

11-1197-CV

United States Court of Appeals *for the* Second Circuit

PATRICK CARIOU,

Plaintiff-Appellee,

– v. –

RICHARD PRINCE,

Defendant-Appellant,

GAGOSIAN GALLERY, INC., LAWRENCE GAGOSIAN,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX Volume 1 of 9 (Pages A-1 to A-280)

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APPEAL, ECF

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:08-cv-11327-DAB**

Cariou v. Prince et al
Assigned to: Judge Deborah A. Batts
Cause: 28:1338 Copyright Infringement

Date Filed: 12/30/2008
Jury Demand: Both
Nature of Suit: 820 Copyright
Jurisdiction: Federal Question

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Date Filed	#	Docket Text
12/30/2008	<u>1</u>	COMPLAINT against Richard Prince, Gagosian Gallery, Inc., Lawrence Gagosian, Rizzoli International Publications, Inc. (Filing Fee \$ 350.00, Receipt Number 673608) Document filed by Patrick Cariou.(ama) (Entered: 01/05/2009)
12/30/2008		SUMMONS ISSUED as to Richard Prince, Gagosian Gallery, Inc., Lawrence Gagosian, Rizzoli International Publications, Inc. (ama) (Entered: 01/05/2009)
12/30/2008		Magistrate Judge Douglas F. Eaton is so designated. (ama) (Entered: 01/05/2009)
12/30/2008		Case Designated ECF. (ama) (Entered: 01/05/2009)
12/30/2008		Mailed notice to Register of Copyrights to report the filing of this action. (ama) (Entered: 01/05/2009)
01/14/2009	<u>2</u>	AFFIDAVIT OF SERVICE. Service was accepted by Chad Maticc (Authorized Agent for Secretary of State of the State of New York). Document filed by Patrick Cariou. (Brooks, Daniel) (Entered: 01/14/2009)
01/14/2009	<u>3</u>	AFFIDAVIT OF SERVICE. Service was accepted by Chad Maticc (Authorized Agent for Secretary of State of the State of New York). Document filed by Patrick Cariou. (Brooks, Daniel) (Entered: 01/14/2009)

01/14/2009	<u>4</u>	AFFIDAVIT OF SERVICE. Document filed by Patrick Cariou. (Brooks, Daniel) (Entered: 01/14/2009)
01/14/2009	<u>5</u>	AFFIDAVIT OF SERVICE. Document filed by Patrick Cariou. (Brooks, Daniel) (Entered: 01/14/2009)
01/14/2009	<u>6</u>	AMENDED COMPLAINT amending <u>1</u> Complaint against Richard Prince, Gagosian Gallery, Inc., Lawrence Gagosian, Rizzoli International Publications, Inc.. Document filed by Patrick Cariou. Related document: <u>1</u> Complaint filed by Patrick Cariou.(dle) (Entered: 01/15/2009)
01/29/2009	<u>7</u>	STIPULATION AND ORDER: It is hereby stipulated and agreed by and between the parties that the time for defendants' to answer, move, or otherwise respond to the amended complaint is extended to and including 2/17/2009. (Signed by Judge Deborah A. Batts on 1/29/2009) (jpo) (Entered: 01/30/2009)
02/17/2009	<u>8</u>	STIPULATION AND ORDER: It is hereby stipulated and agreed by and between the parties that the time for defendant Rizzoli International Publications, Inc. to answer, move or otherwise respond to the amended complaint is extended to March 3, 2009. (Signed by Judge Deborah A. Batts on 2/17/2009) (jpo) (Entered: 02/18/2009)
02/17/2009	<u>9</u>	STIPULATION AND ORDER: It is hereby stipulated and agreed by and between the parties that the time for defendants Richard Prince, Gagosian Gallery, Inc., and Lawrence Gagosian, to answer, move or otherwise respond to the amended complaint is extended to March 3, 2009. (Signed by Judge Deborah A. Batts on 2/17/2009) (jpo) (Entered: 02/18/2009)
03/03/2009	<u>10</u>	NOTICE OF APPEARANCE by Steven Michael Hayes on behalf of Richard Prince (Hayes, Steven) (Entered: 03/03/2009)
03/03/2009	<u>11</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Richard Prince.(Hayes, Steven) (Entered: 03/03/2009)
03/03/2009	<u>12</u>	ANSWER to Amended Complaint with JURY DEMAND. Document filed by Richard Prince. Related document: <u>6</u> Amended Complaint filed by Patrick Cariou.(Hayes, Steven) (Entered: 03/03/2009)
03/03/2009	<u>13</u>	NOTICE OF APPEARANCE by Hollis Anne Bart on behalf of Gagosian Gallery, Inc., Lawrence Gagosian (Bart, Hollis) (Entered: 03/03/2009)
03/03/2009	<u>14</u>	ANSWER to Amended Complaint. Document filed by Gagosian Gallery, Inc., Lawrence Gagosian. Related document: <u>6</u> Amended Complaint filed by Patrick Cariou.(Bart, Hollis) (Entered: 03/03/2009)
03/04/2009	<u>15</u>	NOTICE OF APPEARANCE by Dara Gilwit Hammerman on behalf of Gagosian Gallery, Inc., Lawrence Gagosian (Hammerman, Dara) (Entered: 03/04/2009)
03/06/2009	<u>16</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Gagosian Gallery, Inc., Lawrence Gagosian. (Hammerman, Dara) (Entered: 03/06/2009)

03/17/2009	<u>17</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying RCS MediaGroup S.p.A as Corporate Parent. Document filed by Rizzoli International Publications, Inc..(Epstein, Jesse) (Entered: 03/17/2009)
03/17/2009	<u>18</u>	NOTICE OF APPEARANCE by Jesse Alan Epstein on behalf of Rizzoli International Publications, Inc. (Epstein, Jesse) (Entered: 03/17/2009)
03/17/2009	<u>19</u>	ANSWER to Amended Complaint., CROSSCLAIM against Richard Prince, Gagosian Gallery, Inc., Lawrence Gagosian. Document filed by Rizzoli International Publications, Inc.. Related document: <u>6</u> Amended Complaint filed by Patrick Cariou.(Epstein, Jesse) (Entered: 03/17/2009)
03/23/2009	<u>20</u>	ANSWER to Crossclaim. Document filed by Gagosian Gallery, Inc., Lawrence Gagosian.(Bart, Hollis) (Entered: 03/23/2009)
03/24/2009	<u>21</u>	ANSWER to Crossclaim., CROSSCLAIM against Rizzoli International Publications, Inc.. Document filed by Richard Prince.(Hayes, Steven) (Entered: 03/24/2009)
04/30/2009	<u>22</u>	RULE 26 DISCLOSURE.Document filed by Patrick Cariou.(Brooks, Daniel) (Entered: 04/30/2009)
04/30/2009	<u>23</u>	RULE 26 DISCLOSURE.Document filed by Richard Prince.(Hayes, Steven) (Entered: 04/30/2009)
06/19/2009	<u>24</u>	SCHEDULING ORDER: Except for good cause explicitly set forth by letter and shown, all discovery, including expert discovery, shall be commenced in time to be completed by 2/1/10. The court expects discovery to be completed within 60 days of the first scheduling conference unless, after the expiration of that 60 day period, all counsel stipulate that an additional period of time (not to exceed 60 more days) is needed to complete discovery, and the Court approves such extension. A party contemplating making a dispositive motion must notify opposing counsel by 3/1/10. Proposed Requests to Charge and Proposed Voir Dire shall be submitted by 3/26/10. Joint Pre-trial Statement ("JPTS"): A JPTS shall be submitted by 3/26/10. The JPTS shall conform to the Court's Individual Practices and Supplemental Trial Procedure Rules. Memoranda of Law addressing those issues raised in the JPTS shall be submitted by 3/26/10. Responses to the Memoranda shall be submitted by 4/9/10. There shall be no replies. Dual track mediation and discovery. Private mediation split 4 ways. (Signed by Judge Deborah A. Batts on 6/19/2009) (rw) (Entered: 06/19/2009)
08/10/2009	<u>25</u>	STIPULATED PROTECTIVE ORDER...regarding procedures to be followed that shall govern the handling of confidential material.... (Signed by Judge Deborah A. Batts on 8/10/2009) (jfe) (Entered: 08/10/2009)
02/05/2010	<u>26</u>	STIPULATION AND ORDER OF DISMISSAL: All claims by plaintiff Patrick Cariou against Rizzoli International Publications, Inc. are dismissed with prejudice and without costs to any party as against the other. (Signed by Judge Deborah A. Batts on 2/5/10) (dle) (Entered: 02/05/2010)
02/05/2010	<u>27</u>	ENDORSED LETTER addressed to Judge Deborah A. Batts from Steven M. Hayes dated 1/27/10 re: counsel for defendants request an extension of the discovery time period. ENDORSEMENT: Denied. (Signed by Judge Deborah

		A. Batts on 2/5/10) (dle) (Entered: 02/05/2010)
03/19/2010	<u>28</u>	ORDER: The Court is in receipt of and has reviewed Plaintiff's letters dated February 8 and February 19, 2010 and Defendants' letter dated February 17, 2010. Both Parties request permission to file for summary judgment. The Court hereby grants Parties' requests to cross move for summary judgment. Plaintiff and Defendants shall file and serve their moving papers, respectively, within 45 days of the date of this Order. Each Party shall respond within 30 days of being served with the opposing side's moving papers. Parties may reply within 10 days of being served with a response, at which time the motions will be fully-submitted. (Signed by Judge Deborah A. Batts on 3/19/2010) (tro) Modified on 3/30/2010 (tro). (Entered: 03/22/2010)
03/19/2010	<u>29</u>	STIPULATION AND ORDER OF DISMISSAL: NOW, THEREFORE, IT IS HEREBY ORDERED, whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, upon the Stipulation and Agreement between the undersigned attorneys of record for the Defendant Richard Prince and the undersigned attorneys of record for Defendant Rizzoli International Publications, Inc., that, pursuant to Rule 41 (a)(2)and (c) of the Federal Rules of Civil Procedure, all cross-claims by Rizzoli International Publications, Inc., against Richard Prince are dismissed 'With prejudice, and without costs to any party as against the other. (Signed by Judge Deborah A. Batts on 3/19/2010) (js) (Entered: 03/22/2010)
04/06/2010	<u>30</u>	ENDORSED LETTER: addressed to Judge Deborah A. Batts from Hollis Generka Bart dated 3/26/2010 re: Counsel for defendant request that the Court amend its Order dated March 19, 2010 by adjourning the deadline for the parties to file their respective motions for summary judgment from Monday, May 2, 2010 to Friday, May 7, 2010. ENDORSEMENT: So Ordered. (Signed by Judge Deborah A. Batts on 4/6/2010) (js) (Entered: 04/06/2010)
04/23/2010	<u>31</u>	ENDORSED LETTER addressed to Judge Deborah A. Batts from Daniel J. Brooks dated 4/21/10 re: counsel for plaintiff requests leave of the Court to file in hard copy two books which will be attached as exhibits to the attorney declaration in support of plaintiffs summary judgment motion to be filed with the Court by May 7, 2010. We further request leave to dispense with service on defendants of copies of the books, as, during discovery, it came to our attention that defendants were in possession of both of these books and, therefore, will not be prejudiced by not receiving service of the books. ENDORSEMENT: Granted. (Signed by Judge Deborah A. Batts on 4/23/10) (pl) (Entered: 04/23/2010)
05/05/2010	<u>32</u>	ENDORSED LETTER addressed to Judge Deborah A. Batts from Steven M. Hayes dated 5/5/10 re: counsel requests an adjournment of the date for filing the motions for summary judgment from May 7 until May 14, 2010. ENDORSEMENT: Granted. (Motions due by 5/5/2010.) (Signed by Judge Deborah A. Batts on 5/5/10) (djc) (Entered: 05/05/2010)
05/07/2010	<u>33</u>	ENDORSED LETTER addressed to Judge Deborah A. Batts from Hollis Gonerka Bart dated 5/3/2010 re: Requesting permission to submit a joint memorandum of law in support of defendants' motion for summary judgment;

		Requesting leave of the Court to file in hard copy relevant musical recordings photocopies of Yes Rasta book, and other copies of images which will be attached as exhibits to affidavits in support of defendants' moving brief and which are too large to submit electronically via ECF; and Requesting that the Court treat all of the names of Gagosian Gallery's clients as confidential. ENDORSEMENT: Denied, Granted and Denied respectively. (Signed by Judge Deborah A. Batts on 5/7/2010) (jpo) Modified on 5/17/2010 (jpo). (Entered: 05/10/2010)
05/14/2010	<u>34</u>	MOTION for Summary Judgment. Document filed by Patrick Cariou.(Brooks, Daniel) (Entered: 05/14/2010)
05/14/2010	<u>35</u>	RULE 56.1 STATEMENT. Document filed by Patrick Cariou. (Brooks, Daniel) (Entered: 05/14/2010)
05/14/2010	<u>36</u>	DECLARATION of Eric Doeringer in Support re: <u>34</u> MOTION for Summary Judgment.. Document filed by Patrick Cariou. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Brooks, Daniel) (Entered: 05/14/2010)
05/14/2010	<u>37</u>	MEMORANDUM OF LAW in Support re: <u>34</u> MOTION for Summary Judgment.. Document filed by Patrick Cariou. (Brooks, Daniel) (Entered: 05/14/2010)
05/14/2010	<u>38</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - DECLARATION of Daniel J. Brooks in Support re: <u>34</u> MOTION for Summary Judgment.. Document filed by Patrick Cariou. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E part 1, # <u>6</u> Exhibit E part 2, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I, # <u>11</u> Exhibit J, # <u>12</u> Exhibit K, # <u>13</u> Exhibit L, # <u>14</u> Exhibit L-1, # <u>15</u> Exhibit L-2)(Brooks, Daniel) Modified on 5/18/2010 (jar). (Entered: 05/14/2010)
05/14/2010	<u>39</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - DECLARATION of Daniel J. Brooks (part 2) in Support re: <u>34</u> MOTION for Summary Judgment.. Document filed by Patrick Cariou. (Attachments: # <u>1</u> Exhibit M, # <u>2</u> Exhibit M-1 part 1, # <u>3</u> Exhibit M-1 part 2, # <u>4</u> Exhibit M-2, # <u>5</u> Exhibit M-3, # <u>6</u> Exhibit M-4, # <u>7</u> Exhibit N part 1, # <u>8</u> Exhibit N part 2, # <u>9</u> Exhibit N part 3, # <u>10</u> Exhibit N part 4)(Brooks, Daniel) Modified on 5/18/2010 (jar). (Entered: 05/14/2010)
05/14/2010	<u>40</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - DECLARATION of Daniel J. Brooks (part 3) in Support re: <u>34</u> MOTION for Summary Judgment.. Document filed by Patrick Cariou. (Attachments: # <u>1</u> Exhibit N part 5, # <u>2</u> Exhibit N part 6, # <u>3</u> Exhibit N part 7, # <u>4</u> Exhibit N part 8, # <u>5</u> Exhibit N part 9, # <u>6</u> Exhibit N part 10, # <u>7</u> Exhibit N part 11)(Brooks, Daniel) Modified on 5/18/2010 (jar). (Entered: 05/14/2010)
05/14/2010	<u>41</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - DECLARATION of Daniel J. Brooks (part 4) in Support re: <u>34</u> MOTION for Summary Judgment.. Document filed by Patrick Cariou. (Attachments: # <u>1</u> Exhibit N part 12, # <u>2</u> Exhibit N part 13, # <u>3</u> Exhibit N part 14, # <u>4</u> Exhibit N part 15, # <u>5</u> Exhibit N part 16, # <u>6</u> Exhibit N part 17, # <u>7</u> Exhibit N part 18)(Brooks, Daniel) Modified on 5/18/2010 (jar). (Entered: 05/14/2010)

05/14/2010	<u>42</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - DECLARATION of Daniel J. Brooks (part 5) in Support re: <u>34</u> MOTION for Summary Judgment.. Document filed by Patrick Cariou. (Attachments: # <u>1</u> Exhibit N part 19, # <u>2</u> Exhibit N part 20, # <u>3</u> Exhibit O, # <u>4</u> Exhibit P, # <u>5</u> Exhibit Q, # <u>6</u> Exhibit R, # <u>7</u> Exhibit S, # <u>8</u> Exhibit T part 1, # <u>9</u> Exhibit T part 2, # <u>10</u> Exhibit T part 3, # <u>11</u> Exhibit T part 4)(Brooks, Daniel) Modified on 5/18/2010 (jar). (Entered: 05/14/2010)
05/14/2010	<u>43</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - DECLARATION of Daniel J. Brooks (part 6) in Support re: <u>34</u> MOTION for Summary Judgment.. Document filed by Patrick Cariou. (Attachments: # <u>1</u> Exhibit U part 1, # <u>2</u> Exhibit U part 2, # <u>3</u> Exhibit U part 3, # <u>4</u> Exhibit U part 4, # <u>5</u> Exhibit U part 5, # <u>6</u> Exhibit U part 6, # <u>7</u> Exhibit U part 7)(Brooks, Daniel) Modified on 5/18/2010 (jar). (Entered: 05/14/2010)
05/14/2010	<u>44</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - DECLARATION of Daniel J. Brooks (part 7) in Support re: <u>34</u> MOTION for Summary Judgment.. Document filed by Patrick Cariou. (Attachments: # <u>1</u> Exhibit U part 8, # <u>2</u> Exhibit U part 9, # <u>3</u> Exhibit U part 10, # <u>4</u> Exhibit U part 11, # <u>5</u> Exhibit U part 12, # <u>6</u> Exhibit U part 13, # <u>7</u> Exhibit U part 14, # <u>8</u> Exhibit U part 15) (Brooks, Daniel) Modified on 5/18/2010 (jar). (Entered: 05/14/2010)
05/14/2010	<u>45</u>	MOTION for Summary Judgment. Document filed by Richard Prince, Gagosian Gallery, Inc., Lawrence Gagosian. Responses due by 6/14/2010(Bart, Hollis) (Entered: 05/14/2010)
05/14/2010	<u>46</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - DECLARATION of Daniel J. Brooks (part 8) in Support re: <u>34</u> MOTION for Summary Judgment.. Document filed by Patrick Cariou. (Attachments: # <u>1</u> Exhibit U part 16, # <u>2</u> Exhibit V, # <u>3</u> Exhibit V-1, # <u>4</u> Exhibit W, # <u>5</u> Exhibit X, # <u>6</u> Exhibit Y part 1, # <u>7</u> Exhibit U part 2, # <u>8</u> Exhibit U part 3, # <u>9</u> Exhibit Y part 4, # <u>10</u> Exhibit Y part 5)(Brooks, Daniel) Modified on 5/18/2010 (jar). (Entered: 05/14/2010)
05/14/2010	<u>47</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - DECLARATION of Daniel J. Brooks (part 9) in Support re: <u>34</u> MOTION for Summary Judgment.. Document filed by Patrick Cariou. (Attachments: # <u>1</u> Exhibit Y part 6, # <u>2</u> Exhibit Y part 7, # <u>3</u> Exhibit Y part 8, # <u>4</u> Exhibit Y part 9, # <u>5</u> Exhibit Y part 10, # <u>6</u> Exhibit Y part 11, # <u>7</u> Exhibit Y part 12)(Brooks, Daniel) Modified on 5/18/2010 (jar). (Entered: 05/14/2010)
05/14/2010	<u>48</u>	AFFIDAVIT of Hollis Gonerka Bart in Support re: <u>45</u> MOTION for Summary Judgment.. Document filed by Richard Prince, Gagosian Gallery, Inc., Lawrence Gagosian. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G - Part 1 of 2, # <u>8</u> Exhibit G - Part 2 of 2, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I, # <u>11</u> Exhibit J, # <u>12</u> Exhibit K, # <u>13</u> Exhibit L, # <u>14</u> Exhibit M, # <u>15</u> Exhibit N, # <u>16</u> Exhibit O, # <u>17</u> Exhibit P, # <u>18</u> Exhibit Q, # <u>19</u> Exhibit R, # <u>20</u> Exhibit S, # <u>21</u> Exhibit T, # <u>22</u> Exhibit U - Part 1 of 2, # <u>23</u> Exhibit U - Part 2 of 2, # <u>24</u> Exhibit V, # <u>25</u> Exhibit W, # <u>26</u> Exhibit X, # <u>27</u> Exhibit Y, # <u>28</u> Exhibit Z, # <u>29</u> Exhibit AA, # <u>30</u> Exhibit BB, # <u>31</u> Exhibit CC, # <u>32</u> Exhibit DD, # <u>33</u> Exhibit EE)(Bart, Hollis) (Entered: 05/14/2010)

05/14/2010	<u>49</u>	AFFIDAVIT of Richard Prince in Support re: <u>45</u> MOTION for Summary Judgment.. Document filed by Richard Prince, Gagosian Gallery, Inc., Lawrence Gagosian. (Attachments: # <u>1</u> Exhibit A)(Bart, Hollis) (Entered: 05/14/2010)
05/14/2010	<u>50</u>	MEMORANDUM OF LAW in Support re: <u>45</u> MOTION for Summary Judgment.. Document filed by Richard Prince, Gagosian Gallery, Inc., Lawrence Gagosian. (Bart, Hollis) (Entered: 05/14/2010)
05/14/2010	<u>51</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - DECLARATION of Daniel J. Brooks (part 10) in Support re: <u>34</u> MOTION for Summary Judgment.. Document filed by Patrick Cariou. (Attachments: # <u>1</u> Exhibit Y part 13, # <u>2</u> Exhibit Y part 14, # <u>3</u> Exhibit Y part 15, # <u>4</u> Exhibit Y part 16, # <u>5</u> Exhibit Z, # <u>6</u> Exhibit AA, # <u>7</u> Exhibit BB, # <u>8</u> Exhibit CC, # <u>9</u> Exhibit DD, # <u>10</u> Exhibit EE, # <u>11</u> Exhibit FF, # <u>12</u> Exhibit GG, # <u>13</u> Exhibit HH, # <u>14</u> Exhibit II, # <u>15</u> Exhibit JJ, # <u>16</u> Exhibit KK, # <u>17</u> Exhibit LL, # <u>18</u> Exhibit MM, # <u>19</u> Exhibit NN, # <u>20</u> Exhibit OO, # <u>21</u> Exhibit PP, # <u>22</u> Exhibit QQ, # <u>23</u> Exhibit RR, # <u>24</u> Exhibit SS)(Brooks, Daniel) Modified on 5/18/2010 (jar). (Entered: 05/14/2010)
05/14/2010	<u>52</u>	RULE 56.1 STATEMENT. Document filed by Richard Prince, Gagosian Gallery, Inc., Lawrence Gagosian. (Bart, Hollis) (Entered: 05/14/2010)
05/17/2010	<u>53</u>	COMPOSITE EXHIBIT A TO AFFIDAVIT OF DEFENDANT RICHARD PRINCE IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (relevant photocopies of Yes Rasta book, and other copies of images which will be attached hereto). Document filed by Richard Prince, Gagosian Gallery, Inc., Lawrence Gagosian. ***Accepted for filing by the Honorable Deborah A Batts on 5/7/10 (document #33)(mro) (Entered: 05/17/2010)
05/18/2010		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DEFICIENT DOCKET ENTRY ERROR. Note to Attorney Daniel Brooks to RE-FILE Document <u>47</u> Declaration in Support of Motion, <u>43</u> Declaration in Support of Motion, <u>40</u> Declaration in Support of Motion, <u>46</u> Declaration in Support of Motion, <u>44</u> Declaration in Support of Motion, <u>51</u> Declaration in Support of Motion,, <u>41</u> Declaration in Support of Motion, <u>42</u> Declaration in Support of Motion, <u>38</u> Declaration in Support of Motion, <u>39</u> Declaration in Support of Motion. ERROR(S): Multiple entries of the same document in order to accommodate exhibits are not accepted. (jar) (Entered: 05/18/2010)
05/18/2010	<u>54</u>	DECLARATION of Daniel J. Brooks in Support re: <u>34</u> MOTION for Summary Judgment.. Document filed by Patrick Cariou. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E part 1, # <u>6</u> Exhibit E part 2, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I, # <u>11</u> Exhibit J, # <u>12</u> Exhibit K, # <u>13</u> Exhibit L, # <u>14</u> Exhibit L-1 and L-2, # <u>15</u> Exhibit M to M-4, # <u>16</u> Exhibit N, # <u>17</u> Exhibit O, # <u>18</u> Exhibit P, # <u>19</u> Exhibit Q, # <u>20</u> Exhibit R, # <u>21</u> Exhibit S, # <u>22</u> Exhibit T, # <u>23</u> Exhibit U, # <u>24</u> Exhibit V and V-1, # <u>25</u> Exhibit W, # <u>26</u> Exhibit X, # <u>27</u> Exhibit Y, # <u>28</u> Exhibit Z, # <u>29</u> Exhibit AA, # <u>30</u> Exhibit BB, # <u>31</u> Exhibit CC, # <u>32</u> Exhibit DD, # <u>33</u> Exhibit EE, # <u>34</u> Exhibit FF, # <u>35</u> Exhibit GG, # <u>36</u> Exhibit HH, # <u>37</u> Exhibit II, # <u>38</u> Exhibit JJ, # <u>39</u> Exhibit KK, # <u>40</u> Exhibit LL, # <u>41</u> Exhibit MM, # <u>42</u>

		Exhibit NN, # <u>43</u> Exhibit OO, # <u>44</u> Exhibit PP, # <u>45</u> Exhibit QQ, # <u>46</u> Exhibit RR, # <u>47</u> Exhibit SS)(Brooks, Daniel) (Entered: 05/18/2010)
05/25/2010	<u>55</u>	EXHIBITS(attached to Declaration of Daniel J. Brooks): "Yes Rasta" authored by Patrick Cariou and "Canal Zone" authored by Richard Prince. Document filed by Patrick Cariou. ***Accepted for filing by the Honorable Deborah A. Batts on 4/23/10, document number 31.(mro) (Entered: 05/25/2010)
06/14/2010	<u>56</u>	DECLARATION of Daniel J. Brooks in Opposition re: <u>45</u> MOTION for Summary Judgment.. Document filed by Patrick Cariou. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Brooks, Daniel) (Entered: 06/14/2010)
06/14/2010	<u>57</u>	MEMORANDUM OF LAW in Opposition re: <u>45</u> MOTION for Summary Judgment.. Document filed by Patrick Cariou. (Brooks, Daniel) (Entered: 06/14/2010)
06/14/2010	<u>58</u>	COUNTER STATEMENT TO <u>52</u> Rule 56.1 Statement. Document filed by Patrick Cariou. (Brooks, Daniel) (Entered: 06/14/2010)
06/14/2010	<u>59</u>	MEMORANDUM OF LAW in Opposition re: <u>34</u> MOTION for Summary Judgment.. Document filed by Richard Prince, Gagosian Gallery, Inc., Lawrence Gagosian. (Bart, Hollis) (Entered: 06/14/2010)
06/14/2010	<u>60</u>	COUNTER STATEMENT TO <u>35</u> Rule 56.1 Statement. Document filed by Richard Prince, Gagosian Gallery, Inc., Lawrence Gagosian. (Bart, Hollis) (Entered: 06/14/2010)
06/14/2010	<u>61</u>	AFFIDAVIT of Hollis Gonerka Bart in Opposition re: <u>34</u> MOTION for Summary Judgment.. Document filed by Richard Prince, Gagosian Gallery, Inc., Lawrence Gagosian. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I)(Bart, Hollis) (Entered: 06/14/2010)
06/14/2010	<u>62</u>	AFFIDAVIT of Richard Prince in Opposition re: <u>34</u> MOTION for Summary Judgment.. Document filed by Richard Prince, Gagosian Gallery, Inc., Lawrence Gagosian. (Attachments: # <u>1</u> Exhibit A)(Bart, Hollis) (Entered: 06/14/2010)
06/24/2010	<u>63</u>	REPLY MEMORANDUM OF LAW in Support re: <u>34</u> MOTION for Summary Judgment.. Document filed by Patrick Cariou. (Brooks, Daniel) (Entered: 06/24/2010)
06/24/2010	<u>64</u>	RESPONSE to <i>Defendants' Counter-Statement of Uncontested Material Facts Pursuant to Local Rule 56.1</i> . Document filed by Patrick Cariou. (Brooks, Daniel) (Entered: 06/24/2010)
06/24/2010	<u>65</u>	REPLY AFFIRMATION of Daniel J. Brooks in Support re: <u>34</u> MOTION for Summary Judgment.. Document filed by Patrick Cariou. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D part 1, # <u>5</u> Exhibit D part 2)(Brooks, Daniel) (Entered: 06/24/2010)
06/24/2010	<u>66</u>	REPLY MEMORANDUM OF LAW in Opposition re: <u>34</u> MOTION for Summary Judgment.. Document filed by Richard Prince, Gagosian Gallery,

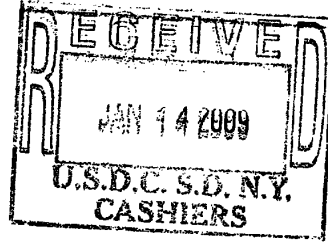
		Inc., Lawrence Gagosian. (Bart, Hollis) (Entered: 06/24/2010)
06/24/2010	<u>67</u>	REPLY AFFIDAVIT of Hollis Gonerka Bart in Opposition re: <u>45</u> MOTION for Summary Judgment.. Document filed by Richard Prince, Gagosian Gallery, Inc., Lawrence Gagosian. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C - Part 1 of 3, # <u>4</u> Exhibit C - Part 2 of 3, # <u>5</u> Exhibit C - Part 3 of 3) (Bart, Hollis) (Entered: 06/24/2010)
06/24/2010	<u>68</u>	RULE 56.1 STATEMENT. Document filed by Richard Prince, Gagosian Gallery, Inc., Lawrence Gagosian. (Bart, Hollis) (Entered: 06/24/2010)
07/01/2010	<u>69</u>	ENDORSED LETTER addressed to Judge Deborah A. Batts from Daniel J. Brooks dated 7/1/10 re: counsel requests that the Court direct the Clerk's Office to accept in hard copy and enter on the docket sheet plaintiff's notice of motion, Local Rule 56.1 Statement and supporting declarations and exhibits, including my May 7, 2010 declaration, which has attached to it a number of exhibits in color which we were unable to file through ECF. ENDORSEMENT: Granted. (Signed by Judge Deborah A. Batts on 7/1/10) (djc) (Entered: 07/02/2010)
07/07/2010	70	MOTION for Summary Judgment pursuant to Rule 56 of the FRCP. Document filed by Patrick Cariou. ***Rule 56.1 statement, Brooks Declaration, Doeringer Declaration and Exhibits attached hereto. (Accepted for filing in hard copy by the Honorable Deborah A. Batts on 7/1/10, document #69)(mro) (Entered: 07/09/2010)
03/18/2011	<u>71</u>	MEMORANDUM AND ORDER: Defendants shall notify in writing any current or future owners of the Paintings of whom they are or become aware that the Paintings infringe the copyright in the Photographs, that the Paintings were not lawfully made under the Copyright Act of 1976, and that the Paintings cannot lawfully be displayed under 17 U.S.C. § 109(c). That the Parties shall appear before this Court on May 6, 2011 at 11:00 am for a status conference regarding damages, profits, and Plaintiff's costs and reasonable attorney's fees. (Signed by Judge Deborah A. Batts on 3/18/2011) (jpo) (Entered: 03/18/2011)
03/24/2011	<u>72</u>	NOTICE OF APPEARANCE by Jonathan David Schiller on behalf of Richard Prince (Schiller, Jonathan) (Entered: 03/24/2011)
03/24/2011	<u>73</u>	NOTICE OF APPEARANCE by Joshua Schiller on behalf of Richard Prince (Schiller, Joshua) (Entered: 03/24/2011)
03/24/2011	<u>74</u>	NOTICE OF APPEARANCE by George F. Carpinello on behalf of Richard Prince (Carpinello, George) (Entered: 03/24/2011)
03/25/2011	<u>75</u>	JOINT NOTICE OF APPEAL from <u>71</u> Memorandum & Order. Document filed by Lawrence Gagosian, Gagosian Gallery, Inc., Richard Prince. Filing fee \$ 455.00, receipt number E 933143. (nd) Modified on 3/28/2011 (nd). (Entered: 03/28/2011)
03/28/2011		Transmission of Notice of Appeal to the District Judge re: <u>75</u> Joint Notice of Appeal. (nd). (Entered: 03/28/2011)
03/28/2011		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US

	Court of Appeals re: <u>75</u> Joint Notice of Appeal. (nd) (Entered: 03/28/2011)
03/28/2011	<p>Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <u>4</u> Affidavit of Service Complaints filed by Patrick Cariou, <u>14</u> Answer to Amended Complaint filed by Gagosian Gallery, Inc., Lawrence Gagosian, <u>1</u> Complaint filed by Patrick Cariou, <u>33</u> Endorsed Letter, Set Deadlines/Hearings,,<u>68</u> Rule 56.1 Statement filed by Gagosian Gallery, Inc., Richard Prince, Lawrence Gagosian, <u>72</u> Notice of Appearance filed by Richard Prince, <u>48</u> Affidavit in Support of Motion,, filed by Gagosian Gallery, Inc., Richard Prince, Lawrence Gagosian, <u>25</u> Protective Order, <u>74</u> Notice of Appearance filed by Richard Prince, <u>54</u> Declaration in Support of Motion,, filed by Patrick Cariou, <u>16</u> Rule 7.1 Corporate Disclosure Statement filed by Gagosian Gallery, Inc., Lawrence Gagosian, <u>20</u> Answer to Crossclaim filed by Gagosian Gallery, Inc., Lawrence Gagosian, <u>7</u> Stipulation and Order, Set Deadlines/Hearings,, <u>6</u> Amended Complaint filed by Patrick Cariou, <u>57</u> Memorandum of Law in Opposition to Motion filed by Patrick Cariou, <u>45</u> MOTION for Summary Judgment. filed by Gagosian Gallery, Inc., Richard Prince, Lawrence Gagosian, <u>31</u> Endorsed Letter,, <u>58</u> Counter Statement to Rule 56.1 filed by Patrick Cariou, <u>2</u> Affidavit of Service Complaints filed by Patrick Cariou, <u>56</u> Declaration in Opposition to Motion filed by Patrick Cariou, <u>23</u> Rule 26 Disclosure filed by Richard Prince, <u>61</u> Affidavit in Opposition to Motion, filed by Gagosian Gallery, Inc., Richard Prince, Lawrence Gagosian, <u>26</u> Stipulation and Order of Dismissal, <u>21</u> Answer to Crossclaim, filed by Richard Prince, <u>27</u> Endorsed Letter, <u>24</u> Scheduling Order,,<u>37</u> Memorandum of Law in Support of Motion filed by Patrick Cariou, <u>15</u> Notice of Appearance filed by Gagosian Gallery, Inc., Lawrence Gagosian, <u>60</u> Counter Statement to Rule 56.1 filed by Gagosian Gallery, Inc., Richard Prince, Lawrence Gagosian, <u>12</u> Answer to Amended Complaint filed by Richard Prince, <u>36</u> Declaration in Support of Motion filed by Patrick Cariou, <u>62</u> Affidavit in Opposition to Motion filed by Gagosian Gallery, Inc., Richard Prince, Lawrence Gagosian, <u>13</u> Notice of Appearance filed by Gagosian Gallery, Inc., Lawrence Gagosian, <u>28</u> Order,, <u>67</u> Reply Affidavit in Opposition to Motion, filed by Gagosian Gallery, Inc., Richard Prince, Lawrence Gagosian, <u>75</u> Notice of Appeal filed by Gagosian Gallery, Inc., Richard Prince, Lawrence Gagosian, <u>18</u> Notice of Appearance filed by Rizzoli International Publications, Inc., <u>10</u> Notice of Appearance filed by Richard Prince, <u>34</u> MOTION for Summary Judgment. filed by Patrick Cariou, <u>30</u> Endorsed Letter, Set Deadlines/Hearings,, <u>49</u> Affidavit in Support of Motion filed by Gagosian Gallery, Inc., Richard Prince, Lawrence Gagosian, <u>3</u> Affidavit of Service Complaints filed by Patrick Cariou, <u>50</u> Memorandum of Law in Support of Motion filed by Gagosian Gallery, Inc., Richard Prince, Lawrence Gagosian, <u>5</u> Affidavit of Service Complaints filed by Patrick Cariou, <u>19</u> Answer to Amended Complaint, Crossclaim filed by Rizzoli International Publications, Inc., <u>29</u> Stipulation and Order of Dismissal,, <u>22</u> Rule 26 Disclosure filed by Patrick Cariou, <u>63</u> Reply Memorandum of Law in Support of Motion filed by Patrick Cariou, <u>73</u> Notice of Appearance filed by Richard Prince, <u>32</u> Endorsed Letter, Set Deadlines/Hearings,, <u>64</u> Response filed by Patrick Cariou, <u>52</u> Rule 56.1 Statement filed by Gagosian Gallery, Inc., Richard Prince, Lawrence Gagosian, <u>11</u> Rule 7.1 Corporate Disclosure Statement filed by Richard Prince, <u>17</u> Rule 7.1 Corporate Disclosure Statement filed by Rizzoli International Publications, Inc., <u>8</u> Stipulation and Order, Set Deadlines/Hearings,, <u>69</u> Endorsed Letter,, <u>9</u></p>

		Stipulation and Order, Set Deadlines/Hearings,, <u>59</u> Memorandum of Law in Opposition to Motion filed by Gagosian Gallery, Inc., Richard Prince, Lawrence Gagosian, <u>66</u> Reply Memorandum of Law in Oppisition to Motion filed by Gagosian Gallery, Inc., Richard Prince, Lawrence Gagosian, <u>35</u> Rule 56.1 Statement filed by Patrick Cariou, <u>71</u> Order, Set Deadlines/Hearings,,,, were transmitted to the U.S. Court of Appeals. (nd) (Entered: 03/28/2011)
04/06/2011	<u>76</u>	ORDER defendants shall provide Plaintiff with unredacted copies of the notices sent to the owners no later than 4/18/11. Should Defendants believe that information contained in those notices requires confidential treatment, they shall submit a stipulated confidentiality agreement, singed by all Parties, no later than 4/12/11. (Signed by Judge Deborah A. Batts on 4/6/11) (cd) (Entered: 04/07/2011)
04/13/2011	<u>77</u>	STIPULATION OF COUNSEL: Pursuant to Judge Batts' Order dated April 6, 2011, the parties agree that the names and addresses in the March 28, 2011 letters sent by Defendants to the owners of the paintings shall be treated as confidential pursuant to the Protective Order dated August 10, 2009. (Signed by Judge Deborah A. Batts on 4/13/2011) (jpo) (Entered: 04/13/2011)
04/14/2011	<u>78</u>	MOTION for Eric J. Maurer to Appear Pro Hac Vice. Document filed by Richard Prince.(mbe) (Entered: 04/19/2011)
04/20/2011		CASHIERS OFFICE REMARK on <u>78</u> Motion to Appear Pro Hac Vice in the amount of \$25.00, paid on 04/14/2011, Receipt Number 4146. (jd) (Entered: 04/20/2011)
04/20/2011	<u>79</u>	ORDER: Defendants' request for a stay of these proceedings is Denied, and Parties shall appear before this Court for May 6, 2011 status conference as previously scheduled. So Ordered (Signed by Judge Deborah A. Batts on 4/20/2011) (js) (Entered: 04/20/2011)
04/25/2011	<u>80</u>	NOTICE OF CHANGE OF ADDRESS by Eric Alwin Boden on behalf of Patrick Cariou. New Address: Schnader Harrison Segal & Lewis LLP, 140 Broadway, Suite 3100, New York, New York, 10005, 212-973-8000. (Boden, Eric) (Entered: 04/25/2011)
05/04/2011	<u>81</u>	ORDER: The conference previously set for 5/6/2011 is adjourned sine die. (Signed by Judge Deborah A. Batts on 5/4/2011) (jar) (Entered: 05/04/2011)
05/26/2011	<u>82</u>	First Supplemental ROA Sent to USCA (Index). Notice that the Supplemental Index to the record on Appeal for <u>75</u> Notice of Appeal filed by Gagosian Gallery, Inc., Richard Prince, Lawrence Gagosian USCA Case Number 11-1197, 3 Copies of the index, Certified Supplemental Clerk Certificate and Certified Docket Sheet were transmitted to the U.S. Court of Appeals. (tp) (nd). (Entered: 05/27/2011)
05/27/2011		First Supplemental ROA Sent to USCA (File). Supplemental Indexed record on Appeal Files for <u>75</u> Notice of Appeal filed by Gagosian Gallery, Inc., Richard Prince, Lawrence Gagosian USCA Case Number 11-1197, were transmitted to the U.S. Court of Appeals. (tp) (Entered: 05/27/2011)

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Attorneys for Plaintiff Patrick Cariou

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PATRICK CARIOU,

Plaintiff,

- against -

RICHARD PRINCE, GAGOSIAN GALLERY, INC.,
LAWRENCE GAGOSIAN, and RIZZOLI
INTERNATIONAL PUBLICATIONS, INC.,

Defendants.
-----X

Case No. 08 CIV 11327 (DAB)

AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Patrick Cariou, by his attorneys, Schnader Harrison Segal & Lewis LLP, for his Complaint against defendants Richard Prince, Gagosian Gallery, Inc. ("Gagosian Gallery"), Lawrence Gagosian, and Rizzoli International Publications, Inc. ("Rizzoli") (collectively "Defendants"), alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), because this action arises under the Copyright Act of 1976, as

amended, 17 U.S.C. §§ 101, *et seq.* The copyrighted works at issue are registered with the U.S. Copyright Office.

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c), and 28 U.S.C. § 1400(a) because defendants Gagosian Gallery, Gagosian and Rizzoli either reside or conduct business and may be found in this district and defendant Richard Prince resides in the State in which this district is located, and because a substantial part of the events giving rise to the claim occurred, and a substantial part of the property that is subject of the action is situated, in this district.

PARTIES

3. Plaintiff Patrick Cariou (“Plaintiff”), a French citizen and resident of Paris, France, is a photographer who has published a number of books of photography, including a book of photographs entitled *Yes Rasta*, published in 2000 by Powerhouse Books, Inc. Plaintiff’s work has also appeared in numerous international magazines.

4. Defendant Richard Prince, a citizen of the State of New York, is a contemporary artist who resides in Rensselaerville, New York.

5. Defendant Gagosian Gallery is a corporation organized and existing under the laws of the State of New York and having its principal place of business in the County and City of New York. Gagosian Gallery owns and operates a number of art galleries in New York City and various other cities, including one located at 555 West 24th Street, New York, New York (the “Chelsea Gallery”). Gagosian Gallery is Prince’s exclusive representative and agent.

6. Defendant Lawrence Gagosian is the controlling shareholder of Gagosian Gallery and makes its operating decisions, including those involving the Chelsea Gallery.

7. Defendant Rizzoli is a corporation organized and existing under the laws of the State of New York and having its principal place of business in the County and City of New York. Rizzoli is the exclusive distributor of a book entitled *Canal Zone*, published by Gagosian Gallery in 2008, and containing photographs of various paintings by Prince which were on display at the Chelsea Gallery from November 8, 2008 through December 20, 2008 in an exhibition entitled *Canal Zone* (the "Canal Zone Exhibition").

NATURE OF THE ACTION

8. Defendants have infringed Plaintiff's exclusive rights under Section 106 of the Copyright Act of 1976, as amended, by, without authorization, reproducing, adapting, distributing and displaying copyrighted photographic works (the "Photographs") which Plaintiff owns and published in the book entitled *Yes Rasta*. Plaintiff seeks damages and other remedies under the Copyright Act.

9. Plaintiff is the sole copyright owner and author of the Photographs, which are published as part of the photography book *Yes Rasta* and copyrighted under Copyright Registration No. VA0001301506, issued on November 5, 2001. A copyright notice is displayed on Plaintiff's published book, *Yes Rasta*, in accordance with Section 401 of the Copyright Act.

10. Long following the issuance of the above Copyright Registration, Defendant Prince appropriated the Photographs without authorization from Plaintiff and created a series of

paintings (the "Paintings") incorporating copies of the Photographs, thereby infringing Plaintiff's exclusive rights in the Photographs under the Copyright Act.

11. Defendants Gagosian Gallery and Gagosian displayed the Paintings during the Canal Zone Exhibition and sold some or all of the Paintings, thereby infringing and contributing to Prince's infringement of Plaintiff's exclusive rights in the Photographs under the Copyright Act. Gagosian Gallery and Gagosian also infringed Plaintiff's rights under the Copyright Act by displaying images of certain of the Paintings, containing the Photographs, on Gagosian Gallery's website and by publishing the book entitled *Canal Zone*, which contains photographs of the Paintings and the Photographs included within the Paintings.

12. By distributing the book entitled *Canal Zone*, which contains copies of the Photographs, Rizzoli has infringed and contributed to Prince's infringement of Plaintiff's exclusive rights under the Copyright Act.

13. None of the Defendants was ever authorized by Plaintiff to appropriate the Photographs, or to reproduce, distribute or display the Photographs, or to adapt the Photographs in order to create the Paintings or any other derivative work based on the Photographs. Defendants' conduct was and continues to be in willful disregard of Plaintiff's rights under the Copyright Act.

14. Defendants' conduct has damaged Plaintiff's ability to sell additional copies of *Yes Rasta* or to earn revenues from derivative works based on the Photographs which Plaintiff could have licensed to others, while at the same time enabling Defendants to profit from their unauthorized reproduction, adaptation, distribution and display of the Photographs.

FACTUAL BACKGROUND

15. Plaintiff is an accomplished photographic artist whose published works include the book entitled *Yes Rasta*.

16. Plaintiff spent parts of six years in the secluded mountains of Jamaica, gaining access to, living and working with, and earning the trust of the Rastafarians who are the subjects of *Yes Rasta*. The Rastafarians are a spiritual society living simply, independently, and in harmony with nature, apart from the industrialized world of environmental pollution and materialism which they reject and refer to as "Babylon." Naturally, the Rastafarians do not easily trust outsiders, such as Plaintiff, and it was only after living with them for years that Plaintiff was finally permitted to photograph them. The result was the Photographs in *Yes Rasta*, approximately 100 strikingly original black-and-white photographs, mostly close-up portraits of stern, mystical-looking men within a distinctive tropical landscape. *Yes Rasta* also contains an essay by Perry Henzell, who was the producer and director of the noted Jamaican film, *The Harder They Come*.

17. The Photographs, registered with the United States Copyright Office on November 5, 2001 under Registration No. VA0001301506, are highly original, for few, if any, artists have been afforded the unfettered opportunity to photograph the Rastafari people in such breadth and detail. *Yes Rasta* was published in 2000 with a copyright notice as prescribed under Section 401 of the Copyright Act.

18. Prince is well known as an "appropriation artist," due to his penchant for appropriating and using as his own images created by others without attribution or permission. As Prince once said of his own work in an interview, he is "practicing without a license." Prince has publicly admitted appropriating photographs created by others and publishing them as his own

work. Although he primarily has been known for copying anonymous commercial imagery, such as advertisements, in the Paintings contained in his Canal Zone Exhibition, Prince has appropriated Plaintiff's copyrighted art work. As stated in Gagosian Gallery's website – which, by displaying images of certain of the Paintings, containing the Photographs, itself infringes Plaintiff's exclusive rights under the Copyright Act – Prince copied the Photographs in various ways, including by scanning them and printing them directly onto the base canvas of the Paintings. In a recent interview with *Interview Magazine*, Prince described his work in the Canal Zone Exhibition as having been taken from “a book” that he “picked up” about Rastas, who represented a culture “that I didn't really know much about. But I loved the book, and I loved the dreads, so I just started fooling around with this book . . .” According to Prince, “[t]he pictures are very quickly done — they're not really thought about . . .” Prince added: “The Rastas came really fast. And they're going to be over really fast, too.” In addition to copying Plaintiff's images of Rastafarians, Prince also copied the landscapes depicted in the Photographs.

19. Not only did Prince appropriate the images in the Photographs and incorporate them into the Paintings without Plaintiff's permission and despite the prominent copyright notice contained in *Yes Rasta*, but, in the infringing book published by Gagosian Gallery and distributed by Rizzoli entitled *Canal Zone*, Prince actually purports to be the copyright owner of all “artworks” and “insert images,” presumably including the Paintings (which contain Plaintiff's Photographs). Furthermore, Gagosian Gallery claims to be the copyright owner of the *Canal Zone* “publication.”

20. The Canal Zone Exhibition contained at least twenty-two Paintings, at least twenty of which reproduce and are derived from the Photographs, incorporating unauthorized uses

of Plaintiff's registered copyrighted work. Among the infringing Paintings which were displayed in the Chelsea Gallery from November 8, 2008 through December 20, 2008 were two untitled works, as well as works entitled: *Graduation*, *Back to the Garden*, *Charlie Company*, *Meditation*, *Canal Zone*, *The Ocean Club*, *Cookie Crumbles*, *Ile de France*, *Ding Dong the Witch Is Dead*, *Djuna Barnes, etc.*, *Zippping the System*, *Tales of Brave Ulysses*, *It's All Over*, *Specially Round Midnight*, *Naked Confessions*, *The Other Side of the Island*, *Cheese and Crackers*, and *Mr. Jones*. Plaintiff's copyrighted work is contained in each of these Paintings and has been wrongfully copied and appropriated by Prince and displayed and distributed by the other Defendants. All of the Paintings were created by Prince, displayed by Gagosian Gallery and Gagosian, and distributed by Rizzoli years after Plaintiff registered his copyright covering the Photographs.

21. Some, if not all, of the Paintings were sold by Prince or Gagosian Gallery before, during or after the Canal Zone Exhibition, and Gagosian Gallery, Gagosian and Prince all benefitted from the sales.

22. In an effort to promote the Canal Zone Exhibition, Gagosian Gallery caused to be printed in newspaper and magazine advertisements copies of the Paintings, containing infringing reproductions of images from the Photographs, including advertisements in *The Art Newspaper* and *Art Forum Magazine*. Gagosian Gallery's invitation to the opening of the Canal Zone Exhibition depicted an image of *Graduation*, the Prince Painting found on the first page of the *Canal Zone* exhibition book, which itself contains an infringing reproduction of images from the Photographs. This use of one of Plaintiff's Photographs in the invitation demonstrates the centrality of the Photographs appropriated by Prince to the essence of the Canal Zone Exhibition. Despite the centrality of the Photographs to the Canal Zone Exhibition, at no time in their press

releases, interviews or other public statements did Prince, Gagosian Gallery or Gagosian ever mention Plaintiff's name or comment on the fact that the Paintings were taken directly from Plaintiff's copyrighted work.

23. Neither Prince, nor Gagosian Gallery, nor Gagosian, nor Rizzoli ever asked for or received permission to use the Photographs.

24. After the Canal Zone Exhibition opened, Plaintiff discovered that the Defendants had infringed his rights under the Copyright Act. Through his counsel, on December 11, 2008, Plaintiff served Defendants with a cease and desist demand, outlining the relevant facts set forth in this Complaint and requiring Defendants to:

- i. Cease and desist from continuing to exhibit or distribute Prince's artwork containing unauthorized reproductions of Plaintiff's copyrighted work;
- ii. Remove all unauthorized reproductions of Plaintiff's copyrighted work from Prince's artwork;
- iii. Deliver or destroy all remaining copies of the *Canal Zone* exhibition book containing Prince's artwork that is being distributed by Rizzoli; and
- iv. Identify all of Prince's artwork containing unauthorized reproductions of Plaintiff's copyrighted work and the current location of each of such work.

25. Defendants did not comply with Plaintiff's cease and desist demand and the Canal Zone Exhibition ran through its scheduled completion date of December 20, 2008 without any corrective action being taken.

FIRST CLAIM FOR RELIEF**(COPYRIGHT INFRINGEMENT AGAINST RICHARD PRINCE)
(17 U.S.C. §§ 106, 501)**

26. Plaintiff hereby incorporates paragraphs 1 through 25 of this Complaint as if fully set forth herein.

27. Defendant Prince, with full knowledge of the copyright protection of the Photographs, without authorization, and despite receiving a cease and desist demand, infringed Plaintiff's exclusive rights as the copyright owner of the Photographs by reproducing, displaying, and causing the Photographs to be distributed and by adapting the Photographs into unauthorized derivative works. All of the infringing conduct occurred in the State of New York.

28. Defendant Prince's infringement was willful because, as an accomplished, educated and informed artist, Prince had knowledge that his conduct constituted infringement or, at least, recklessly disregarded the possibility. Prince's willful infringement is also manifested by his disregard of the copyright notice on the copy of *Yes Rasta* that he admitted perusing and copying from. Finally, Prince's receipt of and non-compliance with Plaintiff's cease and desist demand also establishes the willful nature of his infringing conduct.

29. Prince's acts have damaged and are continuing to damage Plaintiff in an amount and to an extent as yet unknown.

SECOND CLAIM FOR RELIEF**(COPYRIGHT INFRINGEMENT AGAINST GAGOSIAN GALLERY)
(17 U.S.C. §§ 106, 501)**

30. Plaintiff hereby incorporates paragraphs 1 through 29 of this Complaint as if fully set forth herein.

31. Defendant Gagosian Gallery, without authorization, infringed Plaintiff's exclusive rights as the copyright owner of the Photographs by publicly displaying, offering for sale, and selling the Paintings; by advertising the Canal Zone Exhibition with infringing depictions of the Paintings, containing images of the Photographs, on its website and in newspaper and magazine advertisements as well as in the invitation to the opening of the Canal Zone Exhibition; and by publishing and causing to be distributed the Canal Zone Exhibition book, *Canal Zone*, which contains photographs of the Paintings, and the Photographs included within the Paintings. All of this infringing conduct occurred in the County and State of New York. With those same acts, Gagosian Gallery also contributorily and vicariously infringed Plaintiff's exclusive rights as the copyright owner of the Photographs.

32. Defendant Gagosian Gallery's infringement was willful because, as a prominent and sophisticated art gallery which exclusively represented Prince and knew of his background as an "appropriation artist" who openly boasted about copying works created by others, it knew or should have known that its conduct constituted copyright infringement or, at least, recklessly disregarded the possibility. Defendant Gagosian Gallery's willful infringement is also manifested by its disregard of the copyright notice on the copy of *Yes Rasta* that Defendant Prince admitted perusing and copying from, and by its disregard of Plaintiff's cease and desist demand.

33. Defendant Gagosian Gallery's acts have damaged and are continuing to damage Plaintiff in an amount and to an extent as yet unknown.

THIRD CLAIM FOR RELIEF

**(COPYRIGHT INFRINGEMENT AGAINST GAGOSIAN)
(17 U.S.C. §§ 106, 501)**

34. Plaintiff hereby incorporates paragraphs 1 through 33 of this Complaint as if fully set forth herein.

35. Defendant Gagosian, without authorization, infringed Plaintiff's exclusive rights as the copyright owner of the Photographs by publicly displaying, offering for sale, and selling the Paintings; by advertising the Canal Zone Exhibition with infringing depictions of the Paintings, containing images of the Photographs, on the Gagosian Gallery website and in newspaper and magazine advertisements as well as in the invitation to the opening of the Canal Zone Exhibition; and by publishing and causing to be distributed the Canal Zone Exhibition book, *Canal Zone*, which contains photographs of the Paintings, and the Photographs included within the Paintings. All of this infringing conduct occurred in the County and State of New York. With those same acts, Gagosian also contributorily and vicariously infringed Plaintiff's exclusive rights as the copyright owner of the Photographs.

36. Defendant Gagosian's infringement was willful because, as a prominent and sophisticated proprietor of numerous art galleries, including the Chelsea Gallery, who exclusively represented Prince and knew of his background as an "appropriation artist" who openly boasted about copying works created by others, he knew or should have known that his conduct constituted copyright infringement or, at least, recklessly disregarded the possibility. Defendant Gagosian's

willful infringement is also manifested by his disregard of the copyright notice on the copy of *Yes Rasta* that Defendant Prince admitted perusing and copying from, and by his disregard of Plaintiff's cease and desist demand.

37. Defendant Gagosian's acts have damaged and are continuing to damage Plaintiff in an amount and to an extent as yet unknown.

FOURTH CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST RIZZOLI)
(17 U.S.C. §§ 106, 501)

38. Plaintiff hereby incorporates paragraphs 1 through 37 of this Complaint as if fully set forth herein.

39. Defendant Rizzoli, without authorization, infringed Plaintiff's exclusive rights as the copyright owner of the Photographs by distributing the Canal Zone Exhibition book, *Canal Zone*, which contains photographs of the Paintings, and the Photographs included within the Paintings. All or most of this infringing conduct occurred in the County and State of New York. With those same acts, Rizzoli also contributorily and vicariously infringed Plaintiff's exclusive rights as copyright owner of the Photographs.

40. Defendant Rizzoli's infringement was willful because, as an experienced book publisher and distributor, it knew or should have known that its conduct constituted copyright infringement or, at least, recklessly disregarded the possibility. Defendant Rizzoli's willful infringement is also manifested by its disregard of the copyright notice on the copy of *Yes Rasta* that Defendant Prince admitted perusing and copying from, and by its disregard of Plaintiff's cease and desist demand.

41. Defendant Rizzoli's acts have damaged and are continuing to damage Plaintiff in an amount and to an extent as yet unknown.

FIFTH CLAIM FOR RELIEF

(CONSPIRACY BY PRINCE, GAGOSIAN GALLERY, GAGOSIAN, AND RIZZOLI TO VIOLATE PLAINTIFF'S RIGHTS UNDER THE COPYRIGHT ACT)

42. Plaintiff hereby incorporates paragraphs 1 through 41 of this Complaint as if fully set forth herein.

43. Defendants agreed to reproduce, adapt, display, publish, advertise, promote, sell, offer for sale, market, distribute or otherwise dispose of the Photographs and the Paintings derived from the Photographs without Plaintiff's authorization and contrary to his cease and desist demand. Defendants' willful infringement is manifested by their agreement to disregard the copyright notice on the copy of *Yes Rasta* that Defendant Prince admitted perusing and copying from.

44. Defendants' conspiracy was intended to and did deprive Plaintiff of his exclusive rights as the copyright owner of the Photographs.

45. Defendants' acts have damaged and are continuing to damage Plaintiff in an amount and to an extent as yet unknown.

WHEREFORE, Plaintiff Patrick Cariou requests judgment in his favor and against Defendants as follows:

A. That, pursuant to 17 U.S.C. § 502, Defendants, their directors, officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with

them, be enjoined and restrained permanently from infringing the copyright in the Photographs, or any other of Plaintiff's works, in any manner, and from reproducing, adapting, displaying, publishing, advertising, promoting, selling, offering for sale, marketing, distributing or otherwise disposing of the Photographs or any copies of the Photographs, or any other of Plaintiff's works, and from participating or assisting in or authorizing such conduct in any way.

B. That Defendants be required to pay Plaintiff such damages as Plaintiff has sustained in consequence of Defendants' infringements of the copyrights in the Photographs and to account for and pay Plaintiff all of the Defendants' profits attributable to such infringements or, alternatively, as Plaintiff may elect, that Plaintiff be awarded such statutory damages as the Court may find just because of Defendants' willful acts of infringement.

C. That Defendants be required to deliver up on oath for impounding, destruction, or other disposition, as Plaintiff determines, all infringing copies of the Photographs, including the Paintings and unsold copies of the *Canal Zone* Exhibition book, in their possession, custody, or control and all transparencies, plates, masters, tapes, film negatives, discs, and other articles for making such infringing copies.

D. That Defendants be required to notify in writing any current or future owners of the Paintings of whom they are or become aware that the Paintings infringe the copyright in the Photographs, that the Paintings were not lawfully made under the Copyright Act of 1976, and that the Paintings cannot lawfully be displayed under 17 U.S.C. § 109(c).

E. That Defendants pay to Plaintiff the full costs of this action, including reasonable attorney's fees under 17 U.S.C. § 505.


F. That Plaintiff have such other relief as is just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury in this action.

Dated: New York, New York
January 14, 2009

SCHNADER HARRISON SEGAL & LEWIS LLP

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Attorneys for Plaintiff Patrick Cariou

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss:
 COUNTY OF NEW YORK)

TIMOTHY CLANCY, being duly sworn, deposes and says that he is not a party to this action, is over the age of 18 years and resides in Monmouth County, New Jersey. That on the 14th day of January 2009, he served the within AMENDED COMPLAINT upon:

Richard Prince
 151 Righter Road
 Rensselaerville, NY 12147

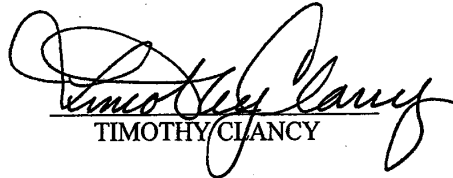
Gagosian Gallery, Inc.
 980 Madison Avenue
 New York, NY 10021

Lawrence Gagosian
 c/o Gagosian Gallery, Inc.
 980 Madison Avenue
 New York, NY 10021

Lawrence Gagosian
 "Toad Hall"
 Further Lane
 East Hampton, NY 11937

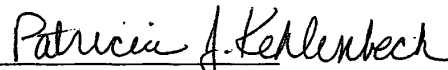
Rizzoli International Publications, Inc.
 300 Park Avenue South
 New York, NY 10010

by depositing a true copy of same securely enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.



TIMOTHY CLANCY

Sworn to before me this
 14th day of January 2009


 Notary Public

PATRICIA J. KEHLENBECK
 Notary Public, State of New York
 No. 01KE6037739
 Qualified in Nassau County
 Commission Expires February 28, 20 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
 :
 PATRICK CARIOU,
 :
 PLAINTIFF,
 :
 -AGAINST-
 :
 RICHARD PRINCE, GAGOSIAN GALLERY, INC.,
 :
 LAWRENCE GAGOSIAN AND RIZZOLI
 :
 INTERNATIONAL PUBLICATIONS, INC.;
 :
 DEFENDANTS.
 ----- X

08-CV-11327 (DAB)

ANSWER TO AMENDED COMPLAINT

JURY TRIAL DEMANDED

Defendant Richard Prince ("Prince"), by his attorneys Hanly Conroy Bierstein Sheridan Fisher & Hayes, LLP, answer the Complaint herein as follows:

1. The allegations of paragraph 1 of the Complaint contain allegations of a legal nature as to which no response is required.
2. The allegations of paragraph 2 of the Complaint contain allegations of a legal nature as to which no response is required.
3. Prince denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint.
4. Prince admits the allegations of paragraph 4 of the Complaint.
5. Prince denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint, except admits that Gagosian Gallery Inc., ("Gagosian") is Prince's representative and agent.
6. Prince denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Complaint.

7. Prince denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Complaint, except admits, upon information and belief, that Rizzoli is a distributor of a book entitled *Canal Zone*, published by Gagosian Gallery in 2008 and containing photographs of artworks by Prince.

8. Prince denies the allegations in paragraph 8 of the Complaint, except denies knowledge or information sufficient to form a belief as to whether Plaintiff owns the photographs in the book entitled *Yes Rasta*, and admits that Plaintiff purports to seek remedies under the Copyright Act.

9. Prince denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Complaint, except admits that the book entitled *Yes Rasta* contains a copyright notice.

10. Prince denies the allegations in paragraph 10 of the Complaint, except admits that Prince, as part of his artistic practice, utilized portions of photographs apparently taken by Plaintiff and states that his actions were proper and appropriate under applicable law.

11. Prince denies the allegations in paragraph 11 of the Complaint, except admits that Prince's paintings, some of which incorporated portions of photographs apparently taken by Plaintiff, were exhibited during the Canal Zone exhibition at Gagosian Gallery, that some of the paintings were sold, and that a book entitled *Canal Zone* was published containing photographs of Prince's paintings.

12. Prince denies the allegations in paragraph 12 of the Complaint.

13. Prince denies the allegations in paragraph 13 of the Complaint, except admits that any use of Plaintiff's photographs by Prince was not specifically authorized by Plaintiff, and states that such authorization was not required as Prince's use of portions of the photographs in his artworks is proper artistic practice and appropriate under applicable law.

14. Prince denies the allegations in paragraph 14 of the Complaint

15. Prince denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Complaint.

16. Prince denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint, except denies that the photographs in *Yes Rasta* are "strikingly original" or "distinctive" in nature.

17. Prince denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Complaint, except admits upon information and belief that *Yes Rasta* contains a copyright notice and was published in 2000, and denies that the photographs are "highly original."

18. Prince denies the allegations in paragraph 18 of the Complaint, except admits that he has appropriately used images created by others as part of his artistic practice, which is permitted by applicable law, and admits the quotes from Interview Magazine, although incomplete, are accurate.

19. Prince denies the allegations in paragraph 19 of the Complaint, except admits that certain paintings in the Canal Zone exhibition included portions of Plaintiff's photographs and admits that Prince owns the copyrights in his artworks and admits, upon information and belief, that Gagosian owns the copyright in the exhibition publication.

20. Prince denies the allegations in paragraph 20 of the Complaint, except admits, upon information and belief, that the Canal Zone exhibition contained approximately 16 paintings and included, among others, certain of the paintings referred to in that paragraph 20 and further asserts that any use made of Plaintiff's photographs was proper under applicable law.

21. Prince denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Complaint, except admits that some of the paintings were sold.

22. Prince denies the allegations in paragraph 22 of the Complaint, except admits, upon information and belief, that Gagosian Gallery did cause advertisements and invitations to be printed for the Canal Zone exhibition, which included portions of Prince's paintings, and admits that he did not refer to Plaintiff's name in relation to the paintings in the Canal Zone exhibition.

23. Prince denies the allegations in paragraph 23 of the Complaint, except admits that Prince did not request permission to use any portion of Plaintiff's photographs in his artworks, and avers that no such request is required and that he is not aware of any such request by the other Defendants herein.

24. Prince denies the allegations in paragraph 24 of the Complaint, except admits, upon information and belief, that on or about December 11, 2008 Plaintiff's counsel sent Prince and the other Defendants a demand letter.

25. Prince denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint, except admits that the Canal Zone exhibition ran through December 20, 2008, and included some of the paintings

complained of herein, and avers that no "corrective action" was required since Prince's actions were proper.

26. In response to paragraph 26 of the Complaint Prince repeats and re-alleges every response stated herein to the allegations of paragraphs 1 through 25 of the Complaint as if fully set forth herein.

27. Prince denies the allegations in paragraphs 27, and avers that his actions were lawful and proper.

28. Prince denies the allegations in paragraphs 28, and avers that his actions were lawful and proper.

29. Prince denies the allegations in paragraphs 29, and avers that his actions were lawful and proper.

30. In response to paragraph 30 of the Complaint Prince repeats and re-alleges every response stated herein to the allegations of paragraphs 1 through 29 of the Complaint as if fully set forth herein.

31. The allegations of paragraph 31 is not made against Prince and therefore no response is required. To the extent such allegations are deemed to be made against Prince, Prince denies any allegations of liability.

32. The allegations of paragraph 32 is not made against Prince and therefore no response is required. To the extent such allegations are deemed to be made against Prince, Prince denies any allegations of liability.

33. The allegations of paragraph 33 is not made against Prince and therefore no response is required. To the extent such allegations are deemed to be made against Prince, Prince denies any allegations of liability.

34. In response to paragraph 34 of the Complaint Prince repeats and re-alleges every response stated herein to the allegations of paragraphs 1 through 33 of the Complaint as if fully set forth herein.

35. The allegations of paragraph 35 is not made against Prince and therefore no response is required. To the extent such allegations are deemed to be made against Prince, Prince denies any allegations of liability.

36. The allegations of paragraph 36 is not made against Prince and therefore no response is required. To the extent such allegations are deemed to be made against Prince, Prince denies any allegations of liability.

37. The allegations of paragraphs 37 is not made against Prince and therefore no response is required. To the extent such allegations are deemed to be made against Prince, Prince denies any allegations of liability.

38. In response to paragraph 38 of the Complaint Prince repeats and re-alleges every response stated herein to the allegations of paragraphs 1 through 37 of the Complaint as if fully set forth herein.

39. The allegations of paragraph 39 is not made against Prince and therefore no response is required. To the extent such allegations are deemed to be made against Prince, Prince denies any allegations of liability.

40. The allegations of paragraph 40 is not made against Prince and therefore no response is required. To the extent such allegations are deemed to be made against Prince, Prince denies any allegations of liability.

41. The allegations of paragraphs 41 is not made against Prince and therefore no response is required. To the extent such allegations are deemed to be made against Prince, Prince denies any allegations of liability.

42. In response to paragraph 42 of the Complaint Prince repeats and re-alleges every response stated herein to the allegations of paragraphs 1 through 41 of the Complaint as if fully set forth herein.

43. Prince denies the allegations in paragraph 43, except admits that portions of Plaintiff's photographs were utilized as part of the Canal Zone exhibition and the book published in connection with that exhibition and further states that Prince's actions were lawful and proper artistic practice.

44. Prince denies the allegations in paragraph 44.

45. Prince denies the allegations in paragraph 45.

FIRST AFFIRMATIVE DEFENSE

46. The Complaint herein fails to state a claim for copyright infringement under the Copyright Act pursuant to 17 U.S.C. § 101 et seq. upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

47. Any use by Prince or the other defendants herein of Plaintiff's photographs are permitted pursuant to the fair use doctrine, as codified in 17 U.S.C. § 107. Prince's paintings are transformative in nature, and include new meaning, new artistic expression and a new message by utilizing portions of the photographs, together with other images and media, to create new and unique work which comments upon certain aspects of culture. The portion of the photographs utilized was partial and

reasonable in light of Prince's artistic and expressive purposes as set forth above. Prince's actions here were done in good faith and reflect established artistic practices. The use of Plaintiff's photographs poses no harm to the value of such photographs and any market value relating to the photographs has, upon information and belief, been enhanced rather than decreased. As a result of these factors, Plaintiff's claims are barred by the fair use doctrine.

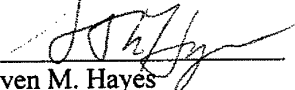
WHEREFORE, Prince respectfully demands the following relief:

- A. Dismissal of the Complaint in its entirety together with
- B. Reasonable attorneys' fees, expenses and costs; and
- C. Such other and further relief as this Court deems just and proper

Dated: March 3, 2009
New York, New York

Respectfully submitted,

HANLY CONROY BIERSTEIN SHERIDAN
FISHER & HAYES LLP

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*Attorneys for Defendants Gagosian Gallery, Inc.
and Lawrence Gagosian*

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

-----X
PATRICK CARIOU,

Plaintiff,

-v-

Index No. 08 CIV 11327 (DAB)

RICHARD PRINCE, GAGOSIAN GALLERY, INC
LAWRENCE GAGOSIAN, and RIZZOLI
INTERNATIONAL PUBLICATIONS, INC.,

Defendants.

-----X

**ANSWER OF DEFENDANTS
GAGOSIAN GALLERY, INC.
AND LAWRENCE
GAGOSIAN TO AMENDED
COMPLAINT**

Defendants Gagosian Gallery, Inc. and Lawrence Gagosian (collectively, "Gagosian" or individually, "Gagosian Gallery" and "Mr. Gagosian"), by and through their attorneys Withers Bergman LLP, as and for their Answer to the Amended Complaint, state as follows:

JURISDICTION AND VENUE

1. Gagosian states that paragraph 1 pleads a legal conclusion to which no answer is required, but to the extent that an answer is required, Gagosian denies knowledge or information sufficient to admit or deny the allegations in paragraph 1.

2. Gagosian states that paragraph 2 pleads a legal conclusion to which no answer is required, but to the extent that an answer is required, Gagosian denies knowledge or information sufficient to admit or deny the allegations in paragraph 2.

PARTIES

3. Gagosian denies knowledge or information sufficient to admit or deny the allegations in paragraph 3, but admits, on information and belief, that plaintiff Patrick Cariou is a photographer who has published a book entitled, *Yes Rasta*, published in 2000 by Powerhouse Books, Inc.

4. Gagosian admits the allegations in paragraph 4, on information and belief.

5. Gagosian admits the allegations in paragraph 5.

6. Gagosian states that paragraph 6 pleads a legal conclusion to which no answer is required, but to the extent that an answer is required, Gagosian denies knowledge or information sufficient to admit or deny the allegations in paragraph 6, but admits that Mr. Gagosian is involved with the operations of the Gagosian Gallery.

7. Gagosian denies knowledge or information sufficient to admit or deny the allegations in paragraph 7, but admits, on information and belief, that defendant Rizzoli is a corporation organized and existing under the laws of the State of New York and having its principal place of business in the County and City of New York.

NATURE OF THE ACTION

8. Gagosian states the paragraph 8 pleads a legal conclusion to which no answer is required, but to the extent that an answer is required, Gagosian denies knowledge or information sufficient to admit or deny the allegations in paragraph 8.

9. Gagosian denies knowledge or information sufficient to admit or deny the allegations in paragraph 9, except admits that a form of copyright notice is found in plaintiff's book.

10. Gagosian states that paragraph 10 is not addressed to Gagosian Gallery or Mr. Gagosian, and therefore it does not require a response from them. To the extent that a response is required, Gagosian denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning the conduct of Richard Prince, and states that the allegations regarding infringement of plaintiff's copyright rights plead a legal conclusion to which no answer is required, and to the extent an answer is required, Gagosian denies the allegations.

11. Gagosian states that the allegations in paragraph 11 plead a legal conclusion to which no answer is required, and to the extent that an answer is required, Gagosian denies the allegations, but admits that some of Prince's paintings were displayed at the Canal Zone Exhibition, sold, and featured in a book entitled, *Canal Zone*.

12. Gagosian states that paragraph 12 is not addressed to Gagosian Gallery or Mr. Gagosian, and therefore it does not require a response from them. To the extent that a response is required, Gagosian states that the allegations in paragraph 12 plead a legal conclusion to which no answer is required, but to the extent that an answer is required, Gagosian denies the allegations.

13. Gagosian states that the allegations in paragraph 13 plead a legal conclusion to which no answer is required, but to the extent that an answer is required, Gagosian denies the allegations in paragraph 13, and affirmatively asserts that Gagosian's conduct, with regard to the reproduction, display, and distribution of Prince's works, was and continues to be lawful.

14. Gagosian denies the allegations in paragraph 14.

FACTUAL BACKGROUND

15. Gagosian denies knowledge or information sufficient to admit or deny the allegations in paragraph 15, but admits, on information and belief, that a book entitled, *Yes Rasta* was published in 2000.

16. Gagosian denies knowledge or information sufficient to admit or deny the allegations in paragraph 16, except denies that the photographs in *Yes Rasta* are “strikingly original” or “distinctive” in nature.

17. Gagosian states that the allegations in paragraph 17 plead a legal conclusion to which no answer is required, but to the extent that an answer is required, Gagosian denies the allegations in paragraph 17, but admits that *Yes Rasta* contains a copyright notice and was published in 2000.

18. Gagosian states that paragraph 18 is not addressed to Gagosian Gallery or Mr. Gagosian, and therefore it does not require a response from them. To the extent that a response is required, Gagosian admits that Prince has been described as an appropriation artist, but denies knowledge or information sufficient to form a belief as to the truth or falsity of the balance of the allegations in paragraph 18, and affirmatively asserts that Gagosian’s display and exploitation of Prince’s works was and continues to be lawful.

19. Gagosian states that paragraph 19 is not addressed to Gagosian Gallery or Mr. Gagosian, and therefore it does not require a response from them. To the extent that a response is required, Gagosian states that the allegations in paragraph 19 plead a legal conclusion to which no answer is required, but to the extent that an answer is required, Gagosian denies the allegations in paragraph 19, and affirmatively asserts that there has been no distribution of the book *Canal Zone*, and that the display and exploitation of Prince’s work was and continues to be

lawful, and that Gagosian Gallery is the lawful owner of all copyrights in and to the *Canal Zone* book.

20. Gagosian denies the allegations in paragraph 20, but admits that, from November 8, 2008 through December 20, 2008, the Canal Zone Exhibition was held at the Gagosian Gallery in Chelsea, which contained sixteen works by Prince, and that certain of the paintings referenced in paragraph 20 were included in a book entitled, *Canal Zone*, and affirmatively avers that Gagosian's display and exploitation of Prince's works from the Canal Zone Exhibition was and continues to be lawful.

21. Gagosian denies the allegations in paragraph 21, and affirmatively avers that only eight paintings were sold.

22. Gagosian denies the allegations in paragraph 22, but admits that Gagosian Gallery lawfully advertised the Canal Zone Exhibition in various newspapers and magazines, that Gagosian Gallery's invitation to the opening of the Canal Zone Exhibition lawfully featured a picture of "Graduation," and that Gagosian Gallery did not mention plaintiff's name in any such marketing materials, and affirmatively avers that there was no requirement to do so.

23. Gagosian states that portions of paragraph 23 are not addressed to Gagosian Gallery or Mr. Gagosian, and therefore it does not require a response from them. To the extent that a response is required, Gagosian did not request permission to use any portion of plaintiff's photographs in its marketing materials, and affirmatively avers that no such request is required. Gagosian denies knowledge or information sufficient to form a belief as to the truth or falsity of the balance of the allegations, and affirmatively asserts that Gagosian's display and exploitation of Prince's works was and continues to be lawful, and thus, no consent was required.

24. Gagosian states that the allegations in paragraph 24 plead a legal conclusion to which no answer is required. To the extent an answer is required, Gagosian denies knowledge or information sufficient to admit or deny the allegations in paragraph 24 which allege plaintiff's internal mental state, or his subjective opinions or beliefs, but affirmatively states that Gagosian received a cease and desist letter from plaintiff, through his counsel, on or about December 11, 2008.

25. Gagosian denies the allegations in paragraph 25, and affirmatively asserts that the Canal Zone Exhibition ran through December 20, 2008 and that Gagosian's display and exploitation of Prince's works was and continues to be lawful, and as such, Gagosian had no obligation to take any corrective action at that time.

FIRST CLAIM FOR RELIEF

**(COPYRIGHT INFRINGEMENT AGAINST RICHARD PRINCE)
(17 U.S.C. §§ 106, 501)**

26. Gagosian's responses to paragraphs 1-15 inclusive, are incorporated herein by reference.

27. Gagosian states that paragraph 27 is not addressed to Gagosian Gallery or Mr. Gagosian, and therefore it does not require a response from them. To the extent that a response is required, Gagosian denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations.

28. Gagosian states that paragraph 28 is not addressed to Gagosian Gallery or Mr. Gagosian, and therefore it does not require a response from them. To the extent that a response is required, Gagosian denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations.

29. Gagosian states that paragraph 29 is not addressed to Gagosian Gallery or Mr. Gagosian, and therefore it does not require a response from them. To the extent that a response is required, Gagosian denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations.

SECOND CLAIM FOR RELIEF

**(COPYRIGHT INFRINGEMENT AGAINST GAGOSIAN GALLERY)
(17 U.S.C. §§ 106, 501)**

30. Gagosian's responses to paragraphs 1-29 inclusive, are incorporated herein by reference.

31. Gagosian Gallery denies the allegations in paragraph 31, and affirmatively avers that its display, sale, and exploitation of Prince's works was and continues to be lawful.

32. Gagosian Gallery denies the allegations in paragraph 32, and affirmatively avers that its conduct was and continues to be lawful.

33. Gagosian denies knowledge or information sufficient to admit or deny the allegations in paragraph 33, but upon information and belief, Gagosian denies that plaintiff has been damaged as a result of any action by Gagosian.

THIRD CLAIM FOR RELIEF

(COPYRIGHT INFRINGEMENT AGAINST GAGOSIAN) (17 U.S.C. §§ 106,501)

34. Gagosian's responses to paragraphs 1-33 inclusive, are incorporated herein by reference.

35. Gagosian Gallery states that paragraph 35 is not addressed to it and therefore does not require a response from Gagosian Gallery. To the extent that a response is required, Gagosian Gallery denies the allegations in paragraph 35, and affirmatively avers that any actions taken by Mr. Gagosian in his capacity as the founder and an officer of Gagosian Gallery with

respect to Prince's works was, and continues to be, lawful. Mr. Gagosian denies the allegations in paragraph 35, and affirmatively avers that Gagosian's display, sale, and exploitation of Prince's works was and continues to be lawful, and that all such actions were undertaken by, and at the direction of, Gagosian Gallery.

36. Gagosian Gallery states that paragraph 36 is not addressed to it and therefore does not require a response from Gagosian Gallery. To the extent that a response is required, Gagosian Gallery denies the allegations in paragraph 36, and affirmatively avers that any actions taken by Mr. Gagosian in his capacity as the founder and an officer of Gagosian Gallery with respect to Prince's works was, and continues to be, lawful. Mr. Gagosian denies the allegations in paragraph 36, and affirmatively avers that Gagosian's display, sale, and exploitation of Prince's works was and continues to be lawful, and that all such actions were undertaken by, and at the direction of, Gagosian Gallery.

37. Gagosian Gallery states that paragraph 37 is not addressed to it and therefore does not require a response from Gagosian Gallery. To the extent that a response is required, Gagosian Gallery denies the allegations in paragraph 37, and affirmatively avers that any actions taken by Mr. Gagosian in his capacity as the founder and an officer of Gagosian Gallery with respect to Prince's works was, and continues to be, lawful. Mr. Gagosian denies knowledge or information sufficient to admit or deny the allegations in paragraph 37, but upon information and belief, Gagosian denies that plaintiff has been damaged as a result of any action by him or by Gagosian Gallery.

FOURTH CLAIM FOR RELIEF

(COPYRIGHT INFRINGEMENT AGAINST RIZZOLI) (17 U.S.C. §§ 106,501)

38. Gagosian's responses to paragraphs 1-37 inclusive, are incorporated herein by reference.

39. Gagosian states that paragraph 39 is not addressed to Gagosian Gallery or Mr. Gagosian, and therefore it does not require a response from them. To the extent that a response is required, Gagosian denies the allegations in paragraph 39 upon information and belief.

40. Gagosian states that paragraph 40 is not addressed to Gagosian Gallery or Mr. Gagosian, and therefore it does not require a response from them. To the extent that a response is required, Gagosian states that the allegations in paragraph 40 plead a legal conclusion to which no response is required, and to the extent a response is required, Gagosian denies the allegations in paragraph 40.

41. Gagosian states that paragraph 41 is not addressed to Gagosian Gallery or Mr. Gagosian, and therefore it does not require a response from them. To the extent that a response is required, Gagosian states that the allegations in paragraph 41 plead a legal conclusion to which no response is required, and to the extent a response is required, Gagosian denies the allegations in paragraph 41.

FIFTH CLAIM FOR RELIEF

(CONSPIRACY BY PRINCE, GAGOSIAN GALLERY, GAGOSIAN, AND RIZZOLI TO VIOLATE PLAINTIFF'S RIGHTS UNDER THE COPYRIGHT ACT)

42. Gagosian's responses to paragraphs 1-41 inclusive, are incorporated herein by reference.

43. Gagosian denies the allegations in paragraph 43, and affirmatively avers that Gagosian's conduct was and continues to be lawful.

44. Gagosian denies the allegations in paragraph 44.

45. Gagosian denies the allegations in paragraph 45.

FIRST AFFIRMATIVE DEFENSE

46. Gagosian alleges that the Complaint, and each purported cause of action alleged therein, fails to state facts sufficient to constitute a cause of action against Gagosian upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

47. Gagosian is not liable for copyright infringement because any use of defendant Prince's copyrighted photographs by Gagosian or Prince is lawful and constitutes fair use pursuant to 17 U.S.C. § 107.

48. First, defendant Prince's works are substantially transformative. Specifically, Prince's works use Cariou's existing raw images and juxtapose them against different images and backdrops to tell a unique and creative story about modern culture. Prince's works were created with an entirely different functional purpose than the purpose for which Cariou claims to have taken the photographs in *Yes Rasta*, and they embody new expression and meaning to create an entirely different type of art with different objectives.

49. Furthermore, the creation and exhibition of Prince's works was not commercially exploitative, was justified with a genuine creative rationale, and was done without bad faith.

50. The nature of Cariou's copyrighted works weigh in favor of Prince's fair use. Cariou's copyrighted works are factually based in that they are real-life photographs of Rastafarians as they appear in their native environments, whereas the works of art by Prince utilize small portions of the photographs, together with other images and media, to create a new and unique work which comments upon certain aspects of culture.

51. Third, the amount and substantiality of the portion of the images used by Prince weigh in favor of a finding of fair use. Prince copied only that portion of the image necessary to

evoke his unintended message and style, and thus his use was reasonable in relation to the purpose of his copying.

52. Finally, defendants did not cause any harm to Cariou's career nor did it decrease the market value for his photographs. Furthermore, there is no derivative market for Cariou to tap into that is in any way related to defendants' use of his work.

53. Plaintiff's claims are thus barred by the fair use doctrine.

THIRD AFFIRMATIVE DEFENSE

54. To the extent that the paintings in the Canal Zone Series infringes any valid copyright belonging to the plaintiff, such infringement was and is innocent and not willful.

FOURTH AFFIRMATIVE DEFENSE

55. As a fourth affirmative defense, Gagosian alleges that the Complaint, and each purported cause of action alleged therein, cannot be maintained against Mr. Gagosian because shareholders or officers can not be held individually liable for the actions of a corporate entity.

FIFTH AFFIRMATIVE DEFENSE

56. Defendant Rizzoli has never distributed *Canal Zone*.

SIXTH AFFIRMATIVE DEFENSE

57. Plaintiff has suffered no damages as a result of the alleged infringement.

WHEREFORE, defendants Gagosian Gallery, Inc. and Lawrence Gagosian respectfully demand the following relief:

- (i) dismissal of the Complaint in its entirety; together with
- (ii) reasonable attorneys' fees and costs incurred by them in defending plaintiff's claims; and
- (iii) such other and further relief as this Court deems just and proper.

Dated: New York, New York
March 3, 2009

Respectfully submitted

WITHERS BERGMAN LLP

By: /s/ Hollis Gonerka Bart
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PATRICK CARIOU,	:	
	:	
Plaintiff,	:	
	:	PLAINTIFF PATRICK CARIOU'S
-against-	:	<u>INITIAL DISCLOSURE</u>
	:	
RICHARD PRINCE, GAGOSIAN GALLERY,	:	08 CIV 11327 (DAB)
INC., LAWRENCE GAGOSIAN and	:	
RIZZOLI INTERNATIONAL	:	
PUBLICATIONS, INC.,	:	
	:	
Defendants.	:	
	:	

Pursuant to Rule 26(a)(1), Fed. R. Civ. P., Plaintiff Patrick Cariou, by his undersigned attorneys, Schnader Harrison Segal & Lewis LLP, submits his initial disclosure as follows:

Fed. R. Civ. P. 26 (a)(1)(A)

**(i) Individuals Likely to Have Information
Relevant to Plaintiff's Claims**

The following individuals are likely to have discoverable information that Plaintiff may use to support his claims:

<u>Name/Address/Phone Number</u>	<u>Subject[s]</u>
(1) Patrick Cariou	Infringement of Plaintiff's copyright
(2) Richard Prince	Infringement of Plaintiff's copyright and damages

- | | | |
|------|--|---|
| (3) | Lawrence Gagosian | Infringement of Plaintiff's copyright and damages |
| (4) | James Frey | <i>Canal Zone</i> Exhibition and <i>Canal Zone</i> Book |
| (5) | Philippe Le Bihan | Document comparing images in <i>Yes Rasta</i> and <i>Canal Zone</i> , which shows appropriation of Plaintiff's images |
| (6) | Francesco Solari
63 rue de Grenelle Paris 75007 | Plaintiff's discovery of <i>Canal Zone</i> Exhibition |
| (7) | Christiane Celle
Clic Gallery
424 Broome St., New York, NY 10013 | Damages; artistic merit of Plaintiff's work |
| (8) | Brian Appel | Interview of Richard Prince |
| (9) | Glenn O'Brien | Interview of Richard Prince |
| (10) | Leonardo DiCaprio | Interview of Richard Prince by Glenn O'Brien |
| (11) | Garry Gross | Willfulness of infringement |

Plaintiff reserves the right to amend and/or supplement this disclosure as his investigation continues.

**(ii) Documents, Electronically Stored Information and Tangible Things
in the Possession, Custody, or Control of Plaintiff That Plaintiff May
Use to Support His Claims**

Documents bearing Bates-Stamp Nos. C00001 - C00088 are being produced simultaneously with this initial disclosure. In addition to the copies of advertisements bearing Bates-Stamp Nos. C00045 – C00054, Plaintiff has published other photographs used in advertisements that are currently not in the possession of counsel, but will be produced as and when they become available.

The following documents and tangible things are not being produced, but are available for inspection and copying at Plaintiff's counsel's office at Defendants' expense:

- (1) The book entitled *Canal Zone*;
- (2) The book entitled *Yes Rasta*;
- (3) The book entitled *Trenchtown Love*; and
- (4) The book entitled *Surfers*

Plaintiff reserves the right to amend and/or supplement this disclosure as his investigation continues and to present in any proceeding and at trial any further information and documents obtained during discovery and preparation for trial.

**(iii) A Computation of Each Category of Damages
Claimed by Plaintiff**

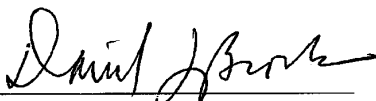
In order to compute Plaintiff's damages, Plaintiff will need the price list and sales information for the paintings sold by Richard Prince which have used images from the book entitled *Yes Rasta*. The price list and sales information have been requested in Paragraph 1 of Plaintiff's First Requests for Production of Documents.

(iv) Insurance Agreements

Plaintiff believes that there are insurance agreements and awaits their production by Defendants in their initial disclosures.

Dated: New York, New York
April 30, 2009

SCHNADER HARRISON SEGAL & LEWIS LLP

By: 
Daniel J. Brooks (DB 3136)
Eric A. Boden (EB 7669)
140 Broadway, Suite 3100
New York, New York 10005
(212) 973-8000
Attorneys for Plaintiff Patrick Cariou

TO:

Steven M. Hayes, Esq.
HANLY CONROY BIERSTEIN
SHERIDAN FISHER & HAYES LLP
112 Madison Avenue
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(212) 784-6414
Attorneys for Defendant Richard Prince

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Attorneys for Defendants
Gagosian Gallery, Inc. and
Lawrence Gagosian

Jesse Epstein, Esq.
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445 Park Avenue, No. 1500
New York, NY 10022
(212) 371-5400
Attorneys for Defendant
Rizzoli International Publications, Inc.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

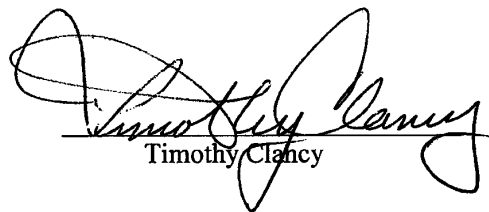
Timothy Clancy, being duly sworn, deposes and says, deponent is not a party to this action, is over eighteen (18) years of age and resides in Monmouth County, New Jersey. That on the 8th day of April 2009, deponent served the attached PLAINTIFF PATRICK CARIOU'S INITIAL DISCLOSURE upon:

Steven M. Hayes, Esq.
Hanly Conroy Bierstein Sheridan Fisher & Hayes LLP
112 Madison Avenue
New York, NY 10016-7416

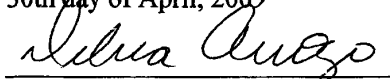
Hollis Gonerka Bart, Esq.
Withers Bergman LLP
430 Park Avenue, 10th Floor
New York, New York 10022-3505

Jesse Epstein, Esq.
Weisman Celler Spett & Modlin P.C.
445 Park Avenue, No. 1500
New York, New York 10022

by hand delivery.


Timothy Clancy

Sworn to before me this
30th day of April, 2009


Notary Public

DEBRA ARROYO
NOTARY PUBLIC, State of New York
No. 24-4742650
Qualified in Kings County
Commission Expires Feb. 28, 2010

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6/19/09

-----X
PATRICK CARION,
Plaintiff,

08 Civ. 11327(DAB)
SCHEDULING ORDER

-against-
RICHARD PRINCE, GAGSIAN
GALLERY, FNC, LAWRENCE GAGSIAN
Defendant.
RIZZOLI ENT'L PUBLIS, FNC

DEBORAH A. BATTS, United States District Judge.

I. TO BE COMPLETED BY THE PARTIES

Trial: Estimated trial time is 10.

Jury . Non-Jury . (Please Check.)

II. TO BE COMPLETED BY THE COURT

Pursuant to Fed. R. Civ. P. 16, after holding a pre-trial conference,

IT IS HEREBY ORDERED that:

Pleadings and Parties: Except for good cause shown --

1. No additional parties may be joined after _____.
2. No additional causes of action or defenses may be asserted after _____.

Discovery: Except for good cause explicitly set forth by letter and shown, all discovery, including expert discovery, shall be commenced in time to be completed by 2/1/10. The court expects discovery to be completed within 60 days of the first scheduling conference unless, after the expiration of that 60 day period, all counsel stipulate that an additional period of time (**not to exceed 60 more days**) is needed to complete discovery, and the Court approves such extension.

Dispositive Motions: A party contemplating making a dispositive motion must notify opposing counsel by 3/1/10. Except for extraordinary cause shown and subsequent permission of the Court given, no party may make a motion for summary judgment until after the completion of discovery.

Within 10 days of serving its intent to file for summary judgment, the moving party must serve on the opposing side and submit to Chambers a letter no more than two pages in length setting forth the proposed basis for summary judgment. Within 10 days of the receipt of this letter, the opposing side must respond by letter to the moving party's request. These letters shall form the basis of discussion at the pre-motion conference held with the Court. However, if the Court finds that a conference is not necessary, the Court will issue a motion schedule.

ASSUMING NO DISPOSITIVE MOTIONS ARE MADE:

Proposed Requests to Charge and Proposed Voir Dire shall be submitted by 3/24/10.

Joint Pre-trial Statement ("JPTS"): A JPTS shall be submitted by 3/24/10. The JPTS shall conform to the Court's Individual Practices and Supplemental Trial Procedure Rules.

Memoranda of Law addressing those issues raised in the JPTS shall be submitted by 3/24/10. Responses to the Memoranda shall be submitted by 4/9/10. There shall be no replies.

Additional Conference(s) _____ at _____.

For non-jury trials only: Proposed Findings of Fact and Conclusions of Law shall be submitted in accordance with the Court's directions.

ANY REQUEST FOR AN EXTENSION MUST BE MADE IN WRITING, AT LEAST ONE WEEK BEFORE THE DEADLINE IN QUESTION, AND MUST STATE THE OTHER PARTY'S POSITION.

Other Directions: Once all papers have been submitted, a final pre-trial conference will be held which shall be attended by trial counsel.

In the event a dispositive motion is made, the dates for submitting the Memoranda of Law, Requests to Charge, Proposed Voir Dire, and JPTS shall be adjourned from those shown above, and shall then begin to run (in the same timing sequence as set forth above) from three (3) weeks from the filing date of the decision on the motion.

Otherwise, if an adjournment is granted, then all subsequent events are simultaneously adjourned in the same timing sequence as set forth above, except any scheduled conferences, which are adjourned sine die.

At any time after the ready for trial date, counsel must notify the Court and their adversaries in writing of any potential scheduling conflicts that would prevent a trial at a particular time, including, but not limited to, trials and vacations. Such notice must come before counsel are notified by the Court of an actual trial date, not after. Counsel should notify the Court and all other counsel in writing, at the earliest possible time of any particular scheduling problems involving out-of-town witnesses or other exigencies.

All counsel are responsible for having copies of and-complying with the contents of the current version of the Court's Individual Practices and Supplemental Trial Procedure Rules, which may be obtained from the Courtroom Deputy or on-line at <http://www.nysd.uscourts.gov/judges/USDJ/batts.htm>. Periodically, the Court will revise its Individual Rules. Notice of these revisions or amendments will be posted in the New York Law Journal and copies will be available at the Cashier's Window in the Clerk's Office at 500 Pearl Street.

FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN SANCTIONS.

Dual track mediation and discovery. Private mediation split 4 ways.

SO ORDERED.

DATED: New York, New York

June 19, 2009

Deborah A. Batts
DEBORAH A. BATTs, U.S.D.J.

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EMAIL
shayes@hanlyconroy.com

January 27, 2010

VIA HAND DELIVERY

Hon. Deborah A. Batts
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St., Room 24B
New York, NY 10007-1312

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 2/5/10

MEMO ENDORSED

JAN 28 2010

RE: 1:08-cv-11327-DAB Cariou v. Prince et al.

Dear Judge Batts:

I write on behalf of Defendants, Richard Prince, Gagosian Gallery and Lawrence Gagosian¹ to request an extension of the discovery time period, currently expiring on February 1, 2010, for the purpose of completing expert discovery. This is the first request for such an extension. Following a meet and confer, Plaintiff's counsel advised that he is not prepared to consent to this extension.

denied
DAB
2/5/10

Defendants have retained two experts. The first of these is Nancy Spector, who is a Deputy Director and Chief Curator of the Guggenheim Museum in New York. Ms. Spector's report and testimony would deal with the history of appropriation art, Mr. Prince's place within that artistic tradition and the differences of artistic expression between Plaintiff Patrick Cariou and Defendant Richard Prince. The other expert would be Jacqueline Silverman, President of Jacqueline Silverman & Associates, Inc., an L.A.-based appraisal firm, who would provide a report regarding, *inter alia*, the commercialization and value of Mr. Cariou's images. In regard to Ms. Silverman's report, it became apparent during the deposition of Mr. Cariou on January 12, 2010 that it would be necessary to depose Christiane Celle, who owns a photo art gallery in New York, in order for Ms. Silverman to prepare her

SO ORDERED

¹ I understand that Rizzoli is no longer a party to this action having settled with Mr. Cariou.

Deborah A. Batts
DEBORAH A. BATTS
UNITED STATES DISTRICT JUDGE

MEMO ENDORSED

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #
DATE FILED: 3/19/10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
PATRICK CARIOU,

Plaintiff,

-against-

08 Civ. 11327 (DAB)
ORDER

RICHARD PRINCE, et al.,

Defendants.

-----X
DEBORAH A. BATTS, United States District Judge.

The Court is in receipt of and has reviewed Plaintiff's letters dated February 8 and February 19, 2010 and Defendants' letter dated February 17, 2010. Both Parties request permission to file for summary judgment.

The Court hereby grants Parties' requests to cross move for summary judgment. Plaintiff and Defendants shall file and serve their moving papers, respectively, within 45 days of the date of this Order. Each Party shall respond within 30 days of being served with the opposing side's moving papers. Parties may reply within 10 days of being served with a response, at which time the motions will be fully-submitted.

SO ORDERED.

DATED: New York, New York

March 19, 2010

Deborah A. Batts

Deborah A. Batts
United States District Judge

Schnader
ATTORNEYS AT LAW
1935 — 75 YEARS — 2010

140 BROADWAY SUITE 3100
NEW YORK, NY 10005-1101
212.973.8000 FAX 212.972.8798 schnader.com

Daniel J. Brooks
Direct Dial 212-973-8150
E-mail: djbrooks@schnader.com

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/23/10

April 21, 2010

VIA HAND DELIVERY

Honorable Deborah A. Batts
United States District Court
Southern District of New York
United States Courthouse
500 Pearl Street, Room 2510
New York, New York 10007

22 APR 2010

MEMO ENDORSED

Re: **Cariou v. Prince, et al.; 08 Civ. 11327 (DAB)**

Dear Judge Batts:

We represent plaintiff Patrick Cariou in the above-captioned action. Pursuant to Section 5.2 of the Electronic Case Filing Rules of the Southern District, we request leave of the Court to file in hard copy two books which will be attached as exhibits to the attorney declaration in support of plaintiff's summary judgment motion to be filed with the Court by May 7, 2010. The two books at issue, *Yes Rasta*, authored by Patrick Cariou and *Canal Zone*, authored by Richard Prince, are at the heart of this litigation and, due to the enlarged size and high resolution of the images contained therein, cannot reasonably be scanned. Previous attempts to scan these books during discovery resulted in poor quality, and irregularly-sized, reproductions of the images.

Granted
4/23/10
DAB

We believe that all of the parties' interests are served best by the Court's review and the official record's inclusion of the actual books. With the Court's permission, we intend to file with Your Honor the two books at the time of our filing and service of our summary judgment motion. We will document on our ECF filing that the official exhibits of the books were filed with Your Honor. We further request leave to dispense with service on defendants of copies of the books, as, during discovery, it came to our attention that defendants were in possession of both of these books and, therefore, will not be prejudiced by not receiving service of the books.

Granted
4/23/10
DAB

SO ORDERED

Respectfully,

Deborah A. Batts

Daniel J. Brooks

Daniel J. Brooks

For SCHNADER HARRISON SEGAL & LEWIS LLP

DEBORAH A. BATTS
UNITED STATES DISTRICT JUDGE

cc via e-mail: Steven M. Hayes, Esq. shayes@hanlyconroy.com
Hollis Gonerka Bart, Esq. hollis.bart@withers.us.com

Schnader Harrison Segal & Lewis LLP

DJB:cpm

MEMO ENDORSED

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5/7/10

Withers Bergman LLP

430 Park Avenue, 10th Floor, New York, New York 10022-3505
Telephone: +1 212 848 9800 Fax: +1 212 848 9888

May 3, 2010

By Hand

The Honorable Deborah A. Batts
United States District Court
United States Courthouse
500 Pearl Street, Room 2510
New York, NY 10007

MEMO ENDORSED

04 MAY 2010

Re: Patrick Cariou v. Richard Prince, Gagosian Gallery, Inc., Lawrence Gagosian Gallery, Inc., Lawrence Gagosian, and Rizzoli International Publications, Inc. (Docket No. 08-11327)

Dear Judge Batts:

We write on behalf of our clients, Gagosian Gallery and Lawrence Gagosian, and at the request of counsel for Richard Prince, to request permission to submit a joint memorandum of law in support of defendants' motion for summary judgment (the "moving brief"), which will not exceed fifty pages.

Denied
S/DAB
5/7/10

In addition, pursuant to Section 5.2 of the Electronic Case Filing Rules of the Southern District, defendants request leave of the Court to file in hard copy relevant musical recordings, photocopies of the *Yes Rasta* book, and other copies of images which will be attached as exhibits to affidavits in support of defendants' moving brief, and which are too large to submit electronically via ECF.

Granted
S/DAB
5/7/10

Finally, due to the highly confidential nature of the identity of certain individuals identified in defendants' moving brief, defendants further request that the Court treat all of the names of Gagosian Gallery's clients as confidential. As such, defendants ask that those portions of the moving brief containing such confidential identities be submitted under seal.

Denied
S/DAB
5/7/10

Respectfully submitted,

Hollis Gonerka Bart

Hollis Gonerka Bart
DGH/dl

cc: Daniel Brooks, Esq. (via electronic mail)
Eric Boden, Esq. (via electronic mail)
Steven M. Hayes, Esq. (via electronic mail)

MEMO ENDORSED

SO ORDERED:

Deborah A. Batts
Hon. Deborah A. Batts

Date: 5/7/10

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MEMO ENDORSED

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Telephone: (212) 973-8000
Facsimile: (212) 972-8798

Attorneys for Plaintiff Patrick Cariou

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PATRICK CARIOU, :
 :
 Plaintiff, :
 :
 -against- :
 :
 RICHARD PRINCE, GAGOSIAN GALLERY, :
 INC., LAWRENCE GAGOSIAN and :
 RIZZOLI INTERNATIONAL :
 PUBLICATIONS, INC., :
 :
 Defendants. :
-----X

08 Civ. 11327 (DAB)
NOTICE OF MOTION
FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that, upon the annexed declarations of Daniel J. Brooks, dated May 7, 2010, and Eric Doeringer, dated May 6, 2010, the exhibits thereto, the annexed statement, pursuant to Local Rule 56.1 of the United States District Courts for the Southern and Eastern Districts of New York, of material facts as to which there is no genuine issue to be tried, and the pleadings and prior proceedings herein, plaintiff Patrick Cariou will move the Court, before the Honorable Deborah A. Batts, at the United States Courthouse, 500 Pearl Street, New York, New York 1007, in accordance with the scheduling order dated March 19, 2010, as amended by memorandum endorsements dated April 6, 2010 and May 5, 2010, with argument to be held if the Court deems it necessary, for an order granting summary judgment, pursuant to Rule 56(a), Fed. R. Civ. P., in plaintiff's favor on the issues of the liability of

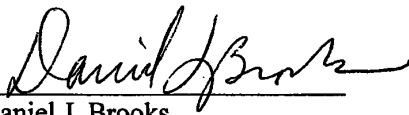
defendants Richard Prince, Gagosian Gallery, Inc. and Lawrence Gagosian for copyright infringement and the invalidity as a matter of law of the defendants' fair use defense, and for such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Court's scheduling order, as amended, defendants' opposition papers must be served by June 14, 2010, and plaintiff's reply papers must be served by June 24, 2010.

Dated: New York, New York
May 14, 2010

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

By: 
Daniel J. Brooks

Eric A. Boden
140 Broadway, Suite 3100
New York, New York 10005
Tel. (212) 973-8000
Fax (212) 972-8798

Attorneys for Plaintiff Patrick Cariou

TO: Steven M. Hayes, Esq.
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SHERIDAN FISHER & HAYES LLP
112 Madison Avenue, 7th Floor
New York, New York 10016

Attorneys for Defendant Richard Prince

Hollis Gonerka Bart, Esq.
Dara G. Hammerman, Esq.
WITHERS BERGMAN LLP
430 Park Avenue, 10th Floor
New York, New York 10022

*Attorneys for Defendants Gagosian Gallery, Inc.
and Lawrence Gagosian*

Daniel J. Brooks
Eric A. Boden
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New York, New York 10005-1101
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Facsimile: (212) 972-8798

Attorneys for Plaintiff Patrick Cariou

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
PATRICK CARIOU,	:	
	:	
Plaintiff,	:	08 Civ. 11327 (DAB)
	:	
-against-	:	
	:	<u>PLAINTIFF'S STATEMENT</u>
RICHARD PRINCE, GAGOSIAN GALLERY,	:	<u>PURSUANT TO LOCAL RULE 56.1</u>
INC., LAWRENCE GAGOSIAN and	:	
RIZZOLI INTERNATIONAL	:	
PUBLICATIONS, INC.,	:	
	:	
Defendants.	:	
-----X		

Pursuant to Rule 56.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, plaintiff Patrick Cariou states that there is no genuine issue to be tried as to the following material facts:

1. Plaintiff Patrick Cariou is the sole copyright owner and author of a book of photography entitled *Yes Rasta*, which was registered as a compilation with the U.S. Copyright Office on November 5, 2001. Declaration of Daniel J. Brooks, dated May 7, 2010 ("Brooks Dec."), Ex. K.
2. *Yes Rasta* was published in 2000 with a copyright notice identifying Cariou as the copyright owner of the photographs (the "Photographs") in the book. Brooks Dec. Ex. L-2.

3. Defendant Richard Prince admitted copying images from *Yes Rasta* and using them in a series of paintings (the "Paintings"). Brooks Dec. Ex. B (Prince's answer), ¶¶ 10-11, 13, 19, 47; Brooks Dec. Ex. E (Prince deposition transcript), at 30, 38-40.

4. Fifteen of the Paintings were exhibited at a gallery owned by defendant Gagosian Gallery, Inc. in a show entitled *Canal Zone* that was held from November 8, 2008 through December 20, 2008. Brooks Dec. Ex. E, at 292, 302-09; Brooks Dec. Exs. X, Y; Brooks Dec. Ex. G (transcript of deposition of Louise Neri), at 22-24.

5. A catalogue of the *Canal Zone* exhibition (the "Canal Zone Catalogue") was published by Gagosian Gallery, picturing 22 Paintings (including additional Paintings not exhibited during the exhibition, but containing images of Cariou's Photographs). Brooks Dec. Ex. E, at 302-04; Brooks Dec. Exs. M, M-1, M-3, N.

6. The Canal Zone Catalogue also contained exact replicas of Cariou Photographs shown mounted on canvases in Prince's studio and blown-up details from the Paintings showing portions of Cariou's Photographs. Brooks Dec. Exs. Z, AA.

7. The Canal Zone Catalogue was copyrighted in the names of Gagosian Gallery and Prince. Brooks Dec. Ex. M-4.

8. In addition to the 22 Paintings in the Canal Zone Catalogue, Prince produced seven or eight other Paintings in 2008 appropriating images from Cariou's Photographs. Brooks Dec. Ex. E, at 304-09; Brooks Dec. Exs. O, P, X.

9. Prince testified that Cariou's Photographs were not the subject of his Paintings. Brooks Dec. Ex. E, at 30.

10. Prince testified that, in his Paintings, he was not commenting on Cariou's Photographs or on Cariou's technique or methodology in taking the Photographs. Brooks Dec.

Ex. E, at 281-82.

11. Prince stated in an interview, and confirmed in his deposition testimony, that the Paintings were “very quickly done – they’re not really thought about” Brooks Dec. Ex. T, C00076; Brooks Dec. Ex. E, at 273.

12. Prince explained another statement he made in the same interview (“[t]he Rastas came really fast. And they’re going to be over really fast, too” by stating: “I was in the middle of other bodies of work that I needed to pay attention to.” Brooks Dec. Ex. E, at 281.

13. Prince testified that he “liked” Cariou’s Photographs (Brooks Dec. Ex. E, at 161), and confirmed his statement in an interview with respect to *Yes Rasta* that: “I loved the look, and I loved the dreads.” Brooks Dec. Ex. T, at C00075; Brooks Dec. Ex. E, at 261-62.

14. Prince testified, “I don’t really have a message[,]” later adding: “The message is to make great art that makes people feel good.” Brooks Dec. Ex. E, at 45-46, 267.

15. Prince testified that the Paintings had a rock-and-roll theme (Brooks Dec. Ex. E, 279-80), with groupings of Rastafarians and nude women representing musical bands. Brooks Dec. Ex. E, at 251-52, 272-73.

16. Prince testified that the “primary subject” of the Paintings was the guitar (which he had appropriated from other sources, including *Guitar Magazine* (Brooks Dec. Ex. E, at 164, 168)), which was his own “brilliant, brilliant contribution” to the Paintings. Brooks Dec. Ex. E, at 279.

17. Regarding the Painting *Back to the Garden*, Prince testified that his “message” was “hey, this guy is playing the guitar.” Brooks Dec. Ex. E, at 340.

18. Regarding the Painting *Djuna Barnes, Natalie Barney, Renée Vivien, and Romaine Brooks Take Over the Guanahani*, Prince testified that he took an entire Cariou

landscape as the backdrop (Brooks Dec. Ex. E, at 356), and that, in superimposing four nude females over that landscape, he was not commenting on any aspects of culture, or trying to create anything with a new meaning or a new message. Brooks Dec. Ex. E, at 360. He also testified that his work did not generally make comments. Brooks Dec. Ex. E, at 354, 364.

19. As a “subtext” (Brooks Dec. Ex. E, at 30) to the musical theme animating his Paintings, Prince testified that he had written a “pitch” for a movie about a wealthy family that arrived in St. Barth’s for a vacation only to discover that a nuclear holocaust had taken place while they were traveling there, resulting in the destruction of most of the world and post-apocalyptic strife on the island, which became divided among various “tribes,” one of which was the Rastas and another of which was the nude women. Brooks Dec. Ex. E, at 206, 341, 365; Brooks Dec. Exs. DD, EE, T (at C00075-76), FF.

20. Cariou took the Photographs over a six-year period, roughly half of which he spent living with the Rastafarians in Jamaica. Brooks Dec. Ex. D (Cariou deposition transcript), at 42-44.

21. In addition to *Yes Rasta*, Cariou is the author of two other books of photography and of commercial photography which has appeared in many fashion and travel magazines. Brooks Dec. Ex. D, at 101, 280-82.

22. In taking the Photographs, Cariou chose the camera, lenses, film, depth of field, background and setting, angle, lighting, time of day, subjects and their poses, and exposures; waited for meteorological events such as approaching tropical storms; and supervised the processing of the film in the darkroom, in order to achieve a desired look (involving the challenge of photographing dark images in the shade without sacrificing detail). Brooks Dec. Ex. D, at 51-64, 133-34, 137-38, 143-44, 152, 169.

23. Cariou's purpose was to create "beautiful" "portrait[s]," "picture[s]," and "landscapes," and "visually compelling" and "visually appealing" photographs. Brooks Dec. Ex. D, at 51, 84, 112, 132, 134, 151, 171, 178.

24. Cariou had planned to make eight artist's prints of each of his Photographs and to sell them. Brooks Dec. Ex. D, at 93-94. He had not yet done so as of late 2008 because he had been concentrating for eight years on completing the photography for a fourth book of portraits, about Gypsies. Brooks Dec. Ex. D, 93-94, 101, 286. At that point, the "mock-up and all the pictures" for his Gypsies book were "done" and he was ready to "go on to something else," including making prints of his Rasta Photographs, Brooks Dec. Ex. D at 93-94, 98, 227, and marketing them. Brooks Dec. Ex. D, at 285-86.

25. On August 28, 2008, Cariou was approached by Christiane Celle, an art gallery owner, who did not know Cariou, but was familiar with his work, and wanted to represent him and have an exhibition of his Rasta Photographs for the opening a new gallery in Soho, dedicated to photography. Brooks Dec. Ex. SS; Brooks Dec. Ex. D, at 94-97; Brooks Dec. Ex. J (Celle deposition transcript), at 17-19, 33-34, 42, 44, 53-58, 60-61, 155.

26. Cariou agreed to Celle's suggestion of an exhibition of his work and they met in order to discuss which of the *Yes Rasta* Photographs to include in the exhibition. Brooks Dec. Ex. D, at 227; Brooks Dec. Ex. J, at 39-40, 42-44.

27. Celle testified that she wanted to exhibit 30 to 40 of the Photographs, with multiple prints of each Photograph to be sold during the show and kept in inventory after the show, for future sale, at prices ranging from \$3,000 to \$20,000, depending on the size of the print. Brooks Dec. Ex. J, at 40-42, 46, 66-68, 127-28, 153-55.

28. Celle also testified that she planned to have *Yes Rasta* reprinted for a book

signing by Cariou during the show. Brooks Dec. Ex. J, at 87-88, 155-56.

29. Celle also testified that she intended to introduce Cariou to clients of hers (decorators and entertainment figures), who might have an interest in the Photographs. Brooks Dec. Ex. J, at 45, 68-69, 130-31, 158-59.

30. Celle testified that, when she found out in November 2008 about Prince's *Canal Zone* show at the Gagosian Gallery in Chelsea (Brooks Dec. Ex. J, at 113-14), she decided to cancel Cariou's show because she did not want to seem to be capitalizing on Prince's success and notoriety (Brooks Dec. Ex. J, at 89, 105-06) and did not want to exhibit work which had been "done already" at a nearby art gallery. Brooks Dec. Ex. J, at 89, 91, 105.

31. After cancelling Cariou's show, Celle would not commit to doing the show in the future. Brooks Dec. Ex. D, at 100; Brooks Dec. Ex. J, at 106-07.

32. On December 11, 2008, Cariou, through counsel, sent a cease and desist letter to Prince, Gagosian Gallery and defendant Lawrence Gagosian, all of whom received the letter on or about that date, but continued on with the *Canal Zone* exhibition and sales of the Paintings and of the Canal Zone Catalogue. Brooks Dec. Ex. RR; Brooks Dec. Ex. B (Prince answer), ¶¶ 24-25; Brooks Dec. Ex. C (Gagosian defendants' answer), ¶¶ 24-25; Brooks Dec. Ex. D, at 25-26; Brooks Dec. Ex. P, ¶ 4 & Ex. A thereto (reflecting sales and exchanges of Paintings after December 11, 2008).

33. Gagosian Gallery and Gagosian knew that Prince had a reputation as an "appropriation artist." Brooks Dec. Ex. C (Gagosian defendants' answer), ¶ 18; Brooks Dec. Ex. G (Louise Neri deposition transcript), at 17-18; Brooks Dec. Ex. H (Alison McDonald deposition transcript), at 91-92.

34. Prince has written about his practice of appropriation (Brooks Dec. Ex. Q),

which he has described as “steal[ing].” Brooks Dec. Ex. R, at 2; Brooks Dec. Ex. E, at 34-35, 48-49.

35. Prince testified that he “find[s] it more satisfying to appropriate than to create [his] own work.” Brooks Dec. Ex. E, at 44; Brooks Dec. Ex. Q.

36. McDonald and Neri, the Gagosian Gallery employees in charge of creating the Canal Zone Catalogue and the press release for the *Canal Zone* exhibition, even though they knew that Prince had a practice of appropriating images created by others, did nothing to find out where Prince had obtained the images taken from *Yes Rasta* or whether those images were copyrighted. Brooks Dec. Ex. G, at 17-18; Brooks Dec. Ex. H, at 91-92.

37. Gagosian approved ads for the *Canal Zone* exhibition in seven newspapers, five of which had images of one of Cariou’s Rastafarian Photographs. Brooks Dec. Ex. H (McDonald deposition transcript), at 42-46, 47-50; Brooks Dec. Ex. F (Gagosian deposition transcript), at 36; Brooks Dec. Ex. GG.

38. Gagosian Gallery publicized the *Canal Zone* exhibition on its website and in a press release depicting one of Cariou’s Photographs (a Rastafarian on a donkey). Brooks Dec. Ex. F, at 49; Brooks Dec. Ex. FF, C00008-09; Brooks Dec. Ex. G, at 18-19.

39. Before the *Canal Zone* exhibition opened, Prince was interviewed about the exhibition, among other things, in *Interview Magazine*; the first page of the interview reproduced five of the Paintings (containing Photographs appropriated from Cariou), which the interviewer requested from Gagosian Gallery. Brooks Dec. Ex. T, C00065; Brooks Dec. Ex. HH, GGP001421.

40. An announcement card with an image of one of Cariou’s Photographs was mailed by Gagosian Gallery to 7,500 clients and to museums in order to promote the *Canal Zone*

show. Brooks Dec. Ex. JJ; Brooks Dec. Ex. F, at 35; Brooks Dec. Ex. H, at 29-33.

41. Leftover announcement cards, instead of being recycled as planned, were sold to a poster company. Brooks Dec. Ex. H, at 55-59; Brooks Dec. Ex. KK.

42. A dinner was held at the Private Roof Club of the Gramercy Park Hotel on November 8, 2008 for the opening of the *Canal Zone* show. Brooks Dec. Ex. LL; Brooks Dec. Ex. H, at 26-28.

43. Everyone on the invitation list to the November 8, 2008 dinner was approved by Gagosian. Brooks Dec. Ex. F, at 51-55; Brooks Dec. Ex. NN, at GGP003313, 3375, 3498.

44. Gagosian was involved in setting the prices for the Paintings. Brooks Dec. Ex. F, at 116.

45. Eight of the Paintings were sold for a cash total of \$10,480,000, 60% of which went to Prince and 40% of which went to Gagosian Gallery. Brooks Dec. Ex. P, ¶ 2 & Ex. A; Brooks Dec. Ex. F, at 48.

46. Four other Paintings were exchanged for a Larry Rivers painting, valued by Gagosian at \$3 or \$4 million. Brooks Dec. Ex. P, ¶ 3; Brooks Dec. Ex. F, at 136-37.

47. Three other Paintings were exchanged for a Richard Serra sculpture, valued by Gagosian at \$3 or \$4 million. Brooks Dec. Ex. P, ¶ 3; Brooks Dec. Ex. F, at 149-50.

48. Gagosian Gallery sold Canal Zone Catalogues for a total of \$6,784. Brooks Dec. Ex. P, ¶ 4.

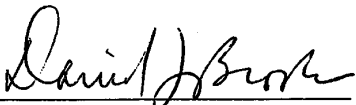
49. Counsel for Gagosian Gallery sent a cease and desist letter in November 2005 to Eric Doeringer, a visual artist who appropriated images from John Currin, an artist represented by Gagosian Gallery. Doeringer Declaration, dated May 6, 2010 (“Doeringer

Dec.”), ¶¶ 2-5 & Ex. A. After his request to use the works for educational, non-commercial purposes was rejected by Gagosian Gallery’s counsel, Doeringer complied, ceasing to display, exhibit or sell the works. Doeringer Dec. ¶¶ 6-8 & Exs. B, C.

Dated: New York, New York
May 14, 2010

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

By: 

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Attorneys for Plaintiff Patrick Cariou

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PATRICK CARIOU,	: X	
Plaintiff,	:	
-against-	:	
RICHARD PRINCE, GAGOSIAN GALLERY,	:	
INC., LAWRENCE GAGOSIAN and	:	
RIZZOLI INTERNATIONAL	:	
PUBLICATIONS, INC.,	:	
Defendants.	:	

08 Civ. 11327 (DAB)

DECLARATION OF DANIEL J. BROOKS

DANIEL J. BROOKS, under the penalty of perjury, states as follows:

1. I am a member of the Bar of this Court and of Schnader Harrison Segal & Lewis LLP, counsel of record for the plaintiff, Patrick Cariou. I submit this declaration, based upon personal knowledge, in support of plaintiff's motion for summary judgment, pursuant to Rule 56(a), Fed. R. Civ. P., on the issue of the liability of the defendants Richard Prince, Gagosian Gallery, Inc. and Lawrence Gagosian for copyright infringement.

2. Attached hereto as Exhibit A is a copy of plaintiff's amended complaint, filed on January 14, 2009.

3. Attached hereto as Exhibit B is a copy of the answer of defendant Richard Prince to the amended complaint, filed on March 3, 2009.
4. Attached hereto as Exhibit C is a copy of the answer of defendants Gagosian Gallery, Inc. ("Gagosian Gallery") and Lawrence Gagosian (collectively, "the Gagosian defendants") to the amended complaint, filed on March 3, 2009.
5. Attached hereto as Exhibit D are excerpts from the transcript of the deposition of plaintiff Patrick Cariou ("Cariou"), taken on January 12, 2010.
6. Attached hereto as Exhibit E are excerpts from the transcript of the deposition of defendant Richard Prince ("Prince"), taken on October 6, 2009.
7. Attached hereto as Exhibit F are excerpts from the transcript of the deposition of defendant Lawrence Gagosian, taken on October 8, 2009.
8. Attached hereto as Exhibit G are excerpts from the transcript of the deposition of Gagosian employee Louise Neri, taken on December 17, 2009.
9. Attached hereto as Exhibit H are excerpts from the transcript of the deposition of Gagosian employee Alison McDonald, taken on December 17, 2009.
10. Attached hereto as Exhibit I are excerpts from the transcript of the deposition of John Olson, the chief executive officer of non-party NancyScans Corp., a commercial laboratory that scanned and printed materials, including photographic images taken from Cariou's copyrighted book, for Prince that were incorporated into Prince's paintings that are at the center of this case. Olson's deposition was taken on November 16, 2009.
11. Attached hereto as Exhibit J are excerpts from the transcript of the deposition of non-party Christiane Celle, an art gallery owner who testified that she planned to have an exhibition of Cariou's work in one of her galleries, but cancelled the show upon learning

that Gagosian Gallery had put on an exhibition of Prince's paintings containing reproductions of Cariou's photographs. Celle's deposition was taken on January 26, 2010.

12. Attached hereto as Exhibit K is a copy of Cariou's certificate of registration of a book of photography entitled *Yes Rasta*, which was issued by the U.S. Copyright Office on November 5, 2001. This document was marked as Exhibit 2 to the Cariou deposition.

13. Attached hereto as Exhibit L is a copy of the cover of *Yes Rasta*, which, pursuant to leave of Court granted on April 23, 2010, is being filed in hard copy, in its entirety, with the Court. In his deposition, Cariou was asked by defense counsel whether certain of his photographs were "staged." Of 29 photographs that he was asked about, he identified only 3 that were not "staged," one of which was a landscape, which Cariou explained, at p. 151-52 of his deposition, cannot be "staged," although he did wait approximately one hour, until a storm came in, to shoot that particular photograph. The questions and answers about the "staging" of the photographs is at pp. 109, 113-21 and 151-52 of the Cariou deposition.

14. Attached hereto as Exhibit L-1 is a copy of the cover of *Yes Rasta*.

15. Attached hereto as Exhibit L-2 is a copy of the colophon page of *Yes Rasta*, indicating that the photographs in the book are copyrighted in Cariou's name.

16. Attached hereto as Exhibit M is a copy of the cover of the catalogue published by Gagosian Gallery in connection with the Prince exhibition entitled *Canal Zone* (the "Canal Zone Catalogue"), which, pursuant to leave of Court granted on April 23, 2010, is being filed in hard copy, in its entirety, with the Court.

17. Attached hereto as Exhibit M-1 are copies of the front, back and spine of the Canal Zone Catalogue.

18. Attached hereto as Exhibit M-2 is a copy of the title page of the Canal Zone Catalogue.
19. Attached hereto as Exhibit M-3 is a List of Works, listing the 22 paintings which are depicted in the Canal Zone Catalogue.
20. Attached hereto as Exhibit M-4 is the colophon page of the Canal Zone Catalogue, listing Gagosian Gallery as the copyright owner of the publication, Prince as the copyright owner of all "artworks" and "insert images," and James Frey as the copyright owner of the essay, *Ding Dong the Witch is Dead*, which is inserted in the Canal Zone Catalogue.
21. Attached hereto as Exhibit N are copies of the 22 paintings depicted in the Canal Zone Catalogue.
22. Attached hereto as Exhibit O are copies of seven additional Prince paintings, which are not depicted in the Canal Zone Catalogue, which were marked as Exhibit 33 to the Prince deposition.
23. Attached hereto as Exhibit P is a copy of a stipulation entered into by counsel for Cariou and the Gagosian defendants, fully executed on January 26, 2010, which stipulates as to the authenticity of certain documents and contains representations by Gagosian Gallery on its sales and exchanges of certain Prince paintings and its sales of the Canal Zone Catalogue.
24. Attached hereto as Exhibit Q are copies of two pages from Prince's website, including comments he wrote entitled "Practicing Without A License," and "Appropriation," which were marked as Exhibit 3 to the Prince deposition.
25. Attached hereto as Exhibit R is copy of an interview of Prince in *ArtForum*, March 2003, which was marked as Exhibit 4 to the Prince deposition.

26. Attached hereto as Exhibit S is a copy of an e-mail indicating that Prince purchased three copies of *Yes Rasta* from the publisher on June 3, 2008. This document was marked as Exhibit 27 to the Prince deposition.

27. Attached hereto as Exhibit T is a copy of an interview of Prince in *Interview Magazine*, which was marked as Exhibit 28 to the Prince deposition.

28. Attached hereto as Exhibit U is a comparison document Cariou created juxtaposing images from the paintings by Prince with photographs by Cariou in order to show which of Cariou's images were appropriated by Prince in each of those paintings and in an insert in the Canal Zone Catalogue depicting one of Cariou's photographs on a canvas in Prince's studio. Cariou testified about the preparation of this document at pp. 30-34 of his deposition. The document was previously marked as Exhibit 40 to the Prince deposition.

29. Attached hereto as Exhibit V is a copy of Prince painting entitled, *Canal Zone 2007*, which consists of 35 pages from *Yes Rasta* collaged on a plywood board. This document was marked as Exhibit 14 to the Prince deposition. The Gagosian defendants stipulated to the authenticity of this document in Exhibit P.

30. Attached hereto as Exhibit V-1 is a copy of *Canal Zone 2007* as it was exhibited in late 2007 in St. Barth's. This document was marked as Exhibit 15 to the Prince deposition.

31. Attached hereto as Exhibit W is a copy of an article in *The Art Newspaper*, marked as Exhibit 20 to the Prince deposition, which discusses this lawsuit and reproduces a portion of *Canal Zone 2007*.

32. Attached hereto as Exhibit X is a document, marked as Exhibit 32 to the Prince deposition, the authenticity of which has been stipulated to by the Gagosian defendants in Exhibit P, showing the layout of the *Canal Zone* exhibition.

33. Attached hereto as Exhibit Y is a printout from the Gagosian Gallery website describing the *Canal Zone* exhibition and showing all of the paintings as they were displayed during the show. This document was marked as Exhibit 105 to the McDonald deposition.

34. Attached hereto as Exhibit Z are copies of three images contained in inserts to the Canal Zone Catalogue, reproducing exact and unaltered copies of Cariou's photographs, shown mounted on canvases in Prince's studio.

35. Attached hereto as Exhibit AA are blown-up details from two Prince paintings, emphasizing two of Cariou's photographs, as shown in the Canal Zone Catalogue.

36. Attached hereto as Exhibit BB is a landscape, marked as Exhibit 108 to the Neri deposition, which Prince admitted, at p. 356 of his deposition, taking in its entirety from the *Yes Rasta* book and using in a painting entitled *Djuna Barnes, Natalie Barney, Renée Vivien, and Romaine Brooks Take Over the Guanahani*.

37. Attached hereto as Exhibit CC are two photographs of Rastafarians taken from the *Yes Rasta* book by Prince and reproduced in various Prince paintings. These photographs were marked as Exhibits 107 and 109 to the Neri deposition.

38. Attached hereto as Exhibit DD is a copy of a "pitch" for movie written by Prince and marked as Exhibit 22 to the Prince deposition.

39. Attached hereto as Exhibit EE is an e-mail pertaining to and updating the "pitch," which was marked as Exhibit 23 to the Prince deposition.

40. Attached hereto as Exhibit FF is a printout from the Gagosian Gallery website describing the *Canal Zone* exhibition and Prince's biography, which was marked as Exhibit 31 to the Prince deposition. The Gagosian defendants stipulated to the authenticity of this document in Exhibit P.

41. Attached hereto as Exhibit GG are copies of five newspaper advertisements taken out by the Gagosian defendants, containing images of one of Cariou's photographs, and promoting the *Canal Zone* exhibition.

42. Attached hereto as Exhibit HH are copies of e-mails which were marked as Exhibit 29 to the Prince deposition. The Gagosian defendants stipulated to the authenticity of these documents in Exhibit P.

43. Attached hereto as Exhibit II is a copy of an e-mail which was marked as Exhibit 55 to the Gagosian deposition. The Gagosian defendants stipulated to the authenticity of this document in Exhibit P.

44. Attached hereto as Exhibit JJ is a copy of the announcement card, bearing an image of one of Cariou's photographs, mailed out by Gagosian Gallery to 7,500 clients and museums in connection with the *Canal Zone* exhibition. This document was marked as Exhibit 104 to the McDonald deposition.

45. Attached hereto as Exhibit KK are copies of e-mails marked as Exhibit 53 to the Gagosian deposition. The Gagosian defendants stipulated to the authenticity of these documents in Exhibit P.

46. Attached hereto as Exhibit LL is a copy of the invitation, marked as Exhibit 103 to the McDonald deposition, to the opening dinner for the *Canal Zone* exhibition.

47. Attached hereto as Exhibit MM are copies of e-mails, marked as Exhibit 26 to the Prince deposition, the authenticity of which the Gagosian defendants stipulated to in Exhibit P.

48. Attached hereto as Exhibit NN are copies of e-mails, marked as Exhibit 48 to the Gagosian deposition, the authenticity of which the Gagosian defendants stipulated to in Exhibit P.

49. Attached hereto as Exhibit OO is a copy of an e-mail, marked as Exhibit 49 to the Gagosian deposition, the authenticity of which the Gagosian defendants stipulated to in Exhibit P.

50. Attached hereto as Exhibit PP is a copy of an e-mail string, marked as Exhibit 50 to the Gagosian deposition, the authenticity of which the Gagosian defendants stipulated in Exhibit P.

51. Attached hereto as Exhibit QQ is a copy of the invitation list to the opening dinner of the *Canal Zone* exhibition, marked as Exhibit 35 to the Prince deposition and identified by Prince at pp. 317-18 of his deposition.

52. Attached hereto as Exhibit RR is a copy of Cariou's cease and desist letter dated December 11, 2008, marked as Exhibit 34 to the Prince deposition, which Prince and the Gagosian defendants admitted receiving on or about that date. *See* Exhibit B, ¶¶ 24-25; Exhibit C, ¶¶ 24-25.

53. Attached hereto as Exhibit SS is a copy of an e-mail exchange, with certified English translation, between Cariou and Celle, which was marked as Exhibit 1 to the Celle deposition.

54. Based on this evidence and the applicable law, it is respectfully submitted that summary judgment should be granted in favor of Cariou against Prince and the Gagosian defendants on the issue of their liability for copyright infringement.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 7, 2010, at New York, New York.


DANIEL J. BROOKS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PATRICK CARIOU,

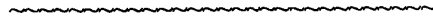
Plaintiff,

vs.

Index No.: 08 CIV 11327 (DAB)

RICHARD PRINCE, GAGOSIAN
GALLERY, INC., LAWRENCE
GAGOSIAN, and RIZZOLI
INTERNATIONAL PUBLICATIONS,
INC.,

Defendants.



DEPOSITION OF

PATRICK CARIOU

Tuesday, January 12, 2010

New York, New York

Reported by:
Bryan Nilsen, RPR



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an Alexander Gallie Company

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Suite 4715
New York, N.Y. 10119

25

1 Cariou

2 paintings, when did you first become aware of

3 that?

4 A. I became aware of it I think in

5 mid-November 2009 through an ad in the Art

6 Newspaper.

7 Q. And you saw the ad or did someone

8 bring the ad to your attention?

9 A. A friend of mine called me a bit

10 confused with the ad, asking me if I did a

11 collaboration with Richard Prince, and I didn't

12 know what he was talking about at the time.

13 And I went to his place and looked

14 at the ad and was a bit surprised I must say.

15 MR. BROOKS: Can I interject. He

16 said 2009, is that what you meant?

17 A. 2008, sorry.

18 MS. BART: Thank you.

19 BY MS. BART:

20 Q. And who was this friend?

21 A. Francesco Solari.

22 Q. This was the person you listed in

23 your initial disclosures, correct?

24 A. Yes.

25 Q. So after you went to his place what

26

1 Cariou

2 did you do next after making this discovery?

3 A. I went on the web and on the

4 Gagosian website and looked at the Canal Zone

5 show and realized that the main subject of the

6 show was Rastas.

7 Q. And then what did you do?

8 A. Then I started to make a few phone

9 calls to friend in New York in order to know

10 what to do and to find a lawyer.

11 Q. And how was it that you came to find

12 the Schnader Harrison firm?

13 MR. BROOKS: What's the relevance of

14 that? What's the relevance of it?

15 How did Prince find you? I mean

16 it's not relevant how he found me.

17 MS. BART: I think I'm entitled to

18 ask that question.

19 MR. BROOKS: Why? Tell me why and I

20 will let him answer.

21 MS. BART: Because it's part of the

22 process of what he did to press his

23 rights.

24 MR. BROOKS: What he did to press

25 his rights is irrelevant. You've got the

27

1 Cariou

2 complaint. And we represent him. How he

3 found us is irrelevant.

4 MS. BART: How many more speeches

5 are we going to have today?

6 MR. BROOKS: Well, it's an improper

7 question.

8 MR. HAYES: Are you directing him

9 not to answer or no?

10 MR. BROOKS: You can answer, over my

11 objection. She wants to know how you

12 found me.

13 A. A friend of mine recommended them

14 and we got in contact, and that was it.

15 Q. And who was the friend?

16 A. My friend was -- his name is Terry

17 Daher, D-A-H-E-R.

18 Q. And does Mr. Daher live in New York?

19 A. He lives in New York, mm-hmm.

20 Q. And when you spoke with Mr. Daher

21 was this -- this is obviously after you had gone

22 on the website and seen --

23 A. Yeah.

24 Q. And what did you tell Mr. Daher you

25 needed?

28

1 Cariou

2 A. To go -- first thing I told him to

3 go see the show. He went and was amazed by it

4 and told me that we had to do something. At

5 that particular moment I didn't know I was going

6 to have a lawsuit. I just -- and he went and

7 told me that the Rastas were all over the

8 paintings and that something should be done.

9 Q. And did he take photographs when he

10 went to the exhibit?

11 A. No, I don't think so.

12 Q. He just -- then he called you back?

13 A. He called me back, yeah.

14 Q. And how do you know Terry Daher?

15 A. Well, he's an old friend of mine.

16 Q. Do you work with him?

17 A. No.

18 Q. Other than your counsel did you

19 speak to anyone else -- anyone other than your

20 counsel and Mr. Daher, did you speak to anyone

21 else at this time about the exhibition?

22 A. I don't think so, no.

23 Q. And then the next thing you did was

24 contact counsel --

25 A. Right.



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29

1 Cariou
 2 Q. -- and then we have what's ensued?
 3 A. Yeah.
 4 MS. BART: Let's give him a copy of
 5 Plaintiff's Exhibit 40.
 6 Q. Mr. Cariou, I'm handing you what's
 7 been marked as Plaintiff's Exhibit 40 in this
 8 lawsuit. Do you see this document?
 9 A. Yeah.
 10 Q. And can you just tell us in your own
 11 words what this document is?
 12 A. Well, it's a compilation of
 13 Mr. Prince's work and my work and the
 14 photographs he used in the Canal Zone show.
 15 Q. And who prepared this document?
 16 A. Me and a friend of mine in Paris.
 17 Q. And who was that?
 18 A. Philippe Le Bihan, L-E, B-I-H-A-N.
 19 Q. Did anyone else assist you?
 20 A. No.
 21 Q. Was this something that -- and
 22 I'm not trying to encroach at all on the
 23 attorney/client privilege -- but was this
 24 something that Mr. Brooks asked you to do or was
 25 this something --

30

1 Cariou
 2 MR. BROOKS: Wait. Hold on. That
 3 is encroaching.
 4 Don't answer that question.
 5 If I asked him to do something, we
 6 had a conversation, that's a privileged
 7 conversation.
 8 He's not going to answer. Go to the
 9 judge if you don't agree with me. He's
 10 not going to ask him who told him to do
 11 it. He's not going to testify about any
 12 conversations he had with me.
 13 Q. Did you prepare this document with
 14 the assistance of counsel?
 15 A. No.
 16 Q. So this is something you prepared
 17 and then you provided it to your attorneys who
 18 then provided it to us?
 19 A. Yes.
 20 Q. Plaintiff's Exhibit 40 represents
 21 the Yes Rasta images which you claim appear in
 22 some of the Canal Zone paintings, correct?
 23 A. That I claim appear? They do
 24 appear.
 25 Q. Well, a claim is what you say in

31

1 Cariou
 2 your complaint appear in these images. I'm not
 3 trying to trick you with these words,
 4 Mr. Cariou.
 5 A. No, no, I thought it was a bit funny
 6 though.
 7 MR. BROOKS: No. Just answer the
 8 question.
 9 A. Yeah, yeah.
 10 Q. And since you prepared this document
 11 have you found any other images that you believe
 12 are incorporated?
 13 A. Yes.
 14 Q. And I'm going to hand you what's
 15 been marked as -- previously been marked as
 16 Plaintiff's Exhibit 41.
 17 I only have one copy of this with
 18 all the tabs, so we're going to have to kind of
 19 work with it together.
 20 You'll see on the bottom -- we
 21 talked about this before the deposition
 22 started -- we've added numbers to the images
 23 that appear in the Yes Rasta book.
 24 Can you please give me the page
 25 numbers for the additional images that you say

32

1 Cariou
 2 appear in the Canal Zone paintings but which are
 3 not found in Plaintiff's Exhibit 40?
 4 A. In order to do that I will need a
 5 printout of the painting called Canal Zone 2007
 6 that I've never seen really. We used -- which
 7 is the first painting Mr. Prince did was showed
 8 in St. Barth's and has probably 20 pictures in
 9 itself. If you show me that one --
 10 Q. You could mark a copy of that?
 11 A. I could find the image.
 12 Q. All right. Why don't we get a copy
 13 of that at a break and then we'll come back to
 14 that at the end of the sequence of questions, is
 15 that acceptable?
 16 MR. BROOKS: It's a deposition
 17 exhibit.
 18 MS. BART: Right. I know. We're
 19 getting it. We don't have it in here.
 20 MR. BROOKS: Fine. Whatever.
 21 BY MS. BART:
 22 Q. I'd like to take you through the
 23 images that appear in Plaintiff's Exhibit 40
 24 which you have shown to us.
 25 I'm going to hand you Plaintiff's



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33

1 Cariou
 2 Exhibit 41.
 3 A. So you want me to actually tell
 4 you --
 5 Q. No, no, no. I just want you to have
 6 the book in front of you along with Plaintiff's
 7 Exhibit 40.
 8 A. Okay.
 9 Q. I don't believe you told me,
 10 approximately when did you prepare the document
 11 that's been marked as Plaintiff's Exhibit 40?
 12 A. It must have been around February 1
 13 would say.
 14 Q. Of 2009?
 15 A. Of 2009, yeah.
 16 Q. On the first page of Plaintiff's
 17 Exhibit 40, which is the comparison that you've
 18 done --
 19 A. Yeah.
 20 Q. -- if you will look at the first
 21 page.
 22 A. Yeah, uh-huh.
 23 Q. No, no.
 24 A. Sorry.
 25 Q. No problem.

34

1 Cariou
 2 We see two images there, one of
 3 Canal Zone and one of the Yes Rasta book. And
 4 it says Yes Rasta photographs by Patrick Cariou,
 5 do you see that?
 6 A. Yeah.
 7 Q. And you made this comparison because
 8 the Yes Rasta images you took are found in the
 9 Yes Rasta book?
 10 A. Excuse me. Come again, please.
 11 Q. Yes. In other words, I'm just
 12 trying to understand, you juxtaposed the Canal
 13 Zone book and the Yes Rasta book because you are
 14 saying that the images are -- some of the
 15 Yes Rasta images are found in the Canal Zone
 16 book?
 17 A. Correct.
 18 Q. Now, according to your complaint
 19 which you have in front of you, I believe it's
 20 paragraph 16, you say that you spent parts of
 21 six years in the secluded mountains of Jamaica
 22 gaining access to and living and working with
 23 and earning the trust of the Rastafarians who
 24 are the subjects of Yes Rasta?
 25 A. Yes.

35

1 Cariou
 2 Q. And I've read that correctly?
 3 A. Yeah.
 4 Q. When did you first approach this --
 5 MR. BROOKS: Hold on. He's not on
 6 paragraph 16.
 7 MS. BART: Sure. No problem.
 8 BY MS. BART:
 9 Q. It's the first sentence.
 10 A. Yeah, yeah. I got it.
 11 Q. Right.
 12 MS. BART: He had already agreed
 13 that it was correct.
 14 BY MS. BART:
 15 Q. When did you first approach this
 16 particular Rastafarian community about the
 17 possibility of gaining access to them?
 18 A. In spring '92.
 19 Q. And is there a reason why you
 20 approached this community?
 21 A. Well, first of all, it's not a
 22 community. It's just Rasta all over Jamaica.
 23 It's not one particular community. It's, you
 24 know, it's a community at large.
 25 Well, yeah, my love for Reggae

36

1 Cariou
 2 music, my love for Jamaica, my love for their
 3 culture, their look, and also the fact that no
 4 book has ever been done about Rastafarians.
 5 Q. And so when you first approached
 6 them you approached them with the idea of
 7 preparing a book containing images and
 8 documenting --
 9 A. Yeah, absolutely.
 10 Q. -- and documenting the Rastafarian
 11 lifestyle?
 12 A. Yes.
 13 Q. And when you first approached them
 14 did you tell them that's what you wanted to do?
 15 A. Yes.
 16 Q. And what did they say to you?
 17 A. It depends on which one.
 18 Q. I see. I guess I understood from
 19 Mr. Henzell's description in the front part of
 20 the Yes Rasta book that you had gone and lived
 21 with one particular community, not that it was
 22 communities everywhere.
 23 So what you're saying is there are
 24 different Rasta communities --
 25 A. There is no such thing as a Rasta



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1 Cariou
 2 Rastafarians -- I think you mentioned their
 3 culture, their looks --
 4 A. Mm-hmm.
 5 Q. -- document those images, you went
 6 there with that purpose?
 7 A. Yeah.
 8 Q. And that's why you were in Jamaica?
 9 A. Yeah.
 10 Q. How were you first sort of
 11 introduced to or exposed to the Rastafarian
 12 culture?
 13 A. Well, through Reggae music, you
 14 know.
 15 Q. And when did you first begin
 16 listening to Reggae music?
 17 A. In -- let me think. I don't know.
 18 I must have been 15, which is, you know, early
 19 '80s -- no, not -- late '70s.
 20 Q. Now, in the second line of your
 21 complaint, paragraph 16 --
 22 A. Yeah.
 23 Q. -- it says the Rastafarians are a
 24 spiritual society living simply, independently,
 25 and in harmony with nature, apart from the

42

1 Cariou
 2 industrialized world of environmental pollution
 3 and materialism which they reject and refer to
 4 as, quote, Babylon.
 5 A. Mm-hmm.
 6 Q. So it was that society and the
 7 simple sort of independent way in which they
 8 live that you wanted to take images of to
 9 document, if you will?
 10 A. Yeah.
 11 Q. In fact, we find this focus in your
 12 complaint in this allegation that says, you
 13 know, they're living this simple life and then
 14 you look down and it says the next paragraph, or
 15 a couple of lines down, it says the result was
 16 the photographs in Yes Rasta?
 17 A. Mm-hmm.
 18 Q. Approximately 100 strikingly
 19 original black and white photographs, mostly
 20 close-up portraits of stern, mystical-looking
 21 men within a distinctive tropical landscape?
 22 A. Yeah.
 23 Q. And so the results of the
 24 culmination of the photographing of this culture
 25 is what resulted in Yes Rasta?

43

1 Cariou
 2 A. Yeah.
 3 Q. Now, it says in the sentence that I
 4 skipped over, it says that it was only after
 5 living with them for years that Plaintiff was
 6 finally permitted to photograph them?
 7 A. Yeah.
 8 Q. Okay. So you first went to Jamaica
 9 and made your first approach in 1992, so at what
 10 point did you first get the first person to
 11 agree to allow you to photograph them?
 12 A. I went in Jamaica twice without
 13 camera before --
 14 MR. BROOKS: With a what?
 15 A. Without a camera. And that was in
 16 spring '93 that I took my first picture of
 17 Rasta. I was, you know, close enough to some
 18 of them to be able to ask and to start taking
 19 pictures. They felt comfortable about it.
 20 Q. And they gave you permission to do
 21 that?
 22 A. Yes.
 23 MR. BROOKS: Excuse me.
 24 Did you get the word comfortable?
 25 (Discussion off the record.)

44

1 Cariou
 2 BY MS. BART:
 3 Q. When you approached a Rasta for the
 4 purpose of taking their photograph, I assume
 5 you -- do I understand you correctly to be
 6 saying you asked each Rasta or each family that
 7 you photographed for their permission to
 8 photograph them?
 9 A. Well, you better -- no, you start to
 10 know them, live with them -- not necessarily
 11 live with them in the sense of living with them
 12 in their house, but hang out with them for a few
 13 days, few weeks, sometimes months. It depends.
 14 And at some point, yeah, you ask
 15 permission to take their picture.
 16 Q. And when you say live with them, the
 17 ones that are up in the mountains of Jamaica,
 18 would you actually go and camp out in the
 19 mountains --
 20 A. Yeah.
 21 Q. -- or would you stay in a hotel and
 22 go back and forth?
 23 A. No, no. I never stayed in a hotel.
 24 Q. And so you would stay there for a
 25 period of time?



<p style="text-align: center;">45</p> <p>1 Cariou</p> <p>2 A. Yeah.</p> <p>3 Q. Did any of the Rastafarians whose</p> <p>4 images appear in the Yes Rasta images give you</p> <p>5 written permission to take their photograph?</p> <p>6 A. No.</p> <p>7 Q. Now, according to your complaint,</p> <p>8 your photographs, the subjects of your</p> <p>9 photographs, it's portraiture?</p> <p>10 A. Yeah.</p> <p>11 Q. And landscapes?</p> <p>12 A. Yeah.</p> <p>13 Q. And that was part of your effort to</p> <p>14 document what I will call the Rastafarian</p> <p>15 culture?</p> <p>16 A. Yeah. It's also my style of</p> <p>17 photography.</p> <p>18 Q. Why don't you tell us what your</p> <p>19 style of photography is?</p> <p>20 A. What my style of photography is?</p> <p>21 Oh, that's -- I'm into portraiture and masters,</p> <p>22 Paul Strand, August Sander, Edward Curtis, who</p> <p>23 were traveling photographers, and it's sort of a</p> <p>24 static way of taking a picture of when someone</p> <p>25 is looking at you -- the viewer, either the</p>	<p style="text-align: center;">47</p> <p>1 Cariou</p> <p>2 in the community or --</p> <p>3 A. Yeah.</p> <p>4 Q. What did you do?</p> <p>5 A. Well, everything was to be done, you</p> <p>6 know, you need to go get water out of the river,</p> <p>7 you need to go get the coconuts, you need to</p> <p>8 cook, you need to clean, you need to be -- to</p> <p>9 make yourself part of the small group who is</p> <p>10 there and, you know, not just sit and wait until</p> <p>11 they've done. You participate to whatever needs</p> <p>12 to be done.</p> <p>13 Q. So you were just trying to embed</p> <p>14 yourself, if you will, in this society, perhaps</p> <p>15 one or two groups at a time, to really be able</p> <p>16 to capture its essence through photography?</p> <p>17 A. Exactly.</p> <p>18 Q. So when I think of the word work</p> <p>19 with them, I think of maybe doing a job or</p> <p>20 performing a job, but in this particular society</p> <p>21 making sure there's water and food is the job</p> <p>22 itself?</p> <p>23 A. Exactly.</p> <p>24 Q. And that's how you're using the word</p> <p>25 work in this complaint?</p>
<p style="text-align: center;">46</p> <p>1 Cariou</p> <p>2 viewer or anybody understands that the person</p> <p>3 whose portrait, in the portrait, has agreed and</p> <p>4 is aware that someone is taking his photograph.</p> <p>5 That's --</p> <p>6 Q. Because you are trying to stage it</p> <p>7 in a certain way?</p> <p>8 A. I stage it, yeah.</p> <p>9 Q. And you're trying to capture as</p> <p>10 closely as possible the essence of the person</p> <p>11 whose image you're taking?</p> <p>12 A. Yeah, absolutely.</p> <p>13 Q. Did anyone assist you in the taking</p> <p>14 of any of the Yes Rasta images?</p> <p>15 A. No.</p> <p>16 Q. So that was done strictly on your</p> <p>17 own?</p> <p>18 A. Yeah.</p> <p>19 Q. Now, in your complaint it says that</p> <p>20 you -- in the first line --</p> <p>21 MR. BROOKS: Which paragraph?</p> <p>22 MS. BART: 16.</p> <p>23 Q. It says that you not only lived with</p> <p>24 the Rastas but you also worked with them.</p> <p>25 Did you actually perform like work</p>	<p style="text-align: center;">48</p> <p>1 Cariou</p> <p>2 A. Yeah.</p> <p>3 Q. So it wasn't that you went there to</p> <p>4 photograph them and that was your job in regards</p> <p>5 to the Rastafarians, that was what you were</p> <p>6 there to do but it wasn't the work you were</p> <p>7 performing for them?</p> <p>8 A. No, no, no.</p> <p>9 Q. What I'd like to do is take you</p> <p>10 through the images that are in Plaintiff's</p> <p>11 Exhibit 40. So if you could keep the book out,</p> <p>12 you might want to keep the complaint handy, and</p> <p>13 go through Plaintiff's Exhibit 40.</p> <p>14 And if we could, go to the second</p> <p>15 page which is marked C00018.</p> <p>16 A. Yes.</p> <p>17 MR. BROOKS: Excuse me. This is 40.</p> <p>18 A. Oh, yeah, okay.</p> <p>19 Q. That's 41.</p> <p>20 MR. BROOKS: And she's talking about</p> <p>21 this first page, C00018.</p> <p>22 MS. BART: Yes.</p> <p>23 A. Yeah.</p> <p>24 Q. Those are numbers, Mr. Cariou, that</p> <p>25 your counsel placed on this particular document,</p>

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1 Cariou
 2 and it's just to help us with identification.
 3 So when you're talking about a page
 4 we'll try to refer to it and the same thing with
 5 the numbers.
 6 A. Okay.
 7 Q. So let's start with this person
 8 which you put as the first image in your
 9 comparison, and can you tell me when this
 10 photograph was taken?
 11 A. It must have been taken in around
 12 '95.
 13 Q. And how is it that you place this
 14 particular image in 1995?
 15 A. How? Why?
 16 Q. How do you know -- you said it must
 17 have --
 18 A. Because I remember when I was with
 19 that man.
 20 Q. And this would have been about three
 21 years into your sojourn into the Rastafarian
 22 culture?
 23 A. Yeah.
 24 Q. And was this a staged photograph?
 25 A. Yeah, absolutely.

50

1 Cariou
 2 Q. And how long did it take you to
 3 shoot this particular image?
 4 A. I don't know. We tried a few
 5 positions. Maybe an hour.
 6 Q. And is there a reason why you wanted
 7 to photograph this particular man, in other
 8 words, was he just one of the Rastas that was
 9 willing to give you permission, or was there
 10 something specific about this particular man
 11 that you wanted to capture on film?
 12 A. There's something really specific
 13 that I wanted to capture about that man.
 14 Q. And what is that?
 15 A. There's a few things. Like his
 16 strength, for one. His dreads. You know, the
 17 fact that he lives really high up in the
 18 mountains. As you can see, he's wearing boots,
 19 plastic boots, because it's so humid.
 20 And I like that man and, you know,
 21 it's hard to explain why a portraitist wants to
 22 take a picture of someone. I liked him. He
 23 liked me. And I thought -- it's actually one
 24 of my favorite pictures. I think it's also
 25 Mr. Prince's favorite picture too.

51

1 Cariou
 2 Q. When you took this your artistic
 3 purpose was strictly to capture this man in his
 4 environment, is that correct?
 5 A. No, it was to make a beautiful
 6 portrait.
 7 Q. Did you choose the setting for this
 8 or is this around where he lives?
 9 A. No, I choose the setting.
 10 Q. And what was it about the landscape
 11 surrounding this gentleman that caused you to
 12 choose him, choose this particular setting for
 13 this particular image?
 14 A. Because he was -- it fits with him.
 15 It was right in the middle of the jungle.
 16 Q. Now, could you please go to the
 17 image in the book, and if you will look on the
 18 right-hand side you will see numbers with blue
 19 tabs?
 20 A. Yeah.
 21 Q. Those numbers correspond to the
 22 Bates Number that your lawyer has put on this
 23 page.
 24 A. Okay.
 25 Q. So if you will find the actual

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1 Cariou
 2 image --
 3 A. Okay.
 4 Q. Do you find number 18 there?
 5 A. No, but I will soon.
 6 (Witness looks through exhibit.)
 7 A. Yes, I got it.
 8 Q. Okay. In looking at that photograph
 9 or that image, I see that the back, the
 10 landscape behind him is largely blurred --
 11 A. Yeah.
 12 Q. -- in part?
 13 A. Yeah.
 14 Q. Why did you choose to do that?
 15 A. Because it's like that mostly in the
 16 book, and I decided to do that, which is --
 17 there is a thing in photography called depth of
 18 field, which is, you know, you can see more or
 19 less of the background.
 20 And I decided long before I actually
 21 started that book that I wanted to -- I would
 22 like to -- I wanted to use little depth of field
 23 and a certain lens in order to have my pictures
 24 like that.
 25 MR. BROOKS: Excuse me.



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1 Cariou
 2 Did you get lens?
 3 (Record read.)
 4 (Discussion off the record.)
 5 BY MS. BART:
 6 Q. What type of lens did you choose?
 7 A. What type of lens?
 8 Q. You said you had chosen a specific
 9 lens?
 10 A. Yeah, it was a 165-millimeter Pentax
 11 lens on a medium camera, medium-format camera,
 12 sorry.
 13 Q. And is there something special about
 14 the use of a 165-millimeter Pentax lens on a
 15 medium-size camera?
 16 A. Yeah.
 17 Q. And what is that?
 18 In other words, you were obviously
 19 going for a particular type of look?
 20 A. Yeah.
 21 Q. And that's what I'm trying to
 22 understand.
 23 A. Yeah.
 24 Q. So you must have chosen that lens
 25 and that camera for a specific reason?

54

1 Cariou
 2 A. Well, then in order to answer that
 3 properly we would need to go into photography
 4 principles, you know, the size of the lens, the
 5 F-stop. Everything goes with it. The size of
 6 the neg, et cetera, et cetera.
 7 You know, why did I use the 165?
 8 Because I knew I was getting that effect for
 9 that picture.
 10 Q. And that effect is what?
 11 A. That effect is to have the
 12 background to be a bit blurry.
 13 Q. And you could also achieve that by
 14 narrowing the F-stop, correct?
 15 A. You could do that too, yeah. Yeah.
 16 Q. For a narrow depth of field?
 17 A. Yeah.
 18 Q. And so what that does -- and I'm
 19 trying to understand, does that then make
 20 landscape fade into the background and the
 21 subject that you're taking the portrait of
 22 become more prominent?
 23 A. Exactly.
 24 Q. And that was the purpose of doing
 25 that?

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1 Cariou
 2 A. Exactly.
 3 Q. To save time, Mr. Cariou, did you
 4 use that same camera and lens on all of these or
 5 only some of them?
 6 A. No, I used two lenses.
 7 Q. Well, then we'll do it photograph by
 8 photograph.
 9 So I guess then when you blur out
 10 the background I take it then that other than
 11 the fact that this man lives in the tropical
 12 area that he does, in this particular image the
 13 background then for artistic purposes is really
 14 not that important?
 15 MR. BROOKS: Object to the form.
 16 You can answer.
 17 A. No, it's not -- because, as you can
 18 notice, there's lights around. And the way --
 19 the angle you choose and the bush you choose
 20 behind is going to make a huge difference in the
 21 picture.
 22 If it's backlit or it's not
 23 backlit -- you see all the little dots? Those
 24 are important. Those are extremely important
 25 when you take those type of pictures.

56

1 Cariou
 2 Q. Were you using artificial light or
 3 was this done --
 4 A. No, it's natural light.
 5 Q. -- with natural lighting?
 6 A. And of course you have the -- you
 7 choose the period, the time of the day when
 8 you're going to take the picture.
 9 Q. To get that light from the correct
 10 angle?
 11 A. To get what you want, yeah.
 12 Q. How long did it take you to find
 13 this particular setting?
 14 A. You know, it's hard to say because
 15 I was living with that man for a few days, you
 16 know, waiting for the right moment to take a
 17 picture, and I was looking around for days.
 18 Not taking the picture, but like --
 19 Q. I call it scouting.
 20 A. We could call it scouting. I went
 21 scouting for a few days before.
 22 But I was also waiting for him to be
 23 in a mood to have his picture taken.
 24 Q. And that's because the essence of
 25 this picture is really the portrait?



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1 Cariou
 2 A. It's him, yeah. It's him. It's
 3 about — you know, as you can notice it, he's
 4 right in the middle, and you can't be more
 5 simple as far as framing is concerned. It's
 6 about him and his strength.
 7 Q. Now, in paragraph 16 of your
 8 complaint you say that the images were taken in
 9 black and white?
 10 A. Mm-hmm.
 11 Q. Was there a specific kind of film
 12 you were using or did it depend on the time of
 13 day you were shooting?
 14 A. No, I only used one film.
 15 Q. And what was the type of film?
 16 A. It's TRI-X 320.
 17 Q. TRI-X?
 18 A. Yeah.
 19 Q. Could you spell that for us?
 20 A. T-X 320.
 21 Q. But it's T-R-I-X 320?
 22 A. Yeah.
 23 Q. And who makes that?
 24 A. Kodak.
 25 MR. HAYES: Is it T-R-I-X or

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1 Cariou
 2 T-R-I-A-X?
 3 A. You can put T and X and that's good.
 4 Q. And is there a reason that you chose
 5 the TX 320 film --
 6 A. Yeah.
 7 Q. -- for this particular series of
 8 images?
 9 A. Oh, yeah. Because I want -- from
 10 the get-go I wanted to have a really specific
 11 look for the whole book. And it's a film that I
 12 thought would give me this look.
 13 But on top of choosing a film, you
 14 need to know how to expose it and to process it
 15 and then how to print it in order to get what
 16 you want.
 17 Q. And can you explain what the
 18 specific overall look you were going for was?
 19 A. Well, I knew I was going to shoot
 20 black man and black woman, you know, obviously.
 21 And I wanted to -- I wanted the overall book to
 22 be dark, you know, but still to have a lot of
 23 details and grays in the book, and that's what I
 24 did.
 25 Q. Now, you mentioned processing?

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1 Cariou
 2 A. Yes.
 3 Q. And if you could go back to the
 4 image of this particular Rastafarian --
 5 MR. BROOKS: This is on page -- what
 6 you've marked C18?
 7 MS. BART: C18, right.
 8 BY MS. BART:
 9 Q. Did you have it processed in a
 10 particular way?
 11 A. Yeah. We used a specific chemical.
 12 Well, first of all, I had it exposed a
 13 particular way.
 14 Q. And that would be with the F-stop?
 15 A. No, with --
 16 Q. With the chemicals?
 17 A. No, with the -- you know, each film
 18 has a sensitivity, ASA, you know, 400 ASA.
 19 Q. Right.
 20 A. But you don't have to -- you can
 21 over or underexpose it when you shoot. You
 22 know, that's a decision you can take.
 23 And then you process it, but you
 24 have to know what you have done before in order
 25 to process it properly and in order to get what

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1 Cariou
 2 you want.
 3 Q. And when you were out in the field
 4 did you keep a field notebook?
 5 A. No.
 6 Q. You kept no notes, so how would you
 7 know then what you had done in the field in
 8 terms of the ASA so that you could then give the
 9 right instructions?
 10 A. Because I'm a good photographer and
 11 I know what I do.
 12 Q. I see. So did you label the films
 13 so you could keep track?
 14 A. No.
 15 Q. And is that because you were taking
 16 not that many pictures?
 17 A. I wasn't taking that many pictures.
 18 Q. So it was easy for you to keep it in
 19 your mind?
 20 A. Yeah, plus I knew the technique, I
 21 knew what I wanted and, you know, with the light
 22 meter and camera it was easy for me to get what
 23 I wanted.
 24 Q. Now, a few minutes ago when you
 25 first started talking about the processing of



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1 Cariou
 2 the images you used the word we processed.
 3 Who helped you with the processing?
 4 A. My lab. It's called Richard
 5 Foulster, F-O-U-L-S-T-E-R.
 6 Q. And you've referred to his name by
 7 looking in the back of Plaintiff's Exhibit 41,
 8 right, in the acknowledgments?
 9 A. Yeah.
 10 Q. He was one of the people that you
 11 acknowledged?
 12 A. Yes.
 13 Q. Now, did you give Mr. Foulster
 14 specific instructions for how you wanted this
 15 image, for example --
 16 A. Of course.
 17 Q. -- to be exposed and printed?
 18 A. Yes.
 19 Q. And what did you tell Mr. Foulster
 20 you wanted done with the image that appears on
 21 C18?
 22 A. Well, C18 -- you have to take the
 23 whole book as a whole. You know, C18 didn't
 24 come as the first image. You know, we already
 25 had images that we were, you know, happy with

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1 Cariou
 2 the look of it.
 3 And it was -- then it became sort of
 4 a routine of, you know, having -- you know, when
 5 you process a film you get contact sheets. Then
 6 from the contact sheets you go to printing.
 7 And we did -- we print -- we always
 8 print together. You know, I'm here when he's
 9 printing my picture.
 10 Q. In the darkroom?
 11 A. In the darkroom.
 12 Q. And so is it fair to say -- again,
 13 I'm just trying to understand the process -- but
 14 is it fair to say then once you developed the
 15 technique that you wanted to create the certain
 16 dark look with accents, that is how all of the
 17 images that appear in the Yes Rasta book were
 18 developed?
 19 A. Yes.
 20 Q. Okay. So could you just describe
 21 for us what the process was that you finally
 22 settled upon for this particular -- for the
 23 Yes Rasta book?
 24 A. Could you repeat your question,
 25 please?

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1 Cariou
 2 Q. Yes. I'm trying to just understand,
 3 you said there was a trial-and-error period, and
 4 then once you came up with the look that you
 5 liked you then exposed and developed each of the
 6 other images that appear in Yes Rasta in the
 7 same way.
 8 MR. BROOKS: Can I just say
 9 something? I think the exposing -- I
 10 could be wrong -- is done when he's
 11 shooting the picture.
 12 The processing is in the lab, I
 13 think.
 14 MS. BART: He actually used the word
 15 exposure in connection with processing, so
 16 I'm trying to follow his --
 17 A. No, no, no. But if I did, that's my
 18 mistake.
 19 Q. Okay.
 20 A. The exposure is done --
 21 Q. That's how I usually understand it,
 22 is the exposure is through the lens. That is
 23 how I understood it.
 24 But you were using it in the lab
 25 context?

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1 Cariou
 2 A. Yeah, that's my mistake. Sorry.
 3 Q. Okay. So what about the processing,
 4 what was it that you were trying to capture in
 5 the processing?
 6 A. We were trying to get extremely dark
 7 images but still keeping a lot of details.
 8 C18 is not the best example. I can
 9 show you another example, like the black man in
 10 the shade but you can still see every details
 11 that there is to see in this picture.
 12 Q. And may the record reflect that the
 13 witness has showed us the image that appears on
 14 page 13 of Plaintiff's Exhibit 41.
 15 MR. BROOKS: Is that 13?
 16 MS. BART: Down on the bottom.
 17 MR. BROOKS: I'm sorry, I think --
 18 oh, it's 13, okay.
 19 A. As an example.
 20 Q. Yes, I understand.
 21 A. That's what we were trying to get.
 22 And it's not easy to get that, to shoot black
 23 people in the shade, because most of them are
 24 shot in the shade, and still getting details is
 25 something which takes work to do.



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1 Cariou
 2 And we went through the whole
 3 process of trying one way and another way and
 4 another way up until we managed to have it.
 5 Q. And I think you testified earlier
 6 that you began taking images in 1993 that was
 7 your first image?
 8 A. Yes.
 9 Q. And so approximately how long did it
 10 take you to sort of work out this process with
 11 Mr. Foulster?
 12 A. Well, we've been working together
 13 forever. And I just want to show you -- you
 14 know what I mean, that's what we were trying to
 15 get.
 16 (Witness indicating.)
 17 MS. BART: May the record reflect
 18 that the witness has shown me a two-page
 19 image which is marked pages 43 and 44 in
 20 the Yes Rasta book.
 21 A. You know, I was doing -- I was
 22 trying things, not being in Jamaica, you know,
 23 when I was on location sometimes for my
 24 professional work, on the island, I was trying
 25 things, and I couldn't tell you exactly how long

66

1 Cariou
 2 it took us to define the whole process.
 3 Q. A year, a month, approximately?
 4 A. I would say a year.
 5 Q. And this is trial and error over a
 6 period of time?
 7 A. Mm-hmm, yes.
 8 Q. Returning now, if you wouldn't mind,
 9 please, you can either look at it on Plaintiff's
 10 Exhibit 40 or you can look at it in the book,
 11 which is marked -- the image that appears on
 12 C00018, which is this gentleman that we first
 13 started talking about?
 14 A. Yeah, yeah, the first guy.
 15 Q. Does this photograph have, or this
 16 image, does this have a title?
 17 A. No.
 18 Q. Did it ever have a title?
 19 A. No, not yet.
 20 Q. Is there a reason why you didn't
 21 title these works of art or these images?
 22 A. No.
 23 Q. Have you ever sold any individual
 24 prints of this photograph, of this image?
 25 A. Of that image? No.

67

1 Cariou
 2 Q. Other than through the sale of the
 3 Yes Rasta book have you marketed this particular
 4 image, which appears on page --
 5 A. 118.
 6 Q. -- 118 of the book and C18 of
 7 Plaintiff's Exhibit 40, have you marketed it in
 8 any way other than through the book?
 9 A. No.
 10 Q. Have you licensed any rights to any
 11 person other than Powerhouse to use this image?
 12 A. No.
 13 Q. Now, if you would go back to the
 14 complaint, paragraph 16, which you have in front
 15 of you.
 16 A. Yeah.
 17 Q. In that paragraph you make a
 18 collective reference to the images in the
 19 Yes Rasta book, and it starts off with -- we
 20 read it before -- the result was the
 21 photographs?
 22 A. Yeah.
 23 Q. And you say of approximately 100
 24 strikingly-original black and white photographs,
 25 can you tell me in your own words why you

68

1 Cariou
 2 believe this is strikingly original, this image
 3 that appears on C18 and page 118 of Plaintiff's
 4 Exhibit 41?
 5 A. You know, I've been trying for 25
 6 years to take good pictures, and I think that's
 7 pretty good. I think it's -- I would even say
 8 it's a great photograph.
 9 You know, some people consider this
 10 book the ultimate book ever done on Rasta.
 11 Q. But there are others --
 12 A. No.
 13 Q. -- in the marketplace?
 14 A. No.
 15 Q. Now, in your complaint in paragraph
 16 16 you then say these portraits were taken
 17 within a distinctive tropical landscape?
 18 A. Mm-hmm.
 19 Q. And I would like to understand why
 20 you think the landscape that appears in this
 21 particular image is distinctive, in your view?
 22 A. It's a group. It's a book. You
 23 know, next to it you have a tropical landscape.
 24 You obviously associate both. And the next page
 25 is the same thing.



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81

1 Cariou

2 A. The composition, the way he looks at

3 us, you know, the way his body looks, you know,

4 the nature he's in, the light, being slightly

5 backlit, and the quality of the black and white.

6 Q. And in terms of the landscaping, a

7 portion of which is blurred out, what do you

8 feel is distinctive about this, or is this just

9 another example of you have to look at the whole

10 book to get what's distinctive about the

11 landscape?

12 A. Yeah, you have to look at the whole

13 book in order to get a better feel of the place

14 than looking at one picture, definitely.

15 MS. BART: Off the record.

16 (Discussion off the record.)

17 (Recess taken: 11:38 a.m.)

18 (Proceedings resumed: 11:51 a.m.)

19 BY MS. BART:

20 Q. Mr. Cariou, will you please turn on

21 Plaintiff's Exhibit 40 to the page that's marked

22 C00024?

23 A. Yes.

24 Q. Do you have that in front of you?

25 A. Yeah, I do.

82

1 Cariou

2 Q. Now, this page contains multiple

3 images from the Yes Rasta book. The first one

4 which appears on the bottom left-hand corner,

5 there's three in a row, the first one in the

6 bottom left-hand corner we've already talked

7 about.

8 I'd like to turn next to the one

9 that's in the middle at the bottom.

10 A. Mm-hmm.

11 Q. Do you see that one there?

12 A. Yeah.

13 Q. It's in essence a person's head and

14 it looks like it's in the middle of vegetation?

15 A. Yeah.

16 Q. Is that him?

17 A. Yeah.

18 Q. Can you please turn to the first

19 blue tab on Plaintiff's Exhibit 41 that is

20 marked C24, that should be the same image, and

21 we can get a page number.

22 And what page is that, 33?

23 A. 33, yeah.

24 Q. Thank you.

25 So that is the image that we're

83

1 Cariou

2 talking about, which is in the middle of C00024,

3 correct?

4 A. Yeah.

5 Q. Can you tell me approximately when

6 this photograph was taken?

7 A. Once again, you know, it's hard for

8 me to have a recollection of every picture in my

9 book and when they were taken.

10 Q. Where would you place it in the

11 six-year span that you were --

12 A. I would put it towards the end.

13 Q. Just again, Mr. Cariou, kindly let

14 me just get my question all the way out before

15 you answer.

16 A. Sorry.

17 Q. I know in a conversation that's

18 acceptable, but in this forum it's a little

19 artificial.

20 I take it this is another photograph

21 that you staged and this is a venue that you

22 chose for this particular shot, is that correct?

23 A. Absolutely.

24 Q. And is there a reason why you wanted

25 to focus this particular -- sorry, photograph

84

1 Cariou

2 this particular man, or is he just another one

3 of the strong Rastafarian men that you refer to

4 in your complaint?

5 A. He is in the middle of his

6 plantation.

7 MR. BROOKS: Objection. I don't

8 think the complaint says strong.

9 MS. BART: I certainly don't want to

10 mischaracterize the complaint, but hold on

11 a second, let me get to paragraph 16.

12 And he's referred to strong men as

13 well --

14 MR. BROOKS: He has, yes. The

15 complaint doesn't.

16 MS. BART: Mostly close-up portraits

17 of stern, mystical-looking men within a

18 distinctive landscape, tropical landscape.

19 BY MS. BART:

20 Q. Is there a reason why you wanted to

21 photograph this particular Rastafarian?

22 A. Yeah, he's someone that I really

23 wanted to photograph. I liked his eyes and his

24 look. And I liked the location, made it

25 visually compelling, and that's about it.



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93

1 Cariou
 2 Q. And are they signed on the front or
 3 on the back?
 4 A. On the back.
 5 Q. And do you have any notation to
 6 Mr. Girard on any of the backs or just your
 7 name?
 8 A. No, it's my name and edition, artist
 9 edition of three.
 10 Q. And what do you mean by artist
 11 edition of three?
 12 A. It means that -- it means that three
 13 prints were mine out of an edition of eight,
 14 because I'd always been planning of selling
 15 prints at some point.
 16 And it would be under the edition of
 17 eight. But out of those eight three are called
 18 artist edition. And that's usual in the
 19 photographic world.
 20 Q. And did you select the three for the
 21 artist edition because they were the three
 22 chosen by Mr. Girard, or did he -- let me
 23 finish -- or did he want to purchase those that
 24 would be designated the artist edition?
 25 A. No, no, it just -- it happened to be

94

1 Cariou
 2 that way. There wasn't really thinking, you
 3 know, much thinking about it.
 4 Q. Now, you mentioned in your last
 5 answer I believe that you're planning to do an
 6 edition of eight, that this is something that
 7 you've been planning to do?
 8 A. Yeah.
 9 Q. When did you first develop the plan
 10 to produce an edition of eight of the images
 11 that appears in the Yes Rasta book?
 12 A. Well, I always waited for the right
 13 opportunity, and I just finished my fourth book
 14 of portraits. And so I've been developing this
 15 plan for quite a while now.
 16 But I wasn't feeling ready to put --
 17 to make those prints available up until
 18 recently.
 19 Q. And why is that?
 20 A. Because I felt that I needed to
 21 complete my fourth book of portraits.
 22 Q. And you felt that it might enhance
 23 the value or the price that you could command
 24 for a print of your images?
 25 A. Yeah.

95

1 Cariou
 2 Q. And when you say you always wanted
 3 it, did you have that plan at the time that you
 4 first began working on the Yes Rasta -- I'll
 5 call it a collection, if that's all right with
 6 you?
 7 A. Yes.
 8 Q. And you said you always wanted to
 9 do this but you were waiting for the right
 10 opportunity. When you say right opportunity
 11 were you looking for the right person to
 12 distribute or sell those or was it just the
 13 right opportunity in terms of your career?
 14 A. The right opportunity -- the right
 15 person to take care of it, yeah.
 16 Q. And would that be like an agent?
 17 A. More like a gallery.
 18 Q. And have you found such an
 19 opportunity?
 20 A. Yeah.
 21 Q. And which gallery is that?
 22 A. It's called Clic Gallery.
 23 Q. C-L-I-C, correct?
 24 A. C-L-I-C, yeah.
 25 Q. And where is that located?

96

1 Cariou
 2 Is that here in New York?
 3 A. Yeah, it's in New York.
 4 Q. How did you first learn about Clic
 5 Gallery?
 6 A. She contacted -- it's owned by a
 7 lady called Christiane Celle, and she contacted
 8 me on summer 2008 asking me to represent me and
 9 to -- she wanted to do my shows.
 10 Q. And, in fact, you and Ms. Celle
 11 communicated by e-mail --
 12 A. Yeah.
 13 Q. -- in French on that subject,
 14 correct?
 15 A. Correct.
 16 Q. And after the two of you
 17 communicated by e-mail you then retained her
 18 services -- you then said I want you to be my
 19 agent?
 20 A. Yeah.
 21 Q. Or my gallery to represent me?
 22 A. Exactly.
 23 Q. Is that on an exclusive basis,
 24 Mr. Cariou?
 25 A. Yeah.



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97

1 Cariou
 2 Q. And is there a writing that
 3 memorializes your relationship?
 4 A. No.
 5 Q. And what percentage of every, I'll
 6 call them prints, that is sold by the gallery,
 7 what percentage does the gallery keep?
 8 A. 50 percent.
 9 Q. And you mentioned that the three
 10 images that Mr. Girard picked out, one is found
 11 in the middle of 22, I believe it was on page
 12 33, the three images?
 13 A. What are we talking? Sorry.
 14 Q. In the book you pointed to I believe
 15 it was page 11 of the book -- I'm just trying to
 16 come back to the record here.
 17 At page 11 was one of them?
 18 MR. BROOKS: These are the three
 19 prints that he sold to Mr. Girard?
 20 MS. BART: These are what he's
 21 called the artist edition.
 22 A. Yeah, yeah.
 23 Q. And the other one was on page 33?
 24 A. Yeah.
 25 Q. And then, I'm sorry, I just don't

98

1 Cariou
 2 remember the third one.
 3 A. I'll find it. It's 30.
 4 Q. 30, right.
 5 MR. BROOKS: And what's the other
 6 one? 11?
 7 A. 11, yeah, 33 and 30.
 8 Q. Now, you mentioned that there would
 9 be an edition of eight. Can you tell me by
 10 reference to the page numbers in Plaintiff's
 11 Exhibit 41 what the other eight would be that
 12 would be included in your edition of eight?
 13 A. The edition of eight is an edition
 14 of eight of one photograph.
 15 Q. I see. I see.
 16 A. Eight prints of the same photograph.
 17 Q. I see. So there's no other special
 18 compilation?
 19 A. No, no.
 20 Q. Are prints of the images that appear
 21 in the Yes Rasta book available currently for
 22 sale at Clic Gallery?
 23 A. No.
 24 Q. Why is that?
 25 A. Because Christiane Celle found out

99

1 Cariou
 2 about the Canal Zone exhibition and happened to
 3 learn that Mr. Prince has used some of my Rastas
 4 picture in his work and canceled my show.
 5 Q. And when did she do this?
 6 A. She did it in I think it's December.
 7 Q. Of 2009?
 8 A. Of 2009.
 9 Q. And when --
 10 MR. BROOKS: Wait a second, I'm
 11 sorry. Nine or eight?
 12 Q. This year or last year?
 13 A. Last year, 2008. Sorry about that.
 14 MR. BROOKS: That's okay.
 15 Q. And she first approached you I
 16 believe in June of 2008?
 17 MR. BROOKS: Objection. It's August
 18 if you look at the documents.
 19 A. Yeah, I think it's August, yeah.
 20 Q. And do you know what prompted
 21 Ms. Celle to first contact you in August of
 22 2008?
 23 A. Because she knew about my work.
 24 Q. And so she just approached you for
 25 the possibility?

100

1 Cariou
 2 A. Yes.
 3 Q. What specifically did Ms. Celle say
 4 to you when she told you that she was going to
 5 cancel your show?
 6 A. Well, she told me that she didn't
 7 want to look opportunistic and ride on
 8 Mr. Prince's fame and hype and that it wasn't
 9 a good idea to show the Rasta picture while they
 10 were in another gallery.
 11 Q. Did she tell you that once the
 12 lawsuit is resolved she would be willing to
 13 resume the representation or to represent you?
 14 A. I don't know.
 15 Q. She didn't say it?
 16 A. No.
 17 Q. Did you discuss it with her?
 18 A. She didn't say anything about it.
 19 We didn't discuss about it.
 20 Q. Did you make any efforts to persuade
 21 Ms. Celle to continue on with the relationship?
 22 A. Yeah.
 23 Q. And what did you say?
 24 A. Well, that, you know, I have other
 25 body of work and eventually maybe, you know,



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101

1 Cariou
 2 when the time is good we could eventually do
 3 something.
 4 Q. And what did she say?
 5 A. She said maybe.
 6 Q. The other body of work that you have
 7 done, one is called Surfer I believe?
 8 A. Mm-hmm.
 9 Q. And there's the -- what are the
 10 other two?
 11 A. The other book is called Trench Town
 12 Love.
 13 Q. And are there any other --
 14 A. Well, there is one book which is
 15 completed but with nothing pressed yet. It's
 16 called Gypsies. It's about gypsies.
 17 Q. And that's the one that appears on
 18 your website?
 19 A. Yeah, I have a few pictures of that
 20 on my website.
 21 Q. And there are no images that appear
 22 from the Surfer, Trench Town Love, or the Gypsy
 23 collections that appear in any of Mr. Prince's
 24 Canal Zone paintings, correct?
 25 MR. BROOKS: I just want to hear

102

1 Cariou
 2 that question again.
 3 (Record read.)
 4 A. Correct.
 5 Q. Have you had any subsequent
 6 conversations with Ms. Celle about the
 7 possibility of her representing you or being
 8 your exclusive gallery?
 9 A. Yeah.
 10 Q. And what have been those
 11 conversations?
 12 A. You know, about finding -- our plan
 13 was to show the Rasta. And because she said it
 14 would fit in very well with the gallery and now,
 15 you know, we're in the midst of seeing what's
 16 going on and what I'm going to produce next and
 17 if it's going to fit with the gallery or not.
 18 Q. And why did she think that the
 19 Yes Rasta collection fit with her gallery?
 20 MR. BROOKS: Object to the form.
 21 MS. BART: What's the basis?
 22 MR. BROOKS: You asked him why did
 23 she think.
 24 BY MS. BART:
 25 Q. Did she tell you why she thought

103

1 Cariou
 2 this fit with the gallery, did she give you an
 3 explanation for that?
 4 A. Well, she does a lot of ethnic
 5 photography show.
 6 Q. And she considered the -- did she
 7 tell you if she considered the Canal Zone show
 8 to be an ethnic collection?
 9 MR. BROOKS: Hold on.
 10 Canal Zone or Yes Rasta?
 11 Q. I'm sorry, Yes Rasta to be an ethnic
 12 collection?
 13 A. Yeah.
 14 Q. How recently have you spoken with
 15 Ms. Celle?
 16 A. Last week.
 17 Q. And was that about the lawsuit?
 18 A. No.
 19 Q. You spoke about works that you're
 20 working on?
 21 A. Yeah.
 22 Q. And she's still considering taking
 23 you on as an artist?
 24 A. Eventually. We'll see if it happens
 25 or not. I don't know.

104

1 Cariou
 2 Q. But you've not approached anyone
 3 else about the possibility of helping you
 4 implement your plan to sell prints of your
 5 various bodies of work?
 6 A. No.
 7 Q. Okay. If we could return to the
 8 image that we were discussing, which is the
 9 gentleman in the --
 10 A. In the field?
 11 Q. -- in the field.
 12 MR. BROOKS: I'm sorry, I'm just
 13 lost, but it's probably my fault.
 14 Which one are we discussing?
 15 MS. BART: 24. It's on C00024 and
 16 it was on page 33 of the book.
 17 MR. BROOKS: Okay.
 18 A. It's on page what, please?
 19 Q. 33 of the book.
 20 A. Thank you.
 21 Q. Actually, you know, I think we had
 22 gotten through most of the questions that I had
 23 on this, so my apologies.
 24 Why don't we turn to the next image
 25 that appears to the right of the man -- I'll



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109

1 Cariou
 2 saying?
 3 A. Yeah.
 4 Q. And that's the portion of that
 5 particular work that appears, correct?
 6 A. Yeah.
 7 Q. Can you tell me what you think is
 8 distinctive about that particular landscape,
 9 portion of the landscape, because I take it the
 10 man is not in the image?
 11 A. Mm-hmm, mm-hmm.
 12 Q. So it's just focusing on that tree.
 13 Can you tell me what you think is
 14 distinctive about that particular --
 15 A. What's distinctive about it is that
 16 it is mine.
 17 Q. Now, have you sold any portion of
 18 the image that appears either -- well, I would
 19 say 87 and 88, have you sold --
 20 A. No, I haven't sold.
 21 Q. And have you marketed, other than
 22 through the Yes Rasta book?
 23 A. No.
 24 Q. And I notice that the Rasta in this
 25 particular image, the part that appears on page

110

1 Cariou
 2 88, is walking away from you. Is this just
 3 something you snapped while you were there?
 4 A. Yeah.
 5 Q. Let's go back now to the image that
 6 appears on page 80 of Plaintiff's Exhibit 40 in
 7 the book.
 8 A. 80?
 9 Q. Yes, please.
 10 And that is the gentleman that
 11 appears in the bottom right of the page that's
 12 been marked C00024 of Plaintiff's Exhibit 40,
 13 correct?
 14 A. Mm-hmm, yes.
 15 Q. When did you take this particular
 16 photograph?
 17 A. Towards the end of my project.
 18 Q. And was this a staged portraiture?
 19 A. Yeah.
 20 Q. And was this just another example of
 21 the Rastafarian men you were attempting to sort
 22 of document in this collection?
 23 A. Yes.
 24 Q. Now, would you mind, Mr. Cariou,
 25 just holding up the book so I can see it,

111

1 Cariou
 2 because it's easier for me to see?
 3 A. Sure.
 4 Q. Thank you kindly.
 5 I notice that a significant portion
 6 of the vegetation that he's seen standing in has
 7 been blurred out, and is that again to draw
 8 emphasis on the person whose image you're trying
 9 to photograph?
 10 A. I would not agree on that one. It's
 11 like there is much more depth of field than the
 12 other picture we talked about. This is all, you
 13 know, in focus.
 14 Q. Yes, but --
 15 MR. BROOKS: Just let him finish
 16 what he was saying.
 17 MS. BART: Right. He was.
 18 MR. BROOKS: I'm not sure he's
 19 finished.
 20 BY MS. BART:
 21 Q. Look at page 79, the leaves that are
 22 on page 79, to my eye that looks more blurred,
 23 but if you say no?
 24 See, it starts to become blurred all
 25 up through here?

112

1 Cariou
 2 A. Yeah, because it goes further.
 3 Q. It goes further, but then the back
 4 portion of it is blurred out, is that correct?
 5 A. It's correct.
 6 Q. But again, it was just a place to
 7 put this man that sort of draws upon the
 8 tropical theme, correct?
 9 A. Yeah. And it was visually
 10 appealing.
 11 Q. The individual himself?
 12 A. The setting, the shape of the
 13 leaves, the backlit, the composition of the
 14 picture.
 15 Q. But again, the focus was to use
 16 that backdrop to really focus or highlight the
 17 individual?
 18 A. Yeah.
 19 Q. Have you sold any prints of the
 20 image that appears on pages 79 and 80?
 21 A. No.
 22 Q. And other than in the Yes Rasta book
 23 have you attempted to market this image in any
 24 way?
 25 A. No.



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113

1 Cariou
 2 Q. I believe I forgot to ask you on
 3 the image that appears on page 88 of the book,
 4 because we got a little phumpered around,
 5 that's the two-page image 87 and 88, I believe I
 6 forgot to ask you when you took that image?
 7 A. When I took that image?
 8 Q. Yes, sir.
 9 A. That was in -- right -- it must have
 10 been in '95.
 11 Q. And why is it that you're able to
 12 place that particular --
 13 A. Because I know exactly -- this type
 14 of moment, that I remember very well and I
 15 remember which trip it was.
 16 Q. And that image that's on 87 and 88,
 17 that's up on the mountain?
 18 A. Oh, yeah.
 19 Q. Right towards the top?
 20 A. High up.
 21 Q. High up, okay.
 22 If you'll now look at the
 23 comparison, Plaintiff's Exhibit 40, and in the
 24 upper right-hand corner you'll see another
 25 hemp -- I'll call it a hemp grove I believe?

114

1 Cariou
 2 A. Yeah.
 3 Q. And you can find it on pages 159 and
 4 160 of the book.
 5 MR. BROOKS: This is the top right?
 6 A. Yeah.
 7 MS. BART: Yes. Because the top
 8 left is Mr. Prince's painting.
 9 BY MS. BART:
 10 Q. Mr. Cariou, would you kindly just
 11 let me see the actual photograph of that?
 12 Okay, thank you.
 13 Can you tell me what's depicted in
 14 this photograph?
 15 A. It's a plantation of marijuana.
 16 Q. And so the vegetation that is
 17 towards the back of the background of this
 18 photo, to me, from the picture I have in front
 19 of me, they look like Christmas trees, but
 20 indeed they're not. Those are also just hemp?
 21 A. For a happy Christmas.
 22 Q. So when did you take this particular
 23 image?
 24 A. I don't remember. I don't know.
 25 I really don't know.

115

1 Cariou
 2 Q. Is this something that you snapped
 3 along your way while you were trying to find a
 4 setting, it just looked of interest to you?
 5 A. It was probably traveling on foot
 6 from one location to another --
 7 Q. To do a portraiture?
 8 A. Yeah -- and shooting some landscape.
 9 Q. Was this a staged shot for you or
 10 just while --
 11 A. No, I wouldn't consider that as a
 12 staged shot.
 13 Q. And what was your purpose for
 14 including this particular image in the Yes Rasta
 15 book?
 16 A. Well, because -- simply because, you
 17 know, Rasta and even Jamaican and marijuana goes
 18 together. I needed to have some shots of
 19 plantations.
 20 Q. And vegetation?
 21 A. And vegetation.
 22 Q. Again, to kind of sort of bolster
 23 this whole idea of the culture as a whole?
 24 A. Exactly.
 25 Q. Have you sold any prints of the

116

1 Cariou
 2 image that --
 3 A. No.
 4 Q. -- appears on 159 and 160?
 5 A. No.
 6 Q. And have you made any attempts to
 7 market that image other than through the
 8 Yes Rasta book?
 9 A. No.
 10 Q. Let's now turn to the image that
 11 appears just below the one that we were --
 12 A. Yeah.
 13 Q. The hemp grove. So this one I would
 14 call it a banana tree in the middle. So it's on
 15 the right in the middle of C00024, and you can
 16 find it on page 79 and 80 of the book.
 17 A. Not 79 and 80, it's --
 18 MR. BROOKS: No, that's a different
 19 one. It's similar, but it's different.
 20 MS. BART: No, he's on 77 and 78.
 21 A. Which page you want me to be on?
 22 MS. BART: Will you see if you can
 23 find -- I apologize --
 24 MR. BROOKS: The middle one?
 25 MS. BART: Yes, please. The one

<p style="text-align: center;">117</p> <p>1 Cariou 2 that is between the hemp grove and the man 3 in the lower right-hand corner of C24. 4 A. I got it. 5 Q. You have it? 6 A. It's 95 and 96. 7 Q. Mr. Cariou, do you recall when this 8 particular image, two-page image was shot? 9 A. I think it was early into -- it must 10 have been in '94. 11 Q. And this is not on the mountainside, 12 this would be down in the more tropical regions 13 of Jamaica, yes? 14 A. A little bit, yeah. 15 Q. And this is just another photograph 16 of a landscape that you shot, again, to create 17 this whole feeling of the whole book? 18 A. Yeah. 19 Q. It was not a staged shot, it was 20 just something you were shooting? 21 A. Well, what do you mean by staged 22 shot? This one I took -- it took me a long -- 23 not a long time, but it took me time to frame it 24 properly, to find the proper light to do it and 25 to, you know, to make it the way it is.</p>	<p style="text-align: center;">119</p> <p>1 Cariou 2 Exhibit 40, the page that's marked C00026. 3 Do you have that in front of you, 4 sir -- and you can find that I believe hopefully 5 on page 128 of the Yes Rasta book. 6 A. Yeah. 7 Q. You have that in front of you? 8 A. Yeah. 9 Q. When was this particular shot taken? 10 A. I don't remember. I know this guy 11 very well, and we hang out a lot together. And 12 I don't remember when I took that picture. 13 It was one of the first guys that I 14 got to know when I was in Jamaica. So through 15 the end. So I don't know -- we spent a lot of 16 time together, so I couldn't tell you when we 17 took this picture. 18 Q. So this was towards the end of the 19 series or -- 20 A. Middle to the end. 21 Q. And it looks to me like he's in a 22 more -- I don't want to use the word urban, but 23 it looks to me like there's a house or something 24 behind him, but it's hard to tell? 25 A. Yeah. It's in Negril.</p>
<p style="text-align: center;">118</p> <p>1 Cariou 2 Q. And you were on your way to another 3 shot? 4 A. No, I was probably waiting for 5 someone or doing scouting like you say all the 6 time, you just like -- and that's what I did. 7 Also, what was interesting to me in 8 that picture is, as you noticed, you have banana 9 trees. 10 Q. Yes, I see. I can see them. 11 A. And plus different food plant, but 12 you also have ganja that no one noticed in the 13 picture. So it was for me a way to show how 14 intertwined ganja is with Jamaica. It's 15 everywhere. 16 Q. And ganja is another word for hemp 17 or marijuana, correct? 18 A. Yeah, yeah. 19 Q. Have you ever sold any prints of 20 this particular image? 21 A. No. 22 Q. And have you marketed this image in 23 any way other than through the Yes Rasta book? 24 A. No. 25 Q. Let's now turn to Plaintiff's</p>	<p style="text-align: center;">120</p> <p>1 Cariou 2 Q. In Negril? 3 A. Yeah. 4 Q. So this is more in town as opposed 5 to the mountains? 6 A. Yeah. 7 Q. And this is another portraiture, 8 another example of a Rastafarian that you wanted 9 to photograph? 10 A. Yes, absolutely. 11 Q. For part of this documentary, is 12 that correct? 13 A. Yeah. 14 MR. BROOKS: Objection to the form 15 documentary, the word documentary. I 16 don't know what that means. 17 MS. BART: Well, he's previously 18 testified that this is a documentary of 19 the lives of people, the Rastafarians and 20 their culture. 21 MR. BROOKS: That's why I'm 22 objecting, I don't think he ever used the 23 word documentary. 24 MS. BART: Let's just stand on the 25 transcript. But let's move on.</p>

<p style="text-align: center;">121</p> <p>1 Cariou</p> <p>2 BY MS. BART:</p> <p>3 Q. By the way, on the previous image</p> <p>4 which was on pages 95 and 96, you said it was</p> <p>5 something that you probably did while you were</p> <p>6 waiting for someone but you took some time to</p> <p>7 set up, it took you about a half hour or so to</p> <p>8 set up for the shot?</p> <p>9 A. Yeah.</p> <p>10 Q. The image that appears on page</p> <p>11 C00026, have you ever sold a print of this</p> <p>12 image?</p> <p>13 A. No.</p> <p>14 Q. Have you ever marketed other than in</p> <p>15 this book?</p> <p>16 A. No.</p> <p>17 Q. And have you licensed any rights in</p> <p>18 this image --</p> <p>19 A. No.</p> <p>20 Q. -- other than to Powerhouse?</p> <p>21 A. No.</p> <p>22 Q. Would you please turn to C27, same</p> <p>23 thing, and you can find this image on page 48 of</p> <p>24 the book, or you can also look for the tab</p> <p>25 number 47, either way.</p>	<p style="text-align: center;">123</p> <p>1 Cariou</p> <p>2 Q. And the focus here, we can see from</p> <p>3 the blurred background, is really on the man, so</p> <p>4 this is another portrait?</p> <p>5 A. Yes.</p> <p>6 Q. Have you sold any copies of prints</p> <p>7 of this particular image?</p> <p>8 A. Yes, I have.</p> <p>9 Q. And to whom did you sell -- if you</p> <p>10 would refer back to I believe Defendant's</p> <p>11 Exhibit 4?</p> <p>12 A. To Caroline De Maigret.</p> <p>13 Q. When did you sell the painting to</p> <p>14 Ms. De Maigret?</p> <p>15 A. When?</p> <p>16 Q. Yes.</p> <p>17 A. That must have been in 2002.</p> <p>18 Q. And how is it that she came to</p> <p>19 purchase --</p> <p>20 A. She's a friend of mine.</p> <p>21 Q. Again, if I could just finish the</p> <p>22 question.</p> <p>23 A. Sorry. Sorry.</p> <p>24 Q. So she's a friend of yours, and so</p> <p>25 this is -- and did she approach you to purchase</p>
<p style="text-align: center;">122</p> <p>1 Cariou</p> <p>2 A. C --</p> <p>3 MR. BROOKS: 48.</p> <p>4 A. Okay.</p> <p>5 Q. Do you have the image in front of</p> <p>6 you?</p> <p>7 A. Yes.</p> <p>8 Q. When was this photograph taken?</p> <p>9 A. Once again, middle of the trip. In</p> <p>10 '96 probably.</p> <p>11 Q. And where approximately was this</p> <p>12 photograph taken?</p> <p>13 A. Excuse me?</p> <p>14 Q. Where? Was it up in the mountains?</p> <p>15 A. Yeah, that was really high up in the</p> <p>16 mountains.</p> <p>17 Q. And this is another example of the</p> <p>18 Rastafarian men that you were attempting to --</p> <p>19 A. Absolutely.</p> <p>20 Q. -- photograph and document?</p> <p>21 In other words, you were looking to</p> <p>22 take this man's photo as another example of</p> <p>23 these stern-looking men that you've alleged in</p> <p>24 your complaint, correct?</p> <p>25 A. Yes, correct.</p>	<p style="text-align: center;">124</p> <p>1 Cariou</p> <p>2 one of your prints?</p> <p>3 A. Yes.</p> <p>4 MR. BROOKS: Let her finish.</p> <p>5 A. Sorry.</p> <p>6 MR. BROOKS: It's not going to make</p> <p>7 it go faster.</p> <p>8 A. Sorry guys.</p> <p>9 Q. It's all right. You're doing fine,</p> <p>10 Mr. Cariou. I know it's an artificial</p> <p>11 circumstance, so.</p> <p>12 And I believe I just asked you --</p> <p>13 MS. BART: I asked him if she</p> <p>14 approached him, correct, and he answered</p> <p>15 that one?</p> <p>16 (Record read.)</p> <p>17 BY MS. BART:</p> <p>18 Q. Ms. De Maigret, did she select this</p> <p>19 particular image or this particular print or was</p> <p>20 this something that you selected for her?</p> <p>21 A. No, she selected.</p> <p>22 Q. And did you give her an opportunity</p> <p>23 to look at all of the images in the Yes Rasta</p> <p>24 book?</p> <p>25 A. Yeah, she had the book first of all.</p>



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<p style="text-align: center;">129</p> <p>1 Cariou</p> <p>2 appears on C28 of Plaintiff's 40.</p> <p>3 Can you tell me when this photograph</p> <p>4 was taken?</p> <p>5 A. I would say '96.</p> <p>6 Q. And this is something that you</p> <p>7 staged or is this something that you snapped</p> <p>8 while you were –</p> <p>9 A. No, I staged it.</p> <p>10 Q. You staged it?</p> <p>11 And where is this Rastafarian, where</p> <p>12 is this man located generally?</p> <p>13 A. He's in the Blue Mountains.</p> <p>14 Q. So he's up high?</p> <p>15 A. Yeah.</p> <p>16 Q. And that is another example of the</p> <p>17 stern-looking Rastafarian men whose images you</p> <p>18 wanted to capture for this book, correct?</p> <p>19 A. Exactly.</p> <p>20 Q. Have you sold any copies of the</p> <p>21 image that appears on C28 or you can also see it</p> <p>22 on page 59?</p> <p>23 A. No.</p> <p>24 Q. And I notice in my copy, perhaps you</p> <p>25 could turn to page C59, that the images or the</p>	<p style="text-align: center;">131</p> <p>1 Cariou</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So now page 6, which is the</p> <p>4 gentleman whose image appears at the bottom of</p> <p>5 C29, correct?</p> <p>6 A. Yeah.</p> <p>7 Q. Can you tell me when this photograph</p> <p>8 was taken?</p> <p>9 A. Towards the end. It must have been</p> <p>10 like 1997 or '98.</p> <p>11 Q. And was this one staged?</p> <p>12 A. Yeah.</p> <p>13 Q. And this is another example of the</p> <p>14 stern-looking Rastafarian men whose images you</p> <p>15 were wanting to –</p> <p>16 A. To produce.</p> <p>17 Q. -- to photograph?</p> <p>18 A. Yeah. Otherwise none of them would</p> <p>19 be in the book.</p> <p>20 Q. Well, I'm sorry, I'm just doing my</p> <p>21 job here.</p> <p>22 A. Yeah.</p> <p>23 Q. I do notice that the background is</p> <p>24 blurred out. So again, the focus here is to</p> <p>25 really try to hone in on a closeup of this man's</p>
<p style="text-align: center;">130</p> <p>1 Cariou</p> <p>2 background is completely blurred?</p> <p>3 A. Yes. It's mainly because it's</p> <p>4 backlit.</p> <p>5 Q. Right. And you're wanting to really</p> <p>6 focus on your subject?</p> <p>7 A. Yeah, and it's a close-up portrait</p> <p>8 so I could focus on his dreads and on his face,</p> <p>9 you know. So by using – the closer you go the</p> <p>10 less depth of field you get.</p> <p>11 Q. The less depth of field?</p> <p>12 A. Yeah.</p> <p>13 Q. Turning now to C29 of Plaintiff's</p> <p>14 Exhibit 40 there's an image that appears on the</p> <p>15 bottom. You can also find this image I believe</p> <p>16 on page 6 of your book.</p> <p>17 Mr. Cariou, I'm terribly sorry,</p> <p>18 before we move on, would you look at the</p> <p>19 image – hold your finger on that page because</p> <p>20 we will go back to it – but also turn to page</p> <p>21 62 of the book.</p> <p>22 A. Yeah.</p> <p>23 Q. Can you tell me if that is a side</p> <p>24 image of the same gentleman who appeared on page</p> <p>25 59 that you just talked to me about?</p>	<p style="text-align: center;">132</p> <p>1 Cariou</p> <p>2 portrait, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Where was this particular image</p> <p>5 taken, do you know?</p> <p>6 A. I think it was in a little town</p> <p>7 called Lucille.</p> <p>8 Q. In Jamaica?</p> <p>9 A. In Jamaica, yeah.</p> <p>10 Q. So he's not one of the Rastafarians</p> <p>11 you lived with up in the mountains?</p> <p>12 A. No. I mean all -- I don't know</p> <p>13 all -- because I didn't spend much time with</p> <p>14 that man, or it was just passing through also.</p> <p>15 I was with a few Rasta friends, they</p> <p>16 knew each other, I thought this guy looked</p> <p>17 amazing and I want to take a picture, and they</p> <p>18 ask for me and –</p> <p>19 Q. And you snapped it?</p> <p>20 A. Well, snapped is -- I took my time</p> <p>21 to make a beautiful picture.</p> <p>22 Q. And about how long did it take you</p> <p>23 to make this image?</p> <p>24 A. I don't know. Fifteen minutes.</p> <p>25 MS. BART: This is probably as good</p>



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<p style="text-align: center;">133</p> <p>1 Cariou 2 a stopping point as any, so why don't we 3 break now for lunch. 4 (Recess taken: 12:51 p.m.) 5 (Proceedings resumed: 1:39 p.m.) 6 BY MS. BART: 7 Q. Let's turn now to page C30 of 8 Plaintiff's Exhibit 40. And I believe this 9 image also appears on pages 133 to 134 of the 10 book. 11 A. 133 and -- got it. 12 Q. When was this photograph taken? 13 A. In 1997 I think. 14 Q. So it was one of the later shots? 15 A. Yeah. 16 Q. And was this something that you 17 took for sort of additional vegetative matter, 18 landscape matter to create the tropical feeling 19 in the book? 20 A. Yes. 21 Q. And did you stage this image or was 22 this something that you took on your way to 23 somewhere else? 24 A. No, I staged that. I thought that 25 landscape was beautiful, I mean the countryside</p>	<p style="text-align: center;">135</p> <p>1 Cariou 2 Q. And I will call him an older 3 Rastafarian. When was this photograph taken? 4 A. I would say at the early stage, 5 probably '94. 6 Q. And are you able to place it for 7 some particular reason in 1994? 8 A. Yeah, because I remember meeting 9 that guy and so I know it's around '94. 10 Q. And where did you meet him? 11 A. I met him on northern coast of 12 Jamaica. 13 Q. And is that where this shot is 14 taken? 15 A. Yeah. 16 Q. And you chose this person because 17 this was another example of the strong 18 Rastafarian men you were wanting to photograph, 19 or stem? 20 A. Yeah, absolutely, and also for the 21 length of his dreads, you know. 22 Q. Which are about the same I guess as 23 the man on the right? 24 A. Yeah, except no, this guy has longer 25 dreads. Because if you can see in the picture,</p>
<p style="text-align: center;">134</p> <p>1 Cariou 2 was beautiful and the light was amazing. I 3 waited until the light was perfect, as far as 4 I'm concerned, and made it that way. 5 You can see there is a tropical 6 storm coming in, and I was waiting for that 7 storm to get at the right place. 8 Q. And in your view what is distinctive 9 about this particular landscape? 10 A. It's just a beautiful landscape. 11 You know, it's -- 12 Q. Okay. All right. 13 Have you ever sold prints of this 14 image? 15 A. No. 16 Q. And have you ever marketed it for 17 sale? 18 A. No. 19 Q. Have you ever licensed it other than 20 the rights licensed to Powerhouse? 21 A. No. 22 Q. Let's turn now to C31, and there's 23 an image at the bottom left-hand corner. 24 Do you see that image? 25 A. Yeah.</p>	<p style="text-align: center;">136</p> <p>1 Cariou 2 it goes around his arms before it goes down. So 3 if he let it go it goes to the ground. 4 Q. And did you stage this shot? 5 A. Yeah, of course. 6 Q. I see again that the background is 7 blurred out, and again that's to draw attention 8 to the subject you were trying to capture? 9 A. Yeah, same style of portraiture. 10 Q. Did you sell this, have you sold a 11 print of this image? 12 A. No. 13 Q. And have you licensed any rights in 14 this image other than those licensed to 15 Powerhouse? 16 A. No. 17 Q. And have you marketed this 18 particular license -- I'm sorry, this particular 19 image in any way? 20 A. No. 21 Q. Let's turn now to C35. 22 A. C35? 23 Q. Yes, sir. 24 A. Yes. 25 Q. And that image is also found on page</p>



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<p style="text-align: center;">137</p> <p>1 Cariou 2 47 of the Yes Rasta book. 3 Are you there? 4 A. Yeah. 5 Q. When was this particular shot taken, 6 Mr. Cariou? 7 A. I don't remember. 8 Q. Was it early in the series or later? 9 A. I think it was later in the series. 10 Q. Was this a shot that you just saw 11 these individuals and you took it or was this a 12 staged shot? 13 A. No, it was a staged shot. 14 Q. And how long did it take you to put 15 together this shot? 16 A. Quite a long time actually, because 17 we -- once again, we were -- I was waiting for 18 the specific light when it comes with tropical 19 storms, and we had to wait until the storm was 20 close to us to take this picture and make it the 21 way it looks. 22 Q. Now, in this particular image, at 23 least on the copy I have, it looks to me like 24 you used a fairly long depth of field, is that 25 fair to say?</p>	<p style="text-align: center;">138</p> <p>1 Cariou 2 A. Yeah. 3 Q. And is there a reason why you chose 4 to use a longer depth of field in this image? 5 A. Well, I'm sure that at the moment I 6 had a reason. I don't know. 7 Q. But the focus of this image is on 8 these two Rastafarian gentlemen, correct? 9 A. It is and it is not. Not as much as 10 other portraits in the book. I wanted -- that's 11 the reason why I wanted to have more depth of 12 field is I wanted to feel more about the 13 environment around them. 14 Q. And why was that? That's what you 15 thought was good at the time? 16 A. Yeah. 17 Q. Where was this particular shot 18 taken? 19 A. That's in St. Elizabeth. It's a 20 parish called St. Elizabeth. 21 Q. And this looks to me like it's sort 22 of in a village or town? 23 A. It's a little town -- yeah, a little 24 village, yeah. 25 Q. And have you sold a print of this</p>
<p style="text-align: center;">139</p> <p>1 Cariou 2 image? 3 A. No. 4 Q. Have you marketed it for sale in any 5 way other than through the Yes Rasta book? 6 A. No. 7 Q. And have you licensed any rights in 8 this image other than through Powerhouse? 9 A. No. 10 Q. All right. Now, skipping ahead to 11 C39, there's an image of a gentleman on the 12 bottom of this page. You can also find it on 13 page 125 of that book. 14 A. Yes. 15 Q. Do you recall when this image was 16 taken? 17 A. Right in the middle. It must have 18 been '96. 19 Q. And this is another example of a 20 portraiture of a Rastafarian man that you wanted 21 to include in this book? 22 A. Yeah. Any of them, if they are in 23 the book. 24 Q. Understood. But I'm trying to just 25 focus on like the portraiture aspect. The last</p>	<p style="text-align: center;">140</p> <p>1 Cariou 2 one you said no, you were kind of more focused 3 on de-emphasizing -- it was a portrait, but you 4 were de-emphasizing the gentleman by bringing in 5 more of the landscape, and here we see a 6 diffused background and the focus is really on 7 the closeup of the man. 8 Have you ever sold any prints of 9 this particular image? 10 A. No. 11 Q. Have you marketed this image other 12 than through the Yes Rasta book? 13 A. No. 14 Q. And have you licensed any rights in 15 this image to any person? 16 A. No. 17 Q. Let's turn now to C40. 18 A. Yes. 19 Q. And we've already talked about the 20 images that appear on the bottom left and the 21 bottom right, so we'll focus this line of 22 questioning on the middle gentleman who is sort 23 of -- 24 A. Crown. Having a crown. 25 Q. Is that what they call it?</p>

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1 Cariou
 2 A. Yeah.
 3 Q. It looked to me like he had taken it
 4 and turned it into a turban?
 5 A. Yeah, also.
 6 It's beautiful, isn't it?
 7 Q. It's quite something.
 8 This picture is another example of a
 9 portraiture work of a Rastafarian man, correct?
 10 A. Sure.
 11 Q. And when was this photograph taken?
 12 A. I don't remember. I couldn't -- I
 13 would say towards probably '97. It's probably
 14 towards the end, yeah, towards the end.
 15 Q. And can you turn to page 20 in the
 16 book and get the actual image?
 17 Seeing the larger size, does that
 18 help you place where this image was shot?
 19 A. That was actually shot, which is
 20 rare in this book, on the coast. This guy was a
 21 fisherman.
 22 Q. And how did you run into this
 23 particular individual?
 24 A. By driving around with friends who
 25 are Rastas and stopping by and, you know, and

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1 Cariou
 2 having a chat and taking a picture.
 3 Q. And was this a staged shot or was
 4 this something that you just snapped?
 5 A. Oh, yeah. Yeah, yeah, yeah. You
 6 know, I had to -- I wasn't ready -- actually
 7 this picture I wasn't ready to take a picture.
 8 So then I had to take all my
 9 equipment out, you know, put the lens on,
 10 choose -- it was in the sun, which is rare for
 11 the book. So we had to -- it took a bit of work
 12 to take this picture.
 13 Q. About how long did it take you to --
 14 A. I would say about two hours.
 15 Q. And have you sold a copy of this
 16 image?
 17 A. No.
 18 Q. Have you licensed any rights in this
 19 image to any person other than Powerhouse?
 20 A. No.
 21 Q. And have you marketed this image in
 22 any way for sale?
 23 A. No.
 24 Q. Let's turn now to C41 in Plaintiff's
 25 Exhibit 40. And this is also on pages 1 and 2

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1 Cariou
 2 of the book.
 3 Now, when was this photograph taken,
 4 Mr. Cariou?
 5 A. I think it was taken in '93.
 6 Q. 1993?
 7 A. Yeah.
 8 Q. Was this before you had obtained
 9 permission from any of the Rastafarians to
 10 photograph them?
 11 A. No.
 12 Q. No?
 13 A. No. We were just walking up to the
 14 mountains, as you can see in the back, and the
 15 light was amazing, as you can see, the sky was
 16 amazing, and I thought it was a good time to
 17 take some landscape.
 18 Q. And is this down by the coast?
 19 A. Not really, no. It's about 30 miles
 20 up already inland.
 21 Q. And from your point of view what do
 22 you think is distinctive about this particular
 23 landscape photograph?
 24 A. I think the sky is quite amazing
 25 and, you know, the light. Once again, the

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1 Cariou
 2 tropical storm makes extremely specific light.
 3 And the sugar cane, the sun on the
 4 sugar cane, and the really dark sky picture
 5 Jamaica very well I think.
 6 Q. Have you sold the image that appears
 7 on pages 1 and 2 of the book to anyone?
 8 A. No.
 9 Q. Have you licensed any rights in this
 10 image other than to Powerhouse?
 11 A. No.
 12 Q. And have you otherwise marketed it
 13 in any way?
 14 MR. BROOKS: I think I objected
 15 before. I asked what do you mean by
 16 marketed --
 17 MS. BART: He answered it and so we
 18 agreed that we would use that definition
 19 which is in any way commercialize it.
 20 That's what we talked about.
 21 A. So am I answering right now?
 22 Q. Yes, you are. Go ahead.
 23 A. No.
 24 Q. Let's now turn to C43.
 25 In the lower half of C43 there are



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<p style="text-align: center;">145</p> <p>1 Cariou 2 seven images -- 3 A. If you don't mind, excuse me. 4 That's the artwork I was talking 5 about earlier. 6 (Witness indicating.) 7 Q. From the newspaper? 8 A. No, from -- it's called Canal Zone 9 2007. That's just a part of it. 10 Q. Right. And I'm just reading from 11 the top of what you prepared, which says it's 12 from the Art Newspaper. 13 A. Yeah, but they only use a portion of 14 the artwork what was -- you know when we talked 15 earlier this morning? 16 Q. Yes. 17 A. Just to -- you know. 18 MS. BART: All right. Why don't we, 19 at this point in time, mark as the next 20 Defendant's Exhibit -- I think we're up 21 to 5. 22 (Defendant's Exhibit 5, color 23 reproduction of Canal Zone 2007, was 24 marked for identification, as of this 25 date.)</p>	<p style="text-align: center;">147</p> <p>1 Cariou 2 MR. BROOKS: Okay, fine. 3 MS. BART: I know we had trouble 4 with printing them off in Summation in 5 time for the production. 6 MR. BROOKS: Okay. 7 BY MS. BART: 8 Q. Mr. Cariou, we've handed you what's 9 been marked as Defendant's Exhibit 5. And the 10 bottom of this document bears in the left-hand 11 column or corner Bates Number GG0083. 12 A. Yes. 13 Q. And it appears to be a color 14 reproduction of a work by Richard Prince 15 entitled The Canal Zone 2007, mixed media on 16 homasote, and then it gives the dimensions. 17 Do you have that in front of you? 18 A. Yeah. 19 Q. Is this the image, the larger image 20 to which you were just referring in your last 21 answer? 22 A. Yes. 23 Q. So the image that we see on 43 is 24 just a portion of the image, the total image 25 that appears in Defendant's Exhibit 5, correct?</p>
<p style="text-align: center;">146</p> <p>1 Cariou 2 MR. BROOKS: Just for the record, 3 I don't think we ever received a copy of 4 this with colors. 5 I think we did receive it and we 6 marked it as Plaintiff's 15, this work, 7 but I don't think we've ever seen it with 8 colors, for what it's worth. 9 MS. BART: Yes, we produced 10 this because we paid extra for color 11 photography to send all these images to 12 you. 13 MR. BROOKS: Yes, but we didn't get 14 a copy with the colors on it. 15 MS. BART: It's GG0083. It was 16 produced just like this with the stamp on 17 it. 18 MS. HAMMERMAN: I think we mailed 19 it. 20 MS. BART: We mailed them to you 21 because you had asked us for color images 22 I think. 23 MR. BROOKS: It doesn't matter. We 24 have it now. 25 MS. BART: I know we had --</p>	<p style="text-align: center;">148</p> <p>1 Cariou 2 A. Absolutely. 3 Q. Would you take this yellow 4 highlighter please, sir, and highlight the 5 section that is on C43? 6 MR. BROOKS: On the original 7 exhibit? 8 MS. BART: Yes, that's fine, on the 9 original, please. 10 (Witness marks exhibit.) 11 BY MS. BART: 12 Q. Mr. Cariou, looking at what's been 13 marked as Defendant's Exhibit 5, is it your 14 position that images from Yes Rasta appear in 15 each one of the squares? 16 A. Yeah. 17 Q. So, for example, in the upper 18 left-hand corner it says -- someone's written 19 the words Canal Zone and there's vegetative 20 matter underneath that, it looks like banana 21 leaves to me, and small print? 22 A. Yeah. 23 Q. Can you show me where in the 24 Yes Rasta book that image appears? 25 A. That's a bad reproduction, so it's a</p>

<p style="text-align: center;">149</p> <p>1 Cariou 2 bit complicated. But I can -- yeah, I could 3 find it. I mean it's going to take time but I 4 can find you everything. 5 Q. Well, the only thing is we want to 6 know what your position is on this, if this 7 is -- 8 A. My position is on that, that 1, 2, 9 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 10 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 11 29, 30, 31, 32, 33, 34, 35 pictures, photographs 12 of Yes Rasta were used in a single artwork from 13 Mr. Prince. That's my position. 14 Q. Understood. 15 A. 35 photographs. 16 Q. Understood. So now what I'd like to 17 try to do, if we could, is have you find -- some 18 of these we've gone over, so I won't make you do 19 those again, they're obvious, or we will be 20 going through them, but if you could, for 21 example, find the vegetation that is on the 22 upper left-hand corner in the book. 23 (Witness looks through exhibit.) 24 MS. BART: May the record reflect 25 that the witness is flipping through each</p>	<p style="text-align: center;">151</p> <p>1 Cariou 2 The image that appears on page 77 3 and 78, can you just hold that up for me, 4 please? 5 A. Yeah, okay. 6 Q. Thank you. 7 We've not talked about this one 8 before, have we? 9 A. No. 10 Q. All right. When was this particular 11 image taken? 12 A. I don't remember. I don't know. 13 At some point. 14 Q. Was this imagery that you took to 15 create -- to have more like tropical vegetation 16 to create the tropical look and feel of the 17 Yes Rasta book? 18 A. Yeah. 19 Q. In your view what about the image 20 that appears on pages 77 and 78 is distinctive? 21 A. Same thing, it's a beautiful 22 landscape. 23 Q. Was this something that you staged 24 or was it something that you might have -- 25 A. Staging a landscape is quite</p>
<p style="text-align: center;">150</p> <p>1 Cariou 2 page of Plaintiff's Exhibit 41 at this 3 time. 4 MR. BROOKS: Is that it? 5 MS. BART: Did you get that? 6 (Clarification by reporter.) 7 MR. BROOKS: I thought that might 8 have been it. 9 A. That's it. 10 (Witness indicating.) 11 Q. And can you just state for the 12 record the page of the book where you say this 13 image in the upper left-hand corner appears? 14 A. Yes, it's page 77 and page 78. 15 Q. Okay. Is the entirety of the image 16 that appears on 77 and 78 reproduced here or is 17 it only a portion? 18 A. It's a portion of it. 19 Q. Now, can we go, for purposes of this 20 exercise, from left to right and then we'll move 21 down to the next row and go left to right to 22 help with the record? 23 A. Okay. 24 Q. The next image appears to be -- I 25 guess I should stop.</p>	<p style="text-align: center;">152</p> <p>1 Cariou 2 complicated. You don't really move trees 3 around, you know. So it's a matter of being a 4 photographer, having an eye and choosing the 5 right moment and framing the picture. 6 Q. Of course. But there was another 7 picture that we spoke about earlier this morning 8 where you said you were just in passing on 9 somewhere else -- 10 A. Yeah. 11 Q. -- and so that was something you 12 took because it caught your eye, it wasn't like 13 the one with the sun and the oncoming storm and 14 that road where you said you waited until the 15 sun reached the exact place? 16 A. It's the same thing on this one, the 17 storm coming in. 18 Q. And you're waiting? 19 A. And I'm waiting. 20 Q. So how long did it take you to do 21 this image? 22 A. I don't remember how long. I really 23 don't remember how long. I was probably waiting 24 for my Rasta friend to do what they had to do, 25 and I don't know, maybe an hour.</p>



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1 Cariou
 2 Q. Have you ever sold the image that
 3 appears on pages 77 and 78?
 4 A. No.
 5 Q. Have you ever licensed any rights to
 6 this image to any person other than Powerhouse?
 7 A. No.
 8 Q. And you have in any way marketed the
 9 image other than through the Yes Rasta book?
 10 A. No.
 11 Q. Okay. Let's move to the right of
 12 that image. We're in the first row, so it's the
 13 second one from the left. There's an image of a
 14 Rastafarian, he appears to be wearing a black
 15 knitted hat or cap?
 16 A. Yeah. We talked about this picture
 17 before.
 18 Q. We did?
 19 A. Yeah.
 20 Q. Okay. Was this the gentleman with
 21 the long beard?
 22 A. Exactly.
 23 Q. So let's move on.
 24 The image to the right of that,
 25 which is the third from the left in the top row

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1 Cariou
 2 on Defendant's 5, the gentleman in a white
 3 shirt?
 4 A. Yeah.
 5 Q. Can you please find that image in
 6 the book?
 7 A. Sure.
 8 (Witness looks at exhibit.)
 9 A. It's page 98.
 10 Q. Mr. Cariou, would you mind just
 11 holding that image up for me please, just so I
 12 can see it?
 13 A. Sure.
 14 Q. Thank you kindly.
 15 Would you put this in the category
 16 of portraits of Rastafarians that you wanted
 17 to include in this book?
 18 A. Yeah. That's actually one of my
 19 favorite portraits.
 20 Q. When was this particular shot taken,
 21 do you know?
 22 A. It probably must have been in '96.
 23 Q. And why do you place it in '96?
 24 A. Because I remember this man very
 25 well. I liked him very well, and we had a good

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1 Cariou
 2 time together.
 3 Q. You just pointed to something on his
 4 shirt. What is it?
 5 A. It's Haile Selassie.
 6 Q. And why is that of significance to
 7 you?
 8 A. Because that's the Rastafarian god.
 9 Q. And so he's considered to be a
 10 leader, or is this just a symbol --
 11 A. No, no, no, because it's just he
 12 liked --
 13 Q. He liked the symbol?
 14 A. He liked the symbol.
 15 Q. Were you finished with your answer,
 16 sir?
 17 A. Oh, yeah, I'm sorry. Yeah.
 18 Q. Okay. This was a staged portrait?
 19 A. Yeah, really staged portrait.
 20 Q. And what do you mean by really
 21 staged?
 22 A. Well, I took a lot of time to find
 23 the perfect lighting, the perfect depth of field
 24 in order to have the leaves that I really like
 25 in the background to be the way they are. And

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1 Cariou
 2 he was extremely calm and peaceful and he was
 3 willing to take as much time as I wanted to to
 4 take this portrait.
 5 So we -- yeah, we tried to take a
 6 powerful portrait and I think we succeed.
 7 Q. And the we here is you and someone
 8 else or you and this gentleman?
 9 A. No, no. He and I.
 10 Q. Have you sold this particular
 11 portrait, the image to anyone?
 12 A. Have I? That's a good question.
 13 Hold on one second.
 14 Yes, I have actually.
 15 Q. And you've, in answering that
 16 question, picked up your answers to
 17 interrogatories?
 18 A. Yeah, yeah.
 19 Q. Or your initial disclosures, I can't
 20 see what you have?
 21 A. No, the --
 22 (Clarification by reporter.)
 23 Q. The answers to interrogatories.
 24 And I think those were marked as
 25 Defendant's Exhibit 4. Yes, okay.

<p style="text-align: center;">165</p> <p>1 Cariou</p> <p>2 Q. So that is a two-page image,</p> <p>3 correct?</p> <p>4 A. Yeah.</p> <p>5 Q. Or it's been printed that way in the</p> <p>6 book?</p> <p>7 A. Yeah, it's a spread.</p> <p>8 Q. Could I ask you please, sir, to hold</p> <p>9 that up just so that I could see the original?</p> <p>10 A. Sure.</p> <p>11 Q. Okay, thank you.</p> <p>12 Is this a portrait that you took</p> <p>13 having staged -- not a portrait -- is this an</p> <p>14 image that you took having staged it for the</p> <p>15 shot, or were you taking out --</p> <p>16 A. Absolutely.</p> <p>17 Q. This was a staged shot?</p> <p>18 A. Yeah.</p> <p>19 Q. And how long did it take you to</p> <p>20 stage this particular shot?</p> <p>21 A. Quite a long time, you know. We</p> <p>22 were both in the water, all in the water, I had</p> <p>23 my camera with me, and it took us a couple hours</p> <p>24 to make it right.</p> <p>25 Q. And what is the expression -- are</p>	<p style="text-align: center;">166</p> <p>1 Cariou</p> <p>2 these more examples of Rastafarian men that</p> <p>3 you're trying to show in their natural setting?</p> <p>4 A. The first one.</p> <p>5 Q. The first one meaning the closest</p> <p>6 one to us?</p> <p>7 A. Yeah, the closest one, yeah. Not</p> <p>8 the two others. The two other ones are not</p> <p>9 Rastafarians. They're what they call in Jamaica</p> <p>10 Rude Boys. Rude Boys.</p> <p>11 Q. R-U-D-E?</p> <p>12 A. Yeah.</p> <p>13 Q. And I just have to ask?</p> <p>14 A. They're gangsters.</p> <p>15 Q. Gangsters?</p> <p>16 A. Yeah. If you can take the book and</p> <p>17 you look, the sign, he's like that.</p> <p>18 (Witness indicating.)</p> <p>19 Q. Like this?</p> <p>20 A. Yes.</p> <p>21 Q. And this is your index and third</p> <p>22 finger pointed at an angle downward?</p> <p>23 A. Yeah.</p> <p>24 Q. And that's a symbol?</p> <p>25 MR. HAYES: Gang sign.</p>
<p style="text-align: center;">167</p> <p>1 Cariou</p> <p>2 Q. A gang symbol?</p> <p>3 A. Yeah, it's like a gun.</p> <p>4 Q. All right.</p> <p>5 Moving on then to the image on</p> <p>6 Defendant's Exhibit 5 that appears to the right</p> <p>7 of that, can you tell me what that is?</p> <p>8 A. Could you come again, please?</p> <p>9 Q. Yes. Get Defendant's Exhibit 5,</p> <p>10 which is the Canal Zone.</p> <p>11 A. Yeah.</p> <p>12 Q. And can you tell me where in the</p> <p>13 book that particular image appears?</p> <p>14 A. The first one on the --</p> <p>15 Q. No, the farthest one on the right.</p> <p>16 A. Yeah.</p> <p>17 (Witness looks at exhibit.)</p> <p>18 A. Here. Page 146.</p> <p>19 MR. BROOKS: Can I see that?</p> <p>20 THE WITNESS: Sure.</p> <p>21 BY MS. BART:</p> <p>22 Q. And having now seen the original --</p> <p>23 MR. BROOKS: Ocho Rios.</p> <p>24 A. Sorry.</p> <p>25 Q. That's all right. He knows his</p>	<p style="text-align: center;">168</p> <p>1 Cariou</p> <p>2 waterfalls.</p> <p>3 MR. BROOKS: I walked down it or up</p> <p>4 it. I don't remember. It was a long time</p> <p>5 ago.</p> <p>6 Q. Having now seen the original image</p> <p>7 is it fair to say that this is probably included</p> <p>8 with the other group of portraiture?</p> <p>9 A. Yeah.</p> <p>10 Q. Going now to the second row of</p> <p>11 Defendant's Exhibit 5, the second from the left?</p> <p>12 A. The second from the left? Yeah.</p> <p>13 Q. It looks to me to be -- on the</p> <p>14 smaller image it looks to me to be a waterfall?</p> <p>15 A. It's actually a river after a storm.</p> <p>16 You want me to --</p> <p>17 Q. If you would please, sir, yes.</p> <p>18 A. Yeah. There's a few, but that's the</p> <p>19 one.</p> <p>20 Q. On page 17 of Plaintiff's Exhibit 41</p> <p>21 in the book? Page 17 of the book, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And was this a landscape picture</p> <p>24 that you included in Yes Rasta to just try to,</p> <p>25 again, connote the tropical --</p>

