UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REPUBLIC OF TURKEY, Plaintiff-Counterclaim Defendant, v. CHRISTIE'S, INC., Defendant, MICHAEL STEINHARDT, Defendant-Counterclaimant, ANATOLIAN MARBLE FEMALE IDOL OF KILIYA TYPE, Defendant-in-rem.	:	Case No.: 17-Civ. 3086 (AJN)

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND APPLICABLE LAW AND APPLICATION OF LAW TO FACTS

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I. PROPOSED FINDINGS OF FACT

A. The Parties

1. Plaintiff Republic of Turkey (the "Republic" or "Turkey") is a foreign state as defined in 28 U.S.C. § 1603(a). (Stipulated Fact No. 1)

2. Defendant Christie's ("Christie's") is a corporation incorporated in the State of New York with its principal place of business at 20 Rockefeller Plaza, New York, NY 10020. (Stipulated Fact No. 2)

3. Defendant Michael Steinhardt ("Steinhardt") is a citizen of the United States and a resident and domiciliary and therefore a citizen of the State of New York. (Stipulated Fact No. 3)

4. The subject matter of this action, the Defendant-in-rem (the "Idol"), is an Anatolian marble female Idol of Kiliya-type. (Stipulated Fact No. 4)

B. The Idol and its Turkish Origins

5. The Idol is an extremely rare artifact. (Stipulated Fact. No. 12)

6. It belongs to a Kiliya figurine tradition that is distinctive to Anatolia. (Stipulated Fact No. 13)

7. Anatolia is entirely contained within the modern boundaries of Turkey. (Stipulated Fact No. 14)

8. Kulaksizlar, a site located in Manisa Province in modern-day Turkey, is the home of the only workshop known to date to have manufactured Kiliya-type idols. (PTX 284 [Direct Testimony Declaration of Neil Brodie ("Brodie Decl.")] ¶ 12; PTX 89 at CHR11517)

9. The Kulaksizlar workshop dates to the third quarter of the fifth millennium BC, specifically in or around the later Middle Chalcolithic period in Turkey (4500–4300 BC). (PTX 284 [Brodie Decl.] ¶ 13)

10. The Kulaksizlar workshop was first identified in the 1990s as a result of a pair of archeological surveys in the mid-1990s, followed by an additional survey in 1999 and most recently by an archeological excavation in 2018. (PTX 15; PTX 89 at 11509; PTX 62; DTX 89B; DTX 176)

C. The Martins' Purchase of the Idol from J.J. Klejman

11. In or around 1961, Alastair and Edith Martin (the "Martins"), acquired the Idol for $12,500.00. (Stipulated Fact. No. 5; PTX 18; PTX 303 [Deposition of Robin Martin ("Martin Tr.")] 35:5-37:5)

12. Alastair Martin was a renowned collector of antiquities. (Stipulated Fact No. 7; PTX 284 [Brodie Decl.] ¶ 34; DTX 201D [Direct Testimony Declaration of Maxwell Anderson ("Anderson Decl.")] ¶ 37; Trial Tr. [Kim Benzel Testimony ("Benzel")] 283:22-284:2)

13. The Martins acquired the Idol from J.J. Klejman Gallery ("Klejman"), a New York gallery. (PTX 18; PTX 19; PTX 21; PTX 264; PTX 303 [Martin Tr.] 35:5-37:5; PTX 305 [Deposition of Michael Steinhardt ("Steinhardt Tr.")] 134:23-135:6)

14. Alastair Martin acknowledged that Klejman was the source of the Idol in his Guennol Collection annotations and in a letter to Vaughn Crawford, the head of the Department of the Ancient Near Eastern Art Department at the Metropolitan Museum of Art ("The Met"), on April 18, 1975. (PTX 18; PTX 19; Trial Tr. [Maxwell Anderson Testimony ("Anderson")] 816:12-14; PTX 303 [Martin Tr.] 33:10-34:3, 35:18-36:4, 36:12-37:5)

15. There is no prior record or documentation of the Idol's existence, discovery or ownership by anyone, including by a museum or an inventoried collection, before the Martins'

acquisition of the Idol from Klejman. (PTX 284 [Brodie Decl.] ¶ 25; (PTX 283 [Direct Testimony Declaration of Zeynep Boz ("Boz Decl.")] ¶ 5)

16. Alastair Martin selected the Idol from a "group" of "several" Kiliya figurines he was offered at the time by Klejman, suggesting that they had been looted. (PTX 20 at BKM-0003, BKM-0005: PTX 21; PTX 283 [Boz Decl.] ¶¶ 12, 14; PTX 303 [Martin Tr.] 165:17-22, 166:8-14, 167:8-11)

17. According to research conducted by Christie's and submitted as an exhibit to Bernheimer's Declaration in Support of Defendant Christie's Opposition to Republic of Turkey's Motion for a Preliminary Injunction dated June 9, 2017 (Dkt. #38), two other Kiliya-type idols reportedly found at Kırşehir were "with J.J. Klejman, New York" in 1965, thereby corroborating the fact that Klejman had offered Alastair Martin his choice of several idols. (PTX 266)

D. <u>The Martins' Loan of the Idol to The Met</u>

18. In 1966, the Martins loaned the Idol, a part of their so-called "Guennol Collection," to The Met. (Stipulated Fact No. 7; PTX 19)

19. Alastair Martin had a long and close association with The Met. For its part, The Met recognized Martin's longstanding connection to it in 1968 when he was elected an honorary trustee, serving until 1992, acting in an advisory role on its Acquisitions Committee from 1984 to 1992. The Martins, in turn, acknowledged their connection to The Met in 1975 when they expressed their "warmest gratitude" to The Met staff. Martin also sat on the board of trustees of the Brooklyn Museum. (Stipulated Fact Nos. 6-7; PTX 284 [Brodie Decl.] ¶¶ 34-35; PTX 136 at vii-viii; PTX 180)

20. In 1983, the Martins removed the Idol from their Guennol Collection and transferred it to Buttercup Beta Corporation, owned by their son, Robin Martin, and his children. (Stipulated Fact Nos. 7-8)

21. Between 1966 and 1993, the Idol was on loan to The Met, and in 1993, it was returned to Robin Martin following his request. (PTX 180; PTX 303 [Martin Tr.] 65:5-67:10)

E. Martin's Knowledge of the Lydian Hoard

22. Alastair Martin undoubtedly would have been aware of the lengthy and very public litigation brought by Turkey against The Met to recover the Lydian Hoard from 1987 to 1993, which caught the attention of the entire antiquities world and coincided with both Martin's tenure as honorary trustee and advisory member of the Acquisitions Committee. (PTX 284 [Brodie Decl.] ¶ 34; Trial Tr. [Anderson] 927:15-929:14)

23. An annotated volume of the collection catalogue, published as *The Guennol Collection* (Volume 2. New York: Met Publications [New York] 1975), in Alastair Martin's personal archives, contains the following annotation alongside the entry for the Kiliya Idol: "1990 Turkey may present a problem here, be careful." (PTX 21 at BKM-00010)

24. Dr. Anderson testified that the expression "present a problem" in Alastair Martin's annotated catalogue could be a reference to a "specious claim by a state party," or that there could be other explanations. (Trial Tr. [Anderson] 858:8-23)

F. Klejman's Reputation and Dealings with the Lydian Hoard

25. Klejman was a primary conduit into the United States for antiquities looted from Turkey. There is no evidence that he was a source of looted objects from countries neighboring Turkey, like Greece or Bulgaria. (PTX 284 [Brodie Decl.] ¶¶ 17, 20)

26. During the 1960s, Klejman had a reputation as a favorite "dealer-smuggler" among his customers like the Metropolitan Museum of Art ("The Met") and was well-known for dealing in looted Turkish antiquities. The best known of these antiquities was the "Lydian Hoard," which was returned to the Republic in 1993 by The Met, after years of a very public litigation (from 1987 to 1993) because they had been looted from Turkey. (Stipulated Fact Nos. 17, 26; PTX 66; PTX 284 [Brodie Decl.] ¶¶ 20, 35-36, 43; PTX 283 [Boz Decl.] ¶¶ 6(d), 12; (Trial Tr. [Benzel] 240:4-19; PTX 305 [Steinhardt Tr.] 118:24-119:11, 245:9-13, 245:25-246:14, 247:17-23)

27. Klejman's questionable reputation as an antiquities dealer is corroborated by Dr. Kim Benzel, Curator in Charge of the Ancient Near Eastern Department at The Met. Dr. Benzel testified that Klejman had a reputation of being "[n]ot so honorable overall. . . " and as someone who dealt in antiquities that "may or may not have had. . . good provenance or had been acquired properly." Dr. Benzel also testified that she learned of Klejman's reputation from a curator in her department at The Met, Oscar White Muscarella. (Trial Tr. [Benzel] 232:9-17, 238:19-239:13, 240:4-19)

28. Dr. Anderson, in his direct testimony declaration, describes the unrelated fact of Klejman's persecution during the Holocaust and the quality of his Madison Avenue gallery's window display in 1967, and brushes aside Thomas Hoving's comment that Klejman was one of The Met's "favorite dealer-smugglers." (DTX 201D [Anderson Decl.] ¶¶ 38-39, 41)

29. Thomas Hoving acknowledged his own role in encouraging looting while directing The Met. (Trial Tr. [Anderson] 922:4-14; PTX 133)

30. In 1993, Hoving, who became director of The Met in 1967, wrote retrospectively about the Lydian Hoard. Hoving recalled that during an internal museum meeting held in response

to an earlier 1970 complaint by the Turkish government about the Hoard's acquisition, he had said that "[w]e all believe the stuff was illegally dug up" and that "[w]e took our chances when we bought the material." (PTX 284 [Brodie Decl.] ¶ 31; PTX 133)

31. Likewise, Philippe de Montebello, Thomas Hoving's successor at The Met and its director at the time of the Lydian Hoard's return to Turkey in 1993, which was about the same time that Steinhardt acquired the Idol, was quoted at that time as saying, "our own records suggested that some museum staff during the 1960s were likely aware, even as they acquired these objects, that their provenance was controversial." (PTX 284 [Brodie Decl.] ¶ 35; PTX 139)

32. Dr. Anderson also described the "methods of collection" of his mentor and former boss at The Met, Dietrich von Bothmer, as "swashbuckling." Von Bothmer was the head of the Department of Greek and Roman Art under Hoving and the person responsible for buying for The Met the Lydian Hoard from Klejman starting in 1966. (Trial Tr. [Anderson] 916:11-917:12; PTX 284 [Brodie Decl.] ¶¶ 35-36; PTX 101 at xvi, PTX 7 at ¶¶ 2-3; PTX 133)

33. During cross-examination, Dr. Anderson tried to distance himself and other departments at The Met from von Bothmer and Klejman. (Trial Tr. [Anderson] 916:17-24, 919:7-23, 924:4-12, 925:10-25, 927:3-9)

34. Before returning the Lydian Hoard, The Met had concealed the Turkish origins of the Hoard for almost twenty-five years. (PTX 284 [Brodie Decl.] ¶ 43; Trial Tr. [Anderson] 885:16-25; PTX 133)

G. Steinhardts' Acquisition and Loan of the Idol

35. Within a month after Robin Martin received the Idol back from The Met, on July 16, 1993, the Merrin Gallery, a New York antiquities dealer, acquired it from Buttercup Beta Corporation. (Stipulated Fact No. 9; *see supra* ¶ 23)

36. Steinhardt and his wife, in turn, jointly acquired the Idol from the Merrin Gallery for $1,500,000 on or around August 16, 1993. (Stipulated Fact Nos. 10-11)

37. Steinhardt had started collecting antiquities in the late 1980s and has amassed a collection of several hundred objects from galleries, dealers and auction houses, with art and antiquities comprising 60% of his total assets. (PTX 305 [Steinhardt Tr.] 28:3-5, 29:11-30:11, 31:13-16, 37:12-17, 39:25-40:8, 43:7-11, 49:9-19, 57:6-18, 152:21-153:6; DTX 201BB [Direct Testimony Declaration of Michael Steinhardt ("Steinhardt Decl.")] ¶ 7)

38. As far back as 1993, Steinhardt maintained records of his antiquities acquisitions and sales. Steinhardt employed someone to be in charge of recording objects that Steinhardt bought and sold. Such records included inventories of Steinhardt's antiquities collection. By 1993, Steinhardt had acquired approximately 150 antiquities. (Trial Tr. [Michael Steinhardt Testimony ("Steinhardt")] 637:23-638:17; PTX 196; PTX 199)

39. In acquiring the Idol, Steinhardt did not attempt to contact Alastair Martin, whom he knew. Steinhardt testified that he spoke only to the Merrin Gallery and people he knew at and through The Met. (DTX 201BB [Steinhardt Decl.] ¶¶ 12, 14-16; Trial Tr. [Steinhardt] 648:3-10, 648:21-649:1, 650:15-20, 660:9-661:5, 662:2-664:9)

40. In his direct testimony declaration, Steinhardt suggests that the Martins' ownership and The Met's possession of the Idol on loan were enough provenance for him. (DTX 201BB [Steinhardt Decl.] ¶ 18)

41. Steinhardt has a decades-long close relationship with The Met, which he describes as "one of [his] particularly favorite institutions" and to which he has contributed substantial sums and loaned various objects over the years. (DTX 201BB [Steinhardt Decl.] ¶ 27; Trial Tr. [Steinhardt] 614:16-615:16)

42. Steinhardt has been a member of The Met's committee, "Friends of Greek and Roman Art: Philodoroi," since its inception in or around the 1980s. The Philodoroi committee advises on the "political circumstances of collecting Greek and Roman art." (Trial Tr. [Steinhardt] 616:21-617:4, 617:20-24; PTX 305 [Steinhardt Tr.] 123:10-124:21; DTX 201BB [Steinhardt Decl.] ¶ 27)

43. The Judy and Michael Steinhardt Collection loaned the Idol to The Met in 1999, where it remained until 2007 when it was returned to Steinhardt. (Stipulated Fact No. 23)

H. <u>Steinhardt's Consignment of the Idol to Christie's for Sale</u>

44. In February 2017, Max Bernheimer, International Head of Antiquities at Christie's, approached Steinhardt by email to request that he consider consigning the Idol to Christie's. In his email, Bernheimer told Steinhardt that the sale of the Idol would cause "no problems." (DTX 201A [Direct Testimony and Declaration of G. Max Bernheimer Decl. ("Bernheimer Decl.")] ¶ 14; Trial Tr. [G. Max Bernheimer Testimony ("Bernheimer")] 529:3-9, 554:3-555:3)

45. On or about March 1, 2017, Steinhardt entered into an agreement with Christie's to consign the Idol to Christie's for sale. Steinhardt agreed to appoint Christie's as his exclusive agent to sell the Idol by auction. (Stipulated Fact No. 62)

46. Around March 2, 2017, Steinhardt consigned the Idol to Christie's for sale; it was delivered to Christie's that same day. (Stipulated Fact No. 63)

I. Christie's Admissions that the Idol came from Turkey

47. On or about March 15, 2017, Christie's prepared a Provenance and Country of Origin Declaration for the Idol (in which Christie's explicitly advises signatories may be provided to governmental authorities). Christie's identified "Turkey" as the Idol's "Country of Origin." Steinhardt subscribed to and certified the Declaration on March 23, 2017. (PTX 78; PTX 84; PTX 87; PTX 305 [Steinhardt Tr.] 239:18-240:4)

48. On or about March 16, 2017, Christie's prepared a draft press release announcing the upcoming sale of the Idol at Christie's April 28, 2017 auction (the "Auction"). In the draft, the Idol is identified as coming "from Turkey." The description was subsequently deleted, pursuant to an email from Bernheimer who, in directing the deletion, remarked: "I would remove 'from Turkey'[.] Why poke them in the eye?" The final press release was issued by Christie's on or about March 24, 2017. (Stipulated Fact No. 68; PTX 80; PTX 281)

49. Bernheimer, in his direct testimony declaration, admits that he instructed that the reference be changed. At trial, Bernheimer testified that he meant his remark to mean that the original description of the Idol being Turkish in the draft press release was inaccurate and he meant only to correct the error because the Idol could have been discovered somewhere else outside of Turkey. (DTX 201A [Bernheimer Decl.] ¶ 58; Trial Tr. [Bernheimer] 727:4-729:17)

50. Bernheimer also testified that his remark was a result of having "a jokester streak," his "being silly with [his] team" and "being funny." (Trial Tr. [Bernheimer] 727:1620, 728:4-13, 729:11-17)

51. On or about March 21, 2017, an interdepartmental presentation made at Christie's described the Idol is the "'Turkish cousin' of the Cycladic (Greek) Schuster Master." (PTX 81)

52. On or about April 14, 2017, Bernheimer sent an email to a potential Christies' customer in which he identified the Idol as "originating" in "further north and east in modern Turkey." (PTX 82; Trial Tr. [Bernheimer] 788:21-790:11)

53. In an email by Alexandra Olsman, a Junior Specialist, Antiquities at Christie's, sent on or about April 12, 2017, Olsman stated that the Idol is of Kiliya-type, and that such idols "originate from Turkey and only Turkey." (PTX 83)

54. Christie's listed the Idol, along with provenance information, in the catalogue for the Auction. (Stipulated Fact No. 64)

55. Christie's catalogue describes the Idol as "AN ANATOLIAN MARBLE FEMALE IDOL OF KILIYA TYPE" in a heading using upper-case typeset. (Stipulated Fact No. 65)

56. In its standard Conditions of Sale in the same catalogue, Christie's warrants that property described in a heading, printed in upper case type, and without qualification, is of the period, culture, source or origin described. (PTX 3 at REPTKY0005136-37)

57. Before the auction date, Christie's contacted a scholar, Dr. Pat Getz-Preziosi (now Getz-Gentle), whom Defendants' own expert describes as being "among the world's leading scholars of Neolithic and Chalcolithic statuettes," about Kiliya-type figures, asking whether she

had "ever come across one that was not from Turkey." Her response was: "I have not come across any Kilia [sic] figures that did not come from Turkey." (PTX 63; PTX 284 [Brodie Decl.] ¶ 19)

J. Christie's Policy Recognizes the 1906 Decree

58. In its internal Policy on Cultural Property (the "Policy"), Christie's lists 1906 as the "Sensitive Date" for Turkey as a result of its "Local Legislation." The Policy also states that "Christie's has a more restrictive policy for cultural property originating from certain countries" "in some cases. . . because of legislation in the country of origin which confers on the State ownership of all cultural property within the territory after a specified date." The Policy was in effect at the time the Idol was offered for sale at Christie's. (PTX 77; DTX 201A [Bernheimer Decl.] ¶ 63; Trial Tr. [Bernheimer] 758:21-759:6, 760:12-23)

59. Christie's was required by the Policy to demonstrate with "verifiable information" that the Idol was outside of Turkey before 1906, and if it could not do so, refer the matter to the Christie's Cultural Property Committee, which included members of Christie's Legal Department, who had helped draft the Policy. (PTX 77; DTX 201A [Bernheimer Decl.] ¶ 72; Trial Tr. [Bernheimer] 740:4-7, 751:16-752:13)

60. Christie's was not able to demonstrate by reference to verifiable documentation that the Idol was outside of Turkey before 1906 because no such evidence existed. (Trial Tr. [Bernheimer] 762:13-20, 763:2-5, 765:12-22)

61. Bernheimer testified that it was unnecessary to refer the matter to the Cultural Property Committee because everyone on the Committee knew the Idol was for sale at the Auction. (Trial Tr. [Bernheimer] 763:6-14; DTX 201A [Bernheimer Decl.] ¶ 73)

62. In his direct testimony trial declaration, Bernheimer states that the "sensitive date" is only one that "a country may argue should be considered as the date by which objects must be out of the country in order for good title to be exchanged, but that Christie's does not necessarily agree with." (DTX 201A [Bernheimer Decl.] ¶ 64; (Trial Tr. [Bernheimer] 763:6-10)

63. Bernheimer offers in his direct testimony declaration that Christie's can ignore the local legislation of a country like Turkey and decide that the appropriate date is 1970. Christie's Cultural Property Policy sets forth the sensitive date protocol as an additional, not an alternative, requirement to the UNESCO "Convention on the Means of Publishing and Preventing Illicit Import, Export and Transfer of Ownership of Cultural Property 1970." (DTX 201A [Bernheimer Decl.] ¶¶ 24, 64, 76; PTX 77 at Appendix 1)

K. The Republic's Claim to the Idol

64. Around March 26, 2017, the Republic learned about the planned sale of the Idol from an email from a journalist named Özgen Açar that included a link to an ArtDaily news article about the Auction. (Stipulated Fact No. 69)

65. Christie's catalogue for the Auction, entitled "The Exceptional Sale 2017", included the following provenance for the Idol:

> Alastair Bradley and Edith Martin, New York, acquired 1966 or prior; thence by descent.
> with the Merrin Gallery, New York, acquired from the above, 1993.
> Acquired by the current owner from the above, 16 August 1993.

(Stipulated Fact No. 66)

66. The provenance published in the Christie's catalogue is not only the first written provenance for the piece; it is the first ever known publicly published provenance for the Idol. (PTX 283 [Boz Decl.] ¶¶ 4-5; (Trial Tr. [Anderson] 814:20-815:24)

67. Ms. Boz testified that the absence of a detailed provenance for such an important piece suggested that the Idol must have been discovered in Turkey just prior to the time it was acquired by the persons identified in the Christie's catalogue. The then-Anti-Smuggling Branch thus "had good reason to suspect that the Idol had been looted from Turkey," and "proceeded to investigate this matter further and specifically obtain expert advice on the origin of the Idol." (PTX 283 [Boz Decl.] ¶¶ 6-7)

68. On or about March 29, 2017, the General Directorate for Cultural Heritage and Museums (the "General Directorate"), forwarded that information to the Province Directorate of Culture and Tourism in Ankara and asked that experts at the Museum of Anatolian Civilizations (the "Museum") in Ankara prepare a report concerning the Idol. (PTX 283 [Boz Decl.] ¶ 7; PTX 10)

69. On or about April 3, 2017, the Province Directorate of Culture and Tourism in Ankara forwarded the March 29, 2017 letter from the General Directorate to the Directorate of the Museum requesting that a report be sent to the Province Directorate. (PTX 283 [Boz Decl.] ¶ 7; PTX 11)

70. The report did not take long to prepare. On April 7, 2017, two archaeological experts at the Museum of Anatolian Civilizations, Aynur Talaakar and Belma Kulaçoğlu, prepared the report requested by the General Directorate. (PTX 283 [Boz Decl.] ¶¶ 7-9; PTX 14)

71. On or about April 10, 2017, the Province Directorate received a letter from the Museum Director of the Museum, enclosing the report from the two experts. (PTX 283 [Boz Decl.] ¶ 8; PTX 12)

72. On or about April 12, 2017, the General Directorate received a copy of the report. Based on the available literature on the subject, the report concluded that the Idol originated in Anatolia, confirming Christie's description in its catalogue. (PTX 283 [Boz Decl.] ¶ 9; PTX 13)

73. On or about April 13, 2017, the General Directorate wrote to the Ministry of Foreign Affairs and asked that the Ministry contact Christie's. (PTX 283 [Boz Decl.] ¶ 11; PTX 16)

74. On April 19, 2017, Ertan Yalcin, then the Consul General at the Turkish Consulate in New York, sent Christie's a letter claiming that the Idol is State property protected under Turkish law. (Stipulated Fact No. 70; PTX 17)

75. In or around April 2017, Turkey demanded the return of the Idol from Defendants. This demand by Turkey was refused by Defendants in or around April 2017. (Stipulated Fact No. 71)

76. Turkey commenced this action on April 27, 2017. (Stipulated Fact No. 72)

77. The Idol remains in Christie's possession pending the outcome of this action. (Stipulated Fact No. 73)

L. <u>The 1906 Decree and its Enforcement</u>

78. Turkey claims ownership of the Idol under a 1906 Ottoman Decree (the "1906 Decree" or the "Decree"). (Court's Opinion and Order (Dkt. 285) ("Op.") at 3; *see generally* PTX 285 [Direct Testimony of Sibel Özel Decl. ("Özel Decl.")]; PTX 69)

79. The Decree enacted in 1906 provided for State ownership of all newly found antiquities without any exception. (PTX 285 [Özel Decl.] ¶ 12; PTX 69)

80. The 1906 Decree remained in effect after the foundation of the Turkish Republic in 1923 and through 1973. Since the Republic is the successor of the Ottoman State, any Ottoman law is also enforced and applied in the Turkish Republic unless it is abrogated clearly by a new law, or it is clearly in conflict with a Turkish law. The Republic did not enact a new law regarding cultural property until 1973. The 1906 Decree was effective, enforced and applied in Turkey until that time. (PTX 285 [Özel Decl.] ¶ 13; PTX 70A; PTX 71A)

81. The 1906 Decree is clear on its face: by its plain terms, movable and immovable antiquities found on both public and private lands were the property of the Ottoman State during the time of its existence, and of modern-day Turkey thereafter. (PTX 285 [Özel Decl.] ¶¶ 13, 16; PTX 71A; PTX 70A)

82. Turkey has regularly and vigorously enforced the Decree as far back as the establishment of the Republic and even earlier. (PTX 283 [Boz Decl.] ¶¶ 15-37; PTX 284 [Brodie Decl.] ¶¶ 40-59; PTX 285 [Özel Decl.] ¶¶ 17-18; PTX 70A; PTX 71A; PTX 72A)

83. A 2018 Turkish Parliamentary Report supports the fact that the Decree was widely enforced: "The last Ottoman regulation for the relics was published in 1906 and the artworks and Islamic fine art pieces were listed as state property. This regulation was also used during the Republican Era, until 1973, with only minor changes made." The Report does not say or suggest that the 1906 Decree was never enforced as an ownership law. (PTX 24A at 33)

84. Pursuant to the 1906 Decree, Turkey provided rewards to citizens who acted in proper fashion and delivered any newly discovered antiquities to the State. The word "purchases" is sometimes used in documentation; it is used to mean rewards, which are clearly provided for

under the law. (Trial Tr. [Zeynep Boz Testimony ("Boz")] 197:7-20; Trial Tr. [Sibel Özel Testimony ("Özel")] 453:22-25)

85. Zeynep Boz, the Director of the Anti-Smuggling Department of the General Directorate in the Ministry of Culture and Tourism of the Republic of Turkey and a former a Specialist in the Anti-Smuggling Branch of the Department of Excavations, details Turkey's extensive recovery efforts under the 1906 Decree and its successor laws to investigate the looting of antiquities within Turkey, and the arrest of tens of thousands of suspects in connection with almost as many incidents of looting at antiquity sites. (PTX 283 [Boz Decl.] ¶¶ 1, 15-37; PTX 286 [Supplemental Direct Testimony of Zeynep Boz ("Boz Supp. Decl.")] ¶¶ 1, 3)

86. At trial, Ms. Boz provided testimony concerning a chart, "Incidents of Smuggling of Cultural Assets in the Area of Responsibility of General Commandership of Gendarmerie," produced by the Republic in discovery. Ms Boz testified that the chart was not intended to be a comprehensive compilation of every arrest and prosecution or seizure with respect to every violation of the law between 1906 and 1973, which would be an impossible task. The supporting records of incidents dating from 70 years ago, for example, are simply not in existence anymore. (Trial Tr. [Boz] 188:7-189:18, 190:1-3; PTX 25/DTX 179)

87. In her direct testimony declaration, Ms. Boz details a huge number of case studies demonstrating a number of successful efforts taken by Turkey to recover looted antiquities throughout the world. Turkey has had in place for generations an elaborate bureaucratic mechanism across several ministries to enforce its antiquities laws with specific divisions in each of those ministries responsible for combatting smuggling and illegal excavations of cultural property and for recovering looted antiquities. (PTX 283 [Boz Decl.] ¶¶ 16-37)

88. Ms. Boz's testimony is corroborated by Dr. Sibel Özel as well as two separate reported court cases resulting from the enforcement of the Decree. (PTX 285 [Özel Decl.] ¶ 18; PTX 70A; PTX 71A)

89. Turkey's subsequent patrimony laws of 1973 and 1983 confirmed and reinforced Turkey's longstanding commitment to protecting its cultural patrimony. Dr. Anderson recognizes that in his book, *Antiquities: What Everyone Needs to Know* (Oxford University Press 2017). (PTX 24A at 33; PTX 101 at 85; DTX 201D [Anderson Decl.] ¶ 14)

90. Professor Ozan Varol, Defendants' self-proclaimed "Turkish law expert," lacks independent expertise or experience concerning Turkey's antiquities laws or cultural patrimony laws in general and has never been admitted to the Turkish Bar or practiced before Turkish courts. (Trial Tr. [Ozan Varol Testimony ("Varol")] 975:7-14, 976:1-977:3, 978:7-15, 980:23-981:5, 987:8-988:2, 989:2-13, 990:14-16, 991:16-992:7; DTX 201C [Direct Testimony Declaration of Ozan Varol Decl. ("Varol Decl.")] ¶ 11)

91. Professor Varol points to private ownership of antiquities prior to the 1906 Decree and gifts sent abroad by the Sultan to foreign government officials. Varol has no first-hand facts to support his claim that the gifts by the Sultan undermined the state ownership provisions of the 1906 Decree; he relies mainly on the opinion of Professor Wendy Shaw in her book *Possessors and Possessed: Museums, Archaeology, and the Visualization of History in the Late Ottoman Empire* (2003), which cited only a handful of gifts made by the Sultan prior to the end of the Ottoman Empire in 1923. (DTX 201C [Varol Decl.] ¶¶ 33, 62-63; Trial Tr. [Varol] 1019:21-1020:4)

92. Ms. Boz explains the enormous task that Turkey faces in trying to enforce its ownership laws. As she testifies, the country is essentially one big excavation site, and the Republic is responsible for trying to protect all of the objects created over thousands of years that lie buried within its borders. (PTX 283 [Boz Decl.] ¶ 19)

93. Dr. Neil Brodie, whose primary area of expertise is in the illicit antiquities trade, is generally recognized as one of the world's foremost experts on the efforts of nations to prevent the looting and smuggling of antiquities found within their borders and to recover already looted and smuggled antiquities. Dr. Brodie testified that Turkey's efforts at enforcing its antiquities laws are extensive, agreeing with Ms. Boz that there are simply too many ancient sites and too many artifacts to be monitored or adequately protected. (PTX 284 [Brodie Decl.] ¶¶ 40-59; Trial Tr. [Neil Brodie Testimony ("Brodie")] 403:20-21)

94. Turkey's extensive efforts to enforce its antiquities laws have earned Turkey recognition as a world leader in pursuing the recovery of looted antiquities. For example, the investigative journalists in the journal *Archaeology* stated: "No other country has pursued its plundered heritage as aggressively or as tenaciously" as Turkey. (PTX 284 [Brodie Decl.] ¶ 53)

95. Dr. Kim Benzel likewise testified that, for the past 35 years or so, it is a "well known fact" that Turkey is aggressive in enforcing its patrimony laws. (Trial Tr. [Benzel] 276:14-278:9)

M. <u>Turkey's Diligence in Bringing This Action</u>

96. Dr. Brodie testified that the Christie's Auction in 2017 was the first realistic opportunity that Turkey had to identify the Idol as having been looted from Turkey and to ascertain its location. Although the Idol had been referenced at times starting in 1964 in academic

publications, the references usually occurred as an unillustrated comparison, often in a small-print footnote, sometimes in passing, almost always in a language other than Turkish and never with a description of its provenance. Dr. Brodie has concluded that it is unrealistic to expect the Turkish General Directorate to be reading closely in all languages every single academic publication of art and archaeology relating to Turkish territory and beyond, looking for one-line single mentions of an object, which nobody knew had been stolen in the first place. (PTX 284 [Brodie Decl.] ¶¶ 60-65)

97. The same point applies to footnote mentions of the Idol in Turkish academic publications of the 1990s, all published after 1993 when Steinhardt bought the Idol, which incorrectly continued to locate the Stargazer in the Guennol Collection of New York (whose owner is never identified), not in the possession of Steinhardt. (PTX 284 [Brodie Decl.] ¶ 60)

98. Dr. Brodie concludes that despite the diligence that Turkey regularly practices in finding and recovering its looted property, for which it has earned general acclaim, it could not reasonably have known that the Idol had been looted from Turkey before the Auction, when Christie's first published its suspiciously limited provenance, and Turkey subsequently researched its origin. (PTX 284 [Brodie Decl.] ¶¶ 39, 65)

99. At trial, Dr. Anderson testified that there are numerous objects said to be from Anatolia in various museums and collections around the world. Based on a "conservative survey based purely on a quick internet search of the websites, to the extent that they had their collections listed," Dr. Anderson found approximately 700 such objects. (Trial Tr. [Anderson] 862:22-863:13)

100. Dr. Brodie testified that it would be unreasonable to "expect the source country to write letters to every museum and collection in the world" and to additionally "take the time to

write the letters and translate them into English, which is another resource burden, before sending them to all the various countries and collections around the world." As Dr. Brodie concluded, without "any indication of provenance," a country "would be very wary" of launching such an inquiry. (Trial Tr. [Brodie] 384:7-386:16; PTX 284 [Brodie Decl.] ¶¶ 54-59)

101. The Idol was first mentioned in passing in a 1964 publication discussing other Kiliya type idols. The publication describes the Idol as "…said to have been found at…" but does not reference the Idol's ownership provenance. (DTX 72)

102. Dr. Anderson described the attribution "said to be from" as "in the realm of speculation." (Trial Tr. [Anderson] 860:23-861:7)

103. This type of description is likewise used in seven of the thirteen or so subsequent published references to the Idol, all published over the next 60 years. None of the publications reference the Idol's ownership provenance. (PTX 95; DTX 73; DTX 80; DTX 82; DTX 88A; DTX 92; DDTX 2A; Trial Tr. [Anderson] 814:20-815:24)

104. Dr. Anderson testified that it was "correct" that "there's no evidence on which Turkey could have predicated a claim." He testified that Turkey nonetheless should have made its claim sooner. (Trial Tr. [Anderson] 862:3-21)

N. <u>The Idol was Unearthed in and Removed from Turkey</u>

105. Dr. Brodie is an archaeologist by education and training and a Senior Research Fellow in the School of Archaeology at the University of Oxford. Dr. Brodie provides comprehensive evidence for his conclusion that the Idol was found in modern Turkey. (PTX 284 [Brodie Decl.] ¶¶ 6, 12-21)

106. The means of transportation in the early societies during the Middle Chalcolithic period in Turkey (4500-4300 BC when these Kiliya-type idols were manufactured), which was "right at the end of the Stone Age," was very limited, the demand for such non-utilitarian objects was very low and objects would be exchanged locally in "interpersonal interactions." Indeed, the wheel had not yet been invented and donkeys were not yet used for overland transport. (PTX 284 [Brodie Decl.] ¶¶ 13-15; Trial Tr. [Brodie] 417:11-18)

107. The proto-urban "trading" communities of the Early Bronze Age were still many centuries in the future. In any event, the religious/ritualistic significance of Kiliya-type idols without any utilitarian purpose would have made them unacceptable objects of trade. Belma Kulaçoğlu also testified that Kiliya type idols are in the "god and goddesses category." (PTX 284 [Brodie Decl.] ¶¶ 14-15; Trial Tr. [Brodie] 414:21-415:25; DTX 13A [Deposition of Belma Kulaçoğlu ("Kulaçoğlu Tr.")] 16:14-22)

108. In his direct testimony declaration, Dr. Anderson states that the find of Greek stone tools from the Paleolithic Age at Kulaksizlar is evidence that Kiliya idols were widely distributed. Dr. Anderson also states that the failure to excavate an intact Kiliya-type idol at Kulaksizlar is evidence that idols "were traded after they were made." (DTX 201D [Anderson Decl.] ¶¶ 22; 34(c))

109. In his deposition, Dr. Rafet Dinc testified that Kiliya-type idols were manufactured in Kulaksizlar and were suitable and used only for local exchange with Anatolian neighbors, not objects of wider or marine trade. (DTX 11A [Deposition of Rafet Dinc ("Dinc Tr.")] 93:18-21, 94:6-22)

110. Dr. Dinc also describes looting and agricultural activity at the Kulaksizlar site over time. (DTX 11A [Dinc Tr.] 166.15-22; DTX 158A)

111. Dr. Brodie agrees with Dr. Dinc that there was local exchange and also that there was no marine-based trade at the time and dismisses the discovery in Chalcolithic Kulaksizlar of alleged Greek stone tools from the Paleolithic Age, which ended five thousand years earlier, as irrelevant to the question of marine trade (PTX 284 [Brodie Decl.] ¶¶12-15; Trial Tr. [Brodie] 413:23-414:13, 431:6-14, 431:23-432:2, 417:11-22)

112. The eponymous idol that was reportedly unearthed on the Gallipoli Peninsula, also in Anatolia, is at its narrowest point roughly three-quarters of a mile from mainland Anatolia and easily traversable by canoe in antiquity. (Trial Tr. [Anderson] 903:21-904:9)

113. There is no archeologically credible or stratified find of a Kiliya type idol anywhere outside of Turkey. Those few that have been discovered and are well-documented as archeologically valid find spots, especially the most recent ones, were all discovered in Western Anatolia. (PTX 284 [Brodie Decl.] ¶¶ 17-19; PD-1 [Plaintiff's Demonstrative]; Trial Tr. [Brodie] 372:9-19, 418:15-18)

114. The well-known example of a Kiliya-type figurine currently at the Mytilene Museum on Lesbos does not establish otherwise, as several scholarly studies demonstrate. Jürgen Seeher, who compiled the authoritative catalogue of Kiliya figurines in 1992, follows the Greek archaeologist Evangelides in dismissing the Thermi find spot and believes the Mytilene figurine was from the private Grimani collection assembled in what is today Turkey. And, writing two years before Seeher, Pat Getz-Preziosi (now Getz-Gentle), an internationally-recognized expert on Aegean marble figurines and bowls, also stated her belief that the Mytilene figurine "may be from

Asia Minor," *i.e.*, within the current borders of Turkey. (PTX 284 [Brodie Decl.] ¶ 18; PTX 95 at 159; PTX 97 at 9)

115. Dr. Anderson likewise testified that, to his knowledge, there have been "no stratified finds of Kiliya-type idols outside of Anatolia." (Trial Tr. [Anderson] 849:21-24)

116. Kiliya-type idols and idol fragments have been discovered at the following documented or stratified sites – each of which is located in Turkey – on the dates included below:

Excavation Site	**Excavation date**	**References**
1. Selendi (Akdeğirmen)	Unknown	PTX 89 at 89, nos. 252-256
2. Hanay Tepe	19th century	PTX 95 at 157, no. 3; PTX 89 at 65, no. 244
3. Troy	19th century	PTX 95 at 156-157, no. 2
4. Yortan	1900	PTX 95 at 158, no. 5 and at 163 (noting that the Early Bronze Age date should be discounted).
5. Aphrodisias	1960s	PTX 95 at 159, nos. 8-9; PTX 89 at 64, nos. 236-237)
6. Karain cave	1980s	PTX 95 at 12, no. 159; PTX 89 at 64, no. 241
7. Beşik Tepe	1980s	PTX 95 at 157, no. 4; PTX 89 at 65, no. 245
8. Gavurtepe Höyük	1987	PTX 95 at 159, no. 7; PTX 89 at 65, no 243
9. Kulaksizlar	1990s onwards	PTX 89; PTX 62
10. Malkayası Cave[1]	2002-2004	Gerber, Christoph. N.d. *Living*

[1] The articles included in this chart for finds beginning in 2002 onwards are the result of research of Plaintiff's expert witness, Dr. Neil Brodie, and provided in response to the Court's request during summation for references to documented find spots within Turkey. (*See* Declaration of Lawrence M. Kaye dated May 10, 2021 ("Kaye Decl.") and Exhibits A-E attached thereto). Although these articles are not in the record, pursuant to Fed. R. Evid. 201(b)(2), the Court may take judicial notice of the find spots beginning in 2002 as facts that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Moreover, pursuant to Fed. R. Evid. 201(d), "[t]he court may take judicial notice at any stage of the proceeding." *See*

		Places and Finds. Frühe Menschenbilder - Early depictions of humans - Erken İnsan Resimleri (latmos-felsbilder.de) (Kaye Decl. Ex. A)
11. Çine-Tepecik	2003 onwards	Günel, Sevinç. 2014. New contributions regarding prehistoric cultures in the Meander region, in *Western Anatolia Before Troy: Proto-Urbanisation in the 4th Millennium BC?*, edited by Barbara Horejs and Mathias Mehofer. Vienna: Austrian Academy of Sciences, 91-93, 97 plate 6, 98 plates 7-8, 99 plate 9 (Kaye Decl. Ex. B)
12. Çukuriçi Höyük	2006-2007	Schwall, Christoph and Barbara Horejs, 2017. Western Anatolian impact on Aegean figurines and religion?, in *Çukuriçi˙ Höyük 1: Anatolia and the Aegean from the 7th to the 3rd Millennium BC*, edited by Barbara Horejs. Vienna: Austrian Academy of Sciences, 54, 55 fig. 3.1 (Kaye Decl. Ex. C)
13. Bozköy-Hanaytepe	2009	Blum, Stephan W.E., Rüstem Aslan. Faika Evrim Uysal, Sebastian Kirschner and Steffen Kraus. 2011. Archäologische Untersuchungen zur voreisenzeitlichen Kultursequenz des Bozköy-Hanaytepe, Nordwesttürkei, *Studia Troica* 119 at 134, plate 12.3 (Kaye Decl. Ex. D)

Ross v. Am. Exp. Co., 35 F. Supp. 3d 407, 435–53 (S.D.N.Y. 2014) (". . . judicial notice may be taken 'at any stage of the proceeding,' including as late as on appeal.") (citing *United States v. Davis*, 726 F.3d 357, 368 (2d Cir. 2013).

14. Dağdere	2010s	Takaoğlu, Turan, 2017. Middle Chalcolithic finds from Dagdere in the Akhisar-Manisa region, *Anatolia* 43 at 7 and 12, figure 5 (Kaye Decl. Ex. E)
15. Ulucak Höyük	2012-2013	Schwall and Horejs 2017: 58 (Kaye Decl. Ex C)

117. Dr. Anderson testified that, if "undertaken in the context of a – an approved scientific excavation," a find of a Kiliya-type idol would be a "notable event" – especially in light of the fact that the Idol is the largest and "among the finest" Kiliya idols. Dr. Anderson further testified that, in contrast, if the Idol was unearthed in a clandestine excavation, it would "most likely not" be "widely known." (Trial Tr. [Anderson] 850:5-20, 850:21-24)

118. There is no reference to the Idol in the literature about Kiliya-type figurines or their related Cycladic (Greek) cousins prior to the first published reference to the Idol after it was purchased by Martin in the 1960s. According to Dr. Brodie, an object of such rarity and interest would have attracted scholarly notice and publication, of which there was none. (PTX 284 [Brodie Decl.] ¶¶ 26, 60)

O. <u>The Idol Was Illegally Removed from Turkey in or about the 1960s</u>

119. Turkey offers evidence of 12 well-publicized cases in which looted antiquities taken from Turkey appeared on the market outside of Turkey shortly after they were looted, including the Lydian Hoard, which first surfaced in New York in 1966, a short time after it was looted. Dr. Brodie confirms that these cases demonstrate that the Idol was smuggled out of Turkey shortly before the Martins acquired it in the early 1960s, while the 1906 Decree was in effect. (PTX 283 [Boz Decl.] ¶ 6; PTX 284 [Brodie Decl.] ¶¶ 22-25)

120. Dr. Anderson admitted that the Lydian Hoard appeared on the market soon after it was looted. (Trial Tr. [Anderson] 855:20-24)

121. Dr. Brodie further testified that the Idol could not have been discovered and removed from Turkey before 1906, since discovery of an object of such interest would have attracted notice and publication of which there was none at that time. (PTX 284 [Brodie Decl.] ¶ 26)

122. In his direct testimony declaration, Dr. Anderson takes issue with the Republic's evidence of the large number of Turkish antiquities that came to market soon after they were looted by citing one example of looted *inventoried* objects being held for a long period of time, as opposed to misappropriation of a previously unknown object, like the Idol. (DTX 201D [Anderson Decl.] ¶ 35)

123. Based on her extensive experience in recovering looted antiquities, Ms. Boz, in her cross-examination, explained that she only knew of inventoried objects that might be kept for a longer period of time before being placed on the market, for the simple reason that such objects are known and therefore could be sought by the authorities immediately after they were stolen. Antiquities taken from previously unexcavated sites, which are unknown, do not need to be hidden in Turkey and looters would want to get them out of the country before authorities investigated any looted sites. (PTX 283 [Boz Decl.] ¶ 2; Trial Tr. [Boz] 123:18-124:2, 124:20-126:2)

P. <u>Steinhardt's Admissions on Risk-Taking in Acquiring Antiquities</u>

124. Steinhardt testified that his experience in business "taught [him] a great deal" about "managing and assessing risk." He further testified that he "developed good instincts over many decades in the investment world…" and that these "instincts apply very effectively to other areas"

of his life. At trial, Steinhardt affirmed that his experience in "the financial world in assuming and managing risk" is a "quality" that he has carried over into "collecting of antiquities." (Trial Tr. [Steinhardt] 672:11-20; DTX 201BB [Steinhardt Decl.] ¶ 5)

125. Steinhardt further testified at trial that "there is risk associated with purchasing ancient artifacts" and that he has "experienced in some of [his] acquisitions elements to confirm that feeling of risk." (Trial Tr. [Steinhardt] 671:16-672:5)

126. Steinhardt also testified that "[he] was prepared to take the risk" that some of the ancient art objects he collected "would have issues of provenance." As he explained, "would I under certain circumstances purchase things that were fresh from the ground? Yes. . . Because my overwhelming motivation in buying ancient art was their aesthetics. And aesthetics had almost nothing to do with provenance." (PTX 305 [Steinhardt Tr.] 46:6-13, 51:3-52:2; Trial Tr. [Steinhardt] 607:1-8, 676:5-11; DTX 201BB [Steinhardt Decl.] ¶ 8)

127. Steinhardt also explained that he would take the risk even when that risk included that "a governmental body would conclude that this was an object that related to its national patrimony." He went on to explain that "[t]he reputation of all ancient art dealers was one that had a dubious quality to it . . . They dealt with the finest museums in the world. But there was this . . . there was this taint over the entire area." (PTX 305 [Steinhardt Tr.] 46:14-47:7, 55:8-56:7; Trial Tr. [Steinhardt] 673:6-674:5)

128. Steinhardt admitted at deposition that he gives short shrift to other countries' ownership laws, like Turkey's. Although aware of countries' efforts to enforce their cultural patrimony laws (including Turkey's claim to own the Lydian Hoard and its return to Turkey), he does not believe that the cultural patrimony laws of other countries should necessitate

"confiscation" of antiquities in the United States or from individual collectors even if those objects were illegally excavated and taken out of the country in violation of those laws. He explained that "if a farmer finds - - is tilling his field and he finds an object in his field and brings it to some local middleman, who then sells it to someone else somewhere else, that might be called looting. But I don't think that's the proper description." (PTX 305 [Steinhardt Tr.] 103:16-107:3, 107:25-109:19, 110:4-12, 112:8-114:3, 115:3-19, 116:2-8, 117:3-118:3, 118:24-119:11, 245:9-13, 245:25-246:14, 247:17-23, 318:21-320:19)

129. When asked whether this was so "[e]ven if under the ownership laws of that person's country the government declared it the owner of that antiquity found in the field," Steinhardt responded: "If the object were in the country, I'd say the country has a good case. If the object is somewhere else and the country is trying to make a case that this came from their territory, it's a different case." (PTX 305 [Steinhardt Tr.] 117:18-118:3)

Q. <u>Steinhardt's Knowledge of the Lydian Hoard and Turkey's Patrimony Laws</u>

130. The Lydian Hoard case provides the critical backdrop for Steinhardt's decision to purchase the Kiliya Idol in 1993. The Lydian Hoard case was reported in the mainstream media and sent ripples through the collecting community during the late 1980s and 1990s. Moreover, at the time that case was pending, and the general problem of theft and smuggling of Turkish antiquities was widely known in the New York antiquities community, Steinhardt was a New York resident and active in and a generous supporter of The Met. ([Brodie Decl.] ¶¶ 36, 38)

131. Dr. Anderson affirmed that Steinhardt, as a collector of antiquities, would have known that the Lydian Hoard litigation was extant in 1993 and that there was a controversy between Turkey and the Metropolitan Museum. As Dr. Anderson explained, "it was in the New

York Times. I have to assume that any person who was involved in collecting would indeed have been aware of it. . .” (Trial Tr. [Anderson] 934:18-935:11)

132. Steinhardt acknowledged knowing of this looting and smuggling problem in a 1996 deposition, in a forfeiture case brought by the United States government following a seizure in 1995 by the then U.S. Customs Service of another antiquity that had been looted from Italy, which Steinhardt had purchased. In that deposition, Steinhardt admitted that in or around 1994, he attended “a meeting that was held . . . by a group of people who included some trustees and other friends of the Metropolitan Museum with a lawyer as to how they were going to proceed . . . and what different issues [were] facing The Met vis-à-vis the problem that it had with Turkey.” (PTX 284 [Brodie Decl.] ¶ 38; PTX 148 at 49:3-10)

133. Steinhardt further testified in 1996 that he became aware of the “patrimony issue” in the “period of the nineties,” and that it was “a topic that became quite a focus for anybody who was involved in the collecting of ancient art. It was a topic that became focus [sic] because of the Metropolitan Museum’s involvement with Turkey.” (PTX 284 [Brodie Decl.] ¶ 38; PTX 148 at 43:14-45:22)

134. Steinhardt admitted at that time that he well understood that Turkey’s laws provided for state ownership of antiquities found within its territory, testifying: “patrimony is related to the issue of ownership of an object that may be found within a national or contemporary national border, and if it’s found in the ground in a [sic] contemporary Turkey, is it [sic], by definition, therefore the property of the Turkish government . . . .” (PTX 148 at 44:15-25)

135. At trial in this case, Steinhardt testified differently, claiming that when he bought the Idol in 1993, he was unaware of Turkey’s cultural patrimony laws and further, that he does not

recall his 1996 deposition testimony. (Trial Tr. [Steinhardt] 627:12-629:10, 631:25-633:15, 635:8-17)

136. In 1993, a serious antiquities collector would have known that the theft and smuggling of Turkish antiquities had been a problem since at least the early 1960s, and that Turkey was likely to act to recover such smuggled material. (PTX 284 [Brodie Decl.] ¶ 38; Trial Tr. [Anderson] 934:18-935:11)

R. Steinhardt's Admissions that the Idol and Other Kiliya-Type Idols Come From Turkey

137. Steinhardt testified at trial that Kiliya type idols "were made" in "Anatolia. . . a province of a country of Turkey." In response to the question of "where the Stargazer Idol in this case was excavated," Steinhardt responded, "I don't know. But I assume it was excavated in Anatolia." (Trial Tr. [Steinhardt] 607:15-19; 687:20-22)

138. Steinhardt admitted that he probably bought other objects that also originated in Turkey even before he bought the Idol. (PTX 305 [Steinhardt Tr.] 61:13-23, 62:5-19)

139. Steinhardt also admitted that he, a Wharton School graduate and trained financial analyst and hedge fund manager, conducted no independent research before he purchased the Idol – this despite the fact that he is aware that there were a group of Kiliya-type idols "maybe from 1950 or 1960" that were "generally assumed to have been found in Anatolia, which is Turkey." (PTX 305 [Steinhardt Tr.] 156:14-19, 217:17-218:13, 227:15-228:2, 307:13-308:4; DTX 201BB [Steinhardt Decl.] ¶¶ 3-5)

II. APPLICABLE LAW AND APPLICATION OF LAW TO FACTS

A. Introduction

Turkey commenced this action to recover a piece of its cultural property, a rare and ancient artifact that was looted from its territory in violation of its state ownership law. This case is not about an inventoried antiquity or a painting hanging in a museum that suddenly and mysteriously goes missing under circumstances that would alert the owner to its theft and cause him or her to launch a search for the missing object. It is unprecedented and involves a looted antiquity – a previously unknown ancient Turkish artifact that, unknown to Turkey until this action was brought, suddenly materialized, completely undocumented, unprovenanced and seemingly out of nowhere, in the United States in 1961 in the hands of a known trafficker of looted Turkish antiquities when it was sold to a storied antiquities collector where it would remain for the next quarter of a century until it was purchased by its current possessor, Michael Steinhardt, another well-known antiquities collector and the Defendant in this action.

Steinhardt has admitted that when purchasing antiquities, his decision to do so is most often driven by the aesthetics of the piece without regard to the object's prior record of ownership and that he understands the risks associated with buying poorly or completely unprovenanced antiquities, including the risk that the antiquity may be the subject of a claim of ownership by a foreign state under that state's cultural patrimony laws. Steinhardt nonetheless has admitted that he is prepared to take the risk associated with such purchases. Steinhardt testified in this case that when he bought the Idol in 1993, he was unaware of Turkey's cultural patrimony laws. He testified differently in 1996, however, in another proceeding before this Court, that he was familiar with Turkey's patrimony laws in the early 1990s, when he bought the Idol, described the operation of

those laws and swore that he recalled discussing Turkey's cultural patrimony laws in the early 1990s with friends of The Metropolitan Museum of Art ("The Met") and a lawyer for The Met during the Lydian Hoard litigation between Turkey and The Met in an effort to help The Met with "the problem that it had with Turkey." Steinhardt testified in deposition in this matter and on cross examination that he has no recollection of this testimony, despite his demonstrated ability to recall in significant detail other events which occurred at roughly the same time, including his unequivocal assertion of what he did not know at the time. Of course, it is for the Court to evaluate Steinhardt's credibility on all issues in light of his untenable material assertions while under oath.

Turkey has presented factual and expert evidence at trial that has proved in their entirety its claims to ownership of the Idol. Defendants have offered no credible evidence to the contrary; nor have they refuted the compelling circumstantial evidence offered by the Republic that, in violation of Turkey's state ownership law, the Idol was illegally excavated in Turkey in the 1960s, removed from Turkey and brought to the U.S., where it was acquired shortly thereafter by Alastair Martin, a renowned collector of antiquities.

As we shall also show, Defendants' laches defense cannot stand because they have failed to prove that Turkey knew or should have known that it had a claim to the Idol before the 2017 Christie's Auction, the first element of any laches defense. *See Bakalar v. Vavra*, 819 F. Supp. 2d 293 (S.D.N.Y. 2011), *aff'd*, 500 F. App'x 6 (2d Cir. 2012). Indeed, even if Defendants were deemed to have proven the first element of laches, they have failed to prove that Michael Steinhardt was vigilant when he bought this unprovenanced 6000 year-old Idol or that he was prejudiced as a result of any alleged delay by Turkey in asserting its claim. Even a good faith purchaser like Steinhardt must exercise vigilance and conduct further inquiry when faced with the many red flags

that were apparent at the time of his purchase of the Idol. *Solomon R. Guggenheim Found. v. Lubell*, 153 A.D.2d 143, 152 (1st Dep't 1990), *aff'd*, 77 N.Y.2d 311 (1991). Steinhardt has failed to demonstrate that he was vigilant when he purchased the Idol, eschewing his duty under *Lubell* to make further inquiry into its conspicuously limited record of prior ownership.

B. Turkey Has Proven All of the Elements of Its Claims

1. Replevin and Conversion Claims

To prove its replevin claim, the Republic bears the burden of showing, by a preponderance of the evidence, that it is lawfully entitled to possess the Idol and that Defendants have unlawfully withheld it. *See Abbott Labs. v. Feinberg*, Nos. 18 Civ. 8468, 19 Civ. 600, 2020 WL 7239617, at *2 (S.D.N.Y. Dec. 9, 2020). After a threshold showing has been made of the plaintiff's ownership of the artwork, the defendant has the burden of proving that the allegedly stolen artwork was not stolen. *See Lubell*, 153 A.D.2d at 153; *Bakalar*, 819 F. Supp. 2d at 298 ("When 'an issue of fact exists as to whether the chattel was stolen..., the burden of proof with respect to this issue is on the possessor.'") "New York case law has long protected the right of the owner whose property has been stolen to recover that property, even if it is in the possession of a good-faith purchaser for value." *Lubell*, 77 N.Y.2d at 429.

Similarly, to establish a cause of action to recover damages for conversion under New York law, the Republic must show Defendants "'intentionally and without authority, assume[d] or exercise[d] control over [its] personal property, interfering with [its] right of possession.'" *Sotheby's, Inc. v. Shene*, No. 04 Civ. 10067, 2009 WL 762697, at *2 (S.D.N.Y. Mar. 23, 2009) (*quoting Colavito v. N.Y. Organ Donor Network, Inc.*, 8 N.Y.3d 43, 49 (2006)).

Turkish law governs the question of whether the Republic has a property interest in the

Idol and the 1906 Decree is the only relevant provision of Turkish law. (Op. at 5, 10-11).

2. The 1906 Decree is an Ownership Law

The Court has already decided as a matter of law that the 1906 Decree is an ownership law and therefore Turkey can maintain the conversion and replevin claims it asserts in this case. (Op. at 11) Although the Court also held that Defendants may offer evidence that the law is "'not what its plain language indicates it is,'" (*id*. at 12, *citing United States v. Schultz*, 333 F.3d 393, 401-02 (2d Cir. 2003)), "by, for example, offering evidence that people within the country may nonetheless legally keep antiquities or that the law is otherwise generally not enforced" (Op. at 12), Defendants have failed to present any such evidence because it is obvious that no such evidence exists.

Defendants have offered no evidence to contradict the evidence presented by Turkey showing that it has enforced its law of national patrimony regularly and vigorously for many decades as far back as the establishment of the Republic and even earlier. **(**FF[2] ¶ 82) In obvious testament to that fact, Turkey has had in place for generations an elaborate system of government agencies dedicated to finding and recovering looted antiquities (FF ¶ 87**)** – to say nothing of the fact that subsequent cultural legislation in 1973 and 1983 has only confirmed and reinforced Turkey's longstanding commitment to protecting its cultural patrimony – something that even Defendants' expert witness, Dr. Maxwell Anderson, recognizes in his book, *Antiquities: What Everyone Needs to Know Oxford* (University Press 2017). (FF ¶ 89) In his testimony, the Defendants' self-proclaimed "Turkish law expert," Ozan Varol, who lacks any independent expertise or experience concerning Turkey's antiquities laws or cultural patrimony laws in general,

[2] "FF" refers to Plaintiff's Proposed Findings of Fact, *supra*.

and has never been admitted to the Turkish Bar or practiced before Turkish courts (FF ¶ 90), could only point to private ownership of antiquities *prior* to the 1906 Decree and gifts sent abroad by the Sultan to foreign government officials, neither of which demonstrates that the law is not an ownership law or that private ownership was permitted under the 1906 Decree. (FF ¶ 91) Varol had no first-hand facts to support his claim that the gifts by the Sultan undermined the state ownership provisions of the 1906 Decree; he relied mainly on the opinion of Professor Wendy Shaw in her book *Possessors and Possessed: Museums, Archaeology, and the Visualization of History in the Late Ottoman Empire* (2003), which cited only a handful of gifts made by the Sultan before the end of the Ottoman Empire in 1923, some seventy years before Michael Steinhardt purchased the Stargazer Idol at issue in this case. (*Id.*) Varol's further contention that Turkey's enforcement efforts through generations have not been foolproof only underscores the enormous task it faces and how successful Turkey's enforcement efforts have been.

Although not required to do so, Turkey has presented overwhelming and irrefutable evidence at trial, as detailed above (FF ¶¶ 79-85, 87-89, 92-95), demonstrating "the prohibition of private ownership of antiquities under the Decree and domestic enforcement of it that confirms that the Decree is what it says is – an ownership law." (Op. at 12-13, citing several examples in the record). As this Court has held in its summary judgment decision, the only arguments put forth by Defendants in the face of the "high-profile examples of enforcement" shown by Turkey (*id.* at 13) – that the 1906 Decree did not remain in effect after the foundation of the Turkish Republic in 1923, and that it was neither widely publicized nor translated into English – "is insufficient to overcome the combination of Turkey's evidence and the plain language of the Decree, which makes clear that the Turkish government claims ownership of all antiquities found

in Turkey after 1906." (*Id.* at 13-15 (citing *Schultz*)) The 1906 Decree remained in effect after the foundation of the Republic in 1923 and through 1973. (FF ¶ 80) *See also Rep. of Turkey v. OKS Partners*, No. 89 Civ. 3061, 1994 U.S. Dist. LEXIS 17032, at *3 (D. Mass. June 8, 1994). Defendants' arguments to the contrary have been put to rest as law of the case by the Court's interpretation of foreign law pursuant to Fed. R. Civ. P. 44.1 (*id.* at 11) and Defendants' failure to present any additional evidence affirmatively showing otherwise reinforces the Court's prior determination.

Defendants' principal argument at trial that the Republic failed to enforce its cultural patrimony laws within Turkey is based on a chart that the Republic produced in discovery which, as Zeynep Boz, the Director of the Anti-Smuggling Department of the Ministry of Culture and Tourism's General Directorate, testified was not intended to be a comprehensive compilation of every arrest and prosecution or seizure with respect to every violation of the law between 1906 and 1973, which would be an impossible task. (FF ¶ 86) Rather, it represented only some of the incidents that occurred during that period, by one of a number of Turkish agencies charged with enforcing the Decree, so it reflected only a portion of the overall domestic enforcement effort. As Ms. Boz testified, the supporting records of incidents dating from 70 years ago or further, for example, are simply not in existence anymore. (*Id.*)

Professor Varol failed to offer proof demonstrating that Turkey did not enforce the 1906 Decree. Indeed, the 2018 Parliamentary Report that Varol relies upon to suggest that the Decree was not generally enforced – to the extent it addresses the issue – actually supports the fact that the Decree was widely enforced: "The last Ottoman regulation for the relics was published in 1906 and the artworks and Islamic fine art pieces were listed as state property. This regulation was also

used during the Republican Era, until 1973, with only minor changes made." The Report certainly does not say, or even suggest, that the 1906 Decree was never enforced as an ownership law. (FF ¶ 83)

Neither Varol, nor any other defense witnesses, could point to even one instance where newly discovered artifacts were permitted to be privately owned or an instance where the law was not enforced or declared invalid or unenforceable by a Turkish court. Defendants rely instead on the hearsay opinions and conclusions of third parties that address the adequacy of the enforcement effort but offer no supporting data for their untenable conclusions regarding enforcement efforts or, more importantly, even the slightest evidence that the 1906 Decree was not enforced. Varol's claim that there are few reported cases because the Decree was rarely enforced is not only untenable on its face, it is belied by the fact that reported cases show that the law was enforced and enforced to the letter. (FF ¶ 88) Worse still are Varol's efforts to mischaracterize provisions of the 1906 Decree relating to its enforcement or his reference to provisions in successor laws, which are largely irrelevant here, but which he mistakenly believes, despite overwhelming evidence to the contrary, supports the risible claim that the 1906 Decree was not generally enforced domestically.

For example, Defendants suggest that Turkey's practice of providing rewards under the 1906 Decree to citizens who acted in proper fashion and delivered any newly discovered antiquities to the State, were not really "rewards" but reflected purchases of antiquities privately owned. As Ms. Boz and Plaintiff's Turkish law expert, Dr. Sibel Özel, both testified, however, the word "purchases" was used to mean rewards, which were clearly provided for under the law, and Defendants submitted no evidence to the contrary. (FF ¶ 84)

It is instructive to compare the facts presented by Turkey at trial with those in *Peru v. Johnson*, 720 F. Supp. 810, 814 (C.D. Cal. 1989), a seminal case for determining whether ownership laws were enforced. As the court held in that case, despite the express terms of Peru's laws providing for State ownership of antiquities, "there is no indication in the record that Peru ever has sought to exercise its ownership rights in such property." *Id.* at 814. Quite the opposite is true in this case.

In the face of Defendants' failure to offer "evidence that people within the country may nonetheless legally keep antiquities or that the law is otherwise generally not enforced," as this Court required in its decision on summary judgment (Op. at 12), Ms. Boz detailed Turkey's extensive efforts under the 1906 Decree and its successor laws to investigate the looting of antiquities with Turkey, and the arrest of tens of thousands of suspects in connection with almost as many incidents of looting at antiquity sites. (FF ¶ 85) In addition, she detailed a huge number of case studies demonstrating a number of successful efforts taken by Turkey to recover looted antiquities throughout the world. As she explained, Turkey has put in place an elaborate bureaucratic mechanism across several ministries to enforce its antiquities laws with specific divisions in each of those ministries responsible for combatting smuggling and illegal excavations of cultural property, and for recovering looted antiquities. (FF ¶ 87) Ms. Boz's testimony was corroborated by Dr. Özel as well as two separate court cases resulting from the enforcement of the Decree. (FF ¶ 88)

Ms. Boz also explained the enormous task that Turkey faces in trying to enforce its ownership laws. As she said, the country is essentially one big excavation site, and Turkey is responsible for trying to protect all of the objects created over thousands of years that lie buried

within its borders. (FF ¶ 92)

In addition, Dr. Neil Brodie, Turkey's archaeological expert generally recognized as one of the world's foremost experts on the efforts of nations to prevent the looting and smuggling of antiquities found within their borders and to recover already looted and smuggled antiquities, testified about Turkey's extensive efforts at enforcing its antiquities laws, agreeing with Ms. Boz that there are simply too many ancient sites and too many artifacts to be monitored or adequately protected. (FF ¶ 93) These extensive efforts to enforce its antiquities laws have earned Turkey recognition as a world leader in pursuing the recovery of looted antiquities. For example, investigative journalists in the journal *Archaeology* stated: "No other country has pursued its plundered heritage as aggressively or as tenaciously" as Turkey. (FF ¶ 94)

In sum, having established that the 1906 Decree clearly provides that the Turkish state owns all antiquities discovered in Turkey after 1906, the remaining elements that Turkey needed to prove at trial is "[a] that the Idol was found within and exported from the boundaries of modern-day Turkey [b] while the Decree was in effect." (Op. at 15) As shown in the Findings of Fact, *supra*, Turkey presented unassailable evidence to prove these elements.

3. Turkey Proved that the Idol Was Found Within and Removed from Turkey

Dr. Neil Brodie offered his expert archeological opinion that the Idol was excavated in Turkey. (FF ¶¶ 105-107, 113, 114, 116, 118) As this Court had previously held, "[g]iven that the only workshop known to have manufactured Kiliya-type idols is located in Turkey," Turkey's expert testimony would be sufficient for the finder of fact to "conclude that the Idol was found in modern-day Turkey." (Op. at 15-16) The Court further held that Defendants' "suggestion that Turkey must further be able to establish a *specific* find spot . . . in order to sustain its ownership

claim has no basis in either the 1906 Decree nor the relevant case law." (*Id.* at 16 (emphasis in original)) Thus, Turkey's burden at trial was only limited to the proof concerning whether the Idol was found somewhere in post-1906 Turkey and, as the Court held, Dr. Brodie's testimony, in itself, is sufficient to establish a *prima facie* case that the Idol was found in and removed from Turkey. Turkey, however, presented at trial additional evidence that was extensive and indisputable, establishing the Idol was found in modern day Turkey. Defendants have offered no affirmative proof that the Idol in this case was discovered anywhere else.

Christie's has repeatedly admitted that Turkey is the home of the Idol. Christie's catalogue for the auction of the Idol, for example, includes a description of it as "AN ANATOLIAN MARBLE FEMALE IDOL OF KILIYA TYPE," in a heading using upper case typeset. (FF ¶ 55) In its standard Conditions of Sale, Christie's warrants that property described in a heading, printed in upper case type, and without qualification – such as the afore-mentioned description of the Idol – is of the period, culture, source or origin described. (FF ¶ 56) Thus, Christie's has not only admitted but warranted that the Idol originated in Anatolia, *i.e.*, within the borders of modern-day Turkey (FF ¶ 7).

The opinion of Dr. Pat Getz-Preziosi (now Getz-Gentle), whom Christie's contacted, and who Defendants' own expert describes as being "among the world's leading scholars of Neolithic and Chalcolithic statuettes," affirmed that fact: "I have not come across any Kilia [sic] figures that did not come from Turkey." Her opinion confirmed Christie's previous belief that the Idol comes from Turkey: "…have you ever come across one that *was not* from Turkey?" (Emphasis added) Her response is equally unambiguous that Kiliya-type figures "come from Turkey" and that Christie's knew it before the Auction as, for example, its own Provenance and Country of Origin

Declaration shows. (FF ¶¶ 47, 57) Steinhardt subscribed to and certified the Provenance and Country of Origin Declaration and admitted himself at trial that he believes that the Idol was unearthed in Turkey. (FF ¶¶ 47, 137)

In a draft press release announcing the upcoming sale of the Idol at Christie's, which it prepared on or about March 16, 2017, the Idol is identified as coming "from Turkey." The description was subsequently deleted, pursuant to an email from Max Bernheimer, who, in directing the deletion, remarked: "I would remove 'from Turkey'[.] Why poke them in the eye?". (FF ¶ 48) Bernheimer, in his direct testimony declaration, admits that he instructed that the reference be changed, but on cross examination unsuccessfully tried to spin his remark to mean that the original description of the Idol being Turkish in the draft press release was inaccurate and he meant only to correct the error because the Idol could have been discovered somewhere else outside of Turkey. (FF ¶ 49) But that plainly is not true and, just as plainly, it is not what he said in the email; nor does this contrived, *post-hoc* explanation jibe with a subsequent description of the Idol by Bernheimer himself in an April 14, 2017 email to a potential Christies' customer, in which he flatly declares that the Idol originated "further north and east in modern Turkey." (FF ¶ 52) Bernheimer was not alone in that belief. An email by Alexandra Olsman, a Junior Specialist, Antiquities at Christie's, who received the earlier "poke them in the eye" email (FF ¶ 48), similarly persisted in telling prospective customers that the Idol is of Kiliya-type, and that such idols "originate from Turkey and only Turkey." (FF ¶ 53) And, more broadly, an interdepartmental presentation, made at Christies on March 21, 2017, described the Idol as "the Turkish cousin of the Cyclidic (Greek) Schuster Master." (FF ¶ 51)

It beggar's belief that Bernheimer, when he made the "why poke them in the eye"

comment, was merely intent on correcting his staff, when only weeks later, he himself placed the origins of the Idols squarely in "modern Turkey." (FF ¶ 52) Of course, he does not even try to explain why he used the term "poke them in the eye," or why, by identifying the Idol as coming from Turkey, Turkey was being "poke[d] in the eye," or why he wished to avoid possibly letting Turkey know that Christie's was offering an Anatolian antiquity for auction, despite the Idol's obvious and acknowledged Turkish origin. In fact, what Bernheimer meant by his obvious comment is precisely what he feared, and that is that, by mentioning Turkey in the press release, he would rouse Turkey's suspicions that the Idol was discovered there in modern times and thus belonged to the Turkish state. Bernheimer's evasions and lies on cross-examination about poking Turkey in the eye (FF ¶¶ 49, 50) explain another telling comment of his, for which he, again, had no plausible explanation. That comment was when he offered to Steinhardt that selling the Idol would "cause no problems" (FF ¶ 44) – a remark that obviously grew out of his concern that the Idol lacked sufficient provenance and would raise eyebrows in the very way that that same lack of provenance was a red flag for Steinhardt when he purchased the Idol in 1993.

Christie's, and again Bernheimer in particular, also were well-aware of the 1906 Decree but – contrary to Christie's own policies – chose to ignore that fact in following procedures leading up to the sale of the Idol. Bernheimer testified at trial that in its Policy on Cultural Property, Christie's lists 1906 as the "Sensitive Date" for Turkey as a result of its "Local Legislation." It also states that "Christie's has a more restrictive policy for cultural property originating from certain countries" "in some cases. . . because of legislation in the country of origin which confers on the State ownership of all cultural property within the territory after a specified date." The Policy was in effect at the time the Idol was offered for sale at Christie's and required Christie's

to demonstrate with "verifiable information" that the Idol was outside of Turkey before 1906, and, if it could not do so, refer the matter to its Cultural Property Committee, which included members of Christie's Legal Department who had helped draft the policy. (FF ¶¶ 58, 59) Christie's was not able to demonstrate by reference to verifiable documentation that the Idol was outside of Turkey before 1906 (because no such evidence existed). (FF ¶ 60) Bernheimer nevertheless chose to ignore Christie's explicit policy; he did not refer the matter to the Cultural Property Committee and went ahead with the sale, later claiming, among other things, that it was unnecessary to refer the matter to the Cultural Property Committee because everyone on the Committee knew the Idol was for sale (FF ¶ 61) – which, of course, begs the more salient question of whether everyone on the Committee also knew that the Idol lacked "verifiable documentation that it was out of the country before the "sensitive date" of 1906. In his direct testimony declaration, Bernheimer claims that the "sensitive date" is only one that "a country may argue should be considered as the date by which objects must be out of the country in order for good title to be exchanged" but that Christie's "does not necessarily agree," thus trying to suggest that he was free to disregard the policy. (FF ¶ 62)

Bernheimer digs an even deeper hole for himself when he offers in his direct testimony declaration that Christie's can ignore the local legislation of a country like Turkey and decide that the appropriate date is an arbitrary one – 1970 – having nothing to do with Turkey's own laws. Christie's Cultural Property Policy, however, explicitly sets forth the sensitive date protocol as an *additional*, not an alternative, requirement to the 1970 UNESCO Convention on the Means of Publishing and Preventing Illicit Import, Export and Transfer of Ownership of Cultural Property. (FF ¶ 63) The inalterable fact remains that Bernheimer deliberately circumvented Christie's

Cultural Property Policy and never referred the matter to the Cultural Property Committee and was undoubtedly animated to do so by his concerns that the Idol's conspicuous lack of provenance would "cause a problem" with Turkey – the very concern that he attempted to allay when he tried to reassure Steinhardt that selling the Idol "would cause no problem," and which he steadfastly denies. (FF ¶ 44)

In addition to Christie's admissions and its attempts to conceal that it knew that the Idol was found in Turkey and was subject to the 1906 Decree, there was significant testimony from Dr. Neil Brodie, Plaintiff's expert on looted antiquities, showing the Idol was found in Turkey. Dr. Brodie, an archaeologist by education and training and a Senior Research Fellow in the School of Archaeology at the University of Oxford, whose primary area of expertise is in the illicit antiquities trade, provided comprehensive evidence for his conclusion that the Idol was found in modern Turkey. (FF ¶¶ 93, 105) He explained that the means of transportation in the early societies during the Middle Chalcolithic period in Turkey (4500-4300 BC when Kiliya-type idols were manufactured), which was "right at the end of the Stone Age," was very limited, the demand for such non-utilitarian objects was very low and objects would be exchanged locally in "interpersonal interactions." Indeed, the wheel had not yet been invented and donkeys were not yet used for overland transport. (FF ¶¶ 9, 112) Also, the proto-urban "trading" communities of the Early Bronze Age were still many centuries in the future and, in any event, the religious/ritualistic significance of Kiliya-type idols without any utilitarian purpose would have made them unacceptable objects of trade. (FF ¶ 107)

Further, to this day there is no archeologically credible or stratified find of a Kiliya-type idol anywhere outside of Turkey. Those few that have been discovered and are well-documented

as archeologically valid find spots, especially the most recent ones, were all discovered in Western Anatolia. (FF ¶¶ 113, 116) Dr. Anderson agreed, testifying that, to his knowledge, there have been "no stratified finds of Kiliya-type idols outside of Anatolia." (FF ¶ 115)

All of the lies and evasions by Christie's point indisputably to its own belief that the origins of the Idol were in modern Turkey. But there are other, independent and quite compelling circumstances that also help establish the fact that the Idol in this case was unearthed in post-1906 Turkey. As an initial matter, the fact that the Idol was illegally excavated in modern Turkey could be inferred from the simple fact that there is no record – in Turkey or anywhere else – of its excavation or even of its existence prior to its sudden appearance, with no earlier provenance, in J.J. Klejman's hands in New York in 1961. (FF ¶¶ 11, 13-15) Indeed, there is no reference to the Idol in the literature about Kiliya-type figurines or their related Cycladic (Greek) cousins prior to the first published reference to the Idol after it was purchased by Martin in the 1960s – a remarkable fact according to Dr. Brodie who believes that the unearthing of such a rare and beautiful object would have caught the immediate attention of archeologists, academics, art historians, museums and antiquities collectors throughout the world. (FF ¶ 118) Again, Dr. Anderson agrees, testifying that, if "undertaken in the context of a – an approved scientific excavation," a find of a Kiliya-type idol would be a "notable event" – especially in light of the fact that the Idol is the largest and "among the finest" Kiliya idols. Dr. Anderson further testified that, in contrast, if the Idol was unearthed in a clandestine excavation, it would "most likely not" be "widely known." (FF ¶ 117)

If it had been unearthed in the distant past, there is no plausible explanation for why not a single word about the figure had ever been published before 1964 other than the fact that its existence had been completely unknown. The Idol is first mentioned in passing in a 1964

publication discussing other Kiliya type idols. (FF ¶ 101) Needless to say, as with all subsequent published references to the Idol (some thirteen in all over the next 60 years), several of which describe the Idol with language such as "…said to have been found at…", there is never any reference to its ownership provenance, at least not before the Christie's sale catalogue reference in 2107, shortly before this action was started. (FF ¶¶ 54, 103) Dr. Anderson describes the attribution "said to be from" as "in the realm of speculation." (FF ¶ 102)

When the Idol first appeared in New York in 1961, it was, with no record of prior ownership, in the possession of J.J. Klejman, a Madison Avenue antiquities dealer who later would become infamous for selling the Lydian Hoard, hundreds of looted Turkish antiquities, to The Met in the mid-1960s. (FF ¶¶ 13, 26, 30, 31) Alastair Martin acknowledged that Klejman was the source of the Idol in his Guennol Collection annotations and in a letter to Vaughn Crawford, the head of the Department of the Ancient Near Eastern Art Department at The Met, on April 18, 1975. (FF ¶ 14) The Met concealed the Turkish origins of the Lydian Hoard for almost twenty-five years before it was forced, as the result of a highly contentious and very public litigation that sent shock waves through the antiquities community, especially here in New York, to return the Hoard to Turkey and publicly to acknowledge the culpability of members of The Met staff in the cover-up. (FF ¶¶ 22, 26, 29-31, 34, 130)

The undisputed evidence adduced at trial shows that Klejman was a primary conduit into the United States for antiquities looted from Turkey as indisputably demonstrated by his role in the Lydian Hoard. There is no evidence that he was a source of looted objects from countries neighboring Turkey, like Greece or Bulgaria. (FF ¶ 25) When Klejman offered the Idol to Alastair Martin, he offered Martin his choice of several of these extremely rare idols, further suggesting

that they had been looted. (FF ¶ 16) The sudden appearance for sale in one place, at one time, by the same dealer – a known trafficker in looted Turkish patrimony – of several previously unknown and rare antiquities, is highly probative of the further fact that the Idol was looted from Turkey and that Klejman came into possession of it shortly after it was looted and then brought it quickly to market before word of its existence and illicit excavation impaired its marketability. It is highly improbable that a previously unknown and rare object that was lawfully excavated would first surface in the hands of a dealer in looted goods such as Klejman. More improbable still is that a *group* of such unknown, rare and lawfully excavated objects would wind up at the same time in the hands of a looted antiquities trafficker like Klejman. But that is exactly what happened here, and the Defense has offered no explanation for it.

Martin's recounting of the fact that he was offered by Klejman more than one idol when he purchased the Idol at issue in this case is corroborated by the fact that Klejman was the source of at least two other Kiliya-type idols that appeared in collections in New York in the 1960s. (FF ¶ 17) Klejman's shady reputation for selling looted antiquities, including those from Turkey, was well known and acknowledged by former Met Director Thomas Hoving in his memoir: *The Artful Tom*. (FF ¶ 26) Klejman's questionable reputation as an antiquities dealer is corroborated by Dr. Kim Benzel, Curator in Charge of the Department of Ancient Near East Art at The Met, and Oscar Muscarella, another curator at The Met. (FF ¶ 27)

To no avail are the efforts in the direct testimony declaration of Dr. Anderson to burnish Klejman's reputation by touting his unrelated persecution and privations during the Holocaust and the quality of his Madison Avenue gallery's window display in 1967. (FF ¶ 28) This is especially so when simultaneously absent from Anderson's direct testimony declaration is any reference to

Klejman's role as a source of the Lydian Hoard or to Klejman's reputation among the staff at The Met. It is especially ironic that, in his praise of Klejman, Anderson would brush aside Hoving's telling comment that Klejman was one of The Met's "favorite dealer-smugglers," when Anderson has described the "methods of collection" of his mentor and former boss at The Met, Dietrich von Bothmer, as "swashbuckling." von Bothmer was the head of the Department of Greek and Roman Art at The Met under Hoving and the person responsible for buying for The Met the Lydian Hoard from Klejman starting in 1966. (FF ¶¶ 28, 32) Hoving does not simply point the finger at Klejman, he goes further and acknowledges his own role in encouraging looting while directing The Met. (FF ¶¶ 29, 30) Indeed, it is doubly surprising that Anderson would try to salvage what, if anything, remains of Klejman's tattered reputation, given the lengths to which he went on cross examination to distance himself and other departments at The Met from von Bothmer and Klejman. (FF ¶ 33) Apparently, all of this sordid, but highly relevant detail is lost on Anderson in his assessment of Klejman in his direct testimony declaration, as he conspicuously, and quite tellingly, neglects to address any of it.

Further pointing to the Idol's discovery in modern Turkey is the admission of Alastair Martin who acknowledged in his personal annotated copy of The Guennol Collection, not only that he had purchased the Idol from Klejman in 1961 and at the time had been offered his choice of one or more idols, but went further, noting in 1990, as Turkey was still very publicly litigating with The Met to recover the Lydian Hoard, that "Turkey may present a problem here, be careful." (FF ¶ 23) This was no idle or passing thought: for years Martin was very close to and very active at The Met, where he was on the Acquisitions Committee, and the Lydian Hoard litigation was widely publicized and certainly caught the attention of the entire antiquities world, especially

renowned collectors such as Alastair Martin. (FF ¶¶ 19, 22) Knowing that he had purchased the Idol from Klejman years earlier, the landmark lawsuit that Turkey had brought against The Met in 1987 had to have been very much on Martin's mind, to the point that he acknowledged privately that Turkey could present a problem for him by ultimately challenging his right to keep the Idol. Plainly, by itself, the admission could be subject to a number of different interpretations, some more sinister than others and one of which was volunteered on cross examination by the Defendants' expert, Maxwell Anderson. (FF ¶ 24) Given the totality of circumstances in which the comment was made, however, the most obvious and compelling inference to be drawn is that Martin himself came to believe that the Idol had been looted from Turkey and, in light of the high-profile, then pending Lydian Hoard litigation, he had ample reason to express his concern that Turkey one day might present a problem to his claim of ownership, and, significantly, did so in the confidential notes he kept for himself.

Another piece in the skein of circumstances that show that the Idol was unearthed in modern Turkey is its probable origins in Kulaksizlar, a settlement in Manisa provenance in Turkey, where the only workshop known to date for manufacturing Kiliya type idols in antiquity was first identified in the 1990s as a result of a pair of archeological surveys in the 1990s, followed by an additional survey in 1999 and most recently by an archeological excavation in 2018, which was done following the commencement of this action. (FF ¶¶ 8, 10) Those surveys and archeological dig so far have confirmed Kulaksizlar as the only well-established workshop in antiquity for the manufacture of Kiliya-type.

Kiliya-type idol expert Dr. Rafet Dinc testified that these idols were manufactured in Kulaksizlar and were suitable and used only for local exchange with Anatolian neighbors, not

objects of wider or marine trade. (FF ¶¶ 107, 109) He also described looting and agricultural activity at the site over time (FF ¶ 110), which effectively refutes Anderson's testimony that the failure to excavate an intact figure at the site is evidence that idols "were traded after they were made" (FF ¶ 108). Dr. Brodie agrees with Dr. Dinc that there was local exchange and also that there was no marine-based trade at the time and dismisses the discovery in Chalcolithic Kulaksizlar of alleged Greek stone tools from the Paleolithic Age, which ended five thousand years earlier, as irrelevant to the question of marine trade. (FF ¶ 111) We submit that there are no facts to support Anderson's contrary conclusion that there was. (FF ¶ 108) Even if fact-based evidence existed that idols manufactured in Kulaksizlar were more widely exchanged and the subject of marine based trade in the Chalcolithic age, the fact remains that Defendants have offered no archeologically credible evidence that *any* Kiliya-type idol (including the Kiliya-type idol displayed today in the Mytilene Museum on Lesbos (FF ¶ 114)) has ever been unearthed outside of what is now modern Turkey, to say nothing of the significantly more important fact that it also has offered no evidence that the particular Idol which is the subject of this litigation was found outside of Turkey.

4. Plaintiff Has Proven that the Idol Was Found in Turkey During the Period that the 1906 Decree Was in Effect

This Court previously held that the evidence that Turkey presented in response to Defendants' summary judgment motion was sufficient for a reasonable fact finder to "conclude that the Idol, which was in the hands of American collectors by 1961, was excavated and exported from Turkey shortly before then, while the 1906 Decree was in effect." (Op. at 16) The Court referred specifically to the evidence Turkey proffered on the motion: "Turkey offers evidence from its archaeology expert that several other prominent examples of antiquities looted from Turkey

appeared on the market, and were acquired by museums or collectors, within a year or two of their looting. Turkey also offers evidence that the Martins, the American collectors who acquired the Idol in 1961, acquired it from the J.J. Klejman Gallery, and that J.J. Klejman was a well-known 'dealer-smuggler' who sold looted art in the 1960's." (*Id.*) All of this supports the conclusion that the Idol was smuggled out of Turkey shortly before the Martins acquired it in the early 1960s. (*Id.*) Defendants have offered conjecture and surmise that the Idol may have been unearthed before 1906, but plainly have offered no evidence of that fact.

Moreover, Turkey presented more extensive evidence at trial to prove this point further, including no fewer than 12 well-publicized cases in which looted antiquities taken from Turkey appeared on the market outside of Turkey shortly after they were looted. (FF ¶ 119) The most notorious of these is the Lydian Hoard, which also first surfaced in New York in the 1960s and was quickly brought to market a short time after it was looted. (*Id.*) Like the Idol, the Hoard came from J.J. Klejman in the 1960s. (FF ¶¶ 13, 26) Further, Dr. Brodie testified that there is virtually no chance that the Idol had been discovered and removed from Turkey before 1906, since discovery of an object of such interest would have attracted notice and publication of which there was none at that time. (FF ¶ 121) Not only is there no report of the Idol's discovery, as we have previously discussed, there is no written reference anywhere even to the existence of the Idol until 1964, three years after Klejman sold the Idol to Alastair Martin. (FF ¶¶ 11, 13, 15, 101)

Even Dr. Anderson admitted that the Lydian Hoard appeared on the market soon after it was looted. (FF ¶ 120) Nevertheless, he took issue with the Republic's evidence of the large number of Turkish antiquities that came to market soon after they were looted, by citing one example of looted *inventoried* objects being held for a long period of time, as opposed to

misappropriation of a previously unknown object, like the Idol, which is brought quickly to market before anyone, including law enforcement, is aware of its existence. (FF ¶ 122) Ms. Boz explained in her cross-examination that, based on her extensive experience in recovering looted antiquities, she only knew of inventoried objects that might be kept for a longer period of time before being placed on the market, for the simple reason that such objects are known and therefore could be sought by the authorities immediately after they were stolen. Antiquities taken from previously unexcavated sites, which are unknown, do not need to be hidden in Turkey and looters would want to get them out of the country before authorities investigated any looted sites. (FF ¶ 123)

In any event, in order to prove that the Idol may have been excavated prior to 1906 even though it first appeared on the market in the 1960's, Defendants would have to argue that it was hidden or "warehoused" for over 50 years. This would mean that a thief or fence refrained from bringing it to market for so long that he or she would essentially give up any chance of selling it in any reasonable time. This makes no sense.

In sum, the Defense has failed to rebut the Republic's *prima facie* case establishing that the Idol was discovered in Turkey after 1906.

C. Defendants Failed to Meet Their Burden to Prove Laches

"In order to prove laches, [Defendant] must show that: (1) [the Republic] was aware of [its] claim, (2) [it] inexcusably delayed in taking action; and (3) [Defendants were] prejudiced as a result." *Bakalar*, 819 F. Supp. 2d at 303 (citations omitted). Since laches is an equitable defense, the "conduct of both [parties] will be relevant to any consideration of this defense," *Lubell*, 77 N.Y.2d at 321, and Defendants' vigilance when acquiring the Idol is as much an issue as Turkey's diligence in commencing this action. *Lubell*, 153 A.D.2d at 152, cited in *Bakalar*, 500 F. App'x

at 9.

As a threshold matter, we submit that the Court need not resolve the issue of Defendants' vigilance because Defendants have utterly failed to prove the first required element of their claimed laches defense: that Turkey was aware or even should have been aware that it had a claim to the Idol before the Christie's 2017 Auction. It was only then, when it learned that the Idol lacked any provenance prior to the 1960's, that Turkey had reason to know that the Idol had been illicitly excavated and, having knowledge of that crucial fact, promptly took action to make a claim for it against the Defendants. Thus, Defendants' failure to prove the first two elements of a required laches claim, *see Bakalar, supra*, alone defeats their claim that laches bars Turkey's recovery of its lawful patrimony.

The evidence presented at trial by the Defendants points to a basic fallacy in their claimed laches defense. By presenting evidence that the Idol was mentioned in catalogue entries, academic reports, news articles and other sources over the years (often obscure publications and texts, in footnotes, written in foreign languages, unillustrated, with the speculative "said to be from" and never with its provenance (FF ¶¶ 96, 97, 101-103)), had been exhibited in New York at the Metropolitan Museum of Art and was part of the well-known Guennol Collection (FF ¶¶ 18, 21, 43), they tried to show that Turkey knew or should have known of the Idol's *existence.* But proof of knowledge that the Idol *existed* in museums or private collections outside of Turkey does not establish the essential first element of a laches defense. Turkey not only must be aware that the Idol exists, but it must also be proved that Turkey "was aware of [its] claim" to recover the Idol and failed to act. *Bakalar, supra.*

This is not a case of a stolen or inventoried work of art that suddenly disappears from a collection so that the loss is noticed immediately by its acknowledged owner and the owner is required to pursue its claim against the defendant-possessor. Indeed, here the opposite is true: here the owner of the Idol had no knowledge of its existence at the time of its loss and – assuming that it learned of its existence at some later point – for decades thereafter had no knowledge that the Idol had been looted or stolen and that it had a claim to rightful ownership. This case is unprecedented and the remedies that have evolved under New York law to protect the interests of good faith purchasers and putative owners should be applied with these significant differences in mind. *Lubell*, the seminal New York case involving the assertion of the laches defense in art recovery cases, provides the appropriate analytical framework for resolving the issues.

In *Lubell*, a gouache had been stolen from the Guggenheim Museum and the defendant possessor argued that the Museum should have been searching for the artwork from the time it was thought to be missing, but before it had any reason to believe it had been stolen. The Appellate Division held that only after the Museum conducted a full-scale inventory could it have presumed that the gouache must have been stolen. The court explained that "it simply makes no sense" to require that the Museum conduct "a search that [it] then had no reason to undertake." *Lubell*, 153 A.D.2d at 151-52. The court made clear that the Plaintiff only had to be diligent in *searching* for the stolen gouache, not in "safeguarding it from theft." *Id.*

No New York case has ever required that an owner search for an artwork before it knows or should have known that it was stolen. The ownership claim to the painting at issue in *Bakalar* was based on the disappearance during the Nazi era of a known collection that included the painting at issue. 819 F. Supp. 2d at 303*; see also Zuckerman v. Metropolitan Museum of Art*, 928

F.3d 186, 193 (2d Cir. 2019) (claim made seventy years after owners knew to whom identified painting was sold under duress); *Sanchez v. Trustees of the Univ. of Penn.*, No. 04 Civ. 1253, 2005 WL 94847 (S.D.N.Y. Jan. 18, 2004) (no effort made to recover pre-Columbian gold objects for thirty-two years after it was known they were stolen from identified collection); *Wertheimer v. Cirker's Hayes Storage Warehouse, Inc.*, 200 A.D.2d 117, 118 (1st Dep't 2002) (owner's family waited to seek return of painting although it was known by owner to have been stolen 50 years ago); *Greek Orthodox Patriarchate of Jerusalem v. Christie's, Inc.*, No. 98 Civ. 7664, 1999 WL 673347 (S.D.N.Y. Aug. 30, 1999) (palimpsest known to have been missing from identified collection seventy years before a claim was made). The mere fact that the Idol existed did not provide Turkey with knowledge that it had a claim to recover it.

The Defendants here would take the diligence on the part of the owner required under New York law well beyond *Lubell*. Steinhardt and Christie's urge that the owner be required to undertake an investigation to determine whether the object has been stolen. To require a country like Turkey, with its vast trove of unknown ancient artifacts, to investigate whether an artifact it later learns exists has been stolen would be to place on it an impossible burden. In his testimony, both on direct and on cross examination, Dr. Brodie describes the kind of burden on a foreign state like Turkey that such a requirement would impose, even if it were limited to a simple letter inquiry for the thousands, perhaps tens of thousands antiquities that are currently located outside of Turkey. (FF ¶¶ 93, 100) Indeed, Maxwell Anderson similarly acknowledged the enormous number of Turkish antiquities that are located throughout the world. (FF ¶ 99) Imposing such a burdensome obligation on private owners and foreign states would virtually insulate looted art found in New York from recovery by its lawful owner – a result that New York courts have

expressly rejected as contrary to the public policy of New York, which has long favored protecting the rights and interests of rightful owners above those of good faith purchasers. *See Lubell*, 77 N.Y.2d at 426; *In re Flamenbaum*, 22 N.Y.3d 962, 963 (2013); *Shene*, 2009 WL 762697, at *2.

As Defendants have gone to great pains to illustrate, Turkey's past repatriation claims always have been based on *direct*, often irrefutable, evidence of looting or theft. This case, on the other hand, is entirely circumstantial, built in large part on pieces of evidence, assembled over time, much of which were not available until shortly before the action started. For example, before starting this action, Turkey did not have evidence that the Idol surfaced virtually unprovenanced outside of Turkey in 1961, that its source was a dealer who then trafficked in looted Anatolian antiquities, that that trafficker had offered a group of these rare idols for sale all at one time, that the original purchaser, Alastair Martin, suspected that "Turkey may present a problem," or even that Michael Steinhardt was in possession of the Idol and of Steinhardt's admitted preference for aesthetics over provenance and acknowledged tolerance for risk when purchasing rare antiquities. These are some of the most salient circumstantial facts that support Turkey's assertion that the Idol at issue in this case was discovered in modern Turkey and is the property of Turkey – all of which came to light only after the Auction was announced and the action against Steinhardt and Christie's was commenced.

Defendants continue to maintain that Turkey should have asserted its claim earlier, when it first learned of the existence of the Idol, because it is Turkey's position that all Kiliya-type idols were found in Anatolia (FF ¶¶ 105-107, 109, 111-114, 116, 118) – this, despite the fact that

Defendants still vigorously contest the fact that all Kiliya-type idols were found in Anatolia. Indeed, they go further to argue simultaneously – though apparently out of different sides of their mouths – that, although there is no evidence that the Idol comes from Turkey or was unearthed after 1906, Turkey nonetheless should have made its claim sooner. But Dr. Anderson, who presses those irreconcilable positions, also conceded that it was "correct" that "there's no evidence on which Turkey could have predicated a claim." (FF ¶ 104) Plainly, the Defendants cannot have it both ways: either there was evidence to support a claim of repatriation, in which Turkey was bound to assert its claim or there was not, in which case Turkey had no obligation to make its claim. Turkey has shown that there was no evidence to support a claim of repatriation until it learned of the Idol's conspicuously thin provenance in the Christie's auction catalogue. (FF ¶¶ 66, 67) As Dr. Brodie explained in detail in his direct testimony at trial, this was the only time that Turkey could reasonably have been expected to have discovered the Idol to be looted property. (FF ¶¶ 96-98) It then promptly moved to halt the Christie's auction (FF ¶ 66-76), thus defeating Defendants' ability to prove the first two elements of their laches defense. *See Bakalar*, *supra.*

The simple fact that the Idol originated in Anatolia would not have been a sufficient basis on which Turkey, without more, could have brought a claim. Without knowing its provenance, Turkey would have no way of knowing whether it had good title to the Idol. (FF ¶ 67, 98)

Moreover, as both Director Boz and Dr. Brodie testified, with limited resources, Turkey is responsible for trying to protect all of the objects created over millennia that lie buried within its borders. (FF ¶¶ 92, 93) Despite these difficulties, Turkey's successful efforts at recovering its looted antiquities stand out in the international community. (FF ¶ 94) Dr. Benzel also testified to

its well-founded reputation for protecting its cultural patrimony (FF ¶ 95), a reputation that echoes Dr. Brodie's description of the international praise Turkey has received for its repatriation efforts and its singular successes, which are ample testament to its past diligence. (FF ¶ 94) The reasonableness and timeliness of the Republic's efforts in this case must be judged in this context. *See Shene*, 2009 WL 762697, at *4 (defendant "has demonstrated that it diligently pursued claims for other objects that it believed had been stolen, . . . and there was no reason for it to be any less diligent in attempting to recover [the object] here"). *Accord: Vineberg v. Bissonnette*, 529 F. Supp. 2d 300, 309 (D.C.R.I. 2007), *aff'd*, 548 F.3d 50 (1st Cir. 2008); *Flamenbaum*, 22 N.Y.3d at 965; *Lubell*, 77 N.Y.2d at 320.

Since Defendants failed to meet their burden of proving the first two elements of the laches defense, the defense must fail. But even if they were somehow able to prove that Turkey knew it had a claim to the Idol simply based on the Idol's existence outside of Turkey without further proof of theft and that it failed to act diligently to recover it, Defendants' laches defense would still fail. This is because, even as a good faith purchaser, Steinhardt has not proven that he was vigilant in purchasing the Idol or that he was prejudiced by any delay attributable to Turkey.

The Appellate Division in *Lubell* made clear that in determining whether the plaintiff can succeed on a laches defense, the court must examine the relative equities of the parties, and, in that regard, the diligence of the plaintiff has to be balanced against the vigilance of the defendant which, in turn, requires that the conduct of both parties be considered. *Lubell*, 153 A.D.2d at 152; *see also United States v. Portrait of Wally*, No. 99 Civ. 9940, 2002 WL 553532, at *22 (S.D.N.Y. Apr. 12, 2002) ("laches involve[s] a fact-intensive inquiry into the conduct and background of both parties in order to determine the relative equities."); *Pavers & Builders Dist. v. Nico Asphalt*

Pavings, Inc, 248 F. Supp. 3d 374. 380 n.3 (E.D.N.Y. 2017) ("A laches defense requires the Court to balance the equities. . ."); *accord 666 Drug v. Trustees of 1199 SEIU*, No. 12 Civ. 1251, 2013 WL 4042614, at *10 (S.D.N.Y. Aug. 8, 2013) (". . . Melrose's own conduct in availing itself of the benefits of the Fund for years while paying into the Fund at the long-expired rate . . . undermines its bid for equitable relief such as laches.").

In assessing the vigilance of the defendant good-faith purchaser, a key element is whether the purchaser was confronted with "red flags" at the time of the purchase that required him or her to exercise vigilance by way of inquiry to ensure that stolen property is not being purchased. *Lubell*, 153 A.D.2d at 152. As the Court of Appeals, affirming the Appellate Division in *Lubell*, put it the rule in New York "gives the owner relatively greater protection and *places the burden of investigating the provenance of a work of art on the potential purchaser*." *Lubell*,77 N.Y.2d at 320 (emphasis added). To place the greater burden on the true owner would "encourage illicit trafficking in stolen art." *Id*; *see also Shene*, 2009 WL 762697, at *2 (same); *Flamenbaum*, 22 N.Y.3d at 966 (same). Therefore, "[p]ersons deal with the property in chattels or exercise acts of ownership over them at their peril," *Lubell*, 153 A.D.2d at 153. In *Lubell*, as in this case, the purchaser, a non-merchant, was held to have been in good faith and thus the case was timely under the statute of limitations. The buyer's good faith, however, did not eliminate the need for the buyer to prove that she was vigilant when faced with suspicious circumstances, and, consequently, to prove that she made further inquiries to ensure that she was not purchasing a stolen artwork. *See Lubel*l, 153 A.D.2d at 152.

Lubell also made clear that the failure to investigate obvious red flags does not undermine the good faith of the purchaser and is not the equivalent of bad faith. Neither the plaintiff in *Lubell*,

nor the Plaintiff here, was or is asserting that the defendant there, or that Steinhardt here, knew or should have known, based on the presence of "red flags," that the plaintiff had a claim. Rather, those "red flags" had to be examined in order to determine whether it was the alleged delay or the purchaser's own inaction which led to the purchase. *Id.* Thus, it was asserted in *Lubell* that the "bill of sale transferring the gouache to defendant 'raised bright red flags' that would have caused a prudent purchaser to suspect the provenance of the gouache…to make inquiry of the plaintiff"; and it was this assertion that led the court to adopt a balancing of the equities test. *Id.* The court in *Lubell*, nonetheless, continued to treat the purchaser as a good faith purchaser and held that its only inquiry would be into whether it was the purchaser's failure to investigate the "red flags," or the lack of diligence on the part of the owner, that led to the purchase. Here, it was Steinhardt's failure to investigate the Idol's suspiciously limited provenance by, among other things, contacting Martin, and not the Plaintiff's asserted lack of diligence, that led to the purchase of the Idol.

Applying *Lubell* to this case, there were many red flags confronting Steinhardt when he acquired the Idol, but he failed to exercise caution in proceeding with the purchase or to make any further, meaningful inquiry about the object he purchased to ensure that it was not stolen. He admits that he was particularly knowledgeable about the then current problems The Met was having with Turkey concerning the Lydian Hoard. (FF ¶ 132) He has also testified under oath that he was very familiar at the time with patrimony laws in Turkey providing for ownership in the State of antiquities found in Turkey, (FF ¶¶ 133, 134) though he now professes that he does not recall that testimony (FF ¶ 135). Steinhardt eschewed further inquiry because his "overwhelming motivation in buying ancient art was their aesthetics[]" (FF ¶ 126) and he was prepared to take the risk that his acquisition would be subject to challenge, even if that risk included

that "a governmental body would conclude that this was an object that related to its national patrimony." (FF ¶ 127) He even admits that "[t]he reputation of all ancient art dealers was one that had a dubious quality to it . . . They dealt with the finest museums in the world. But there was this . . . there was this taint over the entire area." (*Id.*) Steinhardt not only admits to being a risk-taker, he cherishes risk and cultivates his reputation as a risk-taker. (FF ¶ 124)

The existence of these cautionary signs confronting Steinhardt is what distinguishes the facts in *Lubell* and those in the instant case from those in *Bakalar,* where there were no red flags apparent to Bakalar when he purchased the painting at issue in that case. It is one thing to hold that without any warning signs, a good faith non-merchant purchaser has no duty to make inquiry; he or she is thus not deemed to lack "vigilance" for not making inquiries when there does not appear to be any reason to do so. But the New York appellate courts in *Lubell* must have meant something when they imposed the duty of vigilance on a good faith purchaser. What *Lubell* provides is that the duty of investigating provenance falls on the shoulders of the good faith purchaser if red flags suggest that he or she must be vigilant.

Ignoring all of these warnings, Steinhardt went ahead with his acquisition of the Idol without contacting Turkey or even attempting to contact Alastair Martin, whom he knew. (FF ¶ 39) Martin could have informed Steinhardt of the circumstances of his purchase: that he had purchased it from Klejman and that Klejman had a group of similar idols for sale at the same time, and perhaps Martin would have shared his own concerns about Turkey claiming the Idol as cultural patrimony. (FF ¶¶ 16, 23) The spare, virtually non-existent provenance of the Idol was one indication of its suspicious origins; the fact that there was no prior written record of its existence before 1961 was another. Coming to market, as it did in the wake of the scandal caused by The

Met's very public, contemporaneous deaccession of other Turkish antiquities, the Lydian Hoard, was a conspicuous third cautionary red flag. (FF ¶¶ 15, 65, 66, 130, 131) Any one of the three, indeed the very combination of them, required the Idol's purchaser under New York law to probe further into its questionable origins.

Steinhardt's vigilance, however, extended no further than talking about the Idol to the Merrins, and some friends and people he knew at and through The Met (FF ¶ 39), but no one who could provide him with information about the Idol's conspicuously abbreviated, virtually non-existent provenance. He purportedly relied only on the fact that the Idol had been part of the Guennol Collection and had been on loan to The Met, both of which do not address the issue of lack of provenance prior to 1961. (FF ¶ 40) By his own admission Steinhardt, a serious and knowledgeable collector at the time, probed no further and, with his eyes wide open, chose instead to rely on factors that said nothing about the Idol's provenance but merely enhanced its value. (FF ¶ 40)

Steinhardt has also failed to show that he suffered any prejudice because of Turkey's asserted delay, the third required element of a laches defense. This is so because a) neither Martin's testimony, nor that of any of the other deceased witnesses cited by Steinhardt, nor any so-called missing documents, could help Steinhardt now because, as shown above, neither such witnesses nor such documents could establish that Turkey did not own the Idol; b) if Steinhardt had inquired he would have learned facts that would have led him to believe the Idol was stolen that he could not otherwise have known; and c) because of his preference for aesthetics over provenance, high tolerance for risk and attitude toward patrimony laws and collecting, Steinhardt would have ignored the red flags anyway and not changed his position. These factors, plus his

own testimony at trial, serves to defeat any claim of prejudice. *See Abbott Labs.*, 2020 WL 7239617, at *11 (finding defendants were not prejudiced where they failed to explain how testimony from deceased witnesses would contradict the factual record in the case which, although not exhaustive between the date when the artwork was in plaintiff's possession and the time it was allegedly stolen, contained strong circumstantial evidence that the plaintiff owned the painting and it was taken); *Flamenbaum*, 22 N.Y.3d at 965 (holding that a witness's death does not demonstrate prejudice to support a laches defense if the decedent's testimony could not have shown that he had proper title to the antiquity); *see also Mason v. Jamie Music Pub. Co.*, 658 F. Supp. 2d 571, 588 (S.D.N.Y. 2009) (rejecting laches defense and claim of prejudice based on inability to present deceased witness's testimony where "testimony would not change the Court's decision").

As for Christie's, it cannot assert independently the doctrine of laches as a defense because it is a mere stakeholder (FF ¶ 45) and has no interest of its own in the Idol or "in the outcome of the litigation." *Arkwright-Bos. Mfrs. Mut. Ins. Co. v. Truck Ins. Exch.*, 979 F. Supp. 155, 161 (E.D.N.Y. 1997), *vacated in part sub nom. on other grounds*, 173 F.3d 843 (2d Cir. 1999), *citing Airlines Reporting Corp. v. S & N Travel, Inc.*, 58 F.3d 857, 862 (2d Cir. 1995). Christie's has no standing to assert a defense that is asserted by its disclosed principal.

In any event, Christie's also cannot claim it suffered any prejudice by offering the Idol for auction. Christie's also exercised no vigilance when it agreed to offer the Idol. As set forth above, it did not even follow its own rules regarding the sale of antiquities and tried to conceal modern Turkey as the origin of the Idol by altering the information disclosed in its press release, auction catalogue and other documents to remove the word "Turkey." (FF ¶¶ 48, 58-60)

In sum, when one compares the "conduct and background of both parties in order to determine the relative equities," *Portrait of Wally*, 2002 WL 553532, at *22 one can readily see that the opposing parties in this case have vastly different attitudes concerning the importance and legal obligation of returning cultural property to Turkey, the country in which the Idol was discovered and from which it was unlawfully removed. Turkey has been recognized as a leader among nations around the world in pursuing the return of cultural property looted from its territory. (FF ¶¶ 94, 95) On the other hand, although he is a sophisticated and wildly successful businessman who started collecting antiquities in the late 1980s, and has amassed a collection of hundreds of objects (in stark contrast to the "novice art collector" in *Bakalar*, No. 05 CIV. 3037(WHP), 2008 WL 4067335, at *3 (S.D.N.Y. Sept. 2, 2008)) – with art and antiquities comprising 60% of his enormous wealth – (FF ¶¶ 37, 38) Michael Steinhardt exercised no caution when he acquired this extremely rare and valuable Idol, and heedlessly followed his practice of favoring aesthetics over provenance when acquiring objects pleasing to him. (FF ¶ 126) His attempt to suggest, in his direct trial testimony declaration, that Martin's ownership and The Met's possession on loan were enough provenance for him (FF ¶ 40), shows very clearly how little inquiry Steinhardt was interested in doing.

Moreover, Steinhardt does not even recognize Turkey's rights to reclaim its property and instead believes that he has no obligation whatsoever to investigate the provenance of antiquities that he has decided to acquire, even if they have been "freshly" and illegally excavated from countries that have patrimony laws like Turkey. (FF ¶¶ 126-129) In conclusion, the equities in this case certainly do not "tip" in Defendants' favor. *See Portrait of Wally, supra.* Quite the opposite.

When all is said and done, the Republic of Turkey here seeks the return of a remarkable piece of its cultural heritage, to be placed in a prominent museum so that its citizens and others can appreciate its rich cultural heritage. Turkey has never sold and will never sell its antiquities for financial gain. Unlike Defendants in this case, Turkey does not engage in the antiquities trade to make money. The Republic's aim here is much higher than that. It hopes that the Court will help it to achieve that purpose.

CONCLUSION

For the foregoing reasons, Plaintiff's requests for relief should be granted in their entirety.

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