

The Honorable Robert S. Lasnik

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RODNEY J. BLACKMAN and MYRA J.
KEAN, individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

PARK WEST GALLERIES, INC., FINE ART
SALES, INC., HSBC BANK NEVADA, N.A.,
HSBC FINANCE CORPORATION,
HOLLAND AMERICA LINE INC.,
HOLLAND AMERICA LINE – USA INC.,
ROYAL CARIBBEAN CRUISES LTD.,
AND DOES I THROUGH X INCLUSIVE,

Defendants.

No. C08 1310 RSL

FIRST AMENDED CLASS ACTION
COMPLAINT

JURY TRIAL DEMANDED



TABLE OF CONTENTS

1

2 **PAGE**

3 I. NATURE OF THE ACTION 1

4 II. JURISDICTION AND VENUE 2

5 III. PARTIES 2

6 A. Plaintiffs 2

7 B. Defendants 2

8 IV. SUBSTANTIVE ALLEGATIONS 4

9 A. Park West: Background of the Authenticity Scam 4

10 B. HSBC’s “Collectors Card” 9

11 C. Holland America and Royal Caribbean’s Revenue-Sharing
Arrangement with Park West..... 11

12 D. Fine Art Sales, Inc..... 12

13 V. FACTS RELATING TO PLAINTIFFS..... 13

14 A. Plaintiff Rodney J. Blackman 13

15 B. Plaintiff Myra J. Kean..... 14

16 VI. CLASS ACTION ALLEGATIONS 16

17 VII. FRAUDULENT CONCEALMENT..... 19

18 COUNT I (Violations of RICO (18 U.S.C. § 1962(c))..... 19

19 COUNT II (Breach of Contract) 25

20 COUNT III (Breach of Warranty) 25

21 COUNT IV (Unjust Enrichment)..... 26

22 COUNT V (Violation of State Consumer Protection Laws) 27

23 COUNT VI (For Compensatory and Exemplary Damages, Injunctive and Declaratory
24 Relief Under Various Unfair and Deceptive Trade Practices Statutes)..... 28

25 COUNT VII (Declaratory Judgment) 32

26 PRAYER FOR RELIEF 33

1 JURY DEMAND34

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



1 Plaintiffs, Rodney J. Blackman and Myra J. Kean, individually and on behalf of all others
2 similarly situated, through their undersigned counsel, complain against Defendants Park West
3 Galleries, Inc., Fine Art Sales, Inc., HSBC Bank Nevada, N.A., HSBC Finance Corporation,
4 Holland America Line Inc., Holland America Line – USA Inc., Royal Caribbean Cruises Ltd.
5 and Does I through X, pursuant to the investigation of their attorneys and upon knowledge as to
6 themselves and their own acts and otherwise upon information and belief, as follows:

7 **I. NATURE OF THE ACTION**

8 1. This is a putative class action brought by Plaintiffs individually and on behalf of a
9 class of persons who purchased artwork from Defendant Park West Galleries, Inc. (“Park
10 West”), as defined more fully herein.

11 2. Plaintiffs bring this action on behalf of themselves and other purchasers of
12 artwork from Park West who, as alleged herein, were sold pieces that Park West falsely claimed
13 were authored by such artists as Dalí, Picasso and Rembrandt, when in fact they were not.
14 Included among such artwork are works that Park West represented were Salvador Dalí
15 lithographs that are not lithographs at all, but rather photomechanical reproductions of original
16 paintings by Dalí signed in his name by someone else. In essence, Plaintiffs and members of the
17 Class have paid fine art prices – sometimes tens of thousands of dollars – for pieces that are
18 essentially poster art.

19 3. As alleged more fully herein, Plaintiffs seek damages and equitable relief on
20 behalf of themselves and other members of the class who, but for Park West’s false
21 representations regarding the authorship of the artwork it sold, would not have otherwise
22 purchased it.

23 4. Plaintiffs allege claims for violation of RICO, breach of contract, breach of
24 warranty, unjust enrichment, violation of state consumer protection laws, statutory fraud and
25 declaratory judgment against Park West and the other Defendants named herein who participated
26

1 in and otherwise acted in furtherance of the fraud perpetrated on Plaintiffs and other members of
2 the class.

3 **II. JURISDICTION AND VENUE**

4 5. This Court has subject-matter jurisdiction of the claims asserted herein insofar as
5 the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and
6 costs, and is a class action in which members of the class of Plaintiffs are citizens of states
7 different from Defendants. 28 U.S.C. § 1332(d)(2)(A).

8 6. This District is the proper venue for adjudication of the claims asserted herein
9 insofar as this is the judicial district where Defendants Holland America Line Inc. and Holland
10 America Line – USA Inc. reside. 28 U.S.C. § 1391(a)(1).

11 **III. PARTIES**

12 **A. Plaintiffs**

13 7. Plaintiff Rodney J. Blackman (“Plaintiff Blackman”) is a citizen of Illinois, being
14 a natural person and resident of Chicago, Illinois. Plaintiff Blackman is a member of the class
15 defined herein.

16 8. Plaintiff Myra J. Kean (“Plaintiff Kean”) is a citizen of Kentucky, being a natural
17 person and resident of Louisville, Kentucky. Plaintiff Kean is a member of the class defined
18 herein.

19 **B. Defendants**

20 9. Defendant Park West Galleries, Inc., is a citizen of Michigan, being a corporation
21 organized under the laws of Michigan with its principal place of business in Southfield,
22 Michigan.

23 10. Defendant Fine Art Sales, Inc. (“Fine Art Sales”) is a citizen of both Michigan
24 and Florida, being a corporation organized under the laws of Florida with its principal place of
25 business in Southfield, Michigan.

1 11. Defendant HSBC Bank Nevada, N.A. is a citizen of Nevada, being a national
2 banking association with its principal place of business in Las Vegas, Nevada. HSBC Bank is a
3 federally chartered “credit card bank” and the credit card banking subsidiary of Defendant HSBC
4 Finance Corporation.

5 12. HSBC Finance Corporation is a citizen of both Delaware and Illinois, being a
6 corporation organized under the laws of Delaware with its principal place of business in
7 Mettawa, Illinois.^{1/2}

8 13. Defendant Holland America Line Inc. is a citizen of Washington, being a
9 corporation organized under the laws of Washington with its principal place of business in
10 Seattle, Washington.

11 14. Defendant Holland America Line – USA Inc. is a citizen of both Washington and
12 Delaware, being a corporation organized under the laws of Delaware with its principal place of
13 business in Seattle, Washington.³

14 15. Defendant Royal Caribbean Cruises Ltd. (“Royal Caribbean”) is a citizen of both
15 Florida and the Republic of Liberia, being a corporation organized under the laws of the
16 Republic of Liberia with its principal place of business in Miami, Florida.

17 16. At all times relevant hereto, Defendants DOES I through X, were and now are
18 corporations, firms, partnerships, associations or other legal entities who committed the acts
19 alleged herein, and acted within the scope of their agency, with the consent, permission,
20 authorization and knowledge of the others, and in furtherance of both their interests and the
21 interests of Defendants they aided and abetted, and with whom they conspired, as set forth

23 ¹ On March 28, 2003, Household International, Inc. was acquired by HSBC Holdings, plc. In
24 December 2004, Household International, Inc. merged with its subsidiary Household Finance
25 Corporation and changed its name to HSBC Finance Corporation.

26 ² For the sake of convenience, both HSBC defendants are referred to hereinafter as “HSBC.”

³ For the sake of convenience, both Holland America defendants are referred to hereinafter as
“Holland America.”

1 below; that the true names, identities or capacities whether individual, corporate, associate or
2 otherwise of the Defendants DOES I through X, inclusive are presently unknown to Plaintiffs,
3 whom therefore sue said defendants by such fictitious names; that the Plaintiffs are informed and
4 do believe and thereupon allege that each of the Defendants sued herein as DOES I through X
5 are responsible in some manner for the events and happenings herein referred to, which thereby
6 proximately caused the injuries and damages to the Plaintiffs alleged herein; that when their true
7 names and capacities of such Defendants become known, Plaintiffs will ask leave of this Court to
8 amend this Complaint to insert the true names, identities and capacities, together with proper
9 charges and allegations.

10 IV. SUBSTANTIVE ALLEGATIONS

11 A. Park West: Background of the Authenticity Scam

12 17. Park West attributes its success to its self-proclaimed “integrity and
13 professionalism that have been a part of the business since its gallery first opened in 1969.” Park
14 West further claims to rely on recognized scholars to document and to review its collections.
15 Among these persons are Bernard Ewell, who Park West maintains in “the internationally
16 recognized authority of Salvador Dali and appraiser of the Salvador Dali Museum in
17 St. Petersburg, Florida.”⁴

18 18. Much has been written about the at-sea art auction market and Park West’s
19 activities therein, in particular. For example, on July 16, 2008, the NEW YORK TIMES published
20 an article in which it wrote:

21 [O]ver the last two decades, auctioning “fine art” on cruises, often
22 to first-time bidders who have never met a reserve or inspected a
provenance, has become big business.

23 The biggest player by far, with more than \$300 million in annual
24 revenue and nearly 300,000 artworks sold each year, is Park West
Gallery, based in Southfield, Mich. It handles such a high volume

25 ⁴ As of the filing of the initial Complaint, Mr. Ewell appeared to no longer be associated with
26 Park West, as he is no longer mentioned on its website where he was once prominently featured
as its resident Dalí expert.

1 of art sales at sea that it bills itself as “the world’s largest art
2 dealer.”

3 Park West sells art on the Royal Caribbean, Celebrity, Norwegian,
4 Carnival, Disney, Holland America, Regent and Oceania lines.
(Princess runs its own auctions in-house.)

5 For the cruise-ship companies, Park West’s auctions have become
6 a revenue source like any other concession. For the passengers the
auctions are a popular form of onboard entertainment, like
gambling or shopping or catching the shows.

7 Jori Finkel, *Art Auctions on Cruise Ships Lead to Anger, Accusations and Lawsuits*, NEW YORK
8 TIMES, July 16, 2008. According to the article, Park West had between \$300 million and \$400
9 million in annual revenue in 2007, with cruise ship sales accounting for roughly half that
10 volume. *Id.* The remainder of Park West’s sales, the article states, comes from sales onshore at
11 special events like hotel auctions. *Id.*

12 19. The NEW YORK TIMES went on to describe the claims of cruise ship passengers
13 who say they were cheated when they purchased works that they later discovered were not what
14 they were purported to be.

15 Yet some Park West customers say they did not get what they
16 bargained for.

17 One is Luis Maldonado, a businessman from the La Jolla section of
18 San Diego with interests in finance and construction and a
19 penchant for Latin American art. He was touring the
Mediterranean with his wife, Karina, on the Regent Seven Seas
Voyager in November 2006 when they decided to stop by the Park
West art auction promoted onboard.

20 He was surprised to find artworks by Picasso and Rembrandt in the
21 auction area, a lounge near the casino, where they were greeted
with Champagne. He gravitated toward the Picassos.

22 There, he said, the auctioneer talked up two “museum-quality”
23 Picasso prints appraised at more than \$35,000 each and a trilogy of
Salvador Dalí prints valued at \$35,000 as a set. Mr. Maldonado
24 said the auctioneer described the works as “good investments,”
explaining that they were being offered at 40 percent off their
25 “appraised value,” with no sales tax.

26 When he asked about the nature of Park West, he said he was told
it was on par with Christie’s and Sotheby’s.

1 It was easy to make the leap. After all, he thought, it was a
2 prestigious cruise, and he had gotten discounts on good wines
3 onboard before. He started bidding, with little competition from
4 the room, and stopped at several thousand dollars below Park
5 West's appraised value on each. He received an invoice marked
6 "All sales are final."

7 It was only after Mr. Maldonado landed back in California that he
8 did some research on his purchases. Including the buyer's
9 premium, he had paid \$24,265 for a 1964 "Clown" print by
10 Picasso. He found that Sotheby's had sold the exact same print
11 (also numbered 132 of 200) in London for about \$6,150 in 2004.

12 In addition, he had paid \$31,110 for a 1968 print, "Le Clown" by
13 Picasso; Artprice.com, an online art database, showed it going for
14 about \$5,000.

15 **Perhaps most disturbing, he learned from The Official Catalog**
16 **of the Graphic Works of Salvador Dalí, by the Dalí archivist**
17 **Albert Field, that the pencil signatures on Mr. Maldonado's**
18 **prints from Dalí's "Divine Comedy" series (prints without a**
19 **signature in the woodblock itself) put them in Mr. Field's**
20 **column of "unacceptable" prints.**

21 "Since Dalí did not sign any of these prints in black pencil, a pencil
22 signature on one must be a forgery," Mr. Field wrote.

23 "It was very upsetting," Mr. Maldonado said. "I'm not mad about
24 spending \$73,000. I'm mad about spending \$73,000 for works that
25 I was told are worth more than \$100,000 and are probably worth
26 \$10,000, if they're even real."

20. The NEW YORK TIMES article also reported on a similar sale of a fake to another
customer:

Dr. Venkatraman Srinivasan, a Pittsburgh cardiologist, has
published an account of his experience with Park West at the Web
site FineArtRegistry.com. He said he paid around \$30,000 for
"Better World," by Peter Max, while on a Celebrity cruise from
Vancouver, British Columbia, to Anchorage last August.

According to his account, he was told that it was an "original"
painting worth about \$50,000 and was dismayed to discover, when
back on terra firma, that variations from the same series were
priced as low as \$3,000 or \$4,000. (Dr. Srinivasan declined to be
interviewed for this article because of a confidentiality agreement
he signed to obtain a refund from Park West.)

Debra and Timothy Vruble, a couple from Elgin, Ill., who both
work in manufacturing engineering, took a Royal Caribbean cruise

1 to the Bahamas in October 2006. Onboard they bought a set of
2 three "Divine Comedy" prints by Dalí from Park West for \$19,468.

3 An Auctioneer's Advice

4 "The auctioneer told us we could walk off the boat and sell them
5 for 20 percent more, and they would go up 20 percent a year,"
6 Mrs. Vruble said. Back home, an outside appraisal for the resale
7 value of one of the three prints came in at \$850 to \$1,000.

8 Mrs. Vruble said she had gone to great lengths to obtain a refund
9 over the last 18 months, making "dozens of calls" and writing
10 "several letters" to Park West customer service representatives and
11 managers.

12 21. In response to the foregoing claims, Park West's CEO and founder, Albert
13 Scaglione, wrote a letter to the editor of the NEW YORK TIMES, which it published on August 10,
14 2008. The NEW YORK TIMES quoted Mr. Scaglione as stating:

15 Park West guarantees the authenticity of every work of art it sells.
16 The artwork we sell comes primarily from the artist's studio, and
17 we use the world's finest experts to authenticate all others. Our
18 staff uses market-recognized tools, including reviews by a network
19 of accredited independent appraisers who adhere to the Uniform
20 Standards of Professional Appraisal Practices to appraise our art
21 work.

22 In Park West's 40-year history, we have never sold a nonauthentic
23 work of art.

24 Albert Scaglione, *Letter to the Editor*, NEW YORK TIMES, August 10, 2008.

25 22. According to Bruce Hochman, Author of *The Annual Print Guide to Graphic*
26 *Works of Salvador Dalí*; he regularly receives calls from unsuspecting Park West's customers:

BH: We just get calls from people who have bought prints at the
cruise line auctions mainly. They get home and find out that they
have been taken and that what they bought is not worth anything
like what they have been told.

We try to help these folks out but essentially they have been ripped
off. I think these people must check their brains on the dock
before they go up the gangplank.

The fact is that these people are shown an Albert Scaglione
document saying that it's worth umpteen thousands when in fact it
would be worth far, far less, even if it was real. *A Divine Comedy*

1 he says is worth \$8-12,000, when in effect it's worth maybe
2 \$1,200.

3 On the Dalí side it's not just the misrepresentations as to the value
4 of what they are selling. It's the actual authenticity of the art. I
5 believe there is an implied warranty that when you buy art, it is
6 authentic. You, the purchaser, should not have to prove it, but the
7 art seller should warrant automatically that it is authentic.

8 We're seeing things, that are not in the official catalog of the
9 graphic work of Dalí by Albert Field, listed and sold as "authentic"
10 according to Park West. We know they're not.

11 The reason they come to us is because when they do a Google
12 search, we come up first. They ask me. And I can only deal one
13 way and that's honestly. Prices are negotiable. Integrity is not. If
14 I was not an honest person, I could take a stance of, "Oh yeah, I'll
15 just tell them it's great and oh yeah, let me try to sell you mine." It
16 won't work for me.

17 **FAR:** How long have you been getting calls from Park West
18 auction "victims" and how often do you get them?

19 **BH:** We get at least one call a day, if not more. That's been going
20 on for the last seven or eight years. It gets intensified.

21 David Phillips, A Salvador Dalí Expert Comments on the Park West at Sea Dalí Prints: An
22 Interview with Bruce Hochman, November 6, 2007.

23 23. On a website operated by Park West containing purported customer testimonials,
24 it makes the following false and misleading statement about its Certificates of Authenticity:

25 The Park West Gallery[®] Research Library includes many rare and
26 out of print references. Our research department catalogs each
work offered at our gallery and auctions. When our seal is affixed
to a Park West Gallery[®] certificate of authenticity, collectors have
the assurance that the research was done according to the highest
standards, as used by museums and important international
auctions.

27 <http://www.parkwestgalleriestestimonials.com> (August 27, 2008).

28 24. Park West falsely and misleadingly claims that it has never – knowingly or
29 unknowingly – sold a non-authentic work of art:

30 How can I be sure that my Park West[®] artwork is authentic?

1 Park West® has NEVER sold a work of art that is not authentic in
2 it's [sic] nearly 40 year history! You can be assured that each and
3 every work of art Park West® sells has been reviewed and
4 researched by our extensive network of definitive experts and
5 scholars. The Park West® Certificate of Authenticity
6 GUARANTEES the artwork is absolutely genuine.

7 <http://www.parkwestgallery.com/tour/faqs.aspx> (August 27, 2008) (emphasis in original).

8 25. In furtherance of its scheme to defraud consumers, Park West places exorbitant
9 values on the artwork it sells, giving Plaintiffs and other Class members the false impression that
10 what they are buying is real (*e.g.*, a Salvador Dalí lithograph signed by the artist) and not a fake.

11 26. In the case of Plaintiff Kean, as described in further detail *infra*, she paid \$8,105
12 for a purported authentic Dalí lithograph which she was later informed is worth approximately
13 \$75.00.

14 27. Likewise, Plaintiff Blackman, upon information and belief, paid approximately
15 \$5,000 each for two such Dalí lithographs that he was later informed are worth little more than
16 the cost of their frames, or approximately \$200.00 each.

17 28. Thus, by substantially inflating the price for a piece, Park West intends to and
18 does give consumers a false sense that the product is worth the asking price or, at the very least,
19 that its value is not significantly less than the price they pay.⁵

20 **B. HSBC's "Collectors Card"**

21 29. Defendant HSBC Finance Corporation is one of the largest consumer finance
22 companies in the United States. Its subsidiaries provide real estate secured loans, credit cards
23 and private label credit cards, personal non-credit card loans, taxpayer financial services and
24 specialty insurance products.

25 ⁵ The price-value connection that consumers make in purchasing Park West artwork can be
26 contrasted with the sale of fake Rolex watches and Prada handbags on the streets of Manhattan.
Given the flea market prices, purchasers are aware that the latter goods cannot possibly be
authentic.

1 30. HSBC is the sixth largest provider of MasterCard, Visa, American Express and
2 Discover cards in the United States. In addition, HSBC is the third largest issuer of private label
3 (merchant branded) credit cards in the United States and also offers co-brand and debit cards. In
4 addition to having partnered with Park West, HSBC now partners with more than 60 retailers and
5 manufacturers such as Best Buy, Bon-Ton, Costco, Saks, Sony and Yamaha.⁶

6 31. As part of the uniform scheme and common course of conduct alleged herein,
7 upon information and belief, HSBC provided prospective purchasers with credit lines of up to
8 \$50,000.00 so that they could purchase artwork from Park West Gallery aboard cruise ships, at
9 hotel auctions and from Park West's own website, <http://www.parkwestgallery.com> (last visited
10 October 1, 2008).

11 32. The role of HSBC's (now GE's) card is described in the following account
12 submitted by Robert B. Gutshall, Lt. Col, USAF (Ret) to Fine Arts Registry:

13 It was a natural transition to see art displayed along the plushly lit
14 hallway leading to a vast open area where pieces were hung as well
15 as displayed on easels with back-up lighting. We walked around
16 and looked at the art but we weren't overly impressed since the art
17 was mixed in with Disney memorabilia like cartoon cells, large
18 paintings of the Disney characters, as well as a few pictures of
19 Walt Disney at an early age. Subsequently there was an auction
20 that was advertised by the cruise newsletter as an event, so my
21 mother and I attended.

18 We looked at some of the paintings, and there was an auction and
19 the "Art Director", Jacqueline Elliot, said, "Well, you have to
20 register and pick out some paintings you want called up for the
21 auction with a sticker. ***You should also fill out a [Collectors Card
22 application] to cover auction purchases at 0% for 12 months
23 which will include your maximum amount of approved credit,***"
24 which I accomplished, thinking nothing of it at the time other than
25 the terms sounded excellent. I had no idea that this information
26 would give them key data as to how much art they could "push"
my way, using a variety of sophisticated sales techniques and what
I perceived as predatory tactics. (Emphasis added.)

24 ⁶ General Electric Capital Corporation ("GE") has an operating segment it calls "GE Money"
25 through which it provides financial services, including private-label credit cards to consumers
26 and retailers. Upon information and belief, GE now provides the consumer financing for
purchases made from Park West on its "Collectors Card."

1 http://www.fineartregistry.com/articles/far_investigates/parkwest-disney-auction.php (last visited
2 October 1, 2008).

3 33. HSBC (as GE does now) branded its credit cards issued to Park West buyers the
4 “Collectors Card.”

5 34. HSBC knew or reasonably should have known that many of the purported fine art
6 pieces being sold by Park West, the purchases of which it was financing, were not authored by
7 the persons Park West claimed were their creators.

8 35. HSBC knew or reasonably should have known of the problems surrounding Park
9 West’s merchandise from the scores of complaints it received from cardholders seeking refunds
10 and from its communications with the merchant, Park West.

11 36. HSBC benefited enormously from Park West’s scheme, collecting perhaps
12 hundreds of thousands of dollars if not more in finance charges, late fees and other charges from
13 Park West purchasers.

14 **C. Holland America and Royal Caribbean’s Revenue-Sharing Arrangement with Park
15 West**

16 37. In addition to HSBC, Holland America and Royal Caribbean participated in,
17 furthered and benefited from Park West’s scheme to sell artwork aboard cruise ships and
18 elsewhere that it falsely authenticated and represented was authored by various notable artists
19 when in fact it was not.

20 38. Upon information and belief, Holland America and Royal Caribbean, as did other
21 cruise lines, at all times relevant hereto, had agreements with Park West to share in revenue
22 generated by Park West through its onboard auctions.

23 39. Holland America, Royal Caribbean and other cruise lines have financial
24 agreements with Park West under which they receive a percentage of revenue from onboard
25 sales. According to Albert Scaglione, the cruise ships are also “*guaranteed*” a certain minimum
26

1 against a percentage of the gross' that he compared to rent." Jori Finkel, *Art Auctions on Cruise*
2 *Ships Lead to Anger, Accusations and Lawsuits*, NEW YORK TIMES, July 16, 2008.

3 40. Holland America and Royal Caribbean knew or reasonably should have known
4 from, *inter alia*, the complaints it received from deceived passengers, as well as by virtue of their
5 corporate sophistication, that much if not all of the artwork being sold by Park West on board
6 their ships was not authentic insofar as it was not created by the artists Park West claimed it was.

7 41. Holland America and Royal Caribbean intended to and did in fact benefit from
8 the sales of Park West artwork on board its ships, including artwork that was falsely represented
9 to be authored by such artists as Dalí, Picasso and Rembrandt, among others.

10 **D. Fine Art Sales, Inc.**

11 42. Defendant Fine Art Sales, Inc., is closely affiliated with Park West Galleries, Inc.,
12 as the two companies share the same street address and have officers and directors in common.
13 Upon information and belief, the principals of Fine Art Sales are Albert R. Molina, Jr., partner
14 and business associate of Albert Scaglione, CEO and founder of Park West, Marc Scaglione,
15 Albert Scaglione's son, and Nicolette J. Yanke, Albert Scaglione's stepdaughter.

16 43. As part of and in furtherance of the scheme alleged herein, Fine Art Sales issued
17 buyers of Park West artwork "Certificates of Authenticity" that falsely represented the
18 authorship of the works sold.

19 44. For example, Fine Art Sales falsely represented to Plaintiff Blackman that two
20 pieces he bought aboard Holland America were authored by Salvador Dalí when in fact they
21 were not.

22 45. Fine Art Sales, in addition to providing appraisals of the works sold by Park West
23 also falsely guaranteed the authorship of those pieces, including the two purported Dalí works
24 sold to Plaintiff Blackman at an auction conducted by Park West onboard Holland America.

1 51. “The Snake Charmers.” Defendant Fine Art Sales provided Plaintiff Blackman
2 with a second Certificate of Authenticity. The Certificate of Authenticity states in relevant part:

3 [W]e guarantee the authorship of the following work of art:

4 Registration No. 109989

5 Dalí, Salvador

6 Les Enchanteurs des Serpents

7 (The Snake Charmers)

8 1974

9 19 1/2” x 14 1/4” (plate size)

10 Lithograph in color on wove paper. Signed in pencil, lower right
11 and numbered, lower left. Gaufrage plate mark surrounding
12 image. Artist blind stamp lower left margin. From the edition of
13 245 examples numbered in Arabic, aside from an edition of
14 eprueve d’artiste (artist proof) examples annotated “EA”.

15 Published by Societe d’Editions d’Art Les Heures Claires, Paris.

16 From the collection of Dr. Giuseppe Albaretto.

17 52. Notwithstanding the promises and assurances of Park West, Plaintiff Blackman is
18 now informed and believes that the Salvador Dalí lithographs described *supra* are in fact
19 photomechanical reproductions of original paintings by Dalí and that the signature on each is not
20 that of the artist.

21 **B. Plaintiff Myra J. Kean**

22 53. Plaintiff Kean is a musician who resides in Louisville, Kentucky. On or about
23 April 12, 2007, Plaintiff Kean traveled aboard a cruise ship owned or operated by Royal
24 Caribbean.

25 54. While aboard the Royal Caribbean cruise ship described above, Plaintiff Kean
26 purchased at auction artwork, described *infra*, from Park West that it claimed and guaranteed
was a lithograph authored by Salvador Dalí.

 55. Plaintiff Kean paid \$8,105.00 for the artwork she purchased from Park West using
financing provided by HSBC; namely, a private-brand credit card it contracted with Park West to
issue its customers called the “Collectors Card.”

 56. Park West said the purported Dalí work purchased by Plaintiff Kean from Park
West was, according to Park West, titled “*And He was baptized by John in the Jordan,*” which

1 Park West claimed Dalí created in 1964, approximately 25 years before his death at the age of
2 84.

3 57. *“And He Was Baptized by John in the Jordan.”* Defendant Park West provided
4 Plaintiff Kean with a Certificate of Authenticity. The Certificate of Authenticity, signed by
5 Albert Scaglione, Park West’s CEO, states in relevant part:

6 [W]e guarantee the authorship of the following work of art:

7 Registration No. 176609.0073
8 Dalí, Salvador
9 Et baptizatus est a Ioanne in Iordane
10 ‘And He was baptized by John in the Jordan’
11 1964
12 19 1/4” x 13 1/4”
13 Lithograph in color on heavy rag paper. Signed in color pencil,
14 lower right and signed in the plate, lower right.

15 One of one hundred and five illustrations of the “Sacra Biblia” by
16 Salvador Dalí, published by Rizzoli Editions, Milan, Italy, 1969,
17 and edited by Giuseppe Albaretto. From the collection of Roberto
18 Mastella. One complete hand-signed Bible also exists, in a private
19 collection.

20 Dalí’s friend and patron, Giuseppe Albaretto, commissioned the
21 artist to create one hundred and five lithographs to illustrate the
22 Bible. Six years were spent, from 1963 to 1969, in creating the
23 lithographs which were published and printed by Rizzoli Editions.
24 Between 1976 and 1979 Mr. Roberto Mastella, a prominent Dalí
25 collector arranged through Mr. Albaretto to have Dalí hand-sign
26 examples of the lithographs. These are the only known examples
of the Sacra Biblia hand-signed by Salvador Dalí in existence.

More than one year was spent researching and authenticating these
lithographs. Mr. Bernard Ewell, ASA, a recognized expert in the
field of Dalí’s works and appraiser of the Salvador Dalí Museum,
St. Petersburg, FL, authenticated the lithographs and the hand-
signatures by Dalí. Dr. Mara Albaretto Berio, widow of Giuseppe
Albaretto, has also authenticated these lithographs.

Albaretto’s intention in convincing Dalí to accept the Biblical
commission was to lead the artist to God. He believed that
studying [sic] the Bible, Dalí would once again be drawn to the
Catholic religion, fearing that through the influence of Dalí’s wife,
Gala, the artist was risking his spiritual redemption. We can never
know the spiritual outcome of the experience of creating the Sacra
Biblia, but, the artistic outcome is certainly remarkable. Bernard
Ewell, in commenting on the series stated, “Having examined the

1 original paintings, as well as ... the printed illustrations, I am
2 tremendously impressed by the fidelity of the prints. It is
3 frequently difficult to tell they are not the original paintings. They
4 are of quality that would fool most viewers. Truly, the coming
5 together of the Albarettos, the Bible, and Dalí resulted in a creation
6 of a set of images that represent far more than the sum of the parts.
7 Even so, it is worth stating again that each image quite clearly can
8 stand alone as an individual work of art by Salvador Dalí.”

58. Notwithstanding the written promises and assurances of Park West, Plaintiff Kean
9 is now informed and believes that the Salvador Dalí lithograph described *supra* is in fact a
10 photomechanical reproduction of an original painting by Dalí and that the signature on it is not
11 that of the artist.

12 VI. CLASS ACTION ALLEGATIONS

59. This action satisfies the prerequisites for maintenance as a class action set forth in
13 Fed. R. Civ. P. 23(a), as set forth below.

60. *Class Definition.* Plaintiffs bring this action individually and on behalf of the
14 following class of similarly situated persons (the “Class”), including subclass, of which Plaintiffs
15 are members:

16 Persons throughout the United States who purchased artwork from
17 Park West Gallery, Inc. (“Park West”) or from any entity owned or
18 operated by Park West during the applicable statute of limitations
19 period(s).

20 a. *Collectors Card Subclass*

21 Persons in the class defined above who financed their purchase of
22 unauthentic artwork using a credit card or other form of financing
23 provided by HSBC Finance Corporation or HSBC Bank Nevada,
24 N.A.

25 b. *Holland America Subclass*

26 Persons in the class defined above who purchased unauthentic
artwork aboard passenger ships owned or operated by Holland
America Line Inc. or Holland America Line – USA Inc.

c. *Royal Caribbean Subclass*

1 Persons in the class defined above who purchased unauthentic
2 artwork aboard passenger ships owned or operated by Royal
Caribbean Cruises Ltd.

3 Excluded from the Class are Defendants and any of their officers, directors or employees, the
4 presiding judge, and any member of their immediate families. Plaintiffs hereby reserves their
5 right to amend the above class definition based on discovery and the proofs at trial.

6 61. *Numerosity.* The members of the Class are so numerous that joinder of all
7 members is impracticable. While the exact number of Class members is unknown to Plaintiffs at
8 this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there
9 are at least one hundred persons in the Class.

10 62. *Commonality.* There are questions of law or fact common to the Class including,
11 *inter alia*, the following:

12 a. whether the acts and omissions of Defendants alleged herein constitute
13 violations of RICO;

14 b. whether the acts and omissions of Defendants alleged herein constitute
15 breach of contract;

16 c. whether the acts and omissions alleged herein violated state consumer
17 protection laws;

18 d. whether Defendants' acts and omissions alleged herein constitute unjust
19 enrichment;

20 e. whether a declaratory judgment providing that Defendants violated the
21 above-referenced state laws is appropriate;

22 f. whether Plaintiffs and the members of the Class have sustained damages
23 and, if so, what is the proper measure of those damages;

24 g. whether Plaintiffs and the members of the Class are entitled to the relief
25 sought, including injunctive relief and attorneys' fees; and
26

1 h. whether the acts and omissions of Defendants' alleged herein constitute
2 fraudulent concealment or whether Defendants breached an affirmative duty to disclose a
3 material fact.

4 63. *Typicality.* The claims or defenses of Plaintiffs are typical of the claims of the
5 Class alleged herein.

6 64. *Adequacy.* Plaintiffs will fairly and adequately protect the interests of the Class.
7 Plaintiffs have retained the undersigned counsel, who are competent and experienced in the
8 prosecution of complex class action litigation. The interests of the Plaintiffs are aligned with,
9 and not antagonistic to, those of the Class.

10 65. *Fed. R. Civ. P. 23(b)(2) Requirements.* The prerequisites to maintaining a class
11 action for injunctive and equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) exist as Defendants
12 have acted or refused to act on grounds generally applicable to the Class thereby making
13 appropriate final injunctive and equitable relief with respect to the Class as a whole.

14 66. The prosecution of separate actions by members of the Class would create a risk
15 of establishing incompatible standards of conduct for Defendants. For example, one court might
16 decide that the challenged actions are illegal and enjoin them, while another court might decide
17 that those same actions are not unlawful. Individual actions may, as a practical matter, be
18 dispositive of the interest of the Class, who would not be parties to those actions.

19 67. Defendants' actions are generally applicable to the Class as a whole, and
20 Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole.

21 68. Defendants' alleged uniform scheme and common course of conduct make
22 declaratory relief with respect to the Class as a whole appropriate.

23 69. *Fed. R. Civ. P. 23(b)(3) Requirements.* This case satisfies the prerequisites of
24 Fed. R. Civ. P. 23(b)(3). The common questions of law and fact enumerated above predominate
25 over questions affecting only individual members of the Class, and a class action is the superior
26 method for fair and efficient adjudication of the controversy.

1 79. Defendants' agreement that Park West artwork will be sold onboard Holland
2 America and Royal Caribbean cruise ships, that Holland America and Royal Caribbean will
3 promote, facilitate and share in the revenue from Park West's auctions onboard their ships, that
4 Park West and Fine Art Sales will provide "Certificates of Authenticity" to buyers of Park West
5 artwork, and that HSBC will provide and be promoted as consumer financing for would-be
6 purchasers of Park West artwork sold at such auctions, together with Defendants' activities in
7 furtherance of their agreement, constitute an "Enterprise" within the meaning of 18 U.S.C.
8 § 1961(4). Furthermore, this Enterprise is engaged in, and its activities affect, interstate or
9 foreign commerce.

10 80. The Enterprise has a systemic linkage because there are contractual relationships,
11 financial ties, and continuing coordination of activities among the Defendants. There is a
12 common communication network by which the Defendants shared and continued to share
13 information on a regular basis. Typically this communication occurred by use of the wires and
14 mails in which Defendants discuss and agree on the scheme of selling and promoting artwork
15 that is falsely represented as authentic. Defendants functioned as a continuing unit for the
16 purposes of implementing this scheme.

17 81. The material decisions guiding the operation of this Enterprise – including but not
18 limited to, decisions concerning the form and content of campaigns, advertising and other
19 vehicles used by any Defendant to promote the other's products and services pursuant to their
20 agreement (and including the sale of Park West artwork that is falsely represented as authentic or
21 having authorship that it does not in fact have) – are made by Defendants jointly.

22 82. Defendants' illegal conduct and wrongful practices were carried out by an array
23 of employees, working across state boundaries, who necessarily relied upon frequent transfers of
24 documents and information, products and funds by the U.S. mails and interstate wire facilities
25
26

1 83. The nature and pervasiveness of the scheme, which was orchestrated out of the
2 corporate headquarters of each Defendant, necessarily required those headquarters to
3 communicate directly and frequently by the U.S. mails and by interstate wire facilities.

4 84. Many of the precise dates of Defendants' uses of the U.S. mails and interstate
5 wire facilities (and corresponding RICO predicate acts of mail and wire fraud) have been hidden
6 and cannot be alleged without access to these Defendants' books and records. Indeed, an
7 essential part of the successful operation of the scheme alleged herein depended upon secrecy.
8 However, plaintiffs can generally describe the occasions on which the RICO predicate acts of
9 mail fraud and wire fraud occurred, and how those acts were in furtherance of the Scheme;
10 plaintiffs describe this below.

11 85. The Defendants' use of the U.S. mails and interstate wire facilities to perpetrate
12 the scheme involved thousands of communications including, *inter alia*:

13 (a) Marketing materials about Park West artwork, which Park West, Holland
14 America, Royal Caribbean, and Fine Art Sales, sent to consumers, including cruise passengers,
15 located across the country;

16 (b) Written representations between Park West and Holland America as well
17 as between Park West and Royal Caribbean regarding the sale of Park West artwork aboard the
18 cruise ships, which occurred on a regular basis each year;

19 (c) Written representations and telephone calls between Park West and Fine
20 Art Sales regarding the authenticity of Park West artwork.

21 (d) Written and oral communications between Park West and HSBC
22 regarding the sale of Park West artwork.

23 (e) Written and oral communications directed to consumers, including cruise
24 passengers, that fraudulently misrepresented the authenticity of Park West artwork;

25 (f) Internet marketing materials from Park West directed to consumers
26 regarding Park West artwork and the Collectors Card;

1 (g) Receipts of increased profits and sales sent through the U.S. mails and
2 interstate wire facilities – the wrongful proceeds of the scheme; and

3 (h) In addition to the above-referenced RICO predicate acts, it was
4 foreseeable to each Defendant that Park West falsely represented the authenticity of its artwork
5 through the U.S. mails and by interstate wire facilities. Further, each Defendant has, in
6 furtherance of the scheme, communicated through use of the U.S. mails and by interstate wire
7 facilities with their various local headquarters or divisions.

8 86. Defendants’ policies, practices and acts described above constitute wire fraud
9 under 18 U.S.C. § 1343, in that they constitute or are in furtherance of a scheme or artifice to
10 defraud or obtain money by means of false or fraudulent pretenses, furthered or executed through
11 Defendants’ transmission of writings, signals, or data by means of wire.

12 87. By selling and promoting the sale of artwork that is falsely represented as
13 authentic or having authorship that it does not in fact have to unwitting consumers such as
14 Plaintiffs, through the course of conduct described above, Defendants have committed wire fraud
15 thousands or tens of thousands of times since at least 1993 and thus engaged in a “pattern of
16 racketeering activity” within the meaning of 18 U.S.C. § 1961(5).

17 88. Defendants have used a structure separate and apart from their acts of wire fraud
18 to distribute the proceeds of the transactions. In particular, for each Park West piece sold
19 onboard a Holland America or Royal Caribbean ship, Holland America or Royal Caribbean
20 received a commission, fee or other remuneration. In return, Park West received the promotion,
21 advertising and channeling of its wares to Holland America and Royal Caribbean cruise ship
22 passengers. Also, for persons who purchased their Park West artwork using the Collectors Card,
23 HSBC received interest, fees and other amounts incurred by customers as the result of using such
24 cards.

25 89. Defendants violated 18 U.S.C. § 1962(c) in that they are associated with an
26 Enterprise engaged in, or the activities of which affect, interstate or foreign commerce, and have

1 conducted or participated, directly or indirectly, in the conduct of such Enterprise's affairs
2 through a pattern of racketeering activity. Defendants have exerted control over the Enterprise, in
3 violation of Section 1962(c) of RICO, in the following ways:

4 (a) Each of the Defendants had a degree of control concerning the selling and
5 promoting of Park West artwork;

6 (b) Park West has directly controlled the creation and distribution of
7 marketing, sales, and other materials used to inform members of the Class as to the value of its
8 artwork;

9 (c) Park West intended that Holland America, Royal Caribbean, Fine Art
10 Sales, and HSBC would (and did) distribute their publications containing false representations
11 about Park West artwork through the U.S. mails and by interstate wire facilities; and

12 (d) Holland America and Royal Caribbean, and HSBC allowed Park West to
13 exert control over their organizations knowing that the values of the artwork were inflated as a
14 result of the scheme and were valued at significantly less. Park West controlled Holland
15 America and Royal Caribbean, HSBC, and Fine Art Sales by virtue of its ability to inflate the
16 prices of artwork. Holland America and Royal Caribbean, HSBC, and Fine Art Sales did so
17 because the selling of Park West artwork was, and is, a part of its business, and Park West
18 increased Holland America's and Royal Caribbean's, HSBC's, and Fine Art Sales' profits for the
19 reasons set forth herein.

20 90. Each of the Defendants conducted and participated in the affairs of the above-
21 referenced Enterprise through a pattern of racketeering activity, including acts that are indictable
22 under 18 U.S.C. § 1341, relating to mail fraud, and 18 U.S.C. § 1343, relating to wire fraud. The
23 Defendants' pattern of racketeering likely involved thousands of separate instances of use of the
24 U.S. mails or interstate wire facilities in furtherance of their scheme. Each of these fraudulent
25 mailings and interstate wire transmissions constitutes a "racketeering activity" within the
26 meaning of 18 U.S.C. § 1961(1)(B). Collectively, these violations constitute a "pattern of

1 racketeering activity,” within the meaning of 18 U.S.C. § 1961(5), in which the Defendants
2 intended to defraud Plaintiffs, members of the Class and other intended victims.

3 91. Defendants calculated and intentionally crafted the scheme to ensure that
4 Plaintiffs and members of the Class would pay inflated prices for artwork. In designing and
5 implementing the scheme, at all times the Defendants were cognizant of the fact that the artwork
6 sold by Park West was falsely represented as authentic.

7 92. By intentionally and artificially inflating the prices of Park West artwork and by
8 subsequently failing to disclose such practices to the purchasers and consumers generally, the
9 Defendants engaged in a fraudulent and unlawful course of conduct constituting a pattern of
10 racketeering activity.

11 93. The Defendants’ racketeering activities amounted to a common course of
12 conduct, with similar pattern and purpose, intended to deceive Plaintiffs and members of the
13 Class. Each separate use of the U.S. mails and/or interstate wire facilities employed by the
14 Defendants was related, had similar intended purposes, involved similar participants and
15 methods of execution, and had the same results affecting the same victims, including Plaintiffs
16 and members of the Class.

17 94. The Defendants’ violations of federal law and their pattern of racketeering
18 activity have directly and proximately caused Plaintiffs and members of the Class to be injured
19 in their business or property because plaintiffs and members of the Class have paid many
20 millions of dollars in inflated payments for artwork that was falsely represented as authentic as
21 described herein.

22 95. The Defendants sent information regarding the authenticity of Park West artwork
23 through the U.S. mails or by interstate wire facilities and discussed the artwork and other
24 information by the same methods in furtherance of their scheme. Plaintiffs and members of the
25 Class have made inflated payments for artwork based on and/or in reliance on representations
26 that the artwork was authentic, when in fact it was not.

1 105. Plaintiffs repeat and reallege the preceding allegations as if fully stated herein.

2 106. The statements of Park West regarding the authorship, authenticity and
3 genuineness of the artwork purchased by Plaintiffs and other members of the Class constitute an
4 express warranty.

5 107. The authorship, authenticity and genuineness of the artwork purchased by
6 Plaintiffs and other members of the Class are characteristics that are essential to the identity of
7 the goods sold.

8 108. Notwithstanding the aforementioned statements of Park West, it failed to deliver
9 artwork to Plaintiffs and other members of the Class that conformed to its own description of
10 such goods.

11 109. As a direct and proximate result of the foregoing, Plaintiffs and other members of
12 the Class were damaged in an amount to be determined at trial.

13 **COUNT IV**

14 **(UNJUST ENRICHMENT)**

15 110. Plaintiffs bring this Count against all Defendants and in the alternative to Count I,
16 *supra*.

17 111. Plaintiffs repeat and reallege the preceding allegations as if fully stated herein.

18 112. The matters alleged in this Count are outside the scope of the contract described
19 in Count I, *supra*.

20 113. Plaintiffs and other members of the Class conferred a benefit on Defendants when
21 they purchased artwork from Park West, including instances where such artwork was purchased
22 onboard cruise ships owned or operated by Holland America or Royal Caribbean, with financing
23 provided by HSBC, or both.

24 114. Defendants appreciated or knew of the above-described benefit.

25 115. Defendants accepted or retained the benefit under circumstances that make it
26 inequitable for them to retain said benefit.

1 116. As a direct and proximate result of the foregoing, Plaintiffs and other members of
2 the Class have been damaged in an amount to be determined at trial.

3 **COUNT V**

4 **(VIOLATION OF STATE CONSUMER PROTECTION LAWS)**

5 117. Plaintiffs bring this Count against all Defendants (except HSBC) on behalf of the
6 Holland America and Royal Caribbean subclasses defined herein.

7 118. Plaintiffs repeat and reallege the preceding allegations as if fully stated herein.

8 119. At all times relevant hereto there was in full force and effect the Washington
9 Consumer Protection Act, RCW 19.86.010, *et seq.* (the “CPA”) and the substantially similar
10 laws of other states.

11 120. Section 19.86.020 of the CPA, as do the substantially similar laws of other states,
12 prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct
13 of any trade or commerce. RCW 19.86.020.

14 121. The acts and omissions of Defendants alleged *supra* constitute unfair or deceptive
15 acts or practices within the meaning of the CPA and the substantially similar laws of other states.

16 122. The aforesaid unfair or deceptive acts or practices occurred in trade or commerce;
17 namely, in the connection with the sale of artwork to Plaintiffs and other consumers.

18 123. The aforesaid unfair or deceptive acts or practices impact the public interest
19 insofar as consumers of artwork sold by Park West are in an inferior position of knowledge vis-
20 à-vis the seller deserve and need the protection afforded them by the CPA and the substantially
21 similar laws of other states.

22 124. The aforesaid unfair or deceptive acts or practices caused injury to Plaintiffs and
23 other members of the Class in their business or property; namely, the loss of the difference
24 between the value of the goods as represented and the value of the goods actually received.

25 125. The aforesaid injury is causally linked to the unfair or deceptive act insofar as
26 Plaintiffs and other members of the Class would not have purchased artwork from Park West if

1 they had known that they did not in fact have the authorship, authenticity and genuineness
2 represented by Park West.

3 **COUNT VI**

4 **(FOR COMPENSATORY AND EXEMPLARY DAMAGES, INJUNCTIVE**
5 **AND DECLARATORY RELIEF UNDER VARIOUS UNFAIR AND**
6 **DECEPTIVE TRADE PRACTICES STATUTES)**

7 126. Plaintiffs repeat and reallege the preceding and subsequent paragraphs as though
8 set forth herein.

9 127. Defendants' conduct described herein constitutes prohibited practices, unfair,
10 deceptive and unconscionable conduct under the unfair and deceptive trade practices acts of the
11 following jurisdictions:

12 a. Arkansas: The aforementioned practices by Defendants were and are in
13 violation of the Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;

14 b. California: The aforementioned practices by Defendants were and are in
15 violation of the California Unfair and Deceptive Practices Act, Cal. Civ. Code § 1750, *et seq.*,
16 and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*; no damages
17 are sought at the present under § 17507.

18 c. Colorado: The aforementioned practices by Defendants were and are in
19 violation of the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101, *et seq.*;

20 d. Connecticut: The aforementioned practices by Defendants were and are in
21 violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;

22 e. Delaware: The aforementioned practices by Defendants were and are in
23 violation of the Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;

24 f. District of Columbia: The aforementioned practices by Defendants were
25 and are in violation of the District of Columbia Consumer Protection Procedures Act, D.C. Code
26 §§ 28-3901, *et seq.*;

1 g. Florida: The aforementioned practices by Defendants were and are in
2 violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201,
3 *et seq.*;

4 h. Hawaii: The aforementioned practices by Defendants were and are in
5 violation of Hawaii's Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480-1, *et*
6 *seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et*
7 *seq.*;

8 i. Idaho: The aforementioned practices by Defendants were and are in
9 violation of the Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;

10 j. Illinois: The aforementioned practices by Defendants were and are in
11 violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS
12 § 505/1, *et seq.*;

13 k. Kansas: The aforementioned practices by Defendants were and are in
14 violation of the Kansas Consumer Protection Act, Kan. Stat. Ann § 50-626, *et seq.*;

15 l. Kentucky: The aforementioned practices by Defendants were and are in
16 violation of the Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. § 367.110, *et seq.*, and
17 the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann § 365.020, *et seq.*;

18 m. Maryland: The aforementioned practices by Defendants were and are in
19 violation of the Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;

20 n. Michigan: The aforementioned practices by Defendants were and are in
21 violation of the Michigan Consumer Protection Act, § 445.901, *et seq.*;

22 o. Minnesota: The aforementioned practices by Defendants were and are in
23 violation of the Minnesota Prevention of Consumer Fraud Act, Minn. Stat § 325F.68, *et seq.*; and
24 Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;

25 p. Missouri: The aforementioned practices by Defendants were and are in
26 violation of the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;

1 q. Nebraska: The aforementioned practices by Defendants were and are in
2 violation of the Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1601, *et seq.*, and the
3 Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;

4 r. Nevada: The aforementioned practices by Defendants were and are in
5 violation of the Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. § 598.0903, *et seq.*;

6 s. New Hampshire: The aforementioned practices by Defendants were and
7 are in violation of the New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1,
8 *et seq.*;

9 t. New Jersey: The aforementioned practices by Defendants were and are in
10 violation of the New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1, *et seq.*;

11 u. New Mexico: The aforementioned practices by Defendants were and are
12 in violation of the New Mexico Unfair Practices Act, N.M. Stat. Ann. § 57-12-1, *et seq.*;

13 v. New York: The aforementioned practices by Defendants were and are in
14 violation of the New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law § 349, *et seq.*;

15 w. North Dakota: The aforementioned practices by Defendants were and are
16 in violation of the North Dakota Consumer Fraud Act, N.D. Cent. Code § 51-15-01, *et seq.*;

17 x. Oklahoma: The aforementioned practices by Defendants were and are in
18 violation of the Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;

19 y. Oregon: The aforementioned practices by Defendants were and are in
20 violation of the Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;

21 z. Rhode Island: The aforementioned practices by Defendants were and are
22 in violation of the Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen.
23 Laws § 6-13.1-1, *et seq.*;

24 aa. South Carolina: The aforementioned practices by Defendants were and
25 are in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et*
26 *seq.*;

1 bb. South Dakota: The aforementioned practices by Defendants were and are
2 in violation of South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D.
3 Codified Laws § 37-24-1, *et seq.*;

4 cc. Texas: The aforementioned practices by Defendants were and are in
5 violation of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM.
6 CODE § 17.46;

7 dd. Vermont: The aforementioned practices by Defendants were and are in
8 violation of the Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.*;

9 ee. Washington: The aforementioned practices by Defendants were and are in
10 violation of the Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, *et seq.*; and

11 ff. Wisconsin: The aforementioned practices by Defendants were and are in
12 violation of the Wisconsin Deceptive Trade Practices Act, Wis. Stat. § 100.18, *et seq.*

13 128. Under statutes enacted in Washington and the foregoing jurisdictions to protect
14 consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices
15 and false advertising, Plaintiffs and Class members are consumers who purchased phony art
16 pursuant to a consumer transaction for personal use and are therefore subject to protection under
17 such legislation.

18 129. Under statutes enacted in Washington and the foregoing jurisdictions to protect
19 consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices
20 and false advertising, the Defendants are suppliers, manufactures, advertisers, and sellers who
21 are subject to liability under such legislation for unfair, deceptive, fraudulent and unconscionable
22 consumer sales practices.

23 130. Defendants violated the statutes enacted in Washington and the foregoing
24 jurisdictions to protect consumers against unfair, deceptive, fraudulent and unconscionable trade
25 and business practices and false advertising, by knowingly and falsely representing that the
26

1 purchased art was authentic, when in fact it was not so, and by other acts alleged herein. These
2 representations were made in uniform promotional materials.

3 131. Defendants violated the statutes enacted in Washington and the foregoing
4 jurisdictions to protect consumers against unfair, deceptive, fraudulent and unconscionable trade
5 and business practices and false advertising, by omitting material information concerning the
6 authenticity of the art.

7 132. The actions of the Defendants alleged herein are uncured or incurable deceptive
8 acts under the statutes enacted in Washington and the foregoing jurisdictions to protect
9 consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices
10 and false advertising.

11 133. The Defendants had actual knowledge of the truth and failed to take any action to
12 cure the false sale, well in excess of thirty (30) days before the Plaintiffs or any Class member
13 did or could have possessed any such knowledge.

14 134. As a direct result of the Defendants' violations of the statutes enacted in
15 Washington and the foregoing jurisdictions to protect consumers against unfair, deceptive,
16 fraudulent and unconscionable trade and business practices and false advertising, Plaintiffs and
17 members of the Class have been damaged.

18 135. Plaintiffs and members of the Class are therefore entitled to and hereby seek
19 compensatory damages, multiple damages, and equitable and declaratory relief and any and all
20 other available remedies according to proof.

21 **COUNT VII**

22 **(DECLARATORY JUDGMENT)**

23 136. Plaintiffs bring this Count against all Defendants.

24 137. Plaintiffs repeat and reallege the preceding allegations as if fully stated herein.

25 138. At all times relevant hereto, there was in full force and effect the Declaratory
26 Judgment Act, 28 U.S.C. § 2201, *et seq.* (the "DJA").

1 C. Entering judgment in favor of Plaintiffs and the Class and against Defendants;

2 D. Awarding Plaintiffs and Class members their individual damages, treble damages,
3 attorneys' fees and costs, including interest thereon, as allowed or required by law;

4 E. Granting the declaratory relief sought herein and all other appropriate relief; and

5 F. Granting all such further and other relief as the Court deems just and appropriate.

6 **JURY DEMAND**

7 Plaintiffs hereby demand a trial by jury on all issues so triable.

8 Dated: October 3, 2008

9 Respectfully submitted,

10
11 By s/ Steve W. Berman

12 Steve W. Berman, WSBA #12536

13 Ivy Arai, WSBA # 30859

14 HAGENS BERMAN SOBOL SHAPIRO LLP

15 1301 Fifth Avenue, Suite 2900

16 Seattle, WA 98101

17 Telephone: (206) 623-7292

18 Facsimile: (206) 623-0594

19 steve@hbsslaw.com

20 ivy@hbsslaw.com

21 William M. Sweetnam

22 SWEETNAM LLC

23 10 South La Salle Street, Suite 3500

24 Chicago, Illinois 60603

25 Telephone: (312) 346-5100

26 wms@sweetnamllc.com

*Attorneys for Plaintiffs Rodney J. Blackman
and Myra J. Kean*

CERTIFICATE OF SERVICE

On October 3, 2008, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

Ivy D. Arai, ivy@hbsslaw.com

Steve W. Berman, steve@hbsslaw.com

Robert Kent Burlington, rburlington@coffeyburlington.com

Stephania Camp Denton, sdenton@mms-seattle.com

Caryn Geraghty Jorgensen, cjorgensen@mms-seattle.com

Alice Evelyn Meyer, ameyer@coffeyburlington.com

David M. Schoegg, dschoegg@mms-seattle.com

Paul Joseph Schwiep, pschwiep@coffeyburlington.com

William M Sweetnam, wms@sweetnamllc.com

Also, on October 3, 2008, I sent out for service by process a copy of the foregoing First Amended Class Action Complaint and a Summons issued by the Clerk of the Court on the following newly named Defendants:

HSBC Bank Nevada, N.A.
1111 N Town Center Dr
Las Vegas, NV 89144

HSBC Finance Corporation
c/o CT Corporation System
208 South LaSalle Street, Suite 814
Chicago, IL 60604

Royal Caribbean Cruises LTD
c/o CT Corporation System
1801 West Bay Drive NW, Suite 206
Olympia, WA 98502

1 Executed this 3rd day of October, 2008, in Seattle, Washington.

2

3

By: s/ Steve W. Berman
Steve W. Berman, WSBA #12536
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26