

No. 21-869

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**In the  
Supreme Court of the United States**

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THE ANDY WARHOL FOUNDATION  
FOR THE VISUAL ARTS, INC.,

*Petitioner,*

v.

LYNN GOLDSMITH AND LYNN GOLDSMITH, LTD.,

*Respondents.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SECOND CIRCUIT

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**JOINT APPENDIX – VOLUME I**

**(Pages 1 to 290)**

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PETITION FOR CERTIORARI FILED DECEMBER 9, 2021  
CERTIORARI GRANTED MARCH 28, 2022

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**RELEVANT DOCKET ENTRIES**

**U.S. Court of Appeals for the Second Circuit  
Case No. 19-2420**

<b>Date</b>	<b>#</b>	<b>Docket Text</b>
08/07/2019	1	NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellants Lynn Goldsmith and Lynn Goldsmith, Ltd., FILED. [2627074] [19-2420] [Entered: 08/08/2019 09:29 AM] * * *
08/07/2019	3	DISTRICT COURT JUDGMENT AND ORDER, dated 07/14/2019, RECEIVED.[2627090] [19-2420] [Entered: 08/08/2019 09:34 AM]
08/07/2019	4	ELECTRONIC INDEX, in lieu of record, FILED.[2627094] [19-2420] [Entered: 08/08/2019 09:35 AM] * * *
11/15/2019	49	JOINT APPENDIX, volume 3 of 10, (pp. 463-689), on behalf of Appellant Lynn Goldsmith and Lynn Goldsmith, Ltd., FILED. Service date 11/15/2019 by 3rd party, CM/ECF, email.[2707974] [19-2420] [Entered: 11/15/2019 09:19 PM]



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<b>Date</b>	<b>#</b>	<b>Docket Text</b>
11/15/2019	50	JOINT APPENDIX, volume 7 of 10, (pp. 1477-1757), on behalf of Appellant Lynn Goldsmith and Lynn Goldsmith, Ltd., FILED. Service date 11/15/2019 by 3rd party, CM/ECF, email.[2707975] [19-2420] [Entered: 11/15/2019 09:24 PM]
11/15/2019	51	JOINT APPENDIX, volume 10 of 10, (pp. 2245-2522), on behalf of Appellant Lynn Goldsmith and Lynn Goldsmith, Ltd., FILED. Service date 11/15/2019 by 3rd party, CM/ECF, email.[2707976] [19-2420] [Entered: 11/15/2019 09:29 PM]
11/15/2019	52	CERTIFICATE OF SERVICE, for Sealed Joint Appendix, on behalf of Appellant Lynn Goldsmith and Lynn Goldsmith, Ltd., FILED. Service date 11/15/2019 by 3rd party, email.[2707977] [19-2420] [Entered: 11/15/2019 09:38 PM]
11/18/2019	54	DEFECTIVE DOCUMENT, JOINT APPENDIX, [49], [50], [51], on behalf of Appellant Lynn Goldsmith and Lynn Goldsmith, Ltd., FILED.[2709232] [19-2420] [Entered: 11/18/2019 04:20 PM]

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<b>Date</b>	<b>#</b>	<b>Docket Text</b>
11/20/2019	55	SPECIAL APPENDIX, on behalf of Appellant Lynn Goldsmith and Lynn Goldsmith, Ltd., FILED. Service date 11/20/2019 by 3rd party, CM/ECF. [2711402] [19-2420] [Entered: 11/20/2019 03:08 PM]
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11/20/2019	60	SEALED BRIEF, on behalf of Appellant Lynn Goldsmith and Lynn Goldsmith, Ltd., FILED.

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11/20/2019	62	SEALED JOINT APPENDIX, volume 2 of 10, on behalf of Appellant Lynn Goldsmith and Lynn Goldsmith, Ltd., FILED. Service date 11/20/2019 by 3rd party.[2712153] [19-2420] [Entered: 11/21/2019 11:21 AM]
11/20/2019	63	SEALED JOINT APPENDIX, volume 4 of 10, on behalf of Appellant Lynn Goldsmith and Lynn Goldsmith, Ltd., FILED. Service date 11/20/2019 by 3rd party.[2712155] [19-2420] [Entered: 11/21/2019 11:21 AM]
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11/20/2019	68	SEALED JOINT APPENDIX, volume 5 of 10, on behalf of Appellant Lynn Goldsmith and Lynn Goldsmith, Ltd., FILED. Service date 11/20/2019 by 3rd party.[2712175] [19-2420] [Entered: 11/21/2019 11:28 AM]
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11/22/2019	79	AMICUS BRIEF, on behalf of, American Society of Media Photographers, Inc., National Press Photographers Association, Professional Photographers of America, Graphic Artists Guild, North American Nature Photography Association, FILED. Service date 11/22/2019 by CM/ECF.

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11/22/2019	87	AMICUS BRIEF, on behalf of Professor Terry S. Kogan, FILED. Service date 11/22/2019 by CM/ECF. [2713874] [19-2420] [Entered: 11/22/2019 02:10 PM] * * *
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11/22/2019	94	JOINT APPENDIX, volume 5 of 10, (pp. 938-1218), on behalf of Appellant Lynn Goldsmith and Lynn Goldsmith, Ltd., FILED. Service date 11/22/2019 by CM/ECF.[2714147] [19-2420] [Entered: 11/22/2019 04:03 PM]
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02/21/2020	140	BRIEF, on behalf of Appellee The Andy Warhol Foundation For The Visual Arts, Inc., FILED. Service date 02/21/2020 by CM/ECF. [2784486] [19-2420] [Entered: 02/21/2020 11:40 PM] * * *
02/28/2020	145	AMICUS BRIEF, on behalf of Law Professors, FILED. Service date 02/28/2020 by CM/ECF. [2789190] [19-2420] [Entered: 02/28/2020 03:11 AM] * * *
02/28/2020	152	AMICUS BRIEF, on behalf of Michelle Dizon and Viet Le, FILED. Service date 02/28/2020 by CM/ECF. [2790144] [19-2420] [Entered: 02/28/2020 04:44 PM]



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02/28/2020	154	AMICUS BRIEF, on behalf of Robert Rauschenberg Foundation, FILED. Service date 02/28/2020 by CM/ECF. [2790193] [19-2420] [Entered: 02/28/2020 05:10 PM]
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03/03/2020	161	AMICUS BRIEF, on behalf of Michelle Dizon and Viet Le, FILED. Service date 03/03/2020 by CM/ECF. [2791520] [19-2420] [Entered: 03/03/2020 10:29 AM]
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12/21/2020	201	FRAP 28(j) LETTER, dated 12/21/2020, on behalf of Appellant Lynn Goldsmith and Lynn Goldsmith, Ltd., RECEIVED. Service date 12/21/2020 by CM/ECF. [2997602] [19-2420] [Entered: 12/21/2020 11:25 AM]
12/22/2020	203	FRAP 28(j) LETTER, dated 12/22/2020, on behalf of Appellee The Andy Warhol Foundation For The Visual Arts, Inc., RECEIVED. Service date 12/22/2020 by CM/ECF. [2999046] [19-2420] [Entered: 12/22/2020 12:59 PM]
* * *		
03/26/2021	207	OPINION, reversing the grant of AWF's motion for summary judgment, vacating the judgment entered below dismissing Lynn Goldsmith and LGL's amended counterclaim, and remanding this case for further proceedings consistent with this opinion, by DJ, GEL, RJS, FILED.[3064191] [19-2420] [Entered: 03/26/2021 09:27 AM]
03/26/2021	208	OPINION, Concurring, by judge RJS, FILED.[3064200] [19-

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03/26/2021	209	OPINION, Concurring, by judge DJ, FILED.[3064204] [19-2420] [Entered: 03/26/2021 09:33 AM]
03/26/2021	211	CERTIFIED ORDER, dated 03/26/2021, to SDNY (NEW YORK CITY), ISSUED. [3064209] [19-2420] [Entered: 03/26/2021 09:37 AM]
03/26/2021	215	JUDGMENT, FILED.[3064470] [19-2420] [Entered: 03/26/2021 11:40 AM]
03/30/2021	217	ERRATA SHEET, for Opinion dated 03/26/2021, by GEL. FILED.[3066949] [19-2420] [Entered: 03/30/2021 03:52 PM]
		* * *
04/23/2021	237	PETITION FOR REHEARING/ REHEARING EN BANC, on behalf of Appellee The Andy Warhol Foundation For The Visual Arts, Inc., FILED. Service date 04/23/2021 by CM/ECF.[3084910] [19-2420] [Entered: 04/23/2021 11:58 AM]
04/29/2021	239	ORDER, dated 04/29/2021, within fourteen days of the date of this order, Defendants-Counter-Plaintiffs-Appellants Lynn Goldsmith and Lynn

Date	#	Docket Text
		Goldsmith, Ltd. shall file a response to The Foundation's petition, not to exceed 3,900 words in length, solely addressing the impact, if any, of Google LLC v. Oracle Am., Inc., 141 S. Ct. 1183 (2021), on the appropriate disposition of this appeal. The Foundation may file a reply to that response, limited to that same topic and not to exceed 2,000 words, no later than seven days after the response has been filed, by DJ, GEL, RJS, FILED.[3089938] [19-2420] [Entered: 04/29/2021 02:46 PM]
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04/30/2021	241	AMICUS BRIEF, on behalf of Amicus Curiae 60 Intellectual Property Law Professors, FILED. Service date 04/30/2021 by CM/ECF. [3090781] [19-2420]--[Edited 05/03/2021 by KYY] [Entered: 04/30/2021 02:34 PM]
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04/30/2021	245	AMICUS BRIEF, on behalf of Amicus Curiae The Robert Rauschenberg Foundation, Roy Lichtenstein Foundation, Whitney Museum of American

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		Art, Museum of Modern Art, and The Solomon R. Guggenheim Foundation, FILED. Service date 04/30/2021 by CM/ECF. [3091019] [19-2420]--[Edited 05/03/2021 by KYY] [Entered: 04/30/2021 04:51 PM] * * *
05/03/2021	256	LETTER, on behalf of Amicus Curiae Robert Rauschenberg Foundation, Roy Lichtenstein Foundation, Whitney Museum of American Art, The Museum of Modern Art and Solomon R. Guggenheim Foundation, in re: correction to Amicus Brief RECEIVED. Service date 05/03/2021 by CM/ECF. [3091946] [19-2420]--[Edited 05/03/2021 by KYY] [Entered: 05/03/2021 02:48 PM]
05/03/2021	257	CORRECTED BRIEF, on behalf of Amicus Curiae Robert Rauschenberg Foundation, Roy Lichtenstein Foundation, Solomon R. Guggenheim Foundation, The Museum of Modern Art and Whitney Museum of American Art, FILED. Service date 05/03/2021 by CM/ECF. [3091950] [19-

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05/03/2021	259	AMICUS BRIEF, on behalf of Amicus Curiae 60 Intellectual Property Law Professors, FILED. Service date 05/03/2021 by CM/ECF. [3091989] [19-2420]--[Edited 05/03/2021 by KYY] [Entered: 05/03/2021 03:12 PM]
05/03/2021	260	LETTER, on behalf of Amicus Curiae 60 Intellectual Property Law Professors, in re: correction to Amicus Brief RECEIVED. Service date 05/03/2021 by CM/ECF.[3092059] [19-2420]--[Edited 05/03/2021 by KYY] [Entered: 05/03/2021 03:47 PM]
		* * *
05/07/2021	271	MOTION ORDER, granting motions to file amicus curiae briefs in support of petition for rehearing [244], [250], [266], by RJS, FILED. [3096005][271] [19-2420] [Entered: 05/07/2021 01:16 PM]
05/07/2021	273	AMICUS BRIEF, on behalf of Amicus Curiae 60 Intellectual Property Law Professors, FILED. Service date 05/07/2021

Date	#	Docket Text
		by CM/ECF. [3096231] [19-2420]--[Edited 05/07/2021 by KYY] [Entered: 05/07/2021 03:30 PM]
05/07/2021	274	AMICUS BRIEF, on behalf of Amicus Curiae Amy Adler, FILED. Service date 05/07/2021 by CM/ECF. [3096241] [19-2420] [Entered: 05/07/2021 03:33 PM] * * *
05/13/2021	277	OPPOSITION TO PETITION FOR REHEARING/ REHEARING EN BANC, [237], on behalf of Appellant Lynn Goldsmith and Lynn Goldsmith, Ltd., FILED. Service date 05/13/2021 by CM/ECF. [3100549] [19-2420] [Entered: 05/13/2021 06:59 PM] * * *
05/20/2021	280	REPLY TO OPPOSITION [277], on behalf of Appellee The Andy Warhol Foundation For The Visual Arts, Inc., FILED. Service date 05/20/2021 by CM/ECF.[3105030][280] [19-2420] [Entered: 05/20/2021 06:26 PM]
08/24/2021	285	AMENDED OPINION, by DJ, GEL, RJS, FILED.[3161071]

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		[19-2420] [Entered: 08/24/2021 09:24 AM]
08/24/2021	286	OPINION, Concurring, by judge DJ, FILED.[3161072] [19-2420] [Entered: 08/24/2021 09:26 AM]
08/24/2021	288	ORDER, petition for rehearing granted, by DJ, GEL, RJS, FILED.[3161080] [19-2420] [Entered: 08/24/2021 09:33 AM]
08/24/2021	292	AMENDED JUDGMENT, FILED.[3161264] [19-2420] [Entered: 08/24/2021 11:56 AM]
08/24/2021	293	CERTIFIED ORDER, dated 08/24/2021, to SDNY (NEW YORK CITY), ISSUED. [3161271] [19-2420] [Entered: 08/24/2021 11:59 AM]
09/10/2021	294	ORDER, petition for rehearing/ rehearing en banc denied, FILED.[3171716] [19-2420] [Entered: 09/10/2021 01:34 PM]
		* * *
09/17/2021	297	JUDGMENT MANDATE, ISSUED.[3175841] [19-2420] [Entered: 09/17/2021 02:05 PM]
12/14/2021	298	U.S. SUPREME COURT NOTICE of writ of certiorari filing, dated 12/13/2021, U.S. Supreme Court docket # 21-869,



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Date	#	Docket Text
		RECEIVED.[3228241] [19-2420] [Entered: 12/14/2021 03:45 PM] * * *
03/28/2022	303	U.S. SUPREME COURT NOTICE, dated 03/28/2022, U.S. Supreme Court docket # 21-869, stating the petition for writ of certiorari is granted, RECEIVED.[3286395] [19-2420] [Entered: 03/28/2022 04:09 PM]

**RELEVANT DOCKET ENTRIES**

**U.S. District Court for the  
Southern District of New York  
Case No. 1:17-cv-02532-JGK**

<b>Date</b>	<b>#</b>	<b>Docket Text</b>
04/07/2017	1	FILING ERROR - DUPLICATE DOCKET ENTRY COMPLAINT against Lynn Goldsmith, Lynn Goldsmith, Ltd.. (Filing Fee \$ 400.00, Receipt Number 0208-13520493)Document filed by The Andy Warhol Foundation For The Visual Arts, Inc..(Nikas, Luke) Modified on 4/11/2017 (kl). (Entered: 04/07/2017)  * * *
04/07/2017	6	COMPLAINT against Lynn Goldsmith, Lynn Goldsmith, Ltd.. Document filed by The Andy Warhol Foundation For The Visual Arts, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Nikas, Luke) (Entered: 04/07/2017)  * * *
06/09/2017	18	ANSWER to 6 Complaint with JURY DEMAND., COUNTERCLAIM against The Andy Warhol Foundation For The Visual Arts, Inc.. Document filed

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Date	#	Docket Text
		by Lynn Goldsmith, Ltd., Lynn Goldsmith. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Werbin, Barry) (Entered: 06/09/2017)
06/30/2017	19	ANSWER to 18 Counterclaim. Document filed by The Andy Warhol Foundation For The Visual Arts, Inc..(Nikas, Luke) (Entered: 06/30/2017)
07/10/2017	20	AMENDED ANSWER to 18 Answer to Complaint, Counterclaim, 6 Complaint with JURY DEMAND., COUNTERCLAIM against The Andy Warhol Foundation For The Visual Arts, Inc.. Document filed by Lynn Goldsmith, Ltd., Lynn Goldsmith. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Werbin, Barry) (Entered: 07/10/2017)
		* * *
07/24/2017	22	ANSWER to 20 Counterclaim. Document filed by The Andy Warhol Foundation For The Visual Arts, Inc..(Nikas, Luke) (Entered: 07/24/2017)
		* * *
05/11/2018	31	MOTION to Preclude <i>the Expert Report of Dr. Thomas Crow</i> . Document filed by Lynn Goldsmith, Lynn Goldsmith,

Date	#	Docket Text
		Ltd..(Werbin, Barry) (Entered: 05/11/2018)
05/11/2018	32	DECLARATION of Barry Werbin in Support re: 31 MOTION to Preclude <i>the Expert Report of Dr. Thomas Crow.</i> Document filed by Lynn Goldsmith, Lynn Goldsmith, Ltd.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Werbin, Barry) (Entered: 05/11/2018)
05/11/2018	33	MEMORANDUM OF LAW in Support re: 31 MOTION to Preclude <i>the Expert Report of Dr. Thomas Crow.</i> . Document filed by Lynn Goldsmith, Lynn Goldsmith, Ltd.. (Werbin, Barry) (Entered: 05/11/2018)
05/23/2018	34	LETTER addressed to Judge John G. Koeltl from Luke Nikas dated May 23, 2018 re: Holding the Motion to Preclude Expert Report in Abeyance. Document filed by The Andy Warhol Foundation For The Visual Arts, Inc.. (Nikas, Luke) (Entered: 05/23/2018)
05/25/2018	35	MEMORANDUM OF LAW in Opposition re: 31 MOTION to Preclude <i>the Expert Report of Dr. Thomas Crow.</i> . Document filed by The Andy Warhol Foundation For

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Date	#	Docket Text
		The Visual Arts, Inc.. (Nikas, Luke) (Entered: 05/25/2018) * * *
06/01/2018	38	REPLY MEMORANDUM OF LAW in Support re: 31 MOTION to Preclude <i>the Expert Report of Dr. Thomas Crow</i> . . Document filed by Lynn Goldsmith, Lynn Goldsmith, Ltd.. (Werbin, Barry) (Entered: 06/01/2018) * * *
07/06/2018	41	LETTER MOTION for Conference addressed to Judge John G. Koeltl from Luke Nikas dated July 6, 2018. Document filed by The Andy Warhol Foundation For The Visual Arts, Inc..(Nikas, Luke) (Entered: 07/06/2018)
07/06/2018	42	LETTER MOTION for Leave to File motion for summary judgment addressed to Judge John G. Koeltl. Document filed by Lynn Goldsmith, Lynn Goldsmith, Ltd..(Werbin, Barry) (Entered: 07/06/2018) * * *
07/13/2018	44	ORDER: withdrawing without prejudice to renewal 31 Motion to Preclude; terminating 41 Letter Motion for Conference ; granting 42 Letter Motion for Leave to File

Date	#	Docket Text
		<p>Document. The defendants' motion to strike the expert report of Dr. Thomas Crow is withdrawn without prejudice to renewal. The Clerk of Court is directed to close the motion at Docket No. 31. The parties' cross-motions for summary judgment are due on September 28, 2018. Oppositions are due October 26, 2018. Replies are due November 16, 2018. For these motions only, the memoranda of law in support of and in opposition to the motions are limited to 10,000 words, and reply memoranda of law are limited to 2,800 words. The Clerk of Court is directed to close the motions at Docket Nos. 41 and 42. SO ORDERED. (Signed by Judge John G. Koeltl on 7/13/2018) (ama) (Entered: 07/13/2018)</p> <p>* * *</p>
07/30/2018	45	<p>TRANSCRIPT of Proceedings re: conference held on 7/13/2018 before Judge John G. Koeltl. Court Reporter/Transcriber: Raquel Robles, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that</p>

Date	#	Docket Text
		date it may be obtained through PACER. Redaction Request due 8/20/2018. Redacted Transcript Deadline set for 8/30/2018. Release of Transcript Restriction set for 10/29/2018.(McGuirk, Kelly) (Entered: 07/30/2018)
		* * *
10/12/2018	51	MOTION for Summary Judgment . Document filed by Lynn Goldsmith, Lynn Goldsmith, Ltd..(Werbin, Barry) (Entered: 10/12/2018)
10/12/2018	52	RULE 56.1 STATEMENT. Document filed by Lynn Goldsmith, Lynn Goldsmith, Ltd.. (Werbin, Barry) (Entered: 10/12/2018)
10/12/2018	53	MEMORANDUM OF LAW in Support re: 51 MOTION for Summary Judgment . . Document filed by Lynn Goldsmith, Lynn Goldsmith, Ltd.. (Werbin, Barry) (Entered: 10/12/2018)
10/12/2018	54	MOTION for Summary Judgment . Document filed by The Andy Warhol Foundation For The Visual Arts, Inc.. (Nikas, Luke) (Entered: 10/12/2018)
10/12/2018	55	MEMORANDUM OF LAW in Support re: 54 MOTION for

<b>Date</b>	<b>#</b>	<b>Docket Text</b>
		Summary Judgment . . Document filed by The Andy Warhol Foundation For The Visual Arts, Inc.. (Nikas, Luke) (Entered: 10/12/2018)
10/12/2018	56	RULE 56.1 STATEMENT. Document filed by The Andy Warhol Foundation For The Visual Arts, Inc.. (Nikas, Luke) (Entered: 10/13/2018)
10/12/2018	57	DECLARATION of Barry Werbin (Part 1 - Exhibits A -Z) in Support re: 51 MOTION for Summary Judgment.. Document filed by Lynn Goldsmith, Lynn Goldsmith, Ltd.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P, # 17 Exhibit Q, # 18 Exhibit R, # 19 Exhibit S, # 20 Exhibit T, # 21 Exhibit U, # 22 Exhibit V, # 23 Exhibit W, # 24 Exhibit X, # 25 Exhibit Y, # 26 Exhibit Z)(Werbin, Barry) (Entered: 10/13/2018)
10/13/2018	58	DECLARATION of Barry Werbin (Part 2 - Exhibits AA-ZZ) in



Date	#	Docket Text
		Support re: 51 MOTION for Summary Judgment .. Document filed by Lynn Goldsmith, Lynn Goldsmith, Ltd.. (Attachments: # 1 Exhibit AA, # 2 Exhibit BB, # 3 Exhibit CC, # 4 Exhibit DD, # 5 Exhibit EE, # 6 Exhibit FF, # 7 Exhibit GG, # 8 Exhibit HH, # 9 Exhibit II, # 10 Exhibit JJ, # 11 Exhibit KK, # 12 Exhibit LL, # 13 Exhibit MM, # 14 Exhibit NN, # 15 Exhibit OO, # 16 Exhibit PP, # 17 Exhibit QQ, # 18 Exhibit RR, # 19 Exhibit SS, # 20 Exhibit TT, # 21 Exhibit UU, # 22 Exhibit VV, # 23 Exhibit WW, # 24 Exhibit XX, # 25 Exhibit YY, # 26 Exhibit ZZ)(Werbin, Barry) (Entered: 10/13/2018)
10/13/2018	59	DECLARATION of Barry Werbin (Part 3 - Exhibits AAA-PPP) in Support re: 51 MOTION for Summary Judgment .. Document filed by Lynn Goldsmith, Lynn Goldsmith, Ltd.. (Attachments: # 1 Exhibit AAA, # 2 Exhibit BBB, # 3 Exhibit CCC, # 4 Exhibit DDD, # 5 Exhibit EEE, # 6 Exhibit FFF, # 7 Exhibit GGG, # 8 Exhibit HHH, # 9 Exhibit III, # 10 Exhibit JJJ, # 11 Exhibit KKK, # 12 Exhibit LLL, # 13 Exhibit MMM, # 14 Exhibit NNN, # 15 Exhibit OOO,

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Date	#	Docket Text
		# 16 Exhibit PPP)(Werbin, Barry) (Entered: 10/13/2018)
10/13/2018	60	DECLARATION of Luke Nikas in Support re: 54 MOTION for Summary Judgment .. Document filed by The Andy Warhol Foundation For The Visual Arts, Inc.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27 Exhibit 27, # 28 Exhibit 28, # 29 Exhibit 29, # 30 Exhibit 30, # 31 Exhibit 31, # 32 Exhibit 32, # 33 Exhibit 33, # 34 Exhibit 34, # 35 Exhibit 35, # 36 Exhibit 36, # 37 Exhibit 37, # 38 Exhibit 38, # 39 Exhibit 39, # 40 Exhibit 40, # 41 Exhibit 41, # 42 Exhibit 42, # 43 Exhibit 43, # 44 Exhibit 44, # 45 Exhibit 45, # 46 Exhibit 46, # 47 Exhibit 47, # 48 Exhibit 48, # 49 Exhibit 49, # 50 Exhibit 50, # 51 Exhibit 51, # 52 Exhibit 52, # 53

Date	#	Docket Text
		Exhibit 53, # 54 Exhibit 54, # 55
		Exhibit 55, # 56 Exhibit 56, # 57
		Exhibit 57, # 58 Exhibit 58, # 59
		Exhibit 59, # 60 Exhibit 60, # 61
		Exhibit 61, # 62 Exhibit 62, # 63
		Exhibit 63, # 64 Exhibit 64, # 65
		Exhibit 65, # 66 Exhibit 66, # 67
		Exhibit 67, # 68 Exhibit 68, # 69
		Exhibit 69, # 70 Exhibit 70, # 71
		Exhibit 71, # 72 Exhibit 72, # 73
		Exhibit 73, # 74 Exhibit 74, # 75
		Exhibit 75, # 76 Exhibit 76, # 77
		Exhibit 77, # 78 Exhibit 78, # 79
		Exhibit 79, # 80 Exhibit 80, # 81
		Exhibit 81, # 82 Exhibit 82, # 83
		Exhibit 83, # 84 Exhibit 84, # 85
		Exhibit 85, # 86 Exhibit 86, # 87
		Exhibit 87, # 88 Exhibit 88, # 89
		Exhibit 89, # 90 Exhibit 90, # 91
		Exhibit 91, # 92 Exhibit 92, # 93
		Exhibit 93, # 94 Exhibit 94, # 95
		Exhibit 95, # 96 Exhibit 96, # 97
		Exhibit 97, # 98 Exhibit 98, # 99
		Exhibit 99, # 100 Exhibit 100, # 101 Exhibit 101, # 102 Exhibit 102, # 103 Exhibit 103, # 104 Exhibit 104, # 105 Exhibit 105, # 106 Exhibit 106, # 107 Exhibit 107, # 108 Exhibit 108, # 109 Exhibit 109, # 110 Exhibit 110, # 111 Exhibit 111, # 112 Exhibit 112, # 113 Exhibit 113, # 114 Exhibit 114, # 115 Exhibit 115, # 116 Exhibit 116, # 117 Exhibit 117, # 118

Date	#	Docket Text
		Exhibit 118, # 119 Exhibit 119, # 120 Exhibit 120, # 121 Exhibit 121, # 122 Exhibit 122, # 123 Exhibit 123, # 124 Exhibit 124, # 125 Exhibit 125, # 126 Exhibit 126, # 127 Exhibit 127, # 128 Exhibit 128, # 129 Exhibit 129, # 130 Exhibit 130, # 131 Exhibit 131, # 132 Exhibit 132, # 133 Exhibit 133, # 134 Exhibit 134, # 135 Exhibit 135, # 136 Exhibit 136, # 137 Exhibit 137, # 138 Exhibit 138, # 139 Exhibit 139, # 140 Exhibit 140)(Nikas, Luke) (Entered: 10/13/2018)
		* * *
11/20/2018	65	MEMORANDUM OF LAW in Opposition re: 54 MOTION for Summary Judgment . . Document filed by Lynn Goldsmith, Lynn Goldsmith, Ltd.. (Werbin, Barry) (Entered: 11/20/2018)
11/20/2018	66	COUNTER STATEMENT TO 56 Rule 56.1 Statement. Document filed by Lynn Goldsmith, Lynn Goldsmith, Ltd.. (Werbin, Barry) (Entered: 11/20/2018)
11/20/2018	67	DECLARATION of Barry Werbin in Opposition re: 54 MOTION for Summary Judgment .. Document filed by Lynn Goldsmith, Lynn Goldsmith, Ltd.. (Attachments: # 1

Date	#	Docket Text
		Exhibit QQQ, # 2 Exhibit RRR, # 3 Exhibit SSS, # 4 Exhibit TTT, # 5 Exhibit UUU, # 6 Exhibit VVV, # 7 Exhibit WWW, # 8 Exhibit XXX)(Werbin, Barry) (Entered: 11/20/2018)
11/21/2018	68	MEMORANDUM OF LAW in Opposition re: 51 MOTION for Summary Judgment . . Document filed by The Andy Warhol Foundation For The Visual Arts, Inc.. (Nikas, Luke) (Entered: 11/20/2018)
11/21/2018	69	DECLARATION of Luke Nikas in Opposition re: 51 MOTION for Summary Judgment .. Document filed by The Andy Warhol Foundation For The Visual Arts, Inc.. (Attachments: # 1 Exhibit 141, # 2 Exhibit 142, # 3 Exhibit 143, # 4 Exhibit 144, # 5 Exhibit 145, # 6 Exhibit 146, # 7 Exhibit 147, # 8 Exhibit 148, # 9 Exhibit 149, # 10 Exhibit 150, # 11 Exhibit 151, # 12 Exhibit 152, # 13 Exhibit 153, # 14 Exhibit 154, # 15 Exhibit 155, # 16 Exhibit 156, # 17 Exhibit 157, # 18 Exhibit 158, # 19 Exhibit 159, # 20 Exhibit 160, # 21 Exhibit 161, # 22 Exhibit 162, # 23 Exhibit 163, # 24 Exhibit 164, # 25 Exhibit 165, # 26 Exhibit

Date	#	Docket Text
		166, # 27 Exhibit 167, # 28 Exhibit 168, # 29 Exhibit 169, # 30 Exhibit 170, # 31 Exhibit 171)(Nikas, Luke) (Entered: 11/21/2018)
11/21/2018	70	COUNTER STATEMENT TO 52 Rule 56.1 Statement. Document filed by The Andy Warhol Foundation For The Visual Arts, Inc.. (Nikas, Luke) (Entered: 11/21/2018) * * *
12/11/2018	72	REPLY MEMORANDUM OF LAW in Support re: 51 MOTION for Summary Judgment . /Reply Memorandum of Law of Defendants and Counterclaim Plaintiff Lynn Goldsmith and Lynn Goldsmith, Ltd. in Further Support of their Motion for Summary Judgment. Document filed by Lynn Goldsmith, Lynn Goldsmith, Ltd.. (Werbin, Barry) (Entered: 12/11/2018)
12/11/2018	73	DECLARATION of Barry Werbin, Esq. in Further Support of Goldsmith Parties' Cross-Motion for Summary Judgment, in Support re: 51 MOTION for Summary Judgment .. Document filed by Lynn Goldsmith, Lynn Goldsmith,

Date	#	Docket Text
		Ltd.. (Attachments: # 1 Exhibit J-2 transcript pages from the deposition of Lynn Goldsmith inadvertently omitted from Exhibit J to Declaration dated 10/12/18 (Docket No.57))(Werbin, Barry) (Entered: 12/11/2018)
12/11/2018	74	REPLY MEMORANDUM OF LAW in Support re: 54 MOTION for Summary Judgment . . Document filed by The Andy Warhol Foundation For The Visual Arts, Inc.. (Nikas, Luke) (Entered: 12/11/2018)
12/11/2018	75	RULE 56.1 STATEMENT. Document filed by The Andy Warhol Foundation For The Visual Arts, Inc.. (Nikas, Luke) (Entered: 12/11/2018)
12/11/2018	76	DECLARATION of Luke Nikas in Support re: 54 MOTION for Summary Judgment .. Document filed by The Andy Warhol Foundation For The Visual Arts, Inc.. (Attachments: # <u>1</u> Exhibit 172, # <u>2</u> Exhibit 173)(Nikas, Luke) (Entered: 12/11/2018)
		* * *
06/10/2019		Minute Entry for proceedings held before Judge John G.

Date	#	Docket Text
		Koeltl: Oral Argument held on 6/10/2019 re: 51 MOTION for Summary Judgment. Filed by Lynn Goldsmith, Ltd., Lynn Goldsmith. (Fletcher, Donnie) (Entered: 06/24/2019)
07/01/2019	84	<p>OPINION AND ORDER: The Court has considered all the arguments raised by the parties. To the extent not specifically addressed, the arguments are either moot or without merit. For the reasons explained above, AWF's motion for summary judgment is granted, and Goldsmith's motion for summary judgment is denied. Goldsmith's copyright infringement counterclaim is dismissed. AWF should submit a proposed judgment by July 8, 2019. Goldsmith may submit any objections or counter judgment by July 10, 2019. The Clerk is directed to close all pending motions. SO ORDERED. (Signed by Judge John G. Koeltl on 7/1/2019) (jca) Modified on 7/3/2019 (jca). (Entered: 07/01/2019)</p>
07/08/2019	85	<p>PROPOSED JUDGMENT. Document filed by The Andy Warhol Foundation For The</p>



Date	#	Docket Text
		Visual Arts, Inc.. (Nikas, Luke) (Entered: 07/08/2019)
07/10/2019	86	RESPONSE re: 85 Proposed Judgment . Document filed by Lynn Goldsmith, Lynn Goldsmith, Ltd.. (Attachments: # 1 Counter-Proposed Judgment)(Werbin, Barry) (Entered: 07/10/2019)
07/15/2019	87	JUDGMENT AND ORDER: It is hereby ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion & Order dated July 1, 2019 (Dkt. 84) ("Opinion"), Plaintiff-Counterclaim-Defendant The Andy Warhol Foundation for the Visual Arts, Inc.'s ("AWF") motion for summary judgment (Dkt. 54) is granted with respect to AWF's Prince Series works (as defined in the Opinion) insofar as such works are entitled to a fair use defense under 17 U.S.C. §107; Defendants-Counterclaim-Plaintiffs Lynn Goldsmith and Lynn Goldsmith Ltd.'s motion for summary judgment (Dkt. 51) is denied and Defendant-Counterclaim-Plaintiff Lynn Goldsmith's amended counterclaim (Dkt. 20) is

Date	#	Docket Text
		<p>dismissed with prejudice. Any application for costs and attorney's fees is stayed until fourteen days (14) after a mandate is issued on any appeal from this judgment or the time to appeal has expired, whichever date first occurs. (Signed by Judge John G. Koeltl on 7/14/2019) (ama) Modified on 7/15/2019 (ama). (Entered: 07/15/2019)</p> <p>* * *</p>
07/15/2019	88	<p>AO 121 FORM COPYRIGHT - CASE TERMINATED-SUBMITTED. In compliance with the provisions of 17 U.S.C. 508, the Register of Copyrights is hereby advised that a final decision was rendered on 7/15/2019 in a court action filed on the following copyright(s) in the U.S. District Court Southern District of New York. Form e-mailed to Register of Copyrights. (Attachments: # 1 Supplement Complaint) (ama) (Entered: 07/15/2019)</p>
07/31/2019	89	<p>TRANSCRIPT of Proceedings re: CONFERENCE held on 6/10/2019 before Judge John G. Koeltl. Court Reporter/Transcriber: Rose Prater,</p>

Date	#	Docket Text
		(212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/21/2019. Redacted Transcript Deadline set for 9/3/2019. Release of Transcript Restriction set for 10/29/2019.(McGuirk, Kelly) (Entered: 07/31/2019)
		* * *
08/07/2019	91	NOTICE OF APPEAL from 87 Judgment,,,,. Document filed by Lynn Goldsmith, Lynn Goldsmith, Ltd.. Filing fee \$ 505.00, receipt number ANYSDC-17386913. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Werbin, Barry) (Entered: 08/07/2019)
08/07/2019		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 91 Notice of Appeal,. (nd) (Entered: 08/07/2019)
08/07/2019		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal

Date	#	Docket Text
03/26/2021	92	<p>Electronic Files for 91 Notice of Appeal filed by Lynn Goldsmith, Ltd., Lynn Goldsmith were transmitted to the U.S. Court of Appeals. (nd) (Entered: 08/07/2019)</p> <p>USCA OPINION (Certified) as to 91 Notice of Appeal, filed by Lynn Goldsmith, Ltd., Lynn Goldsmith. USCA Case Number 19-2420. For the reasons stated in the opinion, we REVERSE the grant of AWF's motion for summary judgment, VACATE the judgment entered below dismissing Lynn Goldsmith and LGL's amended counterclaim, and REMAND this case for further proceedings consistent with this opinion. JUDGE SULLIVAN concurs in the Court's opinion, and files a concurring opinion in which JUDGE JACOBS joins. JUDGE JACOBS concurs in the Court's opinion, and files a concurring opinion. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 03/26/2021. (Attachments: # 1 Joined Concurring opinion, # 2 Concurring opinion by Judge Jacobs).(nd) (Entered: 03/26/2021)</p>

<b>Date</b>	<b>#</b>	<b>Docket Text</b>
03/26/2021		Transmission of USCA Opinion to the District Judge re: 92 USCA Opinion..(nd) (Entered: 03/26/2021)
08/24/2021	93	USCA OPINION (Certified) as to 91 Notice of Appeal, filed by Lynn Goldsmith, Ltd., Lynn Goldsmith. USCA Case Number 19-2420. Defendants-Appellants Lynn Goldsmith and Lynn Goldsmith, Ltd., appeal from a judgment of the United States District Court for Southern District of New York (Koeltl, J.) granting summary judgment to Plaintiff-Appellee The Andy Warhol Foundation for the Visual Arts, Inc. on its complaint for a declaratory judgment of fair use and dismissing Defendants-Appellants' counterclaim for copyright infringement. We conclude that the district court erred in its assessment and application of the fair-use factors and that the works in question do not qualify as fair use as a matter of law. We likewise conclude that the Prince Series works are substantially similar to the Goldsmith Photograph as a matter of law. We therefore REVERSE the judgment of the

Date	#	Docket Text
		district court and REMAND the case for further proceedings consistent with this opinion. JUDGE JACOBS concurs in the Court's opinion, and files a concurring opinion.. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Order: 08/24/2021..(nd) (Entered: 08/24/2021)
08/24/2021		Transmission of USCA Opinion to the District Judge re: 93 USCA Opinion..(nd) (Entered: 08/24/2021)
10/20/2021	95	ORDER: The Court will hold a conference on October 26, 2021 at 4 p.m. The parties may access the conference using the following dial-in: 888- 363-4749, with access code 8140049. So Ordered (Telephone Conference set for 10/26/2021 at 04:00 PM before Judge John G. Koeltl.) (Signed by Judge John G. Koeltl on 10/20/2021) (js) (Entered: 10/20/2021)
10/25/2021	96	PROPOSED STIPULATION AND ORDER. Document filed by The Andy Warhol Foundation For The Visual Arts, Inc...(Nikas, Luke) (Entered: 10/25/2021)

Date	#	Docket Text
10/25/2021	97	<p>JOINT STIPULATION AND ORDER STAYING THE ACTION: NOW, THEREFORE, IT IS HEREBY STIPULATED, by and between the undersigned counsel for the Parties, subject to the approval of the Court, as follows: 1. This action, including the October 26, 2021 status conference, shall be stayed pending the resolution of AWF's forthcoming petition for a writ of certiorari, and to the extent the Supreme Court grants AWF's petition, until the ultimate resolution of that appeal; 2. Nothing herein shall be construed as a waiver of any Party's rights, or as a waiver of any defenses that any Party would otherwise have, and the Parties reserve all such rights. SO STIPULATED AND AGREED by and between the parties this 25th day of October, 2021. SO ORDERED. (Signed by Judge John G. Koeltl on 10/25/2021) Case stayed. (ks) (Entered: 10/25/2021)</p>

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE ANDY WARHOL  
FOUNDATION FOR THE VISUAL  
ARTS, INC.,

Plaintiff,

-against-

LYNN GOLDSMITH AND LYNN  
GOLDSMITH, LTD.,

Defendants.

Civil Action:\_\_\_\_\_

**COMPLAINT**

Jury Trial  
Demanded

Plaintiff The Andy Warhol Foundation for the Visual Arts, Inc., by its attorneys Boies Schiller Flexner LLP, for its Complaint against Defendants Lynn Goldsmith and Lynn Goldsmith Ltd. (collectively, “Defendants”), alleges as follows:


**NATURE OF THE CASE**

1. This is a civil action to protect the works and legacy of Andy Warhol, one of the most celebrated American artists of the 20th Century.

2. Warhol was a leading figure in the Pop Art movement of the 1950s and 1960s. Like many Pop Artists, Warhol challenged the tradition of fine art by creating works about everyday items like Campbell’s soup cans, Brillo pads, and widely circulated images of celebrities. Although Warhol drew inspiration from these everyday items, his works are lauded for transforming and commenting upon them. Because of their transformative nature, Warhol’s works have been displayed in museums, discussed in universities



around the world, analyzed by numerous art critics and historians, and viewed by millions of people.

3. In 1984, Warhol used his signature style of celebrity portraiture to create a series of portraits of the musical artist Prince Rogers Nelson, commonly known as “Prince” and, to a lesser extent, as “,” “Camille, “the Artist Formerly Known As Prince,” and “the Artist.” Like Warhol’s other celebrity portraits, the *Prince* Series drew inspiration from and transformed a publicity photograph of Prince in circulation at the time

4. In 1984, one of Warhol’s *Prince* Portraits was published in *Vanity Fair*, a magazine widely circulated throughout the United States.

5. Now, more than thirty years after that magazine article was published, Defendants, a photographer named Lynn Goldsmith and her company, are complaining for the first time that Warhol’s *Prince* Series infringes upon Goldsmith’s copyright on a photograph of Prince that she took in 1981. Defendants claim that the *Prince* Series copies the photograph and contains derivative works, in violation of their copyright, and that the works are not transformative or otherwise protected fair use.

6. Defendants have threatened to file litigation if they are not paid a substantial sum of money by The Andy Warhol Foundation for the Visual Arts, Inc. (“The Foundation”), a charitable organization established pursuant to Warhol’s will after his untimely death.

7. To protect Warhol’s legacy and resolve Defendants’ baseless claims, the Foundation requests a declaratory judgment that (1) the portraits in Warhol’s *Prince* Series do not infringe upon Defendants’ copyright in the photograph, (2) the portraits are transformative

or are otherwise protected fair use, and (3) Defendants' claims are barred by the statute of limitations and the equitable doctrine of laches.

### **PARTIES**

8. The Foundation is a New York not-for-profit corporation that maintains its principal place of business at 65 Bleecker Street, New York, New York 10012.

9. Defendant Lynn Goldsmith, Ltd. is a New York corporation, which, upon information and belief, previously operated under the name Lynn Goldsmith, Inc. Records maintained by the New York Department of State indicate that Lynn Goldsmith, Ltd.'s principal place of business is 40 Sunset Drive, Suite 10A, Basalt, Colorado 81621-8362.

10. Defendant Lynn Goldsmith is a photographer and the Chief Executive Officer of Defendant Lynn Goldsmith, Ltd. Upon information and belief, Goldsmith resides in Colorado.

### **JURISDICTION AND VENUE**

11. Because this action arises under the copyright laws of the United States, 17 U.S.C. §§ 101 et seq., this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338, and the Declaratory Judgment Act, 28 U.S.C. § 2201.

12. The Court has personal jurisdiction over Defendant Lynn Goldsmith, Ltd. because it is a New York corporation.

13. The Court has personal jurisdiction over Lynn Goldsmith because she is the Chief Executive Officer of Lynn Goldsmith, Ltd., a New York corporation. Alternatively, the Court has personal jurisdiction over Lynn Goldsmith because, upon

information and belief, she regularly does or solicits business in New York.

14. Venue is proper in this District under 28 U.S.C. § 1391 and 28 U.S.C. § 1400 because a substantial part of the events giving rise to the claims occurred in this District and because, upon information and belief, Defendants may be found in this District and regularly do or solicit business in this District.

#### **FACTUAL BACKGROUND**

##### **I. WARHOL WAS ONE OF THE MOST IMPORTANT ARTISTS OF THE 20TH CENTURY AND A LEADING FIGURE OF THE POP ART MOVEMENT.**

15. Born in 1928 and deceased in 1987, Andy Warhol was one of the most influential and celebrated American artists of the 20th Century. After beginning his career in magazine illustration and advertising, Warhol rose to prominence in the fine arts as a leading figure of the Pop Art movement of the 1950s and 1960s. During his prolific career, he produced tens of thousands of works of art.

16. The Pop Art movement distinguished itself from prior artistic movements by drawing on imagery from contemporary popular culture and media. According to the Guggenheim Art Museum, “Pop art explored the image world of popular culture, from which its name derives. Basing their techniques, style, and imagery on certain aspects of reproduction, the media, and consumer society, these artists took inspiration from advertising, pulp magazines, billboards, movies, television, comic strips, and shop windows. These images, presented with (and sometimes transformed by) humor, wit, and irony,

can be seen as both a celebration and a critique of popular culture.”

## **II. THE ART WORLD HAS LONG CELEBRATED WARHOL’S SIGNATURE METHOD OF PORTRAITURE.**

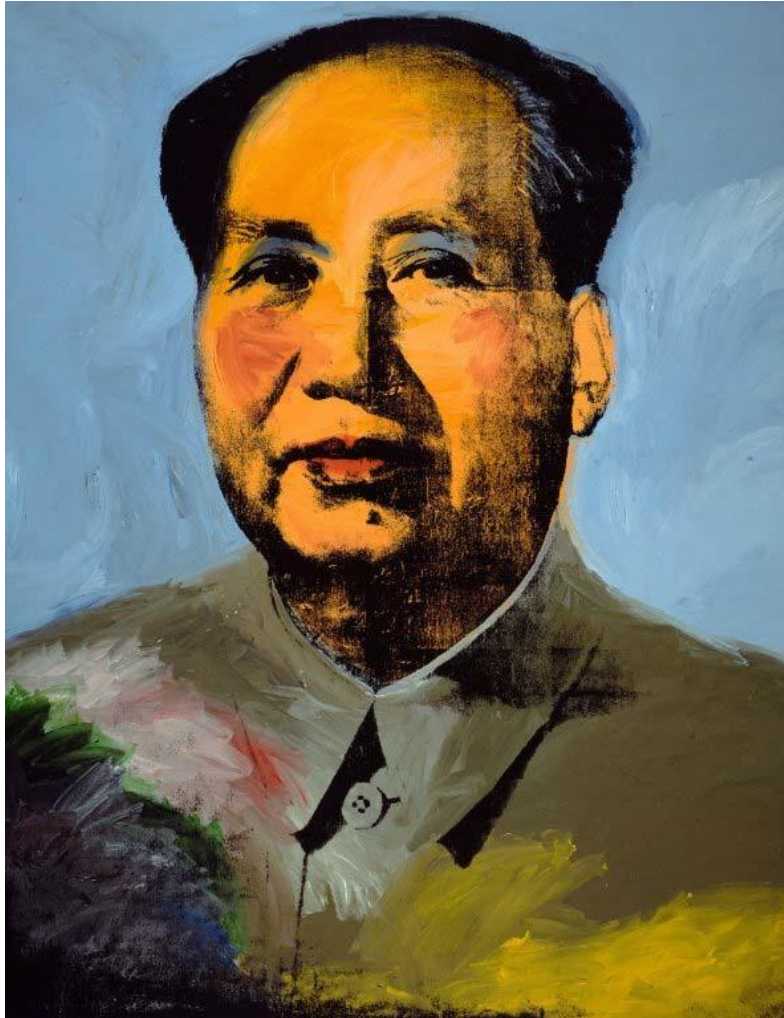
17. Among Warhol’s most important contributions to the Pop Art canon were his portraits of public figures such as Marilyn Monroe and Mao Zedong. These works, images of which are reproduced below, have been viewed by millions of people and exhibited in museums around the world.



**Andy Warhol, *Marilyn Diptych* (1962)**

Acrylic on canvas; 80 7/8 x 57"

JA-46



**Andy Warhol, Mao (1973)**

Synthetic polymer paint and silkscreen ink on  
canvas; 176 1/2 x 136 1/2"

18. Although these classic works by Warhol were inspired by photographic images of his subjects, his unique method of portraiture invariably altered the

visual aesthetic of the original photographic images, as well as the meaning conveyed to the viewer. For example, as curator and art historian Tina Rivers Ryan has observed regarding *Marilyn Diptych*, “At first glance, the work—which explicitly references a form of Christian painting (see below) in its title—invites us to worship the legendary icon, whose image Warhol plucked from popular culture and immortalized as art. But as in all of Warhol’s early paintings, this image is also a carefully crafted critique of both modern art and contemporary life. . . . Even if we don’t recognize the source (a publicity photo for Monroe’s 1953 film *Niagara*), we know the image is a photo.”




[Image from an essay by Tina Rivers Ryan]

19. Ryan continued to discuss Warhol’s transformation of the photograph, noting, “Warhol’s use of the silkscreen technique further ‘flattens’ the star’s face. By screening broad planes of unmodulated color, the artist removes the gradual shading that creates a sense of three-dimensional volume and suspends the actress in an abstract void. Through these choices, Warhol transforms the literal flatness of the paper-thin publicity photo into an

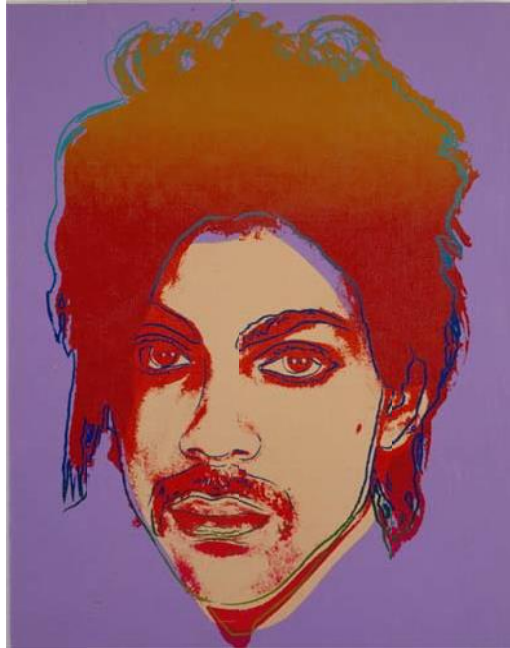
emotional ‘flatness,’ and the actress into a kind of automaton. In this way, the painting suggests that ‘Marilyn Monroe,’ a manufactured star with a made-up name, is merely a one-dimensional (sex) symbol—perhaps not the most appropriate object of our almost religious devotion.”

20. Although Warhol often used photographs taken by others as inspiration for his portraits, Warhol’s works were entirely new creations. Unlike the photographs he used as inspiration, “[m]uch of Andy Warhol’s work, including work incorporating appropriated images of Campbell’s soup cans or of Marilyn Monroe, comments on consumer culture and explores the relationship between celebrity culture and advertising.” *Cariou v. Prince*, 714 F.3d 694, 706 (2d Cir. 2013). In part for this reason, Warhol’s portraits have been analyzed by a significant number of academics and art critics.

### **III. IN 1984, WARHOL CREATED THE *PRINCE* SERIES USING HIS SIGNATURE METHOD OF PORTRAITURE.**

21. In 1984, Warhol applied his signature method of portraiture to create a series of 16 portraits of the popular musician Prince Rogers Nelson, commonly known as “Prince” and, at times, “,” “Camille,” “The Artist Formerly Known As Prince,” and “The Artist.” These works were later sold or donated by the Foundation. For the purposes of this Complaint, this series of portraits will be referred to as the “*Prince* Series.” Images of each portrait contained in the *Prince* Series are displayed below.

JA-49

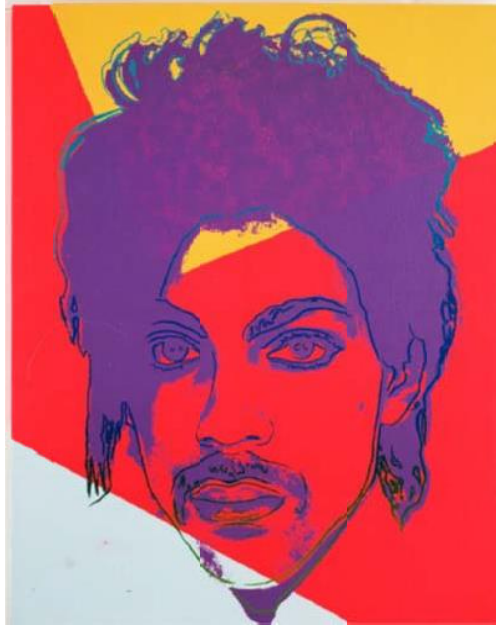


**Andy Warhol, PO 50.537,  
*Prince* (1984)**

Synthetic polymer paint and silkscreen ink on  
canvas; 20 x 16"



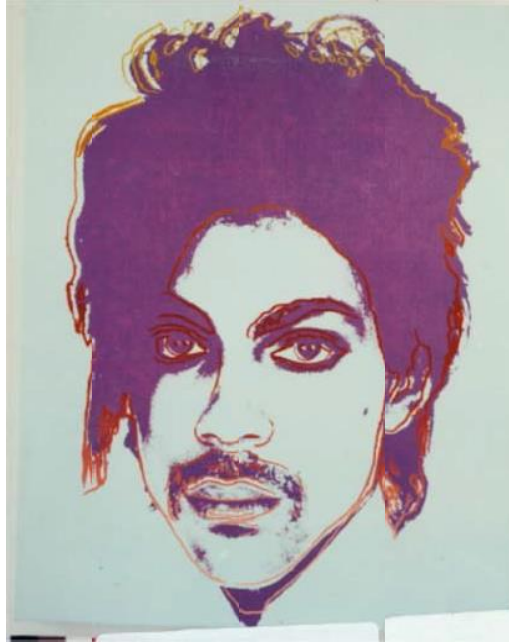
JA-50



**Andy Warhol, PO 50.539,  
*Prince* (1984)**

Synthetic polymer paint and silkscreen ink on  
canvas; 20 x 16"

JA-51



**Andy Warhol, PO 50.538,  
*Prince* (1984)**

Synthetic polymer paint and silkscreen ink on  
canvas; 20 x 16"

JA-52



**Andy Warhol, PO 50.541,  
*Prince* (1984)**

Synthetic polymer paint and silkscreen ink on  
canvas; 20 x 16"

JA-53



**Andy Warhol, PO 50.540,  
*Prince* (1984)**

Synthetic polymer paint and silkscreen ink on  
canvas; 20 x 16"

JA-54



**Andy Warhol, PO 50.543,  
*Prince* (1984)**

Synthetic polymer paint and silkscreen ink on  
canvas; 20 x 16"

JA-55



**Andy Warhol, PO 50.542,  
*Prince* (1984)**

Synthetic polymer paint and silkscreen ink on  
canvas; 20 x 16"

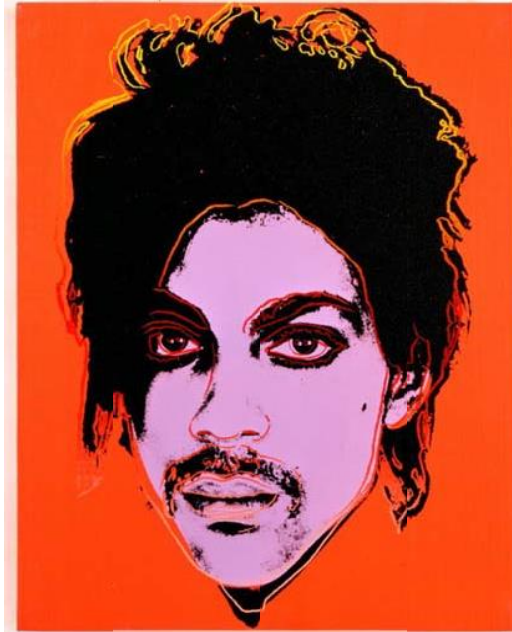
JA-56



**Andy Warhol, PO 50.545,  
*Prince* (1984)**

Synthetic polymer paint and silkscreen ink on  
canvas; 20 x 16"

JA-57



**Andy Warhol, PO 50.544,  
*Prince* (1984)**

Synthetic polymer paint and silkscreen ink on  
canvas; 20 x 16"



JA-58



**Andy Warhol, PO 50.547,  
*Prince* (1984)**

Synthetic polymer paint and silkscreen ink on  
canvas; 20 x 16"

JA-59



**Andy Warhol, PO 50.546,  
*Prince* (1984)**

Synthetic polymer paint and silkscreen ink on  
canvas; 20 x 16"

JA-60



**Andy Warhol, TOP115.260,  
*Prince* (1984)**

Graphite on HMP paper; 31 3/4 x 23 3/4"

JA-61



**Andy Warhol, TOP115.259,  
*Prince* (1984)**  
Graphite on HMP paper; 31 3/4 x 23 3/4"

JA-62



**Andy Warhol, PO 50.458**

***Prince* (1984)**

Synthetic polymer paint and silkscreen ink on  
canvas; 20 x 16"

JA-63



**Andy Warhol, UP 42.72,  
*Prince* (1984)**

Screenprint on Moulin du Verger paper;  
29 3/4 x 21 3/4"

JA-64



**Andy Warhol, UP 42.73,  
*Prince* (1984)**

Screenprint on Moulin du Verger paper; 30 x 21 3/4"

22. Like many of Warhol's classic Pop Art portraits, these portraits of Prince were inspired by a publicity photograph (hereafter "the *Prince* Publicity Photograph"), which is reproduced below.

JA-65





23. Goldsmith claims she took this photograph in 1981 and that she or Lynn Goldsmith, Ltd. holds the copyright to it.

**IV. THE *PRINCE* SERIES TRANSFORMS THE AESTHETIC AND MEANING OF THE *PRINCE* PUBLICITY PHOTOGRAPH.**

24. As would be plain to any reasonable observer, each portrait in Warhol's *Prince* Series fundamentally transformed the visual aesthetic and meaning of the *Prince* Publicity Photograph.

25. The portraits in Warhol's *Prince* Series differ visually from the *Prince* Publicity Photograph in the following ways, at a minimum:

a. As is the case with many of his portraits, Warhol's signature use of the silkscreen printing technique in the *Prince* Series flattens the appearance of the subject's face by removing the gradual shading in the *Prince* Publicity Photograph, which creates a sense of three-dimensional volume, and replaces it with the use of unmodulated color.

b. Each of the portraits in the *Prince* Series focuses on the subject's face, whereas the *Prince* Publicity Photograph is centered at the body of the subject and extends to below the waist.

c. Each of the portraits in the *Prince* Series portrays the subject with something other than his natural skin color, sometimes with unnatural neon colors, whereas the *Prince* Publicity Photograph does little or nothing to alter the subject's natural skin color.

d. Each of the portraits in the *Prince* Series, except for UP 42.72, uses the one color (usually black) to depict the subject's hair, lips, and facial features, whereas the *Prince* Publicity Photograph uses

natural colors (e.g., dark brown for the subject's hair and red for the subject's lips).

e. Each of the portraits in the *Prince* Series portrays the subject's hair as a solid block of color, whereas the subject's strands of hair are plainly visible in the *Prince* Publicity Photograph.

f. The makeup around the subject's eyes in Warhol's *Prince* Series is substantially heavier than the makeup around the subject's eyes in the *Prince* Publicity Photograph.



g. The angle of the subject's face in the *Prince* Series differs from the angle of the subject's face in the *Prince* Publicity Photograph, as demonstrated by a comparison of lines connecting the subject's tear ducts and lines across the subject's chin in the different works.

JA-68



h. Many lines that appear on the subject's face in the *Prince* Publicity Photograph, including the lines underneath the subject's eyes, the lines in the subject's eyes, the lines in the subject's forehead, and the line on the right side of the subject's nose, are omitted from each of the *Prince* Series.



i. The light reflected on the subject's face in the *Prince* Publicity Photograph does not appear in any of the portraits in the *Prince* Series.



j. Many of the portraits in the *Prince* Series have a colored screen of the subject's head that is set off next to another outline of the subject's head. For example, Andy Warhol, UP 42.73, depicts the subject's head in black and white and an offset outline of the head in a different color. Warhol himself drew this distinct form by hand and then screened his drawing as part of the works in the *Prince* series.

26. These are just some of the many readily observable differences between the *Prince* series and the *Prince* Publicity Photograph, the cumulative effect of which is to give the *Prince* series an entirely different visual aesthetic from the *Prince* Publicity Photograph.

27. The different visual aesthetic of the *Prince* Series also may reasonably be perceived to convey a different meaning than the *Prince* Publicity Photograph. Whereas the *Prince* Publicity Photograph is a straightforward picture of the subject with makeup and lighting, the *Prince* Series, like many of Warhol's signature portraits, may reasonably be perceived as simultaneously honoring the celebrity of Prince while also conveying that Prince (like Marilyn Monroe and many other subjects of Warhol's works) is a manufactured star with a stage name, whom society has reduced to a commodity.

**V. THE *PRINCE* SERIES DID NOT USURP THE MARKET OF THE *PRINCE* PUBLICITY PHOTOGRAPH.**

28. Goldsmith is a photographer.

29. Upon information and belief, as of the date of this Complaint, Defendants' business does not involve developing, or licensing others to develop for them, works resembling the *Prince* Series, except for Defendants' assertion that the *Prince* Publicity Photograph resembles the *Prince* Series.

30. Upon information and belief, as of the date of this Complaint, Defendants have not painted, screen printed, or drawn works of art that resemble the *Prince* Series and that Defendants made available for sale or public exhibition.

31. Upon information and belief, as of the date of this Complaint, Defendants have not licensed others to paint, screen print, or draw works of art for them that resemble the *Prince* Series and that Defendants made available for sale or public exhibition, except for Defendants' assertion that the *Prince* Publicity Photograph resembles the *Prince* Series.

32. Upon information and belief, Warhol's *Prince* Series and Defendants' *Prince* Publicity Photograph do not target the same audiences.

33. Upon information and belief, Warhol's *Prince* Series and Defendants' *Prince* Publicity Photograph do not target the same art collectors.

34. Upon information and belief, Warhol's *Prince* Series and Defendants' *Prince* Publicity Photograph do not target the same commercial markets.

35. Upon information and belief, Warhol's *Prince* Series contains works of fine art that are primarily sold to collectors of high-end Pop Art.

36. Upon information and belief, the *Prince* Publicity Photograph is not primarily sold to collectors of high-end Pop Art.

37. Upon information and belief, Warhol's *Prince* Series has not decreased demand among art collectors or the commercial art market for Defendants' *Prince* Publicity Photograph.

**VI. GOLDSMITH HAS KNOWN OR SHOULD HAVE KNOWN ABOUT WARHOL'S *PRINCE* SERIES FOR AT LEAST THREE DECADES.**

38. In 1984, Goldsmith and Lynn Goldsmith Inc. (the apparent corporate predecessor to Defendant Lynn Goldsmith Ltd.) issued a written license to *Vanity Fair* magazine for using the *Prince* Publicity Photograph in exchange for a fee. The license stated as follows:

**FEE FOR THE USE OF ONE PHOTOGRAPH OF PRINCE, COPYRIGHT 1981 LYNN GOLDSMITH FOR USE AS ARTIST REFERENCE FOR AN ILLUSTRATION TO BE PUBLISHED IN VANITY FAIR NOVEMBER 1984 ISSUE. IT CAN APPEAR**

ONE TIME FULL PAGE AND ONE TIME UNDER  
ONE QUARTER PAGE.

NO OTHER USAGE RIGHT GRANTED.

A true and correct copy of this license is attached  
hereto as Exhibit A.

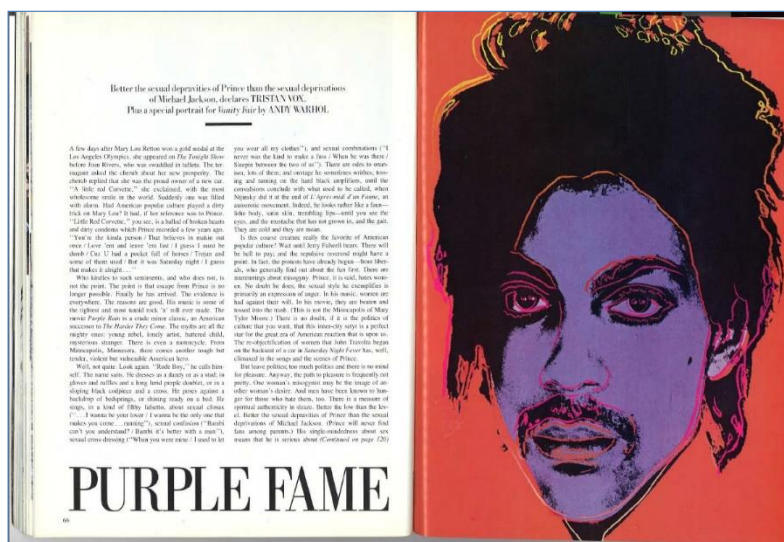
39. Upon information and belief, Warhol did not enter into any agreements with *Vanity Fair* concerning the *Prince* Publicity Photograph or the *Prince* Series that limited his use of the *Prince* Publicity Photograph or impacted his rights in the *Prince* Series.

40. Warhol did not enter into any agreements with Defendants concerning the *Prince* Publicity Photograph or the *Prince* Series that limited his use of the *Prince* Publicity Photograph or impacted his rights in the *Prince* Series.

41. In or around November 1984, *Vanity Fair* magazine published an article by Tristan Vox titled "Purple Fame: An Appreciation of Prince at the Height of His Powers." The Article was printed on page 66 of the November 1984 issue of *Vanity Fair*. One of Warhol's *Prince* portraits was displayed on Page 67 of the same issue.

42. Copies of the November 1984 *Vanity Fair* were circulated throughout the nation and widely available for purchase by anyone.

43. A true and correct copy of pages 66 and 67 of the November 1984 issue of *Vanity Fair* Article is reproduced below.



44. Upon the publication of the November 1984 issue of *Vanity Fair*, Defendants knew or should have known about Warhol's *Prince* Series. Any reasonable person in Defendants' position would have reviewed the November 1984 issue of *Vanity Fair*, if only to confirm that *Vanity Fair* had complied with the license terms described above.

45. Since the publication of the November 1984 *Vanity Fair* article, portraits in the *Prince* Series have been displayed in museums, books, and exhibits around the world. For example:

a. In 1993, PO 50.458 and PO 50.539 were part of the exhibition *Andy Warhol: Portraits of the Seventies and Eighties* at the Museum of Contemporary Art in Sydney, Australia and in the Anthony d'Offay Gallery in London, England.

b. PO 50.458 and PO 50.539 appeared in *Andy Warhol Portraits* by Henry Geldzahler and Robert



Rosenblum, which was published in 1993 by Thames and Hudson Ltd.

c. PO 50.547 appeared in *Andy Warhol Portraits* by Tony Shafrazi, which was published by Phaidon in 2007.

d. UP 42.72 and UP 42.73 appeared in *Andy Warhol Prints: A Catalogue Raisonne 1962 – 1987* by Frayda Feldman and Jörg Schellmann, the fourth edition of which was published in 2003 by D.A.P.

e. In 2005, PO 50.547 was exhibited at Tony Shafrazi Gallery in NYC.

f. PO 50.544 and PO 50.547 appeared in *Warhol Live* by Stephane Aquin, which was published in 2008 by Prestel Publishing.

g. PO 50.547 appeared in *Andy Warhol Treasures* by Matt Wrbcian and Geralyn Huxley, which was published in 2009 by Carlton Books.

h. As part of the touring *Warhol Live* exhibition in 2009 through 2011, PO 50.544 and PO 50.547 were exhibited at The Montreal Museum of Fine Arts in Montreal, Canada; Andy Warhol Museum in Pittsburgh, PA; The Frist Center for the Visual Arts in Nashville, Tennessee; and the de Young Museum in San Francisco, CA.

i. PO 50.544 appeared in *Andy Warhol: The Complete Commissioned Magazine Work* by Paul Marechal, which was published in 2014 by Prestel Verlag.

46. Since the publication of the November 1984 *Vanity Fair* article, portraits in the *Prince* Series have been sold at public auctions. For example, upon information and belief, works from the *Prince* series were offered for sale and, in all but two instances, sold

at the following public auction houses on the following dates:

- a. Christie's New York on November 10, 1999;
  - b. Cornette de Saint-Cyr on December 11, 1999;
  - c. Sotheby's London on March 30, 2000;
  - d. Tajan on August 2, 2000;
  - e. De Vuyst on October 7, 2000;
  - f. Cornette de Saint-Cyr on December 9, 2000;
  - g. Cornette de Saint-Cyr on January 29, 2001;
  - h. Christie's London on June 28, 2002;
  - i. Christie's London on February 10, 2005;
  - j. Sotheby's London on October 25, 2005;
  - k. Phillips de Pury & Company on May 12, 2006;
- and
- l. Sotheby's London on October 16, 2015.

**VII. THE FOUNDATION OWNS WARHOL'S COPYRIGHT INTEREST IN THE *PRINCE* SERIES.**

47. When Warhol died unexpectedly on February 22, 1987, he left an inventory of works of art and personal possessions. His will dictated that his entire estate, with the exception of certain legacies to family members, should be used to create a foundation dedicated to the "advancement of the visual arts."

48. To carry out Warhol's wishes, the Foundation was created and has worked to advance the visual arts from 1987 to the present.

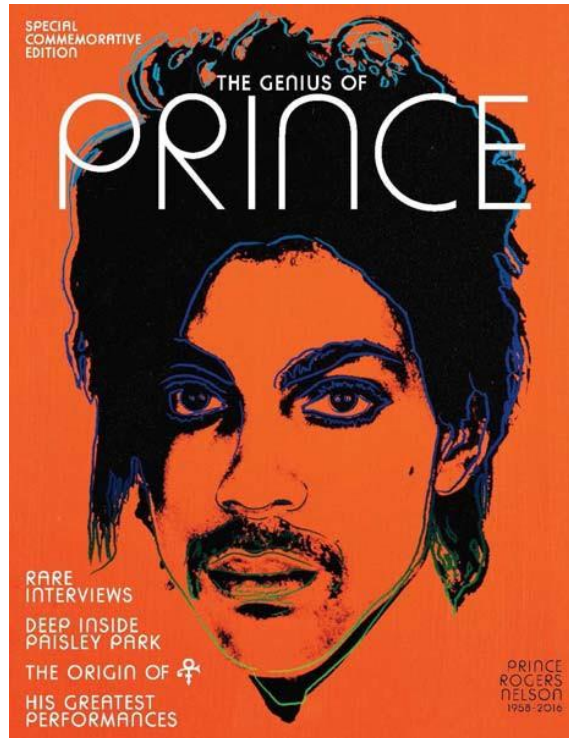
49. Around 1994, the Foundation took ownership of the copyrights and trademarks that were in Warhol's possession at the time of his death, including ownership of the *Prince* Series.

**VIII. MORE THAN 30 YEARS AFTER ONE OF WARHOL'S *PRINCE* PORTRAITS APPEARED IN *VANITY FAIR*, GOLDSMITH CLAIMED THAT SHE FIRST LEARNED ABOUT THE *PRINCE* SERIES IN 2016 AND ATTEMPTED TO SHAKE DOWN THE FOUNDATION.**

50. On April 21, 2016, Prince Rogers Nelson died.

51. The media conglomerate Condé Nast published a special magazine called *The Genius of Prince* on or around May 18, 2016. This magazine was created by the editors of *Vanity Fair*, *The New Yorker*, *WIRED*, and *Pitchfork*.

52. One of Warhol's *Prince* Portraits was used for the cover of *The Genius of Prince*. A true and correct copy of the cover is reproduced below.



53. In early 2016, the Foundation, through the Artist Rights Society, granted a license to Condé Nast to publish this work from the *Prince* Series in the magazine. The publisher paid a fee for the license.

54. In July 2016—over thirty years after the *Prince* Series was created and widely published throughout the United States—Defendants contacted the Foundation and began complaining for the first time that the *Prince* Series infringed upon the copyright associated with the 1981 *Prince* Publicity Photograph. Defendants demanded that the Foundation pay a substantial sum of money and threatened to sue if the Foundation refused.

55. Incredibly, Defendants claim that they were unaware of the *Prince* Series even though they granted a license to *Vanity Fair* in 1984 and one of Warhol's *Prince* Portraits was published in the November 1984 issue of *Vanity Fair*.

56. Defendants' effort to shake down the Foundation with its time-barred and meritless infringement claim is apparently part of their campaign to profit from Prince Rogers Nelson's tragic death. Upon information and belief, around the same time, Defendants made demands from the Smithsonian Institution for its display of a photograph of Prince taken by Goldsmith

**IX. WHEN GOLDSMITH TRIED TO SHAKE DOWN THE FOUNDATION, SHE KNEW THAT WARHOL'S SIGNATURE STYLE OF PORTRAITURE WAS A PROTECTED FAIR USE.**

57. In 2016 and 2017, Goldsmith was well aware that Warhol's signature style of portraiture was a protected fair use.

58. For example, on January 6, 2015, she wrote a public Facebook post stating, "I'm pretty knowledgeable about copyright laws and they are changing as Francoise Kirkland pointed out due to the latest ruling in the RIchard [sic] Prince case...they are not changing in our favor." A true and correct copy of this Facebook post is attached hereto as Exhibit B.

59. When Goldsmith wrote the Facebook post attached hereto as Exhibit B, she was aware of the Second Circuit's landmark decision in *Cariou v. Prince*, 714 F. 3d 694 (2d Cir. 2013).

60. At this time, Goldsmith was also aware that Warhol's signature style of portraiture is a protected

fair use. *Cariou v. Prince* made this clear, stating, “Certainly, many types of fair use, such as satire and parody, invariably comment on an original work and/or on popular culture. For example, the rap group 2 Live Crew’s parody of Roy Orbison’s ‘Oh, Pretty Woman’ ‘was clearly intended to ridicule the whitebread original.’ *Campbell [v. Acuff-Rose Music, Inc.]*, 510 U.S. [569,] 582 [1994] (quotation marks omitted). Much of Andy Warhol’s work, including work incorporating appropriated images of Campbell’s soup cans or of Marilyn Monroe, comments on consumer culture and explores the relationship between celebrity culture and advertising.” 714 F.3d 694, 706 (2d Cir. 2013).

61. Despite knowing that Warhol’s portraits are a protected fair use, Defendants have attempted to extort a settlement from the Foundation. Goldsmith herself made this clear when she wrote in another public Facebook post dated January 5, 2015, “It is a crime that so many ‘artists’ can get away with taking photographers images and painting on them or doing whatever to them without asking permission of the ‘artist’ who created the image in the first place.” Goldsmith also complained about Peter Max, another leading figure in the Pop Art movement whom she has unsuccessfully sued.

62. In that Facebook post, Goldsmith further revealed her understanding about the limits of her copyright interest—which also undermines her case here—when she wrote, “why doesn’t the copyright law protect photographers as artists?” A true and correct copy of this Facebook post is attached hereto as Exhibit C.

63. Goldsmith’s threatened litigation against the Foundation is frivolous. The Foundation is entitled to

a declaration that Warhol's *Prince* Series does not infringe Goldsmith's copyright in the *Prince* Publicity Photograph, that the portraits are transformative or otherwise a protected fair use, and that Defendants' claims are barred by the statute of limitations and the equitable doctrine of laches

**FIRST CAUSE OF ACTION**

**Declaratory Judgment of Non-Infringement  
Under 28 U.S.C. § 2201, *et seq.* (Declaratory  
Judgment Act) and  
17 U.S.C. § 101, *et seq.* (the Copyright Act)  
(Against Defendants)**

64. The Foundation incorporates all of the above allegations as if they were fully stated here.

65. There is a real and actual controversy between the Foundation and Defendants as to whether Warhol's *Prince* Series infringes Defendants' 1981 copyright.

66. The Foundation is entitled to a judgment declaring that the *Prince* Series does not infringe Defendants' 1981 copyright because none of the portraits in the *Prince* Series is a copy of, a phonorecord of, derivative work based on, a performance of, a display of, or a transmission of the *Prince* Publicity Photograph.

**SECOND CAUSE OF ACTION**

**Declaratory Judgment of Fair Use  
Under 28 U.S.C. § 2201, *et seq.* (Declaratory  
Judgment Act) and  
17 U.S.C. § 101, *et seq.* (the Copyright Act)  
(Against Defendants)**

67. The Foundation incorporates all of the above allegations as if they were fully stated here.

68. There is a real and actual controversy between the Foundation and Defendants as to whether Warhol's *Prince* Series is a fair use of the *Prince* Publicity Photograph.

69. The Foundation is entitled to a judgment declaring that the *Prince* Series is a fair use of the *Prince* Publicity Photograph because, among other facts alleged above and incorporated here, each portrait in the *Prince* Series is transformative.

**THIRD CAUSE OF ACTION**

**Declaratory Judgment that Defendants'  
Threatened Claims are Time Barred  
Under 28 U.S.C. § 2201, *et seq.* (Declaratory  
Judgment Act) and  
17 U.S.C. § 507 (the Copyright Act)  
(Against Defendants)**

70. The Foundation incorporates all of the above allegations as if they were fully stated here.

71. There is a real and actual controversy between the Foundation and Defendants as to whether Defendants' meritless copyright claims against the Foundation based on the *Prince* Series are barred by the Copyright Act's three-year statute of limitations.

72. Because Defendants knew or with reasonable diligence should have known of the *Prince* Series as early as November 1984, since one of Warhol's *Prince* Portraits was published in *Vanity Fair* in November 1984, the statute of limitations governing Defendants' claims lapsed in November 1987.



73. Because works from the *Prince* Series were exhibited in museums, published in books, and sold in public auctions as early as the 1990s through 2014, the three-year statute of limitations governing Defendants' claims has expired.

**FOURTH CAUSE OF ACTION**

**Declaratory Judgment of Laches**

**Under 28 U.S.C. § 2201, *et seq.* (Declaratory  
Judgment Act)**

**(Against Defendants)**

74. The Foundation incorporates all of the above allegations as if they were fully stated here.

75. There is a real and actual controversy between the Foundation and Defendants as to whether Defendants' meritless copyright claims against the Foundation are barred by the equitable doctrine of laches.

76. Defendants knew or with reasonable diligence should have known of the *Prince* Series as early as November 1984, because one of Warhol's *Prince* Portraits was published in *Vanity Fair* in November 1984.

77. Defendants knew or with reasonable diligence should have known of the *Prince* Series as early as the 1990s, because Warhol's *Prince* Portraits have been widely exhibited in museums, published in books, and sold in public auctions as early as the 1980s.

78. Defendants' failure to timely raise their purported infringement concerns with Warhol and the Foundation has prejudiced the Foundation's ability to defend itself. Since the publication of one of Warhol's *Prince* Portraits in 1984, Warhol—one of the

key witnesses with personal knowledge relevant to this dispute—has died.

79. Moreover, upon information and belief, documents that might have related to Warhol's creation of the *Prince* Series and to the *Prince* Publicity Photograph have been lost or destroyed for reasons outside the Foundation's control.

80. Due to Defendants' inexcusable delay of multiple decades, the evidentiary record in this case has become prejudicially stale.

81. The public interest would not be served by permitting Defendants to harass the Foundation with its meritless and time-barred claims. The Foundation is a not-for-profit corporation that seeks to promote the visual arts, and Warhol is considered by many to be one of the greatest American artists of the last century. Defendants attempt to shake down the Foundation and tarnish Warhol's legacy is squarely contrary to the public interest.

82. For these and other reasons, Defendants' potential copyright claims against the Foundation are barred by the equitable doctrine of laches.

#### **DEMAND FOR RELIEF**

WHEREFORE, the Foundation demands judgment as follows:

- Declaring that the *Prince* Series does not infringe upon Defendants' alleged copyright;
- Declaring that works in the *Prince* Series are transformative works protected by fair use;
- Declaring that Defendants' potential copyright claims based on the *Prince* Series are barred by the statute of limitations;

- Declaring that Defendants' potential copyright claims based on the *Prince* Series are barred by the equitable doctrine of laches;
- Awarding the Foundation the cost of suit as incurred in this action and attorneys' fees under 17 U.S.C. § 505; and
- Awarding the Foundation all other relief as may be appropriate.

Dated: April 7, 2017  
New York, New York

**BOIES SCHILLER FLEXNER LLP**

By: /s/ Luke Nikas

Luke Nikas  
575 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-2300  
Facsimile: (212) 446-2350  
Email: lnikas@bsfllp.com

*Attorneys for Plaintiff The  
Andy Warhol Foundation  
for the Visual Arts, Inc.*

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**EXHIBIT A**

**LYNN GOLDSMITH INC.**

241 West 36th Street, Loft 7  
New York, New York 10018  
(212) 736-4602, Telex 971782

5579

WR

<b>RENTED TO</b>	<b>VANITY FAIR</b>	<b>DATE</b>
	350 MADISON AVENUE	OCTOBER 29, 1984
	NYC, NY 10017	<b>YOUR P. O. NO.</b> <b>ORDERED BY</b> ESIN GOKNAR

**TERMS: NET 30 DAYS ATTENTION:**

<b>QUANTITY</b>	<b>DESCRIPTION</b>	<b>PRICE</b>
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FEE FOR THE USE OF ONE PHOTOGRAPH OF PRINCE, COPYRIGHT 1981 LYNN GOLDSMITH FOR USE AS ARTIST REFERENCE FOR AN ILLUSTRATION TO BE PUBLISHED IN VANITY FAIR NOVEMBER 1984 ISSUE. IT CAN APPEAR ONE TIME FULL PAGE AND ONE TIME UNDER ONE QUARTER PAGE. NO OTHER USAGE RIGHT GRANTED

ONE TIME USE ENGLISH LANGUAGE ONLY  
NORTH AMERICAN DISTRIBUTION ONLY

JA-86

PAID  
DATE DEPOSITED  
CHECK NO.  
2/8/85

TOTAL: \$400

License is granted to use ~~or reproduce~~ above-described photograph(s) on condition that total amount shown hereon is paid.

This credit line – LYNN GOLDSMITH – must not be omitted, abbreviated or altered under penalty of double charge.

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IN VANITY FAIR NOVEMBER 1984 ISSUE

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## EXHIBIT B


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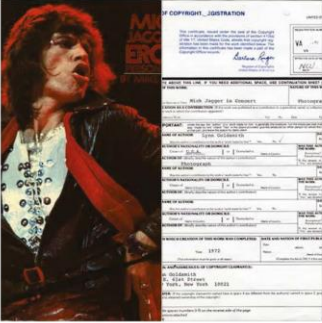
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**Lynn Goldsmith Photography** added 2 new photos.  
January 6, 2015 ·

I want to thank everyone for their comments - I'm pretty knowledgeable about copyright laws and they are changing as Francoise Kirkland pointed out due to the latest ruling in the Richard Prince case - they are not changing in our favor. I sued Peter Max on his first usage and the trial was about a week long. He lied on the stand about getting rights from the Rollingstones as well as the poster company. I got someone who works for The Stones to come in and testify that they never gave Peter Max any permission and I also flew in owner of the poster company who did a poster of it and who Max claimed had given him permission - who testified he had never spoken to or ever seen Peter Max before. Now here is the really interesting part, because when the image was sent in for copyright a 1/8" had been cut off the bottom so that it would fit in the envelope - the court ruled that the Peter Max image was not the same as my image which I had a registered copyright for. I could have appealed but that would have cost me another \$50,000 at least and lots more time. So even though it had been published in a magazine and that should have covered my ownership of the image, or that I actually sent it in to DC for copyright, or that Peter Max was caught lying under oath, I did not win. So, don't think anything is fair - just do the best you can to protect yourself.



64 Likes · 14 Comments · 4 Shares

To see more from Lynn Goldsmith Photography on Facebook, log in or create an account.

Sign Up

Log In

JA-89

## EXHIBIT C


Sign Up

Email or Phone

Password

Log In


Forgot account?





**Lynn Goldsmith Photography** added 5 new photos.

January 9, 2015

It is a crime that so many "artists" can get away with taking photographers images and painting on them or doing whatever to them without asking permission of the "artist" who created the image in the first place - and then they sell that work for lots of money claiming it is their original - Peter Max is one of the ones who do it and still try to act like they are Buddists living on a planet where money means nothing to them - it's such a load of crap - CBS News did piece on Peter Max this weekend - he showed one of his "originals" -- really ! ??? the first is my shot from 1972 Madison Sq Garden - look at how many versions he has made over the years!!!! why doesn't the copyright law protect photographers as artists?





+2

188 Likes

62 Comments

23 Shares

To see more from Lynn Goldsmith Photography on Facebook, log in or create an account.

Sign Up

Log In



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE ANDY WARHOL  
FOUNDATION FOR THE  
VISUAL ARTS, INC.,

Plaintiff,

vs.

LYNN GOLDSMITH AND  
LYNN GOLDSMITH, LTD.,

Defendants.

LYNN GOLDSMITH,

Counterclaim  
Plaintiff,

vs.

THE ANDY WARHOL  
FOUNDATION FOR THE  
VISUAL ARTS, INC.,

Counterclaim  
Defendant.

Case No. 17-cv-  
02532-JGK

**AMENDED  
ANSWER OF  
DEFENDANTS,  
AMENDED  
COUNTERCLAIM  
OF LYNN  
GOLDSMITH  
FOR  
COPYRIGHT  
INFRINGEMENT  
AND JURY  
DEMAND**

Defendants Lynn Goldsmith (“Goldsmith”) and Lynn Goldsmith, Ltd. (“LGLtd”), for their Answer to the Complaint of plaintiff The Andy Warhol Foundation For The Visual Arts, Inc. (the “Foundation”), and Counterclaim Plaintiff Goldsmith, for her counterclaim against the Foundation for copyright infringement, allege as follows:

**ANSWER TO COMPLAINT**

1. With respect to the allegations set forth in paragraph 1 of the Complaint, Defendants admit this is a civil action but otherwise deny knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations alleged therein.

2. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 2 of the Complaint, except admit that Andy Warhol (“Warhol”) was a leading figure in the Pop Art movement of the 1950s and 1960s, and expressly deny that the Warhol work that is the subject of this action is of a “transformative nature” under Section 107 of the 1976 Copyright Act.

3. Deny the allegations set forth in paragraph 3 of the Complaint that “the *Prince* Series drew inspiration from and transformed a publicity photograph of Prince in circulation at the time” and otherwise deny knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in paragraph 3 of the Complaint

4. Admit the allegation set forth in paragraph 4 of the Complaint, but aver that the image appearing in Vanity Fair was an illustration by Warhol (the “Infringing Image”), which was created under license granted to Vanity Fair by Goldsmith and was derivative of Goldsmith’s iconic photographic portrait of Prince (the “Goldsmith Photo”), as further pleaded in the within Counterclaim.

5. Deny the allegations set forth in paragraph 5 of the Complaint, except admit that Goldsmith is alleging in the within Counterclaim that the Foundation has infringed her copyright in the Goldsmith Photo and that the Infringing Image is not

transformative and is not entitled to a fair use defense.

6. Deny the allegations set forth in paragraph 6 of the Complaint.

7. State that the allegations set forth in paragraph 7 of the Complaint are conclusions of law as to which no responsive pleading is necessary, but to the extent any response is required, deny the allegations therein.

8. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 8 of the Complaint.

9. Admit the allegations set forth in paragraph 9 of the Complaint.

10. Admit the allegations set forth in paragraph 10 of the Complaint.

11. State that the allegations set forth in paragraph 11 of the Complaint are conclusions of law as to which no responsive pleading is necessary, but to the extent any response is required, admit that this Court has subject matter jurisdiction over this action.

12. State that the allegations set forth in paragraph 12 of the Complaint are conclusions of law as to which no responsive pleading is necessary, but to the extent any response is required, admit that this Court has personal jurisdiction over LGLtd.

13. State that the allegations set forth in paragraph 13 of the Complaint are conclusions of law as to which no responsive pleading is necessary, but to the extent any response is required, admit that this Court has personal jurisdiction over Goldsmith in her capacity as an officer of LGLtd.

14. State that the allegations set forth in paragraph 14 of the Complaint are conclusions of law as to which no responsive pleading is necessary, but

to the extent any response is required, admit that venue is proper in this District.

15. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 15 of the Complaint.

16. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 16 of the Complaint.

17. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 17 of the Complaint, and aver that the referenced third party comments are irrelevant to the issues and claims in this case.

18. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 18 of the Complaint, and aver that the referenced third party comments are irrelevant to the issues and claims in this case.

19. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 19 of the Complaint, and aver that the referenced third party comments are irrelevant to the issues and claims in this case.

20. Deny the general allegation that “Warhol’s works were entirely new creations,” deny knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in paragraph 20 of the Complaint and respectfully refer the Court to the complete decision in *Cariou v.*

*Prince*, 714 F.3d 694 (2d Cir. 2013), and aver that the subject Infringing Image does not “comment[] on consumer culture and explore[] the relationship between celebrity culture and advertising.”

21. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 21 of the Complaint, and aver that the subject Infringing Image was derived from the Goldsmith Photo that was licensed by Lynn Goldsmith Inc. (“LGI”; later renamed Lynn Goldsmith, Ltd.) to Vanity Fair in 1984 for one time use as the basis for an illustration, with required attribution credit to Goldsmith, as further alleged in the Counterclaim herein, and that each of the images portrayed in paragraph 21 were derived from the same Goldsmith Photo.

22. Deny the allegations set forth in paragraph 22 of the Complaint and aver that the image depicted therein is not the Goldsmith Photo, which was used to create the Infringing Image under license from LGI to Vanity Fair, as further set forth in the Counterclaim herein.

23. Admit the allegations set forth in paragraph 23 of the Complaint, except aver that Goldsmith individually owns the copyright in the image depicted in paragraph 23, which did not form the basis for the Infringing Image.

24. Deny the allegations set forth in paragraph 24 of the Complaint.

25. Deny the allegations set forth in paragraph 25 of the Complaint and respectfully refer the Court to the Infringing Image in issue, the images in paragraph 25 of the Complaint and the Goldsmith Photo from which they were all derived for a

comparison and “how the work in question appears to the reasonable observer,” *Cariou v. Prince*, 714 F. 3d 694, 707 (2d Cir. 2013), and further aver that none of the modifications made by Warhol to the Goldsmith Photograph altered the fundamental characteristics and essence of the Goldsmith Photo.

26. Deny the allegations set forth in paragraph 26 of the Complaint.

27. Deny the allegations set forth in paragraph 27 of the Complaint.

28. Admit the allegation set forth in paragraph 28 of the Complaint.

29. Deny the allegations set forth in paragraph 29 of the Complaint, except admit the allegation that the referenced “Prince Series” resembles the Goldsmith Photo because they are derivative works thereof.

30. Admit the allegation set forth in paragraph 30 of the Complaint and aver that as Goldsmith is a photographer, not a painter, the relevant market is for photography reproduction and usage rights, and fine art photography print sales.

31. Deny the allegations set forth in paragraph 31 of the Complaint insofar as they imply that defendants never licensed others to paint, screen print, or draw works of art based on the Goldsmith Photo.

32. Deny the allegations set forth in paragraph 32 of the Complaint and aver that the Infringing Image was licensed to Condé Nast by Defendant Foundation in 2016, through the Foundation’s agent, Artist Right Society, for the identical purpose for which the Goldsmith Photo was originally licensed to Vanity Fair in 1984, and may have been licensed by

the Foundation to other third parties at different times within the three year period preceding the filing of this action.

33. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 33 of the Complaint.

34. Deny the allegations set forth in paragraph 34 of the Complaint.

35. Deny the allegations set forth in paragraph 35 of the Complaint, and aver that the Infringing Image has been commercially licensed and remains available for commercial license to publishers and other third parties.

36. Deny the allegations set forth in paragraph 36 of the Complaint, and aver that the “Prince Publicity Photograph” as defined in the Complaint is not the Goldsmith Photo in issue and that collectors of pop art have also acquired Goldsmith’s limited edition fine art prints.

37. Deny the allegation set forth in paragraph 37 of the Complaint with respect to the Goldsmith Photo.

38. Admit the allegation set forth in paragraph 38 of the Complaint that in 1984 LGLtd, which was formerly known as Lynn Goldsmith Inc., issued a written one-time illustration usage license (the “License”) to Vanity Fair for the Goldsmith Photo, but deny that the license was for the referenced “Prince Publicity Photograph” (as defined in the Complaint), and respectfully refer the Court to that License for a complete statement of its terms and conditions.

39. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 39 of the

Complaint, but aver that Vanity Fair did not have any right or license from Goldsmith or LGLtd (known in 1984 as Lynn Goldsmith Inc.) to use the Goldsmith Photo beyond the limited purpose set forth in paragraph 38 of this Answer and as further set forth in the License and the Counterclaim herein.

40. Admit so much of the allegation set forth in paragraph 40 of the Complaint that Warhol never entered into any agreement with Defendants, but deny the implicit allegation therein that Warhol had the unfettered right to reproduce and commercially market derivative works from the Goldsmith Photo without Goldsmith's permission and license.

41. Admit the allegations set forth in paragraph 41 of the Complaint.

42. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 42 of the Complaint.

43. Admit the allegations set forth in paragraph 43 of the Complaint, except aver that on page 121 of the same 1984 issue, Vanity Fair printed an attribution credit for Goldsmith as the owner of the copyright for the source image, as further set forth in the Counterclaim.

44. Deny the allegation set forth in paragraph 44 of the Complaint.

45. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 45 of the Complaint.

46. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the



allegations set forth in paragraph 46 of the Complaint.

47. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 47 of the Complaint.

48. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 48 of the Complaint.

49. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 49 of the Complaint.

50. Admit the allegation set forth in paragraph 50 of the Complaint.

51. Admit the allegation set forth in paragraph 51 of the Complaint that Condé Nast published a special magazine called *The Genius of Prince* on or around May 18, 2016, but deny knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth therein.

52. Admit the allegation set forth in paragraph 52 of the Complaint, and aver that such license fee was \$10,000 and that such publication infringed Goldsmith's copyright in the Goldsmith Photo, as further pleaded in the within Counterclaim.

53. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 53 of the Complaint.

54. Admit that after Condé Nast's publication of the special magazine called *The Genius of Prince*,

Goldsmith asserted in or about July 2016 that the use of the Infringing Image on the cover of said publication infringed her copyright in the Goldsmith Photo, and otherwise deny the allegations set forth in paragraph 54 of the Complaint, which further incorrectly characterize and disclose confidential settlement communications.

55. Admit that Goldsmith was unaware of the referenced *Prince Series*, deny the remaining allegations set forth in paragraph 55 of the Complaint, and aver that Goldsmith was never informed by Vanity Fair, Warhol, or the Foundation, or otherwise made aware of the identity of the artist for the 1984 Vanity Fair article until after Prince died in 2016.

56. Deny the allegations set forth in the first sentence of paragraph 56 of the Complaint. With respect to the allegation set forth in the second sentence of paragraph 56 of the Complaint, admit that the Smithsonian Institution infringed Goldsmith's copyright in a different photograph Goldsmith created of Prince in 1993, and that the matter was resolved by the Smithsonian Institution ceasing such infringing conduct and settling on terms favorable to Goldsmith.

57. Deny the allegations set forth in paragraph 57 of the Complaint.

58. Admit the allegation set forth in paragraph 58 of the Complaint, except deny that the allegation quotes the complete Facebook posting, further deny any implication that said posting somehow constitutes an acknowledgment that anything Warhol created was protected by copyright fair use, and aver that the posting concluded with this shout-out to

other photographers: “So, don't think anything is fair - just do the best you can to protect yourself.”

59. Admit the allegation set forth in paragraph 59 of the Complaint that Goldsmith was aware that the *Cariou v. Prince* judicial decision had issued, but deny that Goldsmith, as a lay person, understood the actual or potential legal impact of such decision, and aver that said decision remains controversial for experienced copyright attorneys and scholars.

60. State that the allegations set forth in paragraph 60 of the Complaint are conclusions of law as to which no responsive pleading is necessary, but to the extent any response is required, deny the allegations therein and specifically deny the allegation set forth in the first sentence therein.

61. Deny the allegations set forth in paragraph 61 of the Complaint, respectfully refer the Court to the referenced Facebook post for its complete content and context, and aver that the allegation of “extortion” is impertinent under Rule 12(f) of the Federal Rules of Civil Procedure and should be stricken, and further aver that the cited Facebook post pre-dated publication of the 2016 Condé Nast’s special magazine called *The Genius of Prince* and has no relationship to that act of infringement by the Foundation.

62. Deny the allegations set forth in paragraph 62 of the Complaint, and respectfully refer the Court to the referenced Facebook post for its complete content and context

63. Deny the allegations set forth in paragraph 63 of the Complaint.

**FIRST CAUSE OF ACTION**

64. Repeat and reallege each and every response to paragraphs 1 through 63 of the Complaint as if fully set forth herein.

65. State that the allegations contained in paragraph 65 of the Complaint are conclusions of law as to which no responsive pleading is necessary, but that to the extent any response is required, admit that there is a dispute between the parties as to whether the unauthorized Infringing Image, which continues to be commercially licensed and exploited by the Foundation, infringes Goldsmith's copyright in her Goldsmith Photo and is not entitled to a fair use defense.

66. Deny the allegations set forth in paragraph 66 of the Complaint.

**SECOND CAUSE OF ACTION**

67. Repeat and reallege each and every response to paragraphs 1 through 66 of the Complaint as if fully set forth herein.

68. State that the allegations contained in paragraph 68 of the Complaint are conclusions of law as to which no responsive pleading is necessary, but that to the extent any response is required, admit that there is a dispute between the parties as to whether the unauthorized Infringing Image, which continues to be commercially licensed and exploited by the Foundation, infringes Goldsmith's copyright in her Goldsmith Photo and is not entitled to a fair use defense.

69. Deny the allegations set forth in paragraph 69 of the Complaint.

**THIRD CAUSE OF ACTION**

70. Repeat and reallege each and every response to paragraphs 1 through 69 of the Complaint as if fully set forth herein.

71. State that the allegations contained in paragraph 71 of the Complaint are conclusions of law as to which no responsive pleading is necessary, but that to the extent any response is required, admit that there is a dispute between the parties as to whether the unauthorized Infringing Image, which was commercially licensed by the Foundation to Condé Nast for the 2016 Publication, infringed the copyright in the Goldsmith Photo within the Copyright Act's three-year statute of limitations and the Foundation's frivolous claim to the contrary.

72. Deny the allegations set forth in paragraph 72 of the Complaint.

73. Deny the allegations set forth in paragraph 73 of the Complaint.

**FOURTH CAUSE OF ACTION**

74. Repeat and reallege each and every response to paragraphs 1 through 73 of the Complaint as if fully set forth herein.

75. State that the allegations contained in paragraph 75 of the Complaint are conclusions of law as to which no responsive pleading is necessary, but that to the extent any response is required, admit that there is a dispute between the parties as to whether the unauthorized Infringing Image, which was commercially licensed by the Foundation to Condé Nast for the 2016 Publication, infringed the copyright in the Goldsmith Photo within the Copyright Act's three-year statute of limitations and the Foundation's frivolous laches claim to the contrary, especially in

light of the Supreme Court's decision in *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1962, 188 L. Ed. 2d 979, 572 US \_\_\_\_ (2014) .

76. Deny the allegations set forth in paragraph 76 of the Complaint.

77. Deny the allegations set forth in paragraph 77 of the Complaint.

78. Deny the allegations set forth in paragraph 78 of the Complaint, except admit that Warhol died.

79. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 79 of the Complaint.

80. Deny the allegations set forth in paragraph 80 of the Complaint.

81. Deny the allegations set forth in paragraph 81 of the Complaint, and aver that the Foundation is a hugely successful commercial enterprise, despite its not-for-profit veneer, which earns millions of dollars annually in commercial licensing revenues and royalties.

82. Deny the allegations set forth in paragraph 82 of the Complaint.

## **DEFENDANTS' AFFIRMATIVE DEFENSES**

### **FIRST DEFENSE**

1. The Complaint fails to state a claim upon which relief may be granted.

### **SECOND DEFENSE**

2. Plaintiff's claims are barred in whole or in part by the doctrines of estoppel and unclean hands.

THIRD DEFENSE

3. Plaintiff's infringing use of the Goldsmith Photo is not entitled to a fair use defense under 17 U.S.C. § 107.

FOURTH DEFENSE

4. Defendant Goldsmith's infringement claim is not barred by the statute of limitations under 17 U.S.C. § 507 because the Foundation's infringing act occurred in 2016, well within the statutory three-year limitations period.

FIFTH DEFENSE

5. Defendant Goldsmith's infringement claim is not barred by laches because the claim is brought within the statutory three-year limitations period under 17 U.S.C. § 507 and the Supreme Court held in *Petrella* that laches is not a defense to a claim for copyright infringement brought within that limitations period.

**DEFENDANT'S LYNN GOLDSMITH'S  
COUNTERCLAIM FOR COPYRIGHT  
INFRINGEMENT AGAINST THE  
ANDY WARHOL FOUNDATION  
FOR THE VISUAL ARTS, INC.**

**NATURE OF THE COUNTERCLAIM**

1. This is a civil action seeking damages, profits and injunctive relief for copyright infringement under the United States Copyright Act of 1976 (17 U.S.C. § 101 et seq.), based on the Defendant Foundation's willful and unauthorized use, reproduction, publication, distribution and commercial licensing of a derivative version of Plaintiff Lynn Goldsmith's 1981 black and white photographic portrait (the

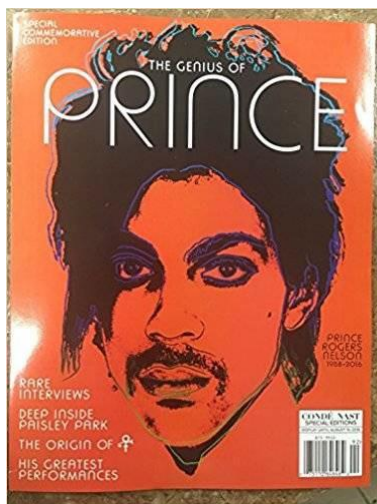
“Goldsmith Photo”) of the recording artist and performer Prince Rogers Nelson (“Prince”). That derivative version was created by Andy Warhol in 1984 for publication in *Vanity Fair* under license from Goldsmith’s company, and was newly published with color changes (the “Infringing Image”) by Condé Nast on the cover of a May 9, 2016, special Prince tribute magazine (the “2016 Publication”) under a paid commercial license from the Foundation’s licensing agency, not Goldsmith.

2. The original black and white Goldsmith Photo appears as follows:



3. The Infringing Image appeared as follows on the cover of the 2016 Publication:





4. The Foundation knew or should have known that the creation and publication by Vanity Fair of the Infringing Image in 1984 was expressly licensed by Goldsmith's company for one-time use only as an artist's reference for illustrative purposes, and that any further use of the Infringing Image as a derivative work of the Goldsmith Photo would require a new license or otherwise be an infringing use.

5. The Infringing Image retains and captures all the essential and distinctive elements of the Goldsmith Photo, from the detailed hair curls atop Prince's head to the long fall of hair down the left side of his face, the overall composition and Prince's head pose, the deep-set intensity of Prince's eyes, his pursed lips, facial hair details, and his self-reflective stare into the eye of the camera as if pondering his newfound stardom. This is starkly evident when the Infringing Image is superimposed over the original Goldsmith Photo and then compared to the Goldsmith Photo, as follows:



Infringing Image



Goldsmith Photo

6. While the Foundation is a not-for-profit entity, it is also a money-making commercial machine, earning millions of dollars in revenues annually from commercial licensing fees and royalties, and sales of original Warhol works.

7. The Infringing Image was licensed for a \$10,000 fee to Condé Nast by the Foundation's licensing agent, the Artists Rights Foundation ("ARS") and, upon information and belief, remains available for commercial licensing in the same or very similar formats.

8. There is no doubt that the Foundation is profiting from its infringing acts concerning the Goldsmith Photo, thereby depriving Goldsmith of actual and potential economic benefits she would have earned and could earn from licensing rights to the Goldsmith Photo, including to Condé Nast and

others, and further diluting Goldsmith's ability to sell the Goldsmith Photo as one of her limited edition fine art prints or in other forms.

9. Goldsmith is an acclaimed celebrity portrait, documentary and fine art photographer, whose works are in the collections of The Smithsonian National Portrait Gallery, The Museum of Modern Art, The Chicago Museum of Contemporary Photography, The Rock and Roll Hall of Fame, Museum Folkwang, The Polaroid Collection, The Kodak Collection, and others. Over the past 50 years of a long and illustrative career, her editorial photography has appeared on and between the covers of *Life*, *Newsweek*, *Time*, *Vanity Fair*, *Rolling Stone*, *National Geographic Traveler*, *Sports Illustrated*, *People*, *Elle*, *Interview*, *The New Yorker* and many other esteemed publications. She has chronicled Bruce Springsteen's rise to fame, the Rolling Stones' stadium tours, and Michael Jackson's and Prince's ascents to stardom, and photographed cultural music icons including Bob Dylan and Patti Smith. Thirteen books of Goldsmith's imagery have been published, including *New Kids*, which was on *The New York Times Best Seller* list, a rare occurrence for a coffee table book of photography. Goldsmith has received two New York Art Direction awards and numerous prestigious awards, from the Lucien Clergue to the World Press in Portraiture. Goldsmith is also a gifted film director, having been the youngest woman member ever to be accepted into the Director's Guild of America. In the early 1980s, under the pseudonym "Will Powers," she produced and directed highly acclaimed videos for the hit album *Dancing For Mental Health*, working with acclaimed musicians Sting, Steve Winwood, Todd Rundgren and Nile

Rodgers, and the videos from the album that she produced and directed were used by the United States Department of Labor to inspire unemployed youths, and by the National Marriage Counsel in England. Goldsmith has been a pioneer in professional photography and founded the first photo agency that focused on celebrity portraiture, which represented the works of over 200 worldwide photographers. Her photographs have been widely exhibited at numerous exhibitions, galleries, museums and art fairs in the United States and abroad.

10. Goldsmith's life has been dedicated to the pursuit and perfection of her art, which is no less deserving of protection than Andy Warhol's creations, with the exception that Goldsmith did not see a need to appropriate works of others and claim ownership of them to the detriment of the original creator.

11. Goldsmith's livelihood is largely dependent on the licensing market for her photography, and the Infringing Image, as used in the 2016 Publication, destroyed a high profile licensing opportunity for her.

12. To the extent the Foundation seeks to hide behind a copyright fair use defense for its unauthorized exploitation of the Infringing Image, its overt commercial use of the Infringing Image for profit and the lack of any transformative use of the Goldsmith Photo preclude such defense.

13. Goldsmith intends to donate any net economic recovery she may be awarded in this action to one or more groups that are working to protect photographers' rights and copyrights.

### **JURISDICTION AND VENUE**

14. This is a civil action arising from the Defendant Foundation's violation of the copyright

laws of the United States (17 U.S.C. § 101 et seq.). Accordingly, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

15. Venue in this District is proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Counterclaim-Plaintiff's claim occurred in this District and Defendant Foundation is located in New York.

16. On November 17, 2016, Goldsmith, through her attorney, filed an electronic application with the U.S. Copyright Office for registration of the Goldsmith Photo, with a creation date of 1981 and Goldsmith designated as both author and copyright claimant. A Certificate of Registration issued for the Goldsmith Photo, effective November 16, 2016, with Registration Number VAu 1-277-562 (entitled "Prince Portrait"). A true and complete copy of this Certificate of Registration is annexed hereto as Exhibit "A."

### **PARTIES**

17. Counterclaim-Defendant The Andy Warhol Foundation For The Visual Arts, Inc. (the "Foundation"), upon information and belief, is a not-for-profit New York corporation with a principal place of business at 65 Bleecker street, New York, New York 10012.

18. Counterclaim-Plaintiff Goldsmith is an individual residing in the State of Colorado, with a business address at 40 Sunset Drive, Unit 10A, Basalt, CO 81621.

**FACTUAL ALLEGATIONS**

**The Creation and Licensing of the Goldsmith  
Photo to Vanity Fair**

19. In 1981, Goldsmith took a series of photographic studio portraits of music legend Prince that were created for an editorial assignment for Newsweek magazine. Goldsmith was the sole photographer for that assignment and retained all copyrights in the photographs she created during that photo shoot. It was common industry practice that any time professional photographers shot on editorial assignment it was for one time usage rights for set space rates, and the photographers always retained copyright ownership of their own photos, as did Goldsmith.

20. In the fall of 1984, Vanity Fair's photo department solicited photo agency Lynn Goldsmith Inc. ("LGI"), later re-named Lynn Goldsmith, Ltd., for submission of one of the Prince images from the 1981 Newsweek photo shoot. The image was to be used as reference for an illustration in an article about Prince and his rise to stardom. LGI submitted initial sample photo images to Vanity Fair. The photo ultimately selected by Vanity Fair was the Goldsmith Photo, as set forth in paragraph 2 of this Counterclaim.

21. As evidenced by a written license agreement dated October 29, 1984 (the "License"), LGI photo agency granted to Vanity Fair one-time English language, North American distribution rights, to use the Goldsmith Photo "as artist reference for an illustration to be published in Vanity Fair November 1984 issue." The License further limited use of the Goldsmith Photo for "full page and one time under quarter page" use and expressly stated: "NO OTHER

**USAGE RIGHT GRANTED.”** The License further stated the Goldsmith Photo 1981 copyright was owned by “Lynn Goldsmith” and required that Goldsmith be given attribution credit. A true and complete copy of the License is annexed hereto as Exhibit “B.”

22. At the time the License was granted, it was common policy for all magazines that requested artist reference images not to inform the photographer of the artist’s identity. Typically, the magazine’s photo department would obtain an image for the magazine’s separate art department, so the photo department also would not know of the artist’s identity.

23. Vanity Fair ultimately published a feature article about Prince in its November 1984 issue that was accompanied by a full page image of Prince derived directly from the Goldsmith Photo. The image appeared as reproduced in paragraph 43 of the Complaint as follows (on page 67 of the Vanity Fair issue):



24. On page 121 of the 1984 Vanity Fair publication, as required by the License, the following attribution credit was given to Goldsmith: **"Page 67: source photograph © 1984 by Lynn Goldsmith/LGL."** Warhol was therefore placed on notice that Goldsmith owned the copyright in the underlying work. A true and correct copy of that credit page (with the attribution highlighted) appears as follows:

### Late Bloomer

(Continued from page 74) people who will occasionally buy my pictures in England, but in New York all my shows have been very successful—and just the general acceptance and encouragement is stimulating. In America they understand that my pictures are representational, whereas in England they are puzzled and think they're abstract. In reality everything happens at once, and my painting tries to be realistic in this way. We can be breaking our heart and looking at the corner of the jukebox at the same time. All things are visually of equal importance—one emotion doesn't sweep it all away."

His London studio is white and unfussy, not an enlarged and three-dimensional "Hodgkin," like his two-part living room upstairs. No extraneous ornament hangs on the wall except a tamboourine hitched to a nail, presented by the painter Patrick Caulfield for Hodgkin to beat the daylight out of when things go wrong. Stacked on the floor are the stubbornly individual bits of wood—trays, blackboards, breadboards, filled-in picture frames—that will be recycled into new life as paintings. As

many as twenty may be in the works at any one time, some taking months and even years to finish, thanks to Hodgkin's agonizing need to constantly revise.

"My Quaker heritage is inescapable. I remember being extremely pleased when somebody said about my collecting, 'Oh, Howard's very strict, very severe with himself,' meaning that if I felt something was bad I wouldn't keep it on grounds of sentiment. It also partly explains why it took me so long to learn how to be a painter."

It is on this point that he finds the example of Matisse so inspiring.

"Matisse, I think, gave a great many people a feeling of moral courage, but he also showed how an artist today has got to be his own patron and his own audience and often his own dealer and his own critic. And that is a rather uncomfortable position to be in. The ideal life of an artist would certainly not be one in the twentieth century, but that's beside the point. As for the rest, some-one years ago asked what my paintings were for. I said they were for hanging over a mantelpiece or a sofa, and I still

don't think that's putting them down for a second. It's to do with paintings' being part of life as it's lived all the time. However large they may have become, they're meant to be from me to you."

Hodgkin's pictures can be on a more ambitious scale these days—like the strikingly explicit but nevertheless daringly spare *Interior with Figures*. They may still autobiographically depict specific events and places (like David Hockney [*D.H. in Hollywood*]), but today Hodgkin's paintings are concerned more with his own life than with the wittily interpreted lives of his friends. They are technically more lush, sexier, and psychologically more complex.

Such newfound freedom of expression and the latest wave of success, however, leave him characteristically unsatisfied.

"I want to be a better, more intense artist. And I'd like to be rich and famous too, but only for a moment, to see what it's like. I think of this year as the beginning of my life as an artist, rather than any peak. Up till now it's been 'fifty years of foreplay,' as I'm accused of saying." □

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### CREDITS

**Page 10:** photograph, top, left to right: © 1982 by Christopher Smith/Camden Press, © 1984 by Jill Krennert, © 1984 by Sonya Markowitz; center, © 1984 by David Lowenthal, © 1984 by Elkan Chasle Michels, © 1984 by David McCaughy; M.J. bottom, © 1984 by Jill Krennert, © 1984 by Janet Hamilton, © 1984 by Poppe; courtesy of Playboy magazine, taken by Richard Klein.

**Page 21:** left to right, graffiti party hose by Electric Sals, \$7, available in January from Vittorio Ricci, 645 Madison Avenue, New York City; stock iron stockings by Electric Sals, \$7, gold evening shoes, about \$175, available in January from Vittorio Ricci; leopard-print party hose, \$3.99 from Shezzan, 120 Second Avenue, N.Y.C.; red shoes, about \$80, available in January from selected Andrea Carano stores; black-and-white graffiti leggings, \$24 from Oliveira, 40 Benet's Street, N.Y.C.; black-and-white checked shoes, about \$115, available in January from selected Andrea Carano stores; green wool socks, \$7 from 99 Accessories, 99 MacDougal Street, N.Y.C.; shoes, about \$48, available in January from Francis, 125 East Fifty-ninth Street, N.Y.C.; black-striped party hose by Mary Quant, \$12 from 99 Accessories; comic-strip abuse socks, \$12 from 99 Accessories; shoes, about \$48, available in January from Francis.

**Page 24:** illustration courtesy of Christie's, N.Y.C.

**Page 211:** red wood plank from the Ralph Lauren Home Collection, \$275 from better department stores; rhinestone earrings by Kenneth Jay Lane, from Saks Fifth Avenue, N.Y.C., and Freeman Marcus, Dallas.

**Pages 29 and 41:** © 1982 by Deep Goldberg/Sygnis.

**Page 41:** ocean from The White Album, © 1979 by Jon Dicks, used with the author's permission.

**Pages 44-45:** photographs 1, 5, 11, and 12 from the M. ronep Obscure photographs 2, 3, 4, 6, 7, 8, 10, 13, and 14 from the Frank Driggs Collection; illustration 5 by J. Pagen, from Vogue, February 15, 1931.

**Page 46:** photographs by Karen Kaplan/Camden Press.

**Page 67:** source photograph © 1984 by Lynn Goldsmith/LGL.

**Pages 68-74:** paintings, from a private collection, courtesy of M. Scudder and Co., Inc., N.Y.C.

**Page 86:** "Toasting Tables," by M. F. K. Fisher, is the foreword to The Alice B. Toklas Cook Book, which is being reissued by Knopf & Row this month, © 1984 by M. F. K. Fisher. Photographs, clockwise from top left, by Carl Van Vechten, reprinted by permission of Joseph Solomon, the Carl Van Vechten Estate, the Benetcke Rare Book and Manuscript Library, Yale University, from the Granger Collection, the Benetcke Archives, by Alan Ray, 1972, from the Gertrude Stein Collection, the Benetcke Rare Book and Manuscript Library.

**Page 87:** inset, from the Gertrude Stein Collection, courtesy of the Benetcke Rare Book and Manuscript Library, Yale University, right, photographed by Carl Van Vechten, reprinted by permission of Joseph Solomon, the Carl Van Vechten Estate, the Benetcke Rare Book and Manuscript Library.

**Page 88:** photograph from Culver Pictures.

**Page 93:** styled by Shaws.

**Page 100:** drawings and photographs, left, courtesy of Klaus Wigenbach; photograph, right, © 1984 by Greg Demos/Sygnis.

**Page 105:** photograph, lined from top, © 1984 by Marjorie Simek.

**Page 107:** courtesy of the University of Illinois Library at Urbana-Champaign.

**Page 108:** photographs, top to bottom, © 1980 by Jill Krennert, © 1982 by Eddie Adams/Gamma Liaison, © 1984 by George Tomas/NTT Pictures, © 1984 courtesy of ABC, © 1982 by Bruce Rosenblum.

VANITY FAIR/NOVEMBER 1984

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25. Another copy of the 1984 Vanity Fair publication is currently posted on Vanity Fair's website at <http://www.vanityfair.com/culture/2016/04/prince-at-the-height-of-his-powers>, which contains attribution credit to Goldsmith printed in the lower spine and co-attribution credit to Goldsmith printed on the bottom of the first page of the article, as follows:



26. At the time LGI issued the License, LGI was not advised by Vanity Fair who the artist would be for the illustration, but only that the illustration would be based on the Goldsmith Photo.

27. Only after Prince died in 2016 did Goldsmith first become aware that Warhol had been the artist for the 1984 Vanity Fair article and that Warhol had subsequently made multiple unauthorized commercial uses of the Goldsmith Photo outside the permitted limited scope of the License.

**2016 Licensing and Publication of the  
Infringing Image**

28. Following Prince's tragic death in 2016, Condé Nast created and released the 2016 Publication as a special tribute issue to Prince's life, using for its cover a different color version of the same image Warhol had created for Vanity Fair in 1984, based on the Goldsmith Photo, as depicted in paragraph 3 of this Counterclaim.

29. The Infringing Image used in the 2016 Publication differs from the image used in the 1984 Vanity Fair publication to the extent the colors were changed, but the Infringing Image in the 2016 Publication continued to capture the same essence of the Goldsmith Photo, as did the 1984 Vanity Fair image. The following comparison shows the images appearing in the 2016 Publication and the 1984 Vanity Fair issue, respectively, juxtaposed with the Goldsmith Photo:



30. Upon information and belief, Condé Nast licensed the Infringing Image used on the cover of the

2016 Publication from the Foundation's third-party licensing agency, ARS, in exchange for payment of a \$10,000 licensing fee.

31. No attribution credit was given to Goldsmith in connection with the 2016 Publication cover image.

32. Plaintiff Goldsmith does not presently know if the Foundation has made additional unauthorized infringing uses of the Goldsmith Photo within the past three years, and reserves the right to amend this Counterclaim to add any such additional acts of infringement.

**The Foundation Knew or Should Have  
Known That it Needed Permission to  
License the Infringing Image to Condé Nast**

33. Defendant Foundation knew, as did Warhol himself, that using other photographers' works to create derivative works required their consent. During his lifetime, Warhol's was sued for copyright infringement by photographers at least several times for acts of unauthorized copying in the form of appropriation art, similar to the Foundation's licensing and exploitation of the Infringing Image.

34. In or about 1966, Warhol was sued in the Southern District of New York (Docket No. 66 Civ. 3776) for copyright infringement by photographer Patricia Caulfield for using her photograph of hibiscus flower blooms, which had been published in the June 1964 issue of *Modern Photography*, to create an authorized derivative silk-screen work called *Flowers*. Upon information and belief, Warhol settled with Caulfield.

35. Upon information and belief, in the 1960s, a copyright infringement claim was made against Warhol by legendary photographer Fred Ward for

Warhol's unlicensed use of Ward's iconic cover photo that was used in *Life* magazine's Kennedy assassination issue, which Warhol had appropriated for his own Jacqueline Kennedy images; that claim settled.

36. Upon information and belief, in the 1960s, a copyright infringement claim was made against Warhol by the renown civil rights photographer Charles Moore for Warhol's misappropriation of Moore's famous photograph of a man being attacked by police dogs during the 1963 Birmingham riots; that claim also settled.

37. Upon information and belief, subsequent to the Caulfield, Ward and Moore infringement claims, Warhol began seeking permission to use publicity and media photographs for his print, or taking his own photographs. Nevertheless, the Foundation has continued to infringe photographers' rights with impunity.

38. In or about 1996, the Foundation was sued in the Southern District of New York (Docket No. 96 Civ. 9219 (TPG)) for copyright infringement by photographer Henri Dauman and Time, Inc., over publication of a 1994 museum book and a 1995 engagement calendar, both of which used an iconic 1963 photograph by Dauman of Jackie Kennedy that had appeared in the December 1963 issue of *Life*. *Dauman v. The Andy Warhol Foundation for the Visual Arts, Inc.*, 1997 WL 337488 (S.D.N.Y. June 18, 1997; Griesa, J.) (denying a motion to dismiss). As set forth in that decision, following President Kennedy's death, Warhol created "a series of artworks by reproducing images of Jacqueline Kennedy; that Warhol used a total of eight 'source images' culled from newspapers and magazines; and that one of

these images ('the Dauman Image') was taken from the Dauman photograph published in Life." Dauman alleged he only first became aware of the misappropriation after publication of the museum book and calendar. The Foundation also settled that claim.

**The Foundation's Actions Were  
and Remain Wholly Commercial in Nature**

39. Despite its alleged not-for-profit altruistic veneer, the Foundation is a money-making machine that earns many millions of dollars annually in commercial revenues. According to the Foundation's filed Form 990-PF Return of Private Foundation for the years 2012 through 2015 alone, the Foundation earned over \$19 million from commercial royalties and licensing fees, and over \$49 million from the sale of artwork, as follows:

2012 990-PF - Sales of art:	Royalties & fees:
\$24,820,967	\$4,687,475
2013 990-PF - Sales of art:	Royalties & fees:
\$10,856,351	\$4,530,428
2014 990-PF - Sales of art:	Royalties & fees:
\$7,742,434	\$5,591,408
2015 990-PF - Sales of art:	Royalties & fees:
\$6,281,111	\$4,694,230

40. As pleaded herein, in keeping with the Foundation's commercial business model, the Infringing Image was also licensed for a fee to Condé Nast for the 2016 Publication.

**CLAIM FOR RELIEF (17 U.S.C. §§ 106, 501)**

41. Goldsmith hereby incorporates paragraphs 1 through 40 of this Counterclaim as if fully set forth at length herein.

42. Defendant Foundation has infringed Goldsmith's exclusive rights as the copyright owner of the Goldsmith Photo by reproducing, publicly displaying, commercially licensing and distributing the Infringing Image, and by incorporating the Goldsmith Photo into unauthorized derivative works, including the Infringing Image printed in the 2016 Publication.

43. The Foundation holds itself out as the exclusive copyright owner of the Infringing Image and authorized ARS to enter into commercial licensing and other monetizing transactions for the Infringing Image, including for the 2016 Publication.

44. Neither Warhol nor the Foundation has ever provided attribution credit to Goldsmith as the photographer and copyright owner of the Goldsmith Photo, which the Foundation has exploited and continues to exploit commercially, thereby misleading the public into falsely believing the Infringing Image was created solely by Warhol.

45. The Foundation knew or should have known that its unauthorized use of the Infringing Image infringed Goldsmith's exclusive rights under the Copyright Act or, alternatively, recklessly and irresponsibly ignored such possibility.

46. Defendant Foundation's infringing acts have caused and continue to cause injury to Goldsmith to an extent as yet to be determined.

**PRAYER FOR RELIEF**

WHEREFORE, Defendants and Counterclaim-Plaintiff Lynn Goldsmith pray that this Court enter judgment in their favor against Defendant The Andy Warhol Foundation for the Visual Arts, Inc. as follows:

1. Dismissing the Plaintiff Foundation's claims for declaratory relief in all respects, with prejudice;

2. Finding that Counterclaim-Defendant Foundation has infringed Plaintiff Goldsmith's exclusive rights in the Goldsmith Photo under 17 U.S.C. § 106;

3. Finding that Counterclaim-Defendant Foundation is not entitled to a fair use defense under 17 U.S.C. § 107;

4. Finding that Counterclaim Plaintiff Goldsmith's infringement claim is not barred by the applicable statute of limitations under 17 U.S.C. § 507;

5. Finding that Counterclaim Plaintiff Goldsmith's infringement claim is not barred by the doctrine of laches;

6. Granting Plaintiff Goldsmith permanent injunctive relief, enjoining the Foundation from further reproducing, modifying, preparing derivative works from, selling, offering to sell, publishing or displaying the Infringing Image and any other Warhol-created works that are substantially similar to the Goldsmith Photo or Infringing Image, under 17 U.S.C. § 502;

7. Granting Counterclaim Plaintiff Goldsmith actual damages and all profits earned by the Foundation attributable to infringement of the Goldsmith Photo in accordance with proof;

8. Finding that Plaintiff Foundation cannot assert copyright protection in the Infringing Image, and any other Warhol-created works that are substantially similar to the Goldsmith Photo or Infringing Image, because they are unauthorized derivative works;

9. Granting Defendants an award for their costs and disbursements of this action;

10. Granting Defendants an award for their attorney's fees incurred in this action under 17 U.S.C. § 505 with respect to any infringing uses by the Foundation of the Goldsmith Photo subsequent to its effective date of registration by the United States Copyright Office and with respect to the Foundation's Declaratory Judgment Complaint;

11. With respect to any infringing uses by the Foundation of the Goldsmith Photo subsequent to its effective date of registration by the United States Copyright Office, as an alternative to an award of damages and profits, granting Counterclaim Plaintiff Goldsmith statutory damages to be elected before trial under 17 U.S.C. § 504;

12. Revising the caption of this action at the time of trial to place Counterclaim Plaintiff in the position of the Plaintiff and the Foundation in the position of Defendant based on the Foundation's anticipatory filing of the present declaratory relief action; and

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



JA-122

Dated: New York, New York  
July 10, 2017

HERRICK, FEINSTEIN LLP

By: /s/ Barry Werbin, Esq.

Barry Werbin, Esq.

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*Attorneys for Lynn Goldsmith  
and Lynn Goldsmith, Ltd.*

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EXHIBIT A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Karen Leigh Claythorn*  
Acting United States Register of Copyrights and Director

Registration Number  
**VAu 1-277-562**  
Effective Date of Registration:  
November 17, 2016

Title \_\_\_\_\_

Title of Work: Prince Portrait

Completion/Publication \_\_\_\_\_

Year of Completion: 1981

Author \_\_\_\_\_

• Author: Lynn Goldsmith  
Author Created: photograph  
Citizen of: United States  
Year Born: 1948

Copyright Claimant \_\_\_\_\_

Copyright Claimant: Lynn Goldsmith  
40 Sunset Drive, Unit 10A, Basalt, CO, 81621, United States

Certification \_\_\_\_\_

Name: Joel L. Hecker  
Date: November 17, 2016

Correspondence: Yes

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Registration #: VAu001277562  
Service Request #: 1-4178540771

Abrams Deemer PLLC  
Joel L. Hecker  
230 Park Avenue  
Suite 660  
New York, NY 10169 United States

\* \* \*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE ANDY WARHOL FOUNDATION  
FOR THE VISUAL ARTS, INC.,

Plaintiff,

-against-

LYNN GOLDSMITH AND LYNN  
GOLDSMITH, LTD.,

Defendants.

Case No.  
17-cv-02532-  
JGK

LYNN GOLDSMITH,

Counterclaim Plaintiff,

-against-

THE ANDY WARHOL FOUNDATION  
FOR THE VISUAL ARTS, INC.,

Counterclaim Defendant.

**ANSWER TO AMENDED COUNTERCLAIM**

Counterclaim-Defendant The Andy Warhol Foundation for the Visual Arts, Inc. (“the Foundation”), by its attorneys Boies Schiller Flexner LLP, as and for its Answer to the Amended Counterclaim (the “Counterclaim”) filed by Counterclaim-Plaintiff Lynn Goldsmith (“Goldsmith”), states and alleges as follows:

1. Denies the averments of Paragraph 1, except states that images of paintings of Prince created by Andy Warhol (the “Original Warhol Works”) were published in *Vanity Fair* in 1984 and published by Conde Nast in 2016 and that the Foundation was paid

a license fee in connection with Conde Nast's 2016 publication.

2. Denies the averments of Paragraph 2.

3. Denies the averments of Paragraph 3 and respectfully refers to Conde Nast's 2016 Publication for a true depiction of its contents.

4. Denies the averments of Paragraph 4.

5. Denies the averments of Paragraph 5 and respectfully refers to the Original Warhol Works, Conde Nast's 2016 Publication, and the Goldsmith Photo for a true depiction of their contents.

6. Denies the averments of Paragraph 6, except admits that the Foundation is a not-for-profit entity and has earned revenues annually from licensing fees, royalties, and sales of original Warhol works.

7. Denies the averments of Paragraph 7, except admits that an image of an Original Warhol Work was licensed to Conde Nast for publication in 2016, the Foundation was paid a \$7,500 licensing fee in connection with the publication, the Artists Rights Society was paid a \$2,500 fee in connection with the publication, and the Foundation has the legal right to license the Original Warhol Works for commercial and non-commercial uses.

8. Denies the averments in Paragraph 8.

9. Denies knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 9 and therefore denies the averments of Paragraph 9.

10. Denies the averments of Paragraph 10.

11. Denies the averments of Paragraph 11, except denies knowledge or information sufficient to form a belief as to the averment about Goldsmith's

livelihood and therefore denies the averment on that basis.

12. Denies the averments of Paragraph 12.

13. Denies knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 13 and therefore denies the averments of Paragraph 13.

14. Denies the averments of Paragraph 14, except admits that the Court has subject-matter jurisdiction over this action.

15. Denies the averments of Paragraph 15, except admits that the Foundation is located in New York and venue is proper in this District.

16. Denies knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 16 and therefore denies the averments of Paragraph 16.

17. Admits the averments of Paragraph 17.

18. Denies knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 18 and therefore denies the averments of Paragraph 18, except admits that records maintained by the New York Department of State indicate that Lynn Goldsmith, Ltd.'s principal place of business is 40 Sunset Drive, Suite 10A, Basalt, Colorado 81621-8362.

19. Denies knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 19 and therefore denies the averments, except admits that Goldsmith took photographs of Prince.

20. Denies the averments of Paragraph 20, except denies knowledge or information sufficient to form a belief as to the truth of the averments in the

first, second, and third sentences of Paragraph 20 and therefore denies those averments on that basis.

21. Denies the averments of Paragraph 21 and respectfully refers to the license agreement for a true depiction of its contents.

22. Denies knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 22 and therefore denies the averments of Paragraph 22.

23. Denies the averments of Paragraph 23, except states that an image of an Original Warhol Work was published in a 1984 *Vanity Fair* magazine as alleged in the Complaint and respectfully refers to the Complaint and the 1984 *Vanity Fair* publication for a true depiction of the contents.

24. Denies the averments of Paragraph 24 and respectfully refers to the 1984 *Vanity Fair* publication for a true depiction of its contents, except admits that the *Vanity Fair* publication stated that Goldsmith held a copyright in a “source photograph” but did not attribute any copyright to Goldsmith for the Original Warhol Work, in which Goldsmith has no rights.

25. Denies the averments of Paragraph 25 and refers to the *Vanity Fair* website for a true depiction of its contents.

26. Denies knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 26 and therefore denies the averments of Paragraph 26.

27. Denies the averments of Paragraph 27.

28. Denies the averments of Paragraph 28, except states that an image of an Original Warhol Work was published by Conde Nast in 2016 and

respectfully refers to the 2016 Conde Nast publication for a true depiction of its contents.

29. Denies the averments of Paragraph 29 and respectfully refers to the Original Warhol Works, the 1984 *Vanity Fair* publication, and Conde Nast's 2016 Publication for a true depiction of their contents.

30. Denies the averments of Paragraph 30, except admits that an image of an Original Warhol Work was licensed to Conde Nast for publication in 2016, the Foundation was paid a \$7,500 licensing fee in connection with the publication, and the Artists Rights Society was paid a \$2,500 fee in connection with the publication.

31. Admits the averments of Paragraph 31.

32. Denies the averments of Paragraph 32.

33. Denies the averments of Paragraph 33.

34. Denies the averments of Paragraph 34, except admits upon information and belief that Andy Warhol settled a dispute with Patricia Caulfield.

35. Denies knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 35 and therefore denies the averments of Paragraph 35.

36. Denies knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 36 and therefore denies the averments of Paragraph 36.

37. Denies the averments of Paragraph 37.

38. Denies the averments of Paragraph 38, except admits that the Foundation settled a dispute with Henri Dauman and Time, Inc., and respectfully refers to the full docket and transcripts in the matter of *Dauman v. The Andy Warhol Foundation for the*



*Visual Arts, Inc.* (S.D.N.Y.) for a true depiction of their contents.

39. Denies the averments of Paragraph 39, except admits that the Foundation is a not-for-profit entity and has earned revenues annually from licensing fees, royalties, and sales of original Warhol works; and respectfully refers to its Form 990-PF filings for a true depiction of their contents, including the portions of the Foundation's 990-PF filings documenting the Foundation's charitable contributions—which total tens of millions of dollars.

40. Denies the averments of Paragraph 40, except admits that an image of an Original Warhol Work was licensed to Conde Nast for publication in 2016, the Foundation was paid a \$7,500 licensing fee in connection with the publication, and the Artists Rights Society was paid a \$2,500 fee in connection with the publication.

41. The Foundation incorporates all of the above responses to the averments contained in each of the numbered paragraphs from 1-40 as if they were fully stated here.

42. Denies the averments of Paragraph 42.

43. Denies the averments of Paragraph 43, except states that the Foundation is the sole copyright owner of the copyrights in the Original Warhol Works, an image of an Original Warhol Work was licensed to Conde Nast for publication in 2016, the Foundation was paid a \$7,500 licensing fee in connection with the publication, and the Artists Rights Society was paid a \$2,500 fee in connection with the publication.

44. Denies the averments of Paragraph 44, except states that the Foundation is the sole copyright

owner of the copyrights in the Original Warhol Works and has not, will not, and is not legally required to provide any form of attribution credit to Goldsmith.

45. Denies the averments of Paragraph 45.

46. Denies the averments of Paragraph 46.

**PRAYER FOR RELIEF**

1. Denies the averments contained in Paragraph 1 of the Prayer for Relief and denies that Goldsmith is entitled to any relief.

2. Denies the averments contained in Paragraph 2 of the Prayer for Relief and denies that Goldsmith is entitled to any relief.

3. Denies the averments contained in Paragraph 3 of the Prayer for Relief and denies that Goldsmith is entitled to any relief.

4. Denies the averments contained in Paragraph 4 of the Prayer for Relief and denies that Goldsmith is entitled to any relief.

5. Denies the averments contained in Paragraph 5 of the Prayer for Relief and denies that Goldsmith is entitled to any relief.

6. Denies the averments contained in Paragraph 6 of the Prayer for Relief and denies that Goldsmith is entitled to any relief.

7. Denies the averments contained in Paragraph 7 of the Prayer for Relief and denies that Goldsmith is entitled to any relief.

8. Denies the averments contained in Paragraph 8 of the Prayer for Relief and denies that Goldsmith is entitled to any relief.

9. Denies the averments contained in Paragraph 9 of the Prayer for Relief and denies that Goldsmith is entitled to any relief.

10. Denies the averments contained in Paragraph 10 of the Prayer for Relief and denies that Goldsmith is entitled to any relief.

11. Denies the averments contained in Paragraph 11 of the Prayer for Relief and denies that Goldsmith is entitled to any relief.

12. Denies the averments contained in Paragraph 12 of the Prayer for Relief and denies that Goldsmith is entitled to any relief.

13. Denies the averments contained in Paragraph 13 of the Prayer for Relief and denies that Goldsmith is entitled to any relief.

#### **AFFIRMATIVE DEFENSES**

Without assuming any burden of proof that would otherwise rest with Goldsmith, the Foundation asserts the following defenses:

##### **FIRST DEFENSE**

The Cause of Action in the Counterclaim fails, in whole or in part, to state a claim on which relief can be granted.

##### **SECOND DEFENSE**

The Cause of Action in the Counterclaim is barred, in whole or in part, by the applicable statutes of limitations and statutes of repose, including under 17 U.S.C. § 507.

##### **THIRD DEFENSE**

The Cause of Action in the Counterclaim is barred, in whole or in part, by the doctrines of laches, waiver, acquiescence, and estoppel.

##### **FOURTH DEFENSE**

The Cause of Action in the Counterclaim is barred because any wrongful conduct alleged therein is

attributable to persons not under the Foundation's control.

**FIFTH DEFENSE**

The Cause of Action in the Counterclaim is barred, in whole or in part, by the doctrine of unclean hands.

**SIXTH DEFENSE**

The Cause of Action in the Counterclaim is barred, in whole or in part, as contrary to public policy.

**SEVENTH DEFENSE**

The Cause of Action in the Counterclaim is barred, in whole or in part, because the Original Warhol Works, including the allegedly infringing works, are transformative and made fair use of any source images, including under 17 U.S.C. § 101, *et seq.*

**EIGHTH DEFENSE**

The Cause of Action in the Counterclaim is barred, in whole or in part, because Goldsmith does not hold a protectable copyright interest in all or part of the Goldsmith Photograph.

**NINTH DEFENSE**

The Cause of Action in the Counterclaim is barred, in whole or in part, because Goldsmith failed to timely register any copyright interest she holds in all or part of the Goldsmith Photograph.

**TENTH DEFENSE**

The Cause of Action in the Counterclaim is barred, in whole or in part, because Goldsmith's alleged damages, if any, are speculative, and because of the impossibility of the ascertainment and allocation of those alleged damages.

**ELEVENTH DEFENSE**

The Cause of Action in the Counterclaim is barred, in whole or in part, because Goldsmith lacks standing to bring the Cause of Action.

**TWELFTH DEFENSE**

The Cause of Action in the Counterclaim is barred, in whole or in part, because one or more parties not named in the Counterclaims may be indispensable parties to this action, and the Foundation reserves the right to seek the joinder of those parties whose absence from the action renders it such that complete relief cannot be granted without the missing party.

**THIRTEENTH DEFENSE**

Goldsmith is not entitled to recovery of attorneys' fees and costs or expert fees

Dated: July 24, 2017  
New York, New York

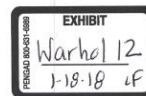
**BOIES SCHILLER FLEXNER LLP**

By: /s/ Luke Nikas

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*Attorneys for Plaintiff The  
Andy Warhol Foundation  
for the Visual Arts, Inc.*

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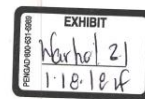
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**LYNN GOLDSMITH**

241 WEST 36th STREET NEW YORK, N. Y.  
10018  
(212) 736-4602

APPROVAL FORM

DATE SEPT. 25, 1984

TO VANITY FAIR ATTN: ESIN GOKNAR  
350 MADISON AVE.  
NYC, NY 10017

PHOTOGRAPHS ON APPROVAL:

1	11" X 14" B&W STUDIO PORTRAIT OF PRINCE BY © 1981 LYNN GOLDSMITH FOR POSSIBLE USE AS AN ARTIST REFERENCE	
	LATEST RETURN DATE: 10/24/1984	

UNUSED MATERIAL MUST BE RETURNED  
WITHIN 15 DAYS –  
SEE REVERSE SIDE FOR CONDITIONS

TERMS OF SUBMISSION

Acceptance of this consignment of photographs or other material constitutes acceptance of the conditions listed below. Acknowledgment is not essential.

Recipient agrees that the person accepting photos consigned, herein on its behalf is authorized to do so, and so doing accepts all the terms set forth herein.

All material listed on the reverse side is submitted on 15 days approval unless additional time specifically granted by Lynn Goldsmith.

Recipient agrees to pay a holding fee of no less than \$1.00 (one dollar) per day per color photo and \$5.00 (five dollars) per day per black and white set held beyond 15 days without approval.

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No model release or other release exists on any of the photographs or written material submitted unless the existence of such release is specifically acknowledged in writing by Lynn Goldsmith, which assumes no liability out of the use of any photographs or other material.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE ANDY WARHOL FOUNDATION  
FOR THE VISUAL ARTS, INC.,

Plaintiff,

-against-

LYNN GOLDSMITH AND LYNN  
GOLDSMITH, LTD.,

Defendants.

No. 17-cv-  
02532-JGK

LYNN GOLDSMITH,

Counterclaim Plaintiff,

-against-

THE ANDY WARHOL FOUNDATION  
FOR THE VISUAL ARTS, INC.,

Counterclaim Defendant.

**DECLARATION OF NEIL PRINTZ**

I, Neil Printz, declare pursuant to 28 U.S.C. § 1746  
as follows:

1. I am the editor of The Andy Warhol  
Catalogue Raisonné. I respectfully submit this  
declaration in support of Plaintiff and Counterclaim  
Defendant The Andy Warhol Foundation for the  
Visual Arts, Inc.'s motion for summary judgment.

2. The Andy Warhol Catalogue Raisonné is the definitive record of the artist's paintings, sculptures, and drawings and covers approximately 18,000 works that Warhol produced between the 1940s and 1987. As editor, I am responsible for researching, writing, and editing the Catalogue Raisonné. My work involves examining Warhol's works; discussing them with curators, conservators, scholars, collectors, and others; interviewing Warhol's assistants and colleagues; marshalling relevant historical and contemporary commentary; and compiling this information into a comprehensive record of all known Warhol paintings, sculptures, and drawings. Each annotated catalogue entry includes the work's title, date, medium, dimensions, inscriptions by the artist, and present owner (including museums like the Tate Gallery in London and the Museum of Modern Art in New York City, as well as individual owners), followed by color notation, provenance, exhibitions, and literature. Related works are linked by introductory texts that explore historical circumstances, shared themes, and studio practices. The Catalogue Raisonné also includes supplementary figures that illustrate source materials that Warhol used for his works: for example, illustrations in printed media, photographs, and photographic reproductions, as well as related drawings, works by other artists, and studio and exhibition views. Volume 5, covering the years 1976–1978, was published in September 2018, with at least five more volumes planned to cover the years 1979–1987.

3. I became the editor of The Andy Warhol Catalogue Raisonné in 1993. I have also been a research curator for 20th century art at The Menil Collection, Houston, an assistant professor of art

history at Caldwell College, and a Henry Luce Visiting Scholar of American Art at Brandeis University's Rose Art Museum. From 1999 to 2004, I was the editor of the Isamu Noguchi Catalogue Raisonné. I have lectured and published essays on Warhol, Noguchi, and Catalogue Raisonné research.

4. I received a B.A. and M.A. in art history from University of Michigan, and an M. Phil. and Ph.D. in art history from the Graduate Center at the City University of New York. I wrote my dissertation on Warhol's early drawings and paintings.

5. I am familiar with Andy Warhol's Prince paintings that are the subject of this lawsuit. Based on my education, training, and experience as the editor of The Andy Warhol Catalogue Raisonné, as well as my personal examination of two of the Prince paintings, I offer the following observations about Andy Warhol's background, artistic process, and the Prince works that are the subject of this lawsuit.

# **I. INTRODUCTION: POP ART AND ANDY WARHOL'S DEVELOPMENT DURING THE 1960s**

6. The term "Pop Art" was coined in the late 1950s by the British curator and critic Lawrence Alloway. In the earliest book about Pop Art, published in 1966, Alloway noted, "I used the term, and also 'Pop Culture,' to refer to the products of the mass media, not to works of art that draw upon popular culture."<sup>1</sup> He was also writing about recent

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<sup>1</sup> Lawrence Alloway, "The Development of British Pop," in Lucy R. Lippard, *Pop Art* (London: Thames and Hudson, Ltd. 1966): 27. See also, Alloway, American Pop Art (London and

developments in contemporary British art. By the early 1960s, however, as the term migrated across the Atlantic and above all to New York, it had undergone a make over; it came to refer to works of art rather than their sources in the mass media.

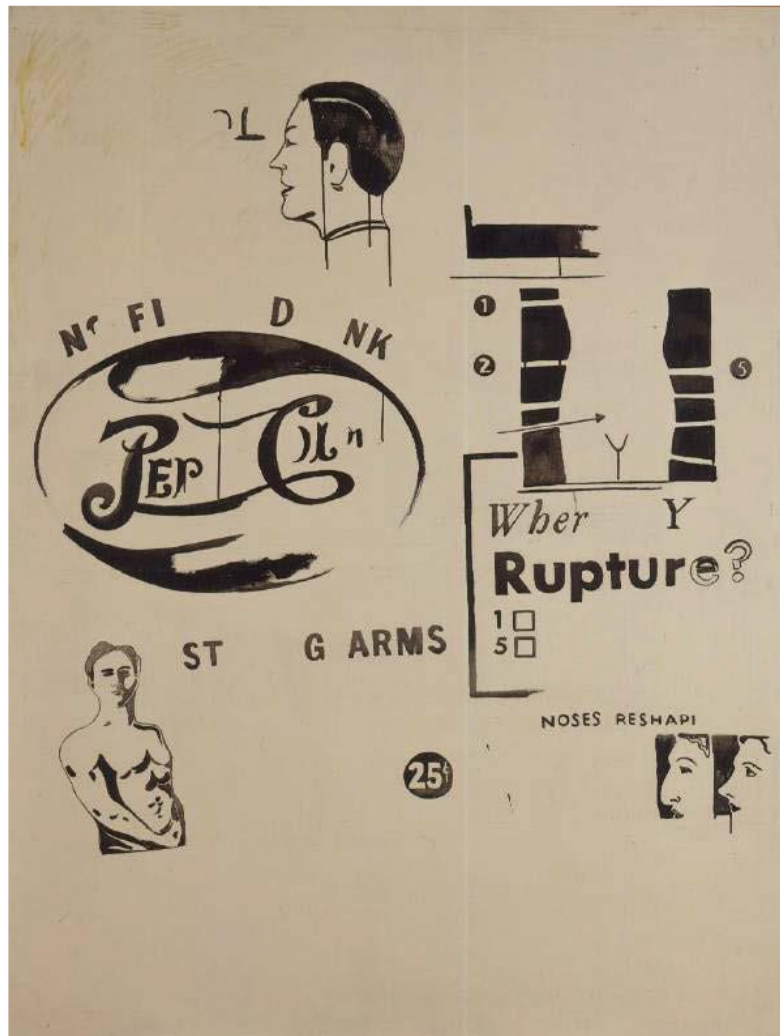
7. In 1961–62, when Andy Warhol began to produce his first body of paintings in an upstairs bedroom of his house at 1342 Lexington Avenue, he probably had never heard the term Pop Art, although this would dramatically change a year later.<sup>2</sup> Nonetheless, his first paintings, made in early 1961, were based on comic strips and black-and-white illustrated ads from the back pages of newspapers, such as the New York Daily News (fig. 1).

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New York: Collier MacMillan Publishers, in association with the Whitney Museum of American Art, 1974): 1.

<sup>2</sup> See Peter Selz, “A Symposium on Pop Art,” Arts Magazine, vol. 37, no. 7 (April 1963): 36–45, with Dore Ashton, Henry Geldzahler, Hilton Kramer, Stanley Kunitz, and Leo Steinberg. See also G. R. Swenson, “What is Pop Art? Answers from Eight Painters, Part I” ARTNews, vol. 62, no. 7 (Nov. 1963): 24–27, 60–65; interviews Jim Dine, Robert Indiana, Roy Lichtenstein, and Andy Warhol. Part II, ARTNews 62, no. 10 (February 1964): 40–43, 62–67. Interviews with Stephen Durkee, Jasper Johns, James Rosenquist, and Tom Wesselmann.

**Figure 1:** Andy Warhol, Advertisement, mid-April 1961, water-based paint and wax crayon on cotton, 69 3/4 x 52 3/8 inches

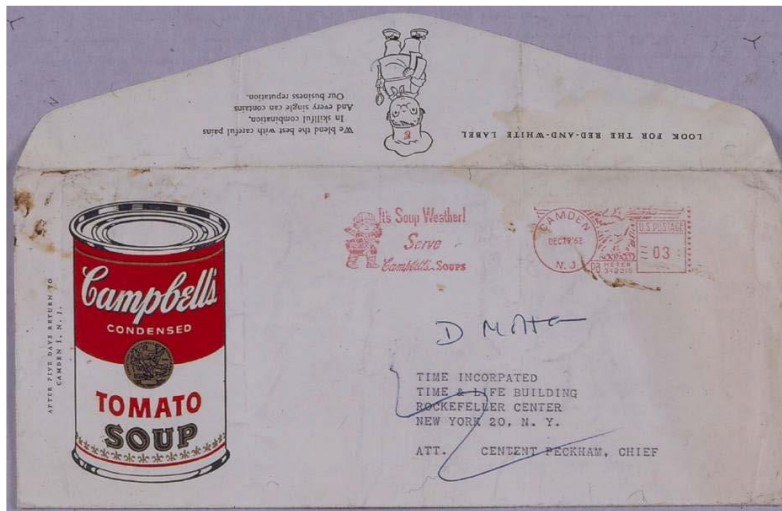


8. Warhol's prior and highly successful career in commercial illustration during the 1950s had sensitized him to the power of advertising to transform objects and our feelings about them into



images that could be reproduced and broadly distributed in the mass media. At this time, this meant primarily the print media—newspapers and magazines. Warhol's famous Campbell's Soup Can paintings of early 1962 are often misunderstood as depictions of real, albeit mass-produced common objects—that is, cans of prepared soup. In fact, they were reproductions of the Campbell Soup Company's logo, printed on their stationery, a purely graphic but supremely memorable sign that stood in for the product (figs. 2–3).

**Figure 2:** Envelope from Campbell's Soup Company



**Figure 3:** Andy Warhol, 32 Campbell's Soup Cans, early 1962, casein, metallic paint, and pencil on linen, 20 x 16 inches, each

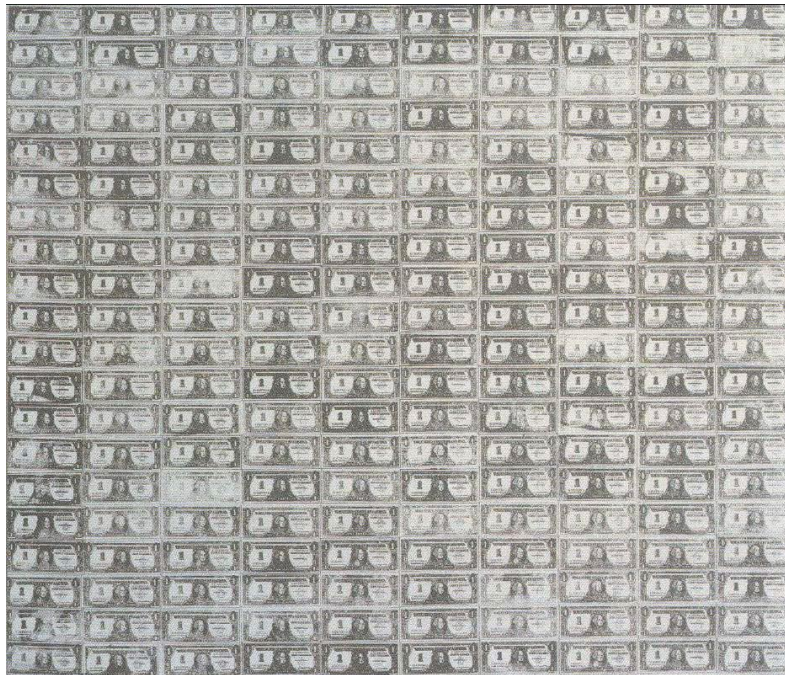


9. From the beginning of his painting career, Warhol was an avid student of media: he was acutely aware of the way images are produced, distributed, and consumed in contemporary culture, and he was fascinated by their function as vehicles of desire.

10. Warhol's adoption of the silk-screen technique in mid-1962 was a logical extension of his interest in printed media and his earlier explorations of more rudimentary printing techniques such as monoprinting, stencils, and rubber stamps. Not only were these techniques instrumental to him as a means of producing images in his work during the early 1960s, but printmaking also allowed Warhol to repeat images and combine them in series; it facilitated reproduction. One of his first silk-screened paintings, 200 One Dollar Bills (fig. 4), literally represents the idea of printing money, yet the bills in

Warhol's painting can neither be folded into a wallet nor crumpled into one's pocket:

**Figure 4:** Andy Warhol, 200 One Dollar Bills, March–April 1962, silkscreen ink and pencil on linen, 80 1/4 x 92 1/4 inches



11. The bills lack material presence; they are mere surfaces, two-dimensional images that cover every square inch of this 80 by 92-inch canvas, reminding us that it too is flat, that there is nothing “inside” the painting. Not only this, Warhol’s dollar bills are one-sided—only the front face of the bill is displayed. This underscores how money operates as a cultural sign, empty of intrinsic meaning or value, but endowed as currency, as a medium of exchange. When Warhol famously remarked in a 1967 interview, “If you want to know all about Andy

Warhol, just look at the surfaces of my paintings and films, and me, and there I am. There's nothing behind it,"<sup>3</sup> he was proposing a radical idea: that meaning was not deep inside people or things, but instead was on the outside, on the surface.

12. Not long after he began printing images onto his canvases with silk screens, Warhol learned that he could use the technique to incorporate photographic images in his paintings—the image he selected could be enlarged and reproduced onto silk screens prepared with a photosensitive emulsion. The photo-silk-screen technique immediately opened up a new class of images for his use—a massive image bank of photographs and photographic reproductions from the mass media. Warhol's first photo-silk-screens were movie-star portraits that zeroed in on their most significant attribute—faces, framed in close-up. With the photograph, movies now came into Warhol's orbit, specifically Hollywood movies. Like advertisements, the movie industry was an especially powerful engine that packaged and disseminated images of intense identification and desire. Even more than advertisements, movies excelled as agents of glamor and fame.

13. Warhol's movie star portraits were based on publicity stills and pictures in fan magazines. In this capacity, they were not portraits in the traditional sense: they did not attempt to capture the way a sitter really looked or to reveal his or her inner character. The photographs that Warhol selected were, in fact, already images. Like a soup can, Marilyn Monroe's

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<sup>3</sup> Gretchen Berg, "Andy: My True Story," Los Angeles Free Press (March 17, 1967): 3. Reprinted from East Village Other.

face in the studio still he selected for his paintings (fig. 5) was already a commodity; and like a dollar bill, her face already functioned as a sign. In the paintings he produced from this image, such as the Marilyn Diptych (fig. 6), Warhol distilled its most referential attributes, so that the subject (Marilyn Monroe) and the medium (photography) remain identifiable, but the physical and psychological presence of the source photograph is radically reduced to a painterly trace.

**Figure 5:** Marilyn Monroe, black-and-white photograph with marker and ink





**Figure 6:** Andy Warhol, Marilyn Diptych, August–September 1962, acrylic and silkscreen ink, and pencil on linen, 81 x 57 inches, each



14. Marilyn as an image, as a photographic trace that fluctuates until it becomes increasingly ghostly and faint, is apparent in the 25 black-and-white silkscreened impressions in the canvas on the right of the diptych. In the canvas on the left, Warhol uses color in tandem with the printed image, cosmetically embellishing Marilyn's movie-star features, coloring her hair yellow, painting her face violet, her lips red, and her eyelids a Technicolor green. Warhol's work is visibly a portrait of Marilyn Monroe, but his real subject is not the private person but the public image, a "persona" named "Marilyn." Warhol painted his first series of Marilyn portraits in the late summer of 1962, in the wake of her suicide on August 5. Her recent death not only made his paintings exceptionally topical, it imbued them with a haunting

quality. This is especially true of the serial Marilyn paintings, in which (like the Marilyn Diptych) the 50 repeated heads—25 in color and 25 in black and white—echo one after the other, like after-images.

15. In this respect, Warhol's celebrity portraits were not about the individual celebrity, but about the way in which the public idolizes and consumes branded images. His portraits comment on the cultural phenomenon embodied by the "publicity machine," a powerful engine that packages and disseminates commoditized images of intense identification and desire.

16. To better understand how Warhol articulated Marilyn as an image, producing her as an effect, it is helpful to consider, step by step, how he constructed a painting like the Marilyn Diptych and to analyze Warhol's painting process in stages.

## **II. WARHOL'S PAINTING PROCESS**

17. After Warhol selected the black-and-white photograph that he wanted to use for his paintings, the first step in his painting process was to deliver it to a professional silk-screen printer, who would produce the silk screen based on Warhol's instructions. Warhol might choose to reframe the image, indicating this with "crop marks" on the photograph as he has done in fig. 5. The two outer marks that appear to have been painted with a brush show that Warhol had initially decided to crop the image directly below the white collar of the dress, although he seems to have reconsidered the decision. The inner rectangle, drawn in marker, zooms in further on the head and face, cropping it through the collar and slightly below the shadow of the chin. This has the effect of severing the head from the shoulders

and bust, producing the disembodied effect of a cinematic close-up. How deliberately Warhol undertook this intervention is shown in a subsequent series of Marilyn paintings from 1964 and a portfolio of published prints from 1967 (figs. 7, 8).

**Figure 7:** Andy Warhol, Marilyn, July–August 1964, acrylic and silkscreen ink on linen, 40 x 40 inches





**Figure 8:** Andy Warhol, Marilyn Monroe (Marilyn), portfolio of 10 screenprints on paper, 36 x 36 inches; edition 250



18. In these works, he continues the procedure, moving in ever closer to contract the distance between the viewer and the image and exaggerate the scale and impact of the face. In the Marilyn Diptych, the photograph was enlarged to approximately 15 by 11 inches—more than life-size, but about half the size of the 1964 painting series and 1967 prints.<sup>4</sup>

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<sup>4</sup> The single Marilyn heads in the 1962 series, known as the Marilyn “flavors,” were produced from a somewhat larger screen, measuring 20 by 16 inches.

19. In addition to cropping the image and specifying the size of the enlargement, Warhol invariably instructed the silk-screen maker to produce a high-contrast image. This may be seen in what was called the “mechanical” for a portrait commissioned by the collector Ethel Scull in mid-1963 (fig. 9): two strips of photographs of Mrs. Scull, taken in an automated photo booth machine, were pasted side-by-side on a piece of cardboard, marked for enlargement, and annotated with the instructions, “Mr Goldstein/Make contrast like before/B+W/Rush/Andy Warhol.”

**Figure 9:** Andy Warhol, Ethel Scull, summer 1963, mechanical for portrait



20. Black-and-white photographs record a continuous range of tones from the deepest blacks in the shadows to the brightest lights, like the whitish highlights on Marilyn's parted lips or on the tip of her nose in fig. 5. On the other hand, the high-contrast black-and-white image that Mr. Goldstein would have printed on a sheet of clear acetate as a proof for Warhol's approval reduced the gradual gray scale of the photograph to a sharp distinction between darks and lights. Once Warhol approved of the high-contrast image printed on the acetate, the silk-screen maker would prepare the screen to size, coating its surface with a photo-sensitive emulsion and exposing the acetate so that the image would be reproduced like a photographic negative onto the screen. The weave of the silk, known as the mesh width, would amplify the contrast further: passing through the weave, lights and darks were transmitted as a "dot pattern."

21. The canvas, usually linen, would have been commercially prepared with a white ground layer, known as the primer. Unrolling the canvas on the floor of his working space, Warhol would lay out the composition in pencil, dividing the surface into a grid of 15- by 11-inch rectangles. He would then place the screen face down on the canvas, pour ink onto the back of the mesh, and use a squeegee to pull the ink through the weave and onto the canvas. As Warhol printed each head, one impression at a time, the ink would begin to clog the screen and he would have to clean it with a solvent from time to time. In the canvas on the right in the Marilyn Diptych (fig. 6), we can see that the image gradually darkens and becomes almost completely obscured in the second row on the left as Warhol proceeds, working from top

to bottom and from left to right. He has probably just cleaned the screen as he begins the third row and probably does so again at the fourth. If a commercial printer had pulled these images from a screen, every impression surely would have been exactly the same. Warhol, however, was not bothered by the imperfections and irregularities among the impressions; they may undermine the illusionism of the image, but they activate the surface, and indicate the intervention of Warhol's hand. Although he is famous for having stated, "I want to be a machine," every Warhol painting is, in fact, a nuanced calibration between repetition and difference, mechanical means and personal touch.

22. The high-contrast half-tone impressions printed on the primed canvas served Warhol as an overall design or "under-drawing." Then came the colors. Warhol painted the colors by hand over the printed impression, using the image outline as a rough guide. He used Liquetex acrylic paints, which had only recently become available. Warhol would have appreciated the fact that acrylic paint mixed with water and dried quickly, and that the colors had a flat, even consistency and an industrial appearance. With the half-tone to guide him, he could work quickly, as he liked to, laying in unmodulated applications of the acrylic paint: cadmium yellow for the hair, acra violet for the face, cadmium red for the lips, titanium white for the teeth, phthalo green for the collar and eye shadow, and cadmium orange for the background, which he painted last of all.

23. Once he had painted each of the 25 heads at the left, Warhol then printed another 25 silk-screened impressions of each head on top of the color. In this way, the final painting would be built up in layers:

first, the pencil grid, then the half-tone, then the color, and finally another application of the half-tone. In effect, the multi-colored layer of acrylic paint was sandwiched between two layers of black silk-screen ink.

24. When the Marilyn Diptych is viewed at close range, traces of black silk-screen ink are visible under the painted color, especially through the light yellow of the hair. Further, the alignment of the printed impressions on top of the color tends to be off-register from the painted shapes. Marilyn's head may be repeated 25 times, but we never see the same head. Marilyn is different every time, or rather her image fluctuates, appearing to shift slightly and quiver optically as we scan the canvas, Marilyn by Marilyn.

25. In 1964, when the Minimalist sculptor, critic, and theoretician Donald Judd was interviewed, he remarked, "A lot of things look alike, but they're not necessarily very much alike."<sup>5</sup> Judd's language is matter of fact, but what he was addressing may be applied to a number of recent developments in the art of the 1960s, Pop Art as well as Minimalism. In both Pop and Minimal Art, the means of representation was based on mechanical reproduction and industrial techniques, but within each system of repetition, as Judd observed, difference and uniqueness prevail.

26. During the 1960s, Warhol's subjects, derived from commonplace objects and images from the mass media, and their representation in paintings that employed mechanical and photomechanical means,

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<sup>5</sup> "Questions to Stella and Judd," interview by Bruce Glaser, WBAI radio 1964, edited by Lucy Lippard and reprinted in ARTnews (September 1966).

thrust him into the foreground of the critical debates about Pop Art. These debates may be clustered around three sets of issues: (1) the popular image as subject matter, and the question of its visual transformation; (2) the value of the mechanical and the mass produced; and (3) the role of irony, criticality, and authorial presence.<sup>6</sup> Warhol was not only a forerunner of Pop Art, but to many observers he represents its most radical exemplar. At the end of the decade, the curator and critic John Coplans, who organized the first retrospective of Warhol's art, paired him with the legendary pioneer of the Dada art movement, Marcel Duchamp, writing:

Andy Warhol, like Marcel Duchamp is a cultural phenomenon. As artists, neither figure belongs to the world of art alone. . . . They are visionaries—prophetic and radical in their approach to art and their ability to intensify the

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<sup>6</sup> For an anthology of critical texts about Pop art, see Carol Anne Mahsun, ed. Pop Art. The Critical Dialogue (Ann Arbor: UMI Research Press, 1989). Examples from the 1960's of each "cluster" of issues might be cited as follows: 1- Erle Loran, "Pop Artists or Copy Cats?" Art News 62 (September 1963) 48–49, 61; id., "Cezanne and Lichtenstein: Problems of Transformation," Artforum (September 1963): 34–37, reprinted in Mahsun, Critical Dialogue, 83–87; 2-Paul Bergin, "Andy Warhol: The Artist as Machine," Art Journal 26 (Summer 1967): 359–63; and 3-Thomas Hess, "Pop and Public," Art News 62 (November 1963): 23, 59–60, reprinted in Mahsun, Critical Dialogue, 107–110. For relatively recent examples, where the issue of Warhol's authorial voice and its criticality is examined, see Benjamin Buchloh, "Andy Warhol's One Dimensional Art: 1956–66," in Kynaston McShine, ed. Andy Warhol: A Retrospective (New York: The Museum of Modern Art, New York, 1989), 39–62; and Fredric Jameson, Postmodernism, or, the Cultural Logic of Late Capitalism (Durham: Duke University Press, 1995), 9–12.

art dialectic of their times with deliberate, incisive strokes.<sup>7</sup>

### III. WARHOL'S LATER PAINTING PROCESS AND HIS 1984 PORTRAITS OF PRINCE

27. From late 1962 until his death on February 22, 1987, Warhol's painting process changed remarkably little, although as one might expect, during this 25-year period, he introduced several important modifications to the way he worked. For example, as early as 1964, he learned to refine one aspect of the process by using sheets of carbon paper and the acetate proofs supplied by his printer to transfer a rough outline and the primary features of his source image onto the primed canvas. This served him as faint underdrawing, which replaced the labor of silk screening an initial impression that tended to bleed through the paint layer, as in the Marilyn Diptych. Ultimately, this allowed him to apply his colors and paints more freely and improvise upon the underdrawing.

28. In 1963, Warhol began working in the first of a series of dedicated studio spaces apart from his living space; more or less, at the same time, he began to hire assistants to work with him in the studio. Although he had studio assistants, Warhol always painted his canvases himself, applying the color with a brush. During the 1970s, Warhol's style changed; he broke up the formerly unmodulated and thinly applied color forms of his earlier work into passages of thick, pasty paint by adding clear acrylic medium to his colors. He also began to mix his colors directly

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<sup>7</sup> John Coplans, Preface, Andy Warhol (New York Graphic Society Ltd, 1970):5.

on the canvas, working the paint wet into wet. Above all, his brush work became increasingly gestural, his touch more “painterly” than flat and graphic. After 1973–74, he began to supplement the gestural effects of his brush work by using his fingers to score into the still-wet paint layer with fingers; in 1976, he began to use a sponge mop to lay in the backgrounds of his larger canvases with broad strokes of the mop. During the 1970s, as his work became more “painterly,” he also stopped printing his silk screens in the studio, outsourcing the work to the off-site printer who had prepared them.

29. Typically, each new project would begin by Warhol selecting a source image or images, usually but not necessarily photographs. During the 1960s, he had availed himself of automatic photo booth machines for his commissioned portraits and self-portraits, as in the portrait of Ethel Scull (fig. 9). In 1972, shortly after Polaroid introduced an inexpensive instant camera called the Big Shot that was designed as a portrait camera, Warhol began to produce his own portrait photographs. He shot thousands of Polaroids in color with the Big Shot over the next two decades in preparation for his paintings. Once he selected a photograph, Warhol would have a high-contrast black-and-white reproduction of the Polaroid made to his specifications, as he had always done. Often, Warhol would apply makeup to his portrait sitters, such as white face powder, in order to erase wrinkles and lines, and the particularity of the sitter’s face. It also amplified the effect of a high-contrast half-tone by draining even further the grey scale from the photographs.

30. In the mid-70s, as Warhol became increasingly involved with producing published



editions of screen prints on paper, he began to explore collage and developed the idea of introducing a line screen based on one of his drawings that could be superimposed over the high-contrast photographic half-tone screen. For example, in one of preparatory collages for a print in the Muhammad Ali portfolio, published in 1978 (fig. 10), Warhol overlaid a collage of cut and torn colored paper with two acetates, first a high-contrast half-tone, and then a line image based on one of his drawings (fig. 11).

**Figure 10:** Andy Warhol, Muhammad Ali, 1978, portfolio of four screenprints Strathmore Bristol paper, 40 x 30 inches, edition 150



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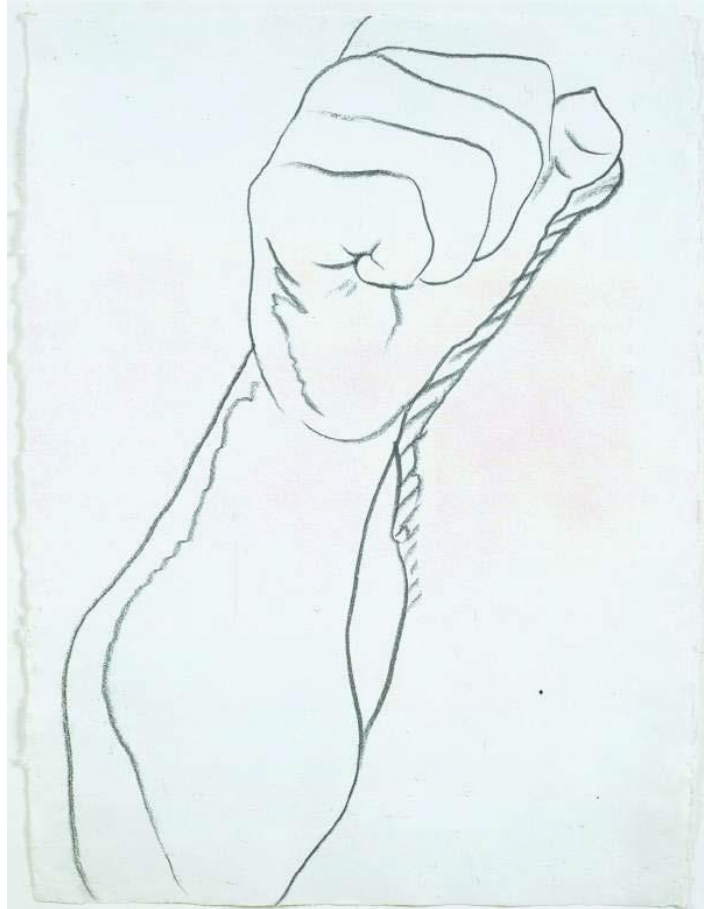
**Figure 11:** Andy Warhol, Muhammad Ali, 1977–78, collage: cut and pasted paper, silkscreen ink on acetate, 40 x 30 inches



31. Both the half-tone and the line drawing (fig. 12) were based on one of the 50-plus Polaroids that Warhol shot on August 16, 1977 at Ali's training camp, Fighter's Heaven, in Deer Lake, Pennsylvania (fig. 13).

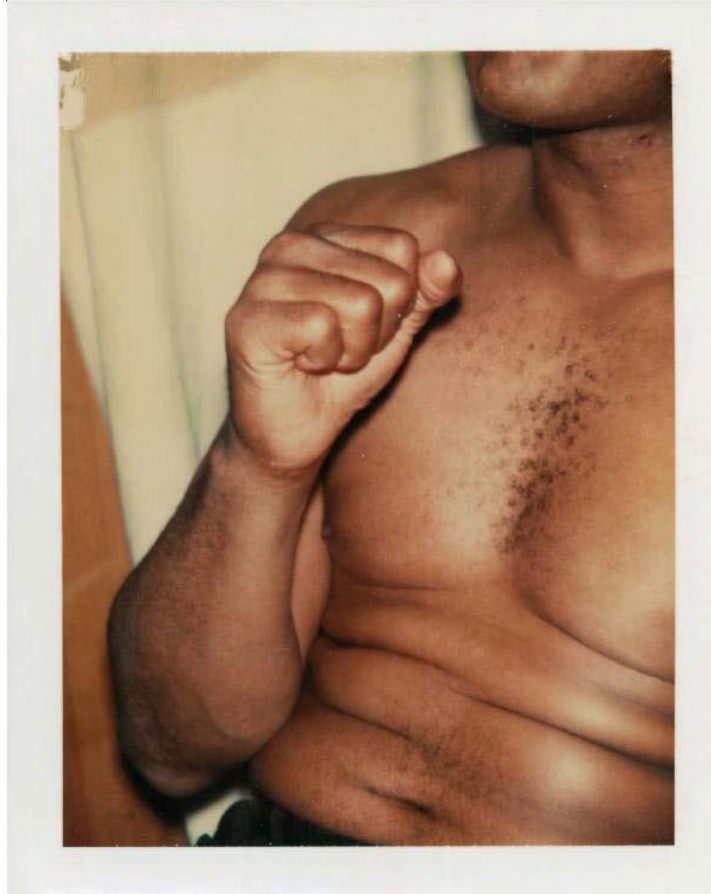
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**Figure 12:** Andy Warhol, Muhammad Ali, 1977,  
graphite on paper, 32 x 24 inches



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**Figure 13:** Andy Warhol, Muhammad Ali, August 16, 1977, Color Polaroid



32. In his 1979 book Exposures, Warhol observed, “The biggest star in the world is Muhammad Ali. He was also the hardest to get to pose for my athletes series.” Towards the end of his sitting, Warhol finally asked Ali not to talk: “All of sudden he was on. He flipped through a series of boxing poses. I got a great picture of Ali with his fists close to his face./Ali said, ‘Do I look fearless?’/ ‘Very

fearless,' I said."<sup>8</sup> As this indicates, Warhol was more interested in eliciting his sitter's charisma rather than his character. And in the end, the portrait depicted the most recognizable and symbolic emblem of Ali's celebrity—his fist—making the finished work a portrait of an icon, not a man.

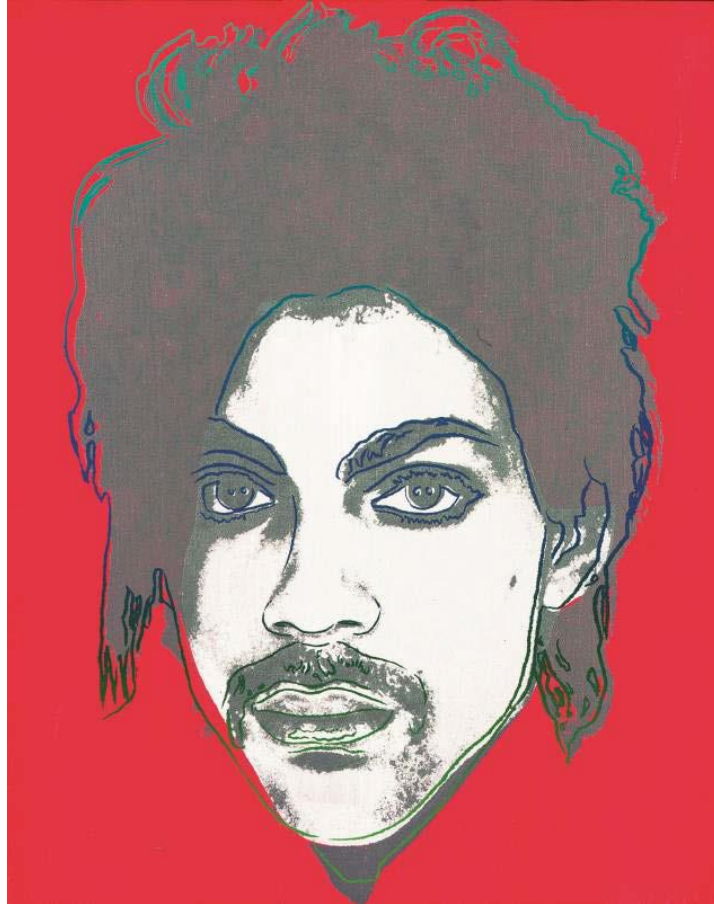
33. Warhol's portrait of the performer Prince, which appeared in the magazine Vanity Fair alongside an article in their November 1984 issue, titled "Purple Fame," was not based on one of Warhol's own Polaroids. In fact, as discussed further below, Warhol did not meet Prince until nearly two years later. It appears that Vanity Fair provided Warhol with a black-and-white photograph that the photographer Lynn Goldsmith, whom Warhol did not know, had supplied to Vanity Fair. As with the photograph of Marilyn Monroe, Warhol cropped the photograph of Prince, zooming in on Prince's face in close-up. Like Marilyn and especially the Marilyn prints (fig. 8), Warhol chose to crop the image directly below the shadow of his chin, so that the head becomes disembodied, separated from the support of the neck and shoulders, as if magically suspended in space, and filling the composition in his painting (fig. 14).

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<sup>8</sup> Andy Warhol, "Muhammad Ali," Andy Warhol's Exposures (New York: Andy Warhol Books, Grosset & Dunlop 1979): 210, 212.

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**Figure 14:** Andy Warhol, Prince, 1984, acrylic and silkscreen ink on linen, 20 x 16 inches

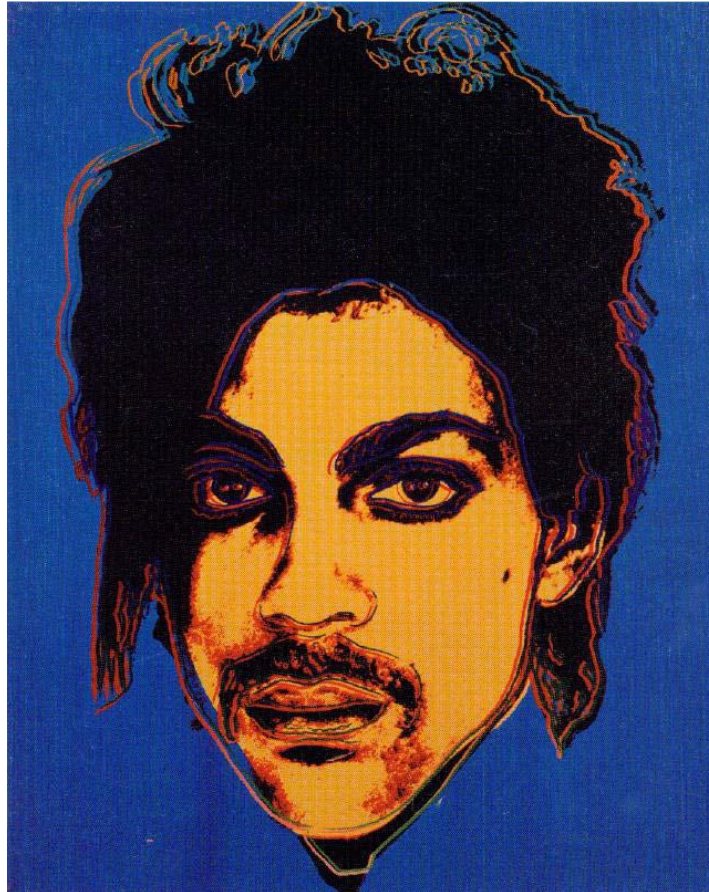


34. In addition to cropping the image, Warhol had his silk-screen printer, Rupert Jasen Smith, enlarge it to 20 by 16 inches, so that the disembodied head of Prince in his paintings would be larger than life-size, nearly twice as large in fact. As is evident in the paintings, the high-contrast half-tone that Rupert Smith would have produced on an acetate for Warhol's approval intensifies the darkness of Prince's



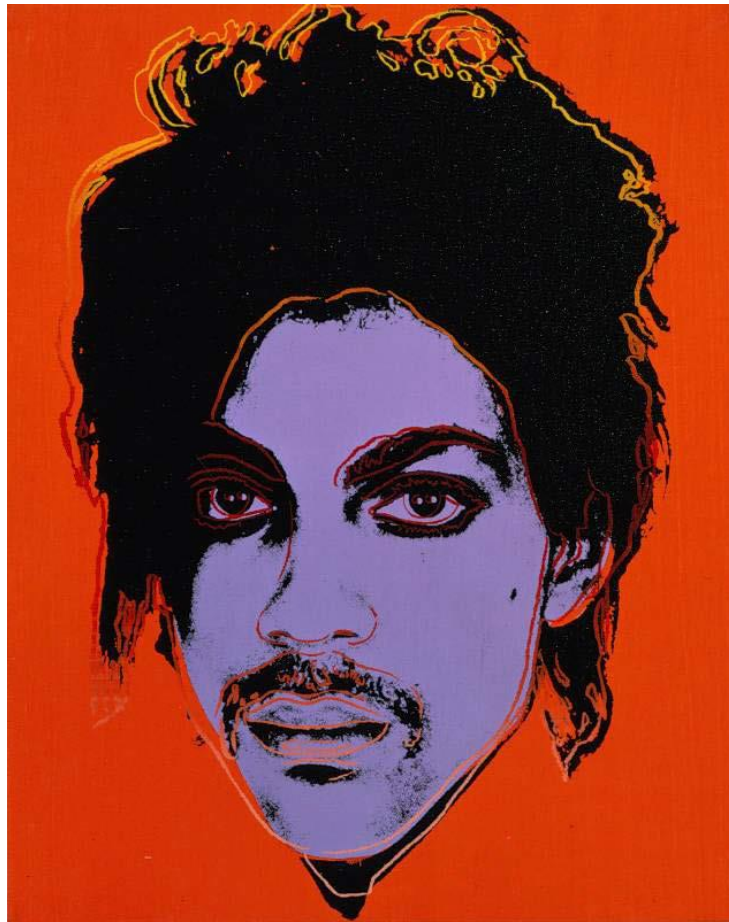
features and makes the shadows that encircle his eyes more pronounced, especially under the right eye where the shadow falls over the edge of his face, descending from the hair. In high contrast, Prince's face forfeits the corporeality and luminosity that may strike us in the photograph; we see not an appealing, if somewhat offbeat-looking, young man, but an ominous-looking apparition, a mask crowned with a large black mass of hair (fig. 15).

**Figure 15:** Andy Warhol, Prince, 1984, acrylic and silkscreen ink on linen, 20 x 16 inches



35. To add color to the face, Warhol used the acetate to faintly trace its overall shape in four of the twelve canvases, then painting it in by hand. In only one canvas is the face remotely flesh-colored; in the others, it is distinctly unnatural, a whitish green, yellow, or purple; the last surely in homage to Prince's 1984 hit song and movie, Purple Rain (fig. 16).

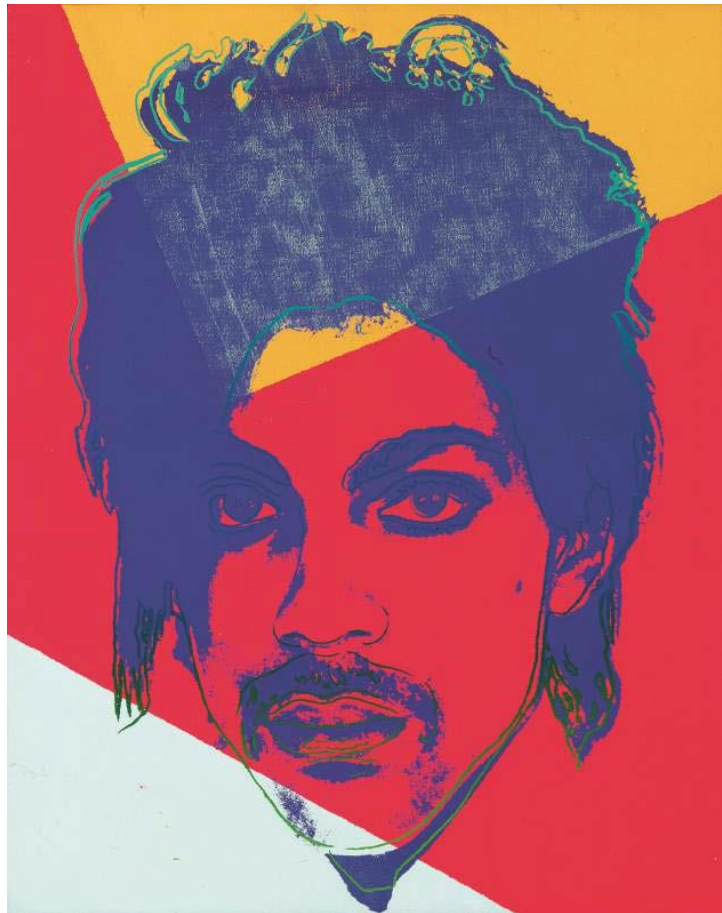
**Figure 16:** Andy Warhol, Prince, 1984, acrylic and silkscreen ink on linen, 20 x 16 inches





36. In two other canvases, the orange background, also hand-painted, continues through the face; the artificial effect of Warhol's color choices is even more extreme in four canvases in which the background is either divided diagonally into two colors or fractured into three differently-colored shapes (fig. 17).

**Figure 17:** Andy Warhol, Prince, 1984, acrylic and silkscreen ink on linen, 20 x 16 inches



37. Both clearly look back to the cut paper collages that Warhol had used for his published prints (fig. 11), now translated into flat wedges of painted color. Warhol also had his printer use different colors rather than exclusively black silk-screen ink for the half-tone in certain paintings: purple (in three paintings), silver (in two), and a red-orange. In figure 18, the lightness of the silver screen printed over the darker, painted background, particularly the blue field on the left, has a peculiar effect—it is like seeing the image in a negative reversal, heightening the spectral aspect of the face.

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**Figure 18:** Andy Warhol, Prince, 1984, acrylic and silkscreen ink on linen, 20 x 16 inches



38. In addition to the high-contrast half-tone silk screen, Warhol had a second screen produced from one of his drawings. The two line drawings that he made reflect the deliberation of his process as he worked his way through the source photograph. In one drawing, the neck and shoulders are abbreviated but distinctly indicated (fig. 19); in the other, the head is cropped below the chin and is somewhat larger,

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nearly filling the sheet of drawing paper (fig. 20). The whiteness of the sheet and the sparseness of the contours deplete the physicality of each drawn head. Both images are imbued with an eerie, empty, and ghostly effect.

**Figure 19:** Andy Warhol, Prince, 1984, graphite on HMP paper, 31.7 x 23.7 inches



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**Figure 20:** Andy Warhol, Prince, 1984, graphite on HMP paper, 31.7 x 23.7 inches



39. To produce these drawings, Warhol would have tacked each sheet to the wall, placed the photograph in an opaque projector and gradually enlarged the image to fill the sheet. Then he would draw over the projected image. His drawings are pure line, what are known as “contour drawings” that

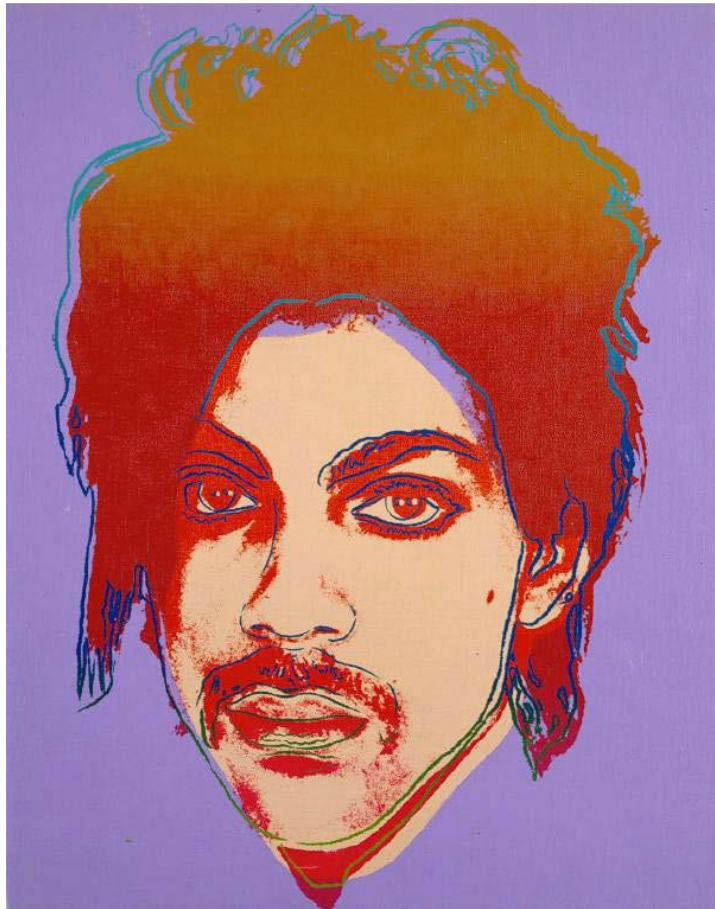
outline the primary features as composites of open silhouettes—the large irregular mound of the hair, the face tapering to the chin, the floating forms of eyebrows, eyes, mustache, and lips, and the profile of the nose. Only the left eyebrow, moustache, and lower lip display pencil marks inside their respective silhouettes that attest to the texture of hair on the eyebrow and mustache, the highlight on the lips. The hair itself is a single mass, broken only by three archipelagoes of tiny contoured islands at the top and on either side where the hair separates into strands.

40. Warhol clearly knew in advance precisely what was required of his drawing. When figure 20 was reproduced onto an acetate for his approval and subsequently exposed onto a silk screen for printing, he knew that his drawing would overlap a half-tone impression, as it does in nine of the 12 paintings. There would have been no need to fill in the shape of the hair or render the shadows of the face. Not only would a contour drawing suffice, it would serve his aesthetic purposes. Printed slightly off register from the half-tone impression, the line screen highlights the face; it has the effect of lip or eye-liner, emphasizing the features and enhancing their impact. Moreover, the line screens were printed not only in different colors but in multi-colored inks so that the line gradually changes color from top to bottom. In two paintings, Warhol heightened the optical dynamic by superimposing two line-screen impressions over the half-tone (figs. 15, 18).

41. The multicolored line screens may be most readily seen in the three paintings without half-tone screens, especially the example on a white background, where the line screen shifts from green to blue to what appears to be a dark purple and back

again to green. In only one of the paintings is there a comparable shift in the colored half-tone impression, from orange to red, while the line shifts from green to blue (fig. 21).

**Figure 21:** Andy Warhol, Prince, 1984, acrylic and silkscreen ink on linen, 20 x 16 inches

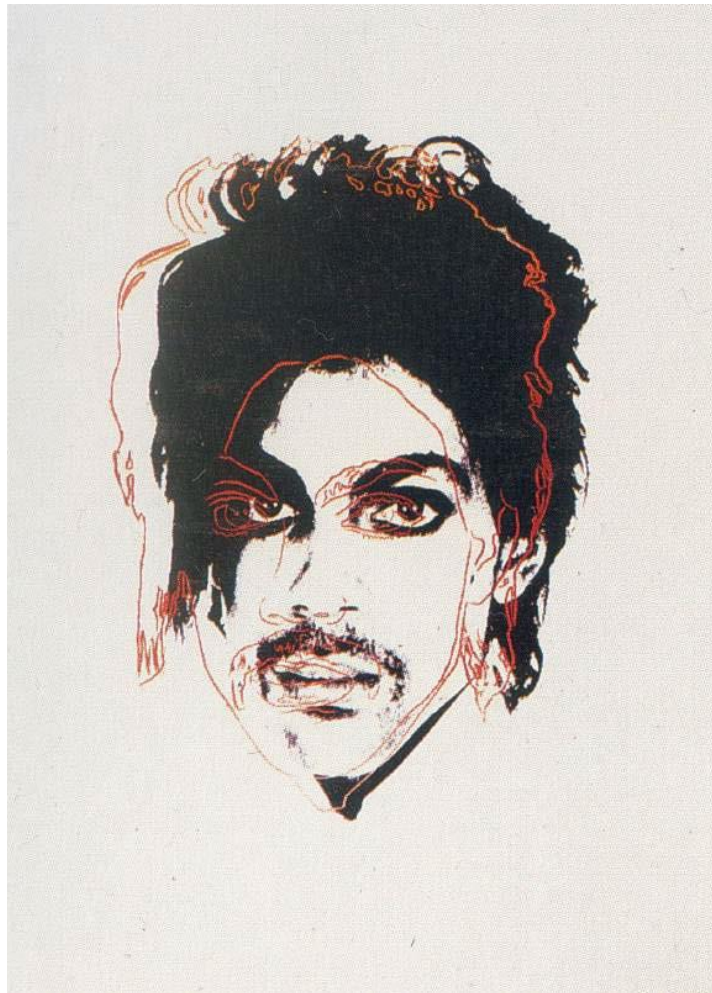


42. Two unpublished prints on paper further reveal the role of the line screen in a more exploratory state. One print replicates the ink colors of the painting in figure 21, and was probably produced as a



proof or study for the painting; the other explores the registration of line screen and half-tone, exaggerating the off-register imprint of the red line screen over the black half-tone (fig. 22). In all sixteen of these works, it is striking how Warhol mobilizes line coloristically, using it to create pictorial effects.

**Figure 22:** Andy Warhol, Prince, 1984, unpublished screenprint on Moulin du Verger paper, 30 x 21 3/4 inches





#### IV. CONCLUSION: THE PRINCE “EFFECT”

43. On Saturday August 2, 1986, Warhol attended a Prince concert at Madison Square Garden; after the concert he was invited to a party for Prince at the Palladium, meeting him for the first time. In his diary entry for that day, he wrote:

We went into the Mike Todd Room [at the Palladium] and it was just almost empty, tables set up, reserved, and there, in a white coat and pink bellbottoms, like a Puerto Rican at a prom, *all by himself*, was Prince. He was just great, that image of him being weird and always with the bodyguards and everything was just dispelled, and he came over to each and every person and shook their hand and said he was so happy they came, and he danced with each and every girl—all these weird girls in sixties dresses. Literally with *every girl*, and he wasn't even a good dancer. And he remembered *names*, like he said, “So glad you came, Wilfredo.” What manners! And Wilfredo was in heaven. We asked Prince if he would be our December cover [of Warhol's magazine Interview] and he said we'd have to talk to his manager and we said that we'd asked the manager and the manager said to ask him, and so they said they'd work it out. We were just shaking, it was so exciting. And Billy Idol was there and you know, seeing these two glamour boys, it's like boys are the new Hollywood

glamour girls, like Harlow and Marilyn. So weird. [Warhol's italics above]<sup>9</sup>

Nothing speaks more directly to Warhol's acute grasp of the effects of celebrity than his own words on the subject. Nor can we point to the disparity between the public image and the private person more immediately than in this passage from his diaries, when Warhol finally meets Prince in person, "*all by himself*" and observes that "the image of him being weird and always with the bodyguards and everything was just dispelled."

44. Warhol's 16 portraits of Prince, like his Marilyn paintings or his Muhamad Ali portraits, are conspicuously not concerned with the person "all by himself," not with the young man in Goldsmith's photograph, but with a charismatic performer who is "on." Prince's public image—his persona—was a performance in its own right, a public face to the world. And this is precisely what we see through Warhol's portraits in the disembodied head, intense gaze ringed by dark shadows, the lurid colors, and optical special effects. This is how he produces the "effect" of Prince's image: spectral, dark, uncanny, and somewhat haunting, or as Warhol himself so succinctly put it, "weird."

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<sup>9</sup> Pat Hackett, ed. The Andy Warhol Diaries (New York: Warner Books, 1989): 749.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: New York, New York  
October 12, 2018

*s/ Neil Printz*  
Neil Printz

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## The Print Collector's Newsletter

205 East 78th Street 1-D, New York, N.Y. 10021  
(212) 744-3032

Vol.I No.6 January-February 1971

*Publisher:* Paul Cummings *Editor:* Judith Goldman

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### A CONVERSATION WITH ANDY WARHOL *by* *Gerard Malanga*

#### *Introductory note:*

I was introduced to Andy Warhol the first week in June, 1963, at a party given by the film makers Willard Maas and Marie Menken. I recall Andy's silver hair, white skin, dark shades, and outright nervousness. I had just curtailed my formal education at Wagner College and was desperately in need of a job. Andy was in need of an assistant to help with production of his silk-screen paintings.

I began working for Andy at what was then his studio, a condemned hook and ladder company located on 87th Street between Lexington and Third Avenues. The city had sold the building to a real estate agent at an auction, and Andy was renting the entire building for \$150 a month until such time as he would be asked to vacate the premises.

We began working almost immediately on the silk-screening of a portrait of Elizabeth Taylor on a canvas that had been prepared with a background of silver spray paint. The job was not too difficult, but became messy later when the screen had to be cleaned with varnolene.

We printed four or five 40 x 40 in. canvases, after which we returned to Andy's home which was two blocks away where I scrutinized Andy's photograph collection while "Sally Goes Round the Roses" spun. The photos were an odd assortment of car crashes, people being tortured, candid and posed movie stars, and nature lovers. I realized that the photos were the actual subject matter Andy reproduced in his silk-screens. From these photos, Andy was taking what he wanted stylistically from the media and from commercial art, elaborating and commenting on a technique and vision that was to begin with secondhand. He was a Social Realist in reverse; he was satirizing the methods of commercial art as well as the American Scene. But instead of satirizing the products themselves, he had satirized the "artful" way they were presented.

Andy has always been an education for me. He had many pitfalls to overcome with his art, and on many occasions we resolved these problems. It was always impossible to make an exact copy of his paintings. It was always accidental, a new element or a new emphasis, either manual or psychological, would crop up in the work. Andy wanted to keep the human element out of his art, and to avoid it he had to resort to silk screens, stencils, and other kinds of automatic reproduction.

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Andy Warhol in 1966,  
preparing his Cow  
wallpaper at the Factory on  
East 47th Street, New York.  
Courtesy Billy Name.

But still the Art would always manage to find a way of creeping in. A smudge here, a bad silk-screening there, an unintended cropping. Andy was always antismudge. To smudge is human. He wanted to blot out blots. When we took up screenprinting, it was not to get away from the preconceived image, but to more fully exploit it through the commercial techniques of multiple reproduction. Unlike Rauschenberg, Andy never destroyed his screens after they were used, and for this reason he has always been worried about the

possibility of a forgery. If somebody faked his art, he could never hope to identify it.

Andy has always felt his work to be vacuous, but at the same time he felt he couldn't tell how someone would react to one of his paintings until the person actually saw it. He thought someone had to see his painting in person to realize how vacuous it really was. Too many people who say it's vacuous have never experienced the vacuousness of it at all. They are judging it either as a reduced illustration or just an abstract idea. They say who's interested in a can of soup? We know what it looks like because we eat it. Or, we've seen pictures of it in the magazines. So Andy reproduces a can of soup as it appears in an advertisement, and then they think he's changed something. People just don't know how vacuous something is until they see a copy of it. Maybe somebody will have to imitate his work before it looks as vacuous as it really is.

Having struck out on my own, after a seven-year apprenticeship, I have discovered now that I am able to make use of what I've learned from Andy in my own daily living, and also the way I see things. The following interview with Andy is not an interview at all, but a review of what we've been feeling about art during the past seven years.

Malanga: *Andy — when did you make your first print?*

Warhol: Don't you remember, Gerard!? It was the print in three colors of the portrait of Elizabeth Taylor.\* Actually I didn't silk screen it myself. Leo (Castelli) had it printed up in a limited edition signed by me. It was in the format of a poster and unlike the current *Campbell Soup Can* and *Flower*

portfolios. If I remember correctly, I felt that if everyone couldn't afford a painting the printed poster would be available.

Malanga: *What was the motive behind repeating the same image more than once on a painting?*

Warhol: I don't really know or remember. I think, at the time, I started repeating the same image because I liked the way the repetition changed the same image. Also, I felt at the time, as I do now, that people can look at and absorb more than one image at a time.

Malanga: *Gathering from what you've said I feel that the idea of the repetitive image ties up with the split-screen experiments incorporated into the film "Chelsea Girls."*

Warhol: Correct, but that was a divine accident. The idea of the split/image in *Chelsea Girls* only came about because we had so much footage to edit, and I wasn't into editing at the time, and the film would have been too long to project in its original form time-wise. By projecting two reels simultaneously, we were able to cut down the running-projecting time in half, avoiding the tedious job of having to edit such a long film. After seeing the film projected in the split/screen format, I realized that people could take in more than one story or situation at a time.

Malanga: *How random is your randomness in choosing the images you work with for the paintings?*

Warhol: Ah — what do you mean? I don't choose images randomly, but make a careful selection through elimination. This was the same approach we used with *Chelsea Girls*, although we did



eliminate two to four 35-minute reels. As for the paintings, the images I've used have all been seen before via the media. I guess they're media images. Always from reportage photographs or from old books, or from four for a quarter photo machines.

Malanga: *Do you feel you've changed the media?*

Warhol: No. I don't change the media, nor do I distinguish between my art and the media. I just repeat the media by utilizing the media for my work. I believe media *is* art.



Andy Warhol, *Jackie*, screenprint on paper (24 x 30 in.), 1966, from *Eleven Pop Artists* portfolio. Courtesy Leo Castelli Gallery, New York.

Malanga: *At what point did you stop painting and start using screens to print your paintings?*

Warhol: Around 1962, though the backgrounds to the paintings have always been painted by hand before the silk screen is applied. Silhouette-shapes of the actual image were painted in by isolating the rest of an area on the canvas by means of masking tape. Afterwards, when the paint dried, the masking tape would be removed and the silk screen would be placed on top of the painted silhouette shape, sometimes slightly off register. I wasn't too careful about making a perfect register. I used to be concerned about this, but it would never come out perfectly registered anyway, because it was hard to see through the silk screen once I'd screened one image and moved it over to the next piece of canvas, so I would approximate the area upon which the silk screen would be placed, and nearly 100% of the time the image would reproduce an almost perfect register.

Malanga: *What distinguishes your prints from your paintings?*

Warhol: I suppose you could call the paintings prints, but the material used for the paintings was canvas. The prints, if they were silk-screened by us, were always done on paper. Anyone can do them. Why, even now, there's this boy in Cologne who has printed up slightly smaller versions of my Marilyn Monroe paintings and the Cow wallpaper prints. But his versions are also done on paper and with more color combinations.

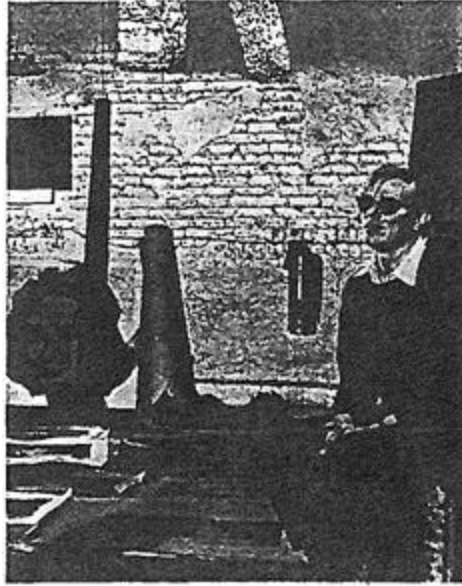
Malanga: *Is there a relationship between your prints and your involvement with film?*

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Warhol: At the time I wasn't aware of any relationship. They were for me at that time and still are two distinct expressions. But you did point out to me the similarity in the repetition of images in both media. I'm speaking here in regard to the early films, like *Sleep* and *Empire*.



Andy Warhol, *Self-Portrait*, screenprint on paper (23 x 23 in.), 1966, Courtesy Lee Castelli Gallery, New York.



Warhol at the Factory.  
Courtesy Leo Castelli Gallery,  
New York.

Malanga: *Yes, I remember holding up to the light a clip from "Sleep" and taking notice how each frame was exactly the same; each frame was static because the film was static in its actual projection. What percentage of influence do the people who work with you have over your final work?*

Warhol: I don't know. I always get my ideas from people. Sometimes I change the idea to suit a certain project I'm working on at the time. Sometimes I don't change the idea. Or sometimes I don't use the idea right away, but may remember it and use it for something later on. I love ideas.

Malanga: *Do you reuse the same screens for later printings and editions?*

Warhol: The screens I used for the *Flower* and *Campbell Soup Can* paintings were never reused for the *Flower* and *Campbell Soup Can* portfolios. First of all, they were never the same size. Second, the portfolios were never handscreened by me. They were always manufactured. I chose the different colors for them.

Malanga: *Why do you use a rubber stamp?*

Warhol: I don't always use a rubber stamp for my signature; but I turned towards the idea of a rubber stamp signature because I wanted to get away from style. I feel an artist's signature is part of style, and I don't believe in style. I don't want my art to have a style.

Malanga: *Do you think of yourself as media?*

Warhol: No one escapes the media. Media influences everyone. It's a very powerful weapon. George Orwell prophesied the potency of the media when he spoke of "Big Brother is watching you" in his visionary novel *1984*.

Malanga: *What plans have you for the near future?*

Warhol: To do nothing.

Gerard Malanga is a poet whose published books include *Screen Tests* among others.

\* Documenting Andy Warhol's graphic work is difficult as he has consistently employed the graphic media to make things other than prints. No documentation was kept on Warhol's early graphics as many of these works were only considered prints after the fact. For example, the first *Flowers* print was a photo offset poster, signed but not numbered, for a 1964 exhibition at the Castelli Gallery in New

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York. The *Elizabeth Taylor* print Warhol refers to here was not his first print. Warhol's first signed and numbered print was probably *Cooking Pot* (1962). The print was made from an engraving of a newspaper advertisement and was signed on the verso with an embossed blind stamp of the artist's signature and numbered in pencil in an edition of 60. It was included in the portfolio *International Avant Garde*, Volume V, published by the Galleria Schwarz in Milan.—Editor

\* \* \*

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE ANDY WARHOL FOUNDATION  
FOR THE VISUAL ARTS, INC.,

Plaintiff,

-against-

LYNN GOLDSMITH AND LYNN  
GOLDSMITH, LTD.,

Defendants.

No. 17-cv-  
02532-JGK

LYNN GOLDSMITH,

Counterclaim Plaintiff,

-against-

THE ANDY WARHOL FOUNDATION  
FOR THE VISUAL ARTS, INC.,

Counterclaim Defendant.

**EXPERT REPORT OF DR. THOMAS CROW**

\* \* \*

**I. RETENTION**

I have been retained by Quinn Emanuel Urquhart & Sullivan, LLP on behalf of The Andy Warhol Foundation For The Visual Arts, Inc. to offer my objective, expert opinion on Andy Warhol's 1984

portraits of the musician Prince (Prince Rogers Nelson). Specifically, I was asked to offer my expert opinion about the following topics:

1. The history, composition, and message of Andy Warhol's celebrity portraits.
2. The history, composition, and message of Andy Warhol's portrait of the music artist Prince.

I offer this report as a deeply experienced and widely recognized expert on the art and career of Andy Warhol. Its purpose is to review the best historical and interpretive literature on the artist and offer an opinion about whether Warhol's portraits of Prince effected a significant transformation of the photograph on which they were based. I opine that Warhol did significantly transform the photograph of Prince, both in composition and meaning, and that the significant character and artistic value of Warhol's Prince portraits as works of art—as is the case in all of his celebrity portraits—inheres in the extent and character of that transformation.

## II. QUALIFICATIONS

Following is a summary of my art-related resume and *curriculum vitae* (attached as Exhibit A):

### Education

University of California, Los Angeles: Ph.D. (1978); M.A. (1975)

Pomona College, B.A. (1969) *Magna Cum Laude*, Phi Beta Kappa

### Honors

Paul Mellon Lecturer in British Art, National Gallery, London and Yale Center for British Art, 2017



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Honorary Doctorate, University of London, 2016  
A. W. Mellon Lecturer in the Fine Arts, National  
Gallery of Art, 2015  
J.S. Guggenheim Fellow, 2014-15  
Holly Fellow, Clark Art Institute, 2014  
Honorary Doctorate, Pomona College, 2006  
Member, American Academy of Arts and Sciences,  
since 2001

Professional Leadership Positions

Institute of Fine Arts, New York University,  
Rosalie Solow Professor of Modern Art  
Associate Provost for the Arts, New York  
University, 2007–2011  
Getty Research Institute, Director, 2000–2007  
Yale University: Robert Lehman Professor of  
History of Art, 1996–2000; Chair, Department of  
Art History, 1997–2000  
University of Sussex, Professor and Chair, History  
of Art, 1990–1996

Representative Writings and Lectures

*Restoration: The Fall of Napoleon in the Course of  
European Art* (Princeton University Press,  
forthcoming October 2018)  
*No Idols: The Missing Theology of Art* (University  
of Sydney and University of Washington Presses,  
2017)  
*The Long March of Pop: Art, Design, and Music  
1930-1995* (Yale University Press, 2015)  
*Emulation: David, Drouais, and Girodet in the Art  
of Revolutionary France* (Yale University Press,  
2006)

*Gordon Matta-Clark*, co-author (London: Phaidon Press, 2003)

*The Intelligence of Art* (University of North Carolina Press, 1999).

*The Rise of the Sixties: American and European Art in the Era of Dissent* (New York: Prentice-Hall, 1996)

*Modern Art in the Common Culture* (Yale University Press, 1996)

*Painters and Public Life in Eighteenth-Century Paris* (Yale University Press, 1985)

Teaching Experience

University of Chicago

Princeton University

University of Michigan

Sussex University (UK)

Yale University

University of Southern California

New York University

**III. MATERIALS REVIEWED**

I have attached as Exhibit B a list of the documents I reviewed and relied upon in connection with the preparation of this report.

**IV. COMPENSATION**

Written expert work	\$400 per hour
Testimony in depositions and at trial	\$500 per hour, with a minimum of \$4,000 per day of testimony

## V. STATEMENT OF OPINIONS REGARDING ANDY WARHOL'S CELEBRITY PORTRAITS

### A. Scholarship On Andy Warhol's Celebrity Portraits

Warhol's 1984 portraits of the musician Prince effected a significant transformation of the photograph on which they were based. Indeed the significant character and artistic value of Warhol's Prince portraits as works of art—as is the case in all of his celebrity portraits—inheres in the extent and character of that transformation. This section of my report addresses this concept as it applies to Warhol's celebrity portraits generally, as a prelude to addressing these issues as applied to Warhol's portraits of Prince.

My opinion about Warhol's celebrity portraits lies at the foundation of the considerable body of scholarly and critical writing on the artist that has emerged since his death in 1987, which is summarized in a 2016 anthology, *On & By Andy Warhol*, published by the MIT Press in the United States and the Whitechapel Gallery (one of the major public venues for modern and contemporary art) in London. Its editor, Gilda Williams, addresses this issue in her introduction [14]:

The artist's unexpected death early in 1987 momentarily stunned the art world into a kind of mute paralysis. . . . [A]n unprepared art community was suddenly faced with the monumental task of sifting through his legacy, still uncertain of its ultimate worth. Thomas Crow's groundbreaking 'Saturday Disasters: Trace and Reference in Early Andy Warhol'

(1987) opened the suspicion that Warhol's performance of passivity during his lifetime disguised the devastating control he had wielded over the response to his art.<sup>1</sup>

Warhol had exerted that control via the consistency with which he maintained his public persona, limiting his remarks about his art to vapid pronouncements that he wanted to be like a machine or that he and his art were all surface. Williams continues to say that, on the publication of my 1987 essay, "[s]uddenly, decades of (almost) unquestioned belief in Warhol's 'Pop' self description—that his hollow persona adhered to his equally depthless art—was called into doubt, and began to be dismantled."

"Saturday Disasters" has been anthologized in four further publications<sup>2</sup> with a substantial excerpt in the 2016 volume edited by Williams [135-143]. In this way, its argument has remained a primary point of reference in serious Warhol studies to date. I have continued in the intervening years to write and lecture about Warhol's work, supervising student

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<sup>1</sup> Gilda Williams ed., *On&By Andy Warhol* (London and Cambridge, MA: Whitechapel Gallery and MIT Press, 2016); "Saturday Disasters: Trace and Reference in Early Andy Warhol," originally published in *Art in America* (May 1987), 129-136.

<sup>2</sup> Serge Guilbaut ed., *Reconstructing Modernism: Art in New York, Paris, and Montreal 1945-1964* (Cambridge MA and London: MIT Press, 1992); Thomas Crow, *Modern Art in the Common Culture* (New Haven and London: Yale University Press, 1996), 49-65; Annette Michelson ed., *October Files 2: Andy Warhol* (Cambridge MA and London: MIT Press, 2001), 49-68, from which further page citations are taken; and in French translation in *Les Cahiers du Musée National de l'Art Modern.*

research on the subject, while incorporating further discussions of his art into two books that have become widely used in the teaching of art history: *The Rise of the Sixties: American and European Art in the Era of Dissent* (1996, revised edition, Yale University Press, 2005) was praised in *Publishers Weekly* as “invaluable for both students of art and any reader interested in this most significantly subversive decade in contemporary culture,” and *The Long March of Pop: Art, Music, and Design 1930-1995* (Yale University Press, 2014) contains two chapters devoted to Warhol in its 400-plus pages. The reviewer in the *College Art Journal*, published by the American professional association of art historians, wrote that “this dazzlingly comprehensive, elaborately constellated new history of Pop . . . lays down a gauntlet for future scholarship, not only on 1960s art, but on art’s relationship to vernacular culture more generally.”<sup>3</sup>

By “vernacular,” this reviewer means the sort of material that Warhol found in the magazine, publicity, and newspaper photographs, which served as the primary sources for his art in general and his celebrity portraiture in particular. One passage in *The Long March of Pop* particularly germane to the present question reads, “the flat, emblematic character of . . . each actual film star likeness, product label, or newspaper photograph transferred to canvas . . . drains from them most of the semblance of life, even that portion retained in the photographic surrogates that provided Warhol with his templates.

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<sup>3</sup> Johann Gosse, “Subterranean Homegrown Blues.” Review of Thomas Crow, *The Long March of Pop: Art, Music and Design, 1930-1995* (New Haven: Yale University Press, 2014), *Art Journal* (Fall 2016), 70–73.

His consistent manner of transforming these sources makes them resemble one another more than they resemble any particular person or thing in the world.” [287.] The point of this observation is that any photographic likeness deployed by Warhol assumed a place within a recognizably Warholian universe of symbols, one that possessed its own order, recognizable character, and internal codes of meaning—entirely distinct from such elements, if any, that might be found in the photograph itself.

Defining the character of that universe has been a cumulative effort by many art historians and critical interpreters, some contributions preceding my own initial Warhol intervention in 1987, and that progression of thought merits a summary here. Michael Fried, of Johns Hopkins University, one of the most distinguished American critics and art historians, wrote a review in 1962 of one of Warhol’s earliest fine-art exhibitions, which included some of his first paintings of Marilyn Monroe. Fried was one of the most prominent partisans of thoroughly abstract art and thus indifferent if not hostile to painting with recognizable subject matter, which included the work of emerging Pop artists. Nonetheless Fried found himself moved by what he saw and compelled to say so: “At his strongest—and I take this to be in the Monroe paintings—Warhol has a painterly competence, a sure instinct for vulgarity (as in his choice of colors) and a feeling for what is truly human and pathetic in one of the exemplary myths of our time.”<sup>4</sup> Fried’s terms of praise are

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<sup>4</sup> Michael Fried, “New York Letter,” review of Andy Warhol at the Stable Gallery, *Art International* (December 1962), 57.

intentionally paradoxical; ascription of vulgarity might seem to strike a discordant note, but points to Warhol approaching the universality of myth via the broadest range of human sympathies.

Heightened awareness of complexity in the creation of Warhol's signature celebrity portraits of the 1960s went hand in hand with finding in them more profound meanings. The catalogue for the large, unprecedented retrospective exhibition of Warhol's work mounted in 1989 by the Museum of Modern Art in New York also included a groundbreaking essay by the art historian Benjamin H.D. Buchloh, then on the faculty of M.I.T. and now at Harvard, which newly recognized in Warhol's art strong conceptual affinities with other, celebrated examples of avant-garde art. Buchloh saw the artist as having exposed the deficiencies of the larger culture in which such superficial icons loom so large: "Although Warhol constructed images of Marilyn Monroe, Liz Taylor, and Elvis Presley in the tragicomical conditions of their glamour, the paintings' lasting fascination does not derive from the continuing myth of these figures but from the fact that Warhol constructed their image from the perspective of the tragic condition of those who consume the stars' images. . . ." <sup>5</sup>

In his *New York Times* review of the 1989 retrospective exhibition, critic Michael Brenson made an equal and opposite argument to Buchloh's sense of tragic entrapment in mediated images, echoing the eminent art historian Robert Rosenblum in seeing rather a paradoxical purity and even metaphysical

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<sup>5</sup> Benjamin H.D. Buchloh, "Andy Warhol's One-Dimensional Art," in McShine ed., *Andy Warhol: A Retrospective*, 53.

import: “His flat images, painted in a flat tone, existing in a non-space from which past and future have been banished . . . make the present seem absolute and eternal—in other words, transcendent. Part of Warhol’s achievement was to legitimize his love of secular, profane subjects by attaching to them traditional religious values. . . . Warhol argues that self-effacement and sensual excess, purity and trash, the moment and eternity can exist together.”<sup>6</sup>

Whether disabusing or other-worldly, the deeper qualities that many have noted in the Marilyn images among others can only have been the outcome of Warhol’s interventions; they resonate as strongly as they do because they arrive with such surprisingly emotive effect. Feelings are involuntary in nature, and they are often prompted by the elusive traces of memory. I observed in my 1987 essay that the “screened image, reproduced whole, has the character of an involuntary imprint. It is memorial in the sense of resembling memory: powerfully selective, sometimes elusive, sometimes vividly present, always open to embellishment as well as loss.”

For his monumental *Marilyn Diptych* of 1962, Warhol arrayed no less than fifty repetitions of his screened module, twenty-five to each of the work’s joined panels, colored on the left, black and white on the right. He thus put into play, as I wrote [52-3], “a stark and unresolved dialectic of presence and absence, of life and death. The left side is a monument; color and life are restored, but as a secondary and invariant mask added to something far

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<sup>6</sup> Michael Brenson, “Review/Art: Looking Back at Warhol, Stars, Super-Heroes and All.” *New York Times* (3 February 1989).



more fugitive. Against the quasi-official regularity and uniformity of the left panel, the right concedes the absence of its subject, displaying openly the elusive and uninformative trace underneath. . . . [S]he is most real and best remembered in the flickering passage of film exposures, no one of which is ever wholly present to perception. The heavy inking in one vertical register underscores this: the passage from life to death reverses itself; she is most present where her image is least permanent. In this way, the *Diptych* stands as a comment on and complication of the embalmed quality and slightly repellant stasis of the *Gold Marilyn*.”

On the occasion of Warhol’s next major retrospective, the internationally traveling exhibition organized by the German curator Heiner Bastian in 2002, the preceding views found affirmation and forms of synthesis in Bastian’s introductory essay. The celebrity portraits of the 1960s, he argued, “imply emptiness, the distant past, and the after life but also the antinomy between saintly relic and fallen woman—articulate the ‘high and the utterly base’ that are always simultaneously perceptible in Warhol’s work. . . . In the Liz [Taylor] and Marilyn portraits, and in the Elvis silkscreens, the aura of utterly affirmative idolization already stands as a stereotype of a ‘consumer-goods style’ expression of an American way of life and of the mass-media culture of a nation. . . . In these works the hyper-icons of Pop turn into icons of demonic emptiness: Warhol’s

notions of ‘beauty’ cannot be imagined without tragedy.”<sup>7</sup>

By this juncture, the consensus among specialists was that the first phase of Warhol’s celebrity portraiture—that preceding a turn towards film in the late 1960s and his grievous wounding in the assassination attempt of 1968—is best understood within such a range of meanings. Following his prolonged recovery, however, his approach to portraiture changed in several important respects. Some changes followed from the fact that his own fame and social standing had risen to the point that he frequently dealt with his celebrity subjects as a peer and close acquaintance rather than as a remote observer from a fan’s subculture. Portraits were most frequently bespoke commissions rather than independently conceived works of art, solicited as a planned stream of revenue to support the considerable scope of his studio infrastructure (“the Factory”).

In the view of Rosenblum, this change did not in any way preclude significant artistic achievement: “Take the pair of Liza Minnelli portraits,” he wrote of a 1978 commission from the entertainer in whose circle Warhol moved, “[w]hat we may first see is how a familiar face is flattened to extinction by the blinding glare of a flashbulb or by the cosmetic mask of lip gloss, hair lacquer, mascara. Almost like Manet in *Olympia* [1863-65], Warhol has here retouched reality to push his pictorial facts to a two-dimensional extreme. Middle values vanish (the nose and

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<sup>7</sup> Heiner Bastian, “Introduction,” *Andy Warhol Retrospective* (Los Angeles: Museum of Contemporary Art, 2002), 27–28.

shoulders are swiftly ironed out to the flatness of paint and canvas), and we are left with . . . this insistent material façade of opaque, unshadowed paint. . . . From behind this brash silhouette, a pair of all too human almost tearful eyes returns our gaze. . . .”<sup>8</sup>

### **B. Andy Warhol’s Process Of Making Celebrity Portraits**

Art historian Rainer Crone published the first serious scholarly account of Warhol’s art in 1970, adapting it from his German doctoral dissertation. Crone’s argument for Warhol’s achievement rested on the leap from commonplace subject matter to the prestige inherent in painting as an artistic medium. He posited that the act of transferring a popular photographic image to a painting, that is, to a unique stretched canvas meant to be contemplated in a gallery, introduced a “revolutionary” new meaning into the practice of art: “Warhol’s reproduction technique is perhaps shown most clearly in the Marlon Brando painting of 1966. It consists of an image taken from a poster of Brando (available for \$1.00 in any poster shop) and silkscreened on unprimed canvas. In combining a poster meant for mass circulation and a painting, traditionally intended for contemplation by an educated individual—its very existence becomes its sole

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<sup>8</sup> Robert Rosenblum “Andy Warhol: Court Painter to the 70s,” in David Whitney ed., *Andy Warhol: Portraits of the Seventies* (New York Random House, 1979) 205–216.

justification . . . he transforms the easel painting into a carrier of ideas. . . .”<sup>9</sup>

Crone was not just arguing that the everyday source from a Brando poster was lent new value by its transposition to a Warhol painting; he went further to say that the art of painting had likewise been transformed by its now being able to convey ideas about contemporary conditions of life, a capability that had heretofore been beyond its capabilities. Rosenblum made the point more explicitly in 1979, from the same 1979 critical text quoted above: “By accepting the photograph directly into the domain of pictorial art, . . . Warhol was able to grasp instantly a whole new visual and moral network of modern life that tells us not only the way we can switch back and forth from artificial color to artificial black-and-white on our TV sets but also the way we could switch just as quickly from a movie commercial to footage of the Vietnam War. For Warhol, the journalistic medium of photography, already a counterfeit experience of the world out there, is double counterfeit in its translation to the realm of art.”<sup>10</sup>

Rosenblum was personally close to Warhol and spoke with a greater degree of first-hand knowledge than did most of his peers. The artist’s regular Catholic religious observance informed Rosenblum’s observation about the 1962 *Gold Marilyn* in the collection of the Museum of Modern Art: “When Warhol took a photographic silkscreen of Marilyn

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<sup>9</sup> Rainer Crone, *Andy Warhol: A Catalogue Raisonné* (New York: Praeger, 1970), 10.

<sup>10</sup> Rosenblum “Andy Warhol: Court Painter to the 70s,” *supra* n. 8.

Monroe's head, set it on gold paint, and let it float high in a timeless, spaceless heaven . . . , he was creating, in effect, a secular saint for the 1960s that might well command as much earthly awe and veneration as, say, a Byzantine Madonna hovering for eternity on a gold mosaic ground."

Rosenblum's observation, much as Fried's observation had done in 1962, confirms that Warhol's painting can carry an emotional charge that was not necessarily—and sometimes could not have been—present in the photographic source. The Marilyn Monroe series offers a clear case in point. As Warhol began the series within weeks of the actress's suicide, the fans' feelings of loss and mourning motivated his choice of that particular motif at that moment in time. He began by purchasing a publicity still of Monroe from the 1953 film *Niagara*. His translation of the heavily cropped photograph into a silkscreen pattern entailed a drastic simplification of the original, a discretionary reduction of tonal gradations to a high-contrast pattern that functioned more like a heraldic emblem than any sort of rounded, particularized representation.

Emerging awareness of the complexities engendered by Warhol's image-manipulations became apparent in the 1989 MoMA catalogue. That catalogue included the most complete discussion of Warhol's techniques up to that date, provided by the British curator and author Marco Livingstone under the title, "Do It Yourself: Notes on Warhol's Technique." His lengthy description of how the Marilyn Monroe images were created [72] defies any shorter summary:

A pencil tracing was taken from the full sized [transparent] acetate prepared for the photographic screen. Either by transferring the penciled line by pressing onto the front of the acetate or sheet of paper, or by placing a sheet of carbon paper beneath the tracing and then drawing the line one section at a time, a rough guide was established for each color area, for example, the lips and the eyelids. The colors were then brushed on by hand, often with the use of masking tape to create a clean junction between them, with the eventual imposition of the black screened image also serving to obscure any unevenness in the line. The acetates were examined by Warhol before they were made into screens, so that he could indicate by means of instructions, written and drawn with china-marking crayon, any changes to be made: for example, to increase the tonal contrast by removing areas of half-tone, thereby flattening the image. The position of the image would be established by taping the four corners of the acetate to the canvas and then tearing off the tape along the corner edges of the acetate; the fragments of tape remaining on the canvas would serve as a guide in locating the screen on top. The position of the screen would be confirmed by eye, and it would then be printed.<sup>11</sup>

A Warhol painting is thus far from any unreflective replica of a photographic source, but

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<sup>11</sup> Marco Livingstone, "Do It Yourself: Notes on Warhol's Technique," in Kynaston McShine ed., *Andy Warhol: A Retrospective* (New York: Museum of Modern Art, 1989), 72.

rather the outcome of a complicated, highly considered interplay of disparate elements. Variables in execution were as significant as the plan; that is to say, just how much looseness to introduce into the procedure was crucial to its outcome, no simple matter of working fast or carelessly, but one of subtle understanding on Warhol's part that too much precision would rob his images of the unexpected liveliness and frequent pathos that has kept them relevant and compelling over the decades.

## **VI. STATEMENT OF OPINIONS REGARDING ANDY WARHOL'S *PRINCE* SERIES**

### **A. The Development of Andy Warhol's 1980s Social Milieu**

Warhol's 1984 portrait series of sixteen portraits devoted to the musician and actor Prince partook to a degree in the technical approach that he had developed for his commissioned portraiture, but it also harked back to the independently conceived celebrity likenesses of his earlier career. As Prince had not commissioned any of the paintings, Warhol could experiment with far more variations in background patterns and colors, including uninflected pale gray paint or white paper, all of which would have diluted the value of a private portrait. His evident fascination with the young African-American entertainer, known for sexual frankness in his music and an androgynous style in his clothes, make-up, and hairstyle, echoed similar traits among those he famously gathered around himself in the Factory entourage of the 1960s.

In the 1960s, though he was well into his thirties, Warhol had become one of the dominant style setters in youth culture, beginning in the downtown

Manhattan scene and, as time has gone on, all over the world. He cultivated two youthful companions in particular: (1) the gay, model-handsome poet Gerard Malanga, who also became an adept assistant to Warhol in the studio, and (2) the heiress Edie Sedgwick, who actually modeled for *Vogue* and was for a time his regular companion at openings and parties. Despite the fifteen-year difference in their ages, Warhol and Sedgwick both affected silver hair and similar clothes, such that they were perceived as inseparable quasi-twins.

Malanga and Sedgwick did not serve as subjects for paintings, but they were prominent actors in the films that consumed a growing amount of Warhol's time and attention from 1963 onwards. As Warhol enlarged his repertoire of painted subjects in the first half of the 1960s, its key personages, rendered as mask-like emblems, came to function as projected aspects of Warhol's own inner self. As his Factory entourage swelled, he used its cast of variously beautiful, colorful, and eccentric personalities to a similar purpose. It was recognized that Warhol, outwardly reticent and undemonstrative, used such charismatic companions as surrogates, aspects, or projections of his conflicted inner psychology. He drew in Lou Reed, leader of the rock band The Velvet Underground, and was credited as producer for their first, enormously influential album released in March 1967. While more a cult than commercial success, *The Velvet Underground and Nico* served as a convincing riposte to Bob Dylan, chief avatar of the coming rock-music boom and then Warhol's great rival for preeminent esteem in the underground culture of lower Manhattan (see Crow, *The Long March of Pop*, 271–312). In short, Warhol worked



very hard to present himself positively to the emerging youth culture of the 1960s, and he cultivated relationships with impressive, much younger figures who carried authority there.

By the early 1980s, his cutting-edge reputation had taken a beating, as commercial enterprises like *Interview* magazine (and many of the portraits) positioned him much closer to Studio 54 and the Reagan-era establishment than to any youth vanguard. It was true that the “appropriation” art by young artists (e.g., Jeff Koons, Haim Steinbach, Cindy Sherman), appearing in storefront galleries or non-profit spaces, owed an immense debt to Warhol’s foundational example, while clubs on the Bowery or around Tribeca were launching musicians (e.g., Patti Smith, Ramones, Talking Heads) equally indebted to the example of the Velvet Underground. But Warhol had lost his direct connection to the current cultural moment, lacking equivalents to the estranged Malanga or Sedgwick, deceased since 1971, who would in any event have aged out of their former roles.

Warhol could only have been aware, too, that the nature of the New York underground had markedly shifted since his first 1960s heyday. Younger artists and musicians of the early 1980s were sharing space in their downtown haunts with representatives of Latino and African-American communities, carried by the first wave of rap and hip-hop music and the graffiti art migrating from the nocturnal train yards to SoHo gallery exhibitions. The young Jean-Michel Basquiat, of mixed Haitian-American and Puerto Rican parentage, embodied this change in his person and artistic enterprise. He first made his name as one of a two-man graffiti partnership under the name of

SAMO, which distinguished itself by tagging walls in the then-central art gallery district of SoHo. He made himself visible in the right clubs and other gathering places, displaying a special fascination for Warhol. Having begun his transition to fine art by painting small compositions on postcards, he always carried a selection with him. Spotting Warhol at lunch with David Bowie and the curator Henry Geldzahler, he dashed into the restaurant to sell Warhol some of his work.

When the two were properly introduced late in 1982 by the Swiss dealer Bruno Bischofberger, a power in the art market, they embarked on a friendship that would last, with inevitable ups and downs, until Warhol's death in 1987. They exchanged portraits after their initial meeting, and not long after began working together in Warhol's Factory studio space. Warhol is said to have offered help with Basquiat's growing drug dependency, which aggravated his already erratic behavior. Only intermittently successful in that endeavor, the older artist for his part appeared to gain renewed energy and commitment from their collaborations.

Outwardly, Warhol returned to the black jeans, leather jacket, and mirrored sunglasses of his 1960s persona, abandoning the Brooks Brothers suits that had accompanied his portrait "business" phase.<sup>12</sup> The art historian Charles Stuckey has documented the degree to which Warhol in the 1980s was likewise returning to the themes of his much earlier work, going as far back as the early 1960s, but that

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<sup>12</sup> Victor Bockris, *The Life and Death of Andy Warhol* (New York: Bantam, 1989), 331.

recapitulation entailed a nearly exclusive concentration on advertising and cartoon imagery.<sup>13</sup> The two artists would mount a show together in 1985, announced by a famous poster showing them as matched opponents in boxing gear.

### **B. Andy Warhol's *Prince* Portraits**

It required an external intervention early in 1984 to draw Warhol back into the mode of his early silkscreen portraits. *Time* magazine was preparing a cover feature on the singer Michael Jackson and commissioned Warhol to provide the image. Warhol wrote in a diary entry for March 7, 1984, five days before the cover date, that forty “*Time* people” came to the studio to look at the alternatives he had prepared, all based on a cheerfully smiling photograph. “And they stood around,” he noted, “saying that it should increase newsstand sales.<sup>14</sup> Their choice featured a sunny yellow background befitting Jackson’s emergence, with the release of the hugely bestselling *Thriller*, as an all-around entertainer embraced by a mass consumer audience.

The *Time* commission was publicly known when *Vanity Fair* asked Warhol to provide an image to accompany its profile of the young, African-American musician Prince, who had crossed over to film success with the release of *Purple Rain* and its accompanying

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<sup>13</sup> Charles Stuckey, *Andy Warhol: Heaven and Hell Are Just One Breath Way! Late Paintings and Related Works* (New York: Rizzoli and Gagosian Gallery, 1992), 9–33.

<sup>14</sup> Warren Perry, “Michael Jackson and Andy Warhol: Destined to Meet,” National Portrait Gallery blog (9 October 2010), <http://npg.si.edu/blog/michael-jackson-and-andy-warhol-destined-meet>.

album in 1984. As Warhol was known, more than any other artist, to have made fame his defining subject, his contribution made sense when juxtaposed to the punning headline, “Purple Fame.”<sup>15</sup> Credited to “Tristan Vox,” the accompanying essay in *Vanity Fair* was actually the work of Leon Wieseltier, who had just begun his renowned career as literary editor of the *New Republic*. The article marked the rise of its subject to a position of commanding celebrity: “escape from Prince,” Wieseltier declared, “is no longer possible. Finally he has arrived. The evidence is everywhere. The reasons are good. His music is some of the tightest and most tumid rock ‘n’ roll ever made. The movie *Purple Rain* is a crude minor classic. . . . From Minneapolis, Minnesota, there comes another tough but tender, violent but vulnerable American hero.”

The Brando-Presley clichés come thick and fast in the last sentence, but serve accurately to recall, whether he read Wieseltier or not, Warhol’s early fascination with such prototypical male heroes. In that sense, Prince as a subject carried a deeper affinity with the disinterested choices of subjects from the artist’s early career, in contrast to the Jackson paintings, which adhere more to the manner of the bespoke portraiture from the 1970s and 1980s. What was more, the more cultish and edgy character of Prince’s parallel breakthrough in 1984 made him the obvious alternative to Jackson, one more in tune with the more discriminating dance/club crowd in New York.

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<sup>15</sup> “Tristan Vox” [Leon Weiseltier], “Purple Fame: An Appreciation of Prince at the Height of His Powers,” *Vanity Fair* (November 1984), 66.

In further contrast to Jackson, with whom Warhol had been personally acquainted since the Studio 54 period of the 1970s, Prince was a distant figure known to Warhol only via publicity images and his charismatic appearance on the cinema screen. In the constellation of Warhol's early art, the aura of his Marilyn visages had come to settle on the face of Edie Sedgwick, as the undiminished charisma of the deceased film star found a living surrogate in the center of the imaginative universe shared by Warhol and his intimates. A parallel dynamic is not difficult to discern, if on a diminished scale, between the images of Prince and the immediate reality of Basquiat, joined to Warhol via shared labor and friendship, in Warhol's re-engagement with the youth culture that surrounded him, as Prince's scene was in distant Minneapolis conveyed only by inference from pictures, records, and film.

A photograph from 1981, when Prince had just broken through to widespread recognition with his 1980 *Dirty Mind* album, remained far from the celebrity that the 1999 album and *Purple Rain* had brought him by 1984. The fame that is Warhol's subject in the Prince portraits was thus of a different magnitude than Prince would have been experiencing three years before, as the Marilyn Monroe mourned and remembered in 1962 had been far from the ingénue captured by photographer Gene Kornman in 1953. In his transformation of the photographic portrait by Lynn Goldsmith, Warhol began with an extreme cropping that eliminated everything in the source but the face and hair. Taking away the high Edwardian collar entirely draws the lower part of the face down to a narrow point, on which the isolated head as a whole seems to balance itself. Warhol then

went about draining the inner tone and texture out of what was left. The first stage of the silkscreen transfer, as noted above, was for the laboratory to send back the processed image on a sheet of transparent acetate, which would have been largely clear in the center. The heightened contrast that Warhol preferred has the effect of isolating and exaggerating only the darkest details: the hair, moustache, eyes, and brows. One conspicuous effect of these changes was to make the subject appear to face fully towards the front as a detachable mask, negating the more natural, angled position of the figure in the source photograph.

The Andy Warhol Museum in Pittsburgh holds, along with three other versions, the painting used for the original 1984 article in *Vanity Fair*. Without direct examination of this source, no full reckoning of Warhol's transformations is possible. I closely inspected these works in person at the Andy Warhol Museum. On close inspection, it is evident that Warhol prepared two separate silkscreens, which overlay one another on top of two hand-painted areas of color: the nearly fluorescent red-orange ground and the facial area in purple. The first screen is the one derived from the cropped photograph and is inked in black. The greater part of this screen consists in the uninflected mass that represents the subject's hair. Indications of the facial features—eyes, brows, mouth, and moustache—extend from this mass in a smudged, approximate manner. The vibrancy and definition of these features largely derive from the second screen, which was created from Warhol's freehand lines drawn around and over the photographically derived layer beneath. He inked the second screen in different ways on each of the

examples in the Warhol Museum collection, varying and blending the colors within a single application. In the painting used for the illustration accompanying the *Vanity Fair* article, the lines in and around the tendril of hair at the top are yellow, while the inscriptions over the facial features shift between orange, red, and pink. These lines represent Warhol's own free invention, by means of which he made a point of diverging from the given facts of the photographic impression to provide his portrayal of Prince with a confrontational presence and intensity absent in his source.

These cumulative changes also made the subject appear to face fully towards the front as a detachable mask, cancelling the more natural, angled position that Prince assumed for the Goldsmith photograph. This effect returned Warhol to the origins of his art-critical credibility, that is, the flattened, emblematic, minimally descriptive manner that had characterized his first, definitive phase as an artist.

**C. Andy Warhol's *Prince* Portraits Versus Lynn Goldsmith's Photograph**

I have viewed images of several of Lynn Goldsmith's photographs of Prince, including her photograph of Prince that is said to be the source of the "artist reference" Warhol viewed before creating his portraits of Prince. I also reviewed Lynn Goldsmith's deposition transcript. I focused carefully on her description of the creation, meaning, and message she associates with the photograph of Prince that Warhol used as a reference for his portraits. Goldsmith explained:

Q. What was the forefront of your mind [when making this photograph]?

A. Getting him to get comfortable, but he is what he is.

Q. And you were trying to capture who he was?

A. You try to do it all.

Q. And in that moment, his identity was revealed to you was -- how would you describe it?

A. Someone who could be so expressive and really was willing to bust through what must be their immense fears to make the work that they wanted to do, which kind of required a different part of themselves, but at the heart of it all, they're frightened.

Q. Do you think you conveyed that?

A. In the picture?

Q. In the picture.

A. It's in the picture, I don't even like looking at it.

Q. Why?

A. Because of that, it makes me really sad.

Q. So you connected with that when you were making these photographs?

A. Yes.

Q. Do you think we can see sort of your story and your empathy when looking at the photographs that captures that?

A. In some ways, I hope so, but in other ways, I really hope nobody does.<sup>16</sup>

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<sup>16</sup> Lynn Goldsmith Deposition Transcript 105:8–106:15.



She also explained:

Q. So there is an important element of the photography in the book that you are trying to humanize, both the subjects and yourself in what you are portraying, is that right?

A. I'm just trying to find out who I am and that journey only takes place by also trying to find out who other people are.

Q. There is a real effort to communicate to the uniqueness of the people and their identities in these photographs?

A. Right. Because they're all part of me, they are all part of all of us.

Q. And when you are connecting who you are with the identity of the people in your photographs, you are trying to do that as accurately as you possibly can, as it relates to their personality?

A. I don't know how accurate. I mean, that word, I'm trying to be as empathetic.<sup>17</sup>

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<sup>17</sup> *Id.* 74:18–75:14; *see also id.* 7:23–8:2 (“Q. Do you agree that your photography has provided you an opportunity to make your passion of a quest into the nature of identity in the human spirit? A. Yes, I do.”), 62:11–20 (“Q. Do you think that your images reveal a great deal about your subjects, as is written here? A. Yes. Q. In what way? A. Each one is different. Q. But as we’ve talked about, you are trying to reveal something about each individual subject’s human identity? A. As best I can, yes”), 66:25–67:22 (“I put myself in the shoes of who is in front of the camera. I mean, I feel like I’m them, like when I talked about how I want the body to be comfortable, I just have this, you are me and I am you. Q. So when we were looking at the photo of Bruce Springsteen, for example, together just a little bit ago, you were attempting to capture his human identity as you talked

Warhol's portraits of Prince are materially distinct in their meaning and message. Unlike Goldsmith's focus on the individual subjects' unique human identity, among other related topics, *see supra* n.17, Warhol's portraits of Prince, as with his celebrity portraits generally, sought to use the flattened, cropped, exotically colored, and unnatural depiction of Prince's disembodied head to communicate a message about the impact of celebrity and defining the contemporary conditions of life. This approach transforms the character, message, and historic and artistic value of Warhol's portrait of Prince compared to Goldsmith's photograph.

Warhol's portraits of Prince are also materially distinct from Goldsmith's photograph in their composition, presentation, color palette, and media. Goldsmith's photograph is a photograph of Prince's head and upper body in muted tones. Warhol's paintings are, as I describe above, composed and presented using materially distinct colors, form, cropping, and contrast. This distinct visual presentation between Warhol's art and Goldsmith's photograph contributes to the transformed meaning and message in Warhol's works compared to Goldsmith's photograph.

In sum, Warhol's portraits of Prince effected a significant transformation of the photograph on

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about, but you are also trying to connect with him, so I'm experiencing what you, in fact, experienced in that very moment when you were connecting with him, is that accurate? A. I actually feel like I'm standing there. Q. So I'm seeing Bruce Springsteen and his identity and his story, but through your eyes, because you are in his shoes in that moment as you are taking or making that photograph? A. Yes.").

which they were based, consistent with the approach he applied to his other celebrity portraits.

## VII. CONCLUSION

Andy Warhol's 1984 portrait of Prince is fundamentally distinct from Goldsmith's photograph of Prince. The composition, presentation, scale, color palette, meaning, and media are fundamentally different and new compared to Goldsmith's photograph, as is the expressive nature of Warhol's portrait of Prince. These conclusions, and my opinion in this report, rest on well-established literature about Warhol's art that are generally accepted in my field of art history and widely accepted in public commentary and public perception about Warhol's art.

/s/ Dr. Thomas Crow

Dr. Thomas Crow

## **EXHIBIT A**

### ***Curriculum Vitae of Thomas Crow***

Thomas Crow teaches art history at the Institute of Fine Arts, New York University where he is Rosalie Solow Professor. He is the author of *The Long March of Pop; Art, Music, and Design 1930 to 1995* (2015), *The Rise of the Sixties* (2005), along with other books on modern art, French painting of the eighteenth century, and approaches to art history. He is a contributing editor at *Artforum* and held a Guggenheim Fellowship for 2014-15. His 2015 Mellon lectures at the National Gallery of Art, Washington DC, explored the changes in European art after the fall of Napoleon; while his Paul Mellon Lectures at Yale and the National Gallery, London, examined Pop art, style, and music in 1960s London.

## **CV**

### **Education**

University of California, Los Angeles: Ph.D. (1978);  
M.A. (1975)

Pomona College, B.A. (1969)

### **Positions** (selected)

Institute of Fine Arts, New York University, Rosalie  
Solow Professor of Modern Art

Associate Provost for the Arts, NYU, 2007 to 2011

Getty Research Institute, Director, 2000-2007

Yale University: Robert Lehman Professor of History  
of Art, 1996-2000; Chair, Department of Art History,  
1997-2000

University of Sussex, Professor and Chair, History of  
Art, 1990-1996

### **Honors and Awards** (selected)

Paul Mellon Lecturer in British Art, National Gallery,  
London and Yale Center for British Art 2017

Honorary Doctorate, University of London, 2016

A. W. Mellon Lecturer in the Fine Arts, National  
Gallery of Art, 2015

J.S. Guggenheim Fellow 2014-15

Holly Fellow, Clark Art Institute, 2014

Honorary Doctorate, Pomona College, 2006

Clifford Lecturer, American Society for Eighteenth-  
Century Studies, 2001

National Endowment for the Humanities Fellowship,  
1988-1989

Charles Rufus Morey Prize, College Art Association,  
1987, *Painters and Public Life in Eighteenth-Century  
Paris*

JA-230

Member, American Academy of Arts and Sciences  
since 2001

### **Other Professional Experience**

Contributing Editor, *Artforum*

### **Books**

2018: *Restoration: The Fall of Napoleon in the Course of European Art* (Princeton University Press, forthcoming October)

2017: *No Idols: The Missing Theology of Art* (University of Sydney and University of Washington Presses)

2015: *The Long March of Pop: Art, Design, and Music 1930-1995* (Yale University Press)

2006: *Emulation: David, Drouais, and Girodet in the Art of Revolutionary France* (Yale University Press)

2003: *Gordon Matta-Clark*, co-author (London: Phaidon Press)

1999: *The Intelligence of Art* (University of North Carolina Press).

1996 *The Rise of the Sixties: American and European Art in the Era of Dissent* (New York: Prentice-Hall)

1996: *Modern Art in the Common Culture* (Yale University Press)

1985: *Painters and Public Life in Eighteenth-Century Paris* (Yale University Press)

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- “Art by the Many: London Style Cults of the 1960s”  
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- “Frank Stella at the Whitney, *Artforum* (Feb. 2106),  
224-225.
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- “Pop Art and Buried Allegories in the Early Works of  
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- “American Idol: on Jeff Koons,” *Artforum* (Sept. 2014),  
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325.
- “Endless Summer: on Philip Leider’s ‘How I Spent  
My Summer Vacation,’” *Artforum* (September  
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*La Era romántica* (Madrid: Galaxia Gutenberg  
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102.
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Sherrie Levine,” in Johanna Burton ed., *Sherrie  
Levine: Mayhem* (New York: Whitney Museum of  
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- “Figures of Emergence in the Recent Sculpture of John Chamberlain, “ in *John Chamberlain: New Sculpture* (New York and Milan: Rizzoli, 2011).
- “The Pop Wars” in Jennifer Farrell ed., *Get There First: Decide Promptly: The Richard Brown Baker Collection of Post-War Art*, (New Haven and London: Yale University Press, 2011), 81-98.
- “The Insistence of the Letter in the Art of Robert Indiana,” in Allison Unruh ed., *Robert Indiana: New Perspectives* (Ostfildern: Hatje Cantz, 2011), 43-99.
- “The Art of the Fugitive in 1970s Los Angeles: Runaway Self-Consciousness,” in Paul Schimmel and Lisa Gabrielle Mark eds., *Under the Big Black Sun: California Art 1974-1981* (New York and London: Prestel, 2011), 44-62.
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- “The Insistence of the Letter in the Art of Robert Indiana,” in Allison Unruh ed., *Robert Indiana: New Perspectives* (Ostfildern: Hatje Cantz, 2011), 43-99.
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- “Vanishing Act: Art in and Out of Pomona,” in Rebecca McGrew and Glenn Phillips eds., *It Happened at Pomona; Art at the Edge of Los Angeles 1969-1973* (Claremont: Pomona College Museum of Art, 2011), 35-53.
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JA-236

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X

THE ANDY WARHOL  
FOUNDATION FOR THE VISUAL  
ARTS, INC.,

Plaintiff,

Case No.:  
17-cv-02532-JGK

vs.

LYNN GOLDSMITH AND LYNN  
GOLDSMITH, LTD.,

Defendants.

----- X

LYNN GOLDSMITH,  
Counterclaim Plaintiff,

vs.

THE ANDY WARHOL  
FOUNDATION FOR THE VISUAL  
ARTS, INC.,

Counterclaim Defendant.

----- X

June 27, 2018  
10:00 a.m.

Expert Deposition of THOMAS EUGENE CROW  
\* \* \*

**[51]**

\* \* \*

Q On Page 3 of your report you state in the beginning of the second paragraph. We're done with that. Page 3 of your expert report.

In the second paragraph you write, my opinion about Warhol's celebrity portraits lies at the foundation of the considerable body of scholarly and critical writing on the artist that has emerged since his death in 1987 and then you go on after that.

My question is: The reference to his death in '87, is that a sort a jumping off point for a large body of scholarly work about Warhol that then came into existence after his death?

A Well, that is the case. And I turned to the editor Gilda Williams -- I turned to the recent collected volume and its editor, Gilda Williams, as confirmation that that was the case because that's precisely what [52] she says.

Q And if we go back to Page 1 your report you referred at the top, I guess you have indented paragraph points 1 and 2?

A Um-hum.

Q You refer to the history AND composition and message of Andy Warhol celebrity portraits and the history composition and message of Andy Warhol's portrait of the music artist Prince.

Do you see that?

A Yes.

Q What do you mean by message in this context?

A Well, how much time do you have?

When you're thinking of message what would be the kinds of --

Q I'm asking the word you wrote in your report, what did you mean by that?

A Well, in this case I think [53] the most germane of the kind of multiple messages that his celebrity portraits carry is that they are much less, if at all, about the figure he represents, a film star let's say or a musician, someone in the public eye like Jackie Kennedy. And it is about the way that their images work on the spectator, the way they have already worked on the spectator in advance of the spectator and counting Warhol's particular transformation of those public images.

Q And would that be the same with respect to Warhol's 1960s images of, let's say, Marilyn Monroe as opposed to his later commissioned celebrity portraits?

A It's a sliding scale where the Marilyn Monroe images are concerned which really set the pattern for all of his subsequent work in this vein. They are about the way that people who become celebrities and circulate via [54] their images among people and for people who never encountered them personally function as masks, function in terms of a cultural language rather than the actual individual in any kind of depth. That's why they flatten out. That's why they are, in fact, very reduced and simplified in their mode of representation or where they encode the face. The celebrity portraits are naturally for people with whom Warhol interacted, often people he knew well.

Q You're talking about the commissions?

A The commissioned celebrity portraits. But they are also people who were interested in appearing like this. In fact, seeing themselves in this mask like manner because this is what it meant to be represented by Andy Warhol.

Q In that the celebrities who commissioned their own portraits wanted to appear as in the form of a mask as [55] the way you described it?

A Yes.

Q Is that your interpretation of those artworks?

A Because that's what it meant to be represented by Andy Warhol. So that was the value of having Warhol do your portrait. It would be a reason that Warhol would have his subjects put on very stark white face makeup so that the color and the variation or the actual volume of their faces would be flattened and essentially erased. And they entered into this. They had to put on the makeup. They would be, you know, photographed that way and from those images the portrait would be made.

Q So it was all consensual on the part of the subject?

A Yes, it was.

\* \* \*

[63]

Q And during his lifetime Warhol did not have very much to say about his own commissioned portraits, did he?

A No.

Q And did he have much to say with respect to his non-commissioned celebrity portraits?

A Did he have -- no, he didn't.

Q On Page 8, again in middle paragraph, again starting with the same sentence, you say -- the first sentence of the middle paragraph, quote, by this juncture a consensus among specialists was that the first phase of Warhol celebrity portraiture that proceeding a turn to its film in the late 1960s and his

grievous wounding in the assassination attempt of 1968 is best of understood within a range of meanings, closed quote.

Do you see that?

A Within such a range of meanings.

[64] Q I'm sorry. Within such a range of meanings.

A Yes.

Q Okay.

Now, you start the sentence by the phrase by this juncture, what time frame are we referring to?

A Well, this would be the 2002 date of an important Warhol retrospective organized by Hannah Bastian and originating at the Los Angeles Museum of Contemporary Art.

Q And that's the exhibition you referred to in the first paragraph on this page, correct?

A Yes.

Q And when you referred to the, quote, consensus among specialists, closed quote. Again, this is as of the 2002 time frame, correct?

A Yes.

Q And by consensus does that infer that there were some specialists who had diverging views of how to [65] interpret Warhol's art?

A There were, of course. But it -- but consensus implies the establishment of a core of agreement.

Q Within which there could still be some divergence of opinion, correct?

A Yes.

Q And what does range of meaning mean in this context?

A Well, I'm using Basquiat as my example here though he is not the only writer who could be cited. In fact, all the previous authorities I have cited up to this date would be subsumed into this. And that looking at Warhol's celebrity portraits, as he says in his Taylor, Marilyn, Elvis silk screens entail a apprehension of major characteristics of recent consumer society and the way it works in people's subjective imaginations, which is the proper province of art to explore that.

[66] Q Understood.

Does the range of meanings tie into the sliding scale you referred to earlier?

A Sliding scale? You mean vis-à-vis the portraits?

Q Correct?

A In relation to the early celebrity images of the '60s?

Q Yes.

A Within the celebrity portraits there is some -- you know, some are more profound than others naturally enough. In fact I quote starting with the bottom of the page, my old colleague Robert Rosenblum's view of the Liza Minnelli portrait which was commissioned, but which captures something as he saw of the force of the 1960s portraits.

\* \* \*

[87]

\* \* \*

Q On Page 10 of your report at the bottom you refer to another expert Rosenblum; is that correct?

A Yes.

Q What was his full name?



A Robert Rosenblum.

Q And is he an art historian?

A Yes. A quite imminent art historian.

Q And in the bottom paragraph of Page 10 you write, quote, Rosenblum's observation much as Fried's observation had done in 1962 confirms that Warhol's painting can carry an emotional charge that was not necessarily and sometimes could not have been present in the photographic source; do you see that?

A Yes.

[88] Q Now, by saying -- by writing can carry an emotional charge, does can imply that they may or may not carry an emotional charge?

A I think it's more that the emotional charge is there for those who have the capacity and the nose of attention necessary to see it.

Q Does the extent to which any painting carries an emotional charge become subjective on the part of the viewer?

A Well, again, within a certain range. I think that the paintings are empirically and objectively impactful on a large number of people.

We knew that from their documented and recorded responses to the work.

Q When you say "their recorded responses", who are you referring to?

A I'm referring to the wide range of interpreters and witnesses about which I've been talking since the [89] start of the deposition.

Q Specifically art historians and art experts?

A They are of course valuable in that that they are -- do their best to articulate their feelings, but I

am talking about people outside of the academic profession or the curatorial profession. People would have left their -- records of their responses, critics, people who knew and wrote about their association with Warhol. And my -- I haven't really spoken much about my interaction with students in the general public as part of my professional life where I regularly interact with students whose views of Warhol are coming into focus for them and how they do that. I speak individually or on panels at museums where the general public attends these events and hear from people who are not professionals at all either in questions from the floor or [90] interactions with them that way or when they speak to me afterwards, which is -- it's a frequent part of the experience of speaking on these occasions.

Q Understood.

And you referred to members of the public in some of the audiences, correct?

A Yes.

Q And would members of the public who are viewing a Warhol portrait, for example, experience different degrees of emotional charge in viewing any one image, for example?

A My experience has been that they do and often it goes against the grain of what they have been told about Andy Warhol or what they -- you know, what they've been led to believe on the paintings of work on them was a great deal of force.

Q Just by standing in front of let's say an original Warhol work of [91] art like you did in the museum and experiencing it in that context, for example?

A Yes. And things come across that do not, in fact, entirely come across in any reproduction like this one.

Q And that reaction by a member of the public would be based on essentially the surface of the art as we talked about earlier?

A Yes, very good. I would say that myself.

Q I'm learning from you.

Let me shift to another subject.

In various places in your report you refer to Lynn Goldsmith's photograph of Prince upon which Warhol's portraits were based.

Do you recall that?

A Yes, I do.

Q Can you describe the Lynn Goldsmith photograph you're referring [92] to?

A Well, I was referring to the half length figure because that was the one that I think the foundation believes that she was sighting as the work on which Warhol based his paintings.

Q What's your basis for saying that?

A Well, that was what I was told at the time.

Q Told by whom?

A I was told by the foundation and its representatives and by the public coverage of the case that followed it. Now I understand that it was a headshot.

Q When did you get that understanding -- obtain that understanding that it was a headshot?

A It was just last week.

Q So when I asked you -- withdrawn.

How did you come to learn [93] that?

A I learned that from the legal representatives of the Warhol Foundation.

Q And in your report you listed an Exhibit B at the end, quote, listed materials reviewed and relied upon, correct?

A Yes.

Q And among those exhibits you listed as having been reviewed or relied upon by you was the Lynn Goldsmith amended counterclaim filed in this case?

A Where do I find that?

Q Well, let me ask you, were you provided with a copy with Lynn Goldsmith's counterclaim for copyright infringement in this case?

A Yes.

Q And you reviewed that?

A Yes.

Q And do you recall that Lynn Goldsmith's claim for copyright [94] infringement is based on black and white headshot photo of Prince?

A That was something which I didn't fix upon at the time but now I understand to be the case.

Q And yet you had reviewed that counterclaim in preparing for your report, correct?

A Well, with -- actually, how you put it, a certain oversight there.

Q And having learned a week ago that Ms. Goldsmith was claiming infringement of her black and white headshot photo, would you change anything in your report sitting here today?

A No, nothing. Only the wish that she had made that clear earlier.

Q Who had made it clearer?

A Ms. Goldsmith.

Q You don't think her counterclaim made that clear?

A Well, I suppose the half length photo had become established [95] as -- in my mind as the licensed image from Vanity Fair, but I would reiterate my conviction and professional conclusion that whether it was the headshot or whether it was the half length doesn't make any difference.

Q Why doesn't it make any difference?

A Because even the headshot was so substantially transformed by Warhol that everything that follows from my analysis as it exists in the report still stands.

Q What I put in front of you is a copy of the amended answer of defendants and amended counterclaim of Lynn Goldsmith for copyright infringement and jury demand.

Have you reviewed this document before?

A I'm not entirely sure. The content of it -- much of it looks familiar, but I won't say anything more.

\* \* \*

[101]

Q By the framing edge is that the boarder of canvas?

A Yeah. Boarder, yeah.

Q Wheres it ends on the stretcher, for example?

A Yes.

Q Anything else that composition relates to?

A That is the core or basic meaning of composition. The -- also it entails what these elements are.

Q So it's the -- and, again, by disposition is another acceptable word the placement?

A Placement, arrangement.

Q They all --

A Interrelationship of elements.

Q So it's the placement and the elements themselves?

A Yes.

Q That defines the composition of a work of art?

A Yes.

**[102]** Q That's helpful. Thank you.

And do you view the composition of the Warhol Prince images as published in Vanity Fair and Condé Nast to be any closer to Lynn Goldsmith's black and white photo versus her color photo?

A Any closer?

Q Yes.

A No.

Q Why not?

A Because the black and white sort of bust length image ever Prince is still drastically reduced.

Q Are you referring to the cropping?

A The cropping.

Q And what is cropped out from the black and white photo?

A Well, his -- any evidence of his body below the chin line. Anything about what he was wearing, all of that information is gone.

Q And you think in the context **[103]** of the original black and white photo that portion which you say is gone would have added any expression or meaning to Ms. Goldsmith's original photo?

A Well, to the -- whatever meaning or expression it possesses has to adhere in everything that's in the photo.

Q And in the context of a portrait photo would that meaning primarily be expected to be in the face or the head portion of the person?

MR. NIKAS: Objection.

A No, by no means. Accessories, costume are traditional tools in the trade of a portraitist. Often they're more important than what you actually see on the face.

Q And do you know whether Vanity Fair in commissioning Warhol wanted a portrait only of Prince's face for the illustration?

A I have no way of knowing

\* \* \*

[186]

\* \* \*

Q That would be the composition we talked about earlier?

A Yes, exactly.

Well, it's only a composition when its been put on a format and put in relationship to the edges and shape the format.

Q But all of which relates to the overall composition?

A Yes.

Q Which we discussed earlier?

A Exactly. And, you know, even in the black and white which seems to be exactly the same, you know, image as the half length, because I've spent some time looking at the contours of the hair and so on to see

how well they match up and they seem to match up exactly. There still is a great deal of nuanced tone, that is to say gradations of -- subtle gradations of light and dark that make the face [187] appear rounded, whole, you know, another human being you are looking at in a naturalistic way.

Q In a natural --

A Naturalistic way.

Q What does that mean, naturalistic way?

A In the way that we apprehend any other people or objects we encounter in the world.

Q And that would be so that the viewer would be able to still recognize the Warhol portrait as a portrait, in this case Prince?

A No, I am not saying that. I'm still talking about the Goldsmith.

Q Okay.

A But there are very many people walking around looking like that.

Q Looking like that meaning with a purple face?

A Yes. And lots of other changes, as well. One that strikes me [188] in particular is -- we may be getting to this -- is the way that the forehead of Prince obviously recedes under the crown of hair. And the crown of hair projects over it and that is a sort of natural shape of the skull. When you get to Warhol's transformation the hair and the forehead are only differentiated by color. They're the same flat plain which goes along with the transformation of Prince into this mask-like simulacrum of his actual existence.

Q Again, that's the mask concept we discussed earlier today, correct?



A Yes.

Q And is the draining you described, does that result from the silk screen process?

A Well, it derives from Warhol's way of -- of orchestrating the silk screen process. He sends the picture out, he gets the line/drop out, **[189]** it's a graphic design term, for anything that can be rendered in a single pass-through through the press. So it doesn't mean lines, it just means the black, just the black pattern. And he gets that pattern back and then he directs the processor to do various things to it before he gets the actual silk screen and applies it over the colors that he's laid down on the canvas.

Q And is that what you're referring to on Page 17 of your report where you describe using a process through an outside laboratory to process the image, and I quote from your report, quote, on a sheet of transparent acetate which would have been largely clear in the center, closed quote?

A Yes.

\* \* \*

**[200]**

\* \* \*

Q And are there shadows in the photo to the left and the right of the chin that carry over into the Prince work?

A Yes, they do. But of course Warhol has, in some ways, narrowed them, pulled them in on each other and made them much darker.

Q Made them much?

A Darker.

Q Again, would that have been a product of the increasing --

A Yes.

Q You have to let me finish.

Increasing the contrast?

A Yes.

Q And the shape -- was the shape of Prince's chin, his actual facial chin the same shape as in the Goldsmith black and white photo?

A Yes. I think that remains the same.

[201] Q And is the shape or I guess the styling of Prince's hair that appears in the black and white photo also carried through into the Warhol image?

A That is of course made into a very undifferentiated block of black with tendrils then emphasized by Warhol's secondary drawing on top of it.

Q The tendrils you're referring to, is that the yellow and other colored line drawing?

A Well, it's already in the black that is the -- there are these projections that help us understand how closely this photograph matches itself to the color half length.

Yes. But, again, going back to something I said before, the hair definitely comes over the forehead and that is part of its overall naturalism. Even the slight shadow that you see around the bottom of the chin as a [202] whole, which is important for seeing the way it projects and what shape it is, Warhol has taken that out, too. So to go back to your other question it's not entirely the same. Everything working together to create this sort of flat emblem that stands in for Prince without being a naturalistic equivalent to the appearance of his head.

Q And if we exclude, again, the line drawing, how do you refer to that?

A Well --

Q Tendrils?

A Well, he's emphasizing the tendrils but they're already there in the black layer.

Q What do you mean by tendrils?

A I mean the projecting of strands.

Q Of hair?

A Yes.

Q I see.

So there are tendrils that one can see in the black and white **[203]** photo, correct?

A Yes.

Q And are those tendrils also reflected in the Warhol image?

A Yes.

Q And then you're saying, so I understand it, that tendril that accentuated the tendrils with his colored line drawing?

A Yes.

Q And was that essentially outlining the outer boundary?

A No, it's quite free. It only -- it coincides but plays, you might say, a kind of counterpoint against them and gives them, you know, a kind of liveliness that the simple black imprint would not possess by itself.

Q And in the black and white photo do you see two little flash dots in each pupil?

A Yes, there are two.

Q And those were carried over **[204]** into the Warhol image, correct?

A Yes, they are.

Q And the image that Warhol created for Vanity Fair is not a smily image like the one he did for Time of Michael Jackson, is it?

A No.

Q And the Warhol image he created displays a certain emotion that the image conjures up, would you say?

MR. NIKAS: Objection.

A I don't think emotion is the point of any of the Prince paintings, Warhol's Prince as in the musician.

Q Let me ask a different question.

Is there a certain expression of Prince's face that the Warhol images are conveying?

A The expressions such as it has is one of confrontation. And that is a marked difference from the more retiring character of the Goldsmith.

Q And the word confrontation, **[205]** that's -- you're expressing your opinion, correct?

A I'm also analyzing what Warhol did. This is what all of these changes were directed towards, bringing everything towards the surface into a much more unified plain or block of black pigment emphasized by various colors both underlying and overlaying. Such that is the face even though you described the Goldsmith photograph as being a three quarter view. Without changing the --

Q The three quarter view was the photograph you relied upon?

A I know, this the same photograph.

Q You're saying the same photograph, correct?

Are you satisfying the black and white photo is the same photo as the color photo just cropped?

A I think it very well could be. I can't defect any differences [206] there.

Q Are you saying that the black and white photo is just a black and white reproduction of the color photo?

A It could well be.

Q You don't know that though?

A But I don't know that.

Q Have you read Lynn Goldsmith's testimony in this case?

A I have. But I also have my own two eyes as far as seeing how closely they coincide. In any event, the disposition of the head vis-a-vis the camera lens is the same in both.

Q Is -- I'm sorry?

A It's the same in both. And I thought three-quarters was a little exaggerated. I think that it would be more like seven eighths, but it makes Prince's right cheek in both this one and the color half length considerably pressed as opposed to his left cheek, that is that it takes up less area in the image. So that's what you read [207] when you see it as being slightly turned to his right.

Q And the slightly turned to his right is -- what image are you referring to so the record is clear?

A Both of them.

Q Both of the photographs?

A Both photographs.

Q And are you saying you did not see the head slightly turn to the right in the Warhol image?

A He's kept the ratio of this area to this area, and that is to the area of the right cheek to the left cheek, but his accumulated changes bring the right side of the face equally forward so that the face lines up with the virtual plain of the image which has to do with this confrontational character that Warhol has created. This is Prince confronting you as his admirer, his fan, a curious onlooker with a kind of uncompromising implacable character [208] which is not present in the Goldsmith.

MR. WERBIN: Just so the record is clear, Mr. Crow is referring to the Warhol image in the 1984 Vanity Fair publication.

A And to the underlying painting.

Q Again, when you say -- when you talk about the Warhol Prince image confronting you, again that's your opinion?

A That's a word for what the painting formally does. And in bringing all the features of Prince up to the surface across the same plain, so he's occupying a kind of barrier between you as a viewer and whatever his inner life might be.

Q Again, I'll ask the question again, that's your opinion of that image, correct?

A Yes. I opine that that is the case.

Q It's not based on Warhol's [209] own description of his Prince image?

A No, it is not.

Q In looking at the black and white photo, would you agree that Prince is looking straight into the camera in that photo?

A I think that's a reasonable -- his head is turned to the right but he's swivelled his eyes toward the camera.

Q So the eyes are looking at camera?

A Yes.

Q Or directly at the viewer in the case of you or I looking at the image?

A Yes.

Q And in the Warhol image do the eyes also look directly at the viewer?

A Yes. Emphatically so.

Q Now, if we can look for a moment at the Condé Nast publication in 2016. The image of Prince that was [210] used on the cover of that was one of the Warhol works that were created by Warhol in 1984, correct?

A Yes.

Q And although the original work was created in 1984, this tribute issue of Condé Nast came out in 2016, correct?

A Yes.

Q So despite Warhol having created his images many years earlier, Condé Nast still selected one of those Prince images to put on the cover of this 2016 tribute magazine, correct?

A Yes.

Q And in the period between 1984 and 2016 when he died, did Prince undergo his own transformation as a performing artist and celebrity?

MR. NIKAS: Objection.

A I think the answer is yes.

Q The reason I'm asking is because I'm trying to understand why you made a distinction earlier with [211] Vanity Fair using a 1981 photo by Ms. Goldsmith for a 1984 commissioned to Warhol whereas Condé Nast used the 1984 Prince work -- I'm

sorry, Warhol work of Prince to put on the cover of a 2016 magazine?

A Well, I'm not quite sure what the issue is between them. My point earlier had been that Prince as the bearer of this theme of Purple Fame, this larger than life character he had become by '84, he hadn't been -- he had been a kind of niche cult entertainer in 1981 before his relative breakthrough not to anything like Michael Jackson in proportions, but still he was still someone now deemed worthy of this kind of breathless article that was written by Wieseltier about him.

And that theme itself was definitely not carried in those early photographs of '81, and I think Warhol saw that, at least he responded by [212] creating an image of Prince as a kind of icon or totem of something rather than just being the actual human being that made the music.

Now why they went back to it, of course it's commemorative, it has to do with history. It's the only Andy Warhol they have and so they went with it. I have no further or any knowledge about their editorial decision-making.

Q Again, you have no knowledge at all about Vanity Fair's editorial decision making; is that correct?

A That's what I just said.

Q I just have a question about the colored lines around the tendrils that we were talking about before in the Warhol Prince works.

Could you just explain how those -- the colored lines get into the image as a process?

A Yes, I can. Of course they're not only around the small locks of hair, they're right through the [213]



face. They emphasize the very reduced dark facial features, et cetera.

He made a drawing over the acetate separate from the acetate and then had that turned into a photo silk screen. He had that drawing of his own his own, his own free hand drawing over the pattern that he had created from the photographic original, I would emphasize it was the pattern that he was using, the two dimensional pattern, and I drew around and in it in ways that he decided were satisfactory so that he could have that made into a separate photo silk screen that he would, by maintaining the register, overlay the two underlying layers and then freely ink it. You know, he would -- part of it had a certain color ink and then changed to another and blend them, make decisions as to which color would work best in the different areas, the edge of the hair, the ear, the jawline, the inner features.

\* \* \*

JA-259

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE ANDY WARHOL FOUNDATION  
FOR THE VISUAL ARTS, INC.,

Plaintiff,

No. 17-cv-02532-JGK

- against -

LYNN GOLDSMITH AND LYNN GOLDSMITH,  
LTD.,

Defendants,

----- x

LYNN GOLDSMITH AND LYNN GOLDSMITH,  
LTD.,

Counterclaim Plaintiffs,

- against -

THE ANDY WARHOL FOUNDATION  
FOR THE VISUAL ARTS, INC.,

Counterclaim Defendant.

----- x

Videotaped oral deposition of LYNN  
GOLDSMITH \* \* \* commencing January 18, 2018  
\* \* \*

\* \* \*

[7]

\* \* \*

Ms. Goldsmith, I want to understand the perspective you attempt to bring to your photography in the pictures you take.

We will mark as Exhibit 2, I will show you what's been identified as your bio and CV.

(Warhol Exhibit 2, documents bearing Bates stamp Nos. LG 142 through LG 150, marked for identification.)

Q. I want to focus you on the sentence that says, the first paragraph, Winning numerous prestigious awards from the Lucien Clergue to the World Press in Portraiture, she considers herself extremely fortunate to have had the opportunity to make her passion of a quest into the nature of identity and the human spirit into her living.

Do you see that?

A. Yes, I do.

Q. Did you write that?

A. No.

Q. Do you agree that your photography has provided you an opportunity to make your passion of a quest into the nature of [8] identity in the human spirit?

A. Yes, I do.

Q. How so?

A. When you photograph people, whether they're famous or not famous, one does a certain amount of research, if possible, prior to going out and making images and giving thought to what it is you actually want to manifest.

Sometimes pictures are made just because you are in the joy of the moment of making pictures with family or friends, but, for me, my connection to

actually feeling alive comes from the making of pictures. That's why, with all the other things that I've done in my life, this one occupation has been like my arm. It's my eye and it always teaches me things and I'm learning because I'm looking through a lens and having a relationship with a person and, therefore, with myself, as well.

Q. What kind of research do you do before taking a photograph of a person?

A. It depends -- it depends on what [9] that person is.

For example, if I was working for National Geographic Traveler and I'm going to Russia, I will read up some history, I will look at other people's pictures, I will try to find out the kinds of foods they eat, the kinds of music they listen to.

If I were to photograph a musician, I would think about and look into what was popular on the charts when they were, like, 14 years old, because that really genuinely affects them when I play that music in my studio. I look at their past pictures, their bone structure. I try to figure out what I can bring to it and in looking at it, I always -- part of that is I'm seeing myself, so -- it's not unlike what actors and actresses do in terms of what I do. You try to reach out further than yourself because you want that person in front of the camera to be comfortable and to be themselves, not to put on a face or to be frightened.

Q. So when you look at past pictures, for example, in the cases where you are [10] taking photos of a musician, what, in those past pictures, are you looking for? You are trying to be inspired by something?

A. You mean other people's photographs?

Q. Correct.

A. Well, I'm not quite sure. I just -- it gives me an idea of what that musician was with the person who photographed them.

It's -- I really like these questions. Thank you.

Q. You're welcome.

A. I'm sorry. Will you repeat what the question was?

Q. Sure. When you are looking at -- when you are doing research in advance of taking a picture of a musician, as part of that research, you said you might look at past photographs of that musician that someone else took, right?

A. Yes.

Q. And when you are looking at those past photographs that another photographer [11] took, my question is, what are you trying to learn? What are you looking for in those photographs?

A. I'm really just looking at the artist's eyes and the expression that they're putting forth. It tells me something about if they're comfortable with themselves, it's very instinctive. It's like me trying to intuit, the person isn't in front of me, so I have no choice, but to look at pictures and to try to feel who that person is.

Q. So you are trying to understand and connect it back to what you wrote in your CV, you are trying to understand their identity, who they are as a person, is that right?

A. Yeah, because I'm always trying to understand who I am.

Q. How does understanding what the identity of that musician is and that musician you are going to take a picture of, how does understanding that allow you to understand who you are?

A. When you are -- in my opinion, when you are able to reach outside of yourself and [12] be yourself, but also be in other people's shoes, you, not only expand your experience of yourself, but of the universe. It's a way to feel connected to other people.

Q. And do you look at bone structure for the purpose of trying to understand how you can capture that musician in a form that reflects their identity, is that why you look at bone structure?

A. In part, I look at it because I want to make them look the best that they can be, what I think is the best that they can look like. I want people to look good. I know I want to look good in pictures.

You know, I was hoping you would have better lighting in here for this video. This is overhead lighting, so, you know, as you work, you show them a Polaroid or whatever, and you want them to immediately go, like, wow, you've made me look amazing, because they open up even more.

Wouldn't you, in front of a camera?

Q. And do you look at interviews a musician might have given to understand who [13] they are, what their identity is before taking a picture?

A. During most of my career, because I will be 70 in February, during most of my career, there was no YouTube to look at interviews, there was no -- you couldn't really do that. There was no access.

Q. Did you make an effort to read any interviews that might have been published in a book, for example?

A. No, I'm sure I did once -- maybe once in a blue moon. I can't remember who or whatever, but, you know, I did that more in working, let's say, for National Geographic Traveler or something.

Q. When you would look at the music that was popular when a musician was 14, as you said, in advance of doing a shoot of the musician, what were you looking for when you were reviewing those charts?

A. Music is very much, in my opinion, a language, and so if I could put together records, cassettes during a shoot. Now, I would do it with playlists on my iPhone. I [14] try to think about, from what was popular at the time and what would have appealed to them, what other music they would like or who they're influenced by, because I play that music during the shoot, so it's kind of a subconscious connection that you make with a person.

Q. Is there an element of certain nostalgia that you are trying to introduce to your photographs, given that you are playing music, the musician might have listened to when they were younger?

A. I don't necessarily think it's nostalgia. I think there is an innocence and openness that we have from our childhood, which is accessed when you hear certain songs.

Q. So you are trying to --

A. Open them up.

Q. And the purpose of opening them up is so you can --

A. Connect.

Q. -- capture who they are, the best you possibly can in that moment, is that [15] right?

A. I hope to connect.

Q. Have you ever had instances with a musician where you didn't feel like were able to connect in taking their picture?

A. It could have taken longer. Sometimes it takes a long time and you keep working at it. I don't like to remember things that aren't pleasant and so I would answer your question that I don't remember that, to the best of my recollection.

Q. The perspective that we're talking about right now, do you attempt to bring that same perspective to photographs of nonmusicians?

A. Yes.

Q. So in your CV, which is Exhibit 2, in front of you, the first paragraph says, The subjects have varied from entertainment personalities to sports stars, from film directors to authors, from the extraordinary to the ordinary man on the street.

Do you see that?

A. Yes.

[16] Q. That's talking about the nature of the individuals that you photographed, is that right?

A. Yes.

Q. And from the personalities, all the way -- entertainment personalities, all the way to the ordinary man on the street, your artistic vision is the same or similar, is that right?

A. The difference in the vision has to do -- it changes because sometimes I am there to serve as particular purpose. If I was hired to do an album cover, my purpose -- and I'm hired by a record label, my purpose is not just to make myself happy and the artist happy, but to make the label happy and the label could have ideas about what they want to see on this cover.



Q. So, in those instances, you'll attempt to incorporate what the client, if you will, has described to you as the purpose, with the artistic vision that you believe you can bring to the process, is that right?

[17] A. I think I'm typical of the cliché that's often attributed to women, that we want to make everybody happy.

Q. Nonetheless, you wouldn't compromise your artistic principles and vision in a photo shoot, the vision we've been talking about, if the record label told you to do something contrary to that, is that right?

A. What I do is I do what they ask me to do and then I will also do what I want -- have in mind and, hopefully, they're want what I have manifested and, fortunately, that's been pretty much true.

Q. That's helpful. Thank you.

I'm going to show you a document that I'm marking as Warhol Exhibit 3. I'm going to apologize for the print size, but it was given to us by your lawyers this way and so it is the Bates stamp LG 151 and it is part of a chapter or chapter 1 from your book, Rock and Roll Stories.

(Warhol Exhibit 3, documents bearing Bates stamp Nos. LG 151 through [18] LG 158, marked for identification.)

A. Did you buy the book?

Q. I did.

A. Did you like it?

Q. It was good.

A. Thank you.

Q. You're welcome.

MR. NIKAS: The full Bates range, for the record, is 151 to 158.

MR. HECKER: Can you put on the record the Bates range for Exhibit 2.

MR. NIKAS: LG 142 through LG 149.

MR. HECKER: Actually, it's 150, which is a blank page.

MR. NIKAS: 150.

Q. I suspect you have seen this chapter in your book before?

A. Oh, yes.

Q. Did you write it?

A. Yes.

Q. The first column, second paragraph, you write, The truth was, I never really saw myself as a photographer. I use the camera as an instrument in my path as an artist. It [19] seems odd that I couldn't allow myself a specific identification since my work always revolved around helping others formulate their identities.

Do you see that?

A. Yes.

Q. Is that consistent with what we've been talking about, in the sense --

A. Oh, yes, I still, and I say it when people ask me now. I still don't label myself or see myself as a photographer --

MR. HECKER: Lynn, you have to let him finish his question. You are interjecting and you don't know what the full question will be, so, for the record, let him finish the question and then answer.

Q. You did infer my question, but as your attorney says, just so we have a clear record of question/answer, it would be helpful if you just wait

until I stop, and it will also give your attorney an opportunity to object if I ask something objectionable, which, of course, I will never do.

**[20]** Let me get the question clear. So you write, The truth was, I never really saw myself as a photographer. I use the camera as an instrument in my path as an artist. It seems odd that I couldn't allow myself a specific identification since my work always revolved around helping others form their identities.

Do you see that?

A. Yes.

Q. The portion of this where you're referring to your work as revolving around -- helping others formulate their identities, is that consistent with what we were just talking about as sort of your artistic vision or perspective?

A. Yes.

Q. The paragraph continues into the next column and says, My subjects wanted or needed to be seen in a certain way and my job was to project that face to the world. I knew how to use clothes and makeup, background and props to manipulate perceptions.

**[21]** Do you see that?

A. Yes.

Q. You wrote that, as well?

A. Yes.

Q. Is that consistent with what we've been talking about in your effort to capture who the identity or who the person is that's the subject of your photography?

A. Yes, only I wouldn't use the word, capture.

Q. What word would you use?

A. Create.

Q. What is the difference, in your view, between capturing the identity of the person in front of you, versus creating it?

A. In moments, they're the same thing, but in other moments, I mean, this sounds kind of -- when you are making images, it's kind of capturing, create at the same moment. These are words. It's very hard to talk about a visual -- it's hard for me to talk about a visual experience.

\* \* \*

[68]

\* \* \*

Q. So in the Warhol Exhibit 3 I have in front of you, you wrote, I resisted the label, rock and roll photographer.

Why did you resist the label, rock and roll photographer?

A. First of all, I resist all labels.

Secondly, in my opinion, many of the individuals long ago, during my day, when they would have called me a rock and roll photographer, you know, they really wanted to either, like, be near the front of the stage or meet a celebrity.

\* \* \*

[73]

\* \* \*

Q. When I look at -- when you were creating this book of a number of rock and roll photographs you had taken.

A. Yes.

Q. Were you intending to capture both, your story about rock and roll itself, and also your story about the people in it, distinctly?

A. Okay. Now, I understand, okay. When I decided to do the book, Photo Diary, I did it because I would get really angry when people called me a rock and roll photographer. It was bad enough being called a photographer, so I thought, if I could really look and write -- look back and write, that I would find out something about myself because the truth was, that I had a lot of photographs of musicians, let's say, compared to sports stars. Not that I hadn't photographed sports stars, but that was really a large portion of my work.

[74] So I thought, when I work on a book, the reason for doing it is an act of self-discovery, that's the real purpose.

By the time I put out that book, when I finished it, you know, when I went through all my pictures, when I thought about it, I got much more comfortable, but I still wouldn't call the book, you know, Lynn Goldsmith, rock and roll journey, I wouldn't have called it rock and roll stories, I still was hung up about it, and that hang up stayed with me and it bothered me. That was why I did the Rock and Roll Stories book 20 years later. I'm not good with it. I figured I will add to it and it's time to be able to say that.

Q. So there is an important element of the photography in the book that you are trying to humanize, both the subjects and yourself in what you are portraying, is that right?

A. I'm just trying to find out who I am and that journey only takes place by also trying to find out who other people are.

[75] Q. There is a real effort to communicate to the uniqueness of the people and their identities in these photographs?

A. Right. Because they're all part of me, they are all part of all of us.

Q. And when you are connecting who you are with the identity of the people in your photographs, you are trying to do that as accurately as you possibly can, as it relates to their personality?

A. I don't know about accurate. I mean, that word, I'm trying to be as empathetic.

Q. So you write in some of your work that some people are real, some people are more fake, some people are genuine, some people aren't as authentic.

How does the difference in any one person's personality, and we will call them, flaws, let's say, how does that influence how you portray or attempt to portray a person?

A. You know, I think we all start out, as children, pretty open, that's why you hold a baby and everybody smiles and everybody is [76] happy, because it's this loving being and then people go through life and they have various things happen to them and they shut down in certain ways and to kind of put yourself in their shoes and hope that you have enough understanding of who you think they really are to get them to be open with you, if, indeed, what you are feeling is that they're not being authentic. I mean, everybody is authentic. You can authentically be a creep, but, you know, I like to believe that -- for example, I mean, just something pops in my mind.

Bob Dylan, okay, when you think about Bob Dylan, about how young he was when he became as famous as he did, that level of fame and what was attributed to him and the people that come up to him and say, are you God, you feel sorry for them and you realize why they have all these defenses and you need to get who they are and then get them to open up and be who you think they really are.

This is a really bizarre deposition.

\* \* \*

[82]

\* \* \*

Q. On the second day, the day after the performance, you made photographs of him in your -- in a studio, right?

A. My studio.

Q. Where was your studio at that point?

A. 241 West 36th Street.

Q. Prince went to your studio in New York to sit for that photo shoot?

A. Correct.

Q. Do you remember if the performance was in New York?

A. Yes.

Q. It was?

A. Yes.

Q. When he arrived at your studio, do you remember who he came with?

A. I think it was Ron.

Q. What was he wearing when he got to your studio?

MR. HECKER: You mean Prince and [83]  
not Ron?

Q. We don't care about Ron, not yet.

What was Prince wearing when he arrived at  
your studio?

A. I don't know, I mean, I don't know what his  
coat -- I don't remember his coat.

Q. Before those two days on which you made  
photographs of Prince, had you made photographs of  
him before?

A. No.

Q. But you had listened to his music?

A. Yes.

Q. And what other research did you do in  
advance of the photo shoot?

A. I don't remember.

Q. When you heard his music in advance of the  
photo shoot, do you remember what your reaction  
was, other than thinking he was going to be a star?

A. It wasn't just hearing his music, it was  
watching him perform.

Q. What about his performance struck you?

A. It was free, open, energetic, [84] skilled, he  
was one with the audience.

Q. Did that give you insight into his identity that  
was relevant to how you would make a photograph of  
him?

A. Yes. How I would like to make a photograph  
of him, yes.

Q. How did it inform how you would like to make  
-- you wanted to be able to make a photograph of him?



A. Well, he was, you know, capable of physically really expressing himself, carrying his body in very graceful ways.

Q. Did you intuit that same sense of freedom, openness, skill when listening to his music as you did when you saw him in performance?

A. No, the performance enhanced it.

Q. So as far as you can remember, you had seen him perform before the photo shoot on that day two, listened to his music and spoke with Ron about him?

A. Yes.

Q. Do you remember anything else you did as part of the research we talked about [85] at the beginning to understand him?

A. Yeah, I always put together -- I spend time prior to a photo shoot in the studio or on location portraiture, putting together a playlist of music that I think will connect us without speaking.

Q. So Prince walks into your studio in New York on day two and you have a playlist ready for that photo shoot?

A. Yes.

Q. Do you remember what songs were on it?

A. I remember, because I made sure to have the roots of rock and roll, Robert Johnson, James Brown, Howling Wolf, the one that did I put a spell on you.

That's all I remember.

Q. Do you remember why you selected those songs?

A. I tried to pace -- when you are working, it takes time, so some of the songs are selected to, like, bring up the energy level, some are to bring it -- you

don't start out, slam, bam, thank you, ma'am. You [86] don't want to scare somebody.

Q. So this is all connected to trying to get them to open up for you, so you can make the photograph that you hope to be able to make?

A. Yes.

MR. NIKAS: I'm going to mark as Warhol Exhibit 11, a document Bates stamped LG 168.

(Warhol Exhibit 11, document bearing Bates stamp Nos. LG 168, marked for identification.)

MR. NIKAS: I will mark as Warhol Exhibit 12, a document Bates stamped LG 16 165.

(Warhol Exhibit 12, document bearing Bates stamp Nos. LG 165, marked for identification.)

MR. NIKAS: I am going to mark as Warhol Exhibit 13, a document Bates stamped LG 166.

(Warhol Exhibit 13, document bearing Bates stamp Nos. LG 166, marked for identification.)

[87] MR. NIKAS: I'm going to mark as Warhol Exhibit 14, LG 167.

(Warhol Exhibit 14, document bearing Bates stamp Nos. LG 167, marked for identification.)

MR. NIKAS: I am going to mark as Warhol Exhibit 15, document Bates stamped LG 160.

(Warhol Exhibit 15, document bearing Bates stamp Nos. LG 160, marked for identification.)

MR. NIKAS: I will mark as Warhol Exhibit 16, a document Bates stamped LG 161.

(Warhol Exhibit 16, document bearing Bates stamp Nos. LG 161, marked for identification.)

MR. NIKAS: I will mark as Warhol Exhibit 17, a document Bates stamped LG 162.

(Warhol Exhibit 17, document bearing Bates

stamp Nos. LG 162, marked for identification.)

MR. NIKAS: I will mark as Warhol [88] Exhibit 18, a document Bates stamped LG 3 163.

(Warhol Exhibit 18, document bearing Bates stamp Nos. LG 163, marked for identification.)

MR. NIKAS: I will mark Warhol Exhibit 19, a document Bates stamped LG 9 164.

(Warhol Exhibit 19, document bearing Bates stamp Nos. LG 164, marked for identification.)

MR. NIKAS: I will mark as Warhol Exhibit 20, a document Bates stamped LG 15 170.

(Warhol Exhibit 20, document bearing Bates stamp Nos. LG 170, marked for identification.)

MR. NIKAS: I will mark as Warhol Exhibit 21, a document Bates stamped LG 169.

(Warhol Exhibit 21, document bearing Bates stamp Nos. LG 169, marked for identification.)

Q. Did you make each of the [89] photographs that I have just marked Warhol -- I will start over.

Did you make each of the photographs I just marked as Warhol Exhibit 11 through Warhol Exhibit 21?

A. Yes.

Q. Were each of these photographs made on day two of the photography we have just talked about in your studio in New York?

A. Yes.

Q. Can you look at Warhol Exhibit 11, please.

First, who is the individual depicted in each of the photographs marked as Warhol Exhibit 11 through 21?

A. Prince.

Q. So in Warhol Exhibit 11, Prince is wearing clothes, correct?

A. Yes.

Q. Did he arrive at the photo shoot wearing the white shirt?

A. Yes.

Q. Did he arrive at the photo shoot wearing suspenders?

[90] A. Yes.

Q. Did he arrive at the photo shoot wearing those pants?

A. Yes.

Q. He has a piece of cloth draped around his neck.

Do you see that?

A. Yes.

Q. Is that a tie?

A. Sort of, it could be.

Q. Was he wearing it when he walked into the studio?

A. No.

Q. Did he have it with him when he --

A. No.

Q. Did you give it to him at the photo shoot in your studio?

A. When an artist arrives, I take them into the green room or the hair and makeup and clothing room. There are things there they can take if they want. Especially right upon meeting them, I don't suggest anything. I'm more interested in connecting with them before we're going out and being on a [91] seamless, which is a very cold environment.

Q. So that cloth or fabric was in the room you just described and he picked it up voluntarily?

A. Yes.

Q. In the photograph, Prince has facial hair.

Do you see that?

A. Yes.

Q. Was his facial hair styled that way when he arrived?

A. Yes.

Q. Does he have makeup on?

A. Yes.

Q. Did he have the makeup on when he arrived?

A. He had some makeup on, not the makeup that you see in the pictures.

Q. What makeup did you have added before he stood for this photo?

A. Right. Depending on who the person is, like I said, at the very beginning, when you are just forming a relationship, I like to put makeup on people because I use my [92] hands or a powder, but it connects us physically. So I have shadow that I might add, I might even add some powder after I -- sometimes it's not that necessary and then I wipe it off. It's more about the relationship of me talking and touching at the same time.

Q. So you think it can be helpful, as long as the subject is comfortable with you touching their face, before the shoot, to connect you on a deeper level than you might otherwise be if you were distant physically?

A. I always ask. The only person I didn't ask was Baryshnikov.

Q. Why didn't you ask in that instance?

A. With Baryshnikov, I just felt it was -- he had a good sense of humor, he was easy, so I just put it on my thumbs and went up to him and just put it on his eyes and he started laughing. You just have to just sort of sense who somebody is and what will work.

With Prince, I could sense immediately, and I probably was told by Ron, [93] I mean, I have worked with Michael Jackson, that this is a very shy person, so you go slowly, you read the signals.

Q. So in this photograph, the eye shadow we see was added by you?

A. He came with some.

Q. Beyond the desire to connect with him, was there a reason you chose that color eye shadow?

A. Prince is in touch -- my feeling was Prince was in touch with the female part of himself, but he is very much male, so it's not like putting blue mascara on David Bowie. This just seemed right, especially when you looked at what he had on.

Q. Why did his clothing influence what you felt was right for his eye shadow?

A. Look at it, it's male and it's got a touch of female.

Q. By, the touch of female in his clothes, are you talking about the silver sparkle in his suspenders?

A. Yes.

Q. Did Prince's hair appear that way [94] when he walked into your studio?

A. Yes.

Q. Why didn't you ask him to change it?

A. I might have asked if the shoot -- you don't just jump in and change somebody. It's a process.

Q. Does he have lipstick or lip gloss on his lips?

A. Lip gloss.

Q. Did you put that on?

A. I didn't --

Q. Had it put on?

A. I gave it to him to put on. I didn't feel it appropriate to be touching his lips. His eyes and face, while I am Chatty Cathy, can be fine, but, here's, here, your lips look a little dry.

Q. Was there a reason you wanted him to put lip gloss on?

A. Probably because they were dry and also I wanted him to be aware that I noticed that his lips are dry, that I care about what he looks like in pictures and that I'm [95] looking after him.

Q. I see the light in this photograph reflects off of his lower lip.

Was there something intentional about adding the lip gloss to be able to create that light that you thought about it?

A. The mouth is a very sensual part of a person, especially someone like him.

Q. So you are trying to draw attention to the mouth?

A. Yeah, he is sensual.

Q. Prince is certainly a sensual person, but he has this very high collar in the photograph that covers him almost completely.

Was there some choice in depicting a very sensual man in a very buttoned up outfit?

A. I just wanted to get him comfortable before I -- that's the main thing first, so I'm not going to say, could you take off your shirt.

Q. Were there any photographs taken on that second day where you have him in a more [96] revealing outfit?

A. No.

Q. So these are the photographs, were all Exhibit 11 to 21, that you took, or made?

A. Yes.

Q. Was there something about the suspenders, the silver sparkle that captured something you were trying to project in the photograph?

A. No.

Q. Why is he buttoning his shirt in this photograph?

A. It's an action, so when someone is uncomfortable, you can say, okay, why don't you act like you are buttoning your shirt just to try to get it going, giving the hands something to do.

Q. Why, in this photograph, is he looking down and away from the camera?

A. I don't remember.

Q. Did you ask him to?

A. I don't remember.

Q. In this photograph, Warhol Exhibit 11, how did you think you were capturing or [97] portraying his human identity?

A. You know, I wanted to light him in a way that showed his chiseled bone structure.

The first thing is getting someone like him comfortable before I'm getting him to reveal anything. He has got to have a good time. He has a good time on stage, he reveals himself, you know, if someone is having a bad time on stage, like Prince, he reveals himself, too, in another way, so you are just trying to



get to the place before you go to the thing of reveal yourself, you are not there yet. You are just trying to establish rapport and mutual respect and connection because of the music that's playing.

Q. Do you remember whether this photograph was earlier in the shoot or later?

A. It was all early to me.

Q. What did you mean by that?

A. I started out shooting the black and white, which is my normal way to go about it, because the first pictures are never the [98] ones that I'm going to give to a publication. I'm doing them for myself and see what we got, you know, and you also never know how long a session can be. Unless you have been told before, you have 20 minutes or something, but my sessions have gone 12 hours, so, you know, you have other clothes there, you have other things, you move through it. You keep them so that they are having a good time, they are entertained, they're learning something, they enjoy the environment and I was only at the beginning stage of that with Prince. I had set up, as I always do, probably utilizing an assistant or something before he ever got there, the lighting I would do, so I was ready with, like, what those first setups would be and planning that and when the person arrives, you do the makeup and you try to connect and then you go on set and I shot very few black and whites when I thought -- he was really uncomfortable and so then I switched to my color and I'm trying various things.

And then Prince very quietly and [99] nicely said, I need to go back in the makeup room and I said, okay, and he went back in there and 20 minutes went by and I knock on the door and there is no answer and

I said, I know you're in there because there is no door out of there, so I said, are you there and he said, just a few minutes. So five minutes pass and I knocked on the door and I said, can I come in. And in the green room, the makeup room, there is a couch there and he is sitting on a corner of the couch and I go and I sit next to him and I said -- he wasn't looking at me and I sat next to him and I said, is it something I said. He doesn't look at me, he is looking down. I have never had this happen to me, never. Is it something I said. He doesn't say anything. I thought well, my humor is usually what endears me to people and vice-versa, so I said, okay, I know what it is, I have BO, right, I know I smell really bad, I forgot my deodorant. He does not look at me, he doesn't do anything. Okay. So I said, okay, I think we have a problem here, so I said, [100] what I'm -- he was so fragile, which he was when he was on set, he was fragile, more than Michael, and so I said, okay, I said, I'm going to leave the room and what I'm going to do is wait on the other side of the wall. If you want to just leave, you can do that. I felt, this poor guy, this was hard, this was really hard for him and so he disappeared and the next day, I got roses, candy and a note about how he was feeling so sick and nervous and he is so sorry and it was a really beautiful note. You did nothing wrong, I just couldn't do it.

Q. So how long did the session last?

A. It wasn't long, it wasn't long because, normally, I have a lot of setups, you know, other things that I'm going to move to. I like to think I'm going to be there 12 hours, so I've got props, I'm ready to go, but this was, you know, I felt fortunate that I got something, but he was really struggling.

Q. Do you think you took 30 minutes?

A. I really don't remember. I just [101] know it wasn't normal.

Q. So if we look at Warhol Exhibits 11 through 21, all of these photographs are in color?

A. Yes.

Q. So these were the photographs you took in the second part of the session, the very short session you just described?

A. Yeah.

Q. Do you think in Warhol 11, you captured that sense of frailty in Prince that you experienced?

A. No, that's kind of like an off, his eyes are about -- it was going to probably go to a blink. People blink every X number of seconds. No, I think if you look at exhibit -- it was right under it, 21, but you can see in his eyes, its eyes that you never -- that I never, rarely forget. This is not a comfortable person. This is a really vulnerable human being.

Q. Why don't we connect it back to human identity we were talking about.

Did you think that you've portrayed [102] that identity in this photograph?

A. Unfortunately, an aspect of identity, not one that -- yes.

Q. Do you think that the suspenders sparkling contrasting with this cloth that he picked up, do you think that, in any way, contributes to identity, in the sense of having something he selected, comfort in the cloth?

A. The cloth is a prop to give the hands something to do and also to break up the white because it was a white background, I didn't know he

would arrive in a white shirt. I'm fine with it, white on white is lovely, but, yeah.

Q. Why, in Warhol 21, why were his hands in his pockets?

A. Either I told him or -- I was just trying to communicate. I might have told him to put them in or he did them, I really don't remember. I would have said, though, let's button your shirt, just to try to get action, a person doesn't just -- you know, I have to give direction. This is not a person who is [103] just going to get in front of a camera and give. Unless you already know him, have a relationship, he has a purpose.

Q. Why are his pants so high?

A. That is something you would have to ask Prince, which you can't do any longer, unfortunately.

Q. Do you think when you are creating this photograph, the contrast of the sensual lips which you accentuated with gloss and lighting and sort of the buttoned up look, high pants, suspenders, contributed to our understanding of who he is?

A. No.

Q. In this photo 21, again, he is not looking at the camera?

A. He is looking at the camera.

Q. It appears his eyes are just offset, no?

A. No. Those are my two umbrellas reflected in his eyes.

Q. Why did you choose a white background for this photograph, all these photographs?

[104] A. I thought that's where I'd start. The white background is hardest to light. You can move to other things, like dark gray, but white -- if you've

got a session and you're moving along, it takes time to light white -- more time to light white, for me, than it does for other options, so I like to get that done before the person steps on set.

Q. Did you alter the lighting throughout the photographs we've got in front of us as Warhol 11 through 21?

A. I don't remember. I might have moved an umbrella an inch or two.

Q. If you can go to paragraph 5, it says, The infringing image retains and captures all the essential and distinctive elements of the Goldsmith photo, from the detailed hair curls atop Prince's head to the long fall of hair down the left side of his face, the overall composition of Prince's head pose, deep set intensity of Prince's eyes, his pursed lips, facial hair details and his self-reflective stare into the eye of the camera as if pondering his newfound [105] stardom.

Were you attempting, when making this photograph, to capture his stare, as if he were pondering his newfound stardom?

A. I don't think that was the forefront in my mind, no.

Q. What was the forefront of your mind?

A. Getting him to get comfortable, but he is what he is.

Q. And you were trying to capture who he was?

A. You try to do it all.

Q. And in that moment, his identity was revealed to you was -- how would you describe it?

A. Someone who could be so expressive and really was willing to bust through what must be their immense fears to make the work that they wanted to

do, which kind of required a different part of themselves, but at the heart of it all, they're frightened.

Q. Do you think you conveyed that?

A. In the picture?

**[106]** Q. In the picture.

A. It's in the picture, I don't even like looking at it.

Q. Why?

A. Because of that, it makes me really sad.

Q. So you connected with that when you were making these photographs?

A. Yes.

Q. Do you think we can see sort of your story and your empathy when looking at the photographs that captures that?

A. In some ways, I hope so, but in other ways, I really hope nobody does.

Q. Do you remember what type of camera you used to take these photographs?

A. It was -- yes -- Nikon, 35 millimeter.

Q. Do you remember the model?

A. No.

Q. Was there a particular reason you chose a Nikon 35 millimeter?

A. I always had my larger format, medium format cameras on set, but I started **[107]** out working in 35 with a person. You can move quickly, you can adjust quickly, so before I moved to my larger format, which I did not get the opportunity to do here, I work in 35 and I've used Nikons for 50 years.

Q. Is there something about Nikon in the way it captures the image that is particularly important to you?

A. No, it's the lenses, Nikon lenses are important.

Q. How were they important in capturing what you tried to capture in these photographs of Prince?

A. You choose what lens you are using for what purpose, you know, and you buy your lenses based on what kinds of images you like to make.

Most fashion photographers, if they were using Nikon, were using 300 millimeter lenses at that time because that was the look and it compresses features. I used an 85 quite a bit and a 105, 85, so I could get even -- just physically standing closer to the person, but you kind of choose lenses **[108]** because lenses can change the shape of a face. If I put a wide angle on him, he wouldn't have looked like that, so there is a choice that I'm very good at making quickly because I have used Nikon for so long.

Q. Did you choose the lens that you used in these photographs for any particular reason, as it related to Prince?

A. As it related to making portraits.

Q. And what kind of film did you use for the black and white photographs?

A. Well, I either used Plus-X or Tri-X, I don't remember which one it was.

Q. Is there a reason why you chose those film as opposed to any other type of film?

A. Any other type of film?

Q. Yes.

A. Those are the films that I like and I don't remember if the color was Kodachrome or Ektachrome.

\* \* \*

**[156]**

\* \* \*

Q. In your view, is this work identical to the black and white photograph that you took?

A. Yes.

Q. When you say that it's identical to the black and white work, what do you mean by the word, identical?

A. I mean that the underlying image to the visual manifested in front of me where lines -- where some lines are drawn and chosen to be in certain colors around his features that this is done on an image which **[157]** I created of Prince.

Q. So what you are saying is that the outline of Prince's face here is identical to the outline of his face in your photograph?

A. Yes.

Q. And it's your view that that is the infringement you are referring to in your Facebook post?

A. Yes.

MR. NIKAS: I will mark as Warhol Exhibit 30, a document Bates stamp AWF 1994.

(Warhol Exhibit 30, document bearing Bates stamp Nos. AWF 1994, marked for identification.)

Q. I'm showing you another document produced by The Foundation. It's a picture of one of the Warhol works.



Did you see this document -- excuse me. Did you see this image before you filed the counterclaims we looked at as Exhibit 1?

A. Yes.

Q. And just as with Warhol 29, your view is that this is identical to the black [158] and white photograph you took?

A. Yes.

Q. And by identical, you mean the outline of Prince's face is identical to the photograph that you took?

A. Not just the outline of his face, his face, his hair, his features, where his neck is. It's the photograph.

Q. And as with this photo, the infringement is, in your view, as you are referring to in your Facebook post, that outline of his features?

A. Say that once more.

Q. Just like you said with Warhol 29 --

A. It's the same thing.

Q. -- the infringement you are referring to on your Facebook page is the outline of the features identical to the photograph you took, is that right?

A. I don't know if you are trying to trick me.

Q. I'm not trying to trick anybody.

A. It's my photograph.

[159] Q. Understood.

\* \* \*