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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

EQUINOX GALLERY LIMITED,

Plaintiff,

-against-

FRED DORFMAN, *individually and d/b/a*
DORFMAN PROJECTS, FRED DORFMAN, INC.,
and DORFMAN PROJECTS LLC,

Defendants.

Case No: 17-cv-230

COMPLAINT

JURY TRIAL DEMANDED

Equinox Gallery Limited (“Equinox”), in its individual capacity, and as assignee of an art-advisory business (collectively, the “the Art Advisor”), by and through its undersigned attorneys, for its Complaint against Fred Dorfman, individually and doing business at all relevant times as Dorfman Projects, Fred Dorfman, Inc., and Dorfman Projects LLC (collectively, the “Dorfman Defendants”), states as follows, on knowledge as to itself and on information and belief as to all other matters, which are likely to have evidentiary support after a reasonable opportunity for discovery:

NATURE OF THE ACTION

1. This matter arises out of the Dorfman Defendants’ criminal racketeering scheme to sell nearly forty artworks (the “Stolen Works”) stolen from the studio of renowned artist Jasper Johns by the artist’s long-time and trusted studio assistant, James Meyer.

2. Meyer has pleaded guilty to interstate transportation of stolen property for his role in this massive fraud, and as part of his guilty plea, he admitted that he stole the work at issue here (the “Work”). Dorfman, for his part, has been described as the “architect of the scheme and its primary beneficiary.” Although the Dorfman Defendants have not yet been charged for their role in masterminding this massive fraud, they have settled at least one civil RICO lawsuit filed in this Court by another collector who, like Plaintiff here, was defrauded into buying one of the Stolen Works. *See Kolodny v. Meyer, et al.*, Case No. 14-cv-03354 (VSB) (S.D.N.Y.).

3. The Dorfman Defendants during the relevant time ran a reputable Manhattan art gallery specializing in the sale of contemporary art. In 2003, Dorfman was introduced to Meyer, himself an aspiring artist. To gain Meyer’s trust and confidence—and therefore access to the studio, including Johns’s works—the Dorfman Defendants offered to represent Meyer as an independent artist, even agreeing to host a solo show of Meyer’s works in 2004.

4. But the Dorfman Defendants were never interested in Meyer’s own original art (indeed, from 2003 through 2006, they did not sell a single piece of Meyer’s work). Rather, the Dorfman Defendants had their sights set instead on the trove of valuable Johns artwork to which Meyer had exclusive and unfettered access as Johns’s trusted studio assistant. And to that end, according to Meyer’s confession, for the next several years after their initial meeting, “Dorfman repeatedly asked [him] if he had access to Mr. Johns’ discarded and/or unfinished artworks that were not intended for sale, and pressured him to obtain as much of these artworks as he could so they could sell them together.”

5. The Dorfman Defendants at all times knew exactly where Meyer had obtained many of these Stolen Works, as contemporaneous e-mails from Meyer to Dorfman confirm: “I got the drawings in 1995-6 when we were moving the office and storage from 63rd to Sharon,

Jasper threw them away and I got them out of the garbage (I had told you this before)."

(Emphasis added).

6. And after Dorfman complained to Meyer that he needed to "air[]" some of the Stolen Works because they seemed to have been stored "with animals," Meyer again reminded Dorfman that Johns had not authorized these works to leave the studio: "you know, the way I keep things . . . I was supposed to destroy them so they werent in good shape."

7. Knowing that these pieces were stolen, and in some instances had actually been fished from the trash, to sell the Stolen Works the Dorfman Defendants needed a story legitimizing their provenance.

8. To buttress this story, the Dorfman Defendants, among other things, drafted false affidavits for Meyer to sign (to be presented to the buyers, including Plaintiff here) swearing: (i) that the Stolen Works were gifts, (ii) that they were recorded in Johns's archives, (iii) that they were authentic works, and (iv) that Johns had authorized Meyer to sell them. Of course, as the Dorfman Defendants knew at all times, these statements were false.

9. The Dorfman Defendants additionally provided to buyers photographs purporting to show the Stolen Works listed among other legitimate Johns works in the artist's studio ledger, and they printed counterfeit "Johns" labels to affix to the back of these Stolen Works. And, as with the Work that Plaintiff here purchased, they falsely promised that certain of the pieces "will be included in the Jasper Johns Catalog Raisonné and recorded in the Jasper Johns Studio archives when it is prepared." Again, the Dorfman Defendants knew at the time that these statements were false, but they made them, as the Meyer affidavits expressly provided, "knowing that the Purchaser will rely on the representations" in connection with these fraudulent sales.

10. The Dorfman Defendants demanded extraordinary compensation for their efforts in orchestrating and carrying out this brazen scheme. Whereas the standard commissions paid to art dealers in legitimate secondary-market sales (involving works on consignment from private collections) generally range between approximately 10%-25%, the Dorfman Defendants here received “commissions” exceeding a whopping 50% of the sale prices of the Stolen Works.

11. Plaintiff purchased one of the Stolen Works in January 2008 for \$800,000. As with all the other Stolen Works, the Dorfman Defendants knew that: (i) the Work had been stolen or otherwise obtained under circumstances against the artist’s wishes, (ii) the Work was not a gift to Meyer and he was not the “rightful owner,” and (iii) Johns had not authorized Meyer (nor, for that matter, anyone else) to sell the Work. For this “sale,” the Dorfman Defendants received nearly 72% of the net purchase price paid to them, an unheard of sum for such sales.

12. The Dorfman Defendants took steps at every turn to conceal their scheme. They ensured that their fraud was self-concealing—namely, as a condition of the sale, Plaintiff (like other buyers of Stolen Works) was required to agree to keep the Work “private” for 10 years. This effectively ensured that the Stolen Works would not enter the public eye in a way that might expose their wrongdoing until after the statutes of limitations on certain claims had run.

13. Even after their sale to Plaintiff, the Dorfman Defendants took affirmative steps to actively conceal the fraud, including by repeating their assurances that Meyer had received the Stolen Works as gifts, and pointing to Meyer’s affidavit—which, of course, they prepared and knew was false—as proof that the buyers “justifiably rely on James’s sworn statement” and “have done [their] due diligence with respect to ownership.” And four years after the sale, the Dorfman Defendants went so far as to draft a false “certif[ication],” along with an image and description of the Work, reaffirming their earlier fraudulent misrepresentations and warranties.

14. The Dorfman Defendants continued their criminal enterprise for several years after the sale to Plaintiff; indeed, even after Meyer warned the Dorfman Defendants in January 2010 that the situation had become “very serious” and to “whatch [sic] out for . . . F.B.I.” To cover their tracks, Meyer told Dorfman to return one of the Stolen Works and to “wipe” it “with glass cleaner” to eliminate fingerprints and to send it “from a pack and ship. cash” “with no return information” “so that it couldn’t be traced back to anyone.” But rather than end their scheme in the face of this potential looming federal criminal investigation, Dorfman became even more resolute, telling Meyer: “Tell me exactly what you want and how you want it and You will get it.”

15. Because the Work was stolen, as Meyer has admitted, Plaintiff never obtained good title; indeed, it has long been settled law that one who acquires artwork from a thief has no title in and to the Work, and therefore cannot pass ownership of the Work to successive transferees. Accordingly, Plaintiff is entitled to rescind the sale.

16. The Work here is virtually worthless and unsaleable in any case because (like all the other Stolen Works) it will never be included in the forthcoming catalogue raisonné for Johns’s works—despite the Dorfman Defendants’ knowingly false claims that it would be—and “non-inclusion in a catalogue raisonné is understood in the art world as a conclusion that the work is not authentic.” *Thome v. Calder Found.*, 70 A.D.3d 88, 107 (1st Dep’t 2009).

17. To date, the Dorfman Defendants have refused to return the purchase price, including their whopping \$470,000 “commission.” Plaintiff has commenced this action asserting claims for: (1) common-law fraud; (2) violations of RICO; (3) breach of warranty; and (4) unilateral mistake.

PARTIES, JURISDICTION, AND VENUE

18. Plaintiff Equinox Gallery Limited is a Canadian company incorporated in British Columbia with its principal place of business in Vancouver, British Columbia, Canada.

19. The Art Advisor is a Midwest corporation owned by a non-New York resident.

20. Defendant Fred Dorfman is a domiciliary of New York, New York.

21. Defendant Fred Dorfman, Inc. is a New York corporation with its principal place of business located at 529 West 20th Street, New York, New York 10011. Dorfman is the sole member of Fred Dorfman, Inc., and during all relevant times he owned and controlled this entity, which he operated as “Dorfman Projects.”

22. Fred Dorfman, Inc. was incorporated in 1976, and since that time the Dorfman Defendants have been recognized in the fine-art community as respected specialists in twentieth-century art, and they hold themselves out as having “built a global reputation for insight and expertise in presenting contemporary artists to collectors, galleries and dealers. Our focus is on established contemporary artists whose voices in a variety of media present significant contributions to the field.” *See* <http://www.dorfmanprojects.com/contact.html> (last visited November 28, 2016).

23. Defendant Dorfman Projects LLC is a New York limited-liability company with its principal place of business located at 529 West 20th Street, New York, New York 10011. Fred Dorfman is the sole member of Dorfman Projects LLC, and at all relevant times he owned and controlled this entity.

24. Dorfman formed Dorfman Projects LLC on May 2, 2013, shortly after learning of the government’s criminal investigation into the Dorfman Defendants’ sale of the Stolen Works, including the indictment against Meyer.

25. The timing of the formation of Dorfman Projects LLC is no coincidence where the Dorfman Defendants knew at that time that victims of their scheme—which was on the brink of becoming public with the unsealing of the Meyer indictment just several months later—would seek to recover the nearly millions of dollars in illicit gains that the Dorfman Defendants reaped from their fraudulent sales.

26. To shield their assets, while continuing to operate their art business as “Dorfman Projects,” the Dorfman Defendants created this new limited-liability company.

27. Dorfman Projects LLC is the successor-in-interest to Fred Dorfman, Inc. and/or Fred Dorfman d/b/a Dorfman Projects, both of which have conducted business for many years, including throughout the relevant period, as “Dorfman Projects.”

28. Dorfman Projects LLC is a mere continuation of Fred Dorfman, Inc. and/or Fred Dorfman d/b/a Dorfman Projects. They share the same d/b/a, “Dorfman Projects,” the same business, assets, offices, ownership, management, and goodwill.

29. At all times herein, Dorfman exercised complete dominion and control over Fred Dorfman, Inc., and he used such dominion and control to commit the fraudulent scheme to market and sell the Stolen Works, resulting in Plaintiff’s injuries alleged here.

30. This Court has personal jurisdiction over each of the Dorfman Defendants because they have transacted business within the State, including the transactions at issue in this litigation, and they have committed tortious acts within the State. Moreover, Dorfman resides in New York County, where his art gallery is located and where he operates his business.

31. This Court has subject-matter jurisdiction over the RICO claims under 28 U.S.C. § 1331 and 18 U.S.C. § 1964(a), and over the related state-law claims under 28 U.S.C. § 1367.

32. This Court has subject-matter jurisdiction under 28 U.S.C. § 1332 because there is complete diversity of citizenship among the parties, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

33. Venue in this District is proper under 28 U.S.C § 1391 because the Dorfman Defendants are located in this District and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred here. Among other things, the transaction at issue was negotiated from and through the Dorfman Defendants in New York, and the Work that is the subject of this action was delivered from Meyer to the Dorfman Defendants in New York, and then shipped from New York in connection with the sale of the Work to Plaintiff.

STATEMENT OF FACTS

Jasper Johns, the Studio, and James Meyer

34. Jasper Johns is considered one of most significant and influential American painters of the twentieth century. He ranks as one of the greatest printmakers of any era, he has created many drawings (unique works on paper, usually based on a Johns painting), and he has created an unique body of sculptural objects.

35. For many years, Johns has maintained an office, archive, and art studio (the "Studio") in Sharon, Connecticut, where he continues to create masterful artworks.

36. Johns throughout his career has worked at any given time with only a small number of assistants, who are said to be loyal and tight-lipped, even after leaving his employ.

37. Meyer became Johns's studio assistant in 1985, and during his tenure he supported Johns in creating artworks and assisted with administrative and record-keeping tasks.

38. As Johns's trusted studio assistant, Meyer had unfettered access to the Studio and its books and records, including a three-ring loose-leaf ledger (the "Ledger") containing a description and inventory number for each of the artist's completed artworks.

39. In his capacity as studio assistant, Meyer had access to uncompleted Johns works, and he was responsible for maintaining a Studio file drawer containing unfinished artworks and other works that Johns had not authorized to be placed into the art market. One of Meyer's responsibilities was to destroy artwork with which Johns was not satisfied or otherwise did not want to be included among his oeuvre (the artist's complete body of finished works).

40. Beginning in the 1990's, Meyer began stealing works from Johns. At first, he stole drawings that he knew Johns had intended to be discarded, a fact which Meyer later admitted more than once to the Dorfman Defendants: "I was supposed to destroy them so they weren't in good shape." "I got the drawings in 1995-6 when we were moving the office and storage from 63rd to Sharon, *Jasper threw them away and I got them out of the garbage* (I had told you this before)." (Emphasis added).

41. Meyer also stole numerous other works from the Studio, including unfinished works located in a Studio file drawer, which Johns had not authorized to be placed into the market for sale or exhibition.

The Dorfman Defendants Architect the Scheme to Sell the Stolen Works

42. As Meyer has confirmed, Defendant Fred Dorfman "was the architect of the scheme" to sell the dozens of Stolen Works. For his role in orchestrating and then carrying out this scheme, Dorfman demanded to be "its primary beneficiary."

43. According to Meyer, “in 2003 [he] was introduced to [Defendant] Fred Dorfman,” and from that time forward Dorfman plotted to exploit Meyer’s relationship and access to Johns:

Dorfman embarked on a three-year effort to convince [Meyer] that he wanted to represent him as an independent artist separate from his employment by Jasper Johns. [Meyer], who by all accounts is impressionable by nature, was drawn in by Dorfman’s offer and was excited at the prospect of finding representation as an artist in his own right.

A true and correct copy of the January 9, 2015, Sentencing Memorandum for Defendant James Meyer is attached as Exhibit A.

44. Dorfman’s actual plan, however, was to play puppeteer of Meyer to exploit his unfettered access to Johns’s works and his Studio archives:

[Meyer] did not realize at the time that Dorfman never actually promoted his independent artistic talents, but rather used him to get access to Jasper Johns’ artwork. Indeed, from 2003-2006, rather than actually sell any of [Meyer]’s art to any other galleries or collectors, (except one or two pieces that he bought himself), Dorfman repeatedly asked [Meyer] if he had access to Mr. Johns’ discarded and/or unfinished artworks that were not intended for sale, and pressured him to obtain as much of these artworks as he could so they could sell them together.

(Ex. A at 22-23.)

45. In or about the fall of 2006, after meeting in person with Dorfman, Meyer ultimately succumbed to Dorfman’s repeated entreaties and agreed to participate in the Dorfman Defendants’ scheme to sell the Stolen Works.

46. Meyer “acquiesced to Dorfman’s plan, and began to deliver Dorfman Jasper Johns’[s] unfinished and discarded artwork from the Johns studio for Dorfman to sell to his contacts in the art world.” (*Id.*) In addition to the works that Meyer had already stolen

(including works that Meyer had fished from the trash despite Johns's instructions to destroy them), Meyer obtained additional unauthorized works from Johns's Studio.¹

47. To convince prospective buyers that these Stolen Works were authentic, that Meyer had good title, and that Johns had authorized the works to be sold, the Dorfman Defendants drafted affidavits for Meyer's signature falsely stating that Johns had given the works to Meyer as gifts.

48. The Dorfman Defendants additionally provided written assurances to buyers falsely "certif[ying]" that the works "will be included in the Jasper Johns Catalog Raisonné and recorded in the Jasper Johns Studio archives when it is prepared." And in some instances the Dorfman Defendants provided false records, including assigning fictitious inventory numbers to the Stolen Works to give the appearance that the pieces were finished and authorized for sale when, in fact, the Dorfman Defendants knew they were not.

49. To ensure that Johns did not learn about this scheme, the Dorfman Defendants imposed confidentiality and re-sale restrictions prohibiting the buyers from disclosing the sale, including by reselling, exhibiting, or loaning the works for at least eight years following the sale. And they actually drafted the written agreements memorializing these conditions, which were critical to the success of their scheme.

The Dorfman Defendants Embark Upon Their Scheme to Sell the Stolen Works

50. Meyer stole in total 83 individual pieces of Johns artworks. The Dorfman Defendants took possession of 42 of those pieces, and they sold 37 of the Stolen Works, yielding a total profit of over \$9 million.

¹ As Meyer has recounted, "[n]otably, . . . this was not the first time Dorfman had engaged in the same conduct with art assistants to well-known contemporary artists in an effort to gain access to their artwork which would not otherwise have been available to him." (Ex. A at 23 n.5.)

51. For their role in masterminding this scheme, the Dorfman Defendants pocketed “\$5,996,507—almost two-thirds of the profits—from the illegal sales.” (Ex. A at 26.)

52. For each of the sales of these Stolen Works, the Dorfman Defendants transmitted to purchasers Meyer’s affidavit (which, again, they had drafted) falsely stating, among other things, that: (1) Meyer received the artwork directly from Jasper Johns; (2) Meyer is the rightful owner of the work and he has the right to sell it; (3) the work is recorded in Jasper Johns’s archive; and (4) the work is authentic.

53. The Dorfman Defendants were necessary and integral participants in organizing and carrying out this aspect of their scheme because, among other reasons, Meyer suffers from severe dyslexia and he could not have prepared these documents himself, and the Dorfman Defendants in each case finalized these documents (Dorfman’s wife, Susan Spagna, notarized each of the affidavits) and then transmitted them to the purchasers.

54. The Dorfman Defendants knew and intended that prospective purchasers would rely on these material misstatements and omissions concerning the works; indeed each affidavit stated that it was being provided “knowing that the Purchaser will rely on the representations contained [t]herein.”

55. In addition to the false Meyer affidavits, the Dorfman Defendants provided false statements and assurances to buyers that the Stolen Works were gifts from Johns that he authorized Meyer to sell. For example, in or around late 2006, the Dorfman Defendants told one dealer that Meyer had received works from Johns as gifts:

How does Meyer receive art: As gifts, a thank you, a birthday, a holiday . . . he’s been working with Jasper for many years. I hope this is helpful. . .

56. The Dorfman Defendants assisted Meyer in fabricating additional documents, purportedly from the Studio’s Ledger of registered Johns artworks, describing the artwork,

listing a fictitious inventory number, and stating falsely that the work had been “gifted to James Meyer.” Meyer at times placed these fake pages in the Studio Ledger, photographed them in that setting, and then provided the photographs to the Dorfman Defendants, who transmitted them to prospective buyers.

57. Although Meyer had admitted to the Dorfman Defendants early on in their scheme that he had fished certain works from the trash, he reminded them again of this incriminating fact in or about 2010 after Dorfman complained that some of the works had condition issues: “I was supposed to destroy them so they werent in good shape.”

58. For their role in masterminding this scheme, the Dorfman Defendants demanded to be paid outrageous sums equaling 50% or more of the total sale proceeds, dwarfing the standard 10-25% commissions paid to art galleries/dealers selling major artworks on consignment from private collections in secondary-market transactions. Indeed, the Dorfman Defendants reaped close to \$6 million, over 60% of the total profits, from these fraudulent sales.²

Plaintiff Purchases One of the Stolen Works

59. In mid-December 2007, the Dorfman Defendants contacted the Art Advisor about prospective buyers for the Work. As with all the other Stolen Works, the Dorfman Defendants knowingly misrepresented that the Work was a gift from Johns to Meyer.

60. The Dorfman Defendants knew that the Art Advisor was attempting to place the Work with a buyer, here Plaintiff. Accordingly, the Dorfman Defendants at all times knew and

² In the art world, the “primary market” refers to the transfer of title of artworks for the first time, often at gallery exhibitions. The “secondary market” refers to transactions of artworks that already have changed hands at least once. Whereas secondary-market commissions generally range from 10%-25% of the gross sale price, gallery commissions for primary-market sales (which, once again, this was not) are often in the 50% range.

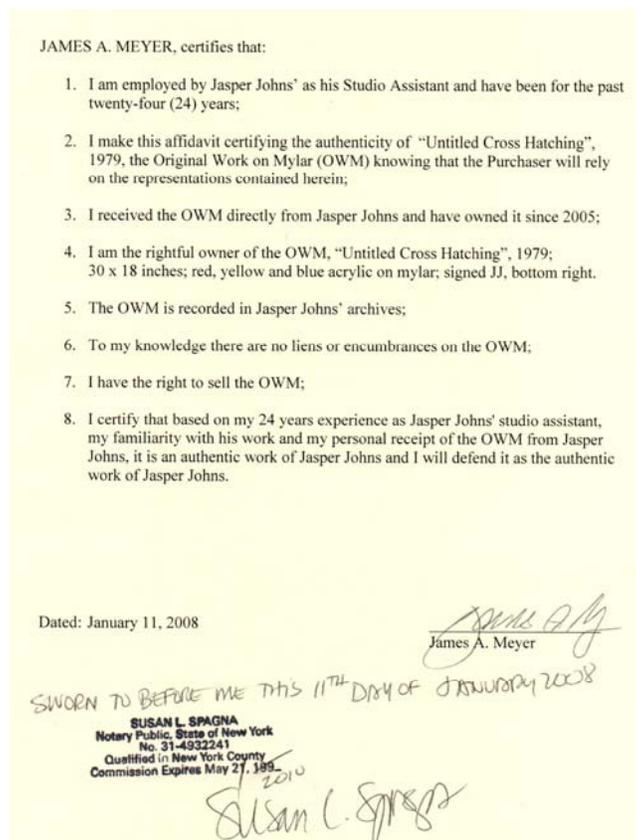
intended that all the information they shared with the Art Advisor would be shared with Plaintiff to induce this fraudulent sale.

61. The Art Advisor shared with Plaintiff images and additional details about the Work that the Dorfman Defendants had provided to be transmitted to the buyer, and then assisted Plaintiff in negotiating and consummating the transaction.

62. There is no dispute that the Work, including the signature, is by the artist's hand. These facts reasonably led Plaintiff and the Art Advisor to believe that the Work was completed by the artist, as it would have been anomalous for the artist to have signed an unfinished work.

63. Of course, Plaintiff never would have purchased the Work if it had known the truth, which the Dorfman Defendants at all times knowingly concealed.

64. As with the other Stolen Works, the Dorfman Defendants prepared a sworn January 11, 2008, affidavit from Meyer falsely swearing that the Work was a gift from Johns.



65. The affidavit is signed by Meyer, and it was notarized by Dorfman's wife. Each of the statements contained in the Affidavit concerning the Work's provenance, the Work's inclusion in the Studio archives, and Meyer's authority to sell the Work, was knowingly false.

66. On or about January 11, 2008, the Dorfman Defendants separately drafted a confidentiality agreement for Plaintiff to execute. As with the other Stolen Works, the Dorfman Defendants required these restrictions as a condition of the sale: "[buyer] will keep the Artwork private and will not sell or loan the Drawings to anyone or any institution within the first ten (10) years of his ownership."

67. Plaintiff agreed to these restrictions, which were reasonable under the circumstances. In fact, such confidentiality and re-sale restrictions are prevalent in the art market, and they "are becoming an increasingly common practice in the art world." *See* Wall Street Journal, "Fine-Art Sales Often Come With Strings Attached: Galleries Are Increasingly Telling Buyers Who They Can and Can't Resell To," April 12, 2015, *available at* <http://www.wsj.com/articles/fine-art-sales-agreements-often-come-with-strings-attached-1428894129> (last visited January 10, 2017).

68. It is standard practice in private art sales, like this one, for the transaction to be memorialized by two invoices—*i.e.*, one from the seller's side to an art advisor, and then a second from the art advisor to the buyer. This enables the principals generally to preserve confidentiality and to conceal the amount of commissions. Of course, it is understood at all times, including by the parties here, that Plaintiff would be the ultimate buyer of the Work, and that the art dealer (here the Art Advisor) is acting primarily to facilitate the transaction.

69. Knowing that the Art Advisor would separately invoice Plaintiff for the Work in connection with the transaction, the Dorfman Defendants sent to the Art Advisor a January 15, 2008, invoice for the Work (the “Dorfman Invoice”).

70. The Art Advisor, in turn, invoiced Plaintiff the full purchase price, including the Art Advisor’s “commission” for the sale (the “Art Advisor Invoice”). The Art Advisor Invoice included a fictitious inventory number for the Work that the Dorfman Defendants had provided to the Art Advisor to create the false impression that Johns had authorized the Work to be sold.

71. Plaintiff and the Art Advisor exercised reasonable due diligence at all times in connection with the acquisition of the Work.

72. The \$800,000 purchase price that Plaintiff paid for the Work was in line with market trends and values for comparable Johns works at the time.

73. Once again, it is undisputed that the Work was created and signed by the hand of the artist, so Plaintiff and the Art Advisor had no reason to suspect that the Work was not authentic.

74. The story that Johns had gifted the Work to Meyer was plausible, especially where it is common for artists to barter or gift works to employees—as the Dorfman Defendants themselves have admitted in Court pleadings:

Meyer had been Johns’ assistant for 27 years, a trusted and beloved member, perhaps the most important member of Johns’ studio. Even fifty works given over twenty seven years time is hardly unreasonable. Especially, when considering that the artworks in question are not paintings but for the most part sketches and studies.

See Kolodny, Case No: 14-cv-03354, Docket No. 50 at 3-4.

75. And the provenance given by the Dorfman Defendants was especially believable where it was accompanied by Meyer’s affidavit swearing that he had received the Work as a gift.

76. The Dorfman Defendants took steps at every turn to conceal their scheme to prevent Plaintiff and the Art Advisor from taking any additional steps to uncover the fraud. As an initial matter, where confidentiality is paramount in the art world and similar restrictive covenants are common place in major art transactions, the seller's insistence on confidentiality and re-sale restrictions was not unusual under the circumstances.

77. Because the Dorfman Defendants imposed these confidentiality and re-sale restrictions, the fraud was self-concealing in that it prevented Plaintiff and the Art Advisor from contacting anyone other than the Dorfman Defendants to verify the Work's provenance.

78. Quite simply, Plaintiff and the Art Advisor could not have been reasonably expected to take any additional steps beyond the due diligence that they had performed, as the Dorfman Defendants tellingly reassured the Art Advisor following the sale: "You justifiably rely on James's sworn statement, other than having a bill of sale, which you will never have with a gift, or a statement from Jasper Johns, and what gift giver provides an affidavit?!? no one that I know of. You have done your due diligence with respect to ownership."

Defendants Continue Their Racketeering Scheme After the Sale to Plaintiff

79. Following the sale to Plaintiff, the Dorfman Defendants sold at least an additional 14 works to unsuspecting buyers, like Plaintiff.

	Sale Date	Johns Artwork	Illicit Profits
1.	4/15/2008	St Martin 2001; untitled cross hatching #5	\$180,000
2.	10/09/2008	St Martin 2001 (untitled cross hatching #6, 9x9)	\$130,000
3.	4/23/2009	Savarin Can (black and white)	\$360,000
4.	5/08/2009	Untitled: 1999	\$415,000
5.	5/14/2009	Untitled: (Winter 1985)	\$25,000

	Sale Date	Johns Artwork	Illicit Profits
6.	2/8/2010	Untitled: Study for Bush Baby	\$375,000
7.	2/10/2011	Savarin Can (colored)	\$800,000
8.	2/17/2010	Untitled: (cross hatch triptych)	\$825,000
9.	3/11/2010	Bush Baby 2005	\$330,00
10.	3/22/2010	Untitled: Triple flag 2000	\$250,000
11.	4/15/2010	Untitled: 2002-2005	\$898,219
12.	11/18/2010	Study for Target, 1973	\$675,000
13.	3/8/2011	Untitled: Beautiful Woman/Crane	\$492,500
14.	7/22/2011	Untitled: (double white map) 2008	\$1,200,000

80. And along the way, the Dorfman Defendants continued to propagate their story, buttressed in each case by false Meyer affidavits, that these Stolen Works were gifts from Johns.

81. For example, on January 20, 2010, the Dorfman Defendants forwarded to the Art Advisor an e-mail from Meyer reaffirming earlier misstatements that the Stolen Works “were given to me.”

82. And on February 2, 2010, Dorfman forwarded to the Art Advisor an e-mail from his wife providing additional information intended to assuage the Art Advisor and its clients, including Plaintiff, about the provenance of these works:

James affidavit supports your involvement in a transaction as a ‘buyer in good faith’, that is you have no reason to believe that the work is anything but in his rightful possession. He has sworn under oath (that’s what an affidavit is) concerning its authenticity and how he came to have the piece in his possession . . . it was a gift from Jasper. The reason of no sale is because Jasper in giving the gift doesn’t want James interfering with Jasper’s market and inundating the market with his works. ***You justifiably rely on James’s sworn statement***, other than having a bill of sale, which you will never have with a gift, or a statement from Jasper Johns,

and what gift giver provides an affidavit?!? no one that I know of. ***You have done your due diligence with respect to ownership.*** James explains that in the affidavit. If the buyer isn't satisfied with the affidavit, then he/she doesn't buy the piece. Susan

83. Where the Dorfman Defendants knew that the Art Advisor sold the Work to a serious collector, it would have been highly anomalous for the Dorfman Defendants not to have at least tried to gauge Plaintiff's interest in purchasing another of the Stolen Works. So it is apparent that the Dorfman Defendants intended this additional information to be shared with Plaintiff to possibly induce another sale, which had the additional effect of reaffirming their earlier false warranties in connection with the sale of the Work.

84. Once again, in addition to the re-sale and confidentiality restrictions that the Dorfman Defendants required as a condition of the sale, they took these additional affirmative acts following the sale of the Work to Plaintiff to conceal the fraud.

85. The Dorfman Defendants reaffirmed their participation in and commitment to the fraudulent scheme even after Meyer warned Dorfman in January 2010 that the situation had become "very serious" and to "whatch [sic] out for . . . F.B.I."

86. Meyer at that time had become alarmed when one of the victims of their scheme had sent an image of a Stolen Work to the Studio, prompting Meyer to desperately seek Dorfman's assistance in returning the drawing. Among other things, Meyer asked Dorfman to return the drawing after "wip[ing]" it "with glass cleaner" to eliminate fingerprints and to send it "from a pack and ship. cash" "with no return information" "so that it couldn't be traced back to anyone." Consistent with Dorfman's role as the mastermind, he responded: "Tell me exactly what you want and how you want it and You will get it."

87. Even after they were aware of a possible federal criminal investigation, and for the next several years, Defendants continued to sell the Stolen Works.

The Fraud Is Revealed And Meyer Is Indicted

88. In early 2012, Johns learned that Meyer had been stealing artworks and covertly selling them through the Dorfman Defendants. Johns was reportedly shaken by the betrayal. “Certainly not a pleasure,” he says of the ordeal. “But I can’t talk about it. I don’t want to talk about it. I don’t want to define it in any way.” *See* <http://www.ft.com/cms/s/2/65e763c8-9444-11e3-a0e1-00144feab7de.html#axzz30INV8Tuk> (last visited January 10, 2017).

89. For his role in the fraudulent scheme, Meyer was indicted on counts of (1) interstate transportation of stolen property (Count I), and (2) wire fraud (Count II). *See United States v. James Meyer*, Case No. 13-cr-604 (S.D.N.Y.). A true and correct copy of the Indictment is attached as Exhibit B.

90. Under a July 22, 2014, plea agreement, Meyer pleaded guilty to Count I of the Indictment, and on April 23, 2015, he was sentenced to 18 months incarceration and 2 years of supervised release. A true and correct copy of the Government’s Sentencing Memorandum is attached as Exhibit C. And as part of the restitution order, Meyer identified the Work here as one of the Stolen Works. A true and correct copy of the Order of Restitution is attached as Exhibit D.

Plaintiff’s Claims

91. Meyer has admitted that he stole the Work. Accordingly, the Dorfman Defendants could not transfer good title to the Work, and Plaintiff is entitled to rescind the sale.

92. Because Johns never authorized the Work to be included among his oeuvre, the Work will never be included in the forthcoming Johns catalogue raisonné, and “non-inclusion in a catalogue raisonné is understood in the art world as a conclusion that the work is not authentic.” *Thome v. Calder Found.*, 70 A.D.3d 88, 107 (1st Dep’t 2009). For this reason, the Work is unsaleable and it is virtually worthless.

93. Under a July 29, 2015, Standstill and Statute of Limitations Tolling Agreement, the Dorfman Defendants have agreed “that the time period beginning on August 1, 2012 until and including August 1, 2016 (the ‘Tolling Period’), will not be included in computing the running of any statute of limitations for any claim by [the Art Advisor], or by any transferee from [the Art Advisor]”

94. The applicable statutes of limitations for Plaintiff’s claims also are tolled under the doctrine of equitable tolling: (1) the fraud was self-concealing, and (2) the Dorfman Defendants committed additional wrongful actions following the sale of the Work intended to conceal their fraud. By concealing their wrongful conduct in these ways, the Dorfman Defendants prevented Plaintiff and the Art Advisor, despite due diligence, from discovering facts giving rise to the claims asserted here.

95. The fraud was self-concealing in that the confidentiality and re-sale restrictions that the Dorfman Defendants imposed as a condition of sale prohibited Plaintiff and the Art Advisor from contacting anyone other than the Dorfman Defendants to discover additional facts concerning the Work and its provenance, title, and authenticity.

96. The Dorfman Defendants additionally took affirmative steps following the sale to prevent the discovery of these claims, and the Dorfman Defendants’ actions induced Plaintiff to refrain from earlier filing its claims.

97. For example, on February 2, 2010, Dorfman forwarded to the Art Advisor an e-mail from his wife providing additional information about the provenance of the Stolen Works intended to assuage the Art Advisor and its clients, including Plaintiff, concerning the provenance of these works.

98. Then, in or about late September 2011, nearly four years after the sale of the Work, to create the false impression that the Work “will be included in the Jasper Johns Catalog Raisonné and recorded in the Jasper Johns Studio archives when it is prepared,” the Dorfman Defendants drafted a false “certif[ication],” along with an image and description of the Work, to be shared with Plaintiff.

99. By making these false statements years after their sale of the Work, the Dorfman Defendants effectively reaffirmed their earlier false representations and warranties concerning, among other things, title, provenance, and authenticity, and in doing so they acted to conceal their prior fraudulent conduct.

100. Under an October 17, 2016, Assignment Agreement, the Art Advisor assigned to Plaintiff all claims against the Dorfman Defendants concerning the sale of the Work, “including without limitation all causes of action sounding in fraud, negligent misrepresentation, racketeering, breach of warranty and/or breach of contract, and any other claim arising out of or relating to” the sale of the Work by the Dorfman Defendants.

101. Plaintiff has commenced this lawsuit in its individual capacity and as assignee seeking rescission and damages based on claims for: (1) fraud; (2) RICO violations; (3) breach of warranty; and (4) unilateral mistake.

FIRST CAUSE OF ACTION

Fraud

102. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 101 as if fully set forth herein.

103. Meyer has pleaded guilty to stealing the Work. The Dorfman Defendants knowingly misrepresented that the Work was given to Meyer by the artist as a gift; that the

Dorfman Defendants had the right to sell the Work; and that the Work had an inventory number assigned by the Studio.

104. All these facts were material to Plaintiff and the Art Advisor in connection with the decision to purchase the Work; indeed title, provenance, and authenticity are perhaps *the* most material facts collectors consider when acquiring art.

105. The Dorfman Defendants knew that all these material misrepresentations were false at the time they communicated this information through the Art Advisor to Plaintiff.

106. The Dorfman Defendants knowingly misrepresented these facts orally and in writing, including in the Meyer affidavit that they drafted and prepared, and through e-mail correspondence, to induce Plaintiff to purchase the Work.

107. Indeed, the Meyer Affidavit, which was drafted and transmitted by the Dorfman Defendants, and notarized by Dorfman's wife, states expressly that Meyer was providing the sworn statements concerning the Work "knowing that the Purchaser will rely on the representations contained herein."

108. The Dorfman Defendants demanded extraordinary compensation for their efforts in orchestrating and carrying out fraudulent "sale," for which they received nearly \$500,000.

109. Plaintiff would not have purchased the Work had it known of these material misstatements and omissions concerning the Work.

110. Plaintiff and the Art Advisor reasonably relied on these material misstatements and omissions based, among other things, on the explicit assurances by the Dorfman Defendants that Meyer had received the Work as a gift directly from the artist, and the fact that the Work, including the signature, is by the artist's hand. Indeed, following the sale the Dorfman Defendants said so themselves: "You justifiably rely on James's sworn statement, other than

having a bill of sale, which you will never have with a gift, or a statement from Jasper Johns, and what gift giver provides an affidavit?!? no one that I know of. You have done your due diligence with respect to ownership.”

111. Plaintiff and the Art Advisor could not have discovered the truth of the Dorfman Defendants’ misstatements and omissions through the exercise of ordinary diligence because the information was either kept confidential or known only by the Dorfman Defendants, including the critical fact that the Work was one of dozens of Stolen Works that Meyer had either stolen or that he was “supposed to destroy” but instead had taken “out of the garbage.”

112. Because the Dorfman Defendants imposed 10-year confidentiality and re-sale restrictions, the fraud was self-concealing in that it prevented Plaintiff and the Art Advisor from contacting anyone other than the Dorfman Defendants to verify the Work’s provenance, title, or authenticity.

113. Plaintiff paid \$800,000 for the Work and was damaged as a proximate result of the Dorfman Defendants’ fraud.

114. Plaintiff never obtained good title to the Work because it was stolen. Accordingly, Plaintiff is entitled to rescind the sale of the Work.

115. The Work is virtually worthless and unsaleable for the separate and independent reason that it will never be included in the forthcoming catalogue raisonné for Johns’ works, which is understood in the art world as a conclusion that the work is not authentic.

116. Because the Dorfman Defendants engaged in their fraudulent conduct willfully and maliciously, and with the intent to damage Plaintiff, Plaintiff is entitled to an award of damages, including punitive damages.

SECOND CAUSE OF ACTION
Aiding and Abetting Fraud

117. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 116 as if fully set forth herein.

118. Meyer perpetrated a fraud on Plaintiff and the Art Advisor by stealing the Work and then selling the Work to Plaintiff knowing that the Work was stolen and therefore that he could not pass good title. Meyer has pleaded guilty for his role in this scheme, and he has admitted that he stole the Work at issue here.

119. The Dorfman Defendants “repeatedly asked [Meyer] if he had access to Mr. Johns’ discarded and/or unfinished artworks that were not intended for sale, and pressured him to obtain as much of these artworks as he could so they could sell them together.”

120. The Dorfman Defendants at all times knew exactly where Meyer had obtained many of these Stolen Works. Before the sale of the Work here, Meyer again admitted to Dorfman that he “got the drawings in 1995-6 when we were moving the office and storage from 63rd to Sharon, *Jasper threw them away and I got them out of the garbage* (I had told you this before).” (Emphasis added).

121. The Dorfman Defendants provided substantial assistance to Meyer in effectuating the fraudulent sale to Plaintiff; indeed, the Dorfman Defendants were critical to the success of this scheme.

122. After convincing Meyer to steal the Work, the Dorfman Defendants used their reputation as a respected art gallery to market and sell the Work to Plaintiff. Meyer did not have the knowledge, resources, or network to accomplish this sale on his own.

123. The Dorfman Defendants made and transmitted false statements about the Work’s provenance, both orally and in writing, including in the Meyer Affidavit, which Dorfman

assisted in drafting, and which his wife notarized. The Dorfman Defendants were necessary to carrying out this aspect of their scheme because Meyer suffers from severe dyslexia and he could not have prepared these documents himself.

124. The Dorfman Defendants disseminated additional false information, including a fictitious Studio Archive Number for the Work, and they arranged for the shipment and sale of the Work to Plaintiff.

125. The Dorfman Defendants took no actions to stop the fraud—indeed, as described above, they actively took steps to initiate, perpetrate, and conceal the fraud, including by storing many of the Stolen Works at Dorfman’s residence (rather than at his art gallery).

126. The Dorfman Defendants demanded extraordinary compensation for their efforts in orchestrating and carrying out fraudulent “sale,” for which they received nearly \$500,000.

127. Plaintiff would not have purchased the Work had it known of these material misstatements and omissions concerning the Work.

128. Plaintiff and the Art Advisor reasonably relied on these material misstatements and omissions based, among other things, on the explicit assurances by the Dorfman Defendants that Meyer had received the Work as a gift directly from the artist, and the fact that the Work, including the signature, is by the artist’s hand. The Dorfman Defendants have conceded that reliance on their statements was reasonable: “You justifiably rely on James’s sworn statement, other than having a bill of sale, which you will never have with a gift, or a statement from Jasper Johns, and what gift giver provides an affidavit?!? no one that I know of. You have done your due diligence with respect to ownership.”

129. Plaintiff and the Art Advisor could not have discovered the truth of the Dorfman Defendants’ misstatements and omissions through the exercise of ordinary diligence because the

information was either kept confidential or known only by the Dorfman Defendants, including the critical fact that the Work was one of dozens of Stolen Works, including works that Meyer had taken “out of the garbage,” and that he was “supposed to destroy.”

130. Because the Dorfman Defendants imposed 10-year confidentiality and re-sale restrictions, the fraud was self-concealing in that it prevented Plaintiff and the Art Advisor from contacting anyone other than the Dorfman Defendants to verify the Work’s provenance, title, or authenticity.

131. The Dorfman Defendants’ conduct proximately caused Plaintiff to purchase the stolen Work for \$800,000.

132. Plaintiff never obtained good title to the Work because it was stolen. Accordingly, Plaintiff is entitled to rescind the sale of the Work.

133. The Work is virtually worthless and unsaleable for the separate and independent reason that the market does not consider it to be authentic because it will never be included in the forthcoming catalogue raisonné for Johns’s works.

134. Because the Dorfman Defendants aided and abetted the fraud willfully and maliciously, and with the intent to damage Plaintiff, Plaintiff is entitled to an award of damages, including punitive damages.

THIRD CAUSE OF ACTION
Fraudulent Concealment

135. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 134 as if fully set forth herein.

136. The Dorfman Defendants made numerous material misstatements and omissions about the Work’s provenance, title, authenticity, and their authority to sell the Work.

137. The Dorfman Defendants had a duty to disclose material facts concerning the Work because, among other reasons, they made partial or ambiguous statements concerning the Work. The Dorfman Defendants misrepresented that the Work was purportedly given to Meyer, while concealing that Johns never transferred title of the Work to Meyer, as a gift or otherwise, and that many of the Stolen Works that Meyer claims to have received as gifts were actually fished from the garbage and Johns had ordered them destroyed.

138. The Dorfman Defendants had a duty to disclose material facts concerning the Work because, among other reasons, they possessed superior knowledge and information concerning the Work that was not readily available to Plaintiff or the Art Advisor and they knew that Plaintiff and the Art Advisor were acting on the basis of incomplete and incorrect information.

139. The Dorfman Defendants had a duty to disclose material facts concerning the Work, including without limitation, that the Work was not given by Johns to Meyer as a gift; that the Studio Archive Number assigned to the Work was falsified; and that the Dorfman Defendants did not have authority to sell the Work.

140. The Dorfman Defendants demanded extraordinary compensation for their efforts in orchestrating and carrying out fraudulent “sale,” for which they received nearly \$500,000.

141. Plaintiff would not have purchased the Work at any price if it had known the facts that the Dorfman Defendants had concealed.

142. Plaintiff and the Art Advisor reasonably relied on these material misstatements and omissions based, among other things, on the explicit assurance by the Dorfman Defendants that Meyer had received the Work as a gift directly from the artist, and the fact that the Work, including the signature, is by the artist’s hand.

143. The Dorfman Defendants knew that Plaintiff and the Art Advisor acted on the mistaken belief that Meyer had good title to the Work, that Meyer had received the Work as a gift from Johns, and that the Dorfman Defendants had the authority to transfer title to the Work.

144. Plaintiff and the Art Advisor could not have discovered the truth of the Dorfman Defendants' misstatements and omissions through the exercise of ordinary diligence because the information was either kept confidential or known only by the Dorfman Defendants, including the critical fact that the Work was one of dozens of Stolen Works, including works that Meyer had taken "out of the garbage," and that he was "supposed to destroy."

145. Because the Dorfman Defendants imposed 10-year confidentiality and re-sale restrictions, the fraud was self-concealing in that it prevented Plaintiff and the Art Advisor from contacting anyone other than the Dorfman Defendants to verify the Work's provenance, title, or authenticity.

146. The Dorfman Defendants' conduct proximately caused Plaintiff to purchase the stolen Work for \$800,000.

147. Plaintiff never obtained good title to the Work because it was stolen. Accordingly, Plaintiff is entitled to rescind the sale of the Work.

148. The Work is virtually worthless and unsaleable for the separate and independent reason that the market does not consider it to be authentic because it will never be included in the forthcoming catalogue raisonné for Johns' works.

149. Because the Dorfman Defendants acted willfully and maliciously, and with the intent to damage Plaintiff, Plaintiff is entitled to an award of damages, including punitive damages.

FOURTH CAUSE OF ACTION
Violation of 18 U.S.C. § 1962(c) (RICO)

150. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 149 as if fully set forth herein.

151. The Dorfman Defendants and Meyer joined forces beginning in or about 2006 for the purpose of selling the Stolen Works. This enterprise lasted over six years, so it was of sufficient duration to pursue its purpose; indeed, it successfully sold 37 Stolen Works to dozens of unsuspecting collectors, resulting in ill-gotten gains totaling approximately \$10 million.

152. The association-in-fact of the Dorfman Defendants and Meyer constitutes an enterprise engaged in and affecting interstate and foreign commerce within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c).

153. This enterprise was continuous in that it lasted for more than two years, it had an ascertainable structure, and it acted in ways distinct from the predicate offenses that Plaintiff alleges. The enterprise was continuous for the additional reason that the predicate acts were a regular way of conducting the Dorfman Defendants' ongoing business and of conducting or participating in the ongoing RICO enterprise.

154. The principal purpose of the enterprise was the marketing and sale of the Stolen Works, whereby the Dorfman Defendants encouraged Meyer to steal the works, Meyer stole the works, and the Dorfman Defendants sold them by intentionally misrepresenting and concealing material facts concerning title, provenance, and authenticity. The purpose of the enterprise was thus to effect the Dorfman Defendants' fraudulent scheme, and to profit from the sale of the Stolen Works.

155. Operating through the enterprise, the Dorfman Defendants engaged in a pattern of racketeering activity, beginning as early as September 2006, and continuing through at least

February 2012, posing a continued threat of criminal activity extending indefinitely into the future. Indeed, the Dorfman Defendants sold only 37 of the 83 Stolen Works, and but for the government's investigation and Meyer's arrest and indictment, the Dorfman Defendants would have continued their scheme to sell dozens of additional Stolen Works.

156. Each of the Dorfman Defendants is a "person" within the meaning of 18 U.S.C. § 1961(3), and is separate from the enterprise.

157. The Dorfman Defendants were critical and willing participants in the racketeering scheme at issue. Indeed, the Dorfman Defendants were the masterminds and architects behind this massive fraud.

158. By encouraging Meyer to steal the Stolen Works and lending his and his art gallery's name, reputation, and resources to the fraudulent scheme, Dorfman enabled the enterprise to thrive.

159. The Dorfman Defendants, along with Meyer, (1) provided Jasper Johns labels for some of the Stolen Works, and (2) fabricated numerous documents, including the Meyer affidavits, containing material misstatements and omissions concerning the works' provenance, title, and authenticity.

160. The Dorfman Defendants transmitted to buyers, including Plaintiff (through the Art Advisor), fictitious or already assigned inventory/registration numbers for the Stolen Works to create the false impression that the Stolen Works were authorized for sale by Johns.

161. The Dorfman Defendants were aware that Meyer did not obtain good title to the works, including taking some out of the trash, which they concealed from Plaintiff and the Art Advisor as well as the dozens of other purchasers of the Stolen Works.

162. The Dorfman Defendants' scienter is established by the foregoing pattern of intentional and knowing fraudulent material misrepresentations and omissions.

The Dorfman Defendants Engaged In a Pattern of Racketeering Activity

163. The Dorfman Defendants engaged in a pattern of racketeering activity involving their sale of thirty-seven Stolen Works to more than twenty purchasers over a six-year period based upon the occurrence of numerous predicate acts, described below.

164. The Dorfman Defendants' racketeering acts were related to one another and formed a pattern of racketeering activity: (a) they were in furtherance of a common goal to sell and profit from the Stolen Works; (b) they used similar methods to perpetrate the fraudulent sale of the Stolen Works, including the same misstatements concerning the artworks' provenance and their authority to sell the Stolen Works; (c) they involved the same participants; and (d) they involved similarly situated victims.

165. The racketeering activity, including the predicate acts, extended over a substantial period of time, beginning as early as September 2006, and continuing through at least February 2012. Additionally, the racketeering acts were sufficiently continuous, and were a regular, indeed critical way of conducting the Dorfman Defendants' ongoing business and of conducting or participating in the ongoing RICO enterprise.

166. The Dorfman Defendants profited enormously from their fraudulent scheme, collecting approximately \$5.9 million from the sale of the Stolen Works.

The Dorfman Defendants Committed Numerous Predicate Acts

167. The Dorfman Defendants committed numerous predicate acts of racketeering activity in connection with the enterprise within the meaning of 18 U.S.C. § 1961(1), including without limitation, numerous and repeated violations of 18 U.S.C. § 2314 (relating to

transportation of stolen goods), 18 U.S.C. § 1341 (relating to mail fraud), 18 U.S.C. § 1343 (relating to wire fraud), and 18 U.S.C. § 2318 (relating to trafficking in counterfeit labels with respect to works of visual art).

Violations of 18 U.S.C. §§ 2314 and 2315

168. Section 2314 prohibits, among other things, the interstate or foreign transport of stolen goods and conduct in connection with any scheme or artifice to defraud that causes a person to travel in interstate or foreign commerce in the execution or concealment of that scheme or artifice to defraud. Section 2315 prohibits the knowing receipt, sale, concealment, possession, or disposition of stolen goods that have been transported interstate or abroad after being stolen, unlawfully converted, or taken.

169. Meyer, with the Dorfman Defendants' authorization, knowledge, and assistance, including their financial assistance, knowingly transported the Stolen Works from the Studio in Connecticut to the Dorfman Defendants and/or purchasers, including Plaintiff, located in other states and abroad. Meyer has pleaded guilty to a violation of 18 U.S.C. § 2314.

170. The Dorfman Defendants knowingly transported the Work to New York.

171. The Dorfman Defendants caused the Work to be shipped from New York through a third-party shipper to California and then to Plaintiff in Vancouver, British Columbia, Canada. The Dorfman Defendants paid for this shipping and related costs and expenses using the interstate mails and/or wires.

172. The Dorfman Defendants repeated many of these patterns each time they marketed and/or sold a Stolen Work.

173. On or about May 12, 2009, the Dorfman Defendants knowingly caused one the Stolen Works to be transported to New York, and then to New Jersey, where another of the Dorfman Defendants' victims resides.

174. On or about May 20, 2010, the Dorfman Defendants knowingly transported one of the Stolen Works to New York, where another of the Dorfman Defendants' victims resides.

175. On or about February 28, 2011, the Dorfman Defendants knowingly caused one of the Stolen Works to be transported to New York, and then to France, where another of the Dorfman Defendants' victims resides.

176. On or about April 6, 2011, the Dorfman Defendants knowingly caused one of the Stolen Works to be transported to New York, and then to Switzerland, where another of the Dorfman Defendants' victims resides.

177. On or about November 18, 2011, the Dorfman Defendants knowingly transported two of the other Stolen Works to New York, and then to Florida, where another of the Dorfman Defendants' victims resides.

Violations of 18 U.S.C. §§ 1341 and 1343

178. Section 1341 outlaws the use of a facility of the United States Postal Service or "any commercial or private interstate carrier" in connection with a fraudulent scheme or artifice. Section 1343 outlaws the use of "wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice."

179. The Dorfman Defendants, having devised the scheme or artifice to defraud, and/or to obtain money or property by means of false or fraudulent pretenses, representations, or promises, transmitted or caused to be transmitted by means of mail, wire, radio, or television

communication in interstate or foreign commerce writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice (namely, to sell the Stolen Works).

180. In late December 2007, by use of interstate wires, the Dorfman Defendants negotiated with the Art Advisor concerning the sale of the Work to Plaintiff.

181. On or about December 19, 2007, the Dorfman Defendants, using interstate wires, forwarded to the Art Advisor an e-mail from Meyer, including information about the purported origin of the Work.

182. On or about January 11, 2008, the Dorfman Defendants, using interstate wires, forwarded to the Art Advisor the “Do Not Sell Agreement” for Plaintiff to sign in connection with the sale of the Work.

183. On or about January 11, 2008, the Dorfman Defendants used interstate wires to transmit to the Art Advisor the Dorfman Invoice.

184. On or about January 15, 2008, the Dorfman Defendants, using the interstate mails and/or wires, sent to the Art Advisor an affidavit signed by Meyer, swearing to the authenticity of the Work, and claiming that he had the right to sell the Work.

185. On or about January 29, 2008, the Dorfman Defendants received from the Art Advisor by wire transfer the purchase price under the Dorfman Invoice.

186. On or about September 21, 2006, the Dorfman Defendants sold a Stolen Work for \$494,070 using the interstate mails and/or wires to transmit the invoice to the purchaser.

187. On or about February 27, 2007, the Dorfman Defendants sold a Stolen Work for \$468,205.62 using the interstate mails and/or wires to transmit the invoice to the purchaser.

188. On or about June 7, 2007, the Dorfman Defendants sold a Stolen Work for \$337,500 using the interstate mails and/or wires to transmit the invoice to the purchaser. On or

about June 11, 2007, the Dorfman Defendants received a wire transfer for \$337,500 in connection with the purchase of the Stolen Work.

189. On or about January 16, 2008, the Dorfman Defendants sold two Stolen Works for \$1,500,000 using the interstate mails and/or wires to transmit the invoice to the purchaser.

190. On or about April 15, 2008, the Dorfman Defendants sold a Stolen Work for \$180,000 through a dealer in Japan, using the international mails and/or wires to transmit the invoice to the purchaser. On or about April 16, 2008, the Dorfman Defendants received an international wire transfer for \$180,000 in connection with the purchase of the Stolen Work.

191. On or about October 9, 2008, the Dorfman Defendants sold a Stolen Work for \$100,000 using the interstate mails and/or wires to transmit the invoice to the purchaser. On or about October 28, 2009, the Dorfman Defendants received a wire transfer for \$100,000 in connection with the purchase of the Stolen Work.

192. On or about April 23, 2009, the Dorfman Defendants sold a Stolen Work for \$360,000 using the interstate mails and/or wires to transmit the invoice to the purchaser. On or about May 12, 2009, the Dorfman Defendants received a wire transfer for \$360,000 in connection with the purchase of the Stolen Work. On or about May 19, 2009, the Dorfman Defendants, using interstate mails, sent a letter to a dealer enclosing an affidavit signed by Meyer swearing that he received the Work from Johns and enclosing “a Jasper Johns label for the back of the frame.”

193. On or about May 8, 2009, the Dorfman Defendants sold a Stolen Work for \$335,000 using the interstate mails and/or wires to transmit the invoice to the purchaser. On or about May 18, 2009, the Dorfman Defendants received a wire transfer for \$335,000 in connection with the purchase of the Stolen Work.

194. On or about July 9, 2009, the Dorfman Defendants sold a Stolen Work for \$335,000 using the interstate mails and/or wires to transmit the invoice to the purchaser.

195. On or about February 8, 2010, the Dorfman Defendants sold a Stolen Work for \$300,000 using the interstate mails and/or wires to transmit the invoice to the purchaser.

196. On or about February 17, 2010, the Dorfman Defendants sold a Stolen Work for \$562,500 using the interstate mails and/or wires to transmit the invoice to the purchaser. On or about February 18 and March 8, 2010, the Dorfman Defendants received wire transfers for \$281,250 and \$280,651.10 in connection with the purchase of the Stolen Work.

197. On or about March 11, 2010, the Dorfman Defendants sold three Stolen Works for \$850,000 to an buyer in Switzerland, using the international mails and/or wires to transmit the invoice to the purchaser. On or about March 24, 2010, the Dorfman Defendants received an international wire transfer for \$850,000 in connection with the purchase of the work.

198. On or about March 29, 2010, the Dorfman Defendants used interstate wires to pay Meyer \$700,000 by wire transfer in connection with the sale of the Stolen Works.

199. In or about March/April 2010, the Dorfman Defendants, by use of interstate wires, negotiated the sale of a Stolen Work to Dae Associates, LLC. On or about April 15, 2010, the Dorfman Defendants, by the use of interstate mails, invoiced Dae Associates, LLC for the Stolen Work.

200. On or about April 26, 2010, the Dorfman Defendants, by use of interstate wires, wrote to Danese regarding the Stolen Work, "I expect the catalogue number on Friday so you can close on Friday." On or about May 7, 2010, the Dorfman Defendants, by use of interstate mails and/or wires, transmitted an affidavit signed by Meyer where he swears to the authenticity of the Stolen Work and his right to sell the Stolen Work.

201. On or about May 12, 2010, Danese, using interstate wires, paid the Dorfman Defendants \$600,000 for the Stolen Work.

202. On or about May 24, 2010, the Dorfman Defendants used interstate mails to pay Meyer \$260,000 by check in connection with the sale of the Stolen Works.

203. On or about November 18, 2010, the Dorfman Defendants sold a Stolen Work for \$400,000 using the interstate mails and/or wires to transmit the invoice to the purchaser. On or about December 14, 2010, the Dorfman Defendants received a wire transfer for \$200,000 in connection with the purchase of the Stolen Work.

204. On or about December 15, 2010, the Dorfman Defendants used interstate wires to pay Meyer \$100,000 by wire transfer in connection with the sale of the Stolen Works.

205. On or about February 10, 2011, the Dorfman Defendants sold a Stolen Work for \$800,000 to a buyer in France using the international mails and/or wires to transmit the invoice to the purchaser. On or about February 28, 2011, the Dorfman Defendants received an international wire transfer for \$799,985 for the Stolen Work.

206. On or about March 8, 2011, the Dorfman Defendants sold a Stolen Work for \$492,500 to a buyer in Switzerland using the international mails and/or wires to transmit the invoice to the purchaser. On or about April 6, 2011, the Dorfman Defendants received an international wire transfer for \$492,477.79 for the Stolen Work.

207. On or about March 29, 2011, the Dorfman Defendants used interstate mails to pay Meyer \$375,000 by check in connection with the sale of the Stolen Works.

208. On or about June 27, 2011, the Dorfman Defendants used interstate mails to pay Meyer \$292,000 by check in connection with the sale of the Stolen Works.

209. On or about July 22, 2011, the Dorfman Defendants sold a Stolen Work for \$1,150,000 using the interstate mails and/or wires to transmit the invoice to the purchaser.

210. On or about February 3, 2012, the Dorfman Defendants used interstate wires to pay Meyer \$125,000 by wire transfer in connection with the sale of the Stolen Works.

211. From 2006 through 2012, in furtherance of their scheme, the Dorfman Defendants regularly communicated with Meyer by interstate mails, interstate wires, and interstate telephone wires concerning their efforts to market and/or sell each of the 37 Stolen Works.

212. On or about September 9, 2006, by interstate wires, Meyer e-mailed Dorfman concerning their plan to falsely represent to buyers that the Stolen Works were “authentic[.]”

213. On or about February 5, 2007, by interstate wires, Meyer e-mailed Dorfman to inform Dorfman that he had taken certain works “out of the garbage . . . So you can tell me what to write or say about that.”

214. On or about January 10, 2008, by use of interstate wires, Meyer e-mailed Dorfman concerning the fictitious inventory numbers assigned to the Work and other Stolen Works.

215. On or about January 27, 2010, by interstate wires, Dorfman e-mailed Meyer complaining about the works he received: “We are airing the 3 paintings . . . Where did you store them? With animals?” On or about January 27, 2010, by interstate wires, Meyer responded to Dorfman by e-mailing that he “was supposed to destroy them so they weren’t in good shape.”

216. On or about October 6, 2010, by interstate wires, Meyer e-mailed Dorfman that an image of a work he was supposed to destroy surfaced: “Alaster sent a iPhone image of the ocean drawing to the office here. Very bad as I was supposed to destroy.”

217. On or about October 7, 2010, by interstate wires, Meyer e-mailed Dorfman to “whatch [sic] out for . . . F.B.I.” and asked Dorfman to “[w]ipe drawing with glass cleaner and send to JJ Sharon ct. Very Serious.”

218. On or about October 27, 2010, by interstate wires, Meyer e-mailed Dorfman concerning their efforts to cover-up the fraud: “Originally I wanted that ink on plastic drawing that was the start of all this turmoil sent to jasper c/o Sharon post office 06069 with no return information and cleaned with like window cleaner so that it couldn’t be traced back to anyone . . . I was supposed to have destroyed it.”

219. On or about March 26, 2012, by interstate wires, Meyer e-mailed Dorfman advising that he was going to confess the fraud to Johns: “And go to my art father and lay my cards on the table. Like you said do you get mad at bloke for doing something wrong, a little but then you get over it.”

220. Each of the Dorfman Defendants knew, expected, reasonably foresaw, and intended that the foregoing transmissions by means of mail, wire, radio, or television communication in interstate or foreign commerce would be used in furtherance of their racketeering scheme, and that such use was an essential part of their scheme.

Violations of 18 U.S.C. § 2318

221. Section 2318 prohibits a person who, “in any of the circumstances described in subsection (c), knowingly traffics in” “a counterfeit label or illicit label affixed to, enclosing, or accompanying, or designed to be affixed to, enclose, or accompany . . . a work of visual art.” 18 U.S.C. § 2318(a)(1)(A)(vi).

222. Section 2318(c) requires that the offense be committed in the United States, that the Dorfman Defendants use the mail or a facility of interstate or foreign commerce, and that the

“counterfeit label or illicit label is affixed to, encloses, or accompanies, or is designed to be affixed to, enclose, or accompany . . . a work of visual art.”

223. The Stolen Works are works of visual art within the meaning of Section 2318.

224. The Dorfman Defendants provided for certain of the Stolen Works counterfeit “Jasper Johns label for the back of the frame.”

225. These counterfeit labels were affixed to, accompanied, or designed to be affixed to the artworks. The counterfeit labels were intended to create the impression that the labels had been created by the Studio and that the Stolen Works were authorized for sale by the Studio.

226. Over the course of their six-year fraudulent scheme, the Dorfman Defendants fabricated documents, which they then transmitted to buyers, listing fictitious inventory numbers for the Stolen Works, as in the case of the Work, and/or assigning registration numbers that already had been assigned by Johns to other artworks. These documents describing the Stolen Works and listing fabricated inventory numbers were counterfeit labels that accompanied or were designed to accompany the Stolen Works.

227. The Stolen Works, including the Work, were trafficked in the United States and shipped via mail or other interstate common carrier. Payments for the Stolen Works, including the Work, were transmitted by mail, wire, or another similar facility of interstate or foreign commerce. The Dorfman Defendants caused the mailing or use of the wires for the purpose of executing the scheme; or, at the very least, the mailing or use of the wires was incidental to an essential part of the scheme.

228. The Dorfman Defendants willfully and with intent to defraud, sold the Stolen Works to numerous unsuspecting victims, including Plaintiff, who reasonably relied upon the Dorfman Defendants’ material misrepresentations and omissions concerning the Stolen Works.

229. Plaintiff and the Art Advisor, like the other victims of this enterprise, were injured by the Dorfman Defendants' fraudulent conduct. Plaintiff paid \$800,000 for the Work as a proximate result of the operation of the enterprise, and because the Work was stolen, Plaintiff does not have good title to the Work.

230. The Work is virtually worthless and unsaleable for the separate and independent reason that the market does not consider it to be authentic because it will never be included in the forthcoming catalogue raisonné for Johns's works.

231. By reason of the Dorfman Defendants' violation of 18 U.S.C. § 1962(c), Plaintiff is entitled to recover treble damages, interest, costs, and reasonable attorneys' fees.

FIFTH CAUSE OF ACTION
Violation of 18 U.S.C. § 1962(d) (RICO Conspiracy)

232. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 231 as if fully set forth herein.

233. The Dorfman Defendants violated 18 U.S.C. § 1962(d) by conspiring with Meyer to commit the actions detailed in this Complaint in violation of 18 U.S.C. § 1962(c).

234. The Dorfman Defendants and Meyer conspired with each other to commit the predicate acts described above in furtherance of their scheme to sell the Stolen Works. Each of these members of the conspiracy, by the nature of their positions in the racketeering enterprise, including the Dorfman Defendants' role as the "mastermind" of the scheme, knew of the nature of the conspiracy and facilitated its furtherance.

235. None of these members of the conspiracy withdrew from the conspiracy; indeed, even in the face of a possible government investigation the Dorfman Defendants became even more resolute and determined to carry out the enterprise, and they continued to sell the Stolen Works for at least the next two years.

236. As alleged herein, the conspiracy was initiated by the agreement of the Dorfman Defendants and Meyer beginning as early as September 2006, and continued through at least February 2012.

237. The Dorfman Defendants initiated the conspiracy when they encouraged Meyer to steal and subsequently assisted Meyer in marketing and selling the Stolen Works. The Dorfman Defendants knew of the facts and circumstances described above revealing that the artworks were stolen and that Meyer had not acquired good title.

238. Each of the Dorfman Defendants agreed to participate in the fraudulent scheme through a pattern of racketeering, and committed overt acts in furtherance thereof.

239. Each of the Dorfman Defendants was aware of the participation of the other Dorfman Defendants and Meyer and each of the Dorfman Defendants knew the nature of the conspiracy to sell the Stolen Works.

240. The Dorfman Defendants conspired with Meyer to market and sell the Stolen Works, to establish and maintain practices to do so, and to reap the benefits therefrom. The purpose of the enterprise, and thus the conspiracy, was to market and to sell the Stolen Works, including the Work at issue in this case. Thus, the Dorfman Defendants knew that the enterprise would be operated through a pattern of racketeering activity, and each of the Dorfman Defendants committed numerous predicate acts in furtherance of the fraudulent scheme.

241. None of the Dorfman Defendants withdrew, or otherwise dissociated themselves from the conspiracy or the other conspirators.

242. Plaintiff paid \$800,000 for the Work as a proximate result of the operation of the conspiracy. Accordingly, Plaintiff is entitled to treble damages, plus interest, costs, and attorneys' fees.

SIXTH CAUSE OF ACTION
Breach of Warranty

243. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 242 as if fully set forth herein.

244. Prior to and at the time of the sale of the Work, the Dorfman Defendants knowingly and intentionally transmitted statements and materials to the Art Advisor to be communicated directly with Plaintiff expressly and unequivocally warranting that: (1) Meyer received the Work “directly from Jasper Johns” as a gift, (2) Meyer is the “rightful owner” of the Work, (3) Meyer has “owned” the Work since 2005, (4) Meyer has “the right to sell” the Work, (5) the Work “is recorded in Jasper Johns’ archives,” (6) the Work has been assigned a “Studio Archive # OA-M176,” and (7) the Work “is an authentic work of Jasper Johns.”

245. These representations concerning title and provenance, which induced Plaintiff to consummate the transaction and formed part of the basis of the bargain, constitute express warranties under N.Y. U.C.C. §§ 2-312 and 2-313(1). These express warranties that the Dorfman Defendants communicated orally and in writing to Plaintiff (through the Art Advisor) were false.

246. Meyer has admitted that he stole the Work, so it was false for the Dorfman Defendants to represent and warrant that Meyer received the Work directly from Jasper Johns.

247. Meyer has admitted that he stole the Work, so it was false for the Dorfman Defendants to represent and warrant that Meyer is the rightful owner of the Work.

248. Meyer has admitted that he stole the Work, so it was false for the Dorfman Defendants to represent and warrant that Meyer has “owned” the Work since 2005.

249. Meyer has admitted that he stole the Work, so it was false for the Dorfman Defendants to represent and warrant that Meyer has “the right to sell” the Work.

250. The Work is not recorded in the Jasper Johns archives and it has not been assigned a “Studio Archive # OA-M176,” so those representations and warranties were false.

251. Though the Work was created by the hand of Jasper Johns, it was not a completed artwork that Johns intended to be included among his oeuvre, or complete body of works. Indeed, the Work will not be included in the forthcoming catalogue raisonné of Johns’s works, and “non-inclusion in a catalogue raisonné is understood in the art world as a conclusion that the work is not authentic.” *Thome v. Calder Found.*, 70 A.D.3d 88, 107 (1st Dep’t 2009). So it was false for the Dorfman Defendants to represent and warrant that the Work “is an authentic work of Jasper Johns.”

252. Plaintiff relied on these warranties and would not have purchased the Work at any price had it known that any one of these warranties were false.

253. As a proximate result of the Dorfman Defendants’ breach of warranties concerning the Work, and their conduct as alleged herein, Plaintiff paid \$800,000 for the Work even though Plaintiff never obtained good title to the Work because it was stolen.

254. The Work is virtually worthless and unsaleable for the separate and independent reason that the market does not consider it to be authentic because it will never be included in the forthcoming catalogue raisonné for Johns’s works.

255. Because the Dorfman Defendants willfully breached numerous express warranties concerning the Work, Plaintiff is entitled to an award of damages, including punitive damages.

SEVENTH CAUSE OF ACTION
Unilateral Mistake

256. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 255 as if fully set forth herein.

257. A unilateral mistake existed by virtue of Plaintiff's and the Art Advisor's mistaken beliefs that Meyer had good title to the Work and that Meyer and the Dorfman Defendants had the right to sell it.

258. It is difficult to imagine a more material fact in a sales contract, indeed a more basic assumption on which a contract is made, than that the seller has good title to the subject of the sale and the right to transfer title to it.

259. Plaintiff and the Art Advisor entered into the transaction without knowledge of the fact that Meyer lacked good title to the Work and that the Dorfman Defendants had no right to sell it.

260. The Dorfman Defendants knew, or it was so obvious that they must have known, that Plaintiff and the Art Advisor entered into the transaction under this mistaken belief.

261. Plaintiff and the Art Advisor could not have ascertained the mistaken belief at the time of the transaction because such information was exclusively in the Dorfman Defendants' possession. Moreover, the confidentiality and resale restrictions that the Dorfman Defendants imposed as a condition of sale prohibited Plaintiff and the Art Advisor from contacting anyone other than the Dorfman Defendants to discover additional facts concerning the Work and its provenance, title, and authenticity.

262. Plaintiff and the Art Advisor performed all their obligations in connection with the sale of the Work.

263. As a proximate result of the Dorfman Defendants' fraudulent material misstatements and omissions concerning the Work's title, provenance, and authenticity, Plaintiff paid \$800,000 for the Work even though Plaintiff never obtained good title to the Work because it was stolen.

264. The Work is virtually worthless and unsaleable where the market does not consider it to be authentic because it will never be included in the forthcoming catalogue raisonné for Johns's works.

265. Plaintiff has no adequate remedy at law, and it would be unconscionable to allow the Dorfman Defendants to retain the benefits of this sale, so the transaction should be rescinded.

DEMAND FOR A JURY TRIAL

Under Federal Rule of Civil Procedure 38, Plaintiff respectfully requests a trial by jury on all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Equinox Gallery Limited, individually and as an assignee, respectfully requests that the Court enter a judgment awarding: (1) compensatory and consequential damages in an amount to be determined at trial; (2) rescission and/or rescissory damages; (3) treble damages and attorneys' fees under 18 U.S.C. § 1962(c) and (d); (4) punitive damages in an amount to be determined at trial by virtue of the Dorfman Defendants' willful and intentional misconduct; (5) reasonable attorneys' fees, costs, expenses, and disbursements; and (6) such other relief as the Court deems just and proper.

Dated: January 11, 2017

GROSSMAN LLP

By:  _____

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