

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

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**EDINBURGH INVESTMENTS LIMITED,**

**Plaintiff,**

**-against-**

**SIDNEY TENOUDJI,**

**Defendant.**

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**Index No. 650372/2013**

**PLAINTIFF'S FIRST  
NOTICE FOR  
DISCOVERY &  
INSPECTION**

PLEASE TAKE NOTICE THAT pursuant to CPLR §3120, plaintiff Edinburgh Investment Limited (“EIL”), by its attorneys, Franzino & Scher, LLC, demand that defendant produce for inspection and photocopying the following documents on March 20, 2013 at the offices of Franzino & Scher, LLC, 900 Third Avenue, 17<sup>th</sup> Floor, New York, New York 10022 at 10:00 AM, or at a mutually agreeable location.

**INSTRUCTIONS AND DEFINITIONS**

A. As used therein, the term “document” means each and every form of communication and includes, without limitation, all written, printed, typed, recorded, audio/digitally recorded, voice recorded, any materials maintained electronically (including, but not limited to electronic mail, word documents, Portable Document Format (PDF) files, Joint Photographic Experts Group (JPEG) files, Tagged Image File Format (TIF) files, or Graphic Interchange Format (GIF) files) or graphic matter of any kind, type, nature, or description, in whatever form (e.g., final and draft versions) that is or has been in your actual or constructive possession, custody, or control, including, but not limited to, all printed and electronic copies of electronic mail, notes, correspondence, memoranda, tapes, stenographic or handwritten notes, written forms of any kind, charts, blueprints, drawings, sketches, graphs, plans, articles, specifications, diaries, letters,

telegrams, photographs, minutes, contracts, agreements, reports, surveys, computer printouts, data compilations of any kind, teletypes, facsimiles, invoices, order forms, checks, drafts, statements, credit memos, reports, summaries, books, ledgers, notebooks, schedules transparencies, recordings, audio/digital recordings, catalogs, advertisements, promotional materials, films, video tapes, audio tapes, digital/audio recordings, voicemail recordings, brochures, pamphlets, or any written or recorded materials of any kind, however stored (whether in tangible or electronic form), recorded, produced, or reproduced, including backup tapes. The term “document” includes not only originals, but also any copies or reproductions of all such written, printed, typed, recorded or graphic matter upon which any notations, comments, or markings of any kind have been made that do not appear on the original documents or that are otherwise not identical to the original documents. Any document with marks such as initials, comments or notations of any kind is not identical to one without such marks and is to be produced as a separate document.

B. As used herein, the terms “communicate” or “communication” means any oral, written, audio/digitally recorded, voice recorded, or electronic transmission of information, including meetings, discussions, conversations, telephone calls, electronic mail messages, memoranda, letters, analyst reports, telecopies, facsimiles, conferences, messages, notes, videotapes, photographs, microfilm, microfiche, magnetic disks, digital/audio recordings, voicemail recordings, or other media of any kind.

C. As used herein, “and/or “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

D. The term “fact” includes all circumstances, events and evidence pertaining to, relating to, or touching upon the matter in question.

E. As used herein “pertaining to” means; consisting of, constituting, evidencing, reflecting, comprising, relating to or referring to in any way relevant within the meaning of the CPLR.

F. With respect to any document request which is objected to on grounds that such request is overbroad, irrelevant, and/or unduly burdensome, state the objection and state all information requested which can be provided without undue burden, and/or which is relevant or might lead to the discovery of admissible evidence, and/or which is otherwise not subject to objection.

G. These document requests shall be deemed to be continuing; requiring each defendant to serve upon plaintiff amended or supplemental documents promptly after said defendant has acquired them.

H. You must answer each document request fully and completely, after making reasonable inquiries to obtain the documents. If you cannot answer any document request fully and completely after making responsible inquiries, you should answer the document request to the best of your ability and explain why you cannot give a full and complete answer.

I. If you claim that part of any response is privileged or otherwise immune from discovery; (a) identify the ground for your claim of privilege or immunity (for example, attorney client privilege); (b) identify the privileged documents or communication by date, author, each and every recipient, and general subject matter; and (c) provide all information which responds to this request and does not fall within your claim of privilege or other immunity.

J. “Representative” means and shall include each and every present and former director, officers, employee, agent or other person acting or purporting to act on behalf of any entity (including, but not limited to, a partnership, corporation, etc.) or any predecessor, subsidiary, affiliates, agent, division or department thereof.

K. In the event that any document requested is not in your possession, custody or control,

please specify what disposition was made of it and by whom such document is now possessed, held in custody or controlled.

L. In the event that any document requested has been destroyed, please specify the date of destruction, manner of destruction, the reason for destruction, the person authorizing destruction, the person destroying the documents and the custodian of the document on the date and time of destruction.

M. The term “concerning” means relating to, referring to, describing, evidencing or constituting.

N. The terms “person” or “persons” refers to natural persons, proprietorships, governmental agencies, corporations, partnerships, trusts, joint ventures, groups, associations, organizations, and all other entities.

O. The terms “you” or “your” refers to you, including, without limitation, your agents, assigns, attorneys, representatives, and anyone acting or purporting to act on your behalf.

P. The words “and” and “or” shall be interpreted both conjunctively and disjunctively.

Q. The singular includes the plural and the plural includes the singular.

R. The term “Complaint” shall mean the Complaint in this action.

S. The term the “Painting” shall mean the painting entitled “Portrait de Femme” by Amedeo Modigliani.

T. This First Notice for Discovery and Inspection imposes a continuing obligation upon you to make further and supplemental document production if, between the time of the original production and the time of trial, you receive or generate additional documents satisfying the request set forth below.

U. Unless otherwise specified, Defendant is to produce the original of the requested

document(s) to Plaintiff and/or its representatives for inspection.

### **REQUESTS FOR PRODUCTION**

1. Originals for inspection, of the following:
  - a. The purchase invoice for the Painting made out by Galerie David & Garnier, Avenue Matignon, Paris (1958).
  - b. The letter from Emmanuel David to Edmond Cohen-Tenoudji confirming that in accordance with his request, statements of provenance for the Painting have been requested from the previous owners or dealers.
  - c. The letter from the most recent owner of the Painting before Edmond Cohen-Tenoudji, a woman who inherited the Painting, confirming that it was acquired sometime around 1931-1932.
  - d. The black and white photograph of the Painting by Marc Vaux, on whose back is a certificate of authenticity made and signed by Jeanne Castel (co-signed by Henry Bing), attesting that the Painting was part of the collection of her friend who inherited it.
  - e. The black and white photograph of the Painting by Marc Vaux, on whose back is a certificate of authenticity by Emmanuel David, David & Garnier Gallery, Paris.
  - f. A black and white photograph of the Painting by Marc Vaux, on whose back is a statement by a dealer in Lyon (Galerie de Lyon), confirming that he acquired the Painting from Zborowski in 1922 and sold it, then repurchased the Painting in 1932.
  
2. All documents concerning Defendant's acquisition of documents to be produced pursuant to Request No. 1.

3. All documents concerning the authenticity of documents to be produced pursuant to Request No. 1.
4. All documents concerning the provenance of the Painting.
5. All communications between Defendant and prior owners/possessors of the Painting.
6. All communications concerning the search and collection of documents related to the Painting.
7. All documents concerning or evidencing the authenticity of the Painting.
8. All documents concerning the value of the Painting.
9. All documents pertaining to the negotiations between Defendant and Plaintiff, including all agents/representatives of Defendant and Plaintiff.
10. All documents concerning an agreement (written or oral) to sell documents to Plaintiff and/or Dingman.
11. All communications between Defendant and his representatives concerning the Painting and/or documents evidencing the provenance of the Painting.
12. All documents and/or communications concerning and involving the following parties, and/or representative of the following parties:
  - a. Plaintiff;
  - b. Dingman;
  - c. Thom Ingram;
  - d. Van Kirk Reeves;
  - e. Asher Edelman;
  - f. Celine Frassart;
  - g. Viola Raikhel-Bolot; and

- h. Marc Restellini.
13. All documents and/or memoranda concerning any conversations Defendant or Defendant's agents/representatives had with those named in Demand No. 12 above.
14. All documents concerning the present location of the documents listed in Request No. 1.
15. All documents concerning the reasoning Defendant failed to produce documents for inspection by Marc Restellini in December 2012.

Dated: New York, New York  
February 12, 2013

FRANZINO & SCHER, LLC

By \_\_\_\_\_  
Frank J. Franzino, Jr.  
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