understanding of the scope and extent of Nike's over-deployment of all Quest software, including the Quest Software Products, and Nike's use of pirated keys to bypass the License Key System is subject to further investigation and discovery. Specifically, Quest is conducting an ongoing inquiry regarding: (1) the number of devices at Nike with Quest software installed on its hard drives; (2) the number of devices at Nike to which Nike provided the ability to access or use Quest software; and/or (3) the number of pirated keys utilized by Nike over the years, and the origin and scope of Nike's unauthorized and improper access to Quest software.

**FIRST CLAIM FOR RELIEF  
BREACH OF CONTRACT**

31. Quest realleges and incorporates by reference the preceding allegations as though set forth in their entirety.

32. Nike licensed the Quest Software Products pursuant to the terms of the parties' SLA, which constitutes a valid, enforceable, two-party contract.

33. In the SLA, Nike agreed to deploy Quest Software Products in accordance with the terms of the SLA only.

34. Nike breached and continues to breach the SLA by failing to pay Quest the required license fees for Nike's full deployment of Quest Software Products, which far exceeds the scope of the rights granted to Nike under the SLA.

35. As a direct and proximate result of these and other breaches by Nike of the SLA, Quest has suffered and is continuing to suffer damages in an amount to be determined at trial.

**SECOND CAUSE OF ACTION  
COPYRIGHT INFRINGEMENT**

36. Quest realleges and incorporates by reference the preceding allegations as though set forth in their entirety.

37. Nike made unauthorized copies, installations and distributions of Quest Software Products for which Quest owns copyright registrations when it exceeded the scope of the license grant from Quest, and such actions infringed and continue to infringe Quest's exclusive rights granted by the Copyright Act, 17 U.S.C. § 106.

38. Nike infringed Quest's copyrights when it made unauthorized copies of Quest Software Products for which Quest owns copyright registrations and improperly provided devices with the ability to use and/or access the products in excess of the scope provided by the applicable licenses.

39. Nike's infringement was willful.

40. Quest suffered and continues to suffer damages as a result of Nike's actions in an amount to be proven at trial.

41. Quest's remedy at law is not itself adequate to compensate Quest for injuries inflicted and threatened by Nike.

**THIRD CAUSE OF ACTION  
VIOLATION OF DIGITAL MILLENNIUM COPYRIGHT ACT**

42. Quest realleges and incorporates by reference the preceding allegations as though set forth in their entirety.

43. The DMCA provides, in pertinent part, that no person shall circumvent a technological measure that effectively controls access to a copyrighted work.

44. Quest Software Products are copyrighted and subject to protection under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*

45. Access to the Quest Software Products is controlled by the Quest License Key System, which requires that customers enter a valid and authorized license key issued by Quest to access the software's functionality.

46. Rather than paying Quest the proper license fees to obtain valid license keys, Nike used pirated keys to circumvent the Quest License Key System.

47. As a direct and proximate result of these and actions, Quest has suffered and is continuing to suffer actual damages in an amount to be determined at trial.

**RELIEF**

WHEREFORE, Quest prays for relief as follows:

- A. For judgment in favor of Quest and against Nike on all claims;
- B. For an injunction enjoining and restraining Nike from engaging in or performing any of the wrongful activities above including further acquisition and use of pirated license keys;
- C. An award against Nike of Quest's actual and/or statutory damages in the maximum amount permitted by law or the equitable powers of the Court;
- D. For an award of pre-judgment and post-judgment interest on all applicable amounts;

E. For an award of Quest's costs, including reasonable attorneys' fees pursuant to any basis permitted by the law or the equitable powers of the Court; and

F. Such other and further relief as the Court may deem equitable and proper.

DATED this 24th day of April, 2018.

STOKES LAWRENCE, P.S.

By: /s/ Thomas A. Lerner

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 24, 2018, I caused the foregoing to be:

- electronically filed with the Clerk of the Court using the CM/ECF system.
- served via process server on the following:

Registered Agent for Nike, Inc.  
National Registered Agents, Inc.  
780 Commercial Street SE, Suite 100  
Salem, Oregon 97301

*/s/ Thomas A. Lerner*

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