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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

Case No.: 11 CIV 1679 (DLC)

-----X
 SAFFLANE HOLDINGS LTD., and
 ROBERT WYLDE,

Plaintiffs,

**ANSWER TO PLAINTIFFS' FIRST
 AMENDED COMPLAINT**

-against-

GAGOSIAN GALLERY, INC.,

Defendant.

-----X

Defendant Gagosian Gallery, Inc. ("Gagosian Gallery"), by and through its attorneys Withers Bergman LLP, as and for its Answer to the Amended Complaint, states as follows:

THE PARTIES

1. Gagosian Gallery denies knowledge or information sufficient to admit or deny the allegations in paragraph 1.
2. Gagosian Gallery denies knowledge or information sufficient to admit or deny the allegations in paragraph 2.
3. Gagosian Gallery admits the allegations in paragraph 3.

JURISDICTION AND VENUE

4. Gagosian Gallery states that paragraph 4 pleads a legal conclusion to which no answer is required, but to the extent that an answer is required, Gagosian Gallery denies knowledge or information sufficient to admit or deny the allegations in paragraph 4.

5. Gagosian Gallery states that paragraph 5 pleads a legal conclusion to which no answer is required, but to the extent that an answer is required, Gagosian Gallery denies knowledge or information sufficient to admit or deny the allegations in paragraph 5.

6. Gagosian Gallery denies the allegations in the first sentence of paragraph 6, and respectfully refers the Court to the Complaint, and states that the second sentence of paragraph 6 pleads a legal conclusion to which no answer is required, but to the extent a response is required, but to the extent that an answer is required, Gagosian Gallery denies that Plaintiffs are entitled to any recovery in this case.

7. Gagosian Gallery states that paragraph 7 pleads a legal conclusion to which no answer is required, but to the extent that an answer is required, Gagosian Gallery denies knowledge or information sufficient to admit or deny the allegations in paragraph 7, but admits that a substantial portion of the events and omissions giving rise to Plaintiffs' claims occurred in this District.

FACTUAL BACKGROUND

8. Gagosian Gallery states that paragraph 8 does not require a response, but to the extent that a response is required, Gagosian Gallery denies knowledge or information sufficient to admit or deny the statements made in paragraph 8, and states that Plaintiffs are judicially estopped from pleading inconsistent facts, as they have done here or in the *Met v. Safflane* action.

9. Gagosian Gallery denies the allegations in paragraph 9, but admits that Gagosian Gallery is one of the most important contemporary art galleries in the world, and affirmatively

avers that Gagosian Gallery maintains a total of 11 galleries throughout the world, is partially owned by Larry Gagosian, and is managed by Larry Gagosian and a management team.

10. Gagosian Gallery denies the allegations in paragraph 10, but admits that Tansey, an American postmodern painter known for monochromatic works and elaborate paintings incorporating hidden text and symbols, was born in 1949 in San Jose, California. The prices at which Tansey's works of art have been sold will be provided in discovery.

11. Gagosian Gallery denies the allegations in paragraph 11, but admits that Prince, an American appropriation artist was born in 1949 in the Republic of Panama, and that the work of art made the subject of this action sold for \$2.5 million.

TANSEY FACTS

12. Gagosian Gallery denies the allegations in paragraph 12, but admits that in or about late July, 31, 2009, Defendant, by John Good, one of Defendant's salespersons, issued an invoice to Plaintiff Safflane, by its authorized representative, Wylde, for the painting by Mark Tansey, entitled "The Innocent Eye Test."

13. Gagosian Gallery denies the allegations in paragraph 13.

14. Gagosian Gallery states that paragraph 14 pleads a legal conclusion to which no response is required, but to the extent a response is required, Gagosian denies the allegations in paragraph 14, but admits that since 2004 Wylde, as Safflane's authorized representative, has engaged in at least 10 transactions with Gagosian Gallery, and that Plaintiffs are active collectors of the works of Tansey, and that they are experienced art collectors who are known for wanting to improve and complement their art collection, and are known for doing extensive research before Wylde decides to purchase works of art.

15. Gagosian denies the allegations in paragraph 15, but admits that between on or about July 20, 2009 to and including the date Plaintiff Safflane was invoiced on July 31, 2009,

John Good relayed to Robert Wylde exactly what Charles Cowles had told John Good – namely, that the Tansey Painting was no longer being exhibited at the Metropolitan Museum of Art (the “Met”), the Tansey Painting had been properly returned to Cowles by the Met, Cowles owned the Tansey Painting, it was hanging in Cowles’ gallery, and the Tansey Painting could be sold to Safflane. Gagosian further admits that Good and Wylde exchanged a series of emails on July 28, 2009 with the subject line “promised gift of charles cowls in honour of William s. Lieberman.”

16. Gagosian Gallery denies the allegations in paragraph 16, but admits that as a collector of Tansey works, Plaintiff was aware that the Tansey Painting had been displayed at the Met, that the Tansey Painting is an iconic piece, and that works by Tansey are relativey scarce.

17. Gagosian Gallery states that the allegations in paragraph 17 plead a legal conclusion to which no answer is required, but to the extent that an answer is required, Gagosian Gallery denies the allegations in paragraph 17.

18. Gagosian Gallery denies the allegations in paragraph 14, but admits that, at the request of Wylde, John Good arranged for Wylde to view the Tansey Painting at Cowles’ gallery, located at 84 Mercer Street in New York City, and that on or about July 27, 2009, Wylde and John Good viewed the Tansey Painting at Cowles’ gallery.

19. Gagosian Gallery states that the allegations in paragraph 19 plead a legal conclusion to which no answer is required, but to the extent that an answer is required, Gagosian Gallery states the following:

- i. Gagosian Gallery denies the allegations in paragraph (i), but admits John Good relayed to Robert Wylde exactly what Charles Cowles had told John Good, namely, that the Tansey Painting was no longer being exhibited at the Met, the Tansey Painting had been properly returned to Cowles by the Met, Cowles owned the Tansey Painting, it was hanging in Cowles’ gallery, and the Tansey Painting could be sold to Safflane.;
- ii. Gagosian Gallery admits the allegations in paragraph (ii);

- iii. Gagosian Gallery admits the allegations in paragraph (iii);
- iv. Gagosian Gallery states that paragraph (iv) pleads a legal conclusion to which no response is required, but to the extent a response is required Gagosian Gallery admits the allegations, but denies that a special relationship developed;
- v. Gagosian Gallery denies the allegations in paragraph (v); and
- vi. Gagosian Gallery denies the allegations in paragraph (vi).

20. Gagosian Gallery denies knowledge or information sufficient to admit or deny the allegations in paragraph 20, but admits that in or about April 2010, Gagosian Gallery learned for the first time that the Met, through gifts made by Cowles and his mother, held a 31% undivided interest in the Tansey Painting.

21. Gagosian Gallery denies the allegations in paragraph 21, and affirmatively avers that Wylde, a seasoned collector of Tansey, conducted his own research and due diligence, which confirms that, he was aware of the Met's interest in the Tansey Painting before he decided to purchase it from Cowles.

22. Gagosian Gallery states that paragraph 22 states a legal conclusion to which no answer is required, but to the extent that an answer is required, Gagosian denies the allegations in paragraph 22.

23. Gagosian Gallery denies the allegations in paragraph 23, but admits that it issued an invoice to Plaintiff Safflane dated July 31, 2009 for the Tansey Painting.

24. Gagosian Gallery denies the allegations in paragraph 24, but admits that payment in full was made on or about August 5, 2009, and thereafter the Tansey Painting was delivered to Plaintiffs.

25. Gagosian Gallery denies the allegations in paragraph 25, and respectfully refers the Court to the invoice, but affirmatively avers that Gagosian Gallery acted to facilitate the sale of the Tansey Painting by Cowles, a disclosed principal, to Plaintiffs.

26. Gagosian Gallery denies the allegations in paragraph 26 and respectfully refers the Court to the April 2, 2010 memorandum.

27. Defendant states that paragraph 27 pleads expressions of plaintiff Wylde's mental state to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 27, and affirmatively avers that Gagosian Gallery acted to facilitate the sale of the Tansey Painting by Cowles, a disclosed principal, to Plaintiffs.

28. Defendant states that paragraph 27 pleads expressions of plaintiff Wylde's beliefs and mental state to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 28, and affirmatively avers that Gagosian Gallery acted to facilitate the sale of the Tansey Painting by Cowles, a disclosed principal, to Plaintiffs.

PRINCE FACTS

29. Gagosian Gallery denies the allegations in paragraph 29, and states that these facts will be learned through the discovery process.

30. Gagosian Gallery admits the allegations in paragraph 30.

31. Gagosian Gallery denies the allegations in paragraph 31.

32. Gagosian Gallery denies the allegations in paragraph 32, but admits that Gagosian Gallery issued an invoice dated October 23, 2009 for the Prince Painting for the sum of \$2,200,000.00, and denies knowledge or information sufficient to admit or deny whether Plaintiff Wylde was unable to initiate a wire transfer or his intentions for initiating the wire transfer on the following Monday.

33. Gagosian Gallery admits the allegations in paragraph 33.

34. Gagosian Gallery states that paragraph 34 pleads a legal conclusion to which no answer is required, but to the extent that an answer is required, Gagosian denies the allegations in paragraph 34, but admits that John Good later advised Plaintiff Wylde that Gagosian Gallery had received a higher offer.

35. Gagosian Gallery denies the allegations in paragraph 35, and affirmatively avers that no contract to sell a painting is formed until payment is made in full.

TANSEY CLAIMS

AS AND FOR A FIRST CAUSE OF ACTION

(Breach of Express Warranty of Title)

36. Gagosian Gallery's responses to paragraphs 1-28 inclusive, are incorporated herein by reference.

37. Gagosian Gallery denies the allegations in paragraph 37.

38. Gagosian denies the allegations in paragraph 15, but admits that John Good conveyed to Robert Wylde exactly what Charles Cowles had told Good, namely, that the Tansey Painting was no longer being exhibited at the Met, had been returned to Cowles, could be sold to Safflane and good, clear and unencumbered title to the Tansey Painting could be conveyed to Plaintiff Safflane.

39. Gagosian Gallery denies the allegations in paragraph 39.

40. Gagosian Gallery denies the allegations in paragraph 40.

41. Gagosian Gallery denies the allegations in paragraph 41.

AS AND FOR A SECOND CAUSE OF ACTION

(Breach of Implied Warranty of Title)

42. Gagosian Gallery's responses to paragraphs 1-28 inclusive, are incorporated herein by reference.

43. Gagosian Gallery denies the allegations in paragraph 43.
44. Gagosian Gallery denies the allegations in paragraph 44.
45. Gagosian Gallery denies the allegations in paragraph 45.
46. Gagosian Gallery denies the allegations in paragraph 46.

AS AND FOR A THIRD CAUSE OF ACTION
(Breach of Implied Warranty of Merchantability)

47. Gagosian Gallery's responses to paragraphs 1-28 inclusive, are incorporated herein by reference.

48. Gagosian Gallery denies the allegations in paragraph 48.
49. Gagosian Gallery denies the allegations in paragraph 49.
50. Gagosian Gallery denies the allegations in paragraph 50.

AS AND FOR A FOURTH CAUSE OF ACTION
(Breach of Contract)

51. Gagosian Gallery's responses to paragraphs 1-28 inclusive, are incorporated herein by reference.

52. Gagosian Gallery denies the allegations in paragraph 52 and respectfully refers the Court to the invoice.

53. Gagosian Gallery admits the allegations in paragraph 53.
54. Gagosian Gallery denies the allegations in paragraph 54.
55. Gagosian Gallery denies the allegations in paragraph 55.

AS AND FOR A FIFTH CAUSE OF ACTION
(Fraud)

56. Gagosian Gallery's responses to paragraphs 1-28 inclusive, are incorporated herein by reference.

57. Gagosian Gallery denies the allegations in paragraph 57.
58. Gagosian Gallery denies the allegations in paragraph 58.
59. Gagosian Gallery denies the allegations in paragraph 59.
60. Gagosian Gallery denies the allegations in paragraph 60.
61. Gagosian Gallery denies the allegations in paragraph 61.

AS AND FOR A SIXTH CAUSE OF ACTION
(Negligent Misrepresentation)

62. Gagosian Gallery's responses to paragraphs 1-28 inclusive, are incorporated herein by reference.

63. Gagosian Gallery denies the allegations in paragraph 63.
64. Gagosian Gallery denies the allegations in paragraph 64.
65. Gagosian Gallery denies the allegations in paragraph 65.
66. Gagosian Gallery denies the allegations in paragraph 66.
67. Gagosian Gallery denies knowledge or information sufficient to admit or deny the allegations in paragraph 67.
68. Gagosian Gallery denies the allegations in paragraph 68.
69. Gagosian Gallery denies the allegations in paragraph 69.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Violation of New York Arts and Cultural Affairs Law § 13.03)

70. Gagosian Gallery's responses to paragraphs 1-28 inclusive, are incorporated herein by reference.

71. Gagosian Gallery denies the allegations in paragraph 71.
72. Gagosian Gallery admits the allegations in paragraph 72.
73. Gagosian Gallery denies the allegations in paragraph 73.

AS AND FOR AN EIGHTH CAUSE OF ACTION

(Unjust Enrichment)

74. Gagosian Gallery's responses to paragraphs 1-28 inclusive, are incorporated herein by reference.

75. Gagosian Gallery denies the allegations in paragraph 75.

76. Gagosian Gallery denies the allegations in paragraph 76.

77. Gagosian Gallery denies the allegations in paragraph 77.

78. Gagosian Gallery denies the allegations in paragraph 78.

PRINCE CLAIMS

AS AND FOR A NINTH CAUSE OF ACTION

(Repudiation and/or Breach of Contract)

79. Gagosian Gallery's responses to paragraphs 1-9, 11, and 29-35 inclusive, are incorporated herein by reference.

80. Gagosian Gallery denies the allegations in paragraph 80.

81. Gagosian Gallery denies knowledge or information sufficient to admit or deny the allegations in paragraph 81.

82. Gagosian Gallery denies the allegations in paragraph 82, but admits that Gagosian Gallery subsequently sold the Prince Painting to another buyer for a higher price.

83. Gagosian Gallery denies the allegations in paragraph 83.

AS AND FOR A TENTH CAUSE OF ACTION

(Deceptive and Misleading Business Practices -GBL §§ 349 et. seq.)

84. Gagosian Gallery's responses to paragraphs 1-9, 11, and 29-35 inclusive, are incorporated herein by reference.

85. Gagosian Gallery denies the allegations in paragraph 85.

86. Gagosian Gallery denies the allegations in paragraph 86, but admits that Gagosian Gallery is an art gallery that sells works of art to the public at large.

87. Gagosian Gallery denies the allegations in paragraph 87.

88. Gagosian Gallery denies the allegations in paragraph 88.

AS AND FOR AN ELEVENTH CAUSE OF ACTION
(Unjust Enrichment)

89. Gagosian Gallery's responses to paragraphs 1-9, 11, and 29-35 inclusive, are incorporated herein by reference.

90. Gagosian Gallery denies the allegations in paragraph 90.

91. Gagosian Gallery denies the allegations in paragraph 91.

92. Gagosian Gallery denies the allegations in paragraph 92.

93. Gagosian Gallery denies the allegations in paragraph 93.

AS AND FOR A TWELFTH CAUSE OF ACTION
(Breach of the Implied Covenant Of Good Faith and Fair Dealing)

94. Gagosian Gallery's responses to paragraphs 1-9, 11, and 29-35 inclusive, are incorporated herein by reference.

95. Gagosian Gallery denies the allegations in paragraph 95.

96. Gagosian Gallery denies the allegations in paragraph 96.

AS AND FOR A THIRTEENTH CAUSE OF ACTION
(Specific Performance)

97. Gagosian Gallery's responses to paragraphs 1-9, 11, and 29-35 inclusive, are incorporated herein by reference.

98. Gagosian Gallery denies the allegations in paragraph 98.

99. Gagosian Gallery denies the allegations in paragraph 99.

100. Gagosian Gallery denies the allegations in paragraph 100.

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

102. Gagosian Gallery alleges that Plaintiffs' contract claims on the Tansey Painting cannot be maintained against Gagosian Gallery because Gagosian Gallery merely facilitated the sale of the Tansey Painting to Plaintiffs by a fully disclosed principal.

THIRD AFFIRMATIVE DEFENSE

103. Gagosian Gallery alleges that Plaintiffs' fraud claim is foreclosed because Plaintiffs played an active role in and directly communicated with Charles Cowles concerning a contract to buy the Tansey Painting, Plaintiffs have not sufficiently alleged justifiable reliance, and Plaintiffs' fraud claim is duplicative of their breach of contract claim.

FOURTH AFFIRMATIVE DEFENSE

104. Gagosian Gallery alleges that Plaintiffs' negligent misrepresentation claim concerning the Tansey Painting cannot be maintained because Plaintiffs did not reasonably rely on any representation of Gagosian Gallery, Plaintiffs did not have a special relationship with Gagosian Gallery, and Plaintiffs' negligent misrepresentation claim is duplicative of Plaintiffs' breach of contract claim.

FIFTH AFFIRMATIVE DEFENSE

105. Gagosian Gallery alleges that Plaintiffs' New York Arts and Cultural Affairs Law § 13.03 claim cannot be maintained because that statute does not provide for civil liability.

SIXTH AFFIRMATIVE DEFENSE

106. To the extent that Defendants made misrepresentations to Plaintiffs with regard to the title of the Tansey Painting, such statements were information Charles Cowles gave to Gagosian Gallery for the express purpose of inducing Plaintiffs to purchase the Tansey Painting.

SEVENTH AFFIRMATIVE DEFENSE

107. Gagosian Gallery alleges that Plaintiffs' claims cannot be maintained because Wylde, a seasoned collector, does his own research and due diligence before purchasing works of art, and in the case of the Tansey Painting, decided to purchase it after having seen it in Cowles' apartment and confirming with Cowles that it was his to sell.

EIGHTH AFFIRMATIVE DEFENSE

108. Gagosian Gallery alleges that all of Plaintiffs' causes of action for repudiation and/or breach of contract and unjust enrichment cannot be maintained because there was no binding contract between the Plaintiffs and Gagosian Gallery with respect to the Prince Painting.

NINTH AFFIRMATIVE DEFENSE

109. Gagosian Gallery alleges that Plaintiffs has not stated a claim for deceptive and misleading business practices under New York General Business Law § 349 because a private transaction does not give rise to a violation of New York General Business Law § 349.

Dated: New York, New York
June 27, 2011

Respectfully submitted,

WITHERS BERGMAN LLP

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CERTIFICATE OF SERVICE

The Undersigned hereby certifies that a copy of the foregoing was served upon the following via ECF on this the 27 day of June, 2011:

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