

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

THEODORE GRUNEWALD and PATRICIA
NICHOLSON,

Plaintiffs,

v.

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.

Civil Action No. 158002/2012

ANSWER OF DEFENDANTS

Respondents Thomas Campbell, Emily Rafferty, Daniel Brodsky and The Metropolitan Museum of Art (the “Metropolitan” or the “Museum”) (collectively, “Defendants”), by its attorneys Arnold & Porter LLP, respectfully answer the allegations contained in the Complaint of Theodore Grunewald and Patricia Nicholson (collectively, “Plaintiffs”) as follows:

1. Deny the allegations in Paragraph 1, except admit that Plaintiffs purport to bring this action as described therein.
2. Deny the allegations in Paragraph 2, except state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 concerning the survey described by Plaintiffs.
3. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3.

4. Deny the allegations in Paragraph 4, except state that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 4 concerning the educational backgrounds of the respondents to the survey described by Plaintiffs.

5. Deny the allegations in Paragraph 5.

6. Deny the allegations in Paragraph 6.

7. Deny the allegations in Paragraph 7.

8. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 8.

9. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 9.

10. Admit the allegations in Paragraph 10.

11. Admit the allegations in Paragraph 11, except that Defendant Thomas P.

Campbell served from 1995 through 2008 in various positions at the Metropolitan Museum of Art (“Museum”), including as Curator from 2003 to 2008.

12. Admit the allegation in Paragraph 12.

13. Deny the allegations in Paragraph 13, and aver that he had responsibility for Museum operations that included the solicitation and collection of a monetary amount that visitors pay voluntarily upon entrance to the Museum (“Admission Donation”).

14. Admit the allegations in Paragraph 14, except that Defendant Emily Rafferty was employed by the Museum as its Senior Vice President from 1996 to January 14, 2005.

15. Deny the allegations in Paragraph 15, and aver that she had responsibility for Museum operations that included the solicitation and collection of a voluntary Admission Donation from Museum visitors.

16. Admit the allegations in Paragraph 16.

17. Deny the allegations in Paragraph 17, and aver that he had responsibility for museum operations that included the solicitation and collection of a voluntary Admission Donation from Museum visitors.

18. Deny the allegations in Paragraph 18 except admit that venue is proper in New York County, New York.

19. Deny the allegations in Paragraph 19 and refer to the text of the documents cited therein for their content.

20. Admit the allegation in Paragraph 20.

21. Deny the allegations in Paragraph 21 and refer to the text of the documents cited therein for their content.

22. Deny the allegations in Paragraph 22 and refer to the text of the documents cited therein for their content.

23. Admit the allegation in Paragraph 23.

24. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 24.

25. Admit the allegation in Paragraph 25.

26. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26.

27. Deny the allegations in Paragraph 27.

28. Admit the allegation in Paragraph 28.

29. Deny the allegations in Paragraph 29.

30. Admit the allegation in Paragraph 30.

31. Admit the allegation in Paragraph 31.
32. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 32.
33. Deny the allegations in Paragraph 33 and refer to the text of the documents cited therein for their content.
34. Deny the allegations in Paragraph 34 and refer to the text of the documents cited therein for their content.
35. Deny the allegations in Paragraph 35 and refer to the text of the documents cited therein for their content.
36. Deny the allegations in Paragraph 36 and refer to the text of the documents cited therein for their content.
37. Deny the allegations in Paragraph 37 and refer to the text of the documents cited therein for their content.
38. Deny the allegations in Paragraph 38 and refer to the text of the documents cited therein for their content.
39. Deny the allegations in Paragraph 39 and refer to the text of the documents cited therein for their content.
40. Deny the allegations in Paragraph 40 and refer to the text of the documents cited therein for their content.
41. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41.
42. Deny the allegations in Paragraph 42 and refer to the text of the documents cited therein for their content.

43. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43.

44. Deny the allegations in Paragraph 44 and refer to the text of the documents cited therein for their content.

45. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45.

46. Deny the allegation in Paragraph 46.

47. Admit the allegation in Paragraph 47.

48. Admit the allegation in Paragraph 48.

49. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49.

50. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50.

51. Deny the allegations in Paragraph 51.

52. Deny the allegation in Paragraph 52, except admit that the Museum asks visitors to pay voluntarily a monetary amount (“Recommended Admission”) upon entrance to the Museum facility.

53. Deny the allegations in Paragraph 53.

54. Deny the allegations in Paragraph 54.

55. Deny the allegation in Paragraph 55, except aver that the Museum posts the Recommended Admission on its website.

56. Admit the allegation in Paragraph 56.

57. Admit the allegation in Paragraph 57.

58. Deny the allegations in Paragraph 58.
59. Deny the allegation in Paragraph 59.
60. Admit the allegation in Paragraph 60.
61. Deny the allegation in Paragraph 61.
62. Admit the allegation in Paragraph 62.
63. Deny the allegations in Paragraph 63.
64. Admit the allegation in Paragraph 64.
65. Admit the allegation in Paragraph 65.
66. Deny the allegation in Paragraph 66.
67. Deny the allegations in Paragraph 67.
68. Deny the allegation in Paragraph 68.
69. Admit the allegation in Paragraph 69.
70. Admit the allegation in Paragraph 70.
71. Admit the allegation in Paragraph 71.
72. Admit the allegation in Paragraph 72.
73. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 73.
74. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 74.
75. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 75.
76. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 76.

77. Deny the allegation in Paragraph 77.

78. Admit that at one time it “approved the content,” but state that they currently lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 78.

79. Admit that at one time it “authorized the references,” but state that they currently lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 79.

80. Deny the allegation in Paragraph 80.

81. Admit the allegation in Paragraph 81.

82. Deny the allegation in Paragraph 82, except admit that the Museum posts information concerning the NYPass in the Museum Building.

83. Deny the allegation in Paragraph 83.

84. Admit the allegation in Paragraph 84.

85. Admit the allegation in Paragraph 85.

86. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 86.

87. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 87.

88. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 88.

89. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 89.

90. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 90.

91. Admit that at one time it “approved the content,” but state that they currently lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 91.

92. Admit that at one time it “authorized the references,” but state that they currently lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 92.

93. Deny the allegation in Paragraph 93.

94. Admit the allegation in Paragraph 94.

95. Deny the allegation in Paragraph 95, except admit that the Museum posts information concerning the CityPass in the Museum Building.

96. Deny the allegation in Paragraph 96.

97. Admit the allegation in Paragraph 97.

98. Admit the allegation in Paragraph 98.

99. Deny the allegations in Paragraph 99.

100. Deny the allegations in Paragraph 100.

101. Deny the allegation in Paragraph 101.

102. Deny the allegation in Paragraph 102.

103. Deny the allegation in Paragraph 103.

104. Deny the allegation in Paragraph 104.

105. Deny the allegation in Paragraph 105.

106. Deny the allegation in Paragraph 106.

107. Deny the allegation in Paragraph 107.
108. Admit the allegation in Paragraph 108.
109. Admit the allegation in Paragraph 109.
110. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 110.
111. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 111.
112. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 112.
113. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 113.
114. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 114.
115. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 115.
116. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 116.
117. Admit that at one time it “approved the content,” but state that they currently lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 117.
118. Admit that at one time it “authorized the references,” but state that they currently lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 118.

119. Deny the allegation in Paragraph 119.
120. Admit the allegation in Paragraph 120.
121. Deny the allegation in Paragraph 121, except admit that the Museum posts information concerning the NY Explorer Pass in the Museum Building.
122. Deny the allegation in Paragraph 122.
123. Admit the allegation in Paragraph 123.
124. Admit the allegation in Paragraph 124.
125. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 125.
126. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 126.
127. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 127.
128. Admit that at one time it “approved the content,” but state that they currently lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 128.
129. Admit that at one time it “authorized the references,” but state that they currently lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 129.
130. Deny the allegation in Paragraph 130.
131. Admit the allegation in Paragraph 131.
132. Deny the allegation in Paragraph 132, except admit that the Museum posts information concerning Expedia in the Museum Building.

133. Deny the allegation in Paragraph 133.

134. Deny the allegation in Paragraph 134.

135. Deny the allegations in Paragraph 135.

136. Deny the allegations in Paragraph 136.

137. Deny the allegation in Paragraph 137, and aver that buttons are provided to all who furnish a voluntary Admission Donation upon entrance to the Museum.

138. Admit the allegation in Paragraph 138.

139. Admit the allegation in Paragraph 139.

140. Deny the allegation in Paragraph 140.

141. Deny the allegation in Paragraph 141.

142. Deny the allegation in Paragraph 142.

143. Deny the allegations in Paragraph 143.

144. Admit the allegation in Paragraph 144, except deny the characterization of the signs as “deceptive.”

145. Deny the allegations in Paragraph 145.

146. Deny the allegations in Paragraph 146.

147. Deny the allegation in Paragraph 147.

148. Deny the allegation in Paragraph 148.

149. Deny the allegations in Paragraph 149, except admit that the text of the sign is accurate.

150. Deny the allegations in Paragraph 150.

151. Deny the allegations in Paragraph 151.

152. Deny the allegations in Paragraph 152.

153. Deny the allegation in Paragraph 153, and refer to the text of the web page for its contents.

154. Deny the allegations in Paragraph 154, and refer to the text of the web page for its contents.

155. Deny the allegation in Paragraph 155, and refer to the text of the web page for its contents.

156. Deny the allegation in Paragraph 156.

157. Deny the allegation in Paragraph 157.

158. Deny the allegations in Paragraph 158.

159. Deny the allegations in Paragraph 159.

160. Deny the allegations in Paragraph 160.

161. Deny the allegations in Paragraph 161.

162. Deny the allegations in Paragraph 162.

163. Deny the allegations in Paragraph 163.

164. Deny the allegations in Paragraph 164.

165. Deny the allegations in Paragraph 165.

166. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 166.

167. Deny the allegations in Paragraph 167 and refer to the text of the documents cited therein for their content.

168. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 168.

169. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 169.

170. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 170.

171. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 171.

172. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 172.

173. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 173.

174. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 174.

175. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 175.

176. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 176.

177. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 177.

178. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 178.

179. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 179.

180. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 180.

181. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 181.

182. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 182.

183. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 183.

184. Repeat and re-allege their responses to Paragraphs 1 through 183 as if fully set forth herein.

185. Admit the allegation in Paragraph 185.

186. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 186.

187. Deny the allegation in Paragraph 187.

188. Deny the allegation in Paragraph 188.

189. Deny the allegation in Paragraph 189.

190. Deny the allegations in Paragraph 190.

191. Deny the allegations in Paragraph 191.

192. Deny the allegations in Paragraph 192.

193. Deny the allegation in Paragraph 193.

194. State that Paragraph 194 asserts legal conclusions to which no responsive pleading is required. To the extent a response is required, the Museum Defendants state that they

lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 194.

195. Repeat and re-allege their responses to Paragraphs 1 through 194 as if fully set forth herein.

196. Admit the allegation in Paragraph 196.

197. Deny the allegations in Paragraph 197.

198. Deny the allegation in Paragraph 198.

199. Deny the allegations in Paragraph 199.

200. Deny the allegations in Paragraph 200.

201. Deny the allegations in Paragraph 201.

202. Deny the allegations in Paragraph 202.

203. State that Paragraph 203 asserts legal conclusions to which no responsive pleading is required. To the extent a response is required, the Museum Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 203.

204. Repeat and re-allege their responses to Paragraphs 1 through 203 as if fully set forth herein.

205. Deny the allegations in Paragraph 205.

206. Deny the allegations in Paragraph 206.

207. Deny the allegations in Paragraph 207.

208. Deny the allegation in Paragraph 208.

209. Deny the allegations in Paragraph 209.

210. Deny the allegations in Paragraph 210.

211. Deny the allegations in Paragraph 211.

212. Deny the allegations in Paragraph 212.

213. Deny the allegations in Paragraph 213.

214. Deny the allegation in Paragraph 214.

215. Deny the allegations in Paragraph 215.

216. Deny the allegations in Paragraph 216.

217. State that Paragraph 217 asserts legal conclusions to which no responsive pleading is required. To the extent a response is required, the Museum Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 217.

218. Repeat and re-allege their responses to Paragraphs 1 through 217 as if fully set forth herein.

219. Deny the allegations in Paragraph 219.

220. Deny the allegations in Paragraph 220.

221. Deny the allegations in Paragraph 221.

222. Deny the allegations in Paragraph 222.

223. Deny the allegations in Paragraph 223.

224. Deny the allegations in Paragraph 224.

225. Deny the allegations in Paragraph 225.

226. Deny the allegations in Paragraph 226.

227. Deny the allegations in Paragraph 227.

228. Deny the allegations in Paragraph 228.

229. Deny the allegations in Paragraph 229.

230. Deny the allegations in Paragraph 230.

231. State that Paragraph 231 asserts legal conclusions to which no responsive pleading is required. To the extent a response is required, the Museum Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 231.

232. Repeat and re-allege their responses to Paragraphs 1 through 231 as if fully set forth herein.

233. Deny the allegations in Paragraph 233.

234. Deny the allegations in Paragraph 234.

235. Deny the allegation in Paragraph 235.

236. Deny the allegations in Paragraph 236.

237. Deny the allegations in Paragraph 237.

238. Deny the allegations in Paragraph 238.

239. Deny the allegations in Paragraph 239.

240. Deny the allegations in Paragraph 240.

241. State that Paragraph 241 asserts legal conclusions to which no responsive pleading is required. To the extent a response is required, the Museum Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 241.

242. Repeat and re-allege their responses to Paragraphs 1 through 242 as if fully set forth herein.

243. Deny the allegations in Paragraph 243.

244. Deny the allegations in Paragraph 244.

245. Deny the allegations in Paragraph 245.

246. State that Paragraph 246 asserts legal conclusions to which no responsive pleading is required. To the extent a response is required, the Museum Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 246.

The Museum Defendants state that the subject headings contained in the Complaint contain certain statements and characterizations to which no responsive pleading is required and they decline to respond to any of the allegations set forth in any of the headings contained in the Complaint.

The Plaintiffs are not entitled to any relief with regard to the allegations and statements made in the “WHEREFORE” clauses following Paragraph 246.

AFFIRMATIVE DEFENSES

The Museum Defendants set forth the following affirmative defenses without assuming any burden of proof not otherwise imposed upon the Museum Defendants.

First Affirmative Defense **(Failure to State a Claim)**

1. Plaintiffs’ Complaint fails to state a claim against the Museum Defendants on which relief can be granted.

Second Affirmative Defense **(Statute of Limitations)**

2. Plaintiffs’ claims are barred, in whole or in part, by the applicable statutes of limitations.

Third Affirmative Defense
(Waiver and/or Laches)

3. Plaintiffs' claims are barred, in whole or in part, by the doctrines of laches and waiver.

Fourth Affirmative Defense
(Lack of Standing)

4. Plaintiffs' claims are barred, in whole or in part, because they lack standing to pursue their claims against the Museum Defendants.

Fifth Affirmative Defense
(Res Judicata)

5. Plaintiffs' claims are barred, in whole or in part, by the doctrine of *res judicata*.

Sixth Affirmative Defense
(Third-Party Beneficiary)

6. Plaintiffs' claims are barred, in whole or in part, because they are not third-party beneficiaries to the lease between the Metropolitan and the New York City Department of Public Parks.

Seventh Affirmative Defense
(No Private Cause of Action)

7. Plaintiffs' claims are barred, in whole or in part, because neither the statute incorporating the Museum, nor the 1893 appropriations statute create a private cause of action.

Eighth Affirmative Defense
(Lack of Injury)

8. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have not suffered any legally cognizable injury or damage attributable to the Museum Defendants.

Ninth Affirmative Defense
(Failure to Plead the Requisite Elements)

9. Plaintiffs' claims are barred, in whole or in part, because they have failed to adequately plead the requisite elements of a violation of New York's General Business Law § 349.

Tenth Affirmative Defense
(Ripeness)

10. Plaintiffs' claims are barred, in whole or in part, because they are not ripe for review.

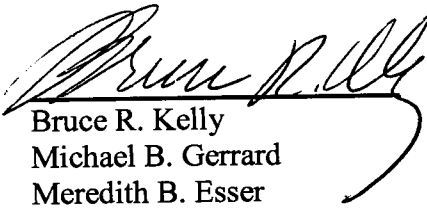
RESERVATION OF RIGHTS

11. The Museum Defendants reserve the right to assert any additional affirmative defenses and any counterclaims, cross-claims, or third-party claims that may become known through discovery or further investigation.

WHEREFORE, the Museum Defendants demand entry of judgment in their favor and against Plaintiffs Theodore Grunewald and Patricia Nicholson, dismissing with prejudice all claims for relief set forth in the Complaint with the award of attorneys' fees, interest, costs of suit, and such further relief as the Court deems just and proper in favor of Defendant and against Plaintiff.

Dated: New York, New York
March 13, 2013

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