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**JUDGE SULLIVAN**

**11 CIV 0702**

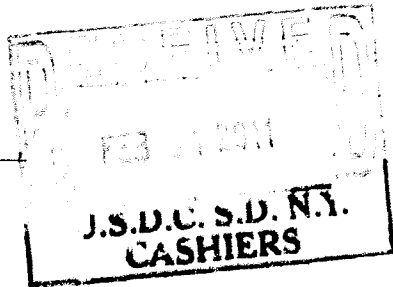
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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KILLALA FINE ART LIMITED, :  
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 :  
 Plaintiff, :  
 :  
 -against- :  
 :  
 JULIAN WEISSMAN, JULIAN WEISSMAN :  
 FINE ART, LLC, DEDALUS FOUNDATION, :  
 INC. and DEDALUS FOUNDATION, INC. :  
 d/b/a ROBERT MOTHERWELL :  
 CATALOGUE RAISONNÉ PROJECT, :  
 :  
 Defendants. :  
----- x

11 Civ.

COMPLAINT



Plaintiff Killala Fine Art Limited ("Killala"), by and through its undersigned attorneys, complaining of defendants Julian Weissman, Julian Weissman Fine Art, LLC, Dedalus Foundation, Inc. and Dedalus Foundation, Inc. d/b/a Robert Motherwell Catalogue Raisonné Project (collectively, "defendants"), alleges as follows:

**NATURE OF THE ACTION**

1. Killala, a company incorporated in Ireland and operated in conjunction with long-time fine art dealer Marc Blondeau, purchased in 2007 an abstract

painting purportedly by the American artist Robert Motherwell ("Motherwell") for \$650,000. When Killala bought the painting, both the art dealer and gallery offering it for sale and the foundation dedicated to authenticating Motherwell's works expressly represented that the work was an authentic Motherwell. In 2009, the foundation suddenly retracted its earlier representation and raised doubts about the painting's authenticity. It now turns out that the artwork is a forgery, and Killala is left with a worthless picture. Due to the false statements by both the dealer/gallery and the foundation concerning the painting's authenticity, Killala suffered the loss of its purchase price and of the current value of the painting had it actually been a work created by Motherwell.

2. Killala has borne the entire financial burden arising from defendants' misrepresentations. Killala brings this suit seeking to hold defendants responsible for their false assurances about the painting's authenticity.

#### **THE PARTIES**

3. Plaintiff Killala is a limited liability company organized under the laws of the Republic of Ireland, with its principal place of business at 4, Clarinda Park North, Dun Laoghaire, Dublin, Ireland. Killala is owned in trust for Mr. Blondeau, and the members of Killala are Bernadette Bopp-Billon, a citizen and resident of Switzerland, and Louise Dods, a citizen of Ireland who resides on the Island of Jersey, Channel Islands. Killala is operated on behalf of Mr. Blondeau, who is a citizen of France and resides in Switzerland.

4. On information and belief, defendant Julian Weissman Fine Art, LLC (the “Weissman Gallery”) is a limited liability company organized under the laws of the State of New York, with its offices at 26 Beaver Street, New York, New York 10004, operated out of Julian Weissman’s home. The Weissman Gallery is a New York art dealer established in 1997, specializing in fields including Contemporary American art. Motherwell is among the artists listed on its website.

5. On information and belief, the Weissman Gallery is wholly owned and operated by defendant Julian Weissman, a citizen of New York and the sole member of the Weissman Gallery. Julian Weissman has worked in the art world for more than 25 years, including as a director at various art galleries. (Unless otherwise noted, the Weissman Gallery and Julian Weissman are referred to together herein as “Weissman.”)

6. On information and belief, defendant Dedalus Foundation, Inc. (the “Foundation”) is a not-for-profit corporation organized under the laws of the State of Connecticut, with its offices at 555 West 57th Street, Suite 1222, New York, New York 10019.

7. On information and belief, the Foundation also does business and holds itself out as the Robert Motherwell Catalogue Raisonné Project (the “Project”). The Project also has its offices at 555 West 57th Street, Suite 1222, New York, New York 10019. (Unless otherwise noted, the Foundation and the Project are referred to together herein as the “Foundation.”)

### JURISDICTION AND VENUE

8. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), as there is diversity of citizenship between the parties to this action and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to plaintiff's claims occurred in this District.

### FACTUAL ALLEGATIONS

#### Motherwell and the Foundation

10. Motherwell was a major American artist in the Abstract Expressionist movement. His paintings, collages, drawings and prints are represented in the collections of museums throughout the world. His work is characterized by a broad range of imagery, within which there are certain recurrent themes and motifs, such as the monumental series known as *Elegies to the Spanish Republic*.

11. The Foundation owns the copyrights to Motherwell's works in all media, and inherited his professional papers, notebooks and archives. Among its activities, the Foundation examines artworks purported to have been created by Motherwell, and makes determinations as to their authenticity.

12. The Foundation established the Project for the purpose of preparing and publishing a catalogue raisonné of the paintings and collages created by Motherwell. The Project consists of a group of individuals the Foundation designated

to determine which works will be included in the Motherwell catalogue raisonné. As the Foundation explains on its website:

A “catalogue raisonné” is a systematic and comprehensive scholarly reference text in which each work known to have been executed by a particular artist is illustrated, thoroughly documented and described, giving information such as title, alternative titles, date, medium, size, inscriptions, provenance, exhibition history, and publication history, and in which each work is assigned a permanent reference number. One of the main purposes of a catalogue raisonné is to establish a reliable corpus of authentic works.

The catalogue raisonné of Robert Motherwell’s paintings and collages will be a comprehensive publication that lists and reproduces all known works by Robert Motherwell in three main categories: paintings on canvas and panel; paintings on paper; and collages. Whenever possible, works will be reproduced in color, and full descriptions, provenance, exhibition history, and bibliography will be given for each work. This publication will also include a detailed chronology of Robert Motherwell’s life and career, and numerous documentary photographs.

(The Dedalus Foundation, Catalogue Raisonné, available at

<http://dedalusfoundation.org/index.php/site/cr/> (last visited January 28, 2011).)

13. Many well-known deceased artists such as Motherwell have an organization such as the Foundation, to which owners of a work believed to have been created by that artist can submit it for determination as to its authenticity. If the organization asserts that a work is inauthentic, or is unable to decide its authenticity, the value of that work is greatly diminished. Many art purchasers will not purchase the work of a well-known artist such as Motherwell without confirmation of its authenticity by the relevant organization.

14. The primary purpose of the Project is to serve as a comprehensive listing of all known paintings and collages by Motherwell. If the Foundation excludes a work from that catalogue raisonné, then the art market will harbor very serious doubts about its authenticity. The work will lose all commercial value, and become unsaleable in the trade.

**Weissman's Offer to Sell a "Motherwell" to Killala**

15. Weissman and Mr. Blondeau have known each other since 2001, when they met in Switzerland. Over this period of nearly ten years, Mr. Blondeau, acting for Killala, has purchased a number of artworks from Weissman. Weissman has on several occasions contacted Mr. Blondeau when he sees a work of art that may appeal to him, as he did with regard to the painting at issue here. Weissman and Mr. Blondeau usually meet in New York during the seasons when auction houses hold their major sales, and sometimes have lunch or dinner together. As Weissman's counsel acknowledged by letter to Killala's counsel dated November 23, 2010, Weissman holds high regard and concern for Mr. Blondeau. Weissman and Mr. Blondeau have a relationship of trust and confidence spanning almost ten years.

16. In or about November 2006, Weissman contacted Mr. Blondeau and told him that he had a painting by Motherwell for sale, entitled *Spanish Elegy*, 1953, oil on canvasboard, 17 3/4 inches x 23 9/15 inches (the "Painting"). (Photographs of the front and back of the Painting are attached hereto as Exhibit A, and are incorporated by reference.)

17. On or about November 15, 2006, Mr. Blondeau went to the Weissman Gallery to see the Painting, where Weissman again told him that the Painting was a work created by Motherwell. Weissman also told Mr. Blondeau that, although he could not reveal the name of the Painting's owner, that work had been purchased directly from Motherwell by the owner's parents prior to 1959. Because Weissman could not reveal the owner's name, Mr. Blondeau told him that Killala would not purchase the Painting unless Weissman and the Foundation certified it as an authentic Motherwell.

18. Mr. Blondeau also told Weissman that he intended to resell the Painting, and knew that a collector was looking for small Abstract Expressionist paintings such as this.

19. On information and belief, Weissman failed to conduct a sufficient investigation into the history and background of the Painting.

**Defendants' Written Representations that the Painting is an Authentic Motherwell**

20. On information and belief, Jack Flam ("Flam"), the President of the Foundation and Director of the Project, and Morgan Spangle ("Spangle"), the Foundation's Executive Director, examined the Painting in person at the Weissman Gallery in late January 2007. Both are also members of the Foundation's Board of Directors. The purpose of their examination was purportedly to determine the authenticity of the Painting.

21. On information and belief, the Foundation failed to conduct a rigorous and thorough examination of the Painting, and did not conduct any scientific analysis of that artwork.

22. After the visit, Weissman called Mr. Blondeau to tell him that Flam and Spangle had come to examine the Painting, and that they had been pleased to discover a Motherwell they had not previously known about.

23. The Foundation then issued a letter of authenticity, apparently misdated March 2, 2007 (the "Letter of Authenticity," a copy of which is attached hereto as Exhibit B and is incorporated by reference), containing the Foundation's representation that the Painting was an authentic Motherwell:

The Dedalus Foundation, Inc. (the "Foundation") has caused the above-described Work to be examined by its representatives. It is the opinion of the Foundation that the Work is the work of Robert Motherwell.

24. After reviewing the Letter of Authenticity, Mr. Blondeau wanted even greater assurance that the Painting was an authentic Motherwell. Accordingly, he asked Weissman for a letter from the Foundation confirming that the Painting would be included in the Foundation's Motherwell catalogue raisonné, and Weissman conveyed that request to the Foundation.

25. As a result, on February 15, 2007, Spangle sent a letter to Weissman (the "February 15 Letter," a copy of which is attached hereto as Exhibit C and is incorporated by reference). The letter contained the Foundation's express promise that the Painting would be included in the Motherwell catalogue raisonné:

Here is the letter of authenticity which is issued by the Foundation. While it does not say directly that the painting, *Spanish Elegy*, 1953, will be included in the catalogue raisonne which is being prepared by the Foundation, I can assure you that the painting *will be* included.

It was a pleasure to be able to see the painting. Jack [Flam] and I are most grateful for your continuing support and cooperation with our catalogue raisonne project.

(Emphasis in original.)

26. Pursuant to invoice dated February 20, 2007 (the "Purchase Agreement," a copy of which is attached hereto as Exhibit D and is incorporated by reference), Killala purchased the Painting from Weissman for \$650,000. In the Purchase Agreement, Weissman expressly warranted, without any qualification, that the Painting was a work by Robert Motherwell.

27. Killala relied on Weissman's express warranty, and on Weissman's oral representations that the Painting had been created by Motherwell, in deciding to purchase the Painting, and would not have purchased the Painting without them. Killala also relied on both the February 15 Letter and the Letter of Authenticity in deciding to purchase the Painting, and would not have purchased the Painting without those letters.

28. The Foundation was fully aware that Weissman intended to use the February 15 Letter and the Letter of Authenticity in selling the Painting to a purchaser in February 2007. Because Spangle knew that the purchaser had asked for the February 15 Letter as further confirmation that the Painting was an authentic Motherwell prior to its purchase of the Painting, the Foundation was also fully aware that the purchaser

would rely on it. As Weissman later explained to Mr. Blondeau, “[t]he Foundation knew that I was selling the painting and knew that not only I would be relying upon their authentication but so would my purchaser (you).” (Letter from Weissman to Mr. Blondeau, dated March 11, 2009, a copy of which is attached hereto as Exhibit E and is incorporated by reference.)

**Doubts Arise about the Painting’s Authenticity**

29. On February 17, 2009, two years after Killala purchased the Painting from Weissman, the Foundation sent Weissman a letter (the “2009 Retraction Letter,” a copy of which is attached hereto as Exhibit F and is incorporated by reference), in which the Foundation declared that, “based on new information,” the Project “has determined to withdraw” the Letter of Authenticity, and further stated that it was “informing you that at present we do not plan to include [the Painting] in the Catalogue Raisonné.” The 2009 Retraction Letter did not describe the “new information” on which the Foundation based its withdrawal of its prior representations that the Painting was an authentic Motherwell.

30. Weissman conveyed the 2009 Retraction Letter to Mr. Blondeau.

31. Throughout 2009 and 2010, Killala sought to understand the rationale and “new information” behind the 2009 Retraction Letter. On several occasions in 2009, Killala’s Swiss counsel corresponded with Weissman’s counsel in an attempt to get Weissman to investigate and resolve the issue of the Painting’s authenticity, to no avail. Killala’s Swiss counsel also attempted to contact the Foundation directly.

32. Killala remains the owner of the Painting.

**The Painting is a Fake**

33. The Painting is in fact not an authentic Motherwell. Instead, it is a deliberate fake, created for the sole purpose of being passed off as an authentic Motherwell. The Painting is worthless.

**FIRST CAUSE OF ACTION**  
**(Breach of the Purchase Agreement by Julian Weissman Fine Art, LLC and Julian Weissman)**

34. Killala repeats and realleges each and every allegation set forth in paragraphs 1 through 33, inclusive, as if set forth herein.

35. The Purchase Agreement constituted a valid and binding contract between Killala and Weissman for the purchase and sale of the Painting.

36. Pursuant to the Purchase Agreement, Weissman agreed to sell Killala a work of art that had been created by Motherwell.

37. Killala performed all of its duties under the Purchase Agreement.

38. The Painting was in fact not created by Motherwell. Weissman therefore breached a material term in the Purchase Agreement.

39. Killala has suffered damages resulting from Weissman's breach of the Purchase Agreement, including without limitation its loss of the purchase price of \$650,000, its loss of the current value of the Painting if that work had in fact been an authentic Motherwell, its loss of interest as allowed by law, and other costs and expenses incurred by it as a result of Weissman's breach, including attorneys' fees.

**SECOND CAUSE OF ACTION**

**(Breach of Express Warranty by Julian Weissman Fine Art, LLC and Julian Weissman)**

40. Killala repeats and realleges each and every allegation set forth in paragraphs 1 through 39, inclusive, as if set forth herein.

41. Weissman expressly represented and warranted to Killala in the Purchase Agreement that the Painting had been created by Motherwell.

42. Weissman's description in the Purchase Agreement of the goods being sold was part of the basis of the bargain between Weissman and Killala. That description created an express representation and warranty by Weissman that the Painting was an authentic Motherwell, pursuant to N.Y. U.C.C. LAW § 2-313 (2010).

43. Killala relied on Weissman's representation and warranty in the Purchase Agreement in purchasing the Painting and in agreeing to pay \$650,000 for the Painting.

44. Weissman's representation and warranty in the Purchase Agreement that the Painting had been created by Motherwell was false. Weissman therefore breached that express representation and warranty.

45. Weissman also orally represented and warranted to Killala that the Painting had been created by Motherwell. This description of the goods being sold was part of the basis of the bargain between Weissman and Killala, and created an express representation and warranty by Weissman that the Painting was an authentic Motherwell, pursuant to N.Y. U.C.C. LAW § 2-313 (2010).

46. Killala relied on Weissman's oral representation and warranty in purchasing the Painting and in agreeing to pay \$650,000 for the Painting.

47. Weissman's oral representation and warranty that the Painting had been created by Motherwell was false. Weissman therefore breached that express representation and warranty.

48. On January 27, 2011, Killala notified Weissman of the breaches of its express representation and warranty. (A copy of the notice is attached hereto as Exhibit G, and is incorporated by reference.)

49. Killala has suffered damages resulting from Weissman's breaches of its written and oral representations and warranties, including without limitation its loss of the purchase price of \$650,000, its loss of the current value of the Painting if that work had in fact been an authentic Motherwell, its loss of interest as allowed by law, and other costs and expenses incurred by it as a result of Weissman's breaches, including attorneys' fees.

**THIRD CAUSE OF ACTION**

**(Breach of Implied Warranty of Merchantability by Julian Weissman Fine Art, LLC  
and Julian Weissman)**

50. Killala repeats and realleges each and every allegation set forth in paragraphs 1 through 49, inclusive, as if set forth herein.

51. Weissman is a merchant with respect to goods of the kind that it sold to Killala (namely, works of fine art), and holds itself out as having knowledge and skill particular to art, including Contemporary American art and Motherwell

specifically. There was therefore an implied warranty in Weissman's sale of the Painting that it was merchantable.

52. Weissman breached that warranty because the Painting could not pass without objection in the trade, because it is not an authentic work created by Motherwell.

53. Weissman further breached that warranty because the Painting was not fit for the ordinary purposes for which such goods are used, namely (a) to display privately as an authentic Motherwell, or (b) to resell to another client as an authentic Motherwell, because it is not an authentic work created by Motherwell. The Painting is not honestly resalable in the normal course of business because it is not what it purports to be -- *i.e.*, an authentic work created by Motherwell.

54. Weissman further breached that warranty because the Painting did not conform to the promises or affirmations of fact made on the container or label, in that the Painting is signed on the back as "Robert Motherwell." That signature is false, because the Painting was not created by Motherwell.

55. On January 27, 2011, Killala notified Weissman of its breaches of the implied warranty of merchantability. (Ex. G.)

56. Weissman is in privity with Killala, because Weissman sold the Painting to Killala pursuant to the Purchase Agreement.

57. Killala has suffered damages resulting from Weissman's breaches of its implied warranty, including without limitation its loss of the purchase price of \$650,000, its loss of the current value of the Painting if that work had in fact been an

authentic Motherwell, its loss of interest as allowed by law, and other costs and expenses incurred by it as a result of Weissman's breaches, including attorneys' fees.

**FOURTH CAUSE OF ACTION**

**(Breach of Implied Warranty of Fitness for a Particular Purpose by Julian Weissman Fine Art, LLC and Julian Weissman)**

58. Killala repeats and realleges each and every allegation set forth in paragraphs 1 through 57, inclusive, as if set forth herein.

59. Killala acquired the Painting for the particular purpose of reselling it as an authentic Motherwell to a third-party purchaser.

60. As Killala is operated by Mr. Blondeau, an art dealer with whom Weissman had worked previously, Weissman knew or had reason to know that Killala sought to acquire the Painting in order to sell it as an authentic Motherwell. Mr. Blondeau in fact told Weissman he intended to resell the Painting, and even mentioned to Weissman that he knew a collector looking for paintings such as this. Weissman knew that Killala would not have purchased the Painting if it could not resell it as an authentic Motherwell.

61. In purchasing the Painting, Killala relied on Weissman's knowledge, skill and judgment as an art world professional for more than 25 years, including in the field of Contemporary American art, to select authentic works of art for sale. Weissman knew that Killala was relying on its knowledge, skill and judgment, as Killala had previously relied on Weissman's knowledge, skill and judgment in other transactions.

62. Since Weissman knew or should have known Killala's purpose in purchasing the Painting, and knew that Killala was relying on Weissman's knowledge, skill and judgment in purchasing the Painting, an implied warranty of fitness arose that the Painting was fit for the described purpose.

63. Weissman breached the implied warranty of fitness for the particular purpose, in that the Painting was not fit for resale as an authentic Motherwell, because it was not an authentic Motherwell.

64. On January 27, 2011, Killala notified Weissman of its breach of the implied warranty of fitness for the particular purpose. (Ex. G.)

65. Weissman is in privity with Killala, because Weissman sold the Painting to Killala pursuant to the Purchase Agreement.

66. Killala has suffered damages resulting from Weissman's breach of its implied warranty, including without limitation its loss of the purchase price of \$650,000, its loss of the current value of the Painting if that work had in fact been an authentic Motherwell, its loss of interest as allowed by law, and other costs and expenses incurred by it as a result of Weissman's breach, including attorneys' fees.

**FIFTH CAUSE OF ACTION**

**(Rescission of the Purchase Agreement Based on Mutual Mistake as against Julian Weissman Fine Art, LLC and Julian Weissman)**

67. Killala repeats and realleges each and every allegation set forth in paragraphs 1 through 66, inclusive, as if set forth herein.

68. The Purchase Agreement contained Weissman's express representation and warranty that the Painting was an authentic work created by Motherwell.

69. This representation and warranty constituted a material part of the Purchase Agreement. Killala relied on this representation at the time it entered into the Purchase Agreement.

70. Killala paid Weissman \$650,000 for the Painting.

71. In fact, the Painting is not an authentic Motherwell.

72. Killala was mistaken at the time of the Purchase Agreement in believing that the Painting was an authentic Motherwell.

73. If Killala had known the Painting was not an authentic Motherwell, it would not have purchased the Painting from Weissman.

74. On information and belief, Weissman was mistaken at the time of the Purchase Agreement in believing that the Painting was an authentic Motherwell.

75. On information and belief, if Weissman had known the Painting was not an authentic Motherwell, it would not have sold the Painting to Killala as a work created by Motherwell.

76. Killala has no adequate remedy at law.

77. Killala demanded rescission of the Purchase Agreement and the return of its \$650,000 purchase price. (Ex. G.) To date, Weissman has refused to do so.

78. The Purchase Agreement should be rescinded on the basis of Killala's and Weissman's mutual mistake, and the purchase price of \$650,000 returned by Weissman to Killala.

**SIXTH CAUSE OF ACTION**  
**(Negligent Misrepresentation as against Julian Weissman Fine Art, LLC and Julian Weissman)**

79. Killala repeats and realleges each and every allegation set forth in paragraphs 1 through 78, inclusive, as if set forth herein.

80. Weissman negligently provided inaccurate information to Killala by expressly representing and warranting that the Painting was a work created by Motherwell, both orally and as a term of the Purchase Agreement.

81. On information and belief, Weissman failed to conduct a sufficient investigation into the history and background of the Painting.

82. Killala relied on Weissman's representations and warranties in purchasing the Painting and in agreeing to pay \$650,000 for the Painting.

83. Weissman knew that Killala intended to rely on its representations and warranties that the Painting was an authentic Motherwell. Weissman knew that Killala would not have bought the Painting or paid \$650,000 for the Painting without those representations.

84. Mr. Blondeau had trust and confidence in Weissman, and a special relationship with him encompassing nearly ten years, multiple sales of artwork, and social engagements. Weissman therefore had a duty of care to convey accurate information to Killala, which he failed to do.

85. Killala has suffered damages resulting from Weissman's negligent misrepresentation, including without limitation its loss of the purchase price of \$650,000, its loss of the current value of the Painting if that work had in fact been an authentic Motherwell, its loss of interest as allowed by law, and other costs and expenses incurred by it as a result of Weissman's breach, including attorneys' fees.

**SEVENTH CAUSE OF ACTION**

**(Unjust Enrichment as against Julian Weissman Fine Art, LLC and Julian Weissman)**

86. Killala repeats and realleges each and every allegation set forth in paragraphs 1 through 85, inclusive, as if set forth herein.

87. Weissman told Killala that the Painting was an authentic Motherwell.

88. Killala relied on Weissman's statements as to the Painting's authenticity in purchasing the Painting and in agreeing to pay \$650,000 for the Painting.

89. The Painting is not an authentic Motherwell, and Killala is left with an artwork that is worthless.

90. Weissman still retains Killala's \$650,000, even though it sold Killala a worthless painting. Weissman has therefore been unjustly enriched by Killala's \$650,000.

91. Killala demanded the return of the \$650,000 purchase price. (Ex. G.) To date, Weissman has refused to return it.

92. Equity and good conscience require Weissman's restitution of the \$650,000 purchase price to Killala, along with interest as allowed by law and other costs

and expenses incurred by Killala as a result of Weissman's misconduct, including attorneys' fees.

**EIGHTH CAUSE OF ACTION**  
**(Promissory Estoppel as against Julian Weissman Fine Art, LLC and Julian Weissman)**

93. Killala repeats and realleges each and every allegation set forth in paragraphs 1 through 92, inclusive, as if set forth herein.

94. On at least three occasions, both orally and in the Purchase Agreement, Weissman made a clear and unambiguous promise to Killala by telling it that the Painting was an authentic Motherwell.

95. Weissman knew that Killala would rely on its promise in deciding to purchase the Painting.

96. Killala relied to its detriment on Weissman's promise in purchasing the Painting and in agreeing to pay \$650,000 for the Painting.

97. The Painting is not an authentic Motherwell, and Killala is left with an artwork that is worthless.

98. Killala has suffered damages resulting from its detrimental reliance on Weissman's promise, including without limitation its loss of the purchase price of \$650,000, its loss of the current value of the Painting if that work had in fact been an authentic Motherwell, its loss of interest as allowed by law, and other costs and expenses incurred by it as a result of Weissman's misconduct, including attorneys' fees.

**NINTH CAUSE OF ACTION**

**(Promissory Estoppel as against Dedalus Foundation, Inc. and Dedalus Foundation, Inc. d/b/a Robert Motherwell Catalogue Raisonné Project)**

99. Killala repeats and realleges each and every allegation set forth in paragraphs 1 through 98, inclusive, as if set forth herein.

100. In the February 15 Letter, the Foundation, acting through its Executive Director, made a clear and unambiguous promise that, “[w]hile [the Letter of Authenticity] does not say directly that the painting, *Spanish Elegy*, 1953, will be included in the catalogue raisonne which is being prepared by the Foundation, I can assure you that the painting *will be* included.”

101. In its Letter of Authenticity, the Foundation made a separate, clear and unambiguous promise that “[i]t is the opinion of the Foundation that the Work is the work of Robert Motherwell.”

102. Because the Foundation issued these separate letters to an art dealer, it was reasonable and foreseeable that a purchaser such as Killala would rely on the Foundation’s promises contained in them in deciding whether to purchase the Painting.

103. The Foundation knew that Weissman would rely on and intended to use the February 15 Letter and the Letter of Authenticity in order to sell the Painting, and that the purchaser of the Painting would rely on the Foundations’ promises contained in those letters in deciding to purchase it.

104. Moreover, the Foundation knew that the purchaser of the Painting would rely on these promises, because it knew the purchaser had specifically requested the February 15 Letter.

105. Killala relied to its detriment on the February 15 Letter and the Letter of Authenticity in purchasing the Painting and in agreeing to pay \$650,000 for the Painting.

106. The Painting is not an authentic Motherwell, and Killala is left with an artwork that is worthless.

107. Killala has suffered damages resulting from its detrimental reliance on the Foundation's promises, including without limitation its loss of the purchase price of \$650,000, its loss of the current value of the Painting if that work had in fact been an authentic Motherwell, its loss of interest as allowed by law, and other costs and expenses incurred by it as a result of Weissman's breach, including attorneys' fees.

#### **DEMAND FOR RELIEF**

WHEREFORE, Killala demands judgment against each of the defendants, as follows:

- (a) awarding compensatory damages against Weissman and the Foundation in an amount to be proven at trial, plus interest as allowed by law;
- (b) rescinding the Purchase Agreement and requiring Weissman to return the \$650,000 purchase price to it, plus interest as allowed by law;
- (c) awarding costs, disbursements and attorneys' fees incurred by Killala in this action; and

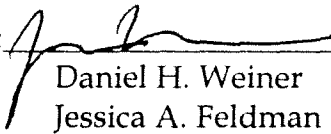
(d) granting such other, further and different relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all issues so triable.

Dated: New York, New York  
February 1, 2011

HUGHES HUBBARD & REED LLP

By:  \_\_\_\_\_  
Daniel H. Weiner  
Jessica A. Feldman

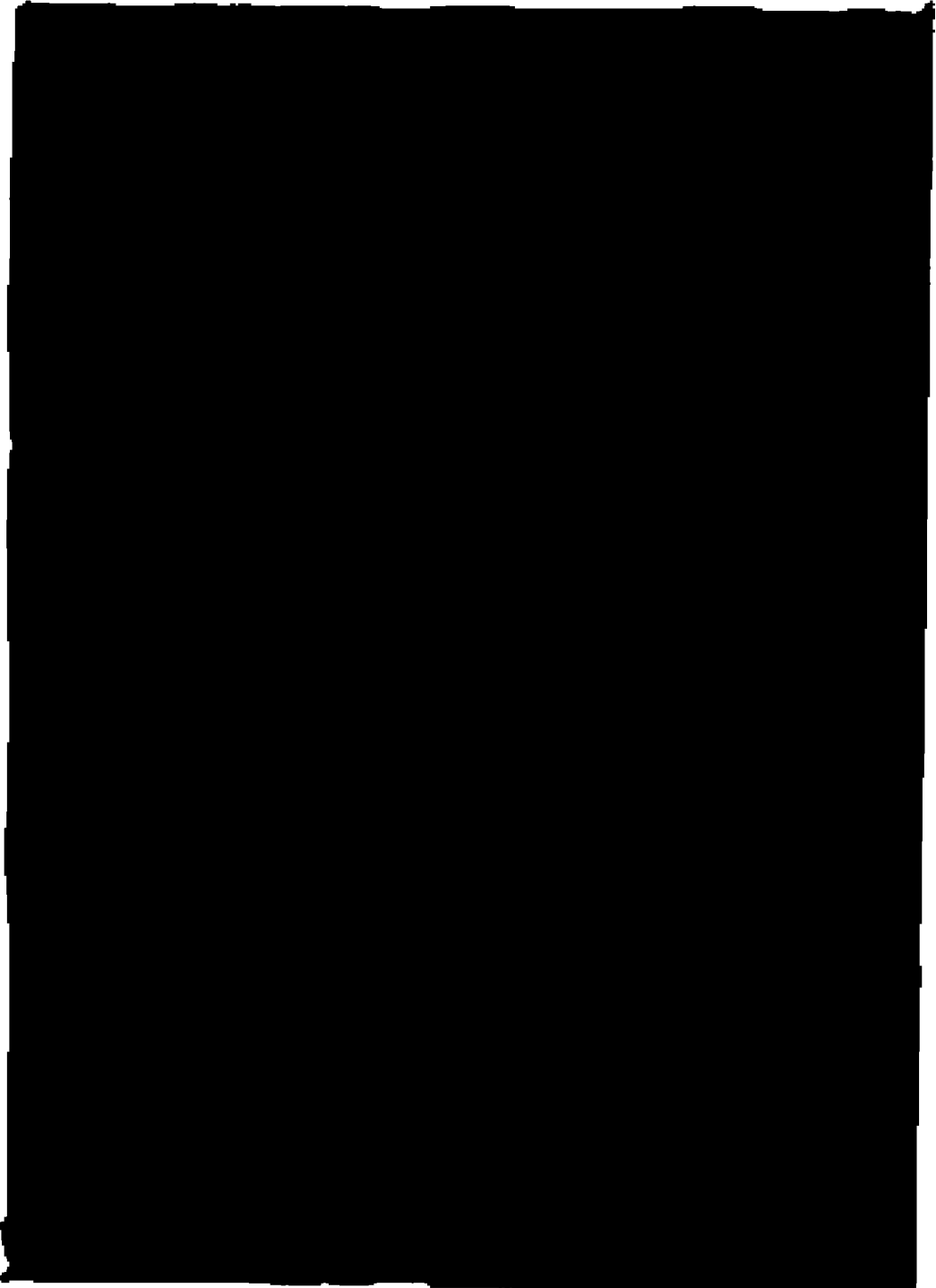
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weiner@hugheshubbard.com  
feldmanj@hugheshubbard.com

Attorneys for Plaintiff

61256911

# Exhibit A





SECRET



# Exhibit B

# FILE COPY

**DEDALUS FOUNDATION, INC.**  
555 West 57<sup>th</sup> Street, Suite 1222  
New York, New York 10019

**Date:** 2 March 2007  
**Owner Name:** Julian Weissman  
**Owner Address:** 26 Beaver Street, 14<sup>th</sup> Floor  
New York, NY 10004



**Description of Work:**  
**Title/Subject:** Spanish Elegy  
**Date:** 1953  
**Medium:** oil on canvasboard  
**Size:** 17.75 x 23.75 inches  
(45.085 x 60.325cm)

**Foundation Identification Number:** 2007.1

The Dedalus Foundation, Inc. (the "Foundation") has caused the above-described Work to be examined by its representatives. It is the opinion of the Foundation that the Work is the work of Robert Motherwell.

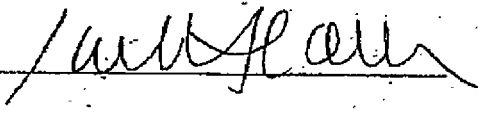
THE FOREGOING IS MERELY OUR OPINION AND IS NOT A WARRANTY OF ANY KIND. NEITHER THE FOUNDATION, NOR ANY OF ITS MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES, OR OTHERS ACTING FOR ANY OF THEM, OR THEIR SUCCESSORS, SHALL HAVE ANY LIABILITY WHATSOEVER TO ANYONE BY REASON OF THE FOREGOING OPINION.

This opinion may change by reason of circumstances arising or discovered by the Foundation after the date hereof. The Foundation will endeavor to respond to inquiries by persons having, in the Foundation's absolute discretion, sufficient basis for making inquiries as to whether such a change has occurred.

This letter is subject to the terms and conditions of the letter agreement with you pursuant to which this letter has been issued.

DEDALUS FOUNDATION, INC.

Signed and Sealed By: \_\_\_\_\_

  
Jack Flam, President

# Exhibit C

COPY

DEDALUS FOUNDATION, INC.

555 West 57th Street, Suite 1222

New York, New York 10019

Telephone: 212.220.4220

Facsimile: 212.220.4225

15 February 2007

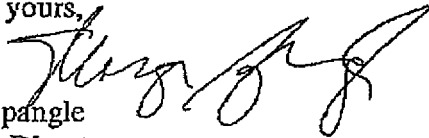
Mr. Julian Weissman  
26 Beaver Street, 14<sup>th</sup> Floor  
New York, NY 10004

Dear Julian,

Here is the letter of authenticity which is issued by the Foundation. While it does not say directly that the painting, *Spanish Elegy*, 1953, will be included in the catalogue raisonne which is being prepared by the Foundation, I can assure you that the painting *will be* included.

It was a pleasure to be able to see the painting. Jack and I are most grateful for your continuing support and cooperation with our catalogue raisonne project.

Sincerely yours,



Morgan Spangle  
Executive Director

# FILE COPY

**DEDALUS FOUNDATION, INC.**  
555 West 57<sup>th</sup> Street, Suite 1222  
New York, New York 10019

**Date:** 2 March 2007  
**Owner Name:** Julian Weissman  
**Owner Address:** 26 Beaver Street, 14<sup>th</sup> Floor  
New York, NY 10004



**Description of Work:**  
**Title/Subject:** Spanish Elegy  
**Date:** 1953  
**Medium:** oil on canvasboard  
**Size:** 17.75 x 23.75 inches  
(45.085 x 60.325cm)

**Foundation Identification Number:** 2007.1

The Dedalus Foundation, Inc. (the "Foundation") has caused the above-described Work to be examined by its representatives. It is the opinion of the Foundation that the Work is the work of Robert Motherwell.

THE FOREGOING IS MERELY OUR OPINION AND IS NOT A WARRANTY OF ANY KIND. NEITHER THE FOUNDATION, NOR ANY OF ITS MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES, OR OTHERS ACTING FOR ANY OF THEM, OR THEIR SUCCESSORS, SHALL HAVE ANY LIABILITY WHATSOEVER TO ANYONE BY REASON OF THE FOREGOING OPINION.

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DEDALUS FOUNDATION, INC.

Signed and Sealed By: Jack Flam

Jack Flam, President

# Exhibit D

JULIAN WEISSMAN FINE ART, LLC

February 20, 2007

Killala Fine Art Limited  
4, Clarinda Park North  
Dun Laoghaire  
Co. Dublin  
IRELAND

INVOICE #7095

Robert Motherwell  
*Spanish Elegy*, 1953  
Oil on canvasboard  
17 3/4 x 23 9/15 inches  
signed and dated verso  
RM 23

\$650,000.00

Subtotal: \$650,000.00

Total: \$650,000.00

Thank you,



Terms and Conditions

Title will not pass until payment is received in full. Payment reflects that the purchaser or a representative for the purchaser has inspected the work of art and found it in good condition. It is agreed that the shipping costs will be the responsibility of the purchaser.

Payment Schedule

It is agreed that a deposit of \$325,000. will be wired upon receipt of invoice to Julian Weissman Fine Art, LLC, CITIBANK N.A. Routing #021000089 for the account #94667913. It is also agreed that the balance of \$325,000. will be wired to Julian Weissman Fine Art, LLC, CITIBANK N.A. Routing #021000089 for the account #94667913 by March 20, 2007.

# Exhibit E

JULIAN WEISSMAN FINE ART, LLC

March 11, 2009

Dear Marc,

My attorney received a reply to his letter to the Dedalus Foundation in which he asked for the new information which supposedly caused the Foundation to temporarily withdraw the authentication that it gave to me in March 2007. I am enclosing a copy of that reply. As you will see and as I suppose you might have expected, the Foundation has refused to offer any explanation for its turnabout. What you will also see is the creation of a trap for the current owner to step into.

As it now stands, the Foundation authenticated this work in March 2007. It did so following a viewing and an inspection of the work by Morgan Spangle, the Executive Director of the Dedalus Foundation, Inc. and Jack Flam, Director Robert Motherwell Calalogue Raisonne Project. There were 2 young people affiliated with the foundation who were also present and who also viewed and examined this work. The inspection took place at 26 Beaver Street. I was also present as was my wife, Karen Gunderson. The Foundation was also supplied with the following provenance information; 1. This work was originally purchased directly from Robert Motherwell prior to 1959, by the parents of the owner who consigned it to me. The parents of this owner acquired this work with the help of Alfonso Ossorio a painter and a collector and a friend of many of the Abstract Expressionists. The original purchasers were friends with Ossorio and his parents and were, indeed, very fortunate to have the help of an artist who had excellent relationships with many of these artists and a keen eye himself.

The Foundation knew that I was selling the painting and knew that not only I would be relying upon their authentication but so would my purchaser (you). It so happens that I did not sign any agreement which authentication boards like this now routinely demand which waives all of my rights to complain if the authentication board acts negligently or improperly. So at it stands right now, you and I have a grievance against this foundation for issuing an authentication and then renouncing it without notice and without allowing any input or giving any explanation. So while it may sound alluring to read that the Foundation might bend its standard procedure of silence in this rare instance, the offer is premised on signing an agreement that would waive any right to complain. Any reconsideration would also require "full provenance", whatever that means. It could mean, for example, that after signing an agreement and requesting a review, the Foundation could say that we did not prove the initial sale by Motherwell which, as you know, is not a sine qua non for accepting a work as authentic.

As it now stands and without any ability to evaluate this turnabout, I can only view the Foundation as acting capriciously. I look forward to any thoughts you might have on this situation.

Best,  
*Julian*  
Julian

# Exhibit F

CATALOGUE RAISONNÉ OF PAINTINGS AND COLLAGES  
BY ROBERT MOTHERWELL

DEDALUS FOUNDATION, INC.

555 West 57th Street, Suite 1222

New York, New York 10019

Telephone: 212-220-0014

Facsimile: 212-220-4225

catalogue@dedalusfoundation.org

February 17, 2009

Mr. Julian Weissman  
26 Beaver Street, 14<sup>th</sup> Floor  
New York, N.Y. 10004

Dear Julian,

I am writing in my capacity as Director of the Robert Motherwell Catalogue Raisonné Project, regarding the work titled "Spanish Elegy" which we examined on January 31, 2007 and the Catalogue Raisonné's opinion letter, dated March 2, 2007, a copy of which is enclosed. In that letter, I stated that by right the Catalogue Raisonné's opinion might change "by reason of circumstances arising or discovered" at a later date.

I am now writing to inform you that, based on new information, and per its right to withdraw the March 2, 2007 letter, the Catalogue Raisonné has determined to withdraw the letter per that right. We are at present not planning to include that painting, titled "Spanish Elegy," in the prospective Catalogue Raisonné of Paintings and Collages by Robert Motherwell.

I am therefore asking that you please return our letter of March 2, 2007, which is no longer valid. Please understand that we are not making a final determination as to the Catalogue Raisonné's opinion about the painting, but simply informing you that at present we do not plan to include it in the Catalogue Raisonné. You, as owner of the work or as authorized agent of the owner, are welcome to resubmit the work with additional documentation/information and to deliver the work for physical inspection by the current members of the Robert Motherwell Catalogue Raisonné Project.

Hoping to hear from you soon,

Yours truly,



Jack Flann

Director, Robert Motherwell Catalogue Raisonné Project

Enclosure

# FILE COPY

**DEDALUS FOUNDATION, INC.**  
555 West 57<sup>th</sup> Street, Suite 1222  
New York, New York 10019

**Date:** 2 March 2007  
**Owner Name:** Julian Weissman  
**Owner Address:** 26 Beaver Street, 14<sup>th</sup> Floor  
New York, NY 10004



**Description of Work:**  
**Title/Subject:** Spanish Elegy  
**Date:** 1953  
**Medium:** oil on canvasboard  
**Size:** 17.75 x 23.75 inches  
(45.085 x 60.325cm)

**Foundation Identification Number:** 2007.1

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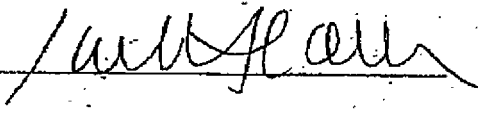
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This letter is subject to the terms and conditions of the letter agreement with you pursuant to which this letter has been issued.

DEDALUS FOUNDATION, INC.

Signed and Sealed By: \_\_\_\_\_

  
Jack Flam, President

# Exhibit G

Hughes  
Hubbard

Hughes Hubbard & Reed LLP  
One Battery Park Plaza  
New York, New York 10004-1482  
Telephone: 212-837-6000  
Fax: 212-422-4726  
hugheshubbard.com

January 27, 2011

BY E-MAIL AND FIRST-CLASS MAIL

John B. Koegel, Esq.  
The Koegel Group LLP  
161 Avenue of the Americas  
5th Floor  
New York, NY 10013

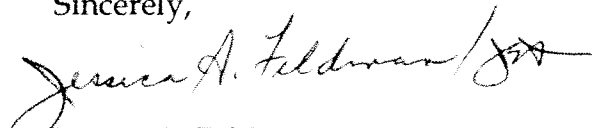
Re: Killala Fine Art Limited re *Spanish Elegy*, 1953,  
oil on canvasboard

Dear Mr. Koegel:

As you know, we represent Killala Fine Art Limited ("Killala"), the owner of a painting entitled *Spanish Elegy* (the "Work"), purchased in early 2007 from your clients Julian Weissman Fine Art, LLC and Julian Weissman (together, "Weissman") as a work created by Robert Motherwell.

We have now learned that the Work was not created by Robert Motherwell, and is instead a forgery. We therefore write to notify you pursuant to N.Y. U.C.C. § 2-607 that Weissman has breached (1) the express warranty of authenticity, (2) the implied warranty of merchantability, and (3) the implied warranty of fitness for a particular purpose. Killala hereby revokes its acceptance of the Work pursuant to N.Y. U.C.C. § 2-608, and demands rescission and the return of its \$650,000 purchase price.

Sincerely,

  
Jessica A. Feldman

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