

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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:
THEODORE GRUNEWALD and PATRICIA
NICHOLSON, :

Plaintiffs, :

-against- :

THE METROPOLITAN MUSEUM OF ART,
THOMAS P. CAMPBELL (DIRECTOR AND CHIEF
EXECUTIVE OFFICER), EMILY RAFFERTY
(PRESIDENT), and DANIEL BRODSKY
(CHAIRMAN OF THE BOARD OF TRUSTEES,
OF THE METROPOLITAN MUSEUM OF ART),

Defendants. :

Index No. :

SUMMONS

Venue is based upon Defendants'
place of business and Plaintiffs'
residences.

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TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon plaintiffs an answer to the complaint in this action within twenty days after the service of this summons and complaint, exclusive of the day of service, where service is made by delivery upon you personally within the state, or within 30 days after completion of service where service is made in any other manner. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
November 8, 2012

WEISS & HILLER, PC
Attorneys for Plaintiffs
600 Madison Avenue
New York, New York 10022
(212) 319-4000

By: 

Michael S. Hiller

To: The Metropolitan Museum of Art
1000 Fifth Avenue
New York, New York 10028-0113

Mr. Thomas P. Campbell
Director and Chief Executive Officer
The Metropolitan Museum of Art
1000 Fifth Avenue
New York, New York 10028-0113

Ms. Emily Rafferty
President
The Metropolitan Museum of Art
1000 Fifth Avenue
New York, New York 10028-0113

Mr. Daniel Brodsky
Chairman of the Board of Trustees
The Metropolitan Museum of Art
1000 Fifth Avenue
New York, New York 10028-0113

Free Admission Requirement in consideration for: (i) permission to use and occupy without charge from the City, the MMA building (“Museum Building”) and the land on which it is situated (“Public Parkland”); and (ii) certain additional, regular and continual funding from the City (“Additional Funding”). The purpose of this arrangement was to establish a museum in New York which would provide free access to the masses (without regard to their financial means) to view and appreciate acclaimed works of art. And the decision to locate the MMA on Public Parkland was intended to facilitate unfettered use of, and access to, the MMA by people who frequent New York’s Central Park.

2. In violation of the Lease and Free Admission Statute, the MMA created, and defendants have implemented and maintained, an admission policy which deceives and defrauds members of the public into believing that they are obligated to pay a fee to obtain admission to the MMA. A recent survey of more than 360 visitors to the Museum Building (“Survey Respondents”) confirms that a stunning 65% paid to become “members” of the MMA because they believed doing so would enable them or a guest to enter the MMA for free -- even though, under the Free Admission Statute and Lease, they were already entitled to free admission without purchasing a membership. Worse, 76% of other Survey Respondents (who did not purchase a membership) responded that they were led to believe that the sum that they paid to the MMA to gain entry was an “admission fee.” Worst of all, a whopping 85% of the Survey Respondents who were not members of the MMA thought that they were *required* to pay a fee to obtain entry to the MMA and view its art, collections and exhibits. Correspondingly, most of the Survey Respondents stated that they were unaware that, on most days of the week, they were entitled to free entry into the MMA to view its art, collections and exhibits.

3. Virtually all of the Survey Respondents visited the MMA on days and at times when, under the Free Admission Statute and Lease, entry into the MMA should have been free and yet an overwhelming majority: (i) believed that they were required to pay an admission fee prior to entry and then, (ii) in compliance with what they believed was a requirement, paid an admission fee.

4. The Survey Respondents include holders of high school, college and post-graduate degrees, and both New York City and non-New York City residents. Members of the general public, regardless of education level or background, have been and, without action from this Court will continue to be, victims of defendants' fraudulent and deceptive business practice of conveying that an admission fee is required, and then charging and receiving it, to enter an institution created for the public. As a consequence, *inter alia*, members of the general public, including and especially those who lack the financial resources to pay the substantial admission fees currently being charged, have been and, without action from this Court will continue to be, deprived of the opportunity to view the works of art that the State Legislature, City and the MMA promised to make available to them at no cost.

5. Instead of providing free and open access to art for the masses, without regard to socio-economic status (as originally designed), the MMA has transformed the Museum Building and Museum Exhibition Halls into an expensive, fee-for-viewing, elite tourist attraction, where only those of financial means can afford to enter a publicly-subsidized, city-owned institution.

6. Defendants employ a number of methods to achieve their objective of misleading and defrauding the public into believing that admission fees are required, including, *inter alia*: (i) publication of misleading statements across a broad spectrum of media; (ii) configuration and orientation of the entry point, along with placement of deceptive signage at the MMA, all of which

are disposed to convey that admission fees are required; and (iii) distributing certain buttons for admission (“Admission Buttons”) only to those individuals who pay admission fees or pay to become members of the MMA.

7. Defendants’ misconduct violates the Lease, Free Admission Statute and General Business Law §349, warranting the grant of an immediate and permanent injunction.

THE PARTIES

8. Plaintiff Patricia A. Nicholson (“Patricia”) is, and at all relevant times has been, a citizen and resident of the City and State of New York.

9. Plaintiff Theodore Grunewald (“Theodore”) is, and at all relevant times has been, a citizen and resident of the City and State of New York.

10. Defendant MMA is a corporation organized and existing under the laws of the State of New York, with a principal place of business located at 1000 Fifth Avenue, New York, New York.

11. Defendant Thomas P. Campbell (“Campbell”) is, and since January 1, 2009 has been, the Director and the Chief Executive Officer (“CEO”) of the MMA. From 1995 through 2007, Campbell served in various positions at the MMA, including as Curator from 2003 through 2007.

12. Upon information and belief, Campbell supervises all of the MMA’s operations, including its admission policies.

13. Upon information and belief, Campbell, during his tenure as Director and CEO, has participated in the design, creation, promulgation, advertisement, dissemination, implementation, enforcement and maintenance of the MMA’s policies relating to admission and admission fees paid

to gain entry to the Museum Exhibition Halls containing and displaying art, collections and other exhibits.

14. Defendant Emily Rafferty (“Rafferty”) is, and since January 15, 2005 has been, the President of the MMA. She has been employed by the MMA since 1976, including as its Senior Vice President from 1995 to January 14, 2005.

15. Upon information and belief, Rafferty, during her tenure as President and Senior Vice President, has participated in the design, creation, promulgation, dissemination, advertisement implementation, enforcement and maintenance of the MMA’s policies relating to admission and admission fees paid to gain entry to the Museum’s Exhibition Halls containing and displaying art, collections and other exhibits.

16. Defendant Daniel Brodsky (“Brodsky”) is, and since in or about September 2011 has been, Chairman of the MMA’s governing body, its Board of Trustees (“MMA Board”).

17. Upon information and belief, Brodsky, during his tenure as Chairman of the Board of Trustees, has participated in the design, creation, promulgation, dissemination, advertisement implementation, maintenance and enforcement of the MMA’s policies relating to admission and admission fees paid to gain entry to the Museum’s Exhibition Halls containing and displaying art, collections and other exhibits.

VENUE

18. Venue is properly located in New York County pursuant to §506(b) of the Civil Practice Law and Rules, as the county in which: (i) defendants failed and refused to perform the duties specifically enjoined upon them by law and the Museum Lease; (ii) the material events took place; and (iii) the principal offices of the defendants are located.

FACTS RELEVANT TO ALL CLAIMS

The MMA Received Without Charge a Fully-Furnished and -Equipped Museum Building in Central Park in Which to Operate a Museum

19. Central Park was created and established by Chapter 616 of the Laws of 1853, enacted on July 21, 1853.

20. The City owns, and at all relevant times has owned, Central Park.

21. By Chapter 290 of the Laws of 1871, enacted on April 5, 1871, the New York State Legislature authorized the Parks Department (by its predecessor) to “construct, erect and maintain in and upon [a specified] portion of Central Park [*i.e.*, Public Parkland, previously defined] a suitable fire-proof building for the purpose of establishing and maintaining therein, from time to time, a Museum and gallery of art, the Metropolitan Museum of Art” (the “1871 Act”).

22. By Chapter 385 of the Laws of 1878, enacted June 8, 1878 (“1878 Act”), the New York State Legislature authorized the Parks Department (by its predecessor, the Department of Parks and Recreation) (hereinafter collectively, the “Parks Department”) to expend City funds to “equip and furnish the [Museum Building] erected ... [in] Central Park ... in a suitable manner for the purposes of museum and gallery of art by the Metropolitan Museum of Art as specified in [the 1871 Act] and with the consent and cooperation of the Metropolitan Museum of Art to remove the collection of said museum to and establish the same in said building” (hereinafter the 1871 and 1878 Acts shall be referred to collectively as the “Museum Facility Establishment Legislation”).

23. Thereafter, the Museum Building was constructed to carry out the purposes of the Museum Facility Establishment Legislation.

24. Upon information and belief, the Museum Building was built by the City.

25. Upon information and belief, the physical plant of the Museum Building was originally provided by the City.

26. Upon information and belief, the Museum Building was originally furnished and equipped by the City.

27. Upon information and belief, the Museum Building was originally built, furnished and equipped for the MMA, and provided with its physical plant, without charge, and in consideration for which the MMA agreed to provide to the masses, free of charge on most days of the week, access to the art and culture therein.

28. The Museum Building is, and at all relevant times has been, owned by the City.

29. Upon information and belief, the only personalty situated within the Public Parkland and/or within the Museum Building used by the MMA that was originally owned by the MMA is the MMA's artwork and the devices by which the MMA displayed, cared for, and maintained the same.

30. The Public Parkland upon which the Museum Building is situated is, and at all relevant times has been, owned by the City.

31. The Public Parkland consists of multiple acres of Central Park, running along Fifth Avenue for six city blocks, from 79th Street to 85th Street.

32. The Public Parkland is among the most desirable and expensive parcels of land in the World.

The MMA Receives a Virtually Perpetual Rent-Free Lease

33. By Chapter 139 of the Laws of 1876, enacted on April 22, 1876, the State Legislature authorized and directed the Parks Department to enter into the Lease (previously defined) with the

MMA (the “Lease Enabling Statute”). By the Lease Enabling Statute, the Legislature authorized the Parks Department “to make and enter into a contract with the MMA, for the occupation by it of the buildings erected or to be erected ... [on the Public Parkland] in Central Park, ... and establishing and maintaining therein its museum, library and collections, and carrying out the objects and purposes of [the MMA].”

34. Pursuant to the Lease Enabling Statute, the Lease was executed on or about December 24, 1878.

35. By the terms of the Lease, the City, acting through the Parks Department (previously defined) as lessor, granted, demised and let, to the MMA, as tenant, the exclusive use and occupancy of the Museum Building, described in the first WHEREAS paragraph of the Lease (Lease, Exh. 1).

36. The term of the Lease was, and still is, perpetual, so long as the MMA carries out the objects and purpose of its charter and does not breach any of its obligations under the terms of the Lease (*Id.* ¶First).

37. The Lease contains no provision for the payment of any rent by the MMA.

38. Under the terms of the Lease, the MMA is permitted to occupy the Museum Building and Public Parkland on which it is situated rent free.

39. In consideration for the virtually perpetual, rent-free Lease, the MMA agreed, *inter alia*, to admit members of the public without charge for at least four days per week. In this regard, the Lease states:

That the exhibit halls of [the Museum] Building shall on Wednesday, Thursday, Friday, and Saturday of each week, and on all legal and public holidays except Sundays, ***be kept open and accessible to the public free of charge*** from ten o’clock AM until half an hour before sunset ... (Lease, Art. Fourthly) (Exh. 1).

40. The Lease further provides that it would terminate, and possession and occupancy would revert to the City upon the MMA's failure to comply with any of its covenants. In this regard, the Lease provides:

And it is expressly understood and agreed by and between the parties hereto, that if the [MMA] shall omit to do, perform, fulfill or keep any or either of the covenants, articles, clauses and agreements, matters and things herein contained, which on its part are to be done, performed, fulfilled or kept according to the true intent and meaning of these presents, then and from thenceforth this grant and demise shall be entirely null and void. And in such case it shall and may be lawful for said Department [of Parks] to serve or cause to be served on the [MMA] a notice in writing, declaring that the said grant hereinbefore made has become utterly null and void, and thereupon the [Parks Department], its successor or successors (six months time being first given to the [MMA] to remove its property therefrom), may re-enter and shall again have, repossess and enjoy the premises before mentioned the same as if their first and foremost estate and in like manner as though these presents had never been made ...

(Lease, Art. Eighthly) (Exh. 1).

41. After the MMA first opened, members of the public demanded that the Museum Building and Museum Exhibition Halls be accessible and free on Sundays.

42. In 1892, the State Legislature enacted Chapter 419 (“1892 Act”), pursuant to which the MMA was required to remain open and free to the public all seven (7) days of the week, plus two evenings per week throughout the year, in consideration for \$70,000 of Additional Funding (previously defined) from the Parks Department. In this regard, the 1892 Act states:

The Department of Public Parks in the City of New York is hereby authorized to apply in each year for the keeping, preservation and exhibition of the collections in the buildings in Central Park that are now or may be hereafter occupied by The Metropolitan Museum of Art, in addition to the sum or sums now authorized by law for such purposes, such further sum not exceeding seventy thousand dollars, upon condition that the collections in the said Metropolitan Museum of Art shall be kept open and *accessible to the public hereafter free of all charge throughout the year, including Sunday afternoons and two evenings in each week*, within such hours and subject to such rules and regulations as may be agreed upon between the Trustees of said Museum and said Department.

43. After the 1892 Act, the MMA expressed concern that the additional costs of operations triggered by the requirement to remain open seven (7) days per week were imposing a hardship on the MMA.

44. In 1893, the State Legislature enacted Chapter 476, pursuant to which the MMA would be permitted to limit the free days and times to *five days per week* (including Sunday afternoons) plus *two free evenings every week*. In this regard, Chapter 476 states:

The Department of Public Parks in the City of New York is hereby authorized to apply in each year for the keeping, preservation and exhibition of the collections in the buildings in Central Park that are now or may be hereafter occupied by the [MMA], in addition to the sum or sums now authorized by law for such purposes, such further sum not exceeding \$70,000, upon condition that the collections in the said MMA *shall be kept open and accessible to the public hereafter free of charge throughout the year for five days each week, one of which shall be Sunday afternoon and also for two evenings in each week ...*

(Free Admission Statute, previously defined) (emphasis added).

45. The Lease and Free Admission Statute were specifically designed to make the art, collections and exhibits of the MMA available to the masses, including and especially those who would find it difficult to afford admissions fees.

46. Upon information and belief, the Free Admission Statute has not been further amended, modified or superseded.

The MMA Has Not Been Required to Pay Rent

47. Consistent with the terms of the Lease, the MMA occupies and uses the Public Parkland without paying any rent to the City or any other party.

48. Consistent with the terms of the Lease, the MMA occupies and uses the Museum Building without paying any rent to the City or any other party.

49. The value to MMA of the free rent for the Public Parkland and the Museum Building provided by the City under the Lease is estimated to be approximately \$368 Million annually; and the aggregate value of the free rent for Public Parkland and the Museum Building provided by the City to the MMA over the course of the last 42 years (*i.e.*, since 1970) is estimated to be in excess of \$9.4 Billion.²

Despite That the City Has Completely Fulfilled its Obligations, the MMA Has Refused to Comply with the Lease and Free Admission Statute, Charging and Collecting from Members of the General Public Unlawful and Deceptive Admission Fees and Other Costs in the Tens of Millions of Dollars Per Year

50. Since the opening of the Museum Building approximately 130 years ago, the City has honored its obligations under the 1871 Act, Museum Facility Establishment Legislation, Lease Enabling Statute, Free Admission Statute and the Lease by, *inter alia*: (i) constructing, building,

²The aforementioned figures are adjusted for 2011 dollars.

furnishing and equipping the Museum Building without charge; (ii) permitting the MMA to occupy the Public Parkland and the Museum Building rent free; (iii) providing the Additional Funding to the MMA; and (iv) providing significant additional public funds to pay the costs of the MMA's gas, electric and other utilities, and to defray the MMA's security costs.³

51. In breach of its obligations under the Lease and Free Admission Statute, the MMA has adopted, and defendants have continuously promulgated, disseminated, advertised, implemented and enforced, policies that directly violate the Free Admissions Requirement.

52. The MMA charges admission fees for entry into the Museum Exhibition Halls (the "Admission Fees").

53. MMA officials over the years have acknowledged in writing that the MMA charges the Admission Fees.

54. MMA has misled, and regularly misleads members of the general public (including teachers from public, non-tuition schools) to believe, on all days of the week during times when the MMA is open, that they are required to pay the Admission Fees in order to enter Museum Exhibition Halls ("Deceptive Admission Fee Policy"). The Deceptive Admission Fee Policy has been implemented by use of a variety of methods, several of which are recited below.

MMA's Website Recites Admission Fees

55. The MMA recites its Admission Fees on the Internet by use of its website ("MMA Website").

56. The MMA uses its Website to sell admission tickets to members of the general public.

³Upon information and belief, the City, from 1970 through and including 2011, provided Additional Funding to the MMA in the approximate amount of \$880 Million (adjusted to 2011 dollars).

57. In regard to admissions, the MMA Website states as follows:

Admissions

Fee includes same-day admission to the Main Building and The Cloisters museum and gardens. There is no extra charge for entrance to exhibits.

Buy Tickets Now (Exh. 2) (emphasis in original).

58. Reference on the Website to the payment of a “Fee” that “includes same-day admission” reinforces the false and deceptive misrepresentation that Admission Fees must be paid in order to enter the Museum Exhibition Halls.

59. The statement on the Website that “[t]here is no *extra* charge for entrance to exhibits” reinforces the false and deceptive misrepresentation that Admission Fees must be paid in order to enter the Museum Exhibition Halls.

60. The “Buy Tickets Now” reference on the MMA Site is a hyperlink that takes members of the general public directly to a page which states in pertinent part:

General Admission

Advance tickets to The Metropolitan Museum of Art allow the visitor to avoid waiting in admission lines at the Museum. *Tickets include admission* to the Met’s collection and all special exhibits. Tickets also include *same-day admission* to The Metropolitan Museum of Art and The Cloisters museum and gardens. Tickets are valid for up to one year after the date of *purchase*.

(Ticket Purchase Page, Exh. 3) (emphasis added).

61. The highlighted terms in the excerpt above falsely convey that the “purchase” of a ticket is required for admission to, *inter alia*, the Museum Exhibition Halls.

62. The Ticket Purchase Page provides as follows immediately below:

Description	Price
Adult General Admission	\$25.00
Senior General Admission	\$17.00
Student General Admission	\$12.00
Child Under 12 with Adult	FREE (<i>Id.</i>).

63. As recited on the Ticket Purchase Page, the MMA charges members of the general public a \$1 service fee for the “privilege” of purchasing a ticket online to enter a free public institution.

64. Beneath the online reference to the \$1.00 Service Charge, the MMA offers an audio guide for purchase. And immediately beneath the offer of the aforesaid audio guide, members of the general public patronizing the MMA Website are directed to “**Continue**” (*Id.*) (emphasis in original).

65. The word “**Continue**” on the Ticket Purchase Page of the MMA Website is a hyperlink that immediately takes members of the general public to a “review shopping cart page.”

66. Two paragraphs beneath the “**Continue**” hyperlink, in fine, small print at the bottom of the Ticket Purchase Page of the MMA Website, the MMA uses the term “recommended admission,” but does not explain what it means.

67. Upon information and belief, the MMA Website Ticket Purchase Page was designed to place the “**Continue**” hyperlink *two paragraphs above* the small, fine-print reference to “recommended admission” to cause members of the general public to “**Continue**” with their purchase of MMA tickets and to hyperlink *away from* the small, fine-print reference to “recommended admission” before they have a chance to see it.

68. The MMA's promotion and sale of tickets on its Website constitute false and deceptive business practices within the meaning of General Business Law §349.

69. The MMA receives remuneration from the sale of tickets on its Website.

70. Upon information and belief, the MMA is aware of websites other than the MMA Website on which tickets may be "purchased" for admission to the Museum Exhibition Halls ("Third-Party Websites").

71. Upon information and belief, the MMA is aware of the existence and content of a website known as newyorkpass.com ("NYPass Site").

72. The NYPass Site is a Third-Party Website.

73. The NYPass Site is a website where members of the general public are invited to purchase a pass ("NYPass") which would grant them admission to a combination of several tourist and other attractions in New York City (hereinafter, all tickets that grant purchasers admission to multiple attractions including the MMA shall be referred to as "Combo-Ticket").

74. The NYPass Site lists as one of the benefits of purchasing a NYPass that admission may be obtained to the MMA.

75. The NYPass Site states in pertinent part:

Metropolitan Museum of Art
Fifth Avenue at 82nd Street, New York,
NY 10028

Free Entry with The New York Pass
Normal Entry Price: Adult \$25.00

The New York Pass grants you free SAME-DAY admission to The Metropolitan Museum and the Cloisters Museum and Gardens (Exh. 4).

76. The NYPass Site does not disclose that no purchase is necessary to enter the Museum Exhibition Halls on most days of the week.

77. The NYPass Site conveys to members of the general public that an admission fee is required in order to obtain entry to the MMA.

78. Upon information and belief, the MMA approved the content of the NYPass Site relating to the MMA.

79. Upon information and belief, the MMA authorized the references, and content relating, to the MMA on the NYPass Site.

80. Upon information and belief, the MMA sponsors the NYPass Site.

81. Upon information and belief, the MMA receives payment and/or other remuneration in connection with the NYPass Site.

82. The MMA promotes the use of NYPass by posting reference(s) thereto inside the Museum Building (Exh. 5).

83. The MMA's promotion and exploitation of the NYPass and NYPass Site constitute false and deceptive business practices within the meaning of General Business Law §349.

84. Upon information and belief, the MMA is aware of the existence and content of the website broadwaybox.com ("BroadwayBox Site").

85. The BroadwayBox Site is a Third-Party Website.

86. The BroadwayBox Site is a website where members of the general public are invited to purchase a pass ("CityPass").

87. A CityPass functions as a Combo-Ticket, entitling purchasers to enter multiple tourist destinations and other attractions in the City, including the MMA.

88. The BroadwayBox Site lists as one of the benefits of purchasing a CityPass therefrom that admission may be obtained to the MMA at a discount of 46%.

89. The BroadwayBox Site does not disclose that no purchase is necessary in order to enter the Museum Exhibition Halls on most days of the week.

90. The BroadwayBox Site conveys to members of the general public that payment of an admission fee is required to obtain entry to the MMA.

91. Upon information and belief, the MMA approved the content of the BroadwayBox Site relating to the MMA.

92. Upon information and belief, the MMA authorized the references, and content relating, to the MMA on the BroadwayBox Site.

93. Upon information and belief, the MMA sponsors the BroadwayBox Site.

94. Upon information and belief, the MMA receives payment and/or other remuneration in connection with the BroadwayBox Site.

95. The MMA promotes, by posting reference(s) thereto inside the Museum Building, the use of CityPass which is sold on the BroadwayBox Site (*Id.*).

96. The MMA's promotion and exploitation of the CityPass constitute false and deceptive business practices within the meaning of General Business Law §349.

97. Upon information and belief, the MMA is aware of the existence and content of the website events.travelocity.com ("Travelocity Site").

98. The Travelocity Site is a Third-Party Website.

99. The Travelocity Site is a website where members of the general public are invited to purchase a pass which would grant them admission to the MMA at a cost of \$20 for adults, \$15 for

seniors, and \$10 for students; the Travelocity Site indicates that only those under age 12 and museum members are entitled to enter for free (Exh. 6).

100. The Travelocity Site does not disclose that no purchase is necessary to enter the Museum Exhibition Halls on most days of the week.

101. The Travelocity Site conveys to members of the general public that payment of an admission fee is required to obtain entry to the MMA.

102. Upon information and belief, the MMA approved the content of the Travelocity Site pertaining to the MMA.

103. Upon information and belief, the MMA authorized the references, and content relating, to the MMA on the Travelocity Site.

104. Upon information and belief, the MMA sponsors the Travelocity Site.

105. Upon information and belief, the MMA receives payment and/or other remuneration in connection with the Travelocity Site.

106. The MMA promotes the Travelocity Site by posting references to Travelocity in its Museum Building (*Id.*).

107. The MMA's promotion and exploitation of the sales effectuated by means of the Travelocity Site constitute false and deceptive business practices within the meaning of General Business Law §349.

108. The MMA is aware of the existence and content of a website known as smartdestinations.com ("Smart Destinations Site").

109. The Smart Destinations Site is a Third-Party Website.

110. The Smart Destinations Site is a website where members of the general public are

invited to purchase a NY Explorers pass (“NY Explorers Pass”)

111. The NY Explorers Pass functions as a Combo-Ticket which grants purchasers admission to various tourist and other attractions in the City.

112. The Smart Destinations Site lists as one of the benefits of purchasing a NY Explorers Pass that admission may be obtained therewith to the MMA.

113. The Smart Destinations Site states in pertinent part:

Address

Fifth Avenue at 82nd Street

New York, NY 10024

Phone: 212-535-7710; Cloisters:

212-923-3700

Website: **Metropolitan Museum of Art**

Adult Gate Price	Child Gate Price
\$25.00	\$0.00

(Exh.7).

114. The Smart Destinations Site does not disclose that no purchase is necessary to enter the Museum Exhibition Halls on most days of the week (*Id.*).

115. To the contrary, the Smart Destinations Site conveys to members of the general public that payment of an admission fee is required to obtain entry to the MMA (*Id.*).

116. The Smart Destinations Site separately recites that, with the NY Explorers Pass, the purchaser receives “a \$25.00 value,” reinforcing the false notion that an admission fee is required to obtain entry into the MMA (*Id.*).

117. Upon information and belief, the MMA approved the content of the Smart Destinations Site relating to the MMA.

118. Upon information and belief, the MMA authorized the references, and content relating, to the MMA on the Smart Destinations Site.

119. Upon information and belief, the MMA sponsors the Smart Destinations Site.

120. Upon information and belief, the MMA receives payment and/or other remuneration in connection with the Smart Destinations Site.

121. The MMA promotes the use of NY Explorer Pass by posting reference(s) thereto inside the Museum Building (Exh. 5).

122. The MMA's promotion and exploitation of the NY Explorer Pass and Smart Destinations Site constitute false and deceptive business practices within the meaning of General Business Law §349.

123. Upon information and belief, the MMA is aware of the existence and content of the website expedia.com ("Expedia Site").

124. The Expedia Site is a Third-Party Website.

125. The Expedia Site is a website where members of the general public are invited to purchase a pass for admission to the MMA at a cost of \$25 for adults and \$17 for seniors (Exh. 8).

126. The Expedia Site does not disclose that no purchase is necessary to enter the Museum Exhibition Halls on most days of the week.

127. The Expedia Site conveys to members of the general public that payment of an admission fee is required to obtain entry to the MMA.

128. Upon information and belief, the MMA approved the content of the Expedia Site relating to the MMA.

129. Upon information and belief, the MMA authorized the references, and content

relating, to the MMA on the Expedia Site.

130. Upon information and belief, the MMA sponsors the Expedia Site.

131. Upon information and belief, the MMA receives payment and/or other remuneration in connection with the Expedia Site.

132. The MMA promotes the Expedia Site by posting references to Expedia in its Museum Building (Exh. 5).

133. The MMA's use and exploitation of the Expedia Site constitute false and deceptive business practices within the meaning of General Business Law §349.

Deceptive Signage and Facility Configuration at the Museum Building

134. The MMA currently has one main entrance ("Public Entrance").⁴

135. Upon arrival at the Public Entrance, MMA employees usher visitors into lines, at the end of which are situated, cashiers ("MMA Cashiers").

136. Upon information and belief, the purpose of creating a line that leads to MMA Cashiers is to deceive, and creating such lines leading to MMA Cashiers has in fact deceived, visitors into believing that they are required to pay the Admission Fees.

137. The MMA provides metallic Admission Buttons (previously defined) only to members and those who pay the Admission Fees.

138. The Admission Buttons are for display on visitors' clothing in order to identify for security personnel, those who have been granted admission to the Museum Exhibition Halls.

⁴The MMA also maintains a ground-level entrance frequented by, *inter alia*, the disabled and school groups. All allegations that pertain to the "Public Entrance" as herein defined apply with equal force to the ground-level entrance, where, *inter alia*, "Deceptive Signs" (hereinafter defined) and the Museum Building's configuration are disposed to enforce and collect the Admission Fees that violate the Free Admission Statute and Lease.

139. The MMA security staff will not permit those not wearing the Admission Buttons to enter the Museum Exhibition Halls.

140. Upon information and belief, the purpose of providing Admission Buttons to those who have been granted admission to the Museum Exhibition Halls is to facilitate, and such has in fact facilitated, the collection of the Admission Fees.

141. Upon information and belief, the purpose of configuring the Public Entrance in the manner herein described is to facilitate, and has in fact facilitated, the collection of the Admission Fees.

142. Plans for restoration of the entrance into the Museum Building from Central Park were scuttled, in part, because of the added cost associated with the duplicative constructing, creating and staffing of admission ticket booths.

143. Deceptive Signs above the MMA Cashiers at the Public Entrance refer to payment of amounts due in order to enter the Museum Exhibition Halls (“Deceptive Signs”).

144. The Deceptive Signs state as follows in regard to admissions:

ADMISSIONS

Recommended
No extra charge for special exhibits

ADULTS	\$25.00
SENIORS	\$17.00
STUDENTS	\$12.00
MEMBERS Join Today	Free
Children under 12 free	

(Exh. 9) (bold and size differential in original).

145. The use of bold print for the term “Admissions,” together with the bold-print prices

to be charged, and the significant difference in the font size between the aforesaid and the word “Recommended,” which appears in tiny, un-bolded print, is designed to cause members of the general public to overlook that the Admission Fees are purported to be “recommended” rather than mandatory.

146. The reference to “Members” being entitled to enter the MMA for “Free” falsely conveys the fraudulent message that, to enter the Museum Exhibition Halls, members of the general public (who are not members) are required to pay the Admission Fees.

147. The reference to children under 12 being entitled to enter the MMA for “Free” falsely conveys the deceptive message that, to view the Museum Exhibition Halls, members of the general public who are not under the age of 12 are required to pay the Admission Fees.

148. The instruction that “no *extra* charge” will be imposed for “special exhibits” conveys that a charge is imposed and must be paid for regular admission.

149. Another sign appears on a wall directly inside the Museum Building by the Public Entrance, stating in pertinent part:

Groups

10 or more visitors
Group rates apply.

(Exh. 5) (emphasis added). There is no reference to the fact that members of the general public, including those traveling in groups of 10 or more, are not subject to any admission fee.

150. The assertion that special reduced “rates” apply to groups of 10 or more visitors falsely conveys the fraudulent message that, to view the Museum Exhibition Halls, members of the general public are required to pay the Admission Fees.

151. Upon information and belief, the creation of lines funneling visitors to MMA Cashiers who work adjacent to signs referencing payment amounts for different categories of persons (adults, students, seniors, etc.), with references to certain groups of individuals receiving lower rates and children under 12 and members receiving free admission is all designed to falsely convey to visitors, and has in fact falsely conveyed to visitors, that, unless visitors are members or under age 12, the Admission Fees must be paid in order to enter the Museum Exhibition Halls.

152. The configuration of the MMA, use of lines leading to MMA Cashiers, MMA's Deceptive Signs, the use of identifying Admission Buttons and the references to group rates and free admission for only certain categories of persons all constitute deceptive business practices within the meaning of General Business Law §349.

***The MMA's Membership Policy and Promotions
Constitute Deceptive Business Practices***

153. On the MMA Website, the MMA promotes and markets annual memberships to the general public.

154. As part of its promotion and marketing effort, the MMA lists on a separate page dedicated to selling memberships ("MMA Membership Page"), that the first attribute of membership is:

- Free unlimited admission to the Metropolitan Museum of Art and the Cloisters museum and gardens

(Exh. 10).

155. The MMA Membership Page also lists additional, more expensive categories of membership which will permit members to bring children, other family members and friends into the MMA as guests for free -- as if there were a required-admission fee.

156. The MMA Membership Page is designed to convey that, in the absence of paying to become a member of the MMA (or paying the Admissions Fees), entry into the Museum Exhibition Halls requires payment of an admission fee.

157. The MMA Membership Page constitutes a false and deceptive business practice within the meaning of General Business Law §349.

158. Upon information and belief, from 1970 through and including 2011, the MMA has imposed and collected in excess of \$600 Million in Admission Fees (adjusted to 2011 dollars), of which, at least \$440 Million was imposed and collected on days and at times when admission to the Museum Exhibition Halls was, by law, required to be free.⁵

The MMA's Deceptive and Unlawful Admission Fee Policies Cause Delays and Dissuade Members of the General Public From Visiting the MMA

159. The imposition of Admission Fees dissuades members of the general public, including and especially the poor, from obtaining entry into the Museum Exhibition Halls, in direct violation of the Fee Admission Requirement reflected in the Lease and Free Admission Statute.

160. The creation of lines funneling visitors to MMA Cashiers creates substantial delays to members of the general public attempting to enter the Museum Exhibition Halls (“Extended Visitor Waiting Time”).

161. The MMA Website promotes sales of tickets (which should, under the Lease and Free Admission Statute, be free) by indicating that, by pre-purchasing tickets, members of the general public can avoid the long lines at the MMA.

⁵This calculation does not even take into consideration the two evenings per week for the last 42 years, during which Admission Fees were imposed and collected by the MMA.

162. Upon information and belief the Extended Visitor Waiting Time, caused by the unlawful admission-fee requirement imposed by the MMA, has dissuaded many members of the public from visits to the Museum Building.

163. Upon information and belief, the MMA decided not to reconstruct the entryway facing Central Park, in part, because such would interfere with the collection of Admission Fees in violation of the Free Admission Requirement set forth in both the Free Admission Statute and the Lease.

***The MMA's Deceptive and Unlawful Admission Fee Policies
Have Interfered with the Original Design of the MMA to be
Accessible from Central Park***

164. Refusal to reopen the entryway fronting Central Park conflicts with the overarching plan developed by the City and State to make the MMA accessible to members of the general public through Central Park. The intention behind designation of the Central Park entrance was that a visit to Central Park would be enhanced for the public by easy access to the MMA's art, collections and other exhibits. The intention for entry into the MMA and its Exhibition Halls by parkside visitors was also clearly understood to provide free access to art for everyone.

165. The Fifth Avenue side of the Museum Building was intended as another route of entry, designed primarily for vehicular drop-off. Accordingly, very large areas on the Fifth Avenue side of the Museum Building were devoted to the fountain areas and their aesthetics, and the arching roadway behind the fountains was designed to serve as the drop-off point for vehicular traffic.

166. The free and significant park-side entry was underscored by the Parks Department in connection with the 1970 "Master Plan" designed to substantially increase the Museum Building's size. An April 15, 1970 Memorandum from the Parks Department's First Deputy Administrator

states that “Garden Courts to be constructed should be maintained by the Museum and must be open free to the public during museum hours.”

167. In December 1, 1971, the MMA published its *Comprehensive Plan for The Metropolitan Museum of Art* (“1971 Comprehensive Plan”) which contains multiple references to a major entryway into the Museum Building from its Central Park side, through a new European Garden Court which, when it was adopted, was intended to be free to the public. For example on page 4 of the 1971 Comprehensive Plan, there is a reference to entry being “free to the public” from the parkside courtyard thereby providing a “major entrance to the Museum from Central Park;” and, on page 5, the 1971 Comprehensive Plan notes that the “court will be green year round and will serve to give the Museum once again an orientation toward the Park, as the original building had.”

***Plaintiffs Have Been Misled and Suffered Harm
as a Result of the MMA’s Illegal Policies***

168. Patricia has been a regular MMA visitor for many years.

169. Prior to each entry into the Museum Exhibition Halls, Patricia observed the Deceptive Signs, was funneled (along with other visitors to the MMA) into lines leading to MMA Cashiers, saw the distribution of Admission Buttons, was thus deceived into believing that payment of Admission Fees was required, and, because she understood that payment of Admission Fees was required for entry, paid \$25.

170. On many occasions when Patricia visited the MMA with a guest or member of her family, she paid the Admission Fees for them as well.

171. Patricia viewed the MMA Website and Third-Party Sites and was deceived into believing that Admission Fees were required for entry into the Museum Exhibition Halls.

172. In an effort to save money on payment of the Admission Fees (which she was deceived into believing were required prior to entry into the Museum Exhibition Halls), Patricia purchased annual memberships to the MMA.

173. Theodore has been a regular MMA visitor for many years.

174. Theodore viewed the MMA Website and Third-Party Sites and was deceived into believing that Admission Fees were required for entry into the Museum Exhibition Halls.

175. Prior to each entry into the Museum Exhibition Halls, Theodore observed the Deceptive Signs, was funneled (along with other visitors to the MMA) into lines leading to MMA Cashiers, saw the distribution of Admission Buttons, was thus deceived into believing that payment of Admission Fees was required, and, because he understood that payment of Admission Fees was required for entry, paid \$25.

176. On many occasions when Theodore visited the MMA with a guest or member of his family, he paid the Admission Fees for them as well.

***The MMA's Deceptive and Unlawful Admission Fee Policy
Actively Misleads and Defrauds Members of the General Public***

177. The experiences of Patricia and Theodore are not unique. An admissions survey of more than 360 people entering and exiting the Museum Building was conducted on October 3, 5, 6, and 8, 2012 to ascertain the extent to which the general public is and has been misled by the MMA's promulgation, advertisement and dissemination of its Deceptive Admission Fee Policy ("Admissions Survey").

178. The Admissions Survey was conducted by a well-known and highly-regarded market research firm.

179. Seventy-six (76%) percent of Survey Respondents stated that they understood the sum that they had paid to the MMA to gain entry was an “admission fee.”

180. Eighty-Five (85%) percent of the Survey Respondents who were not members of the MMA thought that they had to pay to obtain entry into the Museum Exhibition Halls and view the MMA’s art, collection and exhibits.

181. Seventy-Four (74%) percent of the Survey Respondents stated that they were unaware of the fact that, on most days of the week, they were entitled to free entry into the Museum Building to view its art collections and exhibits.

182. Of those Survey Respondents who were already members of the MMA, sixty-five (65%) percent decided to become members, *inter alia*, so that they could secure free year-round admission to the Museum Building’s art, collections and exhibits for themselves or a guest.

183. Most of the interviews of Survey Respondents were conducted on days and at times for which the Lease required free admission for all.

FIRST CAUSE OF ACTION

184. Plaintiffs repeat and reallege all of the allegations contained in ¶¶1 through 183 hereof as if set forth fully herein.

185. The Lease constitutes an agreement between the MMA and the City.

186. Upon information and belief, the City has complied with its obligations under the Lease.

187. Members of the general public are intended third-party beneficiaries under the Lease.

188. Under the Lease, members of the general public are entitled to free admission throughout the year on Wednesdays, Thursdays, Fridays, Saturdays, and all legal and public holidays

(except Sundays) from 10 AM to 30 minutes before Sunset (“Free Days Under the Lease”).

189. The MMA’s Deceptive Admission Fee Policy is and, in the absence of judicial intervention shall continue to be, in direct breach and violation of the terms of the Lease.

190. The MMA’s breach of the Lease is actively causing ongoing harm to plaintiffs and other members of the general public by, *inter alia*:

- wrongfully imposing Admission Fees upon millions of people per year on Free Days Under the Lease;
- intimidating people into paying monies that they would not otherwise pay;
- dissuading people from visiting the MMA due to the Admission Fee;
- discriminating against the poor who cannot afford an Admission Fee;
- dissuading people from visiting the MMA due to the frequently long lines required to gain admission; and
- causing additional harm.

191. By reason of the foregoing, plaintiffs are entitled to an immediate restraining order, preliminary injunction and permanent injunction, enjoining defendants from charging any admission fees going forward on Free Days Under the Lease and, in addition, directing defendants, except at times when fees may legally be charged (“Lawful Fee-for-Entry Times”), to:

- inform all persons entering the MMA that they have the right on Free Days Under the Lease to enter the Museum Building and Museum Exhibition Halls free of charge;
- remove all signs indicating that, on Free Days Under the Lease, an admission fee of any amount is required, can otherwise be charged or is even “recommended;”
- discontinue use of any and all marketing, brochures, promotional literature, and/or other print and/or related advertising, including online advertising and posts, that reference Admission Fees, or insinuate that payment of any sum is required, otherwise can be charged or is even “recommended” on Free Days Under the Lease;

- discontinue use of Admission Buttons or other similar devices designed to enforce collection of Admission Fees;
- discontinue sponsorship of sales of any Combo-Tickets (except for entry at Lawful Fee-for-Entry Times);
- discontinue charging teachers employed by public and other non-tuition schools, even at Lawful Fee-for-Entry Times;
- discontinue all sales of MMA memberships until such time as defendants make disclosures subject to the supervision of the Court that make absolutely clear that free admission does not constitute a benefit of such membership (except at Lawful Fee-for-Entry Times);
- instruct all of its third-party vendors and others from which the MMA receives any remuneration in regard to Admission Fees (whether or not allegedly “recommended”) to discontinue all advertising, marketing, promotion, charging and/or otherwise selling admission tickets or other methods of entry into the MMA (except for entry at Lawful Fee-for-Entry Times); and
- remove all references to Admission Fees and/or other charges from the MMA Website and all other websites over which defendants have any control (until it is made clear that such fees and/or charges may be imposed only at Lawful Fee-for-Entry Times).

192. From the dates that they assumed their positions at the MMA, Defendants Campbell, Rafferty and Brodsky (the “MMA Individual Defendants”), have aided, abetted and participated in, and continue to aid, abet and participate in, the dissemination, publication and advertisement of the MMA’s Deceptive Admission Fee Policy to members of the general public and to plaintiffs.

193. The MMA Individual Defendants should be made subject to, and be required to comply with, all of the foregoing injunctions, directions and requests for relief.

194. As to prospective relief, plaintiffs have no remedy at law.

SECOND CAUSE OF ACTION

195. Plaintiffs repeat and reallege all of the allegations contained in ¶¶ 1 through 194

hereof as if set forth fully herein.

196. Upon information and belief, the MMA received and accepted the Additional Funding referenced in the Free Admission Statute (the 1893 Act).

197. Under the Free Admission Statute, members of the general public are entitled to free admission to the Museum Exhibition Halls five days per week (including Sunday afternoons), plus two evenings per week ("Free Days Under Statute").

198. Plaintiffs are members of the class of persons upon whom the Free Admission Statute was designed to confer a benefit and protection.

199. Defendants have violated the Free Admission Statute by, *inter alia*:

- charging Admission Fees on Free Days Under Statute throughout the week, without exception to members of the general public other than children under age 12 and those who have purchased annual memberships;
- conveying to members of the general public that Admission Fees are required prior to entry into the Museum Exhibition Halls on Free Days Under Statute;
- creating and erecting the Deceptive Signs;
- ushering visitors to lines upon entry into the Museum Building that lead them to MMA Cashiers, whose kiosks are situated directly beneath the Deceptive Signs;
- use of Admissions Buttons as a means of enforcing the charging of Admission Fees;
- creating the deceptive and fraudulent MMA Website;
- approving Third-Party Sites that are fraudulent and deceptive;
- upon information and belief, sponsoring the fraudulent and deceptive Third-Party Websites;
- promoting and marketing Combo-Tickets by conveying that such provide a discount off of the Admission Fees which, as a matter of law, cannot be charged anyway (except at Lawful Fee-for-Entry Times);

- promoting and marketing annual memberships to the MMA by conveying that such confer the benefit of free admission even though members of the general public are, on most days of the week, entitled to such free admission as a matter of law;
- configuring the MMA without a park-side entrance for the purpose of facilitating collection of bogus Admission Fees; and
- otherwise breaching the letter and spirit of the Free Admission Statute.

200. By reason of the foregoing, plaintiffs are entitled to an immediate restraining order, preliminary injunction and permanent injunction, enjoining defendants from charging any Admission Fees going forward on Free Days Under Statute and, in addition, directing defendants, except at Lawful Fee-for-Entry Times, to:

- inform all persons entering the MMA that they have the right on Free Days Under Statute to enter the Museum Building and Museum Exhibition Halls free of charge;
- remove all signs indicating that, on Free Days Under Statute an admission fee of any amount is required, can otherwise be charged or is even “recommended;”
- discontinue use of any and all marketing, brochures, promotional literature, and/or other print and/or related advertising, including online advertising and posts, that reference Admission Fees, or insinuate that payment of any sum is required, otherwise can be charged or is even “recommended” on Free Days Under Statute;
- discontinue sponsorship of sales of Combo-Tickets (except for entry at Lawful Fee-for-Entry Times);
- discontinue charging teachers employed by public and other non-tuition schools, even at Lawful Fee-for-Entry Times;
- discontinue all sales of MMA memberships until such time as defendants make disclosures subject to the supervision of the Court that make absolutely clear that free admission does not constitute a benefit of such membership (except at Lawful Fee-for-Entry Times);
- discontinue use of Admission Buttons or other similar devices designed to enforce collection of Admission Fees;
- direct the MMA to instruct all of its third-party vendors and others from which the

MMA receives any remuneration in regard to Admission Fees (whether or not allegedly “recommended”) to discontinue all advertising, marketing, promotion, charging and/or otherwise selling admission tickets or other methods of entry into the MMA (except for entry at Lawful Fee-for-Entry Times); and

- remove all references to Admission Fees and/or other charges from the MMA Website and all other websites over which defendants have any control (until it is made clear that such fees and/or charges may be imposed only at Lawful Fee-for-Entry Times).

201. From the dates that they assumed their positions at the MMA, the MMA Individual Defendants, have aided, abetted and participated in, and continue to aid, abet and participate in, the dissemination, publication and advertisement of the MMA’s Deceptive Admission Fee Policy to members of the general public and to plaintiffs.

202. The MMA Individual Defendants should be made subject to, and be required to comply with, all of the foregoing injunctions, directions and requests for relief.

203. As to prospective relief, plaintiffs have no remedy at law.

THIRD CAUSE OF ACTION

204. Plaintiffs repeat and reallege all of the allegations contained in ¶¶ 1 through 203 hereof as if set forth fully herein.

205. The MMA’s implementation, publication, dissemination and enforcement of MMA’s Deceptive Admission Fee Policy has been, and continues to be, materially misleading and deceptive to members of the general public and to the plaintiffs in material respects.

206. The MMA’s implementation, publication, dissemination and enforcement of MMA’s Deceptive Admission Fee Policy has had, and continues to have, a broad negative impact on the general public, including plaintiffs.

207. Defendants’ aforesaid deceptive misconduct also includes, *inter alia*:

- conveying to members of the general public that Admission Fees are required in order to gain entry into the Museum Exhibition Halls on Free Days Under the Lease and Under Statute (collectively, “Free Days”);
- erecting the Deceptive Signs indicating that Admission Fees are due on Free Days;
- ushering visitors to lines upon entry into the Museum Building and leading them to MMA Cashiers, whose kiosks are situated directly beneath the Deceptive Signs;
- using of Admissions Buttons as a means of enforcing the charging of Admission Fees;
- creating the deceptive and fraudulent MMA Website;
- approving Third-Party Sites that are fraudulent and deceptive;
- upon information and belief, sponsoring the fraudulent and deceptive Third-Party Sites;
- accepting payment of Admission Fees on Free Days from members of the general public who have been misled by defendants’ deceptive misconduct;
- promoting and marketing Combo-Tickets by conveying that such provide a discount off of the Admission Fees which, as a matter of law, cannot be charged (except at Lawful Fee-for-Entry Times);
- accepting payment of funds for Combo-Tickets which do not confer any benefit with respect to the MMA that is not otherwise available as a matter of law;
- promoting and marketing annual memberships to the MMA by conveying that such confer the benefit of free admission even though members of the general public are, on most days of the week, entitled to such free admission as a matter of law;
- accepting payment of funds for memberships under the false pretenses herein described;
- re-configuring the MMA without its park-side entrance for the purpose of facilitating collection of bogus Admission Fees;
- discriminating against the poor and others who cannot afford to pay the Admission Fees charged; and
- otherwise engaging in deceptive misconduct.

208. The MMA's aforementioned misleading and deceptive practices violate the consumer protection provisions of §349 of the New York State General Business Law.

209. Plaintiffs and the general public have been, and continue to be, injured by reason of their being deceived and misled by MMA into paying sums for entry into the Museum Exhibition Halls in violation of the Free Admission Requirement.

210. Plaintiffs and the general public have been, and continue to be, injured by reason of their being deceived and misled by MMA into purchasing MMA memberships and/or Combo-Tickets.

211. Plaintiffs and the general public, including particularly those members of the general public with lesser economic means and their families, have been, and continue to be, deceived and misled by the MMA's Deceptive Admission Fee Policy into forgoing visits to the Museum Building, and enjoying its art, collections and other exhibits.

212. The MMA's aforementioned misleading and deceptive misconduct is ongoing and will continue unless enjoined by the Court.

213. By reason of the foregoing, plaintiffs are entitled to an immediate restraining order, preliminary injunction and permanent injunction, enjoining defendants from charging any Admission Fees going forward on Free Days and, in addition, directing defendants, except at Lawful Fee-for-Entry Times, to:

- inform all persons entering the MMA on Free Days that they have the right to enter the Museum Building and Museum Exhibition Halls free of charge;
- remove on Free Days all signs indicating that an admission fee of any amount is required, can otherwise be charged or is even "recommended;"
- discontinue use of any and all marketing, brochures, promotional literature, and/or

other print and/or related advertising, including online advertising and posts, that reference Admission Fees, or insinuate that payment of any sum is required, otherwise can be charged or is even “recommended” on Free Days;

- discontinue sponsorship of sales of Combo-Tickets (except for entry at Lawful Fee-for-Entry Times);
- discontinue charging any sum to teachers employed by public and other non-tuition schools, even at Lawful Fee-for-Entry Times;
- discontinue all sales of MMA memberships until such time as defendants make disclosures subject to the supervision of the Court that make absolutely clear that free admission does not constitute a benefit of such membership (except at Lawful Fee-for-Entry Times);
- discontinue use of Admission Buttons or other similar devices designed to enforce collection of Admission Fees;
- direct the MMA to instruct all of its third-party vendors and others from which the MMA receives any remuneration in regard to Admission Fees (whether or not allegedly “recommended”) to discontinue all advertising, marketing, promotion, charging and/or otherwise selling admission tickets or other methods of entry into the MMA (except for entry at Lawful Fee-for-Entry Times); and
- remove all references to Admission Fees and other charges from the MMA Website and all other websites over which defendants have any control (until it is made clear that such fees and/or charges may be imposed only at Lawful Fee-for-Entry Times).

214. By reason of the foregoing, plaintiffs are entitled to payment of their attorneys’ fees.

215. From the dates that they assumed their positions at the MMA, the MMA Individual Defendants, have aided, abetted and participated in, and continue to aid, abet and participate in, the dissemination, publication and advertisement of the MMA’s Deceptive Admission Fee Policy to the general public and to plaintiffs.

216. The MMA Individual Defendants must be made subject to, and required to comply with, all of the foregoing injunctions, directions and requests for relief.

217. As to prospective relief, plaintiffs have no remedy at law.

FOURTH CAUSE OF ACTION

218. Plaintiffs repeat and reallege all of the allegations contained in ¶¶1 through 217 hereof as if set forth fully herein.

219. The MMA has promulgated, disseminated and advertised, and continues to promulgate, disseminate and advertise misrepresentations and other statements in connection with the MMA's Deceptive Admission Fee Policy to the general public and to plaintiffs ("Misrepresentations").

220. The Misrepresentations are reflected, *inter alia*, in the MMA Website, Third-Party Websites, Deceptive Signs, and other promotional marketing literature and media and signage recited in ¶¶54-156 hereof.

221. The Misrepresentations made in connection with the MMA's Deceptive Admission Fee Policy were and are false, deceptive and misleading at the time they were disseminated, published and advertised and to the present date.

222. Upon information and belief, at the time of dissemination, publication and advertisement of the Misrepresentations made in connection with the MMA's Deceptive Admission Fee Policy, the MMA and the MMA Individual Defendants knew that the statements made in furtherance of the Deceptive Admission Fee Policy were and are false, misleading and deceptive.

223. Upon information and belief, the MMA and the MMA Individual Defendants disseminated, published and advertised the Misrepresentations made in connection with the MMA's Deceptive Admission Fee Policy with the intent of deceiving and defrauding the general public, including the plaintiffs, into paying the Admission Fees that violate the Free Admission Statute and the Lease.

224. Members of the general public, including plaintiffs, were ignorant of the falsity of the Misrepresentations made in connection with the MMA's Deceptive Admission Fee Policy, including that such are in violation of the Free Admission Requirement.

225. The general public, including plaintiffs, actually relied upon the Misrepresentations made in connection with the MMA's Deceptive Admission Fee Policy that were and are disseminated, publicized and advertised by MMA with the aid and assistance of the MMA Individual Defendants, and upon their purported validity, and as a result the plaintiffs and members of the general public have been defrauded into paying sums of money to be admitted into the Museum Exhibition Halls, which sums were not properly payable for entry thereto, and many other members of the general public have been dissuaded from seeking, and have not sought entry into the Museum Facility, in order to avoid paying the purported Admission Fee therefor.

226. Plaintiffs and many members of the general public would not have paid sums of money to gain entrance to the Museum Facility and/or would have visited the Museum Facility, except for their reliance upon the MMA's Deceptive Admission Fee Policy disseminated, publicized and advertised by the MMA with the assistance of the MMA Individual Defendants.

227. Plaintiffs and the general public have been damaged, and will continue to suffer damage, as a result of the foregoing scheme.

228. By reason of the foregoing, plaintiffs are entitled to an immediate restraining order, preliminary injunction and permanent injunction, enjoining defendants from charging any Admission Fees going forward on Free Days and, in addition, directing defendants, except at Lawful Fee-for-Entry Times, to:

- inform all persons entering the MMA on Free Days that they have the right to enter

the Museum Building and Museum Exhibition Halls free of charge;

- remove on Free Days all signs indicating that an admission fee of any amount is required, can otherwise be charged or is even “recommended;”
- discontinue use of any and all marketing, brochures, promotional literature, and/or other print and/or related advertising, including online advertising and posts, that reference Admission Fees, or insinuate that payment of any sum is required, otherwise can be charged or is even “recommended” on Free Days;
- discontinue sponsorship of sales of Combo-Tickets (except for entry at Lawful Fee-for-Entry Times);
- discontinue charging teachers employed by public and other non-tuition schools, even at Lawful Fee-for-Entry Times;
- discontinue all sales of MMA memberships until such time as defendants make disclosures subject to the supervision of the Court that make absolutely clear that free admission does not constitute a benefit of such membership (except at Lawful Fee-for-Entry Times);
- discontinue use of Admission Buttons or other similar devices designed to enforce collection of Admission Fees;
- direct the MMA to instruct all of its third-party vendors and others from which the MMA receives any remuneration in regard to Admission Fees (whether or not allegedly “recommended”) to discontinue all advertising, marketing, promotion, charging and/or otherwise selling admission tickets or other methods of entry into the MMA (except for entry at Lawful Fee-for-Entry Times); and
- remove all references to Admission Fees and/or other charges from the MMA Website and all other websites over which defendants have any control (until it is made clear that such fees and/or charges may be imposed only at Lawful Fee-for-Entry Times).

229. From the dates that they assumed their positions at the MMA, the MMA Individual Defendants, have aided, abetted and participated in, and continue to aid, abet and participate in, the dissemination, publication and advertisement of the MMA’s Deceptive Admission Fee Policy to the general public and to plaintiffs.

230. The MMA Individual Defendants should be made subject to, and required to comply with, all of the foregoing injunctions, directions and requests for relief.

231. As to prospective relief, plaintiffs have no remedy at law.

FIFTH CAUSE OF ACTION

232. Plaintiffs repeat and reallege all of the allegations contained in ¶¶1 through 231 hereof as if set forth fully herein.

233. The Lease, Museum Facility Establishment Legislation and Free Admission Statute created a public/private partnership by which the MMA was required to provide free and open access to art and culture for the masses on Free Days, in consideration for the City's construction of a fully-furnished and -equipped Museum Building on valuable Public Parkland, rent-free with public subsidies.

234. By its original design, the MMA, in accordance with the public/private partnership, was designed to be accessible to and from Central Park for free on most days of the week and at least two evenings of each week.

235. The entrance on Fifth Avenue was designed to accommodate visitors arriving by vehicle.

236. The MMA declined to restore the entrance to the Museum Building from Central Park because, *inter alia*, the cost of constructing, creating and staffing admission fee collection apparatuses at that location was determined by the MMA to be too expensive.

237. Collection of Admission Fees (except at Lawful Fee-for-Entry Times) violates the Lease and Free Admission Statute. Thus, the MMA closed off the Museum Building from Central Park to implement an admissions policy that violates New York law.

238. The MMA is misusing the Museum Building and Public Parkland in ways not intended by Lease, Museum Facility Establishment Legislation and the Free Admission Statute.

239. Instead of providing free and open access to art for the masses, without regard to socio-economic status (as originally designed), the MMA has transformed the Museum Building and Museum Exhibition Halls into an expensive, fee-for-viewing, elite tourist attraction, where only those of financial means can afford to enter a publicly-subsidized institution.

240. By reason thereof, plaintiffs are entitled to an order, directing defendants to restore the Central Park entrance to the Museum Building, discontinue all policies designed to collect, and/or which otherwise result in the collection of, Admission Fees (except at Lawful Fee-for-Entry Times), and any and all other relief consistent with this purpose.

241. Plaintiffs have no remedy at law.

SIXTH CAUSE OF ACTION

242. Plaintiffs repeat and reallege all of the allegations contained in ¶¶1 through 241 hereof as if set forth fully herein.

243. Upon information and belief, the grant of the injunctive relief demanded in the aforesaid Fifth Cause of Action herein will require re-construction of the entrance fronting Central Park (“Construction in Central Park”).

244. Upon information and belief, the Construction in Central Park will require agency approval and funding within the meaning of §617(b) of the State Environmental Quality Review Act (“SEQRA”).

245. The Construction in Central Park constitutes a “Type I Action” as that term is defined by §617.4 of SEQRA.

246. By reason of the foregoing, plaintiffs are entitled to an order directing defendants to undertake an environmental assessment.

WHEREFORE, for the reasons herein set forth, plaintiffs demand judgment over and against defendants:

- as to the First, Second, Third and Fourth Causes of Action: an immediate restraining order, preliminary injunction and permanent injunction, enjoining the MMA from charging any Admission Fees going forward and, in addition, directing the MMA to:

- inform all persons entering the MMA on Free Days that they have the right to enter the Museum Building and Museum Exhibition Halls free of charge;
- remove on Free Days all signs indicating that an admission fee of any amount is required, can otherwise be charged or is even “recommended” for entry into the Museum Exhibition Halls;
- discontinue use of any and all marketing, brochures, promotional literature, and/or other print and/or related advertising, including online advertising and posts, that reference Admission Fees, or insinuate that payment of any sum is required, otherwise can be charged or is even “recommended” on Free Days;
- discontinue sponsorship of sales of Combo-Tickets (except for entry at Lawful Fee-for-Entry Times);
- discontinue charging teachers employed by public and other non-tuition schools, even at Lawful Fee-for-Entry Times;
- discontinue all sales of MMA memberships until such time as defendants make disclosures subject to the supervision of the Court that make absolutely clear that free admission does not constitute a benefit of such membership (except at Lawful Fee-for-Entry Times);
- discontinue use of Admission Buttons or other similar devices designed to enforce collection of Admission Fees;
- direct the MMA to instruct all of its third-party vendors and others from which the MMA receives any remuneration from Admission Fees (whether or not allegedly “recommended”) to discontinue all advertising, marketing, promotion, charging

and/or otherwise selling admission tickets or other methods of entry into the MMA (except for entry at Lawful Fee-for-Entry Times); and

- remove all references to Admission Fees and/or other charges from the MMA Website and all other websites over which defendants have any control (until it is made clear that such fees and/or charges may be imposed only at Lawful Fee-for-Entry Times).
- as to the Third Cause of Action, in addition to the foregoing, an award of attorneys'

fees and costs;

- as to the Fifth Cause of Action, an order directing defendants to restore the Central Park entrance to the Museum Building, discontinue all policies designed to collect, and/or which otherwise result in the collection of, Admission Fees (except for entry at Lawful Fee-for-Entry Times), and any and all other relief consistent with this purpose; and

- as to the Sixth Cause of Action, an order directing defendants to undertake an environmental assessment;

all together with disbursements, interest and any and all other and further relief this Court deems just and proper.

Dated: New York, New York
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WEISS & HILLER, PC
Attorneys for Plaintiffs
600 Madison Avenue
New York, New York 10022
(212) 319-4000

By. 

Michael S. Hiller