

UNITED STATES DUSTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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R. JEROME WALKER, and	:	
WALKER FINE ART, LTD,	:	
	:	
Plaintiffs,	:	Case No. 16-cv-
	:	
v.	:	<b>Complaint for</b>
	:	<b>Unfair Competition,</b>
M.C. ESCHER COMPANY B.V.,	:	<b>Antitrust,</b>
THE M.C. ESCHER FOUNDATION,	:	<b>Copyright Misuse,</b>
CORDON HOLDING C.B.,	:	<b>Defamation,</b>
WIM VELDHUYSEN, and	:	<b>Tortious Interference,</b>
MARK VELDHUYSEN,	:	<b>and DEMAND FOR</b>
	:	<b>JURY TRIAL</b>
Defendants.	:	
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As their complaint against the Defendants, the Plaintiffs, R. Jerome Walker, and Walker Fine Art, Ltd, through their attorneys, aver and allege:

NATURE OF THE ACTION

1. This lawsuit centers around Defendants’ felonious activities perpetrated across multiple levels of the exhibition and sales business involving the highly distinctive art created by M.C. Escher (“Escher”), the renowned Dutch artist whose unique body of work, which joins illusion, mathematics and logic, includes numerous iconic images. The Plaintiffs herein seek redress on account of, and protection against, certain predatory, defamatory, anti-competitive and malicious practices which have been perpetrated by Defendants, with the objective of unfairly maximizing their profits, at

the expense of Plaintiff and other competitors working in the business of displaying and selling Escher's original works (the "Escher Market").

#### THE PARTIES

2. Plaintiff Walker Fine Art, Ltd (hereafter "WFA" and "Walker Fine Art") is a limited liability company duly formed and existing under the laws of the State of Delaware, operating from facilities within this District, and is in the business of promoting the establishment of art exhibitions featuring the works of Escher at museums and other venues, placing Escher works owned by it and its clients in such shows in exchange for hanging fees and/or a percentage of the gate at such shows, and selling the original works of Escher for its clients.

3. Plaintiff Rock Jerome Walker (hereafter "Walker") is the principal of Walker Fine Art, and the owner of the second largest collection of original works of Escher in the world. Walker derives income from the same by putting the same in shows, exhibitions and museums, and by selling such original works.

4. Defendant M.C. Escher Company B.V. ("MCEC") (upon information and belief, formerly known as Cordon Art B.V.) is a Dutch corporation with offices at Baarn, Netherlands, and is in the business of licensing rights to reproduce graphic images created by Escher and exhibiting works from its small collection of original artworks created by Escher. Upon information and belief MCEC claims the exclusive right to sublicense any rights to license the works of Escher.

5. The M.C. Escher Foundation (“MCEF”), upon information and belief, is an entity created under the laws of the Netherlands and at various times has claimed rights of reproduction in the works of Escher (the “Escher Copyrights”), and owns certain original artworks created by Escher.

6. Defendant Cordon Holding C.B. (“CHCB”) is a Dutch corporation and purports to be the assignee of the Escher Copyrights and, upon information and belief, has licensed MCEC under the Escher Copyrights.

7. Upon information and belief, Defendant Wim Veldhuysen (“Veldhuysen, Sr.”) is a Dutch citizen and the chief executive officer and sole shareholder of Defendant MCEF, and controls the actions of Defendants CHCB, MCEF and MCEC.

8. Upon information and belief Defendant Mark Veldhuysen (“Veldhuysen, Jr.”) is a Dutch citizen and the son of Defendant Veldhuysen, Sr., and serves as Managing Director of MCEC, and controls the actions of Defendants CHCB, MCEF and MCEC. Veldhuysen, Sr., Veldhuysen, Jr., MCEC, MCEF and CHCB are jointly referred herein to as the “Defendants”.

#### JURISDICTION

9. (a) This Court has jurisdiction over the antitrust and misrepresentation claims herein pursuant to 28 U.S.C. §§1331 and 1337 by virtue of this action arising under the Antitrust Laws of the United States, and pursuant to Section 4 of the Sherman Act, 15

U.S.C. §4, and Section 43(a) of the Lanham Trademark Act, or a what you are 15 U.S. Code §1125.

(b) This Court has jurisdiction over the unfair competition claims herein pursuant to the provisions of 28 U.S.C. 1338(b) in that said claims are joined with a substantial and related claim under the antitrust laws of the United States, 17 U.S.C. 101 et seq.

(c) This Court has jurisdiction based on diversity of citizenship, 28 U.S.C. §§1332 and 1338(a), as the Plaintiff Walker is a citizen of California, and Plaintiff WFA is a citizen of Delaware, and the Defendants are citizens of the Netherlands, and the amount in controversy exceeds \$75,000, and no plaintiff shares a state of citizenship with any defendant.

(d) This Court has pendent jurisdiction over causes of action arising out of the common nucleus of operative facts as claims brought herein within the subject matter jurisdiction of this Court.

10. Venue is proper in this District under the provisions of 28 U.S.C. §1391(b) and (c), because Defendants are subject to the court's personal jurisdiction with respect to the within action because Defendants have committed tortious acts causing injury to person or property within this District.

FACTS APPLICABLE TO ALL COUNTS

11. Maurits Cornelis Escher (“Escher”) was a Dutch graphic artist who worked from about 1920 until his death in 1972. His works included mathematically inspired woodcuts, lithographs, and mezzotints, featuring geometric objects, visual operations (such as evolutions from one object to another, and representations of impossible objects), and explorations of geometric, physical and natural forms, and the perception of the same. In the course of this work, Escher interacted with prominent mathematicians including George Pólya, Roger Penrose, and Harold Coxeter.

12. Escher's art has become well known, not only among art aficionados, scientists and mathematicians, but very much also in popular culture. His work has appeared on the covers of many books and albums and in a variety of scholarly papers.

13. Following Escher’s death, a family trust, titled the M.C. Escher Foundation, created by the artist and held by the Escher’s estate (the “Escher Estate”) held a large collection of wood blocks, original drawings in various media, prints and possessions owned by the artist and containing the artist’s tools and other artifacts. Much or all of this collection was subject to a substantial encumbrance in the form of a loan of the artwork to the Hague Gemeentemuseum. Upon information and belief, the Escher Estate also claimed, to the extent to which the same might have existed, any rights of reproduction to Escher’s work, including any such rights in the United States.

14. Under the law at the time of Escher’s death, all rights of copyright in the United States, at least with respect to a vast body of published works, by operation of law had passed into the public domain under the provisions of the Copyright Act of 1909, and could be freely reproduced by all without liability.

15. In 1980, the Escher Estate was able to negotiate an arrangement with the Hague Gemeentemuseum, which allowed it to put up for sale about ninety percent of the collection of wood blocks, original drawings in various media, prints and possessions owned by the artist.

16. Parties interested in purchasing the assets of the Escher Estate included Plaintiff Walker.

17. In 1981, Walker was a member of a partnership which purchased about ninety percent of the collection of wood blocks, original drawings in various media, prints and possessions owned by the artist, including a closet (with pictures of the artist's family and other people in Escher's life on its door), the artist's tools and other artifacts.

18. At the present time, Plaintiff Walker owns the second largest collection of original Escher art works in the world.

19. As the owner of one of the largest collections of original Escher art works and a leading dealer in the artist's work since the early 1980's, Walker has, for many years, taken the lead in popularizing Escher in contemporary culture. Such work included the use of public domain Escher images on a range of products, including men's ties, tiles and other products in 1991, and the staging of art exhibitions dedicated to Escher's work starting with relatively small shows, such as the exhibition in Albuquerque, New Mexico, and growing to much larger shows in recent years. Walker and WFA have been building their businesses for over 35 years and have achieved a great stature and pre-eminent reputation in the Escher Market. Shows promoted by Plaintiffs include exhibitions at Albuquerque (1991), Winston-Salem (1992), Madison Wisconsin (1993),

Salt Lake City, and Seattle (1994). Following this, a copyright dispute arose between the parties respecting then-recent changes in US copyright law. Nevertheless, more recently, Plaintiffs have promoted and/or participated in Escher shows at the Auditorium in Rome (2008), Verona (2009), Boca Raton (2010), Bressanone (2013), and the Chioistro del Bravante in Rome (2014).

20. In connection with the 1991 exhibition in Albuquerque, New Mexico, Walker created the concept of Escher and education, building on the artist's use of art to explore science, math, geometry, the mind and beyond. Such presentation of Escher's work has done much to promote the image of the artist and raise his stature in the public mind. Such activity on the part of Walker and Walker Fine Art have benefited all in the Escher Market, including Defendants. Nevertheless, increasing recent activities by Walker and Walker Fine Art have come to be resented by Defendants, and have endangered Walker's personal goal of instituting an Escher Prize recognizing individual achievement in education in mathematics and the sciences, based upon Walker's belief that education is the only real deterrent to the most severe and serious social problems which we face, as noted in the dedication of the show catalog for the exhibition in Boca Raton.

#### Subsequent Acquisition of Limited IP Rights by Defendants

21. In 1984, while reproduction rights in Escher's works were in the public domain in the United States, and did not exist, Defendants claim to have acquired, subject to intervening rights of others, certain rights of reproduction to Escher's work (the "Escher Copyrights") by an alleged transfer from the Escher Estate to Cordon Art BV ("Cordon

Art”), a company incorporated in the Netherlands. Upon information and belief, Cordon Art changed its name to M.C. Escher Company B.V., and is one and the same with Defendant MCEC.

22. Upon information and belief, Defendants have, since 1984, put together a collection of original works created by Escher, but such collection consists mostly or largely of duplicates of a much smaller number of works. Like Walker and WFA, Defendants have engaged in the business of displaying such works in exchange for certain monetary payments, and competed with Plaintiffs for placement in museums, art exhibitions and shows.

23. Upon information and belief, Defendant MCEF claims, under the Escher Copyrights, ownership of the rights of reproduction to Escher’s work (which were allegedly transferred to Cordon Art).

24. At the present time, Defendant MCEC claims (and further during the time that it was known as Cordon Art claimed) the right to license Escher's images for the manufacture of artwork reproductions and for merchandising purposes, upon information and belief, under license from Defendant MCEF.

25. Upon information and belief, Defendants derive income directly or indirectly by exhibiting original artworks at shows, exhibitions and museums, and by licensing rights in Escher images.

The Previous Dispute

26. Defendants have long resented the acquisition of Escher's collection of original works and artifacts by Plaintiffs. In or about 1997, upon information and belief, one or more of the Defendants communicated this resentment to Henry Lydiate, who wrote on behalf of Defendant MCEC: "Unfortunately, a large part of the original collection was sold in 1981 to an American art dealer and is thus scattered over the world." This statement has been published repeatedly by the Defendants for several years on their website, together with statements defamatory of Walker and WFA, as appears more fully below.

27. Moreover, and to Defendants' chagrin, Plaintiffs' position has long far overshadowed the stature of Dutch collectors and dealers in the Escher Market. This has come to be deeply resented by the Defendants who, as a Dutch organization, see themselves as the rightful heirs to leadership in the Escher Market, notwithstanding the fact that Plaintiff's leadership stature in the Escher field is the product of substantial efforts and business risks in which Walker and WFA have been engaged for over forty years.

28. On January 1, 1996, certain changes in US law came into effect upon Congressional passage of the Uruguay Round Agreements Act (the "URAA"), pursuant to which section 104a of the copyright law was amended to restore U.S. copyright to certain foreign works that were in the public domain in the United States but protected by copyright in their countries of origin, but subject to the rights of reliance parties, provided that certain formalities were followed, including notice formalities and a 12-month grace period for selling off previously manufactured stock.

29. The scope of the above restoration of rights was subject to numerous requirements, and also subject to the rights of parties that had existing business interests based on the public domain nature of the works benefited by the limited restoration of rights, and referred to as Reliance parties in the new law. Such reliance parties included Walker, who had purchased the collection from the Escher Estate in reliance on the public domain nature of the reproduction rights associated with Escher images. Moreover, the scope of the restoration was the subject of disputed interpretations which had not been determined by the courts.

30. As noted above, at the time of the limited restoration of rights, Walker Fine Art was in the business of manufacturing and selling a variety of products bearing public domain images created by Escher.

31. Accordingly, Defendants brought an action for copyright infringement against the Plaintiffs herein in or about 1996. On the basis of the record in that case, the Court found the works at issue infringed.

32. Accordingly, in the twenty years since that court decision, Walker and WFA never resumed use of allegedly infringing Escher images.

33. Initially, even after the prior lawsuit, because of the stature of Plaintiffs, and the number and dynamism of the activities carried on by Walker and WFA, the Defendants cooperated with Walker and WFA in various enterprises.

#### The Business of the Parties

34. Plaintiff Walker Fine Art has made use of non-infringing limited resolution images in connection with its marketing of original Escher works. Plaintiff Walker Fine Art has also, with the permission of Defendants, in the years following the decision in the prior dispute, published images of Escher works in catalogs published in association with art exhibitions displaying original art works owned by Walker and WFA.

35. More particularly, in a typical exhibition, persons owning art have the opportunity to exhibit the same. Such works have been lent by Plaintiffs in interstate commerce and in the foreign commerce of the United States, including recent shows in Florida (2015), Rome (2014), North Carolina (2015) and Milan (2016). Such exhibitions are important for a number of reasons.

36. Firstly, public exposure of works owned by Walker and managed by WFA, causes those works to gain and maintain stature as iconic of the work of the artist. Identification of the Plaintiff also helps to build status and reputation in the fine art community. Walker and WFA also often receive hanging fees and a percentage of the gate for participation in shows.

37. In addition to this, works exhibited at a show are typically published in a book or "catalog" sold to the public, for example in the museum shop at the exhibition, which also builds stature for the Plaintiffs and the works they own.

38. Original works are also offered for sale by Walker and WFA at exhibitions of Escher's works.

39. All of the above exhibition-related activities increase the value of the works owned by Walker and WFA, and the ability of Plaintiffs to sell the same at a good market price.

#### Anticompetitive Market Activities

40. Following the success of Walker and WFA in launching Escher's work on a great scale into the public mind by initiating the most significant art exhibitions dedicated solely to Escher's work, Defendants, followed Walker and WFA into this business, initially cooperating with Walker and WFA, but then following a course of activities deliberately calculated to exclude Walker and other competitors from the Escher Market.

41. The staging of art exhibitions in the Escher Market has constituted and continues to constitute a substantial business activity in which numerous entities, including the Plaintiffs and Defendants, cooperate with each other, while, at the same time, compete with each other for the limited funds likely to be paid by the consuming public in connection with the exhibition. Such competitive entities include and have included museums, numerous art collectors such as Plaintiffs and Defendants, museum shop operators, intellectual property rights holders such as the Defendants, and other types of entities, such as private operators, performance venues, and so forth.

42. The funds which supported and continue to support such entities and generate profits to the participants substantially all come from the members of the public

attending the exhibitions or otherwise subscribing to the products produced in connection with the exhibitions.

43. Such funds have included, and generally include, admission charges, revenue from sale of merchandise, revenue from the sale of a museum or show catalog associated with the exhibition, and revenue from sale of original artworks. In addition, owners of artwork are often paid a "hanging fee" and may receive a percentage of the admission fees paid at the gate.

44. The publication of the catalogs associated with the above exhibitions provided, and generally does provide, an important part of the income associated with those exhibitions and was and is also important to attendees. Failure of an exhibitor to publish such a catalog will adversely affect the exhibitor's reputation.

45. The publication of a catalog associated with a public exhibition requires the permission of persons claiming rights in the images involved in the show, such as Defendants. A licensing fee, typically about 10% of the gross margin on the catalog, is charged for the right to reproduce the images in the catalog.

46. As a result of the activities of Walker and WFA, Escher has become one of the most popular artists in the world.

47. Defendants have jealously and increasingly come to resent Walker and WFA and, as a result thereof, have dedicated themselves 1) to damaging the business of Walker and Walker Fine Art, and, to the extent possible, 2) to excluding Walker and WFA from doing business in the Escher Market, including excluding and/or hampering Plaintiffs from selling original artworks, staging exhibitions, hanging original artworks

at exhibitions, publishing exhibition catalogs, and carrying on related marketing and advertising activities.

48. Defendants have engaged in numerous acts to damage the business of Walker and WFA, including refusals to deal, coordinating concerted refusals to deal, denial of essential facilities, making defamatory statements, mischaracterizing the character and quality of Plaintiffs' goods and services, interference with contractual relationships, and interference with the formation of contractual relationships, including misuse of the Escher Copyrights, to attempt to monopolize and to monopolize trade in the Escher Market, as detailed more fully herein.

#### Misuse of Intellectual Property Rights by Defendants

49. Defendants have been using their claimed ownership of rights to reproduce images of Escher artworks to exclude others from carrying on business activities in the Escher Market, including the staging of exhibitions of Escher artworks.

50. More particularly, the Defendants claim that, in the Escher Market, without their permission there can be no advertising, catalogue, publicity or merchandising, and that as a practical matter no exhibition can be mounted without "permission" from the Defendants.

51. The Defendants are well aware of their perceived power to control all exhibition of Escher works. Indeed Defendant Veldhuysen, Jr. has explicitly admitted and brandished Defendants' power to control all exhibition of Escher artworks. For example, on March 10, 2016, Defendant Veldhuysen, Jr. emailed Plaintiff Walker stating

that it had come to his attention that Walker and WFA were planning to have an Escher exhibition in Korea, further informing Plaintiffs that Defendants would do an Escher exhibition in Korea, and that Defendants would not grant permission to Walker and WFA or any other entity to have an Escher exhibit in Korea. The Defendants further threatened, in blatant misuse of the Escher Copyrights, that with respect to any such exhibition, it would misuse its copyrights to block any catalog, publicity, and merchandising in association with such exhibition. Exhibit A.

#### Exclusion of Walker and WFA from Singapore Exhibition

52. Defendants have perpetrated a series of activities calculated to exclude Walker and Walker Fine art from all participation in and from all association with activities in the Escher Market.

53. For example, Walker and WFA spent two years arranging for the holding of an exhibition of Escher's works in Singapore. Upon information and belief, the Defendants demanded that no works of Plaintiffs be put on display at the exhibition in Singapore.

54. In 2015, when it became apparent that Defendants would not countenance the participation in the exhibition in Singapore by Walker and Walker Fine Art, Plaintiffs were forced to withdraw from the project, and as a result the Plaintiffs were denied the benefits of show participation.

55. As a result of such activities of Defendants and Defendants' defamatory statements, Walker and WFA were damaged in connection with the Singapore show in

an amount believed to be in excess of \$500,000 on account of reputational losses, and on account of losses from sales of original art.

#### The Rome Exhibition

56. Walker and WFA were also instrumental in arranging for the above exhibition in Rome, which opened in September 2014, and arranged for approximately 30 works of Walker and WFA to be displayed at the exhibition.

57. Upon information and belief, upon learning of the arrangement, Defendant Veldhuysen, Jr. demanded that the works owned by Walker and WFA be removed from the Rome exhibition.

#### Preventing Sale of Original Works Owned by Plaintiffs at Rome and Other Exhibitions

58. Defendants have prevented, and continue to prevent the sale of Original Escher artworks by Walker and Walker Fine Art by numerous activities including direct interference with contracts, intimidation, defamation and other activities, including those activities detailed herein.

59. Such activities include activities carried on in connection with the Escher exhibition in Rome, where Walker and WFA shipped several dozen original Escher works to the gift shop at the museum where the exhibition was being held. An initial consignment of about thirty pieces was delivered to the gift shop.

60. The gift shop at the museum in Rome was coerced by Defendants, by direct communications between the Defendants and the operator of the gift shop, not to sell Walker and WFA original artworks. As a result, all of Plaintiffs' original Escher

artworks (expected to sell at prices between €200 and €75,000) were pulled from the shop. As a consequence Walker and WFA suffered damages in an amount believed to be in excess of \$250,000.

#### Defendants' Tortious Interference in Korea and Other Exhibitions

61. In 2015, Walker and WFA spent considerable time working with a Korean foundation with respect to having an Escher art exhibition in Seoul, Korea. Terms were negotiated at meetings in Seoul Korea and at Plaintiffs' offices in New York City. At the New York City meeting, several individuals travelled from Korea to meet with Plaintiffs and all principal terms for the exhibition in Korea were agreed upon. These activities involved an investment on the part of Plaintiffs in excess of \$100,000.

62. When the Defendants learned of the arrangement for the exhibition in Seoul, Korea, the Defendants refused to permit the same, refusing to allow a catalog, advertising, publicity or merchandising, and instead began to implement a show of their own in Korea. See Exhibit A

63. As a result of Defendants' activities, the show in Korea was prevented and Plaintiffs lost their investment. In addition, Plaintiffs' relationship with the acting curator, who was forced to resign his position over the incident involving Defendants' illegal activities, has been damaged.

64. Such actions of Defendants has damaged Walker and WFA in an amount uncertain at this time but believed to be in excess of \$500,000.

### Exclusion of Walker and WFA from Exhibition Openings

65. In connection with the Escher exhibition at the Scottish National Gallery of Modern Art in Edinburgh, the BBC produced a feature relating in part to the interaction between Escher and the mathematician Roger Penrose (associated with the Escheresque Penrose Triangle). The production was to be important in driving attendance to the Escher exhibition in Edinburgh. As the show was about to open, Walker and Roger Penrose were at the museum on or about June 25, 2015 with a BBC crew during a shoot. Veldhuysen, Jr. learned of the presence of Walker and demanded of museum director Patrick Elliott that Walker is not to be at the exhibition opening on June 26, 2015. Veldhuysen, Jr., in plain misuse of the Escher Copyrights, further stated that if this demand was not complied with, Defendants would not give the BBC permission to show the film because of the Escher images which it contains, and further that Defendants would cause the museum in Edinburgh other problems.

66. To protect the museum from the threatened actions of the Defendants, and fearful of being forcibly removed from the show by a Scottish National Gallery of Modern Art fearful of retribution from the Defendants, Walker did not attend the opening of the show at Scottish National Gallery of Modern Art, and thus was damaged in an amount believed to be in excess of \$250,000 by losing the opportunity to meet people at the opening and advance Plaintiffs' business interests.

### Monopolization and Excessive Pricing

67. Most recently, in connection with the 2016-2017 Escher exhibition in Singapore, the Defendants successfully used their power to control the market through the misuse of the Escher Copyrights to exclude Plaintiffs from benefiting from the exhibition by using the exhibition to publicize their businesses.

68. Upon information and belief, Defendants have further threatened to commit one or more of the complained of activities, perpetrated against Plaintiffs, against others.

69. In addition, the Defendants have misused the Escher Copyrights by increasing their licensing fee for exhibition catalogues beyond reasonable amounts. Such actions have damaged Plaintiffs and other competitors by taking an unreasonably large portion of the funds associated with such exhibitions, by diverting the same to the Defendants' account.

70. At the same time, upon information and belief, the Defendants have misused the Escher Copyrights by threatening the persons running the various exhibitions with a denial of rights to publicize the exhibition, and publish a catalog for the exhibition, if such exhibitions were associated with Walker and/or Walker Fine Art.

71. At the same time, the Defendants have further succeeded in damaging Walker and WFA by denying Plaintiffs the benefit of publicity associated with the Singapore and the Scottish National Gallery of Modern Art exhibitions, by such threats of retaliation against the organizers of those exhibitions, and such threats have constituted further misuse of the Escher Copyrights.

72. The Defendants have further damaged Walker and WFA by using their monopoly power, exercised through the misuse of the Escher Copyrights, to deny

Plaintiffs the opportunity of selling original artwork at and/or through the exhibition of original art, by both preventing and/or impeding the making of personal contacts and the implementation of marketing activities.

#### Effects Exceeding Scope of Copyrights

73. Such misuse of the Escher Copyrights has constituted both the threatening, in the name of the Escher Copyrights, of acts within the scope of rights under the Escher Copyrights and the threatening of acts of assertion outside the scope of the Escher Copyrights, including the denial of essential Escher Market facilities.

74. Moreover, such threats within the scope of rights under the Escher Copyrights and outside the scope of the Escher Copyrights were made willfully and maliciously with the intent of controlling business outside the scope of the Escher Copyrights.

#### Defamation

75. Defendants have made defamatory statements about Walker and Walker Fine Art. Such statements include statements published on a certain webpage on the website of the Defendants (the "Defamatory Webpage"). These defamatory statements include a notice, under the banner headline "False Prints" (the "Banner Headline") including false statements defamatory of Walker and WFA and maliciously intended to damage the reputation of Plaintiffs, to impede and/or stop Plaintiffs in their business of selling and hanging original art works and organizing art exhibitions, and to otherwise damage Plaintiffs. The Defamatory Webpage is annexed hereto as Exhibit B.

76. The Defamatory Webpage follows the “False Prints” Banner Headline with a first headline in bright color stating “R.J. Walker, a.k.a. Rock Walker” under which there follows a brief statement that MCEC and MCEF are not affiliated with and do not do business with Plaintiffs.

77. Walker and WFA have never engaged in the business of selling or offering for sale false prints, or prints which are not printed from the original blocks and such statement is false and defamatory.

78. Moreover, the use of the term “a.k.a.” means to falsely communicate criminal wrongdoing on the part of Mr. Walker because the term is primarily used by law enforcement officials to specify a criminal alias.

79. Next on the Defamatory Webpage is a second headline in the same bright color, stating “Warning! False M.C. Escher prints are being offered for sale” (the “Second Headline”). The same is directly linked to Walker and WFA by the reference to Walker in the First Headline.

80. The Second Headline is followed with a statement that the counterfeits are being offered for sale in California, one of the two locations where Plaintiffs do business.

81. The Defamatory Webpage also has a third headline stating “Copyright Infringement” which is followed by a subheadline identifying the now twenty year old lawsuit filed against Plaintiff Walker by Defendants MCEC and MCEF stemming from the above previous dispute between the parties.

82. Appearing below in the text of the Defamatory Webpage is the false statement that MCEC and MCEF brought proceedings last year against Rock Walker.

83. Walker and WFA have repeatedly written to Defendants demanding removal of the defamatory statements from the Defamatory Webpage, but the Defendants have refused to do so. Recognizing the cost of litigation, Plaintiffs even attempted to compensate the Defendants in exchange for removal of the subject defamatory statements, but the Defendants refused to even meet with Plaintiffs, foregoing short term profits in favor of the long term advantages to the Defendants associated with continuing to damage Walker and WFA, and their businesses.

84. The above acts of monopolization, unfair competition, tortious interference, and defamation have been committed by each of the Defendants individually and have further been perpetrated by Defendants acting in concert with each other and others; and such acts will continue to be committed by Defendants unless they are enjoined by this Court.

#### Damage to Walker and WFA

85. As a result of Defendants' activities, Walker and WFA have been able to make only two sales for a total of \$10,000 over the last eight years. Upon information and belief, Plaintiffs have lost profits of \$5 million on sales of original art on account of the complained of acts of the Defendants.

86. In addition, as a result of Defendants' activities, Plaintiffs have been prevented from displaying their art for hanging fees and have lost hanging fees in the amount of \$2.5 million and shares in gate receipts in the amount of \$1 million.

87. In addition, as a result of the complained of activities of Defendants, Plaintiffs have been forced to accept less than fair market value for hanging fees and gate percentages and have been damaged in the amount of \$2.5 million.

88. Defendants are jointly and severally liable to Plaintiffs for damage done to Plaintiffs by reason of the foregoing acts.

COUNT I  
Unfair Competition

89. Plaintiffs incorporate and reallege paragraphs 1- 88 of this complaint as if fully set forth herein.

90. The aforesaid acts of Defendants have been committed willfully and maliciously with the intent of damaging, and have damaged, Walker and WFA and their ability to compete in the Escher Market and in other business and constitute unfair competition, and unless enjoined by this Court will continue.

COUNT II  
Defamation

91. Plaintiffs incorporate and reallege paragraphs 1- 90 of this complaint as if fully set forth herein.

92. The aforesaid acts, including publication of the Defamatory Webpage and the statements therein have damaged Plaintiffs and their reputation and businesses and constitute Defamation, and unless enjoined by this Court will continue.

COUNT III  
Misrepresentation Lanham Act §43(a)

93. Plaintiffs incorporate and reallege paragraphs 1- 92 of this complaint as if fully set forth herein.

94. The above described activities of Defendants, including, *inter alia*, the above misrepresentations on the website of Defendants dealing with the sale of false prints by Walker and Walker Fine Art, the false allegation that as recently as last year Plaintiffs were committing copyright infringement leading to the filing of a copyright action against Plaintiffs, statements respecting fraudulent and illegal activities in California, and so forth as detailed above and reflected in the exhibits annexed hereto, constitute false or misleading descriptions of fact, and/or false or misleading representations of fact in commercial advertising and/or promotion, misrepresenting the nature, characteristics, qualities, and/or geographic origin of Plaintiffs' goods, services, and/or commercial activities. Such actions have damaged and are likely to continue to damage Plaintiffs, unless enjoined by this Court.

COUNT IV  
Tortious Interference with Contract

95. Plaintiffs incorporate and reallege paragraphs 1- 94 of this complaint as if fully set forth herein.

96. The aforesaid acts including pressuring others to remove the works of Plaintiffs from sale and exhibition, removing the name of plaintiffs, and attempts to prevent

Plaintiffs from staging exhibitions have damaged Plaintiffs, and unless enjoined by this Court will continue.

COUNT V  
Interference with Prospective Economic Advantage

97. Plaintiffs incorporate and reallege paragraphs 1- 96 of this complaint as if fully set forth herein.

98. Such actions of Defendants, including blocking the exhibition in Korea, constitute interference with prospective economic advantage and were and continue to be done willfully and maliciously with the objective of diverting business from Plaintiffs to Defendants, and reducing the profitability of Plaintiffs' businesses.

99. If not enjoined by this Court, Defendants threaten to continue such activities to the damage and detriment of Walker and WFA, and Plaintiffs have no adequate remedy at law.

COUNT VI  
Antitrust

100. Plaintiffs incorporate and reallege paragraphs 1- 99 of this complaint as if fully set forth herein.

101. Defendants acts detailed above constitute monopolization, or attempt to monopolize, or to combine or conspire with other person or persons, to monopolize the trade or commerce among the several States, and/or with foreign nations in the Escher Market.

102. Defendants actions further constitute willfully acquiring, and/or maintaining, and/or using monopoly power by anti-competitive and/or exclusionary means, and/or for anti-competitive and/or exclusionary purposes, and such actions were undertaken with the objective of damaging and have damaged Plaintiffs. The success of such actions noted above evidences that Defendants had a dangerous probability of success in monopolizing and further monopolizing the Escher Market.

COUNT VII  
Copyright Misuse

103. Plaintiffs incorporate and reallege paragraphs 1- 102 of this complaint as if fully set forth herein.

104. The Escher Copyrights constitute an essential facility and have been denied to Plaintiffs by Defendants for the purpose of removing Plaintiffs as competitors.

105. Such use of the Escher Copyrights by the Defendants constitutes copyright misuse and renders the Escher Copyrights unenforceable, and said acts of copyright misuse and the other acts of Defendants complained of herein have damaged and continue to damage Plaintiffs.

**Prayer for Relief**

WHEREFORE, Plaintiffs pray that:

a. This Court grant and enter a judgment or decree declaring that the Escher Copyrights have been misused;

b. This Court enter a judgment or decree that the Escher Copyrights, to the extent that they may exist and be owned by Defendants, are unenforceable against Plaintiffs, and Plaintiffs' customers, clients, co-venturers, and partners cooperating exhibitors and catalog publishers;

c. Defendants be enjoined from threatening Plaintiffs and Plaintiffs' customers, clients, co-venturers, partners and cooperating exhibitors and catalog publishers;

d. This Court enter a judgment or decree ordering Defendants to take down the Defamatory Webpage and enjoining Defendants and each of them from making or publishing any statement stating or implying that Plaintiffs sell false, counterfeit or otherwise misrepresented products or services, and from making other statements otherwise defamatory or derogatory of Plaintiffs;

e. This Court enter a judgment or decree enjoining Defendants from interfering with the contracts and businesses of Plaintiffs;

f. This Court order the publication of a retraction of the false and misleading statements made by Defendants' on their website, and further that Defendants be ordered to make appropriate remedial advertising in all prominent industry publications;

g. The Court enter judgment against Defendants and in favor of Plaintiffs;

h. The Court award Plaintiffs damages on account of the anti-competitive, unfair, and defamatory activities, and the interference complained of herein, including damages on account of 1) injury to reputation, 2) lost sales of art and other products, 3) lost purchases of art and profits associated with retail of the same, 4) lost hanging fees,

5) lost percentages of exhibition gate revenues, 6) lost exhibition and show profits, and  
7) such additional damages as may be revealed during discovery;

i. That said damages, including attorneys fees, be trebled pursuant to the  
antitrust laws;

j. That Plaintiffs be awarded their reasonable attorneys fees;

k. That the costs of this action be assessed against Defendants and each of them,  
jointly and severally; and

l. That Plaintiffs have such other and further relief as this Court deems just.

### **DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: December 22, 2016

Respectfully submitted,

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