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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Case No.: 11 CIV 1679 (DLC)

SAFFLANE HOLDINGS LTD., and
ROBERT WYLDE,

Plaintiffs,

-against-

GAGOSIAN GALLERY, INC.,

Defendant.

**AFFIDAVIT IN SUPPORT OF MOTION
FOR DEFAULT JUDGMENT**

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GAGOSIAN GALLERY, INC.,

Third-Party Plaintiffs,

-against-

CHARLES COWLES,

Third-Party Defendant.

-----X

DARA G. HAMMERMAN, being duly sworn, deposes and says:

1. I am a member of the bar of the state of New York and of this Court and an associate at the law firm of Withers Bergman LLP (“Withers”), attorneys for Defendant/Third-Party Plaintiff Gagosian Gallery, Inc. (the “Gagosian Gallery,” or “Defendant/Third-Party Plaintiff”) in this action.

2. Pursuant to Rule 55(b)(2) of the Fed. R. Civ. P. and Rule 55.2(b) of the Local Civil Rules for the Southern District of New York, I submit this affidavit on behalf of Gagosian Gallery in support of Defendant/Third-Party Plaintiff's Motion for Default Judgment against Charles Cowles ("Cowles" or "Third-Party Defendant").

3. Upon information and belief, Third-Party Defendant is not an infant, in the military, or an incompetent person.

4. This is a third-party action by Gagosian Gallery against Cowles for indemnification arising out of claims Plaintiffs Safflane Holdings, Ltd. and Robert Wylde (the "Safflane Plaintiffs") asserted in the underlying action against Gagosian Gallery for allegedly fraudulent and negligent misrepresentations as to the title and ownership of a painting by Mark Tansey entitled, "The Innocent Eye Test" (the "Tansey Painting") that Cowles sold to the Safflane Plaintiffs through Gagosian Gallery.

5. This Court has supplemental jurisdiction over the subject matter of this Third-Party Complaint pursuant to 28 U.S.C. § 1367(a). The claims in this Third-Party Complaint are so related and intertwined with the claims at issue in the lawsuit commenced by the Safflane Plaintiffs against Gagosian Gallery in the United States Court, Southern District of New York, bearing Civil Action number 11 Civ 1679 (the "Safflane Action") and the lawsuit commenced by The Metropolitan Museum of Art and Jan Cowles against the Safflane Plaintiffs in the United States Court, Southern District of New York, bearing Civil Action number 11-cv-3143 (the "Met Action"), they form part of the same case or controversy under Article III of the United States Constitution.

6. Annexed hereto as Exhibit A is a true and correct copy of the Safflane Action.

7. Annexed hereto as Exhibit B is a true and correct copy of the Met Action.

8. Annexed hereto as Exhibit C is a true and correct copy of the Third-Party Complaint filed against Cowles on July 15, 2011 (the “Third Party Action”).

9. Annexed hereto as Exhibit D is a true and correct copy of the Summons in a Civil Action directed to Cowles issued by the Clerk of the Court on July 15, 2011.

10. Annexed hereto as Exhibit E is a true and correct copy of relevant excerpts from the deposition of Charles Cowles dated July 13, 2011.

11. Annexed hereto as Exhibit F is a true and correct copy of the Affidavit of Service dated October 6, 2011.

12. Attached hereto as Exhibit G is a true and correct copy of the Affidavit of Service dated October 31, 2011 which was filed with the Court.

13. Annexed hereto as Exhibit H is a true and correct copy of the Clerk’s Certificate dated November 1, 2011 acknowledging Cowles’ Default.

14. Exhibit I, a true and correct copy of the Settlement Agreement, has been sealed pursuant to the Court’s Order dated November 8, 2011, and a hard copy of the Settlement Agreement along with the Court’s November 8th Order will be submitted to the Court by hand in accordance with the Court’s instructions for submitting documents under seal.

15. Exhibit J, the “Summary of Damages Paid by Gagorian Gallery to Plaintiffs in Safflane Action for Tansey Painting” (the “Summary”) prepared by Withers Bergman, has been sealed pursuant to the Court’s Order dated November 21, 2011, and a hard copy of the Summary along with the Court’s November 21st Order will be submitted to the Court by hand in accordance with the Court’s instructions for submitting documents under seal.

16. Annexed hereto as Exhibit K are true and correct copies of Withers' time entries for the defense of the Safflane Action from August 31, 2010 through October 31, 2011.¹ These records were made and entered into this firm's billing system contemporaneously with the work performed, and then billed to Gagorian Gallery on a monthly basis. Withers has reprocessed these bills for the purposes of this Motion to reflect only the time it billed with respect to the defense of the Safflane Action and not with respect to work completed for the Third-Party Action. Withers has also redacted from the attached bills privileged information concerning Withers work product and attorney-client communications.

17. Annexed hereto as Exhibit L is a true and correct copy of a chart created for the Court's convenience showing the total amount of fees, costs and disbursements charged for the defense of the Safflane Action since August 31, 2010. Withers Bergman's total fees in defense of the Safflane Action amounted to \$841,420.35. However, Cowles is only liable to Gagorian Gallery for 82%² of these fees, which amounts to \$689,964.69. Gagorian Gallery has also incurred \$16,162.03 in costs and expenses in connection with defending the Safflane Action. However, Cowles is only liable to Gagorian Gallery for 82% of these costs and expenses, which amounts to \$13,252.86.

18. A review of the billing records reflect that Withers Bergman litigated this matter efficiently and effectively, and solely to the extent necessary to respond to and defend Gagorian Gallery against the Safflane Plaintiffs' claims in the Safflane Action.

¹ Withers Bergman's time entries include work performed on behalf of Gagorian Gallery just prior to the commencement of this lawsuit, at which point the parties were working to resolve this matter in the hopes of avoiding litigation.

² Since 82% of the damages paid by Gagorian Gallery was attributable to the Tansey Painting, Cowles is also liable for 82% of the fees charged to Gagorian Gallery, which represents the amount of fees charged by Withers Bergman with respect to the Tansey Painting.

19. Withers Bergman attorneys and support staff have substantial litigation experience in a wide range of matters. As such, this firm was able to utilize this experience by minimizing the hours spent defending this litigation, which has lasted over a year and a half.

20. Hollis Gonerka Bart was first licensed to practice law in the fall of 1986 in the State of Texas. After moving to New York in 1989, Ms. Bart became associated as a litigation attorney with the law firm of Schulte Roth & Zabel, was admitted to the New York Bar in 1990, and has been practicing in New York ever since. In July 1996, Ms. Bart joined McGuire Woods (then Ross & Hardies) as a partner in the commercial litigation group. Ms. Bart joined the law firm of Withers Bergman (“Withers”) as a senior partner in 2005. In this capacity, she leads and manages the commercial litigation and employment practice groups in the United States for Withers. In total, Ms. Bart has 25 years of litigation experience. She is a seasoned litigator in matters such as the instant action. Withers billed Ms. Bart’s time at a rate of \$725-\$750 per hour for work performed in connection with this action.

21. Brian Dunefsky is a 1992 graduate of Hofstra University School of Law, and is a partner of Withers. Mr. Dunefsky’s practice focuses on international and domestic business litigation, and he has handled a wide range of complex matters for banks, financial institutions, hedge funds, entrepreneurs, art galleries, and art collectors. Withers billed Mr. Dunefsky’s time at a rate of \$675 per hour for work performed in connection with this action.

22. Chaya F. Weinberg-Brodt is a 1990 graduate of New York University School of Law, and was admitted to the New York Bar in 1991. She is of counsel at Withers since 2006. Ms. Weinberg-Brodt has extensive experience in the areas of complex contract, employment and commercial litigation. Withers billed Ms. Weinberg-Brodt’s time at a rate of \$595-\$625 per hour for work performed in connection with this action.

23. Sarah Cormack is a graduate of St. Hilda's College of Oxford and is admitted in England and Wales. She is a partner at Withers who advises on tax, trusts and estate planning, both onshore and offshore, for high net worth individuals with a focus on complex offshore structures. Withers billed Ms. Cormack's time at a rate of \$855 per hour for work performed in connection with this action.

24. David Guin is a graduate of Notre Dame Law School, and is a partner in the corporate department at Withers. Mr. Guin focuses on securities law matters and has significant experience representing clients with regard to matters governed by the Securities Act, the Securities Exchange Act, the Investment Company Act, the Investment Advisors Act and the Commodity Exchange Act as well as the rules of various self-regulatory organizations and stock and commodity exchanges. Withers billed Mr. Guin's time at a rate of \$695 per hour for work performed in connection with this action.

25. Ralph Lerner is a graduate of New York University School of Law, and is of counsel at Withers. Mr. Lerner practices in the area of art law including dealing with auction houses, consignment agreements and tax planning for items of tangible personal property. Withers billed Mr. Lerner's time at a rate of \$825-\$850 per hour for work performed in connection with this action.

26. Dara G. Hammerman is a 2003 graduate of Washington University School of Law and was admitted to practice law in New York in 2004. She is a senior associate at Withers. Since 2003, she has handled a wide variety of commercial litigation matters, and since becoming employed at Withers in 2008, has represented art galleries, companies and individuals in general commercial disputes, art disputes, intellectual property disputes and fiduciary litigation. Withers

billed Ms. Hammerman's time at a rate of \$525-\$595 per hour for work performed in connection with this action.

27. Alyssa Koerner is 2004 graduate of Fordham Law School and was admitted to practice law in New York in 2005. She was hired by Withers in 2006 and is an associate at the firm. Ms. Koerner practices litigation and employment law and has broad-based experience in complex commercial matters. Withers billed Ms. Koerner's time at a rate of \$475-\$500 per hour for work performed in connection with this action.

28. Azmina Jasani is a 2007 graduate of Berkeley School of Law and was admitted to practice law in New York in 2009. She is an associate of Withers, where she represents clients in a variety of complex civil litigation in state and federal court, with an emphasis in art law, copyright and trademark infringement, derivative actions and employment discrimination. Withers billed Ms. Jasani's time at a rate of \$450 per hour for work performed in connection with this action.

29. Jason Kleinman is a graduate of New York University School of Law, and an associate at Withers. Mr. Kleinman provides tax, trust and estate planning advice, with a particular emphasis on the U.S. income and transfer tax rules affecting non-U.S. residents. Withers billed Mr. Kleinman's time at a rate of \$395 per hour for work performed in connection with this action.

30. Shannon Smith Retzke is a graduate of the University of Pennsylvania Law School and the Wharton School at the University of Pennsylvania, and is an associate at Withers. Ms. Retzke focuses on income tax legal issues. She advises on partnership tax planning for closely held businesses as well as U.S. income tax planning matters for U.S. individuals.

Withers billed Ms. Retzke's time at a rate of \$540 per hour for work performed in connection with this action.

31. In order to effectively manage costs, certain aspects of this matter were often assigned to paralegals. At Withers, paralegals are responsible for a wide variety of duties, including substantive fact and cite checking and assisting in preparing for motions and deposition, which saves client resources. For example, Dawn Sperrazza and Janice Johnson, both senior paralegals with the firm, have worked in litigation for several years. Dawn Sperrazza has a bachelor's degree and Janice Johnson has a paralegal certificate and is currently pursuing a Bachelor of Arts degree at Hunter College. Irene Mikalef is also a paralegal at Withers who assists the real estate team. Ms. Mikalef is currently pursuing a Bachelor of Arts Degree at St. John's University. Withers billed Ms. Sperrazza's time at a rate of \$225-\$250, Ms. Johnson's at a rate of \$210-\$225, and Ms. Mikalef's time at a rate of \$275-\$290 per hour for work performed in connection with this action.

32. Ah-Young Lee is a former paralegal who was employed at Withers from May 24, 2010 through December 10, 2010. While at Withers, Ah-Young assisted the litigation team, under the supervision of Hollis Gonerka Bart. Withers billed Ms. Lee at a rate of \$195 per hour for work performed in connection with this action.

33. In passing work down to the most cost-effective biller, legal assistants often perform entry-level paralegal tasks. Laura Gosheff is a legal assistant employed by Withers with over 25 years experience in the legal field. She is able to quickly and accurately perform a variety of tasks at an inexpensive rate, including the loading of discovery onto an automated database. Christina Leccese is a 2003 graduate of Ramapo College of New Jersey with a bachelor degree. Ms. Leccese has been a legal assistant at Withers for over five years, and is

familiar with a variety of Gagosian Gallery matters. She often performs entry-level paralegal tasks to help us manage costs for this client. Withers billed Ms. Gosheff's time at a rate of \$115 per hour and Ms. Leccese's time at a rate of \$75 per hour for work performed in connection with this action.

34. In a further effort to keep costs at a minimum, two interns at Withers were also assigned to work on the matter. Timothy Fitzmaurice, who was employed at Withers from June 22, 2010 through August 12, 2011, as well as Emily Blustein, who was employed at Withers from May 23, 2011 through July 29, 2011, were given various entry-level paralegal tasks. Withers billed both Mr. Fitzmaurice and Ms. Blustein's time at a rate of \$75 per hour for work performed in connection with this action.

35. The foregoing hourly rates are similar to the rates typically charged by attorneys and staff of commensurate skill and experience in similar actions in the Southern and Eastern Districts of New York and in London.

36. Annexed hereto as Exhibit M are true and correct copies of relevant excerpts from the deposition of John Good on September 23, 2011.

37. Annexed hereto as Exhibit N are true and correct copies of relevant excerpts from the deposition of Robert Wylde on September 15, 2011.

38. Annexed hereto as Exhibit O is a true and correct copy of GG112, an invoice for the sale of the Tansey Painting dated July 31, 2009 to Safflane Holdings Ltd.

39. Annexed hereto as Exhibit P are true and correct copies of PL 7, 16-17, email correspondence dated July 30, 2009 between Robert Wylde and John Good, dated August 7, 2009 between Robert Wylde and Libby Parks, and dated August 12, 2009 between Robert Wylde and Nina Coticchia, concerning the delivery of the Tansey Painting.

40. Annexed hereto as Exhibit Q is a true and correct copy of *the New York Times* article entitled, *Collector Sues Gagosian Gallery for Selling Him a Painting Partially Owned by Met*, dated March 11, 2011.



Dara G. Hammerman

Sworn to before me this
5 day of December, 2011



NOTARY PUBLIC

TANIA MALAVE
Notary Public, State of New York
No. 01MA6205864
Qualified in New York County 13
Commission Expires May 11, 2013