

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**JOSEPH MCLEOD (c.o.b. as MASLAK MCLEOD GALLERY), JACKIE BUGERA,
BUGERA HOLDING LTD. (c.o.b. as BEARCLAW ART GALLERY), JAMES WHITE,
WHITE DISTRIBUTION LIMITED, DONNA CHILD, ARTWORLD INC. (c.o.b. as
ARTWORLD OF SHERWAY), SUN NAM KIM ("SUNNY KIM"), and GALLERY
SUNAMI INC. (c.o.b as GALLERY SUNAMI)**

Plaintiffs

- and -

**RITCHIE SINCLAIR (also known as "RITCHIE ROSS SINCLAIR", "RICHIE
SINCLAIR", "STARDREAMER", and "BLACKMAGIC")**

Defendant

STATEMENT OF CLAIM

Notice of action issued on November 21, 2008

1. The Plaintiff, Joseph McLeod, claims against the Defendant, Ritchie Sinclair:
 - i. general damages for defamation and intentional interference with economic relations in the amount of \$2,000,000;
 - ii. special damages for lost sales of Norval Morrisseau paintings in the amount of \$1,000,000, further particulars of which will be provided at trial; and
 - iii. punitive damages in the amount of \$200,000.

2. The Plaintiffs, Jackie Bugera and Bugera Holding Ltd., claim against Sinclair:
 - i. general damages for defamation and intentional interference with economic relations in the amount of \$2,000,000;
 - ii. special damages for lost sales of Norval Morrisseau paintings in the amount of \$1,000,000, further particulars of which will be provided at trial; and
 - iii. punitive damages in the amount of \$200,000.
3. The Plaintiffs, James White and White Distribution Limited, claim against Sinclair:
 - i. general damages for defamation and intentional interference with economic relations in the amount of \$2,000,000;
 - ii. special damages for lost sales of Norval Morrisseau paintings in the amount of \$1,000,000, further particulars of which will be provided at trial; and
 - iii. punitive damages in the amount of \$200,000.
4. The Plaintiffs, Donna Child and Artworld Inc., claim against Sinclair:
 - i. general damages for defamation and intentional interference with economic relations in the amount of \$2,000,000;
 - ii. special damages for lost sales of Norval Morrisseau paintings in the amount of \$1,000,000, further particulars of which will be provided at trial; and
 - iii. punitive damages in the amount of \$200,000.
5. The Plaintiffs, Sun Nam Kim and Gallery Sunami Inc., claim against Sinclair:
 - i. general damages for defamation and intentional interference with economic relations in the amount of \$2,000,000;

- ii. special damages for lost sales of Norval Morrisseau paintings in the amount of \$1,000,000, further particulars of which will be provided at trial; and
 - iii. punitive damages in the amount of \$200,000.
6. The individual Plaintiffs, Joseph McLeod, Jackie Bugera, James White, Donna Child, and Sun Nam Kim, each claim against Sinclair \$200,000 in aggravated damages, for a total of \$1,000,000.
7. All of the Plaintiffs claim against Sinclair:
 - i. a permanent injunction restraining Sinclair from making, publishing, distributing or in any way communicating any defamatory statements or assertions whether oral or written and whether distributed via the internet or otherwise about any or all of the Plaintiffs, the Plaintiffs' businesses, or any paintings or other artworks which are or have been purchased, owned, consigned to, possessed or sold by any of the Plaintiffs;
 - ii. a mandatory order requiring Sinclair to take all necessary steps to immediately remove from the website, www.morrisseau.com, all of the words, references, statements, images or other information that is contained on the website, www.morrisseau.com, relating in any way to the Plaintiffs, the Plaintiffs' businesses, or any paintings or other artworks which are or have been purchased, owned, consigned to, possessed or sold by any of the Plaintiffs and not to re-post, broadcast or communicate any of the words or images described herein;
 - iii. pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*;
 - iv. costs of this action on a substantial indemnity basis; and
 - v. such further and other relief as this Honourable Court deems just.

I. The Parties

8. All of the Plaintiffs are in the business of buying and selling the artwork of Norval Morrisseau in the secondary art market. What this means is that the Plaintiffs obtain paintings from other collectors and re-sell them. The Plaintiffs do not currently obtain the paintings from the artist or his estate, although two of the Plaintiffs, Gallery Sunami and Bearclaw Art Gallery, did previously obtain artworks directly from Morrisseau.

Joseph McLeod

9. The Plaintiff, Joseph McLeod, is the owner and sole proprietor of Maslak McLeod Gallery ("Maslak McLeod") which is located at 118 Scollard St. in Toronto Ontario. Maslak McLeod's business consists of buying and selling artwork, including the paintings of Norval Morrisseau. The gallery sells art to the public as well as to museums and other galleries.

10. McLeod began buying and selling artwork by Morrisseau under the business name "Maslak McLeod" in the early 1960's. He opened Maslak McLeod as a full time gallery in 1994. He has been selling paintings by Morrisseau for almost 48 years.

11. McLeod currently owns or has for sale approximately 100 Norval Morrisseau paintings valued at approximately \$2 million.

12. McLeod is a recognized expert in appraising and authenticating paintings by Aboriginal artists including Norval Morrisseau. McLeod authenticates all of the Morrisseau paintings owned and sold by Maslak McLeod by examining them and carefully tracing their provenance.

Jackie Bugera and Bugera Holding Ltd.

13. The Plaintiff, Jackie Bugera, is the sole shareholder, Director and Officer of Bugera Holding Ltd., operating as Bearclaw Art Gallery ("Bearclaw"). Bearclaw is located at 10403 124 Street, Edmonton Alberta. Bugera began working in this gallery

twenty-eight years ago (in 1980) and purchased the gallery from her parents in June 2007.

14. Bearclaw's business consists of buying and selling artwork, including the paintings of Norval Morrisseau. Bearclaw sells art to the public. Currently, Bearclaw has approximately 45 Morrisseau paintings in the gallery for sale. The total retail value of these paintings is approximately \$750,000. Bearclaw keeps careful records of all art purchased and sold.

15. Bearclaw only obtains Morrisseau paintings from select suppliers who have excellent reputations and extensive experience buying and selling Morrisseau paintings. Some of the Morrisseau paintings that Bearclaw has bought and/or sold have been authenticated by experts on Morrisseau's artwork. In other cases, Bearclaw has authenticated the paintings by carefully investigating their provenance.

James White and White Distribution Inc.

16. The Plaintiff, James White, is the sole shareholder, Officer and Director of White Distribution Limited ("White Distribution"), which is located at 16568 Mount Hope Road in Caledon, Ontario.

17. White Distribution's business consists of buying and selling the paintings of Norval Morrisseau. White has been buying and selling Morrisseau paintings since 2000, and he incorporated White Distribution for this purpose in 2006. White Distribution sells paintings on consignment through a number of art galleries. What this means is that galleries agree to display paintings owned by White Distribution for sale to the public. Generally the sale price of each painting is divided 50/50 between the gallery and White Distribution.

18. Since 2000, White has bought and put up for sale approximately 250 paintings by Morrisseau. White Distribution currently owns approximately 160 Morrisseau paintings which have a retail value of approximately \$2.5 million.

19. White Distribution retains recognized experts to authenticate the Norval Morrisseau paintings it owns and sells.

Donna Child and Artworld Inc.

20. The Plaintiff, Donna Child, is the Gallery Director of Artworld of Sherway ("Artworld"), which is a division of Artworld Inc., and is located at Sherway Gardens, 25 The West Mall #207 in Toronto Ontario. Child's husband, Brian Child, is the sole shareholder, Director and Officer of Artworld Inc. He opened Artworld 16 years ago in 1992 and the gallery has remained in its original location since that time. Donna Child became the Gallery Director of Artworld in 1995.

21. Artworld's business consists of buying and selling original artwork of approximately thirty artists, including the paintings of Norval Morrisseau. Artworld sells art to the public, and occasionally on consignment to other galleries. On average, Artworld sells 1,000 to 2,000 pieces of art each year.

22. Artworld keeps careful records of all art purchased and sold. It is Artworld's practice to carefully investigate the history of each piece of art it purchases, consigns or sells in order to ensure its authenticity.

Sun Nam Kim and Gallery Sunami Inc.

23. The Plaintiff, Sun Nam ("Sunny") Kim, is the sole shareholder, Director and Officer of Gallery Sunami Inc, which carries on business as Gallery Sunami. He is also the sole shareholder, Director and Officer of Artcube Inc.

24. Gallery Sunami has two locations. In 1997 it opened at the first location at 5322 Yonge Street, in North York. The gallery moved in 2006 to 6035 Yonge Street, Toronto. In December 2006 Gallery Sunami opened a second location called "Artcube" located at 2387 Weston Road, Toronto. The Artcube location is used only for exhibitions.

25. Sunami's business consists of buying and selling original artwork, including the paintings of Norval Morrisseau. Approximately 25% of Sunami's 2007 sales were of Norval Morrisseau artwork.

26. Kim has sold hundreds of Morrisseau paintings since 1997 and is considered an expert on Norval Morrisseau's work. Kim is able to identify and authenticate original Norval Morrisseau artworks.

27. Kim has carefully examined each piece of Norval Morrisseau artwork that Sunami has bought, consigned, or sold and has satisfied himself that each work is an original painting by Morrisseau. Until this dispute, Kim's assessments of Morrisseau paintings had never been challenged.

Ritchie Sinclair.

28. The Defendant, Ritchie Sinclair, is an individual who resides at 30 Hillsboro Ave., Apt. 1604, Toronto, Ontario, M5R 1S7. Sinclair is the owner and creator of the website, www.morrisseau.com, which is the subject of this action.

29. Sinclair refers to himself as "Stardreamer", "Ritchie Ross Sinclair", "Richie Sinclair", and "Blackmagic". Sinclair posts statements and images on morrisseau.com under the names "Stardreamer", "Blackmagic" and other aliases.

30. Sinclair considers himself an artist and has previously made unsuccessful attempts to have his artwork shown at Maslak McLeod and Artworld of Sherway.

31. Sinclair is not an expert on the artwork of Norval Morrisseau. He does not have expertise in identifying or authenticating original artworks by Norval Morrisseau.

II. Defamatory Content on Sinclair's Website

32. On or around September 16, 2008, Sinclair began posting defamatory statements and assertions on his website, morrisseau.com, about the Plaintiffs and the artwork that

the Plaintiffs deal with in their respective businesses. Specifically, Sinclair has posted images and statements which allege that the Norval Morrisseau paintings that are or have been owned, consigned to, possessed or sold by the Plaintiffs are in fact stolen, counterfeit, fraudulent, forged, or otherwise inauthentic. Sinclair has posted hundreds of statements on his website suggesting that the Plaintiffs are or have been fraudulently selling these allegedly inauthentic paintings.

33. The website contains over one thousand images of paintings which Sinclair claims are inferior counterfeits, stolen, forgeries, frauds or otherwise inauthentic. Sinclair regularly updates the website and posts new allegations relating to the Plaintiffs and their businesses. Thus, it is impossible to comprehensively catalogue each defamatory statement on the website, since Sinclair regularly posts new defamatory content. The following is a description of specific defamatory statements and assertions relating to each of the Plaintiffs that are or have been posted on the website to date. The list of defamatory statements which are or have been posted on the website will be updated at trial.

Maslak McLeod Gallery

34. Sinclair initially posted at least 44 images on the website of paintings which are or were possessed, owned, sold or for sale by Maslak McLeod. The retail value of the paintings in question is \$868,000.

35. Sinclair described 37 of the paintings shown in the images on the website as “Forged Morrisseaus” and the remaining seven paintings as “Stolen Morrisseaus.” A list of these defamatory statements is attached hereto as Schedule “A”. The plain and ordinary defamatory meaning of these statements is that the paintings in question are stolen or forged.

36. The implied defamatory meaning of these statements is that Maslak McLeod is selling stolen or forged artworks to the public. The 45 paintings in question are one of a kind paintings that are or were possessed, owned, sold or for sale by Maslak McLeod.

Anyone in the Canadian art community who viewed the website, and particularly anyone who deals with Norval Morrisseau's artwork, would know that the paintings were or are for sale by Maslak McLeod and would understand the implied defamatory meaning of these statements.

37. On October 9, 2008 Sinclair was served with a Notice of Defamation on behalf of McLeod pursuant to section 5(1) of the *Libel and Slander Act*, R.S.O., 1990, c.L12. To date, Sinclair has not responded to this Notice of Defamation and has continued to post additional untrue allegations on his website relating to McLeod and his gallery as set out below.

38. Counsel for McLeod determined that since the company hosting the website is governed by U.S. law, and the images had been improperly taken from the Maslak McLeod website and gallery publications, it was possible pursuant to a Takedown Notice procedure set out in the *Digital Millennium Copyright Act*, 112 Stat. 2860 (1998), to have the images removed from the website. On October 10, 2008 counsel for McLeod initiated the takedown procedure, and the offending images were removed from the website by October 15, 2008.

39. However, by October 28, 2008 Sinclair had posted at least 18 more images on morrisseau.com of Morrisseau paintings that are or were possessed, owned, sold or for sale by Maslak McLeod. The total retail value of these paintings is \$283,000.

40. Sinclair entitled each of the 18 additional images "Inferior Counterfeit Morrisseau". A list of these defamatory statements is attached hereto as Schedule "B". The plain and ordinary defamatory meaning of these statements is that the paintings in question are not authentic artworks by Norval Morrisseau.

41. The implied defamatory meaning of these statements is that Maslak McLeod is selling inferior counterfeit artworks to the public. For the reasons set out in paragraph 36 above, viewers of the website would understand the implied defamatory meaning of these statements.

42. On October 29, 2008 McLeod's counsel again engaged the U.S. process for takedown of this material, and by October 30, 2008 the offending images and statements were removed from the website.

43. However, following the second takedown process Sinclair has continued to post untrue allegations on the website about McLeod and his gallery. The most recent postings have even more clearly identified Maslak McLeod as being involved alleged in theft and forgery. On or around November 11, 2008, Sinclair posted the following on the main page (homepage) of morrisseau.com:

Stolen art for sale? These murals were unseen since 1985... Why? Joe McLeod's campaign to sell them at 100K+ began days after Morrisseau's death...Why?

44. The plain and ordinary defamatory meaning of this statement is that McLeod is on a campaign to sell stolen Norval Morrisseau artworks to the public at inflated prices, and that he began this campaign immediately after Morrisseau's death.

45. Under this posting, Sinclair, posting as "Stardreamer" wrote the following comment:

Joe McLeod chose to ignore Norval's signed letter sent to him and his gallery. The letter demands that they cease and desist publishing pictures of Norval's art (or inferior counterfeit art that they attribute to Norval Morrisseau). Norval, as the creator, owns the copyright.

Maslak McLeod Gallery have no right to publish any of Norval's images...

>>>>>>> Stardreamer

46. The plain and ordinary defamatory meaning of this statement is that Norval Morrisseau believed that Maslak McLeod was publishing pictures on its website and in its gallery catalogues of inferior counterfeit artworks attributed to Morrisseau and that McLeod ignored Morrisseau's demand that Maslak McLeod cease this practice.

47. In addition, Sinclair has posted at least 12 additional images of paintings which Maslak McLeod owns, has sold, or is attempting to sell. The total retail value of these paintings is \$185,000. Sinclair has described each of these paintings as "Inferior

Counterfeit Morrisseau.” A list of these defamatory statements is attached hereto as Schedule “C”. The defamatory meaning of this statement is the same as described above in paragraph 40. When one of the images is selected, a new page opens with a larger image of the selected painting along with the following commentary:

Description: INFERIOR COUNTERFEIT NORVAL MORRISSEAU >>> In the opinion of Norval Morrisseau protege, Ritchie "Stardreamer" Sinclair this is an image of an INFERIOR COUNTERFEIT NORVAL MORRISSEAU painting. >>>> Inferior counterfeit >>>> means counterfeit, fake, false, falsified, unauthorized, ungenune, unreal, forged, forgery, descending into the inferior regions of the earth, poor in quality, substandard, less important, valuable, or worthy, bottom-rung, less, lesser, lower, nether, peon, subordinate, under, underneath, bent, bogus, copied, crock, deceptive, delusive, delusory, faked, fishy, fraudulent, imitation, misleading, mock, pseudo, sham.>>> ...

The same or substantially the same commentary appears next to each of the images except for the image entitled “Inferior Counterfeit Morrisseau #919” which did not open onto a new page when selected.

48. The plain and ordinary defamatory meaning of these statements is that the paintings in question are fake, fraudulent, counterfeit, forged or otherwise inauthentic.

49. The implied defamatory meaning of these statements is that Maslak McLeod is selling inferior counterfeit artworks to the public. For the reasons set out in paragraph 36 above, viewers of the website would understand the implied defamatory meaning of these statements.

50. All of the allegations on the website relating to McLeod and his gallery are untrue. McLeod has authenticated all of the paintings in question. Neither McLeod nor his gallery has bought, sold or consigned a forged, counterfeit or otherwise inauthentic Morrisseau artwork.

Bearclaw Gallery

51. Sinclair has posted at least 57 images on the website, morrisseau.com, of at least 45 paintings which are either owned, consigned or have been sold by Bearclaw. The total retail value of the paintings in question is \$563,300.

52. Sinclair entitled each of the images “Inferior Counterfeit Morrisseau”. A list of these defamatory statements is attached hereto as Schedule “D”. When each of the images was selected, a new page opened with a larger image of the selected painting accompanied by the following commentary:

INFERIOR COUNTERFEIT NORVAL MORRISSEAU... In the opinion of Norval Morrisseau protégé, Ritchie “Stardreamer” Sinclair this is an image of an INFERIOR COUNTERFEIT NORVAL MORRISSEAU painting. Inferior counterfeit.... Means counterfeit, fake, false, falsified, unauthorized, unguenuine, unreal, forged, forgery, descending into the inferior regions of the earth, poor in quality, substandard, less important, valuable or worthy, bottom-rung, less, lesser, lower, nether, peon, subordinate, under underneath, bent, bogus, copy, crock, deceptive, delusive, illusory, faked, fishy, fraudulent, imitation, misleading, mock, pseudo, sham...

The same or substantially the same title and commentary appeared next to each of the images in question.

53. The plain and ordinary defamatory meaning of the title, “Inferior Counterfeit Morrisseau” and the accompanying description is that the paintings in question are fake, fraudulent, counterfeit, forged or otherwise inauthentic. The implied defamatory meaning of these statements is that Bearclaw is fraudulently selling counterfeit artworks to the public. The 45 paintings in question are one of a kind paintings that are or were possessed, owned, sold or for sale by Bearclaw. For the reasons set out in paragraph 36 above, viewers of the website would understand the implied defamatory meaning of these statements.

54. On November 4, 2008 Sinclair was served with a Notice of Defamation on behalf of Bugera and Bearclaw pursuant to section 5(1) of the *Libel and Slander Act*. To date, Sinclair has not responded to this Notice of Defamation and has continued to post additional untrue allegations on his website relating to Bugera and Bearclaw as set out below.

55. Since the images in question were taken without permission from Bearclaw's website, on November 4, 2008 Bearclaw's counsel used the U.S. takedown process

described above in an effort to have the offending images removed from the website. The offending images and statements were temporarily removed on November 5, 2008.

56. However, on or around November 8, 2008, Sinclair posted on the website at least 36 new images entitled "Inferior Counterfeit". A list of these defamatory statements is attached hereto as Schedule "E". Each posting contained the image of a "stop sign" upon which the following statement appeared:

IMAGE COPYRIGHT – BEARCLAW GALLERY- THIS IMAGE HAS BEEN REMOVED. THERE ARE SO MANY INFERIOR COUNTERFEIT MORRISSEAUS TO CHOOSE FROM... AND IT SEEMED SO IMPORTANT TO THIS GALLERY THAT THEY SWORE UNDER PENALTY OF PERJURY, THAT THEY HOLD EXCLUSIVE COPYRIGHT TO THIS IMAGE THAT... IT SEEMED WISE TO COMPLY. IMAGE COPYRIGHT – BEARCLAW GALLERY

57. The plain and ordinary defamatory meaning of the statement "BearClaw Gallery... There are so many inferior counterfeit Morrisseaus to choose from..." is that Bearclaw is selling numerous fake inferior paintings and passing them off as authentic works by Norval Morrisseau.

58. Sinclair's new postings cause even greater damage to Bugera and Bearclaw's reputation, in that the name of the gallery is written next to the allegation that "there are so many inferior counterfeit Morrisseaus to choose from", and the description of an "Inferior Counterfeit Morrisseau".

59. 24 of the "stop sign" images are accompanied by the same or substantially the same commentary set out in paragraph 52, which has the defamatory meaning set out in paragraph 53. The exact commentary is set out in the attached Schedule "E".

60. All of the allegations on the website relating to Bugera and Bearclaw are untrue. Neither Bugera nor Bearclaw has bought, sold or consigned a forged, counterfeit or otherwise inauthentic Morrisseau artwork.

White Distribution

61. Sinclair has posted hundreds of images and statements on the website relating to paintings that are or were owned, possessed or sold by White Distribution. For the purposes of this action, White has identified 24 images on the website of paintings that are or were owned or sold by White Distribution. The total retail value of these paintings is \$753,500.

62. Sinclair entitled each of the images in question "Inferior Counterfeit Morrisseau". A list of these defamatory statements is attached hereto as Schedule "F". When one of the images is selected, a new page opens with a larger image of the selected painting, and a commentary appears which reads as follows:

INFERIOR COUNTERFEIT NORVAL MORRISSEAU... In the opinion of Norval Morrisseau protégé, Ritchie "Stardreamer" Sinclair this is an image of an INFERIOR COUNTERFEIT NORVAL MORRISSEAU painting. Inferior counterfeit... Means counterfeit, fake, false, falsified, unauthorized, ungenune, unreal, forged, forgery, descending into the inferior regions of the earth, poor in quality, substandard, less important, valuable or worthy, bottom-rung, less, lesser, lower, nether, peon, subordinate, under underneath, bent, bogus, copy, crock, deceptive, delusive, illusory, faked, fishy, fraudulent, imitation, misleading, mock, pseudo, sham....

The same or substantially the same title and commentary appeared next to 21 of the 24 images in question, as set out in the attached Schedule "F".

63. The plain and ordinary defamatory meaning of the title, "Inferior Counterfeit Morrisseau" and the accompanying description is that the paintings in question are fake, fraudulent, counterfeit, forged or otherwise inauthentic. The implied defamatory meaning of these statements is that White Distribution is fraudulently selling counterfeit artworks to the public. The 24 paintings in question are one of a kind paintings that are or were possessed, owned, sold or for sale by White Distribution. For the reasons set out in paragraph 36 above, viewers of the website would understand the implied defamatory meaning of these statements.

64. The image entitled "Inferior Counterfeit Morrisseau #151" contains the following statement in addition to those set out above:

Each Norval Morrisseau inferior painting sold is accompanied by a Certificate Of Authenticity and an Appraisal.

65. The plain and ordinary defamatory meaning of this statement is that the Certificates of Authenticity and Appraisals provided by White Distribution are not genuine and do not indicate that the painting in question is an authentic work by Norval Morrisseau.

66. In addition to the images and statements described above, Sinclair posted the following statement on his website about White under the title: "Inferior counterfeit auctioned off by Jim White.":

Did you buy this 70s style forgery from Jim White? >>>> Titled: >>> Thunderbird Envoke Into After Dimention (suddenly Norval has no idea how to spell!) >>>> Framed acrylic on canvas, signed in syllabics and on verso signed, titled and dated 1979 (I was there...this wasn't!). >>>> Provenance: Gallery Sunami (ARTCUBE), Toronto (as noted by present owner JIM WHITE >>> From his private Collection of fake Morrisseaus, Richmond Hill, Ontario >>>> Condition: DANGEROUS. Sight: 34 3/4"x 52", Frame: 40" x 58" x 2" >>>> >>> Inferior counterfeit >>> means counterfeit, fake, false, falsified, unauthorized, ungenueine, unreal, forged, forgery, descending into the inferior regions of the earth, poor in quality, substandard, less important, valuable, or worthy, bottom-rung, less, lesser, lower, nether, peon, subordinate, under, underneath, bent, bogus, copied, crock, deceptive, delusive, delusory, faked, fishy, fraudulent, imitation, misleading, mock, pseudo, sham. >>> <http://www.liveauctioneers.com/item/5287786>

67. The plain and ordinary defamatory meaning of this posting is that the Plaintiff, James ("Jim") White, fraudulently auctioned off a forged painting and that White has a private collection of fake Morrisseau paintings which he fraudulently sells or auctions to the public.

68. Sinclair, posting as "Stardreamer", wrote the following comment under the above statement :

It actually appears to be Titled" Thunderbird voices to push windigo into afterdimention". [sic] The listing title must have been Jim White's attempt at reading drybrush.

69. The plain and ordinary defamatory meaning of Sinclair's comment is that White made up the listing title of a forged painting in order to fraudulently pass it off as an authentic Morrisseau painting.

70. All of the allegations on the website relating to White and his company are untrue. Neither White nor White Distribution have bought, or sold a forged, counterfeit or otherwise inauthentic Morrisseau artwork. Neither White nor White Distribution auctions Norval Morrisseau paintings nor have they ever possessed, owned or sold the painting that was the subject of the description and commentary set out above at paragraphs 66 to 69.

71. On November 4, 2008 Sinclair was served with a Notice of Defamation on behalf of White and White Distribution pursuant to section 5(1) of the *Libel and Slander Act*. To date, Sinclair has not responded to this Notice of Defamation and has continued to post untrue allegations on his website relating to White and White Distribution.

Artworld of Sherway

72. Sinclair has posted images on the website of at least 36 paintings which are or were possessed, owned or sold by Artworld. The total retail value of the paintings in question is \$572,000.

73. Sinclair entitled each of these images "Inferior Counterfeit Morrisseau". When one of the images was selected, a new page opened with a larger image of the selected painting accompanied by the following commentary:

**Inferior Counterfeit Morrisseau # 351
blackmagic**

Tags: **copy inferior forgery fake sherway 1976**

Description: INFERIOR COUNTERFEIT NORVAL MORRISSEAU Titled: Bear & Salmon Spirits Dance (c. 1976) 31 x 35 >>>> In the opinion of Norval Morrisseau protege, Ritchie "Stardreamer" Sinclair this is an image of an INFERIOR COUNTERFEIT NORVAL MORRISSEAU painting. >>>> Inferior counterfeit >>>> means counterfeit, fake, false, falsified, unauthorized, unguenuine, unreal, forged, forgery, descending into the inferior regions of the earth, poor in quality, substandard, less important, valuable, or worthy, bottom-rung, less, lesser, lower, nether, peon, subordinate, under, underneath, bent, bogus, copied, crock, deceptive, delusive, delusory, faked, fishy, fraudulent, imitation,

misleading, mock, pseudo, sham. >>> Displayed in Toronto at the Art World of Sherway, <http://www.artworldofsherway.com>

The same or substantially the same title and commentary appeared next to each of the images in question. A list of these defamatory statements is attached hereto as Schedule "G".

74. The plain and ordinary defamatory meaning of the title, "Inferior Counterfeit Morrisseau" and the accompanying description is that the paintings in question are fake, fraudulent, counterfeit, forged or otherwise inauthentic. The implied defamatory meaning of these statements is that Artworld is fraudulently selling counterfeit artworks to the public. The 36 paintings in question are one of a kind paintings that are or were possessed, owned, sold or for sale by Artworld. In many cases, Sinclair has explicitly stated that the painting in question is displayed at Artworld of Sherway in Toronto. For these reasons and those set out in paragraph 36 above, viewers of the website would understand the implied defamatory meaning of these statements.

75. On November 4, 2008 Sinclair was served with a Notice of Defamation on behalf of Child and Artworld pursuant to section 5(1) of the *Libel and Slander Act*. To date, Sinclair has not responded to this Notice of Defamation and has continued to post additional untrue allegations on his website relating to Child and Artworld as set out below.

76. Since the images in question were taken without permission from Artworld's website and gallery catalogue, on November 4, 2008 Artworld's counsel used the U.S. takedown process described above in an effort to have the offending images removed from the website. The offending images and statements were temporarily removed on November 5, 2008.

77. However, on or around November 8, 2008, Sinclair posted on the website at least 41 new images entitled "Inferior Counterfeit". A list of these defamatory statements is attached hereto as Schedule "H". Each posting contained the image of a "stop sign" upon which the following statement appeared:

IMAGE COPYRIGHT – ARTWORLD OF SHERWAY- THIS IMAGE HAS BEEN REMOVED. THERE ARE SO MANY INFERIOR COUNTERFEIT MORRISSEAUS TO CHOOSE FROM... AND IT SEEMED SO IMPORTANT TO THIS GALLERY THAT THEY SWORE UNDER PENALTY OF PERJURY, THAT THEY HOLD EXCLUSIVE COPYRIGHT TO THIS IMAGE THAT... IT SEEMED WISE TO COMPLY. IMAGE COPYRIGHT – ARTWORLD OF SHERWAY

78. The plain and ordinary defamatory meaning of the statement “Artworld of Sherway... There are so many inferior counterfeit Morrisseaus to choose from...” is that Artworld is selling numerous fake inferior paintings and passing them off as authentic works by Norval Morrisseau.

79. Sinclair’s new postings cause even greater damage to Child and Artworld’s reputation, in that the name of the gallery is written next to the allegation that “there are so many inferior counterfeit Morrisseaus to choose from”, and the description of an “Inferior Counterfeit Morrisseau”.

80. Each of the “stop sign” images is accompanied by the same or substantially the same commentary set out above in paragraph 73, which has the defamatory meaning set out in paragraph 74. This commentary is set out in the attached Schedule “H”.

81. All of the allegations on the website relating to Child and Artworld are untrue. Neither Child nor Artworld has bought, sold or consigned a forged, counterfeit or otherwise inauthentic Morrisseau artwork.

Gallery Sunami

82. Sinclair has posted at least 70 images on the website of Morrisseau paintings which are or were possessed, owned or sold by Sunami. As a representative sample and for the purposes of this action, Kim has identified 12 images in particular. The total retail value of the paintings in question is \$167,000.

83. Sinclair entitled each of these images “Inferior Counterfeit Morrisseau”. When one of the images is selected, a new page opens with a larger image of the selected painting, and a commentary appears which reads as follows:

Tags: forgeries

Description: 15K for this INFERIOR COUNTERFEIT NORVAL MORRISSEAU painting. >>>> Inferior counterfeit >>>> means counterfeit, fake, false, falsified, unauthorized, ungentuine, unreal, forged, forgery, descending into the inferior regions of the earth, poor in quality, substandard, less important, valuable, or worthy, bottom-rung, less, lesser, lower, nether, peon, subordinate, under, underneath, bent, bogus, copied, crock, deceptive, delusive, delusory, faked, fishy, fraudulent, imitation, misleading, mock, pseudo, sham. >>> - Signed "Copper Thunderbird' in syllabics. DISPLAYED IN TORONTO

The same or substantially the same commentary appears next to each of the images in question, except for the image entitled "Inferior Counterfeit Morrisseau #87", which does not display any commentary. A list of these defamatory statements is attached hereto as Schedule "I".

84. The plain and ordinary defamatory meaning of the titles "Inferior Counterfeit Morrisseau" and the accompanying description is that the paintings in question are fake, fraudulent, counterfeit, forged or otherwise inauthentic. The implied defamatory meaning of these statements is that Sunami is fraudulently selling counterfeit artworks to the public. The 12 paintings in question are one of a kind paintings that are or were possessed, owned, sold by Sunami. For the reasons set out in paragraph 36 above, viewers of the website would understand the implied defamatory meaning of these statements.

85. Sinclair has posted additional statements on the website which directly allege that Kim and his galleries are fraudulently selling fake Morrisseau paintings. On one page with the heading "Inferior Counterfeits at Artcube" Sinclair has posted a statement that "David Morrisseau authenticates and titles these paintings." David Morrisseau is Norval Morrisseau's son and he is also an artist. Sunami Gallery is the exclusive agent for David Morrisseau's work.

86. In another posting on the website which Sinclair has also entitled "Inferior Counterfeits at Artcube", Sinclair has displayed a picture of David Morrisseau seated on a painting. Sinclair has posted a description next to the image which states:

Mr. David Morrisseau posing with what appear to be inferior counterfeit Norval Morrisseau paintings.... There appear to be copies of the old "70's" style "Reforged" and there appear to be fresh paintings like this one that David Morrisseau is sitting on David Morrisseau

authenticates and titles these paintings

87. Another comment posted next to the image states:

There it is.....right there.... I would never let a person "sit" on a painting purported to be a Norval Morriseau" original.....what the hell are you thinking? Especially at \$50,000.00 to \$100,000.00 dollars..... but I must say once again..... a picture tells quite the story wouldn't you say?..... I sure think so..... what lunacy!.....MAJ 2008!

88. On another page on the website, Sinclair has displayed a picture of Kim sitting with Christian Morriseau, another son of Norval Morriseau. The commentary next to the picture states:

Mr. Christian Morriseau posing with what appear to be inferior counterfeit Norval Morriseau paintings....There appear to be fresh paintings behind Artcube owner Sunny who sites [sic] with Christian Morriseau.... David Morriseau authenticates and titles these paintings...

89. Finally, on another page on the website Sinclair has posted the following statement next to an image of David Morriseau:

Mr. David Morriseau posing with what appear to be inferior counterfeit Norval Morriseau paintings... There appear to be fresh paintings like this one the Artcube owner is holding up with David Morriseau.

90. In each of these postings described at paragraphs 85 through 89, Sinclair has posted an excerpt taken from the Artcube website which describes the gallery and its location.

91. The plain and ordinary defamatory meaning of the statements described at paragraphs 85 through 89 is that Kim is selling counterfeit paintings at Artcube including newly painted forgeries of 70's style paintings by Norval Morriseau, and that Kim uses David Morriseau to falsely authenticate and title these forged paintings so that Kim can pass them off to the public as authentic Norval Morriseau artworks.

92. All of the allegations on the website relating to Kim and Sunami are untrue. Kim has authenticated all of the paintings in question as genuine artworks by Norval Morriseau. Neither Kim nor Sunami has bought, sold or consigned a forged, counterfeit or otherwise inauthentic Morriseau artwork.

93. On November 12, 2008 Sinclair was served with a Notice of Defamation on behalf of White and White Distribution pursuant to section 5(1) of the *Libel and Slander Act*. To date, Sinclair has not responded to this Notice of Defamation and has continued to post untrue allegations on his website relating to White and White Distribution.

III. Sinclair has defamed the Plaintiffs

94. Sinclair has posted hundreds of defamatory, libellous allegations about the Plaintiffs and their businesses as described above. These statements and allegations were published by Sinclair without just cause or excuse.

95. These assertions and statements are allegations of fact. The essence of these defamatory statements on morrisseau.com is that the Plaintiffs are fraudulently dealing in stolen, counterfeit or otherwise inauthentic paintings and passing them off as original works by Morrisseau. All of the allegations and assertions in this regard are untrue.

96. Each of the Plaintiffs has rigorous standards for ensuring that the paintings that they buy and sell are authentic. McLeod and Kim are experts in authenticating the works of Norval Morrisseau and have authenticated each of the Morrisseau paintings possessed, owned or sold by their respective galleries.

97. Sinclair is not qualified to identify or authenticate original artworks by Norval Morrisseau. Sinclair has not personally seen or examined most or all of the paintings in question. He has recklessly alleged that the paintings are stolen or forged based solely on his viewing of the images of the paintings displayed on the internet. Sinclair has provided no evidence for his bald allegations, nor could he, as they are manifestly untrue.

98. Furthermore, Sinclair has alleged on his website that Morrisseau paintings are fakes when he had previously endorsed the same paintings as being authentic. He has identified at least two paintings by Norval Morrisseau which are hanging in the National Gallery of Canada as being “forgeries”, “counterfeits” or otherwise inauthentic works. Thus, Sinclair’s bald allegations are not only untrue, they are inconsistent and absurd.

99. Sinclair has acknowledged that he is the operator of morrisseau.com and that he is the author of the allegations on the website that the paintings in question are counterfeit. At all material times, Sinclair had knowledge of and control over the content posted on his website and he could have removed the defamatory content at any time. Sinclair chose not to do so and instead he has continued to publish additional and more harmful defamatory content despite being served with Notices of Defamation from each of the Plaintiffs as set out above.

100. The statements and allegations in question clearly reference the each of the Plaintiffs both explicitly and implicitly, as set out above.

101. Sinclair has communicated his untrue allegations about the Plaintiffs to third parties. Since at least September 16, 2008 up to the present, Sinclair has posted the defamatory content on a public website which is accessible without geographic limitations by any person with a computer. The Plaintiffs have already been contacted by clients and colleagues who have seen Sinclair's allegations on the website and connected them to the Plaintiffs.

102. Child was recently contacted by a client of Artworld who purchased a Morrisseau painting from Artworld. The client advised Child that he had seen the morrisseau.com website and that he was extremely disturbed to see his painting listed on the site as a fake. This was a regular client of Artworld, but he has not returned to the gallery and has not purchased anything from Artworld since this incident.

103. On November 12, 2008, White received the following email from Marlowe Goring, who runs Qualicum Frameworks Gallery, which is one of White Distribution's biggest customers:

Jim,

I realize that the website, morrisseau.com is a joke but I am feilding [sic] calls from longstanding customers regarding the authenticity of their pieces. I have asked stardreamer to take the pieces off his website to no avail. Thus I have taken them off my website and off my gallery floor. I have had one sale go south because of this site,

and I am hoping there will be no more. I am worried about returns of works that are already sold. Is there anything I can do?

Marlowe

104. In other words, the allegations on the website are being read and taken seriously by third parties, including clients of the Plaintiffs. As a direct result of the untrue allegations on the website, Qualicum has taken down all paintings that White Distribution had on consignment at the gallery. These paintings have a retail value of approximately \$200,000.

105. Finally, Sinclair's serious allegations of fraud and misconduct are causing real and substantial harm to the Plaintiffs' reputations and businesses. The Plaintiffs' businesses depend entirely on their reputation for honesty and upon their clients' trust that the Plaintiffs sell authentic paintings. If gallery owners, collectors, or other members of the public come to believe or suspect that the Plaintiffs sell inauthentic artworks, their reputations will be ruined and their businesses will be permanently destroyed.

106. The Canadian art community is a small one. The dealers, galleries and purchasers involved with the purchase and sale of Norval Morrisseau paintings is even smaller. Very few individuals are involved and as a rule, these persons know and rely on one another for business.

107. Sinclair has posted hundreds of statements on his website which wrongly inform all visitors to the website that the paintings owned, sold, or consigned by the Plaintiffs are forged, counterfeit or otherwise inauthentic. These untrue allegations have been read and acted upon by the Plaintiffs' clients and colleagues, and this has seriously harmed the reputation of the Plaintiffs. If these untrue statements continue to be published they will destroy the Plaintiffs' businesses and their livelihood.

108. The Plaintiffs have seen a significant downturn in their sales of Morrisseau paintings since the Defendant began publishing his defamatory statements about the Plaintiffs. As noted, White has lost sales of Morrisseau paintings worth \$200,000 as a

direct result of the allegations on the website. Kim was forced to halt Sunami's sale of 11 Morrisseau paintings worth \$142,000 as a direct result of Sinclair's defamatory allegations.

109. In addition, all of the individual Plaintiffs have suffered distress, anxiety, humiliation, and irreparable damage to their professional reputations as a direct result of Sinclair's defamatory statements on his website.

110. The Plaintiffs claim general damages against Sinclair for defamation as set out above in paragraphs 1 through 5. The Plaintiffs also claim special damages for lost sales of Norval Morrisseau paintings as a result of the defamatory postings on the website, as set out above in paragraphs 1 through 5.

IV. Intentional Interference with Economic Relations

111. The Plaintiffs plead that by posting hundreds of defamatory allegations about the Plaintiffs on his website, Sinclair committed the tort of intentional interference with economic relations.

112. At all material times, Sinclair was aware that the Plaintiffs are engaged in the business of buying and selling the artwork of Norval Morrisseau and that their businesses depend entirely on their reputation for honesty and upon their clients' trust that the Plaintiffs sell authentic paintings.

113. By posting his unsubstantiated defamatory allegations on his website, Sinclair has intentionally set out to destroy the Plaintiffs' professional reputations and their businesses by unlawful means. In effect, Sinclair is telling readers of the site that they should not do business with the Plaintiffs because the Plaintiffs are selling fake Morrisseau paintings.

114. This conclusion is supported by Sinclair's own statements to McLeod. On or around October 7, 2008, Sinclair visited Maslak McLeod Gallery. In light of Sinclair's untrue allegations on morrisseau.com, McLeod asked Sinclair to leave. Sinclair

responded “I’m going to get the Morrisseau establishment.” Sinclair’s unlawful defamatory postings about the Plaintiffs on morrisseau.com escalated following this exchange.

115. As a result of Sinclair’s efforts, the Plaintiffs have suffered economic losses as set out above at paragraphs 104 and 108, further particulars of which will be provided at trial. The Plaintiffs claim general and special damages against Sinclair for intentional interference with economic relations as set out above at paragraphs 1 through 5.

V. Aggravated Damages

116. Sinclair’s actions against the Plaintiffs have been reckless, vindictive and malicious. Sinclair has made no attempt to examine the paintings in question or to review the Plaintiffs’ evidence of the authenticity of the paintings. Instead he has recklessly made bald allegations of fraud based solely on viewing images of the paintings displayed on the internet. Sinclair has either knowingly posted falsehoods or he has shown a reckless disregard for the truth of his allegations.

117. After being served with Notices of Defamation on behalf of each of the Plaintiffs, Sinclair did not remove the defamatory statements or apologize to the Plaintiffs. Rather, he posted additional and more harmful defamatory content about the Plaintiffs.

118. Sinclair has defamed the Plaintiffs for the purpose of interfering with their businesses and destroying their reputations. Sinclair has displayed pictures of the Plaintiffs and published their names as well as the names and addresses of their businesses. He has posted all of this information next to unsubstantiated allegations that the Plaintiffs are engaged in criminal, fraudulent conduct. He has openly stated that his purpose in doing this is to “get” the Plaintiffs.

119. Sinclair has posted all of his allegations on a public website that is available to anyone with a computer. Regardless of the outcome of this action, these untrue

allegations can now be forwarded by others and endlessly republished to an unlimited audience.

120. Sinclair's malicious, intentional conduct, and his reckless disregard for the harm he is causing the Plaintiffs have resulted in the individual Plaintiffs suffering additional anxiety, distress, humiliation and damage to their professional reputations. The individual Plaintiffs claim aggravated damages from Sinclair as set out above in paragraph 6.

VI. Punitive Damages

121. Sinclair's conduct, as set out above, and in particular at paragraphs 94-95, 97-101, 107, 111-115, and 116-120, is sufficiently high-handed, malicious and vindictive that it is deserving of punishment and deterrence. As such, the Plaintiffs claim punitive damages from Sinclair as set out above in paragraphs 1 through 5.

Dated: December 17, 2008

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-and-

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PROCEEDINGS COMMENCED AT
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STATEMENT OF CLAIM

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