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8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES
11

12 WILLIAM I. KOCH, an individual,)	Case No.
13 Plaintiff,)	COMPLAINT FOR FRAUD, NEGLIGENT MISREPRESENTATION, AND VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW
14 vs.)	
15 RUDY KURNIAWAN, an individual,)	
16 Defendant.)	

17
18 Plaintiff William I. Koch alleges on personal knowledge as to himself and on information
19 and belief as to defendant Rudy Kurniawan:

20 **PRELIMINARY STATEMENT**

21 1. Before he turned 30, Rudy Kurniawan became the most prominent wine aficionado
22 in Los Angeles, cutting a broad swath through high-end auctions and exclusive wine tastings.
23 Coming out of nowhere, Kurniawan quickly became known as the youthful, ultra-wealthy
24 foreigner who spent aggressively at wine auctions and bid up prices dramatically. He became so
25 prominent that the *Los Angeles Times* wrote a glowing profile about him in December 2006, just
26 after he turned 30, under the headline "\$75,000 a case? He's buying." The article explained that
27 Kurniawan, who drove a Bentley and a Ferrari, was spending a million dollars a month on wine at
28 auctions at Christie's, Zachys, and elsewhere, and that he owned "one of the world's premier wine

1 collections . . . of the most celebrated Bordeaux and Burgundy wines of the last century." At the
2 same time that Kurniawan was supposedly buying all this wine, he was also selling wine at
3 auctions under the pseudonym "THE Cellar." The *LA Times* story reported that he had sold \$35.4
4 million of wine at two Acker Merrall auctions in the 2006 time frame alone. The two Acker
5 auctions have become known as THE Cellar I (January 2006) and THE Cellar II (October 2006).
6 Kurniawan explained to the paper that he was selling his "duplicates," but it would seem far-
7 fetched that Kurniawan could have inadvertently bought tens of millions of dollars of "duplicates."
8 Buying and selling the same wine at the same time could also be an effort to manipulate wine
9 prices, a scheme to pump up the price and then dump wine into the inflated market. Buying and
10 selling the same wine at the same time could also be an effort to manipulate wine prices, a scheme
11 to pump up the price and then dump wine into the inflated market. As the *LA Times* story
12 reported, "Since [Kurniawan] started buying, prices for rare wine have skyrocketed."

13 2. Kurniawan told the *LA Times* that he knew and understood the problems with
14 counterfeit wine. The story reported: "Only after he'd tasted hundreds of bottles did Kurniawan
15 learn how to spot the fakes, he says. He studies the corks for signs of tampering, knows the telling
16 details of the labels for all of the top wines, and can spot bottle markings that don't match that
17 bottle's label." This 2006 admission by Kurniawan demonstrates that Kurniawan not only
18 understood that counterfeit wine was a problem, but had self-described expertise in identifying
19 suspicious or counterfeit bottles. His sale of counterfeits, and many such sales occurred, were thus
20 intentional.

21 3. Kurniawan arrived in California, presumably under a student visa, to attend Cal
22 State Northridge, although he dropped out after a year. He would never explain publicly exactly
23 where his family money came from and he admitted to having an Indonesian surname that was
24 different than his parents' surnames, which were Chinese. He sometimes reported that his father
25 was alive and, at other times, that he was not. There were and are many unexplained questions,
26 questions that will be addressed in discovery. What was his immigration status when he took the
27 wine market by storm? Where did this unexplained off-shore family wealth come from, if it
28 existed at all? Why would someone in his twenties spend tens of millions of dollars buying wine

1 so quickly? Why was he buying and selling millions of dollars of wine *at the same time*? When
2 Kurniawan was bidding on wine at auction, did the auction house know whether he had the funds
3 to pay for the wine? Did any auction house discuss with him how and how much he should bid?
4 Was he selling more wine than he was buying? If so, where was the other wine coming from?
5 Was he creating it? Was it supplied by others? Was he a puppet for other people in the wine
6 business who benefited from having an aggressive buyer bidding up prices?

7 4. The Kurniawan story and lifestyle have begun to unravel. Twice in the last three
8 years wine that Kurniawan was offering for sale at auction was pulled back in dramatic fashion by
9 the auction house at the last minute (once by Christie's and once by Acker Merrall) because the
10 wine was unquestionably counterfeit. Twice in the last three years Kurniawan defaulted on seven-
11 figure and eight-figure loans, one from Emigrant Bank in New York and others from Acker
12 Merrall, the wine auction house. These multi-million dollar loan defaults led to lawsuits against
13 Kurniawan in 2008 and 2009.

14 5. According to court records, Kurniawan started borrowing money from Acker on or
15 before January 2007. By the end of 2007 Kurniawan owed Acker \$7.4 million. Kurniawan
16 confessed judgment to Acker in the amount of \$10.4 million in November 2008. The "Affidavit
17 of Confession of Judgment of Rudy Kurniawan," filed in the Supreme Court of the State of New
18 York, is attached as Exhibit A.

19 6. In April of 2007, Kurniawan tried to sell counterfeit Le Pin wine at a Christie's
20 auction, but the chateau saw the catalogue and identified the wine as counterfeit. The sale was
21 cancelled.

22 7. In January 2008, Kurniawan borrowed \$3 million from a subsidiary of Emigrant
23 Bank.

24 8. In April of 2008, Kurniawan tried to sell counterfeit Ponsot wine at an Acker
25 auction, but the chateau saw the catalogue and identified the wine as counterfeit. The sale was
26 cancelled.

27 9. By all appearances, Kurniawan was buying wine with loans from Acker and
28 Emigrant and then trying to sell wine, at least some of it counterfeit, to pay down the loans.

1 Although the Le Pin and Ponsot sales were stopped, most of the sales of Kurniawan's counterfeit
2 wine were completed.

3 10. Kurniawan's loan agreements with Acker, the auction house that was handling most
4 of his wine sales, began as early as July 2006. For these loans, Kurniawan granted Acker a
5 security interest "in works of fine art and wine." Acker also extended credit to Kurniawan to buy
6 wine and, at the time of the confession of judgment, Kurniawan owed Acker \$967,196 for wine
7 that he had not paid for.

8 11. At the start of 2008 when he applied for the Emigrant Bank loan, Kurniawan was
9 already deeply in debt to Acker. Nevertheless, Emigrant loaned him \$3 million for a year, with
10 certain art work as collateral, based on a "certificate" from Kurniawan representing that "sales of
11 his wine holdings [were] reasonably expected to provide sufficient financial support for his living
12 expenses in 2008 and 2009." A copy of the Certificate is attached as Exhibit B. Thus, Kurniawan
13 was planning on living off the sale of wine he bought at inflated prices, now that the market prices
14 had inflated in part due to his activity. In addition, Kurniawan claimed that he "reasonably
15 expected" to receive \$10 million a year from "business interests [that] are legal in all respects"
16 starting in 2010. And despite his claimed wealth, in the certificate he admitted to owing \$800,000
17 to \$1,000,000 in taxes. Somehow Emigrant Bank decided to loan \$3 million to Kurniawan. He
18 was to pay the bank back, and continue his lavish lifestyle, by finding people who would buy his
19 wine. Kurniawan defaulted on the loan, according to a lawsuit filed against him in New York
20 state court in January of 2009. That lawsuit was later dropped by the bank.

21 12. Koch, along with other collectors, purchased Kurniawan's wine at wine auctions
22 not knowing that Kurniawan was the seller. Koch recently determined that many of the bottles of
23 wine in his collection are counterfeit. Koch has traced some of the counterfeit wine that he bought
24 to Kurniawan. Koch brings this action to be made whole, to stop Kurniawan from selling
25 counterfeit wine, and for the benefit of other victims of the Kurniawan wine fraud.

26 PARTIES

27 13. Plaintiff William I. Koch is a resident of the State of Florida.

28

1 bidding. Before Acker's April 23, 2005 auction, Acker sent Koch and other consumers a
2 catalogue it had prepared in conjunction with Kurniawan and with information received from
3 Kurniawan in California. The catalogue identified the wine that would be offered at the auction.
4 This catalogue, by its nature, constituted representations that the wine being auctioned was
5 genuine and described accurately. The April 23, 2005 Acker catalogue was designed to be read by
6 collectors of wine like Koch and it was widely disseminated.

7 23. The April 23, 2005 Acker auction catalogue did not disclose the name of the person
8 who consigned the wine for sale, but it has been confirmed in 2009 that Kurniawan was the seller
9 at this auction. The catalogue described the unnamed seller as someone who "carefully acquired"
10 his wine, "inspects his wine," and "takes exceptional pride in the bottles he has acquired and the
11 quality of his collection."

12 24. The representations contained in the April 23, 2005 auction catalogue about certain
13 vintages were false and were made by and for Kurniawan either with knowledge of their falsity or
14 with reckless disregard for the indicators that such representations were false, and were made
15 without adequate investigation or authentication. Kurniawan knew that the representations made
16 in the April 23, 2005 auction catalogue were false, would be passed along to potential buyers, and
17 he intended or expected that these representations would be relied upon by that class of persons.

18 25. At Acker's April 23, 2005 auction, Koch purchased a bottle of 1949 Chateau
19 Lafleur. This bottle was Lot 421 in the Acker catalogue.

20 26. On April 26, 2005, Acker sent to Koch invoice number 054. The invoice listed the
21 bottle of wine represented to be 1949 Chateau Lafleur, the hammer price of \$9,000 plus a 17.5%
22 premium, for a total purchase price of \$10,575.

23 27. Koch reasonably relied on the representations as to the producer and vintage of the
24 alleged 1949 Chateau Lafleur. Koch paid \$10,575 to Acker for the bottle of wine, represented to
25 be a 1949 Chateau Lafleur. If Koch had known that there were reasons to doubt the wine's
26 authenticity, he would not have purchased the bottle.

27 28. Koch learned within the last two years that the 1949 Chateau Lafleur is counterfeit.
28 Koch confirmed within the last year that this bottle came from Kurniawan.

1 **B. The Counterfeit Bottle Of 1947 Chateau Petrus**

2 29. In May 2005, Acker offered to sell to Koch a bottle of wine represented to be a
3 1947 Chateau Petrus, for a price of \$30,000. Acker represented the producer and vintage of the
4 wine to be 1947 Chateau Petrus to potential buyers, including Koch. Those representations were
5 made in conjunction with Kurniawan and with information received from Kurniawan in
6 California. Acker did not disclose to Koch that Kurniawan was the source of that bottle of wine.

7 30. The representations regarding the 1947 Chateau Petrus were made by and for
8 Kurniawan either with knowledge of their falsity or with reckless disregard for the indicators that
9 such representations were false, and were made without adequate investigation or authentication.
10 Kurniawan knew that the representations made regarding the 1947 Chateau Petrus were false and
11 would be passed along to potential buyers and intended or expected that those representations
12 would be relied upon by that class of persons.

13 31. On May 25, 2005, Acker sent to Koch invoice number 0054, listing the bottle of
14 wine represented to be a 1947 Chateau Petrus, and the purchase price of \$30,000.

15 32. Koch reasonably relied on the representations as to the producer and vintage of the
16 alleged 1947 Chateau Petrus in deciding to buy the bottle. Koch paid \$30,000 to Acker for the
17 bottle of wine, represented to be a 1947 Chateau Petrus.

18 33. Koch learned within the last two years that the 1947 Chateau Petrus is counterfeit.
19 Koch confirmed within the last year that this bottle came from Kurniawan.

20 **C. The Counterfeit Bottle Of 1945 Comte Georges de Vogue Musigny, Cuvee**
21 **Vielles Vignes**

22 34. In July 2005, Acker offered to sell to Koch a bottle of wine represented to be a
23 1945 Comte Georges de Vogue Musigny, Cuvee Vieilles Vignes, for a price of \$11,500. Acker
24 represented the producer and vintage of the wine to be 1945 Comte Georges de Vogue Musigny,
25 Cuvee Vieilles Vignes to potential buyers, including Koch. Those representations were made in
26 conjunction with Kurniawan and with information received from Kurniawan in California. Acker
27 did not disclose to Koch that Kurniawan was the source of that bottle of wine.

28

1 35. The representations regarding the 1945 Comte Georges de Vogue Musigny, Cuvee
2 Vieilles Vignes were made by and for Kurniawan either with knowledge of their falsity or with
3 reckless disregard for the indicators that such representations were false, and were made without
4 adequate investigation or authentication. Kurniawan knew that the representations made regarding
5 the 1945 Comte Georges de Vogue Musigny, Cuvee Vieilles Vignes were false and would be
6 passed along to potential buyers and intended or expected that those representations would be
7 relied upon by that class of persons.

8 36. On July 12, 2005, Acker sent to Koch invoice number 3024, listing the bottle of
9 wine represented to be a 1945 Comte Georges de Vogue Musigny, Cuvee Vieilles Vignes, and the
10 purchase price of \$11,500.

11 37. Koch reasonably relied on the representations as to the producer and vintage of the
12 alleged 1945 Comte Georges de Vogue Musigny, Cuvee Vieilles Vignes in deciding to buy the
13 bottle. Koch paid \$11,500 to Acker for the bottle of wine, represented to be a 1945 Comte
14 Georges de Vogue Musigny, Cuvee Vieilles Vignes.

15 38. Koch learned within the last two years that the 1945 Comte Georges de Vogue
16 Musigny, Cuvee Vieilles Vignes is counterfeit. Koch confirmed within the last year that this bottle
17 came from Kurniawan.

18 **D. The Two Counterfeit Bottles Of 1934 DRC Romanee-Conti**

19 39. Acker held an auction of fine and rare wine on January 27, 2006 in New York.
20 Consumers throughout the country were able to participate through telephone and absentee
21 bidding. Before Acker's January 27, 2006 auction, Acker sent Koch and other consumers a
22 catalogue it had prepared in conjunction with Kurniawan and with information received from
23 Kurniawan in California. The catalogue identified the wine that would be offered at the auction.
24 This catalogue, by its nature, constituted representations that the wine being auctioned was
25 genuine and described accurately. The January 27, 2006 Acker catalogue was designed to be read
26 by collectors of wine like Koch and it was widely disseminated.

27 40. The January 27, 2006 auction catalogue did not disclose the consigner of the wine
28 offered (referring to the seller as "THE Cellar"), but it has recently been confirmed that the seller

1 was Kurniawan. The catalogue described the unnamed seller as having "the greatest cellar in
2 America." The catalogue stated that the unnamed seller "is one of the most knowledgeable
3 collectors that I have ever met and is absolutely obsessed with the underlying details of
4 provenance, condition, and label minutiae and of course impeccable storage for his wines."

5 41. The representations contained in the January 27, 2006 auction catalogue about
6 particular vintages were false and were made by and for Kurniawan either with knowledge of their
7 falsity or with reckless disregard for the indicators that such representations were false, and were
8 made without adequate investigation or authentication. Kurniawan knew that the representations
9 made in the January 27, 2006 auction catalogue were false, would be passed along to potential
10 buyers, and he intended or expected that those representations would be relied upon by that class
11 of persons.

12 42. At Acker's January 27, 2006 auction, Koch purchased two bottles of 1934 DRC
13 Romanee-Conti. These bottles were Lot 559 in the Acker catalogue.

14 43. On January 28, 2006, Acker sent to Plaintiff invoice number 061. The invoice
15 listed the two bottles of wine each represented to be 1934 DRC Romanee-Conti, the hammer price
16 of \$22,000 for both bottles plus a 17.5% premium, for a total purchase price of \$25,850 for the
17 two bottles together.

18 44. Koch reasonably relied on the representations as to the producer and vintage of the
19 alleged 1934 DRC Romanee-Conti and as to the quality of the bottles' source in deciding to buy
20 the bottles. Koch paid \$25,850 to Acker for the two bottles of wine, represented to be 1934 DRC
21 Romanee-Conti.

22 45. Koch learned within the last two years that both bottles of 1934 DRC Romanee-
23 Conti are counterfeit. Koch confirmed within the last year that these bottles came from
24 Kurniawan.

25 **II. Kurniawan Sells and Attempts to Sell Counterfeit Wine To Other Consumers**

26 **A. Kurniawan Sells Counterfeit Bottles Of 1947 Chateau Lafleur**

27 46. There have been numerous reports of the sale of counterfeit wine by Kurniawan to
28 others, and Koch expects that discovery would show that there are many victims other than Koch.

1 47. Kurniawan has sold counterfeit Chateau Lafleur at auction. At the January 27,
2 2006 and October 20, 2006 Acker auctions, Kurniawan offered for sale eight magnums of 1947
3 Chateau Lafleur.

4 48. At the 2007 TASTE3 food and wine conference held in Napa Valley, California,
5 David Molyneux-Berry, a noted wine expert who previously ran the wine department at Sotheby's,
6 stated that only five magnums of the 1947 Lafleur were produced. Mr. Molyneux-Berry's
7 information came from one of Chateau Lafleur's late owners.

8 49. Some, if not all, of the 1947 Chateau Lafleur magnums sold by Kurniawan are
9 counterfeit.

10 **B. Kurniawan Attempts to Sell Counterfeit Wine From Le Pin in 2007 at**
11 **Christie's**

12 50. At an April 27, 2007 auction at Christie's, Kurniawan attempted to sell bottles of
13 1982 Chateau Le Pin Pomerol wine, but the wine was pulled by Christie's before the bidding
14 began. Le Pin is a Bordeaux wine that is produced in extremely small numbers. According to
15 *Wine Spectator*, a bottle of 1982 Le Pin can sell for over \$4,000.

16 51. Offering six magnums of Le Pin at auction is of great significance to wine
17 collectors. Magnums command higher prices than bottles. It is thus not surprising at all that the
18 cover of the Christie's catalogue featured the six bottles of Le Pin. The wine was described in the
19 catalogue as in "pristine condition." The six magnums were being offered for sale and Christie's
20 estimated a sales price of \$60,000 to \$100,000.

21 52. After the catalogue for the April 27, 2007 auction was sent out, but before the
22 auction took place, the chateau contacted Christie's indicating that based on the picture on the
23 cover of the catalogue, the bottles of Le Pin appeared fake. Christie's then inspected the bottles
24 closely and reached the same conclusion and pulled them from the sale. Kurniawan's attempt to
25 sell counterfeit wine through Christie's at auction failed.

1 **C. Kurniawan Attempts To Sell Counterfeit Wine From Domaine Ponsot in 2008**
2 **at Acker Merrall**

3 53. At an April 25, 2008 auction, Kurniawan attempted to sell additional counterfeit
4 wine through Acker, but the sale was stopped before the bidding began.

5 54. Kurniawan was prepared to offer twenty-two lots of red Burgundy, totaling 107
6 bottles, purportedly from the Domaine Ponsot. According to press reports, the wine was expected
7 to sell for over \$600,000.

8 55. Shortly before the auction, Laurent Ponsot, the fourth-generation proprietor of the
9 vineyard, examined photos of the bottles of his wine being offered for sale and came to the
10 conclusion that most of the bottles were counterfeit. Ponsot identified several problems with the
11 wine, including the following:

- 12 a. Six of the lots were various vintages of Clos St. Denis, ranging from 1945
13 to 1971. According to Ponsot, however, the first vintage of this wine was
14 produced by his father, Jean Marie Ponsot, in 1982. Ponsot therefore
15 believed that all six of the lots were counterfeit.
- 16 b. Four bottles of Clos de la Roche had the Domaine Ponsot label, including a
17 1929. According to Ponsot, his grandfather, Hippolyte Ponsot, did not
18 begin estate bottling until 1934. Ponsot therefore believed that the bottles
19 were counterfeit.
- 20 c. A case of 1962 Clos de la Roche bottles carried a black and gold neck label
21 saying "Reserve Nicolas," indicating that they had been selected and sold by
22 France's largest wine retailing chain. According to Ponsot, his vineyard
23 never sold any of its wine to Nicolas. Ponsot therefore believed that the
24 case was counterfeit.
- 25 d. The 1962 vintages being offered were sealed with lumpy red wax caps, but
26 Ponsot's vineyard never used such wax, opting instead for smooth lead foil
27 wrappers. Ponsot therefore believed that the 1962 vintages were
28 counterfeit.

1 e. The Ponsot bottles in the auction featured a shield-shaped shoulder vintage
2 label embellished with a vine-leaf motif but, according to Ponsot, such
3 labels were never used by the domaine. Instead, Ponsot recalled that his
4 grandfather hand-stamped the date on his labels and signed the bottles.
5 Ponsot therefore believed that these bottles were counterfeit.

6 56. After examining the photos and concluding that most of Kurniawan's wine was
7 counterfeit, Ponsot contacted John Kapon of Acker and asked that he remove the bottles from the
8 auction. Acker consented to Ponsot's request and withdrew the counterfeit Ponsot wine midway
9 through the April 25 auction.

10 57. According to a report on the auction in a May 16, 2008 *Wine Spectator* article,
11 when Kurniawan was asked after the sale who he had acquired the wines from, he responded only:
12 "We try our best to get it right, but it's Burgundy, and sometimes shit happens."

13 58. The *Wine Spectator* article also reported that in a phone interview ten days after the
14 auction, Kurniawan was asked again about the source of the counterfeit Ponsot wine, and said: "I
15 have a pretty good idea of where I bought them from, and I will be working directly with Laurent.
16 We want to get to the bottom on this. My goal is that I just want the market to get healthy."

17 59. Ponsot did meet with Kurniawan on multiple occasions to try to determine where
18 Kurniawan had obtained the counterfeit bottles, but Kurniawan refused to disclose his source.
19 Ponsot met with Kapon and Kurniawan the day after the auction. Kurniawan told Ponsot at that
20 meeting that he was looking into the source of the counterfeit wine, but did not tell Ponsot
21 anything about who that source was.

22 60. In July 2008, Ponsot met Kurniawan for dinner in Los Angeles and again asked for
23 the source of the counterfeit wine. Kurniawan gave Ponsot a small piece of paper with one name
24 and two Jakarta telephone numbers on it, and told Ponsot that he bought all the counterfeit wine
25 from that person. Ponsot subsequently discovered that the name Kurniawan gave him was very
26 common in Indonesia and could not be tracked, that one of the phone numbers did not work, and
27 that the other phone number went unanswered after many tries.

28

1 61. In May 2009, Ponsot again met Kurniawan for dinner in Los Angeles and pressed
2 him for the name of his source. Kurniawan agreed to give Ponsot the name by email, but the
3 email was never sent and Kurniawan has not responded to Ponsot's further attempts to contact
4 him.

5 **III. Kurniawan's Loans and His Defaults**

6 **A. Acker's Loan to Kurniawan**

7 62. An Affidavit of Confession of Judgment of Rudy Kurniawan" (the "Confession of
8 Judgment") was filed on November 25, 2008 in the court proceeding captioned *Acker Merrill &*
9 *Condit Company v. Rudy Kurniawan*, New York Supreme Court Case No. 08115871. In this
10 filing, Kurniawan admitted that Acker and certain unnamed Acker clients loaned him money.
11 Agreements relating to the loans were executed by Kurniawan in July 2006, February 2007, and
12 August 2007, according to the Confession of Judgment, suggesting that the loans to Kurniawan
13 from Acker began at least as early as 2006. Kurniawan admitted that the total debt that he owed
14 Acker and the Acker clients as of November 2008 was a staggering \$10.4 million. Exhibit 1 to the
15 Confession of Judgment (Exhibit A), shows a long history of Acker loaning money to Kurniawan
16 including a \$1 million loan in January of 2007. The document shows unpaid "initial loans" of
17 \$5.96 million, inclusive of unpaid interest, and unpaid "additional loans" of \$2.89 million.
18 Kurniawan's "outstanding invoices" for wine purchases from Acker were close to \$1 million.
19 Attorney's fees Kurniawan owed Acker totaled close to \$600,000. Kurniawan agreed to pay for
20 the defense of lawsuits relating to counterfeit wine against Acker, including one filed by Koch.

21 63. As collateral for the loans from Acker, Kurniawan granted Acker a security interest
22 in art and wine. (Exhibit A, ¶ 11) On May 2, 2008, Acker and Kurniawan entered into a security
23 agreement as further assurance of Acker's right to Kurniawan's art and wine. (Exhibit C.7)

24 **B. Emigrant Bank's Loans To Kurniawan**

25 64. Already deeply in debt to Acker, in January of 2008 Kurniawan arranged for a loan
26 of \$3 million from Emigrant Bank Fine Art Finance, LLC, a subsidiary of Emigrant Savings Bank.
27 (Exhibit C.1) The Milstein family owns Emigrant Savings Bank. Edward Milstein, who is a
28

1 member of the Milstein family, is an acquaintance of Kurniawan and has purchased wine from
2 him.

3 65. According to allegations in the lawsuit *Emigrant Bank Fine Art Finance, LLC,*
4 *formerly known as Fine Art Capital, LLC v. Rudy Kurniawan,* New York Supreme Court Case
5 No. 09600198, the bank entered into a revolving credit note with Kurniawan in January 2008 for
6 \$3 million and advanced him that amount. As of January 2008 there were multiple events of
7 default and Kurniawan owed the bank over \$2 million. (Exhibit C) To induce Emigrant to make
8 the \$3 million loan, Kurniawan signed a "Certificate" stating each of the following (Exhibit B and
9 C.6):

- 10 • "sales of his wine holdings are reasonably expected to provide sufficient financial
11 support for his living expenses in 2008 and 2009;"
- 12 • "his estimated outstanding liability for income and other taxes in the United States of
13 America is approximately \$800,000 to \$1,000,000;"
- 14 • "beginning in 2010, he will receive distributions from his business interests located
15 outside the United States of America that are reasonably expected to total at least \$10
16 million per year" and these business interests "are legal in all respects."

17 66. Kurniawan defaulted on the Emigrant loan and owed the bank \$2.3 million.
18 (Exhibit C.8) One of his defaults was pledging the same collateral to Acker that he had pledged to
19 Emigrant.

20 **IV. Kurniawan Makes Additional Misrepresentations To Koch In An Attempt To Avoid** 21 **Detection Of His Fraud**

22 67. On June 3, 2008, representatives of Koch met with Kurniawan in Los Angeles,
23 California at the Comme Ça restaurant. During the meeting Kurniawan was asked about the
24 source of the counterfeit Ponsot bottles that were withdrawn from the April 25, 2008 auction.
25 Kurniawan told Koch's representatives that he knew who his source was, but he refused to disclose
26 the name, instead claiming that he was doing his own investigation that he would make public
27 when it was complete.

28

1 they were made, or, at a minimum, acted with reckless disregard for the truth or falsity of the
2 representations and omissions.

3 75. Kurniawan misrepresented, concealed, or suppressed these facts with the intent to
4 influence the actions of Koch and purchasers and collectors of rare wines, a group that includes
5 Koch, including intending to influence purchases of wine owned by Kurniawan.

6 76. Koch reasonably and justifiably relied on Kurniawan's misrepresentations in
7 purchasing the wine.

8 77. At the time Koch acted, Koch was unaware of the concealed or suppressed facts
9 and would have acted differently if Koch had known the true facts.

10 78. Each of the bottles of wine purchased by Koch referenced herein is essentially
11 worthless. As a result of Koch's reliance upon Kurniawan's misrepresentations, Koch has suffered
12 damages in an amount to be proved at trial.

13 **SECOND CAUSE OF ACTION**

14 **(NEGLIGENT MISREPRESENTATION)**

15 79. Koch incorporates by reference the allegations set forth in paragraphs 1 through 78
16 of this Complaint as if set forth in full herein.

17 80. Kurniawan made false representations of fact regarding the wine purchased by
18 Koch as described above, including, for example, that the wine was authentic.

19 81. If Kurniawan's misrepresentations were not intentionally or recklessly made, then
20 Kurniawan was negligent in making false, incomplete, and misleading statements. Koch relied on
21 those misrepresentations.

22 82. The factual representations by Kurniawan were material and were false and
23 misleading. Kurniawan made the representations without any reasonable ground for believing
24 them to be true. He failed to exercise reasonable care or competence in making these
25 representations and in ascertaining or failing to ascertain the truth or falsity of his representations.

26 83. Kurniawan made these false, misleading, and incomplete representations of fact
27 with the intent to influence the actions of Koch and other purchasers and collectors of rare wines.
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- b. Damages for all injuries suffered as a result of Defendant's unlawful conduct;
- c. Exemplary damages in an amount to be determined at trial;
- d. Attorney's fees and costs, to the extent provided for by law;
- e. Pre-judgment interest; and
- f. Such other and further legal and equitable relief as may be just and proper.

Dated: September 10, 2009

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By: 

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