

**UNITED STATES BANKRUPTCY COURT**

**EASTERN DISTRICT OF LOUISIANA**

**IN RE:**

**NEW ORLEANS AUCTION  
GALLERIES, INC.**

**Debtor**

\* Case No. 11-11068  
\*  
\* Chapter 11  
\*  
\* Section "A"

**DECLARATION OF DAVID BERKE IN OPPOSITION TO OBJECTION  
TO MASSOUD POURATIAN'S CLAIM**

I, David M. Berke, declare and state as follows:

1. I am an attorney at law, duly licensed to practice before the courts of the State of California. I am an associate with the law firm of Gaims, Weil, West & Epstein, LLP, counsel for Massoud Pouratian.

2. The facts set forth herein are known to me personally, and if called upon to testify, I could and would competently testify thereto. This declaration is submitted in opposition to Trustee David Adler's Objection to Claim of Massoud Pouratian ("Objection.")

3. In the California action entitled *Pouratian v. New Orleans Auction Galleries, Inc.*, LASC Case No. BC 420489, Mr. Pouratian alleged the following: During an auction dated May 31 – June 1, 2008, Mr. Pouratian bid on and purchased lot nos. 555 and 556 which contained three paintings by Hans Zatzka and lot no. 1414 containing a painting by Emile Eisman-Semenowsky for a total of \$114,000 based on (1) the description in the catalogue, which stated that the paintings were authored by Zatzka and Semenowsky, and (2) Defendant's condition report, which stated that the lots in question were free of any

defects or irregularities. Declaration of Massoud Pouratian, ¶ 2. A true and correct copy of Mr. Pouratian's First Amended Complaint so stating is attached as Exhibit "1."

4. When the paintings arrived, one of the purported Zatzka and one of the purported Semenowsky paintings had stickers on the back from Christie's Auction House indicating that the paintings had been rejected by Christie's. Pouratian Dec., ¶ 3; Color copies of photographs of these stickers are attached to the Declaration of Mr. Pouratian as Exhibit "B."

5. On July 21, 2010, we subpoenaed the records from Christies. A true and correct copy of the subpoena is attached as Exhibit "2." On or about July 28, 2010, our office received the records and I reviewed them. A true and correct copy of Christie's Declaration of Custodian of Records so verifying is attached as Exhibit "3."

6. In reviewing the records, I saw that Deborah Coy was primarily responsible for Christie's rejecting the paintings. Two documents included a handwritten annotation indicating that the paintings submitted to Christie's were "fake," and that the seller's agent, Alan Smith, had been so informed. In a February 26, 2008 email Deborah Coy informed the seller's agent that the Semenowsky painting was a forgery and that the painting "looked much better in the photo." It stated that "[t]he same is true of the Zatzka." True and correct copies of these documents are attached as Exhibit "4."

7. On August 25, 2010, and in late September, 2010, I called Deborah Coy. She confirmed that Christie's rejected the paintings on the grounds that they were forgeries and that she so informed the seller, Alan Smith. A true and correct copy of my confirming letter is attached as Exhibit "5."

8. Although the Objection does not dispute that the paintings are forgeries, the expert reports of Mr. Fritzi and Mr. Van Weyenbergh also state that all four paintings are forgeries. Copies of these reports are attached as Exhibits “C” and “D” to the Pouratian Declaration.

9. The sole stated basis of the Objection is that the items were purportedly sold “as is.” However, the Condition Reports upon which Mr. Pouratian contends he relied in purchasing the paintings neither indicated that there were any concerns about the paintings being forgeries nor stated that they were being sold “as is.” Copies of the Condition Reports are attached as Exhibit “A” to the Pouratian Declaration. NOAG also failed to disclose the Christie’s stickers on the back of paintings indicating that they had been rejected by at least one other auction house. *Id.*

10. NOAG’s “as is” provision is unenforceable as a matter of California law. California Civil Code § 1812.605 states, in pertinent part: “In conducting the business of auctioneering, each auctioneer and auction company, and the company’s owners, partners, officers, agents, and employees, shall do all of the following: ... c) Truthfully represent the goods to be auctioned.” Here, NOAG expressly represented the goods as paintings by Hans Zatzka and a painting by Emile Eisman-Semenowsky. Pouratian Dec., Exh. “A.” California Civil Code § 1812.609 prohibits any waiver of these rights: “Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable. “ True and correct copies of these statutes have been attached for the Court’s convenience as Exhibit “6.”

11. Bankruptcy Rule 3001(f) states that “[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and

amount of the claim.” The Objection does not argue that the proof of claim was not “executed and filed in accordance with” the rules. The Objection does not attach any supporting evidence.

12. Therefore, Claimant Massoud Pouratian is entitled to full credit for \$114,000, plus interest at the rate of 10% pursuant to California Civil Code §§ 3287 and 3289 from and after June 3, 2008. As of today, October 2, 2012, that amount is \$163,379. True and correct copies of these statutes have been attached for the Court’s convenience as Exhibit “7.”

I declare under penalty of perjury under the laws of the State of New Orleans that the foregoing is true and correct.

Executed on October 1, 2012 at Los Angeles, CA.

  
\_\_\_\_\_  
DAVID BERKE

**EXHIBIT 1**

**CONFORMED COPY  
OF ORIGINAL FILED**  
Los Angeles Superior Court

JAN 29 2010

John A. Clarke, Executive Officer/Clerk  
By *E. C. Villa*, Deputy  
E. C. Villa

1 GAIMS, WEIL, WEST & EPSTEIN, LLP  
JOHN GAIMS, State Bar No. 41352  
2 DAVID M. BERKE, State Bar No. 228827  
1875 Century Park East, 12th Floor  
3 Los Angeles, California 90067  
4 Telephone: (310) 407-4500  
Fax Number (310) 277-2133  
5 *Attorneys for Plaintiff Massoud Pouratian*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES**

GAIMS, WEIL, WEST & EPSTEIN, LLP  
ATTORNEYS AT LAW  
1875 CENTURY PARK EAST, 12th FLOOR, LOS ANGELES, CALIFORNIA 90067-2513  
TELEPHONE (310) 407-4500

11 MASSOUD POURATIAN, an  
individual,  
12  
Plaintiff,  
13  
v.  
14  
15 NEW ORLEANS AUCTION  
GALLERIES, INC., a corporation, and  
16 DOES 1 through 10, inclusive,  
17  
Defendants.

Case No. BC 420489  
Complaint Filed: August 25, 2009  
**FIRST AMENDED COMPLAINT  
FOR INTENTIONAL  
MISREPRESENTATION,  
NEGLIGENT MISREPRESENTATION,  
BREACH OF IMPLIED WARRANTY  
OF MERCHANTABILITY, AND  
RESCISSION**  
  
[Assigned to Hon. Rolf M. Treu,  
Department 58]

GAIMS, WEIL, WEST & EFSTEIN, LLP  
ATTORNEYS AT LAW  
1875 CENTURY PARK EAST, 12TH FLOOR, LOS ANGELES, CALIFORNIA 90067-2513  
TELEPHONE (310) 407-4500

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Plaintiff Massoud Pouratian ("Plaintiff") alleges:

1. At all times material hereto, Plaintiff has been and now is a resident of the State of California, County of Los Angeles.

2. At all times material hereto, Defendant New Orleans Auction Galleries, Inc. ("Defendant") has been and now is a Louisiana corporation with its principal place of business in the City of New Orleans, in Orleans Parish, Louisiana.

3. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is an agent or co-conspirator of the other Defendants and is responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused by their conduct. All allegations concerning the named Defendant shall be deemed to apply to Does 1 through 10, inclusive.

**BACKGROUND FACTS**

4. Defendant is a nationally known auctioneer of consigned artworks. Defendant conducts business in California by selling subscriptions of its catalogues to California residents such as Plaintiff and by telephone sales to California residents of artworks contained in its catalogues.

5. For more than 10 years, Plaintiff has purchased artworks from Defendant for investment purposes. Plaintiff, like many other investors, purchases original artworks by artists who are well-known in the art world with the expectation that their artworks will become more valuable with the passage of time.

GAIMS, WEIL, WEST & EPSTEIN, LLP  
ATTORNEYS AT LAW  
1875 CENTURY PARK EAST, 12TH FLOOR, LOS ANGELES, CALIFORNIA 90067-2513  
TELEPHONE (310) 407-4500

1           6. The decision to purchase a valuable artwork, as described above, is based  
2 upon the description of the artwork and the auctioneer's catalogue. Prior to bidding on  
3 any such artwork, Plaintiff required a condition report from Defendant listing any  
4 defect or any irregularity with the lot in which the artworks would be sold.

5           7. The process of acquiring an artwork from Defendant was handled by  
6 telephonic bidding on artworks by potential purchasers. Potential purchasers  
7 contacted Defendant to indicate their interest. When Defendant conducted a sale by  
8 auction of such an artwork, Defendant telephoned the would-be purchasers and  
9 advised them that the bidding was beginning. Defendant advised the would-be  
10 purchasers by telephone what bids had been placed to enable such purchasers to make  
11 higher bids if they chose. If the purchaser made the highest bid by telephone, he or she  
12 would then be told that he or she had acquired the artwork in question and required to  
13 send a check in the appropriate amount as a condition of the release and transmittal of  
14 the artworks to the purchasers.  
15

16           8. During an auction dated May 31 – June 1, 2008, Sale No. 0803, Plaintiff bid  
17 on and purchased lot nos. 555 and 556 which contained three paintings by Hans Zatzka  
18 and lot no. 1414 containing a painting by Emile Eisman-Semenowsky. Plaintiff's total  
19 bid of \$111,625 was based on (1) the description in the catalogue, which stated that the  
20 paintings were authored by Zatzka and Semenowsky, and (2) Defendant's condition  
21 report, which stated that the lots in question were free of any defects or irregularities.  
22

23           9. When the paintings were shipped to Plaintiff, it seemed apparent to him  
24 that all of the paintings were poor reproductions of the paintings by Zatzka and  
25 Semenowsky. Plaintiff's reaction and opinion concerning the subject paintings was  
26 subsequently confirmed by an insurance company appraiser and expert of 19<sup>th</sup> century  
27 paintings who found that the paintings were mere reproductions with forged  
28



1 signatures. Plaintiff employed three additional expert appraisers, each of whom  
2 confirmed the findings of the insurance appraiser.

3 10. Further inquiries by Plaintiff established that reputable auctioneers, *viz.*,  
4 Christie's and Sotheby's, would not accept the paintings on consignment for sale by  
5 auction. In February, 2009, Plaintiff demanded the return of the purchase price and a  
6 rescission of the transaction based upon the sham nature of the artworks in question.  
7 This demand has not been honored.  
8

9 **FIRST CAUSE OF ACTION**

10 **(Fraudulent Misrepresentation Against All Defendants)**

11 11. When Defendant represented the paintings as originals in its catalogue it  
12 either knew that said representation was false or knew that it had no reasonable basis  
13 for making any such representation.

14 12. Plaintiff justifiably relied upon said representation in bidding on and  
15 acquiring the subject paintings. As the proximate result of Plaintiff's justifiable  
16 reliance upon Defendant's representation, Plaintiff has suffered damages in the  
17 amount of the purchase price and freight charges, plus expenses incurred in  
18 confirming that he was sold poor reproductions of the paintings with forged  
19 signatures and that the paintings have been rejected by reputable art auction houses,  
20 plus interest, and any other damages, according to proof.

21 13. Plaintiff is informed and believes and thereon alleges that Defendant  
22 knew that the paintings had been rejected for consignment by Christie's prior to the  
23 sale to Plaintiff and, for that reason, Defendant has refused to identify the seller from  
24 whom the subject paintings were taken on consignment.  
25

26 14. Said representation was made willfully, recklessly, and with malice and  
27 therefore Defendant's conduct is the appropriate subject for an award of exemplary  
28

GAIMS, WEIL, WEST & EPSTEIN, LLP  
ATTORNEYS AT LAW  
1875 CENTURY PARK EAST, 12th FLOOR, LOS ANGELES, CALIFORNIA 90067-2513  
TELEPHONE (310) 407-4500

GAIMS, WEIL, WEST & EPSTEIN, LLP  
ATTORNEYS AT LAW  
1675 CENTURY PARK EAST, 12th FLOOR, LOS ANGELES, CALIFORNIA 90067-2513  
TELEPHONE (310) 407-4500

1 damages. This representation was known, authorized, and ratified by Defendant's  
2 officers, directors, and/or managing agents.

3 **SECOND CAUSE OF ACTION**

4 **(Negligent Misrepresentation Against All Defendants)**

5 15. Plaintiff realleges and incorporates by reference the allegations of  
6 paragraphs 1 through 14 as though set forth in full herein.

7 16. When Defendant made said representation, it had a duty to exercise  
8 reasonable care in accordance with the standards of its industry to ascertain the truth  
9 or falsity of said representation.

10 17. When Defendant made the subject representation, as alleged above, it  
11 failed to exercise reasonable care, according to the standards of its industry, to  
12 ascertain the truth or falsity of said representation.

13 18. As a direct and proximate result of Defendant's breach of the duty to  
14 exercise reasonable care, in accordance with the standards of its industry, Plaintiff  
15 has suffered damages in the amount of the purchase price and freight charges, plus  
16 expenses incurred in confirming that he was sold poor reproductions of the paintings  
17 with forged signatures, and that the paintings have been rejected by reputable art  
18 auction houses, plus interest, and any other damages according to proof.

19 **THIRD CAUSE OF ACTION**

20 **(Breach of Implied Warranty of Merchantability Against All Defendants)**

21 19. Plaintiff realleges and incorporates by reference the allegations of  
22 paragraphs 1 through 18 as though set forth in full herein.

23 20. Under the California Commercial Code, the subject paintings are goods  
24 within the meaning of §2105(1).  
25  
26  
27  
28



GAIMS, WEIL, WEST & EPSTEIN, LLP  
ATTORNEYS AT LAW  
1875 CENTURY PARK EAST, 12th FLOOR, LOS ANGELES, CALIFORNIA 90067-2513  
TELEPHONE (310) 407-4500

1 27. On February 12, 2009, Plaintiff gave Defendant notice of his rescission.  
2 Plaintiff's notice of rescission was given promptly after discovering the facts which  
3 entitled him to rescind.

4 28. Upon giving Defendant notice of his rescission, Plaintiff offered to return  
5 Lots 555, 556, and 1414 to Defendant.

6 29. Despite Plaintiff's rescission, Defendant refused to return Plaintiff's  
7 money.  
8

9 30. Plaintiff now seeks relief based upon such rescission by bringing this  
10 action to recover the money owed to him by Defendant as a consequence of such  
11 rescission.

12 PRAYER

13 WHEREFORE, Plaintiff requests judgment against Defendant as follows:

14 1. Compensatory damages in the amount of \$111,625, plus expenses, in an  
15 amount to be proven at trial;

16 2. For prejudgment interest, as provided by law, on said sum at the full legal  
17 rate; in an amount to be proven at trial;

18 On the First Cause of Action:

19 3. For exemplary damages; in an amount to be proven at trial;

20 On the Fourth Cause of Action:

21 4. For the return of the \$111,625 Plaintiff paid as consideration;

22 5. For any other relief Plaintiff may be entitled to under the circumstances,  
23 including but not limited to consequential damages and damages incurred in  
24 determining that Lots 555, 556, and 1414 were not originals.  
25  
26  
27  
28

GAIMS, WEIL, WEST & EPSTEIN, LLP  
ATTORNEYS AT LAW  
1875 CENTURY PARK EAST, 12th FLOOR, LOS ANGELES, CALIFORNIA 90067-2513  
TELEPHONE (310) 407-4500

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

On All Causes of Action:

- 6. For costs of suit;
- 7. For Plaintiff's reasonable attorneys' fees; and,
- 8. For such other and further relief as the Court deems just and proper.

Dated: January 26, 2010

GAIMS, WEIL, WEST & EPSTEIN, LLP  
JOHN GAIMS  
DAVID M. BERKE

By:   
DAVID M. BERKE  
*Attorneys for Plaintiff Massoud Pouratian*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

Upon stipulation of the parties, and good cause appearing,  
IT IS ORDERED that

1. Plaintiff's August 25, 2009 complaint be amended and that the attached First Amended Complaint be filed as of the date of this Order; and
2. Defendant New Orleans Auction Galleries, Inc., shall, but need not, file a response to the First Amended Complaint within 30 days of this Order; if Defendant does not file a response within that time, Defendant's Answer to the original Complaint will be deemed applicable to the First Amended Complaint, and all allegations in the First Amended Complaint, including those which have been amended or added, shall be deemed denied (both generally and specifically, and denying that the Plaintiff has been damaged in any amount), and all affirmative defenses set forth in Defendant's answer to the original Complaint shall be deemed asserted in response to the First Amended Complaint.

Dated: January 29, 2010

ROLF M. TREU

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

GAINES, WEIL, WEST & EPSTEIN, LLP  
ATTORNEYS AT LAW  
1875 CENTURY PARK EAST, 12th FLOOR, LOS ANGELES, CALIFORNIA 90067-2513  
TELEPHONE (310) 407-4500

**EXHIBIT 2**

**SUBP-010**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>John Gaims, Esq., CSB 41352; David M. Berke, Esq., CSB 228827</b> <b>GAIMS, WEIL, WEST &amp; EPSTEIN, LLP</b> <b>1875 Century Park East, Suite 1200, Los Angeles, CA 90067</b> TELEPHONE NO.: <b>310-407-4500</b> FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>Plaintiff Masoud Pouratian</b>	FOR COURT USE ONLY           CASE NUMBER: <b>BC 420489</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b> STREET ADDRESS: <b>111 N. Hill Street</b> MAILING ADDRESS: <b>Same</b> CITY AND ZIP CODE: <b>Los Angeles, CA 90012</b> BRANCH NAME: <b>Central</b>	
PLAINTIFF/PETITIONER: <b>Massoud Pouratian</b> DEFENDANT/RESPONDENT: <b>New Orleans Auction Galleries, Inc.</b>	
<b>DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS</b>	

**THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):**  
**Christie's Inc. dba Christie's Fine Art Auctioneers, 360 N. Camden Dr., Beverly Hills, CA 90210**

**1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:**

To (name of deposition officer): <b>Gaims, Weil, West &amp; Epstein, LLP</b>	
On (date): <b>August 5, 2010</b>	At (time): <b>10:00 a.m.</b>
Location (address): <b>1875 Century Park East, Suite 1200, Los Angeles, CA 90012</b>	
<b>Do not release the requested records to the deposition officer prior to the date and time stated above.</b>	

- a.  by delivering a true, legible, and durable **copy** of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
  - b.  by delivering a true, legible, and durable **copy** of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
  - c.  by making the **original** business records described in item 3 available for inspection at your business address by the attorney's representative and permitting **copying** at your business address under reasonable conditions during normal business hours.
2. *The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.*

**3. The records to be produced are described as follows:**

Any document which reflects Deborah Coy's full name and last known address and telephone number.

Continued on Attachment 3.

**4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.**

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.**

Date issued: July 21, 2010

David M. Berke

(TYPE OR PRINT NAME)



(SIGNATURE OF PERSON ISSUING SUBPOENA)

**Attorney for Plaintiff Masoud Pouratian**

(TITLE)

(Proof of service on reverse)

Page 1 of 2



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am over eighteen years of age and not a party to the within action; my business address is 1875 Century Park East, Twelfth Floor, Los Angeles, California 90067-2513; I am employed in Los Angeles County, California.

On July 21, 2010, I served the foregoing document(s) described DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS on the interested parties to this action by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

Michael Aiken, Esq.  
Gladstone Michel  
Weisberg Willner & Sloane, ALC

Attorneys for Defendant NEW ORLEANS  
AUCTION GALLERIES, INC.

Mail Service:  
P.O. Box 92621  
Los Angeles, CA 90009-9998

Location:  
4551 Glencoe Avenue, Suite 300  
Marina del Rey, CA 90292-7925

Telephone: 310-821-9000  
Facsimile: 310-7775-8775

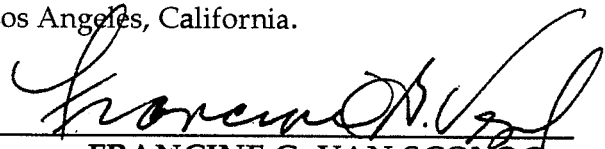
X (BY FACSIMILE Code Civ. Proc., §§ 1013, 2015.5; Cal. Rules of Court, rule 2008(e))

On July 21, 2010 at the facsimile numbers indicated above, by use of facsimile machine telephone number (310) 277-2133, I served the above document(s) on the aforementioned parties in this action by transmitting by facsimile machine the documents set forth above.

The facsimile machine I used complied with California Rules of Court, rule 2003 and no error was reported by the machine. Pursuant to California Rules of Court, rule 2006(d), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 21, 2010, at Los Angeles, California.

  
FRANCINE G. VAN SCOYOC

GAIMS, WEIL, WEST & EPSTEIN, LLP  
ATTORNEYS AT LAW  
1875 CENTURY PARK EAST, 12th FLOOR, LOS ANGELES, CALIFORNIA 90067-2513  
TELEPHONE (310) 407-4500

Message Confirmation Report

JUL-21-2010 12:34 PM WED

Xerox FaxCentre 2218  
Machine Fax ID : GWW&E,LLP  
Serial Number : CBC457025.....  
Fax Number : 310 277 2133

Name/Number : 13107758775  
Page : 3  
Start Time : JUL-21-2010 12:33PM WED  
Elapsed Time : 00' 36"  
Mode : STD ECM  
Results : O.K

GAIMS, WEIL, WEST & EPSTEIN, LLP  
1875 Century Park East  
12<sup>th</sup> Floor  
Los Angeles, CA 90067-2530  
Telephone - (310) 553-6666  
FAX - (310) 277-2133

FACSIMILE COVER LETTER

PLEASE DELIVER THE FOLLOWING 2 PAGES (WITH COVER LETTER)

TO:  
Name: Michael Aiken, Esq.  
Firm: Gladstone Michel Weisberg Willner & Sloane, ALC  
City: Marina Del Rey  
Fax #: (310) 775-8775  
Main #: (310) 821-9000  
File No: 78983-03  
FROM: DAVID BERKE/Francine  
Date: July 21, 2010

HARD COPY TO FOLLOW VIA MAIL: Yes \_\_\_\_\_ No

If you do not receive all the pages, please call (310) 553-6666 as soon as possible.

CONFIDENTIALITY NOTICE:

The information contained in this facsimile is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original facsimile to us at the address above via the United States Postal Service. Thank You.

Remarks: Please see the attached subpoena of today's date.

Attorney or Party without Attorney: DAVID M. BERKE, Bar #228827 GAIMS, WEIL, WEST & EPSTEIN, LLP 1875 CENTURY PARK EAST SUITE 1200 LOS ANGELES, CA 90067 Telephone No: (310) 407-4547				For Court Use Only	
Attorney for: Plaintiff				Ref. No. or File No.: 274619	
Insert name of Court, and Judicial District and Branch Court: LOS ANGELES COUNTY SUPERIOR COURT- CENTRAL DISTRICT					
Plaintiff: MASSOUD POURATIAN Defendant: NEW ORLEANS AUCTION GALLERIES, INC.					
<b>PROOF OF SERVICE</b>		Hearing Date: Thu, Aug. 05, 2010	Time: 10:00AM	Dept/Div:	Case Number: BC 420489

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS.
3.
  - a. Party served: CHRISTIE'S INC. DBA CHRISTIE'S FINE ART AUCTIONEERS
  - b. Person served: STEPHANIE HOOPER, CUSTODIAN OF RECORDS
4. Address where the party was served: 360 N. CAMDEN DR.  
BEVERLY HILLS, CA 90210
5. I served the party:
  - a. by **personal service**. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Wed., Jul. 21, 2010 (2) at: 3:34PM
  - b. I received this subpoena for service on: Wednesday, July 21, 2010
6. Witness fees were offered or demanded, and paid: \$15.00
7. **Person Who Served Papers:**
  - a. ALAN ARAIZA
  - b. **NATIONWIDE LEGAL, INC.**  
1609 JAMES M. WOOD BOULEVARD  
2ND FLOOR  
LOS ANGELES, CA 90015
  - c. (213) 249-9999
  - d. **The Fee for Service was:** Recoverable Cost Per CCP 1033.5(a)(4)(B)
  - e. I am: (3) registered California process server
    - (i) Independent Contractor
    - (ii) Registration No.: 6654
    - (iii) County: Los Angeles

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Thu, Jul. 22, 2010

  
(ALAN ARAIZA)

**EXHIBIT 3**

ORIGINAL

1 GAIMS, WEIL, WEST & EPSTEIN, LLP  
JOHN GAIMS, State Bar No. 41352  
2 DAVID M. BERKE, State Bar No. 228827  
1875 Century Park East, 12th Floor  
3 Los Angeles, California 90067  
4 Telephone: (310) 407-4500  
Fax Number (310) 277-2133

5 *Attorneys for Plaintiff Massoud Pouratian*  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT  
10

11 MASSOUD POURATIAN, an  
individual,

12 Plaintiff,

13 v.

14 NEW ORLEANS AUCTION  
GALLERIES, INC., a corporation, and  
15 DOES 1 through 10, inclusive,

16 Defendants.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. BC 420489  
[Complaint Filed: July 28, 2009]

**DECLARATION OF CUSTODIAN  
OF RECORDS**

**[EVIDENCE CODE § 1561(a)]**

[Assigned to Hon. Rolf M. Treu,  
Dept. 58]

GAIMS, WEIL, WEST & EPSTEIN, LLP  
ATTORNEYS AT LAW  
1875 CENTURY PARK EAST, 12th FLOOR, LOS ANGELES, CALIFORNIA 90067-2513  
TELEPHONE (310) 407-4500

1 I, Sandra Cobden, declare:

2 1. I am over the age of eighteen years and I am not a party to this action. I  
3 have personal knowledge of each fact stated in this declaration and, if called as a  
4 witness, I could and would competently testify thereto.

5 2. My business address is 20 Rockefeller Plaza, New York, NY 10020.

6 *General*  
7 *Senior* 3. I am *Senior* Counsel and Global Head of Dispute Resolution for Christie's  
8 ("Christie's") and am the duly authorized Custodian of Records for Christie's. I am  
9 authorized to testify regarding Christie's business records.

10 4. A deposition subpoena has been served on Christie's requiring the  
11 production of all records described in Exhibit "A."

12 5. I have reviewed the business records of Christie's, and I have located all of  
13 the records described in the deposition subpoena in Christie's possession, custody or  
14 control.

15 6. I have served a true and correct copy of all of the records requested in the  
16 deposition subpoena in Christie's possession, custody or control.

17 7. The records were prepared by Christie's personnel in the ordinary course  
18 of Christie's regular business activities.

19 8. It was Christie's regular practice to make the particular records.

20 9. The records were prepared by individuals specifically entrusted with the  
21 responsibility of preparing them in the ordinary course of business.

22 10. The records were made by personnel whose job duties required them to  
23 observe and report the act, condition, and event recorded.  
24  
25  
26  
27  
28

GAIMS, WEIL, WEST & EPSTEIN, LLP  
ATTORNEYS AT LAW  
1875 CENTURY PARK EAST, 12th FLOOR, LOS ANGELES, CALIFORNIA 90067-2513  
TELEPHONE (310) 407-4500

1 11. The records were prepared at or near the time of the act, condition, or event  
2 recorded.

3 I declare under penalty of perjury under the laws of the State of California that the  
4 foregoing is true and correct and that this Declaration was executed on July 28 2010 at  
5 New York, New York.  
6

7  
8 

9 Sandra Cobden  
10 Custodian of Records for Christie's  
11

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
GAIMS, WEIL, WEST & EPSTEIN, LLP  
ATTORNEYS AT LAW  
1875 CENTURY PARK EAST, 12th FLOOR, LOS ANGELES, CALIFORNIA 90067-2513  
TELEPHONE (310) 407-4500

**EXHIBIT A**



SUBP-020

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>John Gaims, CSB 41352; David M. Berke, CSB 228827</b> <b>GAIMS, WEIL, WEST &amp; EPSTEIN, LLP</b> 1875 Century Park East, Suite 1200 Los Angeles, CA 90067 TELEPHONE NO.: 310-407-4500 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>Plaintiff Massoud Pouratian</b>	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles</b> STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: Same CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central	
PLAINTIFF/PETITIONER: Massoud Pouratian DEFENDANT/RESPONDENT: New Orleans Auction Galleries, Inc.	
<b>DEPOSITION SUBPOENA</b> <b>FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS</b>	CASE NUMBER: <b>BC 420489</b>

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):  
Christie's Inc., dba Christie's Fine Art Auctioneers, 360 N. Camden Dr., Beverly Hills, CA 90210

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:

Date: May 27, 2010 Time: 10:00 a.m. Address: 1875 Century Park East, #1200, Los Angeles, CA 90067

- a.  As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 4. (Code Civ. Proc., § 2025.230.)
  - b.  You are ordered to produce the documents and things described in item 3.
  - c.  This deposition will be recorded stenographically  through the instant visual display of testimony and by  audiotape  videotape.
  - d.  This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).
2. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
3. The documents and things to be produced and any testing or sampling being sought are described as follows:

Continued on Attachment 3.

4. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are described as follows:

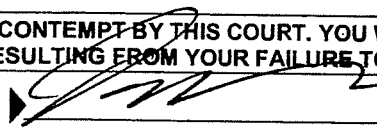
Continued on Attachment 4.

5. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

6. At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition. Unless the court orders or you agree otherwise, if you are being deposed as an individual, the deposition must take place within 75 miles of your residence or within 150 miles of your residence if the deposition will be taken within the county of the court where the action is pending. The location of the deposition for all deponents is governed by Code of Civil Procedure section 2025.250.

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF \$500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.**

Date issued: May 12, 2010

  
\_\_\_\_\_  
(SIGNATURE OF PERSON ISSUING SUBPOENA)

David M. Berke

Attorney for Plaintiff Massoud Pouratian

(TYPE OR PRINT NAME)

(Proof of service on reverse)

(TITLE)

Page 1 of 2

PLAINTIFF/PETITIONER: Massoud Pouratian	<b>SUBP-020</b>
DEFENDANT/RESPONDENT: New Orleans Auction Galleries, Inc.	CASE NUMBER: BC 420489

**PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS**

1. I served this *Deposition Subpoena for Personal Appearance and Production of Documents and Things* by personally delivering a copy to the person served as follows:

a. Person served (*name*):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness fees and mileage both ways (*check one*):

(1)  were paid. Amount: ..... \$ \_\_\_\_\_

(2)  were not paid.

(3)  were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (*specify*): ..... \$ \_\_\_\_\_

f. Fee for service: ..... \$ \_\_\_\_\_

2. I received this subpoena for service on (*date*):

3. Person serving:

a.  Not a registered California process server

b.  California sheriff or marshal

c.  Registered California process server

d.  Employee or independent contractor of a registered California process server

e.  Exempt from registration under Business and Professions Code section 22350(b)

f.  Registered professional photocopier

g.  Exempt from registration under Business and Professions Code section 22451

h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(For California sheriff or marshal use only)  
I certify that the foregoing is true and correct.

Date:

Date:



(SIGNATURE)



(SIGNATURE)

**ATTACHMENT THREE**  
**MASSOUD POURATIAN v. NEW ORLEANS AUCTION GALLERIES, INC.**  
**LASC CASE NO. BC 430489**

**DEFINITIONS:**

A. "DOCUMENTS" shall mean, without limitation, any kind of written or graphic matter, however produced or reproduced, of any kind or description, whether sent or received or neither, including originals, copies, and drafts thereof, and including but not limited to: subscriptions, catalogues, condition reports, papers, books, letters, correspondence, telegrams, cables, telex messages, memoranda, notes, notations, work papers, facsimile transmissions, calendar or diary entries, appointment books, agendas, recordings of telephone or other conversations, opinions, reports, contracts, agreements, checks, all other records kept by electronic, magnetic, photographic or mechanical means, videotapes, including e-mail, computerized data, consignment stock labels, and things similar to the foregoing, however denominated by you, or by any of your agents, consultants, accountants, or attorneys, and all "DOCUMENTS" as defined in §250 of the California Evidence Code.

B. "REFLECT OR REFER TO" shall mean and include: refer, reflect, discuss, show or constitute the matter discussed.

C. "YOUR" shall mean Christie's Inc., doing business in California as Christie's Fine Art Auctioneers, and shall include any of its predecessor and/or successor, constituent corporate entities, owners, officers, directors, employees, servants, agents, representatives, attorneys, accountants, investigators, assigns, and any affiliated entities.

GAIMS, WEIL, WEST & EPSTEIN, LLP  
ATTORNEYS AT LAW  
1875 CENTURY PARK EAST, 12th FLOOR, LOS ANGELES, CALIFORNIA 90067-2513  
TELEPHONE (310) 407-4500

1 **RECORDS TO BE PRODUCED:**

2 1. All DOCUMENTS that REFLECT OR REFER TO the painting bearing YOUR  
3 stock label no. RV053.

4 2. All DOCUMENTS that REFLECT OR REFER TO the painting bearing YOUR  
5 stock label no. RM3CI.

6 3. All DOCUMENTS that REFLECT OR REFER TO the painting described as  
7 "Cupid and a Maiden Seated in a Classical Landscape" and purportedly painted by  
8 Hans Zatzka.

9 4. All DOCUMENTS that REFLECT OR REFER TO the oil painting described  
10 as "Maiden with Open Harp and Waterfall Beyond" and purportedly painted by  
11 Hans Zatzka.

12 5. All DOCUMENTS that REFLECT OR REFER TO the oil painting described  
13 as "Maiden Wearing Garland of Flowers" and purportedly painted by Hans Zatzka.

14 6. All DOCUMENTS that REFLECT OR REFER TO the painting described as  
15 "Gypsy Girl Holding Flowers" and purportedly painted by Emile Eisman-  
16 Semenowsky.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

GAIMS, WEIL, WEST & EPSTEIN, LLP  
ATTORNEYS AT LAW  
1875 CENTURY PARK EAST, 12TH FLOOR, LOS ANGELES, CALIFORNIA 90067-2513  
TELEPHONE (310) 407-4500

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over eighteen years of age and not a party to the within action; my business address is 1875 Century Park East, Twelfth Floor, Los Angeles, California 90067-2513; I am employed in Los Angeles County, California.

On May 12, 2010, I served the foregoing document(s) described as **DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOUCMENTS AND THINGS** on the interested parties to this action by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

Michael Aiken, Esq.  
Gladstone Michel  
Weisberg Willner & Sloane, ALC

Attorneys for Defendant  
New Orleans Auction Galleries, Inc.

Mail Service:  
P.O. Box 92621  
Los Angeles, CA 90009-9998

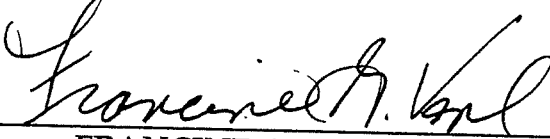
Telephone: 310-821-9000  
Facsimile: 310-775-8775

Location:  
4551 Glencoe Avenue, Suite 300  
Marina del Rey, CA 90292-7925

(BY U.S. MAIL Code Civ. Proc., §§ 1013, 2015.5)  
I am readily familiar with my employer's practices for collection and processing of correspondence for mailing with the United States Postal Service. Following ordinary business practices and placing for collection and mailing at 1875 Century Park East, Los Angeles, California 90067-2513, a true copy of the above-referenced document(s), enclosed in a sealed envelope; in the ordinary course of business, the above document(s) would have been deposited for first-class delivery with the United States Postal Service the same day they were placed for deposit, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 12, 2010, at Los Angeles, California.

  
FRANCINE G. VAN SCOYOC

GAIMS, WEIL, WEST & EPSTEIN, LLP  
ATTORNEYS AT LAW  
1875 CENTURY PARK EAST, 12th FLOOR, LOS ANGELES, CALIFORNIA 90067-2513  
TELEPHONE (310) 407-4500

**EXHIBIT 4**

Stock No. NYCRV053 Receipt 4 Manuscript 4 Regional Stock  
Printed by NYC.NCP.CCL at 12:50 on 14FEB08

NYCRV053 Alan Smith Esq R/L 4 MSS No 4  
1 Zatzka  
Reserve Est USD Received 08FEB08 Seen by NCP/DC  
18,000 25,000  
-----  
Sale Lot Date 08APR08 Sort Cat A  
Age  
Estimates 18,000 25,000 Illus Negative  
Status P On Request N  
Comment  
Agreed By How Agreed  
Reserve Value Stat Location  
Agreed by How Agreed Containerize N  
Currency Reassign to:  
Stock R/L Mss  
Qty Description Inv No.  
1 Zatzka Endangered Interest Code PNP  
Quality For Sale/Estimate S  
  
1 Barcode/s  
Receipt Line Complete Y

**\*RVI**

Artist & Date : Hans Zatzka (Austrian, 1859-1945)  
Title : Sending Cupid's Arrow  
Details : signed 'H. Zatzka' (lower right)  
Medium : oil on canvas  
Size : 27 1/4 x 18 3/4 in. (69.2 x 47.6 cm.)  
Estimate : Estimate: \$18,000-25,000

User Notes : DC rto

Condition : Not lined. There is slight frame abrasion along all four edges. There is fine stable craquelure throughout the painting. Under the ultraviolet light, there is a small area of retouching underneath the woman's nose and in her stomach. There is retouching in the lower right corner, just under the signature.

Chart of Art

Category : Paintings  
Date : 19th Century  
Origin/Ethnicity : Austrian  
Artist/Maker : Zatzka, Hans (1859-1949)  
Material/Technique : oil

Barcodes : 26066448

Index : Zatzka, H.

*fake  
spoke to Han*

Stock No. NYCRV053 Receipt 3 Manuscript 3 Regional Stock  
 Printed by NYC.NCP.CCL at 12:46 on 14FEB08

NYCRV053 Alan Smith Esq. R/L 3 MSS No 3  
 1 Semenowsky Reserve Est USD Received 08FEB08 Seen by NCP/DC  
 10,000 15,000

---

Sale	Lot	Date 08APR08	Sort Cat A
Estimates	10,000	15,000	Age
	Status P	On Request N	Illus Negative
Agreed By	How Agreed		Comment
Reserve	Value	Stat	Location
Agreed by	How Agreed		Containerize N
	Currency		Reassign to:
			Stock R/L Mss
Qty	Description		Inv No.
1	Semenowsky		Endangered Interest Code PNP
			Quality For Sale/Estimate S

1 Barcode/s  
 Receipt Line Complete Y

**\*RVI**

Artist & Date : Emile Eisman-Semenowsky (Polish, 1857-1911)  
 Title : A Young Lady  
 Details : signed 'EISMAN SEMENOWSKY' (lower left)  
 Medium : oil on canvas  
 Size : 32 x 13½ in. (81.3 x 34.3 cm.)  
 Estimate : Estimate: \$10,000-15,000

User Notes : fake  
 dc rto

Condition : Not lined. There is slight frame abrasions on all four edges. Under the ultraviolet light, there are small scattered retouches in the sky and an area of retouching in the extreme upper left corner. There is an approximately 2 inch restored tare in the sky beginning at her right cheek. There is strengthening to her blouse where the blouse meets her breasts. There is an area of restoration in her left shoulder addressing minor paint loss. There is strengthening to the dark pleats in her apron and to the outer hems of her skirt. There is also small areas of retouching in the grass in the lower right corner.

Chart of Art  
 Category : Paintings  
 Date : 19th Century  
 Origin/Ethnicity : Polish  
 Artist/Maker : Semenowsky, Emile Eisman  
 Material/Technique : oil

*fake Spoke to Alan*

Barcodes : 26066462

Index : Semenowsky, E.



Message

Page 1 of 2

**Layng, Christine**

---

**From:** Coy, Deborah  
**Sent:** Wednesday, February 27, 2008 9:39 AM  
**To:** Layng, Christine  
**Subject:** FW: Upcoming April sale

[REDACTED] He is fine will all the changes.

Thanks

Deborah

-----Original Message-----

**From:** Alan Smith [mailto:ASmithDesk@aol.com]  
**Sent:** Wednesday, February 27, 2008 5:52 AM  
**To:** Coy, Deborah  
**Subject:** RE: Upcoming April sale

Dear Deborah

Thanks for your e-mail, everything is fine with that! [REDACTED]

Regards

Alan.

---

**From:** Coy, Deborah [mailto:DCoy@christies.com]  
**Sent:** 26 February 2008 19:38  
**To:** Alan Smith  
**Subject:** Upcoming April sale

Dear Alan:

We have all the pictures here and they have been shot and catalogued. [REDACTED]

There is a problem with two of the pictures. The Semenowsky does not appear to be by the hand of the artist. It looked much better in the photo and none of us think that it is right. He is a better artist than this. There is also a lot of restoration in the picture. We can't really put this in the sale.

The same is true of the Zatzka. I don't think we are going to sell this artist any more because there are a lot of fakes out there, and he is uneven at best. This one looks very cartoon-y and I even asked the house sale experts if they would take it on and they were not interested.

Deborah

2/27/2008

000016

**EXHIBIT 5**

GAIMS, WEIL, WEST & EPSTEIN, LLP

ATTORNEYS AT LAW

1875 CENTURY PARK EAST  
TWELFTH FLOOR  
LOS ANGELES, CALIFORNIA 90067-2513

TELEPHONE (310) 407-4500  
FAX (310) 277-2133

DAVID M. BERKE  
(310) 407-4753  
dberke@gwwe.com

MARC EPSTEIN \*  
BARRY G. WEST  
ALAN JAY WEIL  
JOHN GAIMS  
STEVEN S. DAVIS  
JEFFREY B. ELLIS  
COREY E. KLEIN  
PETER L. STEINMAN †  
ANDREW M. VOGEL  
DAVID M. BERKE  
JESSE J. CONTRERAS  
JEREMY BORDEN

\* A PROFESSIONAL CORPORATION  
† ALSO ADMITTED IN WASHINGTON, D.C.

October 1, 2010

File No.: 78983-03

VIA FACSIMILE ONLY

Ms. Deborah Coy  
Bonhams & Butterfield  
580 Madison Avenue  
New York, NY 10022-2505

Re: *Massoud Pouratian v. New Orleans Auction Galleries, Inc., Los Angeles*  
*County Superior Court Case No. BC 420489*

Dear Ms. Coy:

Thank you again for taking the time to speak to me over the past month.

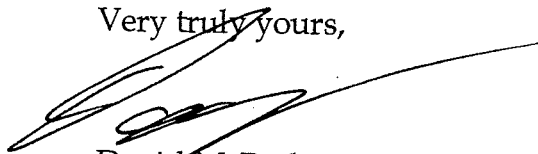
This email will confirm our discussion in which you told me that you wrote "Fake" and "Spoke to Alan" on the pages marked 000006 & 000008, descriptions of paintings by Emile Eisman-Semenowsky and Hans Zatzka, respectively.

This email will also confirm that although you have no specific recollection of your communications with Alan Smith regarding the lack of authenticity, you would not have so written if you had not informed Alan Smith that the paintings were not authentic.

Finally, this email will confirm that you recalled that the paintings identified above were rejected by Christie's and sent back to Alan Smith.

Thanks again for your assistance.

Very truly yours,



David M. Berke  
GAIMS, WEIL, WEST & EPSTEIN, LLP

DB:fvs

**EXHIBIT 6**

§ 1812.605. Business of auctioneering; requirements, CA CIVIL § 1812.605

---

West's Annotated California Codes

Civil Code (Refs & Annos)

Division 3. Obligations (Refs & Annos)

Part 4. Obligations Arising from Particular Transactions (Refs & Annos)

Title 2.95. Auctioneer and Auction Companies (Refs & Annos)

West's Ann.Cal.Civ.Code § 1812.605

§ 1812.605. Business of auctioneering; requirements

Currentness

In conducting the business of auctioneering, each auctioneer and auction company, and the company's owners, partners, officers, agents, and employees, shall do all of the following:

- (a) Follow all lawful requests of the owner or consignor of the goods being sold at auction with regard to the sale of those goods.
- (b) Perform his or her duties so that the highest or most favorable offer made by a member of his or her audience is accepted, except to the extent that any item or sale is offered with reserve or subject to confirmation.
- (c) Truthfully represent the goods to be auctioned.
- (d) Otherwise perform his or her duties in accordance with the laws of this state.

**Credits**

(Added by Stats.1993, c. 1170 (A.B.259), § 2, eff. Oct. 11, 1993.)

West's Ann. Cal. Civ. Code § 1812.605, CA CIVIL § 1812.605

Current with urgency legislation through Ch. 437 of 2012 Reg.Sess. and all propositions on 2012 ballots.

---

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.

West's Annotated California Codes

Civil Code (Refs & Annos)

Division 3. Obligations (Refs & Annos)

Part 4. Obligations Arising from Particular Transactions (Refs & Annos)

Title 2.95. Auctioneer and Auction Companies (Refs & Annos)

West's Ann.Cal.Civ.Code § 1812.609

§ 1812.609. Public policy; waiver of rights

Effective: January 1, 2003

Currentness

Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

**Credits**

(Added by Stats.2002, c. 815 (A.B.2331), § 22.)

West's Ann. Cal. Civ. Code § 1812.609, CA CIVIL § 1812.609

Current with urgency legislation through Ch. 437 of 2012 Reg.Sess. and all propositions on 2012 ballots.

---

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.

**EXHIBIT 7**

West's Annotated California Codes  
Civil Code (Refs & Annos)  
Division 4. General Provisions (Refs & Annos)  
Part 1. Relief  
Title 2. Compensatory Relief  
Chapter 1. Damages in General  
Article 2. Interest as Damages

West's Ann.Cal.Civ.Code § 3287

§ 3287. Interest on damages; right to recover; time from which interest runs

Currentness

(a) Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor from paying the debt. This section is applicable to recovery of damages and interest from any such debtor, including the state or any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state.

(b) Every person who is entitled under any judgment to receive damages based upon a cause of action in contract where the claim was unliquidated, may also recover interest thereon from a date prior to the entry of judgment as the court may, in its discretion, fix, but in no event earlier than the date the action was filed.

**Credits**

(Enacted in 1872. Amended by Stats.1955, c. 1477, p. 2689, § 1; Stats.1959, c. 1735, p. 4186, § 1; Stats.1967, c. 1230, p. 2997, § 1.)

Notes of Decisions (698)

West's Ann. Cal. Civ. Code § 3287, CA CIVIL § 3287

Current with urgency legislation through Ch. 437 of 2012 Reg.Sess. and all propositions on 2012 ballots.

---

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.



§ 3289. Rate of interest chargeable after breach of contract, CA CIVIL § 3289

---

West's Annotated California Codes  
Civil Code (Refs & Annos)  
Division 4. General Provisions (Refs & Annos)  
Part 1. Relief  
Title 2. Compensatory Relief  
Chapter 1. Damages in General  
Article 2. Interest as Damages

West's Ann.Cal.Civ.Code § 3289

§ 3289. Rate of interest chargeable after breach of contract

Currentness

(a) Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.

(b) If a contract entered into after January 1, 1986, does not stipulate a legal rate of interest, the obligation shall bear interest at a rate of 10 percent per annum after a breach.

For the purposes of this subdivision, the term contract shall not include a note secured by a deed of trust on real property.

**Credits**

(Enacted in 1872. Amended by Stats.1985, c. 663, § 1; Stats.1986, c. 176, § 1, eff. June 23, 1986.)

Notes of Decisions (39)

West's Ann. Cal. Civ. Code § 3289, CA CIVIL § 3289

Current with urgency legislation through Ch. 437 of 2012 Reg.Sess. and all propositions on 2012 ballots.

---

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.