

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
(SOUTHERN DIVISION)**

<b>JOSEPH BOHM and JOHN LEE,</b>	)	
<b>Individually and on behalf of all</b>	)	<b>CIV. NO.</b> _____
<b>others similarly situated,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>PARK WEST GALLERY, INC.,</b>	)	
<b>PWG FLORIDA, INC., VISTA FINE</b>	)	
<b>ART, LLC d/b/a PARK WEST AT SEA,</b>	)	
<b>ALBERT SCAGLIONE, and</b>	)	
<b>JOHN DOES 1-100.</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

**CLASS ACTION COMPLAINT**

Plaintiffs, Joseph Bohm and John Lee (together “Plaintiffs”), individually and on behalf of a class of all others similarly situated (the “Class”), file this class action against Defendants, Park West Gallery, Inc., PWG Florida, Inc., Vista Art, LLC d/b/a Park West at Sea and John Does 1-100 (together “Defendants” or “Park West”). Plaintiffs’ allegations are based upon personal knowledge when pertaining to themselves and upon information and belief, based on the investigation and research of counsel and publicly available materials, as to all other facts alleged in the Complaint.

## NATURE OF THE ACTION

1. This is an action for damages brought by Plaintiffs on behalf of a nationwide class of purchasers of artworks at shipboard art auctions conducted by Defendants on the ships of the best known and most popular recreational Cruise Lines.<sup>1</sup>

2. Defendants, alone or in conspiracy with others, planned and operated a fraudulent scheme to sell artwork at shipboard auctions or in “private sales” (together “auctions”), misrepresenting the artwork to be “museum quality” or a “good investment” when in fact the artwork is low-value, fake or otherwise worthless. Defendants then misrepresented the value, meaning and methodology of phony Appraisals which Defendants sold to the purchasers, Plaintiffs and the Class.

3. Defendants designed and operated (and continue to operate) this illegal scheme for at least the past ten (10) years, generating millions of dollars in revenue and millions of dollars in losses for Plaintiffs and the Class.

4. Plaintiffs’ allege Defendants’ illegal scheme violated the Racketeer Influenced and Corrupt Organization Act (“RICO”) 18 U.S.C. § 1961, state consumer protection laws, breach of contract, breach of warranty and the common law.

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<sup>1</sup> The Cruise Lines are Regent Seven Seas, Royal Caribbean, Celebrity, Carnival, Norwegian Cruise Lines, Oceana, Disney and Holland America (together the “Cruise Lines”).

## **THE PARTIES**

### **Plaintiffs**

5. Plaintiff, Joseph Bohm (“Bohm”) is a 74 year old retiree residing in Glen Oaks, New York. Bohm is the joint purchaser with Plaintiff John Lee of artwork purchased from Defendants at Park West shipboard auctions on cruises to the Caribbean in 2002 (Celebrity Cruise Lines) and 2004 (Carnival Cruise Line).

6. Plaintiff, John Lee (“Lee”) is a retiree, residing in New York, New York. Lee is the joint purchaser with Bohm of artwork purchased at the Park West shipboard auctions conducted on cruises to the Caribbean in 2002 (Celebrity Cruise Line) and 2004 (Carnival Cruise Line).

### **Defendants**

7. Defendant Park West Gallery, Inc. (“PWG”) is a corporation organized under the laws of Michigan with its principal place of business and headquarters at 29469 Northwestern, Southfield, MI 49034. PWG designed and operated the fraudulent scheme described in this Complaint.

8. PWG, on its website, bills itself as is the largest single operator of art auctions in the United States, selling approximately 300,000 pieces annually with \$300 million in annual sales. One-half of PWG’s auction sales occur at shipboard auctions conducted during leisure cruises on famous Cruise Lines.

a. PWG’s operations in Southfield, MI include its executive and administrative offices, staff offices, storage facilities, research and customer service departments.

b. Upon information and belief, PWG maintains its business records in Southfield, MI.

c. PWG sells artwork at shipboard auctions on the Cruise Lines and has done so continuously for the past ten (10) years.

d. PWG prepares and distributes the phony Appraisals that are sold to successful bidders at the shipboard auctions.

e. PWG warehouses and distributes the artwork that is sells shipboard from its Southfield, MI headquarters.

f. PWG has approximately 180 employees in Michigan.

g. PWG is not a publicly held corporation.

h. PWG controls Defendants PWG Florida, Inc., Vista Art LLC and John Does 1-100.

i. PWG designed and operated the fraudulent scheme described n this Complaint.

9. Defendant PWG Florida, Inc. ("PWG FL"), an affiliate of PWG, is incorporated in Delaware with its principal place of business in Miami Lakes, Florida. PWG FL is controlled by PWG and participates with PWG in the fraudulent scheme alleged in this Complaint.

a. PWG FL has approximately 207 employees in Florida.

b. PWG FL distributes art work sold at shipboard auctions by Park West from Florida.

c. PWG FL sells artwork at shipboard auctions on the Cruise Lines and has done so for the past ten (10) years.

d. PWG employees travel frequently to PWG FL to conduct Defendants' business.

10. Defendant Vista Art, LLC ("Vista") is a Delaware limited liability company with its principal place of business located in Southfield, MI.

a. Vista does business as Park West at Sea ("PWS") and is an affiliate of PWG. Vista participated with PWG in the fraudulent scheme described in this Complaint.

b. PWS sells art work at shipboard auctions on the Cruise Lines *always* while the cruise ships are in international waters and has done so for the past ten (10) years.

c. PWS is controlled by Defendant Albert Scaglione who is its sole member and a principal of PWG.

11. Defendant Albert Scaglione ("Scaglione") upon information and belief, is a citizen and resident of the State of Michigan. Scaglione designed and operates the fraudulent scheme described in this Complaint.

a. Scaglione is the founder, president and chief executive officer of PWG, having held the position of CEO for forty (40) years.

b. Scaglione is in charge of the day to day operations of PWG and Park West.

c. Scaglione, as an individual, is the managing member of the single member entity Vista, the Park West affiliate that does business as PWS.

- d. Scaglione controls PWG, PWG FL, Vista and PWS.
- e. Scaglione signs the Appraisals at issue in this Complaint.

12. Defendants John Does 1-100 are the affiliated or non-affiliated persons, companies or entities of PWG, PWG FL or PWS that directly or indirectly employ the auctioneers or other employees to conduct the shipboard auctions and sell artwork on the Cruise Lines. John Does 1-100 are under the control of Park West and Scaglione.

### **JURISDICTION**

13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, 18 U.S.C. § 1964(c) and the Class Action Fairness Act of 2005, 28 U. S.C. § 1332 (d)(2), the amount in controversy exceeds five million (\$5,000,000) dollars exclusive of interest and costs, members of the putative class number in excess of one hundred (100) and reside in states different from the Defendants. This Court has supplemental jurisdiction over the Plaintiffs' common law claims pursuant to 28 U.S.C. § 1367.

14. Venue is proper in this district. PWG, Vista and Scaglione reside in this district, and a substantial part of the events alleged in this Complaint giving rise to Plaintiffs' claims occurred in and were directed from this district.

### **FACTUAL ALLEGATIONS**

#### **Park West**

15. PWG styles itself the world's largest art dealer, selling over 300,000 artworks a year, garnering revenues in 2007 in excess of \$300 million. Half of this revenue was generated

by Park West shipboard auctions conducted on ships of the Cruise Lines *always* while the ships are cruising in international waters.

16. Park West has been in business for forty (40) years, but only ten (10) years ago associated with the Cruise Lines in the scheme to conduct shipboard art auctions that is the subject of this Complaint. The launch of Park West's ocean going venture overlaps the explosion in popularity of leisure cruises as a vacation choice for Americans.

17. By the time PWG launched its shipboard art auction venture with the Cruise Lines, Park West had already established itself as a leader in "popular art" auctions as "events." Park West then associated with and conspired with popular, famous Cruise Lines in the fraudulent scheme to bring art auctions shipboard, ostensibly as a form of recreation for "cruisers", as cruise passengers are frequently called.

18. On its website Park West states that its mission is to bring the experience of researching, collecting and living with fine art to people who do not have access to outstanding galleries and auction houses. Park West purposefully pitches its fraudulent and deceptive scheme to the naïve art purchaser at shipboard auctions, selling low value or worthless and fake artwork, misrepresenting to Plaintiffs and the Class that the artwork is valuable and a "good investment" and misrepresenting that the artwork will "appraise immediately after purchase for many times the sale price." These uniform misrepresentations were made by Park West and the John Does 1-100 at all shipboard art auctions to Plaintiffs and the Class.

19. Park West controls the majority of shipboard art auctions on leisure cruises departing the United States, conducting shipboard auctions on eight (8) Cruise Lines and on over eighty (80) ships of those lines. Only the Princess Line maintains its own art auction program.

**The Cruise Lines: Regent Seven Seas, Royal Caribbean, Celebrity, Carnival, Norwegian Cruise Lines, Oceana, Disney and Holland America (together the “Cruise Lines”)**

20. The shipboard auctions provided a new and significant source of revenue for Park West and the Cruise Lines, but the Cruise Lines never disclose to cruisers that the Cruise Lines have a financial interest in the auctions.

21. In the ten (10) year time period since Park West began conducting shipboard auctions on the Cruise Lines, the leisure cruise industry became the fastest growing segment of the American travel and leisure industry, raking in revenues of thirty billion dollars (\$30 B) in 2008. The demographics for passengers on cruise ships demonstrates an audience for Park West of well educated, affluent, middle-to-older aged vacationers with time to spare and money to spend. The Caribbean is the number one destination from the U.S. for leisure cruises.

22. Over half of the 200,000 American passengers who cruised annually during the Class Period (defined below) resided in Florida, California, Texas, New York, Pennsylvania and Massachusetts.

23. For the Cruise Lines, the art auctions, like casino-style gambling, are a major form of entertainment provided to cruisers as well as a major source of revenue. The Cruise Lines receive a guaranteed revenue stream from Park West from the auction sales, however, the Cruise Lines never disclosed to Plaintiffs and the Class that the auctions are a revenue center. The Cruise Lines portion of art auction revenue is computed as a percentage of the auction

proceeds (up to 20%) against an agreed (but secret) minimum. On most cruises at least one passenger will spend up to at least one hundred thousand dollars (\$100,000) in purchases of artwork from Park West.

24. One quarter of a ship's revenue per voyage comes from shipboard vendors including Defendants.

25. The Cruise Lines provide Park West with a prominent shipboard venue to display the artwork to be auctioned during the voyage and conduct the auctions. The artwork displayed is handsomely framed. The Cruise Lines also block out a time for the auctions deliberately limiting other activities that will compete with the Park West auction for cruisers' attention. Passengers are encouraged too mingle at the venue and then to attend the auction in the party shipboard atmosphere.

26. Passengers attending the auction are treated to a free champagne cocktail-hour before the bidding begins, providing time to relax, socialize and preview the artwork that will be offered for sale.

27. Shipboard art auctions are enormously successful for Park West and the Cruise Lines.

28. Park West's and the Cruise Lines' financial success depends on the trust and faith placed in the Cruise lines by Plaintiffs' and the Class.

29. Park West and the Cruise Line trade on cruisers' trust and faith in the Cruise Lines to accomplish the goals of their scheme. The Cruise Lines provide Park West with the well situated venue for its auctions and permit Park West to conduct

auctions day after day on cruise after cruise. Repeat business by cruisers is critical to the success of Cruise Lines. In 2008, one-half (1/2) of all passengers on cruise ships were repeat cruisers.

30. The Cruise Lines disclaim any liability for shipboard purchases, usually in information pre-printed on the reverse side of the ticket (a four (4) to six (6) page pamphlet) or through discretely placed on-board signs. The Cruise Lines never disclose to passengers that they receive a percentage of the auction sale proceeds or that the Cruise Line's profitability depends on the success of shipboard vendors, including Defendants.

31. Park West uses the reputations of the Cruise Lines to lure buyers to the auctions. Passengers do not generally understand the implications of the fact that the Cruise Lines' are not American entities (even if departing from the United States). Passengers generally do not know that the Cruise Lines and the vendors may be insulated by international or admiralty law from claims under state consumer protection statutes or fraud law for deceptive activities conducted at sea (even if departing from the United States).

32. The Cruise Lines intentionally enable Park West, an American entity, to piggy-back on their legal insulation by scheduling the art auctions only when the ship is in international waters. The Cruise Lines "close down" Park West's operations while the ship is in port or in the territorial waters of any port of call. The Cruise Line's and Park West create the illusion for Plaintiffs and the Class, that there is a legal impediment to Park West's operating in port, similar to the legal impediments for the Cruise Line's operating casino gambling while in port.

33. The Cruise Lines turn a blind eye to Park West's activities because they stand to profit from Park West's fraud.

34. Sponsorship by the Cruise Lines provides Park West with access to a large, affluent captive audience.

### **Park West Shipboard Auctions**

35. The Park West shipboard auctions are carefully orchestrated to generate maximum interest among the passengers. The auctions are conducted by auctioneers who are either employed by (directly or indirectly) Park West or under Park West's control. The "private sales" described herein are part of Park West's shipboard auction scheme.

36. Prior to the opening auction on any cruise, the artwork that will be auctioned is displayed at a prominent shipboard location with "works" by Dali, Picasso and Rembrandt featured to serve as a draw. The auctioneers and other Park West employees (together "auctioneer(s)") circulate among the passengers who come to preview the artwork to encourage participation in the bidding, misrepresenting to Plaintiffs and the Class, in a uniform sales pitch used at all Park West shipboard auctions, that: (1) the auctioneers have expertise in art, which they do not; (2) that the artworks to be offered at auction are "good investments," which they are not; (3) that the artwork is "original," which it is not, (4) that the artwork actually received will be a "unique variation" (not a copy) of artwork displayed, a meaningless term and (5) that any artwork purchased at auction "will appraise immediately on shore for many times the auction purchase price," which is blatantly untrue.

37. When bidding begins, it is conducted under the direction of professional auctioneers. The sales pitch employed by the auctioneers touts the value of the artworks, with a sales patter fixing value at an amount that was developed by Park West before the auction. The values represented by the auctioneers are directly related to the Appraisal value for the artwork that will be supplied by Park West after sale.

38. During the preview the auctioneers promise a surprise give away at the first auction as another hook to attract bidders to the auction.

39. At the first auction, auctioneers pretend to “sacrifice” an “important” artwork for a seemingly ridiculously low price, sometimes as low as fifty dollars (\$50.00), in order to stimulate bidding.

40. Bidding is fast paced and reflects the general party atmosphere on a cruise ship where passenger spending is not only encouraged but crucial to the financial success of the Cruise Lines. The auctioneers engage in high pressure tactics, belittling bidders who hesitate to bid higher and always speaking with the pistol shot speed that is the auctioneer’s stock in trade.

41. Plaintiffs and the Class are not told before or during the auction if a sellers’ reserve will be applied, if shilling (bidders who are put-ups by Park West and have no intention to purchase) is permitted or phantom bidding (bids called with no bidder) is permitted at the auction. While some of these practices are legal under the laws of some states or may be otherwise regulated by state law, Park West times its auctions to operate out of the reach of state laws. All the Defendants disclose is the minimum bid.

42. Auctioneers encourage purchasing at the auctions (and the previews and the “private sales”) by stating with emphasis that the auction is taking place on board a famous, well respected Cruise Line, by stating “Do you think they [the Cruise Line] would allow us to have a shop here if we were fraudulent? If we were not reputable?” At least half of the passengers will have seen Park West auctions on other cruises, reinforcing Park West’s misrepresentations. Park West omits to disclose the Cruise Line’s financial interest in the auction proceeds

43. Different works or “lots” of artwork are available for sale each day at the auctions as the cruise progresses. By following this procedure, Park West has new works to auction each night, replenishing the supply of artwork, encouraging repeat business from passengers who might otherwise not attend more than one auction per cruise.

44. Successful bidders pay a “hammer price” (highest bid) plus a buyer’s premium.

45. At the auctions, as bidding is closing down (because the Cruise Line has another recreational activity scheduled for the venue), the auctioneer encourages cruisers at the auctions to attend a “private sale” where the unsold paintings will be displayed and available for purchase. The auctioneers tell Plaintiffs and the Class that at the private sale (which are part of the fraudulent auction sale scheme) that the artwork available for sale there is an even better value because it is being offered at the minimum bid.

46. Plaintiffs and the Class are encouraged to buy by auctioneers’ representations that the offered price (minimum bid) is a really good deal on these investment grade works of art emphasizing that at the private sale there will be no other bidders to drive up the price.

47. Purchasers at private sale do pay the buyer’s premium.

48. Until September 2008, Park West had a strict **NO REFUND** policy. But the existence of this policy was never disclosed to Plaintiffs and the Class until *after* purchase when Plaintiffs and the Class see the “all sales are final” language on the invoice Park West gives as proof of purchase to all successful bidders.

49. A materially identical invoice is given to all purchasers by Park West. The invoice is a two sided pre-printed form document generated by Park West. It affords no opportunity for the Plaintiffs and the Class to negotiate or change any of its terms. See Exhibit A attached for sample invoice.

(a). The front of the invoice records the purchaser’s name and address with a list and description of the items purchased. At the bottom is a pre-printed paragraph (the language of which not changed substantially over the 10 year period) acknowledging purchase and receipt of the invoice and “agreeing” that no verbal agreements or representations remain in effect except as written on the invoice.

(b). The back of the invoice records “additional terms and conditions” including:

- “All sales are final...”
- “Appraisals represent our opinion of the price a client would have to pay to replace the work through *a reputable retail art gallery*. We do not rely on third party auction prices or internet prices to arrive at the appraised value. We do not issue refunds if another appraiser has a different opinion than ours.”

See Exhibit A. (emphasis supplied).

50. Payment by check or credit card for purchase by Plaintiffs and the Class is accepted on board ship. Passengers carrying “insufficient funds” with them on the cruise to pay for costly artwork can immediately apply for a Park West Gallery credit card called a “Park West Collectors Card.” Application and approval for the Park West Collectors Card are accomplished for the purchaser while on board the ship.

51. Another method of payment commonly used by Park West and the Cruise Lines is to add the purchase price for the artwork to the ship’s bill which is presented to Plaintiffs and the Class before disembarking.<sup>2</sup>

52. The artworks sold by Park West (that cannot be carried off the boat) are delivered to the buyer at his/her home address six (6) weeks after purchase via Federal Express.

53. A Certificate of Authenticity is placed inside the box at delivery. The promise of the Certificate of Authenticity is another hook for Park West.

**Park West’s Appraisals (the “Appraisals”)**

54. Park West offers successful bidders the opportunity to purchase an Appraisal for an additional fee of thirty-five (\$35) for the first Appraisal and fifteen (\$15) for each additional Appraisal.

(a). the Appraisals are mailed separately from the artwork via U. S. mail to purchasers after or about the time the artwork is delivered.

(b). Scaglione signs the Appraisals.

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<sup>2</sup> The ship’s bill will include any items purchased by the cruiser that were not included in the price of the ticket.

(c). The appraised value in the Appraisal is always greater than the purchase price.

(d). Purchasers of artwork also purchase Appraisals, in fact the purchase of the Appraisal is automatically included on the purchaser's invoice.

55. The Appraisals are fraudulent and deceptive with the purpose and intent to mislead Plaintiffs and the Class about the value of the artwork purchased and to lull Plaintiffs and the Class into a false belief concerning the value of their shipboard art purchases. The Appraisals validate the purchase price and conceal Park West's misrepresentations by falsely appraising the artwork for many times the purchase price.

56. Park West has used the same or substantially identical Appraisal form for each Class member's purchase. The Appraisal is a form letter that states:

"The following work of art has been *examined* by Park West Gallery. In *our* opinion the current *gallery retail replacement price* for this work, including its frame is [\$\$\$\$]

See Exhibit B attached for sample Appraisal.

57. Park West never disclosed to Plaintiffs and the Class at the shipboard auction or at any time subsequent that the Appraisal would be performed by Park West, alone, entirely without objectivity or generally accepted methodology. The language of the invoice referring to the Appraisal deliberately misstates and implies that Park West will employ an objective methodology to arrive at its opinion of value for the Appraisal.

58. The Park West Appraisal is not an independent, objective valuation of the artwork, but a deceptive self-interested and biased verification of the auction sale price designed

merely to support the purchase price and forestall lawsuits. There is no generally accepted methodology employed other than Park West's "because I say so" or *ipse dixit* valuation of the artwork.

59. According to the American Society of Appraisers ("A.S.A."), when an appraiser has an interest in the property appraised (here Park West is the seller) it is unethical for an appraiser to accept an assignment to appraise a property (here value the artwork) in which the appraiser has an interest *unless* there is full disclosure to the client. Park West does not make full disclosure.

60. Park West never disclosed to Plaintiffs and the Class that the Appraisal purchased is biased. Instead Park West misrepresented to Plaintiffs and the Class that the Appraisal is the result of its research of a price that would be paid by "a reputable retail art gallery," omitting to state that the only art gallery in Park West's evaluation to be consulted on the price will be Park West. Park West has admitted in filings in legal proceedings that it has no appraisal methodology other than the methodology described in the Appraisals themselves.<sup>3</sup>

61. Park West's statements are false or deceptive. By stating or implying that Park West accessed information from objective, non-related parties and reputable art galleries to arrive at the valuations in the Appraisal and omitting to disclose that the only valuation that the Appraisal would supply would be Park West's own interested opinion, Park West intentionally deceived Plaintiffs and the Class.

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<sup>3</sup> See Plaintiff David Bouverat's Memorandum in Opposition to Defendant Park West's Motion for Summary Judgment, *Bouverat v. Park West Gallery, Inc.*, Case No. 08-31331 (S.D. Fl., March 27, 2009)

62. Plaintiffs and the Class did not learn of the deficiencies in the Appraisals at the time of purchase of the Appraisal.

**Park West's Fraudulent Scheme**

63. The artwork auctioned off by Park West at shipboard auctions is not valuable, not a good investment, not museum quality, not original and sometimes fake. Park West deliberately and fraudulently misrepresented to Plaintiffs and the Class in its uniform sales pitch used on cruise after cruise that the artwork sold at shipboard auctions was a "good investment," something to "leave to the grandkids" and would "immediately appraise for many times more" than Plaintiffs and the Class paid for the artwork once on shore and that the artwork was "original," "touched by the artist's hand."

64. Park West knew but never disclosed at the shipboard auctions:

(a) Dali forgeries abound in the Park West shipboard auctions (and other galleries). Dali is a prominent "hook" artist for Park West.

(b) The Rembrandts offered for sale are Rembrandt Wood Cuts, sold sometimes for as much as \$10,000 each. But these Rembrandts are in fact modern prints (perhaps made from the original woodcut), that are neither rare nor valuable. Thousands of these "original" Rembrandts are available and the prints have little chance at appreciation. Park West never discloses that the print was not made during the artists' lifetime.

(c) Some Park West artwork for sale (all artwork is framed when displayed shipboard) is merely an ink-jet print, little better than posters.

(d) The signed and numbered artwork from a series that Park West sells is from a very large series and has little appreciation value although Park West represents them to be a “good investment.” Park West never discloses the total number of the series and only discloses the number in the series when the number is low.

(e) The animation cels offered by Park West auctions are not those used to create the animated character for the screen, but drawings and coloring guides that may have been used by staff artists.

(f) Park West does not disclose when it is the only dealer for a particular artist or the work that is offered for sale.

(g) Park West artists often negotiated bulk sales of their work with Park West, diminishing the value and making Park West the sole or primary dealer for that artist or particular works.

(h) Artwork sold as “signed by the artist” may have merely suspect pencil signatures.

(i) Artists’ “proofs” of limited editions are editions in addition to the limited edition of the work, diminishing value.

(j) Park West describes the work for sale as “artwork” or “painting”.

65. Plaintiffs and the Class are not sophisticated purchasers of art. Plaintiffs and the Class relied on the representations of Park West in making their purchases. Plaintiffs and the Class also relied on sponsorship of Park West by the Cruise Lines.

66. At every shipboard auction, Park West sells or offers to sell an Appraisal of each artwork purchased at the auction. The Appraisals are worthless, deceptively designed to reinforce the inflated value of the purchase made by Plaintiffs and the Class and to conceal Defendants illegal scheme.

67. On September 1, 2008, Park West launched its “40-40 program”. The program promises that all purchasers may return artwork purchased from Park West for a full refund or exchange within forty (40) days of receipt for the full purchase price less buyer’s premium (up to \$1000) plus shipping and handling. For forty (40) months after the date of the invoice for purchase, purchasers can exchange their purchase for another work of art from Park West of equal or greater value.

68. To the extent that Park West ever settles claims with disgruntled customers, the settlement was always subject to a mutual confidentiality agreement.

#### **Park West’s Legal Maneuvering**

69. Park West hides in international waters. Its auctions are carefully scheduled by Park West and the Cruise Lines *never* to take place in any port and *never* within the territorial waters of any port-of-call. The Park West art auctions are conducted in the late afternoon (around the cocktail hour and in fact offering cocktails) and *always* after the ship has left port and is cruising international waters.

70. Conducting business in international waters is important to Park West’s deceptive scheme because it provides a legal cloak to limit the protection of the states’ consumer protection laws to Park West’s shipboard customer even if a ship departs from the U.S. The Cruise Lines

intentionally assist Park West in the illegal scheme by their scheduling of the auctions in international waters.

71. Business conducted on the “high seas” that “bears a significant relationship to maritime activity”<sup>4</sup> is governed by admiralty law. Under 18 U.S.C. § 1333, the “saving to suitors” clause of admiralty jurisdiction, admiralty law refers to a forum court to the law of the home state of the plaintiff for remedy in the event of litigation. The Cruise Lines, more often than not, depart from ports that are not the home state of the passenger and certainly not all of the passengers. Park West does not have a presence in the many cruisers’ home states. As a result of a lawsuit brought in the plaintiff’s home state, Park West will not be amenable to process or within the personal jurisdiction of the home state court (even under long arm statutes).

72. For example a lawsuit by a California resident alleging violations of the California consumer protection laws by Park West was dismissed for lack of personal jurisdiction over Park West. At issue in the complaint were plaintiff’s shipboard purchases of artwork at auction on a Cruise Line and the purchase of phony appraisals. Plaintiff sued on behalf of a putative class of California residents, but Park West argued lack of personal jurisdiction, successfully demonstrating that it conducted no business in California. See Order, *Bautista v. Park West Gallery*, Case No. 2:08-cv-03717-PSG-r2 (C.D. Ca., September 2, 2008).<sup>5</sup>

73. Extraterritorial application of the consumer protection laws of the Plaintiff’s home state provides still another legal hurdle for disgruntled purchasers.

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<sup>4</sup> See *Beegal v. Park West*, 925 A.2d 684, 696 (N.J. Super. Ct. App. Div. 2007)

<sup>5</sup> A subsequent refiling of this complaint was dismissed on the grounds of collateral estoppel. Order, *Bautista v. Park West Gallery*, Case No. CV08-6262-PSG (RZx), (C.D. Cal., December 11, 2008)

74. A lawsuit by a Florida resident filed in Florida, (where Park West can be found) alleging consumer fraud on behalf of a class of Florida purchasers in violation of the Florida consumer protection laws, is still pending. Defendants have moved for summary judgment arguing: (1) that Florida law cannot apply to art purchases made by plaintiff in international waters, here the Baltic Sea, (2) Florida law cannot have extraterritorial application, and (3) that admiralty law preempts Florida law. See, Defendant Park West's Motion for Summary Judgment, *Bouverat v. Park West Gallery, Inc.*, Case No. 08-31331 (S.D. FL., October 29, 2008).

75. In another lawsuit, pending in a Michigan state court, Park West took a different and more aggressive approach. In *Best v. Park West Galleries, Inc.* Case No. 0896952-C2 (State of Michigan, Circuit Court for the County of Oakland, filed Dec. 23, 2008), plaintiffs are seven individuals, one of whom is a Michigan resident, in a joinder action. Plaintiffs allege fraud in the sale of artworks in violation of the Michigan Warranty in Fine Arts Act. Park West fired back with a counter claim against plaintiffs alleging defamation, tortious interference with business relationships and civil conspiracy.

76. Park West's goal in conducting its auctions only in international waters is to escape the reach of the state courts and avoid the application of state consumer protection laws to its illegal activities. Thus far Park West has been successful.

## **PLAINTIFFS' TRANSACTIONS WITH DEFENDANTS**

### **Purchases by Plaintiffs at Park West Shipboard Auctions on Cruise Lines**

77. Plaintiffs are not sophisticated purchasers of art. Plaintiffs' transactions with Park West are typical of Park West's transactions with the Class.

78. Plaintiffs, typical of the Class, are frequent cruisers with the Caribbean as a favorite destination.

79. Plaintiffs began purchasing artwork while on board a Cruise Line in the summer of 2002 when they sailed to the Caribbean on a Celebrity ship departing from New York City.

a. Plaintiffs purchased tickets for the Celebrity cruise directly from the cruise company via a telephone call that Bohm placed to Celebrity's reservations department several months before the cruise.

b. The tickets were paid for by a charge to Plaintiffs' credit card accounts.

c. The tickets arrived at Plaintiffs' homes sent via U. S. Mail within weeks of the initial telephone call.

80. Plaintiffs attended the Park West shipboard auction on the cruise.

(a) Lee bid on and purchased a work at the auction identified on the Appraisal as: Erte (a/k/a Romain de Tirtoff) "Black Magic," from artist's proof edition of sixty (60), signed in pencil. The purchase was made during the shipboard auction conducted in international waters.

(b) The auctioneer represented to Lee that the painting was a "good investment," that it "would appraise for many times its sale price" immediately upon reaching

shore. In purchasing, Lee relied on Park West's misrepresentations that the Erte was a "good investment" that "would appraise for many times the sales price."

(c) The auctioneer used the words "artwork" and "paintings" at the auction.

(d) Lee received an invoice as proof of purchase at the auction. The invoice (now lost) was identical in all material respects to the invoices described above in this Complaint.

(e) The Erte was small enough (1½" x 1") that Lee was able to carry the framed work off the ship, with a Certificate of Authenticity in the box.

(f) The Appraisal for the Erte was automatically included in his purchase price.

(g) The Appraisal arrived at Plaintiffs' home via U. S. Mail in New York state two to three weeks after the painting arrived. The Appraisal is dated September 26, 2002. See Exhibit C attached. The Appraisal is signed by Scaglione and is identical to the Appraisals described above in this Complaint.

(h) Lee paid under two thousand dollars (\$2,000.00) for the Erte. The Appraisal valued the work at four thousand two hundred dollars (\$4,200.00).

(i) The cost of the Erte was added to Lee's shipboard account. Lee paid for the artwork by credit card (together with other charges on the ship's invoice) the day before disembarking.

81. The Appraisal appeared to validate the auctioneer's representations at the shipboard auctions that the artwork was a good investment, increasing Plaintiffs' enthusiasm to attend art auctions on subsequent cruises on the Cruise Lines.

82. Plaintiffs again cruised to the Caribbean for a seven (7) night cruise departing from New York City September 11, 2004 on the Carnival ship, *Victory*.

a. Bohm purchased the tickets directly from the Carnival cruise line via a telephone conversation held several months before the cruise with Carnival's reservations department.

b. The tickets were paid for by charges to Plaintiffs' credit cards.

c. The tickets arrived at Plaintiffs' homes via U.S. Mail.

83. While on board the *Victory*, in international waters, Plaintiffs attended a Park West shipboard auction.

(a) The auctioneer represented to Bohm and Lee that the artwork offered for sale was a "good investment" that "would appraise for many times its sale price,"

(b) Lee and Bohm purchased twelve (12) paintings on that cruise:

**TABLE I**

ARTIST	WORK	HAMMER PRICE	BUYER'S PREMIUM	PURCHASE PRICE	PARK WEST APPRAISAL
Peter Max*	"God Bless America"	\$3,900.00	\$585.00	<b>\$4,485.00</b>	\$6,795.00
Rembrandt VanRijn	"The Artist's Mother With Her..."	\$1,483.00	\$222.45	<b>\$1,705.45</b>	\$2,195.00
Salvador Dali	"Divine Comedy Inferno"	\$ 701.00	\$105.15	<b>\$ 806.15</b>	\$2,350.00
Salvador Dali	"Divine Comedy Purgatory 22"	\$ 701.00	\$105.15	<b>\$806.15</b>	\$2,350.00

Martiros*	"Golden Shimmer"	\$2,100.00	\$315.00	<b>\$2,415.00</b>	\$3,800.00
Peter Max*	"Liberty and Justice For All"	\$3,800.00	\$570.00	<b>\$3,870.00</b>	\$6,495.00
Peter Max*	"God Bless America II"	\$4,200.00	\$630.00	<b>\$4,830.00</b>	\$6,395.00
Alfred Gocckel*	"Las Olas Blues"	\$1,090.00	\$163.50	<b>\$1,253.50</b>	\$1,650.00
Thomas Kinkade*	"Wind of the Spirit"	\$ 231.00	\$ 34.65	<b>\$ 265.65</b>	\$ 650.00
Anatole Krasnyansky	"Rapture II"	\$1,093.00	\$163.95	<b>\$1,256.95</b>	\$1,850.00
Thomas Kinkade*	"Guardian Castle"	\$ 220.00	\$ 33.00	<b>\$ 253.65</b>	\$ 650.00
Thomas Kinkade	"Mountain Majesty"	\$ 231.00	\$ 34.65	<b>\$265.65</b>	\$ 650.00

\*Asterisk indicates work purchased at the "private sale" to which Plaintiffs were directed by the auctioneer.

(a) The cost of shipping, special handling, custom framing and the Appraisals (\$200.00) in the amount of two thousand seven hundred thirty one dollars and ninety eight cents (\$2731.98) was added to the hammer price and buyer's premium bringing the total for Plaintiffs purchases to twenty five thousand four hundred forty-five dollars and thirteen cents (\$25,445.13).

(b) Lee and Bohm paid for the paintings with a Park West Gallery Collectors Cards, that they each applied for and were approved for while onboard the *Victory*. Lee was approved for a twenty-thousand dollar (\$20,000.00) line of credit on his Park West Collectors Card, Bohm for a fifteen thousand dollar (\$15,000.00) line. In order to obtain the credit line for Lee, Park West personnel telephoned the credit card company and Lee spoke with a representative of the credit card company on the telephone at that time while on board the *Victory*.

(c) Lee and Bohm purchased the artwork on the *Victory* in international waters. Some of the works were purchased at the actual auctions, others were purchased at the private sale to which the auctioneer directed them. The auctioneer steered Plaintiffs to the private sale representing that really good deals were available at the “private sale.”

(d) Purchases were always represented to be “a good investment” whether at the actual auction or at the private sale. With respect to the Dali works, the auctioneer on the *Victory* jokingly said “just put it under the bed” (to let it appreciate in value.) The same representations were made to Lee and Bohm at the private sale, that the artwork they were purchasing was a “good investment,” “better than money in the bank.”

(e) The credit card company servicing the Park West Collectors Card made various errors on Lee’s and Bohm’s accounts (not relevant to this Complaint).<sup>6</sup> Bohm complained to the credit card company about damage to certain paintings and the charges on Lee’s charge account. In December 2004, Bohm wrote a letter to the credit card company following up with a telephone call from his home in New York State. As a result of the letter and phone calls, credits were posted to Lee’s account on December 7, 2004, one in the amount of \$2,000.71 and another in the amount of \$5,502.53. Other credits and debits were also made to the accounts including one on January 25, 2005 to Lee’s account in the amount of \$4,911. The credit card servicing company which handled Plaintiffs’ complaint, HSBC, is located in Wood Dale, IL. Plaintiffs paid for the twelve (12) paintings listed in Table I. After paying for the twelve (12) paintings Lee and Bohm closed their Park West Collectors Card account.

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<sup>6</sup> For example, all charges were initially placed on Lee’s account statement and none on Bohm’s.

(f). Plaintiffs received invoices substantially identical to those described in this Complaint at the auction, but at the private sale the computers were down and the invoice was not received until later. The invoice does record Plaintiff's purchases. See Exhibit D.

(g). Plaintiffs received Appraisals for each work identified in Table I. Each of the Appraisals was signed by Scaglione, sent to Plaintiffs' home by U.S. mail and received on various dates between October 29, 2004 and November 19, 2004. Exhibit E. The Appraisals are identical to the Appraisals described above in this Complaint.

(h). Each Appraisal states on its face "In our opinion, the current gallery retail price for this work, including frame is [\$\$\$] ..." on the reverse side of each of the "Terms of Appraisal" states:

"Method of Appraisal

The appraisal represents our opinion of the price a willing buyer would pay or willing seller to acquire the artwork, with number being under a compulsion to sell or buy. In making this determination we rely on gallery prices of reputable art galleries and other reliable price data. We do not rely on third party auction prices or internet prices to arrive at appraised value."

84. These Appraisals are false and deceptive because they are not independent valuations of the artwork but merely Park West's fraudulent device.

85. Park West has no appraisal methodology other than the "methodology" described on the Appraisals.

**Plaintiffs' Discovery of the Fraud**

86. Plaintiffs continued to believe the value of their Park West purchases were as appraised and in the validity of the Appraisals until 2008 (in fact purchasing other works and

Appraisals at an auction in Long Island, New York in February 2005 and again in December 2007).

87. In January 2008, Bohm began trying to sell some of the artwork he purchased from Park West. He contacted some forty (40) galleries inquiring if they had any interest in purchasing his artwork. He sent letters and photographs of the artwork to the galleries. All but one of the galleries contacted did not respond. The gallery that did respond purchased some sculpture not purchased from Park West.

88. On July 16, 2008, an article appeared in the *New York Times* "Art Auctions on Cruise Ships Lead to Anger Accusations and lawsuits, by Jori Finkel. The article detailed sales of low value or worthless "artworks" by Park West at shipboard auctions conducted in international waters, employing representations that the artworks offered by Park West are "museum quality" or "good investments." The article further detailed the difficulty purchasers encountered obtaining any satisfaction from Park West on their complaints. The article stated that whenever there was a settlement with a disgruntled customer, Park West required confidentiality.

89. Lee saw the *Times* article and sent it to Bohm.

90. On August 18, 2008, Bohm wrote a letter which he sent by U. S. mail to Scaglione in Southfield, MI., complaining that the artwork he purchased as a "good investment" was of very low value and not worth the purchase price. In the letter Bohm also noted that even though Park West's Appraisals were for amounts significantly more than Plaintiffs had paid,

sometimes up to three times the hammer price, no gallery had expressed an interest in purchasing these artworks at any price.

91. Bohm telephoned Park West in Michigan from his New York State home in an attempt to reach an acceptable compromise with Park West and threatening suit. The Park West representative on the telephone told Bohm that if he brought a legal action against Park West “without merit, he would be responsible for Park West’s *counsel fees* and litigation costs.” (emphasis supplied).

92. Scaglione and Park West offered Plaintiffs the opportunity to exchange their purchases, Bohm declined.

#### **FRAUDULENT CONCEALMENT**

93. The truth of Park West’s deceptive operations and the fraud alleged in this Complaint were deliberately concealed by Park West and the Cruise Lines from Plaintiffs and the Class. Park West is not a publicly held corporation further limiting the information available to Plaintiffs and the Class.

94. Defendants had a duty to disclose the true value and provenance of the artworks sold at shipboard auctions and furnish honest Appraisals when selling appraisals. Notwithstanding this duty, Defendants never disclosed that the artworks were low value and not good investments and that the Appraisals were phony, self-serving biased statements, utterly worthless for valuing the artwork. Neither the Cruise Lines nor Park West ever disclosed their revenue sharing arrangement.

95. As demonstrated by the allegations in the Complaint, Defendants have employed and continue to employ practices and techniques of intimidation and secrecy to avoid detection of and to fraudulently conceal their illegal conduct including: Defendants' practice of subjecting all settlements with complaining customers to strict confidentiality, the Cruise Line's hiding of its financial interest and Park West's litigation tactics.

96. Through their public statements and other actions as detailed in the Complaint, and through their continuing conduct at shipboard auctions on the Cruise Line, Defendants continue to misrepresent the value of the artwork Park West sells at shipboard auctions on the Cruise Lines and the meaning and value of the Appraisals.

97. Defendants and the Cruise Lines successfully concealed from Plaintiffs and the Class facts sufficient to excite suspicion of claims against Defendants arising from their deception.

98. The information that Plaintiffs and the Class required to discover these claims and to prosecute this Complaint is under Defendants' exclusive control.

99. Plaintiffs and the Class could not have acquired knowledge sufficient to initiate this action through the exercise of reasonable diligence. Defendants are estopped from asserting any statute of limitations as a defense to the claims in this Complaint by virtue of Defendants' acts of fraudulent concealment.

100. Plaintiffs and the Class were not effectively alerted to the existence and scope of this fraud and were not on notice of their potential claims until shortly prior to the filing of this Complaint.

101. The applicable statutes of limitations for Plaintiffs' and the Class's claims are tolled by Defendants' fraudulent concealment of their actions as alleged in this Complaint.

### **ENTERPRISE**

#### **The Celebrity Art Auction Enterprise**

102. (a) The Celebrity Art Auction Enterprise I (the "Celebrity Enterprise I") is an association-in-fact within the meaning of 18 U.S.C. §1961(4), consisting of the Defendants and Celebrity Cruises, Inc. d/b/a the Celebrity Cruise Lines. The Celebrity Enterprise I is an organization, functioning as an ongoing and continuing unit that was created or used as a tool by Defendants to effectuate the pattern of racketeering activity alleged in this Complaint. Each Defendant is a "person" distinct from the Celebrity Enterprise I.

(b) The Celebrity Art Auction Enterprise II (the "Celebrity Enterprise II") is an association-in-fact within the meaning of 18 U.S.C. § 1961(4) consisting of Celebrity Cruises, Inc., d/b/a the Celebrity Cruise Lines. The Celebrity Enterprise II is an organization, functioning as an ongoing and continuing unit that was created or used as a tool by Defendants to effectuate the pattern of racketeering activity alleged in this Complaint. Each Defendant is a "person" distinct from the Celebrity Enterprise II.

#### **The Carnival Art Auction Enterprise**

103. (a) The Carnival Art Auction Enterprise I ("Carnival Enterprise I") is an association-in-fact within the meaning of 18 U.S.C. §1961(4), consisting of the Defendants and Carnival Corporation d/b/a the Carnival Cruise Lines. The Carnival Enterprise I is an organization, functioning as an ongoing and continuing unit. The Carnival Enterprise I was

created or used as a tool by Defendants to effectuate the pattern of racketeering activity alleged in this Complaint. Each Defendant is a “person” distinct from the Carnival Enterprise I.

(b) The Carnival Art Auction Enterprise II (the “Carnival Enterprise II”) is an association-in-fact within the meaning of 18 U.S.C. § 1961(4) consisting of the Carnival Corporation d/b/a the Carnival Cruise Lines. The Carnival Enterprise II is an organization, functioning as an ongoing and continuing unit that was created or used as a tool by Defendants to effectuate the pattern of racketeering activity alleged in this Complaint. Each Defendant is a “person” distinct from the Carnival Enterprise II.

**The Cruise Lines-Park West Art Auction Enterprise**

104. (a) The Cruise Line-Park West Art Auction Enterprise I (the “Cruise Line-Park West Enterprise”) is an association-in-fact within the meaning of 18 U.S.C. §1961(4), consisting of the Defendants and the Cruise Lines. The Cruise Line-Park West Enterprise I is an organization functioning as an ongoing and continuing unit. The Cruise Line-Park West Enterprise I was created by Defendants and/or used as a tool to effectuate a pattern of racketeering activity. Each Defendant is a “person” distinct from the Cruise-Park West Line Enterprise I.

(b) The Cruise Line-Park West Art Auction Enterprise II (the “Cruise Line-Park West Enterprise II) is an association-in-fact within the meaning of 18 U.S.C. § 1961(4), consisting of the Cruise Lines. The Cruise-Line Park West Enterprise II is an organization, functioning as an ongoing and continuing unit that was created or used as a tool by Defendants to effectuate the

pattern of racketeering activity alleged in this Complaint. Each Defendant is a “person” distinct from the Cruise Lines II.

105. The Celebrity Enterprises I and II, the Carnival Enterprises I and II and the Cruise Line-Park West Enterprises I and II are referred to together as the “Enterprises.”

106. Defendants created each of the Enterprises to accomplish common goals that were instrumental to their fraudulent scheme to auction low value, forged or worthless artwork at shipboard auctions on the ships of the Cruise Lines and to sell meaningless, phony Appraisals of that artwork as alleged in this Complaint.

107. The Enterprises each function as a continuing unit of members who participate together in the fraudulent scheme to auction low value, forged or worthless artwork at shipboard auctions and to sell phony Appraisals to support the value of the artwork.

108. Defendants’ racketeering activities as described in this Complaint amounted to a common course of conduct with the Enterprises intended to deceive and harm Plaintiffs and the Class Members. Each racketeering activity alleged was related, had similar purposes, involved the same or similar participants and methods of commission, and had similar results affecting similar victims, including Plaintiff and the Class. Defendants’ racketeering activities were part of their ongoing business and constitute a continuing threat to the property of Plaintiffs and the Class.

### **CLASS ACTION ALLEGATIONS**

109. Plaintiffs bring this action as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of:

**The Class:**

All persons residing in the United States, who purchased artworks and Appraisals at shipboard auctions conducted by Park West Gallery, Inc., PWG Florida, Inc., Vista Fine Art LLC d/b/a Park West at Sea or John Does 1-100 (together “Park West”) on a ship owned or operated by any of the following Cruise Lines: Regent Seven Seas, Royal Caribbean, Celebrity, Carnival, Norwegian Cruise Line, Oceana, Disney, Holland America during the applicable statute of limitations period (the “Class” and/or the “Class Period”). Excluded from the Class are Park West, Park West’s affiliates and each of their officers, directors and employees and officers, directors or employees of the Cruise Lines.

**Sub Class A (the “Celebrity Class”):**

All persons residing in the United States, who purchased artworks and Appraisals at shipboard auctions conducted by Park West Gallery, Inc., PWG Florida, Inc., Vista Fine Art LLC d/b/a Park West at Sea or John Does 1-100 (together “Park West”) on a ship owned or operated by Celebrity Cruise Line during the applicable statute of limitations period (the Celebrity “Class” and/or the “Class Period”). Excluded from the Class are Park West, Park West’s affiliates and each of their officers, directors and employees and officers, directors or employees of Celebrity Cruise Line.

**Sub Class B (the “Carnival Class”):**

All persons residing in the United States, who purchased artworks and Appraisals at shipboard auctions conducted by Park West Gallery, Inc., PWG Florida, Inc., Vista Fine Art LLC d/b/a Park West at Sea or John Does 1-100 (together “Park West”) on a ship owned or operated by the Carnival Cruise Line during the applicable statute of limitations period (the Carnival “Class” and/or the “Class Period”). Excluded from the Class are Park West, Park West’s affiliates and each of their officers, directors and employees and the officers, directors or employees of Carnival Cruise Line.

110. Each Class or Sub-Class (hereafter together “Class”) is sufficiently numerous to satisfy numerosity with thousands of members having purchased artwork from Park West at shipboard auctions while on Cruise Line or the Celebrity or Carnival Lines voyages. The Class members are dispersed throughout the United States such that joinder of all members of the

Class is impracticable. The Class members can be identified by records maintained by Defendants. Park West employs a Director of Shipboard Operations at its Southfield, MI headquarters who declared under penalty of perjury in the *Bouverat* litigation that Park West prepares an End of Cruise Report for each cruise on which it conducts auctions, and the End of Cruise Report records the trip history for each art auction held on board a Cruise Line as well as sales.

111. Upon information and belief, Park West also maintains copies of all invoices and Appraisals for purchases at shipboard auctions that will identify members of the Class.

112. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class members are:

- a. whether Defendants fraudulently misrepresented the value of the artwork and Appraisals sold to Plaintiffs and the Class at shipboard auctions on the Cruise Lines or the Celebrity Line or the Carnival Cruise Line to the financial detriment of Plaintiffs and the Class;
- b. whether Defendants concealed or omitted material information from Plaintiffs and the Class regarding artwork or Appraisals sold at shipboard auctions on cruises on the Cruise Lines or on the Celebrity Cruise Line or Carnival Cruise Line to the financial detriment of Plaintiffs and the Class;

- c. whether Defendants engaged in a deceptive uniform and continuing scheme to sell low value or forged artwork as valuable and a good investment at shipboard auctions on the Cruise Lines or the Celebrity Cruise Line or the Carnival Cruise Line;
- d. whether Defendants employed a uniform pattern of misrepresentation and omissions in the sale of artwork on shipboard auctions on the Cruise Lines or on the Celebrity Cruise Line or the Carnival Cruise Line.
- e. whether Defendants unjustly enriched themselves at the expense of the Plaintiffs and the Class;
- f. whether the acts and omissions of Defendants as described in this Complaint violate RICO;
- g. whether Defendants are liable to Plaintiffs and the Class for damages for conduct actionable under RICO;
- h. whether Defendants are “persons” as defined in RICO, 18 U.S.C. § 1961(3);
- i. whether each of Enterprises defined above is an association-in-fact enterprises pursuant to RICO, 18 U.S.C. § 1961(4);
- j. whether Defendants engaged in a pattern of racketeering activity as defined in RICO, 18 U.S.C. § 1961(5);
- k. whether Defendants used the mails and wires to further their fraudulent scheme as alleged in this Complaint;

l. whether the acts and omissions of Defendants violated the various state laws as alleged below.

m. whether Defendants and the Cruise Lines engaged in a conspiracy in violation of RICO 18 U.S.C. § 1962(d);

n. whether Defendants and the Carnival Cruise Line engaged in a conspiracy in violation of RICO, 18 U.S.C. § 1962(d);

o. whether Defendants and the Celebrity Cruise Line engaged in a conspiracy in violation of RICO, 18 U.S.C. § 1962(d);

p. whether Plaintiffs and the Class sustained damage and loss as a result of Defendants' illegal acts and omissions as alleged in this Complaint;

q. the scope, extent and measure of damages and equitable relief that should be awarded to Plaintiffs and the Class;

r. the amount of attorneys' fees, prejudgment interest, and costs of suit to which Plaintiffs and the Class is entitled; and

s. whether the Defendants' acts and omissions were sufficiently wrongful to entitle Plaintiffs and the Class members to punitive damages.

113. Plaintiffs' claims are typical of the claims of the Class because Plaintiffs and the Class sustained damages arising out of the Defendants' wrongful conduct as detailed in this Complaint. Specifically, Plaintiffs' claims and the Class' claims arise from Defendants' illegal scheme and pattern of racketeering activity as alleged in this Complaint.

114. Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel competent and experienced in class action lawsuits. Plaintiffs have no interests

antagonistic to or in conflict with those of the Class and therefore should be adequate as representatives for the Class.

115. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members of the Class is impracticable. Furthermore, because the damages suffered by individual members of the Class may in some instances be relatively small, the expense and burden of individual litigation make it impossible for such Class members individually to redress the wrongs done to them. Also, the adjudication of this controversy through a class action will avoid the possibility of inconsistent and possibly conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

**COUNT I:**

**VIOLATION OF 18 U.S.C. §1962(C)**

**(AGAINST ALL DEFENDANTS)**

116. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

117. Defendants are “persons” within the meaning of 18 U.S.C. §1961(3) who conducted the affairs of the Enterprises, through a pattern of racketeering activity in violation of 18 U.S.C. §1962(c) in that Defendants, intentionally employed a scheme or artifice to defraud Plaintiffs and the Class using the mails or wires in furtherance of that scheme.

118. The Enterprises engaged in and affected interstate commerce.

119. The Defendants exerted control over the Enterprises and were responsible for the affairs of the Enterprises.

120. Defendants conducted and participated in the affairs of the Enterprises through a pattern of racketeering activity that includes acts indictable under 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud) as described in this Complaint.

121. Defendants' use of the U.S. mails and wires in furtherance of the fraud described in this Complaint involved thousands of communications, including, but not limited to:

- a. communications between Defendants and the Enterprises to establish and maintain the Enterprises;
- b. communications, including financial payments with and among Defendants and the Enterprises, discussing or relating to the scheduling and conducting of shipboard auctions on cruises by the Cruise Lines and providing shipboard venues;
- c. communications with and among Defendants and Plaintiffs and the Class including mailing Appraisals, answering questions and complaints, receiving payments and establishing credit card accounts via the mails and wires;
- d. receiving the proceeds of Defendants' improper scheme from Plaintiffs and the Class.

122. In addition, Defendants' have communicated by U.S. mail, telephone and facsimile or wire with various artists and the artists' sales representatives and others around the country in furtherance of Defendants' scheme.

123. In implementing their fraudulent scheme, Defendants knew that the Plaintiffs and the Class purchasing art at shipboard art auctions on the Cruise Lines are not sophisticated purchasers and that Plaintiffs and the Class depended on the honesty and integrity of Defendants in representing the value of the artwork and the fairness of the Appraisals.

124. Plaintiffs and the Class have been injured in their property by reason of the violations alleged in this Complaint in that Plaintiffs and the Class made millions of dollars in payments for artwork purchased at shipboard auctions on the Cruise Lines to Defendants that they would not have made had Defendants not engaged in their pattern of racketeering activity.

125. The injuries to Plaintiff and the Class were directly and proximately caused by Defendants' racketeering activity as described above.

126. By virtue of these violations of 18 U.S.C. § 1962(c), Defendants are liable to Plaintiffs and the Class for three times the damages Plaintiffs and the Class have sustained, plus the cost of this suit, including reasonable attorney's fees.

**COUNT II:**

**VIOLATION OF 18 U.S.C. § 1962(d)**

**(AGAINST ALL DEFENDANTS)**

127. Plaintiff incorporates by reference all proceeding paragraphs as if fully set forth herein.

128. Section 1962(d) of RICO provides that it "shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section."

129. Defendants have violated § 1962(d) by conspiring to violate 18 U.S.C. § 1962(c) with each of the Cruise Lines. The object of this conspiracy has been and is to conduct or participate in, directly or indirectly, the conduct of affairs of the Enterprises described above through a pattern of racketeering activity.

130. Defendants and their co-conspirators have engaged in numerous overt and predicate fraudulent racketeering acts in furtherance of the conspiracy as described in this Complaint, including multiple instances of mail and wire fraud violations.

- a. scheduling the shipboard art auctions to take place in international waters;
- b. establishing a display area for the artwork for sale at a prominent venue of the ship;
- c. repeatedly scheduling Defendants to conduct art auctions on the Cruise Lines;
- d. communicating with Plaintiffs and the Class to establish travel itineraries and collect payments for tickets;
- e. collecting payments for artwork on the ship's bill;
- f. collecting shared revenues;

131. The nature of the above-described Defendants' and co-conspirators' acts in furtherance of the conspiracy give rise to a plausible inference that Defendants and the Co-Conspirator Cruise Lines and each of them agreed to the objective of violating 18 U.S.C. § 1962(c) and that by conspiring to violate 18 U.S.C. § 1962(c), they were aware that their ongoing fraudulent acts have been and are part of an overall pattern of racketeering activity.

132. Plaintiff and the Class have been injured in their property by reason of the conspiracy alleged herein in that Plaintiff and the Class have paid Defendants millions of dollars for artwork purchased at shipboard auctions on the Cruise Lines that Plaintiffs and the Class would not have made had Defendants not conspired to violate 18 U.S.C. § 1962(c).

133. The injuries of Plaintiff and the Class were directly and proximately caused by Defendants' racketeering activity as described above.

134. By virtue of these violations of 18 U.S.C. § 1962(d), Defendants are liable to Plaintiffs and the Class for three times the damages Plaintiffs and the Class have sustained, plus the cost of this suit, including reasonable attorney's fees.

**COUNT III:**

**VIOLATIONS OF STATE CONSUMER PROTECTION STATUTES**

**(AGAINST ALL DEFENDANTS)**

135. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

136. For purposes of this Count III only, the Class is limited to citizens of California, Florida, Massachusetts, Michigan, New York and Pennsylvania.

137. Defendants engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the state consumer protection statutes listed below when they employed deceptive sales tactics described herein. As a direct result of Defendants' deceptive, unfair and unconscionable conduct, Plaintiffs and the Class were injured in that they paid

millions of dollars for artwork purchased at shipboard auctions on the Cruise Lines that they would not have paid had Defendants not engaged in unfair and deceptive conduct.

138. Defendants' have engaged in unfair competition or unfair or deceptive acts or practices in violation of Cal. Bus. & Prof Code § 17200, *et seq.*

139. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Fla. Stat. Ann. § 501.201, *et seq.*

140. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mass. Gen. Laws Ch. 93A, *et seq.*

141. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mich. Comp. Laws § 445.901, *et seq.*

142. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

143. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 73 PA. Cons. Stat. § 201-1, *et seq.*

144. The unfair and deceptive acts and practices of Defendants have directly, foreseeably and proximately caused damages and injury to Plaintiff and the members of the Class.

145. The actions and failures to act of Defendants, including the false and misleading representations and omissions of material facts regarding the value of the artworks and Appraisals purchased at shipboard art auctions on the Cruise Lines and the above described course of deceptive conduct and fraudulent concealment, constitute acts, uses, or employment by

Defendants of unconscionable commercial practices, deception, fraud, false pretenses, misrepresentations, and the knowing concealment, suppression or omission of material facts with the intent that others rely upon such concealment, suppression, or omission of material facts in connection with the sale of artworks at shipboard auctions on the Cruise Lines.

146. Plaintiffs and the Class are not sophisticated purchasers of art and relied upon Defendants' misrepresentations and omissions in purchasing artwork and Appraisals at shipboard auctions on the Cruise Lines. Plaintiff and the Class relied upon Defendants' misrepresentations and omissions in paying for the artwork and Appraisals. By reason of the unlawful acts engaged in by Defendants, Plaintiff and the Class have suffered ascertainable loss and damages. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and the Class were damaged by paying for these artworks.

147. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and members of the Class are entitled to compensatory damages, treble damages, attorneys' fees and costs of suit.

**COUNT IV:**

**BREACH OF CONTRACT**

**(AGAINST ALL DEFENDANTS)**

148. Plaintiffs incorporate by reference all proceeding paragraphs as if fully set out herein except Count III.

149. Plaintiff brings this Count against Defendants in the *alternative* to Count III.

150. The Certificate of Authenticity issued to Plaintiffs and the Class and furnished by Park West with the artwork purchased at shipboard auctions constitutes a valid and enforceable contract with Defendants. See Exhibit F, Sample Certificate of Authenticity.

151. A material term of the contract between Park West and Plaintiffs and the Class was the guarantee of authenticity of the artwork sold at shipboard auctions on the Cruise Lines.

152. Plaintiffs and the Class performed all of their duties and responsibilities under the contract.

153. Notwithstanding the covenants and promises contained in that contract, specifically that the guarantee of authorship described in the Certificate of Authenticity, furnished by Park West, Defendants failed to deliver the genuine works described therein to Plaintiffs and the Class.

154. As a direct and proximate result of the foregoing, Plaintiff and other members of the Class have been injured and damaged.

**COUNT V:**

**BREACH OF WARRANTY**

**(AGAINST ALL DEFENDANTS)**

155. Plaintiffs incorporate by reference all proceeding paragraphs as if fully set out herein.

156. The statements of Park West regarding the authenticity, genuineness and value of the artwork in the Appraisals purchased by Plaintiff and the Class constitute an express warranty.

157. The authorship, authenticity, genuineness and value of the artwork purchased by Plaintiff and the Class are characteristics that are essential to the identity of the goods sold.

158. Defendants failed to deliver artwork to Plaintiff and the Class that conformed to its own description of such goods.

159. As a direct and proximate result of the foregoing, Plaintiff and the Class were damaged in an amount to be determined at trial.

**COUNT VI:**

**UNJUST ENRICHMENT**

**(AGAINST ALL DEFENDANTS)**

160. Plaintiffs incorporate by reference all proceeding paragraphs as if fully set forth herein.

161. As the intended and expected result of their conscious wrongdoing as set forth in this Complaint, Defendants profited and benefitted from payments Plaintiffs and the Class made for artwork and Appraisals purchased at shipboard auctions on the Cruise Lines.

162. In exchange for the payments made for the artwork, and at the time they made those payments, Plaintiffs and the Class expected that the artwork was authentic, valuable and a good investment as represented and that the Appraisals were objective.

163. Defendants voluntarily accepted and retained these payments, with full knowledge and awareness that, as a result of their wrongdoing, Plaintiff and the Class paid for artworks when they otherwise would not have done so. The failure of Defendants to provide Plaintiffs and the Class with the remuneration they expected enriched Defendants unjustly.

164. Plaintiff and the Class are entitled in equity to seek restitution of Defendants' wrongful profits, revenues and benefits to the extent, and in the amount, deemed appropriate by the Court; and such other relief as the Court deems just and property remedy Defendants' unjust enrichment.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and the Class demand judgment against Defendants in each claim for relief, jointly and severally, as follows:

a. declaring that this action is a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, establishing an appropriate class, appointing Plaintiffs as the Class Representative, and appointing the undersigned counsel of record as Class Counsel;

b. requiring Defendants to refund and make restitution of all monies acquired from the sale of artwork at shipboard auctions on the Cruise Lines to Plaintiffs and the Class;

c. awarding damages on the RICO claims;

d. awarding damages on the claims under the consumer protection statutes of the various states, as enumerated above, respecting the compensatory damages Plaintiff and the Class have sustained as a result of Defendants' conduct, and punitive damages, such amounts to be determined at trial, plus Plaintiffs' costs in this suit, including reasonable attorneys' fees.

e. awarding damages on the claims for breach of contract and breach of warranty as enumerated above;

f. awarding recovery on Plaintiffs' and the Class's claim for unjust enrichment, in the amount of payments for artworks purchased at shipboard auctions on the Cruise Lines in

such amount to be determined at trial, plus Plaintiffs' costs in this suit, including all reasonable attorneys' fees;

g. awarding Plaintiffs and the Class statutory damages as permitted, including any applicable exemplary damages;

h. awarding Plaintiffs and the Class prejudgment interest;

i. awarding Plaintiff and the Class restitution and/or disgorgement and other equitable or injunctive relief as the Court deems appropriate;

j. awarding Plaintiff and the Class their costs and expenses in this litigation, including, but not limited to, expert fees and reasonable attorneys' fees; and

k. awarding Plaintiff and the Class such other and further relief as may be just and proper.

#### **JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury on all issues so triable.

Dated:

/s/ E. Powell Miller  
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