

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
- v. -	:	SUPERSEDING
	:	<u>INFORMATION</u>
SAMUEL WAKSAL,	:	S1 02 Cr. 1041 (WHP)
Defendant.	:	

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COUNT ONE

(Conspiracy)

The United States Attorney charges:

Background

1. At all times relevant to this Information, the State of New York imposed a sales tax on the sale of tangible personal property within the State. Within the City of New York, obligations were imposed by law on vendors to collect, and on purchasers to pay, sales tax at the rate of 8.25 percent. The sales tax did not apply to sales made by vendors when the property sold was delivered outside of the State of New York for use outside of the State of New York.

2. At all times relevant to this Information, an art gallery located in New York, New York (the "Art Gallery") was engaged in the business of buying and selling works of fine art.

A co-conspirator not named as a defendant herein ("CC-1") was the owner and principal manager of the Art Gallery.

3. At all times relevant to this Information, SAMUEL WAKSAL, the defendant, was a resident of New York, New York. Until on or about May 22, 2002, when he resigned, WAKSAL was president, chief executive officer, and a director of ImClone Systems Incorporated ("ImClone"), a corporation organized under the laws of the State of Delaware with its principal place of business in New York, New York. ImClone was engaged in the business of developing biologic medicines. ImClone conducted operations from two facilities: research and executive offices at 180 Varick Street, New York, New York; and a manufacturing facility at 22 Chubb Way, Somerville, New Jersey.

The Scheme to Defraud

4. From on or about June 22, 2000, up to and including on or about December 5, 2001, SAMUEL WAKSAL, the defendant, purchased the following works of fine art from the Art Gallery, the total purchase price of which exceeded \$15 million:

Artist	Title	Purchase Price
Mark Rothko	Untitled (Plum and Brown)	\$3,500,000
Cy Twombly	Untitled (Rome)	\$1,300,000
Richard Serra	The American Flag is Not an Object of Worship	\$350,000
Franz Kline	Mahoning II	\$3,000,000
Francesco Clemente	Lovers	\$60,000

Roy Lichtenstein	Landscape with Seated Figure	\$900,000
Cy Twombly	Solar Barge of Sesostris	\$800,000
Francis Bacon	Study from the Human Body	\$3,000,000
William De Kooning	Untitled V	\$2,400,000

(collectively, the "Artwork"). The Artwork was delivered to, and used by, WAKSAL at his residence in New York, New York, and therefore was subject to the applicable 8.25 percent tax.

5. In an effort to evade unlawfully the sales tax owed on the Artwork, SAMUEL WAKSAL, the defendant, CC-1, and others known and unknown, agreed to represent falsely that the Artwork was for delivery and use by WAKSAL in the State of New Jersey and therefore exempt from the applicable sales tax. In furtherance of this unlawful agreement, CC-1 caused to be prepared and provided to WAKSAL fraudulent invoices for the Artwork, each of which was addressed to "Samuel Waksal, 22 Chubb Way, Sommerville, New Jersey" (the address of ImClone's manufacturing facility). Each of the fraudulent invoices omitted the charge for applicable sales tax, representing that the transaction was an "out of state sale," and that no sales tax was due. No sales tax was paid by WAKSAL or collected by the Art Gallery in connection with the sale of the Artwork.

6. In truth and in fact, as SAMUEL WAKSAL, the defendant, CC-1, and their co-conspirators well knew, the Artwork was for delivery to, and use by, WAKSAL at his residence in New York, New York. The Artwork was delivered from the Art Gallery to WAKSAL's residence in New York, New York by private commercial carrier, either directly, or following a brief stop at 22 Chubb Way, Sommerville, New Jersey.

7. SAMUEL WAKSAL, the defendant, provided payment to the Art Gallery for certain items of the Artwork, without remitting payment for applicable sales taxes, by wire transfers from banking institutions located outside of the State of New York, to a bank account held in the name of the Art Gallery located in New York, New York.

8. As a result of the fraudulent scheme, the State of New York was deprived of and defrauded out of approximately \$1.2 million in sales tax due on the sale of the Artwork.

The Conspiracy

9. From on or about June 22, 2000, up to and including on or about December 5, 2001, in the Southern District of New York and elsewhere, SAMUEL WAKSAL, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit,

to commit wire fraud, in violation of Title 18, United States Code, Section 1343.

10. It was a part and an object of the conspiracy that SAMUEL WAKSAL, the defendant, and others known and unknown, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, unlawfully, willfully and knowingly would and did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds for the purpose of executing such scheme and artifice, in violation of Section 1343 of Title 18, United States Code.

Overt Acts

11. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about June 22, 2000, SAMUEL WAKSAL, the defendant, agreed with CC-1 in New York, New York, that WAKSAL would purchase a painting by the artist Mark Rothko identified as "Untitled (Plum and Brown)" from the Art Gallery for \$3,500,000, which was to be delivered to WAKSAL's residence in New York, New York.

b. On or about June 22, 2000, CC-1 caused an invoice to be prepared for the sale of the Rothko painting to SAMUEL WAKSAL, the defendant, which falsely stated that WAKSAL's address was 22 Chubb Way, Somerville, New Jersey, and falsely stated "No tax, out of state sale."

c. On or about June 23, 2000, SAMUEL WAKSAL, the defendant, agreed with CC-1 in New York, New York, that WAKSAL would purchase a painting by the artist Cy Twombly identified as "Untitled (Rome)" from the Art Gallery for \$1,300,000, which was to be delivered to WAKSAL's residence in New York, New York.

d. On or about June 23, 2000, CC-1 caused an invoice to be prepared for the sale of the Twombly painting to SAMUEL WAKSAL, the defendant, which falsely stated that WAKSAL's address was 22 Chubb Way, Somerville, New Jersey, and falsely stated "No tax, out of state sale."

e. On or about July 5, 2000, SAMUEL WAKSAL, the defendant, caused \$3,500,000 to be wire transferred from an account at NationsBank of North Carolina, N.A., in Charlotte, North Carolina, to an account in the name of the Art Gallery at Chase Manhattan Bank in New York, New York.

f. On or about July 5, 2000, SAMUEL WAKSAL, the defendant, caused \$1,300,000 to be wire transferred from an account at NationsBank of North Carolina, N.A., in Charlotte,

North Carolina, to an account in the name of the Art Gallery at Chase Manhattan Bank in New York, New York.

g. On or about August 4, 2000, SAMUEL WAKSAL, the defendant, agreed with CC-1 in New York, New York, that WAKSAL would purchase a painting by the artist Richard Serra identified as "The American Flag is Not an Object of Worship" from the Art Gallery for \$350,000, which was to be delivered to WAKSAL's residence in New York, New York.

h. On or about August 4, 2000, CC-1 caused an invoice to be prepared for the sale of the Serra painting to SAMUEL WAKSAL, the defendant, which falsely stated that WAKSAL's address was 22 Chubb Way, Somerville, New Jersey, and falsely stated "No tax, out of state sale."

i. On or about August 30, 2000, SAMUEL WAKSAL, the defendant, agreed with CC-1 in New York, New York, that WAKSAL would purchase a painting by the artist Franz Kline identified as "Mahoning II" from the Art Gallery for \$3,000,000, which was to be delivered to WAKSAL's residence in New York, New York.

j. On or about August 30, 2000, CC-1 caused an invoice to be prepared for the sale of the Kline painting to SAMUEL WAKSAL, the defendant, which falsely stated that WAKSAL's address was 22 Chubb Way, Somerville, New Jersey, and falsely stated "No tax, out of state sale."

k. On or about October 31, 2000, SAMUEL WAKSAL, the defendant, agreed with CC-1 in New York, New York, that WAKSAL would purchase a painting by the artist Francesco Clemente identified as "Lovers" from the Art Gallery for \$60,000, which was to be delivered to WAKSAL's residence in New York, New York.

l. On or about October 31, 2000, CC-1 caused an invoice to be prepared for the sale of the Clemente painting to SAMUEL WAKSAL, the defendant, which falsely stated that WAKSAL's address was 22 Chubb Way, Somerville, New Jersey, and falsely stated "No tax, out of state sale."

m. On or about November 3, 2000, SAMUEL WAKSAL, the defendant, agreed with CC-1 in New York, New York, that WAKSAL would purchase a painting by the artist Roy Lichtenstein identified as "Landscape with Seated Figure" from the Art Gallery for \$900,000, which was to be delivered to WAKSAL's residence in New York, New York.

n. On or about November 3, 2000, CC-1 caused an invoice to be prepared for the sale of the Lichtenstein painting to SAMUEL WAKSAL, the defendant, which falsely stated that WAKSAL's address was 22 Chubb Way, Somerville, New Jersey, and falsely stated "No tax, out of state sale."

o. On or about November 30, 2000, SAMUEL WAKSAL, the defendant, caused \$1,000,000 to be wire transferred from an

account at NationsBank of North Carolina, N.A., in Charlotte, North Carolina, to an account in the name of the Art Gallery at Chase Manhattan Bank in New York, New York.

p. On or about February 6, 2001, SAMUEL WAKSAL, the defendant, agreed with CC-1 in New York, New York, that WAKSAL would purchase a painting by the artist Cy Twombly identified as "Solar Barge of Sesostris" from the Art Gallery for \$800,000, which was to be delivered to WAKSAL's residence in New York, New York.

q. On or about February 6, 2001, CC-1 caused an invoice to be prepared for the sale of the Twombly painting to SAMUEL WAKSAL, the defendant, which falsely stated that WAKSAL's address was 22 Chubb Way, Somerville, New Jersey, and falsely stated "No tax, out of state sale."

r. On or about May 25, 2001, SAMUEL WAKSAL, the defendant, agreed with CC-1 in New York, New York, that WAKSAL would purchase a painting by the artist Francis Bacon identified as "Study from the Human Body" from the Art Gallery for \$3,000,000, which was to be delivered to WAKSAL's residence in New York, New York.

s. On or about May 25, 2001, CC-1 caused an invoice to be prepared for the sale of the Bacon painting to SAMUEL WAKSAL, the defendant, which falsely stated that WAKSAL's

address was 22 Chubb Way, Somerville, New Jersey, and falsely stated "No tax, out of state sale."

t. On or about August 21, 2001, SAMUEL WAKSAL, the defendant, caused \$500,000 to be wire transferred from an account at First Republic Bank in San Francisco, California, to an account in the name of the Art Gallery at Chase Manhattan Bank in New York, New York.

u. On or about October 26, 2001, SAMUEL WAKSAL, the defendant, agreed with CC-1 in New York, New York, that WAKSAL would purchase a painting by the artist William De Kooning identified as "Untitled V" from the Art Gallery for \$2,400,000, which was to be delivered to WAKSAL's residence in New York, New York.

v. On or about October 26, 2001, CC-1 caused an invoice to be prepared for the sale of the De Kooning painting to SAMUEL WAKSAL, the defendant, which falsely stated that WAKSAL's address was 22 Chubb Way, Somerville, New Jersey, and falsely stated "No tax, out of state sale."

w. On or about November 7, 2001, SAMUEL WAKSAL, the defendant, caused \$1,000,000 to be wire transferred from an account in the name of Protec Advisory Group at Discount Bank and Trust Company in Amsterdam, The Netherlands, to an account in the name of the Art Gallery at Chase Manhattan Bank in New York, New York.

x. On or about December 5, 2001, SAMUEL WAKSAL, the defendant, caused \$2,300,000 to be wire transferred from an account at Bank of America, N.A., in Charlotte, North Carolina, to an account in the name of the Art Gallery at Chase Manhattan Bank in New York, New York.

(Title 18, United States Code, Section 371).

COUNT TWO

(Wire Fraud)

The United States Attorney further charges:

12. The allegations contained in paragraphs 1 through 8 and 11 are repeated, realleged and incorporated as if fully set forth herein.

13. On or about July 5, 2000, SAMUEL WAKSAL, the defendant, unlawfully, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, namely the scheme set forth above, did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds for the purpose of executing such scheme and artifice, to wit, WAKSAL caused \$3,500,000 to be wire transferred from an account at NationsBank of North

Carolina, N.A., in Charlotte, North Carolina, to an account in
the name of the Art Gallery at Chase Manhattan Bank in

New York, New York, as payment for a painting by the artist Mark Rothko identified as "Untitled (Plum and Brown)."

(Title 18, United States Code, Sections 1343 and 2).

JAMES B. COMEY
United States Attorney