

paintings on wood and canvas, and various additional mixed media (the “Art”), and all rights relating thereto, that the late Thornton Dial (“Mr. Dial”) created during his lifetime, which Art is in Defendants’ possession, custody or control.

2. Plaintiffs seek a preliminary injunction to prevent Defendants from disposing of or otherwise alienating or damaging any of the Art pending resolution of this action.

3. Plaintiffs seek damages from Defendants for their breaches of the Consignment of Art Act, and for their breaches of their duties owed to Mr. Dial and Plaintiffs, as well as attorneys’ fees and costs of this action.

PARTIES, JURISDICTION AND VENUE

4. Plaintiff D. Dial is the personal representative of the Plaintiff Estate, and administration of the Estate is currently pending in the Probate Court of Jefferson County, Alabama, Bessemer Division, case number 2016-048363.

5. Plaintiffs R. Dial, D. Dial, T. Dial, and M. Dial are all residents of Bessemer, Alabama.

6. Defendant Arnett is a Georgia resident who resides at and may be served at 222 14th Street, Apartment 221, Atlanta, Georgia 30309. Arnett is subject to the jurisdiction and venue of this Court.

7. Dashwood is a Georgia corporation duly authorized to transact business in the State of Georgia with its principal place of business located at 1454 English Street, NW, Atlanta, Georgia 30318. Dashwood is subject to the jurisdiction and venue of this Court. Dashwood may be served by serving its registered agent, William Arnett, at 222 14th Street, Apartment 221, Atlanta, Georgia 30309.

8. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1332, as Plaintiffs and Defendants have a diversity of citizenship and the amount in controversy exceeds \$75,000.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) and (d).

CONSIGNMENT OF ART ACT

10. In 1995, the Georgia Consignment of Art Act went into effect. O.C.G.A. § 10-1-520 *et seq.* (the “Art Act”).

11. Under the Art Act, “art dealer” means a person engaged in the business of selling works of art. O.C.G.A. § 10-1-521(1).

12. Under the Art Act, “artist” means the person who creates a work of art, or, if such person is deceased, such person's heir, legatee, or personal representative. O.C.G.A. § 10-1-521(2).

13. Under the Art Act, “Consignment” means that no title to, estate in, or right to possession of the work of art superior to that of the consignor shall vest in the consignee, notwithstanding the consignee's power or authority to transfer and convey to a third person all of the right, title, and interest of the consignor in and to such work of art. O.C.G.A. § 10-1-521(3).

14. Under the Art Act, “value of the work of art” means an amount agreed upon by written contract as the monetary worth of a work of art which amount shall be used in determining damages in the instance of a violation of this article by an art dealer and shall not be used for any other purpose. O.C.G.A. § 10-1-521(6).

15. Notwithstanding any custom, practice, or usage of the trade to the contrary, whenever an artist delivers or causes to be delivered a work of art of the artist's own creation to an art dealer in this state for the purpose of exhibition or sale, or both, on a commission, fee, or other basis of compensation, the delivery to and acceptance of such work of art by the art dealer shall constitute a consignment, unless the delivery to the art dealer is pursuant to an outright sale for which the artist receives or has received full compensation for the work of art upon delivery. O.C.G.A. § 10-1-522.

16. An art dealer may accept a work of art on a fee, commission, or other compensation basis on consignment from the artist who created the work of art

only if prior to or at the time of acceptance the art dealer enters into a written contract with the artist establishing: (1) the value of the work of art; (2) the time within which the proceeds of the sale are to be paid to the artist if the work of art is sold; and (3) the minimum price for the sale of the work of art. O.C.G.A. § 10-1-523(a).

17. If an art dealer violates O.C.G.A. § 10-1-523, a court may, at the request of the artist, void the obligation of the artist to that art dealer or to a person to whom the obligation is transferred other than a holder in due course. O.C.G.A. § 10-1-523(b).

18. A consignment of a work of art shall result in all of the following: (1) the art dealer, after delivery of the work of art, shall constitute an agent of the artist for the purpose of sale or exhibition of the consigned work of art within this state; (2) the work of art shall constitute property held in trust by the consignee for the benefit of the consignor and shall not be subject to claim by a creditor of the consignee; (3) the consignee shall be responsible for the loss of, or damage to, the work of art; and (4) the proceeds from the sale of the work of art shall constitute funds held in trust by the consignee for the benefit of the consignor. Such proceeds shall first be applied to pay any balance due to the consignor, unless the consignor expressly agrees otherwise in writing. O.C.G.A. § 10-1-524.

19. A work of art received as a consignment shall remain trust property, notwithstanding the subsequent purchase thereof by the consignee directly or indirectly for the consignee's own account, until the price is paid in full to the consignor. If such work is thereafter resold to a bona fide purchaser before the consignor has been paid in full, the proceeds of the resale received by the consignee shall constitute funds held in trust for the benefit of the consignor to the extent necessary to pay any balance still due to the consignor and such trusteeship shall continue until the fiduciary obligation of the consignee with respect to such transaction is discharged in full. O.C.G.A. § 10-1-525.

20. Any provision of a contract or an agreement whereby the consignor purports to waive any provision of the Art Act, except as to a cooperative contract, is void. O.C.G.A. § 10-1-526.

21. Any art dealer who violates the Art Act is liable to the artist in an amount equal to: (1) fifty dollars; and (2) the actual damages, if any, including the incidental and consequential damages sustained by the artist by reason of the violation, and reasonable attorney's fees.

FACTUAL ALLEGATIONS

22. Mr. Dial was born on September 10, 1928 and died on January 25, 2016.

23. Mr. Dial was a pioneering and prominent African-American artist whose Art has been acquired by various museums, including the Museum of Modern Art, the Whitney Museum of American Art, the Smithsonian American Art Museum, the American Folk Art Museum, and the High Museum of Art.

24. In the late 1980s Mr. Dial came to the attention of Arnett.

25. Arnett befriended Mr. Dial.

26. Over time, Arnett sought to bring Mr. Dial's Art to national prominence.

27. Over many years, Mr. Dial delivered, or caused to be delivered, his Art to Arnett.

28. Arnett took delivery of almost all of Mr. Dial's Art.

OCTOBER 2008 DOCUMENT

29. On or about October 19, 2008, a document titled "Agreement Between William S. Arnett Family and the Thornton Dial Family" was prepared ("October 2008 Document"). A copy of the October 2008 Document is attached hereto as Exhibit A (excepting the third page of the document and Exhibit A to October 2008 Document relating to redemption of a building from tax foreclosure, which are missing).

30. The October 2008 Document states that it is a summary of the Dial Family Art Purchase Agreement.

31. The October 2008 Document states that it will be the basis for preparing the “necessary agreements, documents for implementing the these [sic] transaction points.”

32. The October 2008 Document identifies the parties to the intended agreement to include the Arnett Family (William Arnett and his four sons), the Dial Family (Thornton Dial and his children), and Tinwood Arts, Inc. (“Tinwood”), with Tinwood being the party that would own the Arnett family art, including the Dial Art to be purchased. Tinwood would control the Dial family art retained by the Dial family.

33. The October 2008 Document references “current existing ownership of the Dial Art” as being owned 50% by the Arnett Family and 50% by the Dial Family.

34. The October 2008 Document purports to allow the Dial family to retain 25% of the “Dial Family Art,” which was stated to equal 1/8 of all Dial Art (termed therein as the “Dial Retained Art”).

35. The October 2008 Document provides that the Dial Retained Art was to be selected by Arnett and held by Arnett – and “locked up” for 15 years.

36. Under the October 2008 Document, no Dial Retained Art could be sold unless Arnett agreed to the sale and price.

37. If any Dial Retained Art were sold, Arnett would receive a commission equal to 50% of the disposition price.

38. Under the October 2008 Document, all currently existing Dial Art was to be immediately turned over to Arnett.

39. The October 2008 Document did not reflect or evidence an outright sale of Art because Mr. Dial did not receive full compensation for the Art upon delivery.

40. To the extent that the October 2008 Document is valid, because it did not reflect an outright sale of Art, Mr. Dial's delivery to and Defendants' acceptance of the Art constituted a consignment of the Art.

41. The October 2008 Document did not comply with the Art Act.

42. The October 2008 Document did not set forth the value of any of Mr. Dial's Art.

43. The October 2008 Document did not set forth the time within which the proceeds of the sale of Mr. Dial's Art were to be paid if Art were sold.

44. The October 2008 Document did not set forth the minimum price for the sale of Mr. Dial's Art.

45. Defendants' violations of the Art Act allow Plaintiffs to void any obligations of Mr. Dial and Plaintiffs to Defendants arising out of or relating to the October 2008 Document and allow Plaintiffs to recover all Art delivered to Defendants and to recover damages.

AUGUST 2012 ART PURCHASE AGREEMENT

46. On or about August 29, 2012, what purports to be an Art Purchase Agreement ("APA") was entered into by and between Dashwood, Mr. Dial and his children. A copy of the APA is attached hereto as Exhibit B.

47. The APA was prepared by Defendants.

48. The APA describes itself as an amendment to the October 2008 Document, and states that the APA replaces and supersedes the October 2008 Document.

49. The APA purports to control the Art that Mr. Dial created throughout his life up to January 1, 2011 ("Pre-2011 Art"), including but not limited to Mr. Dial's drawings on paper, sculptures in mixed media, paintings on wood and canvas, and various additional mixed media.

50. The APA states that Mr. Dial wished to sell to Dashwood certain interests and rights with respect to the Art.

51. The APA states that Arnett and Dashwood have at all times dealt with all members of the Dial family fairly and equitably. APA, ¶ 1.1.

52. The statement set forth in paragraph 51 is untrue.

53. The APA states that “All transactions regarding the sale, publicity, and publication of Mr. Dial’s art have been done in a manner that fairly and equitably rewarded Mr. Dial and the Dial Family and served their best long-term interests.” APA, ¶ 1.1.

54. The statement quoted in paragraph 53 is untrue.

55. The APA states that Mr. Dial and each of the Dial children acknowledge that they have been amply compensated for works of Art created by Mr. Dial between 1987 and 1997. APA, ¶ 1.1.

56. The statement set forth in paragraph 55 is untrue.

57. The APA states that as of the date of the APA, Mr. Dial and each of the Dial children acknowledged that they had been fully compensated for all Art that had been published in all books and catalogs, including but not limited to Souls Grown Deep Volume I, Souls Grown Deep Volume II, Image of the Tiger, Thornton Dial in the 21st Century, Hard Truths, and Creation Story (excluding pieces made after January 1, 2011). APA, ¶ 1.1.

58. The statement set forth in paragraph 57 is untrue.

59. The APA states that Mr. Dial and each of the Dial children acknowledge that in addition to works on paper by Mr. Dial made between 1990 and 1997, Dashwood (or Mr. Arnett personally) owned 500 works on paper made from 1998 through 2009. APA, ¶ 1.1.

60. The statement set forth in paragraph 59 is untrue.

61. The APA states that the “purpose of this Agreement is to provide additional compensation to them for unpublished works of Art created after 1997 that are not covered by the terms of this contract.” APA, ¶ 1.1.

62. The APA states, “The parties to the contract agree that Crossing Waters, finished in January 2011, belongs to the Souls Grown Deep Foundation.”

63. The statement quoted in paragraph 62 is untrue because, under the Art Act, the delivery of Crossing Waters to Defendants was not pursuant to an outright sale for which Mr. Dial received full compensation.

64. Mr. Dial’s delivery to Defendants and their acceptance of Crossing Waters constituted a consignment under the Art Act.

65. A press release dated April 25, 2017, issued by the High Museum of Art, states that it received 13 works of Art by Mr. Dial, including Crossing Waters, as part of a gift and purchase from the Souls Grown Deep Foundation.

66. Under the Art Act, as agents, Defendants held Crossing Waters, among other Art, in trust for the benefit of Mr. Dial (and Plaintiffs) and had no title or right to sell and/or donate Crossing Waters, among other Art, to the Souls Grown Deep Foundation and/or to The High Museum of Art.

67. Plaintiffs are the owners of and have title to Crossing Waters, among other Art, in the possession of the High Museum of Art.

68. Defendants are obligated under the Art Act and otherwise under Georgia law to return Crossing Waters, among other Art, or to pay Plaintiffs the full value of Crossing Waters, among other Art, that Defendants donated and/or sold directly or indirectly to the Souls Grown Deep Foundation and/or to the High Museum of Art.

69. The APA states that “Mr. Dial and each of the Dial children agrees not to make disparaging statements about Mr. Arnett or Dashwood regarding any alleged action or omission of any kind whatsoever occurring before the date of this agreement, regardless of the alleged truth of such statements, and agrees not to make disparaging statements about Mr. Arnett or Dashwood of any kind whatsoever unless such statements are purely of fact and not opinion and can be proved by an overwhelming preponderance of the evidence. Breach of this

paragraph shall be a material breach of this agreement resulting in forfeiture of the full purchase price.” APA, ¶ 1.1.

70. The APA provides that Dashwood will pay to Mr. Dial the sum of \$2 million, less advances made to members of the Dial family prior to the date of the APA totaling \$52,499.99, for a net purchase price of \$1,947,500.01 (the “Purchase Price”), as provided in article II. APA, ¶ 1.1a.

71. The APA provides that upon execution of the APA, Mr. Dial and each of the Dial children would transfer his or her entire interest in the Art Mr. Dial created prior to January 1, 2011 to Dashwood, and, to the extent of his or her entire interest in the copyrights in such works, granted to Dashwood a perpetual, nonexclusive, royalty-free license to reproduce, distribute, display, exploit, and use images of such works without monetary payment. APA, ¶ 1.1b.

72. The APA provides that for Mr. Dial’s Art created after January 1, 2011, Dashwood and Mr. Dial would each have a one-half undivided interest in all right, title and interest in such Art. APA, ¶ 1.1c.

73. The APA states that a complete list of Art created after January 1, 2011, was attached as exhibit B to the APA, and the parties agreed that exhibit B would continue to grow and such list would be timely updated as Mr. Dial created additional Art. APA, ¶ 1.1c.

74. An exhibit B was not attached to the APA at the time of its execution.

75. The Purchase Price was not paid to Mr. Dial contemporaneously with his delivery of the Art to Defendants.

76. The payment of the Purchase Price for the non-exclusive licenses and for the purchase and transfer of ownership of the Art referenced in the APA, was to be paid to Mr. Dial over a period of 20 years, beginning on April 1, 2012. APA, ¶ 2.1.

77. The balance of the Purchase Price was to be paid in monthly installments of \$8,333.33. APA, ¶ 2.1.1.

78. The monthly payment of \$8,333.33 was not guaranteed. *Id.*

79. The APA provides that the failure of Dashwood to make a monthly payment would not be grounds to rescind the APA, and would not be deemed a breach of the APA so long as the purchase price was paid in full by April 1, 2032. *Id.*

80. According to the APA, all works of Art, including all works one-half owned by Mr. Dial, were to be kept, stored and maintained by Dashwood. APA, ¶ 3.1.

81. Dashwood drafted the APA to provide that it had no responsibility for loss, theft, or damage to the Art resulting from any cause, including, but not

limited to, the acts or omissions of Dashwood or any of its members, employees, affiliated entities, agents, representatives, attorneys or assigns. *Id.*

82. The exculpatory provision set forth in paragraph 81 violates the Art Act.

83. If Mr. Dial or his family desired to possess, use or display a piece of Art, prior written approval had to be obtained from Dashwood. APA, ¶ 3.1.1.

84. The APA prohibits Mr. Dial, the Thornton Dial family, and/or the Dial children from selling, gifting or otherwise disposing of any piece of Art, including that Art in which they have a one-half interest, without consultation and prior written approval of Dashwood. APA, ¶ 3.2.

85. Dashwood drafted the APA to require Mr. Dial, the Thornton Dial family and/or the Dial children to acknowledge that Dashwood had the exclusive right to control the introduction of a piece of Art into the marketplace. *Id.*

86. Dashwood drafted the APA to grant Dashwood the sole authority to decide, in its sole discretion, whether to sell any work of Art allegedly owned entirely by it and the terms of sale, including the sales price. APA, ¶ 4.2.

87. Dashwood and Richard Dial, acting on behalf of the Dial family, in their respective sole discretion, had the joint authority to decide whether to sell any

work of Art owned one-half by Dashwood and the terms of sale, including the sales price. *Id.*

88. The APA grants Dashwood “the exclusive right to act as dealer . . . for any artwork of any kind whatsoever created by any Party . . . other than Mr. Dial” and appoints Dashwood as “the sole and absolute grantee of the non-exclusive licenses granted above.”

89. The APA is void, *inter alia*, because it is an unreasonable restraint of trade in violation of Georgia public policy. O.C.G.A. § 13-8-2.

90. The APA is void, *inter alia*, because it violates Georgia public policy as reflected in the Art Act.

91. According to the APA, all proceeds from sales of Art owned entirely by Dashwood would belong solely to Dashwood. *Id.*

92. All proceeds from sales of Art owned one-half by Dashwood were to be divided equally between Dashwood and Mr. Dial, or his estate if he were then deceased, after the deduction of any and all fees, costs or expenses incurred in connection with such sale and/or commissions to any dealer. *Id.*

93. The APA provides that Mr. Dial, the Thornton Dial family, and/or the Dial children agree to and do indemnify and hold Dashwood, Mr. Arnett, the Arnett family, the Arnett children and their children, members, employees,

attorneys, agents, representatives, subsidiaries, affiliated entities, assigns and designees, harmless from and against any and all claims, demands, causes of action, costs and/or expenses, including not limited to attorneys' fees, arising from a breach by the aforementioned of any representation, warranty or obligation contained in the APA, or from the exercise of any rights granted to Dashwood, Mr. Arnett, or the Arnett family. APA, ¶ 5.2.

94. Under the APA, Defendants have no reciprocal indemnification obligations in favor of Mr. Dial, the Thornton Dial family, and/or the Dial children.

95. The APA reinforces the exculpatory language referenced in paragraphs 81 and 93, above, stating, "For the avoidance of doubt, Mr. Dial, the Thornton Dial family, the Dial children and each Dial child expressly releases Dashwood, Mr. Arnett, the Arnett family, any Arnett children, and the members, employees, agents, representatives, subsidiaries of any affiliated entities, assigns, and/or designees from any and all claims in connection with this Agreement, including the not limited to claims for breach of contract, unjust enrichment, quantum meruit and/or attorney's fees, as well as any other claim of any kind whatsoever arising before the date of this Agreement." APA, ¶ 5.2.

96. Paragraph 5.2 of the APA is void and unenforceable because its terms are unconscionable and violate the public policy of the State of Georgia.

97. The APA did not reflect or evidence an outright sale of the Art because Mr. Dial did not receive full compensation for the Art upon delivery.

98. To the extent that the APA is valid, because it did not provide for an outright sale of Art, Mr. Dial's delivery to and Defendants' acceptance of Art constitute a consignment of said Art.

99. The APA does not comply with and violates the Art Act.

100. The APA does not set forth the value of any of Mr. Dial's Art.

101. The APA did not set forth the time within which the proceeds of the sale of Mr. Dial's Art were to be paid if Art were sold.

102. The APA did not set forth the minimum price for the sale of Mr. Dial's Art.

103. Defendants' violations of the Art Act allow Plaintiffs to void any obligations of Mr. Dial and Plaintiffs to Defendants arising out of or relating to the APA and allow Plaintiffs to recover all Art delivered to Defendants and to recover damages.

EXHIBIT A TO APA

104. The APA includes a one-page document labeled exhibit A, which purports to be a bill of sale and transfer of Art from Thornton Dial and the Thornton Dial family to Dashwood.

105. This bill of sale purports to transfer all of Mr. Dial's ownership interest in all of his Art created prior to January 1, 2011 to Dashwood, and to irrevocably transfer an undivided one-half interest in all of his Art created after January 1, 2011 to Dashwood.

106. The bill of sale did not reflect or evidence an outright sale of the Art because Mr. Dial did not receive full compensation for the Art upon delivery.

107. To the extent that the bill of sale is valid, because it did not reflect or evidence an outright sale of Art, Mr. Dial's delivery to and Defendants' acceptance of Art constitute a consignment of said Art.

108. The bill of sale does not comply with the Art Act.

109. The bill of sale does not set forth the value of any of Mr. Dial's Art.

110. The bill of sale did not set forth the time within which the proceeds of the sale of Mr. Dial's Art were to be paid if Art were sold.

111. The bill of sale did not set forth the minimum price for the sale of Mr. Dial's Art.

112. Defendants' violations of the Art Act allow Plaintiffs to void any obligations of Mr. Dial and Plaintiffs to Defendants arising out of or relating to the bill of sale and allow Plaintiffs to recover all Art delivered to Defendants and to recover damages.

EXHIBIT B AS OF JULY 31, 2013

113. A document labeled EXHIBIT B, dated July 31, 2013, which was not appended to the APA, recites that the parties agreed that it was in their best interests to revise the division of Art between Mr. Dial and Dashwood. A copy of EXHIBIT B is attached hereto as Exhibit C.

114. EXHIBIT B states that pursuant to a further agreement (the "Further Agreement"), the parties had agreed that the Art created on or after January 2, 2011 would be divided into two parts by the mutual agreement of Arnett, Dashwood and Richard Dial, with one part owned by Dashwood in its entirety and one part owned by Mr. Dial in his entirety.

115. The Further Agreement was attached as Schedule 1 to EXHIBIT B. A copy of Schedule 1 is attached hereto as part of Exhibit D.

116. Schedule 1 recites that each of the parties to the agreement acknowledge that all Art created by Mr. Dial on or after January 1, 2011 is owned, as of the date of the agreement, one-half by Mr. Dial and one-half by Dashwood, by and through a prior agreement between Mr. Dial, Arnett, and Dashwood, for good and valuable consideration given by Arnett and Dashwood.

117. Schedule 1 provides that the parties further agreed that such Art would be divided into two groups, one to be owned by Mr. Dial, and the other by Dashwood, as determined by the mutual agreement of Mr. Arnett, Dashwood, and Mr. Dial's son, R. Dial.

118. Schedule 1 provides that Mr. Dial agreed that Dashwood would have the exclusive right to act as the dealer for the works of art owned by Mr. Dial, and to house, manage, and sell such Art, under its customary terms as in effect from time to time, including commissions.

119. Schedule 1 provides that it is governed by the laws of Georgia.

120. Schedule 1 did not reflect or evidence an outright sale of the Art because Mr. Dial did not receive full compensation for the Art upon delivery.

121. To the extent that Schedule 1 is valid, because it did not reflect or evidence an outright sale, Mr. Dial's delivery to and Defendants' acceptance of Art constitute a consignment of said Art.

122. Schedule 1 does not comply with and violates the Art Act.

123. Schedule 1 does not set forth the value of any of Mr. Dial's Art.

124. Schedule 1 did not set forth the time within which the proceeds of the sale of Mr. Dial's Art were to be paid if Art were sold.

125. Schedule 1 did not set forth the minimum price for the sale of Mr. Dial's Art.

126. Defendants' violations of the Art Act allow Plaintiffs to void any obligations of Mr. Dial and Plaintiffs to Defendants arising out of or relating to Schedule 1 and allow Plaintiffs to recover all Art delivered to Defendants and to recover damages.

127. A new division of Art was set forth in a document labeled Schedule 2 to EXHIBIT B. A copy of Schedule 2 is attached as part of Exhibit D.

128. Schedule 2 lists 71 pieces as Dial Art and 62 pieces as Dashwood Art. All pieces are dated between 2011 and 2013.

129. Schedule 2 did not reflect or evidence an outright sale of the Art because Mr. Dial did not receive full compensation for the Art upon delivery.

130. To the extent that Schedule 2 is valid, because it did not reflect or evidence an outright sale of Art, Mr. Dial's delivery to and Defendants' acceptance of Art constitute a consignment of said Art.

131. Schedule 2 does not comply with the Art Act.

132. Schedule 2 does not set forth the value of any of Mr. Dial's Art.

133. Schedule 2 did not set forth the time within which the proceeds of the sale of Mr. Dial's Art were to be paid if Art were sold.

134. Schedule 2 did not set forth the minimum price for the sale of Mr. Dial's Art.

135. Defendants' violations of the Art Act allow Plaintiffs to void any obligations of Mr. Dial and Plaintiffs to Defendants arising out of or relating to Schedule 2 and allow Plaintiffs to recover all Art delivered to Defendants and to recover damages.

COUNT I – CONSIGNMENT OF ART ACT CLAIMS

136. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 135 above, as if set forth fully herein.

137. Dashwood is an art dealer under the Art Act.

138. Arnett is an art dealer under the Art Act.

139. Mr. Dial is an artist under the Art Act, and since he is deceased, his heirs and his personal representative are now deemed to be the artist.

140. The value of Mr. Dial's Art delivered to Defendants is believed to exceed millions of dollars.

141. Defendants violated the provisions of the Art Act, as alleged herein.

142. Dashwood and/or Arnett gifted and/or sold Art to a foundation called Souls Grown Deep, which in turn sold and/or gifted Art to museums without the right or title to do so and which retain Art in violation of Plaintiffs' rights to the Art.

143. Defendants and Souls Grown Deep have financially benefited (without any right or entitlement) from the gifts and/or sales of Art to museums.

144. Defendants' violations of the Art Act allow Plaintiffs to void any obligations of Mr. Dial and Plaintiffs to Defendants arising out of or relating to the October 2008 Document, the APA, Exhibit A to the APA, EXHIBIT B, and Schedule 1 and Schedule 2 thereto, and allow Plaintiffs to recover all Art delivered to Defendants and to recover damages.

145. The APA is void, *inter alia*, because it violates Georgia public policy as reflected in the Art Act, which allows Plaintiffs to recover all Art delivered to Defendants.

146. Under the Art Act, Defendants held the Art in trust for Mr. Dial and Plaintiffs.

147. Defendants are liable under the Art Act for all loss of or damage to the Art.

148. All proceeds from the sale of the Art constitute funds held in trust by Defendants for the benefit of Mr. Dial and Plaintiffs.

149. Defendants are liable to Plaintiffs for an amount equal to fifty dollars and the actual damages, including incidental and consequential damages, sustained by Mr. Dial and Plaintiffs by reason of Defendants' violations of the Art Act.

150. Under the Art Act, Defendants are liable for Plaintiffs' reasonable attorneys' fees.

151. Plaintiffs' seek damages from Defendants under the Art Act in an amount to be proven at trial.

COUNT II – REPLEVIN

152. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 151 above, as if set forth fully herein.

153. Mr. Dial, and now his Estate, has been and continues to be the owner of the Art, which Art constitutes unique chattels.

154. Ownership of the Art was not transferred from Mr. Dial or Plaintiffs to Defendants.

155. Any purported transfer of ownership or title from Mr. Dial or Plaintiffs to Defendants was voidable and/or void *ab initio*.

156. Defendants did not obtain good or valid title to the Art.

157. Defendants have no right to the continued possession of any of the Art.

158. Defendants' current possession and control over the Art is without legal basis or right.

159. Plaintiffs' rights to the Art are superior to Defendants' claim of rights to the Art.

160. Plaintiffs have made demand upon Defendants for return of the Art to Plaintiffs, as the rightful owners of the Art. A copy of the letter sent on Plaintiffs' behalf demanding the return of the Art is attached hereto as Exhibit E.

161. Defendants have failed and refused to return the Art. A copy of the letter refusing to return the Art is attached hereto as Exhibit F.

162. Plaintiffs are entitled to the immediate return of all Art in Defendants' possession, custody or control.

163. Defendants have placed certain Art for sale/consignment with other art dealers.

164. Plaintiffs are entitled to the immediate return of all Art that Defendants have placed for sale/consignment with other art dealers.

COUNT III – CONVERSION

165. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 164 above, as if set forth fully herein.

166. At all relevant times, Mr. Dial and Plaintiffs have had a complete right of ownership in and complete right to possess the Art.

167. At all relevant times, Mr. Dial's and Plaintiffs' rights in the Art have been and are superior to Defendants' rights in the Art.

168. At all relevant times, Defendants never acquired or had any title or interest in or to the Art.

169. Plaintiffs have demanded the return of the Art. *See* Exhibit E.

170. Defendants are obligated to return the Art in their possession and/or control to Plaintiffs and, for sold or donated Art, to pay fair market value of such Art to Plaintiffs.

171. Defendants have improperly and without justification failed and refused to return the Art or pay the fair market value to Plaintiffs.

172. Defendants have dealt with the Art in a manner inconsistent with the rights of Plaintiffs, have interfered with the rights of Plaintiffs, and have acted to the exclusion of Plaintiffs' rights to the Art.

173. Defendants have thereby converted the Art and/or the proceeds from the sale of the Art to their own use and benefit to the detriment of Plaintiffs' ownership and possessory rights to the Art.

174. As a result of Defendants' conversion, Plaintiffs have been damaged in an amount to be proven at trial.

COUNT IV – UNJUST ENRICHMENT

175. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 174 above, as if set forth fully herein.

176. Defendants have benefited from and been unjustly enriched by their unlawful and improper actions in converting the Art.

177. Defendants' unjust enrichment has come at Plaintiffs' expense and to Plaintiffs' detriment.

178. As a result of Defendants' unjust enrichment, Plaintiffs have been damaged in an amount to be proven at trial.

COUNT V – ACCOUNTING

179. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 178 above, as if set forth fully herein.

180. Under the Art Act, the Art was held in trust by Defendants for the benefit of Mr. Dial and Plaintiffs.

181. Under the Art Act, the proceeds from the sale of the Art became funds held in trust for the benefit of Mr. Dial and Plaintiffs.

182. Defendants have failed to hold the Art in trust and have failed to hold the Art sale proceeds in trust.

183. Plaintiffs do not know what Art is still held or controlled by Defendants, Plaintiffs do not know what Art has been sold by Defendants, Plaintiffs do not know what the price was for Art sold or donated for tax benefits by Defendants, and Plaintiffs do not know what proceeds or tax benefits Defendants have realized and which Defendants may hold.

184. Plaintiffs demand Defendants to render and file an accounting of (1) all Art delivered to Defendants at any time; (2) all Art that Defendants have sold, donated, or otherwise transferred at any time, indirectly or directly, and to whom said Art was sold, donated, or otherwise transferred; (3) all transactions of any nature relating to the Art, including sale, use or licensing of copyrights to said Art;

(4) Art sold or donated by any entity to any museum; (5) Art that is to be sold or donated by any entity to any museum; (6) Art placed on consignment for sale at any gallery or retail establishment; and (7) all proceeds and/or tax benefits received from the sale and/or donation of Art at any time.

COUNT VI – BREACH OF FIDUCIARY DUTIES

185. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 184 above, as if set forth fully herein.

186. Defendants violated their private duties incident to and created by Georgia statute(s), including the Art Act, and/or from relations created by contract, thereby committing a tort against Plaintiffs. *See* O.C.G.A. § 51-1-8.

187. Plaintiffs' relationship with Defendants was the type of special or confidential relationship giving rise to a duty not to violate the private rights of Mr. Dial and Plaintiffs.

188. Mr. Dial and Plaintiffs justifiably reposed their trust and confidence in Defendants, such that Defendants owed them the fiduciary duty of utmost good faith and a duty not to self-deal at the expense of and with prejudice to Mr. Dial and Plaintiffs. *See* O.C.G.A. § 23-2-58. Defendants knew or should have known

that the contractual terms they drafted and their dealings with Mr. Dial and Plaintiffs were violations of the Art Act and Georgia law.

189. Defendants' actions as alleged herein constitute breaches of their fiduciary duties and their duties of utmost good faith owed to Mr. Dial and to Plaintiffs.

190. Plaintiffs have been damaged by Defendants' breaches of the fiduciary duties and the duties of utmost good faith in an amount to be proven at trial.

COUNT VII – UNCONSCIONABILITY

191. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 190 above, as if set forth fully herein.

192. The October 2008 Document and the APA and its related documents are procedurally unconscionable based on the education, intelligence, business acumen and experience of the parties, their relative bargaining power, and the oppressiveness of the terms of said documents.

193. The October 2008 Document and the APA and its related documents are substantively unconscionable based on the lack of commercial reasonableness

of the contract terms, the purpose and effect of the terms, and the allocation of the risks between the parties.

194. The October 2008 Document and the APA and its related documents are agreements that no sane man not acting under a delusion would make and no honest man would take advantage of.

195. The October 2008 Document and the APA and its related documents are so one-sided as to be unconscionable under the circumstances existing at the time of making the contracts.

196. Because the October 2008 Document and the APA and its related documents are unconscionable, they are void and/or voidable.

197. Plaintiffs are entitled to recover all Art that was delivered to Defendants because of the unconscionable contracts.

COUNT VIII – DECLARATORY RELIEF

198. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 197 above, as if set forth fully herein.

199. Plaintiffs request, and are entitled to, a declaration that the contractual documents referenced above, including the APA, are void because they violate the public policy of the State of Georgia.

200. The contractual documents referenced above, including the APA, are void and unenforceable because they are unconscionable, they purport to indemnify Defendants for their own negligence or fault, they are an unreasonable restraint on trade, and they violate the public policy of Georgia as expressed in the Art Act. *See* O.C.G.A. § 13-8-2.

201. Plaintiffs request the Court to declare that Defendants did not have title to the Art and had no power to transfer Art (by sale or gift) to others.

COUNT IX - INJUNCTIVE RELIEF

202. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 201 above, as if set forth fully herein.

203. Plaintiffs have demanded that Defendants cease and desist from alienating the Art or taking any action to the detriment of the well-being of the Art. *See* Exhibit E.

204. Defendants have refused the demand, *see* Exhibit F, and upon information and belief are alienating the Art despite the demand and despite Plaintiffs' right, title and interest in and to the Art.

205. The Art is unique and irreplaceable.

206. Upon information and belief, the Art is not being stored properly and safely.

207. Upon information and belief, the Art is not being insured.

208. There is a serious risk of loss of some or all of the Art.

209. Plaintiffs have no adequate remedy at law.

210. Plaintiffs seek a preliminary and permanent injunction to stop

Defendants from alienating any Art and requiring Defendants to turn over all Art to a secure, independent third party for safe, insured storage until such time that this case is resolved.

COUNT X – ATTORNEYS’ FEES

211. Plaintiffs incorporate herein by reference each and every allegation set forth in paragraphs 1 through 210 above, as if set forth fully herein.

212. Because Defendants’ malfeasance constitutes bad faith and because they have been stubbornly litigious and caused Plaintiffs unnecessary trouble and expense, Plaintiffs are entitled to recover their expenses of litigation, including their attorneys’ fees pursuant to O.C.G.A. § 13-6-11.

213. Under Georgia’s Art Act, Plaintiffs are entitled to recover their expenses of litigation, including their attorneys’ fees.

COUNT XI -- PUNITIVE DAMAGES

214. Plaintiffs incorporate herein by reference each and every allegation set forth in paragraphs 1 through 213 above, as if set forth fully herein.

215. Defendants' actions alleged herein demonstrate knowing and intentional malfeasance and show a willful, wanton and conscious disregard for the rights of Mr. Dial and Plaintiffs.

216. Defendants' actions show intentional and willful misconduct, malice, fraud, wantonness, oppression or that entire want of care that would raise the presumption of a conscious indifference to the consequences of their actions so as to entitle Plaintiffs to punitive damages against all Defendants in accordance with Georgia law in an amount to be determined by the enlightened conscience of a fair and impartial jury.

217. Defendants have acted with the specific intent to harm Mr. Dial and Plaintiffs such that Plaintiffs are entitled to an award of punitive damages in excess of the \$250,000 statutory cap.

WHEREFORE, Plaintiffs request that this Court:

1. Allow Plaintiffs a trial by jury;

2. Issue a preliminary and permanent injunction to restrain and enjoin Defendants, their agents, employees, successors, affiliates, attorneys, and all persons in active concert and participation with them, from alienating any Art and requiring Defendants to turn over all Art to a secure, independent third party for safe, insured storage until such time that this case is resolved;

3. Require Defendants to return to Plaintiffs all Art in Defendants' possession, custody or control, or Art that Defendants have placed for sale/consignment with other art dealers;

4. Require an accounting of (1) all Art delivered to Defendants at any time; (2) all Art that Defendants have sold, donated, or otherwise transferred at any time, indirectly or directly, and to whom said Art was sold, donated, or otherwise transferred; (3) all transactions of any nature relating to the Art, including sale, use or licensing of copyrights to said Art; (4) Art sold or donated by any entity to any museum; (5) Art that is to be sold or donated by any entity to any museum; (6) Art placed on consignment for sale at any gallery or retail establishment; and (7) all proceeds and/or tax benefits received from the sale and/or donation of Art at any time;

5. Declare that the contractual documents referenced herein, including the APA, are void and unenforceable because they are unconscionable, they

purport to indemnify Defendants for their own negligence or fault, they are an unreasonable restraint on trade, and they violate the public policy of Georgia as expressed in the Art Act;

6. Declare that Defendants did not have title to the Art and had no power to transfer (by sale or gift) to others;

7. Award Plaintiffs all damages they have suffered, in an amount to be proven at trial;

8. Award Plaintiffs punitive damages in excess of the statutory cap of \$250,000 in an exact amount to be determined at trial;

9. Award Plaintiffs their reasonable attorney's fees and expenses of litigation; and

10. Award Plaintiffs such other and further relief as this court may deem proper.

[SIGNATURE BLOCK ON NEXT PAGE]

Respectfully submitted this 2nd day of October, 2017.

STROTT & DILLON, LLC

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CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies the foregoing document has been prepared with one of the font and point selections (Times New Roman, 14 point) approved by the Court in Local Rule 5.1(C).