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Graham; Chuck Close and All Others
Similarly Situated

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE SAM FRANCIS FOUNDATION;
ESTATE OF ROBERT GRAHAM;
CHUCK CLOSE; LADDIE JOHN
DILL; individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

EBAY, INC., a Delaware corporation,

Defendant.

FILED

2011 OCT 18 PM 3:38

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

Case No. **CV11-8622-GHK**
(ASWk)

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs The Sam Francis Foundation; Estate of Robert Graham; Chuck
2 Close; Laddie John Dill (“Plaintiffs”), individually and on behalf of all others
3 similarly situated allege as follows:

4 INTRODUCTION

5 1. This class action lawsuit targets the willful and systematic violation by
6 defendant eBay of its California law obligation to pay royalties to U.S. artists and
7 their estates on artworks sold either in California or at auction by California sellers.
8 To redress eBay’s denial of rights to artists and estates under California’s “Resale
9 Royalties Act,” the plaintiff class herein seeks (i) the payment of all royalties due
10 but not paid under that Act throughout the class periods (as set forth in the class
11 definitions below), together with interest thereon, (ii) the imposition of punitive
12 damages for eBay’s intentional election to flout the law, and (iii) the issuance of
13 appropriate injunctive and declaratory relief to ensure eBay complies with its
14 obligations under the Resale Royalties Act for all future sales involving California
15 sellers, and for all future sales that take place in California.

16 PARTIES

17 2. Plaintiff The Sam Francis Foundation is the heir, legatee and/or
18 personal representative of artist Sam Francis, and has its principal place of business
19 in Los Angeles County, California.

20 3. Plaintiff Estate of Robert Graham is the heir, legatee and/or personal
21 representative of artist Robert Graham, and has its principal place of business in
22 Los Angeles County, California.

23 4. Plaintiff Chuck Close is an artist living in the state of New York.

24 5. Plaintiff Laddie John Dill is an artist living in Los Angeles County,
25 California.

26 6. Defendant eBay, Inc. is a corporation organized and existing under and
27 by virtue of the laws of the State of Delaware, having its principal place of business
28 in San Jose, California, and an additional presence in the County of Los Angeles.

JURISDICTION AND VENUE

1
2 7. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §
3 1332(d)(2), as the amount in controversy exceeds \$5 million and many Class
4 members are citizens of a state different from Defendant.

5 8. This court has personal jurisdiction over Defendant, which has its
6 principal place of business in this State.

7 9. Venue is proper within this District and Division pursuant to 28 U.S.C.
8 §1391(b), because a substantial part of the events and omissions giving rise to the
9 claims occurred in this District, and because there is personal jurisdiction in this
10 District over Defendant because it regularly conducts business in this District.

FACTUAL ALLEGATIONS

eBay's Failure to Comply with California's Resale Royalties Act

11
12
13 10. Through auctions taking place in California during the class periods,
14 eBay sold works of Fine Art – defined herein as original paintings, drawings,
15 sculptures and original works of art in glass, created by U.S. citizen artists. eBay
16 also sold and acted as the agent on behalf of California sellers in connection with
17 some of the foregoing auctions.

18 11. Under California's Resale Royalties Act (section 986 of California's
19 Civil Code) (the "Act"), eBay was required to withhold at the time of the auction or
20 sale, and then pay to the artist (or agent or estate thereof) within 90 days, five
21 percent of the amount of such sales (herein, the "Royalty"). More specifically, the
22 Act obligated eBay to remit the Royalty when it sold the Fine Art (i) "at an auction"
23 and/or (ii) when otherwise serving as the "seller's agent."

24 12. eBay failed and refused to pay the Royalty owed to the plaintiffs and
25 class members, and also failed and refused to apprise plaintiffs and class members
26 when a Fine Art sale occurred that would entitle class members to the Royalty due.
27 (Nor did eBay, as required by the Act – where "unable to locate and pay the artist
28

1 within 90 days” – transfer the amount of the Royalty to California’s Art Council,
2 for deposit “in an account in the Special Deposit Fund in the State Treasury.”)

3 **Auction Sales Where eBay Failed to Pay Royalties to Plaintiffs**

4 13. On information and belief, plaintiffs allege that they are each owed
5 Royalties in connection with the sale of works of Fine Art by eBay. However,
6 because of eBay’s acts of concealment, Plaintiffs at this time can only surmise the
7 total amount of Royalties owed to them.

8 14. As a consequence of eBay’s violations of the foregoing legal
9 obligations, the Plaintiffs and class members have not received the Royalty due to
10 them in connection with the resale of their works of Fine Art.

11 **CLASS ALLEGATIONS**

12 15. As the Act permits an “action for damages within three years after the
13 date of sale or one year after the discovery of the sale, whichever is longer” (Civil
14 Code section 986(a)(3)), the plaintiff Class herein shall be divided as follows:

15 (1) All Artists – and the Estates of such Artists – who created a
16 work of Fine Art for which a Royalty was not paid in connection
17 with an eBay auction or sale, and/or for which a California
18 resident sold the artwork at an eBay auction or sale, within three
19 years of the filing of this action.

20 (2) All Artists – and the Estates of such Artists – who created a
21 work of Fine Art for which a Royalty was not paid when a
22 California resident sold the artwork at an eBay auction or sale
23 three or more years before the filing of this action, and for which
24 eBay never disclosed that the seller was a California resident.

25 In defining the foregoing classes:

26 - “Artist” shall mean a person who created a work of Fine Art and who, at
27 the time of resale, was a citizen of the United States, or had resided in
28 California for two or more years.

1 - "Estates" shall mean the heirs, legatees, and/or personal representatives of
2 an Artist who died no more than twenty years prior to the filing of this
3 action; and

4 - "Fine Art" shall mean an original painting, sculpture, or drawing, or an
5 original work of art in glass, and shall exclude (a) the initial sale of such
6 work where legal title is vested in the artist thereof; (b) the resale of such
7 work for a gross sales price of (or consideration of other artworks, cash
8 and/or property that amounts to) less than one thousand dollars (\$1,000);
9 (c) the resale of such work for a gross sales price less than the purchase
10 price paid by the seller; (d) the resale of such work by an art dealer within
11 10 years of the initial sale of the work by the artist to an art dealer,
12 provided all intervening resales were between art dealers; and (e) any
13 work of stained glass artistry that has been permanently attached to real
14 property and sold as part of the sale of said real property.

15 16. Excluded from the Class are Defendant, Defendant's officers, directors
16 and employees, and the Court and its immediate family members.

17 17. Plaintiffs reserve the right to amend or otherwise alter the class
18 definition presented to the Court at the appropriate time, or to propose sub-classes
19 in response to facts learned through discovery or legal arguments advanced by
20 Defendant or otherwise.

21 18. This action has been brought and may be properly maintained as a
22 class action pursuant to the provisions of Federal Rule of Civil Procedure 23 and
23 other applicable law.

24 19. Numerosity: The Class is so numerous that the individual joinder of
25 all members thereof is impracticable under the circumstances of this case. While
26 the exact number of Class members is unknown at this time, Plaintiffs are informed
27 and believe that the proposed Class consists of at least several hundred members.
28

1 20. Commonality: Common questions of law or fact are shared by Class
2 members. This action is suitable for class treatment, because these common
3 questions of fact and law predominate over any individual issues. Such common
4 questions include, but are not limited to, the following:

5 (a) Whether Defendant violated the Act by failing to pay Royalties
6 to Plaintiffs and Class members;

7 (b) Whether Plaintiffs and Class members are entitled to damages;

8 (c) Whether Plaintiffs and Class members are entitled to punitive
9 damages due to Defendant's willful violations of the Act; and

10 (d) Whether Plaintiffs and Class members are entitled to injunctive
11 relief to insure Defendant's compliance with the Act prospectively.

12 21. Typicality: Plaintiffs' claims are typical of the claims of absent Class
13 members. Plaintiffs and the other Class members were subjected to the same kind
14 of unlawful conduct (Defendant's failure to pay Royalties under the Act) and the
15 claims of Plaintiffs and the other Class members are based on the same legal
16 theories.

17 22. Adequacy: Plaintiffs are adequate representatives of the Class because
18 their interests do not conflict with the interests of the other members of the Class
19 that Plaintiffs seek to represent. Plaintiffs have retained counsel competent and
20 experienced in complex class action litigation and Plaintiffs intend on prosecuting
21 this action vigorously. The interests of Class members will be fairly and
22 adequately protected by Plaintiffs and their counsel.

23 23. Ascertainable Class: The proposed Class is ascertainable in that the
24 members can be identified and located using information contained in Defendant's
25 records.

26 24. Superiority and Substantial Benefit: A class action is superior to other
27 available means for the fair and efficient adjudication of Plaintiffs' and Class
28 members' claims. The damages suffered by each individual Class member may be

1 limited. Given the burden and expense of individual prosecution of the claims at
2 issue, it would be virtually impossible for all Class members to redress the wrongs
3 done to them on an individual basis. Even if members of the Class could afford
4 such individual litigation, the court system could not. Individualized litigation
5 increases the delay and expense to all parties and the court system, due to the
6 complex legal and factual issues of the case. By contrast, the class action device
7 presents far fewer management difficulties, and provides the benefits of single
8 adjudication, economy of scale, and comprehensive supervision by a single court.

9 **FIRST CAUSE OF ACTION**

10 **Violation of California's Resale Royalties Act ("Act")**

11 **Civil Code § 986**

12 25. Plaintiffs incorporate all preceding paragraphs as if fully set forth
13 herein.

14 26. eBay violated California Civil Code section 986 by failing and
15 refusing to pay Royalties due to U.S. artists and their estates.

16 27. More specifically, throughout the class periods (as set forth in the
17 accompanying class definitions), eBay sold works of Fine Art both (i) in California
18 and (ii) at auction by California sellers.

19 28. In connection with such sales, eBay failed and refused to pay the
20 Royalties due to (i) those artists who, at the time of resale, were citizens of the
21 United States, or had resided in California for two or more years, or (ii) to the heirs,
22 legatees and/or personal representatives of such artists who died twenty years (or
23 fewer) prior to the filing of this action.

24 29. eBay made no meaningful effort to locate any artists – or the heirs,
25 legatees and/or personal or representatives of such artists – to whom Royalties were
26 owed.

27 30. eBay also failed, in connection with such sales, to transfer to the
28 California Arts Council the amounts of such Royalties otherwise due to the artists.

1 39. Unfair: eBay's misconduct as alleged herein was unfair because it
2 offends established public policy or is immoral, unethical, oppressive, unscrupulous
3 or substantially injurious to consumers.

4 40. eBay's misconduct as alleged herein was unfair because (i) it caused
5 Plaintiffs and class members substantial injury by, among other things, depriving
6 them of Royalties to which they were lawfully entitled for works of Fine Art that
7 they created, (ii) there were absolutely no countervailing benefits to Artists or to
8 competition that could possibly outweigh this substantial injury, and (iii) this injury
9 could not have been avoided or even discovered by the Artists, because it resulted
10 from eBay's failure to comply with the Act by locating and paying to Artists the
11 pay Royalties due to them, and eBay's concealment of the residences of the sellers.
12 Thus, eBay's acts and/or practices as alleged herein were unfair within the meaning
13 of the UCL.

14 41. As a direct and proximate result of the aforementioned unlawful and
15 unfair practices, eBay has deprived Plaintiffs and class members of the Royalties to
16 which they are entitled under California law.

17 42. As a direct and proximate result of the aforementioned unlawful and
18 unfair practices, eBay retained, and continues to hold, monies that rightfully belong
19 to Plaintiffs and class members.

20 43. As a direct and proximate result of the aforementioned unlawful and
21 unfair practices, Plaintiffs and class members suffered substantial monetary losses
22 and are entitled to restitution for the losses. Plaintiffs and class members are direct
23 victims of eBay's unlawful conduct, and each has suffered injury in fact, and has
24 lost money or property as a result of eBay's unfair competition.

25 44. The unlawful and unfair business practices of eBay, as fully described
26 herein, present a continuing threat to members of the public, as eBay continues to
27 fail to pay Royalties as required by the Act, as described herein. Plaintiffs and
28 other members of the general public have no other remedy of law that will prevent

1 eBay's misconduct as alleged herein from occurring and/or reoccurring in the
2 future.

3 45. Plaintiffs and Class members are entitled to equitable relief, including
4 restitution; restitutionary disgorgement of sums acquired by eBay because of its
5 unlawful and unfair acts and/or practices; attorney's fees and costs; declaratory
6 relief; and a permanent injunction enjoining eBay from engaging in the wrongful
7 activity alleged herein.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for judgment as follows:

- 10 1. For compensatory damages consisting of all royalties, together with
11 interest, owed to the classes.
- 12 2. For disgorgement, restitution and/or rescission to return to the classes
13 all royalties belonging to said classes.
- 14 3. For an award of punitive damages.
- 15 4. For costs of suit, including attorney's fees herein incurred.
- 16 5. For a permanent injunction enjoining the unlawful and unfair activity
- 17 6. For such other and further relief as the court may deem proper.

18 Dated: October 18, 2011

BROWNE WOODS GEORGE LLP

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20 Michael A. Bowse
21 Ira Bibbero
22 Peter Shimamoto

23 By 

Eric M. George

24 Attorneys for Plaintiffs The Sam Francis
25 Foundation; Estate of Robert Graham; Chuck
26 Close; Laddie John Dill and All Others Similarly
27 Situated
28

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury to the full extent permitted by law.

Dated: October 18, 2011

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