

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

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MARGIT FRENK,  
:  
:  
Plaintiff, :  
:  
-against- :  
:  
:  
YRIS RABENOU SOLOMON, Individually :  
and as Executrix of the Estate of Charlotte :  
Weidler, YRIS RABENOU CORPORATION :  
d/b/a YRIS RABENOU GALLERY, DAVID :  
Y. SOLOMON, Individually and as Executor of :  
the Estate of Charlotte Weidler, DARIUS :  
SOLOMON and TEIMOUR SOLOMON, :  
:  
Defendants. :  
-----X

Index No.:  
Date Purchased:  
Date Filed:

**SUMMONS**

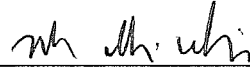
**TO THE ABOVE-NAMED DEFENDANTS:**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer on plaintiff's attorneys within 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 in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial based on defendants' residence.

Dated: New York, New York  
January 25, 2013

**TARTER KRINSKY & DROGIN LLP**  
*Attorneys for Plaintiff*

By:   
Andrew N. Krinsky  
Debra Bodian Bernstein  
1350 Broadway  
New York, New York 10018  
212-216-8000

TO:

Yris Rabenou Solomon, Individually and as Executrix of the Estate of Charlotte Weidler  
249 East 61<sup>st</sup> Street  
New York, NY 10065

Yris Rabenou Corporation d/b/a Yris Rabenou Gallery  
249 East 61<sup>st</sup> Street  
New York, NY 10065

David Y. Solomon, Individually and as Executor of the Estate of Charlotte Weidler  
249 East 61<sup>st</sup> Street  
New York, NY 10065

Darius Solomon  
225 E. 57th Street, Apt. 21B  
New York, NY 10022

Teimour Solomon  
249 East 61<sup>st</sup> Street  
New York, NY 10065

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

-----X  
MARGIT FRENK, :  
 : Index No.:  
 Plaintiff, :  
 :  
 -against- :  
 :  
 YRIS RABENOU SOLOMON, Individually : **VERIFIED COMPLAINT**  
 and as Executrix of the Estate of Charlotte :  
 Weidler, YRIS RABENOU CORPORATION :  
 d/b/a YRIS RABENOU GALLERY, DAVID :  
 Y. SOLOMON, Individually and as Executor of :  
 the Estate of Charlotte Weidler, DARIUS :  
 SOLOMON and TEIMOUR SOLOMON, :  
 :  
 Defendants. :  
-----X

Plaintiff Margit Frenk, as and for her complaint against defendants herein, alleges and says:

**INTRODUCTION**

1. This action seeks the recovery of valuable artworks belonging to Plaintiff, Margit Frenk, the heir of the famous German art critic and publisher Paul Westheim (“Westheim”), and to adjudicate and determine Plaintiff’s entitlement thereto.

2. The Paul Westheim art collection (the “Westheim Collection”) included many important works by German Expressionists. These artworks were lost when Westheim was forced to flee Germany due to Nazi persecution and entrusted his collection to a friend and art dealer in Berlin, Charlotte Weidler (“Weidler”). After the conclusion of World War II, Weidler led Westheim to believe that his art collection had been lost or destroyed during the war, and she broke off communications with him.

3. Following the war, Weidler shipped artworks from the Westheim Collection that had in fact survived the war to New York and fraudulently concealed them from Westheim. After Westheim's death in 1963, Weidler began to sell artworks from the Westheim Collection.

4. Upon information and belief, at least four artworks from the Westheim Collection (hereinafter "the Westheim Artworks") were obtained by Defendants from Weidler, and remain in Defendants' possession. In addition, in 1998, a painting from the Westheim Collection by Erich Heckel, entitled *The Violinist*, was sold to an unknown buyer at Christie's by Defendants or an unknown seller who had obtained it from Weidler. Plaintiff brings this action seeking to recover artworks from the Westheim Collection that are in Defendants' possession, custody or control, damages based on the loss of *The Violinist* and Defendants' sale of any artworks that were part of the Westheim Collection, and seeking ancillary relief associated therewith and arising therefrom.

#### **THE PARTIES**

5. Plaintiff Margit Frenk is an individual residing in Mexico City, Mexico.

6. Margit Frenk is the daughter of Mariana Frenk-Westheim ("Frenk-Westheim"), Westheim's late widow and his sole heir.

7. By testament executed by Frenk-Westheim, who died on June 24, 2004, Margit Frenk and Silvestre Frenk are each entitled to an undivided fifty (50%) percent share of Frenk-Westheim's estate.

8. Silvestre Frenk assigned all rights and interest in the Estate of Paul Westheim, including the Westheim Collection, to Margit Frenk in 2008.

9. Upon information and belief, at all relevant times, defendant Yris Rabenou Solomon, individually and as Executrix of the Estate of Charlotte Weidler, was and is an individual residing in New York, New York.

10. Upon information and belief, at all relevant times, defendant Yris Rabenou Corporation d/b/a Yris Rabenou Gallery was and is a New York corporation with its principal place of business in New York, New York.

11. Upon information and belief, at all relevant times, defendant David Y. Solomon, individually and as Executor of the Estate of Charlotte Weidler, was and is an individual residing in New York, New York.

12. Upon information and belief, at all relevant times, defendant Darius Solomon was and is an individual residing in New York, New York.

13. Upon information and belief, at all relevant times, defendant Teimour Solomon was and is an individual residing in New York, New York.

#### **THE ARTWORKS AT ISSUE**

14. Upon information and belief, the Westheim Artworks that are currently in the possession, custody or control of Defendants are:

*Portrait of Paul Westheim* (1928) by Max Pechstein, oil on canvas, 65 x 49, 7 cm, signed and dated on backside with the inscription "Palaumänner I";

*Bathers* by Otto Mueller, tempera on canvas or burlap;

*Plastische Imagination* by Edgar Jene, oil on canvas;

Watercolor by Paul Klee.

15. Other artworks from the Westheim Collection also may be in Defendants' possession or may have been sold by Defendants.

16. In addition to the above artworks still in Defendants' possession, *The Violinist* was part of the Westheim Collection and, upon information and belief, was sold by Defendants, directly or on behalf of an individual named Gour Shoshan, in 1998 at Christie's (Heckel's *The Violinist*, sold at auction by Christie's in 1998 for £573,500, approximately \$933,000.)

17. Despite diligent efforts, Plaintiff only recently discovered, in August 2010, that the Westheim Artworks and *The Violinist* were not lost or destroyed in the war, as Westheim and Frenk-Westheim were led to believe, but in fact had been stolen by Weidler. Defendants maintain that they acquired the Westheim Artworks in good faith.

18. Upon information and belief, the current value of the Westheim Artworks and *The Violinist* exceeds \$3,600,000.

## **FACTUAL BACKGROUND**

### **A. Nazi Persecution and Westheim's Art Collection**

19. Westheim was a renowned art collector and critic in pre-Nazi Germany. He also was the publisher of "Das Kunstblatt" (The Art Page) and "Die Schaffenden" (The Creators), two influential art publications at the time. Until August 1933, Westheim lived in Berlin. He owned an art collection including more than 50 paintings and sculptures as well as over 3,000 prints by important German Expressionists including Oskar Kokoschka, Otto Dix, Otto Müller and Max Pechstein, among others.

20. When the Nazis came to power in 1933, Westheim, who was Jewish, became an immediate target of the Nazi's anti-Semitic propaganda. He was defamed in official publications as a representative of the "Bolshevik" intellectual circles that the Nazis so badly wanted to erase from the German cultural landscape. Fearing for his life,

Westheim saw no choice other than to emigrate. In August 1933, he relocated to France. In connection with a restitution proceeding that he initiated in the 1950s in Germany, Westheim described his emigration as follows:

After the so called taking of power by the Nazis an inflammatory article against me was published in an NSDAP-paper [Nazi-newspaper], it carried the headline "The Art at Flechtheim and Westheim". This article was accompanied by a reproduction of the painting by Otto Dix "To Beauty", this was in my collection. . . . Because of the inflammatory article I had to fear that SA- or SS people would invade my apartment and destroy or damage my collection as it happened in other cases. . . . When persecution against me became more intense, I had to emigrate to France in August 1933. . . .

(June 15, 1962 Affidavit of Paul Westheim, translated from original German, see Exhibit "A.")

21. Before he left for France, Westheim sought a safe hiding place for his art collection. He initially left the artworks with a friend of his, the diplomat Camill Hoffmann, in Hoffmann's apartment in the Czech embassy building in Berlin. Then, during the last days before his emigration, Westheim took, and entrusted, his entire collection to Weidler in Berlin-Wilmersdorf, who had offered and promised to hold and safeguard the collection for Westheim, until he was able to recover it safely.

22. In June 1935, while in France, Westheim was stripped of his German citizenship by the Nazis and all of his property that remained in Germany was confiscated by official Nazi decree.

23. In June 1940, immediately after the German occupation of France, Westheim's apartment in Paris was raided by the Gestapo and its entire contents were confiscated. Westheim had to leave Paris immediately and, because he was a German

citizen, he was incarcerated in the South of France for a number of months. After being forced to spend time in several French internment camps, Westheim was finally able to flee France in 1941. He obtained an immigration visa to Mexico that same year and fled through Spain over Portugal to Mexico.

24. After the war, Westheim remained stateless until he obtained Mexican citizenship in 1954.

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### **B. Westheim's Search for His Art Collection**

25. Immediately after the war, Westheim attempted to locate and recover his art collection, which he had entrusted to Weidler. When he contacted Weidler regarding the return of his collection, she broke off all contact with him. Westheim described Weidler's behavior in a letter dated June 20, 1959 to the Kokoschka expert Prof. Hans Maria Wingler:

The question of the whereabouts of my collection, which I left with Dr. Weidler when I left Berlin, is entangled in a mysterious secret. The behavior of Dr. Weidler in this matter is, to say it moderately, embarrassing. Until 1945 we had a vivid correspondence. When I asked her about my collection after the war, she broke off all correspondence abruptly. . . .

(Translated from original German, see Exhibit "B.")

26. In the 1950s, Westheim filed restitution claims with the West German authorities for his lost art collection. However, because Weidler's sister, Melitta Weidler, had falsely alleged in an affidavit that the Westheim Collection had been destroyed in bombing raids or otherwise lost during the war, the German compensation claims office found that the Westheim Collection had not been lost due to persecution but, rather, had



been lost due to war damage. Since war damage claims were not compensable under German restitution laws, the claims were denied.

27. In another letter to Wingler, dated August 3, 1959, Westheim talked about the missing artwork *The Violinist*:

After none of my pictures reappeared in 14 years, I have to assume that, this way or another, the entire collection is destroyed. It is striking that Heckel by whom I had two paintings, amongst these, one of his strangest works "The Violinist" (illustrated in "Kunstblatt" 1926, Issue 1) wrote to me a couple of months ago, asking if I knew where the picture is. He was looking for it for his exhibition. If Heckel himself never heard about this painting again, it is really to be assumed it is destroyed.

(Translated from original German, see Exhibit "C.")

28. In a March 23, 1960 letter to Erich Heckel, Westheim wrote about his claim for the lost paintings and asked for the valuation of *The Violinist*:

Please excuse me if I bother you with a question. I applied for compensation for the loss of my collection and have to be prepared for the question of what the value is today of each artwork. In your opinion, what is to be quoted for the "Violinist" and the painting of the "Bathers"? Approximately.

(Translated from original German, see Exhibit "D.") On April 3, 1960, Heckel responded as follows:

I was pleased to hear from you and let you know that I would consider for the painting of the -Violinist- 25,000 marks and for the -Bathers-, if it is one of the smaller horizontal ones with a figure standing on the right side in front of a bush 18,000 to 20,000 marks appropriate.

(Translated from original German, see Exhibit "E.")

29. In 1960, Paul Westheim wrote an essay about his lost collection which was published in the art magazine, *Das Kunstwerk*, Volume 14 (1960/61), Issue 5/6, pp. 8-15. In this article, Westheim described many of the works of art from his collection in detail and tells how he entrusted them to Weidler:

The collection that I remember is my collection, or better, it used to be mine, because it does not exist anymore. Apparently it was destroyed in a bombing raid in Berlin during the last World War. In 1933, when I had to flee Germany, being a Jew, being a renowned “Kulturbolschewist”, who supported artists, that are today in and outside of Germany considered the “classic masters of German art of the first half of the 20<sup>th</sup> century”, I had to leave my collection (and my library) in Berlin: about 50 pictures and sculptures and 3000 leaves of watercolors, drawings and graphic. . . . [A]n acquaintance of mine agreed to take the collection for safekeeping into her building in Wilmersdorf. The building today does not exist anymore. It was bombed. . . .

(Translated from original German, see Exhibit “F.”)

### **C. Charlotte Weidler Embezzled the Paul Westheim Collection**

30. Melitta Weidler’s deceitful statement that the Westheim Collection was lost or destroyed in World War II was untrue. Weidler, who had concealed from Westheim the fact that at least part of his collection survived the war, brought part of the Westheim Collection from Germany to New York after the war. After Westheim’s death in 1963, Weidler started selling the Westheim Collection.

31. Upon information and belief, Weidler sold the painting *Still-Life with White Bottle* by Iwan Puni to the Leonard Hutton Galleries in New York in 1970. This painting was part of the lost Westheim Collection.

32. Upon information and belief, Weidler sold the painting *The Insane's Rooftop-Garden* by Joachim Ringelnatz to Alex Vömel in Düsseldorf in or around 1972. This painting also was part of the lost Westheim Collection.

33. In August 1971, Weidler sold the painting *Portrait Robert Freund II* by Oskar Kokoschka through the Serge Sabarsky Gallery (“Sabarsky”) in New York to Elsbeth Margarethe Schultz. This painting also was part of the lost Westheim Collection.

34. After Westheim’s widow, Frenk-Westheim, learned that the Kokoschka painting had reappeared and was in the possession of Sabarsky, she commenced an action for the recovery of the painting in the New York State Supreme Court, New York County in September 1973 (Index No. 16877/73) (the “1973 Action”). The defendants in the action were Serge Sabarsky Gallery, Inc., Elsbeth Margarethe Schultz and Weidler.

35. Throughout the 1973 Action, Weidler continued to conceal the fact that several Westheim artworks had in fact survived World War II and that she had sold some of these surviving Westheim artworks and still had some of the artworks in her possession. In addition, Weidler falsely maintained that she had bought the Kokoschka painting and three other paintings from Westheim while they were both still living in Berlin-Wilmersdorf. Due to Weidler’s false statements and fraudulent concealment, Frenk–Westheim mistakenly believed that the Kokoschka painting was the only one that had survived the war, and made a settlement in 1974, for only the Kokoschka painting, for the minimal sum of \$7,500.

36. In 1976, following the settlement of the 1973 Action, Weidler attempted to sell the painting *To Beauty* by Otto Dix from the Westheim Collection through the German art dealer Ewald Rathke (“Rathke”). However, Rathke became suspicious and,

through a tip from another art dealer, contacted Frenk-Westheim. She confirmed to Rathke that the Dix painting was from Westheim's collection and did not belong to Weidler. Rathke then refused to sell the painting until eventually a settlement was agreed to between Weidler and Frenk-Westheim.

37. Upon information and belief, unbeknownst to Frenk-Westheim, Weidler sold or otherwise transferred the painting *Portrait of Paul Westheim* by Max Pechstein to Yris Rabenou and/or David Y. Solomon or devised it as part of her estate to her heirs, defendants Darius Solomon and Teimour Solomon, the sons of Yris Rabenou and David Y. Solomon. Until recently, Pechstein experts and art historians were unaware of who was depicted in this painting. A comparison of photographs of Westheim with the person portrayed in the painting shows that it is in fact a portrait of Westheim and belonged to the Westheim Collection (see affidavit of Paul Westheim dated June 15, 1962, Exhibit "G.")

38. Weidler died on February 5, 1983. She left a will naming Yris Rabenou Solomon and David Y. Solomon as her executors. Defendants Darius Solomon and Teimour Solomon are Weidler's sole heirs under her will.

39. Information first obtained in August 2010 indicates that the Max Pechstein painting of Westheim, as well as other artworks from the Westheim Collection, are in the possession of Defendants. Despite diligent efforts to locate artworks from the Westheim Collection, Plaintiff was unaware that Defendants held the Westheim Artworks until Defendants so admitted in August 2010. This also led to Plaintiff's discovery in August 2010 that, unbeknownst to Westheim or his heirs, *The Violinist* had survived the war, and had been sold at Christie's in 1998.

40. On April 14, 2011, after exchanging information with Defendants, Plaintiff demanded the return of the Westheim Artworks. Plaintiff asked that the Westheim Artworks be returned no later than May 14, 2011. Defendants have failed and refused to return the Westheim Artworks and have failed and refused to provide Plaintiff with full, truthful and complete information about the artworks in their possession despite Plaintiff's just demands for an accounting.

41. On April 14, 2011, by letter given to Christie's for delivery to its 1998 buyer, Plaintiff demanded the return of *The Violinist* from the 1998 buyer. Plaintiff asked that *The Violinist* be returned no later than May 14, 2011. Plaintiff has subsequently settled her claims against both Christie's and its 1998 buyer. Pursuant to the settlement agreement, *The Violinist* was again sold at auction by Christie's at its London office on June 7, 2012 and, in addition to other consideration, both Christie's and its 1998 buyer assigned to Plaintiff all claims they may have for damages against Defendants, including claims for breach of warranty of title, which Plaintiff asserts in this action.

42. Westheim never lost title to his artworks and Defendants never obtained good title from Weidler because she stole the Westheim Collection. At no time did Westheim or his heirs transfer to Weidler or Defendants title to any part of the Westheim Collection.

43. Plaintiff is entitled to a full and complete accounting of the artworks from the Westheim Collection that are in Defendant's possession, the return of such artworks, and damages for any artworks from the Westheim Collection that Defendants sold or are not otherwise recovered in this action.

44. Neither the settlement of the 1973 Action regarding the Kokoschka painting nor the 1976 settlement regarding the Dix painting bar this action, as those settlements are specifically with regard to those artworks and were made with parties other than the defendants herein. Moreover, the release obtained by Weidler in the 1973 Action was obtained through fraud and deception and was made under the mistaken belief that all other artworks from the Westheim Collection were lost or destroyed in World War II.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Declaratory Judgment)**

45. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 44 above as if set forth fully herein again at length.

46. Neither Weidler nor any subsequent transferee obtained good title to any of the artworks from the Westheim Collection, because Weidler stole the Westheim Artworks by fraudulent acts of misrepresentation and/or concealment.

47. Accordingly, Defendants could not and did not acquire good title to the Westheim Artworks from Weidler.

48. At the time of the commencement of this action, Plaintiff, as the heir and assignee of rights to the Westheim Collection, was and is the rightful owner of the Westheim Artworks.

49. There is an actual and justiciable controversy between Plaintiff and Defendants with respect to the Westheim Artworks, which requires immediate resolution.

50. Plaintiff has no adequate remedy at law.

51. By reason of the foregoing, Plaintiff is entitled to a judgment declaring that she is the owner of the Westheim Artworks and entitled to immediate possession thereof.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Replevin)**

52. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 51 above as if set forth fully herein again at length.

53. Plaintiff demanded the return of the Westheim Artworks from Defendants on or about April 14, 2011.

54. Defendants have wrongfully refused to return the Westheim Artworks and wrongfully continue to retain possession of the Westheim Artworks, despite due demand from Plaintiff for the return of the artworks.

55. Defendants never acquired good title to the Westheim Artworks and do not have the right to possession of the Westheim Artworks.

56. Plaintiff is entitled to immediate possession of the Westheim Artworks.

57. By reason of such refusal and wrongful detention and conversion of the Westheim Artworks by Defendants, Plaintiff has been damaged and is entitled to an order directing that the Westheim Artworks be returned to Plaintiff, or in the alternative, awarding money damages in an amount to be determined at trial, together with attorneys' fees and interest.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**(Conversion)**

58. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 57 above as if set forth fully herein again at length.

59. By reason of the foregoing, Defendants have intentionally interfered with Plaintiff's ownership interests and have wrongfully and willfully converted property belonging to Plaintiff, *i.e.*, the Westheim Artworks and *The Violinist*.

60. As a result of Defendants' wrongful conversion of the Westheim Artworks and *The Violinist*, Plaintiff has been and continues to be damaged in an amount to be determined at trial, but in excess of the sum of \$3,600,000, together with attorneys' fees and interest.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
**(Bailment)**

61. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 60 above as if set forth fully herein again at length.

62. Westheim relinquished his exclusive possession, control and dominion over the Westheim Collection to Weidler when he delivered the artworks to her, entrusting Weidler to safeguard the Westheim Collection and redeliver the collection to Westheim upon his demand.

63. A bailment was created between Westheim and Weidler with respect to the Westheim Collection.

64. Pursuant to the agreement between Westheim and Weidler, Weidler was required to return the Westheim Collection to Westheim upon demand.

65. Westheim demanded the return of the Westheim Collection from Weidler at the conclusion of World War II.

66. Weidler failed and refused to return the Westheim Collection to Westheim and broke off all communication with him after the war.



67. The bailment continued after the death of Weidler, when Defendants acquired possession of artworks from the Westheim Collection.

68. As a result of Defendants' failure and refusal to return the Westheim Artworks and *The Violinist* to Plaintiff, the rightful owner of the artworks, Plaintiff is entitled to the return of the Westheim Artworks and/or damages in an amount to be determined at trial, but in excess of the sum of \$2,000,000, and damages for the loss of *The Violinist* in an amount to be determined at trial, but in excess of the sum of \$1,600,000, together with attorneys' fees and interest.

**AS AND FOR A FIFTH CAUSE OF ACTION**  
**(Constructive Trust)**

69. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 68 above as if set forth fully herein again at length.

70. At the time that Westheim entrusted his art collection to Weidler, Westheim and Weidler had a close relationship of trust and confidence and/or a fiduciary relationship. In reliance on that relationship and Weidler's promise to hold and safeguard the artworks and return them to Westheim, Westheim transferred and entrusted the Westheim Collection to Weidler.

71. Upon information and belief, Defendants took the Westheim Artworks and *The Violinist* into their custody under circumstances that would render it equitable to return such property to its rightful owner upon due demand.

72. It is just and equitable that the court impress a constructive trust to attach to the res from the time the said artworks entered Defendants' possession.

73. Defendants would be unjustly enriched if permitted to retain the Westheim Artworks or any other artworks from the Westheim Collection or any of the

benefits accruing therefrom.

74. Accordingly, each and every financial emolument accruing to Defendants during the period of the trust should be disgorged and paid over together with prejudgment interest.

75. Plaintiff has no adequate remedy at law.

76. Permitting Defendants to retain property and sales proceeds belonging to Plaintiff is unfair and unjust and in light of the totality of the circumstances warrants imposing a constructive trust under equitable principles of New York law and the return of the said artworks and/or sales proceeds to Plaintiff.

**AS AND FOR A SIXTH CAUSE OF ACTION**  
**(Accounting)**

77. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 76 above as if set forth fully herein again at length.

78. Defendants have never accounted for any artworks from the Westheim Collection, which, upon information and belief, they have had in their possession since Weidler sold or otherwise transferred the artworks to them or since Weidler died and passed them on to Defendants through her estate.

79. As a result of the equitable trust created among the parties, Defendants have a fiduciary duty to return the Westheim Artworks to Plaintiff. Although duly demanded, Defendants have failed to fulfill that duty.

80. Only Defendants know the whereabouts of all the artworks from the Westheim Collection that are currently or have been within their possession, custody or control.

81. Plaintiff has no adequate remedy at law.

82. Plaintiff is entitled to an accounting of all works from the Westheim Collection that are currently in Defendants' possession, custody or control, or which have been in their possession, custody or control, and all sales proceeds obtained by Defendants therefrom.

**AS AND FOR A SEVENTH CAUSE OF ACTION**  
**(Unjust Enrichment)**

83. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 82 above as if set forth fully herein again at length.

84. By reason of the foregoing, Defendants have been unjustly and unlawfully enriched at the expense of Plaintiff.

85. Plaintiff has no adequate remedy at law.

86. By reason of the foregoing, Plaintiff has been damaged in an amount to be determined at trial, but in excess of the sum of \$3,600,000, plus interest.

**AS AND FOR AN EIGHTH CAUSE OF ACTION**  
**(Breach of Warranty of Title)**

87. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 86 above as if set forth fully herein again at length.

88. Defendants consigned *The Violinist* to Christie's for sale at Christie's 1998 London auction.

89. In so doing, Defendants warranted to Christie's and to Christie's buyer that they had good title.

90. However, Defendants did not in fact have good title to *The Violinist*, which had been stolen from Westheim by Weidler.

91. Defendants are thus in breach of the warranty of title to Christie's and its buyer.

92. Plaintiff has settled her claims against Christie's and Christie's buyer in its 1998 sale and they have assigned all claims they may have against Defendants to Plaintiff.

93. Plaintiff is therefore entitled to damages against Defendants in excess of the sum of \$1,600,000 by reason of Defendants' breach of warranty of title, together with costs and reasonable attorneys' fees of this action.

**WHEREFORE**, Plaintiff demands judgment as follows:

A. On her First Cause of Action: declaring that Plaintiff is the owner of the Westheim Artworks and entitled to immediate possession thereof;

B. On her Second Cause of Action: directing Defendants to return to Plaintiff the Westheim Artworks or to pay compensation therefore in an amount to be proven at trial, but not less than the sum of \$2,000,000, together with interest thereon;

C. On her Third Cause of Action: against Defendants in an amount to be proven at trial, but not less than the sum of \$3,600,000, together with interest thereon;

D. On her Fourth Cause of Action: against Defendants in an amount to be proven at trial, but not less than the sum of \$3,600,000, together with interest thereon;

E. On her Fifth Cause of Action: imposing a constructive trust over all works from the Westheim Collection that are currently in Defendants' possession, custody or control, or which have been in their possession, custody or control, and directing Defendants to deliver to Plaintiff possession of the artworks and/or the proceeds with respect to any sales thereof;

F. On her Sixth Cause of Action: directing Defendants to account to Plaintiff for all works from the Westheim Collection that are currently in Defendants' possession, custody or control, or which have been in their possession, custody or control, and all sales proceeds obtained by Defendants therefrom;

G. On her Seventh Cause of Action: against Defendants in an amount to be proven at trial, but not less than the sum of \$3,600,000, together with interest thereon;

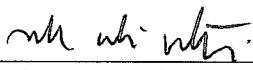
H. On her Eighth Cause of Action: against Defendants in an amount to be proven at trial, but not less than the sum of \$1,600,000, together with interest thereon;

I. Awarding Plaintiff reasonable attorneys' fees and costs;

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

Dated: New York, New York  
January 25, 2013

**TARTER KRINSKY & DROGIN LLP**  
*Attorneys for Plaintiff*

By:   
\_\_\_\_\_  
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**Of Counsel:**

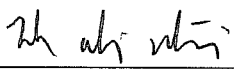
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New York, New York 10016  
(212) 685-5509

**22 NYCRR § 130-1.1-a Certification**

To the best of the undersigned's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the within document and contentions contained herein are not frivolous as defined in 22 NYCRR § 130-1.1(c).

Dated: New York, New York  
January 25, 2013

**TARTER KRINSKY & DROGIN LLP**  
*Attorneys for Plaintiff*

By:   
Debra Bodian Bernstein

**VERIFICATION**

STATE OF NEW YORK     )  
  )  
COUNTY OF NEW YORK )     ss:


DEBRA BODIAN BERNSTEIN, an attorney duly admitted to practice law before the Courts of the State of New York, affirms that:

I am Counsel to Tarter Krinsky & Drogin LLP, attorneys of record for plaintiff in the within action; I have read the annexed Verified Complaint, know the contents thereof; and the same are true to my knowledge, except those matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true. This verification is made by me because plaintiff maintains a residence outside the county in which plaintiff's counsel maintains an office for the practice of law.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are based upon public records and the records of plaintiff in deponent's possession.

I affirm that the foregoing statements are true under penalty of perjury.

Dated:           New York, New York  
                  January 25, 2013

  
\_\_\_\_\_  
Debra Bodian Bernstein