

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

LAILA COMPANY INTERNATIONAL LTD.
d/b/a CONNERY & ASSOCIATES FINE ART
INTERNATIONAL and ADRIEN MEYER,

Plaintiffs,

v.

NADEAU'S AUCTION GALLERY INC. and
JOHN DOE,

Defendants.

Civil Action No. 18 _____

COMPLAINT

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International Ltd. d/b/a Connery & Associates Fine
Art International and Adrien Meyer*

Plaintiffs Adrien Meyer (the “Buyer”) and LAILA Company International Ltd. d/b/a Connery & Associates Fine Art International (“C&A” or the “Buyer’s agent”), by their undersigned attorneys, assert these claims against Defendants Nadeau’s Auction Gallery Inc. (the “Nadeau Gallery”) and John Doe (the “Seller”) and allege and state as follows:

NATURE OF THE ACTION

1. This is an action to recover the price and associated costs paid for the purchase of a counterfeit painting that the Nadeau Gallery sold on behalf of an undisclosed seller.

2. The Buyer learned just days before the auction that the Nadeau Gallery had listed for sale a painting by the famous contemporary artist Wayne Thiebaud (“Thiebaud” or the “Artist”) to be sold at auction on January 1, 2018. In view of the imminent sale, the Buyer communicated directly with, and obtained oral and written representations from, the gallery regarding the authenticity of the painting (the “Painting”). Specifically, the President of the Nadeau Gallery made the unqualified oral and written representations that the Nadeau Gallery had confirmed with Thiebaud’s longtime gallery that it had previously sold the Painting, and that the Nadeau Gallery had spoken with the Artist himself and that “Mr. Thiebaud agreed it was his painting.” In reliance upon these unqualified representations, the Buyer submitted a winning bid for the Painting of \$1.08 million (including fees), which was confirmed by a written invoice to the Buyer (thereafter reissued to his agent) that likewise made the unqualified representation that the work was by “Wayne Thiebaud.”

3. Consistent with its representations made in connection with the sale, the Nadeau Gallery reiterated in its contemporaneous public disclosure of the sale that it had confirmed with the Artist’s gallery and the Artist himself that the work was authentic, stating that Thiebaud “confirmed that it was definitely his brush stroke.”

4. Notwithstanding the representations the Buyer secured from the Nadeau Gallery,

the Buyer's agent demanded that the Nadeau Gallery defer the closing of the sale and conveyance of the sale proceeds to the Seller to allow the Buyer's agent to obtain an independent confirmation from the Artist as to the authenticity of the Painting. The Nadeau Gallery agreed, and indeed, agreed to bear half the costs associated with the Buyer's independent confirmation of authenticity.

5. Working with the Artist's current gallery, the Buyer's agent delivered the Painting to the Artist for his personal inspection. The Artist confirmed the Painting was his work. Only then did the Buyer and his agent agree to the release of funds to the Seller.

6. Shortly thereafter, the Artist retracted his authentication and announced that the Painting was a forgery. The Buyer's agent provided timely notice of revocation and rescission of the sale, and promptly requested the return of its sales proceeds. The Nadeau Gallery unjustifiably refused to return the funds.

7. Moreover, after the Artist retracted his authentication, the Buyer's agent was advised that the Artist's assistant had apprised the Nadeau Gallery of authenticity concerns with the Painting before the auction, which the gallery had concealed from the auction participants.

8. If the Nadeau Gallery was not apprised of these authenticity issues before the sale, this is a straightforward action for rescission due to mutual mistake, breach of warranty and/or timely revocation. If the Nadeau Gallery was so apprised, it has engaged in egregious fraud, and is subject to punitive damages. Either way, at the very least, Buyer is entitled to recover the price paid for the Painting, as well as the costs associated with the sale.

THE PARTIES

9. Plaintiff Adrien Meyer (the "Buyer") is a French citizen who resides and works in New York, New York, maintaining a primary address at 21 West 75th Street, New York, NY 10023.

10. Plaintiff Connery & Associates Fine Art International (“C&A” or “Buyer’s agent”) is a Bahamian International Business Company headquartered at West Bay Street PO Box N4938 Nassau, Bahamas. The single shareholder of C&A is Stephane Connery, a Bahaman resident who, from time to time transacts business from his property in New York City at 930 Fifth Avenue New York, New York 10021.

11. Defendant Nadeau’s Auction Gallery Inc. (the “Nadeau Gallery”) is an auction house. It is a corporation organized under the laws of the State of Connecticut, with its principal place of business at 25 Meadow Road, Windsor, Connecticut 06095.

12. Defendant John Doe is the individual or entity that consigned the Painting to the Nadeau Gallery and who, upon information and belief, currently holds the majority of the funds paid for the Painting.

JURISDICTION AND VENUE

13. The Court has diversity subject matter jurisdiction and supplemental subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. §§ 1332(a)(2) and 1367. The Buyer is a citizen of France who resides and works in New York and C&A is a citizen of the Bahamas. The Nadeau Gallery is a citizen of Connecticut. The amount in controversy is no less than \$1,092,500, which is the total purchase price paid for the Painting plus certain authentication expenses incurred by the Buyer.

14. The Court has personal jurisdiction over Defendants because the claims asserted herein arise under a transaction that occurred in New York. The Buyer is a New York resident, and the Nadeau Gallery engaged in substantial communications concerning the terms of the sale and the authentication of Painting with the Buyer, the Buyer’s agent, and the Artist’s agents in New York.

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because the

sale was to the Buyer residing in this District and the Nadeau Gallery engaged in substantial communications concerning the terms of the sale and authentication of the Painting in this District. In addition, the Painting itself has been stored, and is physically located in this District, at 930 Fifth Avenue, New York, New York 10021. And the Artist viewed the Painting—and ultimately determined it was a forgery—while in this District.

FACTS

16. This dispute concerns the sale by the Nadeau Gallery of a painting it listed as the “Lollipop Tree (1969)” by the American painter Wayne Thiebaud, who is renowned for his whimsical and colorful depictions of everyday objects. An image of the Painting follows:



A. The Nadeau Gallery Lists the Painting as by Thiebaud

17. In late 2017, the Nadeau Gallery announced that it would be offering the Painting for sale in its New Year’s Day auction, on January 1, 2018.

18. To solicit interest in the sale, the Nadeau Gallery publicly and explicitly described

the Painting as a work by Wayne Thiebaud.

19. In late 2017, the Nadeau Gallery published a description of the Painting in its auction catalog (the “Catalog”) which it listed on the gallery’s public facing website and disseminated to prospective purchasers, including the Buyer. The Catalog described the Painting, as a “Wayne Thiebaud (b. 1920), oil on board under glass “Lollipop Tree” created in 1969, signed and dated in pencil bottom center: Thiebaud 1969, having Allan Stone Galleries, Inc. label on verso 48 East 86 Street N.Y. 28, N.Y., Exhibition: Allan Stone Gallery 1970 Exhibition, 13” x 10 1/4”.”

20. The Nadeau Gallery provided this same description of the Painting on the public facing website Bidsquare.

21. And on December 13, 2017, Nadeau’s arranged for an article to be published in an online industry publication regarding its upcoming auction. The article, which contained several quotes from the President of the Nadeau Gallery, Edwin Nadeau, Jr., described the work as “[a]n oil on board painting by Wayne Thiebaud (Am., b. 1920) titled Lollipop Tree.”

22. In each disclosure, the Nadeau Gallery provided an unqualified description of the Painting as a work by Wayne Thiebaud. None of the disclosures made reference to terms and conditions of sale.

B. The Buyer Learned of the Painting on the Eve of the Auction

23. On Friday, December 29, 2017, the last business day of the year, the Buyer first learned that the Painting was to be sold by the Nadeau Gallery on January 1, 2018. The Buyer learned of the imminent sale from a promotional email sent to the Buyer by the Nadeau Gallery.

24. The Buyer and the Buyer’s agent had never previously purchased or sold a Thiebaud painting, and had no expertise with respect to his works.

25. The Buyer therefore immediately called Edwin Nadeau, Jr., the President of the

Nadeau Gallery, to obtain a clear representation regarding the authenticity of the Painting.

C. The Nadeau Gallery Represents it Confirmed the Painting Was Authentic

26. On December 29, 2017, the Buyer spoke with Mr. Nadeau, and requested assurances as to the authenticity of the Painting.

27. Mr. Nadeau stated that he had confirmed the authenticity of the Painting from discussions with one of the galleries that had represented the Artist, and the Artist himself. The Buyer asked that Mr. Nadeau put his representations in writing. Mr. Nadeau complied.

28. By email dated December 29, 2017, Mr. Nadeau represented that the Nadeau Gallery had contacted Kate Barnwell and Wendy Hirsch of the Allan Stone Gallery in New York, which had been Thiebaud's principal New York gallery, and that Barnwell and Hirsch had affirmed that the Allan Stone Gallery "sold *this painting* circa 1970 from their gallery."

29. Mr. Nadeau also represented in his writing that the Nadeau Gallery had been in contact with Thiebaud to authenticate the Painting. Mr. Nadeau stated that he "sent [Thiebaud] high resolution photographs" of the Painting, and that "Mr. Thiebaud agreed that *it is his painting*."

30. The Nadeau Gallery and Mr. Nadeau did not equivocate or qualify their representations concerning the authenticity of the Painting. Moreover, at no time did the Nadeau Gallery or any of its agents mention that it had any concerns regarding, or possessed any information casting doubt on, the authenticity of the Painting.

D. The Parties Agreed to the Terms of Sale

31. During their December 29, 2017 call, the Buyer and the Nadeau Gallery discussed the material terms of the Buyer's participation in the sale. As mentioned, the central and material term of sale was the authenticity of the Painting as represented by the gallery. The Buyer also advised Mr. Nadeau that, should he submit a winning bid, the sale was conditioned

upon the re-invoicing to and acceptance by the Buyer's agent. The Nadeau Gallery agreed to these terms.

32. To participate in the sale, the Nadeau Gallery required the Buyer to provide his contact information and references regarding the available funds in his New York bank account. The Buyer agreed to those conditions and provided the requisite information.

33. In his December 29, 2017 email, Mr. Nadeau also specified logistics regarding the Buyer's participation in the sale.

34. These terms and conditions deviated from those the Nadeau Gallery required for the run-of-mill items it auctioned. Notably, the Nadeau Gallery typically requires a phone bidder to fill out a so-called "Absentee Bid Form" that incorporates and requires a bidder to assent to certain standard "Conditions of Sale." The Nadeau Gallery did not require the Buyer to complete that form or agree to those terms and conditions to participate in the sale, and the Buyer did not complete that form or agree to such terms. Nor did the Nadeau Gallery announce that its boiler-plate terms and conditions—which materially deviated from standard terms of sale for works of fine art by renowned artists—applied when it called the Buyer to bid in the auction.

35. The specified terms for this transaction were understandable. As Mr. Nadeau stated, the Painting was a unique work for his gallery to sell, and it was likely to fetch an exceptionally high price. Consequently, Mr. Nadeau was willing to and did in fact deviate from the typical terms and conditions of sale that pertain to typical auction items sold by the Nadeau Gallery. Because he reasonably understood the parties' negotiated agreement governed the sale, the Buyer was not even aware of the Nadeau Gallery's "typical" terms and conditions when it submitted its bid.

E. The Buyer Places the Conditional Winning Bid

36. In reliance upon the Nadeau Gallery's representations, on January 1, 2018, the

Buyer bid on the Painting by phone, and ultimately placed the winning bid. The Buyer's bid was predicated on the assumption and belief—established by Mr. Nadeau's representations, descriptions, and affirmations concerning the Painting, including those made in the Catalog and those made in written and oral communications between the Buyer and Mr. Nadeau directly—that the Painting was an authentic Thiebaud; the Buyer would not have bid on the Painting had he known it was not authentic.

37. As agreed, the Nadeau Gallery issued an initial invoice to the Buyer on January 1, 2018, and subsequently re-issued the invoice to the Buyer's agent, which timely transmitted the sale proceeds to the Nadeau Gallery. The invoices specified the terms of the parties' sale and purchase agreement, as informed by and consistent with the Nadeau Gallery's prior representations, and affirmed and modified by its subsequent representations and course of performance.

38. In both invoices, the Nadeau Gallery made the same unqualified representation as to the authenticity of the Painting that it previously made. Specifically, under the heading "**Description**" of the item sold, the invoice stated "Wayne Thiebaud (b.1920), oil on board under glass "Lollipop Tree" created in 1969, signed and dated in pencil bottom center: Thiebaud 1969, having Allan Stone Galleries, Inc. label on verso 48 East 86th Street N.Y. 28, N.Y., Exhibition: Allan Stone Gallery 1970 Exhibition, 13" X 10 1/4"."

39. Consistent with the parties' negotiated agreement, the invoices did not make any reference to boiler plate terms and conditions on the Nadeau Gallery's website.

F. The Nadeau Gallery Reaffirms the Painting's Authenticity

40. After the sale, the Nadeau Gallery reiterated its unqualified representations concerning the authenticity of the Painting.

41. In an interview with the *Art Market Monitor* published on January 4, 2018, Mr.

Nadeau represented that he had undertaken due diligence to confirm the authenticity of the Painting. He stated that, among other things, he had spoken with the Artist regarding the Painting who “confirmed it was his” and that “it was definitely his brush stroke.”

42. Nadeau also emphasized in the article that the Painting bore an Allan Stone Gallery label on the back, which was the gallery that had represented Thiebaud.

43. Nadeau did not qualify these absolute representations in any way.

44. Further acknowledging the materiality of the Painting’s authenticity to the transaction, Mr. Nadeau also stated that he had selected the pre-auction projected price of the Painting based on the assumption that it was an authentic Thiebaud work.

G. The Nadeau Gallery Agrees to Defer the Sale

45. Shortly after the auction concluded, the Buyer’s agent learned of a second, similar painting that had been sold by another auction house in 1987. Although it is not unusual for an artist to generate a series of similar works, the Buyer’s agent decided additional inquiry was required to confirm the authenticity of the Painting with the Artist.

46. Accordingly, on January 16, 2018, the Buyer’s agent called Mr. Nadeau and advised the Nadeau Gallery of the Buyer’s agent’s findings and its plan to obtain an independent authentication of the Painting from Thiebaud. The Buyer’s agent requested that the Nadeau Gallery defer the closing of the sale and distribution of proceeds to the Seller pending such confirmation. The Nadeau Gallery agreed to this request.

47. Immediately after the call, the Buyer’s agent sent the Nadeau Gallery an email memorializing their conversation. In the email, the Buyer’s agent reiterated its “concern about the extreme similarity of this painting with [another painting]” and “reaffirm[ed]” its instruction that the Nadeau Gallery “hold off on paying the seller until I resolve the important questions and concerns which I raised in our conversation.”

48. The email from the Buyer's agent was followed by an email from its attorney to the Nadeau Gallery confirming the "previous instructions not to release any of his funds pending resolution of his justifiable concerns regarding the represented authenticity of this work." As noted, the Nadeau Gallery acceded to these demands and refrained from paying the funds to the Seller.

49. Indeed, in response to these emails and to assist with the authentication, Mr. Nadeau forwarded to the Buyer's agent information describing the steps the Nadeau Gallery purportedly took to authenticate the Painting. Mr. Nadeau provided the name of a representative of the Allan Stone Gallery and the name and contact information for Thiebaud's assistant, both of whom Mr. Nadeau had purportedly spoken with in his earlier efforts to authenticate the Painting. Mr. Nadeau also forwarded to the Buyer's agent an email exchange between the Nadeau Gallery and the Allan Stone Gallery in 2017 concerning the authenticity of the Painting.

50. As its response demonstrates, the Nadeau Gallery clearly understood that the authenticity of the Painting was the central and material term of the parties' bargain.

51. The Nadeau Gallery corresponded with the Buyer's agent and its associates while they were in New York City concerning the authentication concerns, the deferment of the consummation of the sale, and the subsequent steps taken to obtain the Artist's assurances as to the Painting's authenticity.

H. Thiebaud Authenticates the Painting But Not His Signature

52. Coordinating through the Artist's current gallery located in New York City, the Buyer's agent secured the Artist's agreement to review the Painting for its authenticity.

53. On February 1, 2018, Thiebaud viewed the Painting in person and stated that it was authentic. However, Thiebaud also concluded that the signature on the canvas on the bottom center of the Painting was not his.

54. On February 12, 2018, the Buyer's agent advised the Nadeau Gallery that it had "confirmed that [the Painting] was, according to Wayne from his hand. . . . all apart from the signature that he was adamant was not." The Buyer's agent stated that he would endeavor to have the existing signature removed and to have Thiebaud sign the Painting as his own.

55. The Buyer's agent also requested that the Nadeau Gallery "hold off either until early next week to pay out your seller or alternatively only pay out 50% while we await the 'signature'." The Nadeau Gallery agreed to defer distribution of the sales proceeds subject to the Artist's signature of the Painting.

56. On February 15, 2018, Thiebaud attested to his authentication by signing the Painting twice—on the stretcher and on the Allan Stone Gallery label affixed to the back of the work.

57. The Nadeau Gallery agreed to pay, and did pay, half the costs incurred to conform the Painting to its represented status, including the costs of shipping the Painting to Thiebaud for authentication and signing, as well as the costs of removing the existing signature.

58. The Nadeau Gallery communicated with the Buyer's agent in New York City concerning these authentication measures and adjustments to the deal terms.

I. The Sale is Effectuated Premised on Artist's Authentication

59. Having obtained the same affirmation from the Artist concerning the authenticity of the Painting that the Nadeau Gallery represented it had obtained, on February 19, 2018, the Buyer's agent gave the Nadeau Gallery its permission to release the funds to the Seller.

60. Only after receiving that direction did the Nadeau Gallery release the funds to the Seller.

J. Connery Provides Prompt Notice of New Authenticity Issues

61. On April 11, 2018, the Buyer's agent was advised by the auction house that had

sold the work similar to the Painting that it had concerns regarding the authenticity of the Painting arising from its familiarity with Thiebaud's works.

62. Promptly thereafter, on April 13, 2018, the Buyer's agent emailed the Nadeau Gallery to provide notice of the new authenticity concerns, recommending that the gallery "warn your seller that we will have to cancel the Nadeau transaction with immediate effect" in the event the concerns were substantiated.

63. To address the new concerns, the Buyer's agent arranged for the Artist to view the Painting again in New York together and compare it to the similar work that had been sold previously.

64. The Buyer's agent gave the Nadeau Gallery prompt notice of this plan by email dated April 16, 2018. The Buyer's agent reiterated that "in case there is an issue once Wayne sees both [paintings] I strongly recommend that you warn your original seller that we ma[y] need recourse and in the meantime ask him to provide whatever other provenance he can" The Buyer's agent reiterated these points in a follow-up email to the Nadeau Gallery on April 18, 2018.

65. The Nadeau Gallery did not respond to the April 16 and 18 emails.

K. Thiebaud Retracts his Authentication

66. On May 11, 2018, in New York City, Thiebaud personally viewed the Painting alongside high resolution photographs of the other similar work.

67. Thiebaud concluded that the Painting was a forgery and that it was not authentic.

L. Plaintiff Promptly Provides a Revocation Notice to the Nadeau Gallery

68. On May 18, 2018, counsel for the Buyer's agent provided a formal rescission notice to the Nadeau Gallery.

69. The notice letter stated in plain terms that, in view of the evident mutual mistake

as to the authenticity of the Painting, the Buyer's agent "hereby rescind[s] the transaction pursuant to which it was proposed that our client acquire . . . a certain painting, described as "Lollipop Tree (1969)", which was represented to be the work of the renowned artist Wayne Thiebaud."

70. The letter "demand[ed] prompt repayment of the total consideration paid by [Plaintiffs] to your company earlier this year, based on an invoice which . . . was materially inaccurate, namely \$1,080,000, plus expenses incurred by [Plaintiffs] of no less than an additional \$12,500."

M. The Nadeau Gallery Refuses to Rescind the Sale

71. By letter from its New York counsel dated May 30, 2018, the Nadeau Gallery refused to rescind the sale or return the purchase price. But the gallery's response only served to underscore the existence of a mutual mistake warranting the rescission of the sale.

72. The Nadeau Gallery's letter, which does not deny that the Painting is a forgery, opens with its acknowledgement that rescission is the appropriate remedy for mutual mistake. The letter thereafter affirms that the sale and purchase was deferred to allow both parties to confirm the Artist's purported verification that the Painting was his, thereby acknowledging that its authenticity was at the heart of the parties' transaction.

73. Moreover, the Nadeau Gallery repeatedly concedes in its letter that the Buyer's agent conducted extensive due diligence in an effort to authenticate the Painting "prior to [the] purchase." In conducting that due diligence, not only did the Buyer secure direct representations from the Nadeau Gallery concerning its authentication of the Painting, the Buyer's agent obtained independent verification from the Artist himself of those representations. As the Nadeau Gallery acknowledges, the Buyer's agent had "Mr. Thiebaud himself directly examine and authenticate the Painting." Thus, accepting the Nadeau Gallery's representations concerning

its own due diligence and understanding, *both* parties were operating under a mistaken belief as to the authenticity of the Painting—due to the assessments of the Artist himself. The presence of this mutual mistake establishes the Buyer’s right to rescission.

74. In its letter, the Nadeau Gallery also attempted to walk away from its repeated unqualified representations concerning the authenticity of the Painting. It did so, not by disputing that it had made the representations (because it could not), but by asserting that its standard terms and conditions on its website disclaimed any liability for its express warranties. But the Nadeau Gallery did not (because it could not) assert that the Buyer had agreed to those standard terms. It could not do so because, as the record clearly shows, the Buyer and the Nadeau Gallery agreed to specific terms governing this unique sale that deviated from the gallery’s boiler plate terms for its run-of-the-mill transactions. The Nadeau Gallery’s express affirmations and descriptions of the Painting as a Thiebaud work went to the heart of the parties’ bargain, as well-demonstrated by the parties’ course of performance. Moreover, any such disclaimer would directly conflict with and be rendered ineffective by the Nadeau Gallery’s repeated, explicit and unequivocal representations, descriptions, and affirmations of fact concerning the Painting’s authenticity.

75. The Nadeau Gallery’s refusal to effectuate the rescission of the sale and refund the purchase price was therefore unjustified, contrary to trade practices, and in bad faith.

N. Thiebaud’s Assistant Refutes the Nadeau Gallery’s Representations

76. During the entirety of the parties’ many discussions and interactions leading to the consummation of the sale, the Buyer and the Buyer’s agent reasonably relied upon the representations made by the Nadeau Gallery concerning the authentication of the Painting as true and complete.

77. After it sent its revocation notice, however, the Buyer’s agent for the first time

received information establishing that the Nadeau Gallery had failed to disclose material information concerning the authenticity of the Painting that the gallery had obtained prior to the auction and prior to its conversations with the Buyer and the Buyer's agent.

78. On May 18, 2018, the Buyer's agent received an email that Thiebaud's assistant had sent to the Artist's current gallery concerning authenticity issues she had raised with the Nadeau Gallery in mid-December 2017. The email states that *"In regard to the Nadeau matter, I spoke with Eddie [Nadeau] in mid-December. At that time, he was informed that the work did not appear to be 'right' and the provenance was questioned. I also told him the signature does not bear any resemblance to Wayne's typical signature. Basically, the piece was questionable."*

79. Notwithstanding the repeated inquiries by the Buyer and the Buyer's agent, at no time prior to the consummation of the sale did the Nadeau Gallery disclose such authenticity concerns to the Buyer or the Buyer's agent. These material concerns were particularly within the Nadeau Gallery's knowledge, which intentionally concealed them from the Buyer and the Buyer's agent.

80. The Artist's assistant also stated that it was not true that—as the Nadeau Gallery had represented—before the auction "Mr. Thiebaud agreed that it was his painting" or that "it was definitely his brush stroke." The Buyer and the Buyer's agent would not have participated in the auction or the purchase of the Painting had they known that the Nadeau Gallery's representations concerning the authenticity of the Painting were false and misleading.

CLAIMS FOR RELIEF

FIRST CLAIM

**BREACH OF EXPRESS WARRANTY
UNDER NY CLS UCC § 2-313 AND NEW YORK COMMON LAW**

(AGAINST THE NADEAU GALLERY AND JOHN DOE)

81. Plaintiffs reallege and incorporate by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein in full.

82. As detailed above, the Nadeau Gallery repeatedly represented and warranted that the Painting was an authentic Wayne Thiebaud work of art. The representations and warranties were explicit and unqualified.

83. The Nadeau Gallery made the representations before the auction publicly and in oral and written statements to the Buyer and the Buyer's agent.

84. The Nadeau Gallery affirmed those representations and warranties after the auction both publicly and in written and oral correspondence to the Buyer and the Buyer's agent.

85. Acknowledging the materiality of the express representations and warranties of authenticity it made, the Nadeau Gallery agreed to defer consummation of the sale until the authenticity of the work had been established to both parties' satisfaction, and agreed to pay one-half of the costs to authenticate and conform the Painting to the representations made.

86. The express representations and warranties are valid and were not disclaimed by the gallery's boiler plate conditions of sale, which did not govern the parties' sale.

87. The Buyer's agent provided timely notice of the breach of the express warranty of authenticity and of his intent to rescind the transaction by letter dated May 18, 2018.

88. Defendants' breach of the express warranty of authenticity of the Painting entitles Plaintiffs to recover the full purchase price of \$1,080,000 plus \$12,500 in expenses incurred in establishing the authenticity of the Painting.

SECOND CLAIM

**DECLARATION OF REVOCATION
UNDER NY CLS UCC § 2-608 AND NEW YORK COMMON LAW**

(AGAINST THE NADEAU GALLERY AND JOHN DOE)

89. Plaintiffs reallege and incorporate by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein in full.

90. The parties contracted for the sale and purchase of an authentic work by renowned artist Wayne Thiebaud titled “Lollipop Tree.” The Buyer’s acceptance of the Painting was predicated on its authenticity, as that was a material term to the parties’ bargain.

91. The Artist’s retraction of his authentication of the Painting and declaration that it was forged for the first time revealed that the Painting did not conform to the material terms of the sale and that its non-conformity substantially impaired the value of the Painting.

92. The Buyer’s acceptance of the Painting was reasonably induced both by the difficulty of the discovery of its inauthenticity and by the Nadeau Gallery’s assurances.

93. The Buyer’s agent timely and appropriately revoked the Buyer’s acceptance by its counsel’s letter dated May 18, 2018.

94. Plaintiffs are entitled to a declaration that Plaintiffs validly revoked their acceptance of the Painting under NY CLS UCC § 2-608, and to an order requiring Defendants to repay Plaintiffs the full purchase price of \$1,080,000 plus \$12,500 incurred by Plaintiffs in connection with the attempted authentication.

THIRD CLAIM

MUTUAL MISTAKE UNDER NEW YORK COMMON LAW

(AGAINST THE NADEAU GALLERY AND JOHN DOE)

95. Plaintiffs reallege and incorporate by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein in full.

96. Plaintiffs and Defendants intended to contract for the sale and purchase of an authentic Thiebaud work titled “Lollipop Tree.”

97. The authenticity of the Painting was the central and material term of the parties' sale.

98. The Buyer and Buyer's agent undertook appropriate and reasonable due diligence regarding the authenticity of the Painting by (i) demanding and securing assurances and representations and warranties from the Nadeau Gallery regarding the authenticity of the Painting, and (ii) obtaining the Artist's own representation as to the authenticity of the Painting.

99. The authenticity of the painting was a material and foundational part of the bargain such that absent such authenticity, there was no meeting of the minds between the parties and no valid contract.

100. The parties' mutual mistake as to the authenticity of the Painting entitles Plaintiffs to the remedy of rescission and to a return of the full purchase price plus incidental costs related to the purchase.

FOURTH CLAIM

FRAUDULENT INDUCEMENT AND CONCEALMENT UNDER NEW YORK COMMON LAW

(AGAINST THE NADEAU GALLERY)

101. Plaintiffs reallege and incorporate by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein in full.

102. In mid-December 2017, before the sale, the Artist's assistant made material representations and disclosed material facts to the Nadeau Gallery calling into question the authenticity of the Painting.

103. The Nadeau Gallery actively concealed those representations and facts from the Buyer and the Buyer's agent, knowing that the failure to disclose those facts rendered false and misleading the representations made by the Nadeau Gallery.

104. The Nadeau Gallery had a duty to disclose those representations and facts having made affirmative and unqualified representations concerning the authentication of the Painting that were rendered false and misleading by the omissions.

105. The Nadeau Gallery also fraudulently misrepresented that it had confirmed with the Artist prior to the auction, through his assistant, that the Painting was an authentic Thiebaud. The Nadeau Gallery falsely represented that “Mr. Thiebaud agreed that it was his painting” and that “it was definitely his brush stroke.” In fact, neither the assistant nor the Artist made such representations prior to the auction.

106. The Buyer and Buyer’s agent reasonably relied to its detriment upon the Nadeau Gallery’s partial, false, and misleading representations in deciding to submit a bid and proceeding to purchase the Painting.

107. The Nadeau Gallery’s fraudulent inducement and concealment entitles Plaintiffs to rescission of the sale and purchase of the Painting.

108. The Nadeau Gallery’s fraudulent inducement and concealment also and/or alternatively entitles recover compensatory and punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following:

- A. An award of general damages in an amount no less than \$1,092,500, which represents the full purchase price of \$1,080,000, plus \$12,500 in authentication expenses incurred by Plaintiffs.
- B. An award of incidental and consequential damages in an amount to be determined at trial.
- C. An award of punitive damages in the amount no less than multiple times the actual damages award.
- D. An award of Plaintiffs’ attorneys’ fees, expenses, and costs.
- E. An award of pre-judgment and post-judgment interest.

F. Any other relief the Court deems just and proper.

JURY DEMAND

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

Dated: New York, New York
June 22, 2018

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