

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : SEALED INDICTMENT

-v.-

: **14**^{14 Cr} **CRIM 217**

JOSE CARLOS BERGANTINOS DIAZ,
JESUS ANGEL BERGANTINOS DIAZ, and
PEI SHEN QIAN,

Defendants.

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COUNT ONE

(Conspiracy to Commit Wire Fraud)

The Grand Jury charges:

Relevant Persons and Entities

1. JOSE CARLOS BERGANTINOS DIAZ, the defendant, is a citizen of Spain and the United States. At all times relevant to this Indictment, JOSE CARLOS BERGANTINOS DIAZ held himself out as a dealer of fine art.

2. JESUS ANGEL BERGANTINOS DIAZ, the defendant, is a citizen of Spain. JESUS ANGEL BERGANTINOS DIAZ and JOSE CARLOS BERGANTINOS DIAZ, the defendant, are brothers.

3. PEI SHEN QIAN, the defendant, is a citizen of China and the United States. QIAN resides in Queens, New York, and is a painter.

4. King's Fine Arts, Inc. ("King's Fine Arts") was a corporation formed under the laws of the State of New York in or about July 1995 by JOSE CARLOS BERGANTINOS DIAZ, the defendant.

JUDGE STEIN

From in or about 1995 through in or about 2010, JOSE CARLOS BERGANTINOS DIAZ and Glafira Rosales ("Rosales") operated King's Fine Arts as a dealer of paintings and other fine art.

5. Glafira Rosales Fine Arts LLC ("Glafira Rosales Fine Arts") is a limited liability company formed under the laws of the State of New York in or about October 2006. From at least in or about 2006 through at least in or about 2009, JOSE CARLOS BERGANTINOS DIAZ, the defendant, and Rosales operated Glafira Rosales Fine Arts as a dealer of paintings and other fine art.

6. For over a century until it closed in or about 2011, a Manhattan-based art gallery ("Gallery 1") was a dealer of fine art.

7. At all times relevant to this Indictment, a Manhattan-based art gallery ("Gallery 2") was a prominent dealer of fine art.

Overview

8. As set forth in more detail below, from in or about the early 1990's through in or about at least June 2009, JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, PEI SHEN QIAN, the defendants, Rosales, and others known and unknown, engaged in a scheme to create and sell paintings that they pretended were painted by world-famous abstract

expressionist artists, including Mark Rothko, Jackson Pollock, Willem de Kooning, Richard Diebenkorn, Robert Motherwell, Barnett Newman, Sam Francis, and Franz Kline, among others (the "Fake Works"). By knowingly and falsely claiming that the Fake Works were painted by these famous artists, JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, QIAN, and Rosales were able to trick purchasers and prospective purchasers into paying tens of millions of dollars in total for many of the Fake Works which, as the defendants and Rosales well knew, were essentially worthless.

9. As set forth below, as the defendants well knew, the Fake Works were created not by famous artists, but by QIAN, with guidance from JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, and Rosales. JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, and Rosales also created and refined at least two false provenances (i.e., historical ownership records) for particular Fake Works in order to dupe purchasers into believing that those Fake Works were painted by particular famous artists, instead of by QIAN.

10. The defendants earned more than \$33 million from the scheme to create and sell the Fake Works. To conceal the illegal nature and origin of the proceeds from the scheme, JOSE CARLOS BERGANTINOS DIAZ and JESUS ANGEL BERGANTINOS DIAZ, the

defendants, and Rosales worked together to launder the proceeds by transferring the proceeds through foreign and domestic bank accounts that they controlled.

11. In addition, as set forth below, to increase the amount of proceeds he kept from the unlawful scheme, JOSE CARLOS BERGANTINOS DIAZ, the defendant, unlawfully impeded and obstructed the Internal Revenue Service ("IRS") by hiding millions of dollars in his unlawful income from the IRS and by knowingly failing to report the existence of the foreign bank accounts that he controlled or maintained an interest in, as required by law.

12. Finally, in an effort to hide his role in the unlawful scheme, PEI SHEN QIAN, the defendant, lied to agents of the Federal Bureau of Investigations about his role in the fraud. In particular, during an interview with FBI agents investigating the scheme, QIAN falsely claimed, among other things, that he did not recognize Rosales's name; that QIAN was unfamiliar with the names of certain artists (including artists whose names QIAN had repeatedly and fraudulently signed on paintings QIAN created, in order to trick purchasers into believing those artists had created the paintings); and that QIAN had never attempted to create paintings mimicking the style of certain abstract expressionist artists.

The Wire Fraud Conspiracy

13. In or about the late 1980's, PEI SHEN QIAN, the defendant, and JOSE CARLOS BERGANTINOS DIAZ, the defendant, met each other when JOSE CARLOS BERGANTINOS DIAZ observed QIAN selling paintings on a street corner in lower Manhattan. Shortly after meeting, at the behest of JOSE CARLOS BERGANTINOS DIAZ, QIAN created paintings that imitated the style of, and fraudulently contained the purported signature of, famous artists such as Francisco Zuniga, Keith Haring, and Jean Michel Basquiat. JOSE CARLOS BERGANTINOS DIAZ subsequently sold those fake works to several art galleries, pretending that they were authentic works created by famous artists when, as JOSE CARLOS BERGANTINOS DIAZ well knew, they were essentially worthless imitations created by QIAN.

14. From in or about the early 1990's through in or about at least June 2009, PEI SHEN QIAN, the defendant, created the Fake Works at the specific request of, and in exchange for payments from, JOSE CARLOS BERGANTINOS DIAZ and JESUS ANGEL BERGANTINOS DIAZ, the defendants, and Rosales. QIAN created the Fake Works in a studio in his home in Queens, New York. QIAN fraudulently signed the artists' names to most of the Fake Works, but for some of the Fake Works, JOSE CARLOS BERGANTINOS DIAZ fraudulently signed the artists' names.

15. JOSE CARLOS BERGANTINOS DIAZ, the defendant, provided some of the materials that PEI SHEN QIAN, the defendant, used to create the Fake Works. For example, JOSE CARLOS BERGANTINOS DIAZ purchased old paintings at art auctions and at flea markets and gave them to QIAN so he could use the old canvases to create the Fake Works, and thereby create the false appearance that the Fake Works had been created decades earlier. JOSE CARLOS BERGANTINOS DIAZ also stained newer canvases with tea bags to give them the false appearance of being older than they actually were. JOSE CARLOS BERGANTINOS DIAZ provided QIAN with old paint that was created in the era in which the Fake Works would have been created if they were authentic works. JOSE CARLOS BERGANTINOS DIAZ also acquired old furniture at flea markets and other places to obtain masonite, a hardboard used in that furniture that was also used by the abstract expressionist artists whose style the Fake Works mimicked.

16. In furtherance of the scheme to sell fake works of art, PEI SHEN QIAN, the defendant, kept in his home in Queens, New York, paintings that QIAN created in the style of Jackson Pollock and Barnett Newman; books on abstract expressionist artists and their techniques; auction catalogues containing works by famous American abstract expressionist

artists; paints, brushes, canvases, and other materials, such as an envelope of old nails marked "Mark Rothko," all to aid QIAN in creating the Fake Works.

17. From in or about 1994 through in or about 2009, JOSE CARLOS BERGANTINOS DIAZ, the defendant, paid PEI SHEN QIAN, the defendant, from several hundred dollars to several thousand dollars, often in cash, for each of the Fake Works. In or about the early 2000's, at a time when QIAN was receiving several hundred dollars per Fake Work, QIAN saw one of the Fake Works he created hanging in a booth at an art show in Manhattan with a price far in excess of the amount QIAN was receiving from JOSE CARLOS BERGANTINOS DIAZ for creating the Fake Works. At that point, QIAN demanded more money for any subsequent Fake Works that he created. Thereafter, JOSE CARLOS BERGANTINOS DIAZ and Rosales paid QIAN several thousands of dollars per Fake Work.

18. JOSE CARLOS BERGANTINOS DIAZ, the defendant, wrote the following checks, all drawn on an account maintained in the name of King's Fine Arts and all payable to QIAN, in the amounts indicated below on or about the dates indicated below and containing the notations indicated below:

Date	Amount	Notation in Memo Line of Check
December 29, 2005	\$5,400	"buying painting"
November 26, 2006	\$5,000	"paying painting"
December 29, 2006	\$9,000	"buying two paintings"
February 1, 2007	\$6,000	"buying painting"
December 4, 2007	\$5,000	"buying painting"
January 23, 2008	\$5,000	"buying one painting"
February 5, 2008	\$7,000	"buying painting"
February 8, 2008	\$8,000	(none)
Total	\$50,400	

In addition to these checks to QIAN for Fake Works, on or about January 9, 2007, JOSE CARLOS BERGANTINOS DIAZ caused approximately \$15,000 to be wire-transferred to an account held in the name of QIAN in Queens, New York from a bank account assigned an account number ending in -1807 at a branch of the bank then known as Caja Madrid in Lugo, Spain (the "Second Caja Madrid Account"). JOSE CARLOS BERGANTINOS DIAZ, the defendant, opened, and caused to be opened, the Second Caja Madrid Account on or about November 8, 2006. JESUS ANGEL BERGANTINOS DIAZ, the defendant, was authorized to use the Second Caja Madrid Account from on or about October 25, 2007 through and including on or about December 28, 2011.

19. At various times relevant to this Indictment, after Fake Works were completed by PEI SHEN QIAN, the defendant, JOSE CARLOS BERGANTINOS DIAZ and JESUS ANGEL BERGANTINOS DIAZ, the defendants, and Rosales variously picked-up Fake Works from QIAN's home in Queens, New York, and took them to the residence of JOSE CARLOS BERGANTINOS DIAZ and Rosales. There, JOSE CARLOS BERGANTINOS DIAZ subjected many Fake Works to various processes, such as heating them, cooling them, and exposing them to the elements outdoors, in an attempt to make the Fake Works seem older than they actually were. For example, in the presence of JESUS ANGEL BERGANTINOS DIAZ, the defendant, and Rosales, JOSE CARLOS BERGANTINOS DIAZ subjected some of the Fake Works to heat by propping a blow-dryer over one of the Fake Works to heat it.

20. In the process of selling the Fake Works to Gallery 1 and Gallery 2, JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, and PEI SHEN QIAN, the defendants, and Rosales, made and caused to be made false and fraudulent representations concerning the authenticity of the Fake Works. JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, QIAN, and Rosales claimed and caused to be claimed that the Fake Works were painted by various famous artists of the twentieth century, such as Mark Rothko, Jackson Pollock, Willem de Kooning, Robert Motherwell, Barnett Newman, Sam Francis, and

Franz Kline. In truth and in fact, and as JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, QIAN, and Rosales well knew, the Fake Works were not painted by the artists that they claimed and had instead been created by QIAN.

21. JOSE CARLOS BERGANTINOS DIAZ and JESUS ANGEL BERGANTINOS DIAZ, the defendants, Rosales, and others known and unknown, also collaboratively created and refined at least two false and fraudulent provenances for the Fake Works. The provenance of a work of art is a historical record of the work's creation, ownership, custody, and location over time. A complete provenance dating back to the creation of a particular work of art by an artist can help demonstrate the authenticity of the work, that is, that the work was in fact created by a particular artist, and, as a result, can increase the value of a work of art. The converse is also true. A lack of evidence about the creation, ownership, custody, and location of a work of art can reduce the work's value.

22. JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, the defendants, and Rosales collaborated to create two false provenances that were communicated to Gallery 1 and Gallery 2 with the knowledge and intent that the false information would be repeated to, among others, purchasers and potential purchasers of the Fake Works and to art brokers who

would attempt to sell the Fake Works to their clients. Among other things, JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, and Rosales researched the lives of various deceased, historical figures in the international art market community, such art collectors and art brokers, to craft a plausible, but entirely false, chain of ownership for each of the Fake Works. For example:

a. Rosales falsely and fraudulently claimed that, with respect to approximately 50 of the Fake Works, Rosales was acting as the broker or agent on behalf of a specific client who Rosales claimed owned the 50 of the Fake Works. Rosales falsely and fraudulently claimed that the specific client was located outside of the United States and maintained residences in, among other places, Switzerland (the "Purported Swiss Client"). In truth and in fact, and as JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, and Rosales knew, the Purported Swiss Client did not exist.

b. Rosales also falsely and fraudulently claimed that, with respect to approximately 13 of the Fake Works, Rosales was acting as the broker or agent on behalf of a specific client who, Rosales claimed, was a Spanish collector of art (the "Purported Spanish Collector") and who had received the works of art from a Spanish gallery (the "Spanish Gallery"),

either by purchase or by trade for goods and services. In furtherance of their scheme, Rosales and JESUS ANGEL BERGANTINOS DIAZ, who was a personal friend of the Spanish Collector, interviewed the Spanish Collector by phone about his life. The purpose of the interview was to obtain facts that JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, and Rosales could, and did, use in constructing the false provenance involving the Purported Spanish Collector. Rosales also provided to Gallery 1 and Gallery 2 forged documents that Rosales obtained from JOSE CARLOS BERGANTINOS DIAZ and/or JESUS ANGEL BERGANTINOS DIAZ in which the Purported Spanish Collector supposedly "certified" that the Purported Spanish Collector had received one or more of the Fake Works from the Spanish Gallery. In truth and in fact, as JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, QIAN, and Rosales knew:

- i. The Purported Spanish Collector never owned any of the Fake Works.
 - ii. The Spanish Gallery never sold any of the Fake Works.
 - iii. The documents that Rosales represented had come from the Purported Spanish Collector and that Rosales provided to Gallery 1 and Gallery 2 were forgeries.
- c. Rosales further falsely and fraudulently

claimed that a portion of the price paid by Gallery 1 and Gallery 2 was a commission to Rosales for selling the Fake Works and that the remainder would be passed along to her clients, the Purported Swiss Client or the Purported Spanish Collector. In truth and in fact, all or substantially all of the proceeds of the sale of the Fake Works constituted income to JOSE CARLOS BERGANTINOS DIAZ, the defendant, and Rosales. In truth and fact, and as they well knew, JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, and Rosales did not pass along a portion of the proceeds from the sales of the Fake Works to the Purported Swiss Client, who did not exist, or the Purported Spanish Collector, who never owned any of the Fake Works.

23. From in or about the early 1990s through in or about June 2009, JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, and PEI SHEN QIAN, the defendants, and Rosales, acting variously through King's Fine Arts or Glafira Rosales Fine Arts, sold approximately 40 of the Fake Works to Gallery 1 and approximately 23 of the Fake Works to Gallery 2. From in or about 1994 through in or about 2009, Gallery 1 paid over \$20.7 million and Gallery 2 paid over \$12.5 million for the Fake Works.

24. Sales of the Fake Works also proved to be lucrative to Gallery 1 and Gallery 2. The Victims paid Gallery

1 more than \$63.7 million and Gallery 2 more than \$17 million for the Fake Works, leading to gross profit to Gallery 1 of approximately \$43 million, and gross profit to Gallery 2 of approximately \$4.5 million, from sales of the Fake Works. For example, Gallery 2 sold one of the Fake Works - a purported painting by the artist Sam Francis - on or about June 9, 2009 to a victim in Michigan for approximately \$975,000. On or about June 15, 2009, Gallery 2 caused a wire transfer to be sent from a bank in New York, New York for approximately \$894,309 to a bank account assigned an account number ending in -1789 at a branch of the bank then known as Caja Madrid in Lugo, Spain (the "First Caja Madrid Account") for the sale of one of the Fake Works. Rosales opened, and caused to be opened, the First Caja Madrid Account. At the time that Rosales opened, and caused to be opened, the First Caja Madrid Account, Rosales authorized JESUS ANGEL BERGANTINOS DIAZ, the defendant, to use the First Caja Madrid Account.

Statutory Allegations

25. From in or about the early 1990's through in or about at least June 2009, in the Southern District of New York and elsewhere, JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, PEI SHEN QIAN, the defendants, and Rosales, together with others known and unknown, willfully and knowingly

did combine, conspire, confederate, and agree, together and with others, to commit wire fraud, in violation of Title 18, United States Code, Section 1343.

26. It was a part and an object of the conspiracy that JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, and PEI SHEN QIAN, the defendants, together with others known and unknown, 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, would and did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

Overt Acts

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

a. On or about January 9, 2007, JOSE CARLOS BERGANTINOS DIAZ, the defendant, caused approximately \$15,000 to be wire-transferred from the Second Caja Madrid Account to an

account held in the name of PEI SHEN QIAN, the defendant, in Queens, New York.

b. On or about February 8, 2008, JOSE CARLOS BERGANTINOS DIAZ wrote a check drawn on an account maintained in the name of King's Fine Arts and payable to PEI SHEN QIAN in the amount of approximately \$8,000.

c. On or about April 1, 2009, JESUS ANGEL BERGANTINOS DIAZ, the defendant, and Rosales caused Gallery 2 to send a facsimile from New York, New York to Spain regarding one of the Fake Works.

d. On or about June 15, 2009, Gallery 2 caused a wire transfer to be sent from a bank in New York, New York for approximately \$894,309 to the First Caja Madrid Account for the sale of one of the Fake Works.

e. On or about July 7, 2009, Rosales caused approximately \$200,000 to be transferred from the First Caja Madrid Account to the Second Caja Madrid Account.

(Title 18, United States Code, Section 1349.)

COUNT TWO
(Wire Fraud)

The Grand Jury further charges:

28. The allegations set forth in paragraphs 1 through 24 and 27 are repeated and realleged as if set forth fully herein.

29. From in or about the early 1990s through in or about at least July 2009, in the Southern District of New York and elsewhere, JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, and PEI SHEN QIAN, the defendants, 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, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, in connection with the sale of the Fake Works, JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, and QIAN made, and caused to be made, false and fraudulent misrepresentations about the authenticity and provenance of the Fake Works and, as a result, transmitted, and caused to be transmitted, for the purpose of executing the scheme to defraud, interstate and

international email and other wire communications into and from the State of New York.

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

COUNT THREE
(Conspiracy to Commit Money Laundering)

The Grand Jury further charges:

30. The allegations set forth in paragraphs 1 through 24 and 27 are repeated and realleged as if set forth fully herein.

31. As set forth below, from at least in or about 1999 through and including 2011, JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, the defendants, Rosales, and others known and unknown, concealed and disguised the nature, location, source, ownership, and control of the proceeds of the sales of the Fake Works using several bank accounts in Spain and the United States that JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, and Rosales controlled.

32. Starting at least in or about early 1999, JOSE CARLOS BERGANTINOS DIAZ, the defendant, opened an account held at Banco Bilbao Vizcaya Argentaria, S.A., in Spain assigned an account number ending in -6038 (the "First BBVA Account"). Rosales and JESUS ANGEL BERGANTINOS DIAZ, the defendant, were authorized to use the First BBVA Account.

33. Starting at least in or about 2006, there was an account held at Banco Bilbao Vizcaya Argentaria, S.A., in Spain assigned an account number ending in -4036 (the "Second BBVA Account"). On occasion, the Second BBVA Account was Rosales's account, and on other occasions, Rosales referred to the Second BBVA Account as the account of JESUS ANGEL BERGANTINOS DIAZ, the defendant.

34. From at least in or about 1999 through in or about 2011, JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, the defendants, Rosales, and others known and unknown, caused Gallery 1 and Gallery 2 to transfer millions of dollars to one or more foreign bank accounts, including the First Caja Madrid Account, the Second Caja Madrid Account, the First BBVA Account, and the Second BBVA Account to conceal and disguise the nature, location, source, ownership, and control of the proceeds of the sales of the Fake Works. For example:

a. From in or about 1998 through and including in or about 2005, JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, and Rosales caused Gallery 1 to send approximately \$7.19 million by wire transfer as payment for some of the Fake Works from Gallery 1's bank account in New York to the Second Caja Madrid Account.

b. From in or about 1998 through and including

in or about 2005, JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, and Rosales caused Gallery 2 to send approximately \$6 million by wire transfer as payment for some of the Fake Works from Gallery 2's bank account in New York, New York to the First BBVA Account. For example, on or about May 12, 2005, at the direction of Glafira Rosales, Gallery 2 transferred approximately \$174,988 to JESUS ANGEL BERGANTINOS DIAZ from a bank account in New York, New York to the First BBVA Account for the sale of one of the Fake Works. On or about June 15, 2009, Gallery 2 caused a wire transfer to be sent from a bank in New York, New York for approximately \$894,309 to the First Caja Madrid Account for the sale of one of the Fake Works.

35. JOSE CARLOS BERGANTINOS DIAZ, and JESUS ANGEL BERGANTINOS DIAZ, the defendants, and Rosales, also subsequently transferred portions of the criminal proceeds between the various accounts they controlled to conceal and disguise the nature, location, source, ownership, and control of the proceeds of the sales of the Fake Works. For example:

a. On or about December 19, 2005, JOSE CARLOS BERGANTINOS DIAZ caused approximately \$1,000,000 in proceeds from sales of the Fake Works to be transferred from the First BBVA Account to a bank account in Miami, Florida.

b. From in or about March 12, 2007 through in

or about July 7, 2009, Rosales caused approximately \$5,347,546 in proceeds from sales of the Fake Works to be transferred from the Second Caja Madrid Account into the First Caja Madrid Account.

c. From approximately June 2007 through and including December 2007, JOSE CARLOS BERGANTINOS DIAZ, the defendant, and Rosales caused more than \$430,000 in proceeds from sales of the Fake Works to be transferred from the Second Caja Madrid Account to bank accounts held by auction houses in the United States for the purchase of various works of art.

d. On or about December 27, 2011, Rosales and JESUS ANGEL BERGANTINOS DIAZ caused approximately \$165,111.94 in proceeds from sales of the Fake Works to be transferred from the First Caja Madrid Account to a bank account held in the name of JESUS ANGEL BERGANTINOS DIAZ at CaixaBank in Spain.

Statutory Allegations

36. From at least in or about 1999 through in or about at least 2012, in the Southern District of New York and elsewhere, JOSE CARLOS BERGANTINOS DIAZ and JESUS ANGEL BERGANTINOS DIAZ, the defendants, and Rosales, together with others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree, together and with others, to

commit money laundering, in violation of Title 18, United States Code, Section 1956(a)(2)(B)(i).

37. It was a part and an object of the conspiracy that JOSE CARLOS BERGANTINOS DIAZ and JESUS ANGEL BERGANTINOS DIAZ, the defendants, and Rosales, together with others known and unknown, willfully and knowingly, would and did transport, transmit, and transfer, and attempt to transport, transmit, and transfer a monetary instrument and funds from a place in the United States to and through a place outside the United States and to a place in the United States from and through a place outside the United States, knowing that the monetary instrument and funds involved in the transportation, transmission, and transfer represented the proceeds of some form of unlawful activity and knowing that such transportation, transmission, and transfer was designed in whole or in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of specified unlawful activity.

Overt Acts

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

a. On or about January 9, 2007, JOSE CARLOS BERGANTINOS DIAZ, the defendant, caused approximately \$15,000 to be wire-transferred from the Second Caja Madrid Account to an account held in the name of PEI SHEN QIAN, the defendant, in Queens, New York.

b. On or about July 30, 2008, Gallery 1 caused a wire transfer to be sent from a bank in New York, New York for approximately \$1,220,000 to the First Caja Madrid Account for the sale of one of the Fake Works.

c. On or about June 15, 2009, Gallery 2 caused a wire transfer to be sent from a bank in New York, New York for approximately \$894,309 to the First Caja Madrid Account for the sale of one of the Fake Works.

d. On or about December 27, 2011, Rosales caused approximately \$165,111.94 to be transferred from the First Caja Madrid Account to a bank account held in the name of JESUS ANGEL BERGANTINOS DIAZ, the defendant, at CaixaBank in Spain.

e. On or about February 21, 2011, JOSE CARLOS BERGANTINOS DIAZ caused approximately \$10,000 to be transferred from the Second Caja Madrid Account to a bank account in Port Washington, New York at Citibank, N.A.

(Title 18, United States Code, Section 1956(h).)

COUNT FOUR
(Money Laundering)

The Grand Jury further charges:

39. The allegations set forth in paragraphs 1 through 24, 27, 31 through 35, and 38, are repeated and realleged as if set forth fully herein.

40. From at least in or about 1999 through in or about at least 2012, in the Southern District of New York and elsewhere, JOSE CARLOS BERGANTINOS DIAZ and JESUS ANGEL BERGANTINOS DIAZ, the defendants, willfully and knowingly, transported, transmitted, and transferred, and attempted to transport, transmit, and transfer a monetary instrument and funds from a place in the United States to and through a place outside the United States and to a place in the United States from and through a place outside the United States, knowing that the monetary instrument and funds involved in the transportation, transmission, and transfer represented the proceeds of some form of unlawful activity and knowing that such transportation, transmission, and transfer was designed in whole or in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of specified unlawful activity, to wit, JOSE CARLOS BERGANTINOS DIAZ and JESUS ANGEL BERGANTINOS DIAZ caused Gallery 1 and

Gallery 2 to transfer certain proceeds of the sales of the Fake Works to certain foreign bank accounts, and JOSE CARLOS BERGANTINOS DIAZ and JESUS ANGEL BERGANTINOS DIAZ transferred, and caused to be transferred, certain proceeds of the sales of the Fake Works from certain foreign bank accounts to bank accounts maintained in the United States.

(Title 18, United States Code, Sections 1956(a)(2)(B)(i) and 2.)

COUNT FIVE
(Conspiracy to Defraud the IRS)

The Grand Jury further charges:

41. The allegations set forth in paragraphs 1 through 24, 27, 31 through 35, and 38, are repeated and realleged as if set forth fully herein.

Obligations of United States Taxpayers

42. Citizens and residents of the United States who have income in any one calendar year in excess of a threshold amount ("U.S. taxpayers") are obligated to file a U.S. Individual Income Tax Return, Form 1040 ("Form 1040"), for that calendar year with the IRS. On such return, U.S. taxpayers are obligated to report their income from any source, regardless of whether the source of their income is inside or outside the United States.

43. A Schedule C ("Profit or Loss From Business Sole Proprietorship") is an IRS form that is attached to a Form 1040 when applicable and must be used by taxpayers to report the gross receipts, expenses, and profit or loss from a business operated by the taxpayer as a sole proprietorship.

44. A Schedule E ("Supplemental Income and Loss From Rental Real Estate, Royalties, Partnerships") is an IRS form that is attached to a Form 1040 when applicable and must be used by taxpayers to report the income, expenses, and the total annual income or loss from partnerships and S corporations, among other things.

45. An IRS Form 1120S, also known as U.S. Income Tax Return for an S Corporation, reports income and various deductions, including costs of goods sold, for S Corporations. S corporations are certain small business corporations that are required to file income tax returns, but not ordinarily required to pay income taxes in their own right. The income or loss from their operation, by law, flows through to their principals, who are required to declare such income or loss on their Forms 1040.

The Conspiracy

46. From in or about at least 2006 through and including at least January 28, 2010, JOSE CARLOS BERGANTINOS DIAZ, the defendant, Rosales, and others known and unknown,

agreed to defraud, impede, and impair the IRS by underreporting millions of dollars of income paid to JOSE CARLOS BERGANTINOS DIAZ and Rosales from the sale of the Fake Works. Specifically, JOSE CARLOS BERGANTINOS DIAZ, Rosales, and others known and unknown, agreed to use bank accounts located in Spain to hide from the IRS approximately \$7,370,000 of income that JOSE CARLOS BERGANTINOS DIAZ obtained as a result of the scheme to sell the Fake Works.

47. The proceeds from the sales of the Fake Works were the proceeds of the scheme to defraud described in this Indictment and, at the same time, constituted income to JOSE CARLOS BERGANTINOS DIAZ, the defendant, and others. JOSE CARLOS BERGANTINOS DIAZ filed U.S. Individual Income Tax Returns, Forms 1040, with the IRS for at least the tax years 2006, 2007, and 2008 that falsely and fraudulently omitted all or substantially all of such income received by JOSE CARLOS BERGANTINOS DIAZ. To further defraud, impede, and impair the IRS, JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, the defendants, and Rosales agreed that proceeds from the sale of the Fake Works would be, and in fact were, transferred to the First Caja Madrid Account, the Second Caja Madrid Account, and other bank accounts in Spain, in the name of JESUS ANGEL BERGANTINOS DIAZ, who was not a citizen of the United States. The illegal proceeds were

routed in this manner, in part, so that JOSE CARLOS BERGANTINOS DIAZ and Rosales, who were American citizens, could further conceal from the IRS their receipt of income from the fraudulent scheme.

48. Between approximately March 2006 and August 2008, JOSE CARLOS BERGANTINOS DIAZ, the defendant, and Rosales sold, through Glafira Rosales Fine Arts, approximately 12 of the Fake Works to Gallery 1 and Gallery 2 (the "2006 to 2008 Fake Works"). JOSE CARLOS BERGANTINOS DIAZ and Glafira Rosales also agreed to split the proceeds from the 2006 to 2008 Fake Works between themselves equally, with approximately 50% of the proceeds going to JOSE CARLOS BERGANTINOS DIAZ and approximately 50% going to Glafira Rosales. Specifically:

a. In 2006, JOSE CARLOS BERGANTINOS DIAZ and Rosales sold two of the 2006 to 2008 Fake Works to Gallery 1 for a total of approximately \$1,275,000. Of the total proceeds, approximately \$1,196,000 was wire-transferred to the Second BBVA Account. In 2006, JOSE CARLOS BERGANTINOS DIAZ and Rosales sold one of the 2006 to 2008 Fake Works to Gallery 2 for approximately \$572,500. Of the total proceeds, approximately \$550,000 was wire-transferred to the Second BBVA Account.

b. In 2007, JOSE CARLOS BERGANTINOS DIAZ and Rosales sold three of the 2006 to 2008 Fake Works to Gallery 1

for a total of approximately \$3,080,000. Of the total proceeds, approximately \$3,024,000 was wire-transferred to the First Caja Madrid Account. In 2007, JOSE CARLOS BERGANTINOS DIAZ and Rosales sold three of the 2006 to 2008 Fake Works to Gallery 2 for approximately \$3,162,500. Of the total proceeds, approximately \$2,780,000 was wire-transferred to the First Caja Madrid Account.

c. In 2008, JOSE CARLOS BERGANTINOS DIAZ, the defendant, and Rosales sold three of the 2006 to 2008 Fake Works to Gallery 1 for a total of approximately \$6,650,000. Of the total proceeds, approximately \$6,502,000 was wire-transferred to the First Caja Madrid Account.

d. In sum, the year-by-year approximate gross receipts by JOSE CARLOS BERGANTINOS DIAZ and Glafira Rosales from sales by Glafira Rosales Fine Arts of the 2006 to 2008 Fake Works to Gallery 1 and Gallery 2 were as follows:

Year	Gross Receipts from Sales by Glafira Rosales Fine Art
2006	\$1,847,500
2007	\$6,242,500
2008	\$6,650,000
Total	\$14,740,000

e. In furtherance of the scheme to defraud, impede, and impair the IRS, of the approximately \$14,740,000 transferred into the First Caja Madrid Account from 2006 through

2008, approximately \$5,147,546 was transferred by, or caused to be transferred by, JOSE CARLOS BERGANTINOS DIAZ, the defendant, and/or Rosales to the Second Caja Madrid Account in 2007 and 2008.

**JOSE CARLOS BERGANTINOS DIAZ Falsely and
Fraudulently Failed to Report the Proceeds of the
Fraudulent Scheme As Income on His Tax Returns**

49. For each of the calendar years 2006, 2007, and 2008, JOSE CARLOS BERGANTINOS DIAZ, the defendant, filed with the IRS and caused to be filed, a Form 1120S for King's Fine Arts. On the tax returns for King's Fine Arts, however, JOSE CARLOS BERGANTINOS DIAZ failed to report any income from Glafira Rosales Fine Arts, or any income from the sale of the Fake Works.

50. For each of the calendar years 2006, 2007, and 2008, JOSE CARLOS BERGANTINOS DIAZ, the defendant, filed and caused to be filed, a U.S. Individual Income Tax Return, Form 1040, together with Schedules C and E. On those Forms 1040, however, JOSE CARLOS BERGANTINOS DIAZ failed to report any income from Glafira Rosales Fine Arts, or any income from the sale of the Fake Works.

51. The Forms 1120S and Forms 1040 filed by JOSE CARLOS BERGANTINOS DIAZ, the defendant, for the calendar years 2006, 2007, and 2008 were false and fraudulent in that they: (a)

omitted, from gross receipts or sales, approximately \$7,370,000 of income received by JOSE CARLOS BERGANTINOS DIAZ through Glafira Rosales Fine Arts LLC and Rosales; (b) understated JOSE CARLOS BERGANTINOS DIAZ's business income through King's Fine Arts; and (c) understated JOSE CARLOS BERGANTINOS DIAZ's total income and tax due and owing.

Statutory Allegations

52. From in or about 2006 through in or about at least January 28, 2010, in the Southern District of New York and elsewhere, JOSE CARLOS BERGANTINOS DIAZ, the defendant, together with others known and unknown to the Grand Jury, willfully and knowingly did combine, conspire, confederate, and agree together to defraud the United States and an agency thereof, to wit, the Internal Revenue Service of the United States Department of Treasury, and to commit offenses against the United States, to wit, violations of Title 26, United States Code, Sections 7206(1).

Objects of the Conspiracy

53. It was a part and an object of the conspiracy that, during the period 2006 through and including at least January 28, 2010, JOSE CARLOS BERGANTINOS DIAZ, the defendant, and others known and unknown, unlawfully, willfully and knowingly would and did defraud the United States of America and

the IRS by impeding, impairing, defeating and obstructing the lawful governmental functions of the IRS in the ascertainment, evaluation, assessment, and collection of income taxes.

54. It was further a part and object of the conspiracy that, during the period 2006 through and including at least January 28, 2010, JOSE CARLOS BERGANTINOS DIAZ, the defendant, and others known and unknown, willfully and knowingly would and did make and subscribe certain U.S. Individual Income Tax Returns, Forms 1040, for JOSE CARLOS BERGANTINOS DIAZ for the tax years 2006, 2007, and 2008, which returns contained and were verified by written declarations that they were made under the penalties of perjury, and which JOSE CARLOS BERGANTINOS DIAZ and others did not believe to be true and correct as to every material matter, in violation of Title 26, United States Code, Section 7206(1).

Means and Methods of the Conspiracy

55. The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

a. To defraud, impede, and impair the IRS, during the period 2006 through and including at least January 28, 2010, JOSE CARLOS BERGANTINOS DIAZ, the defendant, received millions of dollars of income from the sale of the Fake Works that JOSE CARLOS BERGANTINOS DIAZ knowingly and willfully failed

to report to the IRS. In particular, JOSE CARLOS BERGANTINOS DIAZ's filed and caused to be filed U.S. Individual Income Tax Returns, Forms 1040, for the tax years 2006 through 2008, that falsely and fraudulently omitted millions of dollars of income received by JOSE CARLOS BERGANTINOS DIAZ.

b. To further defraud, impede, and impair the IRS, JOSE CARLOS BERGANTINOS DIAZ hid the income he received from the sale of the Fake Works, and which he failed to report to the IRS, in one or more bank accounts located in Spain.

Overt Acts

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

a. On or about August 17, 2006, Rosales opened, and caused to be opened, the First Caja Madrid Account.

b. On or about January 9, 2009, JOSE CARLOS BERGANTINOS DIAZ, the defendant, caused to be filed with the IRS a U.S. Individual Income Tax Return, Form 1040, for himself for the tax year 2007.

c. On or about January 28, 2010, JOSE CARLOS BERGANTINOS DIAZ caused to be filed with the IRS a U.S. Individual Income Tax Return, Form 1040, for himself for the tax year 2008.

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

COUNTS SIX AND SEVEN
(Subscribing to False and Fraudulent
U.S. Individual Income Tax Returns)

57. The allegations set forth in paragraphs 1 through 24, 27, 31 through 35, 38, and 42 through 51 are repeated and realleged as if set forth fully herein.

58. On or about the filing dates set forth below, in the Southern District of New York and elsewhere, JOSE CARLOS BERGANTINOS DIAZ, the defendant, willfully and knowingly did make and subscribe U.S. Individual Income Tax Returns, Forms 1040, for the calendar years set forth below, which returns contained and were verified by the written declaration of JOSE CARLOS BERGANTINOS DIAZ that they were made under penalties of perjury, and which returns JOSE CARLOS BERGANTINOS DIAZ did not believe to be true and correct as to every material matter, in that JOSE CARLOS BERGANTINOS DIAZ fraudulently omitted from his tax returns millions of dollars of personal income that he received from Glafira Rosales Fine Arts and/or Glafira Rosales, which was derived from the sale of some of the Fake Works,

thereby substantially understating his total income, adjusted gross income, taxable income, and tax due and owing for the calendar years set forth below:

Count	Calendar Year	Approximate Filing Date
6	2007	January 9, 2009
7	2008	January 28, 2010

(Title 26, United States Code, Section 7206(1);
Title 18, United States Code, Section 2.)

COUNTS EIGHT THROUGH ELEVEN
**(Willful Failure to File Reports of
Foreign Bank and Financial Accounts)**

The Grand Jury further charges:

59. The allegations set forth in paragraphs 1 through 24, 27, 31 through 35, 38, and 42 through 51 are repeated and realleged as if set forth fully herein.

60. U.S. taxpayers who have a financial interest in, or signature authority over, a bank, securities, or other financial account in a foreign country with an aggregate value of more than \$10,000 at any time during a particular calendar year are required to file with the IRS a Report of Foreign Bank and Financial Accounts, Form TD F 90-22.1 ("FBAR"). The obligation to file an FBAR is separate and apart from the obligation to file a Form 1040. The FBAR for any calendar year is required to be filed on or before June 30 of the following calendar year. The FBAR requires that the filer include his or

her taxpayer identification number, typically an individual's Social Security number, and identify the financial institution with which the account is held, the type of account (either bank, securities, or other), the account number, and the maximum value of the account during the calendar year for which the FBAR is being filed.

61. In each of the years 2010 and 2011, the First BBVA Account and the Second Caja Madrid Account each had an approximate aggregate value of more than \$10,000, which JOSE CARLOS BERGANTINOS DIAZ, the defendant, was required to report to the IRS on an FBAR. For example:

a. The high balance in the First BBVA Account was approximately \$145,011.48 on or about April 19, 2010 and approximately \$175,011.70 on or about May 27, 2011.

b. On or about June 23, 2010, approximately \$287,900 was transferred from the Second Caja Madrid Account to a bank account in New York, New York. On or about September 23, 2011, approximately \$200,000 was transferred from the Second Caja Madrid Account to the First Caja Madrid Account. On or about December 21, 2011, approximately \$975,000 was transferred from the Second Caja Madrid Account to another bank account.

62. For at least calendar years 2010 and 2011, JOSE CARLOS BERGANTINOS DIAZ, the defendant, did not file any FBAR,

as required by law, using either:

- a. the Social Security Number assigned to JOSE CARLOS BERGANTINOS DIAZ;
- b. the name "Jose Carlos Bergantinos Diaz";
- c. the names of "Glafira Rosales Fine Arts LLC" and "King's Fine Arts, Inc."; and
- d. the Employer Identification Numbers assigned to Glafira Rosales Fine Arts and King's Fine Arts.

Statutory Allegations

63. On or before the filing due dates listed below, in the Southern District of New York and elsewhere, JOSE CARLOS BERGANTINOS DIAZ, the defendant, did knowingly and willfully fail to file with the Commissioner of the IRS a Report of Foreign Bank and Financial Accounts, Form TD F 90-22.1 disclosing that he had a financial interest in, and signature and other authority over, a bank, securities, and other financial account in a foreign country, to wit, at least one bank, securities, and other financial account in Spain, which had an aggregate value of more than \$10,000 during each of the years listed below:

Count	Calendar Year	Due Date to File FBAR	Bank
8	2010	June 30, 2011	First BBVA Account
9	2010	June 30, 2011	Second Caja Madrid Account
10	2011	June 30, 2012	First BBVA Account
11	2011	June 30, 2012	Second Caja Madrid Account

(Title 31, United States Code, Sections 5314 and 5322(a);
Title 31, Code of Federal Regulations,
Sections 1010.350, 1010.306(c, d), and 1010.840(b).)

COUNT TWELVE

(False Statements)

The Grand Jury further charges:

64. The allegations contained in paragraphs 1 through 24 and 27 are repeated and realleged as if fully stated herein.

65. On or about June 4, 2013, in the Southern District of New York and elsewhere, PEI SHEN QIAN, the defendant, in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit, the agency known as the Federal Bureau of Investigation ("FBI"), willfully and knowingly falsified, concealed, and covered up by trick, scheme, and device material facts, and did make materially false, fictitious, and fraudulent statements and representations, to wit, QIAN falsely stated to agents from the FBI that (a) QIAN did not recognize Rosales's name; (b) QIAN has never painted in the style of Jackson Pollock or Barnett Newman; and (c) QIAN did not recognize the names Richard Diebenkorn, Mark Rothko, or Sam Francis, when in truth and fact, and as QIAN

well knew, QIAN knew who Rosales was, and QIAN created the Fake Works, including Fake Works by Jackson Pollock, Barnett Newman, Richard Diebenkorn, Mark Rothko, and Sam Francis, among others, all of whose names QIAN knew and recognized.

(Title 18, United States Code,
Sections 1001(a) (1), (a) (2) & 2.)

FORFEITURE ALLEGATIONS

66. As a result of committing the offenses alleged in Counts One and Two of this Indictment, to wit, conspiracy to commit wire fraud, in violation of Title 18, United States Code, Sections 1349, and wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2, respectively, JOSE CARLOS BERGANTINOS DIAZ, JESUS ANGEL BERGANTINOS DIAZ, PEI SHEN QIAN, the defendants, shall forfeit to the United States, pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(2) and Title 28, United States Code, Section 2461, any and all property, real and personal, which constitutes or is derived from proceeds traceable to the commission of the said offense, including, but not limited to, approximately \$33.2 million in United States currency, in that such sum in aggregate is property representing the amount of proceeds obtained as a result of Counts One and Two of this Indictment;

67. As a result of committing the money laundering

offenses alleged in Counts Three and Four of this Indictment, in violation of Title 18, United States Code, Sections 1956(h) and 1956(a)(2)(B)(i) and 2, respectively, JOSE CARLOS BERGANTINOS DIAZ and JESUS ANGEL BERGANTINOS DIAZ, the defendants, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982, all property, real and personal, involved in the money laundering offense and all property traceable to such property, including but not limited to, approximately \$33.2 million in United States currency, in that such sum in aggregate is property involved in the money laundering offense or is traceable to such property.

Substitute Assets Provision

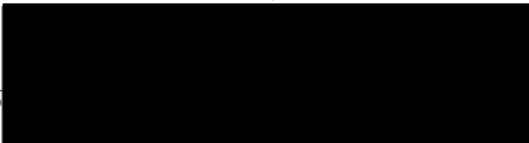
68. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
 - b. has been transferred or sold to, or deposited with, a third person;
 - c. has been placed beyond the jurisdiction of the Court;
 - d. has been substantially diminished in value;
- or
- e. has been commingled with other property

which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b) and Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendants up to the value of the above forfeitable property.

(Title 18, United States Code, Sections 981(a)(1)(C), 982(a)(2) and (b); Title 21, United States Code, Section 853(p); and Title 28, United States Code, Section 2461.)

F 

Preet Bharara

PREET BHARARA

UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

JOSE CARLOS BERGANTINOS DIAZ,
JESUS ANGEL BERGANTINOS DIAZ, and
PEI SHEN QIAN,

Defendants.

INDICTMENT

14 Cr.

(18 U.S.C. §§ 371, 1001, 1343, 1349,
1956(h), 1956(a)(2)(B)(i), and 2; 26 U.S.C.
§ 7206(1); 31 U.S.C. §§ 5314 and 5322(a); 31
C.F.R. §§ 1010.350, 1010.306(c, d), and
1010.840(b).)

PREET BHARARA

United States Attorney.


A TRUE BILL

For person.

-SEALED INDICTMENT

-(3) ARREST WARRANTS

PRESIDING. RONALD L. ELLIS, U.S. MAGISTRATE JUDGE


3-31-14