

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

FILIP SASKA, TOMÁŠ NADRCHAL, and
STEPHEN MICHELMAN,

Plaintiffs,

v.

THE METROPOLITAN MUSEUM OF ART,

Defendant.

Civil Action No. 650775/2013

AMENDED SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into as of the 26th day of February, 2016 by and among Filip Saska, Tomáš Nadrchal, and Stephen Michelman (collectively “Class Plaintiffs”) and The Metropolitan Museum of Art (the “Museum”), a New York nonprofit corporation.

WHEREAS the Museum currently operates pursuant to a “pay what you wish” admission system under which visitors to the Museum’s exhibition halls may pay an admission fee of their choice; and

WHEREAS the Class Plaintiffs in March 2013 commenced a civil action against the Museum (the “Action”) in the Supreme Court of the State of New York (the “Court”) asserting that the Museum’s admission practices, and the manner in which they are communicated to the public, violate New York law and the Museum’s lease with the City of New York; and

WHEREAS the Complaint in the Action asserts claims on behalf of a putative class for

both injunctive and other relief; and

WHEREAS the Class Plaintiffs intend to prosecute the Action vigorously if it cannot be resolved by agreement; and

WHEREAS the Museum denies the material allegations of the Complaint and intends to defend the Action vigorously if it cannot be resolved by agreement; and

WHEREAS the Museum and Class Plaintiffs now wish to resolve the claims and defenses asserted or which could have been asserted in the Action on the terms set forth herein and to stipulate to the entry of an order providing for disposition of all such claims and defenses, without otherwise admitting any issue of fact or law;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and with intent to be legally bound, it is hereby agreed by the Parties, subject to the final approval of the Court and any review of such approval by the appellate courts, as follows:

Settlement Class

1. For the purposes of this settlement only, Class Plaintiffs will seek, and the Museum will not oppose, the Court's certification of a class (the "Settlement Class") defined as follows:

All persons who, at any time from March 5, 2007 to the date of final approval of the Settlement Agreement, paid for either (i) admission to the exhibition halls of The Metropolitan Museum of Art (in person, online, or through a third party vendor, in any location, using any form of payment) or (ii) a Metropolitan

Museum of Art membership.

2. The Parties stipulate and agree that the definition of the proposed class in paragraph 101 of the Complaint in the Action shall be amended to be the same as the Settlement Class, and that the Court's orders preliminarily and finally approving this Settlement Agreement shall so amend the Complaint.

3. Plaintiffs will seek, and the Museum will not oppose, the Court's appointment of Emery Celli Brinckerhoff & Abady LLP as counsel for the Settlement Class ("Class Counsel"), and the appointment of Plaintiffs Filip Saska, Tomáš Nadrchal, and Stephen Michelman as representatives of the Settlement Class.

Settlement Consideration

4. Subject to the termination rights and other conditions stated in this Settlement Agreement, Class Plaintiffs and the Museum agree, as consideration for the settlement of the Action as described herein, that they will jointly propose to the Court the entry of a Judgment in substantially the form annexed hereto as Exhibit A.

Release of Claims

5. The "Releasing Parties" in this Settlement Agreement include the (i) Class Plaintiffs and their respective heirs, executors, administrators, trustees, successors, assigns, and representatives, and (ii) all other members of the Settlement Class and their respective heirs, executors, administrators, trustees, successors, assigns, and representatives.

6. The Releasing Parties hereby, upon the Court's final approval of this Settlement Agreement, expressly and irrevocably waive and fully, finally, and forever settle, discharge, and release the Museum from any and all manner of claims, demands, actions, suits, and causes of

action, whether individual, class, representative, or otherwise in nature, whether known or unknown, suspected or unsuspected, for injunctive relief as to all Releasing Parties and for all forms of relief as to the Class Plaintiffs, that any Releasing Party ever had, now has, or hereafter can, shall, or may have, arising out of or relating in any way to the Museum's admission practices or its communications with the public concerning those practices, as follows:

- a. The three individually named Class Plaintiffs release all claims of any nature, whether for equitable relief, money damages, or attorneys' fees and expenses.
- b. All other members of the Settlement Class release only claims for equitable relief and for attorneys' fees and expenses incurred in connection with the prosecution of their claims for equitable relief, and shall not be deemed to have settled, discharged or released the Museum from any claim for monetary damages. The claims released pursuant to this subparagraph and subparagraph a. are collectively referred to as "Released Claims."

7. Each Releasing Party further expressly and irrevocably waives and fully, finally, and forever settles and releases, upon the Court's final approval of this Settlement Agreement, any and all defenses, rights, and benefits that the Releasing Party may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in the preceding paragraph.

8. The Releasing Parties hereby covenant and agree that they shall not hereafter seek to establish liability against the Museum based, in whole or in part, upon any of the Released

Claims.

Preliminary Court Approval

9. Class Plaintiffs and the Museum agree to use reasonable and good faith efforts to effectuate preliminary Court approval of this Settlement Agreement, including filing necessary motion papers and scheduling a date and time for any necessary hearings that are mutually convenient for the Court, Class Plaintiffs, and the Museum.

10. Class Plaintiffs and the Museum agree to effectuate the Court's entry of an order (the "Preliminary Approval Order"), in the form of Exhibit B hereto, to:

- a. Preliminarily approve this Settlement Agreement.
- b. Approve the provisional certification of the Settlement Class for settlement purposes only, and declare that in the event of termination of this Settlement Agreement as provided below, certification of the Settlement Class shall automatically be vacated and the Museum may fully contest certification of any class as if no Settlement Class had been certified.
- c. Appoint Emery Celli Brinckerhoff & Abady LLP as Class Counsel.
- d. Determine that the Publication Notice in the form of Exhibit C and Notice Plan described in Exhibit D are fair, adequate, and sufficient, constituting the best practicable notice under the circumstances, and are reasonably calculated to reach members of the Settlement Class and apprise them of this Action, the terms and conditions of the Settlement Agreement, and

their rights under the Settlement Agreement.

- e. Approve the procedures described in the Notice for members of the Settlement Class to object to this Settlement Agreement.
- f. Schedule a final approval hearing (the “Final Approval Hearing”), for a time, date, and place mutually convenient for the Court, Class Plaintiffs, and the Museum and at least 95 days after the Court’s entry of the Preliminary Approval Order, at which the Court will conduct an inquiry into the fairness of this Settlement Agreement and determine whether the settlement should be finally approved.
- g. Stay all proceedings in the Action as between Class Plaintiffs and the Museum, except those related to effectuating and complying with the Settlement Agreement, pending the Court’s determination of whether the Settlement Agreement should be finally approved.

Notice Procedures

11. As soon as practicable following entry of the Court’s Preliminary Approval Order, Class Counsel shall cause the Publication Notice to be placed on the dedicated website for this Action, www.metfees.com (the “Settlement Website”), and the Museum shall (i) cause the Publication Notice to be placed in such publications and with such frequency as is described in Exhibit D hereto, in accordance with the Plan for Publication Notice, and (ii) concurrently place on the home page of the Museum’s public website a banner with a link to the Settlement Website in the form attached as Exhibit E. The Settlement Website will provide notice of the date and time that the Court sets for a hearing on final approval of this Settlement Agreement, and clearly

displayed links to complete copies of the following materials:

- a. This Settlement Agreement and its exhibits.
- b. The Court's order granting preliminary approval of this Settlement Agreement.
- c. The Complaint.
- d. The October 30, 2013 decision of the Court.
- e. The February 5, 2015 decision of the Appellate Division.

12. As explained in the Publication Notice, any member of the Settlement Class may object to this Settlement Agreement. Any member of the Settlement Class who wishes to assert such an objection (an "Objector") must send to Class Counsel and counsel for the Museum, by first class mail and postmarked not later than 45 days prior to the date set for the Final Approval Hearing, a written statement of objections. That statement must (i) state the full name and address and telephone number of the Objector, (ii) provide information sufficient to establish that the Objector is a member of the Settlement Class, (iii) state the full name and address and telephone number of any counsel representing the Objector in connection with the objections, (iv) describe all objections of the Objector and the specific reasons therefor (including legal support that the Objector wishes to bring to the Court's attention), and (v) attach any affidavits or other evidence relied upon in support of the objection. Prior to the Final Approval Hearing, Class Counsel shall e-file with the Court all written statements of objection received.

13. At or before the time when a motion for final approval is filed, Class Counsel and

counsel for the Museum shall notify the Court in writing that the Notice Plan was carried out and that the website notice, publication notice, and any other notice was provided in the manner directed by the Court.

Final Court Approval

14. Class Counsel and counsel for the Museum will move for the Court to enter a Judgment and Order Granting Final Approval of Settlement (the “Judgment” and the “Order Granting Final Approval”), in the form of Exhibits A and F hereto, which will:

- a. Determine that the Court has personal jurisdiction over Defendants and all members of the Settlement Class, and jurisdiction to finally approve this Settlement Agreement.
- b. Finally approve this Settlement Agreement, including its release provisions, and find that the Settlement Agreement was made in good faith, following arm’s-length negotiations, and was not collusive, and further find that the Settlement Agreement is fair, reasonable, and adequate for the Settlement Class.
- c. Define the Settlement Class and finally certify it for settlement purposes only, and declare that in the event of termination of this Settlement Agreement, certification of the Settlement Class shall automatically be vacated and the Museum may fully contest certification of any class as if no Settlement Class had been certified.
- d. Approve the notice provided to the Settlement Class as fair, adequate, and

sufficient, as the best practicable notice under the circumstances, and as reasonably calculated to apprise members of the Settlement Class of the Action, this Settlement Agreement, and their objection rights, and as fully satisfying the requirements of CPLR 904, and any other applicable laws or rules of the Court, and due process.

- e. Incorporate all terms and conditions of this Settlement Agreement by reference, and state the settlement consideration and full terms of the release.
- f. Provide that the Court retains continuing jurisdiction over the Settlement Class and the Museum to implement, administer, consummate, and enforce this Settlement Agreement, and the Judgment and the Order Granting Final Approval.
- g. Dismiss the claims for money damages asserted in the First Cause of Action with prejudice as to the three individually named Class Plaintiffs but without prejudice as to all other members of the Settlement Class, and without costs except as provided herein.
- h. Direct that the Released Claims asserted in the Action on behalf of the three individually named Class Plaintiffs and members of the Settlement Class are otherwise dismissed with prejudice and without costs except as provided herein.
- i. Enter a final injunction incorporating the terms of the consent decree

stated in paragraph 15, below.

Terms of Consent Decree

15. In consideration of and subject to all other terms of this Settlement Agreement, and without admission of liability, the parties agree to consent to the entry of a final injunction (the “Consent Decree”) as follows:

- a. **Disclosures of “pay what you wish” admissions policy**—During the term of the Consent Decree, the Museum shall provide disclosures (“Pay What You Wish Disclosures”) of its “pay what you wish” admissions policy in the following manner:
 - i. The Museum will maintain a sign or signs plainly visible to visitors approaching the ticket cashiers informing visitors of the Museum’s “pay what you wish” admissions policy and the suggested admission amounts by each category of visitor. Such sign(s) will disclose the Museum’s “pay what you wish” admissions policy in a manner substantially similar to Amended Exhibit G hereto, it being agreed that signage with identical content in the same order and spacing, and in the same relative type font sizes, and with the same prominence of display and prominence of placement as disclosures currently in use, shall be “substantially similar” regardless of other changes in the design or presentation.
 - ii. The Museum’s website will disclose the Museum’s “pay what you wish” admissions policy in a manner substantially similar to

Amended Exhibit H hereto, it being agreed that disclosure of the admissions policy with identical content in the same order and spacing, and in the same relative type font sizes, with the same prominence of display and prominence of placement as disclosures currently in use, shall be “substantially similar” regardless of other changes in the design or presentation.

- iii. The Museum’s on-site ticket kiosks and the first screens of the transaction pages will disclose the Museum’s “pay what you wish” admissions policy in a manner substantially similar to Exhibit I hereto, it being agreed that disclosure of the admissions policy with identical content in the same order and spacing, and in the same relative type font sizes, with the same prominence of display and prominence of placement as disclosures currently in use, shall be “substantially similar” regardless of other changes in the design or presentation.

- b. **Third party websites**—The Museum will include a provision in its contracts with CityPass, New York Pass, Explorers Pass and NYCitAll Pass (“Third Party Vendors”) that each Third Party Vendor shall disclose the Museum’s “pay what you wish” admissions policy, such that purchasers can reasonably have been notified of such policy prior to purchasing a product which includes admission to the Museum. The Museum will use commercially reasonable efforts to enforce such contract provisions.

- c. **Future changes in suggested admission amounts**—The Museum may change the amounts of the suggested admission amounts under the existing “pay what you wish” admissions policy. If it does so, it may change the amounts of the suggested prices shown on its Pay What You Wish Disclosures. Any such change, if limited to changing the amounts of the suggested prices, will not require the consent of the Class Plaintiffs or the approval of the Court.
- d. **Staff training/ evaluation**—The Museum will (i) not evaluate Visitor Services staff according to individual sales amounts, and (ii) provide Visitor Services staff with introductory training and quarterly refresher training programs on the “pay what you wish” policy and procedures for explaining that policy to visitors. Such procedures shall require that each cashier state that visitors may pay any amount they choose and ask how much visitors would like to pay , and that Visitor Services staff working as “line-busters” explain to visitors that they may pay less than the full suggested admission amount at the cashier’s desk if they continue waiting in line.
- e. **Future changes in Museum admission policy**—The Museum may, without seeking consent of the Class Plaintiffs or approval of the Court, change its admissions policy to charge some or all visitors mandatory admission fees (*i.e.*, fees charged on a basis other than the “pay what you wish” system), subject to any required governmental approvals. Any such change shall be deemed an “Admissions Policy Change.” The Museum

will announce any Admissions Policy Change by means of a press release, with a copy provided simultaneously to Class Counsel, at least 30 days before the effective date of the Admissions Policy Change.

f. **Revised disclosures following changes in Museum admission policy—**

Immediately upon the effective date of any Admissions Policy Change, the Museum may revise the signs at the entrances to the Museum, the Museum's web site, and communications with Third Party vendors (all such revisions being referred to as "Revised Disclosures") to reflect the Admissions Policy Change.

- g. **Court review and approval of Revised Disclosures—**Within 30 days after the effective date of any Admissions Policy Change, the Museum will apply to the Court, with notice to Class Counsel, for an order concerning application of the Consent Decree to the Revised Disclosures describing such Admissions Policy Change. If the Admissions Policy Change provides for a "pay what you wish" policy for some class or classes of visitors, the Court will review the Revised Disclosures and shall approve them if they disclose the availability of "pay what you wish" admission to such visitors in a manner substantially similar to the terms of paragraphs 15.a.i.-iii., above, governing Pay What You Wish Disclosures. On any such motion the Museum, as movant, shall bear the burden of persuading the Court that no such conflict or incompatibility exists. If the Admissions Policy Change does not provide for a "pay what you wish" policy for any class of visitors, the Court will enter an order stating that

the Consent Decree is inapplicable to such Revised Disclosures.

- h. **Availability of “pay what you wish” admission**—During the term of the Consent Decree, so long as the Museum’s admissions policy permits some or all visitors to enter the Museum’s exhibition halls on a “pay what you wish” basis, the Museum will ensure that eligible visitors are provided with a reasonable opportunity to purchase admission at the public entrance to the Museum for less than the full suggested admission fee if they choose.
- i. **Duration of consent decree**—The Consent Decree, once entered, shall remain in effect until 78 months after the date of execution of this Settlement Agreement. Upon the expiration of that time, the Consent Decree shall, without further order of the Court, expire and be of no further force or effect.

Attorneys’ Fees and Expenses

16. Upon entry of Final Approval of this Settlement Agreement by the Court, Class Counsel may apply to the Court for an award of attorneys’ fees and expenses to be paid by the Museum. So long as the total aggregate amount sought does not exceed \$350,000, the Museum agrees not to oppose such application or to argue that the amount sought is unreasonable. The Museum shall not be required to pay any attorneys’ fees and expenses until either (i) all deadlines for any person to seek appellate review of the order granting Final Approval of this Settlement Agreement have elapsed without such review having been sought, or (ii) all possible appeals from such order have been concluded and the order has been affirmed without

substantial modification.

Incentive Payments to Class Plaintiffs

17. The Museum agrees to make an incentive payment of \$1,000 each (\$3,000 total) to the three Class Plaintiffs in consideration for their services as Class Plaintiffs and their release of their individual claims for damages. Payment shall be made by check payable to Class Counsel as attorneys for each Class Plaintiff and shall be delivered to Class Counsel. The Museum shall not be required to pay such incentive payments until either (i) all deadlines for any person to seek appellate review of the order granting Final Approval of this Settlement Agreement have elapsed without such review having been sought, or (ii) all possible appeals from such order have been concluded and the order has been affirmed without substantial modification.

Termination

18. This Settlement Agreement may be terminated only as provided below. Termination shall be effected by written notice to all parties and the Court within ten business days after the event giving rise to the termination:

- a. Any party may terminate if the Court does not enter any of the following in substantially the form attached, or subsequently seeks to modify significantly any such documents: (i) the Preliminary Approval Order attached as Exhibit B hereto, and (ii) the Judgment and the Order Granting Final Approval attached as Exhibits A and F hereto.
- b. Any party may terminate this Settlement Agreement if the Court's Preliminary Approval Order, the Court's Judgment, or the Court's Order

Granting Final Approval are not substantially affirmed or are significantly modified on any appeal.

19. In the event of termination of this Settlement Agreement:

- a. This Settlement Agreement shall be null and void, and of no force and effect, except as provided in this paragraph 19 and in paragraphs 24, 25, and 26 below.
- b. Any certification of the Settlement Class by the Court for settlement purposes will automatically be vacated. The Class Plaintiffs, and all members of the putative class, will retain all claims as if this Settlement Agreement had not been entered into. The Museum will retain all defenses to certification and its non-opposition to the Settlement Class for settlement purposes only shall not be used as evidence, and shall not be admissible as such, in support of class certification in the Action or any other civil action or proceeding.
- c. Class Plaintiffs and the Museum shall revert to their positions prior to the execution of the original Settlement Agreement, including with respect to the appropriateness of class certification, as if no Settlement Agreement in this Action had been reached or executed.

Continuing Jurisdiction

20. During the term of the Consent Decree, the Court will retain continuing jurisdiction over the Class Plaintiffs, the Settlement Class, and the Museum to implement,

administer, consummate, and enforce this Settlement Agreement and the Judgment and the Order Granting Final Approval.

21. Class Plaintiffs, the Settlement Class, and the Museum hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the Judgment and the Order Granting Final Approval.

22. In the event that the provisions of this Settlement Agreement or the Judgment and the Order Granting Final Approval are asserted by the Museum as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any other suit, action, or proceeding by a Class Plaintiff or member of the Settlement Class, it is hereby agreed that the Museum may seek, and that Class Plaintiffs will not oppose, a stay of that suit, action, or proceeding until the Court has entered an order or judgment determining any issues relating to the defense or objections based on such provisions.

Additional Terms and Conditions

23. Plaintiffs, the Settlement Class, the Museum, and their respective counsel shall execute all documents and perform any additional acts reasonably necessary and proper to effectuate the terms of this Settlement Agreement and to obtain the benefit of this Settlement Agreement for Plaintiffs, the Settlement Class, and Defendants.

24. The Museum specifically denies any and all liability in this Action. It is expressly understood and agreed that the Museum, by entering into this Settlement Agreement, is not admitting any liability or wrongdoing and is not admitting the truth of any allegations or circumstances, and is not waiving any defense or affirmative defense.

25. This Settlement Agreement, and all negotiations, documents, and discussions associated with it, shall not be construed as, or deemed to be, evidence of any admission of any liability or wrongdoing on the part of the Museum or any of the Released Parties, or of the truth or merit of any allegations or claims in the Action, or evidence of any admission on the part of Class Plaintiffs and the Settlement Class that their potential claims lack merit, and shall not be offered or accepted as evidence of such in any litigation, arbitration, or other proceeding; provided, however, that nothing contained herein shall preclude use of this Settlement Agreement in any proceeding to enforce this Settlement Agreement.

26. At any time prior to the Final Approval of this Settlement Agreement, the Museum may in its discretion change its practices with respect to admission fees and the communication of those practices to conform to all or part of the provisions of the proposed Consent Decree. The parties agree that in the event the Settlement Agreement does not receive Final Approval (or such Final Approval is reversed on appeal) or is terminated for any reason, the Museum's decision to adopt such changes prior to Final Approval will not be admissible in evidence to prove that the Museum's prior practices were unlawful or tortious.

27. If any notice is required to be given under the terms of this Settlement Agreement, it shall be provided in writing and sent via e-mail and overnight mail to the following:

For Class Plaintiffs:

Andrew G. Celli, Jr., Esq.
Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue at Rockefeller Center
New York, NY 10019
acelli@ecbalaw.com

For the Museum:

Sharon H. Cott, Esq.
Senior Vice President, Secretary & General Counsel
The Metropolitan Museum of Art
1000 Fifth Avenue
New York, NY 10028-0198
Sharon.Cott@metmuseum.org

With a copy to:

Bruce R. Kelly, Esq.
Arnold & Porter LLP
399 Park Avenue
New York, NY 10022
Bruce_Kelly@aporter.com

28. This Settlement Agreement, together with its exhibits, constitutes the entire agreement between the parties with regard to the subject matter hereof. This Settlement Agreement may not be modified or amended except by a writing signed by all signatories hereto or their successors-in-interest.

29. It is understood and agreed that this Settlement Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing the document to be drafted. Each Party is entering into this Settlement Agreement voluntarily, without duress, with the consultation and advice of its legal counsel, and with full understanding of its terms.

30. This Settlement Agreement shall be interpreted and construed in accordance with the laws of the State of New York, without regard to the conflict of laws jurisprudence of the State of New York that would result in the application of the laws of any other jurisdiction.

31. This Settlement Agreement shall bind and inure to the benefit of the respective

heirs, personal representatives, successors and assigns of the Parties.

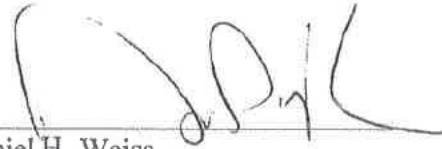
32. This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same Agreement. Executed signature pages for this Settlement Agreement may be delivered by facsimile or email and such facsimiles or emails shall be deemed as if actual signature pages had been delivered.

IN WITNESS WHEREOF, the signatories have read and understood this Settlement Agreement, have executed it, represent that the undersigned are authorized to execute this Settlement Agreement on behalf of their respectively represented parties, have agreed to be bound by its terms, and have duly executed this Settlement Agreement.


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30th ~~of~~ June ~~2016~~
AGREED to as of the 26th day of February, 2016


THE METROPOLITAN MUSEUM OF ART

By: 
Daniel H. Weiss
President

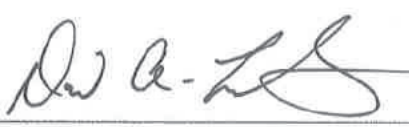
FILIP SASKA

By: 
~~Andrew G. Celli, Jr.~~ David A. Lebowitz
Attorney in Fact

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