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11 THYSSEN-BORNEMISZA
12 COLLECTION FOUNDATION

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 DAVID CASSIRER, AVA
16 CASSIRER, and UNITED JEWISH
17 FEDERATION OF SAN DIEGO
18 COUNTY, a California non-profit
19 corporation,

20 Plaintiffs,

21 vs.

22 THYSSEN-BORNEMISZA
23 COLLECTION FOUNDATION, an
24 agency or instrumentality of the
25 Kingdom of Spain,

26 Defendant.

Case No. 05-cv-03459-JFW (Ex)

**DECLARATION OF THADDEUS J.
STAUBER IN SUPPORT OF
THYSSEN-BORNEMISZA
COLLECTION FOUNDATION'S
MOTION FOR LEAVE TO FILE
FIRST AMENDED ANSWER**

Date: January 12, 2015

Time: 1:30 p.m.

Courtroom: 16

DECLARATION OF THADDEUS J. STAUBER

I, Thaddeus J. Stauber, declare as follows:

1. I am over the age of eighteen and am otherwise competent to make this Declaration. I am an attorney authorized to practice law in the State of California and an associate with Nixon Peabody LLP, attorneys of record for Defendant Thyssen-Bornemisza Collection Foundation (“Foundation”). I make this Declaration based on my personal knowledge and in support of the Foundation’s Motion for Leave to File First Amended Answer.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Foundation’s proposed First Amended Answer.

3. On November 5, 2014, less than a week after the Court granted Plaintiffs’ motion to strike certain affirmative defenses from the Foundation’s Answer, I spoke with Plaintiffs’ counsel, Laura Brill, by telephone.

4. I informed Ms. Brill that the Foundation intends to seek leave to amend its Answer to revise the eight affirmative defenses that the Court found did not provide Plaintiffs with fair notice of the defense. I also informed Ms. Brill that the Foundation would not seek leave to amend the remaining stricken defenses.

5. Ms. Brill responded that if permitted to review a draft of the Amended Answer, Plaintiffs’ might be willing to consider stipulating to the Amended Answer’s filing, thereby saving the parties and the court, significant time.

6. On November 10, 2014, the parties exchanged drafts of their respective portions of the Rule 26(f) report. Both drafts noted that the parties had been discussing the Foundation’s intention to amend its Answer and that the Foundation would provide Plaintiffs with a draft of the Amended Answer.

7. On November 21, 2014, I provided Plaintiffs’ counsel with a draft of the amended Answer, along with a draft motion seeking leave from the court to file an amended Answer. Referencing the parties’ prior discussions regarding the amended Answer, I asked that Plaintiffs’ counsel inform me by November 26, 2014, whether the

1 Foundation would be required to move for leave to amend or whether Plaintiffs' were
2 amenable to stipulate to the amended Answer's filing.

3 8. On November 24, 2014, per Plaintiffs' counsel's request, I provided
4 Plaintiffs' counsel with a redline comparing the draft amended Answer with the
5 Original Answer.

6 9. On November 28, 2014, Ms. Brill informed me by email that Plaintiffs'
7 counsel was still in the process of reviewing the proposed amended Answer. After
8 four paragraphs of questions addressing the merits of the revised affirmative defenses
9 – questions that did not, however, assert that the affirmative defenses failed to provide
10 Plaintiffs with adequate notice – Plaintiffs' counsel stated that the Foundation's
11 proposed amendment is not timely.

12 10. Ms. Brill's e-mail also asserted that the Foundation's proposed
13 amendment is not timely because the Proposed Order that accompanied Plaintiffs'
14 Motion to Strike offered that any amendment to the Answer be filed within fourteen
15 days of the Court's Order. This was the first time a timeliness objection was raised.

16 11. On December 2, 2014, I spoke with Plaintiffs' counsel regarding the
17 Foundation's draft amended Answer and supporting motion seeking leave to amend.

18 12. Counsel for Plaintiffs informed me that they would not stipulate to the
19 filing of the draft amended Answer.

20 13. Attached hereto as Exhibit 2 is a true and correct copy of the Foundation's
21 supplemental response to Plaintiffs' Interrogatories [Set No. 3], Interrogatory No. 18,
22 provided to Plaintiffs on December 5, 2014.

23 14. On December 9, 2014, I provided Plaintiffs' counsel with a revised
24 amended Answer, the Proposed First Amended Answer, which incorporated additional
25 information provided to Plaintiffs' on December 5, 2014, in the Foundation's
26 supplemental response to Plaintiffs' Interrogatory No. 18, along with a draft of the
27 Foundation's motion seeking leave to file First Amended Answer.
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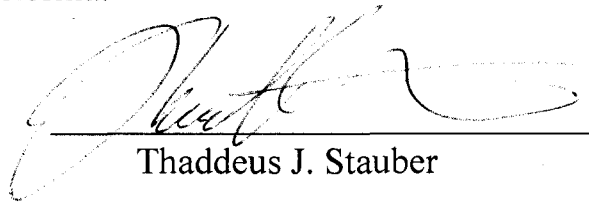
1 15. At that time, I asked Plaintiffs to inform by Friday, December 12, 2014,
2 as to whether they would oppose the Foundation's request for leave to file an amended
3 Answer, as in the event that Plaintiffs intended to oppose the relief sought by the
4 Foundation, the Foundation intended to move for leave to file First Amended Answer
5 on Monday, December 15, 2014.

6 16. That day, Plaintiffs informed me by e-mail that they would consider the
7 request and respond by the end of the week.

8 17. Plaintiffs did not provide the Foundation with a response.

9 18. On Monday, December 15, 2014, Foundation counsel advised Plaintiffs'
10 counsel by telephone message and e-mail that this Motion was being filed.

11
12 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws
13 of the United States of America that the foregoing is true and correct. Executed on
14 December 15, 2014, at Los Angeles, California.

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16 
17 Thaddeus J. Stauber