

<p style="text-align: center;">49</p> <p>1 Celle</p> <p>2 of 2009?</p> <p>3 A. Yeah.</p> <p>4 Q. He came to your show?</p> <p>5 A. I think when he came the gallery</p> <p>6 was already running and open.</p> <p>7 And ironically, I think the show</p> <p>8 that was on, I cannot remember now because, you</p> <p>9 know, I say to him, oh, it could have been you,</p> <p>10 like as a joke, and it was actually a work</p> <p>11 called the Samburu, which is very similar in a</p> <p>12 way but, you know, it's made in Kenya. So I</p> <p>13 opened my first show with that work.</p> <p>14 So I think he probably came</p> <p>15 April-May because that show was on I remember.</p> <p>16 Q. And he was at your gallery for how</p> <p>17 long a period of time, do you recall?</p> <p>18 A. I think he just came to visit and</p> <p>19 to look at what I've done. And, you know, he</p> <p>20 thought the gallery looks great, and he told me</p> <p>21 right now he was in a certain situation and,</p> <p>22 you know.</p> <p>23 Q. Certain situation meaning this</p> <p>24 litigation?</p> <p>25 A. Yeah.</p>	<p style="text-align: center;">51</p> <p>1 Celle</p> <p>2 Q. His personal collection of</p> <p>3 photography books?</p> <p>4 A. Yeah, some – I mean his books, I</p> <p>5 don't know if it's his whole collection, but</p> <p>6 it's part of his collection.</p> <p>7 Q. So the idea is you would sell part</p> <p>8 of his collection for him?</p> <p>9 A. Yes.</p> <p>10 Q. Was there a discussion about</p> <p>11 financial terms of the sale of the collection?</p> <p>12 A. Of the collection?</p> <p>13 Q. Yes.</p> <p>14 A. I wanted to go through the books,</p> <p>15 and honestly this came out of the blue, and I</p> <p>16 didn't have much time. So right now I'm like</p> <p>17 going through them to see what's interesting,</p> <p>18 because we have a few hundred books, and it's</p> <p>19 time consuming work.</p> <p>20 Q. I understand.</p> <p>21 Can you tell me again, what was the</p> <p>22 date of that meeting when he brought the books?</p> <p>23 A. I remember it was before his</p> <p>24 deposition, because he told me I'm here for my</p> <p>25 deposition. But not a long time ago. Like</p>
<p style="text-align: center;">50</p> <p>1 Celle</p> <p>2 Q. And how long a discussion did you</p> <p>3 have with him at that time, if you recall, a few</p> <p>4 minutes, longer, less?</p> <p>5 A. You know, not long because it's not</p> <p>6 like he called me and he say I'm coming to see</p> <p>7 you, let's sit down. He was just there. One</p> <p>8 day he called me and he said I'm in New York,</p> <p>9 and he stopped by. So it was not an organized</p> <p>10 meeting, you know.</p> <p>11 Q. Have you seen him since then?</p> <p>12 A. I saw him actually recently. And he</p> <p>13 told me he was doing his deposition.</p> <p>14 Q. Where did you see him?</p> <p>15 A. He came to visit me at the office.</p> <p>16 Q. And how long was that visit?</p> <p>17 A. How long was that visit? He came to</p> <p>18 bring me some books that, you know, he asked me</p> <p>19 if I would be interested to sell for him. And I</p> <p>20 say yes. So he stayed the whole day. He showed</p> <p>21 me all his books. And I have the books, now I</p> <p>22 want to go through them.</p> <p>23 Q. What books are they?</p> <p>24 A. They are very old vintage collection</p> <p>25 of like very, very old books.</p>	<p style="text-align: center;">52</p> <p>1 Celle</p> <p>2 probably a week ago or – yeah, probably a week</p> <p>3 ago or two weeks ago, you know.</p> <p>4 Q. Between the time that you had time</p> <p>5 with him in Paris – was that lunch or coffee,</p> <p>6 I'm sorry?</p> <p>7 A. Yes.</p> <p>8 Q. Lunch?</p> <p>9 A. Coffee.</p> <p>10 Q. Between the time you had coffee with</p> <p>11 him in Paris and the time he came to see your</p> <p>12 show in the spring of '09 –</p> <p>13 A. Yeah.</p> <p>14 Q. – did you speak to Mr. Cariou at</p> <p>15 all?</p> <p>16 A. When did I speak to him? No, I</p> <p>17 think we e-mail. We e-mail because, you know –</p> <p>18 but I don't think, you know – I left messages</p> <p>19 for him but he not always return his, you know.</p> <p>20 I left – I know I left one or two</p> <p>21 messages occasionally, but he never really, you</p> <p>22 know, call me back.</p> <p>23 Q. So from the fall of '09 to the</p> <p>24 spring of – from the fall of '08 to the spring</p> <p>25 of '09 you didn't speak to him, he may have sent</p>

<p style="text-align: center;">53</p> <p>1 Celle</p> <p>2 e-mails –</p> <p>3 A. I think we e-mailed, yeah, because</p> <p>4 we had some e-mail when the lawsuit happened.</p> <p>5 So I know I knew about that because he e-mailed</p> <p>6 me something.</p> <p>7 Q. Do you have copies of those e-mails</p> <p>8 still?</p> <p>9 A. Yeah.</p> <p>10 Q. Do you have them with you today?</p> <p>11 A. Yes. Do you want them now?</p> <p>12 Q. Please.</p> <p>13 MR. BROOKS: I have them.</p> <p>14 MR. HAYES: Okay. Before you do</p> <p>15 that, I appreciate you doing that, let me</p> <p>16 just mark as an exhibit – off the record.</p> <p>17 (Discussion off the record.)</p> <p>18 MR. HAYES: I'd like to mark as</p> <p>19 Defendant's Deposition Exhibit 1 a</p> <p>20 single-page document which contains I</p> <p>21 believe an e-mail exchange which is in</p> <p>22 French.</p> <p>23 And the top line says from Patrick</p> <p>24 Cariou, and at the bottom – well, the</p> <p>25 third line down has a date on it</p>	<p style="text-align: center;">55</p> <p>1 Celle</p> <p>2 it begins with the line 2008/8/28, Christiane</p> <p>3 Celle, and it says bonjour Patrick?</p> <p>4 A. Mm-hmm, correct.</p> <p>5 Q. And that one continues down to the</p> <p>6 bottom of the page and then ends with your name</p> <p>7 Christiane?</p> <p>8 A. Yes, the whole thing, correct.</p> <p>9 Q. And then his response up above</p> <p>10 starts from Patrick Cariou, it says Bonjour,</p> <p>11 Christiane, and ends with Patrick and a cell</p> <p>12 number?</p> <p>13 A. Yes.</p> <p>14 Q. Okay, great.</p> <p>15 So starting with the first e-mail</p> <p>16 from you to him, could you please translate for</p> <p>17 me – I think there's one, two, three, four,</p> <p>18 five, six paragraphs as I count them, one of the</p> <p>19 paragraphs being just one line, do you see that?</p> <p>20 A. Here?</p> <p>21 Q. Yes.</p> <p>22 A. Yes.</p> <p>23 Q. So could you translate the first</p> <p>24 paragraph for me?</p> <p>25 A. The first here?</p>
<p style="text-align: center;">54</p> <p>1 Celle</p> <p>2 August 28, 2008.</p> <p>3 (Defendant's Exhibit 1, e-mail</p> <p>4 exchange, was marked for identification,</p> <p>5 as of this date.)</p> <p>6 Q. Can you take a look at what's been</p> <p>7 marked as Defendant Celle Exhibit 1?</p> <p>8 This document appears to be an</p> <p>9 e-mail exchange first from you to Mr. Cariou and</p> <p>10 then Mr. Cariou to you, is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. And e-mail exchanges typically start</p> <p>13 at the top with the most recent, the latest, and</p> <p>14 then go down to the earliest, is that correct</p> <p>15 here as well?</p> <p>16 A. I'm sorry –</p> <p>17 Q. And take your time to read it.</p> <p>18 A. Yes.</p> <p>19 Q. Is it correct – again, I'm just</p> <p>20 trying to make sure I understand the document</p> <p>21 correctly – that there are two e-mails here,</p> <p>22 one from you to Mr. Cariou and one from him back</p> <p>23 to you?</p> <p>24 A. Yes, correct.</p> <p>25 Q. And the first one from you to him,</p>	<p style="text-align: center;">56</p> <p>1 Celle</p> <p>2 Q. Yes, please.</p> <p>3 A. Hello, Patrick. I am Christiane</p> <p>4 Celle. We never met, but I know your</p> <p>5 photograph. I live in New York for the last</p> <p>6 20 years with a little break living in</p> <p>7 St. Barths where I started a company called</p> <p>8 Calypso. Then I met Antoine Verglas who is a</p> <p>9 photographer that you know maybe. We have two</p> <p>10 kids 14 and 12, and we are living together since</p> <p>11 then.</p> <p>12 Continue?</p> <p>13 Q. That's perfect.</p> <p>14 Now, just so the record is clear,</p> <p>15 that's the end of that first paragraph, right?</p> <p>16 A. Yes.</p> <p>17 Q. Could you please translate for me</p> <p>18 the second paragraph?</p> <p>19 A. Of course.</p> <p>20 I created Calypso in 1992 in</p> <p>21 St. Barths, and I sold it in 2007. I decided to</p> <p>22 change work and do a gallery in New York. The</p> <p>23 first show will be in November. You should go</p> <p>24 online and look at Vincent Fournier. He's</p> <p>25 having a show right now in Paris at Acte Deux</p>

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<p>1 Celle</p> <p>2 calling to my work. I know all the people you</p> <p>3 are naming in your e-mail. I don't have a</p> <p>4 gallery and I will be interested by a show. The</p> <p>5 book Surfer is sold out for a long time, but</p> <p>6 there should be a reprint this year. I also</p> <p>7 have another book that I'm trying -- I'm just</p> <p>8 finishing after ten years. It's about gypsies.</p> <p>9 Maybe this will be interesting for you. Best.</p> <p>10 Q. And your e-mail to Mr. Cariou does</p> <p>11 not make any reference to Yes Rasta, does it?</p> <p>12 A. Not on this one.</p> <p>13 Q. But by that time you hadn't seen</p> <p>14 Yes Rasta, correct?</p> <p>15 A. I think I had seen Yes Rasta</p> <p>16 because, you know, I always had been on his --</p> <p>17 I already had been on his website to get his</p> <p>18 number.</p> <p>19 Q. And his response also does not refer</p> <p>20 to Yes Rasta?</p> <p>21 A. No.</p> <p>22 Q. And subsequent to this e-mail you</p> <p>23 had additional e-mail correspondence with him?</p> <p>24 A. I call him right away because I</p> <p>25 wanted his phone because it's difficult to have</p>	<p>1 Celle</p> <p>2 the photographer for everywhere because, you</p> <p>3 know, things change, unfortunately.</p> <p>4 Q. Sure.</p> <p>5 A. At the time, I don't recall, you</p> <p>6 know.</p> <p>7 Q. So these e-mails are dated August 28</p> <p>8 of 2008 and you met at Cafe Select in September</p> <p>9 or October of '08, right?</p> <p>10 A. Yes. Yes.</p> <p>11 Q. And so this conversation you just</p> <p>12 described happened sometime in between?</p> <p>13 A. Yes.</p> <p>14 Q. Did you have any other conversations</p> <p>15 with Mr. Cariou in between?</p> <p>16 A. I don't think so because, you know,</p> <p>17 I know I called him later at the end of the</p> <p>18 year. Because one day somebody told me that</p> <p>19 there was a show at Gagolian and there was</p> <p>20 picture from the, you know, the Rasta book.</p> <p>21 So I left a message to him to call</p> <p>22 me back, but he didn't.</p> <p>23 Q. I'll get to that in a moment.</p> <p>24 A. Yeah.</p> <p>25 Q. Thank you. I just want to keep the</p>
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<p>1 Celle</p> <p>2 a conversation. And, you know, I call him and</p> <p>3 I remember having, you know, the website and</p> <p>4 going around the website and telling him what I</p> <p>5 was interested.</p> <p>6 I remember that he was mentioning</p> <p>7 also his new work Gypsies. And I was telling</p> <p>8 him that to do Gypsies would be more interesting</p> <p>9 when the book came out, because it's more</p> <p>10 interesting when the show has a book.</p> <p>11 And I was telling him that because</p> <p>12 my next gallery was going to open soon in</p> <p>13 St. Barths, you know, I was interested in the</p> <p>14 Surfer, but I'll be interested for spring</p> <p>15 eventually of the Rasta.</p> <p>16 Q. Does this -- by the way, does this</p> <p>17 e-mail talk about opening -- having the show in</p> <p>18 St. Barths?</p> <p>19 A. I think at that time it was a mixed</p> <p>20 show. So I think it was probably St. Barths.</p> <p>21 I don't recall.</p> <p>22 Q. You don't recall whether it was</p> <p>23 going to be St. Barths or New York?</p> <p>24 A. I mean I know right now I try to</p> <p>25 do -- when I get a photographer I try to sign</p>	<p>1 Celle</p> <p>2 chronology straight.</p> <p>3 So we have the exchange of e-mails?</p> <p>4 A. Yeah.</p> <p>5 Q. We have the telephone conversation</p> <p>6 you described to us?</p> <p>7 A. Yes.</p> <p>8 Q. And then we have the meeting at Cafe</p> <p>9 Select in New York?</p> <p>10 A. Yes.</p> <p>11 Q. And the meeting in Paris?</p> <p>12 A. Yes.</p> <p>13 Q. And then you left him a message at</p> <p>14 the end of December?</p> <p>15 A. When I --</p> <p>16 Q. I don't mean to put words in your</p> <p>17 mouth. Sometime in December, is that --</p> <p>18 A. I can't remember if it's November or</p> <p>19 December, but it's before Christmas because I</p> <p>20 know I left the 17th of December, so it's before</p> <p>21 the 17th of December.</p> <p>22 Q. And your best recollection is he</p> <p>23 didn't respond to that message?</p> <p>24 A. No.</p> <p>25 Q. And the next time you had any verbal</p>



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<p style="text-align: center;">65</p> <p>1 Celle</p> <p>2 contact with him was he when he came to see your</p> <p>3 show in the spring of '09?</p> <p>4 A. Yes, because I received an e-mail I</p> <p>5 think in January, those e-mails, you know, about</p> <p>6 informing that he has a lawsuit.</p> <p>7 I'm trying to remember.</p> <p>8 I don't think I saw him before that.</p> <p>9 Q. In the conversations either at Cafe</p> <p>10 Select or the cafe in Paris had there been any</p> <p>11 start day set for a show?</p> <p>12 A. I keep thinking spring, because at</p> <p>13 the time when I met him, probably September or</p> <p>14 October, I knew already that the gallery will</p> <p>15 not be open by the end of the year.</p> <p>16 Because for a reason that building</p> <p>17 at 255 Centre, okay, I took a building -- I took</p> <p>18 a space that was huge and that didn't have a</p> <p>19 certificate of occupancy for years. And before</p> <p>20 me it was an electrician, it was not a retail</p> <p>21 store. So it was like a showroom.</p> <p>22 And when I start getting approval</p> <p>23 from the City of New York I had so many problem.</p> <p>24 So I started the construction I think around</p> <p>25 September-October, but I really open in June.</p>	<p style="text-align: center;">67</p> <p>1 Celle</p> <p>2 A. Yeah, we had a discussion of size of</p> <p>3 print.</p> <p>4 Q. What was that?</p> <p>5 A. We had, you know, discussed to do</p> <p>6 very big format because, you know, in New York</p> <p>7 people have big apartment. So nothing less than</p> <p>8 30 by 40 and then going up.</p> <p>9 We discussed about price too because</p> <p>10 I wanted to know, you know, in the past what it</p> <p>11 was, you know, the background. But he never --</p> <p>12 for example, in the Surfer he had sold some</p> <p>13 photography.</p> <p>14 The Rasta he had not done a show</p> <p>15 with it, so he was trusting me, and I was also</p> <p>16 new on that. But I was basing my price in the</p> <p>17 market, you know, according to what the book</p> <p>18 was. And I think the first price were in the</p> <p>19 \$3,000 up to 15 or 20. But we never set up like</p> <p>20 real on paper any size.</p> <p>21 Q. It was a verbal discussion --</p> <p>22 A. Yes.</p> <p>23 Q. -- about what the price points might</p> <p>24 be for different sizes?</p> <p>25 A. From 3,000 to 15 or 20 for really</p>
<p style="text-align: center;">66</p> <p>1 Celle</p> <p>2 There was so many problems.</p> <p>3 So I knew already that I could not</p> <p>4 do a show until spring. So my thinking was,</p> <p>5 you know, to try to work something for him</p> <p>6 April-May. It was always spring.</p> <p>7 Q. It was always spring?</p> <p>8 A. Yeah.</p> <p>9 Q. Would it be fair to say that the</p> <p>10 discussions were general?</p> <p>11 A. Yes.</p> <p>12 Q. And you had discussed he would</p> <p>13 provide the prints and you would frame them and</p> <p>14 you would split any sales price?</p> <p>15 A. Yes, correct.</p> <p>16 Q. Did you discuss how many prints</p> <p>17 would be in the show?</p> <p>18 A. I mean I had an idea because</p> <p>19 according to the space I wanted around like</p> <p>20 between 30 and 40 prints, you know, because I</p> <p>21 was trying to map out the Vincent Fournier at</p> <p>22 the time, and that's what I was figuring out</p> <p>23 that I could fit in the space.</p> <p>24 Q. Did you have a discussion of the</p> <p>25 sizes of the prints?</p>	<p style="text-align: center;">68</p> <p>1 Celle</p> <p>2 big format.</p> <p>3 Q. And in line with that, did you</p> <p>4 discuss with Mr. Cariou the sales he made of any</p> <p>5 prints prior to that discussion?</p> <p>6 A. No. The only thing he told me that</p> <p>7 he had sold Surfer through Marion de Beaupre in</p> <p>8 Paris, and he was selling, you know, privately</p> <p>9 to a hotel, you know.</p> <p>10 Q. You said to a hotel?</p> <p>11 A. Yeah. He actually -- I can mention</p> <p>12 that because a gentleman came to my store called</p> <p>13 Robert Novogratz, N-O-V-O-G-R-A-T-Z. He's a</p> <p>14 really famous decorator that I know. And Robert</p> <p>15 had come to my bookstore looking for kind of new</p> <p>16 things and -- you know.</p> <p>17 And he had come around Yes Rasta and</p> <p>18 Surfer, and Robert had, you know, gotten both</p> <p>19 books. And I said to him, I'm trying to do a</p> <p>20 show with this photographer. And Robert said,</p> <p>21 I'm doing that big hotel in New Jersey, I would</p> <p>22 love to get some photo of him.</p> <p>23 And because I was not representing</p> <p>24 Patrick at the time, I say, well, maybe you</p> <p>25 should contact him directly, because, you know.</p>



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<p>1 Celle</p> <p>2 So I think he contacted him. And</p> <p>3 when Patrick came in New York in the Cafe Select</p> <p>4 he mentioned that thank you for referring</p> <p>5 Robert, I'm doing some photographs for him for</p> <p>6 the hotel.</p> <p>7 Q. And did he say what price they were</p> <p>8 going to be at?</p> <p>9 A. No. And I felt, you know, I didn't</p> <p>10 want to be indiscreet because for me I was</p> <p>11 thinking I'm not his agent. You know, I would</p> <p>12 love to but, you know.</p> <p>13 And Robert Novogratz the decorator</p> <p>14 is also a great client of mine, you know, he</p> <p>15 buys things from me. So I knew that if I was</p> <p>16 referring he will send me clients for something</p> <p>17 else, you know. It's a favor I did to him,</p> <p>18 but --</p> <p>19 Q. Did Mr. Cariou say anything to you</p> <p>20 in words or substance about having sold his</p> <p>21 prints primarily in the past to people that he</p> <p>22 liked or felt good about or friends?</p> <p>23 A. He didn't give me the detail, but he</p> <p>24 told me that he had sold prints in the past and</p> <p>25 mentioned the Robert Novogratz hotel.</p>	<p>1 Celle</p> <p>2 week after I immediately called him.</p> <p>3 Q. So end of August, early September?</p> <p>4 A. Yes.</p> <p>5 Q. You then had the meeting with him in</p> <p>6 Cafe Select in September-October approximately</p> <p>7 of '08?</p> <p>8 A. Yes.</p> <p>9 Q. You then had the meeting in Paris</p> <p>10 sometime later in the fall?</p> <p>11 A. Yes, correct.</p> <p>12 Q. You left him a message in December?</p> <p>13 A. End of November, December. I can't</p> <p>14 recall exactly.</p> <p>15 Q. And that's the one he didn't respond</p> <p>16 to, correct?</p> <p>17 A. He didn't respond. I just asked him</p> <p>18 to call me back, you know. I didn't give any</p> <p>19 detail.</p> <p>20 Q. Just please call me?</p> <p>21 A. I say can you call me back, because</p> <p>22 I was thinking if I say anything he might be</p> <p>23 freaking out. I say just call me back, I need</p> <p>24 to talk to you.</p> <p>25 Q. And when was the next contact after</p>
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<p>1 Celle</p> <p>2 Q. And did he give you any statement as</p> <p>3 to what the price points of the prior sales had</p> <p>4 been?</p> <p>5 A. I mean when I say to him like the</p> <p>6 small one, I was referring to the -- I can't</p> <p>7 remember -- it was to the probably 30 by 40, and</p> <p>8 that was in the 3,000 to 5,000, you know,</p> <p>9 according to the market and something similar,</p> <p>10 and he was in that price range.</p> <p>11 Q. He was agreeing to the price range?</p> <p>12 A. Yes.</p> <p>13 Q. But did he say anything to you about</p> <p>14 what he sold prints for in the past?</p> <p>15 A. No.</p> <p>16 Q. Just so I make sure I have the</p> <p>17 chronology down, what I understand is we have</p> <p>18 the e-mail exchange in August of '08?</p> <p>19 A. Mm-hmm.</p> <p>20 Q. You had a phone conversation with</p> <p>21 him sometime after that, probably in September,</p> <p>22 is that correct?</p> <p>23 A. I think after that, when he gave me</p> <p>24 his cell I call him right away. I don't know if</p> <p>25 it's the same day, but that same week or the</p>	<p>1 Celle</p> <p>2 that you had with Mr. Cariou?</p> <p>3 A. Like contact physically seeing him</p> <p>4 you mean?</p> <p>5 Q. Well, let's say physically seeing</p> <p>6 him, yes, that was when he came to your gallery</p> <p>7 for the show, right?</p> <p>8 A. I think that's it, yeah, in the</p> <p>9 spring.</p> <p>10 Q. Spring of '09?</p> <p>11 A. I think in the spring he was just</p> <p>12 here and he told me he was here for a lawsuit.</p> <p>13 Q. And so between the time you saw him</p> <p>14 in Paris and the time he came to the gallery</p> <p>15 show did you speak to him over the telephone at</p> <p>16 all?</p> <p>17 A. I don't think so.</p> <p>18 Q. And so what was the next contact</p> <p>19 that you had with him, if any, before you met</p> <p>20 him at the show in spring of '09, did you get</p> <p>21 any e-mails from him or send him any e-mails?</p> <p>22 A. I know in January he sent me an</p> <p>23 e-mail telling me that he was going to do the</p> <p>24 lawsuit and, you know.</p> <p>25 MR. HAYES: Do we have that e-mail</p>

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<p>1 Celle</p> <p>2 here?</p> <p>3 MR. BROOKS: These are the e-mails</p> <p>4 that I have.</p> <p>5 MR. HAYES: Off the record.</p> <p>6 (Discussion off the record.)</p> <p>7 MR. HAYES: Let me have marked as</p> <p>8 Defendant Celle Exhibit 2 a four-page</p> <p>9 document which contains what I believe to</p> <p>10 be a series of e-mails.</p> <p>11 The top one says from Patrick Cariou</p> <p>12 and it bears a date January 29, 2009.</p> <p>13 (Defendant's Exhibit 2, series of</p> <p>14 e-mails, was marked for identification, as</p> <p>15 of this date.)</p> <p>16 MR. HAYES: While he's doing that</p> <p>17 let's take a break for a minute.</p> <p>18 (Recess taken: 11:15 a.m.)</p> <p>19 (Proceedings resumed: 11:20 a.m.)</p> <p>20 BY MR. HAYES:</p> <p>21 Q. Ms. Celle, I would like to refer you</p> <p>22 to what's marked as Defendant Celle Exhibit 2</p> <p>23 for identification and ask you, this is an</p> <p>24 exchange of e-mails between Patrick Cariou and</p> <p>25 yourself?</p>	<p>1 Celle</p> <p>2 Q. Okay. So as we go through it we'll</p> <p>3 just identify which are duplicates.</p> <p>4 A. Great. Okay.</p> <p>5 Q. So the first thing is if you could</p> <p>6 translate for us, please, this e-mail on the</p> <p>7 bottom page 4 with "Chere Christiane"?</p> <p>8 A. Page 4, right. Very good.</p> <p>9 From Patrick.</p> <p>10 Dear Christiane, I'm happy to know</p> <p>11 that all your projects are moving on. I will be</p> <p>12 in New York in the two next month. Something</p> <p>13 incredible is happening to me with Richard</p> <p>14 Prince. Richard Prince -- that's slang -- "c,es</p> <p>15 vautrer dans Yes Rasta" -- it's hard to</p> <p>16 translate, that means picked something in</p> <p>17 Yes Rasta -- Richard Prince picked something in</p> <p>18 Yes Rasta.</p> <p>19 Q. That would be the line -- could you</p> <p>20 read the line in French just so I understand?</p> <p>21 A. Yes.</p> <p>22 "En effet prince c,es vautrer dans</p> <p>23 yes rasta."</p> <p>24 Q. And just so I'm accurate, could you</p> <p>25 please give me the best translation from French</p>
74	76
<p>1 Celle</p> <p>2 A. Correct, yes.</p> <p>3 Q. And is it correct -- the document</p> <p>4 physically is four pages, and would it be</p> <p>5 correct to say that the exchange begins on the</p> <p>6 last page on January 29, 2009, at 6:04 a.m.,</p> <p>7 with Mr. Cariou writing to you?</p> <p>8 A. Yes.</p> <p>9 Q. And then continues in point of time</p> <p>10 getting later as we go up this page and through</p> <p>11 the other pages, correct?</p> <p>12 A. Correct.</p> <p>13 Q. So just to be clear, and because I</p> <p>14 unfortunately do not speak French, could you</p> <p>15 start with the first of the e-mails, the one on</p> <p>16 January 29, on the bottom portion of the last</p> <p>17 page of this document and translate it for us</p> <p>18 beginning with "Chere Christiane"?</p> <p>19 A. I'm just confused because I have</p> <p>20 doubles here. So I don't know --</p> <p>21 Q. We have more than one copy of a</p> <p>22 particular e-mail?</p> <p>23 A. Yeah. I think it's the same thing.</p> <p>24 Q. Perhaps we do. Okay.</p> <p>25 A. So it's okay.</p>	<p>1 Celle</p> <p>2 again?</p> <p>3 A. Yeah, in French "c,es vautrer" it's</p> <p>4 slang, so it's hard to translate.</p> <p>5 It's, you know, like kids -- "c,es</p> <p>6 vautre" is like kids lying on the sofa would</p> <p>7 be -- so it's an expression that's very hard to</p> <p>8 translate. But what he meant by that is Richard</p> <p>9 Prince went to look into the Yes Rasta.</p> <p>10 Q. That's the meaning you took from it?</p> <p>11 A. Yes, that's what -- you know.</p> <p>12 Q. Give me, if you would, your best</p> <p>13 translation of the actual words?</p> <p>14 A. "C,es vautrer," I mean --</p> <p>15 Q. Just start with the whole line.</p> <p>16 A. It's like Richard Prince is laying</p> <p>17 on the Rasta, you know.</p> <p>18 Q. Okay.</p> <p>19 A. It's hard to translate.</p> <p>20 Q. And the next line?</p> <p>21 A. He just had a show at Gagosian where</p> <p>22 he's using 30 of my photographs as a central</p> <p>23 theme. Please see attachment. I am doing a</p> <p>24 lawsuit. Please see the links. New York Times</p> <p>25 blog -- there is a New York Times link.</p>



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<p style="text-align: center;">81</p> <p style="text-align: center;">Celle</p> <p>1 A. I hope you will get some kind of 2 money, compensatory, whatever, "dedommage." 3 We should do a show and put all back 4 the clock together -- which is a French 5 expression. We should say, wow, you should do a 6 show and show everybody who you are. Because, 7 you know, I was pushing to do a show at the time 8 and until actually I figure it out. 9 Q. But, again, I'd like you just to -- 10 the line we're on now, "j,espere que tu seras 11 dedommage"?</p> <p>12 A. Yes. 13 Q. And what does that line mean? 14 A. I hope you will get some kind of 15 compensation of -- "dedommage" -- "dommage" 16 means, you know, when you suffer like a loss or 17 something. 18 Q. Right. And can you then give me 19 your best translation of the next line? 20 A. It's the moment to do a show and 21 put back the clock at that time. It's an 22 expression. 23 Q. What did you mean by that? 24 A. That means, you know, straighten 25</p>	<p style="text-align: center;">83</p> <p style="text-align: center;">Celle</p> <p>1 correct? 2 A. Yes. 3 Q. And then we have at the top of the 4 page a responsive e-mail from Mr. Cariou to you 5 appearing to have been sent on January 29 at 6 9:43 a.m., Eastern Standard Time? 7 A. Yes. 8 Q. And it's addressed to you. 9 And can you please translate for us 10 the six lines there? 11 A. I know really well the "travail" or 12 the work of Mr. Prince and his artistic posture. 13 I have a lawyer, a good lawyer, who is working 14 and very motivated by this lawsuit. 15 Q. Let me stop you for a second. The 16 phrase "travaille au pourcentage," what's that? 17 A. I have a great lawyer who works -- 18 I guess I'm not sure what does that mean because 19 I'm not a lawyer, but probably on a retainer 20 fee. That's my interpretation, you know, 21 percentage. 22 Q. "Travaille au pourcentage," does 23 that mean work on percentage? 24 A. Yeah, percentage. 25</p>
<p style="text-align: center;">82</p> <p style="text-align: center;">Celle</p> <p>1 things and show who you are. 2 Q. So what were you suggesting he do in 3 that two-line paragraph, or that line? 4 A. I'm suggesting to him that he should 5 really do a show and, you know, show the world 6 who is he because these people are copying his 7 work, he should be the one showing his work. 8 Q. So he should have a show is what 9 you're saying? 10 A. I told him, yeah. 11 Q. What's the next line? 12 A. I have to send you photo of Bob 13 Marley that a gentleman did. He's a 60 years -- 14 65 years, there is he a typo -- artist. There's 15 a U missing. 16 There was a show before and a 17 museum, you know, took them. Some prints were 18 lost. And some are excellent. I will try to 19 send you some images. Superb. 20 The prints are done by Charlie 21 Griffin. He was a photographer in '89, and now 22 he's a printer, and he's printing for Sugimoto. 23 And wonderful quality. 24 Q. And that's the end of that e-mail, 25</p>	<p style="text-align: center;">84</p> <p style="text-align: center;">Celle</p> <p>1 Q. Okay. And then keep going. 2 The phrase "et est tres motive"?</p> <p>3 A. That is very motivated by the 4 lawsuit or this affair means this business, you 5 know. 6 Q. The lawyer is very motivated by this 7 affair? 8 A. Yes. 9 Q. I see. Go ahead. 10 A. The difference this time -- he's 11 talking about Richard Prince. The difference 12 this time is, you know, he doesn't put his name, 13 but he took like 30 photos from one artist, plus 14 a book with a central theme of my work. This 15 I've never seen before. 16 Q. The phrase -- just back up to the 17 line that begins "la difference." 18 A. Yes. 19 Q. The phrase "cette fois c'est qu'il 20 s, est vraiment"?</p> <p>21 A. Which one? 22 Q. Give me the whole line, if you 23 would. 24 A. "La difference"?</p>



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<p>85</p> <p>1 Celle</p> <p>2 Q. Yes.</p> <p>3 A. Oh. The difference this time is he</p> <p>4 really took 30 photos from one artist.</p> <p>5 Q. Okay, good.</p> <p>6 Then the next line?</p> <p>7 A. Plus one book with the central theme</p> <p>8 of my work.</p> <p>9 Q. "Mon travail du jamais vu," does</p> <p>10 that mean my work or my travel to Jamaica?</p> <p>11 A. Oh, no, this means the central theme</p> <p>12 of my work. "Du jamais vu" means never seen.</p> <p>13 Q. Work never seen?</p> <p>14 A. Yeah.</p> <p>15 Q. The word "travail" is what? How do</p> <p>16 you translate "travail"?</p> <p>17 A. My work.</p> <p>18 Q. "Travail" is work?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Next line?</p> <p>21 A. It looks like it's the first time</p> <p>22 this is happening in the art world. We will</p> <p>23 see. And best.</p> <p>24 Q. "Nous allons voir" means we will</p> <p>25 see?</p>	<p>87</p> <p>1 Celle</p> <p>2 up now, how far in advance do you generally</p> <p>3 prepare the show and what do you do to prepare</p> <p>4 it?</p> <p>5 A. It depends. Usually I need from</p> <p>6 three months to six months, according to the</p> <p>7 artist.</p> <p>8 Q. And what do you do during those</p> <p>9 three to six months?</p> <p>10 A. Okay. What I do is I meet different</p> <p>11 time to review the work, pick up the work, make</p> <p>12 a choice of the work. And then it's the</p> <p>13 responsibility of the artist to print.</p> <p>14 And some artists needs two months.</p> <p>15 The framer needs three weeks to one month.</p> <p>16 So usually, you know, once you agree</p> <p>17 on the show it can take two months minimum to</p> <p>18 prepare.</p> <p>19 Q. Do you do a catalog in connection</p> <p>20 with your shows?</p> <p>21 A. Sometime I do, but not necessarily</p> <p>22 for every show.</p> <p>23 Q. And did you plan a catalog for this</p> <p>24 show?</p> <p>25 A. For that show I didn't plan a</p>
<p>86</p> <p>1 Celle</p> <p>2 A. We will see, yeah.</p> <p>3 Q. So this exchange all took place on</p> <p>4 January 29, 2009?</p> <p>5 A. Yes.</p> <p>6 Q. We'll go through everything else in</p> <p>7 the exhibit in a minute.</p> <p>8 But at the time that this e-mail</p> <p>9 exchange happened had you done anything to</p> <p>10 actually set up the exhibit at your gallery of</p> <p>11 Mr. Cariou's photographs?</p> <p>12 A. No.</p> <p>13 Q. Had you discussed it with any of the</p> <p>14 other artists?</p> <p>15 MR. BROOKS: Discussed what?</p> <p>16 A. With the other artists?</p> <p>17 Q. Discussed the possibility of having</p> <p>18 a Cariou show with any of the other artists you</p> <p>19 represented?</p> <p>20 A. No, I don't discuss usually each</p> <p>21 artist with the others, you know. It's kind of</p> <p>22 confidential.</p> <p>23 Q. I understand.</p> <p>24 And can you tell me in general if</p> <p>25 you're going to do a show like the show you got</p>	<p>88</p> <p>1 Celle</p> <p>2 catalog because what I was planning is a reprint</p> <p>3 of the book of 5,000 copy and have a show of</p> <p>4 Patrick work in conjunction with the reprint of</p> <p>5 the book and do a book signing too because the</p> <p>6 book was hard to find. Powerhouse had sold out</p> <p>7 the book.</p> <p>8 Q. At this point in time had you made</p> <p>9 any arrangements to have the book reprinted as</p> <p>10 of the end of January 2009?</p> <p>11 A. No, because in November or December</p> <p>12 I heard that there was a situation where there</p> <p>13 was a show at Gagosian with certain photograph</p> <p>14 of Patrick Cariou.</p> <p>15 So at the time I had no idea and I</p> <p>16 was thinking two things, maybe Patrick Cariou is</p> <p>17 not responding my phone call because he's doing</p> <p>18 something with Richard Prince.</p> <p>19 You know, I don't know Patrick</p> <p>20 Cariou, so I say maybe that's why he's not</p> <p>21 pursuing me because he's doing something better,</p> <p>22 bigger with this person. That was my first</p> <p>23 reaction when I heard there was a show at</p> <p>24 Gagosian.</p> <p>25 First, that was my reaction. That's</p>



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<p style="text-align: center;">89</p> <p>1 Celle</p> <p>2 why I left a message, you know, for him to call</p> <p>3 me back. Because for me he had done it with</p> <p>4 Gagosian and Prince and the big show and then he</p> <p>5 didn't want to tell the French girl I'm not</p> <p>6 doing it with you, you know, because we had</p> <p>7 started a relation and that would have been bad.</p> <p>8 And I was not sure about that.</p> <p>9 But I was thinking if it's done</p> <p>10 already I'm not going to do now a Rasta show</p> <p>11 showing, you know, the work. It looks like I'm</p> <p>12 trying to take advantage of the success of</p> <p>13 Richard Prince and saying, wow, great, let me do</p> <p>14 the Rasta, and now I'm going to show this.</p> <p>15 So at the time I knew that if I will</p> <p>16 do something with Patrick it will be probably</p> <p>17 the Surfer. But I could not do anymore the</p> <p>18 Rasta because it was already in Chelsea, a</p> <p>19 beautiful gallery in Chelsea.</p> <p>20 And Gagosian is a very famous</p> <p>21 gallery, so if the work was shown there already</p> <p>22 with another artist together, you know, I was</p> <p>23 not sure if Patrick had decided to do something</p> <p>24 with Richard Prince.</p> <p>25 And that was my first idea because,</p>	<p style="text-align: center;">91</p> <p>1 Celle</p> <p>2 Q. And where do you advertise?</p> <p>3 A. In Photograph Magazine. It's like a</p> <p>4 small booklet, like a photographic guide mostly.</p> <p>5 Q. As of the end of January of 2009 had</p> <p>6 you made any arrangements for advertisements of</p> <p>7 a show of photographs by Mr. Cariou?</p> <p>8 A. No, because the minute I figure out</p> <p>9 that there was a Chelsea show of his work, you</p> <p>10 know, I knew that it was over.</p> <p>11 Q. At any time prior to January 29th of</p> <p>12 2009 had you ordered any advertisements for a</p> <p>13 show for Mr. Cariou?</p> <p>14 A. No.</p> <p>15 Q. Had you printed any invitations?</p> <p>16 A. No.</p> <p>17 Q. Had you made any arrangements with</p> <p>18 Powerhouse Books to reprint Yes Rasta?</p> <p>19 A. No, because it was more Patrick's</p> <p>20 decision to do that. But we were committed to</p> <p>21 do something.</p> <p>22 Q. Okay. Now, turning to the third</p> <p>23 page of this document, this is where I guess</p> <p>24 if you can identify -- this appears to be a</p> <p>25 different e-mail.</p>
<p style="text-align: center;">90</p> <p>1 Celle</p> <p>2 you know, a friend of mine told my husband and I</p> <p>3 went to look on the website and I thought maybe</p> <p>4 it's a collaboration. And now I was thinking</p> <p>5 this is why, you know, I don't have any news</p> <p>6 from Patrick.</p> <p>7 The second option was we didn't</p> <p>8 agree and then we see, but I wanted to figure</p> <p>9 out, but I knew there was no way I could do a</p> <p>10 show because of the situation.</p> <p>11 Q. By this time at the end of January</p> <p>12 of 2009 had you printed up any invitations for</p> <p>13 the show?</p> <p>14 A. No.</p> <p>15 Q. Do you typically print invitations?</p> <p>16 A. Really I would say a month before</p> <p>17 the show, you know. We do a postcard.</p> <p>18 Q. A postcard?</p> <p>19 A. Yeah.</p> <p>20 Q. Do you usually take advertisements</p> <p>21 for a show?</p> <p>22 A. Yes, we do.</p> <p>23 Q. And when do you usually make the</p> <p>24 arrangements for advertisements?</p> <p>25 A. At least three months before.</p>	<p style="text-align: center;">92</p> <p>1 Celle</p> <p>2 Looking at the e-mail which appears</p> <p>3 to take up the bottom two thirds of this --</p> <p>4 sorry.</p> <p>5 This page appears to be a copy of</p> <p>6 the -- I confused myself here.</p> <p>7 On page 3 there appears to me to be</p> <p>8 some carryover lines or something at the top</p> <p>9 which consists of --</p> <p>10 MR. BROOKS: Excuse me. Hers is</p> <p>11 different than mine.</p> <p>12 MR. HAYES: Off the record.</p> <p>13 (Discussion off the record.)</p> <p>14 BY MR. HAYES:</p> <p>15 Q. Looking at the third page, at the</p> <p>16 top of the page is what appears to be two lines,</p> <p>17 then a space, one line, then a space, and then</p> <p>18 three lines, do you see that?</p> <p>19 (Witness indicating.)</p> <p>20 Q. Yes. Top of the page, two lines</p> <p>21 beginning "elles ont fait"?</p> <p>22 A. Yes.</p> <p>23 Q. And then there are two lines there,</p> <p>24 then there's a space, one line?</p> <p>25 A. Yes.</p>



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<p style="text-align: center;">101</p> <p>1 Celle</p> <p>2 Q. "Bonne chance en tout cas" means</p> <p>3 good luck in your case?</p> <p>4 A. Yes.</p> <p>5 MR. BROOKS: Does it mean in your</p> <p>6 case or in any case?</p> <p>7 A. "Bonne chance" in any case, whatever</p> <p>8 happens, "bonne chance" to you.</p> <p>9 Q. And then there is a response by</p> <p>10 Patrick Cariou, what appears to be a one-line</p> <p>11 response at 16:03 on the 29th?</p> <p>12 A. Yeah.</p> <p>13 Q. And that's one line with two</p> <p>14 question marks.</p> <p>15 A. Yeah. He's saying thank you on my</p> <p>16 book, interesting, new, because he wants to sell</p> <p>17 that collection of book, so he's asking if I'm</p> <p>18 interested in those books, his big book</p> <p>19 collection.</p> <p>20 Q. And then you respond to him by</p> <p>21 e-mail, which I don't see has time on it, but</p> <p>22 it's also on the 29th and it says "oui bien</p> <p>23 sur"?</p> <p>24 A. Yeah.</p> <p>25 Q. And that consists of --</p>	<p style="text-align: center;">103</p> <p>1 Celle</p> <p>2 A. Yeah.</p> <p>3 Q. Okay. And so between January 29th</p> <p>4 and the time --</p> <p>5 MR. BROOKS: I'm sorry, that last</p> <p>6 line, does it say they're less rare but</p> <p>7 very beautiful?</p> <p>8 A. Yeah, very beautiful.</p> <p>9 MR. BROOKS: And less rare?</p> <p>10 A. Yes.</p> <p>11 Q. Between that e-mail on January 29th</p> <p>12 and the time that he came to your gallery to see</p> <p>13 the show did you have any e-mail contact with</p> <p>14 him?</p> <p>15 A. No, but this refreshed my memory.</p> <p>16 When this happened, as you could</p> <p>17 see, we are not corresponding. He's talking</p> <p>18 about his whole collection and I'm talking about</p> <p>19 the Rasta.</p> <p>20 So I called him. I remember I call</p> <p>21 him. And we talk about the whole thing, you</p> <p>22 know, and -- well, he was going on and on with</p> <p>23 his lawsuit. And, you know, we talk about a</p> <p>24 book and everything.</p> <p>25 And I say to him, you know, I saw a</p>
<p style="text-align: center;">102</p> <p>1 Celle</p> <p>2 A. Yes, of course. I mean that means</p> <p>3 I will be interested to see your collection.</p> <p>4 I buy some online. I already bought 40 Rasta</p> <p>5 and we sold them.</p> <p>6 "En revanche" means on the other</p> <p>7 side I've not been very lucky with Surfer</p> <p>8 because they are very hard to find, very</p> <p>9 difficult to find. But every week I am looking</p> <p>10 for -- "un par si par la" means everywhere I</p> <p>11 can. Rasta people adore the book, really love</p> <p>12 it. Can you do a reprint of the book.</p> <p>13 Q. And then we have at the very top his</p> <p>14 response to you, which I think we established</p> <p>15 before was at 10:31 on January 29.</p> <p>16 And now with that leading into this</p> <p>17 can you then translate those four lines for us,</p> <p>18 please?</p> <p>19 A. Yeah.</p> <p>20 For Rasta you can call my publisher</p> <p>21 Powerhouse Book. In reality I was mentioning my</p> <p>22 private collection, the big collection, with</p> <p>23 beautiful, rare, vintage pieces and some not as</p> <p>24 beautiful.</p> <p>25 Q. And that's it?</p>	<p style="text-align: center;">104</p> <p>1 Celle</p> <p>2 few months ago I try to call you, you know, I</p> <p>3 heard about what was happening in the gallery,</p> <p>4 I tried to call you, you never call me back.</p> <p>5 Q. Did he say why he didn't call you</p> <p>6 back?</p> <p>7 A. You know, he said, you know, my</p> <p>8 cellular phone sometimes, you know --</p> <p>9 Q. Your what?</p> <p>10 A. He told me that sometimes he doesn't</p> <p>11 get all messages, you know.</p> <p>12 Q. Okay.</p> <p>13 A. I mean, you know, and because of the</p> <p>14 holiday I guess. Also in St. Barths I don't</p> <p>15 have -- my 917 phone in New York doesn't work</p> <p>16 there. So I don't know -- we didn't communicate</p> <p>17 really.</p> <p>18 But what I told him at that moment</p> <p>19 is of course I want to carry the book, I think</p> <p>20 you should try to do a reprint because it's a</p> <p>21 very important book.</p> <p>22 And I say to him, anyway, now I</p> <p>23 understand more what happened because I didn't</p> <p>24 know when this happened, I didn't know if you</p> <p>25 worked with him.</p>



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<p style="text-align: center;">105</p> <p>1 Celle</p> <p>2 But I told him that there was no way</p> <p>3 I could do a Rasta show because it looks like</p> <p>4 I'm trying to capitalize on, you know, the</p> <p>5 Richard Prince notoriety and say, wow, he did</p> <p>6 this, I'm going to do a show now and show the</p> <p>7 Rasta work, it looks like I'm trying to take</p> <p>8 advantage of the situation. And I say there's</p> <p>9 no way I can do a show right now.</p> <p>10 Q. And in that conversation did</p> <p>11 Mr. Cariou try to persuade you to proceed with</p> <p>12 the show?</p> <p>13 A. At the time I think he was very</p> <p>14 preoccupied by the whole situation more than</p> <p>15 focusing on my conversation.</p> <p>16 Q. Preoccupied by the lawsuit?</p> <p>17 A. Yes.</p> <p>18 Q. Rather than focusing on your show in</p> <p>19 your conversation?</p> <p>20 A. Yes, he was very preoccupied with it</p> <p>21 because it was something very important for him.</p> <p>22 And I kind of apologize and say,</p> <p>23 you know what, this has been – you know, since</p> <p>24 November I heard, I call you, you didn't call me</p> <p>25 back, and I was thinking, you know, I really</p>	<p style="text-align: center;">107</p> <p>1 Celle</p> <p>2 Q. Are you still interested in doing</p> <p>3 a show with Mr. Cariou?</p> <p>4 A. I don't know after all this, you</p> <p>5 know.</p> <p>6 Q. You are still interested in selling</p> <p>7 the Yes Rasta book?</p> <p>8 A. The book I still sell it. I always</p> <p>9 sold the book, you know, because I have a</p> <p>10 bookstore and, you know. So I love the book,</p> <p>11 but doing a show, I'm not sure.</p> <p>12 Q. Anything else in that conversation</p> <p>13 that you had with him that you haven't told us</p> <p>14 about?</p> <p>15 A. No. I think that's it. I don't</p> <p>16 think I remember anything else.</p> <p>17 Q. Were there any other conversations</p> <p>18 that you had between that telephone conversation</p> <p>19 and the time he came to your gallery in the</p> <p>20 spring of '09?</p> <p>21 A. I don't – no, I don't think so.</p> <p>22 Q. And that conversation was – these</p> <p>23 e-mails are in late January?</p> <p>24 A. Mm-hmm.</p> <p>25 Q. Was that conversation shortly after</p>
<p style="text-align: center;">106</p> <p>1 Celle</p> <p>2 love your work but now if I do a show today it</p> <p>3 looks like I'm taking advantage.</p> <p>4 Because if there is a New York Times</p> <p>5 Magazine talking about, you know, this, you get</p> <p>6 a writeup and I don't want to be the one trying</p> <p>7 to capitalize on the success of that or not the</p> <p>8 success or the bad press, you know. So I say I</p> <p>9 don't want to do the show.</p> <p>10 Q. What did he say in response to that?</p> <p>11 A. You know, he asked me will you do</p> <p>12 any other show. And I say, well, maybe, you</p> <p>13 know, we have to talk.</p> <p>14 Q. And did you have a discussion, for</p> <p>15 example, about doing a show relating the surfer</p> <p>16 portraits that you talked about putting in the</p> <p>17 show with the Rastas?</p> <p>18 A. You know, at the time we didn't go</p> <p>19 anywhere. The proof is like today I still</p> <p>20 haven't gotten anything from him.</p> <p>21 Q. You haven't gotten any prints from</p> <p>22 him or anything?</p> <p>23 A. Today I mean I'm trying to get</p> <p>24 things, but I think this has to be probably</p> <p>25 over, you know. I don't know the situation.</p>	<p style="text-align: center;">108</p> <p>1 Celle</p> <p>2 the e-mail exchange, do you recall?</p> <p>3 A. Yes. I call him because I really</p> <p>4 wanted – because we e-mail sometime, you know,</p> <p>5 he's talking about his collection, I want the</p> <p>6 Rasta.</p> <p>7 Because I had mentioned early on</p> <p>8 that the book was running out, he should do a</p> <p>9 reprint, he should talk to Powerhouse, because</p> <p>10 I cannot go to the publisher and say can you</p> <p>11 reprint that book.</p> <p>12 Q. And that conversation took place,</p> <p>13 would it be fair to say, around the end of</p> <p>14 January or beginning of February?</p> <p>15 A. Yes, beginning of February probably.</p> <p>16 Q. And in that conversation did you</p> <p>17 have a more complete conversation about his</p> <p>18 collection and him sending you the collection?</p> <p>19 MR. BROOKS: I'm sorry, which</p> <p>20 collection?</p> <p>21 MR. HAYES: His collection of his</p> <p>22 own books.</p> <p>23 A. At the time he say to me that the</p> <p>24 books were in the basement in Brooklyn, that his</p> <p>25 next trip to New York he will, you know, go</p>



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<p style="text-align: center;">125</p> <p>1 Celle</p> <p>2 Q. And you expect you did discuss this</p> <p>3 with her?</p> <p>4 A. Yes.</p> <p>5 Q. But don't perhaps remember a</p> <p>6 specific conversation?</p> <p>7 A. I probably told her that was</p> <p>8 happening and that I will not do the show</p> <p>9 because, you know, in December I was already</p> <p>10 talking with a photographer. She was aware of</p> <p>11 it. She had met Lyle Owerko.</p> <p>12 We also had bought a book from him</p> <p>13 that we were selling right away.</p> <p>14 Q. And you were intending to sell that</p> <p>15 in your bookstore?</p> <p>16 A. Bookstore and eventually gallery.</p> <p>17 Q. And the title of that book is?</p> <p>18 A. And The Birds Sing, it's a book</p> <p>19 about 2011 what happened -- September 11, sorry.</p> <p>20 This young photographer came to show</p> <p>21 me with his work about September 11, which I was</p> <p>22 not interested, and when I ask him what other</p> <p>23 project he was working on he showed me the</p> <p>24 Samburu, the North Kenya civilization.</p> <p>25 And I immediately, you know, decided</p>	<p style="text-align: center;">127</p> <p>1 Celle</p> <p>2 selling about 30 prints from him.</p> <p>3 Q. In the year 2009 how many prints in</p> <p>4 total did you sell?</p> <p>5 A. In whole gallery?</p> <p>6 Q. Yes.</p> <p>7 A. There was an artist where I sold</p> <p>8 about 189 exactly.</p> <p>9 Q. Who is that?</p> <p>10 A. It's called James and Karla Murray,</p> <p>11 M-U-R-R-A-Y, and it's called Store Front. It's</p> <p>12 coming with a book too, so we did book signing</p> <p>13 and show. I forgot to mention that show before.</p> <p>14 We are still selling their work.</p> <p>15 It's real interesting work about all New York</p> <p>16 store fronts.</p> <p>17 Q. And what is the price point of those</p> <p>18 photographs?</p> <p>19 A. \$2,500 and up.</p> <p>20 MR. BROOKS: Excuse me one second.</p> <p>21 Did you get the word "store front"?</p> <p>22 A. Store Front, yeah, the name of the</p> <p>23 show, and the book.</p> <p>24 Q. In your gallery -- or galleries, but</p> <p>25 focusing first on the Broome Street gallery, do</p>
<p style="text-align: center;">126</p> <p>1 Celle</p> <p>2 to do a show with him because I knew I was not</p> <p>3 going to do Rasta. And I had Rasta such in my</p> <p>4 head that it was the perfect, you know,</p> <p>5 replacement. And I really like his work.</p> <p>6 Actually, he just won last week --</p> <p>7 there was 3,000 candidates in a big contest</p> <p>8 called Hasselblad contest. He's the winner this</p> <p>9 year, and he was chosen from 3,000 people.</p> <p>10 So I knew that if I could not have</p> <p>11 Rasta I had to have a replacement. And when I</p> <p>12 saw his work I was thinking that's perfect, you</p> <p>13 know.</p> <p>14 Q. And that's the show you told us</p> <p>15 about earlier which did in fact take place?</p> <p>16 A. Yes, my opening show in April.</p> <p>17 Q. And how did that show go?</p> <p>18 A. Very well actually.</p> <p>19 Q. Did you sell prints in the show?</p> <p>20 A. Yeah.</p> <p>21 Q. Do you have an average number of</p> <p>22 prints you've sold from your photography shows?</p> <p>23 A. In this case the prints start at</p> <p>24 2,500 up to 10,000. You know, it's still a</p> <p>25 small gallery, but we are right now we have been</p>	<p style="text-align: center;">128</p> <p>1 Celle</p> <p>2 you carry inventory of the photographs?</p> <p>3 A. Yes, we do.</p> <p>4 Q. And so you offer those for sale in</p> <p>5 addition to whatever the currently-up show is,</p> <p>6 if there is one?</p> <p>7 A. Yes, definitely.</p> <p>8 Q. And where do you have them</p> <p>9 physically in the gallery?</p> <p>10 A. We have like a file, a flat file,</p> <p>11 so we have them there. Some are also framed.</p> <p>12 For example, we keep older show, you know, so we</p> <p>13 have inventory. I have also a huge space.</p> <p>14 I have a 4,000-square-foot space in 255 Centre</p> <p>15 Street. So we keep inventory.</p> <p>16 Q. And you keep inventory then in each</p> <p>17 of your galleries?</p> <p>18 A. Yes, because we work with also a lot</p> <p>19 of decorators, you know.</p> <p>20 Q. And do you keep inventory primarily</p> <p>21 of the artists you've shown or artists of a</p> <p>22 broad spectrum?</p> <p>23 A. Only artists we are showing.</p> <p>24 Q. Have you ever kept any inventory of</p> <p>25 Patrick Carlou?</p>

<p style="text-align: center;">133</p> <p>1 Celle</p> <p>2 A. He told me that they were buying a</p> <p>3 lot of prints for a hotel in New Jersey.</p> <p>4 Q. And did he tell you what subject</p> <p>5 matter those prints were?</p> <p>6 A. I can't recall. I know they were</p> <p>7 related to the book, but I could not give you</p> <p>8 more detail. And I was not really indiscreet,</p> <p>9 you know.</p> <p>10 Q. And the books that Mr. Novogratz</p> <p>11 purchased from you were Yes Rasta books or some</p> <p>12 other books?</p> <p>13 A. Yes Rasta and Surfer.</p> <p>14 MR. HAYES: Can we take a break for</p> <p>15 a few minutes?</p> <p>16 (Recess taken: 12:19 p.m.)</p> <p>17 (Proceedings resumed: 12:42 p.m.)</p> <p>18 BY MR. HAYES:</p> <p>19 Q. As of this time do you represent</p> <p>20 Mr. Cariou in any way in your view?</p> <p>21 A. I was very committed, I wanted to</p> <p>22 represent him. We agree on it but we never</p> <p>23 really pursue it, no.</p> <p>24 Q. You never got to an agreement?</p> <p>25 A. No. In general when I do a show</p>	<p style="text-align: center;">135</p> <p>1 Celle</p> <p>2 But no, never.</p> <p>3 Q. Sitting here today has Mr. Cariou</p> <p>4 ever sent you prints of any photographs he would</p> <p>5 like to have you sell?</p> <p>6 A. No.</p> <p>7 MR. HAYES: I'd like to mark as</p> <p>8 Defendant Celle Exhibit 3 a four-page</p> <p>9 document, which I will represent I printed</p> <p>10 out off what I believe to be your website,</p> <p>11 and I'm not saying it's the entire</p> <p>12 website, it's four pages from the website.</p> <p>13 Let me have that marked, and then I</p> <p>14 want to ask you a few questions about it.</p> <p>15 (Defendant's Exhibit 3, printout</p> <p>16 from website, was marked for</p> <p>17 identification, as of this date.)</p> <p>18 Q. Take a moment to look through those</p> <p>19 four pages. As I said before, I think this is</p> <p>20 not a complete copy of your website. And I may</p> <p>21 ask you if I can get a copy.</p> <p>22 Also, I notice in looking at this</p> <p>23 that some of the photocopying is not good, which</p> <p>24 I apologize for. But just take a look at it.</p> <p>25 And the first question I would have</p>
<p style="text-align: center;">134</p> <p>1 Celle</p> <p>2 with somebody -- when I do a show with an artist</p> <p>3 I do not do a show if I don't represent him,</p> <p>4 because it's very expensive to put a show</p> <p>5 together.</p> <p>6 Q. Sure.</p> <p>7 As of this moment if Patrick Cariou</p> <p>8 wants to sell his prints to someone else he can</p> <p>9 do so in your view?</p> <p>10 A. He's allowed to.</p> <p>11 MR. BROOKS: Object to the form.</p> <p>12 Q. Have you had any discussions with</p> <p>13 Mr. Cariou about him selling his work -- say</p> <p>14 since the beginning of 2010, have you had any</p> <p>15 discussions with Mr. Cariou about him selling</p> <p>16 his work anywhere else?</p> <p>17 A. No.</p> <p>18 Q. Did you have any discussions in</p> <p>19 2009, other than the conversation about the</p> <p>20 decorator we talked about, Robert --</p> <p>21 A. Novogratz.</p> <p>22 Q. -- Novogratz, any discussions with</p> <p>23 Mr. Cariou about him selling his work through</p> <p>24 anyone else?</p> <p>25 A. Novogratz I think was in 2008.</p>	<p style="text-align: center;">136</p> <p>1 Celle</p> <p>2 is does this look like several pages from your</p> <p>3 website?</p> <p>4 A. Yes, correct.</p> <p>5 Q. But there would be more to the</p> <p>6 website pages?</p> <p>7 A. Yes.</p> <p>8 Q. And do you have a complete copy of</p> <p>9 the website pages, not saying here today, but do</p> <p>10 you have them?</p> <p>11 A. I never printed one, but I could.</p> <p>12 Q. And in order to print one would one</p> <p>13 go to the different categories of about, news,</p> <p>14 blog, locations, artists, press, and contact,</p> <p>15 and if you printed out all of those you would</p> <p>16 have a complete?</p> <p>17 A. Correct.</p> <p>18 Q. Can I ask you, if you wouldn't</p> <p>19 mind -- and of course your attorney can take</p> <p>20 this under advisement -- if you could just at</p> <p>21 some point print out a copy and ask Mr. Brooks</p> <p>22 to give me a copy of it?</p> <p>23 A. Definitely.</p> <p>24 Q. Sometimes we have trouble with</p> <p>25 different websites, people have trouble printing</p>



<p style="text-align: center;">137</p> <p style="text-align: center;">Celle</p> <p>1 out the whole thing. I just want to see if I 2 can get a complete. 3 4 Okay. The first page that I have 5 here has some photographs of books and says 6 January Book Sale, correct? 7 A. Correct. 8 Q. And these are books that you're 9 offering as part of a sales -- were offering as 10 part of a sales process, or are offering now as 11 part of a sales process in January? 12 A. Correct. 13 Q. And one is a book about Africa? 14 A. Yes, correct. 15 Q. By Leni Riefenstahl? 16 A. Correct. 17 Q. Next is Matthew Rolston book? 18 A. Mm-hmm. 19 Q. Is that a fashion book? 20 A. Yes, fashion. 21 Q. Next one over, I'm sorry, I can't 22 read. Do you recognize it? 23 A. Thomas Ruff, yeah. 24 Q. And the next one over is? 25 A. I can't remember. I mean I know</p>	<p style="text-align: center;">139</p> <p style="text-align: center;">Celle</p> <p>1 2 A. Both. Some of them also have a 3 book, some don't have a book. 4 Q. So this first one with the two 5 elephants, those artists have a book and sell 6 prints? 7 A. Yes, correct. 8 Q. At your gallery? 9 A. Yes. 10 Q. The next one over, what's the next 11 one? 12 A. Sue Kwon. 13 Q. Again, sells both books and prints 14 at your gallery? 15 A. Yes, the book is called Street 16 Level. 17 Q. And what's the subject matter of 18 that? 19 A. It's New York, old neighborhood that 20 were photographs starting in the '80s to today, 21 different neighborhood. And I had a show for 22 Sue Kwon actually in September. 23 Q. Next one over is? 24 A. Wayne Levin. No book, but I 25 represent him and his work. He's from Hawaii.</p>
<p style="text-align: center;">138</p> <p style="text-align: center;">Celle</p> <p>1 it's representing Eden, but I can't remember the 2 name of the photographer. I have a blank. 3 4 Q. The next page, which I think is 5 printed out when one goes to artists, as you can 6 see from the word "artist" being underlined, is 7 this list artists you represent or have 8 represented? 9 A. Correct. 10 Q. And, again, I apologize for the bad 11 copying. The one at the top left which shows 12 two elephants? 13 A. Yes. 14 Q. Who is the artist there? 15 A. Christo -- Cyril Christo, and Marie 16 Wilkinson. 17 Q. Are those a husband-and-wife team? 18 A. Correct, yeah. 19 Q. What do they show? 20 A. They show the work from a book 21 called Walking Thunder. 22 Q. And by the way, all these on this 23 page, are these all books or are these artists 24 who are selling prints in the gallery or 25 galleries?</p>	<p style="text-align: center;">140</p> <p style="text-align: center;">Celle</p> <p>1 2 Q. So you sell prints of his? 3 A. Yes. 4 Q. And the subject matter is? 5 A. Underwater photography. 6 Q. Color? 7 A. Black and white mainly in my 8 gallery, but he also does color. 9 Q. And have you done a show for him? 10 A. No, he's always part of group show. 11 Q. And the first two that we just went 12 through, did you do shows with them? 13 A. Sue Kwon I did a show. 14 Christo and Wilkinson I did a show 15 and book signing. 16 Q. Next one over, the fourth one with 17 the picture of a person on it, what's that one? 18 A. Lyle Owerko. He's the person 19 actually we replaced Patrick Cariou in April 20 2009 opening. That's the Samburu project. No 21 book yet about that special work, but a show. 22 Q. What's the one to the right? 23 A. Jean-Philippe Piter, underwater 24 photography. He's from St. Barths. No show. 25 I'm sorry, no book. Group show. Part of the</p>



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<p style="text-align: center;">149</p> <p>1 Celle</p> <p>2 A. What I was assuming is once I would</p> <p>3 be like representing him I will do a show about</p> <p>4 the Rasta. But I was interested in also the</p> <p>5 Surfer print. So in that case, of course I will</p> <p>6 sell the Surfer print too. That was my</p> <p>7 understanding.</p> <p>8 Q. And he has never sent you the Surfer</p> <p>9 prints?</p> <p>10 A. If he had sent me the Surfer</p> <p>11 prints – I've seen the Surfer prints. He</p> <p>12 showed me the cover of the book. I've seen a</p> <p>13 few image but, you know, they don't belong to</p> <p>14 me.</p> <p>15 Q. If he were to send you the Surfer</p> <p>16 prints would you sell them, offer them for sale?</p> <p>17 A. I mean I will have to think about</p> <p>18 it. I cannot just maybe sell them randomly.</p> <p>19 I would have to maybe organize a show. I have</p> <p>20 a show coming this summer of Surfer maybe.</p> <p>21 Q. Have you had any discussion with</p> <p>22 Mr. Cariou about including Surfer images in the</p> <p>23 summer show?</p> <p>24 A. We talked about it before, yes, we</p> <p>25 did.</p>	<p style="text-align: center;">151</p> <p>1 Celle</p> <p>2 A. Yeah, I'm not sure that he'd be</p> <p>3 willing to participate. I'm not sure what kind</p> <p>4 of prints are available.</p> <p>5 He showed me some prints but they</p> <p>6 were very small. I need big prints. They are</p> <p>7 expensive. He needs to print them. I don't</p> <p>8 know his situation financially, if he can afford</p> <p>9 to print them, you know. That's all the detail.</p> <p>10 You know, some photographer just</p> <p>11 say, okay, you want to do a show, let's do it,</p> <p>12 and I have the print.</p> <p>13 With Patrick we never really went</p> <p>14 farther. And because of the situation now –</p> <p>15 what is interesting right now is selling his</p> <p>16 book. And I told him I will help him with that.</p> <p>17 Q. The Rasta book? The Surfer book?</p> <p>18 A. No, the collection of old books.</p> <p>19 And those two books I'm selling no matter what.</p> <p>20 Q. I apologize. So you told him you're</p> <p>21 interested in selling his collection or the</p> <p>22 portion of his collection he's given you to</p> <p>23 review?</p> <p>24 A. Voila. Right now actually I'm</p> <p>25 trying to review them, but they have probably –</p>
<p style="text-align: center;">150</p> <p>1 Celle</p> <p>2 Q. And what was the discussion about</p> <p>3 it, what did you say to him and what did he say</p> <p>4 to you?</p> <p>5 A. I wanted to know if he had, you</p> <p>6 know, the image, what kind of image he had, and</p> <p>7 if it was consistent enough, you know, because</p> <p>8 so far I've not seen really many prints of his</p> <p>9 works. I have seen the book but I have not seen</p> <p>10 all the prints.</p> <p>11 Q. But any substantive discussions,</p> <p>12 detailed discussions about it?</p> <p>13 A. I mean I always told him that, you</p> <p>14 know, I would love to do something with the</p> <p>15 Surfer, you know. And I think probably it will</p> <p>16 happen. I don't guarantee.</p> <p>17 I know right now his focus is</p> <p>18 this situation, so I never really got like a</p> <p>19 100 percent answer.</p> <p>20 But we discussed that before,</p> <p>21 because I mean Yes Rasta is a problem, but the</p> <p>22 Surfer has no problem. You know, it's very</p> <p>23 independent from this.</p> <p>24 Q. So when you say you never got a</p> <p>25 100 percent answer, you mean from Mr. Cariou?</p>	<p style="text-align: center;">152</p> <p>1 Celle</p> <p>2 he told me 400. I'm trying to do an inventory</p> <p>3 and see what books I'm interested in, because I</p> <p>4 cannot take the 400, you know.</p> <p>5 Q. I won't ask a lot of questions about</p> <p>6 this, but I just wanted to know, have you or</p> <p>7 your husband ever been involved in any lawsuits?</p> <p>8 A. Yes, I had been.</p> <p>9 Q. What lawsuits have you been involved</p> <p>10 in?</p> <p>11 A. It was when I left Calypso, my</p> <p>12 previous company. I resign for good cause. And</p> <p>13 there was a lawsuit, and it was settled, you</p> <p>14 know.</p> <p>15 Q. Has your husband ever been involved</p> <p>16 in a lawsuit? He was involved in that lawsuit I</p> <p>17 guess?</p> <p>18 A. Actually was he involved directly or</p> <p>19 indirectly? Yes, I think he was involved as a</p> <p>20 partner, you know, in the company.</p> <p>21 Q. Has he been in any other lawsuits</p> <p>22 that you know?</p> <p>23 A. Not that I know of.</p> <p>24 MR. HAYES: I have no further</p> <p>25 questions.</p>



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<p>153</p> <p>1 Celle</p> <p>2 MS. HAMMERMAN: I have no questions.</p> <p>3 MR. BROOKS: I just have a few.</p> <p>4 EXAMINATION BY</p> <p>5 MR. BROOKS:</p> <p>6 Q. Ms. Celle, earlier today you</p> <p>7 testified that if you had done the show for</p> <p>8 Mr. Cariou I believe you said there would have</p> <p>9 been 30 to 40 prints, is that right?</p> <p>10 A. Correct.</p> <p>11 Q. Of different sizes?</p> <p>12 A. Different sizes.</p> <p>13 Q. Now, for any given photograph that</p> <p>14 you had a print of would there only have been</p> <p>15 one for sale or would there have been more than</p> <p>16 one for sale?</p> <p>17 A. Okay. What we discussed with</p> <p>18 Patrick was the edition, because that's a very</p> <p>19 important question. So for each print we were</p> <p>20 thinking a series of ten photograph.</p> <p>21 Q. And would those have remained for</p> <p>22 sale after the show was over?</p> <p>23 A. Yes.</p> <p>24 Q. You would have kept them in</p> <p>25 inventory?</p>	<p>155</p> <p>1 Celle</p> <p>2 MS. HAMMERMAN: Join.</p> <p>3 Q. You can answer.</p> <p>4 A. I wish. It's hard to say.</p> <p>5 I wish, I would be very happy today.</p> <p>6 Q. And the prices again would have been</p> <p>7 between what and what?</p> <p>8 A. First price around 3,000, the most</p> <p>9 expensive, the biggest format I would say 15,000</p> <p>10 to 20.</p> <p>11 Q. Now, just to be clear, you've talked</p> <p>12 a lot about Lyle – Owerko?</p> <p>13 A. Owerko, yeah.</p> <p>14 Q. That was your first show?</p> <p>15 A. Yes.</p> <p>16 Q. At the 424 Broome Street gallery?</p> <p>17 A. Yes.</p> <p>18 Q. And when you were talking to Patrick</p> <p>19 was he going to be the first show before you</p> <p>20 replaced him with Lyle?</p> <p>21 A. Yes, Patrick was the opening show.</p> <p>22 Q. And can you explain again what your</p> <p>23 idea was that you discussed with Patrick about</p> <p>24 having a book signing at his show?</p> <p>25 A. Usually, I mean it's really more</p>
<p>154</p> <p>1 Celle</p> <p>2 A. Yes. The way it works is people buy</p> <p>3 sometime at the show.</p> <p>4 MR. HAYES: I'm just going to object</p> <p>5 to the question. Calls for speculation.</p> <p>6 MS. HAMMERMAN: Join.</p> <p>7 Q. Go on.</p> <p>8 A. Also people buy the print at the</p> <p>9 show because there is only one print people</p> <p>10 order, you know, people want the same image, so</p> <p>11 we have to print it for them.</p> <p>12 Q. So if there were 30 to 40 photos how</p> <p>13 many copies would there have been of each one</p> <p>14 that you would have offering for sale?</p> <p>15 MR. HAYES: Again, object, the</p> <p>16 question calls for speculation, and form.</p> <p>17 MS. HAMMERMAN: Form.</p> <p>18 Q. You can answer.</p> <p>19 A. At the show I was issuing one of</p> <p>20 each but, you know, you could make 30 to 40 by</p> <p>21 ten, you know.</p> <p>22 Q. So there could have been 300 to 400</p> <p>23 that you would have sold?</p> <p>24 MR. HAYES: Objection, calls for</p> <p>25 speculation. Objection to form.</p>	<p>156</p> <p>1 Celle</p> <p>2 powerful when you are able to present the work</p> <p>3 of an artist and there is a book to validate the</p> <p>4 work.</p> <p>5 I was very surprised that – in</p> <p>6 Europe his work is very well-known of course,</p> <p>7 because he's French I guess. I really wanted to</p> <p>8 capitalize for, you know, the fact that there</p> <p>9 was that beautiful book. And, you know, the</p> <p>10 book was very helpful in terms of picking out</p> <p>11 all the photograph and the portrait.</p> <p>12 Q. And which book are you talking about</p> <p>13 now?</p> <p>14 A. Yes Rasta.</p> <p>15 Q. So again, how many copies were you</p> <p>16 planning to have at the book signing?</p> <p>17 A. Usually in a book signing I can sell</p> <p>18 from – I will say an event like that, 50 to</p> <p>19 200.</p> <p>20 I had a book signing where I sold</p> <p>21 400 books, but that was Patrick Demarchelier.</p> <p>22 He's much more famous.</p> <p>23 But usually guaranteed 50 books.</p> <p>24 But, you know, up to 200, and the book stays in</p> <p>25 the gallery anyway and the show too, so.</p>



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<p style="text-align: center;">157</p> <p>1 Celle</p> <p>2 Q. And why was it that you – I think</p> <p>3 you said he was going to ask Powerhouse to</p> <p>4 reprint the book I think you said?</p> <p>5 What was the reason for that?</p> <p>6 MR. HAYES: Objection. I don't</p> <p>7 think it states the testimony correctly.</p> <p>8 MS. HAMMERMAN: Join.</p> <p>9 MR. BROOKS: I think she said that.</p> <p>10 A. I was the one telling him because</p> <p>11 it's not in my power to go to Powerhouse and</p> <p>12 tell them to reprint the book.</p> <p>13 So I was having a conversation with</p> <p>14 Patrick to tell him you should really push them</p> <p>15 to reprint that book, but not only that book,</p> <p>16 the Surfer book too.</p> <p>17 Q. Now, you don't represent Patrick,</p> <p>18 correct?</p> <p>19 A. I don't.</p> <p>20 Q. But if you had had a show you would</p> <p>21 have entered into a contract to be his agent?</p> <p>22 MR. HAYES: Objection, calls for</p> <p>23 speculation. Object to the form.</p> <p>24 MS. HAMMERMAN: Join.</p> <p>25 Q. Is that correct?</p>	<p style="text-align: center;">159</p> <p>1 Celle</p> <p>2 or contemporary photography, but this was a show</p> <p>3 that I thought could have a wide audience, but</p> <p>4 especially in the entertainment business because</p> <p>5 of the nature of – you know, you don't sell the</p> <p>6 Rasta and the marijuana to the same people that</p> <p>7 necessarily want something for their children's</p> <p>8 room.</p> <p>9 So it was I think something very</p> <p>10 interesting that when I start looking I really</p> <p>11 look to see there was work very similar, you</p> <p>12 know, and I didn't find anything on the Rasta</p> <p>13 because I think it's very difficult to</p> <p>14 infiltrate that community and be able to live</p> <p>15 with them and take their photo. It's something</p> <p>16 very – like the Samburu, the same thing.</p> <p>17 You know, tourists don't go to that</p> <p>18 place. He only had access to that place because</p> <p>19 he worked for the United Nations.</p> <p>20 Q. This is in northern Kenya?</p> <p>21 A. North Kenya, yeah.</p> <p>22 Q. Did you say that those photos were</p> <p>23 similar to the Yes Rasta photos?</p> <p>24 A. For me it was similar approach in</p> <p>25 the term that it's a certain civilization that's</p>
<p style="text-align: center;">158</p> <p>1 Celle</p> <p>2 A. I would because, as I mentioned</p> <p>3 before, you know, a show – just framing the</p> <p>4 show costs between 20 and 30-thousand dollars.</p> <p>5 So when you start investing it's a long-term</p> <p>6 reward. So I sign the photographer. If not,</p> <p>7 I don't do the show.</p> <p>8 Q. Finally, you said something in one</p> <p>9 of your answers to the effect that you knew</p> <p>10 people in the entertainment business, do you</p> <p>11 remember saying that?</p> <p>12 A. Yes, correct.</p> <p>13 MS. HAMMERMAN: Objection.</p> <p>14 MR. HAYES: Objection, form.</p> <p>15 Q. What significance, if any, did that</p> <p>16 have with respect to these Yes Rasta prints?</p> <p>17 A. Okay. Because of the different show</p> <p>18 I've been doing, I know coming from fashion I</p> <p>19 have all kind of different customers, so of</p> <p>20 course I have the fashion people.</p> <p>21 But I'm really connected with a lot</p> <p>22 of people in the music industry. And I won't</p> <p>23 sell – you know, the Rasta for me was directly</p> <p>24 addressed to this kind of people.</p> <p>25 Like in the Hamptons I sell surfer</p>	<p style="text-align: center;">160</p> <p>1 Celle</p> <p>2 kind of disappearing one day and you cannot</p> <p>3 really take their photograph except if you get</p> <p>4 their trust and you are able to spend time with</p> <p>5 them and live with their family.</p> <p>6 And that's what they both did. It's</p> <p>7 a very similar work in different places.</p> <p>8 Q. They both meaning Patrick Cariou and</p> <p>9 Lyle –</p> <p>10 A. And Lyle Owerko, yeah.</p> <p>11 Q. I have nothing further.</p> <p>12 BY MR. HAYES:</p> <p>13 Q. I have couple questions coming out</p> <p>14 of Mr. Brooks' questions.</p> <p>15 First, about Mr. Owerko and</p> <p>16 Mr. Cariou, so in your view they both document</p> <p>17 certain civilizations that may be passing?</p> <p>18 A. Definitely.</p> <p>19 Q. Did you ever give Mr. Cariou a draft</p> <p>20 contract for him to review or sign?</p> <p>21 A. No, no. It didn't go so far.</p> <p>22 Q. Of the other photographers – you</p> <p>23 spoke to Mr. Cariou about doing a series of the</p> <p>24 prints?</p> <p>25 A. Sorry?</p>



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February 8, 2010

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**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

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

Dear Judge Batts:

We represent the plaintiff, Patrick Cariou, and respectfully request a pre-motion conference for the purpose of obtaining permission to move for summary judgment against the defendants. Notice of intent to file for summary judgment has been served upon the defendants.

In this copyright infringement action, plaintiff alleges that the defendant Richard Prince reproduced and adapted plaintiff's copyrighted photographs (the "Photographs"), taken in Jamaica and depicting members of the Rastafarian culture and various tropical landscapes, and incorporated the Photographs into numerous paintings (the "Paintings"); and that the defendants exhibited, offered for sale and sold the Paintings, including in November-December 2008 in a show at the Gagosian Gallery entitled *Canal Zone*; advertised the show with an image appropriated from plaintiff's Photographs; published and sold a catalogue of the *Canal Zone* Paintings, incorporating the Photographs appropriated from plaintiff; and otherwise disseminated images copied from plaintiff's Photographs, all for a highly commercial purpose.

There is no dispute that plaintiff owns a valid copyright in the Photographs or that plaintiff's work was copied, exhibited, offered for sale and sold by the defendants without plaintiff's permission. The only issue in the case, we believe, is defendants' fair use defense.

Courts regularly resolve fair use issues at the summary judgment stage. According to one empirical study, more than half of the published fair use opinions in a 27-year period addressed a motion or cross-motion for summary judgment, and of those 121 opinions, 86% granted the motion or cross-motion. See Barton Beebe, *An Empirical Study of U.S. Copyright Fair Use Opinions, 1978-2005*, 156 U. PA. L. REV. 549, 570 (2008); *Castle Rock Entm't, Inc. v. Carol Publ'g Group, Inc.*, 150 F.3d 132, 137 (2d Cir. 1998) ("Although '[f]air use is a mixed question of law and fact,' [internal citation omitted], this court has on a number of occasions 'resolved fair use determinations at the summary judgment stage' where, as here, there are no genuine issues of material fact. [citations omitted]"); *Bourne Co. v. Twentieth Century Fox Film Corp.*, 602 F. Supp. 2d 499 (S.D.N.Y. 2009). There are no disputed issues of material fact in this case relating to any of the four fair use factors.

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**1. Purpose and Character of the Use.** It is undisputed, from Mr. Prince's own testimony and interviews he gave and acknowledged in his deposition, that Mr. Prince appropriated plaintiff's Photographs because he "loved the look" and "loved the dreads," and that his Paintings, which were done "quickly" and "not really thought about," did not in any way intend to comment on plaintiff's Photographs or on plaintiff's technique or methodology. We believe, as a matter of well-settled law, this defeats Mr. Prince's claim that his borrowing from plaintiff was fair or justified. Defendants advance a contrary legal argument, contending that an appropriation artist's very act of taking an image and "re-contextualizing" it is transformative, even if no comment is being made on the appropriated image. We believe that there is no support in the case law for any such special standard for artists (as opposed to writers, musicians, etc.) and that copyrighted images may only be appropriated if they are at least in part the subject of the appropriator's comment. Otherwise, there would be no practicable boundary to the fair use defense in the visual arts. The extent of the commerciality of defendants' exploitation of plaintiff's Photographs is also undisputed: revenues from sales of the Paintings exceed \$10 million in cash and, according to Mr. Gagosian, another \$6 to \$8 million in art exchanged for certain Paintings; the *Canal Zone* show was heavily advertised using an image from one of plaintiff's Photographs; celebrities, actors, models, and recording artists were invited to the opening dinner to generate buzz so that the collectors (mainly hedge fund and private equity billionaires) would buy the Paintings; 7,500 announcement cards, also bearing one of plaintiff's Rastafarian Photographs, were mailed out; and the leftover announcement cards, instead of being recycled, were sold to a poster company.

**2. The Nature of the Copyrighted Work.** It is undisputed that, in order to create "beautiful" and "visually appealing" Photographs, plaintiff applied a creative and expressive eye, choosing the camera, lenses, filters, film, subjects and their poses, angles, lighting and shade, the subjects' resultant skin tone, time of day, meteorological events (e.g. approaching storms), focus, exposure, and processing and printing of the film to very particular specifications. The result was a first-of-its-kind, intimate look at a remote and reclusive population.

**3. The Amount and Substantiality of the Portion Used in Relation to the Copyrighted Work as a Whole.** There cannot be any dispute as to this factor; a side-by-side comparison of the Photographs and Paintings will be dispositive. Suffice it to say that many of the Paintings contain wholesale reproductions of the Photographs: entire portraits of Rastafarians and landscapes were appropriated.

**4. Potential Harm to the Market for Plaintiff's Photographs and Prints.** It is undisputed that an art gallery in SoHo intended to represent plaintiff, exhibit 30 to 40 of his Photographs during a six-week show, offer for sale multiple prints of each of those Photographs at prices ranging up to \$20,000 per print, have plaintiff's book reprinted for a book signing in connection with the show, publicize the show and introduce plaintiff to clients who are decorators and entertainment figures who would be interested in this genre of photography. It is also undisputed that, upon learning of the *Canal Zone* show at the Gagosian Gallery in Chelsea, the SoHo art gallery decided not to put up plaintiff's show because it did not want to seem to be opportunistically riding on the defendants' coattails and because the images in plaintiff's Photographs had already been extensively exhibited as part of the *Canal Zone* show.

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United States District Judge Deborah A. Batts  
February 8, 2010  
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Respectfully,



Daniel J. Brooks  
For SCHNADER HARRISON SEGAL & LEWIS LLP

DJB/sh

cc: Steven M. Hayes, Esq. (by email)  
Hollis Gonerka Bart, Esq. (by email)

# YES RASTA

"In the mountains of Jamaica their descendants still live, close to nature and what nature provides, reflecting on how happy they are to be living a life in Zion where almost everything is free, the air is pure, the earth is rich, the rainfall is abundant, and where one can build a bamboo home big enough to house the largest family. Here is where they can grow the best food and ganja in the world, and meditate in the way good herb often brings, thinking about what it's like living in Babylon, where nothing is free or unpolluted..."

Babylon is not just a word to Rasta.

Babylon is not merely an idea for Rasta.

For Rasta, Babylon is a brutal reality.

Most people cower and wilt under the assault of the Babylonian forces of the world, but the Rastas in Jamaica stand tall and preach repentance to the self-righteous."

PERRY HENZELL

Not placable with the evident, is it no wonder photographer Patrick Cariou—whose first book *SURFERS* drew immense praise—journeyed to Jamaica in search of Truth. He found it in the secluded world of the mountain Rastafarians, a culture, though highly mythologized, closed to outsiders. Cariou ate, worked, slept, and took herb with the locksmen and their families, and began to know them and their incredibly pure way of life, their system of knowledge.

The Rastas, for whom Babylon is diametrically opposed to the *ital* way of life, found a kindred spirit in Patrick. These Rastas, who have never been accurately depicted, allowed Patrick to photograph them.

In *YES RASTA*—the phrase spoken by Jamaicans to true Rastafarians in greeting one another—Cariou's direct, classical photographs reveal a strong, simple people whose style and attitude are as distinctive as their dreadlocks. Men who have left the modern world of Babylon in pursuit of their own independence, their own truth, their own groove—their own *irie*. Meditative people whose lives are intertwined with the tropical landscape, and whose rituals, symbols, religion, philosophies, medicine, agriculture, family structure, and remarkable strength make the definitive statement of self-reliance and righteousness.

## YES RASTA

Patrick Cariou is a deeply committed photographer whose first book, *SURFERS* (powerHouse Books, 1998) was described by *Vanity Fair* as "awesomealy beautiful." Jamaica, for Cariou, was "exquisite beauty and pure madness." Cariou lives and works in New York.

Perry Henzell is best known as the producer of the classic cult film *The Harder They Come*. Born in Jamaica of West Indians going back several generations, Henzell began his career working for the BBC. He established the 10A studio in Kingston, the first film studio in Jamaica, and made over 200 commercials in the 60s. He is also the author of the novel *POWER GAME* and the soon-to-be-published historical novel *CANE*. Henzell is currently casting *The Harder They Come II*, and lives in Kingston and Treasure Beach, St. Elizabeth.

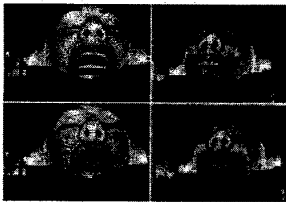
Paul Ritter is a former art director of *Colors* and creative director of *Life* and of Virgin Records in Paris. He recently founded his own independent magazine and art project *Whatever*. Ritter currently spends most of his time directing music videos, recording music, and working on a screenplay at home in New York.

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**a**ppropriation - To take possession of another's imagery (or sounds), often without permission, reusing it in a context which differs from its original context, most often in order to examine issues concerning originality or to reveal meaning not previously seen in the original. This is far more aggressive than allusion or quotation, it is not the same as plagiarism however. An image reused in collage is an example, but more complete are the photographs that Sherri Levine (American) made of photographs by earlier photographers.

#### Examples of works involving appropriation:



◀ Krzysztof Wodiczko (American, born Poland, 1943-), *The Tijuana Projection*, 2001, public projection at the Centro Cultural de Tijuana, Mexico (as part of In-Site 2000). Krzysztof Wodiczko creates large-scale slide and video projections of politically-charged images on architectural façades and monuments worldwide. By appropriating public buildings and monuments as backdrops for projections, Wodiczko focuses attention on ways in which architecture and monuments reflect collective memory and history.

► Dara Birnbaum (American, 1946-), *Technology/Transformation: Wonder Woman*, 1978-79, videotape, color, sound, 5.5 minutes, Electronic Arts Intermix, NY. This piece is one of the first examples of appropriating imagery from mainstream television, a practice that has become widespread. Wonder Woman, the main character of a prime-time program based on an action-adventure comic book of the same name, is captured in her twirling metamorphosis from "real" woman to super-hero. Birnbaum manipulated this and other scenes in a variety of ways. Birnbaum has written about "plunging the viewer headlong into the very experience of TV-unveiling TV's stereotypical gestures of power and submission, of male and female egos." See [video](#).



◄ Richard Prince (American, 1949-), *Untitled (Cowboy)*, 1984, Ektacolor print, artist's proof from edition of 2, 40 x 27 inches (101.6 x 68.5 cm), collection of Mr. and Mrs. James R. Hedges IV. This is a picture "rephotographed" (as Prince called it) of the "Marlboro Man" -- a character recurring for many years in advertisements for Marlboro cigarettes. See [photography](#) and [tattoo](#).

Also see [analogy](#), [copy](#), [copyright](#), [counterfeit](#), [facsimile](#), [fake](#), [forgery](#), [homage](#), [likeness](#), [mirror](#), [replica](#), [representation](#), [reproduction](#), [simile](#), [simulacrum](#), and [simulation](#).







These images were culled from the internet from a myriad of websites, including, but not limited to: [www.urbanimagesphotography.com](http://www.urbanimagesphotography.com); [www.spraguephoto.com](http://www.spraguephoto.com); [www.istock.com](http://www.istock.com); [www.reggae-vibes.com](http://www.reggae-vibes.com); [www.tiptopwebsite.com](http://www.tiptopwebsite.com); [www.off-the-beaten-track.com](http://www.off-the-beaten-track.com); [www.flickr.com](http://www.flickr.com); etc.

By permission of the Court, this  
exhibit was filed by hand.

**See Exhibit 2 to the Joint Appendix**

**Hard Copy of Patrick Carious' Book entitled  
*Yes Rasta***

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)

**AFFIDAVIT OF DEFENDANT  
RICHARD PRINCE  
IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

RICHARD PRINCE, being duly sworn, deposes and says:

1. I am an artist living in New York City and Rensselaerville, New York, but maintain my principal studio in Rensselaerville.
2. I submit this affidavit in support of Defendants' Motion for Summary Judgment.
3. I have been an artist for nearly 40 years, and have consistently aspired to create beautiful pieces of art to convey a distinct message or creative concept. My work has been displayed in, and is part of the permanent collection of major museums around the world, including the Solomon R. Guggenheim Museum in New York; Whitney Museum of Art; the San Francisco Museum of Modern Art; Museum Boijmans van Beuningen, Rotterdam; Museum fur Gegenwartskunst, Basel; and Kunstmuseum Wolfsburg. As an example, in late 2007, the Solomon R. Guggenheim Museum in New York presented a major retrospective of my work, which filled the entire rotunda and two tower galleries.

4. My works are sought after by significant collectors and galleries of contemporary art worldwide, and are regularly offered at auction.
5. My career as an appropriation artist dates back to 1977, when I was working in the tear-sheet department of Time-Life magazine, clipping and filing articles for its editors. While working at Time-Life, I would re-photograph discarded advertising images that I salvaged. I also made collages using clippings from various advertising images, and combined them as if they were freeze frames from the same movie.
6. Ultimately, I began using photographic images of artists, and re-photographing them by changing the context in which they appear.
7. In 1984, I began creating exact re-drawings of cartoons that elicited a mix of cultural preferences, human desires and biases. This process inspired me to paint and so I began to add painterly elements to my works to evoke the styles of Robert Rauschenberg and other well-known appropriation artists.
8. My style of appropriation evolved further with my "Hippy Drawings" consisting of stick figures with abstract, mask-like faces onto which I painted circles over the eyes, nose, and mouth, which are known as my signature "lozenge" faces.
9. After this body of work, I increasingly began using bright colors, drip painting, bold brush strokes, and other painterly elements to create layered effects, which spoke to my expressive and gestural styles.
10. My next body of work was my sequential series, which included *Nurses* (2002-04), the *Check Paintings* (2004-05), the *de Kooning Paintings* (2007-07), and the *Canal Zone* (2008) series.

11. I tend to create artwork in series and/or groups, as I believe things are best understood in relation to other things. My work that falls under the grouping and repetition categories include *Untitled* (four women with hats) (1979-80); *Untitled* (three hands with watches) (1980); *Cowboys* (1980-2003); *Gangs* (1984-86); *the Monochrome Jokes* (1985-89); and the *White Painting* (1990-95). Similarly, the *Canal Zone* Paintings were done as a group.

12. My style is highly inspired by popular culture. Guitars frequently appear as a subject in my work, and they represent my love for rock music, which began in 1973 when I moved to New York City and immersed myself in its downtown music and arts scenes. At the time, I was enamored with Andy Warhol, and especially interested in the punk rock movement.

13. In the work I have done as an appropriation artist, including the *Canal Zone* series, I look at pre-existing images of all types and see what I can contribute to make something new, distinctive and hopefully visually beautiful with one or more messages to be found in the work by the viewer. It is all about what contribution I can bring as an artist in all of my work. Often I adopt a unique persona to go along with my works of art often portraying myself as a rebel, an outsider, or an outlaw. Adopting this unique persona allows me to discover and create new things.

14. I like to use other people's work to incorporate facts into my work to reduce speculation and make them more genuine, but I am not interested in what is actually there. Instead, I am interested in making art that transforms something that already existed without involving myself in the original intent of the image. I ultimately believe

that artists should be as free as possible in their studio because art is about freedom of expression and not being restricted.

15. Although my primary artistic practice has been as a painter, sculpture and re-photographer, I have long had an interest in writing. I have collected first editions and other literary works for many years and have also authored a number of works both real and fictitious.

16. My development of the *Canal Zone* series began in part with a literary creation rather than the paintings themselves. The *Canal Zone* developed from the storyline of a cinematic pitch I wrote from 2007 through 2008 called *Eden Rock*. *Eden Rock* describes a fantasy account of survivors of a nuclear attack whose cruise ship ends up in St. Barts. The survivors in the story form gangs and tribes, taking over the resort hotels on the island, and create their own post-apocalyptic society. The tribes and gangs include "Charlie Company," the family unit; the "Backpackers," who are college students on spring break; the "Rastas or Reggae," who play in cruise ship band; lesbian "Amazons" who escaped from the cruise ship; and a group of affluent individuals dubbed, the "Ultimate Ones." I was also affected by a trip I made to Panama (where I was born) in about 2005 and wanted to do a painting series set in a tropical location, as in the pitch described above.

17. Around the same time, I was visiting St. Bart, where I rent a home for two weeks each year, and found a copy of *Yes Rasta* in a bookstore on the Island. I had never seen the book in any other bookstore and assumed it was an out of print book. I saw the documentary images in the book and made a connection to the tropical settings I had seen on my visit to Panama. The day before I had also seen cruise ships in the harbor of St.

Barts and thought they should be in my screenplay. I also had envisioned that one of the tribes in my screenplay would be a reggae band that was on the cruise ship and certain of the Rastafarians looked like males that would fit into my screenplay. At the time, I had also been listening to Radiodread, an album that sampled and replicated Radiohead in a reggae manner, and was very much into that album. When I walked into the bookstore the next day and saw the book with Rastas, I thought something was in the air. At the time that I painted my de Kooning series, I was already thinking about the *Canal Zone* Series, and therefore, I had also been looking for black and images of figures of men that I could put next to my de Kooning women.

18. I began drawing in *Yes Rasta* itself like I had done before in a book of de Kooning's works, and making notations and sketches, which I eventually incorporated into portions of into my *Canal Zone* paintings. When I began to do this, I was simply making random drawings as I tend do wherever I am, at home or on vacation, as part of the creative process. I continued to draw on the faces for two or three years. I was inspired by the images because it was a subject matter that I knew nothing about, a position that I often put myself in to discover new things.

19. In creating the *Canal Zone* paintings, I was influenced by a combination of events. The paintings are in part inspired by my trip to the former *Canal Zone* in Panama, and depict portions of my storyline from the Eden Rock screenplay. The screenplay was the starting point for the *Canal Zone* series. Therefore, while the plot and characters in the screenplay were in my head when I created the paintings, my paintings do not depict every aspect of the storyline. In creating a painting series there are many

ingredients and influences that go into the germination and creation of works of art in the studio, and portions of the screenplay story line are among those ingredients.

20. I named the series the *Canal Zone* because I was very intrigued by the fact that the name of the place I was born in, *Canal Zone*, had disappeared, and was renamed Panama.

21. In addition, I sought to pay homage and refer back to Willem de Kooning, Cezanne, Warhol and Picasso through my paintings in the *Canal Zone* series (collectively, the "Paintings"). For example, I sketched out enlarged hands and feet on some of the images in the *Yes Rasta* book in de Kooning-esque fashion, as a transition from my previous *de Kooning* series (which I had been working on when I began drawing in the *Yes Rasta* book), and to emulate the style of de Kooning hybrid creatures. This is also a reference to Cezanne's abstracted bathers paintings from the 1930's and his exaggerated drawings of hands and feet. I also abstracted the faces found in many of the *Canal Zone* Paintings with painterly elements, such as dripping paint, use of oil stick crayon and other media, and lozenge-face circles to emulate the style of de Kooning's contorted facial features and Picasso's primitive masks and unique ways of drawing parts of figures. I further transformed the images found in *Yes Rasta* by painting images onto the canvas and then painting over them again to create a ghost-like effect. I organized images of nude figures next to one another and drew Picasso-like primitive masks on some of the images that appear in the Paintings. Finally, the repetition that appears throughout the *Canal Zone* series refers to the iconic style of Andy Warhol. Such references to the history of art are a significant part of my work. Other artists such as Picasso have been noted for the art historical references in their work.



22. I added images of guitars to my paintings to establish groupings of men and women as contemporary musical bands in order to create a rock and roll theme throughout the paintings in the *Canal Zone* series. Each Painting represents different musical bands or aspects of my ideas conveyed in my screenplay pitch as one of the ingredients in the Painting. My creative message for the *Canal Zone* series was to have music groups and music itself be the surviving, if not redeeming, fact of life in the post-apocalyptic world I imagined in my screenplay. The redemptive value of music is one of the important concepts and messages of this series.

23. I used images of Rastas from *Yes Rasta* because they looked primitive, and like the type of man that might appear in my post-apocalyptic screenplay. The landscapes in *Canal Zone* merely served as background for my creative expression. The images served as one ingredient in my entire recipe.

24. To create the *Canal Zone* series, which I created alone, I appropriated, in the tradition of Duchamp, 41 images from *Yes Rasta*, two adult books from an art publishing company called Taschen, images of rock guitars and musician hands from contemporary music magazines, images from anatomy books that I bought at the art supply store, and an image from a book or magazine on Bob Marley.

25. When creating the paintings, I had at least 25 or more books and magazines in front of me and would randomly take images that fit into my artistic vision and message for each work.

26. With the exception of *Canal Zone*, 2007, which I created using portions of pages torn from *Yes Rasta* onto which I drew masks in the style of Picasso (*see* ¶ 21 above), I digitally scanned and resized the *Yes Rasta* images, some of which I scanned directly

onto the canvas while others I fixed onto a canvas with glue, scotch tape or paint, and then used them either as background for collaging or as collage elements, creating a layering effect. In some of the Paintings, I affixed the collaged elements to other images with scotch tape for further scanning, and in others I applied the collage elements directly to the canvas using a squeegee technique in which elements are affixed to the canvas with paint to create a layered effect. Thus, in making the *Canal Zone* Paintings, I sought to make a totally new artistic contribution using what I call ingredients.

27. I also created the works to convey specific messages, such as historical art references as an homage to master painters whose works I admire, such as Cezanne, Picasso, Warhol and de Kooning, and the fictional world on a tropical island where bands of individuals form musical groups that live and interact (as reflected in part of my screenplay pitch.) These ideas are combined with art techniques of collage, layering use of different media (acrylic paint, oil stick, graphite, inkjet printing and images from numerous photographic books) to create entirely new and different works of art that I hope are interesting and contribute to the dialogue of art.

28. Larry Gagosian and I withdrew the balance of the *Canal Zone* paintings that remained for sale from the market pending the resolution of this lawsuit.

29. Although the *Canal Zone* Paintings were done as part of one artistic conception, I have set forth in detail below, what I did – and why – in creating each of the Paintings in the *Canal Zone* series.

30. To appreciate the various elements, or ingredients, that appear in each of the Paintings, and in turn, their transformative nature, the defendants have compiled, as an aid to the Court, the Composite Exhibit attached hereto as Exhibit A, which contains the

images taken from the *Yes Rasta* book, and corresponding Painting(s) in which the image appears, a summary of the various elements (or ingredients) and the techniques I used to create each Paintings and a summary of Mr. Cariou's testimony explaining why he took the particular *Yes Rasta* images.

31. As the various layering effects and elements are not readily ascertainable from the images reproduced in the Composite Exhibit, Mr. Gagosian and I respectfully invite the Court for a private viewing of the Paintings to be held at the Court's convenience either at a gallery space in New York City or in my studio in Rensselaerville, New York, where most of the remaining Paintings are located.

**Individual Paintings in the Canal Zone Series**

32. **Graduation, 2008.** To create *Graduation*, I tore pages from the *Yes Rasta* book and had it scanned, enlarged in a bluish tint. I also had the background landscape dimmed and deemphasized. I painted a Picasso-inspired, blue lozenge facemask directly onto the canvas on the Rastafarian's face, not only to pay homage to Picasso, but also because musicians often wear face masks while performing, and thus, the mask was another way of illustrating his identity and carrying out my theme for the series. I collaged a picture of a blue electric guitar, which I cut out of a guitar aficionado magazine, onto the Rastafarian's body, and also replaced his hands with enlarged ones. I painted a small dot of blue pigment on the Rasta's forehead. These elements were then rescanned and printed directly onto the canvas. In furtherance of my music-inspired message, I added the guitar to this image to transform the identity of the Rastafarian to a contemporary musician who represented the lead guitarist of one of the bands.

33. **Meditation, 2008.** In creating *Meditation*, I used the same image of the guitar-playing Rastafarian found in *Graduation*. I rotated, and altered the size of, the image, and taped it onto a plain white canvas. I painted a white lozenge facemask on the Rastafarian's face, collaged proportional size hands and a different guitar onto the image, and added hints of blue on the four edges of the painting. The male who appears in *Meditation* represents the same musician that appears in *Graduation*. However, I switched the direction he was facing, and the guitar, as musicians often switch instruments as part of a performance, to further my reference to an ongoing musical performance in this series of Paintings.

34. **Canal Zone, 2008.** In creating *Canal Zone, 2008* I used the same image that appears in *Graduation* and *Meditation*, but once again, I replaced the guitar with a different one and affixed different hands instead. In this painting, the Rastafarian is cut out and placed among a grid-like landscape, which is created from torn, scanned, altered, and reassembled images of foliage I took from various pages in *Yes Rasta* and, if I recall correctly, may include portions from a book on Tahiti I had come across. I used the photographs of different landscapes because I wanted the painting to appear like a camouflage backdrop, with the guitarist in the midst of lush foliage that has taken control of my fictional island. I also was inspired by Andy Warhol's camouflage paintings, and his use of grids, so in this respect, I paid homage to him. The Rastafarian in the painting, symbolizes a musician who is a solo artist, and is actually a reference to musician Neil Young (deliberately using a black man as a stand in for Young). He is holding an appropriated image of Neil Young's guitar with proportional hands, and I added a white lozenge facemask as a reference to Picasso. Absent from this painting is any architecture

or buildings to create a sense that nothing has survived after the apocalypse, except this man and his guitar and music.

35. **The Ocean Club, 2008.** I named this painting after a club on Chambers Street in Manhattan, New York. To create *The Ocean Club*, I cut up different images of green landscapes from *Yes Rasta* and possibly a book on Tahiti , and recombined them on a canvas with tape and paint. I then cut out an image of a Rastafarian from *Yes Rasta* and added white lozenge faces. I also cut out an image of a nude female figure on the beach from another book, and added pink lozenge faces. I duplicated and enlarged the images of the Rastas and the nude women and then pasted them, using white paint, in alternating order onto the canvas over the background images of the landscape. The repetition in this painting is similar to the repetition that I utilize in many of my works of art, and is an homage to Warhol's style of repetition. I also chose *Ocean Club* as the title for this painting because Warhol used to go to the Ocean Club, a club I would also go to when I was a young artist, and I envisioned that the females in the painting were on the beach.

36. **Charlie Company, 2008.** In *Charlie Company*, I tore pages bearing an image from *Yes Rasta* and cut out the image of a Rastafarian riding a donkey, had it scanned and enlarged, and then reassembled it side by side with tape, and glued it twice on top of the image that was scanned on to the canvas as background. During the scanning process, I had the image cropped on the left side and tinted in sepia tones. I then pasted an image of a nude female figure next to the image of the Rastafarian riding a donkey. I attached the images to the canvas with white paint, which I applied with the use of a squeegee. I also painted lozenge facemasks on the Rastafarian and the nude female figure. The repetition and juxtaposition of images in this painting is a reference to Warhol, while the fracturing

of the image is a reference to Picasso's cubism. The woman in this painting represents a tourist and the black man represents a native, and they are juxtaposed because they are helping each other to survive. Again, absent from this painting is anything mechanical or man-made to illustrate the post-apocalyptic world in which they now exist.

37. **Back to the Garden, 2008.** In creating *Back to the Garden*, I first scanned and enlarged the image of the Rastafarian on a donkey along with the background landscape onto a canvas. To this altered image, I added a collaged guitar and a white lozenge mask to make it seem as though the Rastafarian is playing the guitar. Next I cut out the same image of the Rastafarian on a donkey, and cropped, scanned, and tinted it to sepia, and then superimposed it over the image on the canvas. Before applying it, I tore it into three pieces and then reassembled and affixed it using white paint onto the canvas. I also affixed the images of two nude women, which were also scanned in a sepia tone, on each end of the two Rastafarian images, and added lozenges facemasks to the women's faces. I was thinking about Adam and Eve when I painted *Back to the Garden* since they were in the Garden of Eden and my post-apocalyptic screenplay takes place in a tropical jungle garden. This painting also is a take on the music scene, by combining the guitar and hands with the collaged man on the donkey, while highlighting three different human relationships in the universe: women with women, women with men, and men with men. The landscape represents the idyllic setting at Woodstock, and again, included nothing man-made. The man in the painting is playing "Back to the Garden" at Woodstock on George Harrison's guitar and has become a "Beatle" in furtherance of my message that music is the only redeeming thing to have survived.

38. **Cheese and Crackers, 2008.** In creating *Cheese and Crackers*, I first scanned images of three nude women onto the canvas. Next I painted, drew, and collaged onto their bodies enlarged hands and feet, and also obscured their faces. I cut out a portion of a scanned and enlarged image of the Rastafarian found in *Graduation*, and applied it to the canvas using white paint. I obscured his face as well with paint. For one of the Rastafarian's hands, I applied a scanned, enlarged image of a hand onto the figure, and for the other hand, I drew on it with an oil stick crayon. I also altered the Rastafarian's feet by painting enlarged feet over them. I painted the background with bright, heavy colors. This painting, especially the wine colored background, is heavily influenced by de Kooning's techniques, and is stylistically very similar to my de Kooning series. I consider *Cheese and Crackers* a bridge between my de Kooning paintings and the *Canal Zone* Paintings. This painting is also influenced by Picasso's well-known 347 series of etchings and Cezanne's bathers. I essentially took different elements from art history and attempted to update them, and make them a part of this painting in order to pay homage to these particular artists. In particular, the feet and primitive facemasks are a historical reference to Picasso while the cartoon, lozenge faces reference de Kooning. I titled this painting *Cheese and Crackers* because I envisioned that that this was the name of the band.

39. **Mr. Jones, 2008.** Mr. Jones was influenced by Picasso's famous painting *Demoiselles d'Avignon* now in the Museum of Modern Art in New York, and is very similar to *Cheese and Crackers*. The images of the nude female figures were scanned onto the original canvas. The male figure that appears in the painting was a cut out of a scanned and enlarged image of the Rastafarian in *Graduation* that I affixed to the canvas

using paint. I painted a de Kooning-esque mask over the face of the male figure, and added images of oversized hands, feet, and an arm on the image of the Rastafarian. I added similar oversized hands and feet to the nude females that appear on each side of the male figure. I also added pigment to the lower portion of the male figure that continues downward to the bottom of the canvas. This painting is stylistically similar to *Cheese and Crackers* in that it is heavily influenced by de Kooning's techniques, Picasso's 347 series and Cezanne's bathers. I used these elements from art history, again, to pay homage to these particular artists.

40. **The Other Side of the Island, 2008.** In creating this painting, I scanned images of different female figures onto the canvas and painted yellow lozenge facemasks over their faces. Then I cut out, scanned, and enlarged two images of Rastafarians from *Yes Rasta*, the one from *Graduation* and a different one. In obscuring the images of the Rastafarians in this painting, I painted de Kooning-esque style masks on their faces, covered half their bodies with paint, and painted and drew enlarged hands on them. I made the background of this painting dark with a hint of orange and purple swirls. This painting is stylistically similar to *Cheese and Crackers* in that it is heavily influenced by de Kooning's techniques, Picasso's 347 series and Cezanne's bathers. I used these elements from art history, again, to pay homage to these particular artists.

41. **Naked Confessions, 2008.** In creating this painting, I used images of three female figures, and a male Rastafarian figure from a page torn from *Yes Rasta*. I painted the background with darker shades of black and dark red swirls. I collaged an electric guitar onto the Rastafarian figure and then scanned and enlarged the combined image, and affixed it to the canvas. I then obscured the face of the male figure by painting a mask-



like eyes and lips. I also collaged a guitar on the Rastafarian's hands. I replaced the landscape that appeared in the background of the photograph of the male Rastafarian with a background of white and pink paint. I altered the images of the nude females by adding either lozenge masks or for the figure on the right, a fully drawn de Kooning-like face and enlarged hands and feet. This painting is stylistically similar to *Cheese and Crackers* in that it is heavily influenced by de Kooning's techniques, Picasso's 347 series and Cezanne's bathers. I used these elements from art history, again, to pay homage to these particular artists. I also juxtaposed these historical references with the guitar, which is a contemporary reference.

42. *Specially Round Midnight, 2008.* In creating *Specially Around Midnight*, I painted the background with dark colors before affixing scanned and enlarged cutouts of the images of three nude female figures and the two images of Rastafarians, which also appear in *The Other Side of the Island*. Around the two male figures, I painted haloes of white paint. I collaged an image of a guitar over the hands of one of the male figures. To this same male figure I also added exaggerated painted boots to his feet and painted a white mask on his face. On the other male figure, I drew distorted eyes and a mouth over his face and added black stripes to his sleeve. I also obscured the bottom half of his figure by darkening it. On the female figures, I drew and collaged enlarged feet and drew over their faces to obscure them. I also painted haloes of white paint around two of the female figures. This painting is stylistically similar to *Cheese and Crackers* in that it is heavily influenced by de Kooning's techniques, Picasso's 347 series and Cezanne's bathers. I used these elements from art history, again, to pay homage to these particular artists. The title for this painting refers to Miles Davis who had a song and album entitled

“Round About Midnight.” The man in the painting represents the lead guitarist who is playing that song, and the four others that appear symbolize the other members of the band.

43. **Zippping the System, 2008.** In creating *Zippping the System*, I first primed the canvas and then collaged onto the canvas enlarged and cutout scans of three nude females and the same two male Rastafarian figures that appear in *The Other Side of the Island*. I outlined the collaged images with white, pink and grey paint. I altered each Rasta figure by drawing and painting enlarged hands, facial features, and for one of the figures, a sketch of enlarged feet over the existing image. I obscured the bottom half of one of the male figures by cutting off the image at the bottom and painting over it with black paint. I also drew enlarged feet and hands on the female figures and altered their faces by drawing and collaging different eyes and mouths. The up and down style in this painting is a reference to Barnett Newman’s famous zip paintings (areas of vertical color separated by thin lines).

44. **Color Me Mine, 2008.** In creating *Color Me Mine*, I used four scanned and enlarged cutouts of nude female figures, and a scanned and enlarged partial image of a male Rastafarian figure taken from a page torn from *Yes Rasta*, and collaged them onto a primed canvas. Before affixing the image of the Rastafarian, I collaged together four separate bodies before scanning it into a single image. I added a guitar on the image with the Rastafarian head in furtherance of my music-inspired theme and obscured the face by painting it with white paint and an oil stick. To the female images, I added pink lozenge facemasks and sketched enlarged hands for one of them. I also collaged a pair of feet that appears below one of the female figures. I painted the background of the painting with

purple and white brushstrokes. This painting is heavily influenced by de Kooning's style. The melding of the white and black person together is also a reference to Basquiat.

45. **James Brown Disco Ball, 2008.** To create this painting, I scanned and enlarged cut outs of images of five nude figures and headshots of two male Rastafarian images, taken from pages torn from *Yes Rasta*. I affixed portions of these images to the canvas, and layered the background with strokes of purple, pink and white paint. Almost all the images in this painting have been cut and reassembled onto the canvas. On top of one of the nude figures, I pasted an altered and bleached image of a Rastafarian head and added white lozenge eyes, a cut out of an enlarged foot, and white paint around the top of the head. I placed the other image of the Rastafarian's head on top of another nude figure and added a primitive-looking facemask to his face. I also painted black lozenge facemasks on the faces of the female figures, and collaged onto them different scanned and altered images of hands and feet. The bodies in this picture represent disco balls, while the painting itself is a poetic reference to James Brown whose disco ball I had recently purchased at auction. I used the headshots of the Rastafarian men because they typified another black man, but in this painting, he is in a funk band, as evidenced by the title, which again references my musical theme. However, the only visible trait of the Rastafarian images are their dreadlocks, which I used because they give the illusion of dripping paint, a technique that refers to the Japanese photographer Araki who would put black paint on black and white photographic images.

46. **Inquisition, 2008.** To create this painting, I scanned and enlarged an image of a nude female figure onto which I had drawn a lozenge facemask and then collaged an image of a blue electric guitar and an image of a dog on to this image. I scanned,

enlarged, and cut out portions of images of Rastafarian figures taken from pages torn from *Yes Rasta* and onto which I had drawn primitive and de Kooning style masks and pasted them around her. I affixed these images with white paint, which I applied with a squeegee. Each element in this painting has been collaged, scanned, and then collaged and reworked. I also included an upside-down image as a reference to Georg Baselitz, although it is completely obscured by other images layered on top of it. Again I entitled this painting, *Inquisition*, to draw upon its theme of world domination which related to the post-apocalyptic, island/jungle theme and the message of my pitch.

47. **Uncle Tom, Dick, and Harry, 2008.** In creating this painting, I constructed layers with some of the images being scanned directly onto the canvas and others cutout and affixed directly on top. The four images of Rastafarians taken from pages torn from *Yes Rasta* were scanned with a blue tint, and then I cut out portions and altered the images by adding lozenge facemasks and de Kooning style masks over their faces. I affixed one of the images of male figures upside down. I also added black lozenge faces to the nude female figure. I painted the background white, with strokes of blue, and added an enlarged image of a marijuana cigarette. The upside-down image is a reference to the contemporary artist, Georg Baselitz. The title was influenced by the spies that are in my screenplay.

48. **Canal Zone, 2007:** To create this collage, I created a grid of collaged and obscured portions of images of landscapes and Rastafarians taken from pages torn from *Yes Rasta*. I altered each of the images that appear in this collage by drawing lozenge and primitive facemasks on some of the Rastafarian's faces, and other features with magic marker, crayons, pencil, and white acrylic paint. For others, I obscured their facial

image entirely with paint or other techniques. The images were rearranged in a big grid and thumb tacked to a piece of plywood. *Canal Zone* was exhibited during the first unveiling of the pitch at the Eden Rock Hotel in St. Bart, and was a way of introducing some of the characters, components, and players in the screenplay that I envisioned would be a part of the *Canal Zone* series.

49. **Tales of Brave Ulysses, 2008.** In creating this painting, I layered cutout portions of images of nude female figures and a male Rastafarian onto a canvas. I scanned, enlarged, and applied as collage three of the four Rastafarian figures (the same image as is found in *Graduation*), and varied each of the sizes of the images. I scanned and enlarged the fourth one directly onto the canvas, and also altered its size to be smaller than the other three. To affix the collage elements, I used white paint, which I applied with a squeegee. In fact, on the largest male image, the squeegee marks still appear. On the smallest Rastafarian image, I drew enlarged hands. I also varied the size of the female images. I painted the bodies of the female figures, and added white, lozenge eyes to three of the six female images. I painted the background with a combination of light yellow, orange and red. I named the painting after a song by one of my favorite groups, Cream. The repetitive images seek to capture the rhythm of Cream's song, *Tales of Brave Ulysses*, and are also homage to Warhol and a reference Cezanne's *Bathers*. The figures, which are a band, are jamming, but the male figure does not yet have a guitar because he has not been the lead yet.

50. **Escape Goat, 2008.** I painted the background of this painting a whitish-blue color. I then scanned, enlarged, and collaged onto the canvas five images of a portion of the same Rastafarian figure that appears in the *Graduation* in varying sizes and forms.

On the smallest figure to the far left, I collaged an image of enormous hands on the body and a blue lozenge facemask. To the next figure to the right, I added blue lozenge facemasks and an enlarged painted hands. I sketched over his feet with an abstract drawing. I collaged blue lozenge facemasks and a blue, electric guitar to the central male figure. I created this central figure by first collaging the mask and guitar and then scanning it. I also blackened out and enlarged his feet with paint and oil stick crayon. I created the fourth male figure by affixing collaged sections with white paint and then adding white lozenge eyes and sketching over his hands and feet. The last image is identical to the one with the collaged blue guitar and blue lozenge facemask, but I drew different feet on him. I also affixed cutouts of four nude female figures, and painted different colored lozenge facemasks on them as well. I outlined some of figures using a hint of green and gray paint. This painting references Cezanne's bathers.

51. ***On the Beach, 2008.*** In creating this painting, I cut out, scanned, and enlarged fragments of images of seven nude female figures and a fragment of an image of the same Rastafarian male that appears in *The Other Side of the Island, Specially Round Midnight, Canal Zone, 2007* and *Zippping the System*. For the background, I scanned and enlarged a landscape image taken from pages in *Yes Rasta*, and affixed the other scanned images on top of it using white paint that I applied with a squeegee, which created a layered effect. On the images, I also drew white and mustard yellow lozenge facemasks. The lozenge faces are a reference to de Kooning, and the title reference Nevel Shutes's novel *On The Beach*. The composition of images comes from multiple sources, such as Richard Kern, German nudist books, and a book called "Paradise." These elements added to my vision of a post-apocalyptic world in my screenplay.

52. *Cookie Crumbles, 2008.* In creating *Cookie Crumbles*, I cut out canvases of scanned and enlarged images of four nude female figures, and one image of a male Rastafarian taken from a page torn from *Yes Rasta*, and then collaged them directly onto another canvas. I affixed the images by first applying black paint with a squeegee and then sticking the images to the black paint. I replicated the image of the male Rastafarian three times in the painting, and juxtaposed these images with images of the nude women. I painted a mask over the male Rastafarian and added enlarged hands and other drawings in oil stick crayon. I also scribbled on the stomach of each of these images and altered the man's seashell pendant into a peace sign. I also added white and black lozenge facemasks to the faces of the female figures, and painted parts of their bodies. I painted the background pastel yellow, with a splash of pink and grey. The images in this painting refer to dance and evoke a kind of musical rhythm. The images of women come from four different books, but I repeated the image of the male Rasta in different scales and tones and with different masks to suggest that they are twin brothers who would also be members of the same group on the Island. The repetition also is a reference to Warhol.

53. *It's All Over, 2008.* To create this painting, I first cut out, scanned, and enlarged portions of images of three nude female figures, and a portion of the male Rastafarian figure that appears in *On the Beach, On the Beach, The Other Side of the Island, Specially Round Midnight, Canal Zone, 2007* and *Zippping the System*. For the background, I used an enlarged image of a landscape from *Yes Rasta*, but then painted over it with white and pink paint obscuring the landscape. I drew black, pink, and white lozenge facemasks on all the images. I affixed the images with black, white, pink, and orange paint. I collaged guitars on two of the four Rastafarian images, which represented

George Harrison's guitars, which refers to the musical theme in my screenplay, and drew enlarged feet on them as well, as a historical art reference to deKooning and Picasso. I drew on the images of the female bodies using drip paint. I also included three of my *Hippie Drawings* in this painting. The repetition of different sized images that appears in this painting is a reference to Warhol. I highlighted the dreadlocks as a painterly form of drips, which also references the Japanese photographer, Araki who would put black paint on black and white photographic images.

54. **Ile de France, 2008.** To create this painting, I affixed directly to an unprimed canvas scanned, enlarged, and cutout portions of images of three nude female figures and a Rastafarian that appears in *Canal Zone, 2007*. To affix the images, I applied paint with a squeegee and then stuck the images on top of the paint. On the female figures I painted black and white lozenge faces, and added strokes of white, black, and grey paint over their bodies. I had portions of the image of the Rastafarian scanned in a bluish tint, and I cropped the lower portion of his body. I attached the cropped Rastafarian figure to the canvas with white, black, and grey paint, which is evident from the layers of paint that appear on the figure. This painting represents another aspect of the screenplay in which the hotel on St. Bart (named Ile de France) has been occupied by a band of people.

55. **Djuana Barnes, Natalie Barney, Renee Vivian and Roman Brooks Take Over the Guanahani, 2008.** For the background of this painting, I used a photograph of a tropical landscape taken from pages torn from *Yes Rasta*, had it scanned, cropped, and enlarged in a pinkish tone. I collaged images of cutouts of portions of four nude female figures onto the canvas using pink and white paint to affix them. I also added pink and white lozenge faces to the female figures. I named this painting after four famous literary



lesbians. This painting portrays the women taking over the Guanahani. This painting represents another element of my screenplay in which early 20<sup>th</sup> century novelists, poets, and expatriates, who had a lesbian salon in Paris, take over the Guanahani on St. Bart. I also wanted to portray a rock and roll theme on the one hand and also make reference to Cezanne's bathers. The background is a stereotypical, generic tropical jungle, which is the setting for my screenplay.

56. **Mina Loy, Janet Flanner, Radclyffe Hall, Una Towbridge and Oscar Wilde's niece Dolly Wilder, 2008.** In creating this painting, which I named after lesbian writers in reference to the lesbian characters in my screenplay, I had scanned and enlarged cutouts of the images of six nude female figures, the male Rastafarian figure that appears in *Graduation*, and portions of images of landscapes, dreadlock hair and necklaces, which were torn from the pages of *Yes Rasta*. Before affixing the collage of images to the canvas, I cut up and reassembled all of the images such that they differed from their original composition and added white lozenge faces to many of the figures. Once assembled, I had them scanned. I then affixed and layered these scanned images onto the canvas using white paint. I painted the background of the painting with pastel blue paint. I used different scales, masks, and tattoos in this painting to create an all over abstract painting. The women in this painting represent lesbian writers from the 20<sup>th</sup> century.

57. **Quarry, 2008.** In creating this painting, I had scanned and enlarged images of four nude female figures, and an image of the male Rastafarian figures, necklace and landscape that appear in *Mina Loy, Janet Flanner, Radclyffe Hall, Una Towbridge and Oscar Wilde's niece Dolly Wilder*, and the marijuana cigarette that appears in *Uncle Tom, Dick and Harry*. I cut up the scanned images of the male Rastafarian and landscape and

affixed portions of the, along with cut out images of a marijuana cigarette, hemp leaves and a necklace, on top of the images of the female figures. I added white lozenge facemasks to the images. The tattoo in this painting is a reference to the idea of Polynesia and idea that they are shipwrecked. In creating this painting, I was thinking about Marlan Brando and Clarke Gabel sailing. I was also thinking about Tahiti and the oceanic art. The collage of the male and female figures was a way for me to fuse the two together in a new inventive way. The repetition is a reference to Warhol.

58. Untitled, 2008. In creating this painting, I had scanned and enlarged an image of a nude female, and a landscape and the necklace found on the male Rastafarian in *Quarry*. I had the enlarged image of the landscape scanned onto the canvas, and then I affixed with paint the enlarged chest of the female figure on top of the landscape. I then affixed the cropped image of a Rastafarian's chest wearing a medallion necklace on top of the female figure. This painting depicts a contemporary band. All the *Untitled, 2008* paintings (including those described in paragraphs 57 and 58 below) relate to comparisons between and relationships among the males and females occupying my fictional tropical island.

59. Untitled (Rasta), 2008. To create this painting, I cut out, enlarged and scanned onto a canvas images of two nude female figures, to which I added pink and black lozenge faces, and a collaged the image of the Rastafarian male found in *Graduation* to which I had added a white lozenge mask, guitar and a cut out of hands. I then affixed with paint these sheets of canvas to another unprimed canvas. This painting is a sister painting to my other untitled works, and also depicts a contemporary band.

60. **Untitled (Rasta), 2008.** I used similar techniques to create this painting as I used to create the other *Untitled (Rasta)*. To create this painting, I cut out, enlarged and scanned onto a canvas images of three nude female figures, to which I added white lozenge face. I also collaged a cut out the image of the Rastafarian found in *Graduation* to which I had added a white lozenge mask, guitar and a cut out of hands. I then affixed with paint these sheets of canvas to another unprimed canvas. This painting also depicts a contemporary band, with the Rastafarian representing the lead male in the band.

61. **Ding Dong the Witch is Dead, 2008.** In this painting I have used a number of raw materials and other elements using many of the same techniques as those found in the rest of the *Canal Zone* series. None of the images found in *Yes Rasta* appear in this work. There is, however, an image I took from a book about Bob Marley to further my artistic concept of post-apocalyptic bands, and my message of equality between the sexes.

#### **Other Matters Related to the Canal Zone Series**

62. I did the paintings in the *Canal Zone* relatively quickly both because I often do paintings in a day or less (something which many other artists such as Picasso are also known for) and because I had been working for quite some time on the de Kooning series and felt that I need a break and so I began to prepare these paintings in the summer of 2008 with the idea of using them for a show in the fall of 2008 in lieu of another show that had been planned.

63. The images in the *Yes Rasta* book, in which I had been drawing figures and ideas for some time, fit into my ongoing vision composed of an homage to Cezanne, de Kooning, Warhol, Picasso and others, as well as the screenplay pitch I prepared and my


desire to combine these elements with strong references to music and the people who play music in a tropical setting similar to Panama where I was born. As I said before, in my use of any images whether photographic or otherwise, I do this to use an ingredient in a work and to transform the work into something to which I have made a contribution and which I believe contributes to the dialogue among artists through their work while providing an interesting new experience for people to see the work and may be interested in purchasing it.

64. It is true that I have made several million dollars from the sale of the *Canal Zone* paintings. However, the sales of the *Canal Zone* paintings are not at any higher level for similar-sized paintings that I have done in other series and indeed, have sold for less based on such comparisons. I believe that the value contained in the paintings is that which I brought to it by my contribution as an artist as well as the obvious benefit to my name and place in contemporary art as an enticement to collectors to purchase my paintings. In creating these paintings, I changed the use of the images in Mr. Cariou's book of documentary photographs into part of a fictional environment which related to my screenplay pitch, and my desire to do a series of paintings in a tropical setting with an emphasis on musical groups, while still making strong art historical references. Whether a particular viewer likes my work or not, I believe that, when compared to Mr. Cariou's

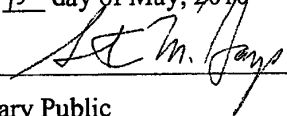
photographs, it is evident that what I have done is a highly individualistic, proprietary and, I believe, transformative use of images, techniques and a variety of other sources to create works which are unique, creative and utilize a visual vocabulary that is uniquely mine.

65. The catalog for the show contained an essay by James Frey, an American author. It is common to have essays contained in art show catalogs, sometimes by the scholars but often by the writers or others whose essays are included in order to add an extra element to the catalog. I asked Mr. Frey initially to do this for me and he did it as a favor. When I received the actual essay, I was not pleased by it, because although some elements of my pitch were referred to in the essay, I felt that he had done an entirely different work and that ultimately the themes contained in his essay had nothing to do with my paintings. However, since he had done the essay for me as a favor, and since I felt that the paintings stood on their own in any event, I agreed to the essay being included.

66. I do see my work as continuing within prior artistic traditions of offering homages to prior artists, utilizing a variety of images and media in new and different ways and bringing my own artistic concepts, message and fantasies to visual expression as part of an ongoing dialogue of art.

  
RICHARD PRINCE

Subscribed and sworn to before me  
this 13<sup>th</sup> day of May, 2010

  
Notary Public

STEVEN M. HAYES  
Notary Public, State of New York  
No. 4658650  
Qualified in Nassau County 2013  
Commission Expires Oct. 31, 19

**By permission of the Court, this  
exhibit was filed by hand.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

PATRICK CARIOU,

Plaintiff,

-against-

**08 CIV 11327 (DAB)**

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

Defendants.

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**COMPOSITE EXHIBIT A TO  
AFFIDAVIT OF DEFENDANT RICHARD PRINCE IN  
SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

To appreciate the various elements, or ingredients, that appear in each of the Paintings, and in turn, their transformative nature, the defendants have compiled, as an aid to the Court, a Composite Exhibit, which contains the images taken from the *Yes Rasta* book, and corresponding Painting(s) in which the image appears, a summary of the various elements (or ingredients) and the techniques defendant Prince used to create each Paintings and a summary of Mr. Cariou's testimony explaining why he took the particular *Yes Rasta* images. The specific rationales set forth in the Affidavit of Richard Prince in paragraphs 3-31 also apply to each of the individual Paintings.



**Graduation** 2008, Collage, inkjet, and acrylic on canvas, 72 ¾ x 52 ½ in, 185 x 133 cm

To create *Graduation*, Prince tore pages from the *Yes Rasta* book and had it scanned, enlarged in a bluish tint. He also had the background landscape dimmed and deemphasized. Prince painted a Picasso-inspired, blue lozenge facemask directly onto the canvas on the Rastafarian's face, not only to pay homage to Picasso, but also because musicians often wear face masks while performing, and thus, the mask was another way of illustrating his identity and carrying out his theme for the series. Prince collaged a picture of a blue electric guitar, which he cut out of a guitar aficionado magazine, onto the Rastafarian's body, and also replaced the Rasta's hands with enlarged ones. Prince painted a small dot of blue pigment on the Rasta's forehead. These elements were then rescanned and printed directly onto the canvas. In furtherance of his music-inspired message, Prince added the guitar to this image to transform the identity of the Rastafarian to a contemporary musician who represented the lead guitarist of one of the bands.

PR Aff. ¶ 32; see also PR Tr. 362-63.

Sold: Exchanged for "Dead and Dying Veteran," by Larry Rivers. Bart Aff. Ex. N at ¶ 3.



*Yes Rasta*, p 118, C00018

p. 118 Cariou staged and shot this image, which he took in 1995, in about an hour. He wanted to capture something specific about this man, in particular the man's strength, dreads, the fact that he lives really high up in the mountains, his plastic boots, and also he and the man liked each other. Cariou chose the setting because it fit with the man and it was right in the middle of the jungle. Cariou narrowed the depth of field in this photo to blur and make the landscape fade into the background and the portrait more prominent. The background is not all that important. Cariou chose the time of day to take the image and scouted the location where the image was taken. Cariou's objective was to make a beautiful portrait. The essence of this picture is the portrait. The image is about the man and his strength. This image is strikingly original because it is a great photograph. The landscape is not necessarily distinctive on its own, but rather creates an overall association in the book between the images of the Rastafarians and the tropical environment in which they live. Cariou Tr. 48 – 57, 66-69





**Meditation**, 2008, Collage, inkjet, and acrylic on canvas, 58 x 46 in, 147 x 117cm

In creating *Meditation*, I used the same image of the guitar-playing Rastafarian found in *Graduation*. I rotated, and altered the size of, the image, and taped it onto a plain white canvas. I painted a white lozenge facemask on the Rastafarian's face, collaged proportional size hands and a different guitar onto the image, and added hints of blue on the four edges of the painting. The male who appears in *Meditation* represents the same musician that appears in *Graduation*. However, I switched the direction he was facing, and the guitar, as musicians often switch instruments as part of a performance, to further my reference to an ongoing musical performance in this series of Paintings. PR Aff. ¶ 33.

Not sold. Bart Aff. Ex. N at Ex. A.



Yes Rasta, p 118, C00023

p. 118 Cariou staged and shot this image, which he took in 1995, in about an hour. He wanted to capture something specific about this man, in particular the man's strength, dreadlocks, the fact that he lives really high up in the mountains, his plastic boots, and also he and the man liked each other. Cariou chose the setting because it fit with the man and it was right in the middle of the jungle. Cariou narrowed the depth of field in this photo to blur and make the landscape fade into the background and the portrait more prominent. The background is not all that important. Cariou chose the time of day to take the image and scouted the location where the image was taken. Cariou's objective was to make a beautiful portrait. The essence of this picture is the portrait. The image is about the man and his strength. This image is strikingly original because it is a great photograph. The landscape is not necessarily distinctive on its own, but rather creates an overall association in the book between the images of the Rastafarians and the tropical environment in which they live. Cariou Tr. 48 – 57, 66-69



Canal Zone, 2008, Collage, inkjet, and acrylic on canvas, 107 x 119 1/2 in, 272 x 304 cm



**Canal Zone**, 2008, Collage, inkjet, and acrylic on canvas, 107 x 119 ½ in, 272 x 304 cm

In creating *Canal Zone*, 2008 I used the same image that appears in *Graduation* and *Meditation*, but once again, I replaced the guitar with a different one and affixed different hands instead. In this painting, the Rastafarian is cut out and placed among a grid-like landscape, which is created from torn, scanned, altered, and reassembled images of foliage I took from various pages in *Yes Rasta* and, if I recall correctly, may include portions from a book on Tahiti I had come across. I used the photographs of different landscapes because I wanted the painting to appear like a camouflage backdrop, with the guitarist in the midst of lush foliage that has taken control of my fictional island. I also was inspired by Andy Warhol's camouflage paintings, and his use of grids, so in this respect, I paid homage to him. The Rastafarian in the painting, symbolizes a musician who is a solo artist, and is actually a reference to musician Neil Young (deliberately using a black man as a stand in for Young). He is holding an appropriated image of Neil Young's guitar with proportional hands, and I added a white lozenge facemask as a reference to Picasso. Absent from this painting is any architecture or buildings to create a sense that nothing has survived after the apocalypse, except this man and his guitar and music. PR Aff. ¶ 34.

Sold: \$1,200,000. Bart Aff. Ex. N at Ex. A.

C00024

p.33 Cariou staged this image and chose the venue where it was shot. It took approximately an hour to shoot the image, and two hours to reach the location, which was in the parish of Westmoreland. Cariou photographed this particular man because he liked his eyes, his look, the location, which made it visually appealing. Cariou used the surrounding hemp to draw attention to the facial features of this man, which he wanted to capture. Cariou Tr. 81-86  
Cariou sold image for €1,500. Cariou Tr. 88-91.

p. 79 Cariou took this image in 1995 high up in the mountains of Jamaica. He placed the man amongst the leaves to draw upon the tropical theme. The setting, the shape of the leaves, the backlit, and the composition of the picture made it more visually appealing. The purpose of using this backdrop was to focus or highlight the individual being photographed. Cariou Tr. 111-113

p. 80 This image is another example of the Rastafarian men that Cariou was attempting to document in this collection. Cariou Tr. 110-111

p. 88 The focus of this particular image the three-headed tree and what is distinctive about this image that it belongs to him. Cariou Tr. 106-109

p. 95-96 Cariou took this photograph in 1994 in a more tropical region of Jamaica. It took a long time, about a half hour or so, for Cariou to frame this image properly, find the proper light and make it the way it is. He took this photo while waiting for someone or scouting a different location. Cariou photographed this landscape to help create the tropical feeling of the whole book. This image was a way for him to show how intertwined ganja or marijuana is with Jamaica. Cariou Tr. 116-118, 121

p. 118, see Comp. Ex. p.2

p.159-160 This image depicts a plantation of marijuana. The image was not staged, and was something Cariou snapped along the way while he was traveling on foot to another location to take a portrait. Cariou included this particular image in *Yes Rasta* because Rasta and Jamaica and marijuana go together, and he needed some shots of vegetation to bolster the idea of the culture as a whole. Cariou Tr. 113-116



*The Ocean Club*, 2008, Collage, inkjet, and acrylic on canvas, 76 x 100 ½ in, 193 x 255 cm



*Yes Rasta*, p 33, C00024



*Yes Rasta*, p 95-96, C00024



*Yes Rasta*, p 79-80, C00024



*Yes Rasta*, p 118, C00024



*Yes Rasta*, p 159-160, C00024



*Yes Rasta*, p 88, C00024

***The Ocean Club***, 2008, Collage, inkjet, and acrylic on canvas, 76 x 100 ½ in, 193 x 255 cm

I named this painting after a club on Chambers Street in Manhattan, New York. To create *The Ocean Club*, I cut up different images of green landscapes from *Yes Rasta* and possibly a book on Tahiti, and recombined them on a canvas with tape and paint. I then cut out an image of a Rastafarian from *Yes Rasta* and added white lozenge faces. I also cut out an image of a nude female figure on the beach from another book, and added pink lozenge faces. I duplicated and enlarged the images of the Rastas and the nude women and then pasted them, using white paint, in alternating order onto the canvas over the background images of the landscape. The repetition in this painting is similar to the repetition that I utilize in many of my works of art, and is an homage to Warhol's style of repetition. I also chose *Ocean Club* as the title for this painting because Warhol used to go to the Ocean Club, a club I would also go to when I was a young artist, and I envisioned that the females in the painting were on the beach. PR Aff. ¶ 35; see also PR Tr. 246, 252-53.

Not sold. Bart Aff. Ex. N at Ex. A.

C00025

p.33 Cariou staged this image and chose the venue where it was shot. It took approximately an hour to shoot the image, and two hours to reach the location, which was in the parish of Westmoreland. Cariou photographed this particular man because he liked his eyes, his look, the location, which made it visually appealing. Cariou used the surrounding hemp to draw attention to the facial features of this man, which he wanted to capture. Cariou Tr. 81-86  
Cariou sold image for €1,500. Cariou Tr. 88-91.

p. 79 Cariou took this image in 1995 high up in the mountains of Jamaica. He placed the man amongst the leaves to draw upon the tropical theme. The setting, the shape of the leaves, the backlit, and the composition of the picture made it more visually appealing. The purpose of using this backdrop was to focus or highlight the individual being photographed. Cariou Tr. 111-113

p. 80 This image is another example of the Rastafarian men that Cariou was attempting to document in this collection. Cariou Tr. 110-111

p. 88 The focus of this particular image the three-headed tree and what is distinctive about this image that it belongs to him. Cariou Tr. 106-109

p. 95-96 Cariou took this photograph in 1994 in a more tropical region of Jamaica. It took a long time, about a half hour or so, for Cariou to frame this image properly, find the proper light and make it the way it is. He took this photo while waiting for someone or scouting a different location. Cariou photographed this landscape to help create the tropical feeling of the whole book. This image was a way for him to show how intertwined ganja or marijuana is with Jamaica. Cariou Tr. 116-118, 121

p. 118, see Comp. Ex. p.2

p.159-160 This image depicts a plantation of marijuana. The image was not staged, and was something Cariou snapped along the way while he was traveling on foot to another location to take a portrait. Cariou included this particular image in *Yes Rasta* because Rasta and Jamaica and marijuana go together, and he needed some shots of vegetation to bolster the idea of the culture as a whole. Cariou Tr. 113-116



**Charlie Company**, 2008, Collage, inkjet, and acrylic on canvas, 131 x 100 in, 333 x 254cm

In *Charlie Company*, I tore pages bearing an image from *Yes Rasta* and cut out the image of a Rastafarian riding a donkey, had it scanned and enlarged, and then reassembled it side by side with tape, and glued it twice on top of the image that was scanned on to the canvas as background. During the scanning process, I had the image cropped on the left side and tinted in sepia tones. I then pasted an image of a nude female figure next to the image of the Rastafarian riding a donkey. I attached the images to the canvas with white paint, which I applied with the use of a squeegee. I also painted lozenge facemasks on the Rastafarian and the nude female figure. The repetition and juxtaposition of images in this painting is a reference to Warhol, while the fracturing of the image is a reference to Picasso's cubism. The woman in this painting represents a tourist and the black man represents a native, and they are juxtaposed because they are helping each other to survive. Again, absent from this painting is anything mechanical or man-made to illustrate the post-apocalyptic world in which they now exist. PR Aff. ¶ 36.

Not sold. Bart Aff. Ex. N at Ex. A.



*Yes Rasta*, p 83-84, C00022

p.83-84 Cariou staged this image, which was taken in the west end of Negril. Cariou took the image because the man was a friend of his, and because he felt that this particular man typified what a young Rastafarian should represent. Cariou chose the setting for this image because "it felt good" and "it felt right." Cariou blurred the background of this particular image because he wanted to focus on the portrait of the man. Cariou believes this image is strikingly original because he embodies a strong, young Rastafarian, and also because of its composition, the way the man looks at us, the way his body looks, the nature he is in, the light, and the quality of the black and white. The landscape is not necessarily distinctive on its own, but rather, on a whole as a book that gives a feel for the place. Cariou Tr. 69 – 75, 80-81



**Back to the Garden**, Collage, inkjet, and acrylic on canvas, 80 x 120 in, 203 x 305 cm

In creating *Back to the Garden*, I first scanned and enlarged the image of the Rastafarian on a donkey along with the background landscape onto a canvas. To this altered image, I added a collaged guitar and a white lozenge mask to make it seem as though the Rastafarian is playing the guitar. Next I cut out the same image of the Rastafarian on a donkey, and cropped, scanned, and tinted it to sepia, and then superimposed it over the image on the canvas. Before applying it, I tore it into three pieces and then reassembled and affixed it using white paint onto the canvas. I also affixed the images of two nude women, which were also scanned in a sepia tone, on each end of the two Rastafarian images, and added lozenges facemasks to the women's faces. I was thinking about Adam and Eve when I painted *Back to the Garden* since they were in the Garden of Eden and my post-apocalyptic screenplay takes place in a tropical jungle garden. This painting also is a take on the music scene, by combining the guitar and hands with the collaged man on the donkey, while highlighting three different human relationships in the universe: women with women, women with men, and men with men. The landscape represents the idyllic setting at Woodstock, and again, included nothing man-made. The man in the painting is playing "Back to the Garden" at Woodstock on George Harrison's guitar and has become a "Beatle" in furtherance of my message that music is the only redeeming thing to have survived. PR Aff. ¶ 37; see also PR Tr. 331-43.

Sold: Exchanged for Richard Serra's sculpture, "Bellamy." Bart Aff. Ex. N at ¶ 3.



Yes Rasta, p 83-84. C00021

p.83-84 Cariou staged this image, which was taken in the west end of Negril. Cariou took the image because the man was a friend of his, and because he felt that this particular man typified what a young Rastafarian should represent. Cariou chose the setting for this image because "it felt good" and "it felt right." Cariou blurred the background of this particular image because he wanted to focus on the portrait of the man. Cariou believes this image is strikingly original because he embodies a strong, young Rastafarian, and also because of its composition, the way the man looks at us, the way his body looks, the nature he is in, the light, and the quality of the black and white. The landscape is not necessarily distinctive on its own, but rather, on a whole as a book that gives a feel for the place. Cariou Tr. 69 – 75, 80-81



***Cheese and Crackers***, 2008, Collage, inkjet, and acrylic on canvas, 91½ x 140 in, 232 x 256 cm

In creating *Cheese and Crackers*, I first scanned images of three nude women onto the canvas. Next I painted, drew, and collaged onto their bodies enlarged hands and feet, and also obscured their faces. I cut out a portion of a scanned and enlarged image of the Rastafarian found in *Graduation*, and applied it to the canvas using white paint. I obscured his face as well with paint. For one of the Rastafarian's hands, I applied a scanned, enlarged image of a hand onto the figure, and for the other hand, I drew on it with an oil stick crayon. I also altered the Rastafarian's feet by painting enlarged feet over them. I painted the background with bright, heavy colors. This painting, especially the wine colored background, is heavily influenced by de Kooning's techniques, and is stylistically very similar to my de Kooning series. I consider *Cheese and Crackers* a bridge between my de Kooning paintings and the *Canal Zone* Paintings. This painting is also influenced by Picasso's well-known 347 series of etchings and Cezanne's *Bathers*. I essentially took different elements from art history and attempted to update them, and make them a part of this painting in order to pay homage to these particular artists. In particular, the feet and primitive facemasks are a historical reference to Picasso while the cartoon, lozenge faces reference de Kooning. I titled this painting *Cheese and Crackers* because I envisioned that that this was the name of the band. PR Aff. ¶ 38; see also PR Tr. 251-52, 265.

Not sold. Bart Aff. Ex. N at Ex. A.



p. 118 Cariou staged and shot this image, which he took in 1995, in about an hour. He wanted to capture something specific about this man, in particular the man's strength, dreads, the fact that he lives really high up in the mountains, his plastic boots, and also he and the man liked each other. Cariou chose the setting because it fit with the man and it was right in the middle of the jungle. Cariou narrowed the depth of field in this photo to blur and make the landscape fade into the background and the portrait more prominent. The background is not all that important. Cariou chose the time of day to take the image and scouted the location where the image was taken. Cariou's objective was to make a beautiful portrait. The essence of this picture is the portrait. The image is about the man and his strength. This image is strikingly original because it is a great photograph. The landscape is not necessarily distinctive on its own, but rather creates an overall association in the book between the images of the Rastafarians and the tropical environment in which they live. Cariou Tr. 48 – 57, 66-69





**Mr. Jones**, 2008, Collage, inkjet, and acrylic on canvas, 91½ x 128 in, 232 x 325 cm

Mr. Jones was influenced by Picasso's famous painting *Demoiselles d'Avignon* now in the Museum of Modern Art in New York, and is very similar to *Cheese and Crackers*. The images of the nude female figures were scanned onto the original canvas. The male figure that appears in the painting was a cut out of a scanned and enlarged image of the Rastafarian in *Graduation* that I affixed to the canvas using paint. I painted a de Kooning-esque mask over the face of the male figure, and added images of oversized hands, feet, and an arm on the image of the Rastafarian. I added similar oversized hands and feet to the nude females that appear on each side of the male figure. I also added pigment to the lower portion of the male figure that continues downward to the bottom of the canvas. This painting is stylistically similar to *Cheese and Crackers* in that it is heavily influenced by de Kooning's techniques, Picasso's 347 series and Cezanne's bathers. I used these elements from art history, again, to pay homage to these particular artists. PR Aff. ¶ 39.

Sold: \$2,000,000. Bart Aff. Ex. N at Ex. A.



Yes Rasta, p 118, C00038

p. 118 Cariou staged and shot this image, which he took in 1995, in about an hour. He wanted to capture something specific about this man, in particular the man's strength, dreads, the fact that he lives really high up in the mountains, his plastic boots, and also he and the man liked each other. Cariou chose the setting because it fit with the man and it was right in the middle of the jungle. Cariou narrowed the depth of field in this photo to blur and make the landscape fade into the background and the portrait more prominent. The background is not all that important. Cariou chose the time of day to take the image and scouted the location where the image was taken. Cariou's objective was to make a beautiful portrait. The essence of this picture is the portrait. The image is about the man and his strength. This image is strikingly original because it is a great photograph. The landscape is not necessarily distinctive on its own, but rather creates an overall association in the book between the images of the Rastafarians and the tropical environment in which they live. Cariou Tr. 48 – 57, 66-69



***The Other Side of the Island***, 2008, Acrylic, collage, oil crayon, charcoal, and inkjet on canvas, 84 x 132 in, 213 x 335 cm

In creating this painting, I scanned images of different female figures onto the canvas and painted yellow lozenge facemasks over their faces. Then I cut out, scanned, and enlarged two images of Rastafarians from *Yes Rasta*, the one from *Graduation* and a different one. In obscuring the images of the Rastafarians in this painting, I painted de Kooning-esque style masks on their faces, covered half their bodies with paint, and painted and drew enlarged hands on them. I made the background of this painting dark with a hint of orange and purple swirls. This painting is stylistically similar to *Cheese and Crackers* in that it is heavily influenced by de Kooning's techniques, Picasso's 347 series and Cezanne's bathers. I used these elements from art history, again, to pay homage to these particular artists. PR Aff. ¶ 40.

Sold: \$1,200,000. Bart Aff. Ex. N at Ex. A.



*Yes Rasta*, p 108, C00036



*Yes Rasta*, p 118, C00036

p. 108 This image was staged and taken around 1994 on the northern coast of Jamaica. Cariou photographed this man because of the length of his dreads, and because he was another example of the strong Rastafarian men he was trying to capture. This image was taken in the same style of portraiture. Cariou blurred the background to draw attention to the subject. Cariou Tr. 134-136

p. 118, see Comp. Ex. p.2



**Naked Confessions**, 2008, Collage, inkjet, and acrylic on canvas, 45¼ x 46 in, 115 x 117 cm

In creating this painting, I used images of three female figures, and a male Rastafarian figure from a page torn from *Yes Rasta*. I painted the background with darker shades of black and dark red swirls. I collaged an electric guitar onto the Rastafarian figure and then scanned and enlarged the combined image, and affixed it to the canvas. I then obscured the face of the male figure by painting a mask-like eyes and lips. I also collaged a guitar on the Rastafarian's hands. I replaced the landscape that appeared in the background of the photograph of the male Rastafarian with a background of white and pink paint. I altered the images of the nude females by adding either lozenge masks or for the figure on the right, a fully drawn de Kooning-like face and enlarged hands and feet. This painting is stylistically similar to *Cheese and Crackers* in that it is heavily influenced by de Kooning's techniques, Picasso's 347 series and Cezanne's bathers. I used these elements from art history, again, to pay homage to these particular artists. I also juxtaposed these historical references with the guitar, which is a contemporary reference. PR Aff. ¶ 41.

Sold: \$450,000. Bart Aff. Ex. N at Ex. A.



*Yes Rasta*, p 47, C00035

p. 47 Cariou staged this image, which was taken in a village called St. Elizabeth, and took him quite awhile to shoot. He waited for the specific light to come in with the tropical storm. Cariou used a longer depth of field in the image. The focus of this image is on the two Rastafarian gentlemen but also the environment around them. Cariou Tr. 136 – 139



**Specially Round Midnight**, 2008, Collage, inkjet, and acrylic on canvas, 100½ x 154 in, 255 x 391 cm

In creating *Specially Around Midnight*, I painted the background with dark colors before affixing scanned and enlarged cutouts of the images of three nude female figures and the two images of Rastafarians, which also appear in *The Other Side of the Island*. Around the two male figures, I painted haloes of white paint. I collaged an image of a guitar over the hands of one of the male figures. To this same male figure I also added exaggerated painted boots to his feet and painted a white mask on his face. On the other male figure, I drew distorted eyes and a mouth over his face and added black stripes to his sleeve. I also obscured the bottom half of his figure by darkening it. On the female figures, I drew and collaged enlarged feet and drew over their faces to obscure them. I also painted haloes of white paint around two of the female figures. This painting is stylistically similar to *Cheese and Crackers* in that it is heavily influenced by de Kooning’s techniques, Picasso’s 347 series and Cezanne’s bathers. I used these elements from art history, again, to pay homage to these particular artists. The title for this painting refers to Miles Davis who had a song and album entitled “Round About Midnight.” The man in the painting represents the lead guitarist who is playing that song, and the four others that appear symbolize the other members of the band. PR Aff. ¶ 42.

Sold: \$2,430,000. Bart Aff. Ex. N at Ex. A.



Yes Rasta, p 108, C00034



Yes Rasta, p 118, C00034

p. 108 This image was staged and taken around 1994 on the northern coast of Jamaica. Cariou photographed this man because of the length of his dreads, and because he was another example of the strong Rastafarian men he was trying to capture. This image was taken in the same style of portraiture. Cariou blurred the background to draw attention to the subject. Cariou Tr. 134-136

p. 118, see Comp. Ex. p.2



***Zippering the System***, 2008, Collage, inkjet, and acrylic on canvas, 71½ x 110½ in, 182 x 281 cm

I first primed the canvas and then collaged onto the canvas enlarged and cutout scans of three nude females and the same two male Rastafarian figures that appear in *The Other Side of the Island*. I outlined the collaged images with white, pink and grey paint. I altered each Rasta figure by drawing and painting enlarged hands, facial features, and for one of the figures, a sketch of enlarged feet over the existing image. I obscured the bottom half of one of the male figures by cutting off the image at the bottom and painting over it with black paint. I also drew enlarged feet and hands on the female figures and altered their faces by drawing and collaging different eyes and mouths. The up and down style in this painting is a reference to Barnett Newman's famous zip paintings (areas of vertical color separated by thin lines). PR Aff. ¶ 43.

Not sold. Bart Aff. Ex. N at Ex. A.



*Yes Rasta*, p 108, C00031



*Yes Rasta*, p 118, C00031

p. 108 This image was staged and taken around 1994 on the northern coast of Jamaica. Cariou photographed this man because of the length of his dreads, and because he was another example of the strong Rastafarian men he was trying to capture. This image was taken in the same style of portraiture. Cariou blurred the background to draw attention to the subject. Cariou Tr. 134-136

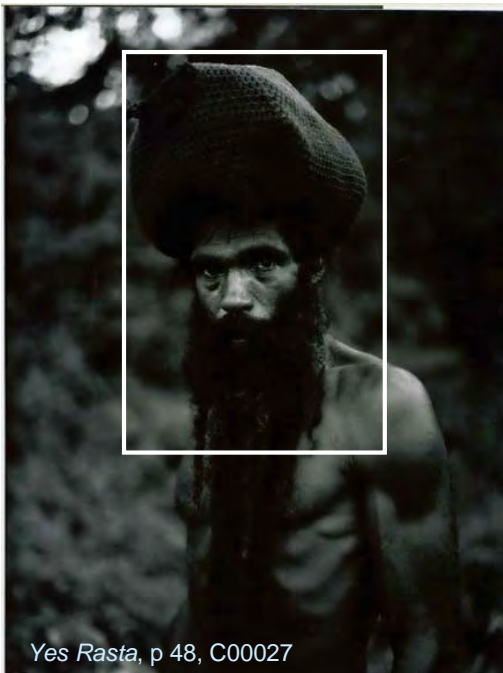
p. 118, see Comp. Ex. p.2



**Color Me Mine**, 2008, Collage, inkjet, and acrylic on canvas, 59¼ x 80½ in, 151 x 205 cm

In creating *Color Me Mine*, I used four scanned and enlarged cutouts of nude female figures, and a scanned and enlarged partial image of a male Rastafarian figure taken from a page torn from *Yes Rasta*, and collaged them onto a primed canvas. Before affixing the image of the Rastafarian, I collaged together four separate bodies before scanning it into a single image. I added a guitar on the image with the Rastafarian head in furtherance of my music-inspired theme and obscured the face by painting it with white paint and an oil stick. To the female images, I added pink lozenge facemasks and sketched enlarged hands for one of them. I also collaged a pair of feet that appears below one of the female figures. I painted the background of the painting with purple and white brushstrokes. This painting is heavily influenced by de Kooning's style. The melding of the white and black person together is also a reference to Basquiat. PR Aff. ¶ 44.

Not sold. Bart Aff. Ex. N at Ex. A.



p. 48 Cariou took this image around 1996 high up in the mountains. This image is another example of the stern-looking Rastafarian men that he was trying to photograph and document. Cariou blurred the background, and so the focus is on the man in this portrait. Cariou Tr. 121-123

Cariou sold this image for €1,500. Cariou Tr. 121-25.



**James Brown Disco Ball**, 2008, Collage, inkjet, and acrylic on canvas, 100½ x 154½ in, 255 x 392 cm

To create this painting, I scanned and enlarged cut outs of images of five nude figures and headshots of two male Rastafarian images, taken from pages torn from *Yes Rasta*. I affixed portions of these images to the canvas, and layered the background with strokes of purple, pink and white paint. Almost all the images in this painting have been cut and reassembled onto the canvas. On top of one of the nude figures, I pasted an altered and bleached image of a Rastafarian head and added white lozenge eyes, a cut out of an enlarged foot, and white paint around the top of the head. I placed the other image of the Rastafarian's head on top of another nude figure and added a primitive-looking facemask to his face. I also painted black lozenge facemasks on the faces of the female figures, and collaged onto them different scanned and altered images of hands and feet. The bodies in this picture represent disco balls, while the painting itself is a poetic reference to James Brown whose disco ball I had recently purchased at auction. I used the headshots of the Rastafarian men because they typified another black man, but in this painting, he is in a funk band, as evidenced by the title, which again references my musical theme. However, the only visible trait of the Rastafarian images are their dreadlocks, which I used because they give the illusion of dripping paint, a technique that refers to the Japanese photographer Araki who would put black paint on black and white photographic images. PR Aff. ¶ 45; see also PR Tr. 249-51.

Sold: Exchanged for "Dead and Dying Veteran," by Larry Rivers. Bart Aff. Ex. N at ¶ 3.



*Yes Rasta*, p 59, C00028



*Yes Rasta*, p 11, C00028

p. 59 Cariou staged this photograph that he took in 1996 high up in the Blue Mountains. This image is another example of the stern-looking Rastafarian men whose image he wanted to capture for the book. This image is a close-up portrait, and Cariou blurred the background and used less depth of field to really focus on the subject's dreads and face. Cariou Tr. 129- 130

p. 11 Image sold for €1,500. Cariou Tr. 88-91.



To create this painting, I scanned and enlarged an image of a nude female figure onto which I had drawn a lozenge facemask and then collaged an image of a blue electric guitar and an image of a dog on to this image. I scanned, enlarged, and cut out portions of images of Rastafarian figures taken from pages torn from *Yes Rasta* and onto which I had drawn primitive and de Kooning style masks and pasted them around her. I affixed these images with white paint, which I applied with a squeegee. Each element in this painting has been collaged, scanned, and then collaged and reworked. I also included an upside-down image as a reference to Georg Baselitz, although it is completely obscured by other images layered on top of it. Again I entitled this painting, *Inquisition*, to draw upon its theme of world domination which related to the post-apocalyptic, island/jungle theme and the message of my pitch. PR Aff. ¶ 46; see also PR Tr. 347-51.

Sold: \$800,000. Bart Aff. Ex. N at Ex. A.

\*This Painting was not included in the *Canal Zone* Exhibition.

***Inquisition***,\* 2008 ink jet, acrylic and collage on canvas, 100 ½ x 77 in, 255.3 x 195.6 cm



*Yes Rasta*, p 59, C00040

p. 59 Cariou staged this photograph that he took in 1996 high up in the Blue Mountains. This image is another example of the stern-looking Rastafarian men whose image he wanted to capture for the book. This image is a close-up portrait, and Cariou blurred the background and used less depth of field to really focus on the subject's dreads and face. Cariou Tr. 129- 130



*Yes Rasta*, p 62, C00040



*Yes Rasta*, p 20, C00040

p. 20 Cariou staged this image, which was taken in about 1997, on the coast in Jamaica and took about two hours to photograph. The image is another example of a portraiture of a Rastafarian man that Cariou was trying to capture for the book. Cariou Tr. 140 – 142





In creating this painting, I constructed layers with some of the images being scanned directly onto the canvas and others cutout and affixed directly on top. The four images of Rastafarians taken from pages torn from *Yes Rasta* were scanned with a blue tint, and then I cut out portions and altered the images by adding lozenge facemasks and de Kooning-esque style masks over their faces. I affixed one of the images of male figures upside down. I also added black lozenge faces to the nude female figure. I painted the background white, with strokes of blue, and added an enlarged image of a marijuana cigarette. The upside-down image is a reference to the contemporary artist, Georg Baselitz. The title was influenced by the spies that are in my screenplay. PR Aff. ¶ 47.

Not sold. Bart Aff. Ex. N at Ex. A.

\*This Painting was not included in the *Canal Zone* Exhibition.

**Uncle Tom, Dick and Harry,\*** 2008, ink jet, acrylic and collage on canvas, 81 ½ x 57 ½ in, 207 x 146 cm



*Yes Rasta*, p 5



*Yes Rasta*, p 48

p. 48 Cariou took this image around 1996 high up in the mountains. This image is another example of the stern-looking Rastafarian men that he was trying to photograph and document. Cariou blurred the background, and so the focus is on the man in this portrait. Cariou Tr. 121-123.

Cariou sold this image for €1,500. Cariou Tr. 121-25.



*Yes Rasta*, p 11



*Yes Rasta*, p 22

p. 11 Image sold for €1,500. Cariou Tr. 88-91.



*The Canal Zone*,\* 2007 mixed media on homosote, 48 x 82 ¾ in, 121.0 x 210.2

To create this collage, I created a grid of collaged and obscured portions of images of landscapes and Rastafarians taken from pages torn from *Yes Rasta*. I altered each of the images that appear in this collage by drawing lozenge and primitive facemasks on some of the Rastafarian's faces, and other features with magic marker, crayons, pencil, and white acrylic paint. For others, I obscured their facial image entirely with paint or other techniques. The images were rearranged in a big grid and thumb tacked to a piece of plywood. *Canal Zone* was exhibited during the first unveiling of the pitch at the Eden Rock Hotel in St. Bart, and was a way of introducing some of the characters, components, and players in the screenplay that I envisioned would be a part of the *Canal Zone* series. PR Aff. ¶ 48; see also PR Tr. 182-184, 349-52.

Not sold. Bart Aff. Ex. N at Ex. A.

\*This Painting was not included in the *Canal Zone* Exhibition.



(C00043) Yes Rasta pictures (or portions thereof) used in *The Canal Zone*, 2007 (from left to right): 77-78, 48, 98, 59, 1-2, 16, 55-56, 146, 5, 17, 11, 23, 108, 125, 142, 147-148, 79-80, 150, 14, 102, 45-46, 53, 20, 111-112, 21, 62, 6, 51-52, 118, 89-90, 83-84



p. 16, 5, 23, 108, 142, 150, 14, 102, 53, 21, 6 These images exemplify a portrait of a Rastafarian that Cariou wanted to include in *Yes Rasta*. The images were staged and taken in the portraiture style of photography. Each image focuses on the subject that Cariou was photographing.



p. 17 This image of landscape adds to the tropical look of *Yes Rasta*. This image is distinctive because the storm is passing by, it is really high up in the mountains, the river is rushing, and because of the light. Cariou Tr. 168-169, 176-177



p. 45-46 This image is another example of an attempt to show family life in the Rastafarian society. The house is distinctive because it is a really old house for Jamaica and was built by the Spanish before they left the island to the British. It was also a family that Cariou liked and thought it was a nice place to take a picture. Cariou Tr. 173-75



p. 48 Cariou took this image around 1996 high up in the mountains. This image is another example of the stern-looking Rastafarian men that he was trying to photograph and document. Cariou blurred the background, and so the focus is on the man in this portrait. Cariou Tr. 121-123

Cariou sold this image for €1,500. Cariou Tr. 121-25.



p. 51 This image exemplifies the Jamaican landscape that he wanted to capture to create a certain look in the book. Cariou Tr. 176-77



p.55-56 Cariou staged this image, which took a couple of hours to shoot. The closest appearing man in the image is an example of the Rastafarian men that Cariou was trying to capture in their natural setting. The other two men are gangsters in Jamaica called "Rude Boys." Cariou Tr. 164 – 167



p. 77-78 Cariou waited for the right moment to capture this photograph, which took him about an hour to shoot. He took this image to create the tropical look and feel of *Yes Rasta*. This image is distinctive because it is a beautiful landscape. Cariou Tr. 150-152



p.83-84 Cariou staged this image, which was taken in the west end of Negril. Cariou took the image because the man was a friend of his, and because he felt that this particular man typified what a young Rastafarian should represent. Cariou chose the setting for this image because "it felt good" and "it felt right." Cariou blurred the background of this particular image because he wanted to focus on the portrait of the man. Cariou believes this image is strikingly original because he embodies a strong, young Rastafarian, and also because of its composition, the way the man looks at us, the way his body looks, the nature he is in, the light, and the quality of the black and white.

The landscape is not necessarily distinctive on its own, but rather, on a whole as a book that gives a feel for the place. Cariou Tr. 69 – 75, 80-81



p. 89-90 This image represents family life and the habitat. It is visually appealing, which is what makes it distinctive. Cariou Tr. 177-180



p. 98 This image was taken in 1996. Cariou took a lot of time to find the perfect lighting and depth field to have the leaves in the background the way they are. This image is another example of a portrait of a Rastafarian that he wanted to include in *Yes Rasta*. Cariou staged this image in order to take a powerful portrait. Cariou Tr. 154-156

Cariou sold this image for €2,000. Cariou Tr. 154-58.



p.111-112 Cariou originally thought that the second image from the right was a portion of this image, however, the image that appears in Canal Zone was too dark and too small to ultimately identify.



p. 118 Cariou staged and shot this image, which he took in 1995, in about an hour. He wanted to capture something specific about this man, in particular the man's strength, dreads, the fact that he lives really high up in the mountains, his plastic boots, and also he and the man liked each other. Cariou chose the setting because it fit with the man and it was right in the middle of the jungle. Cariou narrowed the depth of field in this photo to blur and make the landscape fade into the background and the portrait more prominent. The background is not all that important. Cariou chose the time of day to take the image and scouted the location where the image was taken. Cariou's objective was to make a beautiful portrait. The essence of this picture is the portrait. The image is about the man and his strength. This image is strikingly original because it is a great photograph. The landscape is not necessarily distinctive on its own, but rather creates an overall association in the book between the images of the Rastafarians and the tropical environment in which they live. Cariou Tr. 48 – 57, 66-69



p. 146 This image is a portrait. Cariou Tr. 167-168



p. 147-148 This image was taken high up in the mountains and he shot it as a landscape to set the stage for the *Yes Rasta* book. According to Cariou, this image is distinctive because it is a beautiful landscape. Cariou Tr. 170-71



p. 150 This image is a portrait, and he was trying to show the family life that is part of the fabric of the Rastafarian society. Cariou also noted that the other photographs of Rastafarian women that appear throughout the book were also trying to show the emphasis on family in the Rastafarian culture. Cariou Tr. 171-73



**Tales of Brave Ulysses**, 2008, Collage, inkjet, and acrylic on canvas, 80 x 120 ¼ in, 203 x 305 cm

In creating this painting, I layered cutout portions of images of nude female figures and a male Rastafarian onto a canvas. I scanned, enlarged, and applied as collage three of the four Rastafarian figures (the same image as is found in *Graduation*), and varied each of the sizes of the images. I scanned and enlarged the fourth one directly onto the canvas, and also altered its size to be smaller than the other three. To affix the collage elements, I used white paint, which I applied with a squeegee. In fact, on the largest male image, the squeegee marks still appear. On the smallest Rastafarian image, I drew enlarged hands. I also varied the size of the female images. I painted the bodies of the female figures, and added white, lozenge eyes to three of the six female images. I painted the background with a combination of light yellow, orange and red. I named the painting after a song by one of my favorite groups, Cream. The repetitive images seek to capture the rhythm of Cream's song *Tales of Brave Ulysses*, and are also homage to Warhol and a reference Cezanne's *Bathers*. The figures, which are the band, are jamming, but the male figure does not yet have a guitar because he has not become the lead yet. PR Aff. ¶ 49; see also PR Tr. 363-66.

Not sold. Bart Aff. Ex. N at Ex. A.



Yes Rasta, p. 118, C00032

p. 118 Cariou staged and shot this image, which he took in 1995, in about an hour. He wanted to capture something specific about this man, in particular the man's strength, dreads, the fact that he lives really high up in the mountains, his plastic boots, and also he and the man liked each other. Cariou chose the setting because it fit with the man and it was right in the middle of the jungle. Cariou narrowed the depth of field in this photo to blur and make the landscape fade into the background and the portrait more prominent. The background is not all that important. Cariou chose the time of day to take the image and scouted the location where the image was taken. Cariou's objective was to make a beautiful portrait. The essence of this picture is the portrait. The image is about the man and his strength. This image is strikingly original because it is a great photograph. The landscape is not necessarily distinctive on its own, but rather creates an overall association in the book between the images of the Rastafarians and the tropical environment in which they live. Cariou Tr. 48 – 57, 66-69



**Escape Goat**,\* 2008 ink jet, acrylic and collage on canvas, 92 x 122 in, 233.7 x 309.9

I painted the background of this painting a whitish-blue color. I then scanned, enlarged, and collaged onto the canvas five images of a portion of the same Rastafarian figure that appears in the *Graduation* in varying sizes and forms. On the smallest figure to the far left, I collaged an image of enormous hands on the body and a blue lozenge facemask. To the next figure to the right, I added blue lozenge facemasks and an enlarged painted hands. I sketched over his feet with an abstract drawing. I collaged blue lozenge facemasks and a blue, electric guitar to the central male figure. I created this central figure by first collaging the mask and guitar and then scanning it. I also blackened out and enlarged his feet with paint and oil stick crayon. I created the fourth male figure by affixing collaged sections with white paint and then adding white lozenge eyes and sketching over his hands and feet. The last image is identical to the one with the collaged blue guitar and blue lozenge facemask, but I drew different feet on him. I also affixed cutouts of four nude female figures, and painted different colored lozenge facemasks on them as well. I outlined some of figures using a hint of green and gray paint. This painting references Cezanne's bathers. PR Aff. ¶ 50.

Sold: \$2,000,000. Bart Aff. Ex. N at Ex. A.

\*This Painting was not included in the *Canal Zone* Exhibition.



p. 118 Cariou staged and shot this image, which he took in 1995, in about an hour. He wanted to capture something specific about this man, in particular the man's strength, dreads, the fact that he lives really high up in the mountains, his plastic boots, and also he and the man liked each other. Cariou chose the setting because it fit with the man and it was right in the middle of the jungle. Cariou narrowed the depth of field in this photo to blur and make the landscape fade into the background and the portrait more prominent. The background is not all that important. Cariou chose the time of day to take the image and scouted the location where the image was taken. Cariou's objective was to make a beautiful portrait. The essence of this picture is the portrait. The image is about the man and his strength. This image is strikingly original because it is a great photograph. The landscape is not necessarily distinctive on its own, but rather creates an overall association in the book between the images of the Rastafarians and the tropical environment in which they live. Cariou Tr. 48 – 57, 66-69





***On the Beach***,\* 2008, ink jet acrylic and collage on canvas, 59 x 90¼ in, 149.9 x 229.2 cm

In creating this painting, I cut out, scanned, and enlarged fragments of images of seven nude female figures and a fragment of an image of the same Rastafarian male that appears in *The Other Side of the Island*, *Specially Round Midnight*, *Canal Zone*, 2007 and *Zippping the System*. For the background, I scanned and enlarged a landscape image taken from pages in *Yes Rasta*, and affixed the other scanned images on top of it using white paint that I applied with a squeegee, which created a layered effect. On the images, I also drew white and mustard yellow lozenge facemasks. The lozenge faces are a reference to de Kooning, and the title reference Nevel Shutes's novel *On The Beach*. The composition of images comes from multiple sources, such as Richard Kern, German nudist books, and a book called "Paradise." These elements added to my vision of a post-apocalyptic world in my screenplay. PR Aff. ¶ 51.

Not sold. Bart Aff. Ex. N at Ex. A.

\*This Painting was not included in the *Canal Zone* Exhibition.



*Yes Rasta*, p 1-2, C00041



*Yes Rasta*, p 108, C00041

p. 108 This image was staged and taken around 1994 on the northern coast of Jamaica. Cariou photographed this man because of the length of his dreads, and because he was another example of the strong Rastafarian men he was trying to capture. This image was taken in the same style of portraiture. Cariou blurred the background to draw attention to the subject. Cariou Tr. 134-136

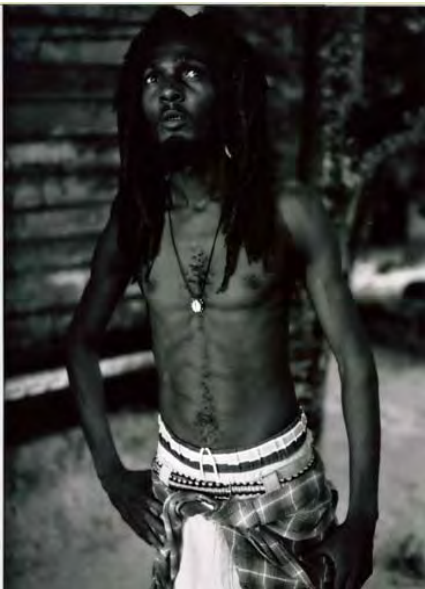
p. 1-2 Cariou took this image in 1993 while he was walking up to the mountains, about 30 miles inland. Cariou thought the light and sky were amazing. The landscape is distinctive because of the sky and the light from the tropical storm, and the sun on the sugar cane and the really dark sky capture Jamaica very well. Cariou Tr. 142 – 144



**Cookie Crumbles**, 2008, Collage, inkjet, and acrylic on canvas, 76 x 100 ½ in, 193 x 255 cm

In creating *Cookie Crumbles*, I cut out canvases of scanned and enlarged images of four nude female figures, and one image of a male Rastafarian taken from a page torn from *Yes Rasta*, and then collaged them directly onto another canvas. I affixed the images by first applying black paint with a squeegee and then sticking the images to the black paint. I replicated the image of the male Rastafarian three times in the painting, and juxtaposed these images with images of the nude women. I painted a mask over the male Rastafarian and added enlarged hands and other drawings in oil stick crayon. I also scribbled on the stomach of each of these images and altered the man's seashell pendant into a peace sign. I also added white and black lozenge facemasks to the faces of the female figures, and painted parts of their bodies. I painted the background pastel yellow, with a splash of pink and grey. The images in this painting refer to dance and evoke a kind of musical rhythm. The images of women come from four different books, but I repeated the image of the male Rasta in different scales and tones and with different masks to suggest that they are twin brothers who would also be members of the same group on the Island. The repetition also is a reference to Warhol. PR Aff. ¶ 52.

Sold: Exchanged for Richard Serra's sculpture, "Butterfly." Bart Aff. Ex. N at ¶ 3.



p.128 Cariou photographed this man in the town of Negril. The image is another portraiture and example of the Rastafarians that he wanted to photograph as part of his documentary of Rastafarian culture. Cariou Tr. 119-120

*Yes Rasta*, p 128, C00026



***It's All Over***, 2008, Collage, inkjet, and acrylic on canvas, 80 x 120¼ in, 255 x 391 cm

To create this painting, I first cut out, scanned, and enlarged portions of images of three nude female figures, and a portion of the male Rastafarian figure that appears in *On the Beach*, *On the Beach*, *The Other Side of the Island*, *Specially Round Midnight*, *Canal Zone*, 2007 and *Zippping the System*. For the background, I used an enlarged image of a landscape from *Yes Rasta*, but then painted over it with white and pink paint obscuring the landscape. I drew black, pink, and white lozenge facemasks on all the images. I affixed the images with black, white, pink, and orange paint. I collaged guitars on two of the four Rastafarian images, which represented George Harrison's guitars, which refers to the musical theme in my screenplay, and drew enlarged feet on them as well, as a historical art reference to de Kooning and Picasso. I drew on the images of the female bodies using drip paint. I also included three of my *Hippie Drawings* in this painting. The repetition of different sized images that appears in this painting is a reference to Warhol. I highlighted the dreadlocks as a painterly form of drips, which also references the Japanese photographer, Araki who would put black paint on black and white photographic images. PR Aff. ¶ 53.

Sold: Exchanged for "Dead and Dying Veteran, by Larry Rivers. Bart Aff. Ex. N at at ¶ 3.



*Yes Rasta*, p 108,  
C00033

p. 108 This image was staged and taken around 1994 on the northern coast of Jamaica. Cariou photographed this man because of the length of his dreads, and because he was another example of the strong Rastafarian men he was trying to capture. This image was taken in the same style of portraiture. Cariou blurred the background to draw attention to the subject. Cariou Tr. 134-136



**Ile de France**, 2008, Collage, inkjet, and acrylic on canvas, 77¼ x 100½ in, 196 x 255 cm

To create this painting, I affixed directly to an unprimed canvas scanned, enlarged, and cutout portions of images of three nude female figures and a Rastafarian that appears in *Canal Zone*, 2007. To affix the images, I applied paint with a squeegee and then stuck the images on top of the paint. On the female figures I painted black and white lozenge faces, and added strokes of white, black, and grey paint over their bodies. I had portions of the image of the Rastafarian scanned in a bluish tint, and I cropped the lower portion of his body. I attached the cropped Rastafarian figure to the canvas with white, black, and grey paint, which is evident from the layers of paint that appear on the figure. This painting represents another aspect of the screenplay in which the hotel on St. Bart (named Ile de France) has been occupied by a band of people. PR Aff. ¶ 54.

Not sold. Bart Aff. Ex. N at Ex. A.



Yes Rasta, p 6, C00029

p. 6 Cariou staged this image, which he took in either 1997 or 1998, while passing through the town of Lucille in Jamaica. It took approximately 15 minutes for him to take the photo. The image is another example of the stern-looking Rastafarian men whose image he wanted to photograph. The background of the image is blurred out so that the focus of this image is a close-up of this man's portrait. Cariou Tr. 130 - 132



*Djuana Barnes, Natalie Barney, Renee Vivien and Romaine Brooks take over the Guanahani, 2008, Collage, inkjet, and acrylic on canvas, 52½ x 90½ inches, 133 x 230 cm*



*Yes Rasta, p. 133-134, C00030*

***Djuana Barnes, Natalie Barney, Renee Vivien and Romaine Brooks take over the Guanahani, 2008***, Collage, inkjet, and acrylic on canvas, 52½ x 90½ inches, 133 x 230 cm

For the background of this painting, I used a photograph of a tropical landscape taken from pages torn from *Yes Rasta*, had it scanned, cropped, and enlarged in a pinkish tone. I collaged images of cutouts of portions of four nude female figures onto the canvas using pink and white paint to affix them. I also added pink and white lozenge faces to the female figures. I named this painting after four famous literary lesbians. This painting portrays the women taking over the Guanahani. This painting represents another element of my screenplay in which early 20<sup>th</sup> century novelists, poets, and expatriates, who had a lesbian salon in Paris, take over the Guanahani on St. Bart. I also wanted to portray a rock and roll theme on the one hand and also make reference to Cezanne's bathers. The background is a stereotypical, generic tropical jungle, which is the setting for my screenplay. PR Aff. ¶ 55, see also PR Tr. 215-17, 358-61.

Sold: Exchanged for "Dead and Dying Veteran, by Larry Rivers. Bart Aff. Ex. N at at ¶ 3.

C0030

p. 133-134 Cariou staged this image, which he took in 1997. He captured this image of vegetative matter to add to the tropical feeling of the book. He thought the countryside was beautiful and that the light was amazing. He waited until the light was perfect and for the storm to be in the right place before taking the image. In Cariou's view, this particular landscape is distinctive because it is a beautiful landscape. Cariou Tr. 133-134



**Mina Loy, Janet Flanner, Radclyffe Hall, Una Trowbridge and Oscar Wilde's niece Dolly Wild,\* 2008, inkjet, acrylic and collage on canvas, 77 ½ x 120 ½ in, 196.8 x 306.1 cm**

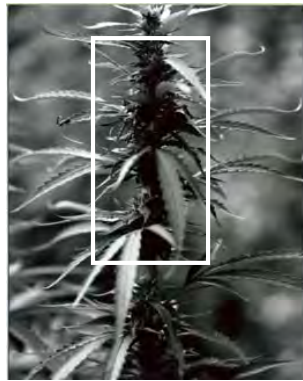
In creating this painting, which I named after lesbian writers in reference to the lesbian characters in my screenplay, I had scanned and enlarged cutouts of the images of six nude female figures, the male Rastafarian figure that appears in *Graduation*, and portions of images of landscapes, dreadlock hair and necklaces, which were torn from the pages of *Yes Rasta*. Before affixing the collage of images to the canvas, I cut up and reassembled all of the images such that they differed from their original composition and added white lozenge faces to many of the figures. Once assembled, I had them scanned. I then affixed and layered these scanned images onto the canvas using white paint. I painted the background of the painting with pastel blue paint. I used different scales, masks, and tattoos in this painting to create an all over abstract painting. The women in this painting represent lesbian writers from the 20<sup>th</sup> century. PR Aff. ¶ 56.

Not sold. Bart Aff. Ex. N at Ex. A.

\*This Painting was not included in the *Canal Zone* Exhibition.



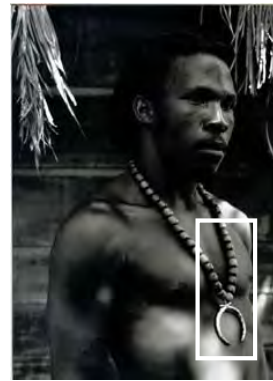
Yes Rasta, p 118



Yes Rasta, p 143



Yes Rasta, p 59



Yes Rasta, p 13

p. 118, see Comp. Ex. p.2

p. 59 Cariou staged this photograph that he took in 1996 high up in the Blue Mountains. This image is another example of the stern-looking Rastafarian men whose image he wanted to capture for the book. This image is a close-up portrait, and Cariou blurred the background and used less depth of field to really focus on the subject's dreads and face. Cariou Tr. 129- 130



**Quarry,\*** 2008, inkjet, acrylic and collage on canvas, 57¼ x 132 in, 146.7 x 335.3 cm

In creating this painting, I had scanned and enlarged images of four nude female figures, and an image of the male Rastafarian figures, necklace and landscape that appear in *Mina Loy, Janet Flanner, Radclyffe Hall, Una Towbridge and Oscar Wilde's niece Dolly Wilder*, and the marijuana cigarette that appears in *Uncle Tom, Dick and Harry*. I cut up the scanned images of the male Rastafarian and landscape and affixed portions of the, along with cut out images of a marijuana cigarette, hemp leaves and a necklace, on top of the images of the female figures. I added white lozenge facemasks to the images. The tattoo in this painting is a reference to the idea of Polynesia and idea that they are shipwrecked. In creating this painting, I was thinking about Marlan Brando and Clarke Gabel sailing. I was also thinking about Tahiti and the oceanic art. The collage of the male and female figures was a way for me to fuse the two together in a new inventive way. The repetition is a reference to Warhol. PR Aff. ¶ 57.

Not sold. Bart Aff. Ex. N at Ex. A.

\*This Painting was not included in the *Canal Zone* Exhibition.



Yes Rasta, p 22



Yes Rasta, p 13



Yes Rasta, p 143



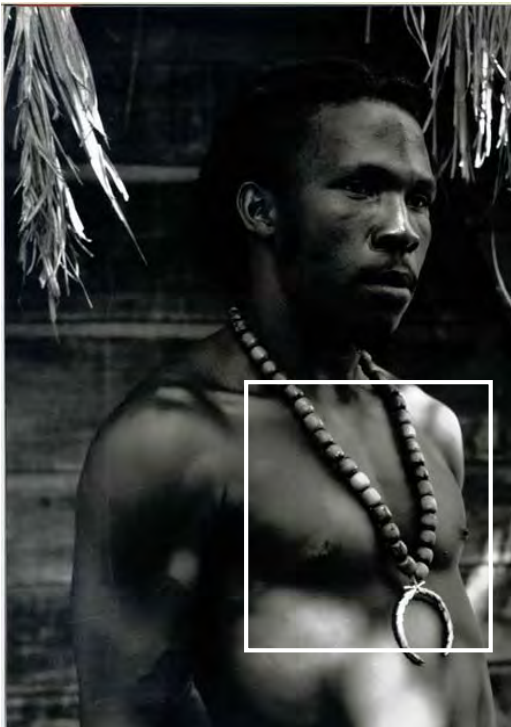


*Untitled*,\* 2008 Ektacolor photograph, 40 x 26 ¼ in, 101.6 x 66.7 cm

In creating this painting, I had scanned and enlarged an image of a nude female, and a landscape and the necklace found on the male Rastafarian in *Quarry*. I had the enlarged image of the landscape scanned onto the canvas, and then I affixed with paint the enlarged chest of the female figure on top of the landscape. I then affixed the cropped image of a Rastafarian's chest wearing a medallion necklace on top of the female figure. This painting depicts a contemporary band. All the *Untitled*, 2008 paintings (including those described in paragraphs 57 and 58 below) relate to comparisons between and relationships among the males and females occupying my fictional tropical island. PR Aff. ¶ 58.

Gifted to Gagosian Gallery. Bart Aff. Ex. N at at ¶ 3.

\*This Painting was not included in the *Canal Zone* Exhibition.



*Yes Rasta*, p 13



**Untitled (Rasta)**, 2008 Collage, inkjet, and acrylic on canvas, 40 x 30 in, 102 x 76 cm

To create this painting, I cut out, enlarged and scanned onto a canvas images of two nude female figures, to which I added pink and black lozenge faces, and a collaged the image of the Rastafarian male found in *Graduation* to which I had added a white lozenge mask, guitar and a cut out of hands. I then affixed with paint these sheets of canvas to another unprimed canvas. This painting is a sister painting to my other untitled works, and also depicts a contemporary band. PR Aff. ¶ 59.

Sold: \$400,000. Bart Aff. Ex. N at Ex. A.



Yes Rasta, p 118, C00019

p. 118 Cariou staged and shot this image, which he took in 1995, in about an hour. He wanted to capture something specific about this man, in particular the man's strength, dreads, the fact that he lives really high up in the mountains, his plastic boots, and also he and the man liked each other. Cariou chose the setting because it fit with the man and it was right in the middle of the jungle. Cariou narrowed the depth of field in this photo to blur and make the landscape fade into the background and the portrait more prominent. The background is not all that important. Cariou chose the time of day to take the image and scouted the location where the image was taken. Cariou's objective was to make a beautiful portrait. The essence of this picture is the portrait. The image is about the man and his strength. This image is strikingly original because it is a great photograph. The landscape is not necessarily distinctive on its own, but rather creates an overall association in the book between the images of the Rastafarians and the tropical environment in which they live. Cariou Tr. 48 – 57, 66-69



**Untitled (Rasta)**, 2008, Collage, inkjet, and acrylic on canvas, 40 x 30 in, 102 x 76 cm

I used similar techniques to create this painting as I used to create the other *Untitled (Rasta)*. To create this painting, I cut out, enlarged and scanned onto a canvas images of three nude female figures, to which I added white lozenge face. I also collaged a cut out the image of the Rastafarian found in *Graduation* to which I had added a white lozenge mask, guitar and a cut out of hands. I then affixed with paint these sheets of canvas to another unprimed canvas. This painting also depicts a contemporary band, with the Rastafarian representing the lead male in the band. PR Aff. ¶ 60.

Sold: Exchanged for Richard Serra's sculpture, "Bellamy." Bart Aff. Ex. N at ¶ 3.



Yes Rasta, p 118, C00020

p. 118 Cariou staged and shot this image, which he took in 1995, in about an hour. He wanted to capture something specific about this man, in particular the man's strength, dreads, the fact that he lives really high up in the mountains, his plastic boots, and also he and the man liked each other. Cariou chose the setting because it fit with the man and it was right in the middle of the jungle. Cariou narrowed the depth of field in this photo to blur and make the landscape fade into the background and the portrait more prominent. The background is not all that important. Cariou chose the time of day to take the image and scouted the location where the image was taken. Cariou's objective was to make a beautiful portrait. The essence of this picture is the portrait. The image is about the man and his strength. This image is strikingly original because it is a great photograph. The landscape is not necessarily distinctive on its own, but rather creates an overall association in the book between the images of the Rastafarians and the tropical environment in which they live. Cariou Tr. 48 – 57, 66-69



***Ding Dong the Witch is Dead***, 2008, Collage, inkjet, and acrylic on canvas, 57 ½ x 84 in, 146 x 213 cm

In this painting I have used a number of raw materials and other elements using many of the same techniques as those found in the rest of the *Canal Zone* series. None of the images found in *Yes Rasta* appear in this work. There is, however, an image I took from a book about Bob Marley to further my artistic concept of post-apocalyptic bands, and my message of equality between the sexes. PR Aff. ¶ 61.

Not sold. Bart Aff. Ex. N at Ex. A.

Cariou makes no statement about this painting.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

PATRICK CARIOU,

Plaintiff,

-against-

**08 CIV 11327 (DAB)**

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

Defendants.

-----X

**EXHIBIT A TO SUPPLEMENTAL AFFIDAVIT OF DEFENDANT RICHARD PRINCE  
IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT AND IN FURTHER SUPPORT OF DEFENDANTS MOTION  
FOR SUMMARY JUDGMENT**

To appreciate the various elements, or ingredients, that appear in each of the Paintings, and in turn, their transformative nature, the defendants have compiled, as an aid to the Court, a Composite Exhibit, which contains the images taken from the *Yes Rasta* book, and corresponding Painting(s) in which the image appears, a summary of the various elements (or ingredients) and the techniques defendant Prince used to create each Paintings and a summary of Mr. Cariou's testimony explaining why he took the particular *Yes Rasta* images. The specific rationales set forth in the Affidavit of Richard Prince in paragraphs 3-31 also apply to each of the individual Paintings.



***Pumpsie Green***,\* 2008 Ink jet, acrylic and collage on canvas, 77 x 100 1/2 inches (195.6 x 255.3 cm)

To create *Pumpsie Green*, Prince tore an image from the *Yes Rasta* book and had it scanned and enlarged in a sepia tint. He cut out a portion of this image and collaged it with other images of nude women, a man and a guitar. All of these images were then collaged directly onto the canvas with white paint, using the squeegee technique. On the man, Prince painted black lozenge eyes. He painted pinkish colored lozenge eyes on two of the women and black lozenge eyes on one of the women. Prince named this painting *Pumpsie Green* because Pumpsie Green, who was the first African-American player on the Red Sox, was his childhood hero, and he wanted to honor him through the title. Prince said that "it was just a way of giving a nod to my boyhood hero." RP Supp. Aff. ¶ 5. See also Bart Aff. Ex. G at 253-4.

Not sold. Bart SJM Aff. Ex. N at Ex. A.

\*This Painting was not included in the *Canal Zone* catalog.



*Yes Rasta*, p 13

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

PATRICK CARIOU,

08 CIV 11327 (DAB)

Plaintiff,

-against-

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

Defendants.

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**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT**

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**Preliminary Statement**

In creating the *Canal Zone* paintings, Richard Prince drew inspiration from the world around him to develop his artistic vision for a fantastical, post-apocalyptic world where all that remained was music and the bands to play it. In expressing that vision, Prince, in the tradition of other acclaimed appropriation artists, used raw materials appropriated from many sources, including pages torn from *Yes Rasta*, a book of photographs taken by Patrick Cariou of Rastafarians in their native Jamaican landscape, to convey new insights with a wholly new expressive meaning and message, the redemptive value of music and equality between the sexes. Through the use of established appropriative techniques, Prince expressed this genuine creative rationale, by collaging and scanning rescaled, altered, cropped images to which he added images of guitars, painterly elements, and historical art references as an homage to master painters he admires. In doing so, Prince achieved his goal of using only what was needed to transform the raw elements into a beautiful, completely new and contemporary take on the music scene having nothing to do with Rastafarians in their Jamaican landscape. As such, the exhibition and sale of the *Canal Zone* paintings by Prince, through the efforts of Gagosian Gallery and its owner, Lawrence Gagosian, does not compete with, and therefore could not usurp the market for, Cariou's *Yes Rasta* images. Indeed, as of November 2008, when the *Canal Zone* exhibition opened, the market for Cariou's images was virtually non-existent due solely to choices Cariou made, and not any bad faith or unlawful conduct by defendants. When viewed in light of defendants' contribution to the broader public benefit of art, then, Prince's use of the *Yes Rasta* images was fair. The goal of copyright law to promote the progress of the arts would be better served by allowing Prince's use of the Images because to hold otherwise would effectively stifle, if not foreclose, an established art form that has been firmly entrenched in society and art history.

## FACTUAL BACKGROUND

### A. Appropriation Art, an Established Art Form

Appropriation art can be traced back to the late 19<sup>th</sup> century when authors, composers and artists began borrowing from existing artworks, using fragments of them to create their own. Kenly Ames, *Beyond Rogers v. Koons: A Fair Use Standard For Appropriation*, 93 Colum. L. Rev. 1473, 1478 (Oct. 1993) (“Ames”). By the 20<sup>th</sup> century, incorporation of elements of popular culture and of existing works had become routine. *See* Ex A (Tate Collection Glossary definition of Appropriation Art).<sup>1</sup> In appropriating artwork, artists “encompass a wide variety of methods, ranging from the incorporation of a single element into a much larger work through collage techniques to the reproduction of an image without physical alteration, but reattributed to the appropriating artist.” Ames at 1479. The collage technique takes pieces of photographs, fabric and other raw materials that are organized together and affixed to a surface, often a canvas, creating a layered effect, to produce a completely new work. *See* Ex B (Tate Collection Glossary definition of collage). By reusing a work and removing it from its usual context, appropriation artists aim to give new meaning to the work, questioning “the most fundamental perceptions, both literal and symbolic, on which society is based.” *Id.* at 1482.

Some examples of the most celebrated appropriation art include Dadaist Marcel Duchamp’s *Fountain* (1917), in which he used a readymade urinal, rotated it ninety degrees and signed it with a pseudonym “R. Mutt,” to reference a popular cartoon character. *See* Ex C (Tate

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<sup>1</sup> “Ex \_\_” refers to the exhibits attached to the accompanying Affidavit of Hollis Gonerka Bart (“Bart Aff.”). “RP Aff.” or “Prince Affidavit” refers to the accompanying Affidavit of Richard Prince in Support of Defendants’ Joint Motion for Summary Judgment. “RP Tr.” refers to the transcript of the Prince deposition taken on October 6, 2009, “LG Tr.” refers to the transcript of the deposition of Lawrence Gagosian taken on October 8, 2009, “AP Tr.” refers to the transcript of the deposition of Anthony Petrillose, taken on October 23, 2009, “PC Tr.” refers to the transcript of the deposition of Patrick Cariou taken on January 12, 2010, “CC Tr.” refers to the transcript of the deposition of Christiane Celle taken on January 26, 2010, excerpts of which are attached to Bart Aff. as Exhibits G, L, R, U, Y, respectively.

Collection description of Marcel Duchamp). Another is pop-artist Andy Warhol, who created iconic paintings using popular, commercial images and portrait paintings and recreated them using bright colors, repetition, and his signature grid. *See id.* at Ex D (MOMA description of Warhol's Gold Marilyn Monroe 1962). Other well-known appropriation artists include Pablo Picasso, Georges Braque, Jasper Johns, Robert Rauschenberg, Sherrie Levine, Salvador Dali, Jeff Koons and Prince. *See Ex A; see also Ex E, ¶ 18; Ex F (Guggenheim Release on Prince).*

**B. Richard Prince, a World-Renowned Appropriation Artist**

Prince's career as an appropriation artist began in 1977, when he re-photographed discarded advertising images he salvaged while working in the tear-sheet department of Time Life. RP Aff. ¶ 5; RP Tr. 12-13, 48-49; *see also* RP Tr. 46. Initially, Prince made collages with the clippings, combining the images as if they were freeze frames from the same movie. RP Aff. ¶ 5. Over time, he began working with other artists' photographic images and re-photographing them to place them in a wholly different context. *Id.* at ¶ 6; *see also* RP Tr. 13-16. In 1984, Prince began a new body of works consisting of exact re-drawings of cartoons that evoke a mix of cultural preferences, human desires and prejudices. *Id.* at ¶ 7. These works eventually led to his pursuit of painting and the addition of painterly elements to his work. *Id.* at ¶ 7. In the ensuing years, his techniques expanded with his scribbled "Hippy Drawings" consisting of stick figures with abstract, mask-like faces onto which he would paint circles over the eyes, nose and mouth, known as his "lozenge" faces. RP Aff. ¶ 8. This body of work was followed by sequential series such as the *Nurses* (2002-04), the *Check Paintings* (2004-05), the *De Kooning Paintings* (2007-07), and the *Canal Zone* (2008). RP Aff. ¶ 10. With each successive series, Prince broadened his gestural style with bright colors, dripping paint, bold brush strokes and other painterly elements to create a layered effect. *Id.* at ¶ 9. Historically, Prince has gravitated

toward repetition, groupings and categories as he expresses himself taxonomically, based on the belief that objects are best understood in relation to other objects. *Id.* at ¶ 11.

Prince's appropriative style also is informed by trends in popular culture. *Id.* at ¶ 12. Prince's works feature guitars as a repetitive element, representing his love for music. *Id.* at ¶ 12. Prince is "always trying to hook [his] art up with musical terms." RP Tr. 43; *see also id.* at 125-26. Prince frequently pays homage in his works to master painters whose work he respects. RP Aff. ¶¶ 21, 27; RP Tr. 165-67; Ex F (Guggenheim Release on Prince). Prince aspires to create beautiful pieces of art, and believes that "artists ... should be as free as possible... in their studios." Price Aff. ¶ 3; RP Tr. 123. "Art is about freedom. It's not about being restricted. If I was restricted, then I couldn't transform these images ... I believe artists ... should be as free as possible, yes, in their studios." *Id.* at 120-21.

Prince's works are considered among the most innovative art produced in the past 30 years. Ex F; *see also* Ex E at ¶ 28 (Prince is "an accomplished, educated and informed artist"). The work of Prince has been widely exhibited and is found in the permanent collections of major museums around the world. RP Aff. ¶ 3. In late 2007, the Solomon R. Guggenheim Museum in New York presented a major retrospective of his work, which filled the entire rotunda and two tower galleries. *Id.* at ¶ 3. *See also* Ex F. Prince's works also are sought by significant collectors. RP Aff. ¶ 4. He has an active and strong primary gallery market, with a strong secondary market at auctions and in private sales. *See* Ex H, Ex I. In 2008, *Overseas Nurse* sold at auction in London for approximately \$8.4 million, the highest price for a work by Prince to date. *See* Ex J, Ex K.

**C. Prince's Creation of the Canal Zone Series**

As detailed further in his affidavit, Prince's creation of the *Canal Zone* series evolved from the storyline of a cinematic "pitch" he began writing in 2007 entitled, *Eden Rock*. *See* RP

Aff. Ex A; *see also* RP Tr. 218, 232. The screenplay is his fantastical account of survivors of a worldwide nuclear attack whose cruise ships end up in St. Barts. *Id.*; *see also* RP Tr. 30, 192, 207-208. Forming separate “tribes” or “gangs,” these survivors take over the resort hotels on the island and create their own post-apocalyptic society. *Id.* at ¶ 16; *see also* RP Tr. 207-08, 214-18.

For Prince, the creation of the *Canal Zone* series was the culmination of a confluence of events that came together when he heard his stepson playing the alternative music of the Easy Star All-Stars band in the album *Radiodread*. RP Aff. ¶ 17; RP Tr. 263-64, 266. The next day, Prince found a copy of *Yes Rasta* in a bookstore on St. Barts (Ex EE), and was drawn to the images in the book, given his inclusion of a reggae band as the Rastafarian “tribe” in his screenplay. RP Aff. ¶ 17; RP Tr. 150-51, 153-58, 158, 266. Drawing inspiration from his birthplace, the Panama Canal Zone, where he had recently visited, and the storyline of his *Eden Rock* screenplay, Prince imagined a make-believe, post-apocalyptic enclave, the Canal Zone, in which bands and music are the only things to survive. RP Aff. ¶ 16; RP Tr. 7, 30, 207-08, 218, 232, 251-52. As Prince explains it, “the redemptive value of music is one of the important concepts of this series.” *Id.* at ¶ 22; *see also* RP Tr. 251-52 (Prince’s *Canal Zone* Paintings represent a musical band).

To convey his message, Prince, in the tradition of Duchamp, used appropriated imagery, which included 41 images torn from the pages of *Yes Rasta* (collectively, the “Images”), and images of naked women, rock guitars and musicians’ hands taken from several other sources. RP Aff. ¶ 24; PR Tr. 30 (Images were but one of the “recipe ingredients” that became the *Canal Zone* series); *see also* RP Tr. 170-71, 277-80 (guitars, naked women and Rastas were all ingredients in the Paintings, with the guitar being the primary one). In all but one of the works, *Canal Zone*, 2007, Prince digitally scanned and enlarged the images, applying some directly to the canvas as a backdrop for collaging, and others as cut-out collage elements. RP Aff. ¶ 26; RP

Tr. 40; 168-69. In some of the works, Prince affixed the collage elements to other images with scotch tape for further scanning, and in others he would apply the collage elements directly to the canvas using his squeegee technique in which elements are affixed to the canvas with paint.<sup>2</sup> RP Aff. ¶ 26; *see also* RP Tr. 168-69; 331-37. *Canal Zone*, 2007 consists of portions of 35 Rastafarian faces torn from pages in *Yes Rasta* and onto which Prince drew and painted facemasks. RP Aff. ¶ 48. These were reordered and tacked to a board as means for Prince to introduce the likely characters of his next series, the *Canal Zone*. *Id.*

Stylistic references to the history of art are a hallmark of Prince's *Canal Zone* Paintings in which he pays homage to artists such as de Kooning, Cezanne, Warhol and Picasso. RP Aff. ¶ 21; RP Tr. at 165-66; 300-01. For example, the enlarged hands in several Paintings represent a transition from the *De Kooning* series, which emulated the compositional style of De Kooning's hybrid creatures, and also is a reference to Cezanne's *Bathers*. RP Aff. ¶ 21; *see also* RP Tr. 156, 166-67, 251-52; 264-65. In the style of de Kooning's contorted facial features and Picasso's primitive masks, Prince abstracted the faces found in many of the *Canal Zone* Paintings with painterly elements, oil stick crayon, and the application of his signature "lozenge-face" circles. RP Aff. ¶ 21; *see also* RP Tr. 172-73. As Prince explained in his deposition, he was attempting to create an "unbelievably looking great painting that had to do with a kind of rock-and-roll painting on the radical side, and on a conservative side, something to do with Cezanne's *Bathers*." *Id.* at 361. "As I said, I'm trying to make a kind of fantastic, absolutely hip, up to date, contemporary take on the music scene. And it's my way of dealing with this idea that I've always had, which are the three relationships that exist in the world, which are men and

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<sup>2</sup> For a more detailed description of the transformative nature of the various elements and techniques Prince used in the Paintings in the *Canal Zone* series, the Court is respectfully referred to the Prince Affidavit at paragraphs 32 through 61 and Exhibit A thereto, which is a Composite Exhibit describing the transformative elements of each of the Paintings, and contrasting Cariou's stated purpose for each of the Images Prince lawfully appropriated from *Yes Rasta*.



women, men and men, and women and women.” *Id.* at 338-39. In the *Canal Zone series*, Prince emphasized equality between the sexes. RP Aff. ¶ 61.

**D. Gagosian Gallery’s Canal Zone Exhibition**

Lawrence Gagosian is the founder and owner of the Gagosian Gallery, a leading contemporary art gallery with eight locations worldwide. Ex L at LG Tr. 16, 18-19. Throughout its history, Gagosian Gallery has dedicated itself to organizing important exhibitions of contemporary art. *See*, [www.gagosian.com](http://www.gagosian.com). Since approximately 2005, Gagosian Gallery has represented Prince in the marketing and exhibition of his artwork. LG Tr. 24.

From about November 8, 2008 through December 20, 2008, Gagosian Gallery held the *Canal Zone* Exhibition (the “Exhibition”) at its gallery in Chelsea, featuring 22 of the 29 Paintings in the *Canal Zone* series. Ex M; LG Tr. 25. Gagosian Gallery sold 14 of the Paintings through its promotion of the exhibition. Ex N at Ex A. Gagosian Gallery purchased four of the Paintings, and some were traded in non-cash transactions for other works. *Id.*

Gagosian Gallery spent approximately \$434,730.47 organizing and marketing the Exhibition. Ex O at GGP0043144. Advertisements for the Exhibition were featured in various publications. Ex P at GG0071-79. Marketing efforts primarily targeted prominent collectors, gallerists and museums, as they are the predominant market for Prince’s artwork. *See* Ex H. Invitations to the Exhibition were sent to target consumers. *See* LG Tr. 59-60; Ex Q. Gagosian Gallery also created a catalogue entitled *Canal Zone*, featuring Paintings in the Exhibition. Bart Aff. Ex M. Rizzoli International planned to publish *Canal Zone* for distribution that was scheduled to begin in September 2009, but Rizzoli backed out because of plaintiff’s lawsuit.<sup>3</sup> *See* AP Tr. 24. Though not legally obligated to do so, Defendants withdrew the unsold Paintings, pending this case. RP Aff. ¶ 28.

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<sup>3</sup> Plaintiff has since dismissed all claims against Rizzoli with prejudice. *See* Ex S.

**E. Cariou's Career as a Photographer**

Cariou is a Paris-based photographer who has published a number of photography books, including *Yes Rasta*, published in 2000 by powerHouse Books, Inc. (“powerHouse”). PC Tr. 45-46, 280, 285; Ex T ¶ 3; Ex E ¶ 3. For the past 20 years, Cariou has focused on portraiture photography and landscapes. PC Tr. 45-6, 280, 285. Sometime before 2004, Cariou stopped accepting commercial free-lance photography assignments to focus solely on his photography projects. PC Tr. 282. Two other books, entitled *Surfers* and *Trench Town Love*, containing Cariou's portraiture-style photographic images have been published. According to Cariou, his fourth book, featuring his Gypsy project, was finished in the fall of 2008, however, as of January 2010, he had no plans to publish this book. PC Tr. 286-7; *but see* CC Tr. 43-44. A few images from Cariou's *Yes Rasta* book and *Surfers* book were exhibited at a gallery in Paris in 2000. PC Tr. 234-235, 288-89. Images from his *Trench Town Love* series were exhibited in a small museum in Paris named La Villette for two months in 2009 as part of a group show. Ex V at 3(f); PC Tr. 288-90.

**F. Cariou's Creation of the Images in *Yes Rasta***

According to Cariou, the approximately 100 images that appear in *Yes Rasta* were taken over a six-year period, during which time he continued his career as a professional photographer. AC at ¶ 16; PC Tr. 39-40. Cariou testified that he wanted to photograph Rastafarians in Jamaica because of his love for Reggae music, Jamaica, its culture, the “look” of the Rastafarians and because “no book ha[d] ever been done about Rastafarians.” PC Tr. 35-6; Ex E ¶ 16; Ex Z. His intent was to document the Rastafarian culture and the surrounding landscapes, and to capture as closely as possible the subject being photographed. PC Tr. 36, 40-43, 45, 110, 166, 171; 172-73; 176-78; 265-66; *see also id.* at 120; 185-86 (“What I'm into is to make beautiful books.”);<sup>4</sup>

<sup>4</sup> None of the images in *Yes Rasta* have titles. PC Tr. 77; *but see* RP Tr. 248-49 (for Prince, titles to the Paintings are an important component to the works and to “recontextualizing the image” and “create[] another type of subtext that you can read into the painting.”).

GGP0043115-6; *but see* RP Tr. 357-58 (in contrast to Cariou's images which capture what is actually there, Prince has "never been interested in what's actually there."). Cariou described the *Yes Rasta* project to powerHouse Books, in this way: "I told them that I wanted to have a book of photographs,...of portraiture, and I didn't want that book to look pop culture at all . . . ." *Id.* at 187. Cariou testified that powerHouse marketed *Yes Rasta* to consumers of artist books. *See id.* at 188; *but see* Ex W.

Cariou describes his portraiture style as "a static way of taking a picture of when someone is looking at you;" that is, it is staged and the subject knows he/she is being photographed. *Id.* at 45-46. To Cariou, it is the combination of the way the subject looks at the viewer, the way his body looks, the lighting and the quality of the black and white that make his images strikingly original. *See, e.g.,* PC Tr. 80-81; *but see* Ex CC (similar images from Internet).

Cariou explained that sometimes he would just snap a landscape shot while on his way to another destination, and sometimes he would choose background settings because he thought they would make a beautiful portrait, they suited the subject, were visually compelling, or created a tropical feel, or because they just "felt good" or it "felt right" and not because of any specific attribute about the particular setting. *Id.* at 51, 74, 84, 109-10, 112, 115; 151. Cariou also included photographs of marijuana plantations to depict a prominent feature of the Rastafarian and Jamaican cultures. *Id.* at 114-15; 118. Many of the Images were taken in the towns of Negril and Lucille and in other public places. *Compare* PC Tr. 6, 36-37, 73-74, 83-84, 128 *with* Ex E at ¶ 16. In many instances, Cariou blurred the landscape background to make the subject stand out. *See, e.g.,* PC Tr. 53-55, 123-24; 140-41. Cariou believes his landscape images in *Yes Rasta* are distinctive because they are his and because of the way the tropical landscape is organized in the book, adjacent to the portraiture shots. *Id.* at 67-68, 109; *see also id.* at 171. As

Cariou explained it, the reader must view the whole book to get the feel of the subject matter of each of the individual images in *Yes Rasta*.<sup>5</sup> *Id.* at 81.

**G. By Cariou's Own Design, the Market for his Images is Virtually Non-Existent**

Cariou has utilized an unconventional business model to manage and advance his career as a photographer, such that as of November 2008, the market for his photographic images was virtually nonexistent. Information about Cariou's career as well as images from his books can be found at the website he set up years ago, [www.patrickcariou.com](http://www.patrickcariou.com). Cariou says he does not maintain or monitor this website or check the email address listed on the webpage to see if he has had any inquiries concerning his work. PC Tr. 239. Visitors to Cariou's website can only purchase photographs if they contact him directly via the website. *Id.* at 238-39. Cariou testified that since its creation, no one has contacted him through the website to purchase any of his photographs. *Id.* at 239-40, 254, 260.

Cariou has only sold a few photographs, and by choice, all of these sales were to his friends or to people he liked depending on his mood. Ex V at 1(c); *see also* PC Tr. 89, 92, 126, 157-58, 161, 237, 283-84. In each instance, Cariou arbitrarily decided the price. *See* PC Tr. 92. *Id.* at 221. Moreover, in selecting artist editions for the works he sold, Cariou said he did not really give much thought to which photographs to select. *Id.* at PC Tr. 93-94. Likewise, Cariou has made little attempt to market the *Yes Rasta* images, and he has not given any of the 70 copies of *Yes Rasta* that he received free from the publisher to people who could help market the book. *Id.* at 103, 109, 116, 118, 121, 128, 129, 134, 139, 140, 142, 144, 153, 159, 221.

Cariou is not listed in the 2009 Art in America guide to galleries, museums and artists. *See generally* [www.artinamerica.com](http://www.artinamerica.com). Cariou also is not included in either of the Artnet

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<sup>5</sup> For a detailed recitation of Cariou's stated reasons for photographing the Images, the Court is respectfully referred to the Composite Exhibit attached to the Prince Affidavit as Exhibit A.

databases, which is a valuable resource utilized by art appraisers, art dealers, museum curators, auction experts, and collectors to find artists. *See* www.artnet.com. Cariou's website does not list museum exhibitions featuring his work. Ex X at GG004340 – 43143. Other than the exhibition at Galerie 213, Paris, Cariou has not exhibited or actively sought to exhibit the *Yes Rasta* Images in an effort to promote their sale. PC Tr. 232, 234-235, 288-89.

According to Cariou, exhibiting his works at the Clik Gallery was the first opportunity he considered to exhibit and sell the *Yes Rasta* Images. *Id.* at PC Tr. 95. Cariou testified that Christiane Celle ("Celle") planned to represent him on an exclusive basis for the exhibition. *Id.* Cariou claims that Celle backed away from doing the *Yes Rasta* show because she did not want to look opportunistic and ride on Prince's fame while his work was being exhibited at Gagosian. *Id.* at 100. Celle, however, has not foreclosed working with Cariou on future projects, and has even requested proofs from Cariou for other shows, but Cariou has not followed through with finalizing her representation of him. Bart Aff. Ex Y, CC Tr. 106, 133, 149; *see also* PC Tr. 103. After deciding not to move forward with the *Yes Rasta* exhibition, Celle also reached out to Cariou to inform him of her decision. CC Tr. 63. However, Cariou never responded. CC Tr. 63-65, 71. It was not until they spoke months later, when he called to ask her for help with this lawsuit, that Celle first informed Cariou that she had, for her own professional reasons, decided not to proceed with a show featuring the Images in *Yes Rasta*. *Id.* 71-73. Cariou has not approached anyone else about the possibility of helping him implement his plan to sell prints from his various bodies of work, including invoking his right under his agreement with powerHouse Cultural Entertainment, Inc. ("powerHouse") to permit others to publish his Images. *Id.* at 103, 230-231.

Cariou was not involved in the marketing, advertising, or publicity of *Yes Rasta*. *See id.* at 185, 212, 224. Cariou did not know how many *Yes Rasta* books were sold, whether it was out

of print, how many copies powerHouse still has available for sale, or whether powerHouse has received inquires about the possible sale of *Yes Rasta*. *Id.* at 211, 218, 230, 268; *see also* RP Tr. 236 (*Yes Rasta* was out of print when Prince started to create the *Canal Zone* series). Discovery obtained from powerHouse shows that the market for *Yes Rasta* is very small. *See* Ex T at ¶ 4. powerHouse published one edition of *Yes Rasta*, and has only sold 5,791 copies. *Id.* at ¶ 2, 3. Cariou has earned \$8,087.75 in royalties from the sale of *Yes Rasta*. *Id.* at 214-215; Ex T at ¶¶ 2, 3, and 6. Although powerHouse has not foreclosed working with Cariou on future projects, a hard cover edition of *Yes Rasta* is out of stock and a limited number of copies are available for sale through the powerHouse website. *Id.* at Ex T, ¶¶ 8-9, 11. Cariou claims his ability to sell copies of *Yes Rasta* or to earn revenues from derivative works based on the Images has been damaged due to defendants' alleged conduct. Ex E at ¶ 14. Cariou, however, never intended to continue with portrait photography, and it was not until recently that he allegedly "decided" he was finally ready to market and sell his images. PC Tr. 94-95, 235, 284-85, 286.

### ARGUMENT

#### PRINCE'S APPROPRIATIVE USE OF THE YES RASTA IMAGES WAS FAIR

Section 107 of the Copyright Act is a codification of the common law tradition of fair use adjudication, and requires courts to avoid a rigid application of the copyright statute that "would stifle the very creativity which that law is designed to foster." *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 577 (1994). *See also* Pierre N. Leval, *Toward a Fair Use Standard*, 103 Harv. L. Rev. 1105, 1107 (1990) ("Leval") ("Fair use should be perceived . . . as a rational, integral part of copyright, whose observance is necessary to achieve the objectives of that law."). "The ultimate test of fair use . . . is whether the copyright law's goal of 'promoting the Progress of Science and useful Arts,' . . . 'would be better served by allowing the use than by preventing it.'" *Blanch v. Koons*, 467 F.3d 244, 251 (2d Cir. 2006) (citations omitted).

In determining fair use, courts rely on four *non-exclusive*, statutory factors: 1) “the purpose and character of the use,” 2) “the nature of the copyrighted work,” 3) “the amount and substantiality of the portion used in relation to the copyrighted work as a whole,” and 4) “the effect of the use upon the potential market for or value of the copyrighted work.” 17 U.S.C. § 107. Since “no generally applicable definition [of the fair use doctrine] is possible . . . each case raising the question must be decided on its own facts.” *Harper & Row, Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 560 (1985). *See also Blanch*, 467 F.3d at 251 (citing *Campbell*, 510 U.S. at 577-78) (“determination of fair use defense is an open-ended and context-sensitive inquiry.”). “Although ‘[f]air use is a mixed question of law and fact,’ this court has on a number of occasions resolved fair use determinations at the summary judgment stage where . . . there are no genuine issues of material fact.” *Blanch*, 467 F.3d at 250. When viewed in light of the pivotal role of the fair use defense in promoting the progress of arts and the public exhibition of art, Prince’s appropriation of plaintiff’s *Images* should be considered fair use as a matter of law.<sup>6</sup>

**A. Because the Paintings in Prince’s Canal Zone Series Were Created With New Insights, a Different Purpose, Message and New Meaning, the Character and Purpose Prong of the Fair Use Defense Weighs Decidedly in Defendants’ Favor**

The first factor, the purpose and character of the use, lies at the heart of the fair use inquiry, and is often considered the key factor in determining fair use. *See Campbell*, 510 U.S. at 579. In evaluating the purpose and character prong, courts in this Circuit consider whether the use was transformative, for a commercial purpose, and in bad faith, as well as the rationale for the use. *See, e.g., Blanch*, at 476 F.3d at 251-56.

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<sup>6</sup> Plaintiff’s Fifth Claim for Relief, “Conspiracy by [Defendants] to Violate Plaintiff’s Rights Under the Copyright Act” must be dismissed because there is no cause of action under New York for conspiracy to violate the Copyright Act, and such claims are preempted by the Copyright Act. *Calloway v. Marvel Entm’t. Group*, 1983 U.S. Dist. Lexis 10506, at \*\*14-15 (S.D.N.Y. 1983); *Irwin v. ZDF Enters. GMBH*, 2006 U.S. Dist. Lexis 6156, at \*9 n.1, 11-14 (S.D.N.Y. 2006).

1. Prince's Use of the Images was Transformative

In determining whether the secondary work is transformative, the central inquiry is whether it “merely ‘supersedes the objects’ of the original creation, or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message...in other words, whether and to what extent the new work is ‘transformative.’ Although such transformative use is not absolutely necessary for a finding of fair use, the goal of copyright, to promote science and arts, is generally furthered by the creation of transformative works. Such transformative works thus lie at the heart of the fair use doctrine’s guarantee of breathing space.” *Id.* at 251 quoting *Campbell*, 510 U.S. at 579 (citations omitted). The secondary use adds value where the copyrighted expression in the original work “is used as raw material, transformed in the creation of new information, new aesthetics, new insights and understandings – this is the very type of activity that the fair use doctrine intends to protect for the enrichment of society.” *Id.* (citations omitted).

Here, Cariou’s stated goal was to create a beautiful portraiture book, which accurately depicts members of the Rastafarian culture in their native Jamaican landscapes. PC Tr. 35-36, 51, 132, 134, 141, 186, 265-66; *see also* Ex 2. In other words, Cariou’s objective in taking the Images was to document the Rastafarian culture as reality. *See, e.g.*, Ex AA. Prince, in contrast, is “not interested in what is actually there,” and is instead “really interested in making art that...transforms something that’s already existed without getting involved in the original intent of the image.” RP Tr. 167, 358.

In furtherance of that artistic purpose, Prince appropriated the Images, along with other raw materials, and used them for an entirely different artistic and expressive purpose, which was to create his vision of a fantastical post-apocalyptic world set in a place which no longer exists, while paying homage to master painters. RP Aff. ¶ 21; *see, e.g.* RP Tr. 30, 165-67; 341, 365. One of his creative message for the *Canal Zone* series was to have “music groups and music



itself be the surviving, if not redeeming, fact of life in the post-apocalyptic world I imagined in my screenplay. The redemptive value of music is one of the important concepts and messages of this series.” RP Aff. ¶ 22; *see also* RP Tr.338-40. Prince added guitars to the Paintings to establish groupings of men and men, men and women, and women and women as musical bands, to connote equality between the sexes (RP Aff. ¶ 22) and to further the band and music theme that was one of the centerpieces of his *Canal Zone* series (RP Tr. 279; 338-39. RP Aff. ¶¶ 22 , 32, 44, 45, 46, 53, 55, 65 and Ex A to RP Aff.).

As detailed further in the Prince Affidavit, Prince’s juxtaposition of collaged and other elements in each of the Paintings combined to create a fictionalized world that transforms the individual raw elements used in the Painting into a completely new expression and a different message that had nothing to do with capturing as accurately as possible the Rastafarian culture in native landscapes in Jamaica.<sup>7</sup> On this record, the first, and arguably most compelling, fair use factor, weighs decisively in favor of a finding that Prince’s appropriative use of rescaled, altered, cropped reproductions of the Images as raw materials in the Paintings, is transformative and should therefore be considered fair use. *See, e.g., Blanch*, 467 F.3d at 252-53 (use of copyrighted work as “raw material” to further creative objectives “sharply different” from those of copyright owner “confirms the transformative nature of the use.”); *Bourne Co. v. Twentieth Century Fox Film Corp.*, 602 F.Supp. 2d 499, 509-10 (S.D.N.Y. 2009) (Batts, J.) (“The Second Circuit found it ‘plain’ that superimposing the face of Leslie Nielsen on a photographed body intended to look like Demi Moore’s was ‘transformative’ of Leibovitz’s original photograph.”) citing *Leibowitz v. Paramount Pictures Corp.*, 137 F.3d 109, 114 (2d Cir. 1998).

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<sup>7</sup> As the layering of the raw materials and other elements used in the Painting is difficult to appreciate from a view of the *Canal Zone* book or the photographs attached to the Prince Affidavit, the defendants invite the Court to inspect the Paintings in person at either Prince’s studio in Rensselaerville, New York or in a gallery space in Manhattan should the Court wish to confirm Prince’s sworn statements concerning the manner in which he used the Images.

2. The Broader Public Benefit of the Public Exhibition, and Progress, of Art Outweighs the Commercial Exploitation of the Paintings

While courts will consider the commercial nature of the secondary use when it is an untransformed duplication of the original, any significance attributable to the commercialism factor should be discounted where, as here, the second use is demonstrably transformative. *See Blanch v. Koons*, 467 F.3d 244, 254 (citing *Campbell*, 510 U.S. at 579) (“The more transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use.”); *see also* Point A(1). In any event, given the importance placed on encouraging the creative expression of art, the net economic gains derived from the Paintings to which defendants stipulated (*see* Ex N), should give way to the broader public benefits to be derived from the public exhibition of works of art by Prince. *See id.* at 253-54 (“courts are more willing to find a secondary use fair when it produces a value that benefits the broader public interest . . . Notwithstanding the fact that artists are sometimes paid and museums sometimes earn money, the public exhibition of art is widely and we think properly considered to ‘have value that benefits the broader public interest.’”). As such, little weight, if any, should be afforded to the commercialism factor.

3. Although Not Dispositive, Prince Acted Properly and in Good Faith

Although consideration of the propriety of an alleged infringer’s conduct is an integral part of the analysis, it is not, even when undertaken in bad faith, dispositive of either the first factor or the fair use defense. *NXIVM Corp. v. Ross Inst.* 364 F.3d 471, 479 (2d. Cir. 2004) citing *Campbell*, 510 U.S. at 585 n.18. In any event, as Prince did not act in bad faith when he used the Images to create the Paintings, the good faith factor weighs in Prince’s favor.

Cariou readily admits that Prince is a well-known appropriation artist. (Ex E ¶ 18). “Appropriation art” is defined as taking “possession of another’s imagery (or sounds), often without permission, reusing it in a context which differs from its original context, most often in

order to examine issues concerning originality or to reveal meaning not previously seen in the original.” Ex BB. Thus, appropriation art necessarily entails a taking and repurposing of another image and turning it into something else – a construct that is the very essence of the fair use doctrine. As such, Prince’s use of the Images was consonant with an established art form for which he is well-known; that is, taking raw elements and turning them into something new. *See, e.g.*, RP Tr. 120-21, 123. Indeed, that Prince would not object to his own images being copied and sold for a profit, illustrates his belief in appropriation art as an art form, his commitment to the promotion of the arts, and in turn, his lack of bad faith. RP Tr. 88 (“I’m all for it.”), 123 (artistic freedom is for all artists: “It could be an art student. I would encourage it.”).

In any event, Cariou’s claim that Prince appropriated the Images without Cariou’s permission (Ex E ¶ 19; RP Tr. 28), in itself, does not constitute bad faith. *Blanch*, 467 F.3d at 256 (“We are aware of no controlling authority to the effect that the failure to seek permission for copying, in itself, constitutes bad faith and the cases addressing bad faith tend to arise in circumstances strikingly different from the situation here.”). Even plaintiff’s allegation of “continued distribution” of Prince’s work after plaintiff notified him of his copyright infringement claim (Ex E ¶ 27), “is of no relevance to the fair use equation . . . because [i]f the use is otherwise fair, then no permission need be sought or granted . . . .” *Id.* Besides, upon learning of this lawsuit, defendants pulled the remaining Paintings pending resolution of this lawsuit out of respect for the judicial process. RP Aff. ¶ 28.

#### 4. Prince Had a Genuine Creative Rationale for Appropriating the Images

For Prince, his decision to appropriate the Images was part of a fluid creative process that was inspired by a series of chance events, which happened while he was working on his *Eden Rock* screenplay. *See* RP Tr. 266; RP Aff. ¶ 16. Specifically, when Prince first saw a copy of *Yes Rasta*, he immediately made a connection between the images in the book and the jungles he

had seen on a recent visit to Panama. RP Tr. 158, 161; RP Aff. ¶ 17. The day before, he had seen “monumental cruise ships” in the harbor in St. Barts and he thought they should be in the screenplay. RP Tr. 266; RP Aff. ¶ 17. In thinking about who should be on the ship, the idea of a reggae band popped into his head. *Id.* At the time, he had been listening to Radiodread, an album that sampled and replicated Radiohead, in a reggae manner. RP Tr. 263-64; RP Aff. ¶ 17. As Prince explained, “I was very much into that album, I played it over and over. And then the next day I walk into a bookstore and what do I pick up, a book that had pictures of Rastas in them and I said to myself, hmm, something is in the air. It was pure chance.” *Id.* “It’s that notion of when worlds collide.” RP Tr. 263; RP Aff. ¶ 17. Prince had been looking for black and white images of figures so that he could put them next to his *de Kooning* women, as a transition from that series. RP Tr. 264, 251; RP Aff. ¶ 17.

At the time he was painting his *de Kooning* series, Prince was already thinking about the *Canal Zone* series, and his desire to pay homage to de Kooning through that series. RP Tr. 156-57, 165-66; RP Aff. ¶¶ 21, 38, 39, 40, 41, 42, 43, 46, 47, 51, 53, 62, 63. Working in the style of de Kooning, Picasso, and Warhol, and using the composition of Cezanne’s *Bathers* along with other raw elements (*i.e.*, “ingredients”), Prince transformed the images he had torn from the pages in *Yes Rasta*. RP Tr. 167, 264, 277-79; RP Aff. ¶¶ 27, 42, 53, 63; *see also* Point A(1). The sincerity of Prince’s artistic vision is further confirmed by the fact that he also used an image of a Rastafarian he came across in a book on Bob Marley. *Id.* at 162, 263; *see also* RP Aff. ¶ 24 and Ex M at p. 13-14. Prince, who two years earlier, had “started drawing directly in the book like [he] had done before in a book of De Kooning’s work” (RP Tr. 151), was inspired by the Images because the Rastafarian culture was a subject he knew nothing about, and Prince often puts himself in a position to discover new things. *Id.* at 156. Thus, Prince’s explanation for using the Images, particularly when viewed in light of the entirely different expressive

purpose of the *Canal Zone* series (see A(1)), reveals a genuine creative rationale for his appropriative use of the Images that supports a fair use defense.<sup>8</sup> See *Blanch*, 467 F.3d at 255 (Koon's sworn explanation for use of original work sufficient to carry justification prong of first fair use factor) cited in *Bourne*, 602 F.Supp.2d 499, 507-08 ("Second Circuit has given weight to an artist's own explanation of their creative rationale when conducting fair use analysis").

**B. The Nature of Cariou's Work – Depicting, as Accurately as Possible, Real-Life Images – Weighs in Favor of Fair Use**

Because Prince's use of the Images was transformative, the second fair use factor, the nature of the work, arguably is of limited usefulness since the use was intended to further a wholly different artistic purpose, and not to exploit the "creative virtues" of the Images. See *Blanch v. Koons*, 467 F.3d 244, 257 citing *Bill Graham Archives v. Dorling Kindersley Ltd.*, 448 F.3d at 612-13. In any event, because the images in Cariou's *Yes Rasta* book were published with the stated goal of depicting real-life images of Rastafarians in their native Jamaican landscape (see Ex Z), which, according to Cariou, are destined to have historical significance (PC Tr. 284-86), the second prong should weigh in favor of fair use. See *Blanch*, 467 F.3d 256 ("greater leeway being allowed to a claim of fair use where the work is factual or information, and [] the work is published"); see also *Blanch v. Koons*, 396 F. Supp. 2d 476, 481-82 (S.D.N.Y. 2005)(fair use factor favored defendant where image "not sufficiently original to deserve much copyright protection."); CC Tr. 160.

**C. The Amount and Substantiality of the Images Prince Used was Reasonable**

The third fair use factor considers whether "the quantity and value of the materials used, are reasonable in relation to the purpose of the copying." *Campbell*, 510 U.S. at 586. See

<sup>8</sup> Cariou has suggested in his February 8, 2010 letter to the Court (Ex Z) that a work must comment on the original work to be transformative. This is not the law. While a transformative work may comment on the original work, it is not a prerequisite to finding that the secondary work is transformative. See *Blanch*, 467 F.3d at 255.

also *Blanch v.* 467 F.3d 244, 257 (whether copying was “excessive, beyond his ‘justified’ purpose for doing so.”). This analysis focuses not only on the quantity of the materials used, but also their quality and importance. *Campbell*, 510 U.S. at 587; *Graham*, 448 F.3d 608, 613. The analysis “must take into account that ‘the extent of permissible copying varies with the purpose and character of the use’” and the review is undertaken in reference to the original work.<sup>9</sup> *Graham*, 448 F.3d 608, 613 (citing *Campbell*, 510 U.S. at 586-87).

In this case, then, analysis of the amount and substantiality prong must begin with Cariou’s testimony that the images in his *Yes Rasta* book need to be viewed as a whole in order to appreciate the distinctiveness of the individual images. PC Tr. 61-62, 81, 117. By his own admission, then, the individual Images are not particularly distinctive. Indeed, images strikingly similar to Cariou’s images of Rastafarians, tropical landscapes and marijuana plantations can be readily found on the Internet (Ex CC), thereby demonstrating that the importance of the individual Images is marginal. *See Blanch*, 396 F. Supp. 2d at 467 at 482. Cariou’s testimony also shows that the importance of the Images is as part of a collection of approximately 105 images in the *Yes Rasta* book, for which the copyright was registered as a compilation (Ex DD). Prince’s use is thus diminutive and becomes inconsequential when viewed in light of Prince’s overall creative and artistic purpose for the *Canal Zone* series. *See, e.g., NXIVM Corp.*, 364 F.3d at 481 (rejected “heart of the work” theory where plaintiff conceded book was an assemblage, and it reflected “no objective core”).

Even when viewed individually, however, the quantity and value of the Images Prince used in his Paintings are reasonable to carry out that artistic purpose, particularly given the importance placed on the furtherance of the arts. Though Cariou has represented to this Court that Prince engaged in wholesale copying of entire original works, it is important to note that

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<sup>9</sup> As such, Prince’s enthusiastic appreciation for the images in *Yes Rasta* is not determinative, as plaintiff urges in his February 8, 2010 letter to the Court. *See NXIVM Corp.*, 364 F.3d at 480-81.

none of the Paintings incorporate the actual original works, the photographs themselves. Rather, the appropriative use was made of Images which plaintiff had already reproduced, altered and published in book format in *Yes Rasta*. See PC Tr. 204-205. Moreover, as can be readily seen from a comparison of the Images in *Yes Rasta* and those use in the *Canal Zone* series (see PR Aff. Ex A), in all but three of the Paintings, *Djuna Barnes*, *Natalie Barney*, *Renee Vivien and Romaine Brooks*, 2008, *On the Beach*, *On the Beach*, 2008, and *Graduation*, 2008, Prince appropriated only portions of the Images, and in all instances, did so solely to the extent necessary to further his unique artistic purpose and message. See *id.* at ¶¶ 55, 51, 32 and Ex A to Prince's Aff.

In the three instances where Prince used an entire Image, the amount and substantiality of the Images used is not fatal to defendants' fair use defense because Prince's artistic expression in those three Paintings, a fantastical post-apocalyptic survivor society on St. Barts, is entirely different from Cariou's artistic purpose of creating a beautiful book containing images that depict as realistically as possible Rastafarians in their native Jamaican landscapes. See *Field v. Google Inc.*, 412 F. Supp. 2d 1106, 1121 (D. Nev. 2006); see also *Leibovitz* (fair use found even where entire photograph replicated to look precisely like original). Moreover, these three Images were altered, cropped and used solely as a backdrop for other raw elements painterly techniques. *Campbell*, 510 U.S. at 586-87 ("[T]he extent of permissible copying varies with the purpose and character of the use"; therefore, this inquiry requires the court to return to the first factor).

Given the purpose of the copyright law to progress the arts and encourage artistic freedom, the amount and substantiality factor should weigh in favor of fair use, particularly since, as demonstrated below, there has been no usurpation of the market for Cariou's *Yes Rasta* book or the photographs contained therein. See *Leval* at 1123-24 (amount and substantiality factor must be evaluated "in relation to the copyright objectives; they must consider the

justification for the secondary use and the *realistic risk* of injury to the entitlements of authorship.”) (emphasis added).

**D. Prince’s Use of the Images Did Not Usurp the Potential Market For, or Value of, the *Yes Rasta* Images**

In his February 8 letter to the Court, Cariou points to Celle’s decision not to go forward with a six-week show featuring Cariou’s *Yes Rasta* images to support his view that the exhibition of the Paintings has resulted in “Potential Harm to the Market for Plaintiff’s Photographs and Prints.” Ex 2; PC Tr. 98-100. However, even if Celle’s testimony about her reputational concerns of not wanting to be seen as riding on Prince’s coattails (CC Tr. 88-90) can be reconciled with her testimony that she went with another artist due to timing constraints because Cariou did not respond for months to her attempts to reach him (*id.* at 64-65), Celle’s decision is not the sort of harm the Copyright Act protects. *See NXIVM Corp.*, 364 F.3d at 482 (affirming holding that Goldie Hawn’s cancellation of visit with plaintiff after defendants disseminated allegedly infringing materials is not a cognizable harm under Copyright Act). “In considering the fourth factor, our concern is not whether the secondary use suppresses or even destroys the market for the original work or its potential derivative, but whether the secondary use usurps the market of the original work.” *Id.* at 481-82 (citing *Campbell*, 510 U.S. at 593). “The focus here is whether defendants are offering a market substitute for the original.” *Id.* at 481. Here, there is no evidence that Prince’s creation or defendants’ exhibition and sale of the Paintings usurped, or was offered as a substitute for, Cariou’s *Yes Rasta* images.

At the time the *Canal Zone* series was exhibited at Gagosian Gallery, the market for Cariou’s *Yes Rasta* images was virtually non-existent. Other than the creation and publication of the image in the *Yes Rasta* book in 2000 and his non-committal communications with Celle about a possible show in the spring of 2009 (CC Tr. 66), Cariou has not actively tried to license, market, promote, exhibit or actively sell any of the *Yes Rasta* images. *See supra* Factual



Background G. Instead, Cariou intentionally limited the sale of his works to his friends or people he likes. Ex V at 1(c); PC Tr. 89, 92, 126, 157, 158, 161. To date, Cariou has only sold six *Yes Rasta* images for €1,500 to €2,000. Cariou purportedly had no intention of making any of his portraiture work available to the public until his fourth and final book of *Gypsies* portraits was completed, which (purportedly) happened in the fall of 2008. PC Tr. 286; *but see* CC Tr. 43-44 (Cariou told her it was not done as of the fall 2008). Cariou, having completed the last book, intends to move on from portraiture photography altogether. PC Tr. 286. Thus, it was factually impossible to usurp a market that, by Cariou's own design did not exist.

Second, even if Celle's speculation that she would have done well with Cariou's *Yes Rasta* images (CC Tr. 82) could be spun as a forecast of the potential market for those images, Cariou cannot show that the *Canal Zone* Paintings compete in the same market. *See Consumers Union of the United States, Inc. v. Gen. Signal Corp.*, 724 F.2d 1044, 1051 (2d Cir. 1983) ("[w]here the copy does not compete in any way with the original, this concern [regarding usurping the market] is absent."); *accord Video-Cinema Films, Inc. v. Cable News Network, Inc.*, 2001 U.S. Dist. LEXIS 25687 \*29 (S.D.N.Y. 2001) ("If the allegedly infringing use is not in competition with the copyrighted use, the fair use defense is ordinarily sustained.") (citations and internal quotations omitted). Prince is a well-known appropriation artist whose wholly fictionalized works containing pop cultural messages are displayed in major museums around the world. AC ¶ 18; RP Aff. ¶¶ 3, 12. Consumers of his works are museums, galleries and private collectors of contemporary art, and his works are regularly offered at auction. RP Aff. ¶ 3. Four of the Paintings were sold for prices ranging between \$400,000 and \$2,430,000. Ex N. Cariou, in contrast, is an established portraiture photographer, who has had a couple of shows in the last ten years, and who is known for creating beautiful photography books that capture with great accuracy the essence of his subjects. PC Tr. 45-46, 288-90; *Yes Rasta* (inside jacket cover); CC

Tr. 42-46. As there is no similarity between the styles, concepts, mediums, price ranges or the markets of Cariou and Prince, the *Canal Zone* Paintings in no way compete with the *Yes Rasta*, and certainly are not a substitute for them.<sup>10</sup>

Moreover, as Prince intended to, and did, create Paintings that were transformative (RP Aff. ¶¶ 21, 64), there is no derivative market for Cariou to tap into that is in any way related to Prince's use of portions of the Images. *Blanch*, 467 F.3d at 258 (existence of derivative market for original work must be related to use by defendant); *see also Campbell*, 510 U.S. at 59 (where second use is "transformative," "market substitution is at least less certain, and market harm may not be so readily inferred.").

Finally, the record reveals that notwithstanding Celle's stated reluctance to proceed with a *Yes Rasta* show due to professional considerations, she was quite adamant when she finally spoke to Cariou on or about February 2009, that he do his own *Yes Rasta* show; she urged him to do a reprint of *Yes Rasta* (it was out of print) "because it is a very important book;" she was insistent on purchasing additional *Yes Rasta* books; she felt she could sell prints of images from *Yes Rasta* for between \$3,000 and \$20,000, depending on the size; and she remained willing to represent him, even though it took him several months to return her call. *See* CC Tr. 52-53, 82, 102, 104-05, 107-08, 155. As Celle put it, "I was very committed, I wanted to represent him. We agree on it but we never really pursue it." *Id.* at 133. PC Tr. 286-7 (powerHouse also is still interested in working with Cariou). On this record, then, the fourth factor weighs in favor of

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<sup>10</sup> While Celle (also represented by plaintiff's counsel) testified that her recently-opened (June 2009) gallery, which sells prints of photographic works ranging from \$3,000 to \$20,000, also markets to entertainers, people in the fashion industry, decorators and others (CC Tr. at 67-68, 128, 137, 154-155; *see also Ex Z*), any evidence of an actual overlap between the consumers of the Paintings and consumers of prints of the images in the *Yes Rasta* book (and none was adduced) does not show that in marketing and exhibiting the Paintings, defendants were offering a market substitute for Cariou's *Yes Rasta* prints.

Prince, as his use of the Images did not usurp the potential market for or value of the *Yes Rasta* images. See *Blanch*, 467 F.3d at 258; *NXIVM Corp.*, 364 F.3d at 481-82.

#### **CONCLUSION**

When weighed in light of the purposes of copyright to progress the arts, Prince's use of portions of Cariou's Images should be considered fair because, as demonstrated herein and in the accompanying exhibits, Prince's Paintings, having been created in good faith and with genuine creative rationale to convey new insights, a different purpose and new meaning, are transformative and contribute to the broader public benefit of art; and the quantity and value of the Images Prince used in his Paintings was reasonable to carry out his genuine artistic purpose, which was to transform Cariou's fact-based Images into a completely different expressive purpose that does not compete with and therefore does not usurp Cariou's market for the Images. Accordingly, for all of the reasons set forth herein and in the accompanying exhibits, defendants Prince, Gagosian Gallery and Lawrence Gagosian respectfully request that the Court enter an order granting them summary judgment on their fair use defense and dismissing plaintiff's conspiracy claim as it is frivolous and preempted by federal copyright law, and for such other and further relief to which the defendants are entitled.

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