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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

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17 SIMCOR LLC, a California limited
liability company; and
18 ELLIS KING LTD., an Ireland
limited liability company,

19 Plaintiffs,

20 vs.

21 IBRAHIM MOHAMMED
22 MAHAMA, an individual,

23 Defendant.

Case No.: 2:15-cv-4539

COMPLAINT FOR:

- 24 (1) **BREACH OF CONTRACT;**
- (2) **FRAUDULENT INDUCEMENT;**
- (3) **COMMERCIAL**
- 25 **DISPARAGEMENT;**
- (4) **UNFAIR COMPETITION;**
- (5) **SPECIFIC PERFORMANCE; AND**
- (6) **DECLARATORY RELIEF**

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27 **JURY TRIAL REQUESTED**

1 Plaintiffs SIMCOR LLC (“Simcor”) and ELLIS KING LTD. (“Ellis King”
2 and, together with Simcor, “Plaintiffs”), complain as follows against Defendant
3 IBRAHIM MOHAMMED MAHAMA (“Mahama”):

4 **THE PARTIES**

5 1. Plaintiff Simcor is a limited liability company organized under the laws
6 of the State of California with its principal place of business in Los Angeles County,
7 California. Stefan Simchowicz (“Simchowicz”) is the principal of Simcor. Simcor
8 provides independent fine art consultation, management and curating services to
9 artists, galleries, collectors, foundations and exhibitors.

10 2. Plaintiff Ellis King is a limited liability company organized under the
11 laws of the nation of Ireland and is in good standing. Jonathan Ellis King, a citizen
12 of Ireland, is its principal. Ellis King owns and operates a fine art gallery in Dublin,
13 Ireland.

14 3. Plaintiffs are informed and believe and thereon allege that Defendant
15 Mahama, now a celebrated contemporary artist, is a citizen of the nation of Ghana,
16 residing in Tamale, Ghana.

17 **JURISDICTION AND VENUE**

18 4. This Court has jurisdiction over the subject matter of this action under
19 principles of diversity jurisdiction pursuant to 28 U.S.C. §1332. The amount in
20 controversy exceeds the sum or value of \$75,000, exclusive of interests or costs.
21 Complete diversity of citizenship between the Parties is also present as Plaintiffs are
22 citizens of California and Ireland while Defendant is a citizen of Ghana. Further,
23 some of the inventory of artworks that are the subject of this action are stored in Los
24 Angeles County. Lastly, this Court has jurisdiction under the Declaratory Judgment
25 Act pursuant to 28 U.S.C. §§2201, 2202.

26 5. This Court has personal jurisdiction over Mahama because, on
27 information and belief, Mahama has engaged in the sale of artwork to residents of
28 the State of California and/or otherwise entered commercial transactions with

1 residents of the State of California within this judicial district; has conducted or
2 attempted to conduct business and/or engage in commercial enterprises in the State
3 of California within this judicial district; and has committed tortious acts which
4 Mahama knew or should have known would cause injury to Simcor in the State of
5 California.

6 6. Venue is proper before this Court pursuant to 28 U.S.C. § 1391.

7 **GENERAL ALLEGATIONS**

8 7. Simchowitz is a renowned cultural entrepreneur. Having produced
9 several acclaimed feature films and founded two major photographic licensing
10 websites, Simchowitz currently specializes as an independent consultant and curator
11 for modern art collectors and institutions. Simchowitz has had significant success in
12 discovering, financially supporting and promoting unknown artists, guiding them
13 from obscurity to international prominence. Mahama is one such artist. Simchowitz
14 does business through Simcor, LLC, of which he is a managing member. Simcor is
15 a California Limited Liability Company in good standing.

16 8. Prior to meeting Simchowitz, Mahama had little, if any, recognition in
17 the Western art world. Mahama had never displayed his work in any gallery or
18 exhibit outside Ghana, either individually or as part of a group. He had made few
19 sales of his work, if any. His work was not included in the collections of any
20 museums, and exhibitions of his work were limited to Ghana. In short, Mahama
21 was virtually unknown to the art world and had no experience exhibiting his art
22 outside of his home country.

23 9. In or about 2012, Simchowitz contacted Mahama through Facebook.
24 Simchowitz had seen photographs of some of Mahama's pieces online, principally
25 consisting of draped jute coal sacks, and thought that he showed promise.
26 Simchowitz eventually introduced Mahama to Ellis King, and the parties agreed to
27 work together.

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1 10. In October 2013, the parties corresponded and orally agreed on the
2 terms of a business arrangement (the “Contract”). Specifically, pursuant to the
3 Contract, Simchowitz and Ellis King each paid Mahama £45,000—a total of
4 £90,000—for six different allotments of jute coal sack material from Mahama (the
5 “Lots”). The £90,000 figure was agreed upon because Mahama represented that he
6 needed some of that amount to obtain the jute materials and the majority of the
7 money to build and furnish an artist’s studio and living space. The parties further
8 orally agreed that two of the Lots, one measuring approximately 20x120 feet and the
9 other measuring approximately 20x150 feet, would remain intact and would serve as
10 the material for installations to be exhibited by Ellis King, and which would be
11 owned by Plaintiffs (the “Installation Pieces”). The parties further orally agreed to
12 create a series of smaller, unique artworks from the remaining four Lots by reducing
13 them into three separate sizes (108”x54”, 96”x48”, and 72”x36”) and mounting the
14 fabric over stretcher bars, which would then be authenticated by Mahama’s
15 signature on the recto of the stretched frame (the “Individual Works”), and which
16 Plaintiffs would have the exclusive right to sell.

17 11. All of the parties initially performed their respective obligations under
18 the Contract. Plaintiffs paid Mahama in full for the six Lots. Plaintiffs paid an
19 additional €1,650.00 to import the Lots to the United Kingdom. Plaintiffs hired a
20 skilled artisan, Dylan Atkins (“Atkins”), to undertake the process of creating the
21 Individual Works by cutting four of the Lots into the agreed sizes and mounting the
22 fabric over stretcher bars for Mahama’s signature.

23 12. Mahama visited Atkins at his studio in London to oversee and approve
24 the stretching process. Based on Mahama’s input, Atkins completed his work,
25 assembling a total of at least 294 Individual Works, for which Atkins was paid
26 approximately \$67,000 by Plaintiffs.

27 13. On December 3 and 4, 2014, Mahama signed the 294 Individual Works
28 at Ellis King’s gallery in Dublin.

1 14. While Atkins was completing the Individual Works from four of the six
2 Lots, Ellis King was erecting the Installation Pieces in its Dublin gallery. Two
3 additional workers were hired by Ellis King to assemble and erect the Installation
4 Pieces in the exhibition space.

5 15. From December 5, 2014 through January 10, 2015, Ellis King
6 exhibited the Installation Pieces, titled “Civil Occupation” (the “Exhibition”). The
7 Exhibition was a tremendous success and received extremely favorable reviews. As
8 a result, the formerly unknown Mahama suddenly rose to fame. Of the 294
9 Individual Works, Plaintiffs sold 27 pieces to galleries and collectors in Los
10 Angeles, New York, London, Paris, Cyprus, Belgium, Monaco, Greece and the
11 United Arab Emirates. The average price in U.S. Dollars for each of the Individual
12 Works sold was approximately \$16,700.

13 16. Some of the remaining unsold inventory of 267 Individual Works is
14 stored in Dublin; the rest in California. The value of the unsold inventory is
15 approximately \$4,450,000.

16 17. In addition to the 294 Individual Works, there are 15 more stretched but
17 unsigned works of varying sizes in Simcor’s possession in California (the
18 “California Works”). These pieces were sent to California for display and sale by
19 Simcor, with the understanding between Mahama and Simcor that Mahama would
20 provide certificates of authenticity.

21 18. During the Exhibition, once Plaintiffs had brought Mahama to the
22 public’s attention and begun establishing a market for his work, Mahama began to
23 breach the parties’ Contract.

24 19. On information and belief, without advising either of the Plaintiffs,
25 Mahama secretly made a new series of artworks substantially similar to the
26 Individual Works.

27 20. On information and belief, during or close to the period the Exhibition
28 was on display in Dublin, Mahama sold approximately 20 of his new pieces to a

1 collector in Los Angeles, with whom he attempted to arrange an artist studio
2 residency to take place in Los Angeles, without either of Plaintiffs' participation, or
3 knowledge.

4 21. In January 2015, Mahama wrote an email to Ellis King stating, for the
5 first time, that he was "disappointed" with the Individual Works, although he had
6 written to Ellis King the previous February that "the stretched work looks fine."
7 Mahama went on to admit that he had sold his new works to the collector in
8 California to "help me to raise funds" for his participation in the Venice Biennale, a
9 major international contemporary art exhibition held every other odd year. Mahama
10 concluded his email stating he wanted "to drop the representation" with Ellis King,
11 and that his name should be removed from the gallery's website.

12 22. On or around May 2015, Mahama sent an undated letter to Ellis King
13 asserting that he was the owner of the copyright in Installation Pieces, as well as the
14 owner of the Installation Pieces themselves. He further stated that Ellis King did not
15 have permission to use the Installation Pieces. He continued: "Permission was
16 neither asked nor granted to reproduce parts of the works...[a]nd the resulting new
17 works therefore constitute infringement of the artist's rights." Mahama went on to
18 state that he intended to provide a "certificate of authenticity" for each of the two
19 Lots comprising the Installation Pieces, and that, pending provision of the
20 certificates, Mahama's invoices for the Lots purchased by the Plaintiffs "are
21 considered as certificate of authenticity."

22 23. In Mahama's letter May 2015, he took the position that none of the
23 Individual Works were authentic, despite his having signed them, and despite his
24 knowledge that many of the Individual Works had already been sold. Further,
25 Mahama stated that he was the owner of the copyright in and to all of the original
26 six Lots purchased by Plaintiffs. Mahama admonished Plaintiffs not to display, sell
27 or otherwise exploit that material, complaining that he had not agreed to the
28 commercialization of his artworks.

1 30. Pursuant to the Contract, Plaintiffs paid Atkins \$67,000 to create the
2 Individual Works by reducing them into agreed upon sizes and fastening them over
3 stretcher frames, in order for Mahama to sign them.

4 31. Mahama was not required to do very much pursuant to the Contract;
5 rather all the work – importing the material, assembling and installing the fabric
6 pieces, and cutting and stretching the fabric lots to create the Individual Works and
7 the California Works– was performed by individuals other than Mahama who were
8 paid by Plaintiffs. Mahama’s sole obligations pursuant to the Contract were to
9 oversee the installation process for the Exhibit, approve the process employed by
10 Atkins to size and stretch the Individual Works and the California Works, and to
11 approve and sign the stretched pieces created by Atkins. With his signature,
12 Mahama physically gave his imprimatur as to the provenance and authenticity of the
13 Individual Works and was supposed to bestow the same authenticity on the
14 California Works had he fulfilled his contractual obligations.

15 32. On information and belief, during or immediately after the Exhibition,
16 without the knowledge of consent of Plaintiffs, Mahama created artworks identical
17 or substantially similar to the Individual Works and sold them to collectors for tens
18 of thousands of dollars.

19 33. Mahama has taken the position that he owns the copyright in all of the
20 artwork created from the original six Lots, including the Installation Pieces, the
21 Individual Works and the California Works.

22 34. On information and belief, Mahama has taken the position that none of
23 the stretched pieces are authentic, despite his having personally signed the
24 Individual Works and having agreed to sign the California Works.

25 35. On information and belief, Mahama took £90,000 (the equivalent of
26 \$148,500 U.S. Dollars) from Plaintiffs, most of which was supposed to fund the
27 building of an artist’s studio and residence. On information and belief, Mahama did
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1 not spend any of that amount as promised, but instead invested the money in a
2 venture with his father.

3 36. As a result of Mahama's actions as hereinabove alleged, Mahama has
4 materially breached and repudiated the Contract.

5 37. Mahama's breach of the Contract has resulted in substantial damages to
6 Plaintiffs in an amount to be established at trial including, but not limited to, the
7 value of unsold inventory of the Individual Works, estimated at approximately
8 \$4,450,000, the market for which Mahama has devalued and discredited.

9 **SECOND CLAIM FOR RELIEF**

10 **(Fraudulent Inducement)**

11 38. Plaintiffs incorporate by reference Paragraphs 1 through 25 of this
12 Complaint as though fully set forth herein.

13 39. Mahama represented to Plaintiffs that he intended to build a fully
14 integrated artist studio and living space with money Plaintiffs provided, and that he
15 would fulfill his obligations under the Contract by authenticating the Individual
16 Works and the California Works, thereby enabling Plaintiffs to establish a market
17 for those pieces, which were to be exclusively sold by Plaintiffs.

18 40. In reasonable reliance on Mahama's representations, Plaintiffs spent
19 hundreds of thousands of dollars to purchase and import the Lots, assemble and
20 erect the Installation Pieces for the Exhibition, promote and host the Exhibition, and
21 to create the Individual Works and the California Works. In the process, Plaintiffs
22 helped to transform a virtually unknown Ghanaian man in his twenties into an
23 internationally successful artist.

24 41. Mahama's representations were false when made to Plaintiffs.
25 Specifically, on information and belief, Mahama had no intention of allocating any
26 of the money Plaintiffs paid directly to him for the construction of a studio, instead
27 using the money in investments. Mahama further falsely represented that he
28 intended to fulfill his obligations under the Contract by signing the Individual

1 Works and the California Works, thereby enabling Plaintiffs to create a market for
2 the authentic pieces.

3 42. Mahama's true intentions regarding his participation in the Exhibit and
4 in authenticating the stretched pieces were also deceptive. On information and
5 belief, Mahama secretly sold numerous artworks, for tens of thousands of dollars, to
6 collectors in California at or around the time the Exhibition was being held.
7 Mahama thus had no intention of honoring his agreement of exclusivity with
8 Plaintiffs. On the contrary, Mahama used Plaintiffs to bring him to prominence and
9 wasted no time going behind their backs to start reaping the benefits of his new-
10 found fame.

11 43. But for Mahama's deceptive representations as to his intent to fulfill his
12 contractual obligations, Plaintiffs would not have invested the substantial amounts
13 of time, money and effort required to create a name for Mahama and establish a
14 market for his work.

15 44. As a result of Mahama's actions as hereinabove alleged, Plaintiffs
16 suffered damages, in an amount to be established at trial, in that they were
17 fraudulently induced into investing substantial sums of money to bring him into the
18 Western art world, only to have him disavow his relationship with Plaintiffs in an
19 attempt to discredit and to devalue the artwork they paid for – as well as claim
20 ownership of artwork they paid for – all in order to benefit himself at Plaintiffs'
21 expense and to their considerable financial detriment.

22 Plaintiffs are entitled to, and hereby seek, in addition to compensatory
23 damages, punitive damages as a result of Mahama's fraudulent conduct herein on
24 grounds that such conduct was knowing, willful, malicious and specifically
25 intended to cause harm to Plaintiffs and did, in fact, cause harm to Plaintiffs.
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1 **THIRD CLAIM FOR RELIEF**
2 **(Commercial Disparagement)**

3 45. Plaintiffs incorporate by reference Paragraphs 1 through 25 of this
4 Complaint as though fully set forth herein.

5 46. On information and belief, Mahama has publicly stated that the
6 Individual Works and the California Works are not authentic, and that he is the
7 owner of the Installation Pieces. Further, Mahama has made disparaging statements
8 about Plaintiff Simcor and its member, Stefan Simchowitz, to various artists in
9 Ghana and elsewhere with whom Simcor works that they should not do business
10 with Simcor because of Simcor's improper and dishonest business practices. Upon
11 information and belief, these disparaging statements have been made starting mid-
12 January 2015 to the present.

13 47. Mahama's statements are knowingly, demonstrably false because he
14 was handsomely paid for the materials for the Installation Pieces and because he
15 personally authenticated the Individual Works by signing them himself.

16 48. Mahama's false statements were made with the express intention of
17 eliminating the market for the inventory of Individual Works and the California
18 Works in Plaintiffs' possession while increasing the market for his own, competing
19 artworks.

20 49. As a direct and proximate result of Mahama's actions as hereinabove
21 alleged, Plaintiffs have suffered damages in an amount to be established at trial
22 including, but not limited to, the value of unsold inventory of the Individual Works,
23 estimated at approximately \$4,450,000, the market for which Mahama has devalued
24 and discredited by his false and disparaging statements. In addition, Plaintiffs stand
25 to suffer additional losses for which Mahama will be held liable if the Individual
26 Works Plaintiffs already sold are deemed non-authentic, causing Plaintiffs to refund
27 to the buyers the sale prices of those works.

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FIFTH CLAIM FOR RELIEF

(Specific Performance)

55. Plaintiffs incorporate by reference Paragraphs 1 through 25 of this Complaint as though fully set forth herein.

56. Plaintiffs and Mahama entered into a valid and binding Contract as alleged above.

57. Plaintiffs have performed and are continuing to perform all of their obligations under the Contract.

58. In addition to Mahama’s contractual breaches as alleged above, Mahama failed and refused to sign the California Works, thereby placing those works’ authenticity in question. Each of the unsigned pieces was created at the same time, in the same place, by the same person (Atkins), in the same manner, from the same materials, and for the same cost to Plaintiffs as the works Mahama did sign. On information and belief, Mahama did not provide any reason why he failed to sign the California Works.

59. Bearing Mahama’s signature to verify their authenticity and provenance, the California Works may be sold for approximately \$16,700 each. Without his signature, the pieces are simply jute coal sacks mounted to wooden frames, which impacts their commercial value.

60. In light of the foregoing, Plaintiffs seek an order for specific performance requiring Mahama to either sign the California Works or otherwise provide sufficient documentation to attest to their authenticity and provenance. Alternatively, in addition to the other contractual damages prayed for herein, Plaintiffs seek from Mahama the equivalent value of 15 signed Individual Works, an amount equal to at least \$250,500.

1 **SIXTH CLAIM FOR RELIEF**

2 **(Declaratory Relief)**

3 61. Plaintiffs incorporate by reference Paragraphs 1 through 25 of this
4 Complaint as though fully set forth herein.

5 62. As alleged hereinabove, Plaintiffs paid Mahama \$148,500 for the Lots,
6 two of which were assembled and erected at Plaintiffs' expense as the Installation
7 Pieces, which pieces are owned by Plaintiffs.

8 63. Also alleged hereinabove, the Individual Works and the California
9 Works were created with Mahama's knowledge, consent, oversight and approval.
10 Following their creation Mahama authenticated the Individual Works by personally
11 signing them. Overall, Plaintiffs spent approximately \$225,000 in payments to
12 Mahama, in paying for and importing the Lots, creating the Installation Pieces,
13 promoting and hosting the Exhibit, and creating the Individual Works and the
14 California Works.

15 64. Despite the foregoing, on information and belief, Mahama now asserts
16 ownership of the Installation Pieces and disputes the authenticity of the Individual
17 Works and the California Works.

18 65. Absent a declaration that the Individual Works and the California
19 Works are authentic, Plaintiffs will suffer millions of dollars in damages because
20 they will not be able to sell their inventory of unsold Individual Works and
21 California Works.

22 66. In addition, absent a declaration that the Individual Works are
23 authentic, Plaintiffs may be required to refund the payments received from buyers of
24 the 27 Individual Works already sold.

25 67. An actual and justiciable controversy exists between the parties as to
26 copyright ownership of the Installation Pieces as well as the pieces themselves.

27 68. An actual and justiciable controversy exists between the parties as to
28 the authenticity of the Individual Works and the California Works. Plaintiffs

1 therefore seek a declaration that: (1) Plaintiffs own the Installation Pieces, and
2 (2) the Individual Works and the California Works are, in fact, authentic.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiffs pray for judgment as follows:

5 1. On the first claim for breach of contract, for an order for actual
6 damages in the amount Plaintiffs have been damaged as a result of Mahama's
7 breach of the Contract, in an amount to be proved at trial but estimated at
8 approximately \$4,450,000;

9 2. On the second claim for fraudulent inducement, for an order for
10 actual damages as a result of Mahama's fraudulently inducing Plaintiffs to enter and
11 perform under the Contract, in an amount to be proved at trial but estimated at
12 approximately \$4,450,000, plus punitive damages.

13 3. On the third claim for commercial disparagement, for an order for
14 actual damages and punitive damages as a result of Mahama's malicious and
15 knowingly false statements regarding the authenticity of the Individual Works and
16 the California Works;

17 4. On the fourth claim for unfair competition, for an order requiring
18 Mahama to pay restitution for amounts Plaintiffs expended in connection with the
19 Installation Pieces, the Individual Works and the California Works, and enjoining
20 Mahama from engaging in unfair competitive business practices including, without
21 limitation, falsely representing that the Individual Works and the California Works
22 are not authentic;

23 5. On the fifth claim for specific performance, for an order requiring
24 Mahama to either sign the California Works or otherwise provide sufficient
25 documentation to attest to their authenticity and provenance or, alternatively, in
26 addition to the other contractual damages prayed for herein, the equivalent value of
27 15 signed Individual Works, an amount equal to at least \$250,500;

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6. On the sixth claim for declaratory relief, for an order declaring that:
(1) Plaintiffs own the Installation Pieces, and (2) the Individual Works and the California Works are authentic;
7. For costs of suit herein incurred;
8. For attorneys’ fees on claims allowing such fees; and
9. For such other and further relief as the Court deems just.

DAVID STEINER & ASSOCIATES

By: /s/ David P. Steiner
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THE RUDD LAW FIRM, A P.C

By: /s/ Christopher L. Rudd
CHRISTOPHER L. RUDD
Attorney for Plaintiff SIMCOR LLC

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JURY TRIAL DEMAND

Plaintiffs request trial by jury of all issues so triable.

DAVID STEINER & ASSOCIATES, PLC

By: /s/ David P. Steiner
DAVID P. STEINER
JONATHAN BALFUS
Attorney for Plaintiffs SIMCOR LLC
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