

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

-----	X	
	:	
MAX LEVAI,	:	Index No. _____
	:	Date Filed: September 15, 2020
Plaintiff,	:	
	:	Plaintiff designates New York
- against -	:	County as the place of trial
	:	
MARLBOROUGH GALLERY INC., STANLEY N.	:	<u>SUMMONS</u>
BERGMAN, and FRANZ PLUTSCHOW,	:	
	:	Venue is proper pursuant to
Defendants.	:	CPLR §§ 503 and 509
	:	

----- X

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and upon your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
September 15, 2020

KASOWITZ BENSON TORRES LLP

By: /s/ Marc E. Kasowitz
Marc E. Kasowitz
(mkasowitz@kasowitz.com)
Albert Shemmy Mishaan
(amishaan@kasowitz.com)
Kim Conroy
(kconroy@kasowitz.com)

1633 Broadway
New York, New York 10019
Tel: (212) 506-1700

Attorneys for Plaintiff Max Levai

To: MARLBOROUGH GALLERY INC.
545 West 25th Street
New York, NY 10001

STANLEY N. BERGMAN
22 Country Club Drive
Woodbridge, CT 06525-2510

FRANZ PLUTSCHOW
Spiegelhofstrasse 36
Zurich, Switzerland 8032

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

-----	X	
	:	Index No.
MAX LEVAI,	:	
	:	
Plaintiff,	:	
	:	<u>COMPLAINT</u>
- against -	:	
	:	
MARLBOROUGH GALLERY INC., STANLEY N.	:	
BERGMAN, and FRANZ PLUTSCHOW,	:	
	:	
Defendants.	:	
-----	X	

Plaintiff Max Levai (“plaintiff” or “Mr. Levai”), by his attorneys, Kasowitz Benson Torres LLP, for his complaint against defendants Marlborough Gallery Inc. (“Marlborough” or the “Company”), Stanley N. Bergman (“Bergman”), and Franz Plutschow (“Plutschow”), alleges:

PRELIMINARY STATEMENT

1. This action arises out of the defendants’ malicious and unlawful efforts to damage Max Levai’s reputation and credibility and convert his personal property, all in an effort to destroy his ability to compete with Marlborough following his termination as the Company’s President.

2. Since the 1960s, Mr. Levai’s father, Pierre Levai, worked with his uncle, Frank Lloyd, to operate the Marlborough galleries, an internationally renowned conglomerate of art galleries originally founded in London with branches around the world. In the 1970s, as a result of a scandal that severely tarnished the Marlborough brand, Frank Lloyd and the Lloyd Family were forced to step back from operating Marlborough’s New York gallery. Thereafter, Pierre Levai and the Levai family operated Marlborough’s New York business for decades.

3. In 2012, Marlborough's Board of Directors (the "MG Board of Directors") enlisted Max Levai, then 24 years old, to work at Marlborough's downtown New York gallery in Chelsea, which opened in 2007 ("Marlborough Chelsea"). During that time, Mr. Levai honed his talent for innovative programming and developing new artists, which increased Marlborough's profile in the contemporary art world and positioned the Marlborough brand for continued success in an ever evolving market.

4. In 2019, Mr. Levai was promoted by the MG Board of Directors to President of Marlborough's New York and London operations -- the first person to carry this responsibility since Frank Lloyd. Mr. Levai was quickly recognized by the art media and community as a rising star, and worked tirelessly to revitalize the Marlborough brand and bring it into a new age both in terms of technology and programming.

5. In March 2020, amid the COVID-19 pandemic, plans for a major renovation of Marlborough Chelsea were halted and the gallery was temporarily closed. With the pandemic causing financial uncertainty, and Mr. Levai's father, Pierre Levai, recovering from COVID-19 and preparing to take on a less active role in Marlborough's day to day operations, the Lloyd Family embarked on a scheme to seize control of Marlborough's operations from Mr. Levai and his father.

6. As part of this coup d'état, defendants Bergman and Plutschow, who had worked for the Lloyd Family for decades and were members of the MG Board of Directors, were enlisted to terminate Mr. Levai's employment as Marlborough's President. With Pierre Levai ill, the MG Board of Directors voted to terminate Mr. Levai, and then worked to ensure that once he was ousted he could not pose any competitive threat to Marlborough's business, given that Mr. Levai was not subject to any non-compete agreement. Aware that Mr. Levai had been the primary

architect of Marlborough's recent growth by enlisting new artists and staging innovative exhibitions, defendants were concerned that Mr. Levai, unencumbered by any legal restriction on his business activity, would continue to use his extensive experience and vast array of relationships with collectors, artists, and media to be a major force in the art world.

7. Beginning in late May 2020, the Company and defendants Bergman and Plutschow engineered a scheme to damage Mr. Levai's reputation and his relationships with artists, important estates, and other industry figures, hijack his personal property, including his valuable social media account, stymie his chances of launching a successful solo business, and extract as much information from Mr. Levai as possible regarding the value and details of Marlborough's inventory and business operations.

8. Defendants first falsely announced Marlborough Chelsea's permanent closure and invited Mr. Levai to submit a proposal outlining his knowledge of portions of Marlborough's inventory under the pretext of negotiating to sell Mr. Levai certain pieces upon the liquidation of the gallery's inventory. Once they had this information, the Company terminated Mr. Levai's employment and ceased negotiations for the sale of any artwork. At the same time, defendants began spreading defamatory statements about Mr. Levai to his business contacts and artists with whom Mr. Levai had professional relationships.

9. If this were not enough to ensure that Mr. Levai would be unsuccessful in his own business venture, the Company commandeered Mr. Levai's personal Instagram account for the Company's use, preventing Mr. Levai from reaching his over 75,000 followers. The Company also refused to return pieces from Mr. Levai's personal art collection that were stored in the Company's warehouse during his tenure as President.

10. Defendants' egregious misconduct effectively halted Mr. Levai's attempt to build his new business and caused him substantial economic and reputational damage.

11. Mr. Levai brings this action against defendants to end defendants' defamatory campaign, gain the return of his rightful control over his personal property, and recover the reputational and economic damages he has suffered -- including punitive damages based on defendants' willful and malicious conduct.

THE PARTIES

12. Plaintiff Max Levai is an individual residing in New York. Until June 2020, he served as President of defendant Marlborough Gallery Inc.

13. Defendant Marlborough Gallery Inc. is a New York domestic corporation organized and existing under the laws of the State of New York with its principal place of business at 545 West 25th Street, New York, NY 10001. It is managed by the MG Board of Directors, whose members include defendants Bergman and Plutschow.

14. Defendant Stanley N. Bergman is an individual residing in Connecticut. He is a member of the MG Board of Directors and simultaneously a member of the Lloyd Board of Trustees. Bergman is also a founder of Withers Bergman LLP, a firm known to specialize in advising high net worth individuals on estate and tax avoidance matters.

15. Defendant Franz Plutschow is an individual residing in Zurich, Switzerland. He is a member of the MG Board of Directors and simultaneously a member of the Lloyd Board of Trustees. Upon information and belief he is also an accountant for and the head of Marlborough A.G., a Liechtenstein corporation.

JURISDICTION AND VENUE

16. This Court has personal jurisdiction over the Company pursuant to CPLR §§ 301 and 302(a)(1), (2), and (3) because its principal place of business is in New York and because it is a corporation formed under the laws of the State of New York. The Company also committed torts in New York.

17. The Court has personal jurisdiction over defendants Bergman and Plutschow pursuant to CPLR §§ 301 and 302(a)(1), (2), and (3), including as a result of acting in New York through the Company. Additionally, as described in detail below, the claims brought here arise out of defendants' acts, including as a result of their transacting business in New York, committing torts in New York, and/or committing torts outside New York that injured plaintiff in New York.

18. Venue is proper in this Court pursuant to CPLR § 503(a) and (c) because plaintiff resides in New York County and the Company's principal place of business is located in New York County. Additionally, a substantial part of the events giving rise to the claims occurred in New York County. Venue is also proper pursuant to CPLR § 509.

FACTS

I. History of the Marlborough Galleries

19. In 1946, after the war ended, Frank Lloyd, a Viennese entrepreneur, opened Marlborough Fine Art in London ("Marlborough London"). Gilbert Lloyd, Frank Lloyd's oldest son and Pierre Levai, Frank Lloyd's nephew, helped him run and expand the business.

20. By the 1960s, Mr. Lloyd expanded Marlborough's operations and opened a space in New York, on 57th Street. In New York, Mr. Lloyd continued to build Marlborough's reputation as the gallery for avant-garde artwork, staging exhibitions for artists such as Frank

Auerbach and representing famous abstract expressionists such as Jackson Pollock. At the height of its prominence, the Marlborough galleries were located in multiple countries, and became known as the first true mega-gallery.

21. Beginning in the 1970s, Mr. Lloyd and the Marlborough galleries became entangled in a nearly twelve-year scandal involving the artwork of the famed abstract expressionist Mark Rothko. Among other things, Rothko's heirs brought a legal action alleging that the Marlborough galleries, along with Rothko's estate executors, engaged in "double dealing, fraud and conspiracy" in their handling of Rothko's work, in a years-long scheme to undervalue the artist's works during his life, engage in fraudulent sales, and, after his death, capitalize on their fraud by selling the works at higher prices and higher commissions.

22. The New York Court of Appeals ultimately ruled, among other things, that two of the three estate executors had direct and/or indirect monetary interests in the Marlborough gallery and breached their fiduciary duties by executing agreements "between the Marlborough corporations and the estate [that] were neither fair nor in the best interests of the estate." The Court ordered Marlborough to return unsold pieces to Rothko's heirs. Mr. Lloyd was ultimately required to pay one third of the \$9.2 million damages award to the Rothko children as a fine against Marlborough for violating the Court's injunction against the sale of any further paintings before a final ruling or settlement. Mr. Lloyd was also indicted for tampering with evidence and fled to his Bahamas home for years to avoid criminal penalties.

23. The Rothko litigation also exposed Marlborough's then intricate network of shell corporations in Liechtenstein and bank accounts in Switzerland that enabled Mr. Lloyd and certain of his loyal aides to hide both art and profits. Rothko's heirs sought to sanction Mr. Lloyd for an alleged scheme to ship millions of dollars of art work from Toronto to Zurich in

order to avoid their seizure in satisfaction of a judgment in a related Rothko proceeding.

Defendant Plutschow, who was the head of Marlborough A.G. in Liechtenstein at the time, was alleged to have taken part in the scheme.

24. The Rothko litigation exploded in the press and reverberated throughout the art world. As a result, art dealers began publicly rejecting Mr. Lloyd and Marlborough. Mr. Lloyd's tarnished reputation led to the mass exodus of Marlborough's leading artists fleeing to competitor galleries. With the survival of the gallery in jeopardy due to its affiliation with the Lloyd name, Mr. Lloyd was forced to step back from control of the business. He handed the reins of Marlborough's operations to his nephew Pierre Levai, plaintiff's father, who slowly but surely rebuilt the Marlborough reputation.

25. Frank Lloyd passed away in 1998. After his death, ownership of the Marlborough galleries was placed into four separate trusts (the "Gallery Trusts"). The Gallery Trusts consist of three trusts that hold 80% ownership interests for the benefit of Mr. Lloyd's three children, Gilbert, Alexander, and Caroline, and one trust that holds 20% ownership interests for the benefit of Pierre Levai. Defendants Bergman and Plutschow sit on the Board of Trustees that oversees all of the Lloyd Family Trusts, including the Gallery Trusts (the "Lloyd Board of Trustees").

II. Defendants Bergman and Plutschow are Beholden to the Lloyd Family

26. Defendants Bergman and Plutschow have served the Lloyd Family for many years in managing the family's vast wealth and real estate holdings. In addition to their positions on the Lloyd Board of Trustees, defendants Bergman and Plutschow serve as two of the three members of the MG Board of Directors, along with Pierre Levai.

27. Upon information and belief, defendant Bergman, through his law firm Bergman Withers LLP and its predecessor firm, created the Gallery Trusts and other trust structures for the

Lloyd Family, and provides financial services to, and manages the revenue of, various Lloyd Family entities. In addition, Bergman has long acted as Marlborough's and the Lloyd Family's attorney, and sits on various boards of directors for Lloyd Family-related entities. Bergman continues to earn significant fees from his representation of the Marlborough galleries and the Lloyd Family.

28. Upon information and belief, defendant Plutschow's income and employment is also dependent on the Lloyd Family. Plutschow has been the head of Marlborough's Liechtenstein's operation for decades and has served as one of Marlborough's accountants for over forty years.

III. Max Levai Is On-Boarded To Marlborough

29. In 2007, Marlborough expanded with the opening of Marlborough Chelsea. Five years later, in 2012, Mr. Levai joined the business. At the time, Marlborough, though doing well, had failed to modernize and had no digital presence. Mr. Levai had already spent years walking in his father's footsteps, meeting artists and building a presence in the art world. Thus, at 24 years old, Mr. Levai was brought on to revitalize Marlborough, steer it into modern times, and eventually take over the reins of the Company as his father was planning to retire, the Lloyd Family had been out of the art scene for years, and defendants Plutschow and Bergman had no relevant experience. Mr. Levai initially focused on Marlborough's programming, and shortly thereafter assumed full responsibility for Marlborough Chelsea, which became the center of Marlborough's contemporary art business.

30. Over the last few years, the Company and the MG Board of Directors, including defendants Plutschow and Bergman, relied on Mr. Levai's personal contacts and know-how to handle all aspects of the business, including his relationships with artists, as well as his expertise

in buying and selling art, real estate development, and website and brand development. In addition, Mr. Levai led Marlborough's efforts to identify emerging talent and new revenue streams with both contemporary and non-contemporary artists.

31. Mr. Levai worked tirelessly to enhance the Marlborough brand, resulting in success at the leading art fair organizations, Art Basel (Miami and Hong Kong) and Frieze (New York and London), and features in important international press. Mr. Levai also received recognition in the art world and media for his work and for Marlborough, including being touted as "the real deal," one of the "25 Rising Power Players" in the art world, and included in Forbes' "30 Under 30" for its "Art & Style" section. As described by France-Amérique, a bilingual French and English magazine: "Max Levai quickly became an instrumental figure in the modernization of the Marlborough brand."

32. In 2016, Mr. Levai was appointed as the Director of Marlborough Chelsea. In connection with that position, on or about December 1, 2016, Mr. Levai entered into an employment agreement with the Company, which set out the terms of his employment as the Director of Marlborough Chelsea through November 30, 2019. Notwithstanding the agreement's expiration, it expressly provided that "[u]pon termination of [his] employment, [Mr. Levai] shall continue to be entitled to receive any accrued commissions payable when [the Company] receive[s] payment from sales of works by you," in accordance with the terms of the agreement.

33. At all times following the expiration of the agreement, Mr. Levai continued to be paid commissions in accordance with its terms.

34. In 2019, Mr. Levai was named President of the Company. At the time, the Company did not request or receive any non-compete restrictions on Mr. Levai's activity in the event he were to leave Marlborough.

35. At or around the same time, the Company announced its vision for the future -- one where the three distinct and independent operations of Marlborough London and Marlborough's New York galleries would consolidate and exist under one unified Marlborough brand.

36. The Company and defendants Bergman and Plutschow agreed that as part of the consolidation process, Marlborough would close its rented gallery space on 57th Street and acquire a building vacated by contemporary gallery Cheim & Read, next door to Marlborough Chelsea, so that the downtown gallery could serve as Marlborough New York's flagship location. Mr. Levai worked with defendant Bergman's law firm to execute the purchase, develop a strategy to connect the gallery space in the two buildings, and begin plans for construction. The new development was set to break ground in March 2020, but because the COVID-19 pandemic required Marlborough Chelsea to temporarily close its doors, the plans for the expansion of the gallery space were stalled.

IV. Marlborough Chelsea is Purportedly Permanently Closed

37. In April 2020, Mr. Levai's father contracted COVID-19 and was in critical medical condition. Defendants Bergman and Plutschow repeatedly asked Mr. Levai about his father's condition during their many discussions concerning gallery business. While at the time Mr. Levai believed that these discussions and inquiries were the result of genuine concern and collaboration among close longtime business associates, Mr. Levai quickly learned that defendants' motives were far from pure.

38. On May 27, 2020, Mr. Levai sent a letter to the MG Board of Directors containing proposed 2021 budgets for the Marlborough galleries that outlined his strategy and initiatives (the "May 27 Budgets"). Prior to its submission, Mr. Levai worked with defendants Bergman

and Plutschow on the preliminary budgets and planned initiatives. Both defendants Bergman and Plutschow purported to support and encourage Mr. Levai's submission.

39. On May 29, 2020, just two days after Mr. Levai sent the May 27 Budgets, in a complete blindside, Plutschow, as a trustee for the Lloyd Board of Trustees and, upon information and belief, with the agreement of Bergman, sent a letter to Mr. Levai in New York (the "May 29 Letter"), informing Mr. Levai that a decision was made to permanently close Marlborough Chelsea and breach the agreement to purchase the adjoining property. Given the earlier closure of Marlborough's 57th Street space, closing Marlborough Chelsea meant that Marlborough Gallery Inc., the U.S. Company was shutting down. The May 29 Letter also stated that the Lloyd Board of Trustees, clearly aware that Mr. Levai would likely desire to continue in the art business, "wish[ed] to offer [him] both the gallery spaces [in Chelsea] for rent subject that [he] run it under [his] name" and would "cooperate" with him for the purchase of "the inventory of art." The May 29 Letter, among other things, did not address the apparent inconsistency between defendants Bergman and Plutschow's decision to approve substantial 2020/2021 expenditures, including, but not limited to, paying legal fees to Withers Bergman LLP for work in connection with the contemplated real estate transaction, and their decision to permanently close Marlborough Chelsea, thereby rendering the expenditures a total waste.

40. Notwithstanding the letter, Bergman told Mr. Levai that the MG Board of Directors wanted him to work on securing alternative sources of revenue for the gallery until its closure. As a result, among other things, Mr. Levai entered into discussions with Mr. Tripoli Patterson of the Tripoli Gallery, a contemporary art gallery in Wainscott, New York, and began planning the opening of a pop-up gallery in a warehouse in the Hamptons in July 2020, designed specifically to accommodate social distancing protocols (the "Alone Gallery"). With

Marlborough focused on cutting expenses, Mr. Levai sought a revenue stream that imposed few additional costs on the gallery, which the collaboration with Mr. Patterson provided.

41. Beginning in June 2020, while still President of Marlborough, and in connection with the Alone Gallery project, Mr. Levai, on behalf of Marlborough, entered into several consignment agreements to consign over 40 works from various Marlborough artists that would be exhibited at the Alone Gallery. The MG Board of Directors had full authority and transparent access to all information concerning Mr. Levai's collaborations and actions taken to enhance the revenue of the gallery. Moreover, the Alone Gallery's opening was well publicized in the art world media, including being reported by the New York Times as early as June 9, 2020.

42. In addition to continuing to find new ways to raise revenues, Mr. Levai attempted to work with the Company to ensure an orderly closure of Marlborough Chelsea. In June 2020, Mr. Levai confirmed to the Company and Lloyd Board of Trustees that given the announced closure of Marlborough, he planned to open his own business and put forth a proposal whereby he would personally acquire certain artwork and leased space from Marlborough in connection with his forthcoming business venture.

V. The Defendants' Scheme to Ruin Mr. Levai Is Exposed

43. In furtherance of what he believed were good-faith efforts to reach an agreement for the sale and purchase of certain artwork, Mr. Levai submitted a bid outlining his professional opinion regarding the value of certain of Marlborough's pieces that he was interested in acquiring for his own forthcoming business. Rather than use that valuation as a starting point for the negotiations, the Company ceased all engagement with Mr. Levai shortly after receiving his proposal. This sudden abandonment of the negotiations seemed illogical to Mr. Levai, who at the time still understood, based on defendant Plutschow's own statements in the May 29 Letter

and defendant Bergman's communications with Mr. Levai thereafter, that the Company planned to imminently and permanently close Marlborough Chelsea.

44. It was not until some weeks later, when Mr. Levai learned that Marlborough Chelsea was not actually closing permanently, that it became clear that he had been duped by defendants Bergman and Plutschow, who invited him to submit his "bid" as a means of extracting his knowledge about the value of Marlborough's inventory under the guise of the purported closing. In reality, defendants Bergman and Plutschow were not preparing to close the Marlborough Gallery, they were preparing to terminate Mr. Levai's employment, and wanted his opinion as to the value of certain works in Marlborough's inventory before they let him go. This information was undoubtedly valuable, as it could be used as a baseline for the Company's future sale of the pieces and provided a glimpse into what direction Mr. Levai might take in his post-Marlborough endeavors.

45. Having surreptitiously obtained a download of Mr. Levai's views on the gallery's inventory, defendants then set out to destroy Mr. Levai's reputation, damage his relationships with artists and other industry figures, and hijack his valuable social media account all in an effort to block Mr. Levai's ability to succeed on his own.

46. In furtherance of this scheme, on June 23, 2020, the Company, Bergman, and Plutschow, through counsel and on behalf of the Company, sent a letter to Mr. Levai and other prominent people in the New York art world, including Robert Rubin and Tripoli Patterson, that contained numerous defamatory and false statements (the "June 23 Letter"), concerning, among other things, the Alone Gallery project in the Hamptons. Robert Rubin is an art collector who was publicly reported as working with Mr. Levai in the past and who planned on collaborating on the Alone Gallery project. Mr. Patterson is an art dealer, curator, and the owner of the Tripoli

Gallery, who has been recognized for his innovative contributions to the contemporary art scene on the East End of Long Island and in New York City.

47. The June 23 Letter falsely stated that Mr. Levai was: (a) “in wrongful possession of tangible and intellectual property belonging to the New York Marlborough Gallery, including but not limited to works of art owned by the Gallery as well as the Gallery’s business and financial records;” (b) “converted the Instagram account developed for the benefit of both the New York and London Marlborough Galleries for his own personal benefit;” and (c) that Mr. Levai lied about the Lloyd Family Trusts, by making “false, inaccurate, and/or misleading statements or representations to any person or organization, including without limitation the press.” The June 23 Letter demanded that Mr. Levai and the third-party recipients immediately return and cease the exhibition of art previously consigned from Marlborough.

48. The June 23 Letter was demonstrably false and sent with malicious intent. While stating that Mr. Levai stole from Marlborough, in reality, the Company executed consignment agreements with Tripoli, which clearly stated that commissions were to be shared between Tripoli and Marlborough. Moreover, Mr. Levai executed the agreements on behalf of the Company in his capacity as President, with the full authority to do so, and which the Company and defendants Bergman and Plutschow were well aware of, and intentionally disregarded, in support of their falsehoods.

49. As to the statements in the June 23 Letter that Mr. Levai was in “wrongful possession” of the Company’s property, including business records and an Instagram account, and that he made false and/or misleading statements to third parties, the Company and defendants Bergman and Plutschow were well aware that these assertions were false. While Mr. Levai had certain Marlborough pieces in his possession at the time of the June 23 Letter, those

pieces were lent to him openly with the full knowledge and agreement of the Company. Moreover, all Company business and financial records were at all times in the Company's possession and under its control. The Company and defendants Bergman and Plutschow were also well aware that the Instagram account was Mr. Levai's personal property. Further, Mr. Levai made no false or misleading statements to any third parties concerning the Lloyd Family Trusts -- and the June 23 Letter cites none.

50. The next day, June 24, 2020, defendants Bergman and Plutschow called a meeting of the MG Board of Directors and ratified their decision to terminate Mr. Levai's employment.

51. On July 16, 2020, the Company and defendants Bergman and Plutschow, through counsel and on behalf of the Company, sent another letter (the "July 16 Letter") to Mr. Levai and the same third parties who received the June 23 Letter, including Messrs. Patterson and Rubin. The July 16 Letter falsely stated that Mr. Levai: (a) was in "wrongful possession of tangible and intellectual property belonging to the New York Marlborough Gallery, including but not limited to works of art owned by the Gallery as well as the Gallery's business and financial records[;]" (b) made "a significant set of unauthorized consignments for art owned by the Gallery[;]" (c) "concealed" those consignments; and (d) "did not have legal authority from the Marlborough board to engage in these purported consignments." Outrageously, at the time the Company was threatening Mr. Levai's business associates based on blatant misrepresentations regarding Mr. Levai's purported authority at the time he entered into the consignments, the Company had already received, acknowledged, and accepted payment of approximately \$1 million for the sale of certain of those consigned works.

52. As a result of the letters, Mr. Rubin backed out of further involvement with the Alone Gallery, and Tripoli contacted the Company regarding the return of the consigned

artwork. Amazingly, after threatening Mr. Levai's business associates and besmirching his reputation in the June 23 and July 16 Letters, the Company, upon information and belief, delayed Tripoli's return of certain of the artwork and, as of August 2020, was not only accepting commissions from sales of the consigned works, but left art work in Tripoli's possession, stating that there was no urgent need for their return to Marlborough.

53. In addition to making false claims directly to Mr. Levai's business contacts, upon information and belief, the Company, Bergman, and Plutschow caused the defamatory statements to be repeated by other Marlborough staff and representatives to certain artists with whom Mr. Levai had relationships, including Tom Otterness, Ahmed Alsoudani, the George Rickey Estate, and Richard Estes. As a result, when Mr. Levai attempted to contact these artists after his termination to discuss future endeavors, they refused to communicate with him and told him that they were made aware of the statements in the June 23 and July 16 Letters.

54. On or around August 12, 2020, on calls with two artists that Mr. Levai brought to Marlborough Chelsea, Ahmed Alsoudani and Tom Otterness, it was confirmed that the Company contacted them, stated that Marlborough Chelsea would in fact not be closing, and promised these individuals a certain number of exhibitions and support with regard to upcoming ventures in exchange for not going to work with Mr. Levai.

55. As a result of the defamatory statements contained in the June 23 and July 16 Letters and repetition of the accusations therein, as well as the Company's and defendants Bergman and Plutschow's intentional interference with Mr. Levai's professional relationships, the defendants achieved their goal of preventing Mr. Levai from competing with the gallery and destroying his good will and professional reputation. Their malicious conduct caused several clients, collectors, and artists to either indicate they no longer wish to work with Mr. Levai,

withdraw from projects, and/or sever their relationship with Mr. Levai, including, but not limited to Tom Otterness, Ahmed Alsoudani, the George Rickey Estate, Richard Estes, the Tripoli Gallery, and Robert Rubin, rendering him unable to make a fresh start after having been unceremoniously terminated, and causing him substantial reputational and economic damage.

VI. Max Levai's Instagram Account is Wrongfully Hacked

56. As part of the Company and defendants Bergman and Plutschow's nefarious campaign to crush Mr. Levai's ability to successfully compete with Marlborough after his termination, the defendants also stole and took control over Mr. Levai's personal Instagram account.

57. In or around 2013, Mr. Levai opened an Instagram account under the handle @mlevai. At all times the @mlevai Instagram account was personally run by, and under the exclusive control of, Mr. Levai, and at all times it was the primary account he used to post information.

58. As Mr. Levai became increasingly involved with the operations of Marlborough Chelsea and as the importance of a social media presence, particularly on the Instagram platform, grew within industry, Mr. Levai decided, on his own accord, to change his Instagram account's handle to reflect the fact that he had been using his personal account for the benefit of the gallery, which otherwise lacked a social media presence. Accordingly, over the past seven years, the account handle has changed from @mlevai to @marlboroughchelsea to @marlboroughcontemporary, and finally to @marlborough_gallery, the handle it bears today (the "Account"). All of the Account handle changes were made in Mr. Levai's sole and personal discretion. While Mr. Levai unilaterally decided to use his personal account to benefit

Marlborough, at no time did the Company or defendants Bergman and Plutschow suggest or intimate that Mr. Levai's social media was the property of Marlborough.

59. In or about 2018, a gallery staff member began assisting Mr. Levai in managing his Account. At no time did Mr. Levai ever authorize this staff member to take any actions with respect to the Account other than posting and responding to direct messages at Mr. Levai's sole direction. Further, Mr. Levai never gave authorization to change the password to the Account. While Mr. Levai chose to use his Account for Marlborough's benefit during his tenure, it at all times remained his personal Instagram account, and he consistently maintained it as such.

60. After Mr. Levai learned he had been terminated from the Company, he changed his Account handle to @maxlevaiart to reflect his separation from Marlborough and promote his eventual new endeavors.

61. Shortly thereafter, on the same day the July 16 Letter was sent, Mr. Levai learned that his Account was wrongfully accessed at the direction and insistence of Douglas Walla ("Walla") who, upon information and belief, is an employee of the Company and was hired to oversee Marlborough Chelsea upon its reopening.

62. Upon information and belief, Walla, with the knowledge and approval of defendants Bergman and Plutschow, directed a Marlborough Chelsea staff member to access the Account, change Mr. Levai's password, and change his Account handle from @maxlevaiart back to @marlborough_gallery. After being locked out of his Account, Mr. Levai reached out to the staff member, only to learn they had been bullied into changing Mr. Levai's password and the Account handle. Indeed, the staff member apologized to Mr. Levai for their actions.

63. On July 22, 2020, Mr. Levai, through counsel, responded to the June 23 and July 16 Letters and addressed, among other things, the unlawful hijacking of his Account (the "July

22 Letter”). The letter made clear that the Account was hacked when the password to the Account was wrongfully changed without Mr. Levai’s permission and demanded that control over the Account be restored to Mr. Levai.

64. This demand has been completely ignored. Indeed, not only has Mr. Levai’s access to his Account not been restored, defendants have since posted to the Account -- announcing the reopening of the Marlborough London location and promoting an upcoming exhibition.

65. Since 2013, Mr. Levai has grown his Instagram presence via the Account, which had tens of thousands of followers prior to the defendants’ unlawful actions, many of whom are business and professional contacts. Following the Company’s wrongful hijacking of the Account, Mr. Levai has been deprived of the ability to post images, update his tens of thousands of followers regarding his new projects, and otherwise use the Account. Further, the Account has been harmed since Marlborough wrongfully seized control, as a substantial number of followers no longer follow the Account.

VII. The Company Continues to Wrongfully Withhold Mr. Levai’s Property

66. To stop the defendants’ smear campaign, Mr. Levai, through counsel, sent the July 22 Letter demanding, among things, that the defendants cease and desist from their tortious and harassing conduct. No response was immediately forthcoming.

67. Mr. Levai has repeatedly reached out to the Company to recover his personal artwork that the Company had willingly stored in his warehouse while Mr. Levai was employed. Such artwork consists of approximately 25 works, worth hundreds of thousands of dollars. To date, the Company has failed to return Mr. Levai’s personal property.

68. Following his promotion from Director of Marlborough Chelsea to President of Marlborough, Mr. Levai continued to market and sell works and the Company continued to pay him commissions for those sales in accordance with that portion of the December 1, 2016 agreement governing sales commissions, which at all times remained in full force and effect. Prior to his termination as President, Mr. Levai did in fact market and sell numerous works for which he earned a commission and is entitled to payment under the agreement, which the Company has withheld in breach of its contractual obligations.

FIRST CAUSE OF ACTION
(Defamation – Against all Defendants)

69. Mr. Levai incorporates by reference all of the preceding paragraphs as if fully set forth herein.

70. As detailed above, beginning in June 2020, the Company and defendants Bergman and Plutschow, directly or through agents and/or proxies, published or caused to be published multiple false statements of fact about plaintiff that are defamatory.

71. The false and defamatory statements about plaintiff contained in the June 23 Letter state that he: (a) was “in wrongful possession of tangible and intellectual property belonging to the New York Marlborough Gallery, including but not limited to works of art owned by the Gallery as well as the Gallery’s business and financial records;” (b) “converted the Instagram account developed for the benefit of both the New York and London Marlborough Galleries for his own personal benefit;” and (c) lied by making “false, inaccurate, and/or misleading statements or representations to any person or organization, including without limitation the press.”

72. The false and defamatory statements about plaintiff contained in the July 16 Letter state that he: (a) was in “wrongful possession of tangible and intellectual property

belonging to the New York Marlborough Gallery, including but not limited to works of art owned by the Gallery as well as the Gallery's business and financial records;" (b) made "a significant set of unauthorized consignments for art owned by the Gallery;" (c) "concealed" those consignments; and (d) "did not have legal authority from the Marlborough board to engage in these purported consignments."

73. Additionally, upon information and belief, the Company and defendants Bergman and Plutschow caused these false statements to be repeated to Tom Otterness, Ahmed Alsoudani, the George Rickey Estate, and Richard Estes orally.

74. The defamatory statements expose plaintiff to public contempt, hatred, ridicule, aversion, disgrace, and/or deprivation of friendly intercourse in society.

75. The Company and defendants Bergman and Plutschow, directly or through agents and/or proxies, published or caused to be published such false and defamatory statements to third parties, including, but not limited to, Tom Otterness, Ahmed Alsoudani, the George Rickey Estate, Richard Estes, Tripoli Patterson, and Robert Rubin, and continue to do so.

76. Every defamatory statement identified herein is categorically false, and contained, or created the impression of, facts that are false and which malign plaintiff's honesty, ethics, trustworthiness, dependability and/or professional or business abilities.

77. The Company and defendants Bergman and Plutschow's publication of these false and defamatory statements was neither privileged nor authorized in any way and were published or caused to be published maliciously, knowingly, and/or with extreme recklessness, and without justification.

78. The Company and defendants Bergman and Plutschow continue to engage in the aforementioned unlawful conduct, including by continuing to knowingly and intentionally publish false and defamatory statements about Mr. Levai.

79. Plaintiff has suffered and will continue to suffer extensive economic and reputational damages by reason of the Company and defendants Bergman and Plutschow's defamation. The Company and defendants Bergman and Plutschow's defamatory statements have harmed plaintiff by causing, among other things, third parties to refuse to engage in any new business dealings with plaintiff, lost revenue and profits, increased expenses, legal fees, and costs expended to mitigate the impact of the Company and defendants Bergman and Plutschow's dishonesty. As a direct and proximate result of the publication of these false and defamatory statements, Mr. Levai has suffered millions of dollars of monetary damages, in an amount to be proven at trial, but not less than \$10.8 million.

80. Because the Company and defendants Bergman and Plutschow's conduct in publishing the defamatory statements cited herein was undertaken knowingly and in conscious disregard of their falsity, Mr. Levai is entitled to an award of punitive damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION
(Defamation Per Se – Against all Defendants)

81. Plaintiff incorporates by reference all of the preceding paragraphs as if fully set forth herein.

82. As detailed above (*see supra* at ¶¶ 43-55, 69-80), beginning in June 2020, the Company and defendants Bergman and Plutschow, directly or through agents and/or proxies, published or caused to be published multiple false statements of fact about plaintiff that are defamatory in the June 23 and July 16 Letters.

83. Additionally, upon information and belief, the Company and defendants Bergman and Plutschow caused these false statements to be repeated to Tom Otterness, Ahmed Alsoudani, the George Rickey Estate, and Richard Estes orally.

84. The foregoing statements are per se defamatory because they accuse plaintiff of serious criminal wrongdoing and/or impugn his reputation in his profession, business, or trade.

85. The defamatory statements expose plaintiff to public contempt, hatred, ridicule, aversion, disgrace, and/or deprivation of friendly intercourse in society.

86. The Company and defendants Bergman and Plutschow, directly or through agents and/or proxies, published or caused to be published such false and defamatory statements to third parties, including, but not limited to, Tom Otterness, Ahmed Alsoudani, the George Rickey Estate, Richard Estes, Tripoli Patterson, and Robert Rubin, and continue to do so.

87. Every defamatory statement identified herein is categorically false, and contained, or created the impression of, facts that are false, and which malign plaintiff's honesty, ethics, trustworthiness, dependability, and professional and business abilities.

88. The Company and defendants Bergman and Plutschow's publication of these false and defamatory statements was neither privileged nor authorized in any way and were published or caused to be published maliciously, knowingly, and/or with extreme recklessness, and without justification.

89. The Company and defendants Bergman and Plutschow continue to engage in the aforementioned unlawful conduct, including by continuing to knowingly and intentionally publish false and defamatory statements about Mr. Levai.

90. Plaintiff has suffered and will continue to suffer extensive injury by reason of the Company and defendants Bergman and Plutschow's defamation. As a direct and proximate

result of the publication of these false and defamatory statements, plaintiff has suffered damages, including monetary damage, damage to his professional and personal reputation and livelihood, and has suffered anguish and humiliation. The Company and defendants Bergman and Plutschow's defamatory statements have harmed plaintiff by causing, among other things, third parties to refuse to engage in any new business dealings with plaintiff, lost revenue and profits, increased expenses, legal fees, and costs expended to mitigate the impact of the Company and defendants Bergman and Plutschow's dishonesty. As a direct and proximate result of the publication of these false and defamatory statements, Mr. Levai has suffered millions of dollars of monetary damages, in an amount to be proven at trial, but not less than \$10.8 million.

91. As a direct and proximate result of the Company and defendants Bergman and Plutschow's knowing, willful, and malicious conduct in publishing these false and defamatory statements, Mr. Levai is entitled to an award of punitive damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION
(Tortious Interference with Actual and Prospective Business Relations – Against all Defendants)

92. Mr. Levai incorporates by reference all of the preceding paragraphs as if fully set forth herein.

93. Mr. Levai has actual and prospective business relationships with many third parties, including but not limited to existing and potential clients, curators, artists, and other collaborators.

94. The Company and defendants Bergman and Plutschow knew of Mr. Levai's existing and potential business relationships with such third parties.

95. The Company and defendants Bergman and Plutschow intentionally, maliciously, and without justification directly interfered with Mr. Levai's actual and prospective business relationships with said third parties by employing improper and wrongful means, including but not limited to, sending the false and defamatory June 23 and July 16 Letters to Messrs. Tripoli and Rubin, rebroadcasting false and defamatory statements concerning Mr. Levai's business and business practices, including to artists Tom Otterness, Ahmed Alsoudani, the George Rickey Estate, and Richard Estes, and offering artists coveted exhibitions at Marlborough New York in exchange for not doing business with plaintiff, including Ahmed Alsoudani and Tom Otterness. These actions were taken with the intent to, and for the purpose of, interfering with Mr. Levai's actual and potential business relationships.

96. As a direct and proximate result of the Company and defendants Bergman and Plutschow's prior and ongoing intentional and tortious interference with Mr. Levai's actual and prospective business relationships with third parties, Mr. Levai's actual and prospective business relationships have been damaged, including but not limited to Mr. Levai's relationships with artists, clients, curators, and other collaborators, including those with Tom Otterness, Ahmed Alsoudani, the George Rickey Estate, Richard Estes, the Tripoli Gallery, and Robert Rubin, who will no longer work with, have withdrawn from projects with, and/or severed their relationship with Mr. Levai.

97. The Company and defendants Bergman and Plutschow's wrongful interference with Mr. Levai's actual and prospective business relationships has caused Mr. Levai to suffer millions of dollars of monetary damages, in an amount to be determined at trial, but not less than \$10.8 million.

98. Because the Company and defendants Bergman and Plutschow's wrongful interference with Mr. Levai's actual and prospective business relationships cited herein was deliberate and undertaken knowingly, willfully, and with malice, Mr. Levai is entitled to an award of punitive damages in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
(Conversion – Against the Company)

99. Mr. Levai incorporates by reference all of the preceding paragraphs as if fully set forth herein.

100. Mr. Levai is the sole and rightful owner of approximately 25 art works stored in the Company's warehouse and the Account (collectively the "Personal Property"), with sole possessory right to the exclusion of all other persons.

101. The Company intended to and has exercised unauthorized control and dominion over the Personal Property in derogation of Mr. Levai's rights and has no possessory rights to the Personal Property.

102. As detailed above, Mr. Levai has demanded the return of the Personal Property, which demand has been refused by the defendants.

103. As a result of the foregoing, the Company has converted the Personal Property and Mr. Levai has suffered millions of dollars in damages in an amount to be determined at trial.

104. Because the Company's actions were malicious and in reckless and willful disregard of Mr. Levai's rights, he is entitled to an award of punitive damages, in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
(Replevin/CPLR Article 71 – Against the Company)

105. Mr. Levai incorporates by reference all of the preceding paragraphs as if fully set forth herein.

106. Mr. Levai is the sole and rightful owner of the Personal Property, with sole possessory right to the exclusion of all other persons.

107. The Company has no possessory right to and wrongfully took the Personal Property without authority or permission.

108. The Company is on notice that Mr. Levai is the rightful owner of the Personal Property, but has continued to exert control over the Personal Property and has refused to return such control.

109. The Company's continued retention of control over the Personal Property is unlawful.

110. By reason thereof, Mr. Levai is suffering and will continue to suffer irreparable injury, including the inability to access the Personal Property, for which he is entitled to recover possession and return of the Personal Property, injunctive and equitable relief, as well as monetary damages in an amount to be determined at trial.

SIXTH CAUSE OF ACTION
(Trespass to Chattels – Against the Company)

111. Mr. Levai incorporates by reference all of the preceding paragraphs as if fully set forth herein.

112. Mr. Levai is the sole and rightful owner of certain chattel -- the Personal Property -- with sole possessory right to the exclusion of all other persons.

113. The Company, who has no possessory rights to the Personal Property, has dispossessed Mr. Levai of the Personal Property, and has interfered with and deprived him of his use and enjoyment of the Personal Property for a substantial time.

114. Additionally, the Company's wrongful actions have also caused injury to the Account, evidenced by, among other things, a loss of thousands of the Account's followers.

115. The Company's interference with the Personal Property is intentional and without justification and Mr. Levai's consent.

116. By reason thereof, Mr. Levai is suffering and will continue to suffer irreparable injury, including the inability to use the Personal Property, for which he is entitled to injunctive and equitable relief as well as monetary damages in an amount to be determined at trial.

117. Because the Company's actions were malicious and in reckless and willful disregard of Mr. Levai's rights, he is entitled to an award of punitive damages in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
(Violation of 18 U.S.C. §§ 1030, *et seq.*
Computer Fraud and Abuse Act – Against all Defendants)

118. Mr. Levai incorporates by reference all of the preceding paragraphs as if fully set forth herein.

119. The Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.* ("CFAA") provides a civil cause of action under 18 U.S.C. § 1030(g) to "[a]ny person who suffers damage or loss by reason of a violation of this section[.]" which prohibits certain conduct in connection with "protected computers."

120. Defendants violated the CFAA by: (i) intentionally accessing a computer without authorization and/or in excess of their authorization and thereby obtaining information from a

protected computer (18 U.S.C. § 1030(a)(2)(C)) and (ii) intentionally accessing a protected computer without authorization, and as a result, recklessly caused damage and/or caused damage and loss (18 U.S.C. § 1030(a)(5)(B) and (C)) when, as set forth *supra*, defendants wrongfully and intentionally accessed the Account, changed the password, thereby preventing Mr. Levai from accessing and obtaining information from the Account without authorization, and subsequently posted to the Account without Mr. Levai's permission and in contravention of his demand to return control of the Account.

121. The computer(s) at issue here, including the Instagram computers, are "protected computers" as that term is defined by 18 U.S.C. § 1030(e)(2)(B) based on their use in or affecting interstate or foreign commerce or communication.

122. Defendants' wrongful and intentional actions have caused damage and/or loss to Mr. Levai in an amount aggregating at least \$5,000 in value during a 1-year period beginning on or about July 16, 2020, in that, among other things, Mr. Levai has lost revenue, incurred costs associated with hiring counsel to respond to defendants' violations, as well as costs resulting from Mr. Levai's interruption of service since he lost access to his Account, which has caused him to, among other things, expend time, money, and resources in an attempt to reengage his followers to a different Instagram account.

123. As a result of defendants' wrongful conduct described herein, Mr. Levai has suffered monetary damages in an amount to be determined at trial. Additionally, Mr. Levai is suffering and will continue to suffer irreparable injury, including the inability to access the Account, for which he is entitled to injunctive and equitable relief.

EIGHTH CAUSE OF ACTION
(Violation of 18 U.S.C. §§ 2701, *et seq.*
Stored Communications Act – Against all Defendants)

124. Mr. Levai incorporates by reference all of the preceding paragraphs as if fully set forth herein.

125. The Stored Communications Act, 18 U.S.C. § 2701 *et seq.* (“SCA”) provides a civil cause of action under 18 U.S.C. § 2707(a) to “any provider of electronic communication service, subscriber, or other person aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind[.]”

126. As set forth *supra*, the defendants violated the SCA by intentionally and knowingly accessing without authorization a facility through which an electronic communication service is provided and/or intentionally exceeded an authorization to access that facility, and thereby obtained, altered, and/or prevented authorized access to a wire or electronic communication while it was in electronic storage in such system, when the defendants wrongfully obtained the password to the Account, used the password to wrongfully access the Account, and change the password to the Account -- thereby obtaining access to and preventing Mr. Levai from accessing the Account and the communications and messages electronically stored therein without authorization, and subsequently posting to the Account without Mr. Levai’s knowledge or permission.

127. Defendants’ violations of 18 U.S.C. § 2701 were committed with actual and/or implied malice in conscious disregard of Mr. Levai’s rights.

128. As a result of defendants’ wrongful conduct described herein, Mr. Levai has suffered monetary damages in an amount to be determined at trial. Additionally, Mr. Levai is suffering and will continue to suffer irreparable injury, including the inability to access the

Account and the communications and messages stored therein, for which he is entitled to injunctive and equitable relief.

129. Because defendants' actions were malicious, willful, and intentional, Mr. Levai is entitled to an award of punitive damages in an amount to be determined at trial.

NINTH CAUSE OF ACTION
(Breach of Contract – Against the Company)

130. Mr. Levai incorporates by reference all of the preceding paragraphs as if fully set forth herein.

131. Mr. Levai and the Company entered into and are parties to the employment agreement dated December 1, 2016. Mr. Levai performed in accordance with the terms of that agreement.

132. Pursuant to the terms of the agreement, “[u]pon termination of [his] employment, [Mr. Levai] shall continue to be entitled to receive any accrued commissions payable when [the Company] receive[s] payment from sales of works by [Mr. Levai].”

133. Prior to his termination, Mr. Levai effected sales of various art works for which he is owed commissions.

134. The Company breached the agreement by failing to pay Mr. Levai his accrued commissions.

135. As a direct result of the Company's breach of contract, Mr. Levai has sustained monetary damages in excess of \$50,000, in an amount to be determined at trial.

TENTH CAUSE OF ACTION
(Permanent Injunction – Against all Defendants)

136. Mr. Levai incorporates by reference all of the preceding paragraphs as if fully set forth herein.

137. By engaging in the conduct described above, including publishing false and defamatory statements about Mr. Levai and his business practices, interfering with his actual and prospective business relationships, and wrongfully taking over and refusing to return the Personal Property, defendants have violated Mr. Levai's rights, and caused, and are continuing to cause, irreparable injury to Mr. Levai's reputation, business, and livelihood.

138. Mr. Levai has no adequate remedy at law.

139. Accordingly, Mr. Levai is entitled to a permanent injunction:

- a. Ordering the Company to return the Personal Property, including access to and control over the Account;
- b. ordering the defendants to retract and desist from: (i) publishing defamatory and libelous statements against Mr. Levai to third parties; and (ii) interfering with Mr. Levai's actual and prospective business relations with third parties; and
- c. ordering all such other relief as the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this Court enter an order and judgment against defendants:

1. Awarding plaintiff monetary damages including direct, incidental, consequential, and punitive/exemplary damages in amounts to be determined at trial, but in an amount not less than \$10.85 million;
2. Requiring defendants to return and restore control over the Personal Property to plaintiff;
3. Awarding plaintiff a permanent injunction;
4. Awarding plaintiff reasonable costs, fees, including reasonable attorney's fees, and expenses incurred in this action;

5. Awarding plaintiff pre- and post-judgment interest at the maximum rate allowed by law;
6. Awarding plaintiff relief for violations of 18 U.S.C. § 1030 including, but not limited to:
 - a. permanent equitable relief, pursuant to 18 U.S.C. § 1030(g); and
 - b. actual damages, pursuant to 18 U.S.C. § 1030(g);
7. Awarding plaintiff relief for violations of 18 U.S.C. § 2701 under the authority and the provisions of 18 U.S.C. § 2707 including, but not limited to:
 - a. permanent equitable relief, pursuant to 18 U.S.C. § 2707(b)(1);
 - b. actual damages, pursuant to 18 U.S.C. § 2707(b)(2) and (c);
 - c. punitive damages pursuant to 18 U.S.C. § 2707(c);
 - d. statutory damages of \$1,000 pursuant to 18 U.S.C. § 2707(c);
 - e. plaintiff's reasonable attorney's fees and other litigation costs reasonably incurred pursuant to 18 U.S.C. § 2707(b)(3) and (c); and
8. Awarding plaintiff such other and further relief as the Court deems just and proper.

Dated: September 15, 2020
New York, New York

Respectfully submitted,

KASOWITZ BENSON TORRES LLP

By: /s/ Marc E. Kasowitz
Marc E. Kasowitz
(mkasowitz@kasowitz.com)
Albert Shemmy Mishaan
(amishaan@kasowitz.com)
Kim Conroy
(kconroy@kasowitz.com)

1633 Broadway
New York, New York 10019
Tel: (212) 506-1700

Attorneys for Plaintiff Max Levai