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9/4/11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

SAFFLANE HOLDINGS LTD., and
ROBERT WYLDE,

Plaintiffs,

-against-

GAGOSIAN GALLERY, INC.

Defendant.

-----X

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

THE METROPOLITAN MUSEUM OF ART and
JAN COWLES,

Plaintiffs,

-against-

SAFFLANE HOLDINGS LTD., and
ROBERT WYLDE.

Defendants.

-----X

**No. 11 CIV 1679
(DLC)**

**STIPULATED PROTECTIVE
ORDER**

**No. 11 CIV 3143
(DLC)**

**STIPULATED PROTECTIVE
ORDER**

WHEREAS, the Parties to these actions , which have been coordinated for discovery purposes, believe that certain anticipated discovery will or may contain personal or private information, trade secrets, confidential and/or proprietary commercial information, or materials otherwise entitled to confidential protection; and

WHEREAS, the Parties believe it would serve their mutual interest to conduct discovery under a Stipulated Protective Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the Parties through their respective counsel, as follows:

1. DEFINITIONS:
 - a. “Party” or “Parties” shall mean any party litigant in these actions;
 - b. “Person(s)” shall mean any natural person(s) and any legal and business entity(ies);
 - c. “Producing Party” is any Party or Person who produces or provides any document, thing, testimony, or other information.
 - d. “Document(s)” shall be construed pursuant to Local Rule 26.3 (c)(2) of the United States District Court for the Southern and Eastern District of New York.
 - e. “Confidential Information” is any document, thing, testimony, or other information that the Producing Party has exclusively in its possession and in good faith believes is personal, private, confidential, commercially sensitive, proprietary, a trade secret, or otherwise entitled to confidential protection, as well as all information contained therein or derived therefrom; and
 - f. “Outside Counsel” shall mean counsel of record for any Party in these actions.

2. Designation of Confidential Information shall be performed by the Producing Party as follows:

- a. By stamping a document, or a discovery or interrogatory response, with the legend “Confidential,” or, if documents are produced in electronic form, by placing the legend “Confidential” on the electronic version or image of the document;
- b. By stating on the record at a deposition that the testimony, or portions thereof, contains or reflects Confidential Information, or by notifying all parties in writing, within 20 days after a full and complete transcript is made available to the Producing Party, or, if a full and complete transcript has been made available to the Producing Party prior to the execution of this Protective Order, then within 20 days after the Protective Order has been executed by all parties and so ordered by the Court. After that time, deposition transcripts and exhibits shall be treated as Confidential Information to the extent so designated. The Parties agree to mark all copies in accordance with such designation. Counsel for the Producing Party may also request that all persons other than the Parties, the witness, the court reporter, counsel, and those individuals specified according to paragraph 3 hereof leave a deposition at the time any inquiry is made into matters deemed Confidential Information by the Producing Party. The failure of such other persons to comply with a request of this type shall constitute substantial justification for counsel to instruct the witness that he/ she shall not answer the question, pending further order or direction of the Court.

- c. Where information is produced in a form not appropriate for stamping, it shall be designated at the time of production as “CONFIDENTIAL INFORMATION” or “CONFIDENTIAL” to the receiving Party by letter or other clear writing and so marked, if possible.
 - d. Failure to timely designate documents or testimony as Confidential Information may be remedied by supplemental written notice, which may be given at any time. If such notice is given, all materials so designated shall be thereafter fully subject to this Stipulated Protective Order. If such materials have already been disclosed, the receiving Party that disclosed the Confidential Information to other persons shall take reasonable steps to obtain from such other persons a completed Declaration, in the form annexed hereto as Exhibit A, and/ or collect all originals and copies of the materials from such other persons.
3. Except upon further order of the Court, or by express written consent of counsel for the Producing Party, no use shall be made of any Confidential Information by anyone receiving Confidential Information except for the purpose of prosecuting and defending claims asserted in this action, and material designated as Confidential Information shall be disclosed only to the following “Authorized Persons:”
- a. Outside Counsel for each Party and support personnel assisting Outside Counsel in connection with this action whose function requires access to the Confidential Information. Such support personnel include paralegals, secretaries, translators and law clerks regularly employed or retained by Outside Counsel. Execution of this Stipulated Protective Order by any attorney of a law firm representing any

Party shall constitute a representation that all such persons employed by that law firm shall observe the procedures set forth herein;

- b. The Parties, and each employee, officer, director, or member of a Party whose access to the Confidential Information is deemed reasonably necessary in connection with the prosecution or defense of this action, or any party thereof;
- c. Any non-Party witness, and counsel for the witness, during the course of, or in preparation for, his or her deposition or testimony at trial or hearing in this action, in accordance with the provisions of paragraph 4 herein;
- d. The Court, Court personnel, and stenographic reporters transcribing the testimony or argument at any pretrial conference, hearing, argument, trial or deposition taken in this action;
- e. Experts and/or consultants retained by Outside Counsel for the purpose of this action (including the experts' or consultants' employees) in accordance with the provisions set forth in Paragraph 4 herein;
- f. Outside commercial copying services, data base vendors and their personnel;
- g. Mediators, arbitrators, or similar outside parties and their staffs enlisted by all parties to assist in the resolution of this matter.

4. Confidential Information may be disclosed to those Authorized Persons designated in Paragraph 3(e), only after such Authorized Persons execute a Declaration of Confidentiality ("Declaration") in the form annexed hereto as Exhibit A. Prior to presenting, showing and/or disclosing Confidential Information to those Authorized Persons designated in Paragraph 3(e), the Parties will seek to obtain confirmation under oath from such Authorized Person that they will be bound by the terms of this Stipulated Protective Order, which shall be

marked as an exhibit. Outside Counsel disclosing Confidential Information to Authorized Persons as defined in Paragraph 3(e) shall maintain copies of the executed Declarations by such persons. These Declarations shall not be discoverable except in the event of a dispute regarding an alleged improper disclosure of Confidential Information.

5. Authorized Persons who receive Confidential Information shall hold it in confidence and shall not disclose it directly or indirectly to any person not authorized to receive it under the terms of this Stipulated Protective Order.

6. Each Authorized Person who receives any Confidential Information pursuant to this Stipulated Protective Order shall maintain it in a secure and safe area (and, for counsel, their law offices shall be deemed such an area), and such Authorized Person shall exercise due and proper care with respect to the storage, custody, and use of all Confidential Information.

7. Unless otherwise agreed to by the Parties or ordered by the Court, all Confidential Information which is filed with the Court, including portions of deposition transcripts, shall be filed separately under seal, in accordance with the procedures established by the Court for filing under seal. Nothing herein shall require a Producing Party to take such precautions with its own Confidential Information, confidential or otherwise, but the filing of any Confidential Information in a manner that makes it available to the public at large shall be deemed a waiver of confidentiality with respect to the information made public.

8. At the conclusion of all proceedings in this action, including appeals, if any, all Confidential Information and any copies thereof which are not in custody of the Court shall promptly be destroyed or returned to the Producing Party. Copies of the Confidential Information, which include or reflect receiving counsel's work product shall be destroyed within thirty (30) days of the conclusion of all proceedings [and counsel destroying Confidential

Information shall provide written confirmation of such destruction to opposing counsel.

Notwithstanding the foregoing, Outside Counsel may retain, for their files, one set of all papers and documents filed with the Court, a set of trial and deposition transcripts, and a set of all discovery responses served from any other Party, which contain Confidential Information.

9. The restrictions provided for above shall not terminate upon the conclusion of this lawsuit but continue until further Order of this Court.

10. This Stipulated Protective Order shall not be construed to apply to information in the public domain, or which any Party or its counsel has lawfully obtained, prior to the commencement of this action, from any party, third party or otherwise, or has independently and lawfully developed, and such information shall not be deemed or treated as Confidential Information unless all parties in the possession of such information agree to designate it as Confidential Information.

11. This Stipulated Protective Order shall not foreclose the Parties from challenging in writing that materials labeled or designated in accordance with paragraph 2 are, in fact, not Confidential Information, and such challenge may be made at any time. If the Parties are unable to agree within ten (10) days whether or not such materials are Confidential Information, either Party may move for an order (or seek such other relief as the Court shall direct) that such material is or is not Confidential Information, and the designating Party shall have the burden of proving that the material is properly designated as Confidential Information.

12. This Stipulated Protective Order is without prejudice to the right of any Party to seek relief from the Court, upon good cause shown, from any of the restrictions contained herein.

13. This Stipulated Protective Order is intended to provide a mechanism for the handling of the disclosure or production of Confidential Information to which there is no

objection other than confidentiality. Each Party reserves the right to object to any disclosure of any information or documents it deems to contain Confidential Information on any other ground it may deem appropriate. The designation of Confidential Information pursuant to this Stipulated Protective Order shall not create any presumption with respect to the confidential, proprietary or trade secret nature of any information, testimony, documents, or things.

14. By entering into this Confidentiality Agreement, the Parties do not intend to waive, and do not waive, any or all privileges or other rights they possess or may possess with respect to the Confidential Information. In particular, the Parties do not waive their right to assert attorney-client privilege, or protection under the attorney work-product doctrine or any other applicable privilege or immunity, with respect to any Confidential Information disclosed pursuant to this Confidentiality Agreement.

15. Nothing in this Confidentiality Agreement shall require either Party to produce privileged information. To the extent that privileged information is inadvertently produced, each Party shall be permitted to demand the return of such information, along with all copies thereof, within a reasonable time after that Party becomes aware that the privileged or non-responsive information was inadvertently produced. Within five (5) business days of receipt of such demand, the receiving Party shall return the inadvertently-produced information. By returning the inadvertently produced information, the non-producing Party does not waive its right to make a motion challenging the assertion of privilege or non-responsiveness. The burden of proving privilege or non-responsiveness remains with the producing Party, but the fact that the information was produced may not serve as a basis to assert a waiver of any such privilege or non-responsiveness. Pending resolution of any such motion, the contested information shall be considered privileged and/or non-responsive, and the non-producing party shall not make any

use or disclosure of such material [and shall delete all such document/material (including all copies thereof) from all electronic databases and the like and shall confirm in writing that all copies have been returned or destroyed. The failure of a producing Party to demand the return of any information may not be construed to mean that such information is responsive.

16. Nothing herein shall prevent any Party from using its own Confidential Information in any manner it considers appropriate.

17. Nothing herein shall be deemed to restrict, in any way, the conduct of any hearing, oral argument, or trial in this matter. During a hearing, oral argument, or trial, any Party may seek a sealing order or other order of confidentiality from the Court. However, the grant or denial of such an order shall be at the sole discretion of the Court, and the failure to obtain such an order shall not in any way prohibit either party from using or disclosing Confidential Information during hearings, oral arguments, or trial.

18. In the event that a person subject to this Order receives a subpoena, civil investigative demand, or other legal process or request seeking disclosure or production of any document or information designated as Confidential Information in this action, that person shall give immediate written notice of the request to all Parties, provide a copy of the request, subpoena, or process to all Parties, and shall to the extent permitted by law, withhold production of the subpoenaed material until any dispute relating to its production is resolved.

19. This Stipulated Protective Order may be executed by facsimile, and a faxed signature shall be treated as an original. The Stipulated Protective Order may be executed in counterparts.

20. This Stipulated Protective Order shall become effective and binding on the parties immediately upon signature by all counsel. This Stipulated Protective Order may be presented to

the Court for signature, by any Party, and upon execution by the Court, this Stipulated Protective Order shall become a Stipulated Protective Order of the Court.

Dated: New York, New York
August __, 2011

WITHERS BERGMAN LLP

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Attorneys for Jan Cowles

SO ORDERED:

This stipulation binds the parties to treat as confidential the documents so classified. The Court, however, has not reviewed the documents referenced herein; therefore, by so ordering this stipulation, the Court makes no finding as to whether the documents are confidential. That finding will be made, if ever, upon a document-by-document review. Moreover, the Court does NOT so order any paragraph, which purports to authorize the parties to file documents under seal without a prior court order.

Denise Cole
September 6, 2011

EXHIBIT A

DECLARATION OF CONFIDENTIALITY

The undersigned hereby acknowledges that he/she has read the Stipulated Protective Order executed by the attorneys of record for the parties in the actions presently pending in the Southern District of New York, entitled *Safflane Holdings Ltd. et al. v. Gagosian Gallery, Inc.*, 11 CIV 01679 (DLC), and *The Metropolitan Museum of Art and Jan Cowles v. Safflane Holdings Ltd. et al.*, 11 CIV 3143 (DLC), and understands the terms thereof, and agrees to be bound by its terms.

I further agree that I shall not disclose to others, except in accord with this Stipulated Protective Order, any Confidential Information, as defined therein, or any information contained in such Confidential Information, in any form whatsoever, and that such Confidential Information and the information contained therein may be used only for the purposes authorized by this Stipulated Protective Order.

I further agree and attest to my understanding that my obligation to honor the confidentiality of such Confidential Information will continue even after this litigation concludes.

I further agree that if I fail to abide by the terms of this Stipulated Protective Order, I will be subject to the jurisdiction of the courts of the state of New York for the purposes of any proceedings relating to enforcement of this Stipulated Protective Order.

Dated: _____, 2011

Print Name: _____

Signature: _____