SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

MAFG ART FUND, LLC, and MACANDREWS & FORBES GROUP LLC

Plaintiffs,

v.

LARRY GAGOSIAN and GAGOSIAN GALLERY, INC.

Defendants.

Index No.: _____

SUMMONS

TO:

LARRY GAGOSIAN
980 Madison Avenue
New York, NY 10075

GAGOSIAN GALLERY, INC.
980 Madison Avenue
New York, NY 10075

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Venue is proper in this Court because Plaintiffs and Defendants reside in the County of New York and because a substantial part of the events giving rise to this action occurred in the County of New York.

Dated: New York, New York
September 12, 2012

THE FLEISCHMAN LAW FIRM

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

MAFG ART FUND, LLC, and MACANDREWS & FORBES GROUP LLC *Plaintiffs*, v. LARRY GAGOSIAN and GAGOSIAN GALLERY, INC. *Defendants*.	Index No.: _____ **COMPLAINT**

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Plaintiffs MAFG Art Fund, LLC ("Art Fund") and MacAndrews & Forbes Group, LLC ("MacAndrews"), by their undersigned counsel, The Fleischman Law Firm, bring this action against Defendants Larry Gagosian and Gagosian Gallery, Inc. (collectively, "Gagosian" or "Defendants"), and allege as follows, upon knowledge as to themselves and their conduct, and upon information and belief as to all other matters:

INTRODUCTION

1. This action concerns a scheme perpetrated on Plaintiffs by Gagosian Gallery, Inc. and its founder and owner, Larry Gagosian. Together, Defendants concealed material information from Plaintiffs and used their dominant position in the contemporary art world to manipulate the price of a certain artwork in transactions with Plaintiffs in gross violation of the fiduciary duties owed to Plaintiffs. As a result of Defendants' wrongful actions, Gagosian was enriched by millions of dollars at Plaintiffs' expense.

2. Gagosian is the most powerful dealer in the contemporary art world, with twelve galleries worldwide, including three locations in New York City. Gagosian represents artists and the estates of artists such as Damien Hirst, Richard Serra, Cy Twombly, Andy Warhol, and Jeff Koons. His clients include actors, entertainment executives, billionaire philanthropists, and financiers.

3. Gagosian's position in the art world is well-known. Major business magazines have written about Gagosian's dominance in the art market. A recent *Forbes*

article described Gagosian as a "superdealer" and the "most powerful" art dealer in the world.[1]

4. Likewise, a recent *Wall Street Journal* article described Gagosian's tremendous influence and power. This article noted that Gagosian represents 77 of the world's top artists or their estates, sells upwards of $1 billion of art a year, and conducts many of the biggest sales himself. The article also explained that it is famously difficult to determine which artist will have lasting cultural significance over decades or centuries, and which will be a flash in the pan – and that this uncertainty gives top dealers like Gagosian enormous power to influence the art market.[2]

5. Similarly, a recent New York *Times* article discussed Gagosian's power and described Gagosian as "a one-man Nasdaq, an exchange where he helps set the price, not to mention the size of his commission."[3]

6. Ronald Perelman is the Chairman and Chief Executive Officer of MacAndrews & Forbes Holdings Inc., a diversified holding company with interests in consumer products, entertainment, financial services, biotechnology, and gaming, among other fields. MacAndrews & Forbes Holdings Inc. invests in art through various of its wholly owned subsidiaries, including Art Fund and MacAndrews. For over twenty years,

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[1] Caleb Melby, *Larry Gagosian, Andy Warhol and the Rise of the Superdealer*, FORBES, May 3, 2012, reprinted at htt://www.forbes.com/sites/calebmelby/2012/05/03/larry-gagosian-andy-warhol-and-the-rise-of-the-superdealer/.

[2] Kelly Crow, *The Gagosian Effect*, THE WALL STREET JOURNAL, April 1, 2011, reprinted at http://online.wsj.com/article/SB10001424052748703712504576232791179823226.html.

[3] David Segal*, Pulling Art Sales Out of Thinning Air,* THE NEW YORK TIMES, Mar. 7, 2009, reprinted at http://www.nytimes.com/2009/03/08/business/08larry.html?pagewanted=all.

Gagosian has been a constant and trusted art advisor and mentor to Mr. Perelman, MacAndrews and Art Fund, which have relied heavily on Gagosian's advice and guidance regarding desirable artists, market demand, and the value of specific works of art. Mr. Perelman and Plaintiffs have depended through the years on Gagosian to advise them on these matters when buying and selling works of art. As set forth in more detail below, Gagosian and Plaintiffs have worked together for over twenty years and Gagosian has been involved in some of the most significant art transactions undertaken by Plaintiffs. Plaintiffs' relationship with and reliance on Gagosian and Gagosian's superior – indeed, unique – knowledge of the market for contemporary art created a fiduciary relationship.

7. Despite this longstanding fiduciary advisory relationship between the parties, in 2010 through 2012, Gagosian took advantage of his position of trust and made fraudulent statements and omissions to induce Plaintiffs to enter into a lopsided agreement involving a trade of a fraudulently valued work of art.

8. Specifically, Gagosian abused his position of trust by fraudulently concealing material information in order to induce Plaintiffs to purchase a sculpture by the prominent artist Jeff Koons. Gagosian's misrepresentations wrongfully placed him in a position of much greater power than Plaintiffs, a position he later used to force Plaintiffs to trade the work to Gagosian at significantly below its fair market value, enriching Gagosian at Plaintiffs' expense and in violation of Gagosian's fiduciary duty. In addition, Gagosian breached the original purchase contract by failing to timely deliver the sculpture.

9. Gagosian's conduct constituted a fraud on Plaintiffs and a breach of his longstanding fiduciary duties. Accordingly, Plaintiffs bring this action for fraud, breach of fiduciary duty, unjust enrichment, breach of contract and negligent misrepresentation against Defendants in order to recover the millions of dollars of damages Plaintiffs suffered as a result of Gagosian's scheme.

PARTIES

10. **Plaintiff MAFG Art Fund, LLC** is a limited liability company existing under the laws of Delaware having its principal place of business at 35 East 62nd Street, New York, NY 10065. Its sole member is MacAndrews & Forbes Group, LLC.

11. **Plaintiff MacAndrews & Forbes Group, LLC** is a limited liability company existing under the laws of Delaware having its principal place of business at 35 East 62nd Street, New York, NY 10065. Its sole member is a wholly owned subsidiary of MacAndrews & Forbes Holdings Inc. Ronald Perelman, through MacAndrews & Forbes Holdings Inc., is indirectly the sole member of Art Fund and MacAndrews. Mr. Perelman is also the Chairman and Chief Executive Officer of MacAndrews and, through this position, frequently acted on behalf of Art Fund and MacAndrews with respect to the matters at issue in this Complaint.

12. **Defendant Larry Gagosian** is a major international art dealer, recognized as the most powerful art dealer in the world. Mr. Gagosian owns Gagosian Gallery, Inc. and is a resident of New York.

13. **Defendant Gagosian Gallery, Inc.** is Larry Gagosian's chain of art galleries. Upon information and belief, Gagosian Gallery, Inc. is a corporation organized under the laws of the State of New York, with its principal place of business at 980

Madison Avenue, New York, NY 10075. Gagosian Gallery, Inc. has three art galleries in New York City (at 980 Madison Avenue; 555 West 24th Street; and 522 West 21st Street); two art galleries in California (in Beverly Hills and La Jolla); two art galleries in London; and art galleries in other prominent locations throughout the world, including Paris, Rome, Geneva, Athens and Hong Kong. Gagosian Gallery, Inc. is known for dealing with the works of prominent living artists such as Mark Tansey, Richard Serra, Jeff Koons, Damien Hirst and Eric Fischl, and famous deceased artists including Roy Lichtenstein, Willem de Kooning, Edwin Parker "Cy" Twombly, Jr., Richard Avedon, Jackson Pollock, Robert Rauschenberg, Andy Warhol and Pablo Picasso.

JURISDICTION AND VENUE

14. This Court has personal jurisdiction over Defendants Larry Gagosian and Gagosian Gallery, Inc. because they reside in and do business in the State and County of New York, and because this action arises out of conduct that took place in the State and County of New York.

15. Venue is proper in this Court because Plaintiffs and Defendants reside in the County of New York and because a substantial part of the events giving rise to this action occurred in the City, County and State of New York. The art involved in this action was located, consigned, installed, stored, marketed, traded, sold, attempted to be traded and/or attempted to be sold in the City, County and State of New York. In addition, many of the material misstatements and omissions alleged in this Complaint were made in the City, County and State of New York.

STATEMENT OF FACTS

Gagosian's Longstanding Advisory Relationship of Trust with Plaintiffs

16. For over twenty years, Defendants Larry Gagosian and Gagosian Gallery, Inc. have acted as art dealers, agents and trusted art advisors to Ronald Perelman and entities owned by Mr. Perelman, including Plaintiffs.

17. As part of this relationship, Gagosian regularly advised Mr. Perelman, individually and as the Chief Executive Officer of each of the Plaintiffs, regarding the market and intrinsic value of particular works of art, gave guidance as to the market and intrinsic worth of various artists and their art generally, and advised on specific pieces to buy or sell. Mr. Perelman, individually and as the Chief Executive Officer of MacAndrews and Art Fund, came to depend on Gagosian, whose knowledge of the market and judgment in these matters were without peer.

18. Over the decades of their personal and professional relationship, Gagosian educated Plaintiffs on new and established artists and had a major influence on their acquisition of art. Gagosian introduced Plaintiffs to major contemporary artists like Jeff Koons, Richard Serra and Cy Twombly, and arranged for Plaintiffs to purchase many new works by these and other contemporary artists. For example, Gagosian organized a major commission by Roy Lichtenstein that was installed in Mr. Perelman's corporate offices in the early 1990s.

19. Buyers completed a significant number of transactions with and through Gagosian during this period. These transactions include purchasing works of art from Gagosian, selling works of art to Gagosian, and exchanging works through Gagosian. They also include consigning pieces to Gagosian.

20. Gagosian and Mr. Perelman spoke to and saw each other often to discuss art, as well as other matters, and developed a close relationship. Mr. Perelman valued the

advice he received from Gagosian and relied on Gagosian's unique and intimate knowledge of the contemporary art world.

21. In addition to their relationship concerning art, Gagosian and Mr. Perelman are also friends and have been business partners outside of the art world. For example, Mr. Perelman and Gagosian, with others, invested as partners in the re-opened Blue Parrot restaurant in East Hampton, New York. They have been guests in each other's homes, have met often for dinner or drinks, and have attended the same social events.

22. The potent combination of Gagosian's unparalleled knowledge and dominant position in the art world, along with the parties' longstanding friendship, Gagosian's position of trust in advising Plaintiffs regarding art acquisitions and value, handling consignments of works owned by Plaintiffs, and bidding for works of art on Plaintiffs' behalf, made Gagosian a fiduciary of Plaintiffs. Accordingly, Gagosian owed Plaintiffs the highest degree of loyalty and fair dealing.

Plaintiffs Purchase *Popeye*

23. As set forth in further detail below, Plaintiffs fundamentally trusted Gagosian and relied on Gagosian's representations and guidance regarding the art world and the value of specific works of art. Gagosian nevertheless abused his position of trust to (1) fraudulently induce Plaintiffs to purchase *Popeye*, a sculpture by the artist Jeff Koons, and (2) force Plaintiffs to accept an exchange value significantly below the work's fair market value.

24. Gagosian is the leading expert in the market for Koons' work due to his long association with and representation of the artist and his works. Plaintiffs had also previously acquired works by Koons through Gagosian.

25. On or about May 12, 2010, Plaintiffs and Gagosian executed a Purchase Agreement for a new granite sculpture titled *Popeye*. Under the terms of the Purchase Agreement, Plaintiffs agreed to purchase the sculpture in exchange for $4 million, to be paid in five periodic installments of $800,000, with the final installment due when work on *Popeye* was completed. The Purchase Agreement stated that the work would be delivered on December 15, 2011. The Purchase Agreement also specified that Plaintiffs were not permitted to sell the work or obtain title and possession to the work until it was delivered to Plaintiffs by Gagosian.

26. When Plaintiffs negotiated and executed the Purchase Agreement with Gagosian, they were aware that there had been and continued to be a general expectation in the contemporary art market that the value of Koons' work substantially appreciated and would continue to substantially appreciate over time, and that Gagosian was the premier dealer in Koons' work. Plaintiffs therefore relied on Gagosian's unique knowledge and expertise in Koons in connection with reaching a fair value for *Popeye*. Furthermore, when negotiating and executing the Purchase Agreement, Plaintiffs reasonably believed that the work that they were purchasing would be freely alienable for its full market value in the future.

27. However, during these negotiations, Gagosian failed to provide material information about Plaintiffs' ability to sell Koons' work generally and *Popeye* in

particular. Unbeknownst to Plaintiffs, Gagosian and Koons had entered into a nonpublic agreement containing provisions regarding the resale of *Popeye*.

28. Specifically, Gagosian's contract with Koons entitled Koons to 70% of any amount over the original sale price of $4 million if Gagosian resold the work. Furthermore, if Gagosian bought back the work before it was finished, delivered and fully paid for, Koons would be entitled to 80% of the profit on any subsequent sale.

29. Gagosian concealed this material information from Plaintiffs when they negotiated and executed the Purchase Agreement for *Popeye*. Such information would have materially and substantially altered Plaintiffs' view of the transaction, as these secret contract provisions detrimentally affected Gagosian's ability and willingness to repurchase or resell *Popeye* above the price paid by Plaintiffs. Given Gagosian's role as Koons' representative and the foremost dealer in Koons' work, such restrictions effectively crippled Plaintiffs' ability to resell *Popeye* at its fair market value.

30. In accordance with the terms of the Purchase Agreement, Plaintiffs made three timely payments of $800,000 to Gagosian in May 2010, September 2010 and January 2011. The invoices issued by Gagosian acknowledging receipt of the installment payments clearly stated that "Title does not pass until payment in full has been received." This contradicted the earlier Purchase Agreement provision stating that Plaintiffs would not obtain title to the work until it was delivered to Plaintiffs by Gagosian.

31. In June 2011, Plaintiffs received word that *Popeye* would not be delivered by the date of December 15, 2011 set forth in the Purchase Agreement between the parties. Gagosian informed Plaintiffs that Koons had encountered problems in the

fabrication process for *Popeye*, and the work would not be completed until July 2012, seven months past the promised delivery date.

Gagosian's Breaches of Duty to Plaintiffs

32. Commencing in approximately April 2011, Plaintiffs and Gagosian, both directly and through counsel, negotiated a group of art transactions wherein Art Fund acquired a work of art from Gagosian, or from a seller represented by Gagosian, and paid for it with cash and by transferring or consigning to Gagosian certain works of art, including the sculpture *Popeye*, thereby receiving a credit for the purported value of those works.

33. The *Popeye* transaction involved the purchase of a painting by the Art Fund (the "Painting"). As part of this transaction, Gagosian violated the duties he owed to Plaintiffs by undervaluing the exchange credit on *Popeye*. Gagosian's misrepresentations regarding the marketability and true value of this work resulted in unjust gain to him and a corresponding loss to Plaintiffs.

34. In October 2011, Mr. Perelman and Gagosian reached a binding oral agreement to purchase the Painting for a certain price. The parties agreed that the purchase price could be satisfied either through paying cash, trading or consigning works to Gagosian for resale, or a combination thereof, to be determined through good faith negotiations between the parties.

35. Plaintiffs and Gagosian then began identifying and pricing the works that would be exchanged for the Painting. As set forth above, Plaintiffs fundamentally trusted Gagosian and relied on Gagosian's representations and guidance regarding the value of the artwork exchanged in these transactions.

36. By this time, Gagosian had failed to deliver *Popeye* on time in accordance with the terms of the Purchase Agreement. Plaintiffs sought to include *Popeye* as one of the works exchanged for the Painting.

37. After initiating a conversation about including *Popeye* in January 2012, Gagosian finally disclosed the existence of this secret contract with Koons. During this and subsequent negotiations in connection with valuing *Popeye*, Gagosian refused to pay any amount above $4 million for the work. Because the sale of *Popeye* from MacAndrews to Gagosian constituted a resale pursuant to the agreement with Koons, Gagosian was required to remit 70% of any amount over $4 million paid for the sculpture. During this period of time, Plaintiffs repeatedly asked to see Gagosian's contract with Koons to verify Gagosian's claims regarding Gagosian's profit-sharing obligations to the artist. Gagosian refused to provide a copy of the agreement.

38. Despite their reasonable efforts, Plaintiffs were not at the time of the negotiation of the transactions able to determine the truth of the assertions that Gagosian made concerning these restrictions on Gagosian, but Plaintiffs also had no ability at that time to obtain a better price for *Popeye* from another dealer due to Gagosian's position as the premier dealer in Koons' work and his dominance of the market for such work.

39. Furthermore, Gagosian asserted that Plaintiffs were not permitted to sell or obtain title to the work until it was delivered to Plaintiffs by Gagosian. Plaintiffs argued that, in accordance with the invoices issued by Gagosian himself, title would pass to Plaintiffs once Gagosian received payment in full, meaning that once Plaintiffs paid the remaining balance on *Popeye* they would be free to resell the work. However, Gagosian denied that the terms set forth in the invoices that he issued were valid, and asserted that

title would not pass until the work was completed and delivered. Therefore, unless Gagosian agreed to purchase or arrange for the resale of *Popeye*, Plaintiffs would be unable to resell the work until its completion and delivery, which had already been substantially delayed. As Gagosian had already breached the Purchase Agreement by failing to deliver the work by December 2011 and pushing back the completion date by seven months, Plaintiffs reasonably believed that the work would not be completed and delivered at any time in the near future.

40. Gagosian, due to his position of trust and confidence with Plaintiffs and his exclusive knowledge of his nonpublic contract with Koons, was required to share such information at the time that Plaintiffs entered into the initial agreement to acquire *Popeye*. Instead, Gagosian hid this critical information from Plaintiffs until Plaintiffs were ready to sell or exchange *Popeye*. Gagosian then used the advantage he gained through failure to disclose this information to reduce the price to be ascribed to *Popeye* in the exchange transaction from its fair market value, all to Plaintiffs' detriment and Gagosian's gain.

41. In particular, Gagosian rejected Plaintiffs' repeated attempts to assign a fair market value to *Popeye* that was higher than $4 million, despite the fact that, as Gagosian well knew, the work was worth significantly more. Gagosian also refused to allow Plaintiffs to try and sell the piece to any other party. The price of *Popeye* was further discounted because Gagosian breached the Purchase Agreement to timely deliver *Popeye*. Upon information and belief, the value of works by Koons increase as delivery dates draw close and can sometimes double in value shortly after delivery. Ultimately, Gagosian agreed to raise the exchange value of *Popeye* to only $4,250,000.

42. Nonetheless, for the reasons stated above, Plaintiffs had no choice at that time but to accept the value Gagosian proposed as the highest price reasonably available and thereby comply with the terms of their October 2011 oral agreement regarding the Painting and mitigate Plaintiffs' damage from Gagosian's original non-disclosure and breach of the Purchase Agreement.

43. In February 2012, the parties agreed upon a final list of works and an amount of cash to be exchanged for the Painting.

44. The Painting was acquired in exchange for four works of art and $250,000 in cash. The most significant exchanged work was Koons' *Popeye*, which was assigned an exchange value of $4,250,000 less the unpaid balance of $1,600,000, or $2,650,000.

45. As a proximate result of Gagosian's material omissions and fraudulent misrepresentations as just alleged concerning the market for *Popeye*, Plaintiffs suffered a loss of millions of dollars.

FIRST CAUSE OF ACTION – FRAUD IN THE INDUCEMENT

46. Plaintiffs repeat and reallege each of the relevant foregoing allegations as if fully set forth and alleged herein.

47. Defendants Larry Gagosian and Gagosian Galleries, Inc., although obliged under the circumstances to provide to Plaintiffs all information reasonably available, omitted crucial and material facts about *Popeye*.

48. At the time when the parties were negotiating and executing the purchase agreement for *Popeye*, Plaintiffs reasonably believed that the Koons work they were purchasing would be freely alienable for full market value in the future. The standard in the contemporary art market is that a work purchased from a reputable dealer like

Gagosian is freely alienable unless expressly stated otherwise. Here, however, Gagosian failed to provide critical information that his agreement with Koons substantially impaired his ability to resell the work and that he would therefore not participate in any effort to resell *Popeye* at its true value. Knowledge of this information would have substantially changed Plaintiffs' view of the transaction, as these secret contract provisions detrimentally affected Gagosian's ability and willingness to repurchase or resell *Popeye* above the price paid by Plaintiffs, and would have materially altered the terms by which Plaintiffs would have agreed to purchase the work.

49. Defendants knew that their material representations and omissions regarding *Popeye* were false or fraudulent when made. The material misrepresentations and omissions were made or omitted with the intent to deceive Plaintiffs about their ability to resell the work for full market value and to induce Plaintiffs to purchase the work.

50. Plaintiffs could not have discovered the restrictions on Gagosian's ability and willingness to resell *Popeye* at its full fair market value, as the details of Gagosian's agreement with Koons were secret and known only to those parties. Plaintiffs did not have a copy of the contract between Gagosian and Koons at the time they agreed to purchase *Popeye*, and to this day Gagosian has refused to provide a copy of said agreement despite Plaintiffs' repeated requests.

51. Defendants' material misrepresentations and omissions fraudulently induced Plaintiffs to purchase *Popeye*.

52. When entering into the transactions described herein, Plaintiffs reasonably relied upon Defendants' material misrepresentations and omissions. Plaintiffs' reliance

was reasonable because Gagosian was a renowned expert in contemporary art, was generally known and particularly known by Plaintiffs to have unparalleled access to value information concerning Koons and the market for Koons' work, and had a longstanding advisory relationship, friendship and relationship of trust with Plaintiffs.

53. As a proximate result of Defendants' fraud, Plaintiffs sustained millions of dollars in damages.

SECOND CAUSE OF ACTION – BREACH OF FIDUCIARY DUTY

54. Plaintiffs repeat and reallege each of the relevant foregoing allegations as if fully set forth and alleged herein.

55. Gagosian served as a longtime, trusted art advisor to Plaintiffs, and Plaintiffs reasonably relied on his unparalleled expertise and superior knowledge as to the contemporary art market, a position which created a fiduciary relationship between Plaintiffs and Gagosian. Additionally, Plaintiffs' consignment to Gagosian of many of the exchanged works created an agency relationship and a relationship of trust between Plaintiffs and Gagosian.

56. As an art advisor to and agent of Plaintiffs, Gagosian owed a fiduciary duty to Plaintiffs, and was required to be loyal and at all times exercise the utmost good faith and loyalty, with the highest and truest principles of morality.

57. Gagosian's conduct described above was disloyal and below the standard of good faith, loyalty, fair dealing and principles of morality required of an agent, advisor and/or fiduciary.

58. In fact, Gagosian acted directly against Plaintiffs' interest by making material misrepresentations, omitting material facts and engaging in self-dealing to

induce Plaintiffs to purchase *Popeye* and later impose an artificially low exchange value on the work.

59. Plaintiffs were not contemporaneously aware of Plaintiffs' deceptions and breaches of faith and fair dealing, and instead Plaintiffs reasonably relied on Gagosian.

60. As a proximate result of Defendants' breach of fiduciary duty, Plaintiffs sustained millions of dollars in damages.

THIRD CAUSE OF ACTION – UNJUST ENRICHMENT

61. Plaintiffs repeat and reallege each of the relevant foregoing allegations as if fully set forth and alleged herein.

62. Gagosian made millions of dollars of illicit profit and was unjustly enriched by making material misrepresentations and omissions regarding the value of *Popeye*, and by engaging in self-dealing to induce Plaintiffs to purchase *Popeye* and later impose an artificially low exchange value on the work.

63. By reason of the foregoing, Plaintiffs are entitled to recover the amount by which Gagosian has been unjustly enriched, amounting to millions of dollars in damages.

FOURTH CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION

64. Plaintiffs repeat and reallege each of the relevant foregoing allegations as if fully set forth and alleged herein.

65. Defendants are world-renowned art dealers who knew or should have known the true value of *Popeye*.

66. Nonetheless, Defendants negligently and/or intentionally materially misrepresented the marketability and value of *Popeye*. Defendants knew or should have

known that these material misrepresentations would be material to Plaintiffs' decision to enter into the transactions described herein.

67. When entering into these transactions, Plaintiffs reasonably relied upon Defendants' material misrepresentations and omissions. Plaintiffs' reliance was particularly reasonable because Gagosian was a renowned expert in contemporary art with unparalleled access to information concerning the art market and had a longstanding advisory relationship and relationship of trust with Plaintiffs.

68. As a proximate result of Defendants' negligent misrepresentations, Plaintiffs sustained millions of dollars in damages.

FIFTH CAUSE OF ACTION – BREACH OF CONTRACT

69. Plaintiffs repeat and reallege each of the relevant foregoing allegations as if fully set forth and alleged herein.

70. The May 2010 Purchase Agreement between the parties specified that *Popeye* would be delivered on December 15, 2011.

71. Gagosian failed to deliver *Popeye* by the delivery date set forth in the Purchase Agreement, and therefore breached the contract.

72. Furthermore, the Purchase Agreement for *Popeye* specified that Plaintiffs were not permitted to sell or obtain title and possession to the work until it was delivered to Plaintiffs by Gagosian. Unless Gagosian agreed to purchase or arrange for the resale of *Popeye*, Plaintiffs would be unable to resell the work until its completion and delivery, which had been substantially delayed by Gagosian. Plaintiffs were therefore forced to accept the artificially low value placed on *Popeye* by Gagosian, which was still incomplete at that time due to Gagosian's breach of the Purchase Agreement.

73. As a proximate result of Defendants' negligent misrepresentations, Plaintiffs sustained millions of dollars in damages.

WHEREFORE, Plaintiffs pray for judgment against Larry Gagosian and Gagosian Gallery, Inc. as follows:

(a) Judgment in an amount to be determined at trial, including compensatory and punitive damages;

(b) Pre- and post-judgment interest, to the fullest extent assessable at law or in equity, on all amount of damages;

(c) Reasonable attorneys' fees, costs and expenses; and

(d) Such further relief as the Court may deem just and proper.

Dated: New York, New York
September 12, 2012

THE FLEISCHMAN LAW FIRM

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