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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

JUL 09 2010

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY, Deputy

Attorneys for Defendant THOMAS REGA

**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.: 52

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 415 North Hill
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

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

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

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11 DATED: July 8, 2010

MORRIS & STONE, LLP

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13 By: 

14 Aaron P. Morris

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

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

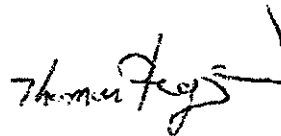
23 6. I was never personally served with the complaint in this matter. I have been
24 informed by my counsel that the Plaintiff is contending there was an attempt made to serve me at
25 my home on April 5 at 4:56 p.m., and that on April 7, 2010 the complaint was then given to
26 someone named Ryan Rega,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

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

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

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

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22 DATED: July 8, 2010



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Thomas Rega