

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

PIETER AREND FOLKENS, dba A HIGHER
PORPOISE DESIGN GROUP,

Plaintiff,

v.

WYLAND (NFN) AKA ROBERT THOMAS
WYLAND, *et al.*,

Defendant.

Case No. 2:14-cv-02197-JAM-CKD

**ORDER ON DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

19 Having reviewed the Motion for Summary Judgment and supporting papers by defendants
20 Wyland, Wyland Worldwide, LLC, Wyland Galleries, Inc., and Signature Gallery Group, Inc., and
21 the opposition papers by Plaintiff Pieter Arend Folkens, dba A Higher Porpoise Design Group,
22 and heard the oral arguments of counsel, the Court hereby rules that the motion is GRANTED in
23 part, DENIED in part, and submitted in part, as follows:

24 1. The Court GRANTS the motion as to the first claim for relief for copyright
25 infringement as to the Lucite sculpture known as "Wyland Dolphin" and dismisses the claim with
26 prejudice on the grounds that the posture of a single vertical dolphin is not an element protected
27 by copyright (*George S. Chen Corp. v. Cadona Int'l, Inc.*, 266 F. App'x 523, 524 (9th Cir. 2008))
28 and Plaintiff cannot satisfy the extrinsic test for substantial similarity of protected elements;

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

2. The Court takes under submission the first claim for relief for copyright infringement as to the painting by defendant Wyland known as "Life in the Living Sea";

2. The Court DENIES the motion as to the second claim for relief for breach of settlement agreement on the ground that there are triable issues of fact;

3. The Court DENIES the motion as to the third claim for relief for declaratory relief on the ground that there are triable issues of fact;

4. The Court GRANTS the motion as to the fourth claim for relief for false promise and dismisses the claim with prejudice on the ground that a claim for false promise requires something more than mere non-performance to prove the defendant's intent not to perform his promise (*Magpali v. Farmers Group, Inc.*, 48 Cal. App. 4th 471, 481, *as modified on denial of reh'g* (1996)), which has not been demonstrated by Plaintiff.

DATED: 3/28/2016

/s/ John A. Mendez
John A. Mendez
United States District Court Judge