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FILED Los Angeles Superior Court

Aaron P. Morris, Esq. (Bar No. 130727) MORRIS & STONE, LLP 505 N. Tustin Ave., Suite 250 Santa Ana, CA 92705 (714) 954-0700

Attorneys for Defendant THOMAS REGA

JUL 09 2010

John A. Clarke, Executive Officer/Clerk SHAUNYA-WESLEY

## SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES CENTRAL DISTRICT

PROFILES IN HISTORY, a California General Partnership,

Plaintiff,

VS.

THOMAS REGA, an Individual, and DOES 1-100, inclusive,

Defendants.

CASE NO. BC431481

NOTICE OF MOTION AND MOTION TO VACATE ENTRY OF DEFAULT AND **DEFAULT JUDGMENT:** MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF THOMAS REGA IN SUPPORT **THEREOF** 

(PROPOSED ANSWER PROVIDED HEREWITH AS AN ATTACHMENT)

DATE:

August 23, 2010

TIME:

8:30 a.m.

DEPT .:

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Complaint filed:

February 8, 2010

Trial Date:

None set.

## TO PLAINTIFF AND ITS ATTORNEY OF RECORD HEREIN:

NOTICE IS HEREBY GIVEN that on August 23, 2010, at 8:30 a.m. or as soon thereafter as the matter may be heard, in Department 52 of the above-entitled court, located at 11 N Street, Los Angeles, California, Defendant THOMAS REGA ("Defendant") will and hereby-does move this Court for an order vacating the default entered on June 7, 2010 and any subsequent LEA/DEF#:

MOTION TO VACATE DEFAULT AND DEFAULT JUDGMENT

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judgment by default that may be entered during the pendency of this motion. This motion in made on the grounds that the default and default judgment were entered as a result of Defendant's mistake, inadvertence, surprise and/or excusable neglect, and relief should therefore be granted pursuant to Code of Civil Procedure section 473 on the grounds of mistake, inadvertence, surprise, and/or excusable neglect, and under Code of Civil Procedure section 473.5 for lack of actual notice..

The motion is based on this notice, on the attached Memorandum of Points and Authorities and the Declaration of Thomas Rega, on all papers on file in this matter, and on such oral argument as the Court may consider at the hearing of this matter.

DATED: July 8, 2010

MORRIS & STONE, LLP

By: Aaron P. Morris

Attorneys for Defendant THOMAS REGA

MOTION TO VACATE DEFAULT AND DEFAULT JUDGMENT

ORIGINAL PROP BLOG.COM I, Thomas Rega, do declare as follows:

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1. I am the named defendant in this action. I have firsthand, personal knowledge of the facts asserted herein, and if called as a witness, could and would testify competently thereto.

- 2. I am a collector and occasional seller of memorabilia. I am new to this hobby and do not have much experience. Here, I purchased a number of movie posters that I believed would have value among collectors, and provided them to Plaintiff Profiles in History, on consignment, for Plaintiff to sell on my behalf. According to its complaint, Plaintiff was apparently most interested in selling a particular Dracula poster, since it is a highly valued collectors item. Given the circumstances of my purchase of that poster – the way found it among other old posters and the price I paid - I believed it to be authentic and had no reason to believe otherwise. Still, Plaintiff had the poster examined by its own expert who determined that the poster was authentic. Plaintiff reported back to me that its expert had found the poster to be authentic, and even told me that it would be featured on the cover of its auction magazine. Unfortunately, Plaintiff has now convinced itself, based on the comments of third parties, that the Dracula poster was not "authentic" and has filed an action against me. I paid a significant sum for the Dracula poster, believing it was genuine. I have not yet been provided with any proof that the poster is not genuine, and Plaintiff has failed and refused to return the poster to me so I can have the poster authenticated. If it should turn out that the poster is not genuine, I was not aware of that fact as evidenced by what I paid for it.
- 3. The current action makes no conceptual sense. I will be the only victim if the poster turns out to be a fake, since I paid for the poster. Plaintiff sells on consignment and is paid a commission by the buyer. As set forth in the complaint, Plaintiff never sold the posters they now claim were fakes, and has suffered no losses. Plaintiff makes a vague reference to loss of reputation because it now believes it put a fake poster on the cover of its auction magazine, but that was Plaintiff's decision based on the report of its own expert.

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12 MOTION TO VACATE DEFAULT AND DEFAULT JUDGMENT

The allegations of the complaint simply are not true. Plaintiff claims that I was 4. under some obligation to provide "authentic" movie posters, and then makes the leap in logic that a restored item is somehow not "authentic." That is not how the term is used in the industry. It is commonplace in the industry, when dealing with vintage posters, to restore them to the extent possible to improve their appearance and thereby increase the desirability of the item. It's no different than restoring a vintage car. Yet Plaintiff offers allegations of my restoration efforts as though they are proof of a misrepresentation. I never misrepresented the nature of the posters I was providing for consignment. Further, Plaintiff works on a commission basis, paid by the buyer, so it cannot lose any money based on whether an item is "authentic" or not. The sale price on a restored item will usually be lower than a piece that is in the same condition but without any restoration efforts, but that just impacts the sales price and the concomitant commission. Plaintiff does not claim it is owed money because of lost commissions, but rather is claiming it lost "sums on promoting the sales including putting the Dracula Poster on the front cover of Profiles' auction catalog," and a loss to its reputation. In reality, the posters Plaintiff thought might be fake were removed from the sale, so to the extent Plaintiff is claiming they were not "authentic" as it defines that word, its reputation is intact. I will be able to prove that I never mislead Plaintiff or made any misstatements about the posters.

Plaintiff has not provided the Court with the contract. Plaintiff claims that I 5. breached the contract because I warranted that the posters, including the Dracula Poster, were "genuine" and "authentic." In preparation of this motion, I reviewed the contract, and there is no language whereby I warrant the posters to be genuine and authentic. In any event, it was my belief that the posters were genuine and authentic, but the contract did not make me warrant that fact.

I was never personally served with the complaint in this matter. I have been 6. informed by my counsel that the Plaintiff is contending there was an attempt made to serve me at my home on April 5 at 4:56 p.m., and that on April 7, 2010 the complaint was then given to someone named Ryan Rega, who is identified as my son. I have only one son, and his name is

Aiden Rega. Aiden is three years old. I do not know anyone named Ryan Rega, and no one ever gave me a copy of the complaint that Plaintiff contends was served at my home. If my three year old son was served, he never provided me with the complaint. Also, I am generally available at home, and if the process server had simply tried to serve me in the morning or on a weekend day, he could have personally served me with the complaint.

7. Plaintiff did send me notice of a Status Conference sometime in May, stating that the conference would be on May 25. Upon receiving this notice, I wrote to the Court and to Plaintiff's counsel on May 17, explaining why I could not attend the Status Conference due to commitments, and my lack of funds for an airline ticket. I stated that if the Status Conference could be put off until July, I would have the funds to retain counsel and travel to California. Thus, even without proper service, I was trying my best to monitor and do what was necessary in the action. I never heard back from anyone to say that my request had been rejected (although I did receive something from the court telling me I should not communicate directly with the judge). My girlfriend called several attorneys in California to see if they could assist with this case, and when one of the attorneys informed us on July 6, 2010 that a default had been entered and that a default prove-up was pending on July 9, 2010, I immediately retained him to prepare this motion on an emergency basis to try to minimize any inconvenience to the court and counsel for Plaintiff.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: July 8, 2010

Thomas Rega