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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

8 Attorneys for Plaintiffs Estate of Robert  
 Graham; Chuck Close; Laddie John Dill  
 9 and All Others Similarly Situated

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UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ESTATE OF ROBERT GRAHAM;  
 CHUCK CLOSE; LADDIE JOHN  
 DILL; individually and on behalf of all  
 others similarly situated,

Plaintiffs,

vs.

SOTHEBY'S, INC., a New York  
 corporation,

Defendant.

Case No. **CV11-8604** - JHJ  
**CLASS ACTION COMPLAINT** (FFM)

**JURY TRIAL DEMANDED**

Trial Date: None Set

1 Plaintiffs Estate of Robert Graham; Chuck Close; Laddie John Dill  
2 (“Plaintiffs”), individually and on behalf of all others similarly situated allege as  
3 follows:

4 **INTRODUCTION**

5 1. This class action lawsuit targets the willful and systematic violation by  
6 defendant Sotheby’s of its California law obligation to pay royalties to U.S. artists  
7 and their estates on artworks sold either in California or at auction by California  
8 sellers. To redress Sotheby’s denial of rights to artists and estates under California’s  
9 “Resale Royalties Act,” the plaintiff class herein seeks (i) the payment of all  
10 royalties due but not paid under that Act throughout the class periods (as set forth in  
11 the class definitions below), together with interest thereon, (ii) the imposition of  
12 punitive damages for Sotheby’s intentional election to flout the law, and (iii) the  
13 issuance of appropriate injunctive and declaratory relief to ensure Sotheby’s  
14 complies with its obligations under the Resale Royalties Act for all future auctions  
15 involving California sellers, and for all future sales that take place in California.

16 **PARTIES**

17 2. Plaintiff Estate of Robert Graham is the heir, legatee and/or personal  
18 representative of artist Robert Graham, and has its principal place of business in Los  
19 Angeles County, California.

20 3. Plaintiff Chuck Close is an artist living in the state of New York.

21 4. Plaintiff Laddie John Dill is an artist living in Los Angeles County,  
22 California.

23 5. Defendant Sotheby’s, Inc. is a corporation organized and existing under  
24 and by virtue of the laws of the State of New York, having its principal place of  
25 business in New York, and an additional presence in the County of Los Angeles.

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1 **JURISDICTION AND VENUE**

2 6. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §  
3 1332(d)(2), as the amount in controversy exceeds \$5 million and many Class  
4 members are citizens of a state different from Defendant.

5 7. This court has personal jurisdiction over Defendant, which regularly  
6 conducts business in this State.

7 8. Venue is proper within this District and Division pursuant to 28 U.S.C.  
8 §1391(b), because a substantial part of the events and omissions giving rise to the  
9 claims occurred in this District, and because there is personal jurisdiction in this  
10 District over Defendant because it regularly conducts business in this District.

11 **FACTUAL ALLEGATIONS**

12 **Sotheby's Failure to Comply with California's Resale Royalties Act**

13 9. Through auctions conducted during the class periods, Sotheby's sold  
14 and acted as the seller's agent in connection with the sale of works of Fine Art –  
15 defined herein as original paintings, drawings, sculptures and original works of art  
16 in glass, created by U.S. citizen artists – on behalf of California sellers. In addition  
17 to the foregoing auctions, Sotheby's sold works of Fine Art through sales – whether  
18 private or otherwise – that took place in California during the class periods.

19 10. Under California's Resale Royalties Act (section 986 of California's  
20 Civil Code) (the "Act"), Sotheby's was required to withhold at the time of the  
21 auction or sale, and then pay to the artist (or agent or estate thereof) within 90 days,  
22 five percent of the amount of such sales (herein, the "Royalty"). More specifically,  
23 the Act obligated Sotheby's to remit the Royalty when it sold the Fine Art (i) "at an  
24 auction" and/or (ii) when otherwise serving as the "seller's agent."

25 11. Sotheby's failed and refused to pay the Royalty owed to the plaintiffs  
26 and class members, and also failed and refused to apprise plaintiffs and class  
27 members when a Fine Art sale occurred that would entitle class members to the  
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1 Royalty due. (Nor did Sotheby's, as required by the Act – where “unable to locate  
2 and pay the artist within 90 days” – transfer the amount of the Royalty to  
3 California's Art Council, for deposit “in an account in the Special Deposit Fund in  
4 the State Treasury.”)

5 12. Worse still, Sotheby's affirmatively engaged in a pattern of conduct  
6 intended to conceal from plaintiffs and class members those circumstances in which  
7 a Fine Art sale – because it involved a California resident seller, or because the sale  
8 took place in California – entitled plaintiffs and class members to a Royalty.  
9 Sotheby's custom and practice is to conceal the fact of a seller's California  
10 residency, or the fact that a sale took place in California, from communications with  
11 the public concerning auctions and sales of Fine Art. By way of several examples  
12 Sotheby's auction catalogs generally conceal from the reader the state of residency  
13 of a seller of Fine Arts, and Sotheby's will refuse – upon inquiry – to reveal said  
14 information. None of these practices is necessary to maintain the anonymity of a  
15 seller of Fine Art, since Sotheby's could – but refuses to – identify the state of  
16 residency (and not the identity) of a Fine Art seller, or could otherwise denote by the  
17 inclusion of a symbol in its catalog materials (as Sotheby's does for other  
18 circumstances) that the lot is one for which the artist will be entitled to the Royalty  
19 due under California law. Similarly, Sotheby's conceals information from the  
20 public that would enable a reader to learn whether a non-auction sale of Fine Art  
21 took place in California.

22 13. Sotheby's, by engaging in the aforesaid practices, has successfully  
23 stymied and prevented plaintiffs and the class members from reasonably discovering  
24 the occurrence of auctions and sales for which a Royalty was due. Only Sotheby's,  
25 through information it secretly maintains, possesses the knowledge to determine  
26 which auctions and sales of Fine Art are ones for which a Royalty is due.

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1 **Auction Sales Where Sotheby's Failed to Pay Royalties to Plaintiffs**

2 14. On information and belief, plaintiffs allege that they are each owed  
3 Royalties in connection with the sale of works of Fine Art by Sotheby's. However,  
4 because of Sotheby's acts of concealment, Plaintiffs at this time can only surmise  
5 the total amount of Royalties owed to them.

6 15. As a consequence of Sotheby's violations of the foregoing legal  
7 obligations, the plaintiffs and class members have not received the Royalty due to  
8 them in connection with the resale of their works of Fine Art.

9 **CLASS ALLEGATIONS**

10 16. As the Act permits an "action for damages within three years after the  
11 date of sale or one year after the discovery of the sale, whichever is longer" (Civil  
12 Code section 986(a)(3)), the plaintiff Class herein shall be divided as follows:

13 (1) All Artists – and the Estates of such Artists – who created a work  
14 of Fine Art for which a Royalty was not paid when a California  
15 resident sold the artwork at an auction organized or conducted by  
16 Sotheby's, or when the sale took place in California, within three  
17 years of the filing of this action.

18 (2) All Artists – and the Estates of such Artists – who created a work  
19 of Fine Art for which a Royalty was not paid when a California  
20 resident sold the artwork at an auction organized or conducted by  
21 Sotheby's, or when the sale took place in California, three or  
22 more years before the filing of this action, but for which  
23 Sotheby's never disclosed in any auction catalog or other writing  
24 to the Artist that the seller was a California resident or that the  
25 sale took place in California.

26 In defining the foregoing classes:

27 - "Artist" shall mean a person who created a work of Fine Art and who, at  
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1 the time of resale, was a citizen of the United States, or had resided in  
2 California for two or more years.

- 3 - "Estates" shall mean the heirs, legatees, and/or personal representatives of  
4 an Artist who died no more than twenty years prior to the filing of this  
5 action; and
- 6 - "Fine Art" shall mean an original painting, sculpture, or drawing, or an  
7 original work of art in glass, and shall exclude (a) the initial sale of such  
8 work where legal title is vested in the artist thereof; (b) the resale of such  
9 work for a gross sales price of (or consideration of other artworks, cash  
10 and/or property that amounts to) less than one thousand dollars (\$1,000);  
11 (c) the resale of such work for a gross sales price less than the purchase  
12 price paid by the seller; (d) the resale of such work by an art dealer within  
13 10 years of the initial sale of the work by the artist to an art dealer,  
14 provided all intervening resales were between art dealers; and (e) any work  
15 of stained glass artistry that has been permanently attached to real property  
16 and sold as part of the sale of said real property.

17 17. Excluded from the Class are Defendant, Defendant's officers, directors  
18 and employees, and the Court and its immediate family members.

19 18. Plaintiffs reserve the right to amend or otherwise alter the class  
20 definition presented to the Court at the appropriate time, or to propose sub-classes in  
21 response to facts learned through discovery or legal arguments advanced by  
22 Defendant or otherwise.

23 19. This action has been brought and may be properly maintained as a class  
24 action pursuant to the provisions of Federal Rule of Civil Procedure 23 and other  
25 applicable law.

26 20. Numerosity: The Class is so numerous that the individual joinder of all  
27 members thereof is impracticable under the circumstances of this case. While the  
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1 exact number of Class members is unknown at this time, Plaintiffs are informed and  
2 believe that the proposed Class consists of at least several hundred members.

3 21. Commonality: Common questions of law or fact are shared by Class  
4 members. This action is suitable for class treatment, because these common  
5 questions of fact and law predominate over any individual issues. Such common  
6 questions include, but are not limited to, the following:

- 7 (a) Whether Defendant violated the Act by failing to pay Royalties  
8 to Plaintiffs and Class members;
- 9 (b) Whether Plaintiffs and Class members are entitled to damages;
- 10 (c) Whether Plaintiffs and Class members are entitled to punitive  
11 damages due to Defendant's willful violations of the Act; and
- 12 (d) Whether Plaintiffs and Class members are entitled to injunctive  
13 relief to insure Defendant's compliance with the Act prospectively.

14 22. Typicality: Plaintiffs' claims are typical of the claims of absent Class  
15 members. Plaintiffs and the other Class members were subjected to the same kind  
16 of unlawful conduct (Defendant's failure to pay Royalties under the Act) and the  
17 claims of Plaintiffs and the other Class members are based on the same legal  
18 theories.

19 23. Adequacy: Plaintiffs are adequate representatives of the Class because  
20 their interests do not conflict with the interests of the other members of the Class  
21 that Plaintiffs seek to represent. Plaintiffs have retained counsel competent and  
22 experienced in complex class action litigation and Plaintiffs intend on prosecuting  
23 this action vigorously. The interests of Class members will be fairly and adequately  
24 protected by Plaintiffs and their counsel.

25 24. Ascertainable Class: The proposed Class is ascertainable in that the  
26 members can be identified and located using information contained in Defendant's  
27 records.

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1           38. Sotheby's misconduct, as alleged herein, gave it an unfair competitive  
2 advantage over those of its competitors who comply with the Act.

3           39. Unlawful: The unlawful acts and practices of Sotheby's alleged above  
4 constitute unlawful business acts and/or practices within the meaning of UCL.  
5 Sotheby's unlawful business acts and/or practices as alleged herein violated  
6 California Civil Code § 986.

7           40. Unfair: Sotheby's misconduct as alleged herein was unfair because it  
8 offends established public policy or is immoral, unethical, oppressive, unscrupulous  
9 or substantially injurious to consumers.

10           41. Sotheby's misconduct as alleged herein was unfair because (i) it caused  
11 Plaintiffs and class members substantial injury by, among other things, depriving  
12 them of Royalties to which they were lawfully entitled for works of Fine Art that  
13 they created, (ii) there were absolutely no countervailing benefits to Artists or to  
14 competition that could possibly outweigh this substantial injury, and (iii) this injury  
15 could not have been avoided or even discovered by the Artists, because it resulted  
16 from Sotheby's failure to comply with the Act by locating and paying to Artists the  
17 pay Royalties due to them, and Sotheby's concealment of the residences of the  
18 sellers or the locations of sales. Thus, Sotheby's acts and/or practices as alleged  
19 herein were unfair within the meaning of the UCL.

20           42. As a direct and proximate result of the aforementioned unlawful and  
21 unfair practices, Sotheby's has deprived Plaintiffs and class members of the  
22 Royalties to which they are entitled under California law.

23           43. As a direct and proximate result of the aforementioned unlawful and  
24 unfair practices, Sotheby's retained, and continues to hold, monies that rightfully  
25 belong to Plaintiffs and class members.

26           44. As a direct and proximate result of the aforementioned unlawful and  
27 unfair practices, Plaintiffs and class members suffered substantial monetary losses  
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1 and are entitled to restitution for the losses. Plaintiffs and class members are direct  
2 victims of Sotheby's unlawful conduct, and each has suffered injury in fact, and has  
3 lost money or property as a result of Sotheby's unfair competition.

4 45. The unlawful and unfair business practices of Sotheby's, as fully  
5 described herein, present a continuing threat to members of the public, as Sotheby's  
6 continues to fail to pay Royalties as required by the Act, as described herein.  
7 Plaintiffs and other members of the general public have no other remedy of law that  
8 will prevent Sotheby's misconduct as alleged herein from occurring and/or  
9 reoccurring in the future.

10 46. Plaintiffs and Class members are entitled to equitable relief, including  
11 restitution; restitutionary disgorgement of sums acquired by Sotheby's because of its  
12 unlawful and unfair acts and/or practices; attorney's fees and costs; declaratory  
13 relief; and a permanent injunction enjoining Sotheby's from engaging in the  
14 wrongful activity alleged herein.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray for judgment as follows:

- 17 1. For compensatory damages consisting of all royalties, together with  
18 interest, owed to the classes.
- 19 2. For disgorgement, restitution and/or rescission to return to the classes  
20 all royalties belonging to said classes.
- 21 3. For an award of punitive damages.
- 22 4. For costs of suit, including attorney's fees herein incurred.
- 23 5. For a permanent injunction enjoining the unlawful and unfair activity.

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6. For such other and further relief as the court may deem proper.

DATED: October 17, 2011

BROWNE GEORGE ROSS LLP  
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By   
Eric M. George

Attorneys for Plaintiffs  
Estate of Robert Graham; Chuck Close; Laddie  
John Dill and All Others Similarly Situated

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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury to the full extent permitted by law.

DATED: October 17, 2011

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