

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

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MARLBOROUGH GALLERY, INC.,	:	Index No.:
Plaintiff,	:	Date Purchased:
-against-	:	
MAX LEVAI, PIERRE LEVAI, PASCAL SPENGEMANN AND JOHN HELMRICH,	:	SUMMONS
Defendants.	:	

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To the above-named Defendants:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's attorney an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

The venue was designated pursuant to CPLR 503 as Plaintiff limited liability company's principal office is located in New York County and at least one of the defendants resides in New York County.

Dated: September 15, 2020
New York, New York

ROBINS KAPLAN LLP

By: /s/ Eamon O'Kelly
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Attorneys for Plaintiffs

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

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Marlborough Gallery, Inc.,	:	Index No. _____
Plaintiff,	:	Hon. _____
	:	
-against-	:	<u>VERIFIED COMPLAINT</u>
Max Levai, Pierre Levai, Pascal Spengemann, and:		
John Helmrich,		
Defendants.	:	

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Plaintiff Marlborough Gallery, Inc., by its attorneys Robins Kaplan LLP, brings this action against Max Levai, Pierre Levai, Pascal Spengemann, and John Helmrich and alleges as follows:

INTRODUCTION

1. This is a civil action based upon the persistent wrongdoing of Max Levai and Pierre Levai, with the knowing assistance of Pascal Spengemann and John Helmrich—wrongdoing that caused substantial economic and reputational harm to Marlborough Gallery, Inc. (“Marlborough”). After Marlborough determined that the recent performance and long-term prospects of its New York gallery (“Marlborough Gallery” or “Gallery”) required that its operations be responsibly wound down and that the Gallery eventually close, it communicated its determination to Defendants Max Levai and Pierre Levai (together, the “Levai Defendants”), accompanied by an offer to negotiate an approach by which Max Levai and/or Pierre Levai might be able to transition operations to a new gallery under his or their own brand. That offer was voluntary on the part of Marlborough as there was no obligation, legal or otherwise, for Marlborough to do so. Marlborough’s efforts were aggressively met with opportunistic efforts to

secure a number of windfalls for the Levai Defendants to the detriment of Marlborough. In contrast to the good faith “high road” approach taken by Marlborough, and at the same time that Marlborough was offering an amicable and responsible outcome, and when both Max Levai and Pierre Levai owed fiduciary and other duties to Marlborough, the Levai Defendants were engaged in a pattern of self-interested and self-enriching transactions and an insistence on thwarting and undermining the responsible management of Marlborough, all for the benefit of Max Levai and Pierre Levai and to the detriment of Marlborough. The Levai Defendants were assisted by Marlborough employees Pascal Spengemann and John Helmrich. The resulting claims include breach of fiduciary duty, aiding and abetting breach of fiduciary duty, conversion, trespass to chattels, unjust enrichment, usurpation of corporate opportunity, breach of contract, breach of the covenant of good faith and fair dealing, negligence, defamation, fraud, constructive fraud, negligent misrepresentation, civil conspiracy, and an accounting.

2. Plaintiff seeks: (a) the return of its property that is being wrongfully held by Max and Pierre Levai as well as by others to whom they unlawfully transferred or consigned Marlborough property; and (b) damages in excess of \$8,000,000 for losses that Marlborough incurred due to property transferred that cannot be returned, any and all below-market sales and transfers of Marlborough property to Max Levai, Pierre Levai, or others at reduced or discounted prices, some of which occurred with the aid and assistance of Pascal Spengemann and John Helmrich, damages for money that was improperly transferred out of Marlborough’s financial accounts to Max Levai and others, for improper expenses charged to Marlborough by all Defendants, for losses associated with the Defendants all being unjustly enriched based on their wrongful actions, including but not limited to receiving compensation and commissions from Marlborough while breaching and/or aiding the breach of their respective fiduciary and other

duties, and benefits gained by their usurpation of Marlborough's corporate opportunities.

Plaintiff also seeks damages for the reputational damage suffered as a result of the false statements published by Max Levai.

JURISDICTION AND VENUE

3. Jurisdiction in this action is based on New York's Civil Practice Law and Rules ("CPLR") §§ 301 and 302.

4. Venue for this action is proper in the County of New York pursuant to CPLR §§ 503 and 509, insofar as one or more parties reside in New York County and the plaintiff designates New York County as the place of trial.

PARTIES

5. Plaintiff Marlborough is incorporated in New York and has its principal place of business in New York County in the state of New York. Plaintiff has operated art galleries in New York City and the County of New York since its inception in 1963.

6. Upon information and belief, Defendant Max Levai is an individual who resides in New York City, New York. He was employed by Marlborough beginning in 2012 when he was brought on by his father Pierre Levai to manage the contemporary art efforts of the Marlborough Gallery. In or around June of 2019, Max Levai was appointed President of the Marlborough Gallery by his father Pierre Levai. Max Levai's employment was terminated on June 24, 2020.

7. Upon information and belief, Defendant Pierre Levai is an individual who resides in New York City, New York. Pierre Levai is the nephew of the late Frank Lloyd, who founded the larger Marlborough enterprise in or about 1946. Pierre Levai acted as the President of the Marlborough Gallery until in or about June of 2019 when he appointed his son, Max Levai, to

succeed him as President of the Gallery. As of June of 2019, Pierre Levai continued to be an employee of Marlborough and was an officer serving on the board of directors.

8. Upon information and belief, Defendant Pascal Spengemann is an individual who resides in Pelham, New York. Spengemann was hired by Marlborough in 2012 and in 2019 was promoted by Max Levai to Vice President of the Gallery. Spengemann's employment was terminated by Marlborough on July 16, 2020.

9. Upon information and belief, Defendant John Helmrich is an individual who resides in Mamaroneck, New York. Helmrich was hired by Marlborough in approximately 1988 and served as the Gallery's Chief Financial Officer until he resigned on July 9, 2020.

STATEMENT OF FACTS

10. The Marlborough Gallery is located at 545 West 25th Street, New York, NY, 10001. The Marlborough Gallery is owned and operated by Plaintiff Marlborough.

11. Marlborough is owned by four trusts established by the late Frank Lloyd for the primary benefit of his wife and children. Pierre Levai is a limited, discretionary beneficiary of two of the relevant trusts. Max Levai may receive a bequest upon the passing of both of his parents. Neither Levai Defendant has any ownership interest in the Marlborough Gallery or its holdings.

12. Pierre Levai was President of the Marlborough Gallery for many years, until he promoted his son Max Levai to President in the summer of 2019.

13. During Pierre Levai's tenure with Marlborough, and continuing to the present, he owed and owes a fiduciary and other legal duties to the Marlborough Gallery and its beneficiaries.

14. Upon information and belief, throughout Pierre Levai's tenure with the Marlborough Gallery, Pierre Levai developed a sense of entitlement that eroded his understanding as to his role with the Marlborough Gallery and his right to take certain actions with regard to the Marlborough Gallery's property and resources. Examples of this sense of entitlement range from and include Pierre Levai's appropriation of Marlborough Gallery property for his own use and for the use of various friends and acquaintances; to directing, sometimes through his wife, Marlborough employees to reimburse himself and others for personal expenses; to diverting unauthorized corporate monies to support Max Levai's ill-advised venture into the restaurant and nightclub business.

15. Upon information and belief, Marlborough property that was appropriated by Pierre Levai continues to be in his possession and in the possession of others to whom he has wrongfully transferred Marlborough property.

16. By way of example, at least 23 valuable works of art owned by Marlborough have been in the possession of Marcia Levine, a person with whom Pierre Levai has a close—and on information and belief intimate—relationship. While Levine has at times purported to act as a sales agent for the Marlborough Gallery, she did not sell a single piece of art in 2020 and sold artworks only sporadically in recent years. Some of the works have been in Levine's possession for as long as two decades and most for at least a decade. Upon information and belief, many if not most of the works are not being actively marketed and instead are installed in Levine's private residence or residences for her own pleasure and to impress others.

17. Marlborough's business purpose is to generate revenue through the sale of art that it owns or that it has taken on consignment. Active efforts to market and sell art in order to

generate revenue are and have at all times relevant to this complaint been material to Marlborough.

18. Upon information and belief, Pierre Levai had personal knowledge that Levine was not actively marketing many if not most of the works in her possession and that they were instead installed in her private residence or residences for her own pleasure and to impress others.

19. Despite knowing that many if not most of the works in the possession of Levine were not being actively marketed by Levine and that they were instead installed in her private residence or residences, Pierre Levai persistently misrepresented or caused to be misrepresented in Marlborough Gallery records that Marlborough's property was "Out on loan."

20. Upon information and belief, Pierre Levai misrepresented or caused to be misrepresented the status of the works in Levine's possession in Marlborough Gallery records in order to induce the Gallery to allow Levine to perpetually maintain possession of Marlborough's property for her personal use.

21. The Marlborough Gallery relied on Pierre Levai as a fiduciary of Marlborough to maintain accurate records, to vigilantly protect Marlborough Gallery's assets, and to maximize revenue through the active marketing and sale of Marlborough's art holdings.

22. While Marlborough had knowledge of Pierre Levai's relationship with Levine, until such time that Max Levai's employment was terminated and the Board was able to access the Gallery's records, Marlborough did not have knowledge or information regarding the fact that Levine was in possession of at least 23 valuable works of art and that such possession in many instances went back decades.

23. As a result of Pierre Levai's concealed effort to allow Levine to possess numerous art works owned by Marlborough for extensive periods of time, Marlborough was denied the ability to market, sell, and generate revenue on such works and has therefore been damaged.

24. Upon information and belief, Pierre Levai purported to invoice and pay for one of the works of art in the possession of Levine but used a reference to Städel Museum in an effort to conceal that he was gifting the art to Levine.

25. During his time as an employee of the Marlborough Gallery, Max Levai owed a fiduciary and other legal duties to Marlborough and its beneficiaries.

26. Upon information and belief, Max Levai inherited his father's sense of entitlement related to the Marlborough Gallery, resulting in a belief that the Marlborough Gallery was "his" gallery, a misconception that he communicated to third parties. In concert with his father Pierre Levai, Max Levai used his position at the Marlborough Gallery to divert significant sums of unauthorized money away from the Marlborough Gallery to support the operations of the ill-fated nightclub/restaurant that he opened in his failed bid to become a night club impresario in New York City. In addition, Max Levai also used his position with Marlborough to secure a large loan from the Gallery, for which there is an outstanding balance of \$416,013.35 as of August 31, 2020.

27. Upon information and belief, consistent with the Levai Defendants' sense of entitlement, one or both of Pierre and Max Levai improperly gifted a Red Grooms work entitled Boy with Winter Hat to a third party, Dan Nadel. Dan Nadel was the curator of a Red Grooms show at Marlborough Gallery and had been fully compensated for his efforts.

28. The improper gifting of Boy with Winter Hat damaged the Gallery due to deprivation of income and the cost to pay the artist his share of what the painting should have sold for, and, similar to problems with other artists as detailed more fully below, created reputational harm for the Marlborough Gallery.

29. As early as April of 2020, Max Levai began planning a project that used works owned by or consigned to the Marlborough Gallery for his own personal benefit and promotion. This project was planned for a gallery in the Hamptons that was eventually launched as the “Alone Gallery.” Max Levai personally selected which of the Marlborough Gallery’s owned works and consigned works that he wanted to use for this personal project. Planning related to the “Alone Gallery” continued into May, during which time, upon information and belief, Max Levai used Marlborough Gallery funds to cover expenses related to the Alone Gallery.

30. Under Pierre Levai’s leadership, up to the time when he began increasingly delegating responsibility to Max Levai, the Marlborough Gallery had been reasonably profitable, largely as the result of long-standing relationships with established artists whose works commanded substantial prices.

31. From 2012, until his father promoted him to President in the summer of 2019, Max Levai was responsible for the Gallery’s contemporary artists and sales. Starting in April of 2017 he was also responsible for the contemporary artists and sales in the Marlborough’s London Gallery. Starting in the summer of 2019, Max Levai was responsible for all of Marlborough. In his time with Marlborough, Max Levai failed to demonstrate the ability to develop the type of relationships that had long sustained the Marlborough Gallery, resulting in decreased performance.

32. Upon information and belief, Pierre Levai's loyalty to Max Levai and his desire to provide for him was in conflict with, and often took precedence over, Pierre Levai's duties and obligations to Marlborough and its beneficiaries. As a consequence, upon information and belief, Pierre Levai failed to scrutinize Max Levai's performance and remained blindly committed to allowing Max Levai to transition to the role of President by 2019.

33. In assessing Max Levai's performance, it became clear to the Marlborough Board that the Marlborough Gallery had sustained losses of up to \$18.7 million during the period of 2013–2019, of which \$14.5 million was related to aspects of Marlborough over which Max Levai had primary responsibility. Despite the poor performance for which Max Levai was responsible, Max Levai, with the aid and assistance of Pierre Levai, rewarded himself with year on year salary increases that were not warranted.

34. During the transition to Max Levai's leadership of Marlborough, the Board was forced to subsidize losses through the sale of low-cost inventory of major artists, a strategy that could not continue as the inventory of major artists became diminished—most having left the Marlborough Gallery or passed away. Upon information and belief, many major artists that left the Gallery left due to issues that they had with one or the other of Pierre Levai and Max Levai. By late 2019 and into the first quarter of 2020, the Board was particularly concerned that it had not been presented with a plan by which the Gallery would attract new artists with high selling prices, which would be essential to the Gallery's survival.

35. In the first quarter of 2020, the Board repeatedly pressed Max Levai for business and financial planning that would support the ongoing viability of the Marlborough Gallery. The information provided to the Board did not result in confidence that the Gallery's operations could be responsibly maintained.

36. In the course of this analysis and related discussions, Pierre Levai admitted that at best it would take three to four years for the operation to be profitable. Neither Levai Defendant had a proposal for how to finance the related losses in a way that was not detrimental to Marlborough and its beneficiaries.

37. Ultimately, the Board determined that it would be irresponsible to cover the anticipated losses to the detriment of the beneficiaries and in a manner that would only benefit Defendant Max Levai.

38. On May 29, 2020, the Board communicated its decision to the Levai Defendants and in so doing outlined the reasoning behind the decision. This same communication reminded the Levai Defendants of the Board's obligation to preserve assets and responsibly monitor the business.

39. In this same May 29, 2020 communication, the Board expressed a willingness to offer the Gallery's real estate to Defendants Max and/or Pierre Levai for rent provided that they run any new gallery operation under their own name. In addition, this same communication offered to cooperate regarding the potential purchase of any inventory to assist with a new enterprise started by the Levai Defendants.

40. While the Board wished to be fair with the Levai Defendants regarding a transitional opportunity, its first priority was the responsible winding down of the Marlborough Gallery so that values could be maintained related to works that were owned by the Gallery and so that relationships with artists who had works on consignment could be preserved for the artists' and the Gallery's mutual benefit. It was important to the Board that the winding down be handled in a way that protected both value and opportunities in the best interest of Marlborough

and the beneficiaries. The Board appropriately expected all Marlborough employees to assist with and not undermine this objective.

41. On or about June 3, 2020, the Levai Defendants attempted to interfere with the Board's exercise of its duties to Marlborough and the respective trusts by threatening legal action if the Board pursued its well-reasoned decision to wind-down the Marlborough Gallery. The threat lacked any legal or factual basis, relied on inaccurate characterizations of the Board's motivation, and revealed a fundamental failure to acknowledge the actual beneficial and ownership interests of the Marlborough Gallery and the Gallery's assets. This threat was accompanied by a term sheet through which the Levai Defendants sought to obtain various real estate and other Marlborough property at a substantial reduction and to the extreme financial detriment of the Gallery. Related solely to the implicated real estate, the terms demanded by the Levai Defendants amounted to at least a \$10 million loss to Marlborough and a \$10 million windfall to the Levai Defendants.

42. Upon information and belief, Spengemann and Helmrich were immediately involved and assisted with the Levai Defendants' efforts, having been provided with a copy of the Board's May 29, 2020 communication by Max Levai one day after it was received.

43. In subsequent demands, the Levai Defendants further sought a windfall at Marlborough's expense, including by way of example seeking possession of the Gallery's Graphics, Photography, and Posters at a price that constituted 18% of actual cost and far less than actual value.

44. Additional subsequent demands also included an effort to obtain various real estate and art holdings for an amount that did not even account for the value of the real estate and

that was not tied to the actual value of the art that the Levai Defendants sought to obtain. By way of example, on June 18, 2020, despite knowing that any possible sale of art and real estate to Max Levai and Pierre Levai had to be pegged to actual fair market values to satisfy various duties to both the Marlborough Gallery and to the trust beneficiaries (who all are blood relations of the Levai Defendants), Max Levai issued another demand that, rather than increasing the most recently demanded below-market dollar figure in the direction of fair market values, instead dropped the demand figure by yet millions more dollars.

45. Upon information and belief, Pierre Levai supported and encouraged such unrealistic demands, despite his duties to Marlborough as an employee and member of the Board. Despite Pierre Levai's duties as a member of the Board, communications provided on his behalf by his representatives evinced active support for financial terms that represent windfalls to Max Levai (and to Pierre Levai himself, to the extent of his participation with Max Levai) and substantial losses for Marlborough. Other communications by Pierre Levai suggested and urged that current and previous employees of Marlborough be excused for works of art that may be missing. In all the years of his employment with Marlborough, this was the first and only notice to the rest of the members of the Marlborough Board of Directors that works of art might be missing. Despite his fiduciary duties, Pierre Levai gave no details regarding the missing artworks and to this day remains silent as to what is missing and what is known about the circumstances.

46. In light of increasing concerns regarding the tone of the Levai Defendants' demands and additional concerns regarding Max Levai's potential actions with Marlborough property, the Board communicated to the Levai Defendants that, effective as of June 6, 2020, sales of any works owned by the Marlborough Gallery valued at or in excess of \$50,000 were

considered unauthorized and presumptively void unless they were reviewed and authorized by Pierre Levai and such authorization was documented in writing.

47. At the time that this condition was put in place, the Board hoped and reasonably expected that Pierre Levai could be trusted to act in good faith, conduct himself in accordance with his fiduciary and other duties, and maintain control over Max Levai.

48. No documentation related to Pierre Levai's authorization of post-June 6, 2020 sales of Marlborough-owned works has been received by the Board or Marlborough's current management. What information there is regarding post-June 6, 2020 sales of such works indicates that some or all sales were at substantially below fair market values and thus the combined result of both Max Levai's and Pierre Levai's self-interest and their disregard of their legal obligations and duties to Marlborough.

49. Of utmost importance to the Board was that the Marlborough Gallery be wound down in a manner that maximized the value and sales price of the Gallery's assets and holdings and protected the artists with which it worked. For this reason the Board had no intention to make its decision to wind-down the Marlborough Gallery public or disclose the decision to third parties until a plan had been developed with Marlborough Gallery leadership.

50. Between May 29, 2020 and June 17, 2020, the Board continued to endeavor to find a reasonable way by which Max Levai could assume ownership of some Marlborough Gallery assets under his own brand and on reasonable terms. At the same time the Board repeatedly requested information from the Levai Defendants that was needed in order that they be in a position to plan for any appropriate form of wind-down or transition. Such information

requests included price and insurance lists for the art owned or held on commission by the Marlborough Gallery. Max Levai refused to provide or direct the provision of the information.

51. Draft correspondence dated May 30, 2020 provided by Max Levai's mother to Spengemann and Helmrich, with the subject line "Proposed Response to Board- FROM MAX", reveals Max Levai's thorough disregard for his duties to Marlborough. In this draft communication, presumably a proposed response to the Board's May 29, 2020 communication regarding the status of the Gallery, Max Levai:

- a. Threatens that if the Board does not complete the pending purchase of a second property for the Gallery, known as the Cheim Read building, the decision "will have serious residual impact that could spiral into some real problems for the family [...] With no one there to control the optics this could cause you all sorts of problems."
- b. States his intention to depart from Marlborough on June 10, an intention on which Max Levai never acted, instead staying in his position in order to use Marlborough's resources to support his new endeavors, continue to draw a salary, and make at least one fire sale transaction for which he claimed a commission.
- c. Articulates the demand that he be entitled to purchase both the existing Gallery building and the property subject to the pending sales agreement—the Cheim Read property—for \$16.9 million while knowing that the purchase price for the Cheim Read property alone was \$19 million and, upon

information and belief, that the most recent valuation of the Gallery building was \$13 million.

- d. States that “selling the package will allow you to avoid a lawsuit which you will loose [sic] and the burden of two vacant spaces that you will not be able to sell or rent in this market.”

52. From May 29 to the present, Max Levai failed to cooperate in providing the Board with any requested information or documentation related to Marlborough’s current operation or to provide the Board with access such that they could assess the current state of affairs and begin the process of holding sales and maximizing the value of the Gallery’s holdings. When the Board sought information regarding passcodes and physical access codes from Helmrich, he refused to provide the requested information. Upon information and belief, Helmrich was acting at the direction of and in collaboration with at least Max Levai in refusing to assist the Board.

53. It was the duty and obligation of all Marlborough Gallery leadership and employees to ensure that the Marlborough Gallery be wound down in a manner that maximized the value and sales price of the Gallery’s holdings and protected the relationships with all of the artists with which the Gallery worked. Such duties extended to Spengemann and Helmrich.

54. During May and early June of 2020, while still employed by the Marlborough Gallery, Max Levai continued to plan and ultimately launch the Alone Gallery, which used Marlborough Gallery art for a project publicly billed as “the concept of art dealers Tripoli Patterson and Max Levai, and art collector Bob Rubin, who, together, worked with Bean.la, a

California-based design and development agency, to design a social distancing art viewing experience.”

55. In early June, Max Levai, Helmrich, and Spengemann began shifting some of their communications to personal emails.

56. Upon information and belief, from early May until he was terminated on June 24, 2020, Max Levai devoted significant time and resources to the effort at the Alone Gallery to the detriment of the assistance that he should have been providing to the winding down of the Marlborough Gallery.

57. Upon information and belief, Max Levai intentionally excluded attribution to Marlborough from the opportunity at the Alone Gallery, while at the same time he used his position within the Gallery to direct the use of Marlborough’s contact lists in order to advertise the project.

58. In addition, Max Levai and Helmrich directed and approved the payment by the Marlborough Gallery of costs to publicize the Alone Gallery.

59. Also in June of 2020, while employed by Marlborough, Max Levai, with no notice to Marlborough and without authorization to do so, transferred an Instagram account in Marlborough’s name and brand and that had tens of thousands of followers to his own name: maxlevaiart.

60. Marlborough’s Instagram account was created during Max Levai’s employment with Marlborough and involved not only the Marlborough New York Gallery but also the Marlborough London Gallery.

61. Also in June of 2020, while employed by Marlborough, Max Levai devoted time and effort to purchasing art from at least Sotheby's for a new enterprise he was preparing to launch with Pierre Levai, Spengemann, and Helmrich.

62. In light of the complete lack of cooperation or good faith negotiations regarding a potential transition of some aspects of the Gallery, on June 17, 2020, representatives of the Board again engaged in communications with the Levai Defendants in order to facilitate their productive participation in the wind-down of the Gallery. In light of frustrations over the delays caused by the Levai Defendants' bad faith negotiations, the Board articulated that the wind-down would need to begin on June 19, 2020.

63. Rather than work cooperatively with the Board in response to this June 17, 2020 communication, on or about June 18, 2020, without any authority from the Board, Max Levai provided misleading, false, and damaging information to the press, which led to widely circulated press coverage that was similarly misleading, false, and damaging to Marlborough. Such information included at least that the decision to wind-down the Gallery involved "a power struggle that pitted members of its ownership family against one another" and that Gilbert Lloyd, who has no role or authority on the Board, had fired Defendants Pierre and Max Levai.

64. As of June 18, 2020, both Pierre and Max Levai remained employed by Marlborough and Pierre Levai served on the Board.

65. In addition, the false and misleading information provided to the press by Max Levai included that his father was in hospice care at the time the decision was communicated, when in fact the communication regarding the decision had also included a personal call to Pierre Levai from another member of the Board at which time Pierre Levai confirmed that he was well

into his recovery. Contrary to the truth, Max Levai stated to the press that: “As he lay battling for his life, after testing positive for COVID-19 this spring, the board used his condition for their own advantage, and voted while he was incapacitated to permanently close the New York gallery.”

66. Max Levai knew that the statement regarding Pierre Levai’s health was untrue. On May 4, 2020 he drafted a communication to a potential purchaser of Marlborough holdings that Pierre Levai was “about 14 days into the recovery.” In addition, on May 28, 2020, one day before the communication from the Board to the Levai Defendants, Max Levai himself communicated to the Board that Pierre Levai was “more comfortable and getting more and more back to normal”.

67. Upon information and belief, Max Levai’s false and misleading statements to the press were designed to aggrandize the Levai Defendants to the detriment of the Marlborough Gallery.

68. Upon information and belief, Max Levai’s false and misleading statements to the press were designed to move artists away from the Gallery and to an enterprise he was developing with Pierre Levai, Spengemann, and Helmrich.

69. Max Levai’s false and misleading statements further undermined the effort to effectively and responsibly wind-down the Marlborough Gallery’s operations and maximize the value of its holdings and its relationships with artists.

70. Also on or about June 18, 2020, Max Levai claimed publicly that he had “broken with the international Board of Marlborough Gallery.”

71. In contrast to his statements to the press, internally Max Levai continued to direct employees and draw a salary.

72. In contrast to his statements to the press, Max Levai's employment had not yet been terminated.

73. Max Levai's statements to the press undermined the Board's ability to engage in productive and mutually beneficial discussions with the Gallery's artists and resulted in artists severing relationships with the Gallery when, on information and belief, they would not have in the context of an orderly wind-down.

74. Also in June, the Levai Defendants engaged in discussions with artists and their representatives that discussed the closing of the Gallery. Upon information and belief, such discussions were meant to convince artists to prematurely sever ties with the Gallery, to the detriment of Marlborough and its beneficiaries. Upon information and belief, Spengemann and Helmrich also participated in such discussions.

75. Within just five days of Max Levai's false and misleading statements to the press, he had compiled a list of 46 artists whom he claimed no longer wished to work with the Marlborough Gallery.

76. Upon information and belief, most if not all of these 46 artist relationships would have remained intact but for the efforts of the Defendants.

77. Communications from artists and their representatives reflect the damage done by the press coverage facilitated by Max Levai, including beliefs that the Gallery had already been closed, which was not the case, and surprise that artists were not contacted prior to the press reports.

78. Increasingly concerned with Max Levai's behavior and the need to secure and preserve the Marlborough Gallery's assets and intellectual property, on June 23, 2020, representatives for the Board wrote to the individuals involved in the Alone Gallery and communicated that the use of the Gallery's assets was not authorized and asked that such unauthorized use cease. The communication also sought documentation and an accounting for any and all business or financial arrangements Max Levai purported to make related to the Gallery's property and additionally that the Gallery's property and records, including records of sales and financial transactions, be provided. This request went unheeded by Max Levai and his business partners.

79. The June 23, 2020 request also requested that the Instagram account dedicated to the Marlborough Galleries be restored to its proper name and brand. This request also went unheeded.

80. Rather than comply with the request, Max Levai explicitly told at least one business partner "Dont worry bout the letter [sic]."

81. Between May 29 and June 24, Max Levai was also communicating with Spengemann and Helmrich regarding his efforts to negotiate a windfall for himself at the expense of Marlborough, providing them with updates regarding his efforts with his lawyers and engaging with them regarding his strategy. Upon information and belief, despite being employees of Marlborough, Spengemann and Helmrich did nothing to protect the Gallery and instead actively supported Max Levai's destructive actions.

82. By way of example, on or about June 11, 2020, Max Levai wrote to Defendants Helmrich and Spengemann "Important to know that Chelsea arts tower has still not gotten cofo

which we should take into mind in these negotiations.” The next day, Helmrich responded “Absolutely”.

83. Also in June of 2020, Max Levai used his position within the Gallery to ship Gallery items to his apartment and to a restaurant known as Juku, which upon information and belief is an establishment in which Max Levai has a personal and proprietary interest.

84. Upon information and belief, also between May 29 and June 24, all Defendants engaged in discussions with artists and others who did business with the Gallery in a manner that actively undermined the best interests of the Gallery and its beneficiaries.

85. By way of example, upon information and belief, while still employed by Marlborough, Max Levai communicated with representatives for Art Basel (the premiere art fair in the world) and, in addition to continuing to perpetuate the inaccurate narrative suggesting a family drama, indicated that he was “hatching plans for a new venture with key staff, artists and artist estates.”

86. Max Levai’s “key staff” included Spengemann and Helmrich, who while employed by Marlborough, assisted Max Levai with his efforts at the Alone Gallery.

87. After the Board became increasingly frustrated with Max Levai’s unwillingness to assist the Board with responsible management of the Marlborough Gallery’s winding down, on June 24, 2020, Max Levai was terminated from his employment with the Gallery.

88. Max Levai’s termination from his employment with the Gallery was accomplished by an action of the Board at a meeting that occurred at 10:00 EDT on June 24, 2020. Pierre Levai participated as one of three board members and voted present on the resolution to terminate Max Levai’s employment.

89. On the same day he was terminated, Max Levai was actively interfering with the Gallery's relationships with artists and their representatives. In correspondence with one such party on the afternoon of June 24, 2020, this third party noted to Max Levai "Thank you for your call today [...] I have spoken to [the director] [...] about the current situation with Marlborough and about your new future plans for New York and Montauk. Until we hear something from the Marlborough Gallery Board of Directors, everything remains the same as it has been..." Max Levai responded by stating that he had spoken with his father and, without acknowledging that he no longer was employed by Marlborough, falsely suggested that the Gallery had closed by claiming that his father had "attended today's final meeting." Max Levai further communicated: "In regards our conversation about removing your name from the represented artist list, I assume your email is stating that you would like to remain for the time being. Please understand that as of tomorrow you will be the only New York artist left on that list." Max Levai then provided his personal email for future contact.

90. Once Max Levai was terminated, the Board finally had the ability to access the Gallery, including its physical location and its paper and electronic records. Due to the failure of the Levai Defendants to cooperate with the responsible management of the Gallery's winding-down, the Board was forced to incur expenses related to both the physical locks as well as securing access to physical and electronic records.

91. Helmrich, while still employed by Marlborough, collaborated with Max Levai to continue to thwart the Board's efforts to secure the Gallery. When the Board requested access to the Gallery, Helmrich refused to cooperate. Worse, when the Board contacted him regarding whether there were alarms set at the Gallery and sought the codes to disable them so that the locks could be changed, Helmrich continued to be uncooperative and instead emailed Max

Levai, who was no longer employed at the Gallery, and indicated “Looks like a major move is imminent”.

92. Until he was terminated, Max Levai’s lack of cooperation with the Board and active disruption of artist relationships with the Gallery interfered with the Board’s ability to appropriately communicate with the artists associated with the Gallery. Nevertheless, Defendants, including at least Spengemann, perpetuated the perception that the state of mismanagement was the fault of the Board, including in a communication to the artist Red Grooms where Spengemann also suggested that “Max was fired without cause yesterday afternoon.”

93. Upon finally securing access to the Gallery, the Board learned that the Gallery’s physical condition was vastly deteriorated and showed signs of not only neglect, but active destruction. Upon information and belief, Max Levai made it a practice to use the Gallery premises to host unwieldy parties that resulted in physical damage to the Gallery. Addressing the deterioration and damage to the Gallery caused Marlborough to incur costs and divert staff and other resources from the operation of the Gallery to addressing the physical condition of the property.

94. Upon finally securing access to the Gallery and the records that were available, the Board learned that one of the Marlborough Gallery-owned works that had been wrongfully consigned to the Alone Gallery was a specific work by Alex Katz known as Blue Sweater.

95. In the months leading up to Max Levai’s termination, Max Levai and other sales representatives had been engaged in discussions regarding the potential sale of Katz’s Blue

Sweater. Amongst the employees at Marlborough it was consistently communicated that the value was \$1.8 million.

96. Upon information and belief, the actual value of Katz's Blue Sweater is over \$2 million.

97. In June of 2020, Max Levai sold Katz's Blue Sweater for \$1.2 million, constituting an at-least-\$600,000 lost revenue opportunity for the Gallery. Katz's Blue Sweater was sold at that deep discount to Bob Rubin, one of Max Levai's friends and collaborators in the Alone Gallery venture. On June 24, 2020, the very day he was terminated, Max Levai claimed a \$60,000 commission on the sale. Upon information and belief, Max Levai did not seek the required written pre-approval from Pierre Levai. In the alternative, if Pierre Levai did provide such an approval, it was done in bad faith and constituted an action tailored to benefit Max Levai over the interests of Marlborough and its beneficiaries.

98. Upon information and belief, Spengemann and Helmrich were knowledgeable regarding the under-valued sale of Katz's Blue Sweater, and upon information and belief, did nothing to stop it.

99. After his termination on June 24, 2020, Max Levai continued to direct and engage in correspondence with Marlborough employees, specifically Spengemann and Helmrich, regarding Marlborough business, including directing the movement of Marlborough's assets and authorizing commissions to himself and others. Upon information and belief, Spengemann and Helmrich knowingly participated in, supported, and aided Max Levai's actions to the benefit of Max Levai and to the detriment of Marlborough and its beneficiaries.

100. In the days leading up to and continuing after his termination Max Levai, both directly and also with the assistance of Spengemann and Helmrich, cancelled a series of invoices related to sales that had been previously made by Marlborough and for Marlborough's benefit. The cancelled invoices related to commissioned works by three sculptors—Tony Matelli, Matt Johnson, and Julius von Bismarck—who were engaged by the Marlborough Gallery with the understanding that the artist and the Gallery would each receive a percentage of the profit when the work was sold. In some instances artists were advanced costs from Marlborough for fabrication and materials.

101. Upon information and belief, the invoices cancelled by Max Levai in the days leading up to and after his termination reflect actions taken to interfere with agreements made between artists and the Marlborough Gallery and to transfer the benefit of the previous agreements with the artists to a new venture or ventures for the benefit of the Defendants.

102. The interference with and transfer of agreements made between artists and the Marlborough Gallery caused Marlborough to be damaged by the deprivation of profits to which it was legally and contractually entitled and also by the loss of costs advanced for fabrication and materials.

103. Also in the days leading up to and continuing after his termination Max Levai, both directly and also with the assistance of Spengemann and Helmrich, made alterations to other invoices. In some instances the alterations increased the recorded costs on the invoices while simultaneously decreasing the profit. Upon information and belief, such alterations to invoices were done with the intent and purpose of burdening the Marlborough Gallery with falsified alleged costs related to works and with artists that Defendants were soliciting for their

new venture or ventures and also to deny any profit to Marlborough and to transfer increased profit to the Defendants.

104. Also in the days leading up to and continuing after his termination Max Levai, and upon information and belief with the support, aid, and assistance of Pierre Levai, Spengemann, and Helmrich, interfered with a contract related to an artist duo known as Freeman & Lowe who had numerous works on consignment with Marlborough and for whom Marlborough had invested more than \$500,000 in fabrication costs. A large set of consigned works were dedicated to a project for the Aros Museum in Denmark, a project that was worth revenue in the amount of \$750,000 to Marlborough. On June 30, 2020, six days after his employment was terminated, Max Levai advised a representative of Marlborough's London Gallery that the project with the Aros Museum was cancelled. As of the date of this Complaint, the Aros Museum continues to promote the upcoming Freeman & Lowe exhibit which, upon information and belief, Max Levai transferred to one of his new ventures. This interference alone cost the Gallery nearly \$1,000,000 in the loss of invested costs and lost revenue.

105. After his termination on June 24, 2020, Max Levai continued to direct Marlborough employees to work on his behalf related to the Alone Gallery, drawing on Marlborough resources that should have been dedicated to the responsible management of the Gallery's winding down.

106. Such efforts included directing Marlborough employees to assist with promotional work for the Alone Gallery. For example, on or about July 2, 2020, Marlborough employees were asked to assist with promotional work at the Alone Gallery for an exhibit of Tomás Sánchez's works. Max Levai wrote "Hey guys Can u help With this Important for tomas".

107. Such post-termination efforts also included Max Levai directing employees to assist with purchases that were related to his efforts to start his own enterprise. For example, on June 30, 2020, Max Levai directed a Marlborough employee to “send hugo my new invoicing info.” related to the purchase of a piece called Allen Jones Hat Stand that previously, on June 17, 2020, while still employed by Marlborough, Max Levai had secured for himself. In the context of the final agreement, when the counterparty indicated that he would draft up sales documents for transfer to Marlborough, Max Levai noted: “Not to Marlborough. To my personal entity.”

108. After his termination on June 24, Max Levai continued to engage in correspondence with artists associated with the Gallery, falsely representing that prior to the Board’s decision, the Gallery’s “business was going extremely well recently in New York” and that the Board’s efforts to responsibly wind-down the Gallery represented “a bizarre sequence of events” and that another family member “was the architect of all of this!” In such correspondence he also solicited the artists to work with him on his “really exciting plans”.

109. Also after his termination on June 24, 2020, Max Levai spearheaded an effort to put Pierre Levai in a position related to the wind-down of the Marlborough Gallery where he could seek to further Max Levai’s interests to the detriment of Marlborough. Upon information and belief, Max Levai’s efforts went so far as to include overseeing the drafting of letters to be sent on behalf of Pierre Levai. Max Levai provided copies of his efforts to Spengemann and Helmrich while both continued to be employees of the Gallery and Spengemann actively assisted with drafting and revision. On or about June 30, 2020, Helmrich responded to one such effort by noting: “Great letter!! Let’s see the reaction”.

110. Upon information and belief, the communication referenced in Helmrich’s June 30, 2020 communication was drafted by Max Levai with assistance by Spengemann. This

communication, purported to have been written by Pierre Levai, wrongly suggested that certain fire-sale valuations at which Max Levai wished to purchase art that he wished to acquire were “fairly priced” and suggested to the other members of the Board that they counter Max’s proposal at a level that represented a significant loss to Marlborough and a comparable windfall to Max Levai. Upon information and belief, Pierre Levai was, however, knowledgeable regarding the self-serving drafting being done on his behalf and ultimately approved it on each occasion.

111. Into July, including on or about July 9, 2020, Max Levai was, with the assistance of Defendants Helmrich and Pierre Levai, approving payments, including upon information and belief to artists and related to projects that he and his Co-Defendants had actively moved from Marlborough to an enterprise that they were starting for their own benefit.

112. Spengemann and Helmrich were not only assisting the Levai Defendants with an effort to set up a competing gallery, on numerous occasions, including specifically the early July time frame, they collaborated and assisted the Levai Defendants with their adverse legal efforts against the Board. Specifically, Spengemann actively assisted with proposed language and drafting related to correspondence and messaging provided through the Levai Defendants’ lawyers.

113. In addition, on July 9, 2020, shortly after resigning, Helmrich directed that Max Levai be paid his full salary despite knowing that he had been terminated.

114. The previous month, with full knowledge that the Gallery was to wind down, Helmrich requested from Max Levai an additional \$40,000 as a “commission” related to work done in 2019. Helmrich was not a sales representative, and he not only received a generous

salary, but also a significant and upon information and belief already inflated bonus for his work in 2019. Upon information and belief both Levai Defendants approved this additional undeserved payment to Helmrich.

115. As late as mid-July 2020, Defendants were contacting Marlborough artists, sometimes using Marlborough email accounts, to urge artists to leave the Gallery. By way of example, as late as July 16, 2020, Helmrich corresponded with one such artist, indicating in an email sent from his Marlborough email account: “a very upsetting time. I have actually resigned last Thursday and will be working with Pierre and Max on some new projects. You should make a formal written request for the return of your works to Pascal, as the gallery’s Vice President. All costs related to the return are at Marlborough’s expense.”

116. In addition, continuing into July and August of 2020, while still owing Marlborough fiduciary duties in light of his position on the Board, Pierre Levai communicated with artists and artist representatives to convince them to sever their respective relationships with Marlborough and work with Max Levai on his new projects.

117. The Board’s access to the Gallery and available Marlborough records has revealed and continues to reveal additional information regarding the Defendants’ activities. By way of example, it has become evident that on June 12, 2020, Pierre Levai sold himself a painting by the artist Rufino Tamayo for \$40,000. The Gallery had purchased the work in 1983 for \$45,000, and the value is currently estimated to be between \$2 and 2.5 million. Press coverage of Pierre Levai demonstrates that Pierre Levai had been in personal possession of this particular Tamayo since at least 2016.

118. In addition, also on June 12, 2020, Pierre Levai sold himself an Alex Katz painting known as The Red Band for \$45,000. The Red Band had been purchased by the Gallery in 1978 for \$5,700 and its current value is believed to exceed \$1.7 million.

119. Max Levai and Helmrich actively participated in and facilitated the June 12, 2020 self-interested purchases by Pierre Levai despite, upon information and belief, knowing the true values of the paintings. Helmrich sought to conceal the problematic sale from scrutiny by asking that the paper work be distributed “to everyone as a normal invoice.”

120. In the wake of Max Levai’s departure, other examples of costly wrongdoing and mismanagement have emerged. For example, recently, Plaintiff was approached by an attorney on behalf of the artist Peter Coffin presenting a purported claim for \$100,000 for damage caused by Max Levai’s failure to return, pay for and/or properly store a claimed work of art that had been consigned through Max Levai for exhibition and possible sale at the 2018 Bridges Art Fair. It was further learned that Max Levai not only failed to return the claimed work, but that Max Levai also instead made repeated failed promises to enter into a written consignment agreement and to properly store the claimed work. The representative for Coffin further claimed that the claimed work was not only not properly stored, but that it was essentially destroyed, having been left outside, unprotected for the 18 months following the 2018 Bridges Art Fair.

121. In its efforts to investigate the claim made by Coffin, the Board learned that Max Levai engaged in a practice of making off-book deals with some artists and that in such instances did not obtain proper and industry standard insurance. Based on currently available information, the concern raised by Coffin is an example—and only one example—of this improper conduct.

FIRST CAUSE OF ACTION**Breach of Fiduciary Duty****(Against All Defendants)**

122. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

123. At all times relevant to this action, Max Levai was an employee of Marlborough and owed Marlborough the duty of loyalty, the duty to act in good faith and in the corporation's best interests, and the duty to make full and truthful disclosures to the corporation.

124. At all times relevant to this action, Pierre Levai was an officer of Marlborough and owed Marlborough the duty of loyalty, the duty to act in good faith and in the corporation's best interests, and the duty to make full and truthful disclosures to the corporation.

125. At all times relevant to this action, Spengemann was an employee of Marlborough and owed Marlborough the duty of loyalty, the duty to act in good faith and in the corporation's best interests, and the duty to make full and truthful disclosures to the corporation.

126. At all times relevant to this action, Helmrich was an employee of Marlborough and owed Marlborough the duty of loyalty, the duty to act in good faith and in the corporation's best interests, and the duty to make full and truthful disclosures to the corporation.

127. Max Levai breached his fiduciary duties by advancing his own interests to the detriment of Marlborough by, among other things:

- a. consigning several artworks owned by or under consignment with the Marlborough Gallery to Tripoli Patterson, LLC, a company owned by his friend and business partner Trip Patterson, to benefit himself and without the approval of the Marlborough Board;

- b. bidding on and actively negotiating for the purchase, on his own behalf, of art owned by the Gallery at prices that he knew to be far below the true value of the art;
- c. allowing if not actively approving the sale to Pierre Levai of at least two artworks owned by the Gallery at prices below their market value, and in one instance below the actual cost incurred by the Gallery in purchasing the artwork many decades ago;
- d. improperly gifting a valuable work owned by the Gallery to a third party, Dan Nadel;
- e. cancelling invoices related to sales of works by three sculptors that had been commissioned by Marlborough, with the intent and purpose of transferring the benefit of Marlborough's agreements with those artists to a new venture or ventures that benefited himself;
- f. altering invoices relating to artworks by the same artists so as to increase the recorded costs of materials while simultaneously decreasing the profit, with the intent and purpose of (i) burdening Marlborough with falsely inflated costs, (ii) denying Marlborough profits on sales of the artworks, and (iii) transferring the profits to a new venture or ventures that benefited himself;
- g. threatening Marlborough with legal action that lacked any basis in law or fact, in an attempt to extract substantial financial concessions from Marlborough, including the transfer to the Levai Defendants of valuable real estate and art holdings at a fraction of their actual value;

- h. misappropriating to his own name Marlborough's Instagram account and refusing Marlborough's requests that the Instagram account be restored to its proper name and brand;
- i. making false and harmful statements about Marlborough and the Marlborough Board to Artnet News and others;
- j. using the Gallery's resources to establish his own business ventures including directing Marlborough employees to assist with (i) promotional work for the Alone Gallery, and (ii) purchasing artworks for the benefit of other personal projects;
- k. devoting substantial time to establishing the Alone Gallery when he was being paid by and should have been tending to the affairs of Marlborough;
- l. intentionally taking several artworks owned by the Gallery and transferring them to the Alone Gallery, without authority from the Marlborough Board;
- m. shipping artworks owned by Marlborough to his own apartment or to a restaurant in which he has a personal and proprietary interest;
- n. engaging in the unauthorized sales to third parties of artworks owned by or consigned to Marlborough and failing to account for such sales when required to do so;
- o. selling at least one artwork owned by Marlborough at a price substantially below its market value, without authorization, and taking a commission on the sale;

- p. failing or refusing to provide Marlborough with information necessary for the orderly wind-down or transition of the Gallery, including price or insurance information for art owned or held by Marlborough;
- q. diverting the Gallery's business opportunities by inducing Marlborough artists and their representatives to leave the Gallery prematurely; and
- r. approving payments from Marlborough's resources to artists that he and his co-Defendants had actively moved to the Alone Gallery.

128. Pierre Levai breached his fiduciary duties by advancing his own interests to the detriment of Marlborough by, among other things:

- a. purporting to authorize Max Levai to consign the Marlborough Gallery's artworks to Tripoli Patterson, LLC, despite his knowledge that Max Levai was seeking to advance his own self-interest at the Gallery's expense;
- b. failing or refusing to provide Marlborough with information necessary for the orderly wind-down or transition of the Gallery;
- c. knowingly purchasing two artworks owned by the Gallery at prices below their market value;
- d. permitting at least 23 artworks owned by Marlborough to be taken into the possession of Marcia Levine, an individual with whom Pierre Levai has a close, personal relationship, while concealing or failing to disclose that instead of being marketed by Levine, were installed in her private residences;

- e. improperly gifting a valuable work owned by the Gallery to a third party, Dan Nadel;
 - f. authorizing the sale by Max Levai of an artwork owned by Marlborough at a price substantially below its market value, so that Max Levai could pocket a commission on the sale;
 - g. diverting the Gallery's business opportunities by convincing dozens of Marlborough artists to leave the Gallery prematurely; and
 - h. threatening Marlborough with baseless legal action in an attempt to extract substantial financial concessions from Marlborough.
129. Spengemann breached his fiduciary duties by advancing his own interests to the detriment of Marlborough by, among other things:
- a. participating in the establishment and launch, at Marlborough's expense, of the Alone Gallery, in furtherance of his own personal and financial interest;
 - b. failing to protect Marlborough's interests despite having express knowledge of Max Levai's scheme to negotiate a windfall for himself at Marlborough's expense;
 - c. participating in the Levai Defendants' scheme to extract substantial financial concessions from Marlborough through threats of baseless legal action;
 - d. knowingly participating in the sale of two artworks owned by the Gallery to Pierre Levai at prices below their market value;

- e. failing to stop the unauthorized sale of artwork belonging to Marlborough to third parties despite having express knowledge that such sales were at below-market prices;
- f. participating in the sale by Max Levai of an artwork owned by Marlborough at a below-market price, enabling Max Levai to pocket a commission on the sale;
- g. participating in the transfer of Marlborough assets to Max Levai and the payment of improper commissions to Max Levai and others;
- h. participating in the altering of invoices relating to artworks by three artists with which Marlborough had commission agreements so as to increase the recorded costs of materials while simultaneously decreasing Marlborough's profits, for the benefit of a venture or ventures in which he had a personal interest;
- i. participating in the payment of Marlborough funds to artists whose works had been transferred to a business enterprise in which he had a personal interest;
- j. participating in the scheme to thwart Marlborough's plans for an orderly wind-down or transition of the Gallery;
- k. diverting the Gallery's business opportunities by convincing dozens of Marlborough artists to leave the Gallery prematurely; and
- l. generally failing to protect Marlborough's interests despite being fully aware of the destructive course of conduct being pursued by the Levai Defendants.

130. Helmrich breached his fiduciary duties by advancing his own interests to the detriment of Marlborough by, among other things:

- a. participating in the establishment and launch, at Marlborough's expense, of the Alone Gallery, in furtherance of his own personal and financial interest;
- b. failing to protect Marlborough's interests despite having express knowledge of Max Levai's scheme to negotiate a windfall for himself at Marlborough's expense;
- c. participating in the Levai Defendants' scheme to extract financial concessions from Marlborough through threats of baseless legal action;
- d. knowingly participating in the sale of two artworks owned by the Gallery to Pierre Levai at prices below their market value, and attempting to conceal evidence of the circumstances surrounding the sales;
- e. failing to stop the unauthorized sale of artwork belonging to Marlborough to third parties despite having express knowledge that such sales were at below-market prices;
- f. participating in the sale by Max Levai of an artwork owned by Marlborough at a below-market price, enabling Max Levai to pocket a commission on the sale;
- g. participating in the transfer of Marlborough assets to Max Levai and the payment of improper commissions to Max Levai and others;

- h. actively seeking the transfer of Marlborough assets to himself under the guise of commissions;
- i. participating in the altering of invoices relating to artworks by three artists with which Marlborough had commission agreements so as to increase the recorded costs of materials while simultaneously decreasing Marlborough's profits, upon information and belief for the benefit of a venture or ventures in which he had or has a personal interest;
- j. participating in the payment of Marlborough funds to artists whose works had been transferred to a business enterprise in which upon information and belief he had or has a personal interest;
- k. participating in the scheme to thwart Marlborough's plans for an orderly wind-down or transition of the Gallery;
- l. diverting the Gallery's business opportunities by convincing dozens of Marlborough artists and their representatives to leave the Gallery prematurely;
- m. refusing to provide passcodes and other information and documentation to Marlborough that the Marlborough Board needed for an orderly wind-down or transition of the Gallery;
- n. directing that funds be paid from Marlborough to Max Levai despite knowing that Max Levai's employment with the Gallery had been terminated; and
- o. generally failing to protect Marlborough's interests despite being fully aware of the destructive course of conduct being pursued by the Levai Defendants.

131. By reason of the foregoing, Defendants are liable in an amount in excess of \$8,000,000, plus interest/attorneys' fees/costs as appropriate as well as additional equitable or injunctive relief as set forth below.

SECOND CAUSE OF ACTION

Aiding and Abetting a Breach of Fiduciary Duty

(Against All Defendants)

132. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

133. Max Levai rendered substantial assistance to Pierre Levai in the course of effecting his breaches of fiduciary duty by, among other things:

- a. allowing if not actually authorizing the sale of two artworks owned by the Gallery to Pierre Levai at prices below their market value;
- b. aiding and assisting Pierre Levai in the improper transfer of a valuable artwork owned by the Gallery to a third party; and
- c. facilitating communications purported to be by Pierre Levai that further his own interests and that represent actions by Pierre Levai that are adverse and harmful to the Gallery and its beneficiaries.

134. Pierre Levai rendered substantial assistance to Max Levai in the course of effecting his breaches of fiduciary duty by, among other things:

- a. authorizing Max Levai to consign the Marlborough Gallery's artworks to Tripoli Patterson, LLC;

- b. asking Max Levai to allow if not authorize the sale two artworks owned by the Gallery to Pierre Levai at prices below their market value;
- c. aiding and assisting Max Levai in the improper transfer of a valuable artwork owned by the Gallery to a third party, Dan Nadel;
- d. authorizing the sale by Max Levai of an artwork owned by Marlborough at a below-market price, enabling Max Levai to pocket a commission on the sale;
- e. facilitating Max Levai's transfer of several of the Gallery's artworks to the Alone Gallery, without authority from the Marlborough Board; and
- f. participating and assisting with Max Levai's efforts to establish his own enterprise with the support and resources of the Gallery.

135. Spengemann rendered substantial assistance to the Levai Defendants and Helmrich in the course of effecting their breaches of fiduciary duty by, among other things:

- a. aiding and assisting Max Levai and Helmrich in the establishment and launch, at Marlborough's expense, of the Alone Gallery;
- b. aiding and assisting Pierre Levai and Max Levai in the sale of two artworks owned by the Gallery to Pierre Levai at prices below their market value;
- c. aiding and assisting Max Levai and Helmrich in the unauthorized sale of artwork belonging to Marlborough to third parties at below-market prices;
- d. aiding and assisting Max Levai in the sale of an artwork belonging to the Gallery at a below-market price so that Max Levai could pocket a commission on the sale;

- e. aiding and assisting Max Levai in the shipment of Marlborough assets to his home and to a restaurant in which Max Levai has an interest;
- f. aiding and assisting Max Levai in a scheme to cancel or alter invoices relating to the sale of artworks commissioned by Marlborough, with the intent and purposes of transferring to the benefits of the commission arrangements from Marlborough to the Alone Gallery, a venture in which Defendants Max Levine, Spengemann and Helmrich have an interest;
- g. aiding and assisting in the payment of improper commissions to Max Levai and others;
- h. aiding and assisting the Levai Defendants in their scheme to extract financial concessions from Marlborough through threats of baseless legal action;
- i. aiding and assisting Max Levai in the misappropriation of Marlborough's Instagram account to his own name, and in refusing to restore the Instagram account to its proper name and brand;
- j. aiding and assisting Max Levai in convincing dozens of Marlborough artists to leave the Gallery prematurely;
- k. aiding and assisting Max Levai and Helmrich in the payment of Marlborough funds to artists whose works had been transferred to the Alone Gallery; and
- l. participating with the Levai Defendants and Helmrich in the scheme to thwart Marlborough's plans for an orderly wind-down or transition of the Gallery.

136. Helmrich rendered substantial assistance to the Levai Defendants and Spengemann in the course of effecting their breaches of fiduciary duty by, among other things:
- a. aiding and assisting Max Levai and Spengemann in the establishment and launch, at Marlborough's expense, of the Alone Gallery;
 - b. aiding and assisting Pierre Levai and Max Levai in the sale of two artworks owned by the Gallery to Pierre Levai at prices below their market value;
 - c. aiding and assisting Max Levai and Spengemann in the unauthorized sale of artwork belonging to Marlborough to third parties at below-market prices;
 - d. aiding and assisting Max Levai in the below-market price sale of an artwork belonging to the Gallery so that Max Levai could pocket a commission on the sale;
 - e. aiding and assisting Max Levai in the transfer of artwork belonging to the Marlborough Gallery to Max Levai's home and to a restaurant in which Max Levai has an interest;
 - f. aiding and assisting the Levai Defendants in their scheme to extort substantial financial concessions from Marlborough through threats of baseless legal action;
 - g. aiding and assisting Max Levai in a scheme to cancel or alter invoices relating to the sale of artworks commissioned by Marlborough, with the intent and purposes of transferring to the benefits of the commission arrangements from Marlborough to a venture in which Defendants Max Levine, Spengemann and Helmrich have an interest;

- h. aiding and assisting Max Levai in the payment of improper commissions to Max Levai and others;
- i. aiding and assisting Max Levai in the misappropriation of Marlborough's Instagram account to his own name, and in refusing Marlborough's requests that the Instagram account be restored to its proper name and brand;
- j. aiding and assisting Max Levai in convincing dozens of Marlborough artists to leave the Gallery prematurely;
- k. aiding and assisting Max Levai, Pierre Levai and Spengemann in the payment of Marlborough funds to artists whose works had been transferred to the Alone Gallery;
- l. aiding and assisting in the payment of funds from Marlborough to Max Levai despite knowing that Max Levai's employment with the Gallery had been terminated; and
- m. participating with the Levai Defendants and Helmrich in the scheme to thwart Marlborough's plans for an orderly wind-down or transition of the Gallery.

137. By reason of the foregoing, Defendants are liable in an amount in excess of \$8,000,000 plus interest/attorneys' fees/costs as appropriate as well as additional equitable or injunctive relief as set forth below.

THIRD CAUSE OF ACTION**Conversion****(Against the Levai Defendants)**

138. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

139. Max Levai interfered with the Marlborough Gallery's possession and dominion over its property by, among other things:

- a. intentionally taking several artworks owned by the Gallery and consigning them to Tripoli Patterson, LLC, without authority from the Marlborough Board;
- b. improperly gifting a valuable work owned by the Gallery to a third party, Dan Nadel;
- c. intentionally taking several artworks owned by the Gallery and transferring them to the Alone Gallery, without authority from the Marlborough Board; and
- d. intentionally taking several artworks owned by the Gallery and shipping them to his home or to a business in which he has a personal or proprietary interest.

140. Pierre Levai interfered with the Gallery's possession and dominion over its property by, among other things:

- a. purporting to authorize Max Levai to consign the Gallery's artworks to Tripoli Patterson, LLC, without authority from the Marlborough Board;

- b. improperly gifting a valuable work owned by the Gallery to a third party, Dan Nadel;
- c. permitting his companion Marcia Levine to have in her personal possession for up to 20 years at least 23 artworks owned by the Gallery to the derogation of the Gallery's rights and interest in its own property;
- d. knowingly purchasing two artworks owned by the Gallery at prices below their market value; and
- e. intentionally taking several artworks owned by the Gallery for the benefit of himself or others to the derogation of the Gallery's rights and interest in its own property.

141. By reason of the foregoing, Max Levai and Pierre Levai, intentionally and without authority, assumed or exercised control over Marlborough's property, in derogation of Marlborough's possessory rights or interest in its property.

142. By reason of the foregoing, Defendants are liable in an amount in excess of \$2,000,000 plus interest/attorneys' fees/costs as appropriate as well as additional equitable or injunctive relief as set forth below.

FOURTH CAUSE OF ACTION

Trespass to Chattels

(Against the Levai Defendants)

143. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

144. Max Levai interfered with the Marlborough Gallery's use and enjoyment of its property by among other things:

- a. intentionally taking several artworks owned by the Gallery and consigning them to Tripoli Patterson, LLC, without authority from the Marlborough Board;
- b. intentionally taking an artwork owned by the Gallery and improperly gifting it to a third party, Dan Nadel;
- c. intentionally taking several artworks owned by the Gallery and transferring them to the Alone Gallery, without authority from the Marlborough Board;
- d. canceling or altering invoices relating to the sale of artworks commissioned by Marlborough, with the intent and purposes of transferring to the benefits of the commission arrangements to a venture in which he had a personal interest;
- e. engaging in the unauthorized sales to third parties of artworks owned by or consigned to Marlborough and failing to account for such sales when required to do so; and
- f. intentionally taking several artworks owned by the Gallery and transferring them to his home or to a restaurant in which he had a personal and proprietary interest.

145. Pierre Levai interfered with the Gallery's use and enjoyment of its property by, among other things:

- a. purporting to authorize Max Levai to consign the Gallery's artworks to Tripoli Patterson, LLC, without authority from the Marlborough Board;
- b. permitting Marcia Levine to have in her personal possession at least 23 artworks owned by the Gallery to the derogation of the Gallery's rights and interest in its own property; and
- c. intentionally taking several artworks owned by the Gallery for the benefit of himself or others to the derogation of the Gallery's rights and interest in its own property.

146. By reason of the foregoing, Defendants, intentionally and without justification or consent, physically interfered with Marlborough's use of its property, caused harm to the physical condition, quality or value of the property, and deprived Marlborough of the use of its property for a substantial time.

147. By reason of the foregoing, Defendants are liable in an amount in excess of \$2,000,000 plus interest/attorneys' fees/costs as appropriate as well as additional equitable or injunctive relief as set forth below.

FIFTH CAUSE OF ACTION

Unjust Enrichment

(Against All Defendants)

148. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

149. Max Levai unjustly enriched himself at the Marlborough Gallery's expense by, among other things:

- a. using the Gallery's resources to establish his own business venture;
- b. appropriating several artworks owned by Marlborough for his own use;
- c. taking payment from Marlborough of commissions and reimbursement of expenses to which he was not entitled;
- d. using his position to take a loan from Marlborough, of which \$416,013.35 remained outstanding as of August 31, 2020;
- e. canceling or altering invoices pertaining to commission agreements with three artists in order to benefit a venture or ventures in which he had a personal interest; and
- f. receiving compensation and commissions while breaching fiduciary duties owed to Marlborough.

150. Pierre Levai unjustly enriched himself at the Marlborough Gallery's expense by, among other things, purchasing two artworks owned by the Marlborough Gallery from Max Levai at prices below their market value.

151. Spengemann unjustly enriched himself at the Marlborough Gallery's expense by, among other things:

- a. receiving compensation while breaching fiduciary duties owed to Marlborough and
- b. altering invoices pertaining to commission agreements with three artists in order to benefit a venture or ventures in which he had a personal interest.

152. Helmrich unjustly enriched himself at the Marlborough Gallery's expense by, among other things:

- a. receiving compensation while breaching fiduciary duties owed to Marlborough;
- b. seeking and receiving additional unearned commissions for an employment period for which he had already been amply compensated; and
- c. altering invoices pertaining to commission agreements with three artists in order to benefit a venture or ventures in which he had a personal interest.

153. It is against equity and good conscience to permit Max Levai, Pierre Levai, Spengemann, and Helmrich to retain these benefits.

154. By reason of the foregoing, Defendants are liable in an amount in excess of \$2,000,000 plus interest/attorneys' fees/costs as appropriate as well as additional equitable or injunctive relief as set forth below.

SIXTH CAUSE ACTION

Usurpation of Corporate Opportunity

(Against All Defendants)

155. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

156. At all relevant times, Max Levai was a fiduciary to and employee of Marlborough.

157. At all relevant times, Pierre Levai was a fiduciary to and officer of Marlborough.

158. At all relevant times, Pascal Spengemann was a fiduciary to and employee of Marlborough.

159. At all times, John Helmrich was a fiduciary to and employee of Marlborough.

160. Max Levai diverted for his own benefit Marlborough's corporate opportunity to sell various artworks that Marlborough had a tangible expectation of selling and receiving the commensurate revenue.

161. Max Levai canceled or altered invoices relating to artworks commissioned by Marlborough, thereby diverting for his own benefit Marlborough's corporate opportunity to profit from the marketing and sale of those artworks.

162. Max Levai also diverted for his own benefit Marlborough's corporate relations with artists with whom Marlborough had a tangible expectation of continuing relationships in the future.

163. Pascal Spengemann participated in the canceling or altering of invoices relating to artworks commissioned by Marlborough, thereby diverting for his own benefit Marlborough's corporate opportunity to profit from the marketing and sale of those artworks.

164. John Helmrich participated in the canceling or altering of invoices relating to artworks commissioned by Marlborough, thereby diverting for his own benefit Marlborough's corporate opportunity to profit from the marketing and sale of those artworks.

165. By permitting the transfer of up to 23 artworks to his companion Marcia Levine, Pierre Levai diverted for his own benefit Marlborough's corporate opportunity to profit from the marketing and sale of those artworks.

166. By reason of the foregoing, Defendants are liable in an amount in excess of \$2,000,000 plus interest/attorneys' fees/costs as appropriate as well as additional equitable or injunctive relief as set forth below.

SEVENTH CAUSE OF ACTION

Breach of Contract

(Against All Defendants)

167. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

168. At all times relevant to this action, Max Levai was a party to an oral contract with Marlborough relating to his employment at Marlborough.

169. At all times relevant to this action, Marlborough performed pursuant to this contract by, among other things, paying salary, bonuses and commissions, and providing health care, retirement and other benefits to Max Levai.

170. At all times relevant to this action, Pierre Levai was a party to an oral contract with Marlborough relating to his corporate directorship of Marlborough.

171. At all times relevant to this action, Marlborough performed pursuant to this contract by, among other things, paying salary and bonuses, and providing health care, retirement and other benefits to Pierre Levai.

172. At all times relevant to this action, Spengemann was a party to an oral contract with Marlborough relating to his employment at Marlborough.

173. At all times relevant to this action, Marlborough performed pursuant to this contract by, among other things, paying salary, bonuses and commissions, and providing health care, retirement and other benefits to Spengemann.

174. At all times relevant to this action, Helmrich was a party to an oral contract with Marlborough relating to his employment at Marlborough.

175. At all times relevant to this action, Marlborough performed pursuant to this contract by, among other things, paying salary, bonuses and commissions, and providing health care, retirement and other benefits to Helmrich.

176. Max Levai breached his contractual obligations to Marlborough by, among other things:

- a. consigning several artworks owned by the Marlborough Gallery to Tripoli Patterson, LLC, a company owned by his friend and business partner, without the approval of the Marlborough Board;
- b. bidding on several of the artworks he consigned to Tripoli Patterson, LLC, without the approval of the Marlborough Board;
- c. selling two artworks owned by the Gallery to Pierre Levai at prices below their market value;
- d. transferring several artworks owned by the Gallery to his personal use;
- e. improperly gifting an artwork owned by the Gallery to a third party, Dan Nadel;

- f. cancelling invoices related to sales of works commissioned by Marlborough, with the intent and purpose of transferring the benefits of the commission agreements to the benefit of the Defendants;
- g. altering invoices relating to artworks commissioned by Marlborough in order to (i) burden Marlborough with falsely inflated costs, (ii) deny Marlborough profits on sales of the artworks, and (iii) transfer the profits to the benefit of the Defendants;
- h. engaging in the unauthorized sale to third parties of artworks owned by Marlborough and failing to account for such sales when required to do so;
- i. threatening Marlborough with baseless legal action in an attempt to extract valuable concessions from Marlborough;
- j. misappropriating to his own name Marlborough's Instagram account and refusing Marlborough's requests that the Instagram account be restored to its proper name and brand;
- k. making false and malicious statements about Marlborough and the Marlborough Board to Artnet News and others;
- l. using the Gallery's resources to establish his own business venture;
- m. thwarting Marlborough's plans for an orderly wind-down or transition of the Gallery;
- n. refusing to respond to repeated requests by the Marlborough Board for information and that certain actions be taken;

- o. diverting the Gallery's business opportunities by purchasing artworks that the gallery should have had the opportunity to purchase; and
- p. diverting for his own benefit Marlborough's corporate relations with artists with whom Marlborough had a tangible expectation of continuing relationships in the future.

177. Pierre Levai breached his contractual obligations to Marlborough by, among other things:

- a. purporting to authorize Max Levai to consign the Marlborough Gallery's artworks to Tripoli Patterson, LLC, despite his knowledge that Max Levai was seeking to advance his own self-interest at the Gallery's expense;
- b. improperly gifting an artwork owned by the Gallery to a third party;
- c. purchasing two artworks owned by the Gallery from Max Levai at prices below their market value;
- d. facilitating the transfer of up to 23 artworks to his companion Marcia Levine, while concealing or failing to disclose that the works are not being marketed but were instead installed in Levine's private residences; and
- e. diverting for his own benefit and the benefit of Max Levai Marlborough's corporate relations with artists with whom Marlborough had a tangible expectation of continuing relationships in the future.

178. Spengemann breached his contractual obligations to Marlborough by, among other things:

- a. using the Gallery's resources to establish the Alone Gallery;
- b. failing to act to protect Marlborough's interests despite having express knowledge of Max Levai's wrongful schemes;
- c. participating in the sale of two artworks owned by the Gallery to Pierre Levai at prices below their market value;
- d. participating in the transfer of artworks own by the Gallery to Max Levai for his personal use;
- e. failing to stop the unauthorized sale of artwork belonging to Marlborough to third parties at below-market prices;
- f. altering invoices relating to artworks commissioned by Marlborough, with the intent and purpose of transferring the benefits of the commission agreements to the benefit of the Defendants;
- g. participating in the Levai Defendants' attempt to extract valuable concessions from Marlborough by threats of baseless legal action;
- h. diverting for his own benefit and the benefit of Max Levai Marlborough's corporate relations with artists with whom Marlborough had a tangible expectation of continuing relationships in the future; and
- i. thwarting Marlborough's plans for an orderly wind-down or transition of the Gallery.

179. John Helmrich breached his contractual obligations to Marlborough by, among other things:

- a. aiding the use of the Gallery's resources to establish the Alone Gallery;
- b. failing to act to protect Marlborough's interests despite having express knowledge of Max Levai's wrongful schemes;
- c. participating in the sale to Pierre Levai of two artworks owned by the Gallery at prices below their market value;
- d. participating in the transfer of artworks own by the Gallery to Max Levai for his personal use;
- e. participating in the unauthorized sale of artwork belonging to Marlborough to third parties at below-market prices;
- f. altering invoices relating to artworks commissioned by Marlborough, with the intent and purpose of transferring the benefits of the commission agreements to the benefit of the Defendants;
- g. participating in the Levai Defendants' attempt to extract valuable concessions from Marlborough by threats of baseless legal action;
- h. diverting for his own benefit and the benefit of Max Levai Marlborough's corporate relations with artists with whom Marlborough had a tangible expectation of continuing relationships in the future; and
- i. hindering Marlborough's plans for an orderly wind-down or transition of the Gallery.

180. At all times relevant to this matter there were contracts between Marlborough on the one hand, and Pierre Levai, Max Levai, Pascal Spengemann and John Helmrich, individually

on the other; Marlborough performed under said contracts; Defendants breached their contractual obligations as set forth above; and Marlborough suffered damages as a result of the breach.

181. By reason of the foregoing, Defendants are liable in an amount in excess of \$8,000,000 plus interest/attorneys' fees/costs as appropriate as well as additional equitable or injunctive relief as set forth below.

EIGHTH CAUSE OF ACTION

Breach of Covenant of Good Faith and Fair Dealing

(Against All Defendants)

182. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

183. At all times relevant to this action, Max Levai was a party to an oral contract with Marlborough relating to his employment at Marlborough.

184. At all times relevant to this action, Marlborough performed pursuant to this contract, as described above.

185. Max Levai was under an obligation of good faith and fair dealing in the performance of his duties as an employee of Marlborough.

186. At all times relevant to this action, Pierre Levai was a party to an oral contract with Marlborough relating to his corporate directorship of Marlborough.

187. At all times relevant to this action, Marlborough performed pursuant to this contract, as described above.

188. Max Levai was under an obligation of good faith and fair dealing in the performance of his duties as an employee of Marlborough.

189. At all times relevant to this action, Pascal Spengemann was a party to an oral contract with Marlborough relating to his employment at Marlborough.

190. At all times relevant to this action, Marlborough performed pursuant to this contract, as described above.

191. Spengemann was under an obligation of good faith and fair dealing in the performance of his duties as an employee of Marlborough.

192. At all times relevant to this action, John Helmrich was a party to an oral contract with Marlborough relating to his employment at Marlborough.

193. At all times relevant to this action, Marlborough performed pursuant to this contract, as described above.

194. Helmrich was under an obligation of good faith and fair dealing in the performance of his duties as an employee of Marlborough.

195. Max Levai breached his obligation of good faith and fair dealing to Marlborough by, among other things:

- a. consigning several artworks owned by the Marlborough Gallery to Tripoli Patterson, LLC, a company owned by his friend and business partner, without the approval of the Marlborough Board;
- b. bidding on several of the artworks he consigned to Tripoli Patterson, LLC, without the approval of the Marlborough Board;
- c. selling two artworks owned by the Gallery to Pierre Levai at prices below their market value;

- d. transferring several artworks owned by the Gallery to his personal use;
- e. improperly gifting an artwork owned by the Gallery to a third party;
- f. cancelling invoices related to sales of works commissioned by Marlborough, with the intent and purpose of transferring the benefits of the commission agreements to the benefit of the Defendants;
- g. altering invoices relating to artworks commissioned by Marlborough in order to (i) burden Marlborough with falsely inflated costs, (ii) deny Marlborough profits on sales of the artworks, and (iii) transfer the profits to the benefit of the Defendants;
- h. engaging in the unauthorized sale to third parties of artworks owned by Marlborough and failing to account for such sales when required to do so;
- i. threatening Marlborough with baseless legal action in an attempt to extract valuable concessions from Marlborough;
- j. misappropriating to his own name Marlborough's Instagram account and refusing Marlborough's requests that the Instagram account be restored to its proper name and brand;
- k. making false and malicious statements about Marlborough and the Marlborough Board to Artnet News and others;
- l. using the Gallery's resources to establish his own business venture;
- m. thwarting Marlborough's plans for an orderly wind-down or transition of the Gallery;

- n. refusing to respond to repeated requests by the Marlborough Board for information and that certain actions be taken;
- o. diverting the Gallery's business opportunities by purchasing artworks that the gallery should have had the opportunity to purchase; and
- p. diverting for his own benefit Marlborough's corporate relations with artists with whom Marlborough had a tangible expectation of continuing relationships in the future.

196. Pierre Levai breached his obligation of good faith and fair dealing to Marlborough by, among other things:

- a. purporting to authorize Max Levai to consign the Marlborough Gallery's artworks to Tripoli Patterson, LLC, despite his knowledge that Max Levai was seeking to advance his own self-interest at the Gallery's expense;
- b. improperly gifting an artwork owned by the Gallery to a third party;
- c. purchasing two artworks owned by the Gallery from Max Levai at prices below their market value;
- d. facilitating the transfer of up to 23 artworks to his companion Marcia Levine, while concealing or failing to disclose that the works are not being marketed but were instead installed in Levine's private residences; and
- e. diverting for his own benefit and the benefit of Max Levai Marlborough's corporate relations with artists with whom Marlborough had a tangible expectation of continuing relationships in the future.

197. Spengemann breached his obligation of good faith and fair dealing to Marlborough by, among other things:

- a. using the Gallery's resources to establish the Alone Gallery;
- b. failing to act to protect Marlborough's interests despite having express knowledge of Max Levai's wrongful schemes;
- c. participating in the sale of two artworks owned by the Gallery to Pierre Levai at prices below their market value;
- d. participating in the transfer of artworks own by the Gallery to Max Levai for his personal use;
- e. failing to stop the unauthorized sale of artwork belonging to Marlborough to third parties at below-market prices;
- f. altering invoices relating to artworks commissioned by Marlborough, with the intent and purpose of transferring the benefits of the commission agreements to the benefit of the Defendants;
- g. participating in the Levai Defendants' attempt to extract valuable concessions from Marlborough by threats of baseless legal action;
- h. diverting for his own benefit and the benefit of Max Levai Marlborough's corporate relations with artists with whom Marlborough had a tangible expectation of continuing relationships in the future; and
- i. thwarting Marlborough's plans for an orderly wind-down or transition of the Gallery.

198. Helmrich breached his obligation of good faith and fair dealing to Marlborough by, among other things:

- a. aiding the use of the Gallery's resources to establish the Alone Gallery;
- b. failing to act to protect Marlborough's interests despite having express knowledge of Max Levai's wrongful schemes;
- c. participating in the sale to Pierre Levai of two artworks owned by the Gallery at prices below their market value;
- d. participating in the transfer of artworks own by the Gallery to Max Levai for his personal use;
- e. participating in the unauthorized sale of artwork belonging to Marlborough to third parties at below-market prices;
- f. altering invoices relating to artworks commissioned by Marlborough, with the intent and purpose of transferring the benefits of the commission agreements to the benefit of the Defendants;
- g. participating in the Levai Defendants' attempt to extract valuable concessions from Marlborough by threats of baseless legal action;
- h. diverting for his own benefit and the benefit of Max Levai Marlborough's corporate relations with artists with whom Marlborough had a tangible expectation of continuing relationships in the future; and
- i. hindering Marlborough's plans for an orderly wind-down or transition of the Gallery.

199. At all times relevant to this matter, each of Defendants Pierre Levai, Max Levai, Pascal Spengemann and John Helmrich had an obligation of good faith and fair dealing to Marlborough; Defendants breached their obligations as set forth above; and Marlborough suffered damages as a result of the breach.

200. By reason of the foregoing, Defendants are liable in an amount in excess of \$8,000,000 plus interest/attorneys' fees/costs as appropriate as well as additional equitable or injunctive relief as set forth below.

NINTH CAUSE OF ACTION

Negligence

(Against All Defendants)

201. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

202. At all times relevant to this action, Max Levai was an employee of Marlborough Gallery, Inc., and owed Marlborough Gallery, Inc. the duty of loyalty, the duty to act in good faith and in the corporation's best interests, and the duty to make full and truthful disclosures to the corporation.

203. At all times relevant to this action, Pierre Levai was an officer of Marlborough and owed Marlborough the duty of loyalty, the duty to act in good faith and in the corporation's best interests, and the duty to make full and truthful disclosures to the corporation.

204. At all times relevant to this action, Spengemann was an employee of Marlborough Gallery, Inc., and owed Marlborough Gallery, Inc. the duty of loyalty, the duty to act in good faith and in the corporation's best interests, and the duty to make full and truthful disclosures to the corporation.

205. At all times relevant to this action, Helmrich was an employee of Marlborough Gallery, Inc., and owed Marlborough Gallery, Inc. the duty of loyalty, the duty to act in good faith and in the corporation's best interests, and the duty to make full and truthful disclosures to the corporation.

206. Max Levai negligently breached his duties to Marlborough by, among other things:

- a. consigning several artworks owned by the Marlborough Gallery to Tripoli Patterson, LLC, a company owned by his friend and business partner, without the approval of the Marlborough Board;
- b. bidding on several of the artworks he consigned to Tripoli Patterson, LLC, without the approval of the Marlborough Board;
- c. allowing and authorizing the sale of two artworks owned by the Gallery to Pierre Levai at prices below their market value;
- d. improperly gifting an artwork owned by the Gallery to a third party, Dan Nadel;
- e. cancelling or altering invoices related to sales of works commissioned by Marlborough, with the intent and purpose of transferring the benefits of the commission agreements to his own benefit;
- f. threatening Marlborough with baseless legal action in an attempt to extract financial concessions from Marlborough;

- g. misappropriating to his own name Marlborough's Instagram account and refusing to restore it to its proper name and brand;
- h. making false and malicious statements about Marlborough and the Marlborough Board to Artnet News;
- i. hindering Marlborough's plans for an orderly wind-down or transition of the Gallery;
- j. impairing Marlborough's relationship with dozens of artists with whom the gallery had done business;
- k. shipping artworks owned by Marlborough to his own apartment or to a restaurant in which he has a personal and proprietary interest;
- l. intentionally taking several artworks owned by the Gallery and transferring them to the Alone Gallery, without authority from the Marlborough Board;
- m. engaging in the unauthorized sales to third parties of artworks owned by or consigned to Marlborough and failing to account for such sales when required to do so; and
- n. using the Gallery's resources to establish his own business venture.

207. By reason of the foregoing breaches, Max Levai proximately caused Marlborough to suffer substantial financial losses.

208. Pierre Levai negligently breached his duties to Marlborough by, among other things:

- a. purporting to authorize Max Levai to consign the Marlborough Gallery's artworks to Tripoli Patterson, LLC despite his knowledge that Max Levai was seeking to advance his own self-interest at the Gallery's expense;
- b. purchasing two artworks owned by the Gallery from Max Levai at prices below their market value;
- c. improperly gifting an artwork owned by the Gallery to a third party;
- d. facilitating the transfer of up to 23 artworks to his companion Marcia Levine, while concealing or failing to disclose that, rather than being marketed, the works were installed in Levine's private residences;
- e. threatening Marlborough with baseless legal action in an attempt to extract financial concessions from Marlborough;
- f. impairing Marlborough's relationship with dozens of artists with whom the gallery had done business; and
- g. hindering Marlborough's plans for an orderly wind-down or transition of the Gallery.

209. By reason of the foregoing breaches, Pierre Levai proximately caused Marlborough to suffer substantial financial losses.

210. Spengemann negligently breached his duties to Marlborough by, among other things:

- a. using the Gallery's resources to establish the Alone Gallery;

- b. participating in the Levai Defendants' attempt to extract valuable concessions from Marlborough by threats of baseless legal action;
- c. failing to act to protect Marlborough's interests despite having express knowledge of Max Levai's wrongful schemes;
- d. participating in the sale of two artworks owned by the Gallery to Pierre Levai at prices below their market value;
- e. failing to stop the unauthorized sale of artwork belonging to Marlborough to third parties at below-market prices;
- f. cancelling or altering invoices related to sales of works commissioned by Marlborough, with the intent and purpose of transferring the benefits of the commission agreements to the benefit of the Defendants;
- g. impairing Marlborough's relationship with dozens of artists with whom the gallery had done business; and
- h. thwarting Marlborough's plans for an orderly wind-down or transition of the Gallery.

211. By reason of the foregoing breaches, Spengemann proximately caused Marlborough to suffer substantial financial losses.

212. Helmrich negligently breached his duties to Marlborough by, among other things:

- a. using the Gallery's resources to establish the Alone Gallery;
- b. participating in the Levai Defendants' attempt to extract valuable concessions from Marlborough by threats of baseless legal action;

- c. failing to act to protect Marlborough's interests despite having express knowledge of Max Levai's wrongful schemes;
- d. participating in the sale of two artworks owned by the Gallery to Pierre Levai at prices below their market value;
- e. participating in the unauthorized sale of artwork belonging to Marlborough to third parties at below-market prices;
- f. cancelling or altering invoices related to sales of works commissioned by Marlborough, with the intent and purpose of transferring the benefits of the commission agreements to the benefit of the Defendants;
- g. impairing Marlborough's relationship with dozens of artists with whom the gallery had done business; and
- h. thwarting Marlborough's plans for an orderly wind-down or transition of the Gallery.

213. By reason of the foregoing breaches, Max Levai proximately caused Marlborough to suffer substantial financial losses.

214. By reason of the foregoing, Defendants are liable in an amount in excess of \$8,000,000 plus interest/attorneys' fees/costs as appropriate as well as additional equitable or injunctive relief as set forth below.

TENTH CAUSE OF ACTION**Defamation****(Against Max Levai)**

215. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

216. Max Levai made the following statements to Artnet News concerning the Marlborough and the Marlborough Board:

- a. “As he [Pierre Levai] lay battling for his life, after testing positive for COVID-19 this spring, the board used his condition for their own advantage, and voted while he was incapacitated to permanently close the New York gallery,” Max Levai said in a statement. “The architects of this maneuver are board leaders Franz Plutschow, head accountant for Marlborough International since the Frank Lloyd days ... and Stanley J. Bergman of [law firm] Withers Bergman.”
- b. “Having been effectively terminated by the board of trustees of the Lloyd family trusts, I have regrettably broken with the international Board of Marlborough Gallery. This is an unfortunate ending because things were going well, and so much was planned for the future. However, decisions made by the board of trustees with regard to their treatment of me and my family have had legal ramifications and exacerbated serious health issues for my parents.”

217. Artnet News published these statements on June 18, 2020 as part of a news article about the closing of the Gallery.

218. These statements were false and, among other things, contrary to the truth and Max Levai's statements for at least the following reasons:

- a. Pierre Levai was not "battling for his life" or in hospice care at the time, but rather was well into recovery from the COVID-19 infection at his home—a fact that Pierre Levai confirmed in a telephone call with a member of the Marlborough Board;
- b. Max Levai knew that the statement that Pierre Levai was "battling for his life" was false, which is confirmed by a communication that he drafted on May 4, 2020—about six weeks before his statement was published—that Pierre Levai was "about 14 days into the recovery";
- c. In addition, on May 28, 2020—almost three weeks before the statement was published—Max Levai himself communicated to the Board that Pierre Levai was "more comfortable and getting more and more back to normal";
- d. The decision to wind-down the Marlborough Gallery was not a secret "maneuver" by the Board; rather, it was a decision that had been made by the Board over several months, in regular consultation with Pierre and Max Levai;
- e. Max Levai had not been "terminated by the board of trustees of the Lloyd family trusts" when the statement was made; the Board did not terminate his employment until June 24, 2020, although he continued to direct employees at the Gallery (including Spengemann and Helmrich) and to draw a salary from Marlborough after that time; and

- f. Max Levai had not “broken with the international Board of Marlborough Gallery” at the time the statement was made; on the contrary, he continued to direct Marlborough employees and the movement of Marlborough assets for several weeks after that, and to authorize the payment of commissions to himself and others.

219. Max Levai made these statements with full knowledge and/or reckless disregard for their falsity.

220. Plaintiff has suffered reputational and financial harm as a direct consequence of Max Levai’s statements, including:

- a. Marlborough’s effort to effectively and responsibly wind down the operations of the Marlborough Gallery were undermined, causing the devaluation of Marlborough’s assets and holdings;
- b. Marlborough’s ability to engage in productive and mutually beneficial discussions with the Gallery’s artists were impaired, resulting in dozens of artists severing relationships with the Gallery when, on information and belief, they would not have occurred in the context of an orderly wind-down.

221. Indeed, within just five days of Defendant Max Levai’s false and misleading statements to the press, he had compiled a list of 46 artist relationships that he claimed no longer wished to work with the Marlborough Gallery.

222. By reason of the foregoing, Defendants are liable in an amount in excess of \$1,000,000 plus interest/attorneys’ fees/costs as appropriate as well as additional equitable or injunctive relief as set forth below.

ELEVENTH CAUSE ACTION**Fraud****(Against Pierre Levai)**

223. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

224. At all times relevant to this action, Pierre Levai was an officer of Marlborough and owed Marlborough the duty of loyalty, the duty to act in good faith and in the corporation's best interests, and the duty to make full and truthful disclosures to the corporation.

225. During his tenure as Marlborough's chief executive officer, Pierre Levai permitted and facilitated the transfer of at least 23 valuable works of art owned by the Marlborough Gallery to Marcia Levine, a person with whom Pierre Levai has a close—and on information and belief intimate—relationship.

226. Some of the works have been in Levine's possession for as long as two decades and most for at least a decade. Upon information and belief, many if not most of the works are not being actively marketed and instead are installed in Levine's private residence or residences.

227. Although Levine has at times purported to act as a sales agent for the Marlborough Gallery, she did not sell a single piece of art in 2020 and only sporadically sold any artworks in recent years.

228. Upon information and belief, Pierre Levai had personal knowledge that Levine was not actively marketing many, if indeed any, of the works in her possession and that they were instead installed in her private residence or residences.

229. Despite knowing that many if not most of the works in the possession of Levine were not being actively marketed and that they were instead installed in her private residence or residences, Pierre Levai persistently represented or caused to be represented in Marlborough Gallery records that the Gallery's property was "Out on consignment."

230. In the alternative, Pierre Levai omitted to notify Marlborough that many if not most of the works in the possession of Levine were not being actively marketed and that they were instead installed in her private residence or residences.

231. Upon information and belief, Pierre Levai misrepresented or caused to be misrepresented the status of the works in Levine's possession in Marlborough Gallery records in order to induce Marlborough to allow Levine to perpetually maintain possession of the Marlborough Gallery's property.

232. While Marlborough had knowledge of Pierre Levai's relationship with Levine, until such time that Max Levai's employment was terminated and the Board was able to access the Gallery's records, Marlborough did not have knowledge or information regarding the fact that Levine was in possession of at least 23 valuable works of art and that such possession in many instances went back decades.

233. Upon information and belief, Pierre Levai purported to invoice and pay for one of the works of art in the possession of Levine but falsely used a reference to Städel Museum in an effort to conceal that he was gifting the art to Levine.

234. The Marlborough Gallery's business purpose is to generate revenue through the sale of art that it owns or that it has taken on consignment. Active efforts to market and sell art in

order to generate revenue is and has at all times relevant to this complaint been material to the Marlborough Gallery.

235. Marlborough relied on Pierre Levai as a fiduciary of Marlborough to maintain accurate records, to vigilantly protect Marlborough Gallery's assets, and to maximize revenue through the active marketing and sale of Marlborough's art holdings.

236. Marlborough also relied on Pierre Levai as a fiduciary of Marlborough to keep it fully and faithfully informed regarding the status of the Marlborough Gallery's assets, including the 23 or more artworks that are now known to be in the possession of Levine and installed in her private residence or residences.

237. In light of the fiduciary relationship that existed between Marlborough and Pierre Levai, Marlborough reasonably relied on Pierre Levai's representations regarding the status of the artworks that are now known to be in the possession of Levine.

238. As a result of Pierre's Levai's concealed effort to allow Levine to possess numerous art works owned by Marlborough Gallery for extensive periods of time, Marlborough was denied the ability to market, sell, and generate revenue on such works and has therefore been damaged.

239. By reason of the foregoing, Defendants are liable in an amount in excess of \$1,000,000 plus interest/attorneys' fees/costs as appropriate as well as additional equitable or injunctive relief as set forth below.

TWELFTH CAUSE OF ACTION**Constructive Fraud****(Against the Levai Defendants)**

240. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

241. At all relevant times, Max Levai and Pierre Levai were fiduciaries to Marlborough and owed it a duty of full and truthful disclosure.

242. Max Levai and Pierre Levai failed to disclose that, among other things, that:

- a. Pierre Levai facilitated the transfer of up to 23 artworks to his companion Marcia Levine, while concealing or failing to disclose that, rather than being marketed, the works were installed in Levine's private residences;
- b. Max Levai consigned several artworks owned by the Marlborough Gallery to Tripoli Patterson, LLC, a company owned by his friend and business partner, without the approval of the Marlborough Board;
- c. Pierre Levai purported to authorize these sales;
- d. Max Levai bid on several of the artworks he consigned to Tripoli Patterson, LLC, without the approval of the Marlborough Board;
- e. Max Levai authorized and otherwise allowed the sale of two artworks owned by the Gallery to Pierre Levai at prices below their market value;
- f. Max Levai used the Gallery's resources to establish his own business venture;
- g. Max Levai transferred several artworks owned by the Gallery to his personal use;

- h. Max Levai shipped artworks owned by Marlborough to his own apartment or to a restaurant in which he has a personal and proprietary interest;
- i. Max Levai transferred several artworks owned by the Gallery to the Alone Gallery, without authority from the Marlborough Board;
- j. Max Levai sold artworks owned by Marlborough without authorization and failing to account for such sales when required to do so;
- k. Max Levai altered or canceled invoices related to sales of artworks created by three sculptors with which Marlborough had commission agreements, with the purpose and intent benefiting a venture or ventures in which he had a personal interest; and
- l. Max Levai and Pierre Levai diverted the Gallery's business opportunities by inducing Marlborough artists and their representatives to leave the Gallery prematurely.

243. These facts were material to Marlborough.

244. By reason of the foregoing, Defendants are liable in an amount in excess of \$8,000,000 plus interest/attorneys' fees/costs as appropriate as well as additional equitable or injunctive relief as set forth below.

THIRTEENTH CAUSE OF ACTION

Negligent Misrepresentation

(Against the Levai Defendants)

245. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

246. At all times relevant to this action, Pierre Levai was an officer of Marlborough and owed Marlborough the duty of loyalty, the duty to act in good faith and in the corporation's best interests, and the duty to make full and truthful disclosures to the corporation.

247. Pierre Levai permitted and facilitated the transfer of at least 23 valuable works of art owned by the Marlborough Gallery to his companion, Marcia Levine. Some of the works have been in Levine's possession for as long as two decades and most for at least a decade.

248. Upon information and belief, many if not most of the works are not being actively marketed and instead are installed in Levine's private residence or residences.

249. Although Levine has at times purported to act as a sales agent for the Marlborough Gallery, she did not sell a single piece of art in 2020 and only sporadically sold any artworks in recent years. Upon information and belief, Pierre Levai had personal knowledge that Levine was not actively marketing many if not most of the works in her possession.

250. Nevertheless, Pierre Levai persistently represented or caused to be represented in Marlborough Gallery records that the Gallery's property was "Out on loan."

251. While Marlborough had knowledge of Pierre Levai's relationship with Levine, until such time that Max Levai's employment was terminated and the Board was able to access the Gallery's records, Marlborough did not have knowledge or information regarding the fact that Levine was in possession of at least 23 valuable works of art and that such possession in many instances went back decades.

252. The Marlborough Gallery relied on Pierre Levai as a fiduciary of Marlborough to maintain accurate records, to vigilantly protect Marlborough Gallery's assets, and to maximize revenue through the active marketing and sale of Marlborough's art holdings.

253. The Marlborough Gallery also relied on Pierre Levai as a fiduciary of Marlborough to keep it fully and faithfully informed regarding the status of the Marlborough Gallery's assets, including the artworks that are now known to be in the possession of Levine.

254. In light of the fiduciary relationship that existed between Marlborough and Pierre Levai, Marlborough reasonably relied on Pierre Levai's representations regarding the status of those artworks that are now known to be in the possession of Levine.

255. As a result of Pierre's Levai's concealed effort to allow Levine to possess numerous art works owned by Marlborough Gallery for extensive periods of time, Marlborough was denied the ability to market, sell, and generate revenue on such works and has therefore been damaged.

256. By reason of the foregoing, Defendants are liable in an amount in excess of \$1,000,000 plus interest/attorneys' fees/costs as appropriate as well as additional equitable or injunctive relief as set forth below.

FOURTEENTH CAUSE OF ACTION

Civil Conspiracy

(Against All Defendants)

257. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

258. Max Levai and Pierre Levai agreed to commit the torts set forth above.

259. Max Levai and Pierre Levai committed several overt acts in furtherance of the torts, including, among other things:

- a. Max Levai's canceling or altering invoices pertaining to Marlborough's commission agreements with three artists in order to benefit a venture or ventures in which Defendants had an interest;
- b. Max Levai's unauthorized sale to third parties of artworks owned by Marlborough and failure to account for such sales when required to do so;
- c. Max Levai's improper gifting of the Marlborough's artwork to a third party, Dan Nadel;
- d. Max Levai's shipment of artworks owned by Marlborough to his own apartment or to a restaurant in which he has a personal and proprietary interest;
- e. Max Levai's transfer of several artworks owned by the Gallery to the Alone Gallery, without authority from the Marlborough Board;
- f. Max Levai's consignment of several artworks owned by the Marlborough Gallery to Tripoli Patterson, LLC, a company owned by his friend and business partner, without the approval of the Marlborough Board;
- g. Pierre Levai's purported authorization of these sales;
- h. Pierre Levai's purchase of two artworks owned by the Gallery from Max Levai at prices below their market value; and
- i. their communication of threats of baseless legal action to Marlborough in an attempt to extract financial concessions.

260. Spengemann and Helmrich agreed to commit the torts set forth above.

261. Spengemann and Helmrich committed several overt acts in furtherance of the torts, including, among other things:

- a. participating in the sale of two artworks owned by the Gallery to Pierre Levai at prices below their market value;
- b. facilitating the unauthorized sale of artwork belonging to Marlborough to third parties at below-market prices;
- c. participating in the attempt to extract valuable concessions from Marlborough by threats of baseless legal action;
- d. altering invoices pertaining to Marlborough's commission agreements with three artists in order to benefit a venture or ventures in which Defendants had an interest; and
- e. thwarting Marlborough's plans for an orderly wind-down or transition of the Gallery.

262. By reason of the foregoing, Defendants are liable in an amount in excess of \$5,000,000 plus interest/attorneys' fees/costs as appropriate as well as additional equitable or injunctive relief as set forth below.

FIFTEENTH CAUSE OF ACTION

An Accounting (Against All Defendants)

263. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

264. At all times relevant to this action, Max Levai was an employee of Marlborough and owed Marlborough the duty of loyalty, the duty to act in good faith and in the corporation's best interests, and the duty to make full and truthful disclosures to the corporation.

265. At all times relevant to this action, Pierre Levai was an officer of Marlborough and owed Marlborough the duty of loyalty, the duty to act in good faith and in the corporation's best interests, and the duty to make full and truthful disclosures to the corporation.

266. At all times relevant to this action, Spengemann was an employee of Marlborough and owed Marlborough the duty of loyalty, the duty to act in good faith and in the corporation's best interests, and the duty to make full and truthful disclosures to the corporation.

267. At all times relevant to this action, Helmrich was an employee of Marlborough and owed Marlborough the duty of loyalty, the duty to act in good faith and in the corporation's best interests, and the duty to make full and truthful disclosures to the corporation.

268. For the reasons set forth in the preceding paragraphs of this complaint, Max Levai breached his fiduciary duty to and committed torts against Marlborough.

269. For the reasons set forth in the preceding paragraphs of this complaint, Pierre Levai breached his fiduciary duty to and committed torts against Marlborough.

270. For the reasons set forth in the preceding paragraphs of this complaint, Pascal Spengemann breached his fiduciary duty to and committed torts against Marlborough.

271. For the reasons set forth in the preceding paragraphs of this complaint, John Helmrich breached his fiduciary duty to and committed torts against Marlborough.

272. By reason of the foregoing, Defendants are liable in an amount to be determined, in addition to the equitable or injunctive relief set forth below.

WHEREFORE, Marlborough respectfully requests judgment as follows:

A. On the First Cause of Action, awarding damages in favor of Marlborough, in an amount to be determined at trial, but in no event less than \$8,000,000, plus interest, attorneys' fees and costs or awarding equitable and/or injunctive relief as follows:

1. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that are in the possession of Marcia Levine.
2. The return to the Marlborough Gallery of all artworks purportedly purchased from Marlborough by Pierre Levai.
3. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were consigned or otherwise sent by Defendants to Tripoli Patterson, LLC.
4. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were consigned or otherwise sent by Defendants to the Alone Gallery.
5. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were sent to Max Levai's apartment or to any restaurant or other business premises in which Max Levai has or had a financial or proprietary interest.

6. The return to the Marlborough Gallery of a work of art unlawfully given to Dan Nadel.
7. The return to the Marlborough Gallery of all works of art sold by Defendants to third parties without authorization.

B. On the Second Cause of Action, awarding damages in favor of Marlborough, in an amount to be determined at trial, but in no event less than \$8,000,000, plus interest, attorneys' fees and costs or awarding Plaintiff equitable and or injunctive relief as follows:

1. The return to the Marlborough Gallery of all artworks purportedly purchased from Marlborough by Pierre Levai.
2. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were consigned or otherwise sent by Defendants to Tripoli Patterson, LLC.
3. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were consigned or otherwise sent by Defendants to the Alone Gallery.
4. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were sent to Max Levai's apartment or to any restaurant or other business premises in which Max Levai has or had a financial or proprietary interest.
5. The return to the Marlborough Gallery of a work of art unlawfully given to Dan Nadel.

6. The return to the Marlborough Gallery of all works of art sold by Defendants to third parties without authorization.

C. On the Third Cause of Action, awarding damages in favor of Marlborough, in an amount to be determined at trial, but in no event less than \$2,000,000, plus interest, attorneys' fees, and costs or awarding Plaintiff equitable and or injunctive relief as follows:

1. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that are in the possession of Marcia Levine.
2. The return to the Marlborough Gallery of all artworks purportedly purchased from Marlborough by Pierre Levai.
3. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were consigned or otherwise sent by Defendants to Tripoli Patterson, LLC.
4. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were consigned or otherwise sent by Defendants to the Alone Gallery.
5. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were sent to Max Levai's apartment or to any restaurant or other business premises in which Max Levai has or had a financial or proprietary interest.
6. The return to the Marlborough Gallery of a work of art unlawfully given to Dan Nadel.

7. The return to the Marlborough Gallery of all works of art sold by Defendants to third parties without authorization.

D. On the Fourth Cause of Action, awarding damages in favor of Marlborough, in an amount to be determined at trial, but in no event less than \$2,000,000, plus interest, attorneys' fees, and costs or awarding Plaintiff equitable and or injunctive relief as follows:

1. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that are in the possession of Marcia Levine.
2. The return to the Marlborough Gallery of all artworks purportedly purchased from Marlborough by Pierre Levai.
3. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were consigned or otherwise sent by Defendants to Tripoli Patterson, LLC.
4. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were consigned or otherwise sent by Defendants to the Alone Gallery.
5. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were sent to Max Levai's apartment or to any restaurant or other business premises in which Max Levai has or had a financial or proprietary interest.
6. The return to the Marlborough Gallery of a work of art unlawfully given to Dan Nadel.

7. The return to the Marlborough Gallery of all works of art sold by Defendants to third parties without authorization.

E. On the Fifth Cause of Action, awarding damages in favor of Marlborough, in an amount to be determined at trial, but in no event less than \$5,000,000, plus interest, attorneys' fees, and costs or awarding Plaintiff equitable and injunctive relief as follows:

1. An accounting for Defendants' unjust enrichment at Plaintiff's expense.
2. Disgorgement of Defendants' ill-gotten gains.
3. Restitution to Plaintiff.

F. On the Sixth Cause of Action, awarding damages in favor of Marlborough, in an amount to be determined at trial, but in no event less than \$2,000,000, plus interest, attorneys' fees, and costs or awarding Plaintiff equitable and injunctive relief as follows:

1. An accounting for Defendants' usurpation of Plaintiff's corporate opportunities.
2. Disgorgement of Defendants' ill-gotten gains.
3. Restitution to Plaintiff.

G. On the Seventh Cause of Action, awarding damages in favor of Marlborough, in an amount to be determined at trial, but in no event less than \$8,000,000, plus interest, attorneys' fees, and costs.

H. On the Eighth Cause of Action, awarding damages in favor of Marlborough, in an amount to be determined at trial, but in no event less than \$8,000,000, plus interest, attorneys' fees, and costs.

I. On the Ninth Cause of Action, awarding damages in favor of Marlborough, in an amount to be determined at trial, but in no event less than \$8,000,000, plus interest, attorneys' fees, and costs or awarding Plaintiff equitable and injunctive relief as follows:

1. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that are in the possession of Marcia Levine.
2. The return to the Marlborough Gallery of all artworks purportedly purchased from Marlborough by Pierre Levai.
3. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were consigned or otherwise sent by Defendants to Tripoli Patterson, LLC.
4. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were consigned or otherwise sent by Defendants to the Alone Gallery.
5. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were sent to Max Levai's apartment or to any restaurant or other business premises in which Max Levai has or had a financial or proprietary interest.
6. The return to the Marlborough Gallery of a work of art unlawfully given to Dan Nadel.
7. The return to the Marlborough Gallery of all works of art sold by Defendants to third parties without authorization.

J. On the Tenth Cause of Action, awarding damages in favor of Marlborough, in an amount to be determined at trial, but in no event less than \$1,000, plus interest, attorneys' fees, and costs or awarding Plaintiff equitable and injunctive relief as follows:

1. A public retraction by Max Levai of his Defamatory statements regarding Plaintiff and its Board.

K. On the Eleventh Cause of Action, awarding damages in favor of Marlborough, in an amount to be determined at trial, but in no event less than \$1,000,000, plus interest, attorneys' fees, and costs or awarding Plaintiff equitable and injunctive relief as follows:

1. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that are in the possession of Marcia Levine.

L. On the Twelfth Cause of Action, awarding damages in favor of Marlborough, in an amount to be determined at trial, but in no event less than \$8,000,000, plus interest, attorneys' fees and costs or awarding Plaintiff equitable and injunctive relief as follows:

1. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that are in the possession of Marcia Levine.
2. The return to the Marlborough Gallery of all artworks purportedly purchased from Marlborough by Pierre Levai.
3. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were consigned or otherwise sent by Defendants to Tripoli Patterson, LLC.

4. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were consigned or otherwise sent by Defendants to the Alone Gallery.
5. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were sent to Max Levai's apartment or to any restaurant or other business premises in which Max Levai has or had a financial or proprietary interest.
6. The return to the Marlborough Gallery of all works of art sold by Defendants to third parties without authorization.

M. On the Thirteenth Cause of Action, awarding damages in favor of Marlborough, in an amount to be determined at trial, but in no event less than \$1,000,000, plus interest, attorneys' fees, and costs or awarding Plaintiff equitable and injunctive relief as follows:

1. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that are in the possession of Marcia Levine.

N. On the Fourteenth Cause of Action, awarding damages in favor of Marlborough, in an amount to be determined at trial, but in no event less than \$5,000,000, plus interest, attorneys' fees, and costs or awarding Plaintiff equitable and injunctive relief as follows:

1. The return to the Marlborough Gallery of all artworks purportedly purchased from Marlborough by Pierre Levai.
2. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were consigned or otherwise sent by Defendants to Tripoli Patterson, LLC.

3. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were consigned or otherwise sent by Defendants to the Alone Gallery.
4. The return to the Marlborough Gallery of all works of art owned by or consigned to Marlborough that were sent to Max Levai's apartment or to any restaurant or other business premises in which Max Levai has or had a financial or proprietary interest.
5. The return to the Marlborough Gallery of a work of art unlawfully given to Dan Nadel.
6. The return to the Marlborough Gallery of all works of art sold by Defendants to third parties without authorization.

O. On the Fifteenth Cause of Action, awarding Marlborough equitable and or injunctive relief as follows:

1. An accounting sufficient to permit the orderly winding down of the Marlborough Gallery in a way manner that protects the value of Marlborough's assets and business opportunities.
2. An accounting for Defendants' unjust enrichment at Plaintiff's expense.
3. An accounting for Defendants' usurpation of Plaintiff's corporate opportunities.
4. An accounting for all funds paid, lent or advanced from Marlborough to the Defendants, whether by way of salaries, bonuses, commissions, loans, or reimbursements of expenses.

5. An accounting for all works of art owned by or consigned to Marlborough that are in the possession of Marcia Levine.
6. An accounting for all artworks purportedly purchased from Marlborough by Pierre Levai.
7. An accounting for all works of art owned by or consigned to Marlborough that were consigned, lent or otherwise sent by Defendants to Tripoli Patterson, LLC.
8. An accounting for all works of art owned by or consigned to Marlborough that were consigned, lent or otherwise sent by Defendants to the Alone Gallery.
9. An accounting for any and all Marlborough resources used to establish business ventures in which Defendants had a personal or proprietary interest, including the use of Marlborough funds or the directing Marlborough employees to assist with such projects.
10. An accounting for all works of art owned by or consigned to Marlborough that were sent to Max Levai's apartment or to any restaurant or other business in which Max Levai has or had a financial or proprietary interest.
11. An accounting for a work of art unlawfully given to Dan Nadel.
12. An accounting for all transactions pertaining to the commission agreements between Marlborough and the artists Tony Matelli, Matt Johnson, and Julius von Bismarck.
13. An accounting for all works of art sold to third parties without authorization.

P. Granting Marlborough such other and further relief as the Court deems just and proper.

Dated: September 15, 2020
New York, New York

Respectfully submitted,

ROBINS KAPLAN LLP

By: /s/ Eamon O'Kelly
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Eokelly@robinskaplan.com

*Attorneys for Plaintiff
Marlborough Gallery, Inc.*

VERIFICATION

STATE OF CONNECTICUT)

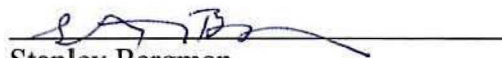
) ss.:

COUNTY OF NEW HAVEN)

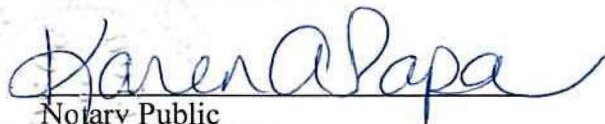
Stanley Bergman, being duly sworn, deposes, and says:

I am a director of Plaintiff Marlborough Gallery, Inc. I have read the foregoing complaint and know its contents. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

Dated: New Haven, Connecticut
September 15, 2020


Stanley Bergman

Sworn to before me this 15th
day of September 2020.



Notary Public

KAREN A. PAPA

NOTARY PUBLIC, STATE OF CONNECTICUT
MY COMMISSION EXPIRES 3/31/2022