

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

S.A.R.L. GALERIE ENRICO NAVARRA,

Plaintiff,

v.

MARLBOROUGH GALLERY INC. and  
PIERRE LEVAI,

Defendants.

**SUMMONS**

Index No.: \_\_\_\_\_

Date Purchased: \_\_\_\_\_

Plaintiff designates New York County as the  
place of trial

To the above-named Defendants:

You are hereby summoned and required to answer the attached complaint of the plaintiff in this action and to serve a copy of your answer upon the attorneys for the plaintiff at the address stated below.

If this summons was personally delivered to you in the State of New York, you must serve the answer within 20 days after such service, excluding the day of service. If this summons was not personally delivered to you in the State of New York, you must serve the answer within 30 days after service of the summons is complete, as provided by law.

If you do not serve an answer to the attached complaint within the applicable time limitation stated above, a judgment may be entered against you, by default, for the relief demanded in the complaint.

Venue is based in this county under CPLR Section 503[a] because both Defendants reside therein.

Dated: New York, New York  
April 16, 2019

WALLISON & WALLISON LLP

/S/Jeremy Wallison

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S.A.R.L. GALERIE ENRICO NAVARRA

TO:

MARLBOROUGH GALLERY INC.  
40 West 57th Street,  
New York, New York, 10019

PIERRE LEVAI  
180 West 58th Street, Apt 11A,  
New York, New York, 10019

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Index No.:

**COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff, S.A.R.L. Galerie Enrico Navarra, by its undersigned attorneys, for its complaint against defendants Marlborough Gallery Inc. and Pierre Levai, alleges as follows:

**PARTIES**

1. S.A.R.L. Galerie Enrico Navarra (the “Navarra Gallery”) is a corporation organized under the laws of France with its principal place of business at 75 rue du Faubourg Saint Honoré, 75008 Paris, France.

2. It is in the business of buying, selling and promoting museum-quality contemporary art.

3. Marlborough Gallery Inc. (the “Marlborough Gallery”) is a corporation organized under the laws of New York State with its principal place of business at 40 West 57th Street, New York, New York 10019.

4. Like the Navarra Gallery, the Marlborough Gallery is in the business of buying, selling and promoting museum-quality contemporary art.

5. Pierre Levai (“Levai,” and together with the Marlborough Gallery, “Defendants”) is and was at all pertinent times the co-president of the Marlborough Gallery. On information and belief, his current residence and domicile is at 180 West 58th Street, Apt 11A, New York, New York 10019.

### **JURISDICTION**

6. This Court has general jurisdiction over both Defendants in this case under New York’s Civil Practice Law and Rules (“CPLR”) Section 301 because the Marlborough Gallery is a domestic New York corporation and Levai is a New York domiciliary.

7. Venue is proper in this county under CPLR Section 503[a] because both Defendants reside in this county.

### **INTRODUCTION**

8. This case arises out of Defendants’ willful and malicious destruction of the Navarra Gallery’s rights under a fine art ceramics edition publishing contract (the “Production Agreement”) between the Navarra Gallery, the late French/Chinese artist Chu Teh-Chun (“Chu”), and Francis Delille (“Delille”) “acting for his own account and representing” a ceramics foundry called “La Tuilerie.”

9. Pursuant to that Production Agreement, Chu worked with Delille and La Tuilerie to create 24 ceramic plate designs for editions of 40 exemplars plus eight artist proofs, for a total of 1,152 ceramic artworks (the “Plates”), which then were produced by La Tuilerie following Chu's authorization.

10. The Navarra Gallery’s role in the Production Agreement was limited first to paying the bills – amounting to the costs of the design and production of the Plates plus a 14% pre-paid royalty to the artist based on certain agreed minimum public prices for the Plates – and then

publishing “a quality catalogue in the vein of the catalogues it usually publishes” to help promote the Plates to the public.

11. In exchange, the Navarra Gallery ultimately received 32 of the 40 exemplars and two artist proofs for each of the 24 designs, for a total of 816 Plates, while Chu, in addition to his prepaid royalties, received four artist proofs for each of the 24 designs, for a total of 96 Plates, and Delille received eight of the 40 exemplars plus two artist proofs for each of the 24 designs, for a total of 240 Plates.

12. From the time the parties entered into the Production Agreement in 2003, through the end of 2006, the project was a great success for all involved.

13. After developing the 24 designs and authorizing the production of the finished Plates, which Chu did in accordance with industry standard practices by writing the words “*bon-à-tirer*” (“good to produce,” hereinafter “BAT”) in his own hand on the back of each final trial proof of the 24 designs, Chu took delivery of his allotment of the finished Plates, cashed his prepaid royalties, signed certificates of authenticity for the Plates, exhibited a portion of the Plates himself at a gallery in Brussels, participated in setting the prices for the Plates at another gallery, presented a Plate as a gift to his “dear friend,” Pierre Cabanne, in 2006, with a handwritten dedication on the back, and, on December 12, 2006, posed for pictures with the Plates for use in the catalogue the Navarra Gallery was required to prepare.

14. Then Defendants entered the picture, enticed Chu with promises of immediate wealth and fame, and, in a misguided effort to burnish the Marlborough Gallery’s credentials as a major player in what by then had become the rapidly appreciating emerging market for contemporary Chinese art, set about systematically turning Chu against his longstanding relationships with competing galleries, and ultimately, in the Navarra Gallery’s case, causing

Chu to breach his obligations under the Production Agreement by publicly disavowing the authenticity of the very Plates he had authorized, been paid royalties for and been so proud of immediately prior to Defendants' involvement.

15. The damages from that breach – tantamount in consequence to smashing the entire stock of Plates on the floor – have been total and devastating.

16. As of May 2015, the last time a fair market value appraisal was performed on the Plates, the value of the Plates, if marketable as authentic Chu artworks, would have been roughly \$22,000 per Plate, or \$18,000,000 for the Navarra Gallery's entire 816 Plate allotment.

17. Instead, as a result of Defendants' successful interference with the Production Agreement, the Plates, to the extent they are now sellable at all, are now sellable only as cheap forgeries.

18. And yet, since inflicting that harm, Defendants and their confederates – Chu's son, Yvon Chu, Chu's French lawyer, William Bourdon ("Bourdon"), and the Marlborough Gallery's former "Director for Asia," Philippe Koutouzis ("Koutouzis") – have sought to aggravate it through pervasive misconduct at earlier stages of this litigation, including perjury on the most material issues, discovery gamesmanship, and, upon information and belief, witness tampering, all as more fully alleged below.

### **PROCEDURAL HISTORY**

19. That the evidence is sufficient to find that Defendants caused the harm to the Navarra Gallery's rights and expectations under the Production Agreement already has been decided against Defendants after eight years of litigation between the parties and Koutouzis in the United States District Court for the Southern District of New York, Case No. 10-civ-7547 (KMW) (RLE) (the "Federal Suit").

20. The Navarra Gallery originally commenced the Federal Suit against the Marlborough Gallery alone on October 4, 2010, a little over two years after Chu breached the Production Agreement by publicly disavowing the authenticity of the Plates.

21. Although the original complaint in the Federal Suit did not directly charge the Marlborough Gallery with tortuously interfering with the Production Agreement, because the Navarra Gallery did not at that time have a basis to conclude that the Marlborough Gallery even knew of the Production Agreement's existence, it did put in issue the Marlborough Gallery's involvement in the various transactions and occurrences that ultimately led to the breach of the Production Agreement.

22. When later, during discovery, the Marlborough Gallery disclosed documents proving that Levai and Koutouzis in fact were fully aware of the Production Agreement and, indeed, were at the origin of Chu's abrupt change in attitude toward his obligations under that agreement, the Navarra Gallery sought, and, after extensive motion practice, was granted, leave to serve an amended complaint asserting claims against the Marlborough Gallery, Levai and Koutouzis for tortious interference with the Production Agreement and aiding and abetting tortious interference.

23. After subsequent motion practice in which all three defendants unsuccessfully argued that the amended complaint was not timely asserted against them, the parties engaged in years of discovery, both here and in France, marked throughout by various discovery abuses on the part of Defendants, Koutouzis, and their confederates in France, Bourdon and Yvon Chu.

24. At the close of discovery, Defendants and Koutouzis then moved for summary judgment, in part on a supposed insufficiency of the evidence of their involvement in procuring Chu's breach of the Production Agreement.

25. The District Court granted summary judgment in their favor on April 6, 2017, the Navarra Gallery timely appealed, and, on September 21, 2018, the Second Circuit Court of Appeals vacated the grant of summary judgment and remanded the Federal Suit to the district court for further proceedings, explicitly holding the admissible evidence sufficient to find Defendants liable for the Navarra Gallery's harm. S.A.R.L. Galerie Enrico Navarra v Marlborough Gallery Inc., 17-1477-CV, 2018 WL 4523610 [2d Cir Sept. 21, 2018].

26. That decision now collaterally estops Defendants from arguing otherwise here.

27. Nevertheless, shortly after that Second Circuit victory, the District Court, on November 2, 2018, terminated the Federal Suit, "in the interests of comity," to allow this Court to adjudicate the purely New York State common law tortious interference and aiding and abetting tortious interference claims.

28. The Navarra Gallery now re-files those claims here.

29. Further, as this complaint is based on the exact same transactions and occurrences that have been at issue in the Federal Suit since October 4, 2010, this complaint, for purposes of the statute of limitations, must be treated as having been commenced on October 4, 2010, pursuant to CPLR 205[a].

30. That date is well within the three-year statute of limitations applicable to tortious interference with contract and aiding and abetting tortious interference with contract claims under CPLR 214[4].

### **STATEMENT OF FACTS**

31. In 2009, at the age of 89, Chu had a debilitating stroke that left him unable to work or speak.

32. In 2014, at the age of 94, he died.

33. Now 10 and five years, respectively, after those unfortunate events, Chu occupies an elite status in the art market, commanding prices for his work at auction as high as \$11 million, a record price set on November 26, 2016, at Christie's in Hong Kong.

34. That record price is not an outlier. Over the past four years, no fewer than 41 Chu paintings have sold at auction for \$1 million or more.

35. His market was quite different in 1997, when the Navarra Gallery made its first investments in his work.

36. Then, at the age of 77, Chu's record auction price was a mere \$47,000.

37. And, of the 134 Chu paintings offered at auction by the end of 1996, the overwhelming majority sold for less than \$8,000, if they managed to find a buyer at all.

38. The Navarra Gallery's investments in his work were instrumental in setting Chu's market on the path to where it is today.

39. As Delille attested at his deposition in the Federal Suit:

Enrico Navarra worked quite a lot for Chu Teh-Chun producing a number of major monographs about him, organizing a number of major shows in the People's Republic of China and being involved in some very large projects... But I think it might well be said that Navarra, whether he's at the origin of anything or not, he certainly built a significant aura around Chu Teh-Chun.

40. One such investment was the Navarra Gallery's involvement in the Production Agreement.

41. Delille and Chu, in 2001 to 2002, had created a series of 72 ceramic works together at La Tuilerie.

42. Chu, at the time, had very little experience working with ceramics.

43. Nevertheless, this initial foray sparked Chu's interest and he proposed to Delille the idea of a ceramics edition project.

44. As neither had the cash for a project of that scale, they decided to seek financing for the project from the Navarra Gallery.

45. Ultimately, the Navarra Gallery agreed to finance the project on the terms set forth in the Production Agreement.

### **The Terms of The Production Agreement**

46. Under the terms of the Production Agreement, Delille/La Tuilerie, “working directly with the artist,” were responsible for all aspects of the production of the Plates, from helping Chu develop the 24 base models for the editions, to liaising with the color lab technicians, producing trial proofs of the 24 designs, obtaining the artist’s approval – the BATs – of the 24 trial proofs, and then producing those 24 plate designs in editions of 40 plus eight artist proofs, for a total of 1,152 Plates.

47. The Navarra Gallery was assigned no responsibility for any of those design, BAT and production matters.

48. In the Production Agreement, Delille undertook to keep Chu informed of the production of the Plates and the deliveries of the Plates made.

49. The Navarra Gallery was assigned no responsibility for such matters.

50. Further, Delille/La Tuilerie undertook in the Production Agreement to ensure that only the Plates authorized to be produced would actually be produced.

51. The Navarra Gallery was assigned no contractual responsibility in this regard.

52. Rather, the Navarra Gallery’s contractual responsibilities under the Production Agreement were limited to: (i) the pre-payment of a 14% royalty to the artist over four years from 2004 to 2007 in three annual installments based on certain agreed minimum public prices and production of 10 exemplars of each design per year; (ii) providing Chu a copy of the price

lists corresponding to each selling exhibition of the Plates, if any, the Navarra Gallery would make during 2004-2007; and (iii) producing “a quality catalogue, in the vein of the catalogues it usually publishes.”

53. For his part, Chu’s explicit obligations under the Production Agreement were to: (i) create the 24 base models used for the Plates; (ii) finish those base models by the end of December 2003; and (iii) work directly with Delille/La Tuilerie on all aspects of the production of the Plates.

54. For these respective contributions, the parties originally were to be compensated as follows.

55. Chu would receive his 14% royalty on the Plates plus four of the eight artist proofs of each of the 24 designs, for a total of 96 Plates.

56. The Navarra Gallery would receive all 40 exemplars and two of the artist proofs of each of the 24 designs, for a total of 1008 Plates.

57. And Delille would receive two of the artist proofs of each of the 24 designs, for a total of 48 Plates.

58. Ultimately, however, Delille, the Navarra Gallery and Chu agreed that Delille, instead of the Navarra Gallery, would receive eight of the 40 exemplars of each of the 24 designs and pay Chu the royalties due under the Production Agreement for those eight “series.”

59. Moreover, the Navarra Gallery and Delille further agreed that Delille would receive his eight series of the 24 editions first and therefore be the first to market the Plates.

60. Accordingly, the final allotment was as follows: Chu would receive 96 Plates, Delille would receive 240 Plates (and pay the royalties to Chu on eight series of the 24

designs), and the Navarra Gallery would receive 816 Plates (and pay the royalties to Chu on 32 series of the 24 designs).

### **The Parties' Performance of The Production Agreement**

61. After signing the Production Agreement, Chu got off schedule.

62. That delay resulted in the scheduled production of the Plates being pushed back by eight months relative to what was contemplated in the Production Agreement.

63. Ultimately, however, Chu did complete the 24 base models for the Plates and gave his BAT on the final trial proof of each of the 24 designs by signing each such trial proof in French and Chinese with the words, in his own hand, "*bon à tirer*," and often the date.

64. Over the course of the BAT and production process, Chu and Delille had 50 meetings in which Chu was shown what had been produced, discussed corrections with Delille, and ultimately gave his BAT.

65. And Delille, in turn, discharged all his obligations to work with Chu on the production process, and to keep him informed about the production and the deliveries made.

66. Consistent with the allocation of responsibilities in the Production Agreement, the Navarra Gallery had no involvement in such matters.

67. In accordance with the parties' amendment to the allocation provisions of the Production Agreement, under which Delille was to receive eight of the 40 series of the 24 designs and receive his allotment of Plates before Navarra, Delille testified that, in September 2004, he paid Chu the required royalties for the first two of the 8 series Delille was scheduled to receive.

68. Delille then, in October 2004, exhibited five of the Plates at the Art Paris fair in the Carrousel du Louvre.

69. Chu's wife, Thérèse Chu, attended the fair, came to Delille's booth, and saw the Plates and their list prices.

70. On January 1, 2005, the Navarra Gallery sent Chu three checks for its share of the prepaid royalties due under the Production Agreement, totaling € 48,720, corresponding to full payment on 10 series of its 32 series allotment.

71. Chu, on May 31, 2005, issued an invoice to the Navarra Gallery in his own handwriting accepting those checks and then subsequently cashed those checks.

72. On March 1, 2005, Chu signed in blank and gave to Delille three certificates of authenticity for the Plates.

73. As Delille would testify in the Federal Suit regarding these certificates of authenticity:

...[A]lthough the editor has the perfect right to certify the genuineness of his own editions, there may be a client or a client's client who actually wants such a certificate, and this is something you can do. And I asked Chu Teh-Chun to prepare these certificates in advance. He provided me with three and I have two left over. As you can see, these are not copies, they're individual certificates. The signatures on them are different.

74. From March 18 to June 30, 2005, 12 Plates from Delille's allotment were shown in a museum in Zaragoza, Spain, as part of an exhibition dedicated to ceramics artworks produced at La Tuilerie.

75. Delille informed Chu of this exhibition.

76. Delille also testified that, on November 28, 2005, he paid Chu the royalties corresponding to two more series of his 8 series allotment of Plates.

77. On March 15, 2006, the Navarra Gallery sent Chu three more prepaid royalty checks due under the Production Agreement, totaling € 48,720, corresponding to full payment on 10 more series of its 32 series allotment.

78. Chu acknowledged receipt of those checks on the same day and issued the Navarra Gallery a handwritten invoice.

79. Subsequently, he cashed those checks.

80. From June 8 to September 10, 2006, Chu himself exhibited Plates at Galerie J. Bastien in Brussels.

81. The Plates Chu exhibited at Galerie J. Bastien in Brussels were from the first series of artist proofs Chu received.

82. Subsequently, Delille testified, he personally delivered to Chu a second series of artist proofs of the Plates and paid Chu the royalties corresponding to two more series of his 8 series allotment of Plates.

83. Some time in 2006, Chu gave one of those artist proofs as a gift to Pierre Cabanne, who, to that point, had written two books on Chu's work, including one published by the Navarra Gallery.

84. On the back of that Plate, Chu wrote, in his own hand:

"For my dear friend

Pierre Cabanne

Affectionately"

85. He then signed it, again in his own hand, "Chu Teh-Chun 2006."

86. On or around September 25, 2006, Chu, Delille and Arlette Souhami, the owner of Galerie Minsky, in Paris, had a teleconference in which they discussed and agreed on public prices for the Plates to be shown at Galerie Minsky in October 2006.

87. Delille testified that he paid Chu the royalties for the final two series of his 8 series allotment in November 2006.

88. On December 12, 2006, Chu sat for a Navarra Gallery-commissioned photoshoot at his studio in Vitry, France.

89. The photos were for use in the catalogue the Navarra Gallery was required to produce under the Production Agreement.

90. Chu was involved in choosing the photographer for the pictures and reworking the colors of the photographs.

91. The resulting photos show Chu, smiling, posing with the Plates.

**Chu First Turns Against The Production Agreement, But All Parties Keep Performing**

92. Throughout 2006, Delille interacted with Chu frequently in connection with, among other things, a separate new ceramics editions project they had embarked on together at La Tuilerie.

93. During that time and before, Chu – consistent with his cashing of royalty payments, accepting delivery of his allotment of the Plates, working with the Navarra Gallery on the catalogue of the Plates, giving a Plate as a gift to his “dear friend” Pierre Cabanne, showing the Plates himself at Galerie J. Bastien, signing certificates of authenticity, and helping set prices for the Plates at Galerie Minsky – never mentioned a single concern about the Plates or the parties’ performance under the Production Agreement.

94. In “early 2007,” however, at a meeting on other business, Chu stated to Delille in reference to the Plates: “Look, Francis, why are we doing this with Navarra? Why aren’t we just doing this ourselves? I mean I have a client and I believe he would buy the whole thing, and [Navarra’s] not paying me, or he’s paying me late.”

95. Chu did not disclose to Delille the identity of the “client” Chu believed would be willing to “buy the whole thing.”

96. Delille responded that any payment delays were attributable to Chu's delays in delivering the base models for the Plates, delaying the production of the Plates from what had been contemplated in the Production Agreement.

97. Indeed, he further noted, any delay in the Navarra Gallery's payments was by a shorter period than Chu's delays in his required contractual performance.

98. In response to Delille's point, Chu said nothing. The two of them then moved on to other business.

99. Nevertheless, on February 19, 2007, a letter titled "Case: Chu Teh-Chun vs. Galerie Enrico Navarra," was sent under the letterhead of a French attorney, Bourdon, addressed to the Navarra Gallery and Delille (the "Cease and Desist Letter"), alleging, falsely, certain breaches of the Production Agreement by the Navarra Gallery and Delille, and, on the basis of that pretext, demanding that the Navarra Gallery and Delille "cease all production" and "all exhibitions and sales" of the Plates.

100. On February 22, 2007, the day they received the Cease and Desist Letter, the Navarra Gallery sent Chu a check for € 16,240, representing another installment of the prepaid royalties due under the Production Agreement.

101. On March 9, 2007, Delille went to meet with Chu at Chu's studio in Vitry, France.

102. At this meeting, Delille confronted Chu about the Cease and Desist Letter, demanding: "What on earth is this?"

103. Chu responded: "Just leave the lawyers to their business."

104. On March 15, 2007, the Navarra Gallery and Delille both sent responses to the Cease and Desist Letter.

105. They both rejected the demand that the production and sale of the Plates cease. Indeed, Delille noted that, despite the delay caused by Chu, the whole production would be completed by August or September 2008, “although this process can possibly be accelerated.”

106. Instead of responding to these letters, Bourdon’s firm began a lawsuit in France (the "French Lawsuit"), serving the Navarra Gallery a complaint on April 10, 2007 (the “April 2007 Complaint”).

107. The April 2007 Complaint also names as defendants not Delille or La Tuilerie but an entity called “S.A.R.L. Les Editions Francis Delille,” which is mentioned nowhere in the Production Agreement or in the Delille Response Letter.

108. The April 2007 Complaint repeated the allegations of the Cease and Desist Letter regarding supposed breaches of the Production Agreement by the Navarra Gallery and Delille, and, on that basis, sought, under French law, an order judicially terminating the Production Agreement.

109. In the Federal Suit, Delille testified that, from his perspective, the April 2007 Complaint was inconsequential because, “...to be honest, the issues that were raised were so false and so ridiculous that it seemed to me that it couldn’t take more than three weeks before the whole thing was cleared up.”

110. Mr. Navarra, in the Federal Suit, similarly testified that he assumed at the time the charges in the April 2007 Complaint would quickly be resolved.

111. Consistent with that, the Navarra Gallery, after the April 2007 Complaint, continued performing all its obligations under the Production Agreement to the letter, sending Chu, on June 27, 2007, another € 16,240 installment of prepaid royalties due under the

Production Agreement, and, on October 29, 2007, completing the performance of its royalty obligations under the Production Agreement when it sent Chu two final checks for € 16,240 and € 9,744, respectively, thereby paying Chu in full for the Navarra Gallery's 32 series allotment.

112. As for Chu's understanding of the continuing vitality of the Production Agreement following the April 2007 Complaint, Chu cashed the Navarra Gallery's final royalty payments in November 2007 and made no objection when 21 Plates (all from Delille's allotment) came up for sale at auctions in France over the remaining months of 2007.

113. On December 14, 2007, the Navarra Gallery served its first response to the April 2007 Complaint ("Navarra Gallery Answer and Counterclaim").

114. In it, the Navarra Gallery explained why the April 2007 Complaint was frivolous and sought damages for the French tort of abuse of process.

115. Further, in the Navarra Gallery Answer and Counterclaim, the Navarra Gallery sought a declaration from the court that the Production Agreement had been fully complied with and asked the court to reject Chu's request for the judicial termination of the Production Agreement.

116. On April 27, 2008, two more Plates – the 22nd and 23rd offered publicly at auction in France after the April 2007 Complaint, both from Delille's allotment – were sold at auction, this time at Cannes Enchères in Cannes, France.

117. Again, Chu made no objection.

#### **Chu Breaches The Production Agreement**

118. Up to this time, all the Plates that had been sold, whether at public auctions in France or privately, had been from Delille's allotment.

119. By April 2008, however, having heard nothing more from Chu in the French Lawsuit for over a year, having seen that Chu had cashed all the Navarra Gallery's royalty payments in the interim, and with all of the auctions of the Plates going forward without incident, the Navarra Gallery restarted preparations for a first show of the Plates with a gallery partner in Bali, Jais Darga ("Darga"), as part of an overall plan to exhibit Chu works in Asia, which it had initially put on hold temporarily while waiting for the French Lawsuit to be resolved.

120. In order to help determine an appropriate price for the Plates, the Navarra Gallery decided to test the market by having 12 Plates put up for sale at Christie's in Hong Kong.

121. The auction at Christie's Hong Kong was to take place on May 25, 2008.

122. On May 15, 2008, however, having not intervened to stop any of the 23 prior auctions of the Plates in France, Bourdon served on the Navarra Gallery a "sommation de communiquer" (a notice to produce) demanding that the Navarra Gallery – which had nothing to do with the BAT process – produce all the BATs for the Plates within 48 hours.

123. Although Bourdon's notice to produce ostensibly gave the Navarra Gallery 48 hours to produce the BATs, in fact at 10:06 a.m. in Paris on May 16, 2008, the morning after he sent the notice to produce, he sent an email in English to the head of contemporary art at Christie's Hong Kong, and then, three minutes later, an identical email to Christie's Hong Kong's "Head of Sales" (collectively, the "Christie's Email") stating:

Dear Sir, I am writing to you in my capacity as legal adviser of Mr. Chu Teh-Chun who has brought to my knowledge the fact that a series of 12 ceramics attributed to Mr. Chu Teh-Chun will be put to auction on the 25th of May 2008, at Christie's in Hong-Kong.

In connection with this, I would like to point out to you that legal proceedings undertaken by Mr. Chu Teh-Chun against the Enrico

Navarra Gallery and Mr. Francis Delille are pending at the present moment before the Paris Courts.

The proceedings are based on the fact that the Enrico Navarra Gallery and Mr. Francis Delille have not respected the conditions of the contract made with the artist in 2003: Mr. Chu Teh-Chun has never given written authorization to reproduce these ceramics. Until the present day Mr. Chu Teh-Chun has never received any information allowing him to check the exploitation of his oeuvre.

Additionally, Mr. Chu Teh-Chun has the greatest reservations about the authenticity of the ceramics at present in circulation which were produced by the Francis Delille factory and bear the mark of the Enrico Navarra Gallery.

Taking these proceedings into consideration, prudence consequently obliges you to withdraw the 12 ceramics in question from the sale which will take place on the 25th of May, 2008.

Of course I am completely at your disposition for any further information that you may consider useful.

I remain your faithfully.

William BOURDON

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124. On May 23, 2008, the Navarra Gallery served both Bourdon and Christie's a sworn report from a Huissier de Justice (an officer of the court), Emmanuelle Hocqueloux (the "Hocqueloux Report"), which had been prepared at Delille's request a year earlier in response to the April 2007 Complaint.

125. Ms. Hocqueloux reports that she went to La Tuilerie, was met there by Delille and Jean-Marie Foubert (the head of La Tuilerie), and saw the 24 trial proofs for the Plates, each of which, on the back, contained the handwritten words "*bon à tirer*," as well as the double signature of the artist.

126. Nevertheless, faced with Chu's purported "greatest reservations about the authenticity" of the Plates, Christie's withdrew the Plates from the sale.

127. On May 30, 2008, the Navarra Gallery sent a bailiff to serve Chu personally a demand that he write immediately to Christie's to confirm that the Plates that were to be offered at Christie's Hong Kong are authentic (the "May 30 Sommatation").

128. The May 30 Sommatation reflects that Chu responded to the bailiff by stating that he would send the May 30 Sommatation to his lawyer who would "respond if necessary."

129. Chu never wrote to Christie's to confirm the authenticity of the Plates.

130. At his deposition in the Federal Suit, Delille testified that the Christie's Hong Kong email was a turning point for him in that Chu had not previously "expressed any doubt as to the authenticity of the artwork. That was the first time that the issue of authenticity was ever raised."

131. Delille further testified that, after the Christie's Email, clients began demanding that he take back the Plates he had previously sold them.

132. The reason for this, Delille testified, was "... the clients may trust me as an individual, but they're still worried about the financial outcome and they said, 'Look, Francis, we can't afford to be mixed up in this. If there's any dispute then you have to buy the works back from us.'"

133. Mr. Navarra testified that, for the Navarra Gallery, the Christie's Email similarly was a turning point in that, while Chu was free to "sue me for breaches of contract for late payments, for whatever, even for things I did not do," he was not free to deny the authenticity of the Plates to third parties.

134. Consistent with that, Mr. Navarra testified that the Christie's Email was the first time he considered Chu to have breached the Production Agreement in any material way.

135. Those charges destroyed what Mr. Navarra considered the essential bargain of the Production Agreement:

This document here [the Production Agreement] is supposed to be the record of a good faith agreement between three parties, the Galerie Navarra which aims at making editions of ceramics, Francis Delille which aims at producing these ceramics, and Chu Teh-Chun who aims at making the work of art, and without that relationship there – there would be no such document. This – this document is really just – it's a step in something which a – that's the way it is in France, anyway, that it shows that people are getting together to – to enter into a transaction. And what we're buying here is a big thing, it's not a crate of tomatoes. You – you don't sign a check for – I don't know how much – 50 or € 70,000 a year and then pay for the films, and pay for the tryout and pay advances on sums that you haven't even perceived yet or on products that you haven't yet sold unless you believe that you have an agreement with the person that they are, in fact, going to provide you with the product that this agreement is about.

136. Delille further testified that, after Christie's cancelled the sale of the Navarra Gallery's Plates, he sought a meeting with Chu “with a view to explaining to him that the proceedings concerning Christie's were preposterous and to suggest we should meet and talk about it.”

137. Chu, who had worked so closely with Delille prior to the Christie's Email, never responded.

138. Delille then tried calling Thérèse Chu multiple times to set up an appointment, “but she was never able to give me a date.”

139. Instead, Thérèse Chu indicated that Delille should talk to Chu's son, Yvon Chu.

140. When asked at his deposition in the Federal Suit whether Thérèse ever explained why he should discuss the matter with Yvon Chu in particular, Delille testified:

“[m]y impression is that it was Yvon Chu who was handling this business.”

141. Ultimately, when Delille reached Yvon Chu, Yvon Chu told him that the “courts would not open before July, it was the summer recess, and that nothing would happen between now and then and that we could discuss this further after the courts were back in session.”

142. Delille never heard from Yvon Chu again.

143. Instead, on October 3, 2008, an advertisement denominated “Warning from M. Chu Teh-Chun” was published in the October 3 to October 16, 2008, edition of the Journal des Arts, a French art publication.

144. The text of the advertisement (the “JDA Ad”) is as follows:

#### **Warning from Mr. CHU TEH CHUN**

Mr. Chu Teh Chun, a French artist, had to start a lawsuit against Galerie Navarra, that is currently pending in the Paris District Court.

One of the main reasons for this legal action is the fact that various ceramic editions have been manufactured, distributed, marketed and put up for sale without Mr. Chu Teh Chun having signed a *bon à tirer* for each of them.

Notwithstanding all the reservations he expressed through his Counsel, Me William Bourdon, Attorney at the Paris Bar, some ceramics were put up for sale, in particular through CHRISTIE’S in Hong Kong in their auction “Chinese 20th century art” of May 25, 2008.

Reacting to a cease and desist notice from his Counsel, CHRISTIE’S decided to withdraw these ceramics from sale.

However, in order to safeguard his rights and in the hypothetical case that other ceramics coming from the workshops of the Navarra Gallery, and which were not authentic because they were not the subject of a *bon à tirer*, were put up for sale, Mr Chu Teh Chun warns whomever may be concerned against putting in the market ceramics so lacking authenticity

and notes in this context that everyone is responsible for making all necessary verifications before putting up for sale, buying or marketing such ceramics.

He also reserves the right to start any legal action for the purpose of ensuring preservation of his rights and to claim any damages in compensation for the loss that would be suffered.

145. The Journal des Arts bills itself as:

... the trade publication for the art world in France, Belgium and Switzerland ... It is aimed at those passionate about art: artists, high-profile collectors, art dealers, auctioneers, art historians, museum curators, trustees and institutional representatives. Our readers across the world range from major cultural institutions to festivals, exhibitions, art fairs and art professionals in general.

146. It claims to have a circulation of 25,000 and a readership of 78,000, ranging from “from major cultural institutions to festivals, exhibitions, art fairs and art professionals in general.”

147. However, for its early October edition, it claims to have an “extra circulation” of 50,000 copies in order to coincide with the Paris contemporary art fair, FIAC.

148. At his deposition in the Federal Suit, Mr. Navarra described the effect of the JDA Ad as “disastrous,” a harm that was then made irreversible by two tragic events: just three months after the JDA Ad, Chu, in January 2009, suffered his stroke, leaving him unable to communicate, and on March 25, 2014, he died.

149. Regarding the consequences of Chu’s stroke and death for the Navarra Gallery’s ability ever to enjoy the rights it paid for in the Production Agreement, Yvon Chu stated at his deposition in the Federal Suit that Chu’s heirs are now unable or unwilling to confirm the authenticity of the Plates: “[t]he *bons à tirer* are the work of my father, I don’t think that any of us, my own mother or myself or anybody can substitute for my father and speak for him in that way.”

**Defendants Caused Chu's Breach and The Resulting Damages**

150. The Second Circuit Court of Appeals in the Federal Suit has held that there is sufficient evidence for a jury to find that Defendants caused this harm to the Navarra Gallery's rights and expectations under the Production Agreement. S.A.R.L. Galerie Enrico Navarra v Marlborough Gallery Inc., 17-1477-CV, 2018 WL 4523610 [2d Cir Sept. 21, 2018].

151. That holding now has collateral estoppel effect here.

152. The evidence on which that conclusion was based includes the following.

153. From 1997, when the Navarra Gallery made its first significant investments in Chu's market, through the end of 2005, when Defendants first became involved in that market, the market for Chu's work appreciated dramatically.

154. Whereas Chu's auction record in 1997 was a mere \$47,000, that record, by the end of 2005, had climbed to \$500,000, 1000%, and Chu could boast consistent auction sales of his work for \$100,000 and up.

155. At 85 years old, however, Chu would see little of the financial rewards of this newfound success.

156. Moreover, despite improving dramatically, the market for his work remained confined to Western Europe and Asia, whereas Chu continued to harbor ambitions of fame and wealth in the United States.

157. Then he met Defendants.

158. Founded shortly after World War II, the Marlborough Gallery had been one of the most prominent and successful galleries in the world during the latter part of the 20th Century, associated with such giants of contemporary art as Mark Rothko, Francis Bacon, Adolph Gottlieb, and Robert Motherwell.

159. By the beginning of the 21st century, however, its stable of prominent artists had all but disappeared due to a series of public relations disasters, most notably the public exposure in litigation of its predatory practices toward Mark Rothko.

160. Accordingly, Defendants had begun to look to the emerging Asian contemporary art market as a way to revive the gallery's fortunes.

161. The difficulty for Defendants in executing on that plan was that, by 2001, other Western art dealers, such as the Navarra Gallery, were far ahead of them in establishing a presence and reputation in Asia.

162. As Koutouzis put it at his deposition in the Federal Suit, the Marlborough Gallery's "brand" in the Chinese world did not exist.

163. Koutouzis, who had spent some time in Asia and claimed friendships with a least one prominent Chinese contemporary artist, was hired by Defendants to change that.

164. At the time Defendants initially hired Koutouzis, in 2001, his assignment was to assist the Marlborough Gallery in obtaining a contract with a single specific Chinese contemporary artist wherein the Marlborough Gallery would represent that artist on an "exclusive world-wide basis."

165. Two years later, however, in May 2003, Koutouzis' role at the Marlborough Gallery was expanded to making the Marlborough Gallery the "favored" exhibition venue for Chinese artists and developing and maintaining "formal relationships" between the Marlborough Gallery and those Chinese artists.

166. In this new role, Koutouzis was given the title of the Marlborough Gallery's "Director for Asia."

167. By 2005, however, Koutouzis had largely failed to produce any results for Defendants.

168. Then Levai learned about Chu from a Paris art dealer friend, Patrice Trigano (“Trigano”).

169. Levai testified in the Federal Suit that he immediately saw the potential of Chu to help accomplish what Koutouzis thus-far had failed to accomplish – namely, “enhance Marlborough’s reputation as a dealer of Chinese art.”

170. Defendants, accordingly, lavished Chu with inducements to sign on as a Marlborough artist.

171. Where Chu had long dreamed of developing a collector base in the United States, Defendants promised to show 24 of Chu’s paintings in Marlborough’s “main gallery” in New York from May to June 2006, further promised to “do a beautiful catalogue and publicize the exhibition in important art magazines,” and further promised to feature Chu’s work at art fairs around the world.

172. Where Chu thus far saw relatively little of the rewards of the improving market for his work, Defendants promised to make him wealthy overnight – agreeing, “[i]n order to prove our commitment to your work,” to pre-purchase for millions of dollars the 24 paintings the Marlborough Gallery would be showing in New York.

173. Finally, Defendants offered Chu the opportunity to work on a prestigious ceramics edition project at Sèvres, the famous French ceramics foundry.

174. At his deposition in the Federal Suit, Yvon Chu testified as to why this was such a great honor for his father:

[T]he Manufacture de Sèvres is the place which is associated with places like Versailles and he was going to be working

there and it was a great honor for him to be in a place that was associated with a golden age and with the table setting at the Hôtel de Matignon and very historic places for French history, so it was very flattering to him.

175. All of these inducements came with obligations, however.

176. As Koutouzis' job description suggested, Defendants' goal in working with artists such as Chu was not to mount a single show of paintings or a single ceramics project, but to form a "formal relationship" that would advance the Marlborough Gallery's goal of becoming the "favored" exhibition venue for Chinese artists.

177. And, in Levai's view, that required exclusivity over Chu's market – or, as Levai put it in his deposition in the Federal Suit, that Marlborough Gallery would be Chu's "main dealer."

178. It is unclear whether Chu formally agreed to Levai's terms.

179. What is clear is that, from the time Chu started working with Defendants in 2006, until his stroke in 2009, the Chu family willingly complied with Defendants' efforts to end Chu's longstanding relationships with competing galleries.

180. For example, in early 2007, when Defendants learned that a long-time dealer of Chu work, Franck Pagès ("Pagès"), was planning a show of Chu's work at his gallery in Baden-Baden, Germany, Defendants prevailed on Chu to put an end to that.

181. As Koutouzis would later triumphantly report back to Levai: "The Baden-Baden dealer Franck Pagès is out of the race. After speaking with Beate Reifenscheid, the director of the Ludwig in Koblenz, I drafted a letter for Thérèse and Yvon Chu that they sent to Franck Pagès."

182. The letter worked: Pagès never got to mount the show and would never work with Chu again.

183. Nor was Pagès alone in being knocked “out of the race.”

184. In the decade from 1997, when the Navarra Gallery started investing in Chu, through 2006, when Chu started his relationship with Defendants, Chu worked with at least 15 different galleries.

185. From 2007 through the date of Chu’s stroke in 2009, however, only the Marlborough Gallery and the dealer who introduced Levai to Chu, Patrice Trigano, would get to mount shows of Chu’s work.

186. Moreover, even in Trigano’s case, Koutouzis had to reassure Levai that the exhibit would create no confusion about the Marlborough Gallery’s status as Chu’s “main dealer,” noting, in an email to Levai, that the individual writing the preface to the Trigano gallery catalogue is a “loyal friend, of this I am sure, and he is ours for all he did and eventually will do with us,” and “[f]urthermore, we could impose that at the end of the preface be printed a note explaining, e.g., ‘text written on the occasion of the exhibition of works on paper by CHU Teh-Chun at the Marlborough Gallery in New York...’ and add thanks to MG.”

187. No competitor, however, posed a greater threat to Defendants’ ambition to be Chu’s “main dealer” than the Navarra Gallery.

188. As Delille attested, the Navarra Gallery name already was strongly associated with Chu, particularly in Asia. Indeed, it was the Navarra Gallery that had created what Delille called the “aura” around Chu at the time.

189. Accordingly, upon learning of the Plates and the Navarra Gallery’s involvement with them, Defendants again acted to put a Marlborough Gallery competitor “out of the race.”

190. Upon information and belief, the fact that the Navarra Gallery was about to enter the “race” with the Plates first came to Defendants’ attention on November 28, 2006, when the Marlborough Gallery’s co-director, Gilbert Lloyd (“Lloyd”), emailed Levai lot descriptions for three Plates coming up for sale in Paris at Christie’s Post-War and Contemporary Art auction on December 5, 2006, and noted in his cover email that the three Plates were among the lots at the sale that were “of interest.”

191. The lot descriptions stated that each Plate was part of an edition of 40 exemplars and marked on the back “ENRICO NAVARRA LA TUILERIE.”

192. Upon learning this, Levai immediately dispatched Koutouzis to investigate further, as, just a few hours later in the day on November 28, 2006, Koutouzis emailed Levai with more information about the Plates, this time gathered from an auction listing for three other Plates coming up for auction.

193. Koutouzis wrote, as though continuing an earlier conversation: “So, the 3 ceramics will be sold at Briest’s on December 12 > they are among those produced by Navarra > 40 editions of each model, est: Eur 1000-1200 each.... Talk to you later, Philippe.”

194. When the documentary record produced in the Federal Suit picks up again, it is a little over two months later – in February 2007, in the same email in which Koutouzis reports putting Pagès “out of the race” – when Koutouzis reports back to Levai that he now has talked to Chu about the Production Agreement “many times,” that “one thing leading to another” he got a copy of the Production Agreement, that he found a “loophole” or a “flaw” that he believed could be used to “recover half if not all of the rights” in the Plates, and that he has referred Chu to his “lawyer friend,” Bourdon, to accomplish that goal.

195. Additional evidence indicates that these “many” discussions between Koutouzis and Chu about the Production Agreement started in January 2007, that Koutouzis explicitly urged Chu to sue the Navarra Gallery, and that, after introducing Chu to Bourdon, Koutouzis demanded that he be copied on all subsequent communications between the Chu family and Bourdon.

196. At least three facts show that these “many” discussions between Chu and Koutouzis in January 2007 were the “but for” cause of Chu’s determination to extricate himself from the Production Agreement, by breach if necessary.

197. First, January 2007 is in “early 2007,” which, according to Delille’s testimony, is when Chu first sought to cut the Navarra Gallery out of the Production Agreement in favor of an unnamed “client” who Chu believed would “buy the whole thing.”

198. Second, as recently as only a month before, on December 12, 2006, Chu had posed smilingly with the Plates for pictures to be used in the Navarra Gallery’s promotional materials for the Plates, evidencing that Chu, at that time, had no complaint with the Navarra Gallery and no intention to extricate himself from the Production Agreement.

199. Third, the Marlborough Gallery had previously bought all 24 Chu paintings it had shown in New York, and Koutouzis now was promising to get back “half if not all of the rights” in the Plates, evidencing that the Marlborough Gallery was the “client” Chu mentioned to Delille who would “buy the whole thing” if Delille agreed to cut the Navarra Gallery out of the Production Agreement.

200. Moreover, much as they did when Koutouzis ghostwrote the letter for the Chu family that put Pagès “out of the race,” Defendants, again through Koutouzis, spearheaded each of the subsequent attacks on the Production Agreement made in Chu’s name.

201. The first attack was the Cease and Desist Letter.

202. When Bourdon prepared a draft of the Cease and Desist letter, he sent it first to Koutouzis – not any member of the Chu family – for his review and comments.

203. Further, upon information and belief, Koutouzis then send that draft to Defendants, as Defendants, in the Federal Suit, produced a draft of the Cease and Desist Letter from their files, complete with handwritten annotations.

204. The evidence is similar with respect to the April 2007 Complaint.

205. For example, records of calls to and from Koutouzis' mobile phone during this period evidence that, on March 16, 2007, the day after the Navarra Gallery and Delille sent Bourdon letters rejecting the demands of the Cease and Desist Letter, Koutouzis, in New York, first talked with Yvon Chu, in Paris for nearly 40 minutes, then immediately called Bourdon, also in Paris, immediately after which he called Yvon Chu back and talked with him again, then immediately called Bourdon back and talked with him again, then called the Marlborough Gallery's headquarters in New York.

206. Similarly, on April 9, 2007, the day before the April 2007 Complaint was served on the Navarra Gallery, Koutouzis, in New York, called Bourdon, in Paris, and then, immediately after that conversation, called Yvon Chu, in Paris, and talked with him.

207. And on April 10, 2007, the day the April 2007 Complaint was served on the Navarra Gallery, Koutouzis, in New York, first called Bourdon twice, in Paris, and talked with him, then immediately called Yvon Chu, in Paris, and talked with him, and then called Marlborough Gallery's headquarters in New York later in the day.

208. The phone traffic after the Navarra Gallery served the Navarra Gallery Answer and Counterclaim is similar.

209. On Friday, December 14, 2007, the Navarra Gallery served that pleading.

210. On the following Monday, December 17, 2007, at 8:21 a.m. in New York, Koutouzis spoke first with Bourdon, in Paris, then immediately called Yvon Chu, in Paris, and then, apparently not reaching him, tried him again half an hour later, after which Koutouzis then called Bourdon back and talked with him.

211. The following morning, December 18, 2007, Koutouzis' first call of the day was to Bourdon, in Paris, immediately after which he called Yvon Chu and spoke to him.

212. The phone records are equally incriminating with respect to Defendants' involvement in the specific conduct by which Chu ultimately breached the Production Agreement – the Christie Email and JDA Ad.

213. Yvon Chu authorized the publication of the JDA Ad by signing an “ordre d’insertion,” giving final authorization for the publication of the advertisement, on September 26, 2008.

214. That “ordre d’insertion” indicates that the Journal des Arts required that the actual text of the JDA Ad be submitted three weeks prior to the publication date – or, September 12, 2008 (three weeks prior to the October 3, 2008, publication date).

215. The phone records for the period immediately preceding the September 12 deadline show that, on September 10, 2008, and into the early morning of September 11, 2008, Koutouzis, in China, talked with Yvon Chu, in Paris, multiple times, then unsuccessfully tried to reach Bourdon, then tried Bourdon again and talked with him briefly, then called Bourdon back half an hour later, at 12:25 a.m. in China, at which time he and Bourdon talked again.

216. Later in the day on September 11, 2008, Koutouzis, in China, was back on the phone with Bourdon and Yvon: at 2:28 p.m., China time, he unsuccessfully tried Bourdon

on Bourdon's mobile phone; later in the day he called Yvon Chu and talked with him, then immediately tried to reach Bourdon, then, shortly after an half hour call with Marlborough's headquarters, he tried Bourdon again, talked with him for two minutes, then immediately called Yvon and talked with him again.

217. To the extent the phone records are less effective in tying Defendants to the Christie's Email, that is because Koutouzis, during this period, made his calls using prepaid phone cards for which no records of calls were produced in the Federal Suit.

218. The surrounding phone records, however, evidence that Defendants once again spearheaded the attacks.

219. When asked at his deposition in the Federal Suit about the origin of the intervention in the Christie's Hong Kong auction, Bourdon testified that "...we only learned by happenstance that the sale in Hong Kong was taking place..."

220. When asked what that "happenstance" was, Bourdon responded: "I don't recall."

221. On May 6, 2008, however, 10 days before the May 16, 2008, Christie's Email, Yvon Chu, in Paris, called Koutouzis, in New York, at 9:04 a.m., and then again at 9:16 a.m., and then again at 9:17 a.m., and then again at 9:18 a.m., at which point they talked for 18 minutes.

222. Later that same day, after at least one phone call with the Marlborough Gallery's New York headquarters, Koutouzis called Yvon Chu back, first on Yvon Chu's mobile, then at his home number, and they talked again.

223. On the evening of May 7, 2008, Koutouzis flew to China, arriving in Beijing on May 8.

224. On the day he arrived in China, Koutouzis purchased a prepaid phone card, for which no records of calls were produced in the Federal Suit.

225. On May 15, 2008, the day before the Christie's Email was sent, Koutouzis flew from Beijing, arriving in Paris on May 16, 2008.

226. And on that day, as he had done in China, he purchased another prepaid phone card for which no records of calls were produced.

227. As for Defendants' specific contributions to the Christie's Email and JDA Ad, other evidence indicates that, as with Thérèse and Yvon Chu's letter to Pagès, Koutouzis once again ghostwrote the attacks.

228. The charge of inauthenticity, as both the Christie's Email and JDA Ad made clear, was based on the assertion that Chu never signed the required BATs authorizing the production of the Plates.

229. Exactly how that could be possible when Chu wrote the words "*bon à tirer*" in his own hand, along with his signature and often the date, on the back of the 24 trial proofs for each of the 24 editions, Bourdon tried to explain in pleadings submitted to the French court after the JDA Ad, in which he argued that there had to be *two* BATs for each of the 24 editions (the "Double BAT Theory").

230. That theory did not come from Bourdon or his firm.

231. When asked at his deposition where this Double BAT Theory came from, Bourdon testified: "I don't know how I or my firm could have invented that information."

232. All the evidence, instead, points to Defendants' "Director for Asia" – Koutouzis.

233. The record reflects that, by the time of the Christie's Email and JDA Ad, the Chu family was taking direction from Koutouzis on the more technical aspects of the art business.

234. As Koutouzis himself testified at his deposition in the Federal Suit, "Mr. Chu did not have very high – ... He didn't have an absolute command of the French language and probably what could be somewhat legal and things like that."

235. Indeed, for that reason, according to Koutouzis, the Chu family invited him to attend an October 10, 2006, meeting with a book publisher to discuss the contractual terms of a book in which the Marlborough Gallery had no other involvement.

236. According to Koutouzis, the Chu family invited him so that he would "ask the proper questions..."

237. Moreover, that advisory role ultimately included instructing the Chu family, on February 12, 2008 (three months before the Christie's Email and eight months before the JDA Ad), to set up an entity, Atelier Chu, for the sole purpose of producing a *catalogue raisonné* that could be used to police authenticity questions regarding Chu's work, a plan, according to Koutouzis, that had "been in our conversations."

238. And Koutouzis – not Chu himself, nor anyone else – was the person ultimately chosen to announce to the world, on the Atelier's behalf, the work on that *catalogue raisonné* and its importance in helping "detect fakes."

239. When combined with the other evidence of Koutouzis' role in the attacks on the Plates and the Production Agreement, it follows that the Double BAT Theory, having not been "invented" by Bourdon, could only have been invented by Koutouzis.

**The “Joint Defense” of The Federal Suit**

240. That Defendants in fact tortiously caused the ultimate breach of the Production Agreement, is evidenced further by the extensive efforts Defendants, Koutouzis, Yvon Chu and Bourdon made in the Federal Suit to hide Defendants’ role in the attacks on the Plates and the Production Agreement.

241. During the Federal Suit, Defendants, Koutouzis, Bourdon and Yvon Chu mounted what Koutouzis’ counsel, in a letter to the District Court successfully seeking the protection of a “joint defense privilege” for their communications, plainly characterized as a “joint defense” pursuant to which:

It is only natural that the parties’ counsel would communicate pursuant to a joint defense privilege in an effort to discuss and stay abreast of the various proceedings, share information, discuss and seek advice on potential legal issues, avoid unnecessary duplication of work, and coordinate overall legal strategy when possible.

242. In fact, however, this “joint defense” operated as a conspiracy to fraudulently conceal from the Navarra Gallery, the District Court, and the Second Circuit, Defendants’ central role in bringing about the breach of the Production Agreement and resulting harm to the Navarra Gallery’s interests.

243. Included in their wrongdoing was, upon information and belief, a coordinated effort to prevent the discovery of the relevant documentary record.

244. For example, Koutouzis was to be copied on all communications between Bourdon and the Chu family.

245. Yet, neither Koutouzis, nor Bourdon, nor Yvon Chu, nor Defendants provided any of those communications.

246. Compounding that prejudice, Defendants apparently deliberately waited to produce certain other critical evidence until it was too late for the Navarra Gallery to question witnesses about it.

247. For example, Defendants produced Koutouzis' phone records only after the depositions of Koutouzis, Bourdon and Yvon Chu – the latter two of which took over half a year to obtain through the Hague Convention.

248. Further, having either delayed in producing or failed to produce the most important documents in the case, the members of the joint defense aggravated the prejudice with deliberately false testimony.

249. Illustrative of this is their testimony regarding Defendants' role in the Cease and Desist Letter.

250. All the members of the joint defense – Defendants, Koutouzis, Bourdon and Yvon – swore emphatically, either in depositions or declarations, that neither Defendants nor Koutouzis played any role in drafting or the decision to send the Cease and Desist Letter.

251. Indeed, Bourdon alone swore five separate times in two different depositions that he did not seek and never would have sought Koutouzis' input on a draft of the Cease and Desist Letter prior to sending it, going as far as testifying: "That would be malpractice. The only person I share things with would be my client, not with any other parties."

252. It is now clear that all this testimony was false – that, in fact, Bourdon sought only Koutouzis' comments on and approval of the Cease and Desist Letter, not his "client's."

253. Moreover, despite knowing the truth, Defendants and Koutouzis successfully made this false sworn testimony about their noninvolvement in the Cease and Desist Letter a

centerpiece of their respective motions for summary judgment, and, in part on the basis of it, ultimately convinced the District Court to grant their respective motions.

254. Finally, the efforts of the members of the “joint defense” to conceal Defendants’ wrongdoing also came to involve, upon information and belief, witness tampering.

255. At the time of the Christie’s Email and the JDA Ad, Bourdon was assisted by an associate named Sophie Liotard (“Ms. Liotard”).

256. During the Federal Suit, the Navarra Gallery’s counsel contacted Ms. Liotard to see if she had any information pertinent to the Federal Suit and, if so, whether she would be willing to testify.

257. After explaining to Ms. Liotard that counsel represents the Navarra Gallery and that the Federal Suit concerned whether the Marlborough Gallery interfered in the Production Agreement, Ms. Liotard spontaneously implicated Koutouzis and indicated a willingness to testify.

258. Navarra’s counsel then contacted Defendants’ counsel, explained the testimony Ms. Liotard appeared willing to provide, and sought their consent to the issuance of a letter rogatory under the Hague Convention to Ms. Liotard, who lives in France.

259. Shortly after that request, Ms. Liotard retracted her willingness to provide testimony, which Defendants then used as a basis to argue, ultimately successfully, that the District Court should not grant the Navarra Gallery’s request for the issuance of a letter rogatory to Ms. Liotard.

260. Upon information and belief, counsel for Defendants reported Ms. Liotard’s willingness to testify and the substance of her expected testimony to counsel for Koutouzis,

who then reported it to Koutouzis, who then reported it to Bourdon, who then pressured Ms. Liotard not to testify.

261. All these efforts to conceal the truth of Defendants' central role in the harm to the Navarra Gallery combined to prejudice not just the Navarra Gallery, but the District Court and the Second Circuit Court of Appeals as well, in money, time and judicial resources.

## **CAUSES OF ACTION**

### **COUNT I**

#### **Tortious Interference With Contract**

262. The Navarra Gallery repeats the allegations above as though fully set forth herein.

263. The Production Agreement is a valid contract between the Navarra Gallery and Chu, among others.

264. Defendants were aware of the Production Agreement.

265. Defendants intentionally induced Chu to breach his obligations under the Production Agreement.

266. Chu breached those obligations when he allowed the authenticity of the Plates to be publicly and falsely denied in his name in the Christie's Email and the JDA Ad, thus rendering the Plates unsalable as authentic Chu artworks and depriving the Navarra Gallery of the fundamental expectation it bargained and paid for in the Production Agreement – namely, that it would own and be able to market and sell authentic Chu artworks.

267. That conduct is a breach of contract under French law by virtue of Articles 1134 and 1135 of the applicable version of the French Civil Code, which, together, impose on every party to a French contract an obligation not to take any action that unjustifiably would deprive its contract counterparty of the basic fruits of the contract.

268. The Navarra Gallery has suffered damages as a result of that breach in an amount to be determined at trial, but no less than \$18,000,000.

269. By reason of the foregoing, Defendants are liable for tortious interference with contract under New York law.

270. In addition, Defendants' conduct in the underlying tort as well as their conduct in concealing their wrongdoing through participation in a joint defense of the Federal Suit that involved coordinated discovery abuses, perjured testimony and, upon information and belief, witness tampering, warrants the imposition of punitive damages in an amount to be determined at trial.

**COUNT II**  
**Aiding and Abetting Tortious Interference With Contract**

271. The Navarra Gallery repeats the allegations above as though fully set forth herein.

272. As detailed above, all of the wrongful actions complained of herein were taken by Defendants or by Defendants' agent and employee, Koutouzis, on Defendants' behalf and for Defendants' benefit.

273. In the alternative, the allegations demonstrate that Defendants knowingly participated in and substantially assisted Koutouzis in his direct commission of tortious interference with the Production Agreement and that their assistance and encouragement was a substantial factor in causing the relevant actions and the damage to the Navarra Gallery that flowed therefrom, which damages total no less than \$18,000,00.

274. By reason of the foregoing, Defendants are liable for aiding and abetting tortious interference with contract under New York law.

275. In addition, Defendants' conduct in the underlying tort as well as their conduct in concealing their wrongdoing through participation in a joint defense of the Federal Suit that involved coordinated discovery abuses, perjured testimony and, upon information and belief, witness tampering, warrants the imposition of punitive damages in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, the Navarra Gallery respectfully requests that this Court enter judgment in its favor and against Defendants as follows:

- A. On Counts I and II: Damages in an amount to be determined at trial, but in no event less than \$18,000,000, plus pre- and post-judgment interest, plus costs, plus punitive damages; and
- B. Such other and further relief as the Court deems just and proper.

Dated: April 16, 2019  
New York, New York

WALLISON & WALLISON LLP

/S/ Jeremy Wallison

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