

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

THE PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, Attorney General of the
State of New York,

Plaintiff,

-against-

SOTHEBY'S, INC.,

Defendant.

Index No. _____

SUMMONS

Date Index No. Purchased:
November 6, 2020

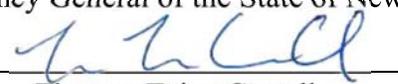
TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer in this action and serve a copy of your answer on the Plaintiff's attorney within twenty (20) days after service of this summons, exclusive of the day of service. If this Summons is not personally served upon you, or if the summons is served on you outside the State of New York, then your notice of appearance must be served within thirty (30) days. In the case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the Complaint.

The bases of venue are the principal office location of Defendant, which is 1334 York Avenue, New York, New York 10021, the residence of Plaintiff, which is 28 Liberty Street, New York, New York 10005, and that New York County is the county in which a substantial part of the events or omissions giving rise to the claim occurred.

Dated: November 6, 2020

LETITIA JAMES
Attorney General of the State of New York

By: 
Thomas Teige Carroll

Bureau Chief
Taxpayer Protection Bureau
Office of the New York State Attorney General
28 Liberty Street, 21st Floor
New York, New York 10005
(212) 416-6012

Attorney for the People of the State of New York

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

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

SOTHEBY'S, INC.,

Defendant.

Index No. _____

COMPLAINT

JURY TRIAL DEMANDED

The State of New York (the "State"), through the Attorney General of the State of New York, brings this action against defendant Sotheby's, Inc. ("Sotheby's"), pursuant to the New York False Claims Act.

NATURE OF THE ACTION

1. In this case, the auction house Sotheby's enabled a valued client, a collector of contemporary art ("Collector"), to fraudulently avoid sales tax on \$27 million worth of art he bought from Sotheby's for his art collection over a period of five years, between 2010 and 2015. Sotheby's enabled the Collector to buy art tax-free by accepting his representation that he was an art dealer instead of a collector who bought for his own personal use, even though Sotheby's knew that his representation was false.

2. In general, someone who buys art in New York City and takes delivery there must pay city and state sales tax. But under a feature of New York Tax Law known as a resale exemption, purchasers buying items as part of their inventory, for resale to their own customers in the normal course of business operations, do not have to pay sales tax.

3. To receive this exemption, the purchaser must fill out and submit to the seller a form called a “resale certificate” that certifies he is purchasing for resale. Among other things, that certificate requires the purchaser to fill out a line reading “I am in the business of ___ and principally sell ___,” in order to demonstrate that the purchaser’s business actually resells the types of items it is purchasing. The purchaser must then purchase with the exclusive intent to resell, in the normal course of business. In order to avoid liability, the seller must accept the resale certificate in good faith, without knowledge that the certificate, including the line explaining the purchaser’s business, is false.

4. First individually, and later through an art holding company (“Porsal Equities”) that he owned and directed, the Collector submitted four resale certificates to Sotheby’s. These certificates were false and fraudulent because they represented (i) that the Collector was an “art dealer,” and later that his company was engaged in “art export,” (ii) that both principally sold artwork, and (iii) that they were purchasing artwork from Sotheby’s for resale outside the State, when in fact these statements were not true. Actually, the Collector, and later Porsal Equities, purchased for the Collector’s personal use, namely, for display and enjoyment at his vacation homes in New York and his other properties. In 2018, the State entered into a settlement agreement with Porsal Equities, in which Porsal Equities admitted to improperly using resale certificates to purchase art for personal use, in violation of the New York False Claims Act.

5. Sotheby’s knew the rules for accepting resale certificates: it could only accept them if, according to the head of the responsible department (“Client Accounting”), “there are no red flags or actual knowledge that the property is being used for anything [other] than resale.” Further, a “key review point” in accepting resale certificates at Sotheby’s was that a “[p]urchaser must maintain the items are sold in the normal course of business. For example, a doctor

normally is not engaged in the business of selling artwork. As such, a doctor may not present the certificate to purchase artwork. Sotheby's must charge sales tax."

6. Despite knowing these rules, Sotheby's accepted the Collector's resale certificate, and those of his company, even though Sotheby's in fact possessed knowledge that the Collector and his company were purchasing for the Collector's personal use and enjoyment, not for sale "in the normal course of business." In fact, the case of the Collector was exactly like that of the doctor who "normally is not engaged in the business of selling artwork."

7. The Sotheby's sales representative (a "key client manager," or "KCM") responsible for interacting with the Collector learned when she first met him that he was a collector whose business was shipping, which had nothing to do with selling art. The KCM sent a full description of her client's shipping business to a unit in Sotheby's responsible for gathering and storing client information, referring to him as a "big collector" of certain types of art.

8. On the eve of a major purchase the Collector wanted to make in late 2010, the KCM—at this time, only three years out of college—helped him fill out a resale certificate and then submitted it, with the description of his business left blank, to Client Accounting. Later that day she, or at her direction, another employee at Sotheby's, filled in the business description line to read "I am in the business of art dealer and principally sell art work," even though the Collector had not told the KCM he was an art dealer and had given her the form without that description, and even though the KCM had given Sotheby's a full, accurate description of his shipping business and collecting interests for their client records.

9. These were not the acts of a rogue employee, or mere negligence. Sotheby's accepted not only this resale certificate, but by 2015 had accepted three more equally false certificates for Porsal Equities, facilitated by the KCM and others at Sotheby's. Over that period,

evidence that the Collector and Porsal Equities were buying for his personal use was overwhelming. For example, the KCM communicated often with the Collector about his plans to display and enjoy his art at his apartment, personally went to his apartment in New York to help him display the art he bought from Sotheby's using the false resale certificates, and also visited with other senior Sotheby's personnel to admire his artwork on the walls of his apartment when installation was complete.

10. Numerous Sotheby's employees worked on these accounts, including (i) the KCM and other sales representatives, who sold him artwork, (ii) business directors, who assisted in addressing many special requests concerning his accounts, (iii) executives in the tax department, who responded to questions from the KCM regarding his accounts, (iv) senior executives, who considered his requests for special payment terms to purchase artwork, and (v) administrative personnel in various departments, including shipping and client accounting, which handled billing and resale certificates. In fact, at least 29 Sotheby's employees knew that the Collector and Porsal Equities were using resale certificates; at least 22 knew that art was being delivered to the Collector's Manhattan apartment and/or that he was displaying the art he purchased; and at least 12 employees at Sotheby's knew both.

11. Sotheby's Client Accounting department remained blind to this mass of knowledge, permitting fraudulently obtained tax-free sales for five years, because, with respect to resale certificates, Sotheby's structure, practices, and policies prevented Client Accounting from learning important facts bearing on resale from the sales force, which had intimate knowledge of its clients.

12. The sales force, on the one hand, competed fiercely with rival auction houses for sales, and learned to extend whatever accommodations they could to keep clients happy. KCMs

were only cursorily introduced to the use of resale certificates during their initial training, and, once the KCMs received resale certificates from clients, they merely forwarded them to Client Accounting without knowing what Client Accounting did with them. Client Accounting personnel, on the other hand, knew only that they could accept a resale certificate in good faith if it was complete, they saw no red flags on the document, and they had no actual knowledge it was false.

13. The obligation to accept resale certificates in good faith, however, falls on Sotheby's itself, not on its blinkered Client Accounting department. And, in the struggle to compete for sales, Sotheby's either recklessly disregarded the falsity of the resale certificates it accepted from the Collector and his company, or remained deliberately ignorant of that falsity. Finally, through at least one of its employees, Sotheby's possessed actual knowledge of that falsity.

14. Further, as a result of its knowing acceptance of these false and fraudulent resale certificates, Sotheby's submitted sales tax returns to state tax authorities that falsely understated the amount of sales tax due to the State, and was either actually aware of, deliberately ignorant of, or recklessly indifferent to that falsity. Sotheby's also knowingly made and used false and fraudulent sales invoices to the Collector and his company, which reflected that no sales tax was due on its sales to the Collector and his company on the basis of their fraudulent resale certificates.

15. Sotheby's conduct constitutes a violation of the New York False Claims Act. Accordingly, pursuant to the New York False Claims Act, the State seeks to recover damages sustained by the State and local government, plus penalties.

JURISDICTION AND PARTIES

16. Plaintiff, the People of the State of New York, through the New York State Attorney General, brings this action in its sovereign capacity and pursuant to the New York False Claims Act. It sues to redress injury to the State, general economy and citizens, and seeks treble damages and penalties with respect to Sotheby's fraudulent and otherwise unlawful conduct.

17. Defendant Sotheby's, Inc. is headquartered at 1334 York Avenue in New York, New York.

18. This Court has personal jurisdiction over Sotheby's because Sotheby's can be found, resides, and/or transacts business in New York State and New York County.

19. Venue is proper in this Court pursuant to CPLR § 503.

FACTUAL ALLEGATIONS

I. Sotheby's Earns Commissions from Brokering Sales of Artwork in an Intensely Competitive Industry

20. Sotheby's is an international auction house based in New York City. It conducts auctions in ten locations worldwide, including New York City, and has private sale galleries in New York City, London and Hong Kong. It is one of the largest brokers of fine arts, jewelry and collectibles in the world, offering services in over 70 departments.

21. Sotheby's acts as an agent for clients interested in selling their artwork through the auction or private sales process. It accepts works of art on consignment, conducts due diligence to authenticate the consigned artwork, and seeks to match sellers to buyers through the auction and private sale process.

22. Sotheby's receives substantial commissions in connection with its auction services. In particular, Sotheby's receives a commission from buyers known as the "buyer's

premium,” which is calculated as a percentage of the hammer price (*i.e.*, the amount of the winning bid) of the property sold at the auction. The buyer’s premium is based on a tiered rate structure, depending on the value of the property; currently, Sotheby’s buyer’s premium ranges between 13.9% to 25% of the hammer price. Sotheby’s also typically earns a smaller commission from the seller, known as the “seller’s premium.”

23. These commissions account for a significant portion of Sotheby’s revenue. According to its 2012 annual report, Sotheby’s auction commissions accounted for 81%, 84%, and 86%, respectively, of its consolidated revenue in 2012, 2011 and 2010.

24. Sotheby’s also earns commission through private sale transactions. These commissions account for 10%, 8% and 6% of its consolidated revenue, respectively, in 2012, 2011 and 2010.

25. In light of its commission-based model, Sotheby’s must conduct a high volume of sales—particularly at higher price points—in order to maintain high levels of revenue and profitability.

26. Competition in the global art market is “intense,” as noted in Sotheby’s 2012 annual report. Sotheby’s primary competitor in the global art market is Christie’s. The two auction houses have “one of the longest-running rivalries in business history going back to when they were established in London in the 18th century,” according to a publication by Bloomberg, which notes that the competition has become “cutthroat.”¹

27. Another industry journal observes, “Gentlemanly rivalry has turned cut-throat competition—both between and within auction houses—all with the added pressure of turning a meaningful profit while winning limited market share.” The auction houses are largely a

¹ Stephanie Baker & Katya Kazakina, “Auction Wars: Christie’s, Sotheby’s, and The Art of Competition,” *Bloomberg*, June 21, 2015.

“relationship business” with “thrusting business-getters,” and opportunities for “[y]ounger staff” to “cut their teeth.”²

28. As one writer in the industry observed, success in the fierce competition between auction houses has hinged in recent times on their ability to court prospective buyers. An auction specialist is “expected to meet thirty new potential clients each year and learn their collecting preferences,” or focus on a smaller number of major clients who can each spend very large amounts of money. The competition is so fierce, in fact, that specialists may not only simply wine and dine prospective clients, but may go to significant and unusual lengths—such as throwing a birthday party for a client’s child—in order to grow relationships and boost sales. The writer cites a *New York Times* interview in which two worldwide department heads at Sotheby’s were asked “whether they would help get a collector’s child into college to score a success.” In response, “both ‘laughed and nodded yes.’”³

29. Indeed, faced with intense competition in the market, Sotheby’s commission-based business depends in large part on cultivating and maintaining strong relationships with potential buyers for the artwork it sells at auctions and through private sales.

II. Sotheby’s Key Client Managers Strive to Develop Relationships with Prospective Significant Buyers in the Competition for Their Business

30. To court and retain major buyers and sellers in this environment, Sotheby’s assigns certain sales representatives within its departments—known as specialists—to serve as key client managers, or “KCMs” for clients transacting above certain amounts. The KCM serves

² Melanie Gerlis, “Lifers no more: can auction houses keep their talent up?” *The Art Newspaper*, Dec. 18, 2018.

³ Don Thompson, *The Orange Balloon Dog: Bubbles, Turmoil and Avarice in the Contemporary Art Market* (2017), excerpted in “How Auction Houses Woo Billionaires,” *artsy.net*, Nov. 13, 2017, available at <https://www.artsy.net/article/artsy-editorial-auction-houses-woo-billionaires>; Judith H. Dobrzynski, “How Auction Houses Orchestrate Sales for Maximum Drama,” *N.Y. Times*, Oct. 28, 2015.

as a single point of contact, handling most if not all aspects of the client's experience at Sotheby's.

31. The point of this approach is to foster a close relationship between Sotheby's and the client: KCMs are encouraged to get to know their clients on a personal level by spending time with them, including by taking them out to lunch or dinner, visiting them at their residences, or inviting them to events organized by Sotheby's, as well as other outings. KCMs are expected to use the personal relationships with their clients to learn as much as possible about clients' backgrounds and purchasing interests, to ensure that Sotheby's can transact for the client in as many ways as possible. For example, KCMs are expected to keep their client apprised of artwork that may be of interest to them at upcoming auctions, and to assist their clients with bidding and other aspects of their transactions at Sotheby's.

32. To manage the relationship, the KCM may involve other specialists on the client team, whom the KCM manages. Also, the KCM often serves as a liaison between the client and other administrative departments at Sotheby's, including the department which administers aspects of the sale such as invoicing, payment and sales tax.

III. Resale Certificates May Exempt Certain Clients from Paying Sales Tax

33. Sales tax is required to be paid on every retail sale of tangible personal property in the State. Vendors are required to collect sales tax from the purchaser and remit it to the New York State Department of Taxation and Finance, and above certain thresholds, must submit periodic sales tax returns, which must contain a full, complete and accurate disclosure of, among other things, gross sales, taxable sales, and sales tax due. Sotheby's is a vendor subject to these requirements.

34. However, even where a sale is subject to sales tax, a purchaser may be exempt from the payment of sales tax where he is purchasing tangible personal property solely for resale, in the normal course of business. In the context of purchasing artwork, this resale exemption may be applicable, for example, to art galleries or private art dealers that are in the business of selling artwork.

35. To claim the resale exemption, a purchaser must complete and sign an exemption certificate known as a “resale certificate,” in which he certifies that he is exempt from the payment of sales tax because he is purchasing for resale, and submit it to the vendor. The purchaser then submits the certificate to the vendor and is not required to pay sales tax on the transaction.

36. A resale certificate is a single-page tax form, Form ST-120, issued by the New York State Department of Taxation and Finance. Resale certificates plainly state that they may only be used to purchase goods for resale, and that they may not be used to purchase goods for personal use. For example, the purchaser is explicitly warned as follows:

You may not use this certificate to purchase items or services that are not for resale. If you purchase tangible personal property or services for resale, but use or consume the tangible personal property or services yourself in New York State, you must report and pay the unpaid tax directly to New York State.

37. Further, the purchaser is required to explain the type of resale business he is in by completing the sentence “I am engaged in the business of ____ and principally sell ____.” This line ensures that the property concerned is purchased in the normal course of business operations, and the line’s inclusion is a warning that only those who do purchase in the ordinary course of business should use a resale certificate.

38. As one of the options describing the type of purchase for which the certificate is being used, the certificate has a box to check for a representation stating that “I am purchasing ... tangible personal property for resale that will be resold from a business located outside of New York State.”

39. The purchaser must then certify that he is purchasing for resale, and sign and date the certificate, which contains the following statement: “I certify that the above statements are true, complete and correct, and that no material information has been omitted.”

40. Resale certificates may be “single use,” for a single transaction, or “blanket,” applying to all purchases of the same general type of property purchased for resale.

41. Resale certificate rules also impose an important constraint on vendors. A vendor is only excused from charging sales tax on a transaction where a resale certificate is tendered if the vendor has accepted that certificate in good faith—that is, without knowledge that it is false or fraudulent.

42. This is made clear in the single-page instruction form that accompanies tax Form ST-120, under a heading that reads “To the Seller”: “A certificate is accepted in good faith when a seller has no knowledge that the exemption certificate is false or is fraudulently given, and reasonable ordinary due care is exercised in the acceptance of the certificate.”

43. Not only did Sotheby’s employees fail to exercise reasonable ordinary due care, they at minimum recklessly ignored the resale certificate rules in dealing with the Collector in order to keep him happy and active at their auctions and private sales.

IV. Sotheby’s Practices in Accepting Resale Certificates Were Plainly Inadequate

44. Sotheby’s accepts resale certificates from clients. From at least 2010 onward, an administrative department at Sotheby’s known as Client Accounting was responsible for the

review and processing of resale certificates, together with other client billing matters, including the preparation of invoices and collection of payment from clients.⁴

45. Although Client Accounting personnel were responsible for the review and processing of resale certificates—including marking a checkbox to confirm that a resale certificate did, in fact, appear to be used to purchase for resale—they did not have personal knowledge of, or relationships with, clients so as to be able to make that determination. And those who did have personal relationships with clients so as to know for what purposes they may be purchasing—namely, KCMs—were not sufficiently trained on resale certificates to ensure any potential misuse was conveyed to Client Accounting. Nor, as explained below, were they incentivized to do so.

46. While some clients may send their resale certificates directly to Client Accounting, Sotheby's permitted its clients with assigned KCMs to send resale certificates directly to their KCMs, who would then send the resale certificates to Client Accounting.

47. Client Accounting received periodic training on how to review and process resale certificates. It also received written guidelines, prepared by Sotheby's Tax Department, which set forth "key review points" for Client Accounting to check before accepting a resale certificate.

48. One of the "key review points" to be checked was that the resale certificate was, in fact, being used to purchase for resale. This key review point stated, "Purchaser must maintain the items are sold in the normal course of business. For example, a doctor normally is not engaged in the business of selling artwork. As such, a doctor may not present the certificate to purchase artwork. Sotheby's must charge sales tax." Client Accounting was required to

⁴ Sotheby's Client Accounting department was restructured in the fall of 2011 and renamed Post-Sale Services. For the purposes of this Complaint, the department will simply be referred to as "Client Accounting."

check a box confirming that this requirement was met, thus deeming the resale certificate acceptable, such that it would not need to charge the client sales tax.

49. This “key review point” shows that, at a policy level, Sotheby’s recognized that even a doctor with an art collection who might occasionally sell one of his pieces would not be selling artwork in the “normal course of business,” and would thus be using an invalid resale certificate.

50. However, Client Accounting was not typically in a position to know whether this requirement was met. Client Accounting was simply comprised of administrators, who were not closely familiar, if they were even familiar at all, with client profiles and interests. In most instances, the only way Client Accounting would know that a client was abusing a resale certificate—that is, using it to avoid sales tax on a purchase for personal purposes—was if someone familiar with the client notified Client Accounting of this fact.

51. By contrast, on the sales force side, Sotheby’s personnel made every effort to know as much about its clients as possible. Sotheby’s sales personnel engaged in after-sale “debriefs” in which they discussed clients and their activity in auctions. Sotheby’s employed additional personnel to perform “post-sale research,” collecting information on its clients in order to help determine the best way to cultivate them further. Larger departments such as Contemporary Art possessed dedicated client developers who performed this work.

52. In particular, as described above, KCMs were closely familiar with their clients. Thus, a KCM would be the one to know, for example, if her client was a doctor as opposed to a person in the business of selling artwork.

53. However, KCMs did not have access to the training materials or guidelines provided to Client Accounting. In fact, KCMs were not provided with any formal, substantive

guidance regarding what resale certificates are, how they could properly be used, what constituted a false or fraudulent resale certificate, or what to do if a resale certificate they were receiving appeared to be false or fraudulent.

54. Indeed, although Sotheby's permitted KCMs to receive resale certificates from clients in the first instance and pass them on to Client Accounting, Sotheby's had no written policies requiring KCMs to notify Client Accounting—or anyone else at Sotheby's—if a resale certificate a KCM received from a client appeared improper.

55. Thus, Sotheby's did not have any mechanism in place to identify resale certificates that its personnel knew were being misused to avoid sales tax on purchases for personal purposes. Its practices in accepting resale certificates from clients were inadequate to detect abuse of the certificates.

56. Sotheby's practices were so inadequate that they enabled the Collector and Porsal Equities to use false and fraudulent resale certificates to purchase over \$27 million worth of art, over a period of five years, apparently without detection, despite the fact that his KCM and many other Sotheby's employees were aware that he was purchasing art for personal purposes.

V. The Collector and Porsal Equities Made Extensive Purchases from Sotheby's Using False and Fraudulent Resale Certificates

57. The Collector, whose primary residence is outside the United States, runs a successful shipping business. The Collector owns apartments in New York City, at which he and his family stay when visiting the area, as well as other private residences around the world. The Collector established an account at Sotheby's for one of his companies, Porsal Equities, in early 2012, through which to purchase and own his artwork. The Collector is the president, secretary, and ultimate owner of Porsal Equities, which was incorporated in the British Virgin Islands.

58. The Collector and Porsal Equities were major clients of Sotheby's. From 2010 to 2015, they purchased 35 pieces of artwork and furniture from Sotheby's, totaling over \$27 million. For each of these purchases, they used resale certificates they submitted to Sotheby's.

59. Specifically, Sotheby's accepted a false blanket resale certificate from the Collector as an individual on November 8, 2010, who used it to purchase artwork from Sotheby's until, in early 2012, he established a Sotheby's account for Porsal Equities. On February 23, 2012, Sotheby's accepted a false blanket resale certificate in the name of Porsal Equities, which the Collector used to purchase artwork from Sotheby's in the name of Porsal Equities. On February 28, 2012, Sotheby's accepted a Porsal Equities resale certificate directed to Sotheby's London. Finally, on May 13, 2015, Sotheby's accepted a renewal resale certificate for Porsal Equities.

60. These resale certificates were false and fraudulent because they represented that the Collector and Porsal Equities were in the business of selling art, when they were not. The certificates were also false and fraudulent because they indicated that the Collector and Porsal were purchasing "tangible personal property for resale that will be resold from a business located outside New York State," when the property was not being purchased for resale, either from a non-New York business or otherwise, but instead was being purchased for the Collector's personal enjoyment of his art collection.

61. In 2018, Porsal Equities reached a settlement with the OAG, in which it admitted that it and the Collector used false resale certificates, primarily at Sotheby's, in violation of the New York False Claims Act. Porsal Equities admitted that it and the Collector falsely certified they were purchasing artwork and other goods for resale, but in fact, were actually purchasing solely for personal use, and paid a portion of the liabilities incurred with respect to these sales.

VI. Sotheby's Employees Knew of, and Actively Assisted with, the Collector and Porsal Equities' Abuse of Resale Certificates

62. Fixed on courting these major clients in order to increase its sales, Sotheby's employees recklessly disregarded the company's obligation to collect and remit sales tax to the State. Not only did they know that the Collector and Porsal Equities were not art dealers using resale certificates to purchase artwork for resale, they played an active role in the creation and use of those resale certificates. In doing so, Sotheby's employees effectively enabled the Collector and Porsal Equities receive substantial discounts -- at the expense of New York State's taxpayers -- and thus remain satisfied and loyal clients.

A. The KCM and Other Sotheby's Employees Facilitated the Use of Fraudulent Resale Certificates by the Collector and Porsal Equities

63. Despite her knowledge that the Collector and Porsal Equities were purchasing art for display and enjoyment at the Collector's residence, and despite the notices on the face of the resale certificates they executed that they could only be used to purchase for resale, the KCM, driven to gain and keep their business, actively facilitated their use of resale certificates. Not only the KCM, but the Senior Specialist, as well as other Sotheby's employees, assisted in these activities.

1. Sotheby's Employees Facilitated the Creation and Use of the False Resale Certificate Submitted by the Collector on November 8, 2010 to Sotheby's New York

64. The Collector first began using resale certificates at the recommendation of his KCM at Sotheby's. In early November 2010, during a conversation at the Manhattan coffee bar Sant Ambroeus, the Collector asked his KCM why some people did not pay sales tax when they bought art. The conversation took place in the days leading up to a large purchase the Collector

wanted to make—a sculpture by prominent contemporary artist Anish Kapoor, for over \$1.4 million. Sales tax on that purchase would amount to over \$126,000.

65. The KCM told him that people who purchase for resale use resale certificates, which exempt them from paying sales tax. She advised him that he could use them because he might resell his art at some point in the future, and told him that she would send him a form resale certificate for him to use. The KCM, whom Sotheby's had not trained in the correct use of resale certificates, made no inquiry to determine whether her representations to the Collector were correct.

66. The KCM went even further than this. She provided the Collector with a form resale certificate, rather than have him obtain the form from the New York State Department of Taxation and Finance, where it was freely available. Moreover, she even partially completed it for him.

67. She sent him the form by e-mail on November 8, 2010, writing, "Attached is the re-sale certificate form that we need here at Sotheby's. Please let me know if you have any questions."

68. The form resale certificate she attached stated clearly on its face, "You may not use this certificate to purchase items or services that are not for resale." Despite this notice, the KCM completed at least two portions of the resale certificate form for the Collector—a vendor registration number and his address—thus further facilitating its creation and use.

69. The Collector signed the resale certificate and returned it to the KCM. The line titled "Purchaser information," requiring the purchaser to explain the type of resale business he is in—"I am engaged in the business of ____ and principally sell ____"—was not completed. As explained earlier, this line ensures that the type of property being purchased is to be sold in the

normal course of business operations, and its inclusion is a warning that only those who do purchase and sell in the ordinary course of business should use a resale certificate.

70. The signed resale certificate also checked a box stating, “I am purchasing ... Tangible personal property for resale that will be resold from a business located outside of New York State.” This statement was materially false. The Collector was not actually using the resale certificate to purchase for resale, but rather, to purchase a large sculpture by Anish Kapoor for display and enjoyment at one of his residences, as the KCM knew based on her communications with him.

71. Once the resale certificate was signed, the KCM sent the partly-complete certificate back to the Collector’s assistant for his records. The KCM also brought the partly-complete resale certificate to Client Accounting.

72. Although she knew at this point that the Collector intended to use a resale certificate to purchase for personal purposes, and was in the business of shipping as opposed to being an art dealer, she did not notify Client Accounting of any impropriety or red flag, or even inquire as to whether the obvious discrepancy between the resale certificate and the intended use of the artwork was problematic.

73. There was a key difference between the resale certificate the KCM sent back to the Collector’s assistant for his records and the resale certificate that was approved by Sotheby’s Client Accounting department. In the version the Collector provided to the KCM, and which was returned for his files, the “Purchaser information” field is blank, as described above. But in the version in Sotheby’s Client Accounting department records, the field is complete. It reads, “I am in the business of Art dealer and principally sell Fine Arts.”

74. This statement was materially false. The Collector was not an art dealer or in the business of selling fine art. Indeed, the KCM knew that, to the contrary, the Collector was in the shipping business and was purchasing art for personal purposes.

75. The events described here indicate that neither the Collector nor his assistant completed this field. Moreover, the handwriting in this field is not consistent with their handwriting. Further, this statement is entirely different from the statements in other resale certificates the Collector submitted at this time to two other institutions, both of which stated, “I am in the business of export and principally sell personal property items” (and were subsequently rejected by those institutions).

76. Upon the foregoing information, and belief, either the KCM made this false statement on the November 8, 2010 resale certificate or caused another Sotheby’s employee to make it. The KCM knew that this statement was false because she knew that the Collector was in the business of shipping, not in the business of dealing art, and she knew that the Collector did not principally sell fine arts.

77. Client Accounting reviewed the Collector’s resale certificate and checked it off as valid. A “Certificate Review Checklist Coversheet,” attaching the Collector’s resale certificate, reflects five checkboxes, including one that states:

“Ask yourself the validity of the claim for exemption ... does it make sense? Sotheby’s should not accept a document where a business issues a resale certificate who normally does not re-sell the items being purchased. A physician who is registered and in the business as a chiropractor [sic] should not issue a resale certificate for purchasing art or jewelry ... Sotheby’s should not accept a document where an officer, member or employee is making a purchase for their personal use.”

The question “VALID?” appears at the bottom. The document is initialed by a Client Accounting employee.

78. Sotheby's thus accepted the false resale certificate, and it was applied to the Collector's purchase of the Kapoor sculpture on November 9, 2010. On the basis of this false resale certificate, Sotheby's did not collect and remit any sales tax on this \$1.4 million purchase.

79. The resale certificate executed by the Collector was a "blanket resale certificate," meaning it was to be applied on all of his purchases. Accordingly, Sotheby's also did not collect or remit any sales tax on any subsequent purchases made by the Collector with this resale certificate, although the KCM knew that the Collector was continuing to use the resale certificate to purchase solely in order to display artwork for his own enjoyment at his properties.

2. Sotheby's Employees Facilitated the Creation and Use of the False Resale Certificate Submitted by Porsal Equities on February 23, 2010 to Sotheby's New York

80. In February 2012, the KCM assisted the Collector with opening an account at Sotheby's in the name of Porsal Equities, the legal entity he had created through which to purchase and hold art.

81. At the KCM's request, the Collector provided her with a resale certificate in the name of Porsal Equities. In the "Purchaser Information" section, this certificate bore the statement "I am in the business of art export and principally sell art works." The signed resale certificate also checked the box for the option "I am purchasing ... Tangible personal property for resale that will be resold from a business located outside of New York State."

82. This resale certificate was also materially false and fraudulent. Porsal Equities was not in fact using the resale certificate to purchase solely for resale in the normal course of business, but rather, to continue the practice of collecting artwork for display and enjoyment at the Collector's properties.

83. The KCM knew that the Collector was continuing to purchase art for personal purposes, and she testified that she “just understood [Porsal Equities] to be a new company under which they were going to buy art.” She subsequently stated, “I don’t think internally it was marked as dealer.”

84. The KCM again submitted the resale certificate to Client Accounting once it was signed. Although the KCM had known from the beginning of her association with the Collector that he planned to purchase artwork for personal purposes, and nothing about his new account in the name of Porsal Equities changed that understanding, she did not notify Client Accounting of any impropriety or red flag.

85. As a result, Client Accounting, again, deemed the resale certificate to be valid. A “Certificate Review Checklist Coversheet,” attaching Porsal Equities’ resale certificate, reflects five checkboxes, including one that states:

“Ask yourself the validity of the claim for exemption... does it make sense? . . . Sotheby’s should not accept a document where a business issues a resale certificate who normally does not re-sell the items being purchased. A physician who is registered and in the business as a chiropractor [sic] should not issue a resale certificate for purchasing art or jewelry . . . Sotheby’s should not accept a document where an officer, member or employee is making a purchase for their personal use.”

The question “VALID?” appears at the bottom. The document is initialed by, upon information and belief, a Client Accounting employee.

86. The resale certificate executed by Porsal Equities was also a blanket resale certificate. Accordingly, Sotheby’s also did not collect or remit any sales tax on any purchases made by Porsal Equities with this resale certificate, although the KCM knew that it was being used to purchase for display and enjoyment at the Collector’s properties.

87. Further, in connection with this resale certificate, Sotheby’s made an exception to what the Tax Compliance Manager called an “extremely important” policy in place regarding purchases using resale certificates. This “extremely important” policy required that purchases

using resale certificates be made from a company bank account rather than a personal bank account.

88. In an e-mail to the KCM dated February 23, 2012, the Tax Compliance Manager explained to her the reason for the policy: “If the payment comes from the customer’s personal account, upon audit, NYS would start with the assumption that the individual used a corporate resale certificate to avoid being charged NYS sales tax and could say that we did not accept the resale certificate in good faith.”

89. The KCM acknowledged this policy in a response to the Tax Compliance Manager. Nevertheless, on March 15, 2012—just a few weeks later—she requested, and was granted, for at least transaction, approval to permit the Collector to make payments from his personal account for artwork he purchased with a Porsal Equities resale certificate. Sotheby’s employees thus excused the Collector from compliance with its “extremely important” policy, although they knew that doing so might indicate that Sotheby’s had not accepted Porsal Equities’ resale certificates in good faith.

3. Sotheby’s Employees Facilitated the Creation and Use of the False Resale Certificate Submitted on February 28, 2010 by Porsal Equities to Sotheby’s London

90. Shortly after facilitating the making and use of the first Porsal Equities resale certificate to Sotheby’s New York, the KCM actively assisted in the creation and submission of another false resale certificate by Porsal Equities, in order to facilitate the shipment of the Collector’s purchases from Sotheby’s London to New York.

91. In early 2012, the Collector was purchasing artwork from Sotheby’s London. He wanted the art to be shipped to Sotheby’s New York for storage until renovations at his New York apartment were complete and the art could be displayed there.

92. In late February 2012, the KCM discussed his request with a Sotheby's business manager, the director of Client Accounting in London, and the Manager of Tax Compliance and Reporting ("Tax Compliance Manager") at Sotheby's. They were initially concerned about accommodating the Collector's request because it led to a concern about sales tax nexus—the concern being that property purchased from Sotheby's London, outside of New York, would not be subject to sales tax, but that, if delivery of the property was taken from Sotheby's in New York, that sales tax would be due.

93. However, the KCM pointed out to them that the Collector used a resale certificate, and asked if that would "make a difference." The Tax Compliance Manager stated that in that case, the concerns were not triggered, and they could accommodate the Collector's request, as long as a new resale certificate was submitted to Sotheby's London.

94. During this exchange, the Tax Compliance Manager informed the KCM that "[o]ur obligation for accepting a resale certificate is that it must be completed in full, it must be completed accurately and it must be accepted in good faith."

95. The KCM was thus made explicitly aware that inaccuracies in resale certificates prevented Sotheby's from accepting resale certificates. She also knew by this time that Sotheby's had accepted two resale certificates that were inaccurate: they both represented that the Collector and Porsal Equities were art dealers principally selling art. And she had known from the day she met the Collector that he was not an art dealer, but a shipping executive who collected art.

96. The KCM facilitated the creation of the new resale certificate to be submitted to Sotheby's London: she sent another form resale certificate to the Collector's assistant, to be used for purchases from Sotheby's London, stating "Can you help me with this and then you [sic]

send it back to me when you have a moment?” Upon receiving no response, the KCM sent a reminder to the Collector’s assistant that the resale certificate needed to be completed. Upon receiving the resale certificate from the Collector’s assistant, the KCM edited it—or in her words, “adjusted it”—to reflect the correct seller name. The KCM learned from the Tax Compliance Manager that minor additional edits were needed to the resale certificate. She had the Collector make these edits, and then sent the form back to the Tax Compliance Manager, who approved it.

97. In the “Purchaser information” section, this certificate bore the statement “I am in the business of art export and principally sell art works.” The signed resale certificate also checked a box stating, “I am purchasing ... Tangible personal property for resale that will be resold from a business located outside of New York State.” This resale certificate was also materially false and fraudulent. Porsal Equities was not in fact using the resale certificate to purchase for resale, but rather, to purchase artwork for display and enjoyment at the Collector’s properties.

98. While the KCM facilitated the creation of this new false and fraudulent resale certificate, it was another employee’s idea to use the resale certificate in the first place, as a solution to get the Collector’s pieces to New York and avoid the sales tax nexus concern. This employee was a senior vice president and senior specialist in the Contemporary Art department (“Senior Specialist”). Indeed, on February 29, 2012, the KCM sent the Senior Specialist an update on the process; the Senior Specialist responded, “Yay! I’m glad my suggestion of resale got this going in the right direction!”

99. As of this date, the KCM was well aware that the Collector and Porsal Equities were using resale certificates to purchase artwork for display in the Collector’s properties.

Nonetheless, the KCM facilitated the creation and use of this resale certificate, and failed to alert anyone that the use of these resale certificates may have been improper.

100. Sotheby's accepted the false resale certificate, and accordingly, did not collect or remit any sales tax on any purchases made by Porsal Equities with this blanket resale certificate.

4. The Senior Specialist Facilitated the Creation and Use of the False May 13, 2015 Resale Certificate Submitted by Porsal Equities to Sotheby's New York

101. In June 2013, the KCM left Sotheby's, and the Senior Specialist became the key client manager for the Collector and Porsal Equities.

102. On May 13, 2015, Porsal purchased two pieces of artwork from Sotheby's, which the Senior Specialist personally presented to the Collector.

103. The Collector planned to bring these pieces to Miami, Florida, and give them to his wife as birthday gifts. The Senior Specialist was aware of these plans.

104. Despite knowledge of the purely personal use the Collector intended, the Senior Specialist nonetheless provided the Collector with a new resale certificate for him to sign on behalf of Porsal Equities. She did so because Sotheby's policy required blanket resale certificates to be updated every three years, and Porsal's previous one, approved by Sotheby's in 2012, was due for an update.

105. The new resale certificate was already filled out when the Senior Specialist presented it to the Collector for signature. In the "Purchaser Information" section, this certificate bore the statement "I am in the business of fine art and principally sell fine art." This was a materially false statement. Porsal Equities was not in fact in the business of selling fine art, but rather, was a holding company for the Collector's purchases of fine art for his collection.

106. The resale certificate also checked the box for the option “I am purchasing ... Tangible personal property for resale that will be resold from a business located outside of New York State.” This certification was also materially false and fraudulent: Porsal Equities was not in fact purchasing for resale, but rather, it was buying birthday presents for its Collector’s wife.

107. As his key client manager at this point, the Senior Specialist knew that the Collector was purchasing these pieces as birthday gifts for his wife rather than for resale. She further knew, at this point, that the Collector and Porsal Equities were not art dealers purchasing for resale, but rather, that the Collector was an art collector, in the shipping business, and was using pieces of art he purchased from Sotheby’s for personal purposes, namely for display and enjoyment at his properties.

108. As the resale certificate was pre-completed at the time the Collector received and signed it, upon this information and belief, a Sotheby’s employee made or caused the making of these materially false statements.

109. The Collector signed the resale certificate, and took possession of the pieces. Sotheby’s accepted the false resale certificate, thereby causing its use, and accordingly did not charge sales tax on these pieces, which it sold to Porsal for a total of \$543,500.

5. The KCM Caused the Creation and Use of Materially False Sales Invoices

110. The KCM often e-mailed Client Accounting to ensure that the Collector and Porsal Equities were not charged sales tax, due to the materially false and fraudulent resale certificates they had submitted.

111. Where an invoice generated by Client Accounting reflected sales tax on a piece purchased by the Collector or Porsal Equities, the KCM requested that Client Accounting “zero

out” the sales tax on the basis of the resale certificates on file. In such situations, Client Accounting obliged and sent revised invoices.

112. By this conduct the KCM further facilitated the use of false resale certificates by the Collector and Porsal Equities, and also caused additional materially false records to be made, namely, invoices reflecting that no sales tax was due. These invoices were false because they reflected that no sales tax was due, when, in fact, it was. These invoices also were material to the obligations of the Collector and Porsal Equities to pay sales tax because they did not require the payment of sales tax to complete the transactions.

B. In Their Efforts to Court a Major Client, Many Sotheby’s Employees Learned that the Collector and Porsal Equities Were Purchasing Art for Personal Purposes

1. The KCM Was Well Aware the Collector and Porsal Equities Were Purchasing Art for Personal Purposes

113. The Collector came to Sotheby’s in 2010 to browse Latin American art prior to an auction. At the time, the department was leanly staffed, and the KCM—then a junior cataloguer, just three years out of college—gained an opportunity to walk the Collector through the pieces for sale. They quickly formed a strong connection; the Collector realized she was from his home country, and was very impressed with her knowledge of Latin American art. She requested and received permission to become his KCM.

114. The KCM learned right when they met that the Collector was in the shipping business and was a collector of Latin American art. She promptly placed this information in Sotheby’s records. On June 4, 2010, she wrote an e-mail to the data quality department at Sotheby’s, a unit charged with collecting and maintaining up-to-date information about the auction house’s clients.

115. In the email, the KCM provided a full description of her new client, including the name, location and detailed description of his shipping business. She explained that the Collector's country "relies heavily on imports so this is a very profitable business."

116. In the same e-mail, she described the Collector as a "big collector" of a particular artist and stated that he was "eager to continue collecting works by the artist" and she went on to describe his "collecting interest" in further detail.

117. The KCM also quickly learned that the Collector had an apartment in New York and other private residences around the world. She knew even from early communications with the Collector that he intended to display the art he purchased at these private residences. She provided the locations of these private residences in her June 4, 2010 e-mail to the data quality department at Sotheby's as well.

118. The KCM knew the Collector was displaying the art he purchased from Sotheby's (with the benefit of resale certificates) for his personal enjoyment because she frequently communicated with him regarding his plans to do so, and even helped install it in his Manhattan apartment. For example, she coordinated the framing and installation of several pieces of artwork the Collector purchased from Sotheby's in April 2012 (using false resale certificates) for display at this apartment. In an April 24, 2012 e-mail exchange, the KCM suggested to the Collector that they use an anti-reflective frame for the "works of art for the apartment," which "significantly reduces reflection" and "makes a huge difference." The Collector deferred to her on the choice of frame, stating, "I trust you completely," and instructed, "SPEED THINGS ALONG SO THAT YOU HAVE ALL OF THEM AT THE APARTMENT WHEN I ARRIVE!!!" As reflected in an e-mail exchange two days later, KCM then directly coordinated

the logistics of framing and installation with a framer, including determining who would “rehang the works” at the “client’s home” after the framing was complete.

119. In another example, in an e-mail exchange dated December 5, 2012, the Collector thanked the KCM for sending art (which he had purchased from Sotheby’s using false resale certificates) to his apartment for his upcoming visit, but expressed displeasure that one of the pieces was taking too long, stating “I was really counting on enjoying the [piece] as well during my short stay in NY for the holidays.” He added, “I’m planning to get to NY next week and I would really love to have it there, you all know how much I enjoy the new pieces around my house.” The KCM apologized for the delay, writing, “I am truly sorry, but I am certain everything will be ready at your apartment and you will be able to enjoy it.”

120. The KCM knew that the Collector was not in the business of selling art. On June 19, 2012, in response to the Collector’s assistant’s inquiry as to software that the Collector could use in connection with his art collection, the KCM stated she would not recommend a particular software to him because “many of [its] ‘features’ are created for galleries or for somebody who is actively selling art.”

2. The KCM Worked with Other Sotheby’s Employees to Accommodate Their Major Client Wherever Possible to Generate Sales

121. The KCM quickly recognized the Collector’s potential significance as a client, and was eager to cultivate the relationship. On July 23, 2010, she wrote in an e-mail to a business manager that the Collector had, at that point, spent “well over 1mm in multiple sales.” She emphasized that in order to keep his business, “[i]t is crucial that we keep him not just satisfied but happy.”

122. She sought to maintain a close personal relationship with him early on, and openly solicited his trust, writing to him on September 14, 2010, upon learning of an illness in

his family, “I hope you know that I’m at your service if your family is still here and I can help with something, anything! I would have let your kids stay at my place for Rosh Hashana!! You can count on me for anything you need.” The KCM alluded to and invited his trust many times in similar communications over the course of their ensuing professional relationship.

123. The Collector was a demanding client from the start, insisting that Sotheby’s waive or absorb costs and fees, among other things. The KCM went to great lengths to accommodate his special requests, given his importance as a client and his threats that he would end his business with Sotheby’s and pursue more business with Christie’s, where he was also a client, if he was not accommodated.

124. As the Collector continued to spend large amounts of money at Sotheby’s, he continued to put enormous pressure on Sotheby’s to accommodate various requests for special treatment, including, for example, shipping pieces he purchased from Sotheby’s London office to Sotheby’s New York location until his apartment was renovated and ready for their display, and shipping pieces of artwork to him on extremely tight timelines. The KCM continued to go to great lengths to fulfill his requests, often “begging” her colleagues to assist, given his importance as a client and his threats to take all of his business to Christie’s if he was not accommodated. At times, she was able to bend the rules to accommodate him.

125. For example, in early November 2012, the KMC explained to a business manager at Sotheby’s that the Collector was unhappy about a recent transaction with Sotheby’s. Desperate to “show[] him our goodwill in this situation,” the KCM stated she needed to ship certain pieces he had purchased from London to New York in time for his upcoming visit to New York. She continued, “Can I please beg you for a quote tomorrow? I don’t know who else to turn to... please please help!”

126. The business manager explained that “we need to be realistic. This is not going to reach him next week.” The KCM replied, “Please please help. We may have to throw in shipping for him to be happy with us but I do need to have a timeline—this has to be prioritized due to how sensitive this has all been and we need him to be happy and active in our sales... I beg you to help me with this. This just has to be in New York next week.”

127. The KCM received permission to expedite shipping at Sotheby’s expense, and on November 7, 2012, worked with several other Sotheby’s employees to get the delivery completed as soon as possible. She apologized to her colleagues for the rush, stating, “I am just under so much pressure to make this happen,” and asked if the shipment could arrive within two days, writing, “Pleeeeeeease??? I am on my knees begging right now...” Ultimately, she was able to get the pieces to New York on time for the Collector, and was able to get Sotheby’s to absorb the \$1800 fee for shipping and installation at his apartment, all despite the fact that the pieces had not even been paid for in full.

128. Shortly thereafter, the KCM was notified that she should not have released the property to the Collector if it was not paid in full. She apologized, and explained she had the approval of the Head of Contemporary Art, and did not realize further approvals were needed. She further stated that she was “only trying to get this done to appease the client in time for the sale,” explaining, “we were actually put against the wall and were worried that he was not going to sign the contract for [a piece] and worse, that he would cut ties and not come to the auction.”

129. Sotheby’s efforts to accommodate the Collector paid off. The KCM, with the aid of the other Sotheby’s personnel working with her, was able to bring in substantial business from him. In fact, from 2012 to 2014, Porsal Equities was one of the top ten clients in the

Contemporary Art department—one of the highest grossing departments at Sotheby’s—that used resale certificates.

130. The KCM also benefitted personally from her sales to the Collector and Porsal Equities. In the course of their professional relationship, she successfully transitioned from a smaller Latin American Art Department to the larger and more prominent Contemporary Art Department, in line with the Collector’s purchasing interests, and was promoted twice—from junior cataloguer to junior specialist, and then to specialist. She also received an 11% “one off special recognition bonus” and an 11% raise in 2011—within a year of meeting the Collector, and just a few months after she enabled him to use a resale certificate for the first time.

131. The KCM was repeatedly commended for her relationship with the Collector and Porsal Equities. For example, the Senior Specialist wrote to her in an e-mail on February 13, 2012, “I respect the profound trust [the Collector] has with you and in your [advice]” and stated that an upcoming event would “debut to the world in a very obvious way that you are his art world contact and that is just a big deal internally as externally.”

132. The Senior Specialist also congratulated the KCM more publicly in an e-mail dated September 12, 2012. In the e-mail, she thanked the senior executives at Sotheby’s for granting the Collector special payment terms for the purchase of a \$5.7 million Basquiat painting. She pointed out that their “willingness to extend terms to [the Collector] continues to pay off,” stating that he had made, at that point, “\$10,000,000 worth of purchases.” Having copied the KCM and the Head of Contemporary Art, she concluded by attributing credit to the KCM, who had cultivated the relationship: “[KCM] -- congratulations.”

3. Senior Sotheby's Executives in the Contemporary Art Department Were Well Aware that the Collector Was Displaying Art for Personal Purposes

133. In 2011, the KCM transferred to the Contemporary Art Department at Sotheby's, and assisted the Collector with his increasing purchases from that department. She promptly introduced him to more senior personnel in Contemporary Art, to ensure he was getting the benefit of their experience and felt like a valued client.

134. In particular, the KCM introduced the Collector to the head of the Contemporary Art Department ("Head of Contemporary Art"), who had been employed for ten years by Sotheby's at the time, and was cited by Bloomberg as "one of the top dealmakers at Sotheby's" and among its "top managers and specialists."

135. The KCM also introduced the Collector to the Senior Specialist. The Senior Specialist was a Senior Vice President at Sotheby's, who served in the prominent posts of Head of Day Sales and, subsequently, Head of Evening Sales.

136. The Head of Contemporary Art and the Senior Specialist assisted the KCM with the Collector's accounts, and ensured he felt well taken care of. They helped address the Collector's many requests for accommodations, at times escalating issues to some of the most senior executives at Sotheby's.

137. For example, the Head of Contemporary Art escalated the Collector's request for special payment terms (*i.e.*, to pay in installments) to purchase a painting by the renowned artist Jean-Michel Basquiat, to the CFO of Sotheby's and an Executive Vice President of Sotheby's. In an e-mail dated March 2, 2012, the Head of Contemporary Art explained to the executives, "[h]e is renovating a new apartment in NY and he is hoping to move in before the end of the year. By then most of the painting will be paid down." A business director, who had also been

briefed on the matter, joined the pitch, explaining, “We feel that our ability to close this deal will be a bonus for us in winning future sale opportunities.” The request was approved.

138. Through Porsal Equities, the Collector purchased the Basquiat for \$5.7 million, through a private sale transaction, two weeks later. Sotheby’s applied Porsal Equities’ blanket resale certificate to the purchase.

139. Although Porsal Equities purchased the work using a resale certificate for the purchase, the Head of Contemporary Art and the Senior Specialist knew very well—as did the KCM—that the Collector was displaying the art he purchased in his apartment in New York. In fact, they knew that he planned to display the Basquiat painting itself there. On March 12, 2012, the Head of Contemporary Art sent a letter to the Collector, congratulating him on the purchase, and stated, “I know [the KCM] will have it beautifully installed for all of us to admire.” The Senior Specialist assisted in the drafting of the letter.

140. Subsequently, the KCM, the Head of Contemporary Art, and the Senior Specialist went out to dinner with the Collector and then went to the Collector’s apartment in New York to see the painting by Basquiat on display there. The Senior Specialist went to the Collector’s apartment on other occasions as well, to view parts of his collection on display there, together with the KCM.

4. Many Other Sotheby’s Employees Were Also Aware that the Collector Was Using the Art He and Porsal Equities Purchased for Personal Purposes

141. The fact that the Collector was displaying the art he purchased at his apartment in New York was communicated to many others at Sotheby’s. For example, in an e-mail dated March 28, 2012, the KCM wrote to four colleagues at Sotheby’s, including her direct supervisor at the time, a Vice President and Head of Contemporary Art Day Sales, “Just a friendly reminder

that I am going to [the Collector's] apartment this morning to help with the installation of paintings in his new apt.”

142. Further, as reflected above, courting the Collector was clearly a team effort. Given the significance of this client, and his many demands, numerous Sotheby's employees ultimately assisted with his accounts, including (i) the KCM, the Senior Specialist, the Head of Contemporary Art, and other specialists at Sotheby's; (ii) business directors, who assisted in addressing his requests for accommodations, (iii) executives in the tax department, who responded to questions from the KCM regarding their accounts, (iv) executives who considered his requests for special payment terms, and (v) administrative personnel in Client Accounting and shipping.

143. In fact, in the course of working on his accounts at Sotheby's, at least 29 employees at Sotheby's knew that Porsal Equities and its Collector were using resale certificates; at least 22 employees at Sotheby's knew that art was being delivered to the Collector's apartment and/or that he was displaying the art that he purchased; and at least 12 employees at Sotheby's knew both, including the following:

- a. The KCM;
- b. The Senior Specialist;
- c. Two business managers in the Contemporary Art Department;
- d. Two administrators in the Contemporary Art Department;
- e. A client accounting employee who worked closely with the Contemporary Art Department;
- f. A vice president, and an administrator, in the 19th Century Furniture, Sculpture and Works of Art Department;

- g. The deputy director of the Logistics Department in London, who was also an “export specialist”;
- h. A client accounting manager in London; and
- i. A shipping coordinator.

144. Remarkably, the knowledge possessed by at least 22 employees at all levels of Sotheby’s—including the KCM, the Senior Specialist, and the Head of Contemporary Art—that these significant clients of Sotheby’s were purchasing art for personal purposes was never disclosed to the specific employees in Client Accounting that reviewed and deemed their resale certificates acceptable.

145. And further, although at least 12 employees at all levels of Sotheby’s—including the KCM, the Senior Specialist, and a Client Accounting employee who served as the primary contact for the Contemporary Art Department—knew that these significant clients of Sotheby’s were using resale certificates and were purchasing art for personal purposes, none of them appears to have even raised a question as to whether this use was improper.

VII. Sotheby’s Employees Acted Within the Scope of Their Employment and For the Benefit of Sotheby’s

146. The KCM was a full-time employee of Sotheby’s during the timeframe in which she assisted the Collector and Porsal Equities with creating and using false resale certificates, from 2010 to 2013.

147. The KCM’s actions in facilitating the creation and use of false resale certificates were within the scope of her employment at Sotheby’s. As a KCM, she was responsible for selling artwork and assisting clients with their transactions at Sotheby’s. Her responsibilities included answering questions from clients about their transactions, obtaining resale certificates from clients and forwarding them to Client Accounting, and coordinating the shipment of art to

clients. Thus, her discussions with the Collector regarding his use of resale certificates to purchase art, her assistance in completing resale certificates for him, her submission of his resale certificates to Client Accounting, and her other assistance with his use of resale certificates, were well within the scope of her employment.

148. Further, the KCM acted largely for the benefit of Sotheby's. By facilitating the use of resale certificates by the Collector and Porsal Equities, and thereby essentially offering a discount on their purchase of artwork, the KCM incentivized the Collector and Porsal Equities to purchase more from Sotheby's. Not only did this help advance her profile and career at Sotheby's and earn her commissions on private sales transactions, but it also benefitted Sotheby's, which earned substantial commissions on their purchases.

149. Upon information and belief, the other Sotheby's employees referenced herein were also full-time employees whose knowledge regarding the activities of the Collector and Porsal Equities were gained within the scope of their employment at Sotheby's, and whose assistance with their transactions were also conducted within the scope of their employment, and for the benefit of Sotheby's.

**CAUSE OF ACTION
AGAINST DEFENDANT SOTHEBY'S**

New York False Claims Act—State Fin. Law § 189(1)(g)

150. Plaintiff repeats and re-alleges the foregoing paragraphs as set forth herein.

151. Sotheby's violated State Finance Law § 189(1)(g) in that its employees knowingly made, used, or caused to be made or used, false records or statements material to an obligation to pay or transmit money or property to the State.

152. Specifically, as set forth above, Sotheby's employees caused the making and use of at least four false resale certificates by the Collector and Porsal Equities. These resale

certificates asserted that the Collector and Porsal Equities were art dealers, and certified that they were buying personal property for resale that would be resold by a business located outside of New York State. These statements were false because the Collector was actually an art collector purchasing on his own behalf and through Porsal Equities for personal purposes, namely, display and enjoyment at the Collector's private residences.

153. Sotheby's acted with actual knowledge, or in deliberate ignorance or reckless disregard of the falsity of the statements it made or used or caused to be made or used in accepting and otherwise facilitating the creation and submission of the resale certificates. Sotheby's knew that the Collector and Porsal Equities were purchasing solely for personal use, and not for resale in the normal course of business, but Sotheby's Client Accounting department accepted the resale certificates despite Sotheby's employees' knowledge of their falsity. In addition, the Sotheby's employees who made, used, or caused the false statements in these resale certificates to be made or used acted with actual knowledge, or in deliberate ignorance or reckless disregard of the falsity of the statements.

154. The resale certificates were material to Sotheby's obligation to collect and remit sales tax to the State because by accepting them, Sotheby's could claim it was relieved of the obligation to collect and remit sales tax to state tax authorities.

155. Additionally, Sotheby's employees acted with actual knowledge, or in deliberate ignorance or reckless disregard of the falsity of the records they made, used, or caused to be made or used by removing sales tax charges from invoices sent to the Collector. The invoices were false because the sales tax charges were removed on the basis of the false and fraudulent resale certificates, and they were removed despite the knowledge that the Collector and Porsal Equities were purchasing for personal purposes and were not art dealers. The false invoices were

material to Sotheby's obligation to collect and remit sales tax to the State because without the charges, Sotheby's did not collect and remit sales tax that was in fact due on the purchases.

156. Further, though the sales made to the Collector and Porsal Equities were taxable (notwithstanding the submission of false and fraudulent resale certificates), Sotheby's failed to declare them as taxable in the quarterly sales tax returns it filed with the Tax Department from 2010 to 2015. Specifically, Sotheby's did not include the sales amounts in the required calculation of sales tax due in the quarterly Form ST-810s that it filed. Instead, with at a minimum reckless disregard of the falsity of the returns, it falsely understated taxable sales by excluding sales to the Collector and Porsal Equities as purportedly exempted purchases for resale.

157. As a result, the returns falsely and materially understated the total sales tax Sotheby's was obliged to remit for the quarters ending November 30, 2010 through May 31, 2015. The omission of the purportedly exempted sales was material because it directly affected the calculation of tax due by reducing the taxable receipts to which sales tax rates apply in New York State taxing jurisdictions, and thus resulted in returns that showed less sales tax due than was actually the case. That omitted sales tax amount was also material: it totaled at least an estimated \$2.4 million.

158. The thresholds set forth in State Finance Law § 189(4)(a)(i) and (ii) are satisfied because Sotheby's had net income or sales in excess of \$1 million for any taxable year subject to this action, and the damages pleaded exceed \$350,000 in the aggregate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands and prays that judgment be entered against

Sotheby's as follows:

- a. Declaring, pursuant to CPLR § 3001, that Sotheby's has violated N.Y. State Fin. Law §§ 187 *et seq.*;
- b. Directing that Sotheby's pay damages pursuant to N.Y. State Fin. Law §§ 187 *et seq.*, in an amount to be determined at trial or as directed by the Court;
- c. Directing that Sotheby's pay penalties as required by N.Y. State Fin. Law §§ 187 *et seq.* for each violation of N.Y. State Fin. Law § 189;
- d. Directing that Sotheby's pay Plaintiff's costs, including fees and costs as provided by law; and
- e. Granting such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of any issue of fact triable as of right by a jury.

Dated: New York, New York
November 6, 2020

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: 

Thomas Teige Carroll
Sujata M. Tanikella
Taxpayer Protection Bureau
28 Liberty Street, 21st Floor
New York, NY 10005
(212) 416-6012