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

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STEVEN TANANBAUM,

Plaintiff,

-against-

GAGOSIAN GALLERY, INC. and JEFF KOONS LLC,

Defendants.

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Index No. _____

Date Index No. Purchased:
April 19, 2018

SUMMONS

Plaintiff designates New York County as the place of trial.

The basis of venue is, inter alia, the County where Defendants have their principal place of business.

Plaintiff resides in Westchester County.

To the above-named Defendants:

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 Plaintiff's 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 case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
April 19, 2018

Defendants' Addresses:

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

JEFF KOONS LLC
601 West 29th Street
New York, New York 10001

AARON RICHARD GOLUB, ESQUIRE, P.C.
Attorney for Plaintiff

BY: _____
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X Index No. _____

STEVEN TANANABAUM,

Plaintiff,

COMPLAINT
(Jury Trial Demanded)

-against-

GAGOSIAN GALLERY, INC. and JEFF KOONS LLC,

Defendants.

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Plaintiff STEVEN TANANABAUM ("Plaintiff"), by his attorney, AARON RICHARD GOLUB, ESQUIRE, P.C., as and for his complaint against Defendants GAGOSIAN GALLERY, INC. ("GGI") and JEFF KOONS LLC ("JKL") (collectively, "Defendants"), alleges as follows:

PARTIES

1. At all relevant times, Plaintiff is and was a resident of the State of New York, County of Westchester, residing at 10 Loden Lane, Purchase, New York 10577.

2. Upon information and belief, at all relevant times, Defendant GGI is and was a domestic business corporation organized under the laws of the State of New York and maintains an office and place of business at 980 Madison Avenue, New York, New York 10075.

3. Upon information and belief, at all relevant times, Defendant JKL is and was a foreign limited liability company formed under the laws of the State of Delaware and conducts business in the State of New York, County of New York.

4. Established in 1979 by Lawrence Gagosian ("Larry Gagosian"), GGI is known to be the world's most famous and largest contemporary art gallery and has four art galleries in New York City alone. GGI has 10 additional gallery locations throughout the world at the

following major locations: Beverly Hills; London (three locations); Rome; Athens; Paris (two locations); Geneva; and Hong Kong.

5. Jeff Koons ("Jeff Koons") is the principal shareholder of JKL and was born in 1955 in Pennsylvania. On his website at http://www.jeffkoons.com/biography-summary, Jeff Koons describes himself as an artist who "has blended the concerns and methods of Pop, Conceptual, and appropriation art with craft-making and popular culture to create his own unique iconography, often controversial and always engaging... Koons hires artisans and technicians to make the physical works. For him, the hand of the artist is not the important issue..." Jeff Koons sculptures sell for millions of dollars privately and at auction.[1]

BACKGROUND

6. This case concerns the purchase and non-delivery of three Jeff Koons multi-million dollar sculptures named Balloon Venus Hohlen Fels (Magenta) ("Balloon Venus"), Eros ("Eros") and Diana ("Diana"). These facts pit honesty against corruption. When the curtain is pulled back, "Something is rotten in the state of Denmark"[2] cannot help but spring to mind from Defendants' naked, unadorned avarice and conspiratorial actions in connection with the sale of factory-manufactured industrial products called Jeff Koons sculptures. Jeff Koons wears the crown in the Contemporary Art world; he is the number one. Jeff Koons' sales have generated hundreds of millions, possibly billions, of dollars in art revenue for himself and Defendant JKL.[3] But the road to Jeff Koons' success is littered with corruption and Jeff Koons' international acclaim has a hidden, dark and unctuous background.

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[1] Upon information and belief, the record sale price for a Jeff Koons sculpture is $58.4 million for "Balloon Dog" in 2013.

[2] See Hamlet, Act I, Scene IV.

[3] As well as for their art dealers, Defendant GGI and its principal Larry Gagosian in this action.

7. Behind the ostensible façade of Jeff Koons' art world triumphs and record-breaking auction sales—illustrated by a never-ending international parade of museum, art fair and art gallery exhibitions—lurks a well-oiled machine, more specifically an established, archaic System as old as the hills applied to the art world to exploit art collectors' desire to own Jeff Koons sculptures. The archaic System, once all of the obfuscations are stripped away, exposes a garden-variety, interest-free, fraudulent financial routine that harkens the name Ponzi. New money is used to pay old obligations, not to mention that the archaic System is one that oversold the artist's capacity. Ponzi meets The Producers.[4] Defendants' enterprise of ostensible civil corruption bleeds collectors of deposits and payments, drawing on their funding without supplying a product in exchange therefor. While the design, manufacture and completion of the so-called Jeff Koons sculptures wallow at best and are continually and fraudulently postponed by a factor of years and contracted collectors wait interminably for delivery, Larry Gagosian and Jeff Koons live extravagant lifestyles financed in part by inappropriate and highly questionable practices underwritten by Plaintiff and other collectors.

8. Defendants' modus operandi is clear: (a) Bind the collectors to JKL-drafted, non-negotiable form contracts and convince them to remit an initial deposit in the sum of one to two or more million dollars and one or more additional payments, each in the sum of one to two or more million dollars; (b) Fabricate representations to the contracted collectors that the collectors' particular Jeff Koons sculptures will be completed by a certain date; and then (c) Inform the

[4] Without prejudice and subject to further discovery, Plaintiff reserves the right to plead causes of action for fraud and/or fraudulent inducement and to add Larry Gagosian and Jeff Koons as individual defendants.

collectors that the completion of the sculptures will be delayed by at least six months to a full year.[5]

9. Another material aspect of the System is that the collectors are put in the following untenable and precarious positions:

i. If the collectors ***refuse*** to pay further purchase price payments without being assured of a definite sculpture completion date, the collectors jeopardize the payments made, which payments usually consist of at least 50% of the purchase price; and

ii. If the collectors ***continue*** to pay the purchase price payments, the collectors do so at their own peril because of the uncertainty of when, if at all, the sculptures will be completed, ***and*** the collectors are in the absurd position of having no definite date whatsoever for delivery (and completion) of the sculptures.

10. At the time of contract, Defendant JKL has astutely diagnosed and appraised the collectors' character predisposition and penchant to relent and accede, albeit at times reluctantly, to repeated delays and postponements of sculpture completion and delivery based on the reputed demand for Jeff Koons sculptures. This judgment is paramount. Little do the collectors know that once the form contract is signed, they are entering the Larry Gagosian-Jeff Koons opaque world where they will be blocked from finding out how they will get the sculptures they paid for or if the sculptures are in production while being besieged by a blizzard of installment payments. Defendants JKL and GGI orchestrate and manipulate the collectors[6] to accept form contracts of adhesion with brutal payment plans well before Defendants JKL and GGI delay delivery. Defendant GGI and other art galleries act as the membranes, taking a hefty cut of the collectors'

[5] With respect to the Balloon Venus (discussed in detail in Section II, infra), Defendants have pushed back the estimated completion date three times, postponing delivery several years into the future (presently August 2019) with no certainty of when it will occur.

[6] Frequently through an art advisor.

payments (as much as 30%)[7] and principally persuading the collectors to sign the form JKL contracts to be enforced by Defendant GGI and similarly situated art dealers.[8]

11. Having pocketed millions of dollars from the collectors, Defendants then blind the collectors with faux science, claiming that any delays are the result of complex technological issues, including, inter alia, the inherent difficulty of utilizing "reverse engineering" and Computer-Aided Design processes (known as "CAD"). Defendants omit from all purchase agreements and invoices the identity of the foundry that purportedly is manufacturing the sculptures to ensure that Plaintiff cannot independently ascertain how much, if any, progress has been made. This alone constitutes a flagrant violation of Arts and Cultural Affairs Law ("NYACAL") Section 15.10(1)(c), for which NYACAL Section 15.15(3)(a) provides damages to the purchaser in the sum of three times the amount the purchaser paid. In the interim, as part of Defendants' omnivorous archaic System, Defendants steadfastly refuse to provide the collectors with any concrete proof that the sculptures actually are being manufactured, including, inter alia, photographs or video of the sculptures during the alleged manufacturing process. Instead of manufacturing the sculptures by the initial estimated date of completion, Defendants manufacture false hope. They breed a false sense of urgency to secure as many millions of dollars in deposits and payments as they can. This money, upon information and belief, is used

[7] Larry Gagosian personally repeatedly has made false oral representations to Plaintiff that Larry Gagosian is not receiving any of the proceeds of Plaintiff's payments in connection with the purchase of Jeff Koons sculptures.

[8] See Blue Art Ltd. v. David Zwirner and David Zwirner, Inc., Index No. 653810/2016 (Sup. Ct. N.Y. Co. Oct. 26, 2016) (Ex. 5) ("Blue Art Action"). Ex. 5 is centered on a form purchase agreement utilized by another Jeff Koons art dealer that is virtually identical to those agreements at bar (the same font is used) and that provides a precise blueprint of Defendant JKL's concerted efforts to extract million dollar payments from collectors while providing them with false information and failing to deliver the purchased sculptures as represented and contracted. Subject to discovery, in light of Blue Art, supra, and the likelihood that many collectors are similarly situated to Plaintiff, a class action is being contemplated.

to fulfill a host of obligations incurred by Defendant JKL prior or subsequent to entering into the subject purchase agreements, to complete the manufacture of sculptures or other contracted "artistic" obligations commissioned at an earlier date by similarly duped collectors and/or to line the pockets of Defendants (see priorities, infra, in ¶ 12).

12. Flush with Plaintiff's and other collectors' money, Defendant JKL and Jeff Koons prioritized other works over the three sculptures that are the subjects of the three purchase agreements at bar, self-causing the alleged completion and delivery delays. Those include, but are not limited to a:[9] (1) 2018 Hong Kong Art Basel exhibition at which new Jeff Koons works were exhibited for sale; (2) 2017 Beverly Hills exhibition of new Jeff Koons works at GGI; (3) 2016 Buenos Aires exhibition at Museo de Arte Latinoamericano de Buenos Aires; (4) 2016 New York exhibition of new Jeff Koons works at GGI; (5) 2016 Vienna exhibition at Natural History Museum Vienna; and (6) 2014 Hong Kong exhibition at GGI where Jeff Koons was trailed by a film crew. Notably, Defendant JKL also prioritized the plaintiff's sculpture that was the subject of Blue Art, supra, completing and delivering it to the plaintiff in that action in 2016 (only after the lawsuit was initiated) despite the fact that the purchase agreement for those works post-dated the purchase agreement for Balloon Venus (discussed in detail in Section II, infra) by almost nine months.

13. The "estimated completion dates" supplied by Defendants to the collectors are a sham from the very outset. Defendants have and had no intention of completing the sculptures according to a completion and delivery schedule. At heart, this interest-free loan System — unbeknownst to the collectors—is less about creating timeless works of art and more about creating an ouroboros by which Defendants maintain a never-depleting source of funds at the

[9] The following is a partial list and subject to discovery. Many of these exhibitions are recited on Defendant JKL's website.

expense of eager and trusting collectors (without resorting to financial factors who purchase accounts receivable at a discount or securing loans from financial institutions).

FACTUAL BACKGROUND

I. DEFENDANTS' CONSPIRATORIAL RELATIONSHIP

14. GGI and certain employees, including, inter alia, Melissa Lazarov ("Lazarov"), Anita Foden ("Foden"), Andy Avini ("Avini"), Martha Blakey ("Blakey"), Emily White ("White"), Rebecca Sternthal ("Sternthal"), Amanda Fischer ("Fischer") and Isabel Shorney ("Shorney")[10] execute the archaic System. Foden and Lazarov are the money collectors, doggedly dunning the collectors to make their contractual payments while Blakey, White, Sternthal, Fischer and Shorney function as a cadre to prevaricate and obfuscate delivery of the sculptures. Collectively, these seven individuals are used as sales and contract performance drones,[11] who regularly, knowingly and usually in bad faith carry out the unlawful purposes of Defendant JKL and Jeff Koons through Defendant GGI and ignore any steps to verify the truth or falsity of the representations made by Defendant JKL or GGI that the drones stoically convey to the collectors. As part of the System, the drones ostensibly act as if they cannot ascertain when the sculptures will be completed or if they are in the process of being manufactured.[12]

15. Upon information and belief, Matthew Dontzin, Esq.'s ("Dontzin") role in the System is to intervene whenever a dispute arises between Defendant GGI and collectors in connection with the collectors' purchases of Jeff Koons works sold by Defendant GGI. As with Plaintiff herein, Dontzin subverts his role as Defendant GGI's attorney and instead purports to be

[10] The GGI employees are material witnesses.

[11] Likened to military drone aircraft.

[12] The precise nature and level of the drones' knowledge of Jeff Koons' works is a material issue and subject to discovery.

the collectors' ally, simultaneously seeking to guide the collectors to a renegotiated agreement that contains an arbitration clause.[13] As set forth in Section IV, infra, Dontzin engaged in substantive legal discussions with Plaintiff in connection with the Jeff Koons sculpture Diana despite knowing that Plaintiff was represented by counsel during the negotiation of the Diana side letter agreement, dated January 10, 2017 (Ex. 4, "Diana Side Letter Agreement").

16. Defendants GGI and JKL intentionally blur the lines of principal/agent, with Defendant GGI acting simultaneously as a principal, co-principal and/or agent for Defendant JKL in the performance of the contracts connected to the three Jeff Koons sculptures purchased by Plaintiff.

17. In the three purchase agreements for the subject three Jeff Koons sculptures (see Sections II-IV, infra), Defendant GGI represented and warranted to Plaintiff that Defendant GGI was "acting on behalf of Jeff Koons, LLC" "**as of the delivery date**" (see Exs. 1, 2 and 3) (emphasis added). In point of fact, GGI acted as agent and in the dual role of principal and co-principal. Until such time as Defendants deliver the three Jeff Koons sculptures, Defendant GGI, chameleon-like, exudes the colors of principal, co-principal and agent depending on which hue then suits Defendant GGI.[14]

18. Defendant GGI acted as a principal, co-principal and/or agent in drafting and executing the Diana Side Letter Agreement referenced in connection with Diana (see Section IV, infra), which drafting and execution Defendant GGI was authorized to perform.[15] It contains no agency provision. While executing form agreements drafted by Defendant JKL and issuing

[13] Subject to discovery, Dontzin may be named as a defendant in this action.

[14] Each of the three purchase agreements provided that Defendant JKL was "a third party beneficiary" of the agreements (see id.).

[15] Alternatively, Defendant GGI drafted and executed the Diana Side Letter Agreement of its own accord.

invoices to and communicating with Plaintiff concerning the Jeff Koons sculptures, Defendant GGI acted as a principal and co-principal (acting for itself) and as an agent of Defendant JKL (acting on behalf of Defendant JKL).[16] As a principal and/or co-principal, GGI legally assumed liability on its own behalf.

19. Defendant JKL accepted the financial benefits of this hybrid relationship—pursuant to which Defendant GGI could and did voluntarily assume liability on its purported principal Defendant JKL's behalf—authorizing the representations made by Defendant GGI, whether made in the role of co-principal or agent.

20. In the three purchase agreements (see Sections II-IV, infra), Defendant GGI agreed as follows: "[GGI] agrees to indemnify [Plaintiff] against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional fees and expenses resulting from any breach or alleged breach of or falsity or inaccuracy of any of Seller's representations, warranties (express or implied) or other terms set forth in this Agreement" (see id.). That relief is being sought herein.

II. BALLOON VENUS

21. Plaintiff and Defendant GGI entered into a purchase agreement for Balloon Venus, dated September 5, 2013 (Ex. 1, "Balloon Venus Agreement"),[17] with the following description in the Jeff Koons form contract:

> Balloon Venus Hohlen Fels (Magenta), 2013-2015
> Mirror-polished stainless steel with transparent color coating
> 103 x 65 inches
> 261.6 x 165.1 cm

[16] Uniquely, Defendant GGI is authorized to pass title to the Jeff Koons sculptures to Plaintiff.

[17] It appears that Avini, who executed the Balloon Venus Agreement, is not an officer of Defendant GGI.

Ed. 1/5 unique versions

22. On or about September 5, 2013, Defendant GGI provided Plaintiff with GGI Invoice NY2013.453[18] for Balloon Venus with an estimated completion date of December 2015 ("Balloon Venus Original Invoice"), the same estimated completion date as in the Balloon Venus Agreement.

23. As reflected on "Revised A" Invoice NY2013.453 ("Revised A Balloon Venus Invoice"), GGI received Plaintiff's contract deposit for Balloon Venus in the sum of $1,600,000.00 on September 11, 2013, Plaintiff's first payment in the sum of $1,600,000.00 on January 30, 2014 and Plaintiff's second payment in the sum of $1,600,000.00 on September 3, 2014.

24. Adrian Pobric ("Pobric"), an employee of the Heller Group ("HG"), Plaintiff's art adviser, emailed Blakey twice (on April 16 and 21, 2015) to inquire whether the production timeline for Balloon Venus remained on schedule. Blakey responded via email (without mentioning any reason therefor) on April 21, 2015, "We have heard back that the new estimated completion date for [Balloon Venus] is now September 2016. We'll keep you informed on any updates we receive."

25. On or about April 21, 2015, Plaintiff received Revised A Balloon Venus Invoice from Defendant GGI, delaying the estimated completion date from December 2015 to September 2016 without disclosing any reason therefor and pushing back the due date for Plaintiff's third payment in the sum of $1,600,000.00 from May 1, 2015 to September 1, 2015.

26. On September 29, 2015, White emailed Pobric, without setting forth a reason, that Balloon Venus "will likely be anywhere from 3-6 months late."

[18] Each invoice sent by Defendant GGI in connection with a particular sculpture has the same date as the initial invoice date. Defendant GGI repeats this pattern for all three sculptures purchased by Plaintiff.

27. On April 27, 2016, White emailed Pobric "Revised B" Invoice NY2013.453 ("Revised B Balloon Venus Invoice"), which further postponed the estimated completion date from September 2016 to June 2018 (almost two years later) and pushed back the due date for Plaintiff's third payment in the sum of $1,600,000.00 from September 1, 2015 to June 1, 2016. White, without understanding the technical impact or content of the message conveyed or attempting to assess its truth or falsity, wrote:

> "The work is now expected to be complete in June 2018. Due to the high volume of data, the scanning and engineering phase for this sculpture took longer than anticipated. Jeff [Koons] takes components from numerous scans of balloons in order to create his ideal version of the Balloon Venus Hohlen Fels. Now that this phase is near completion the metal work will begin shortly. Once the metal work begins the schedule and dates given by the fabricator are more predictable."

28. As reflected on "Revised C" Invoice NY2013.453 ("Revised C Balloon Venus Invoice"), GGI received Plaintiff's third payment in the sum of $1,600,000.00 on June 1, 2016.

29. On January 5, 2018, White paradoxically informed Pobric of yet another significant delay: "The Koons studio confirmed [Balloon Venus] is now estimated for completion August 2019. The studio informed the gallery that the delay is due to the fact that the reverse engineering at Arnold took longer than they anticipated." This email was Defendants' first reference to reverse engineering.

30. On January 9, 2018, Foden, a Director of GGI, emailed Plaintiff "Revised C" Balloon Venus Invoice ("Revised C Balloon Venus Invoice"), delaying the estimated completion date from June 2018 to August 2019. Foden wrote, without attempting to assess the truth or falsity of the following statement:

> "The Koons studio has also sent an update that [Balloon Venus] is estimated to be completed in August 2019. The studio has explained that this delay is due to the complicated reverse engineering by the fabricator, Arnold, which is taking longer

> than anticipated. There is only one payment remaining for this work, due upon completion."

As did White on January 5, 2018, Foden failed to disclose whom at JKL communicated the delay to GGI, what exactly that JKL representative stated concerning the delay or whether the "Arnold" referenced was a person, friend or business entity.

31. On February 14, 2018, Pobric emailed Foden that Plaintiff was expecting images of any and all of the sculptures in progress (i.e., Balloon Venus, Eros and Diana).

32. To date, Plaintiff has paid Defendant GGI the deposit and the first three payments for Balloon Venus, totaling **$6,400,000.00**. Despite an initial estimated completion date of December 2015, Defendants have extended the estimated completion date on **three separate occasions** and now estimate completion of Balloon Venus (for whatever that is worth) on August 2019, **almost 70 months after an initial estimate of 27 months**. It is not now clear, four and a half years after the Balloon Venus Agreement was executed, whether any work has begun on Balloon Venus. Given the tortured history of Balloon Venus' alleged manufacture, no trust or confidence can be maintained in Defendants' latest estimate. Plaintiff has not accepted the estimated completion date of August 2019 and is suing Defendants now thereon.

III. EROS

33. On or about January 7, 2017, Plaintiff and Lazarov, Financial Director of Defendant GGI, on behalf of Defendant GGI, executed the purchase agreement for Eros, dated December 12, 2016 (Ex. 2, "Eros Agreement"), with an estimated completion date of January 2019. Lazarov's responsibilities are limited to financial and human resources issues.

34. Prior to that, on November 30, 2016, Plaintiff personally met with Jeff Koons at Jeff Koons' Studio, located at 601 West 29th Street, New York, New York 10001 ("Jeff Koons' Studio"), where a number of Jeff Koons sculptures were presented in maquette form, i.e.,

cardboard models, amongst which were models of Diana and Eros. At that time, Jeff Koons assured Plaintiff that production of any of these sculptures would be made on time.

35. On December 9, 2016, Gary McCraw ("McCraw"), an employee of Defendant JKL, emailed Sternthal "the payment terms for [Plaintiff]" for Eros, including when each payment is due and an estimated date of completion of January 2019, with the following description:

> Eros, 2016-
> Mirror-polished stainless steel with transparent color coating
> 73 x 37 3/16 x 33 5/16 inches
> 185.42 x 94.46 x 84.61 cm
> Ed. 2/3 + 1 AP

Sternthal forwarded McCraw's email to Sandy Heller ("Heller"), principal of HG, later that day.

36. On December 22, 2016, Sternthal emailed Heller Invoice NY2016.521 with an estimated completion date of January 2019 ("Eros Original Invoice"), the same date set forth in the Eros Agreement.

37. As reflected on "Revised A" Invoice NY2016.521 ("Revised A Eros Invoice"), GGI received Plaintiff's deposit for Eros in the sum of $1,200,000.00 on December 12, 2016.

38. On June 29, 2017, Foden emailed Pobric that Defendant GGI had received Plaintiff's first payment for Eros in the sum of $1,200,000.00.

39. On December 8, 2017, Pobric asked Foden via email "to check on the latest status of the production schedule" for Eros. Foden responded, "We have inquired with the Koons studio for the latest update on *Eros* and will get back to you shortly."

40. After receiving no response from Defendants for almost one week, Pobric emailed Foden again on December 14, 2017, "I just wanted to check in again to see if there was an updated production schedule I could pass on."

41. Almost one month later, on January 8, 2018, Pobric emailed Foden for a third time seeking clarity on the production status of Eros. Foden finally answered via email later that day, "Thank you for following up and please accept our apologies for the delay. We will check in again with the Koons studio for an update."

42. On January 9, 2018, Foden, without stating a reason therefor, emailed Pobric that Defendant GGI had "[r]eceived updates from the Jeff Koons studio" and that "*Eros* is now estimated to be completed in October 2019 per the Koons studio."

43. As a result of the delay, on January 9, 2018, Defendants emailed Plaintiff "Revised A" Eros Invoice ("Revised A Eros Invoice"), which delayed the estimated completion date from January 2019 to October 2019 and revised the payment schedule as follows: the due date for Plaintiff's second payment in the sum of $1,200,000.00 was unilaterally extended from January 1, 2018 to May 1, 2018; the due date for Plaintiff's third payment in the sum of $1,200,000.00 was unilaterally extended from July 1, 2018 to January 1, 2019; and the due date for Plaintiff's final payment in the sum of $1,642,500.00 was unilaterally extended from the date of completion, estimated January 2019, to the date of completion, estimated October 2019.

44. On February 14, 2018, Pobric emailed Foden that Plaintiff was expecting images of any and all of the three sculptures in progress (i.e., Balloon Venus, Eros and Diana). No images were received.

45. To date, Plaintiff has paid Defendant GGI the deposit and the first payment for Eros, totaling $2,400,000.00. Defendants have postponed the estimated completion date from January 2019 to October 2019—**almost a full year**. Plaintiff has not agreed to the postponed estimated completion date of October 2019 and seeks damages for breach of the Eros Agreement.

IV. DIANA

46. On December 14, 2016, Foden emailed Pobric a purchase agreement, dated December 12, 2016—which was executed on or about January 11, 2017 by Plaintiff and Lazarov, on behalf of Defendant GGI (Ex. 3, "Diana Agreement"). The Diana Agreement contained an estimated completion date of August 2019.

47. Prior to that, on December 9, 2016, McCraw emailed Sternthal "the payment terms for [Plaintiff]" for Diana, including when each payment is due and an estimated date of completion of August 2019, with the following description:

> Diana, 2016-
> Mirror-polished stainless steel with transparent color coating
> 108 x 77 3/8 x 70 3/16 inches
> 274.32 x 196.53 x 178.28 cm
> Ed. 3/3 + 1 AP

Sternthal forwarded McCraw's email to Heller later that day.

48. Also on December 9, 2016, Sternthal emailed Heller that Jeff Koons "is fine with Tananbaum's [Plaintiff's] proposal re: Diana," which concerned "an option," i.e., a right to accept or reject Diana, pursuant to which Plaintiff would be given the opportunity to review edition 1 of Jeff Koons' Diana sculpture ("Diana Edition 1") upon its completion, estimated to be October 1, 2018. At that point, Plaintiff, at his sole discretion, could cancel his purchase contract for Diana and request that all proceeds previously paid in connection with Diana be returned to Plaintiff.

49. On or about December 12 or 13, 2016, Sternthal emailed Plaintiff Invoice NY2016.520 for Diana ("Diana Original Invoice"). The Diana Original Invoice estimated that Diana would be completed in August 2019 and that **Diana Edition 1 would be completed on October 1, 2018**.

50. On December 13, 2016, Pobric emailed Foden:

> "We had understood that [Larry Gagosian] and [Plaintiff] had agreed that no more than 50% would be paid by the time Edition I of Diana was completed, at which point, [Plaintiff] could view the completed edition and decide if he wanted to complete the sale. If he did not proceed with the purchase at that point, the proceeds previously paid would be returned, and if he did proceed with the purchase, he would continue to make payments according to the payment schedule."

51. On December 14, 2016, Foden emailed Pobric Revised Invoice NY2016.520 ("Diana Revised Invoice"). Both the Diana Agreement and the Diana Revised Invoice contained estimated completion dates for Diana and Diana Edition 1 of August 2019 and October 1, 2018, respectively.

52. On December 15, 2016, Pobric emailed Foden that the Diana Agreement and the Diana Original Invoice emailed by Defendant GGI failed to include "the requested revision that [Plaintiff] be able to cancel the sale after seeing [Diana] Edition 1 and have the previously paid funds returned." Foden responded via email, "We will send a side-letter addressing this point."

53. Between January 6 and 11, 2017, Defendant GGI and Plaintiff, and their respective counsel, negotiated the content of the Diana Side Letter Agreement. On January 11, 2017, Plaintiff and Larry Gagosian, on behalf of Defendant GGI, executed the Diana Side Letter Agreement, dated January 10, 2017 (Ex. 4). The Diana Side Letter Agreement provides in pertinent as follows:

> "Gagosian Gallery, Inc. ("Seller") has entered into an invoice and Purchase Agreement (the "Agreement") with Mr. Steven Tananbaum ("Buyer") with regard to the purchase of a work created by Jeff Koons titled *Diana*, edition #3 from an edition of 3, plus 1 AP (the "Work"). Seller and Buyer agree that Buyer will have the opportunity to review edition #1 of this sculpture upon its completion, estimated to be October 1, 2018. Upon review of the completed edition #1 *Diana* (which review Buyer agrees to complete within 30 days after Seller makes such work available to Buyer for review), Buyer shall have the opportunity to cancel the purchase at his discretion by written notice to Seller (which written notice

> must be delivered to Seller within 10 days after completion of Buyer's review for it to be effective). Should Buyer cancel the purchase, (i) all proceeds previously paid to Seller pursuant to the Agreement will be returned to Buyer, and Buyer shall have no obligation to make any further payments, and (ii) Seller will indemnify and hold Buyer harmless against any damages, costs, or claims arising out the cancellation of the purchase. If you are in agreement with the foregoing please sign below."

54. Defendant GGI received Plaintiff's deposit for Diana in the sum of $2,125,000.00 on or about January 12, 2017.

55. On November 30, 2016, Plaintiff personally met with Jeff Koons at Jeff Koons' Studio, where a number of Jeff Koons sculptures were presented in maquette form, i.e., cardboard models, amongst which were models of Diana and Eros. At that time, Jeff Koons assured Plaintiff that production of any of these sculptures would be made on time.

56. Defendant GGI received Plaintiff's first payment for Diana in the sum of $2,125,000.00 in or about mid-November of 2017.

57. On February 14, 2018, Pobric emailed Foden that Plaintiff was expecting images of any and all of the sculptures in progress (i.e., Balloon Venus, Eros and Diana), as well as an update as to whether Diana Edition 1 was on schedule for a viewing prior to the due date of Plaintiff's second payment in the sum of $2,125,000.00 on October 1, 2018.

58. On February 15, 2018, Fischer (from Lazarov's email account) emailed Pobric:

> "Unfortunately, the fabrication of Jeff Koons Diana is delayed, and the sculpture will not be ready this year. The Koons studio has relayed that this sculpture is among the most complex in the series, and their initial projections for the scanning and digital model were off-target. In addition, due to the large surface area of this work, the fabrication timeline has been extended. We will continue to check in with the Koons studio periodically for additional updates. In addition, we have asked for the requested images of works currently in progress and will revert back when received."

59. On February 27, 2018, having received **none of the requested images of any of the three sculptures** in progress or a firm date as to when Diana Edition 1 would be completed

and made available to Plaintiff for review, Heller emailed Larry Gagosian that Plaintiff was canceling the purchase of Diana and requesting the return of his deposit. Heller explained, "I think the delays in production have a lot to do with this decision."

60. On March 2, 2018, Plaintiff emailed Larry Gagosian, "As you know this wasn't a purchase but an option if available to look at. It is not available to look at during the time specified. So this is cancelled and [I] would like my money back."

61. After Larry Gagosian responded via email later that day that he would "revert the beginning of next week," Plaintiff demanded via email a "refund next week."

62. On March 8, 2018, Larry Gagosian rejected via email Plaintiff's request for a refund, claiming that the request was premature and that the purchase of Diana could be canceled only after a review of Diana Edition 1, which had not yet been completed and for which there was no concrete date of completion.

63. On March 13, 2018, Plaintiff and Larry Gagosian orally agreed that Plaintiff would receive all funds remitted to Defendants in connection with Diana—in the sum of $4,250,000.00—by the end of October 2018.

64. However, on March 20, 2018, consistent with his role in the System, Dontzin, masking his true role as attorney for Defendant GGI, emailed "settlement terms" to Plaintiff that ran counter to Plaintiff's agreement with Larry Gagosian one week earlier and instead would have subverted litigation and resulted in a lengthy and costly arbitration.

65. On March 22, 2018, Plaintiff sought an end to the dialogue with Dontzin by reminding the attorney that, as Dontzin was aware that Plaintiff is represented by counsel on this matter, the New York Rules of Professional Conduct Rule 4.2(a) required Dontzin to communicate with Plaintiff's counsel, not directly with Plaintiff. Dontzin responded via email

by claiming that he was "**going out of [his] way to try to resolve this amicably**"—disingenuously confirming that he was acting as an independent go-between—despite the fact that Dontzin was acting as attorney for Defendant GGI, not as an independent, unbiased go-between. Dontzin's true purpose was to bury any potential litigation in an arbitration clause.

66. Also on March 22, 2018, Plaintiff emailed Larry Gagosian, informing him of Dontzin's rejection of Larry Gagosian's earlier agreement to return the sums remitted by Plaintiff in connection with Diana—totaling $4,250,000.00—and noting that Larry Gagosian had advanced those sums, without Plaintiff's authority, to Defendant JKL.

67. To date, Plaintiff has remitted the deposit and the first payment for Diana, totaling $4,250,000.00, and has not been provided with a single image of Diana (or Balloon Venus or Eros) in progress or a concrete date on which Diana Edition 1 will be completed and made available for Plaintiff's review. Defendants have not adjusted the Diana payment schedule and are still requiring Plaintiff to pay the next payment without delay.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Balloon Venus Agreement Against Defendants GGI and JKL)

68. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein.

69. Plaintiff and Defendant GGI executed the Balloon Venus Agreement with an estimated date of completion of December 2015.

70. On April 21, 2015, Defendants postponed the estimated date of completion from December 2015 to September 2016. On or about September 29, 2015, Defendants postponed the estimated date of completion "anywhere from 3-6 months." On April 27, 2016, Defendants postponed the estimated date of completion from September 2016 to June 2018. On January 5, 2018, Defendants postponed the estimated date of completion from June 2018 to August 2019.

71. Defendants failed to complete Balloon Venus by December 2015 and have not completed Balloon Venus to date. Defendants have failed to complete Balloon Venus within a reasonable time from the execution of the Balloon Venus Agreement, thereby breaching the Balloon Venus Agreement.

72. On several occasions after execution of the Purchase Agreements, Defendants represented in writing and orally to Plaintiff that Balloon Venus was in the process of being manufactured, but was delayed significantly due to insurmountable technical issues.

73. Defendants have refused to provide Plaintiff with any images, meaning photographs or other visual evidence, demonstrating that Balloon Venus actually was being manufactured by Defendants or showing any progress in manufacturing Balloon Venus because such images do not exist, thereby breaching the Balloon Venus Agreement.

74. As part of Defendants' System, Defendants have prioritized the design, manufacture and delivery of other sculptures and works of art to other collectors and clients (see ¶¶ 11-12) and have breached the representations that Balloon Venus was being manufactured, rendering the estimated date of completion of December 2015 and all subsequent estimated dates of completion a nullity. Defendants never intended to complete the manufacture of Balloon Venus by the date set forth in the Balloon Venus Agreement and took no material steps to do so, thereby breaching the Balloon Venus Agreement.

75. Plaintiff accepted the aforementioned representations made by Defendants and Plaintiff paid Defendants a deposit and three payments in the sum of $6,400,000.00.

76. Plaintiff has performed all of his obligations under the Balloon Venus Agreement prior to and during Defendants' breaches, as set forth in ¶¶ 69-74 hereinabove, trusting Defendants to perform the terms of the Balloon Venus Agreement.

77. As a result of the foregoing breaches, Plaintiff has been damaged in a sum in excess of $6,400,000.00— the sum total of the deposit and payments Plaintiff made to Defendants in connection with Balloon Venus—the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff further demands that Defendants "indemnify [Plaintiff] against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional fees and expenses," as set forth in pages 2-3 of the Balloon Venus Agreement. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

AS AND FOR A SECOND CAUSE OF ACTION
(Breach of Eros Agreement Against Defendants GGI and JKL)

78. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein.

79. On November 30, 2016, Plaintiff personally met with Jeff Koons at Jeff Koons' Studio, where a number of Jeff Koons sculptures were presented in maquette form, i.e., cardboard models, amongst which were models of Diana and Eros. At that time, Jeff Koons assured Plaintiff that production of any of these sculptures would be made on time.

80. Plaintiff and Defendant GGI executed the Eros Agreement with an estimated date of completion of January 2019.

81. On several occasions after execution of the Eros Agreement, Defendants represented in writing and orally to Plaintiff that Eros was in the process of being manufactured, but was delayed significantly due to insurmountable technical issues.

82. Defendants have refused to provide Plaintiff with any images, meaning photographs or other visual evidence, demonstrating that Eros actually was being manufactured by Defendants or showing any progress in manufacturing Eros because such images do not exist, thereby breaching the Eros Agreement.

83. As part of Defendants' System, Defendants have prioritized the design, manufacture and delivery of other sculptures and works of art to other collectors and clients (see ¶¶ 11-12) and have breached the representations that Eros was being manufactured, rendering the estimated date of completion of January 2019 a nullity. Defendants never intended to complete the manufacture of Eros by the date set forth in the Eros Agreement and took no material steps to do so, thereby breaching the Eros Agreement.

84. Plaintiff accepted the aforementioned representations made by Defendants and Plaintiff paid Defendants a deposit and one payment in the sum of $2,400,000.00.

85. Plaintiff has performed all of his obligations under the Eros Agreement prior to and during Defendants' breaches, as set forth in ¶¶ 79-83 hereinabove, trusting Defendants to perform the terms of the Eros Agreement.

86. As a result of the foregoing breaches, Plaintiff has been damaged in a sum in excess of $2,400,000.00— the sum total of the deposit and payments Plaintiff made to Defendants in connection with Eros—the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff further demands that Defendants "indemnify [Plaintiff] against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional fees and expenses," as set forth in pages 2-3 of the Eros Agreement. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

AS AND FOR A THIRD CAUSE OF ACTION
(Breach of Diana Agreement and Diana Side Letter Agreement Against Defendants GGI and JKL)

87. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein.

88. Plaintiff and Defendant GGI executed the Diana Agreement with an estimated date of completion for Diana of August 2019, as well as the Diana Side Letter Agreement with an estimated date of completion for Diana Edition 1 of October 1, 2018.

89. On November 30, 2016, Plaintiff personally met with Jeff Koons at Jeff Koons' Studio, where a number of Jeff Koons sculptures were presented in maquette form, i.e., cardboard models, amongst which were models of Diana and Eros. At that time, Jeff Koons assured Plaintiff that production of any of these sculptures would be made on time.

90. Defendants have represented to Plaintiff that they will not complete Diana or Diana Edition 1 by the estimated dates of completion or within a reasonable time from the execution of the Diana Agreement and Diana Side Letter Agreement, thereby breaching the Diana Agreement and Diana Side Letter Agreement.

91. Defendants have confirmed to Plaintiff that, contrary to the Diana Side Letter Agreement, Defendants will not permit Plaintiff to review Diana Edition 1 on October 1, 2018, or at any other point in 2018, and exercise Plaintiff's option to cancel his purchase of Diana, thereby breaching the Diana Agreement and Diana Side Letter Agreement. However, Defendants are still requiring Plaintiff to pay the next payment without delay.

92. On several occasions after execution of the Diana Agreement and Diana Side Letter Agreement, Defendants represented in writing and orally to Plaintiff that Diana and Diana Edition 1 were in the process of being manufactured, but were delayed significantly due to insurmountable technical issues.

93. Defendants have refused to provide Plaintiff with any images, meaning photographs or other visual evidence, demonstrating that Diana and Diana Edition 1 actually were being manufactured by Defendants or showing any progress in manufacturing Diana and

Diana Edition 1 because such images do not exist, thereby breaching the Diana Agreement and Diana Side Letter Agreement.

94. As part of Defendants' System, Defendants have prioritized the design, manufacture and delivery of other sculptures and works of art to other collectors and clients (see ¶¶ 11-12) and have breached the representations that Diana and Diana Edition 1 were being manufactured, rendering the estimated dates of completion of August 2019 and October 1, 2018, respectively, a nullity. Defendants never intended to complete the manufacture of Diana and Diana Edition 1 by the dates set forth in the Diana Agreement and Diana Side Letter Agreement and took no material steps to do so, thereby breaching the Diana Agreement and Diana Side Letter Agreement.

95. Plaintiff accepted the aforementioned representations made by Defendants and Plaintiff paid Defendants a deposit and one payment in the sum of $4,250,000.00.

96. Plaintiff has performed all of his obligations under the Diana Agreement and Diana Side Letter Agreement prior to and during Defendants' breaches, as set forth in ¶¶ 88-94 hereinabove, trusting Defendants to perform the terms of the Diana Agreement and Diana Side Letter Agreement.

97. As a result of the foregoing breaches, Plaintiff has been damaged in a sum in excess of $4,250,000.00— the sum total of the deposit and payments Plaintiff made to Defendants in connection with Diana—the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff further demands that Defendants "indemnify [Plaintiff] against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional

fees and expenses," as set forth in page 2 of the Diana Agreement. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

AS AND FOR A FOURTH CAUSE OF ACTION
(Anticipatory Repudiation of Balloon Venus Agreement Against Defendants GGI and JKL)

98. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein.

99. Plaintiff and Defendant GGI executed the Balloon Venus Agreement with an estimated date of completion of December 2015.

100. On April 27, 2016, Defendants postponed the estimated date of completion to June 2018.

101. Subsequent to securing a third payment from Plaintiff, Defendants conceded, on April 27, 2016, that Balloon Venus will not be completed by June 2018 and, at best, might be completed more than one year later on August 2019.

102. As part of Defendants' System, Defendants have prioritized the design, manufacture and delivery of other sculptures and works of art to other collectors and clients (see ¶¶ 11-12), never intended to complete the manufacture of Balloon Venus by June 2018, August 2019 or any of the other estimated dates of completion and took no material steps to do so.

103. To date, Defendants have not provided Plaintiff with a single image of Balloon Venus in progress and/or a concrete or material date (or any date for that matter) on which Balloon Venus will be completed and made available for Plaintiff's review.

104. The foregoing acts of Defendants constitute an anticipatory repudiation of the Balloon Venus Agreement.

105. Up to and including the time of Defendants' anticipatory repudiation of the Balloon Venus Agreement, Plaintiff performed all of his obligations under the Balloon Venus,

including, without limitation, paying Defendants the required deposit and three subsequent payments in the sum of $6,400,000.00, and Plaintiff was ready, willing and able to continue performance of the Balloon Venus Agreement and did perform his obligations.

106. As a result of the foregoing, Plaintiff has been damaged in a sum in excess of $6,400,000.00— the sum total of the deposit and payments Plaintiff made to Defendants in connection with Balloon Venus—the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff further demands that Defendants "indemnify [Plaintiff] against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional fees and expenses," as set forth in pages 2-3 of the Balloon Venus Agreement. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

AS AND FOR A FIFTH CAUSE OF ACTION
(Anticipatory Repudiation of Eros Agreement Against Defendants GGI and JKL)

107. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein.

108. Plaintiff and Defendant GGI executed the Eros Agreement with an estimated date of completion of January 2019.

109. Defendants have represented to Plaintiff that they will not complete Eros by January 2019 or within a reasonable time from the execution of the Eros Agreement.

110. As part of Defendants' System, Defendants have prioritized the design, manufacture and delivery of other sculptures and works of art to other collectors and clients (see ¶¶ 10-11), never intended to complete the manufacture of Eros by January 2019 or any other estimated date of completion and took no material steps to do so.

111. To date, Defendants have not provided Plaintiff with a single image of Eros in progress or a concrete or material date (or any date for that matter) on which Eros will be completed and made available for Plaintiff's review.

112. The foregoing acts of Defendants constitute an anticipatory repudiation of the Eros Agreement.

113. Up to and including the time of Defendants' anticipatory repudiation of the Eros Agreement, Plaintiff performed all of his obligations under the Eros Agreement, including, without limitation, paying Defendants the required deposit and one subsequent payment in the sum of $2,400,000.00. Plaintiff was ready, willing and able to continue performance of the Eros Agreement and did perform his obligations.

114. As a result of the foregoing, Plaintiff has been damaged in a sum in excess of $2,400,000.00— the sum total of the deposit and payments Plaintiff made to Defendants in connection with Eros—the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff further demands that Defendants "indemnify [Plaintiff] against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional fees and expenses," as set forth in pages 2-3 of the Eros Agreement. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

AS AND FOR A SIXTH CAUSE OF ACTION
(Anticipatory Repudiation of Diana Agreement and Diana Side Letter Agreement Against Defendants GGI and JKL)

115. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein.

116. Plaintiff and Defendant GGI executed the Diana Agreement with an estimated date of completion for Diana of August 2019, as well as the Diana Side Letter Agreement with an estimated date of completion for Diana Edition 1 of October 1, 2018.

117. Defendants have represented to Plaintiff that they will not complete Diana or Diana Edition 1 by the estimated dates of completion or within a reasonable time from the execution of the Diana Agreement and Diana Side Letter Agreement.

118. Defendants have confirmed to Plaintiff that, contrary to the Diana Side Letter Agreement, Defendants will not permit Plaintiff to review Diana Edition 1 on October 1, 2018, or at any other point in 2018, and exercise Plaintiff's option to cancel his purchase of Diana. However, Defendants are still requiring Plaintiff to pay the next payment without delay. Defendants' conduct defeats the entire purpose of the Diana Side Letter Agreement.

119. As part of Defendants' System, Defendants have prioritized the design, manufacture and delivery of other sculptures and works of art to other collectors and clients (see ¶¶ 11-12), never intended to complete the manufacture of Diana or Diana Edition 1 by August 2019, October 1, 2018 or any other estimated date of completion and took no material steps to do so.

120. To date, Defendants have not provided Plaintiff with a single image of Diana or Diana Edition 1 in progress or a concrete or material date (or any date for that matter) on which Diana will be completed and Diana Edition 1 will be completed and made available for Plaintiff's review.

121. The foregoing acts of Defendants constitute an anticipatory repudiation of the Diana Agreement and/or the Diana Side Letter Agreement.

122. Up to and including the time of Defendants' anticipatory repudiation of the Diana Agreement and/or the Diana Side Letter Agreement, Plaintiff performed all of his obligations under the Diana Agreement and/or the Diana Side Letter Agreement, including, without limitation, paying Defendants the required deposit and one subsequent payment in the sum of $4,250,000.00. Plaintiff was ready, willing and able to continue performance of the Diana Agreement and/or the Diana Side Letter Agreement and did perform his obligations.

123. Defendants are further guilty of anticipatory breach of the Diana Side Letter Agreement and the Diana Agreement in March 2018 as Defendants materially breached their obligation pursuant to the Diana Side Letter Agreement by depriving Plaintiff of his right to view Diana Edition 1 and reject Diana while simultaneously insisting that Plaintiff be bound by the Diane Side Letter Agreement. Defendants' insistence upon an untenable interpretation of the Diana Side Letter Agreement and the Diana Agreement, and a refusal to perform unless Plaintiff agrees to Defendants' interpretation, constitute an anticipatory repudiation of the Diana Side Letter Agreement and the Diana Agreement.

124. As a result of the foregoing, Plaintiff has been damaged in a sum in excess of $4,250,000.00— the sum total of the deposit and payments Plaintiff made to Defendants in connection with Diana—the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff further demands that Defendants "indemnify [Plaintiff] against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional fees and expenses," as set forth in page 2 of the Diana Agreement. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Violation of NYUCC § 2-609 With Respect to Balloon Venus Against Defendants GGI and JKL)

125. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein.

126. Plaintiff and Defendant GGI executed the Balloon Venus Agreement with an estimated date of completion of December 2015.

127. On April 21, 2015, only after Pobric emailed Blakey to confirm that Defendants would complete Balloon Venus as contracted on December 2015, Defendants postponed the estimated date of completion to September 2016. On September 29, 2015, White emailed Pobric that Balloon Venus "will likely be anywhere from 3-6 months late." On April 27, 2016, Defendants postponed the estimated date of completion from September 2016 to June 2018. On January 5, 2018, Defendants again postponed the estimated date of completion from June 2018 to August 2019.

128. Plaintiff sought assurances from Defendants GGI and JKL that Balloon Venus would be completed according to schedule and requested "images of any/all of the works in progress."

129. Defendants have refused to provide Plaintiff with any images, meaning photographs or other visual evidence, demonstrating that Balloon Venus actually was being manufactured by Defendants or showing any progress in manufacturing Balloon Venus because such images do not exist.

130. Despite claiming that Balloon Venus was delayed as a result of complex technical and manufacturing issues, Defendants did not make available material requested information, or any information whatsoever, showing the manufacturing of Balloon Venus, and/or Defendants were not capable of providing such material information concerning these technical and

manufacturing issues, because such information did not exist. Defendants were therefore hiding and obscuring the reasons behind each prospective delay and failed to supply any such information to Plaintiff in regard thereto, because such information did not exist.

131. To date, Defendants still have not provided Plaintiff with a concrete date of completion and delivery, four and a half years after the Balloon Venus Agreement was executed.

132. This intransigence is part and parcel of Defendants' System and is repeated for each of the three Jeff Koons sculptures purchased by Plaintiff.

133. Plaintiff has performed all of his obligations under the Balloon Venus Agreement.

134. As a result of the foregoing, Plaintiff has been damaged in a sum in excess of $6,400,000.00— the sum total of the deposit and payments Plaintiff made to Defendants in connection with Balloon Venus—the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff further demands that Defendants "indemnify [Plaintiff] against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional fees and expenses," as set forth in pages 2-3 of the Balloon Venus Agreement. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

AS AND FOR AN EIGHTH CAUSE OF ACTION
(Violation of NYUCC § 2-609 With Respect to Eros Against Defendants GGI and JKL)

135. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein.

136. Plaintiff and Defendant GGI executed the Eros Agreement with an estimated date of completion of January 2019.

137. On December 8, 2017, Pobric emailed Foden, asking whether the production of Eros was on schedule. Almost one week later, on December 14, 2017, Pobric repeated the

inquiry to Foden. Approximately one month later, on January 8, 2018, Pobric emailed Foden a third time about the production status of Eros. The following day, Foden finally responded, without providing a reason therefor, that the estimated date of completion was postponed until October 2019.

138. Plaintiff sought assurances from Defendants GGI and JKL that Eros would be completed according to schedule and requested "images of any/all of the works in progress."

139. Defendants have refused to provide Plaintiff with any images, meaning photographs or other visual evidence, demonstrating that Eros actually was being manufactured by Defendants or showing any progress in manufacturing Eros because such images do not exist.

140. Defendants did not make available material requested information, or any information whatsoever, showing the manufacturing of Eros, and/or Defendants were not capable of providing such material information concerning these technical and manufacturing issues, because such information did not exist. Defendants were therefore hiding and obscuring the reasons behind each prospective delay and failed to supply any such information to Plaintiff in regard thereto, because such information did not exist.

141. To date, Defendants still have not provided Plaintiff with a concrete date of completion and delivery.

142. This intransigence is part and parcel of Defendants' System and is repeated for each of the three Jeff Koons sculptures purchased by Plaintiff.

143. Plaintiff has performed all of his obligations under the Eros Agreement.

144. As a result of the foregoing, Plaintiff has been damaged in a sum in excess of $2,400,000.00— the sum total of the deposit and payments Plaintiff made to Defendants in connection with Eros—the precise amount to be proven at trial, with appropriate legal interest,

including, without limitation, all consequential and incidental damages related thereto. Plaintiff further demands that Defendants "indemnify [Plaintiff] against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional fees and expenses," as set forth in pages 2-3 of the Eros Agreement. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

AS AND FOR A NINTH CAUSE OF ACTION
(Violation of NYUCC § 2-609 With Respect to Diana Against Defendants GGI and JKL)

145. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein.

146. Plaintiff and Defendant GGI executed the Diana Agreement with an estimated date of completion for Diana of August 2019, as well as the Diana Side Letter Agreement with an estimated date of completion for Diana Edition 1 of October 1, 2018.

147. On November 30, 2016, Plaintiff personally met with Jeff Koons at Jeff Koons' Studio, and Jeff Koons assured Plaintiff then that Diana and Diana Edition 1 would be completed on time without any delays.

148. On February 14, 2018, Pobric wrote to Foden that Plaintiff required an update concerning whether Diana Edition 1 would be completed and made available to Plaintiff for review by October 1, 2018, as contracted in the Diana Side Letter Agreement. On February 15, 2018, Fischer (from Lazarov's email account) responded that Diana Edition 1 "is delayed" and "will not be ready this year."

149. Defendants have confirmed to Plaintiff that, contrary to the Diana Side Letter Agreement, Defendants will not permit Plaintiff to review Diana Edition 1 on October 1, 2018, or at any other point in 2018, and exercise Plaintiff's option to cancel his purchase of Diana.

However, Defendants are still requiring Plaintiff to pay the next payment without delay. Defendants' conduct defeats the entire purpose of the Diana Side Letter Agreement.

150. Though Plaintiff requested "images of any/all of the works in progress," Defendants have refused to provide Plaintiff with any images, meaning photographs or other visual evidence, demonstrating that Diana and Diana Edition 1 actually were being manufactured by Defendants or showing any progress in manufacturing Diana and Diana Edition 1 because such images do not exist.

151. Defendants did not make available material requested information, or any information whatsoever, showing the manufacturing of Diana and Diana Edition 1, and/or Defendants were not capable of providing such material information concerning these technical and manufacturing issues, because such information did not exist. Defendants were therefore hiding and obscuring the reasons behind each prospective delay and failed to supply any such information to Plaintiff in regard thereto, because such information did not exist.

152. To date, Defendants still have not provided Plaintiff with a concrete date of completion for Diana Edition 1 after which Plaintiff can review the sculpture and decide whether to cancel his purchase of Diana, despite this being the very heart of the Diana Side Letter Agreement.

153. This intransigence is part and parcel of Defendants' System and is repeated for each of the three Jeff Koons sculptures purchased by Plaintiff.

154. Plaintiff has performed all of his obligations under the Diana Agreement and Diana Side Letter Agreement.

155. As a result of the foregoing, Plaintiff has been damaged by Defendants' breach of the Diana Agreement and Diana Side Letter Agreement in a sum in excess of $4,250,000.00—

the sum total of the deposit and payments Plaintiff made to Defendants in connection with Diana—the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff further demands that Defendants "indemnify [Plaintiff] against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional fees and expenses," as set forth in page 2 of the Diana Agreement. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

AS AND FOR A TENTH CAUSE OF ACTION
(Violation of Article 15 of New York's Arts and Cultural Affairs Law With Respect to Balloon Venus Against Defendants GGI and JKL)

156. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein.

157. Pursuant to NYACAL Section 15.10(1), the following information must be provided in writing to a purchaser at the time a sculpture is sold:

(a) Artist. State the name of the artist.

(b) Title. State the title of the sculpture.

(c) Foundry. State the name, if known, of the foundry which or person who produced, fabricated or carved the sculpture.

(d) Medium. Describe the medium or process used in producing the multiple. If an established term, in accordance with the usage of the trade, cannot be employed accurately to describe the medium or process, a brief, clear description shall be made.

(e) Dimensions. State the dimensions of the sculpture.

(f) Time produced. State the year the sculpture was cast, fabricated or carved.

(g) Number cast. State the number of sculpture casts, according to the best information available, produced or fabricated or carved as of the date of the sale.

(h) If the purported artist was deceased at the time the sculpture was produced, this shall be stated.

(i) Use of master. State whether the sculpture is authorized by the artist or, if produced after the artist's death, whether it was authorized in writing by the artist or by the estate, heirs or other legal representatives of the artist. In the event of a sale after the initial sale, the art merchant may disclose in writing evidence of such reasonable inquiries as have been made pursuant to subdivision two of section 15.15 of this article and any information imparted as may be relevant in fulfilling the intent of this paragraph.

158. Pursuant to NYACAL Section 15.10(2), with respect to limited edition sculptures, the following information also must be provided in writing to the purchaser:

(a) Whether and how the sculpture and the edition is numbered;

(b) The size of the edition or proposed edition and the size of any prior edition or editions of the same sculpture, regardless of the color or material used;

(c) Whether additional sculpture casts have been produced in excess of the stated size of the edition or proposed edition and, if so, the total number of such excess casts produced or proposed to be produced and whether and how they are or will be numbered according to the stated intention of the artist or a statement that the artist has not disclosed his intention about the number of additional casts or their numbering. Additional sculpture casts shall include all casts from the same master regardless of their color, material or size; and

(d) Whether the artist has stated in writing a limitation on the number of additional sculpture casts to be produced in excess of the stated size of the edition or proposed edition and, if so, the total number of such excess casts produced or proposed to be produced and whether and how they are or will be numbered according to the stated intention of the artist or the estate, heirs or other legal representatives of the artist or a statement that the artist has not disclosed his intention about the number of additional casts or their numbering. Additional sculpture casts shall include all casts from the same master regardless of their color, material or size.

159. Defendants violated NYACAL Article 15 and failed to disclose in the form Balloon Venus Agreement, drafted and supplied by Defendant JKL, inter alia, the following:

(a) The foundry or person that produced, fabricated or carved Balloon Venus (NYACAL Section 15.10(1)(c));

(b) The year Balloon Venus was cast, fabricated or carved or to be cast, fabricated or carved (NYACAL Section 15.10(1)(f));

(c) The size of any prior edition or editions of the same sculpture, regardless of the color or material used (NYACAL Section 5.10(2)(b));

(d) Whether the sculpture is authorized by the artist (NYACAL Section 5.10(1)(f)); and

(e) Subject to discovery, other provisions of Article 15 of the NYACAL.

160. An art merchant who fails to disclose any of the information set forth in NYACAL Section 15.10, or who provides mistaken, erroneous or untrue information, is liable for the consideration paid by the purchaser, as well as interest from the dates of the payments.

161. An art merchant who willfully fails to disclose any of the information set forth in NYACAL Section 15.10, or who knowingly discloses false information, is liable to the purchaser for three times the consideration paid by the purchaser.

162. NYACAL Section 15.11 sets forth that information provided by an art merchant pursuant to NYACAL Section 15.10 creates an express warranty—pursuant to NYACAL 13.05—for each such item of information.

163. Defendants willfully failed to disclose information, and/or knowingly disclosed false information, to Plaintiff in writing, including, inter alia, the information set forth in ¶ 159, and, subject to discovery, other provisions of Article 15 of the NYACAL.

164. As a result of the foregoing, Plaintiff has been damaged in a sum in excess of $6,400,000.00—the sum total of the deposit and payments Plaintiff made to Defendants in connection with Balloon Venus—the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Pursuant to NYACAL Section 15.10, Plaintiff also has been damaged in a sum in excess of $19,200,000.00—three times the sum total of the deposit and payments Plaintiff made to

Defendants in connection with Balloon Venus— the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, attorneys' fees, expert witnesses' fees and all consequential and incidental damages related thereto. Plaintiff further demands that Defendants "indemnify [Plaintiff] against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional fees and expenses," as set forth in pages 2-3 of the Balloon Venus Agreement. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

AS AND FOR AN ELEVENTH CAUSE OF ACTION
(Violation of Article 15 of New York's Arts and Cultural Affairs Law With Respect to Eros Against Defendants GGI and JKL)

165. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein, particularly those set forth in ¶¶ 156-164.

166. Defendants violated NYACAL Article 15 and failed to disclose in the form Eros Agreement, drafted and supplied by Defendant JKL, inter alia, the following:

(a) The foundry or person that produced, fabricated or carved Eros (NYACAL Section 15.10(1)(c));

(b) The year Eros was cast, fabricated or carved or to be cast, fabricated or carved (NYACAL Section 15.10(1)(f));

(c) The size of the sculpture set and the size of any prior edition or editions of the same sculpture, regardless of the color or material used (NYACAL Section 15.10(2)(b));

(d) Whether the sculpture is authorized by the artist (NYACAL Section 5.10(1)(f)); and

(e) Subject to discovery, other provisions of Article 15 of the NYACAL.

167. Defendants willfully failed to disclose information, and/or knowingly disclosed false information, to Plaintiff in writing, including, inter alia, the information set forth in ¶ 166 and, subject to discovery, other provisions of Article 15 of the NYACAL.

168. As a result of the foregoing, Plaintiff has been damaged in a sum in excess of $2,400,000.00—the sum total of the deposit and payments Plaintiff made to Defendants in connection with Eros—the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Pursuant to NYACAL Section 15.10, Plaintiff also has been damaged in a sum in excess of $7,200,000.00—three times the sum total of the deposit and payments Plaintiff made to Defendants in connection with Eros— the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, attorneys' fees, expert witnesses' fees and all consequential and incidental damages related thereto. Plaintiff further demands that Defendants "indemnify [Plaintiff] against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional fees and expenses," as set forth in pages 2-3 of the Eros Agreement. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

AS AND FOR A TWELFTH CAUSE OF ACTION
(Violation of Article 15 of New York's Arts and Cultural Affairs Law With Respect to Diana Against Defendants GGI and JKL)

169. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein, particularly those set forth in ¶¶ 156-164.

170. Defendants violated NYACAL Article 15 and failed to disclose in the form Diana Agreement, drafted and supplied by Defendant JKL, or in the Diana Side Letter Agreement, inter alia, the following:

(a) The foundry or person that produced, fabricated or carved Diana (NYACAL Section 15.10(1)(c));

(b) The year Diana was cast, fabricated or carved or to be cast, fabricated or carved (NYACAL Section 15.10(1)(f));

(c) The size of the sculpture set and the size of any prior edition or editions of the same sculpture, regardless of the color or material used (NYACAL Section 15.10(2)(b));

(d) Whether the sculpture is authorized by the artist (NYACAL Section 5.10(1)(f)); and

(e) Subject to discovery, other provisions of Article 15 of the NYACAL.

171. Defendants willfully failed to disclose information, and/or knowingly disclosed false information, to Plaintiff in writing, including, inter alia, the information set forth in ¶ 170, and, subject to discovery, other provisions of Article 15 of the NYACAL.

172. As a result of the foregoing, Plaintiff has been damaged in a sum in excess of $4,250,000.00—the sum total of the deposit and payments Plaintiff made to Defendants in connection with Diana—the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Pursuant to NYACAL Section 15.10, Plaintiff also has been damaged in a sum in excess of $12,750,000.00—three times the sum total of the deposit and payments Plaintiff made to Defendants in connection with Diana— the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, attorneys' fees, expert witnesses' fees and all consequential and incidental damages related thereto. Plaintiff further demands that Defendants "indemnify [Plaintiff] against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional fees and expenses," as set forth in page 2 of the Diana Agreement. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

AS AND FOR A THIRTEENTH CAUSE OF ACTION
(Rescission With Respect to the Balloon Venus Agreement Against Defendants GGI and JKL)

173. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein.

174. Defendants have materially breached and anticipatorily repudiated the Balloon Venus Agreement and Plaintiff has been damaged by virtue of the conduct set forth in ¶¶ 68-77, 98-106 and 125-134.

175. Defendants' breaches were so material and substantial that they defeated the very essence and object of the Balloon Venus Agreement.

176. Plaintiff is entitled to a judgment rescinding the Balloon Venus Agreement and/or that it is void from its inception and to be returned to the status quo prior to contract formation. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

AS AND FOR A FOURTEENTH CAUSE OF ACTION
(Rescission With Respect to the Eros Agreement Against Defendants GGI and JKL)

177. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein.

178. Defendants have materially breached and anticipatorily repudiated the Eros Agreement and Plaintiff has been damaged by virtue of the conduct set forth in ¶¶ 78-86, 107-114 and 135-144.

179. Defendants' breaches were so material and substantial that they defeated the very essence and object of the Eros Agreement.

180. Plaintiff is entitled to a judgment rescinding the Eros Agreement and/or that it is void from its inception and to be returned to the status quo prior to contract formation. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

AS AND FOR A FIFTEENTH CAUSE OF ACTION
(Rescission With Respect to the Diana Agreement and Diana Side Letter Agreement Against Defendants GGI and JKL)

181. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein.

182. Defendants have materially breached and anticipatorily repudiated the Diana Agreement and Diana Side Letter Agreement and Plaintiff has been damaged by virtue of the conduct set forth in ¶¶ 87-97, 115-124 and 145-155.

183. Defendants' breaches were so material and substantial that they defeated the very essence and object of the Diana Agreement and Diana Side Letter Agreement.

184. Plaintiff is entitled to a judgment rescinding the Diana Agreement and the Diana Side Letter Agreement and/or that such agreements are void from their inception and to be returned to the status quo prior to contract formation. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

AS AND FOR A SIXTEENTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing With Respect to Balloon Venus Against Defendants GGI and JKL)

185. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein.

186. Plaintiff and Defendant GGI executed the Balloon Venus Agreement with an estimated date of completion of December 2015.

187. Implied in the Balloon Venus Agreement is the requirement that the estimated date of completion be a reasonable estimate by which Defendants, in good faith, determined that they could design, manufacture and deliver Balloon Venus to Plaintiff.

188. Implied in the Balloon Venus Agreement is the requirement that Defendants, at the time of contract execution, had the capacity to complete Balloon Venus by the estimated completion date.

189. Further implied in the Balloon Venus Agreement is the requirement that Defendants promptly begin designing and manufacturing Balloon Venus and endeavor, in good faith, to manufacture Balloon Venus in the time allotted and, to the extent Defendants would not be able to complete the manufacturing on time, Defendants would provide information to Plaintiff concerning the cause and nature of the delay, as well as evidence that Balloon Venus actually was being manufactured.

190. Upon information and belief, Defendants never had the capacity to complete Balloon Venus by the estimated completion date and did not promptly begin designing and manufacturing Balloon Venus in an effort to meet the estimated completion date.

191. Plaintiff expressly sought images and information from Defendants GGI and JKL that Balloon Venus would be completed according to schedule and requested "images of any/all of the works in progress."

192. Defendants have refused to provide Plaintiff with any images, meaning photographs or other visual evidence, demonstrating that Balloon Venus actually was being manufactured by Defendants or showing any progress in manufacturing Balloon Venus because such images do not exist.

193. Despite claiming that Balloon Venus was delayed as a result of complex technical and manufacturing issues, Defendants did not make available material requested information, or any information whatsoever, showing the manufacturing of Balloon Venus, and/or Defendants were not capable of providing such material information concerning these technical and manufacturing issues, because such information did not exist. Defendants were therefore hiding and obscuring the reasons behind each prospective delay and failed to supply any such information to Plaintiff in regard thereto, because such information did not exist.

194. To date, Defendants still have not provided Plaintiff with a concrete date or any date of completion and delivery, four and a half years after the Balloon Venus Agreement was executed. Therefore, Defendants have breached the covenant of good faith and fair dealing as such actions by Defendants were intended to deprive Plaintiff of his right to receive the benefits under the Balloon Venus Agreement and thereby prevented their own performance thereon.[19]

195. There is an implied obligation in every agreement that when an inquiry is made by a contracting party concerning the progress of performance, the other contracting party has an obligation to respond thereto with material information. Defendants, by not performing in a timely basis, additionally have deprived Plaintiff of the fruits and benefits of the Balloon Venus Agreement.

196. In addition, Defendants had a duty not to frustrate the purpose of the Balloon Venus Agreement, to perform the Balloon Venus Agreement and to perform their obligations thereunder. Defendants, who accepted Plaintiff's deposit and subsequent payments, breached their duty of good faith and fair dealing as they were unwilling to perform the Balloon Venus Agreement and made no reasonable effort to perform it, and deprived Plaintiff of the fruits and benefits of the Balloon Venus Agreement.

197. As a result of the foregoing, Plaintiff has been damaged in a sum in excess of $6,400,000.00— the sum total of the deposit and payments Plaintiff made to Defendants in connection with Balloon Venus—the precise amount to be proven at trial, with appropriate legal

[19] Plaintiff's foregoing breach of the covenant of good faith and fair dealing concerning the Balloon Venus Agreement, and the subsequent causes of action herein for breaches of the duty of good faith and fair dealing concerning the Eros Agreement, Diana Agreement and Diana Side Letter Agreement, are consistent with the allegations in paragraph 3 of the First Amended Verified Complaint, dated August 17, 2017, in the Blue Art Action, supra, alleging in pertinent part, "Despite paying $2 million ***in advance*** for the Sculpture and not making any cast available for more than two years..., Defendants offered no explanation or accommodation"(emphasis in original).

interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff further demands that Defendants "indemnify [Plaintiff] against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional fees and expenses," as set forth in pages 2-3 of the Balloon Venus Agreement. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

AS AND FOR A SEVENTEENTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing With Respect to Eros Against Defendants GGI and JKL)

198. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein.

199. Plaintiff and Defendant GGI executed the Eros Agreement with an estimated date of completion of January 2019.

200. Implied in the Eros Agreement is the requirement that the estimated date of completion be a reasonable estimate by which Defendants, in good faith, determined that they could design, manufacture and deliver Eros to Plaintiff.

201. Implied in the Eros Agreement is the requirement that Defendants, at the time of contract execution, had the capacity to complete Eros by the estimated completion date.

202. Further implied in the Eros Agreement is the requirement that Defendants promptly begin designing and manufacturing Eros and endeavor, in good faith, to manufacture Eros in the time allotted and, to the extent Defendants would not be able to complete the manufacturing on time, Defendants would provide information to Plaintiff concerning the cause and nature of the delay, as well as evidence that Eros actually was being manufactured.

203. Upon information and belief, Defendants never had the capacity to complete Eros by the estimated completion date and did not promptly begin designing and manufacturing Eros in an effort to meet the estimated completion date.

204. Plaintiff expressly sought assurances from Defendants GGI and JKL that Eros would be completed according to schedule and requested "images of any/all of the works in progress."

205. Defendants have refused to provide Plaintiff with any images, meaning photographs or other visual evidence, demonstrating that Eros actually was being manufactured by Defendants or showing any progress in manufacturing Eros, because such images do not exist.

206. Despite claiming that Eros was delayed as a result of complex technical and manufacturing issues, Defendants did not make available material requested information, or any information whatsoever, showing the manufacturing of Eros, and/or Defendants were not capable of providing such material information concerning these technical and manufacturing issues, because such information did not exist. Defendants were therefore hiding and obscuring the reasons behind each prospective delay and failed to supply any such information to Plaintiff in regard thereto, because such information did not exist.

207. To date, Defendants still have not provided Plaintiff with a concrete or any date of completion and delivery. Therefore Defendants have breached the covenant of good faith and fair dealing as such actions by Defendants were intended to deprive Plaintiff of his right to receive the benefits under the Eros Agreement and thereby prevented their own performance thereon.

208. There is an implied obligation in every agreement that when an inquiry is made by a contracting party of the progress of performance, the other contracting party has an obligation to respond thereto with material information. Defendants, by not performing in a timely basis, additionally have deprived Plaintiff of the fruits and benefits of the agreement.

209. In addition, Defendants had a duty not to frustrate the purpose of the Eros Agreement, to perform the Eros Agreement and to perform their obligations. Defendants, who accepted Plaintiff's deposit and subsequent payment, breached their duty of good faith and fair dealing as they were unwilling to perform the Eros Agreement and made no reasonable effort to perform it, and deprived Plaintiff of the fruits and benefits of the Eros Agreement.

210. As a result of the foregoing, Plaintiff has been damaged in a sum in excess of $2,400,000.00— the sum total of the deposit and payments Plaintiff made to Defendants in connection with Eros—the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff further demands that Defendants "indemnify [Plaintiff] against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional fees and expenses," as set forth in pages 2-3 of the Eros Agreement. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

AS AND FOR AN EIGHTEENTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing With Respect to Diana Against Defendants GGI and JKL)

211. Plaintiff repeats and realleges all of the foregoing allegations as if fully set herein.

212. Plaintiff and Defendant GGI executed the Diana Agreement with an estimated date of completion for Diana of August 2019, as well as the Diana Side Letter Agreement with an estimated date of completion for Diana Edition 1 of October 1, 2018.

213. The express purpose of the Diana Side Letter Agreement was to permit Plaintiff "the opportunity to cancel the purchase [of Diana] at his discretion" and rescind the Diana Agreement in the event Plaintiff did not approve of Diana Edition 1.

214. Implied in the Diana Agreement and Diana Side Letter Agreement is the requirement that the respective estimated completion dates be reasonable estimates by which Defendants, in good faith, determined that they could design and manufacture Diana and Diana Edition 1.

215. Implied in the Diana Agreement and Diana Side Letter Agreement is the requirement that Defendants, at the time of contract execution, had the capacity to complete Diana and Diana Edition 1 by the respective estimated completion dates.

216. Further implied in the Diana Agreement and Diana Side Letter Agreement is the requirement that Defendants promptly begin designing and manufacturing Diana and Diana Edition 1 and endeavor, in good faith, to manufacture Diana and Diana Edition 1 in the time allotted and, to the extent Defendants would not be able to complete the manufacturing on time, Defendants would provide information to Plaintiff concerning the cause and nature of the delay, as well as evidence that Diana and Diana Edition 1 actually were being manufactured.

217. Upon information and belief, Defendants never had the capacity to complete Diana and Diana Edition 1 by the respective estimated completion dates and did not promptly begin designing and manufacturing Diana and Diana Edition 1 in an effort to meet the respective estimated completion dates.

218. Plaintiff expressly sought assurances from Defendants GGI and JKL that Diana and Diana Edition 1 would be completed according to schedule and requested "images of any/all of the works in progress."

219. Defendants have refused to provide Plaintiff with any images, meaning photographs or other visual evidence, demonstrating that Diana and Diana Edition 1 actually

were being manufactured by Defendants or showing any progress in manufacturing Diana and Diana Edition 1, because such images do not exist.

220. Despite claiming that Diana and Diana Edition 1 were delayed as a result of complex technical and manufacturing issues, Defendants did not make available material requested information, or any information whatsoever, showing the manufacturing of Diana and Diana Edition 1, and/or Defendants were not capable of providing such material information concerning these technical and manufacturing issues, because such information did not exist. Defendants were therefore hiding and obscuring the reasons behind each prospective delay and failed to supply any such information to Plaintiff in regard thereto, because such information did not exist.

221. To date, Defendants still have not provided Plaintiff with a concrete or any date of completion and delivery.

222. In the Diana Side Letter Agreement, Plaintiff was granted the right to cancel the purchase of Diana upon reviewing Diana Edition 1, estimated to be completed on October 1, 2018, and have returned to Plaintiff all proceeds previously paid in connection with Diana.

223. The purpose of entering into the Diana Side Letter Agreement was to ensure that Plaintiff would be able to opt out of or cancel the purchase of Diana in Plaintiff's sole discretion in the event that Plaintiff, upon review of Diana Edition 1, did not approve of it. The Diana Side Letter Agreement also provided Plaintiff with the opportunity to avoid further delays in the production of Diana as Plaintiff would be able to unilaterally judge whether or not Diana was completed or would be completed within a reasonable time from the review of Diana Edition 1 with its estimated completion date of October 2018.

224. Defendant GGI irrationally canceled the review date with respect to Diana Edition 1 and deprived Plaintiff of the opportunity to review Diana Edition 1, illegally informing Plaintiff that Plaintiff cannot reject his purchase of Diana and receive a full refund in connection therewith until Diana Edition 1 is completed, regardless of when Diana Edition 1 is to be completed at an undefined, open-ended time, thereby breaching Plaintiff's rights to receive all sums paid to Defendants pursuant to the Diana Side Letter Agreement and the implied covenant of good faith and fair dealing.

225. Defendants breached the covenant of good faith and fair dealing as such foregoing actions by Defendants were intended to deprive Plaintiff of his right to receive the benefits under the Diana Agreement and/or the Diana Side Letter Agreement and thereby prevented their own performance thereon.

226. There is an implied obligation in every agreement that when an inquiry is made by a contracting party of the progress of performance, the other contracting party has an obligation to respond thereto with material information. Defendants, by not performing in a timely basis, additionally have deprived Plaintiff of the fruits and benefits of the agreements.

227. In addition, Defendants had a duty not to frustrate the purpose of the Diana Agreement and/or the Diana Side Letter Agreement, to perform the Diana Agreement and/or the Diana Side Letter Agreement and to perform their obligations thereunder. Defendants, who accepted Plaintiff's deposit and subsequent payment, breached their duty of good faith and fair dealing as they were unwilling to perform the Diana Agreement and/or the Diana Side Letter Agreement and made no reasonable effort to perform them, and deprived Plaintiff of the fruits and benefits of the Diana Agreement and/or the Diana Side Letter Agreement.

228. As a result of the foregoing, Plaintiff has been damaged in a sum in excess of $4,250,000.00— the sum total of the deposit and payments Plaintiff made to Defendants in connection with Diana—the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff further demands that Defendants "indemnify [Plaintiff] against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional fees and expenses," as set forth in page 2 of the Diana Agreement. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial.

WHEREFORE, Plaintiff demands judgment as follows:

(a) On the First Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a sum in excess of $6,400,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial;

(b) On the Second Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a sum in excess of $2,400,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial;

(c) On the Third Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a sum in excess of $4,250,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial;

(d) On the Fourth Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a sum in excess of $6,400,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial;

(e) On the Fifth Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a sum in excess of $2,400,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial;

(f) On the Sixth Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a sum in excess of $4,250,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial;

(g) On the Seventh Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a sum in excess of $6,400,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial;

(h) On the Eighth Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a sum in excess of $2,400,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial;

(i) On the Ninth Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a sum in excess of $4,250,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial;

(j) On the Tenth Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a sum in excess of $6,400,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto, as well as treble damages, pursuant to NYACAL Section 15.10 for a sum in excess of $19,200,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without

limitation, all consequential and incidental damages related thereto. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial;

(k) On the Eleventh Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a sum in excess of $2,400,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto, as well as treble damages, pursuant to NYACAL Section 15.10 for a sum in excess of $7,200,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial;

(l) On the Twelfth Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a sum in excess of $4,250,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto, as well as treble damages, pursuant to NYACAL Section 15.10 for a sum in excess of $12,750,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without limitation all consequential and incidental damages related thereto. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial,;

(m) On the Thirteenth Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a judgment that the Balloon Venus Agreement is void from its inception and that Plaintiff be returned to the status quo prior to contract formation. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial;

(n) On the Fourteenth Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a judgment that the Eros Agreement is void from its inception and that Plaintiff be returned to the status quo prior to contract formation. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial;

(o) On the Fifteenth Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a judgment that the Diana Agreement and Diana Side Letter Agreement are void from their inception and that Plaintiff be returned to the status quo prior to contract formation. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial;

(p) On the Sixteenth Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a sum in excess of $6,400,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial;

(q) On the Seventeenth Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a sum in excess of $2,400,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial;

(r) On the Eighteenth Cause of Action, jointly and severally against Defendants GGI and JKL in favor of Plaintiff, for a sum in excess of $4,250,000.00, the precise amount to be proven at trial, with appropriate legal interest, including, without limitation, all consequential and incidental damages related thereto. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial;

(s) Indemnification by Defendants, jointly and severally, in favor of Plaintiff "against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional fees and expenses," as set forth in pages 2-3 of the Balloon Venus Agreement and Eros Agreement and page 2 of the Diana Agreement. Plaintiff is further entitled to exemplary damages in a sum to be determined at trial; and

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

Dated: New York, New York
April 19, 2018

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