

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

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MADONNA CICCONE, *in both her individual  
capacity and as Trustee of the CICCONE 1989  
TRUST,*

Index No. \_\_\_\_\_/2017

Motion Sequence No.

Plaintiff,

- against -

GOTTA HAVE IT! COLLECTIBLES, INC. d/b/a  
GOTTA HAVE ROCK AND ROLL LLC, PETE  
SIEGEL, DARLENE LUTZ, JOHN DOES #1-200  
(a fictitious name),

Defendants.

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**MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFF'S MOTION FOR A TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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**TABLE OF CONTENTS**

	<b>Page</b>
PRELIMINARY STATEMENT .....	2
STATEMENT OF FACTS .....	4
ARGUMENT .....	6
I.    MS. CICCONE HAS A PROBABILITY OF SUCCESS ON THE MERITS OF HER CLAIM TO RECOVER POSSESSION OF THE SUBSET OF MADONNA MEMORABILIA THAT IS THE SUBJECT OF THIS MOTION.....	7
II.   MS. CICCONE WILL LIKELY SUFFER IRREPARABLE HARM IF SHE DOES NOT RECEIVE IMMEDIATE INJUNCTIVE RELIEF.....	11
A.    Ms. Ciccone Will Be Irreparably Harmed if the Auction Proceeds .....	11
B.    The Display of Sensitive, Private Correspondence and Intimate Personal Property Is Causing Ms. Ciccone Irreparable Harm .....	13
III.  THE BALANCE OF THE EQUITIES FAVORS MS. CICCONE.....	13
IV.  THE UNDERTAKING, IF ANY, SHOULD BE MINIMAL .....	14
V.   THIS COURT SHOULD GRANT PLAINTIFF’S REQUEST FOR EXPEDITED WRITTEN DISCOVERY .....	15
CONCLUSION.....	16

TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>CASES</b>	
<i>Arthur Glick Truck Sales, Inc. v. H.O. Penn Mach. Co.</i> , 2004 WL 2472475 (N.Y. Sup. Ct. Nov. 3, 2004) (unpublished).....	15
<i>Bel Geddes v. Zeiderman</i> , 644 N.Y.S.2d 729 (1st Dep't 1996) .....	15
<i>Doe v. Axelrod</i> , 73 N.Y.2d 748 (1988) .....	6
<i>Flynn v. City of New York</i> , 101 A.D.3d 803 (2d Dep't 2012) .....	10
<i>Giordano v. Grand Prix Sales, Serv., Restoration Co., Inc.</i> , 113 Misc. 2d 395 (Sup. Ct. 1982).....	11, 12
<i>Greystone Equip. Fin. Corp. v. Motion Imaging, Inc.</i> , 27 Misc. 3d 1213(A), 2010 WL 1655454 (Sup. Ct. 2010), <i>judgment entered</i> , 2010 WL 10078182 (N.Y. Sup. Ct. June 2, 2010).....	7
<i>Hirschfeld v. Stone</i> , 193 F.R.D. 175 (S.D.N.Y. 2000) .....	13
<i>Hochberg v. Maimonides Med. Ctr.</i> , 831 N.Y.S.2d 439 (2d Dep't 2007).....	15
<i>Hofferman v. Simmons</i> , 290 N.Y. 449 (1943) .....	7
<i>Jacobs v. Mulford</i> , 197 A.D. 835 (3d Dep't 1921).....	7
<i>John Mullins &amp; Sons, Inc. v. Komnich</i> , 31 N.Y.S.2d 569 (App. Term 2d Dep't 1941) .....	8
<i>John Paul Mitchell Sys. v. Quality King Distribs., Inc.</i> , 106 F. Supp. 2d 462 (S.D.N.Y. 2000).....	11
<i>Lawrence v. Meloni</i> , 163 A.D.2d 827 (4th Dep't 1990).....	10, 14
<i>MacDonnell v. Buffalo Loan, Tr. &amp; Safe Deposit Co.</i> , 193 N.Y. 92 (1908) .....	10

<i>Meyer v. Fanelli</i> , 266 A.D.2d 361 (2d Dep't 1999) .....	9
<i>Morse v. Penzimer</i> , 58 Misc. 2d 156 (Sup. Ct. 1968) .....	11
<i>Nobu Next Door, LLC v. Fine Arts Hous., Inc.</i> , 4 N.Y.3d 839 (2005) .....	6
<i>Plante v. Gonzalez</i> , 575 F.2d 1119 (5th Cir. 1978) .....	13
<i>Scharfman v. May-Claire Costume Co.</i> , 133 Misc. 482 (City Ct. 1928) .....	8
<i>Simon v. Simon</i> , 274 A.D. 447 (1st Dep't 1948) .....	9
<i>Solomon R. Guggenheim Found. v. Lubell</i> , 77 N.Y.2d 311 (1991) .....	7, 10
<i>State v. Seventh Regiment Fund, Inc.</i> , 98 N.Y.2d 249 (2002) .....	7
<i>Sylmark Holdings Ltd. v. Silicone Zone Int'l Ltd.</i> , 5 Misc. 3d 285, 783 N.Y.S.2d 758 (Sup. Ct. 2004) .....	15
<b>STATUTES AND RULES</b>	
N.Y. C.P.L.R. § 6301 .....	7
N.Y. C.P.L.R. § 6312 .....	9, 14
N.Y. C.P.L.R. § 7101 .....	7
N.Y. C.P.L.R. § 7108 .....	8
N.Y. C.P.L.R. § 7109 .....	11, 12
<b>OTHER AUTHORITIES</b>	
N.Y.C. OFFICE OF CHIEF MED. EXAM'R, FORENSIC BIOLOGY PROTOCOLS FOR FORENSIC MITOCHONDRIAL DNA ANALYSIS (2016) .....	12
23 N.Y. JUR. 2D CONVERSION, Etc. § 90 .....	7
STEDMANS MEDICAL DICTIONARY (2014) .....	12

Plaintiff Madonna Ciccone is the songwriter, recording and performing artist, actress and philanthropist professionally known as Madonna. Ms. Ciccone brings this action in both her individual capacity and as Trustee of the CICCONE 1989 Trust, and respectfully submits this memorandum in support of her motion, by Order to Show Cause, for a temporary restraining order in advance of a preliminary injunction barring Defendants Gotta Have It! Collectibles, Inc. d/b/a Gotta Have Rock and Roll LLC, Pete Siegel (collectively, "GHRR"), and Darlene Lutz (together with GHRR, "Defendants") from: (a) auctioning, selling, gifting, transferring or otherwise disposing of, damaging or destroying the memorabilia currently identified as Lots #9, 10, 13, 14, 33, 62, 65, 66, 78, 109-119, and 128, a subset of Madonna Memorabilia identified in Lots #1-128 (as to all 128 lots, the "Madonna Memorabilia") in the auction titled "The Rock & Roll Pop Culture Auction July 2017," (the "Auction") previewing online at <http://www.gottahaverockandroll.com/catalog.aspx> (the "Auction Website") and as more specifically set forth in Exhibits 3 through 14 to the July 18, 2017 Affirmation of Madonna Ciccone ("Ciccone Aff."); and (b) participating, facilitating or otherwise engaging in the public or private display of the Madonna Memorabilia currently identified as Lots #9 ("Madonna Handwritten Love Letter to John Enos"), 10 ("Madonna Handwritten & Signed Love Letter to Peter Shue and Personally Worn Panties"), 13 ("Madonna Handwritten Thanksgiving Dinner Tribute To Her Brother Christopher Circa 1991-92"), 14 ("Madonna 1990 'Blond Ambition Tour' Handwritten & Signed Letter to Her Brother Chris"), 33 ("Madonna Handwritten & Signed Letter Circa 1993"), 65 ("Madonna's Miami Home Original Photograph Collection"), 66 ("Madonna Personally Owned Bachelorette Party Photographs and Negatives"), 78 ("Rosie O'Donnell Original Faxed Letters to Madonna (2)"), and 128 ("Tupac Shakur Handwritten &

Signed Letter to Madonna from Prison”) in the Auction (*see* Ciccone Aff., Exhibits 3-7, 10-12, and 14).

She also submits this memorandum in support of her request, by Order to Show Cause, for expedited discovery, limited to a handful of written requests, and such other and further relief as may be just, proper and equitable.

Ms. Ciccone seeks provisional relief to (1) preserve the *status quo* with respect to possession of the unique items planned to be auctioned and identified as Lots #9, 10, 13, 14, 33, 62, 65, 66, 78, 109-119, and 128 by the Defendants beginning July 19 in violation of Ms. Ciccone’s exclusive ownership rights, (2) restore the *status quo* as it existed prior to commencement of Defendants’ wrongdoing with respect to the display of the items identified as Lots #9, 10, 13, 14, 33, 65, 66, 78 and 128, until the matter described below can be fully adjudicated on the merits, and (3) assist the Court in concluding Plaintiff’s likelihood of success on the merits.

### **PRELIMINARY STATEMENT**

This matter concerns the outrageous effort by Defendants GHRR and Darlene Lutz to auction off personal belongings that they do not own, have the right to possess, transfer title to or display. Over 100 individual items belonging to Ms. Ciccone are currently set to be auctioned tomorrow, July 19. Despite repeated demands to return to Ms. Ciccone the Madonna Memorabilia, or, failing that, to at least postpone the imminent sale of her property until this Court can determine title, Ms. Lutz has informed Ms. Ciccone she intends to proceed with the Auction and GHRR has responded to the demands with silence. This Court must intervene and grant injunctive relief to prevent the irreparable harm that will result if the Auction proceeds. It must also intervene to put an end to the irreparable harm already occurring and which is

compounded each moment another member of the general public invades Ms. Ciccone's right to privacy by viewing her personally sensitive information that Defendants have so callously displayed on the Internet for all the world to see.

As discussed below in Point I, Ms. Ciccone has a probability of success on the merits with respect to her claim to recover her unique, personal property. It is self-evident that the property belongs to Ms. Ciccone. She never sold, gifted, or otherwise transferred that property or any possessory interest in it to Ms. Lutz or GHRR, and Ms. Lutz and GHRR have been curiously silent as to how they came to hold any of the Madonna Memorabilia. Ms. Lutz lacks the authority to consign the property to GHHR, and neither Ms. Lutz nor GHRR have the authority to now sell that property through auction or to otherwise sell, gift, transfer or dispose of those items. Regardless of whether GHHR contracted with Ms. Lutz to obtain the property for auction, (apparently without first establishing that Ms. Lutz had title to the Madonna Memorabilia, which GHRR should have done given its personal and private nature), its subsequent refusal to at least suspend the Auction until this Court can determine the dispute over ownership of the Madonna Memorabilia is especially egregious. Its decision to press forward with the Auction demonstrates a complete lack of good faith and concern regarding the harm caused not only to Ms. Ciccone, but also the harm that would be caused to potential bidders who would purchase the items through auction but not obtain good title to the property.

As discussed in Point II, Ms. Ciccone will suffer irreparable injury if injunctive relief is not granted because the Auction will severely impair her ability to recover her unique, personal property, and creates an imminent risk that she will not be able to recover it at all. Ms. Ciccone is also currently suffering irreparable harm due to Defendants' continuous unauthorized display,

disclosure and dissemination of highly personal information, including her, her friend's and former boyfriends' confidential mental thoughts and impressions.

As shown in Point III, the equities weigh decidedly in Ms. Ciccone's favor. Failure to issue an injunction now will result in a multiplication of litigation—exposing potential purchasers of the property to liability to Ms. Ciccone, and both GHR and Ms. Lutz to liability to these purchasers—all of which could be avoided by enjoining the Auction until the rights of the parties' with respect to the Madonna Memorabilia can be finally adjudicated. In contrast, granting the injunction to preserve the *status quo* by postponing the Auction with respect to *only a limited subset* of the Madonna Memorabilia and to restore the *status quo* by prohibiting the display of *an even smaller subset* of the Madonna Memorabilia will not prejudice the Defendants.<sup>1</sup> And to the extent Defendants might nevertheless contend otherwise, Ms. Ciccone has requested expedited discovery so that the instant matter may be adjudicated as quickly as possible.

Finally, as discussed in Point IV, in light of all the circumstances, the undertaking, if any, should be *de minimis*.

## **STATEMENT OF FACTS**

### **The Property In Question**

At present, one-hundred twenty-eight (128) lots, each containing items relating to Ms. Ciccone, are previewing for sale through the Auction set to commence tomorrow at 9:00 AM Eastern Daylight Time. (Ciccone Aff. ¶ 4, Ex. 1; Affirmation of Sandra A. Crawshaw-Sparks

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<sup>1</sup> To be sure, Ms. Ciccone believes that she is the rightful owner of all the Madonna Memorabilia, and seeks an accounting and damages with respect to the property that is not the subject of this motion for injunctive relief. (*See* Ciccone Aff. ¶ 4.)

Concerning Irreparable Harm (“Crawshaw-Sparks Aff.”) ¶ 2.) Upon information and belief, the Auction Website is owned and operated by GHRR.

The Madonna Memorabilia set to be auctioned includes unique, irreplaceable and, in many cases, intensely private and intimate property: (1) private letters and other correspondence between Ms. Ciccone and her family and acquaintances (including celebrities and former boyfriends) (Ciccone Aff. ¶¶ 13-17, Exs. 3-7, 12, and 14); (2) personal and private photographs (Ciccone Aff. ¶¶ 13 and 20, Exs. 10 and 11); (3) original unreleased recordings (Ciccone Aff. ¶¶ 13 and 21, Ex. 13); and (4) other personal effects owned and previously used by Ms. Ciccone, including a personal checkbook, previously worn underwear, and a hairbrush with Ms. Ciccone’s hair (Ciccone Aff. ¶¶ 13, 18 and 19 Exs. Lots # 4, 8 and 9).

The Auction Website provides lot-specific information, including information regarding the consignor of the items. The specific descriptions accompanying one-hundred eighteen (118) lots explicitly state that “Darlene Lutz, Madonna’s art consultant who was also a long-time personal friend of Madonna’s from her innermost circle, knowing her for over 20 years” consigned the property to GHRR for sale at auction. (Ciccone Aff. ¶ 8, Exs. 2. *See also id.*, Ex. 3.)

Ms. Lutz was previously a friend of Ms. Ciccone’s and provided art consulting services to her. (Ciccone Aff. ¶ 9.) Ms. Lutz regularly had access to Ms. Ciccone’s residences, often stayed at those residences overnight, and even helped pack Ms. Ciccone’s property when Ms. Ciccone decided to sell her Miami residence. (*Id.*) Notably, a number of the items consigned to GHRR by Ms. Lutz are property that Ms. Ciccone possessed at the time she lived in Miami. (*Id.*)

Although Ms. Ciccone and Ms. Lutz were previously acquainted, Ms. Ciccone never sold, gifted or otherwise transferred title or a possessory interest in any of the Madonna

Memorabilia to Ms. Lutz. (Cicccone Aff. ¶ 10.) Ms. Cicccone was surprised to learn that property purportedly consigned by Ms. Lutz to GHRR was no longer in her possession. (*See* Cicccone Aff. ¶¶ 5-6.)

### **Defendants' Refusal to Cease and Desist with the Planned Auction**

Between July 10 and 15, 2017, Plaintiff's counsel sent five separate letters to Defendants demanding that they cease and desist from the planned auction with respect to the Madonna Memorabilia or portions thereof, and return the property to counsel, or at the very least postpone the Auction to provide an opportunity for this Court to determine the parties' rights with respect to the Madonna Memorabilia. (Crawshaw-Sparks Aff. ¶¶ 13-21.)

Counsel for Ms. Lutz twice responded that she intended to proceed with the Auction despite Ms. Cicccone's demands. (Crawshaw-Sparks Aff. ¶¶ 19, 23.) Notably absent from Ms. Lutz's response was any information regarding how Defendant Lutz purportedly came to own (or even possess) Plaintiff's personal property. (*Id.* ¶ 19) She instead claims that a general release (concerning an entirely unrelated dispute) protects her from liability to Ms. Cicccone. *Id.*

As of the time this motion was filed, GHHR has not responded to any of the letters sent by Plaintiff's counsel. (Crawshaw-Sparks Aff. ¶ 22.)

### **ARGUMENT**

A "party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor." *Nobu Next Door, LLC v. Fine Arts Hous., Inc.*, 4 N.Y.3d 839, 840 (2005). In applying these requirements, the court must "weigh a variety of factors," and the matter is committed to the court's sound discretion. *Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988). Further, "[a] temporary restraining order may be granted pending a hearing for a preliminary injunction

where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.” N.Y. C.P.L.R. § 6301. As shown below, Ms. Ciccone’s application meets these requirements.

**I. MS. CICCONE HAS A PROBABILITY OF SUCCESS ON THE MERITS OF HER CLAIM TO RECOVER POSSESSION OF THE SUBSET OF MADONNA MEMORABILIA THAT IS THE SUBJECT OF THIS MOTION**

Ms. Ciccone has a high probability of success on the merits with regard to her claims for conversion and for replevin of chattels pursuant to CPLR § 7101.

An action for conversion requires a plaintiff to show the “unauthorized assumption and exercise of the right of ownership over goods belonging to another to the exclusion of the owner’s rights.” *State v. Seventh Regiment Fund, Inc.*, 98 N.Y.2d 249, 259 (2002) (citation omitted). Similarly, “[i]n an action for recovery of chattels pursuant to CPLR § 7101, the sole issue is which party has the ‘superior possessory right’ to the chattels.” *Greystone Equip. Fin. Corp. v. Motion Imaging, Inc.*, 27 Misc. 3d 1213(A), 2010 WL 1655454, at \*10 (Sup. Ct. 2010), *judgment entered*, 2010 WL 10078182 (N.Y. Sup. Ct. June 2, 2010). Absent unusual circumstances, the rightful owner of specific property is entitled to its possession. *See Hofferman v. Simmons*, 290 N.Y. 449, 455 (1943). Accordingly, an action for the recovery of chattel may be premised on the theory of conversion. *Jacobs v. Mulford*, 197 A.D. 835, 836 (3d Dep’t 1921) (“The action is clearly one for replevin, involving elements of conversion, and sounds in tort”); 23 N.Y. JUR. 2D CONVERSION, Etc. § 90 (action for recovery of chattel may be “founded on . . . a conversion”); *see generally Solomon R. Guggenheim Found. v. Lubell*, 77 N.Y.2d 311, 317 (1991) (action for recovery of painting appropriate when painting previously misappropriated from rightful owner).

The only material difference between an action to recover property based on the theory of conversion and an action for conversion itself lies in the remedy: the primary recovery sought in an action to recover property is the property itself. Alternative relief for the amount of the value of the property and damages due to its improper detention is only incidental to the primary recovery sought. N.Y. C.P.L.R. § 7108(a); *Scharfman v. May-Claire Costume Co.*, 133 Misc. 482, 484 (City Ct. 1928). In contrast, the remedy for conversion is solely money damages. *John Mullins & Sons, Inc. v. Komnich*, 31 N.Y.S.2d 569, 570 (App. Term 2d Dep't 1941) (“The only judgment which can be rendered in a conversion action is for damages based upon the value of the property converted at the time of the conversion.”).

Ms. Ciccone is likely to prevail in her action for conversion of the Madonna Memorabilia because the evidence establishes that Defendants knowingly exercised dominion over specifically-identifiable property to the exclusion of Ms. Ciccone’s – the true owner’s – rights. Ms. Ciccone is also likely to prevail in her action to replevy the Madonna Memorabilia, premised on a conversion theory, because as the rightful owner of the Madonna Memorabilia, Ms. Ciccone has a superior possessory interest in the Madonna Memorabilia as compared to both GHRR and Ms. Lutz. She is therefore entitled to recover it.

First, it is beyond dispute that Ms. Ciccone was the original owner of the property at issue. The entire reason that the “memorabilia” have value is that they were once owned by Plaintiff. Indeed, numerous Lot descriptions describe the Madonna Memorabilia as previously “owned” or “worn” by Ms. Ciccone. (*See Ciccone Aff.*, Ex. 1.) She is also the presumptive owner of letters received by her and unsent letters authored by her, her personal photographs, original unreleased tape-cassette recordings of her voice, and personal effects like her

checkbook, her underwear, and her hairbrush (including the hair that is still intertwined in its bristles). (See Ciccone Aff. ¶¶ 13-21, Exs. 3-7, 10-12, and 14)

Second, there is no basis to conclude that either Ms. Lutz or GHRR have title to the items. The Auction Website explicitly represents that Ms. Lutz consigned to GHRR nearly all of the Madonna Memorabilia that forms the basis of this motion. (See Ciccone Aff. ¶ 8, Ex. 2.) But Ms. Ciccone has submitted a sworn affirmation under penalty of perjury that she never sold, gifted or otherwise transferred title or a possessory interest in any of the Madonna Memorabilia to Ms. Lutz, GHRR or anyone else. (Ciccone Aff. ¶ 10.) Even after this information was communicated to Ms. Lutz, she failed to justify her alleged “ownership” of any of the Madonna Memorabilia.<sup>2</sup> (Crawshaw-Sparks Aff. ¶ 19.) Likewise, GHRR’s silence speaks volumes. (*Id.* ¶ 21.)

Third, because Ms. Lutz is not the rightful owner of the Madonna Memorabilia, her consignment of the Madonna Memorabilia to GHRR constituted an unauthorized assumption and

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<sup>2</sup> Tellingly, Ms. Lutz instead contends that she would be judgment proof by virtue of a general release. This contention is meritless for at least the following reasons. First, the prior resolved dispute concerned Ms. Lutz’ services to Ms. Ciccone as an art consultant, and New York law is clear that even general releases do not apply to unrelated, unanticipated disputes. *E.g.*, *Meyer v. Fanelli*, 266 A.D.2d 361, 362 (2d Dep’t 1999) (general release in agreement relating to personal injury claims inapplicable to defeat claim for repayment of loan). Second, Ms. Ciccone’s claim to replevy the Madonna Memorabilia arose only recently upon the consignment by Ms. Lutz to GHRR and the refusal of her demand to return the property, many years after the release, which could not and did not release future arising claims. Third, the release was contingent on Ms. Lutz satisfying particular conditions, which she did not. Fourth, the release did not confer good title to the Madonna Memorabilia or any possessory interest in it to Ms. Lutz (or anyone else). *Simon v. Simon*, 274 A.D. 447, 449 (1st Dep’t 1948) (“[W]hile the release was general in form, we hold that, in the absence of a showing that the title to these articles was actually in question at the time the release was given, it cannot be held, as a matter of law, that any claims based on such title were barred.”). Fifth, even if the release applied to the instant dispute between Ms. Ciccone and Ms. Lutz (and it does not), the release does not extend to GHRR or any purchasers at auction, who are not parties to or third-party beneficiaries of the agreement. The existence of a factual dispute regarding any of the aforementioned rationales does not preclude a court from finding the requisite likelihood of success. See N.Y. C.P.L.R. § 6312(c).

exercise of the right of ownership of the Madonna Memorabilia to the exclusion of Ms. Ciccone's – the true owner's – rights.

Likewise, once GHRR obtained the right to possess the consigned property, its repeated failure to respond to the demands made by Ms. Ciccone (*i.e.*, the rightful owner) to recover the property constituted conversion. *MacDonnell v. Buffalo Loan, Tr. & Safe Deposit Co.*, 193 N.Y. 92, 101, (1908) (lawful possessor of property becomes wrongdoer and subject to action for conversion after refusing owner's demand for return of property); *Lawrence v. Meloni*, 163 A.D.2d 827, 827 (4th Dep't 1990) (same); *see Flynn v. City of New York*, 101 A.D.3d 803, 805 (2d Dep't 2012) (refusal can be inferred from a failure to respond to a demand). This is true regardless of whether GHRR obtained an interest in the Madonna Memorabilia in exchange for promises and other consideration provided to Ms. Lutz. Even if GHRR obtained its interest in good faith, (which it did not, since the intimate nature of the possessions Ms. Lutz presented should have prompted at least an attempt by GHRR to contact Ms. Ciccone to inquire into whether the items presented were properly within Ms. Lutz's possession) that cannot defeat Ms. Ciccone's right to recover her property. *Solomon R. Guggenheim Found.*, 77 N.Y.2d at 317 (stating New York law has long protected the rightful owner's right to recover misappropriated property from a "good-faith" purchaser).

Because Ms. Ciccone is the rightful owner of the items she seeks to enjoin the Defendants from auctioning, her possessory rights with respect to those items are superior to both of the Defendants' (whose possessory rights are non-existent). For these reasons, Ms. Ciccone is likely to establish her claims for conversion and replevin.

## II. MS. CICCONE WILL LIKELY SUFFER IRREPARABLE HARM IF SHE DOES NOT RECEIVE IMMEDIATE INJUNCTIVE RELIEF

Ms. Ciccone is likely to suffer immediate and irreparable injury unless she receives injunctive relief because (1) Ms. Ciccone may be entirely unable to recover her unique, specifically identifiable and intensely personal private property if the Madonna Memorabilia is auctioned off, (2) the display of Ms. Ciccone's intensely personal private belongings is a continuous invasion of her privacy, and (3) money damages are an inadequate substitute for both of these harms.

### A. Ms. Ciccone Will Be Irreparably Harmed if the Auction Proceeds

There is no question that Ms. Ciccone is likely to suffer immediate, irreparable harm if she is not afforded injunctive relief.

CPLR § 7109 explicitly provides that “[w]here the chattel is unique, the court may grant a preliminary injunction or temporary restraining order that the chattel shall not be removed from the state, transferred, sold, pledged, assigned or otherwise disposed of until the further order of the court.” *Compare Morse v. Penzimer*, 58 Misc. 2d 156, 159 (Sup. Ct. 1968) (holding property could be disposed of by sale and proceeds remitted to court with jurisdiction to determine respective rights of parties because property was not unique). This statutory section is based on the principle that “a unique chattel is something irreplaceable.” *John Paul Mitchell Sys. v. Quality King Distribs., Inc.*, 106 F. Supp. 2d 462, 478 (S.D.N.Y. 2000). The inability to recover property that is irreplaceable necessarily constitutes irreparable harm.

All of the Madonna Memorabilia – and especially the items with respect to which Ms. Ciccone seeks an injunction – indisputably qualifies as “unique.” *Giordano v. Grand Prix Sales, Serv., Restoration Co., Inc.*, 113 Misc. 2d 395, 400 (Sup. Ct. 1982) (explaining that “heirlooms . . . and other similar items have been held to be unique and subject to the injunctive provisions of

CPLR 7109[a]”). Indeed, GHRR’s description of the items, not to mention the high proposed auction prices, removes any doubt that these items are all unique. *See id.* (relying in part on high price associated with antique Ferrari to conclude it was unique chattel). And it is certain that Ms. Ciccone’s ability to recover the Madonna Memorabilia will be compromised by Defendants’ planned Auction of the Madonna Memorabilia.

Specifically, if injunctive relief is not provided, Ms. Ciccone would be compelled to pursue the recovery of her unique property from potentially more than twenty purchasers, which will severely hamper her ability to recover it in the condition in which it presently exists, if at all. (Crawshaw-Sparks Aff. ¶ 6.) Defendants cannot guarantee that the purchasers of the Madonna Memorabilia will not alter, destroy, lose, hide or otherwise transfer the property. (*Id.*) The Auction is being conducted online. Potentially millions of people outside the United States, where Ms. Ciccone enjoys a huge fan base, may be among the bidders. Purchasers of the Madonna Memorabilia may reside in locations beyond the jurisdiction of any state or federal court. (*Id.*)

Courts routinely find a likelihood of irreparable harm when a defendant has already announced its intention to sell or otherwise transfer unique chattel, making the remedies articulated in CPLR § 7109(a) particularly apt. *Giordano*, 113 Misc. 2d at 400 (relying on previous attempt to sell unique property grounds to issue injunctive relief). The risk of irreparable harm is even higher, here, where at least one of the items set to be auctioned off possibly contains Ms. Ciccone’s DNA, which could be misappropriated for nefarious purposes before she is able to locate and recover the property. N.Y.C. OFFICE OF CHIEF MED. EXAM’R, FORENSIC BIOLOGY PROTOCOLS FOR FORENSIC MITOCHONDRIAL DNA ANALYSIS (2016); *DNA fingerprinting*, STEDMANS MEDICAL DICTIONARY 237560 (2014).

In sum, absent injunctive relief, there is a substantial risk that Ms. Ciccone will suffer irreparable harm for which monetary damages would not afford adequate relief.

**B. The Display of Sensitive, Private Correspondence and Intimate Personal Property Is Causing Ms. Ciccone Irreparable Harm**

“Public disclosure of highly personal and confidential information . . . [can] result in a harm that is both substantial and irreversible. *See Plante v. Gonzalez*, 575 F.2d 1119, 1135 (5th Cir. 1978) (“[w]hen a legitimate expectation of privacy exists, violation of privacy is harmful without any concrete consequential damages’).” *Hirschfeld v. Stone*, 193 F.R.D. 175, 187 (S.D.N.Y. 2000).

The display of items previewing for the Auction on the Auction Website, including private communications (and drafts of communications) between Ms. Ciccone and her family and acquaintances (including celebrities and former boyfriends), previously worn underwear, a hairbrush with Plaintiff’s hair, and private photographs, is personally offensive and causes Ms. Ciccone irreparable harm by usurping her ability to avoid the disclosure of highly personal and confidential information. (Ciccone Aff. ¶ 22; Crawshaw-Sparks Aff. ¶ 9.)

Money damages are an inadequate remedy for the continued dissemination of sensitive, intimate, and personal thoughts and confidences expressed by and to Ms. Ciccone. The harm caused by the continued display of these items is irreparable. (Ciccone Aff. ¶ 26.)

**III. THE BALANCE OF THE EQUITIES FAVORS MS. CICCONE**

The balance of the equities overwhelmingly tips in favor of granting injunctive relief. Ms. Ciccone is already suffering irreparable harm due to the unauthorized public display of highly personal, intimate belongings, and will suffer additional harm if the Auction proceeds, in which event her unique chattels may be unrecoverable. And, perhaps most seriously, the auction could enable a member of the general public to possess Ms. Ciccone’s DNA.

Likewise, the failure to issue injunctive relief may harm the public, exposing purchasers of the Madonna Memorabilia to actions for recovery of those chattels and forcing additional suits by those purchasers to recover against Defendants. *See, e.g., Lawrence*, 558 N.Y.S.2d at 360 (innocent purchaser of misappropriated property may become liable for conversion after refusing rightful owner's demand for its return). These harms can be avoided by finally adjudicating the parties' rights to the Madonna Memorabilia before they are sold off to countless individuals potentially residing throughout the country and world.

In contrast, Defendants will not suffer any hardship if injunctive relief is granted. Defendants have yet to substantiate their claimed right to possess the property and cannot credibly claim that delaying the Auction until the parties' rights with respect to the Madonna Memorabilia can be finally adjudicated will cause them harm. There is no urgency to the planned Auction. In fact, the values of the Madonna Memorabilia will likely only increase because, should Defendants prevail (though we doubt they will), the cloud on the title of the Madonna Memorabilia, and therefore the risk to potential purchasers, will have been lifted.

#### **IV. THE UNDERTAKING, IF ANY, SHOULD BE MINIMAL**

The purpose of an undertaking is to cover the "damages and costs which may be sustained by reason of the injunction" if it is determined that the movant was not entitled to injunctive relief. N.Y. C.P.L.R. § 6312(b). Here, the only possible damages Defendants could conceivably sustain due to the postponement of the Auction would be: (1) any decline in value of the Madonna Memorabilia; and (2) lost interest. As just discussed, however, the value of the Madonna Memorabilia is unlikely to decrease in value given that the items are all memorabilia which typically increase in value over time. In fact, the value in this instance likely would increase if the Auction were to later commence because this action will remove the cloud

currently looming over title to the Madonna Memorabilia. Accordingly, any such undertaking should be minimal.

**V. THIS COURT SHOULD GRANT PLAINTIFF'S REQUEST FOR EXPEDITED WRITTEN DISCOVERY**

New York courts possess the discretionary authority to expedite discovery. *See Hochberg v. Maimonides Med. Ctr.*, 831 N.Y.S.2d 439, 440 (2d Dep't 2007) (upholding trial court's decision to expedite discovery as provident exercise of its discretion). This authority is often exercised when the plaintiff seeks injunctive relief or when the defendant has unique possession of the information necessary to determine the extent of their unlawful conduct. *See Bel Geddes v. Zeiderman*, 644 N.Y.S.2d 729 (1st Dep't 1996) (holding that expedited discovery was appropriate in claim of breach of fiduciary duty because if true, details would only be known to defendant); *Sylmark Holdings Ltd. v. Silicone Zone Int'l Ltd.*, 5 Misc. 3d 285, 303, 783 N.Y.S.2d 758 (Sup. Ct. 2004) (holding that expedited discovery was appropriate when a manufacturer had unique possession of silicone product molds that developer made); *Arthur Glick Truck Sales, Inc. v. H.O. Penn Mach. Co.*, 2004 WL 2472475, at \*3 (N.Y. Sup. Ct. Nov. 3, 2004) (unpublished) (finding that plaintiff's requested discovery was necessary for preliminary injunction hearing because the requested documents went "directly to the issue" of the "heart of the action").

Applying these standards, there could not be a more apt situation in which to order expedited discovery. Plaintiff seeks expedited discovery with respect to a handful of narrow written discovery requests, limited to information that will assist the Court in resolving the likelihood of Plaintiff's success on the merits. (*See* *Crawshaw-Sparks Aff.*, Exs. A and B.) If Defendants possess information establishing that they have a superior right to possession of the Madonna Memorabilia (which they do not, or else they would have already produced it to Ms.

Ciccone), they should disclose it. Additionally, expedited discovery will mitigate any potential effect postponing the auction of this limited subset of items might have on Defendants in the exceedingly unlikely event this Court determines they do, in fact, have the right to auction the property.

### **CONCLUSION**

For all the foregoing reasons, Ms. Ciccone's motion for a temporary restraining order and a preliminary injunction should be granted.

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