

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PARK WEST GALLERIES, INC.,
a Michigan corporation,

Plaintiff/Counter-Defendant

Case No. 2:08-CV-12247

v.

Hon. Lawrence P. Zatkoff
Mag. Virginia M. Morgan

FINE ART REGISTRY, an Internet site
based out of Arizona, BRUCE HOCHMAN,
a California resident,

Defendants/Counter- Plaintiff

PARK WEST GALLERIES, INC.,
a Michigan corporation,

Plaintiff/Counter-Defendant

Case No. 2:08-cv-12274

v.

Hon. Lawrence P. Zatkoff
Mag. Virginia M. Morgan

DAVID CHARLES PHILLIPS,
a Washington resident,

Defendant/Counter-Plaintiff

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**FINE ART REGISTRY AND DAVID PHILLIPS' COUNTER-COMPLAINT AGAINST
PARK WEST GALLERIES, INC.**

Counter-Plaintiffs FINE ART REGISTRY and DAVID CHARLES PHILLIPS, by and through their attorneys Kaufman, Payton & Chapa, state as follows for their Counter-Complaint against Counter-Defendant Park West Galleries, Inc.:

PARTIES, JURISDICTION AND VENUE

1. Counter-Plaintiff FINE ART REGISTRY ("FAR"), is a website operated by Global Fine Art Registry, L.L.C., an Arizona limited liability company.
2. Counter-Plaintiff DAVID CHARLES PHILLIPS [hereinafter "PHILLIPS"] is a resident of the State of Washington, and is a contract writer for Counter-Defendant FINE ART REGISTRY.
3. Counter-Defendant PARK WEST GALLERIES, INC. [hereinafter "PARK WEST"], is a Michigan corporation, authorized and doing business in the City of Farmington Hills, County of Oakland, State of Michigan.
4. This Court has jurisdiction over this matter.

GENERAL ALLEGATIONS

5. Counter-Plaintiffs hereby re-allege and incorporate the preceding paragraphs.
6. FAR operates a website that is dedicated, in part, to exposing fraud, deception, and improper practices in the art industry.
7. The FAR website also sells memberships, and makes available for purchase a patented registration "tagging system" which assists art collectors and artists with establishing the authenticity of art work and preventing art fraud and theft.

8. Counter-Defendant PARK WEST considers itself to be the world's largest art gallery, selling "artwork" both in the State of Michigan and on numerous cruise ships worldwide.
9. Since early 2007, Counter-Plaintiffs FAR and PHILLIPS have been approached by over three hundred (300) persons who suspected that Counter-Defendant PARK WEST had sold them fraudulent, and/or overpriced, and/or misrepresented artwork.
10. FAR and PHILLIPS investigated and reported on some of these incidents on the FAR website, as well as posting other articles related to PARK WEST'S numerous verified questionable business practices.
11. All statements made by FAR and PHILLIPS were supported by witnesses, expert opinions, and reports from insiders.
12. In an effort to stop this legitimate criticism and reporting, Counter-Defendant PARK WEST has engaged in a concerted effort to defame, smear, and destroy the business and personal reputations of FAR and PHILLIPS.
13. PARK WEST, through its agents, employees, co-conspirators, and principals, have intentionally, and on numerous occasions, published and uttered false and defamatory statements which were made directly to FAR members, and to the public at large.
14. Counter-Defendant PARK WEST has also interfered with the business relationships between FAR and its members, and has also infringed on and misused FAR's federally protected trademarks.
15. As a direct and proximate result of Counter-Defendant PARK WEST'S actions, Counter-Plaintiffs FAR and PHILLIPS have been damaged.

COUNT I –
DEFAMATION BY PARK WEST AGAINST FAR AND PHILLIPS

16. Counter-Plaintiffs hereby re-allege and incorporate the preceding paragraphs.
17. On numerous occasions PARK WEST, through its agents, employees, contractors, and principals, have knowingly and maliciously made and published false statements about Counter-Plaintiffs FAR and PHILLIPS.
18. The following false and defamatory statements by the Park West agents as identified have caused severe harm and damage to Counter-Plaintiffs FAR and PHILLIPS.

A. BERNARD EWELL:

19. Bernard Ewell, a self-proclaimed paid agent and expert of PARK WEST, published the following false, malicious and defamatory statements about FAR and PHILLIPS on his blog on behalf of and upon the direction of counter-Defendant PARK WEST:
 - a. October 22, 2008, blog entry [Exhibit A]:
 - i. “So who are Fine Art Registry...and David Phillips and where do they fit in?...It is clear, however, that they are doing Bruce’s dirty work and are evidently well funded by him.”
 - ii. “Future postings will address directly each of the nasty and libelous claims made by Fine Art Register (on Bruce’s behalf)...and the heavily compromised (in some cases criminally) ‘experts’ they promote.
 - b. December 28, 2008, blog entry [Exhibit B]:
 - i. “The source of the attacks is California “dealster” Bruce Hochman who uses Fine Art Registry (FAR) as his mouthpiece for posting false and defamatory charges on the internet.”

- ii. “It’s only a matter of time before a judge orders the FAR site taken off the Internet.”
- c. March 21, 2009, blog entry [Exhibit C]:
 - i. “This is due in large part to scurrilous postings relying heavily on lies by a dangerous blog hosted by the bogus Fine Art Registry. The lies they post (including some about me) appear to have their origin almost certainly with Bruce Hochman of the virtual Salvador Dali Gallery.”
 - ii. “Wait a minute.....Didn’t I state in an earlier posting that I was no longer going to stoop to the low level of Hochman and Fine Art Registry even though there was much in their representations that is incorrect and vicious?”
- d. March 28, 2009, blog entry [Exhibit D]:
 - i. “Bruce, Because Park West is being relentlessly attacked by you and your pseudo-independent stooge Fine Art Registry and you do so with lies and innuendo.”
- e. April 18, 2009, blog entry [Exhibit E]:
 - i. In a recent article printed in *The Artist’s Magazine* May, 2009 issue, Morris Shapiro of Park West Gallery wrote a splendid article as a rebuttal to a scurrilous one written by Fine Art Registry’s hatchet man David Phillips.”

20. Mr. Ewell, on behalf of and directed by PARK WEST falsely states and implies that FAR has an intimate association with, and is in fact being directed and financed by, Bruce Hochman.

21. These untruthful, harmful, disparaging, defamatory and false statements about FAR and PHILLIPS made by PARK WEST's self-proclaimed paid agent and expert on behalf of and upon the direction of PARK WEST were published knowing these statements were false, and/or with a high degree of awareness of their falsity.
22. These statements were arranged by, coordinated with and directed by PARK WEST and were made with malice and/or negligently, and caused harm to the reputation of FAR and PHILLIPS.
23. The link to Ewell's blog is located prominently on PARK WEST'S own website. [Exhibit F].
24. PARK WEST'S own Gallery Director, who is also a principal of the company, wrote to a FAR member on December 5, 2008, and referred him to Mr. Ewell's blog, noting that it will allegedly "shed some light on the current circumstances surrounding Dali's art and the individuals involved."

B. ARTICLES COMMISSIONED BY PARK WEST:

25. Further, Counter-Defendant PARK WEST commissioned articles to defame and smear FAR and PHILLIPS.
26. Tom Beaman, who upon information and belief was paid directly by PARK WEST, published on behalf of PARK WEST an article online entitled "Art market at risk with online art registries that claim to authenticate art" [Exhibit G], which contained the following defamatory statements:
 - a. "It could easily be called "Fake Art Registry" since with their system one could register fakes and even sell them through the website."

- b. “Just as the real estate industry’s mantra is “Location, Location, Location,” “Credentials, Credentials, Credentials” drives the business of fine art collecting, and that’s another caution for clients considering working with websites such as FAR.”
- c. “The only “expert” on the FAR website is Bruce Hochman who I would never rely upon to authenticate anything.”

27. These harmful, disparaging, defamatory and false statements about FAR made by PARK WEST’s paid agent on behalf of and upon the direction of PARK WEST were published knowing these statements were false, and/or with a high degree of awareness of their falsity.

28. These statements were arranged by, coordinated with and directed by PARK WEST and were made with malice and/or negligently, and caused harm to the reputation of FAR.

29. Jill Conner, who upon information and belief was paid directly by PARK WEST, published on behalf of PARK WEST an article online entitled “What’s Real About the Online Art Market? - A Closer Look” [Exhibit H], which contained the following defamatory statements:

- a. “FAR, however, insists that it offers art authenticity on the condition that one pays to become a member of the website.”
- b. “The lack of quality control is glaring, in addition to the fact that FAR allows its collectors to buy and sell from each other.”
- c. “FAR’s deceptive reportage brings to light a host of questions regarding the online art market...”

- d. “Not only does FAR conduct less-than-credible research for concerned buyers, but it also does not guide consumers to other art professionals who work in the real art world. Instead, FAR maintains an introverted stance and generates speculation that is based upon buyer’s remorse.”
- e. “ALR [Art Loss Register] not only offers due diligence services but it also protects its database of private collections from public view, unlike the practice of FAR.”
- f. “But with the internet, the social nature of art is set to change even further if sites like eBay and FAR continue to engage in disingenuous business practices.”

30. These harmful, disparaging, defamatory and false statements about FAR made by PARK WEST’s paid agent on behalf of and upon the direction of PARK WEST were published knowing these statements were false, and/or with a high degree of awareness of their falsity.

31. These statements were arranged by, coordinated with and directed by PARK WEST and were made with malice and/or negligently, and caused harm to the reputation of FAR.

32. The Beaman and Conner articles also tout PARK WEST, and a PARK WEST agent sent this article to a Florida reporter even prior to them being published online in an effort to stop a report about PARK WEST from being aired. (See paragraph 50(a)).

C. LOUIS POSTEL:

33. Louis Postel, yet another one of PARK WEST’S paid agents/employees, has published numerous false, malicious and defamatory statements about FAR and PHILLIPS on the internet on behalf of and upon the direction of Counter-Defendant PARK WEST, including the following:

a. Blog posting, dated July 21, 2008, entitled “Jori Finkel and Fine Art Registry: What Lies Beneath” [Exhibit I]:

- i. “The criminal backgrounds of Fine Art Registry’s Bruce Hochman and evidence of the “cyber bullying” that Fine Art Registry employs against Park West Gallery are readily available.”
- ii. “Yet another person of interest for an investigative journalist is John C. Golfis. He was, it seems a founder of Fine Art Registry.”
- iii. “Take a look at what Fine Art Registry does for a business. It ‘registers’ your art online-with a jpeg!-send you a sticker with a number on it. For what! It is of no use to anyone...”
- iv. “Do go to the suggested website link in the above comment-www.weworshipsatin... and take a look at Fine Art Registry’s idea of a debate.”

b. Blog post, dated July 22, 2008 [Exhibit J]

- i. “The Fine Art Registry is the racket, not Park West Gallery. I work for Park West as a freelancer and I have seen the racket first hand. It’s called a Rogue Registry...”
- ii. “FAR demanded that Park West Gallery “register” all its hundreds of thousands of pieces or get slandered into oblivion. They demanded \$4,000,000 dollars to end their campaign. We have the letter. We have the securities fraud arrest records of their chief Dali expert.

34. Notably, Postel makes numerous defamatory and demonstrably false statements.

35. Hochman is not a FAR expert, FAR has no association with the website “weworshipsatan”, and **FAR HAS NEVER APPROACHED PARK WEST FOR A BUSINESS DEAL OF ANY KIND.**
36. These untruthful, harmful, disparaging, defamatory and false statements about FAR made by PARK WEST’s self-proclaimed paid agent on behalf of and upon the direction of PARK WEST were published knowing these statements were false, and/or with a high degree of awareness of their falsity.
37. These statements were arranged by, coordinated with and directed by PARK WEST and were made with malice and/or negligently, and caused harm to FAR.
38. Daniel Cherrin, who works for PARK WEST’S hired public relations firm “Caponigro Public Relations” also published a press release specifically related to a supposedly forthcoming book from Louis Postel which was reportedly commissioned and paid for by PARK WEST that is purportedly mostly directed at demonizing and slandering FAR and PHILLIPS.
39. The press release itself [Exhibit K] contains the following defamatory statements:
- a. “Journalist Louis Postel Targets Registry Rogues Postel announces new book on how dot-coms such as Fine Art Registry are increasingly well positioned to prey on inexperienced collectors as well as major auction houses.”
 - b. “Chapter One will rely heavily on Postel’s immediate area of expertise: art and design. He is particularly interested in a rogue registry created by a woman named Teri Franks in Phoenix, Ariz., which she calls grandly enough **The Fine Art Registry** or **FAR** for short.”

- c. “But to more experienced artists and collectors, the site’s value is less than nil, perpetuating a risky illusion of safety and authenticity.”
- d. “Well, at this point,” says Postel, “**The Fine Arts Registry** seems fairly transparent, but hardly a threat to the national economy: a way to suck in naïve collectors and artists as well as dealers unwilling or unable to have their wares properly authenticated. But the fees for ID tags only represent penny ante for operators of these rouge sites. The real payoff comes when these operators like **FAR** approach big art dealers such as a Sotheby’s or Park West and extort them into signing up and registering their thousands of artworks for millions of dollars.”
- e. “So far art industry leaders have resisted, but the pressure remains intense to “register” their inventories with **Fine Art Registry**.”
- f. “Ms. Franks certainly chose a fitting person to lend expertise and credibility to her operation: one Bruce Hochman...Hochman is well known in legitimate art circles for... the unusual and untimely death of his partner at a Mexican clinic involving yet to be accounted for Dali artwork...”
- g. “It’s a little more sophisticated than the old time protection rackets, but not by much.”

40. These untruthful, harmful, disparaging, defamatory and false statements about FAR made by PARK WEST’s self-proclaimed paid agent Postel and the head of PARK WEST’S paid public relations firm on behalf of and upon the direction of PARK WEST were published knowing these statements were false, and/or with a high degree of awareness of their falsity.

41. These statements were arranged by, coordinated with and directed by PARK WEST and were made with malice and/or negligently, and caused harm to the reputation of FAR.
42. Postel was also linked to the FAR and PHILLIPS smear site AboutFineArtRegistry.com.
43. Many of the above referenced articles appeared on a website entitled AboutFineArtRegistry.com, which is directly linked to Louis Postel.
44. That website was devoted to smearing the good name and reputation of FAR, and PHILLIPS.
45. In an action filed by FAR in the World Intellectual Property Organization Arbitration and Mediation Center, arguing that the name of that website violated FAR's Trademark (an issue which is discussed later), the Court found that [Exhibit L]:
 - a. "It appears likely, as discussed above, that Park West Gallery or persons associated with that company have exercised control over the Domain Name from the outset...The website formerly associated with the Domain Name disparaged the Complainant and promoted Park West Gallery and other art professionals. It is not likely a coincidence that a paid consultant of Park West Gallery, residing in the same small Vermont town shown as the address of the administrative contact for the Domain Name, wrote the lead article on the website, and that this was followed by press releases from Park West Gallery itself.
46. FAR won that lawsuit, and has since gained control of AboutFineArtRegistry.com, but the harm from the defamation directly linked to PARK WEST was still done.
47. Postel has also posted other defamatory articles about FAR and PHILLIPS on the Internet, including an article entitled: "Scam alert! How Rogue Registries take your money" [Exhibit M], which was done on behalf of and directed by PARK WEST.

48. In that article, Postel states:

- a. "Trouble is Rogue Registries such as the FineArtRegistry.com are like sharks waiting to get you at this vulnerable moment."
- b. "Nothing intrinsically wrong with that except it's totally bogus the way they have set it up."
- c. "The truth is FAR isn't in the business of protecting your art – they're in the business of hitting up huge companies to register every print they own or get blogged to death for "not registering" or having unregistered art."
- d. "How a few self-described experts can scam you faster than you can say "Dali" by offering some sort of "tag" that registers your work supposedly forever."

49. These untruthful, harmful, disparaging, defamatory and false statements about FAR made by PARK WEST's self-proclaimed paid agent on behalf of and upon the direction of PARK WEST were published knowing these statements were false, and/or with a high degree of awareness of their falsity.

50. These statements were arranged by, coordinated with and directed by PARK WEST and were made with malice and/or negligently, and caused harm to the reputation of FAR.

D. SHAPIRO:

51. Morris Shapiro, the "Gallery Director" and a principal of PARK WEST, continues the defamation against Counter-Plaintiffs FAR and PHILLIPS on behalf of PARK WEST in his own article entitled "Park West Gallery Sets the Record Straight." [Exhibit N].

52. The Shapiro article makes the following false and defamatory statement:

- a. "Mr. Phillips does a great disservice to the art world in general and to the readers of *The Artist's Magazine* in particular."

53. This untruthful, harmful, disparaging, defamatory and false statements about Phillips made by one of the principals of PARK WEST on behalf of and upon the direction of PARK WEST was published knowing this statement was false, and/or with a high degree of awareness of its falsity.

54. These statements were arranged by, coordinated with and directed by PARK WEST and were made with malice and/or negligently, and caused harm to the reputation of PHILLIPS.

E. WIKIPEDIA ENTRY:

55. Further, upon information and belief Counter-Defendant PARK WEST, through its agents, employees, and/or principals published the following defamatory and untrue statements about FAR and PHILLIPS on the Wikipedia website under the description of “Fine Art Registry” [Exhibit O]:

- a. “In 2007, Ms. Theresa Franks [FAR’s CEO] was investigated for fraud and forgery regarding a painting supposedly by American artist Richard Diebenkorn. The case is still pending according to the Glendale, AZ District Attorney’s Office.”
- b. “Theresa Franks believes in freedom of expression and regularly hires writers and investigators with controversial pasts. One such individual David C. Phillips, a freelance journalist who has photographed young boys in England and distributes them legally in parts of Eastern Europe. He also has published anti-American photos including “Burn the Flag”, in which Phillips depicts the flag burning in various situations. Theresa Franks defends him saying, “We at Fine Art Registry are constantly finding ways to re-invent the way Americans view art. David

Philips burning flags and photographing young boys is not illegal if it's in artistic format. Just because he was arrested once in the 1980's for voyeurism should not be in an issue when it comes to his association with Fine Art Registry.”

c. The article also falsely alleges other statements were made by Mrs. Franks.

56. These untruthful, harmful, disparaging, defamatory and false statements about FAR and PHILLIPS made, upon information and belief, by PARK WEST or on behalf of and upon the direction of PARK WEST were published knowing these statements were false, and/or with a high degree of awareness of their falsity.

57. These statements were arranged by, coordinated with and directed by PARK WEST and were made with malice and/or negligently, and caused harm to the reputation of FAR and PHILLIPS.

F. E-MAILS FROM PARK WEST AND DEFAMATORY CONVERSATIONS:

58. PARK WEST, through its agents, employees, and principals, has also defamed, smeared, and damaged the reputation of Counter-Plaintiffs FAR and PHILLIPS by e-mail correspondences.

59. Many, but not all of these correspondences were sent directly to FAR members.

60. In an e-mail dated April 15, 2008, sent by Albert Molina, a high ranking employee of PARK WEST, to a Florida reporter, Mr. Molina made the following defamatory statements [exhibit P]:

a. “Relying on Terry Franks versions of “supposed” conversations she had – “who confirms 30 Park West customers have received refunds for art they felt wasn’t worth the value paid” provides you with lies, not the truth.”

- b. “We can demonstrate through private investigators who we have retained that, even in the rare cases where a client has become unhappy, it is Terry Franks and Bruce Hochman who are lying to Park West clients about value and authenticity and attempting to poison them against Park West.”

61. In an e-mail dated March 25, 2008 [Exhibit Q] sent to PHILLIPS from FAR member Guz Zucco, Mr. Zucco relays a conversation he had with PARK WEST employees when he called to express his concerns about artwork he had been sold:

- a. “Yesterday, I contacted Park West and spoke with someone named Leslie. I went over all my points with her and remained firm. She insisted that you were a frustrated internet company of ill repute, and that you also were being investigated by the FBI.”
- b. “Today, I spoke at length with a Mary Courson in Client Services. She (as you predicted) claimed that everything you told me was false, attempted to discredit Fine Art Registry and Bruce Hochman, saying that you were slandering Park West to further your own interests since you are a competitor (though I fail to make that connection, as I don’t see you guys selling any Dali, Miro, etc on your site – I of course pointed that out to her).

62. In an e-mail dated July 31, 2008 [Exhibit R], a FAR member wrote PHILLIPS an e-mail describing defamatory statements that had been made by a PARK WEST employee.

63. The FAR member writes: “I spoke with park west. They claimed the NY Times article was freelance writer out to disparage them. They claimed you were disgruntled and were not very complimentary about you.”

64. In an e-mail dated April 3, 2008 [Exhibit S], sent from PARK WEST'S attorney Robert Burlington on behalf of PARK WEST to FAR member Lorri Millett, the following false and defamatory statements were published:

“In reality, you have been deprived of the enjoyment of your art by FAR, Ms. Franks, and Bruce Hochman...You see, Bruce Hochman, the “authority” recommended to you by FAR and Ms. Franks, works hand in hand with FAR in its misguided crusade to harm Park West. It is a foregone certainty that he will declare your art either “fake” or “over priced” or both. That is why you were directed to his entities by FAR and Ms. Franks.”

65. On November 12, 2008, a letter [Exhibit T] was sent to Mr. John Szostak by Jaye Quadrozzi, counsel for and on behalf of PARK WEST, in which the following defamatory statements are made:

a. “The information provided to you by these individuals and posted on the Fine Art Registry website and elsewhere is false. They have no credible or accurate source for their accusations, and have no experience or expertise in the area.”

66. Additionally, even in a contract for a refund of artwork [Exhibit U] that PARK WEST sent to a customer, PARK WEST manages to defame FAR and PHILLIPS, by writing:

a. “We understand that you have received information from sources including Terry Franks, Fine Art Registry, Frank Hunter, and David Phillips that you have relied on in requesting a refund. Although you have been misinformed, as a matter of client satisfaction, Park West is prepared to issue a refund...”

67. These untruthful, harmful, disparaging, defamatory and false statements about FAR and PHILLIPS made by PARK WEST's employees, principals, attorneys and agents on behalf of and upon the direction of PARK WEST were published knowing these statements were false, and/or with a high degree of awareness of their falsity.

68. These statements were arranged by, coordinated with and directed by PARK WEST and were made with malice and/or negligently, and caused harm to the reputation of FAR and PHILLIPS.

G. PRESS RELEASES:

69. PARK WEST has also commissioned the creation of Press Releases containing defamatory statements about FAR and PHILLIPS.

70. In one press release, dated April 22, 2008 [Exhibit V], and titled 'Fine Art Registry' Accused of Defamation, the following defamatory and untrue statements are contained in the press release, and are directly attributed to PARK WEST:

- a. "But Park West says the FAR registers the artwork online, "never examines the actual artwork" and makes promises it cannot back up."
- b. "Park West adds:...Defendant Hochman, the person whom FAR retains as its art expert, also has no artistic credentials, but does have a criminal history."

71. Another PARK WEST press release, dated January 28, 2009 [Exhibit W], the following defamatory statements were published:

- a. "Park West Gallery, one of the world's largest art dealers, is defending itself forcefully against a campaign of defamation and business interference waged by the website Fine Art Registry (FAR)."
- b. "Responding to a lawsuit filed earlier this year in Oakland County Circuit Court by Park West customers recruited by FAR..."
- c. "As Park West's counterclaim states, FAR's defamatory attacks began in 2007 shortly after the gallery rejected a business offer from the start-up website's management...FAR approached Park West to buy the website's art registry

services...Park West saw no value to its customers in spending well in excess of \$1 million per year for FAR's service, and passed on FAR's solicitation."

- d. "...FAR has continued its online attacks and sponsored unsuccessful legal challenges in a number of states. A FAR-sponsored suit similar to the one filed in Michigan this year was dismissed in California in December 2008."

72. These untruthful, harmful, disparaging, defamatory and false statements about FAR made by PARK WEST were published knowing these statements were false, and/or with a high degree of awareness of their falsity.

73. These statements were arranged by, coordinated with and directed by PARK WEST and were made with malice and/or negligently, and caused harm to the reputation of FAR.

74. PARK WEST also published and uttered numerous other defamatory statements which caused harm to Counter-Plaintiffs FAR and PHILLIPS.

75. All of the above defamatory statements made by PARK WEST harmed the reputation of FAR and PHILLIPS, and deterred current members and potential members from utilizing the services of FAR and PHILLIPS.

76. All of the above referenced statements were false and were published by PARK WEST with the express purpose of causing harm to FAR and PHILLIPS.

77. These defamatory statements were made with malice, were not authorized by FAR or PHILLIPS, and were not privileged.

78. FINE ART REGISTRY AND DAVID CHARLES PHILLIPS have been damaged as a direct and proximate result of PARK WEST'S defamation, and the defamatory statements directly attributable or made on behalf of PARK WEST.

WHEREFORE, FINE ART REGISTRY and DAVID CHARLES PHILLIPS demand a judgment against PARK WEST for actual and punitive damages, and all other relief allowable under the Michigan and federal court rules.

COUNT II

TORTIOUS INTERFERENCE BY PARK WEST AGAINST FAR

79. Counter-Plaintiff FAR hereby re-alleges and incorporates the preceding paragraphs.
80. FAR is a well respected and highly ethical company, which has an excellent reputation in the art industry.
81. FAR enjoys an advantageous business relationship with its members, customers, business partners and readers.
82. PARK WEST has knowledge of FAR's excellent reputation, and the esteem with which it is held by its members, customers, business partners and readers.
83. PARK WEST initiated contacts with FAR members, customers, business partners and readers by telephone, e-mail, written correspondence, articles, blog postings, and press releases and PARK WEST maliciously and intentionally told FAR members, customers, business partners and readers negative falsehoods about FAR, FAR's associates, and FAR's activities.
84. PARK WEST'S statements were intentionally false, and were intended to destroy not only the good will and business and other relationships of FAR, but also to decimate the company.

85. As a direct and proximate result of PARK WEST'S interference with FAR's relationships with its members, customers, business partners and readers, FAR has been severely damaged.

WHEREFORE, FINE ART REGISTRY and DAVID CHARLES PHILLIPS demand a judgment against PARK WEST for actual and punitive damages, and all other relief allowable under the Michigan and federal court rules.

COUNT III

PARK WEST'S INTERFERENCE WITH FAR'S PROSPECTIVE BUSINESS ADVANTAGE

86. Counter-Plaintiff FAR hereby re-alleges and incorporates the preceding paragraphs.

87. FAR is a well respected and highly ethical company, which has an excellent reputation in the art industry.

88. FAR enjoys an advantageous business relationship with its members, customers, business partners and readers.

89. PARK WEST has intentionally interfered with FAR's relationships with prospective customers, members, and business partners and has maliciously smeared FAR and tried to destroy its reputation worldwide.

90. PARK WEST'S published, and written statements were false and intended to damage and decimate FAR and damage the business relationship between FAR and FAR's current and prospective customers, members, and business partners.

91. As a direct and proximate result of PARK WEST'S interference with FAR's relationships with current and prospective customers, members, and business partners, FAR has been severely damaged.

WHEREFORE, FINE ART REGISTRY demands a judgment against PARK WEST for actual and punitive damages, and all other relief allowable under the Michigan and federal court rules.

COUNT IV

PARK WEST'S VIOLATION OF THE LANHAM ACT AS TO FINE ART REGISTRY

92. Counter-Plaintiff FAR hereby re-alleges and incorporates the preceding paragraphs.
93. Counter-Plaintiff FINE ART REGISTRY (a.k.a. Global Fine Art Registry, LLC) owns the following United States Federally Registered service marks: FINE ART REGISTRY (Reg. No. 3,445,181), and FAR (Reg. No. 2,826,552).
94. FAR also owns the United States common law service mark FINE ART ADVOCACY based upon common use.
95. As described above, PARK WEST intentionally, and in bad faith obtained and utilized the domain name AboutFineArtRegistry.com, in an attempt to smear the good name of FAR.
96. PARK WEST'S use of the name Fine Art Registry was intended to confuse the public, draw attention and traffic from current and prospective customers of FAR, and ruin FAR's reputation.
97. PARK WEST also attempted to profit from the use of the Fine Art Registry name.
98. PARK WEST's misuse of the Fine Art Registry name was made maliciously, fraudulently, deliberately, and willfully.

99. The World Intellectual Property Organization Arbitration and Mediation Center in Case D2008-1203 transferred to Global Fine Art Registry, LLC the domain “aboutfineartregistry.com” that Park West Gallery obtained in bad faith.
100. In the words of the WIPO Panel: “From the record in this preceding, however, it appears more likely than not that the Domain Name was registered and used in a bad-faith attempt to divert Internet users interested in the Complainant to a website that criticized the Complainant and promoted Park West Gallery, consisting with paragraphs 4(b)(iii) and (iv) of the Policy.
101. However, severe harm was done to FAR by the misuse of its recognized trademarks.
102. PARK WEST’s actions, as stated above, violated the Lanham Act, 15 U.S.C.S. 1125(d).
103. PARK WEST’s violation of the Lanham Act has continued since that time.
104. PARK WEST has engaged in a continuous illegal assault on trademarks owned by FAR, and the goodwill associated with those marks.
105. Without authorization or approval from FAR, PARK WEST “purchased” the “right” to use the trademarks and service marks of FAR from various search engines including at least Google and AOL as “keyword” triggers that cause PARK WEST paid advertisements, which Google and AOL call “Sponsored Links” to appear above, and below and/or alongside the “natural results,” i.e., web listings, the placement of which is not influenced by payment from third parties. [Exhibit X, see “The Truth About FAR” link at the top].
106. Additionally, the link that takes one to PARK WEST’s litigation page (located at FineArtAdvocacy.ParkWestGallery.com) includes a sub domain that is calculated to

further infringe upon the common law mark FINE ART ADVOCACY and to misdirect customers from another FAR website called FineArADvocacy.com.

107. When present or potential customers, business partners, or readers of FAR entered one of its marks into Google's or AOL's search engine to search or navigate the Internet, instead of being directed to FAR's website, Google's and AOL's "Sponsored Links" captioned with FAR marks misdirected them to PARK WEST'S website.
108. Google and AOL agreed to take down the PARK WEST sponsored ads using FAR marks as keywords, but the harm was still done.
109. Currently, PARK WEST continues to use the FineArtAdvocacy name as the link to its litigation page, which contains smears against FAR. [Exhibit Y]
110. PARK WEST'S litigation webpage is: (1) a blatant attempt to damage the good will associated with FAR's registered marks; and (2) a way to increase PARK WEST'S commercial sales by using FAR's registered marks.
111. PARK WEST'S use of the FAR marks as "triggers" and use of the FineArtAdvocacy name was intended to confuse the public, draw attention and traffic from current and prospective customers of FAR, and ruin FAR's reputation.
112. PARK WEST also attempted to profit from the use of FAR's marks.
113. PARK WEST's misuse of the Fine Art Registry marks name was done maliciously, fraudulently, deliberately, and willfully.
114. FAR has suffered from the above-described actions of PARK WEST.
115. PARK WEST's actions, as stated above, violated and continue to violate the Lanham Act, 15 U.S.C.S. 1125(d).

WHEREFORE, FINE ART REGISTRY demands a judgment against PARK WEST for actual and punitive damages, attorney fees and all other relief allowable under the Michigan and federal court rules, including the issuance of an injunction to prevent Counter-Defendant PARK WEST from further violations of the Lanham Act.

COUNT V

CONSPIRACY AGAINST FAR AND PHILLIPS

116. Counter-Plaintiffs FAR and PHILLIPS hereby re-allege and incorporate the preceding paragraphs.
117. Counter-Defendant PARK WEST maliciously conspired with its employees, agents, business partners, and associates to tarnish the reputation of FAR and PHILLIPS.
118. To accomplish this goal, PARK WEST made and published false and defamatory statements about FAR and PHILLIPS, and maliciously interfered with existing and potential business activities of FAR and PHILLIPS.
119. As a result of the conspiracy between PARK WEST and individuals named above, as well as other unnamed corporations, and individuals, FAR and PHILLIPS sustained damage to their reputation and business.
120. PHILLIPS also sustained severe emotional pain and suffering as a result of the illegal actions of PARK WEST and its co-conspirators.
121. PARK WEST continues to conspire with others to cause damage to FAR and PHILLIPS, and FAR and PHILLIPS' damages are continuing as a result.

WHEREFORE, FINE ART REGISTRY and DAVID CHARLES PHILLIPS demand a judgment against PARK WEST for actual and punitive damages, and all other relief allowable under the Michigan and federal court rules.

Respectfully Submitted,

KAUFMAN, PAYTON & CHAPA

Date: May 4, 2009

/s/ Lawrence C. Atorthy
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I hereby certify that on May 4, 2009, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Rodger D. Young, and Ian C. Simpson.

/s/ Lawrence C. Atorthy
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