

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

**REPUBLIC OF TURKEY,** )  
)  
**Plaintiff-Counterclaim Defendant,** )  
)  
**v.** )  
)  
**CHRISTIE’S INC. and** )  
)  
**MICHAEL STEINHARDT,** ) **CIV. ACT. NO. 17-cv-3086 (AJN) (SDA)**  
)  
**Defendants-Counterclaimants,** )  
)  
**and** )  
)  
**ANATOLIAN MARBLE** )  
**FEMALE IDOL OF KILIYA** )  
**TYPE,** )  
)  
**Defendant-in-rem.** )

**DEFENDANTS CHRISTIE’S INC.’S AND MICHAEL STEINHARDT’S [PROPOSED]  
POST-TRIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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**[PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Plaintiff Republic of Turkey brought this case against Christie’s and Michael Steinhardt, as well as Defendant-in-rem an Anatolian Marble Female Idol of Kiliya-type, also known as the “Guennol Stargazer” (“Stargazer” or “Idol”). This diversity action arises from the allegedly unlawful excavation and possession of the Stargazer that Turkey claims it owns pursuant to a 1906 Ottoman Decree. Dkt #468 ¶78. The statuette ultimately made its way into the hands of Steinhardt, a private collector in the United States who purchased it in 1993. Plaintiff brings New York state law claims of conversion and replevin and seeks a declaratory judgment that all right, title, and interest in and to the Stargazer is vested in Turkey. Dkt #65. Steinhardt counterclaims, seeking a declaratory judgment that all right, title, and interest in and to the Idol is vested in him. Dkt #122.

The Court concludes that the 1906 Decree is not enforceable and that even if it were, Plaintiff failed to establish ownership of the Idol under that law. The Court also concludes that Turkey’s claims are barred by laches. The Court enters judgment in favor of Defendants and grants Steinhardt’s request for declaratory judgment awarding him all right, title and interest in and to the Stargazer. This Opinion and Order constitutes the Court’s findings of fact and conclusions of law for purposes of Fed. R. Civ. P. 52(a)(2) and 65. To the extent any statement labeled as a finding of fact is a conclusion of law it shall be deemed a conclusion of law, and vice versa.

**I. TRIAL**

In April 2021, the Court held an eight-day remote bench trial pursuant procedures agreed to by the parties and so-ordered by the Court. Dkt #431. The Court heard live testimony from Zeynep Boz, who heads Turkey’s Anti-Smuggling Department; Steinhardt; Max Bernheimer, head of Christie’s antiquities department; and third-party witnesses Samuel Merrin of the Merrin Gallery and Dr. Kim Benzel of the Metropolitan Museum of Art (“Met”). The Court also received into



evidence deposition testimony by five witnesses Turkey presented for depositions but did not make available for trial (DTX 10A (E. Gokhan Bozkurtlar); DTX 11A (Dr. Rafet Dinç); DTX 13A (Belma Kulaçoğlu); DTX 17A (Aynur Talaakar); DTX 19A (Dr. Candemir Zoroğlu)), by third party Robin Martin, who passed away before trial (PTX 303), and by Steinhardt's former collection manager Emily Leonardo (PTX 304). The Court also considered and ruled upon several pretrial motions regarding various evidentiary issues. Most notably, based on the law of the case and Fed. R. Evid. 404(b) and 403, the Court declined to accept Plaintiff's proffer of evidence regarding government investigations into Steinhardt's antiquities collection to establish his state of mind and unclean hands in purchasing the Stargazer. Dkt #417.

At trial, the Court also heard testimony from four expert witnesses (Dr. Sibel Özel and Dr. Neil Brodie offered by Plaintiff, and Dr. Maxwell Anderson and Professor Ozan Varol offered by Defendants). Turkey asked this Court to disqualify Varol and to limit Anderson's testimony. Dkt #194. The Court reserved ruling and admitted the testimony at trial. Dkt #285 at 22. Having heard Defendants' experts' testimony and having struck limited portions of their declarations (DTX 201C; DTX 201D), the Court hereby DENIES the balance of Turkey's *Daubert* motion.

## **II. JURISDICTION AND VENUE**

The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because this is a dispute between a foreign state and two citizens of a State, and the matter in controversy exceeds \$75,000, exclusive of interest and costs. The Court has jurisdiction over Steinhardt's counterclaim for declaratory judgment pursuant to 28 U.S.C. § 2201(a). Stipulated Statements of Fact ("Stip.") No. 1. This Court has personal jurisdiction over Plaintiff pursuant to 28 U.S.C. § 1330(a) due to Turkey's waiver of its foreign sovereign immunity as set forth in 28 U.S.C. § 1605(a)(1). The Court has personal jurisdiction over Defendants pursuant to New York CPLR 301 and 302(a)

because Defendants transacted business in this judicial district giving rise to the claims asserted. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the subject matter of this dispute, namely the Stargazer, is located in this judicial district. Stip. No. 1.

### III. FINDINGS OF FACT

Plaintiff claims ownership and right to possession of an Anatolian Marble Female Idol of Kiliya-type believed to date from the middle or late 5<sup>th</sup> millennium B.C.E., between 4800 and 4100 B.C.E. Tr. 428:21-429:21 (Brodie); 832:24-834:2 (Anderson). The Idol is sometimes known as the “Guennol Stargazer” due to its having been part of the prominent Guennol Collection, owned by Alastair and Edith Martin, from 1961 to 1993. Stip. Nos. 5-10; DTX 201A ¶7; DTX 201D ¶17. Steinhardt acquired the Stargazer in 1993 through the Merrin Gallery. Stip. No. 10.

Kiliya-type idols are extremely rare, with only about three dozen complete or near-complete examples known to exist. Tr. 837:16-19 (Anderson). The Stargazer is virtually unique because of its size and condition; it is the largest and one of the finest examples of its type. Stip. No. 12; PTX 283 ¶6; DTX 165, 169; DTX 201A ¶¶8-9; DTX 201D ¶¶17, 44; DTX 215. The market value of the Stargazer is approximately \$14,471,500. Dkt #122; DTX 201A ¶36.

The Stargazer has been in the U.S. since at least 1961, when the Martins acquired it. Stip. No. 5. After entering the Martins’ collection, the statuette garnered attention from academics and archaeologists around the world, leading to fourteen scholarly and other publications referencing the Idol between 1964 and 2018. PTX 95; DTX 54, 55, 72, 73, 75A, 77, 79, 80, 81A, 82, 88A, 92, 189, 234; DDTX2A. In 1997, Turkey’s own Ministry of Culture and Tourism published a paper by Turkish archaeologist Dr. Rafet Dinç – one of the world’s first leading experts on Kiliya-type idols – that summarizes a presentation he made at a May 1996 Ministry symposium and names the Kiliya-type idol in the Guennol Collection in New York. Stip. No. 59; DTX 88A at 5.

The Stargazer is extremely well-known. Benzel, Curator of Ancient Near Eastern Art at the Met, testified that she knew of the Stargazer as a graduate student and perhaps as an undergraduate. Tr. 288:8-289:6 (Benzel). *See also* DTX 201D ¶¶44, 50. The Stargazer's widespread reputation was driven by the fourteen publications and its exhibition during two long-term loans to the Met: from the Guennol Collection (1966 to 1993) and from Steinhardt (1999 to 2007). Stip. Nos. 7, 23; DTX 52, 54, 55. The Met displayed the figurine almost continuously during those loans, including at the *Centennial Exhibition of the Guennol Collection* in 1969-70 and *Art of the First Cities in the Third Millennium B.C.* in 2003. Stip. No. 25; DTX 54, 55. Particularly notable for this case, the Stargazer was on public display during Turkey's litigation against the Met in New York from 1987 to 1993 regarding unrelated objects known as the Lydian Hoard. Stip. No. 26; DTX 54, 55; DDTX3A. *See Turkey v. Metropolitan Museum of Art*, 762 F. Supp. 44 (S.D.N.Y. 1990).

Despite this long and highly public history of publications and exhibitions, for many decades Turkey made no inquiry or claim to the Stargazer, waiting until just before Christie's auction in April 2017, when its action was prompted by an email from Turkish journalist Özgen Acar. Stip. Nos. 29-30, 69; Dkt #468 ¶ 64; DTX 63. Acar has driven many of Turkey's repatriation claims in the past, frequently urging the government to pursue cultural objects. DTX 81A, 85.

Before filing the instant case, Turkey's Consulate General in New York asked Christie's to pull the Stargazer from the auction. Stip. No. 70; DTX 99, 132. Christie's provided documentation of the statuette's provenance and declined. Stip. No. 71; DTX 100. Turkey also requested that the U.S. Department of Homeland Security seize the Stargazer and the Department refused. Stip. No. 74; DTX 131. In trying to interrupt the auction, Turkey cited its 1983 cultural heritage law, Law No. 2863. DTX 68. Because the figurine has been out of Turkey since at least 1961, that law –

passed in 1983 – has no relevance to this repatriation claim. Tr. 99:10-12 (Boz); DTX 201C ¶47. Turkey later shifted to citing the 1906 Ottoman Decree. PTX 285 ¶19.

**A. Turkey’s Cultural Heritage Laws And The 1906 Ottoman Decree.**

Ottoman cultural heritage laws date back to the 1800s. PTX 285 ¶11. In 1869, the Ottoman Empire promulgated its first decree prohibiting the export of antiquities but permitting free trade within the Empire, which encompassed territory from eastern Austria to the Persian Gulf, and from Algiers to Saudi Arabia. DTX 201D ¶28. The Empire promulgated a new decree in 1874, then another in 1884. DTX 201C ¶57. None of these early decrees provided for full and unconditional state ownership of antiquities newly discovered on Ottoman lands; the 1906 Decree was the first to do so. Tr. 1016:11-1017:2 (Varol); PTX 285 ¶11; DTX 201C ¶¶32, 41. The Ottoman Empire’s 1906 Decree provided, in part:

Article 4. All monuments and immovable and movable antiquities situated in or on land and real estate belonging to the Government and to individuals and various communities, the existence of which is known or will hereafter become known, and are the property of the Government of the Ottoman Empire....

DTX 225. All parties agree that to establish ownership pursuant to this Decree, Plaintiff must prove that the Idol was excavated within the boundaries of modern-day Turkey while the 1906 Decree was in effect – that is, between 1906 and 1973, when Turkey passed a new antiquities law. PTX 284 ¶3; PTX 285 ¶¶16, 19; DTX 201C ¶17; DTX 201D ¶35.

The Court previously held that the 1906 Decree is, on its face, a patrimony law. Turkey bears the burden to establish at trial the *bona fides* of its statute and the Court must consider, among other things, whether “people within the country may nonetheless legally keep antiquities [and whether] the law is otherwise generally not enforced.” Dkt #285 at 12 (citing *U.S. v. Schultz*, 333 F.3d 393, 401 (2d Cir. 2003)).

### **1. Private Ownership of Antiquities in Turkey.**

It is undisputed that the 1906 Decree permits private ownership of antiquities that were privately owned before that Decree took effect. Tr. 451:20-452:4 (Özel); DTX 201C ¶¶33, 38. The 1906 Decree does not provide for a registry or any other method of establishing the lawfulness of grandfathered private collections and there is no evidence that Turkey created one. Tr. 453:17-21 (Özel). Although Boz and Özel testified that a registration method was available before the 1906 Decree's enactment, no documents to this effect were offered by Turkey at trial, and neither Boz nor Özel have seen any registration documents or forms, despite having searched for such materials in connection with this litigation. Tr. 194:2-9 (Boz); Tr. 452:5-22 (Özel).

### **2. Enforcement of the 1906 Decree.**

From 1906 until 1973, the 1906 Decree was unenforced or severely underenforced. DTX 201C ¶¶42-44, 57, 60-62, 65. A 1907 memorandum commemorates the Ottoman Empire's decision to send ancient artifacts to Denmark University as a "gift" – a decision made by the state consultancy civil service office. DTX 192. Similarly, a 1920 memorandum from the Chief Secretary of the Grand Vizierate to the Ministry of Culture reports that antiquities excavated on the island of Rhodes would be donated to the Copenhagen Museum in Denmark. DTX 194. The German Consulate also obtained an exemption to export a substantial number of antiquities after 1906. DTX 201C ¶63. German archaeologists likewise continued to export antiquities with impunity, despite the enactment of the 1906 Ottoman Decree. *Id.*

Varol provided credible and compelling testimony regarding the general non- or under-enforcement of the 1906 Decree, testifying that he was able to locate fewer than five cases decided in Turkey that discuss the 1906 Decree. Tr. 993:25-994:11 (Varol). He interpreted this to mean that "enforcement doesn't happen at the police level," supporting his conclusion that "abrogation

of the 1906 decree was the norm rather than the exception.” Tr. 1011:5:1012:1 (Varol). Varol also pointed to Plaintiff’s own evidence as showing minimal enforcement. DTX 201C ¶¶43-59. Specifically, he noted that Plaintiff’s statistics – as well as a 2018 report by the Turkish Parliament – show almost no enforcement until the 1990s, long after the 1906 Decree had been superseded by Turkey’s 1973 and 1983 laws. PTX 25, 124A; DTX 120B. A chart of Turkey’s enforcement activities produced by Plaintiff shows no repatriations to Turkey earlier than 1924, and only two before the 1980s. Tr. 120:13-121:6 (Boz); PTX 24A. Boz admitted that a list of 34 repatriations in her written direct (PTX 283 ¶34) includes only *one* incident of enforcement of the 1906 Decree, the remainder having been effectuated under later laws. Tr. 138:2-9 (Boz). In part because of this non- or under-enforcement – as well as the Decree’s non-retroactivity and the lack of a registry – there continues to be an active antiquities market in Turkey. DTX 201C ¶40.

The 1906 Decree allowed – indeed required – payments to finders of antiquities. Under Article 9, Turkish authorities must pay landowners who find antiquities on their property *half the value of the discovered objects*. Tr. 453:22-25 (Özel); DTX 225. Özel did not address Article 9 in her direct testimony, discussing only Articles 4 and 5; she also supported her opinions with a partial translation of the Decree that omitted Article 9. Tr. 442:11-443:12 (Özel); PTX 69; PTX 285 ¶12. At trial, Boz and Özel readily acknowledged that Turkey continues to make payments to finders under the current law. Tr. 195:16-198:5 (Boz); Tr. 454:12-14 (Özel). Both referred to such payments as rewards or bonuses, although museum records call them “purchases.” Tr. 195:16-198:5 (Boz); Tr. 454:12-14 (Özel); DTX 113A, 114. But no payments or rewards or bonuses are made to possessors in foreign countries. Tr. 182:17-24 (Boz). Plaintiff’s expert Brodie offered no opinion on Turkey’s practice of paying for found antiquities. Tr. 408:7-409:1 (Brodie).

Finally, while not binding on this Court, the sole legal decision anywhere in the world outside of Turkey to decide the validity and enforceability of the 1906 Ottoman Decree did not end in Turkey's favor: Swiss courts rejected the Decree in *Turkish Republic v. The Canton of the City of Basel and Ludwig*, holding that Turkey forfeited ownership of five gravestones due to "the inactivity of the state authorities." DTX 116A; DTX 201D ¶¶87-89.

**B. Turkey's Ownership Of The Stargazer Under The 1906 Ottoman Decree.**

Plaintiff offered no direct evidence of where or when the Stargazer was excavated, instead arguing that the Court should infer that the Idol was excavated in and exported from Turkey based upon the Idol's presumed place of manufacture and the lack of documented find spots of Kiliya-type idols outside Turkey. Plaintiff likewise argues that the Court should infer that the Stargazer left Turkey shortly before 1961 based upon the lack of a documented provenance before then, lack of prior publication, and the object's association with art dealer J.J. Klejman.

While the Court finds that the preponderance of the evidence establishes that the Stargazer was manufactured in Anatolia, which is now Turkey, there is insufficient evidence in the record to show by a preponderance of the evidence: (i) that it was excavated or unearthed between 1906 and 1961, when it appeared in the U.S.; (ii) the date on which it was exported from its place of modern discovery; or (iii) that it was unearthed or discovered in modern-day Turkey or any other place.

**1. The place and date of manufacture of the Stargazer.**

The Court finds that the Idol was likely manufactured at Kulaksizlar, the only workshop for the production of Kiliya-type idols known to-date – although there may be others yet unknown. Tr. 373:16-24 (Brodie); Tr. 837:4-13 (Anderson); PTX 284 ¶12; DTX 13A (Kulaçoğlu) at 77:19-25; DTX 201D ¶29. Brodie testified that he is aware of another workshop ten kilometers from Kulaksizlar, but the record contains no supporting information. Tr. 373:17-24 (Brodie).

Anderson concluded that tool marks on the Stargazer and the way it was carved “would lead an archaeologist to associate [it] with other examples understood to be from Kulaksizlar.” Tr. 836:19-837:3 (Anderson). A report prepared in April 2017 about the Stargazer by two archaeologists at the Anatolian Civilizations Museum, Aynur Talaakar and Belma Kulaçoğlu, contains no information regarding the Idol’s date of manufacture, but does state that it is “an artifact of Anatolian origin.” DTX 67. Although much remains unknown about Kiliya-type idols, Plaintiff has proven, by a preponderance of the evidence, that the Idol was manufactured in Anatolia.

While Brodie and Anderson provide slightly different opinions on the Idol’s date of manufacture, their opinions are not far apart and overlap somewhat. Taking both experts’ opinions into consideration, the Court finds that the Idol was likely manufactured in the mid- to late 5<sup>th</sup> millennium B.C.E., specifically between 4800 and 4100 BC. Tr. 428:21-429:21 (Brodie); 832:24-834:2 (Anderson). Evidence about trade and travel during that period of antiquity makes clear that there were trade networks in the Aegean, particularly to and from Kulaksizlar. Tr. 866:3-14, 870:15-873:2 (Anderson); Tr. 410:14-411:23 (Brodie); DTX 201D ¶¶25-27.

## **2. The date of discovery, excavation, or export of the Stargazer.**

The date of the figurine’s discovery, excavation, or export remains unknown. The report prepared by Kulaçoğlu and Talaakar contains no information on these points. DTX 67. Talaakar “had no knowledge at all” of Kiliya-type idols before preparing the report; Kulaçoğlu had never studied Kiliya-type idols, although she was familiar with some of the literature. DTX 17A (Talaakar) at 16:25-17:10. There are no witnesses to the Idol’s excavation or export, and no other direct evidence such as photographs. DTX 10A (Bozkurtlar) at 125:25-126:18; DTX 17A (Talaakar) at 79:19-80:6; DTX 19A (Zoroğlu) at 254:6-12; DTX 201D ¶75. In the absence of



documentation or first-hand testimony, Plaintiff relies on hearsay, calling Boz as its only fact witness despite her relatively short tenure and lack of personal knowledge about the Idol's manufacture, excavation, or export.

Plaintiff asks the Court to infer the Idol was both discovered and exported after 1906 because it first appeared in 1961 and stolen antiquities often arrive quickly on the market. Dkt #468 ¶¶119, 123. According to Brodie, the Stargazer would have been published had it been discovered before 1961. Dkt #468 ¶¶121.

There is insufficient evidence to assume the figurine's date of excavation or export from its 1961 appearance on the U.S. market. At least two Kiliya-type Idols are known to have been excavated before 1906. Tr. 899:20-900:14 (Anderson); PTX 266 ¶¶1, 4; DTX 201D ¶31. Both parties' experts testified that there are examples of objects appearing on the market immediately after being excavated as well as contrary examples. Tr. 419:16-423:11 (Brodie); DTX 201D ¶35. Brodie testified that objects are sometimes held in warehouses for long periods of time, and he provided reasons why some objects might be held for long periods of time before being sold. Tr. 419:16-423:11 (Brodie); PTX 284 ¶¶22-26.

Even assuming the Idol was unearthed in modern-day Turkey (which Plaintiff has not established), the Court concludes it is also possible that it was excavated before or after 1906. Therefore, Plaintiff has not met its burden to establish the date of discovery, excavation, or export.

### **3. The place of discovery or excavation of the Stargazer.**

The Idol is an unstratified antiquity. Tr. 403:12-13 (Brodie); DTX 13A (Kulaçoğlu) at 114:5-116:9; DTX 19A (Zoroğlu) at 260:5-15, 286:14-287:3. As such, it has lost its archaeological context, including any knowledge that could have been gained from other objects found in the same excavation layer, as well as the "chronological positioning and also [the] cultural associations

and natural associations with the object in question.” Tr. 402:23-403:11 (Brodie). A “stratified” object, by contrast, is one “which has been found in [a] scientific excavation revealing the precise location of the work in an archaeological context.” Tr. 825:25-826:4 (Anderson).

In the absence of direct evidence of a particular find spot, Plaintiff asks the Court to infer the Idol’s place of discovery in modern times from its presumed place of manufacture, Kulaksizlar. Tr. 964:23-25 (Plaintiff’s counsel). While the place of manufacture in antiquity is relevant to where the Idol was unearthed in modern times, the evidence shows that objects traveled widely in antiquity and the place of manufacture alone does not establish the Idol’s modern find spot. Boz and others acknowledged the distinction between place of manufacture and location of modern discovery, conceding that “of Anatolian origin” means “produced” in Turkey. Tr. 93:4-9 (Boz).

Plaintiff also argues that the lack of stratified finds of Kiliya-type idols outside of Turkey necessitates the inference that this Idol is from modern-day Turkey. The lack of stratified find spots outside of Turkey does not justify the inference Plaintiff seeks, as the record indicates that of the approximately three-dozen complete or near-complete Kiliya-type idols in existence, only about a third have known find spots. Tr. 837:14-19 (Anderson). In an effort to bolster the evidence on this point, Plaintiff submitted five new documents after trial. Dkt #469. These materials were not part of the trial record and the Court declines to consider them.<sup>1</sup>

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<sup>1</sup> Fed. R. Evid. 201(b)(2) authorizes a court to take judicial notice of a fact “not subject to reasonable dispute... because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” These five documents relate to a central issue in the case, and because Plaintiff did not offer them during trial, Defendants had no opportunity to question their authenticity, admissibility, or relevance, or to cross-examine Brodie about the documents. Accordingly, the Court declines to take judicial notice of the facts asserted in the documents. *See Int’l Star Class Yacht Racing Ass’n v. Tommy Hilfiger U.S.A., Inc.*, 146 F.3d 66, 70 (2d Cir. 1998) (“Because the effect of judicial notice is to deprive a party of the opportunity to use rebuttal evidence, cross-examination, and argument to attack contrary evidence, caution must be used in determining that a fact is beyond controversy”) (citations omitted). Even if the Court

In unrebutted testimony, Anderson stated that it is likely there are Kiliya-type idols that have not yet been discovered, as most of antiquity, including artifacts from the Chalcolithic era, remain underground. Tr. 837:12-13 (Anderson); DTX 201D ¶24. Without any information about where the majority of known Kiliya-type idols have been found, the Court is unable to infer that the Idol was unearthed in Turkey in modern times, particularly in light of the evidence of trade, exchange, or circulation of Kiliya-type idols both during antiquity and in modern times.

Plaintiff also argues that Christie's catalog description is evidence of the Stargazer's find spot. Dkt #468 at 40. But the plain language of the catalog makes clear that it warrants only the Stargazer's "period, culture, source or origin" as Anatolia, not its find spot. PTX 3. With respect Plaintiff cites Steinhardt's testimony that he "assume[s] it was excavated in Anatolia" (Dkt #468 ¶137), Plaintiff's reliance on that assumption is unfounded; Steinhardt is not an expert and testified he does not know where the Idol was excavated. Tr. 687:20-607:23-24 (Steinhardt).

**a.) Kiliya-type idols circulated during antiquity.**

Much remains unknown about the 5<sup>th</sup> millennium B.C.E. Tr. 853:2-5 (Anderson). The Court therefore exercise caution in relying on available evidence, including both Brodie's and Anderson's opinions and interpretations, and the experts' analyses of the work of Turkish archaeologists Dinç and Dr. Turan Takaoglu of Çanakkale Onsekiz Mart Üniversitesi, whom both parties agree are widely regarded as leading experts on Kiliya-type idols.

Defendants established that there was a "cultural interaction network" during the Chalcolithic Era and that Kiliya-type idols circulated within it during antiquity. DTX 61 at 2. For his opinion, Anderson relies in part on Takaoğlu, who describes cultural interactions between the Greek islands

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considered the documents, the listed objects (Dkt #468 ¶116) represent a minority of known idols, most of which have no known find spot. PTX 95; DTX 201D ¶34(e).

and Anatolia during the Chalcolithic period. DTX 92. In addition, a 2018 report from excavations at Kulaksizlar says that among “the most interesting finds” were “30 [Paleolithic] obsidian tools...27 of [which] were determined to have originated from the Greek island of Milos.” DTX 61 at 2. The report also notes the find of a “miniature jadeite ax...which could have originated from the island of Syros.” *Id. See also* DTX 201D ¶34(c) (noting that the jadeite axe found at Kulaksizlar was traded concurrently with the date of the Idol). These finds, according to the report, “show that Kulaksizlar had an existence within the cultural interaction networks accepted to have been actively present during the Middle Chalcolithic Age.” *Id.* The archaeological report confirms that the cultural interaction networks present at Kulaksizlar had “been set forth previously by the widely-distributed marble bowls and Kiliya figurines manufactured in Kulaksizlar.” *Id.*

Brodie did not address the Greek tools found at Kulaksizlar. He testified that although he was unsure what Takaoğlu meant by “cultural interaction networks,” he did not inquire further. Tr. 412:10-413:6 (Brodie). Brodie also acknowledged that several Greek islands are closer to Kulaksizlar than is Kiliya, the first documented find spot that gave this type of idol its name. Tr. 374:10-14 (Brodie). Boz testified that some Greek islands are visible from Turkey’s mainland. Tr. 122:2-20 (Boz).

Anderson testified that Kiliya-type idols were manufactured for trade and export. Tr. 834:14-17 (Anderson); DTX 201D ¶¶18, 19. To support his opinion, he noted that while many marble fragments have been found at Kulaksizlar, no intact idols have been found there. Tr. 834:11-13 (Anderson); DTX 201D ¶22. He also testified that the Stargazer is small and portable, with trade in antiquity being “robust” in such objects. DTX 201D ¶¶18-19. Maritime trade was established well before the Idol’s date of manufacture, and the small idols could easily have traversed the short distances to nearby Aegean islands. Tr. 903:21-904:9 (Anderson); DTX 201D ¶25.

Dinç, a Turkish archaeologist, professor, and former museum official, recognized by both parties' experts as knowledgeable about Kiliya-type idols, testified at his deposition about the ancient trade in Kiliya-type idols: "They were manufacturing them and selling them. Where? To their neighbors. Prehistoric trading. Dealing. Change and exchange. They would give salt and Idol. Gold and Idol. It was like that." DTX 11A (Dinç) at 94:6-10.

At trial, Brodie disagreed with describing Kiliya-type idols as "trade goods," but conceded that the wide distribution of their known find spots "indicates they were exchanged over some distance." Tr. 418:4-419:7 (Brodie). Brodie also credits Dinç's description that Kiliya-type idols would have been exchanged for other goods, such as salt or metal. Tr. 411:6-20 (Brodie).

Brodie testified that Kiliya-type idols are "believed to have had a ritual or religious function, so that without any utilitarian purpose they would not likely have been considered acceptable trade objects and would have had little commercial value." PTX 284 ¶15. On cross-examination, however, Brodie agreed that the idols were exchanged. Tr. 417:9-419:7 (Brodie). Anderson believes that the Idol had a "funerary" purpose because it was made "to lie down on its back." Tr. 874:2-7 (Anderson). He also testified that the Idol could have been "purchased as a remembrance of the deceased." Tr. 876:2-5 (Anderson). In sum, the Idol played thousands of years ago in the society that created it remains shrouded in mystery; however, Turkey has failed to demonstrate that the Idol would not have been a proper subject of trade. The available evidence indicates that it was, in fact, a subject of exchange.

The Court thus finds that Kiliya-type idols were manufactured to be traded or exchanged, so the extent of their movement in antiquity cannot be determined with any degree of certainty. Defendants presented ample evidence of the idols' wide distribution within Turkey and more broadly. Kirşehir (in central Turkey, far from Kulaksizlar) is mentioned frequently in the literature

as a possible find spot although rejected by Dinç as a “lie.” DTX 11A (Dinç) 64:15-65:4. Defendants’ evidence also demonstrated that Kiliya-type idols were part of the broader “cultural interaction networks” in the Aegean during the Chalcolithic Era, including parts of what is now Greece. PTX 95; DTX 19A (Zoroğlu) at 250:15-251:2; DTX 61 at 2.

From the evidence of trade networks during the period and evidence that Kiliya-type idols specifically were traded or exchanged in antiquity, the Court concludes that this object likely moved during antiquity from its presumed place of manufacture at Kulaksizlar. There is no evidence from which the Court can discern whether that movement in antiquity was more likely than not within or outside of Turkey, but combined with the evidence of circulation of Kiliya-type idols in modern times, Plaintiff cannot meet its burden to establish that the Idol remained in Turkey from its time of manufacture until its date of discovery.

**b.) Kiliya-type idols circulate in modern times.**

Evidence presented at trial establishes that Kiliya-type idols circulated in modern times before 1906. Dinç testified that Kiliya-type idols have been circulating outside Turkey for at least 120 years. DTX 11A (Dinç) at 70:9-71:5. In a 1994 letter sent to Professor Engin Özgen of the Directorate-General of Monuments and Museums (“Directorate”) from Professor Cezmi Öncüer, President of Adnan Menderes University, Öncüer confirmed that “‘Kiliya-type’ marble idols have spread across the world over the last 120 years.” DTX 219. The same letter also stated that Kiliya-type idols were “introduced to the scholarly world as early as the 19<sup>th</sup> century[.]” *Id.*

In addition to the general evidence that Kiliya-type idols were circulating widely in the 19<sup>th</sup> century, at least two are known to have been outside modern-day Turkey before 1906. The first is in the Mytilene Museum on the Greek island of Lesbos, which Anderson testified was probably acquired before 1865. Tr. 899:20-900:14 (Anderson); PTX 266 ¶4. The second is the namesake

Kiliya-type idol found on the Gallipoli peninsula, first published in 1902 and now in the American School of Classical Studies in Athens. PTX 266 ¶1; DTX 201D ¶31.

Whether Kiliya-type idols began circulating in modern times approximately 120 years before Dinç's 2018 testimony (around 1898) or 120 years before Özgen received Öncüer's letter (around 1874), the evidence confirms the movement of Kiliya-type idols in modern times before the enactment of the 1906 Ottoman Decree. Accordingly, Turkey has failed to carry its burden of proof to show excavation in Turkey or export from there between 1906 and 1973.

**C. J.J. Klejman.**

The Martins acquired the Stargazer from Klejman in 1961. DTX 47. In the 1960s, Klejman was an established dealer who focused primarily on African tribal art. DTX 201A ¶40; DTX 201D ¶38. Klejman also dealt with antiquities, including works from Turkey and Greece. PTX 284 ¶20. He and his gallery sold or donated hundreds of antiquities to multiple U.S. museums in the 1960s. DTX 201D ¶38. The Met has several hundred objects in its collection with Klejman's name in the provenance (DTX 201D ¶38); Benzel testified that there are nearly a hundred in the Met's Ancient Near East Department alone. Tr. at 325:5-23 (Benzel). Klejman's name is inscribed on the Met's main staircase as a major benefactor. DTX 173A. He passed away in 1995 and his gallery's records cannot be located. Stip. No. 17; Tr. 773:24-774:2 (Bernheimer).

Due to his alleged involvement with the Lydian Hoard, Turkey asks the Court to infer that Klejman illicitly acquired the Stargazer in Turkey in the 1960s. Plaintiff relies primarily on former Met Director Thomas Hoving's memoir "Artful Tom," posted online on Artnet in 2009, to portray Klejman as an unscrupulous antiquities dealer. PTX 66. Hoving's memoir recounts his purported involvement in various events, including some of his adventures and misadventures during his tenure as Met Director from 1967 to 1977. Hoving died in 2009. Stip. No. 18.

Hoving's unsubstantiated and unreliable hearsay observations provided the sole basis for Brodie's testimony regarding Klejman. Tr. 409:2-14 (Brodie). Benzel similarly testified that she never knew Klejman and could only repeat what she heard from a colleague. Tr. 236:10-237:14, 238:14-239:18 (Benzel). Boz testified that Klejman was a "notorious looter" (PTX 283 ¶13), but admitted at trial that he was *not* a looter. Tr. 130:1-131:7 (Boz). The information presented at trial regarding Klejman is insufficient to establish that because the Idol passed through his hands, it must have left Turkey illegally soon before 1961. The Court does not credit the limited hearsay evidence regarding his reputation after 1993 and declines to make a finding with respect to Klejman's reputation or involvement in looted antiquities based on insufficient evidence.

**D. The Anti-Smuggling Unit's Opposition to Bringing Legal Action.**

As a result of the dearth of evidence described above, Turkey's Anti-Smuggling Unit (and its successor, the Anti-Smuggling Branch (PTX 286 ¶1)) urged Plaintiff not to bring this lawsuit because "taking any steps to halt the sale of the idol offered for sale by Christie's and filing a lawsuit for the repatriation of the said work is not an effective way to proceed." DTX 10A (Bozkurtlar) at 64:3-65:6, 67:5-18; DTX 69. The Unit has been generally responsible for monitoring destruction or damage to antiquities within Turkey, handling issues related to the domestic and international smuggling of cultural property and pursuing returns of cultural objects. PTX 283 ¶1; DTX 10A (Bozkurtlar) at 27:23-30:9; DTX 17A (Talaakar) at 34:16-36:11; DTX 19A (Zoroğlu) at 47:15-22, 96:5-10, 213:6-214:15.

The Anti-Smuggling Unit gave its advice in an "Information Note," which stated that the Unit believed a claim to the Stargazer in 2017 would be untimely: "because the origin (provenance) information published for the [Stargazer] in the auction catalog states that the previous owner of the work acquired it in 1966, from a legal standpoint, we face the issue of statute of limitations



and the principle that the 1970 [UNESCO] Convention cannot be applied retroactively.” DTX 69. Bozkurtlar agreed with the Unit’s analysis and shared it with then-Minister of Culture Nabi Avcı. DTX 10A (Bozkurtlar) at 67:5-18; DTX 69.

#### **IV. FACTS RELEVANT TO LACHES.**

##### **A. Turkey’s Knowledge Of Its Claim To The Stargazer.**

###### **1. Turkish Ministry of Culture’s Publications.**

Turkey knew the Stargazer’s location and possessor since at least 1992 – that is, for about 25 years before initiating this lawsuit in 2017. Dinç testified that at the time of its publication or soon thereafter, he read a well-known 1992 article by Dr. Jürgen Seeher identifying a Kiliya-type idol in the Guennol Collection in New York. Stip. No. 54; DTX 11A (Dinç) at 59:24-60:8; DTX 44 Nos. 22-24. Seeher’s article “Anatolian Marble Statues of the Kiliya-type” not only discusses the Stargazer, but also features large images of it. PTX 95 at 154, 161-62. Dinç, who has studied Kiliya-type idols in Turkey for decades and testified that “[t]his is my profession” (DTX 11A (Dinç) at 137:20-138:5), was section head of the state-owned Manisa Museum in 1993. Dkt #231 ¶71; DTX 11A (Dinç) at 137:20-138:5. Plaintiff has therefore known about the Idol’s presence in New York for over 25 years. DTX 11A (Dinç) at 59:24-60:13; DTX 44 No. 50; DTX 201D ¶47.

Dinç demonstrates the centrality of Seeher’s 1992 article in the Kiliya-type idol literature by referencing it in several of his own publications, including essays published by the Ministry of Culture itself. Dinç cites Seeher’s 1992 article in his 1995 essay “Two Marble Statuette Heads of Kiliya-type Found in Yortan.” DTX 86B at 4. Dinç cites Seeher’s article again in a 1996 Ministry of Culture publication that summarizes Dinç’s presentation at a May 1995 symposium sponsored by the Ministry of Culture. Stip. No. 55; DTX 87B at 7; PTX 283 ¶10. Dinç cites Seeher for a third time in a 1997 article published by the Ministry of Culture, “Kulaksizlar Marble Idol Atelier

and Environment Investigations,” which summarizes Dinç’s presentation at the Ministry’s May 1996 “Research Results” symposium. Stip. No. 59; DTX 88A at 5. There, Dinç states that the Kiliya-type idol in the Guennol Collection was one of a group reportedly found in Kırşehir, again citing Seeher’s 1992 article as the source of his information – although Dinç testified that he thought the Kırşehir find spot was false. DTX 11A (Dinç) at 64:15-65:4; DTX 88A at 5.

Takaoğlu, another Kiliya-type idol scholar, has also relied on Seeher. Stip. No. 28; DTX 89B. Takaoğlu cites Seeher’s 1992 article in a 2001 Turkish Ministry of Culture publication “1999 Kulaksızlar Marble Atelier Investigation” that summarizes Takaoğlu’s presentation at a May 2000 symposium sponsored by the Ministry of Culture. DTX 89B. Takaoğlu again cites Seeher in “A Chalcolithic Marble Workshop at Kulaksızlar in Western Anatolia: An analysis of production and craft specialization” and references a Kiliya-type idol from the Guennol Collection in the List of Plates and on pages vi, 38, 63, and 93 (Figure 225). DTX 92.

Since its Ministry of Culture employees typically do not have specialized expertise, it is Turkey’s normal practice to rely on museum specialists like Dinç and Takaoğlu to provide expertise on particular antiquities. Stip. No. 27; DTX 19A (Zoroğlu) at 116:3-116:18; DTX 44 No. 22. As a result, these scholars’ familiarity with Seeher’s 1992 article and its reference to the Kiliya-type idol in the Guennol Collection in New York establishes Turkey’s knowledge of the Stargazer’s whereabouts and Anatolian origin long before 2017.

## **2. News Coverage by Reporter and Ministry Consultant Özgen Acar.**

Even before seeing Seeher’s 1992 article, a prominent Turkish cultural reporter located the Stargazer and published it in the mainstream Turkish press. Acar has been writing about Turkish cultural heritage issues for 50 years and is considered by many to be a leading journalist on the subject. Tr. 66:7-67:4 (Boz); DTX 11A (Dinç) at 29:3-14. His 1989 article entitled “History for

Sale Again,” published in the well-known newspaper *Cumhuriyet* in Turkey, mentions a Kiliya-type idol in the Guennol Collection. Stip. Nos. 29, 30; DTX 19A (Zoroğlu) at 226:11-13; DTX 81A. Acar’s publication of the Stargazer in 1989 is noteworthy because Turkey’s Anti-Smuggling Unit is responsible for following and collecting press coverage of Turkish antiquities. Tr. 53:14-18 (Boz); DTX 10A (Bozkurtlar) at 27:24-29:2; DTX 17A (Talaakar) at 42:23-44:3; DTX 19A (Zoroglu) at 47:15-48:13. It is also extremely likely that Acar transmitted his knowledge of Kiliya-type idols (and the Guennol Stargazer in particular) to Ministry officials, given former Director General of the Directorate Engin Özgen’s testimony that Acar served as consultant to former Minister of Culture Durmuş Fikri Sağlar. Tr. 76:10-14 (Boz); DTX 62.

It was Acar who located the top half of the Weary Herakles at the Met. Acar had seen the statue while it was on loan in 1990 for the Met’s *Glories of the Past* exhibition and mentally connected the top part with the bottom, which was in Turkey. Tr. 102:9-11 (Boz); DTX 19A (Zoroğlu) at 112:21-25; DTX 93A. After Acar’s article alerted Plaintiff to its existence and location, Turkey claimed the top half of the Weary Herakles. Tr. 395:3-6; DTX 19A (Zoroğlu) at 132:3-6; DTX 85; DTX 93A. Evidence of a specific find-spot, along with a plaster cast demonstrating that the top and bottom halves of the statue fit together, supported Turkey’s claim to the sculpture. DTX 93A; DTX 201C ¶29. Acar similarly challenged the Ministry of Culture to pursue the Stargazer in 2017 when he learned that it was being auctioned off at Christie’s. DTX 63. (He also “brought [the Lydian Hoard] to the attention of the government.” Dkt #18 at 16:11-13 (Plaintiff’s counsel).)

### **3. The Stargazer at the Met.**

Although Plaintiff knew the Stargazer’s location and possessor since at least 1992, and most likely knew about it at the time of Acar’s 1989 *Cumhuriyet* article, it is also true that Turkey should have known of its location and possessor much earlier, from when the Idol was on loan from the

Martins to the Met. It was almost continually exhibited in the Met's permanent galleries from 1968-1993, with some interruptions for a special exhibition in 1969-70 and conservation. Stip. No. 7; DTX 44 No. 5, 6, 8; DTX 54, 55. In 1969-70, the Idol was included in the *Centennial Exhibition of the Guennol Collection* and published as no. 55 in the exhibition catalog. DTX 54; DTX 55 at 6. In a gallery view photo from the 1980s of the Ancient Near Eastern Art permanent galleries supplied by the Met, the Stargazer is plainly visible in the glass display case. DTX 102. Although no witness in this case can remember the exact text of the gallery label for the Stargazer during its first loan period at the museum from 1966-1993, documents from the Met's archives indicate that the label identified it as being Anatolian and part of the Guennol Collection. DTX 59, 60, 121, 154; DTX 201A ¶¶5-6; DTX 201D ¶36.

The Stargazer was also properly identified and in the public eye for years *after* Steinhardt acquired the figure in 1993. The Met again exhibited the Stargazer from 1999-2007 with loan number L1999.73.1, once more identifying the Idol as Anatolian, and this time labeling it as on loan from the Judy and Michael Steinhardt Collection, New York. Stip. No. 24; DTX 44 No. 11; DTX 52, 57, 58; DTX 201BB ¶28. The loan agreement for the Stargazer's second loan period at the Met provides that the "[e]xact form of lender's name for [gallery] label copy" should read "Judy and Michael Steinhardt Collection, New York." Stip. No. 24; DTX 52; DTX 201BB ¶28. The design specifications for the Idol's gallery label during this second loan period state that the figure is "Lent by Judy and Michael Steinhardt Collection." DTX 57. Specifications for gallery labels confirm that the Met was likely good to its word in labeling the Stargazer as directed. Tr. at 298:3-302:13 (Benzel); DTX 57-59, 155. In a gallery view photo from the 2003 *Art of the First Cities* exhibition, provided by the Met, the Stargazer is again visible. DTX 103.

Turkey thus had multiple opportunities to locate the Stargazer during its extensive publication history and decades of exhibition at the Met, when, as the evidence indicates, it was prominently displayed and clearly labeled as Anatolian. During Turkey’s litigation against the Met over the Lydian Hoard from 1987 to 1993, and at the time of Turkey’s discovery of the Weary Herakles at the Met in 1990 (PTX 284 ¶45), the Stargazer was on public display at the Met. Stip. No. 26; DTX 54, 55. Given the importance of the Stargazer, the relatively few Kiliya-type idols displayed in museums at the time, and Turkey’s interest in repatriating these idols, “it would not have taken a significant amount of effort to locate the Idol before Turkey learned of it in the early 1990s.” DTX 201D ¶36; DTX 219 at 3.

#### **4. The Stargazer’s Publications in Academic and Other Sources.**

From 1964 through 1992 – that is, before Steinhardt’s 1993 purchase – the Stargazer was published in numerous prominent publications, five with images (DDTX2A):

- In 1964, Herbert Hoffman published *The Beauty of Ancient Art: Exhibition of the Norman Schimmel Collection*. The publication mentions the Idol in cat. no. 80. DTX 72.
- In 1974, Hoffmann again mentions the Stargazer in cat. no. 8, in O.W. Muscarella’s *Ancient Art: The Norbert Schimmel Collection*. DTX 73.
- Elizabeth Rohde, former director of the Antikensammlung (Collection of Classical Antiquities) in Berlin, published “Die frühbronzezeitlichen Kykladenfiguren der Berliner Antiken-Sammlung” (“Early Bronze Age Cycladic Figures from the Berlin Antique Collection”) in *Forschungen und Berichte* in 1975. Rohde references the Stargazer on page 154, no. 8. DTX 5 at 12; DTX 75A.
- Prudence O. Harper, former curator in charge of the Met’s Department of Ancient Near Eastern Art, published a two-volume work on the Guennol Collection that discusses the

Stargazer on pages 3-5 of the second volume and includes a photograph of the Idol. P.O. Harper, *The Guennol Collection, Vol. II*, The Metropolitan Museum of Art (New York, 1982). DTX 77; DTX 201D ¶64.

- Patricia Getz-Preziosi (also known as Patricia or Pat Getz, and Patricia or Pat Gentle), who is among the world's leading scholars of Neolithic and Chalcolithic statuettes, wrote the introduction for "Early Cycladic Sculpture: An Introduction" for The J. Paul Getty Museum in 1985. The introduction references the Stargazer on page 88 and includes an image as figure 82. DTX 79.
- Getz-Preziosi also wrote a section in Martha Sharp Joukowsky's 1986 "Prehistoric Aphrodisias," which references the Idol on pages 217-219 and has images of it as figures 242, 243a, and 243b. Joukowsky is professor at the Department of Anthropology at Brown University who has decades of experience as a field archaeologist specializing in the Near East, particularly Turkey. DTX 80; DTX 201A ¶39. Kulaçoğlu testified that she read Joukowsky's article. DTX 13A (Kulaçoğlu) at 112:17-113:5.
- Getz-Preziosi again references the Idol on page 9 of *Glories of the Past: Ancient Art from the Shelby White and Leon Levy Collection* (the catalog from the Met's *Glories of the Past* exhibition), D. von Bothmer, ed., The Metropolitan Museum of Art (New York, 1990). DTX 82. Zoroğlu cites the 1990 *Glories of the Past* exhibition catalog on pages 144-45 of "The Provenance Problem and the Weary Herakles," in Stefano Manacorda, ed., *Organised Crime in Art and Antiquities* (Milan 2009). This chapter addresses Turkey's discovery of Weary Herakles at the Met in 1992, and its ultimately successful recovery efforts. DTX 93A. Zoroğlu testified that the 1990 *Glories of the Past* exhibition and catalog helped

Turkey connect the top part of the Weary Herakles, which was on loan at the Met, with the bottom part in Turkey. DTX 19A (Zoroğlu) at 111:21-114:18.

- While he was in residence at the German Archaeological Institute in Istanbul (DTX 44 No. 49) in 1992, Seeher published “Die Kleinasiatischen Marmorstatuetten vom Typ Kilia” (“Anatolian Marble Statues of the Kiliya-type”), which appeared in the *Archäologischer Anzeiger* (a scholarly journal). The article includes two photographs of the Stargazer (PTX 95 at 154) and also references it on page 154 (Figure 1) as “Guennol Collection, New York” (PTX 95 at 161); the article also mentions the Stargazer on pages 161-62 (note 28). PTX 95 at 154, 161-62; DTX 11A (Dinç) at 103:12-23; DTX 201D ¶7. So important was Seeher’s 1992 article that Plaintiff’s Anti-Smuggling Unit prepared a Turkish-language summary for its files in 2017, mentioning Seeher’s references to the Kiliya-type idol in the Guennol Collection in New York. DTX 19A (Zoroğlu) at 79:6-11, 86:22-87:16, 92:23-93:15; DTX 84. Zoroğlu received a copy of it. DTX 19A (Zoroğlu) at 86:6-87:3.
- Önder Bilgi, an archaeology professor at Istanbul University, published a book in 2014 entitled *Anthropomorphic Representations in Anatolia* that names the Stargazer and features an image of it. DTX 189; DTX 201D ¶50(e)(xiii). Kulaçoğlu read Bilgi’s book. DTX 13A (Kulaçoğlu) at 101:6-102:23.

## **B. Losses Of Evidence Due To The Passage Of Time.**

### **1. Losses and Deaths of Witnesses.**

#### **a.) Witnesses to the Stargazer Transactions.**

No person with knowledge of the Stargazer’s appearance in the U.S., the Martins’ 1961 acquisition, or the Idol’s first loan to the Met in 1966 was available to testify. Edith Martin died in 1989 and Alastair Martin died in 2010. Stip. Nos. 16, 19; DTX 130. The Martins’ son Robin gave

a deposition in 2017 and died in 2019; he had little to no information about his parents' purchase. Stip. No. 20; PTX 303. Klejman, from whom Alastair Martin ostensibly purchased the Stargazer, died in 1995, so the Court could not learn from whom he obtained the Stargazer or what he told Martin. Stip. No. 17. Hoving, the primary source for Plaintiff's proposition that Klejman was a dealer of dubious repute, served as Director of the Met from 1967 to 1977 and died in 2009. Stip. No. 18. Dudley Easby, Jr., who accepted the Martins' loan of the Stargazer to the Met, is no longer alive. DTX 160, 237. Vaughn E. Crawford, the Met curator who handled the Martins' 1966 loan, died in 1981. DTX 47, 159. The Met therefore does not know the basis for Crawford's description of the statuette in the 1960s loan documents. DTX 160.

**b.) Witnesses to Turkey's Enforcement of the 1906 Decree.**

Witnesses with knowledge of Turkey's enforcement of its cultural heritage laws were also unavailable to Defendants in this case. Plaintiff identified Osman Murat Süslü, Director General of the Directorate from 2010 to 2013, as a person having knowledge relevant to Turkey's claim. DTX 30 No. 1; DTX 31 No. 1. Because Süslü was part of the Turkish government's purge in 2016 and 2017 (following an attempted coup d'état in July 2016), he was unavailable for deposition in this case. DTX 19A (Zoroğlu) at 26:10-27:3, 71:20-72:13. Prior to Süslü's tenure as Director General, Plaintiff relied primarily on Turkey's 1983 cultural patrimony law, No. 2863, for its repatriation efforts, increasingly doing so in the 1990s and 2000s. DTX 201D ¶70. In or around 2011-2012, under Süslü's direction, Plaintiff began relying more heavily on the 1906 Decree for its repatriation efforts. DTX 10A (Bozkurtlar) at 121:18-122:14; DTX 201D ¶70. Based on Süslü's unavailability, Defendants have been unable to offer his evidence about Turkey's policy change.

Abdullah Koçapınar succeeded Süslü as Director General of the Directorate, serving in that position from 2013 to 2016; he was likewise removed from his government position during the



purge and did not testify in this case. Tr. 192:2-10 (Boz); DTX 19A (Zoroğlu) at 26:2-9. Two additional former employees of the Anti-Smuggling Unit who had relevant information, Zakir Yilmaz and Zehra Ertan, were also removed from the government as part of the purge. Tr. 192:13-193:2 (Boz); DTX 19A (Zoroğlu) at 70:21-74:16.

Other important Turkish witnesses could not even be identified due to the passage of time and faded memories. In 1989, when Acar published his article referencing the Stargazer (Tr. 66:7-67:4 (Boz); DTX 81A), someone within the Anti-Smuggling Unit was assigned to monitor international cases, including newspapers, but he has since passed away. DTX 17A (Talaakar) at 42:23-43:19. Plaintiff's 30(b)(6) witness Zoroğlu, a Turkish archaeologist and former Specialist in the Anti-Smuggling Unit who now works in the executive office of the Minister of Culture, testified that another Unit employee whose name he could not remember also died within the last few years. DTX 19A (Zoroğlu) at 69:10-19.

Many specialists working in the early 1990s have passed away. For instance, Talaakar testified that she had a colleague "back in 1989, who was responsible for the international cases," who passed away. DTX 17A (Talaakar) at 43:11-43:19. Bozkurtlar's father, who worked in the Anti-Smuggling Unit in the 1990s, also died. DTX 10A (Bozkurtlar) at 30:11-31:19. Haydar (last name unknown), an employee of the Anti-Smuggling Unit, died within the last few years. DTX 19A (Zoroğlu) at 69:10-70:20. Nalan Akyurek, an employee of the Anti-Smuggling Unit who tracked auction catalogs in the late 1980s, died at an unknown time. DTX 17A (Talaakar) at 43:20-44:19.

## **2. Faded Memories.**

### **a.) Memories of the Stargazer Transactions.**

Witnesses who are still alive have difficulty remembering details about transactions involving the Stargazer due to the passage of time. Steinhardt, for example, is 80 years old and acquired the

Idol nearly 30 years ago, when he was a novice antiquities collector. DTX 201BB ¶¶2, 9. He does not recall many specific details of the purchase, including when he first learned about the figurine's existence. DTX 201BB ¶11. Steinhardt does recall that he researched the Stargazer's ownership history "to the extent of knowing that it had been at The Met for a considerable period." DTX 201BB ¶15. Steinhardt believes he saw the Idol during its display at the Met and recalls seeing a label with "Guennol" on it, but has no specific memory of the date or circumstances, which happened decades ago. DTX 201BB ¶17. Steinhardt testified in an unrelated matter in 1996 that he was generally aware of Turkey's patrimony laws at that time; today, he has no recollection of that testimony. Tr. 631:1-634:4, 635:7-636:20 (Steinhardt). Plaintiff claims that Steinhardt's testimony should not be credited (Dkt #468 at 31-32), but cites no specific contradictions or lack of credibility except for his loss of memory.

Sam Merrin, who worked with his father in selling the figurine to Steinhardt in 1993, has virtually no recollection of the transaction. Tr. 471:10-18 (Merrin). Benzel, the Met's current curator of Ancient Near Eastern Art, was 4 years old at the time of Guennol Collection loan in 1966 and joined the Met well after the museum accepted the Idol for the 1966 and 1999 loans, and thus had no personal knowledge of the Idol's exhibition. Tr. 236:6-9 (Benzel).

**b.) Memories of Turkey's diligence.**

Nor did Turkey's witnesses have institutional knowledge of steps Turkey has taken to learn about or recover allegedly looted antiquities. Zoroğlu, for instance, testified that a commission was sent to the Met in the 1980s to report on the Lydian Hoard, but he did not know whether they reported on other matters because "we were not able to access or find any information pertaining to this reporting." DTX 19A (Zoroğlu) at 179:24-180:8. Zoroğlu also did not know whose responsibility it was in the 1980s to find books and articles on Kiliya-type idols. DTX 19A

(Zoroğlu) at 100:21-101:2. Zoroğlu was not familiar with Turkey's attempts to use interrogatories and requests for production in the Lydian Hoard litigation to learn about other Anatolian objects in the Met's possession, stating that "this is a very old event." DTX 19A (Zoroğlu) at 285:10-293:15. He likewise did not know whether Turkey took any steps after 1990 to determine if there were other antiquities of Anatolian origin at the Met. DTX 19A (Zoroğlu) at 289:15-293:15; DTX 134. Similarly, Kulaçoğlu, one of the archaeologists at the Anatolian Civilizations Museum who prepared the report about the Stargazer before Plaintiff commenced this action, did not remember whether she attended the 1995 symposium sponsored by the Ministry of Culture at which Dinç presented the findings of his 1994 survey of the marble idol workshop at Kulaksizlar, although she did remember reading the results when published. DTX 13A (Kulaçoğlu) at 91:10-91:2; DTX 67.

### **3. Lost Documents**

Evidence regarding the extent of Turkey's enforcement of the 1906 Decree is equally difficult to obtain due to the passage of time. Articles on antiquities abroad that may be of Turkish origin have come to the Anti-Smuggling Unit through various avenues over the years, but there is no documented procedure for how these articles are filed or kept. DTX 19A (Zoroğlu) at 47:15-48:13. No single person in the Unit is responsible for monitoring news articles on looted antiquities, so there is no systematic process for tracking or maintaining these press reports. Tr. 53:14-18 (Boz); DTX 10A (Bozkurtlar) at 27:23-28:16. Likewise, because everyone in the Anti-Smuggling Unit is responsible for monitoring museum exhibitions, no one person is charged with checking foreign museums for Turkish antiquities in their collections and documentation of such activities was not produced. DTX 10A (Bozkurtlar) at 30:3-30:9. Zoroğlu testified that although he believed somebody would have performed this task, no person was specifically assigned in the 1960s to review collections of major antiquities museums to look for objects that might be from Turkey and

documents did not reveal steps taken. DTX 19A (Zoroğlu) at 173:6-173:22. (Anderson’s quick review showed hundreds of such objects. DTX 201D ¶¶96-98.) Zoroğlu testified that similarly, the job of monitoring articles in the 1970s on looted Kiliya-type idols was not part of any employee’s official job description. DTX 19A (Zoroğlu) at 107:20-108:22. Plaintiff itself admits that “supporting records of incidents dating from 70 years ago [during the period of the 1906 Decree]...are simply not in existence anymore.” Dkt #468 ¶86.

Documents from Klejman’s gallery are no longer extant. Tr. 773:24-774:2 (Bernheimer). The Martins’ son Robin Martin did not know whether his parents kept object files, inventories, or other records on the artworks they owned, or whether his father destroyed any records related to his antiquities collection. PTX 303 (Martin) at 16:15-16:20, 185:8-185:10.

### **C. Turkey’s Diligence.**

Turkey could have learned about the Stargazer’s existence and presence at the Met at any time between 1968 and 1993, when many articles appeared about it, and actually knew about the Stargazer’s existence and location in the early 1990s. By then, Turkey also knew that the Stargazer was of Anatolian origin and virtually unique and irreplaceable because of its size and condition. DTX 22 ¶11; DTX 64A. Despite this knowledge, Turkey took no action until 2017. DTX 99.

The Ministry of Culture relies on museum specialists like Dinç and academics in Turkish universities to supply expertise. Stip. No. 27; DTX 19A (Zoroğlu) at 116:3-116:18; DTX 44 No. 22. Dinç learned about Kiliya-type idols in 1991, when villagers brought marble idol fragments to the Manisa Museum. DTX 64A at n.1; DTX 219. Kulaksizlar was identified in 1991 as the only known site where Kiliya-type idols were manufactured. DTX 71A, 219. Acar showed Dinç photos of Kiliya-type idols when he visited the Manisa Museum in 1991 or 1992, which Dinç connected to the villagers’ fragments. Stip. No. 31; DTX 11A (Dinç) at 28:7-30:6; DTX 44 No. 31. During

his visit to the Manisa Museum, Acar was the guest of the Museum director, who was present during Acar's meeting with Dinç about Kiliya-type idols. DTX 11A (Dinç) at 29:15-30:6.

Around the same time, in 1992 or soon thereafter, Dinç read Seeher's article. Stip. No. 54; PTX 95; DTX 11A (Dinç) at 58:12-60:13; DTX 44 No. 50. Dinç acknowledges that Seeher's 1992 article lists the Guennol Collection in New York as having a Kiliya-type idol. DTX 11A (Dinç) at 103:10-104:7. After Dinç left Manisa Museum to teach at state-owned Adnan Menderes University in 1993, he continued to work with the Ministry of Culture on Kiliya-type idols. DTX 64A, 87-88. In the early 1990s, Dinç wanted to excavate near Kulaksizlar, but the Ministry only gave him permission to conduct a surface survey, which he did in 1994, reporting to the Ministry the same year that "Kiliya-type marble idols are of Anatolian origin and are spread in museums and private collections across the world." Stip. No. 57; PTX 283 ¶9; DTX 11A (Dinç) at 176:11-18; DTX 64A, 158; DTX 201C ¶92. There is no evidence in the record that Ministry did anything at that time or at any time before 2017 to inquire about Kiliya-type idols.

Dinç continued to share his knowledge about Kiliya-type idols with the Ministry and other researchers, presenting findings from his 1994 surface survey at Kulaksizlar at a May 1995 symposium sponsored by the Ministry of Culture at which Ministry employees were present. Stip. No. 56; DTX 44 No. 101; DTX 87B. Dinç's 1995 presentation included a discussion of archaeological evidence he discovered in 1994 that Kulaksizlar was a marble workshop for the production of Kiliya-type idols. DTX 87B. The following year, the Ministry of Culture published Dinç's 1995 presentation, as noted above.

With the Ministry's approval, Dinç conducted another surface survey at Kulaksizlar in or about October and November 1995. Stip. Nos. 57, 58, 60; DTX 44 No. 122. The following year, in May 1996, Dinç presented his findings at a symposium in Ankara sponsored by the Ministry of Culture

– again with Ministry employees present. Stip. No. 60; DTX 11A (Dinç) at 203:21-204:17; DTX 44 No. 125; DTX 65. As discussed above, the Ministry published Dinç’s presentation in 1997 specifically mentioning the Stargazer. DTX 88A at 261.

In 1997, the Ministry of Culture published Dinç’s 1996 “Research Results” essay that identified a Kiliya-type idol in the Guennol Collection in New York. DTX 11A (Dinç) at 135:4-138:5; DTX 44 No. 136; DTX 88A at 261. Dinç’s report about the Stargazer would have reached a wide audience, as the Ministry sends copies of the symposium publications to museums and archaeologists across Turkey, and they are generally known among the archaeological community. DTX 13A (Kulaçoğlu) at 18:17-19:10, 91:11-92:10; DTX 19A (Zoroğlu) at 52:22-53:10. The Ministry of Culture also published on its website Dinç’s 1997 essay identifying the Stargazer and placing it in the Guennol Collection in New York. DTX 13A (Kulaçoğlu) at 59:22-61:3.

On May 29, 2013, responding to a request from the Office of the Director General, Takaoğlu reported on a Kiliya-type idol sold at Christie’s in 2010, identified the Stargazer as being in the Guennol Collection, and, like a similar memo in 1994, noted that Kiliya-type idols are abroad and originated in Anatolia. DTX 66 (“[W]e can say that the Kiliya type marble idols that have shown up in many museums, private collections, and auctions overseas originated from Western Anatolia.”); DTX 219. Boz saw Takaoğlu’s report when it arrived, yet the Directorate took no follow-up actions. Tr. 88:25-89:21 (Boz); DTX 19A (Zoroğlu) at 123:4-124:7; DTX 66.

Turkey failed to inquire about the Stargazer prior to 2017, despite its exhibition at the Met, its being well-known in archaeological circles, and its repeated mention in prominent articles including ones published by, and reports submitted to, the Ministry of Culture. Plaintiff failed to approach the owners of the Guennol Collection regarding the Stargazer at any time. DTX 10A (Bozkurtlar) at 148:25-149:5. Plaintiff also failed to approach Steinhardt prior to April 2017. There

is no evidence in the record that Turkey ever contacted the Met to inquire specifically about the Idol. Plaintiff failed to publicize the loss of the Stargazer prior to April 2017. DTX 10A (Bozkurtlar) at 149:6-12. Plaintiff failed to report the loss of the Stargazer to any international organization or database at any time prior to April 2017. DTX 10A (Bozkurtlar) at 149:25-150:6; DTX 201D ¶¶81. The record does not show that Plaintiff claimed any of the seven Kiliya-type idols reportedly found in Kirşehir prior to the initiation of this lawsuit. Plaintiff made no claim on the Idol before Yalçın's April 2017 letter. DTX 99. Simply put, Turkey took no action to pursue or inquire about the Stargazer until 2017.

#### **D. Steinhardt's Diligence.**

Steinhardt began collecting antiquities in the late 1980s. DTX 201BB ¶¶6. When he purchased the Stargazer, he considered himself to be a novice collector, a view confirmed by Anderson. DTX 201BB ¶¶9; Tr. 612:4-6 (Steinhardt); Tr. 930:2-22 (Anderson).

Plaintiff conceded that Steinhardt was a good-faith purchaser of the Stargazer. Dkt #285 at 7. Steinhardt's efforts to learn about the Idol before he purchased it in 1993 stand in stark contrast to Turkey's failure to make inquiries or take any other actions prior to 2017. As a "relatively new" collector in 1993, having only started collecting antiquities circa 1987 (Tr. 601:13-16, 637:14-22 (Steinhardt)), Steinhardt was a reasonable purchaser by 1993 standards. Tr. 886:16-25 (Anderson); DTX 201D ¶¶64-65. When Steinhardt entered discussions with the Merrin Gallery in 1993 about purchasing the Stargazer, he had every reason to believe that if Turkey thought it had a colorable claim to the Idol, it would have already claimed it; indeed, Steinhardt testified that while "there is risk associated with purchasing ancient artifacts" (Tr. 671:16-21 (Steinhardt)), he "really did not think that [he] was engaged in a particularly risky endeavor" in purchasing the Idol "because of

the provenance, because of the history, because of the facts associated with this particular Idol.” Tr. 671:4-15 (Steinhardt).

It was significant to Steinhardt that he was engaging with a dealer he knew and trusted when purchasing the Stargazer. DTX 201BB ¶18. He considered the Merrin Gallery, which was representing the Martins, to be a reputable antiquities dealer. Tr. 608:23-25 (Steinhardt). Steinhardt learned from the Merrin Gallery that the Stargazer had a lengthy exhibition history at the Met and a provenance in the U.S. going back at least to 1966; Steinhardt also learned from the Merrin Gallery that the Idol had been part of the Martins’ esteemed Guennol Collection, which the dealer described to Steinhardt as an important collection. Tr. 603:12-25 (Steinhardt); DTX 201BB ¶¶12-13, 15. The Merrin Gallery informed Steinhardt that “for its type [the Stargazer] was exceptionally well-made, beautiful, and worthy” and provided Steinhardt with articles and other information about the Idol and analogous idols. Tr. 603:18-19 (Steinhardt); DTX 183; DTX 201BB ¶14. Steinhardt believes he read additional articles supplied by the Merrin Gallery about the Idol and likely spoke to other dealers, but he cannot remember the specifics. Tr. 657:9-658:17, 664:5-9 (Steinhardt). In spite of all these efforts, Steinhardt was not able to learn the date or place of the Idol’s modern discovery. Tr. 687:20-24 (Steinhardt).

Unlike Turkey, which never requested information from scholars of Kiliya-type idols about the Stargazer prior to this lawsuit, Steinhardt took a number of steps to learn about the object and Kiliya-type idols generally before purchasing the figure. Although Steinhardt had never previously purchased a Kiliya-type idol, he made an effort to become “at least superficially knowledgeable about this type of figure” and “tried to learn everything [he] could.” Tr. 606:22-25, 608:17-19, 612:24-613:2 (Steinhardt). He visited museums like the Met to view their collections of Kiliya-type idols, and he “looked in catalogs and tried to get as much of the public information that there



was about this type of Idol.” Tr. 613:3-7 (Steinhardt). He remembers “reading sections of art books that were focused on Kiliya idols” and seeing their descriptions and pictures to glean “whatever other information [he] could gather from books that had at least part of their effort devoted to the history of Kiliya idols.” Tr. 613:16-25 (Steinhardt). In particular, he remembers reading an article by Prudence (P.O.) Harper about the Stargazer (two versions appear in his files). Tr. 621:11-14 (Steinhardt); DTX 183.

Steinhardt sought out knowledgeable, disinterested people who might have information about the Stargazer or Kiliya-type idols broadly. Having already established a relationship with the Met (DTX 201BB ¶18), he approached curators likely to have information about the Stargazer and Kiliya-type idols – including, to the best of his recollection, Met curators Prudence Harper, Carlos Picon, and Joan Mertens. Tr. 614:9-12 (Steinhardt); DTX 201BB ¶16. Indeed, Steinhardt “think[s] [he] spoke to a number of people at the Metropolitan Museum to try to get their understanding of this one in relation to others” (Tr. 614:1-8 (Steinhardt)), as he “had the highest regard for their expertise and ethics.” DTX 201BB ¶15. Steinhardt’s conversations with Harper, who was herself concerned about provenance and cautious about antiquities (Tr. 931:3-25 (Anderson)), would have given him confidence about his prospective acquisition of the Idol.

Based on his research, information provided by Merrin, and his conversations with knowledgeable people about the Stargazer, Steinhardt felt comfortable with the purchase in 1993. Tr. 658:11-17 (Steinhardt). His reliance on the Guennol name and the Idol’s exhibition history at the Met was reasonable. Tr. 886:16-25 (Anderson). As Steinhardt put it, “the fact that this object had spent 20 or more years in The Metropolitan Museum and had been acquired in the ‘60s or ‘70s by Alastair Martin was, in terms of provenance from my perspective, about as good as it gets.” PTX 305 (Steinhardt) at 136:6-11. Indeed, “in the world of ancient art, to have had a prior owner

who owned it for as long as The Guennol Collection owned it is itself a pretty significant piece of information and leads one to be more comfortable than if it weren't the case." Tr. 659:8-12 (Steinhardt). The Martins "had the reputation of being serious collectors not only in terms of quality but in terms of provenance as well, and if they owned it, it suggests to someone else that they had done the work, or done a meaningful amount of work, about provenance or it would not have entered their collection." Tr. 659:24-660:4 (Steinhardt). In Steinhardt's mind, "because this Idol had such a strong reputation in terms of its relationship with the Met, in terms of its being well known amongst the Kiliya idols in terms of its being owned by The Guennol Collection, all of those led [him] to feel pretty comfortable that this Idol was not one that [he] had to worry about in terms of provenance or very much else." Tr. 658:11-17 (Steinhardt).

Plaintiff questions Steinhardt's credibility because he testified back in 1996 that he was generally aware of Turkey's patrimony laws and has no recollection of that testimony. Dkt #468 at 31-32. Steinhardt's lack of memory of the testimony and deposition from 25 years ago is unsurprising. Steinhardt was duly diligent, consistent with Plaintiff's acknowledgement of his good faith and the Court's holding to that effect.

#### **E. Christie's Diligence.**

Although immaterial to the issues in this case (*see infra*), Christie's undertook significant diligence related to the Stargazer. Christie's knew that the Stargazer was "a well-known piece that had been in the United States since before 1970, and had been exhibited at The Met for more than half of those 50 years and broadly published during that time[.]" DTX 201A ¶24. Even so, both before and after the auction, Christie's "conducted extensive provenance research" that traced the Stargazer back to the Guennol Collection in New York as early as 1966. DTX 201A ¶¶19-24. Christie's staff contacted the Met, Martin, Sam Merrin, Getz-Preziosi, and the Brooklyn Museum;

worked to find references in published materials; and conducted other due diligence. DTX 201A ¶¶19-24. Anderson testified that Christie’s actions were reasonably diligent and in accordance with standard practices. DTX 201D ¶69.

## V. CONCLUSIONS OF LAW

The Court previously held that the 1906 Decree on its face is an ownership law. Dkt #285 at 11-13. The Court still must consider, *inter alia*, evidence presented by Defendants at trial “that the law is nonetheless ‘not what its plain language indicates it is,’ by, for example, offering evidence that people within the country may nonetheless legally keep antiquities or that the law is otherwise generally not enforced.” *Id.* at 12, *citing Schultz*, 333 F.3d at 401-02. *See also U.S. v. One Tyrannosaurus Bataar Skeleton*, 12 Civ. 4760, 2012 U.S. Dist. LEXIS 165153, at \*30-31 (S.D.N.Y. Nov. 14, 2012) (Castel, J.) (“active enforcement of [a country’s] patrimony laws—or lack thereof—may be probative” of the law’s intent). If the Court determines the Decree to be a valid ownership law, it must then determine whether Plaintiff has proved that the Stargazer was excavated from modern-day Turkey while the Decree was in force – between 1906 and 1973.

If the Court rules in Plaintiff’s favor on the Decree’s enforceability and Turkey’s ownership of the Stargazer, the Court must then consider Defendants’ laches defense by determining: (1) whether Plaintiff was, or should have been, aware of its claim, (2) whether Plaintiff inexcusably delayed taking action; and (3) whether Defendants were unduly prejudiced as a result of that delay. *Bakalar v. Vavra*, 819 F. Supp. 2d 293, 303 (S.D.N.Y. 2011), *aff’d*, 500 Fed. Appx. 6 (2d Cir. 2012) (unpubl.). New York law applies to all substantive claims and affirmative defenses. Stip. No. 2. Turkish law determines whether Turkey has a property interest in the Idol. Dkt #285 at 5.

**A. The 1906 Ottoman Decree Is Not What Its Plain Language Indicates, And Is Unenforceable By This Court.**

Plaintiff asks this Court to enforce the 1906 Decree although that law has never been accepted as an ownership law in a U.S. court decision or in any decision that has been brought to the Court's attention from a court outside Turkey. In neither of the two cases Turkey brought in the U.S. pursuant to the 1906 Decree did the court decide the Decree's validity. *Metropolitan Museum*, 762 F. Supp. 44; *Turkey v. OKS Partners*, Civ. Act. No. 89-3061, 1994 U.S. Dist. LEXIS 17032, at \*3 (D. Mass. June 8, 1994) (defendants did not contest validity of 1906 Decree). Varol was able to locate only five court cases in Turkey discussing the Decree, suggesting minimal and sporadic enforcement even within Turkey. Tr. 993:3-15 (Varol). Whether the Decree is enforceable in U.S. courts therefore remains an open question and depends on its treatment by Turkey.

Özel relies solely upon the *language* of the Decree which the Court has already addressed; she did not consider other relevant issues, such as whether the Decree was enforced or whether it permits private ownership of antiquities. Tr. 441:11-16 (Özel). In fact, both Özel and Boz recognized Turkey's evidence of enforcing the 1906 Decree as paltry, but had no explanation other than arguing that there must be more records, although none were offered at trial. Tr. 120:10-121:6, 134:10-135:12 (Boz). Özel likewise did not consider or address the only known decision by any court in the world to examine the validity of the Decree, in which Swiss courts rejected the 1906 Decree and ruled that Turkey forfeited ownership of five gravestones due to "the inactivity of the state authorities." DTX 116A; DTX 201D ¶¶87-89.

**1. Private Ownership of Antiquities is Allowed Under the 1906 Decree.**

Plaintiff does not dispute that the 1906 Decree lacked retroactive application and therefore allowed for the private ownership of antiquities already in private possession before its enactment. Tr. 451:20-452:4 (Özel); DTX 201C ¶¶33, 39. Özel agrees that the Turkish state is not the owner

of every antiquity. Tr. 452:10-452:19 (Özel); DTX 201C ¶¶33. Yet Turkey maintains no registry, and has never maintained a registry, of privately-owned antiquities grandfathered under the 1906 Decree; thus, Turkey has no way to keep track of antiquities privately owned prior to 1906. Tr. 194:2-9 (Boz); Tr. 452:5-453:21 (Özel). Indeed, neither Boz nor Özel has ever seen registration forms or other records documenting lawful ownership of pre-1906 antiquities, and none were offered at trial. *Id.* Because Turkey never created a registry of antiquities legally owned by private parties (Tr. 453:18-21 (Özel)), private collectors have no way to establish ownership of antiquities in their possession for objects privately acquired before 1906. *Cf. Schultz*, 333 F.3d at 398 (“The law provides for all antiquities privately owned prior to 1983 to be registered and recorded”).

In addition to permitting private ownership, Turkey allows the existence of a domestic market despite claiming ownership of all antiquities. DTX 201C ¶¶40, 58. *Compare Schultz*, 333 F.3d at 400 (“there are no circumstances under which a person who finds an antiquity in Egypt may keep the antiquity legally”). Even after the commencement of this litigation, Turkish authorities approved a private individual’s purchase of Kiliya-type idol heads from an Internet auction. DTX 114. The lack of a central registry for legally, privately owned antiquities coupled with the permitted trade of archaeological goods within Turkey makes it nearly impossible to establish which antiquities may be lawfully owned by private individuals. DTX 201C ¶40.

## **2. The 1906 Decree Was Generally Not Enforced.**

As Varol testified, “abrogation or nonenforcement [of the 1906 Decree] was the norm and enforcement was the rare exception.” Tr. 1046:24-25 (Varol). Plaintiff’s data regarding enforcement efforts while the Decree was in effect, from 1906 to 1973, supports this conclusion. A chart documenting smuggling incidents involving antiquities demonstrates minimal enforcement of Turkey’s cultural heritage laws prior to 1993, with incidents in single digits for the

years leading up to that date – two in 1950 and none between 1951 and 1978. DTX 179. Although Boz claimed that there were additional instances not reflected in the chart, she was unable to point to any other source and admitted that such records do not exist. Tr. 188:7-190:3 (Boz). Boz merely stated that it is “common sense” that there would have been more law enforcement actions to curtail smuggling, despite the lack of documentation and despite Boz’s knowledge of minimal enforcement prior to 1993. Tr. 189:21-25 (Boz). Yet Plaintiff did not adduce evidence proving that Turkey has ever seriously attempted to enforce the 1906 Decree until recent years. *See Peru v. Johnson*, 720 F. Supp. 810, 814 (C.D. Cal. 1989) (“There is no indication in the record that Peru ever has sought to exercise its ownership rights in such property, so long as there is no removal from that country.”). The Court cannot infer robust enforcement from evidence showing the opposite. *Cf. Schultz*, 333 F.3d at 400 (“when the Egyptian government learns that an antiquity has been discovered, agents of the government immediately take possession of the item.”).

### **3. The 1906 Decree Required Payment for Finding and Turning In Antiquities.**

In *Schultz*, the Second Circuit found it significant that Egypt did not reward finders of antiquities because Egypt, under its patrimony law, is the owner and therefore need not pay to recover objects. 333 F.3d at 401 (“The person who found the antiquity is not compensated for the item, because it never belonged to the finder.”). By contrast, under the 1906 Decree, Turkey *must* pay locals who turn in antiquities under Article 9, which requires Turkish authorities to pay landowners half the value of movable antiquities found on their property. Tr. 453:22-25 (Özel); DTX 225. Although Özel and Boz refer to these payments as “rewards” or “bonuses,” both witnesses acknowledge that Turkey does in fact regularly pay locals who turn over antiquities. Tr. 195:16-198:5 (Boz); Tr. 442:11-443:12, 454:12-14 (Özel); PTX 69; PTX 285 ¶12. Moreover, Plaintiff’s own documents refer to these exchanges as “purchases.” DTX 113A; DTX 201C ¶75.

Turkish authorities do not, however, offer payments or rewards to foreigners who voluntarily relinquish antiquities in their possession (Tr. 197:21-198:5 (Boz)), so the law provides for differential treatment domestically and for exported objects.

**4. The Ottoman Government Made Many Exceptions to the 1906 Decree, As Does the Turkish Government.**

In 2018, the Turkish Parliament issued a report noting that the Ottoman decrees regarding antiquities, including the 1906 Decree, were not always enforced, and some antiquities were exported legally. DTX 120B at 33; DTX 201C ¶¶36-37. Indeed, both the Turkish Parliament and Plaintiff's witnesses acknowledge that the Ottoman Sultan made *ad hoc* exceptions to the Empire's cultural heritage laws and permitted the export of antiquities, often as gifts to foreign dignitaries. DTX 201C ¶¶34, 37; Tr. 147:10-24 (Boz); Tr. 1018:12-1019:7 (Varol). Museums in Germany, Austria, France, and the United Kingdom therefore possess numerous antiquities exported with the Sultan's permission in direct contravention of the stated terms of the law. DTX 201C ¶63; Tr. 1016:11-1018:18 (Varol). Museums and private collections abroad are also filled with antiquities exported through Turkey's partage system, whereby foreign archaeologists were allowed to keep and export a percentage of the artifacts they excavated. Tr. 1016:11-1018:11 (Varol); DTX 19A (Zoroğlu) at 331:21-332:6; DTX 194.

**5. Turkey Failed to Prioritize Enforcement of the 1906 Ottoman Decree.**

Turkey has demonstrated a lack of commitment to cultural protections, failing to provide adequate funding or expertise. DTX 201C ¶¶8-9. *Cf. Schultz*, 333 F.3d at 401 (official with Egyptian Antiquities Police "testified that his department...employs more than 400 officers [and] regularly investigates and prosecutes people for violating Law 117 [Egypt's Patrimony Law]").

Turkey has made only a lax effort to publicize the Decree or educate people about it, and refused to put the world on notice that it claimed antiquities under the 1906 Decree until 2019

(such as by translating it into English, posting an English translation on its website (Tr. at 54:9-11 (Boz)), posting it on UNESCO's Database of National Cultural Heritage Laws (Tr. at 54:12-61:21 (Boz)), or requesting a Memorandum of Understanding with the U.S. under the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property). DTX 201C ¶¶102-113. By comparison, Egypt posted its law on the UNESCO website and signed a Memorandum of Understanding in 2016.

The Court therefore concludes that the 1906 Ottoman Decree is not what its plain language indicates, due to the many exceptions to state ownership and Turkey's lax education and enforcement efforts. Both parties' experts attested to the insufficient funding Turkey has allotted to anti-smuggling efforts, leading to underenforcement of the 1906 Decree. DTX 201C ¶¶78-101; PTX 284 ¶54 ("Like any government department, the Turkish General Directorate of Cultural Heritage and Museums is subject to funding constraints"). These are Turkey's choices and cannot justify the numerous instances of Turkey's failure to enforce its cultural heritage laws, which demonstrate that the plain language of the 1906 Ottoman Decree cannot be taken at face value.

**B. Plaintiff Did Not Prove Ownership Of The Stargazer Pursuant To The 1906 Decree.**

At the heart of Plaintiff's claims is its contention that it owns the Stargazer under the 1906 Decree. "[R]eplevin to recover property is appropriate when a party establishes a superior possessory right in the chattel and shows it is entitled to immediate possession of that property." *Lewin v. Richard Avedon Found.*, 11 Civ. 8767, 2015 U.S. Dist. LEXIS 83452, at \*68 (S.D.N.Y. June 26, 2015) (Wood, J.) (citation omitted). Conversion is "the unauthorized assumption and exercise of the right of ownership over goods belonging to another to the exclusion of the owner's rights." *Zaretsky v. Gemological Inst. of Am., Inc.*, 14 Civ. 1113, 2014 U.S. Dist. LEXIS 58975, at \*10 (S.D.N.Y. Apr. 28, 2014) (Scheindlin, J.) (citation omitted).



Even if this Court were to accept the validity of the 1906 Decree, Turkey would still bear the burden of proof of ownership: “in order for Turkey to establish ownership under the 1906 Ottoman Decree, it must prove that the Idol was found within and exported from the boundaries of modern-day Turkey while the Decree was in effect.” Dkt #285 at 15. *See also Shiotani v. Walters*, 10 Civ. 1375, 2012 U.S. Dist. LEXIS 175464, at \*7 (S.D.N.Y. Dec. 3, 2012) (Sullivan, J.) (“Plaintiff bears the burden of establishing [its] rights, if any, to ownership”); *Peru v. Wendt*, No. 90-55521, 1991 U.S. App. LEXIS 10385 at \*5, 933 F.2d 1013 (9th Cir. 1991) (unpubl.) (“Under any theory of recovery, Peru had to prove the artifacts originated in modern-day Peru.”). Turkey acknowledges that it bears the burden of proof on ownership. Dkt #468 at 33.

Plaintiff has not met its burden to show ownership. While the Idol may have been unearthed in Turkey while the 1906 Decree was in effect, it is equally likely that the Idol left Turkey either during antiquity or in modern times prior to the enactment of the 1906 Decree. The Court is sensitive to the reality that the lack of evidence of the Idol’s date or place of excavation may mean the Idol was illegally excavated but cannot be claimed by Turkey. The evidence, however, is insufficient to show the Idol’s date or place of excavation by a preponderance of the evidence.

**1. Plaintiff has not established that the Idol was found within the boundaries of modern-day Turkey.**

Plaintiff has not met its burden to show that the Stargazer was excavated in Turkey. *See Peru*, 720 F. Supp. at 815 (ruling, following bench trial, that Peru cannot prevail in part because it could not establish “in what country [the artifacts] were found”).

The Court notes the stark contrast to Turkey’s successful repatriation efforts (discussed at length at trial), where specific find spots were known in almost every instance. For example, Boz describes the literature concerning eleven “well-known” examples of looted antiquities repatriated to Turkey. PTX 283 ¶6. These cases with known find spots provide helpful context of the type of

evidence that would establish ownership under the 1906 Decree. A specific find spot is not legally required, but provides the anchor to establish that an object came from within a country's borders.

In the absence of a particular find spot, the Court turns to circumstantial evidence Plaintiff relies on to establish ownership. The fact that the Idol was likely manufactured in what is now Turkey weighs in Plaintiff's favor. There is, however, no direct evidence of the path this particular Idol took after manufacture. Its first known location was in New York City in 1961, leaving an unilluminated span of thousands of years and thousands of miles during which the Idol could have taken any number of paths. DTX 47.

Klejman's possession of the Idol could weigh in Turkey's favor, given Brodie's testimony that Klejman was "a primary conduit into the United States for material looted from Turkey and the Middle East." PTX 284 ¶20. However, Brodie's sole basis for this assertion is Hoving's memoir, in which he discusses the Lydian Hoard "supplied by my old friend John J. Klejman, who had dealt in so many illicit antiquities." PTX 66. The record therefore does not provide factual support for Brodie's broad statement that Klejman was a "primary conduit." Dkt #468 ¶25.

After considering all facts and being mindful of Fed. R. Evid. 404(a)(1) ("Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait."), the Court concludes that the inferences available to Plaintiff are not sufficient to establish that the Idol was unearthed in modern Turkey.

**2. Plaintiff has not met its burden regarding the Idol's date of excavation or export.**

As with the Idol's place of excavation, Plaintiff asks the Court to infer the date of discovery based on Klejman's possession in 1961 (supported by the argument that looted antiquities often reach the market quickly after their excavation. PTX 284 ¶25. The Court is unable to infer a date

of excavation from the date of the Idol's first known sale, when there is evidence in the record that while some objects reach the market quickly, others take longer. Tr. 419:22-422:5 (Brodie).

Plaintiff also relies on the lack of early publications referencing the Stargazer to support its argument that it must have been unearthed after 1906. Dkt #468 at 45, 51. Brodie testified that, had an antiquity as unique as the Idol been removed from Turkey before 1906, it would have appeared in the literature. PTX 284 ¶26. The record shows that at least two Kiliya-type idols left Turkey before 1906, but caused no notable response in the literature. *See, e.g.*, PTX 266 ¶¶1, 4. Dinç testified that Kiliya-type idols were the subject of trade and exchange in antiquity (DTX 11A (Dinç) at 94:6-10), and Brodie conceded that the idols were exchanged. Tr. 417:9-419:7 (Brodie). *See also* DTX 201D ¶¶19, 30. Known find spots are widely dispersed within Turkey and Plaintiff provided no information about the circumstances of the discovery of the majority of Kiliya-type idols. *See* DTX 201D ¶34(e). Moreover, Klejman's appearance in the provenance as the seller to the Martins in 1961 does not support an inference that the Idol was excavated shortly beforehand. The record is devoid of any evidence regarding Klejman's patterns of purchasing objects, with Plaintiff relying solely on the Lydian Hoard example.

Plaintiff argues that "in order to prove that the Idol may have been excavated prior to 1906 even though it first appeared on the market in the 1960s, Defendants would have to argue that it was hidden or 'warehoused' for over 50 years." Dkt #468 at 52. But it is Plaintiff's burden to establish ownership, and Plaintiff fails to provide evidence to demonstrate that the Stargazer was unearthed and exported from Turkey between 1906 and 1961. It presents *no* direct evidence of the Stargazer's excavation or export, and insufficient circumstantial evidence to warrant an inference in its favor. The Court concludes that Turkey has not established by a preponderance of the evidence that the Idol left the borders of modern-day Turkey while the 1906 Decree was in effect.

**C. Turkey Cannot Justify Its Decades Of Delay In Pursuing The Stargazer To The Prejudice Of Defendants.**

The equitable defense of laches is governed by New York law. Stip. No. 2; *Bakalar*, 819 F. Supp. 2d at 303. To prevail on their laches defense, Defendants ““must show that the plaintiff has inexcusably slept on its rights so as to make a decree against the defendant unfair. Laches... requires a showing by the defendant that it has been prejudiced by the plaintiff’s unreasonable delay in bringing the action.”” *Zuckerman v. Metropolitan Museum of Art*, 928 F.3d 186, 193 (2d Cir. 2019) (citation omitted). *See also Bakalar*, 819 F. Supp. 2d at 203 (citation omitted) (“In order to prove laches, [Defendants] must show that: (1) [Plaintiff was] aware of [its] claim, (2) [Plaintiff] inexcusably delayed in taking action; and (3) [Defendants were] prejudiced as a result.”).

At the same time, “the claimant’s reasonable diligence in locating the lost property is highly relevant to a laches defense.” *Greek Orthodox Patriarchate v. Christie’s, Inc.*, 98 Civ. 7664, 1999 U.S. Dist. LEXIS 13257, at \*25 (S.D.N.Y. Aug. 18, 1999) (Wood, J.). A claimant cannot deliberately avoid knowledge and later claim it was diligent – that is, “[t]he opposing party need not have had actual knowledge of the claim; rather, it is sufficient that the opposing party *should have known*.” *Bakalar*, 819 F. Supp. 2d at 303 (citations omitted) (emphasis original) (claimants aware of loss of collection did not need to know identity of possessor or have specific knowledge of the artwork involved to be charged with knowledge).

Laches involves an inquiry into both parties’ diligence. *Solomon R. Guggenheim Found. v. Lubell*, 153 A.D.2d 143, 152, 550 N.Y.S.2d 618, 623 (App. Div. 1990) (“defendant’s vigilance is as much in issue as plaintiff’s diligence.... The reasonableness of both parties must be considered and weighed.”). Here, Plaintiff has admitted and the Court has found that Steinhardt was a good faith purchaser (Dkt #285 at 7); he therefore was found to have had no knowledge of the Stargazer’s allegedly illicit history (*id.* at 9 (“Steinhardt did not have any knowledge that the Idol

was not his when he lent it to the Met”), nor did he have any reason to suspect further inquiry was required. Dkt #417 at 4. The determination of whether laches bars Plaintiff’s claims is within the Court’s discretion. *Tri-Star Pictures v. Leisure Time Prods., B.V.*, 17 F.3d 38, 44 (2d Cir. 1994).

**1. As a Good Faith Purchaser, Steinhardt Is Entitled to a Laches Defense.**

In ruling that Turkey’s claims were timely under New York’s statute of limitations, this Court determined that Steinhardt is a good faith possessor. Dkt #285 at 7. Steinhardt’s good faith became the law of the case and the Court accordingly denied Plaintiff’s motion *in limine*, in which it sought to preclude Steinhardt from presenting a laches defense as a result of unclean hands. Dkt #417. Steinhardt’s good faith forecloses any argument that he was insufficiently diligent and entitles him to the protection of the laches doctrine. *Id.* at 5-6. *See Greek Orthodox Patriarchate*, 1999 U.S. Dist. LEXIS 13257, at \*24 (quoting *Czartoryski-Borbon v. Turcotte*, N.Y.L.J., Apr. 28, 1999, at 27 col. 2 (Sup. Ct. N.Y. Cty. 1999) (“the doctrine of laches ... safeguards the interests of a good faith purchaser of lost or stolen art ... by weighing in the balance of competing interests the owner’s diligence in pursuing his claim.”)).

Plaintiff maintains that despite Steinhardt’s admitted good faith, he knew or should have known of Turkey’s claim to the Stargazer. Plaintiff’s counsel argued at trial that the “lack of provenance in itself is a red flag. It is a signal to a prospective purchaser.” Tr. 1119:25-1120:3 (Plaintiff’s counsel). Counsel went on to accuse Steinhardt of understanding “the risk associated with buying unprovenanced, or poorly provenanced antiquities... but he was nonetheless prepared to take the risk associated with the purchase.” Tr. 1121:17-22 (Plaintiff’s counsel). Plaintiff thus abandons the “thin line” it was trying to walk between good faith and bad (Tr. 462:11-15 (Court)) and returns to its argument that “Steinhardt was aware of red flags that required him to dig deeper[.]” Tr. 1123:2-3 (Plaintiff’s counsel). The Court has already rejected this argument:

Plaintiff argues that even though Steinhardt was a good faith purchaser, he acted recklessly in not investigating the provenance of the Idol ahead of time. *See* March 18, 2021 Tr. at 44:12-44:13, 45:10-45:14, 49:8-49:11. That argument is at odds with the meaning of a good faith purchaser under New York law and with the unclean hands doctrine.

Dkt #417 at 4. *Accord Bakalar*, 819 F. Supp. at 306. This is precisely the bad faith argument that Plaintiff abandoned by conceding Steinhardt's good faith. Dkt #389 at 8 n.8.

Likewise, Plaintiff's contention that Steinhardt ignored red flags and declined to conduct appropriate diligence because he was prepared to risk a claim (Tr. 1121:14-20, 1126:7-12 (Plaintiff's counsel)) is inconsistent with Steinhardt's good faith. This argument flies in the face of *Bakalar*, 819 F. Supp. at 306:

Defendants argue that because Bakalar did not inquire into the provenance of the Drawing when he purchased it and failed to investigate its provenance for over forty years, any prejudice to Bakalar was due to his own conduct, rather than the Defendants' delay. However, this Court previously found that Bakalar purchased the Drawing in good faith, and there is no reason to disturb that finding.

Steinhardt could not have been a good faith purchaser if he had reasons to believe there were flaws in the seller's ability to deliver clear title yet failed to investigate, as this Court previously found. Dkt #417 at 4. This is the law of the case and the Court sees no basis to overturn it.

**2. Turkey Knew or Should Have Known of Its Claim to the Stargazer Much Earlier than April 2017.**

As Judge Crotty held in *Bakalar*, for claimants "[t]o have 'knowledge' of their claim, [they] need not have been aware of a claim against [the defendant] specifically; it is enough that they knew of – or should have known of – the circumstances giving rise to the claim, even if the current possessor could not be ascertained." 819 F. Supp. 2d at 304 (citation omitted). There can be no question that Turkey knew or should have known it had a claim to the Stargazer soon after 1964, when the first of fourteen publications of the figurine appeared (DTX 72), or not long after 1968, when the Idol's decades of public display at the Met began. DTX 54, 55, 102, 103. As detailed by

Anderson, the Stargazer was extremely well-known. DTX 201D ¶¶50(e), 57. Beginning in 1964, scholars, museums, a noteworthy journalist, and *even the Turkish Ministry of Culture itself* published fourteen articles mentioning the presence of the Stargazer in the Guennol Collection. Six feature photographs of the Idol, and the one published by Turkey’s Ministry of Culture in 1997 followed Dinç’s presentations that he made at Ministry symposia attended by Ministry employees in 1995 and 1996. Stip. Nos. 55-60; DTX 201D ¶¶50-51. Benzel of the Met was aware of the Stargazer in graduate school and perhaps even as an undergraduate. Tr. 288:8-289:1 (Benzel). Acar published it in the *Cumhuriyet* newspaper in 1989, showed photographs to Dinç and his supervisor at the Manisa Museum in 1991, and later worked for the Ministry as a consultant; Dinç learned about the Idol by reading Seeher’s article in 1992 and published it himself in 1997; Kulaçoğlu read Joukowsky’s 1986 article and Bilgi’s 2014 book.

Courts analyzing whether a claimant knew or should have known the whereabouts of a missing artwork have put great weight on such publications and public display, especially when the work at issue is well-known and exhibited at a prominent museum such as the Met. *Zuckerman*, 928 F.3d at 192-194 (delay was unreasonable where the painting, a “masterwork” by Picasso “not an obscure piece of art,” was on display at the Met, “a major public institution,” and had been “published in the [museum’s] published catalogue of French paintings” since 1967); *Matter of Peters v. Sotheby’s Inc.*, 34 A.D.3d 29, 38, 821 N.Y.S.2d 61, 68-69 (1st Dept 2006) (failure to make demand unreasonable where “the painting was exhibited as part of the [owner’s] collection at prominent museums, galleries, and universities”).

Turkey acknowledges that the Stargazer is “unique and irreplaceable” (DTX 22 ¶11), but asks this Court to excuse its decades of inaction because the Idol was allegedly looted out of the ground, not from an inventoried collection. Tr. 1177:13-16, 1179:18 (Plaintiff’s counsel); Dkt #468 at 54.

Yet Turkey routinely claims uninventoried objects: its claims to the Lydian Hoard, Elmai Hoard, Weary Herakles, and mosaics at Dallas Museum of Art and Bowling Green State University *all* concerned artifacts that Turkey claimed were stolen from archeological sites.

Plaintiff claims it did not have reason to know about its claim until it saw the Christie's catalog with provenance information going back no earlier than the 1960s. Tr. 1129:17-20 (Plaintiff's counsel). This argument only goes so far. Certainly by the late 1980s or early 1990s, after decades of exhibition at the Met and many publications, including Acar's 1989 newspaper article, Turkey must be charged with actual or constructive knowledge that the Stargazer was Anatolian, had no known history before the 1960s, and could be found in the Guennol Collection in New York.

Turkey's argument that it did not have sufficient information "until shortly before [this] action started" (Dkt #468 at 56) ignores *Bakalar's* holding that "it is enough that they knew of—or should have known of—the circumstances giving rise to the claim." Turkey claims ownership of *all objects* found in Turkey (*Metropolitan Museum*, 762 F. Supp. at 45), and admits knowledge of site looting in the 1960s (Dkt #332 at 16), the period it attributes to the supposed unlawful excavation of the Stargazer. DTX 22 ¶13. Also, Turkey knew or should have known that the Stargazer was not published before 1964 or exhibited until 1968 and therefore had little or no known provenance before the 1960s. Tr. 1121:8-13 (Plaintiff's counsel); DTX 72. Turkey always knew or had the opportunity to realize that before the 1960s, "there is no mention anywhere in the literature about this Idol." Tr. at 1119:23 (Plaintiff's counsel). Requiring Plaintiff to have specific knowledge of the provenance of each Kiliya-type idol before making a claim, or even an inquiry, would excuse Plaintiff from a diligence requirement altogether. *Bakalar*, 819 F. Supp. 2d at 304 ("Particularly for large art collections with several minor works, [requiring a claimant to have knowledge of each particular work] would defeat laches in virtually every case").



Turkey failed to offer any evidence to suggest that it decided not to make a claim or inquiry about the Stargazer (or other Kiliya-type idols) because it lacked detailed provenance information or even considered the provenance in choosing inaction. Indeed, in the pre-claim report, Turkey's experts considered only the Anatolian origin of the Idol and not its provenance. DTX 67. Similarly, the Anti-Smuggling Unit did not address provenance and cited delay as the basis for advising against bringing this case. DTX 69. Although Turkey makes much of its claim that the Stargazer was part of a group that it believes was offered to Martin, Turkey's knowledge of its potential claims to other Kiliya-type idols undermines its claim here, since it has proven no action with regard to the other objects. *See Bakalar*, 819 F. Supp. 2d at 304 ("Where several items were purportedly stolen under common circumstances, these items may be treated collectively for the purposes of establishing knowledge."). Dinç reported on this group of seven "idols of 'Kiliya Type'" more than two decades ago, in his 1997 article. DTX 88A.

Acar's 1989 *Cumhuriyet* article (Stip. No. 30; DTX 81A) suggested that a different "Kiliya idol" being sold at Sotheby's had been smuggled out of Turkey. In the same article, Acar mentions the Guennol Stargazer that he was able to identify in the Guennol Collection in New York. Acar located the Weary Herakles (Tr. 102:9-11 (Boz)) and the Lydian Hoard (Dkt #18 at 16:11-13 (Plaintiff's counsel)) at the Met, and also alerted Turkey to the Stargazer's presence at Christie's in 2017. PTX 284 ¶56. Two of Turkey's cultural officials testified that the Anti-Smuggling Unit is tasked with monitoring the press. DTX 10A (Bozkurtlar) 27:23-28:16; DTX 17A (Talaakar) 36:2-11; 42:23-43:10. The Court finds it highly likely that someone in Turkey's Anti-Smuggling Unit saw Acar's 1989 article (DTX 81A) or certainly should have.

Turkey argues that assembling its proof in this case has been a difficult task. Dkt #468 at 57. But Turkey "knew of—or should have known of—the circumstances giving rise to the claim" long

ago. *Bakalar*, 819 F. Supp.2d at 304. Moreover, Turkey claims that it would have pursued the Stargazer if the Met had disclosed it in the Lydian Hoard case – well before Christie’s catalog published the object’s provenance. Dkt #18 at 17:6-11 (Plaintiff’s Counsel) (“In [the Lydian Hoard] case we submitted interrogatories where we asked for every object in the museum that came from Turkey. Clearly this [Idol] was not disclosed in those papers. I have no recollection of it being disclosed. I certainly say if it was we would have gone after it.”).

On the basis of this evidence, this Court finds that Turkey knew or should have known that the Stargazer was Anatolian and present in the Guennol Collection as early as 1989, when Acar reported on it in the *Cumhuriyet*. Acar surely would have pointed it out to Turkish cultural officials at that time, as he did with the Weary Herakles and Lydian Hoard, and as he did in 2017 when he found the Idol again. DTX 62, 63. In knowing the location of the Stargazer in New York, Turkey would also have understood the circumstances giving rise to its claim: the looting of archeological sites in Turkey in the 1960s (Dkt #332 at 17), the appearance of the Stargazer at the Met in the 1960s described as Anatolian (DTX 54), and the lack of exhibition or publication history before the 1960s (DDTX2A; DDTX3A). *See Bakalar*, 819 F. Supp. 2d at 304 (“it is enough that they knew of—or should have known of—the circumstances giving rise to the claim, even if the current possessor could not be ascertained.”).

Alternatively, the Court has no doubt that Turkey actually knew about the Stargazer’s presence in the Guennol Collection no later than 1992, when Dinç read Seeher’s article in the original German. Many other publications likewise mention the Stargazer’s Anatolian origin and presence in the Guennol Collection, and are far from being “vague references in publications that really aren’t publications....” Tr. 1177:23-1178:2 (Plaintiff’s counsel). Nor did these references “usually occur[] as an unillustrated comparison, often in a small-print footnote, sometimes in passing” (Dkt

#468 at ¶96); six of the publications have half- or full-page images of the Stargazer and all provide details regarding its origin, location, and owner. *See* DDTX2A. Kulaçoğlu of the Anatolian Civilizations Museum read Joukowsky’s 1986 publication and Bilgi’s 2014 article. DTX 80, 189; DTX13A (Kulaçoğlu) 101:6-102:23, 112:18-113:17. Dinç’s own Turkish-language article – in which he wrote “it is also known that the seven [idol[s] of ‘Kiliya Type’ reported to be found in Kirşehir are in the Leon Levy, Norbert Schimell [*sic*], Gustave-Franyo Schindler and Guennol collections in New York” – was published in 1997 *by the Ministry of Culture itself*. DTX 88A.

The evidence of Turkey’s opportunities for knowledge about the Stargazer is overwhelming. The Met displayed the Stargazer almost continuously for 25 years *before Steinhart’s purchase* and for seven more years after that, always described as “Anatolian.” *See* DDTX2A. Dinç made symposium presentations in 1995 and 1996 with Ministry employees present (Stip. Nos. 55, 56, 59, 60) and in 1997, the Ministry published his findings on the Stargazer being in “the Guennol collection[] in New York.” DTX 88A. Whether the Court considers 1964 when the first publication appeared, the periods of exhibition at the Met (1968-1993 and 1999-2007), 1989 when Acar’s article appeared, 1991 when Acar met with Dinç, 1992 when Dinç read Seeher’s article, 1997 when the Ministry published Dinç’s article, or some in-between date (such as 1987-1993, during the Lydian Hoard case), the Court finds that the preponderance of the evidence establishes Turkey should have been aware of its claim to the Stargazer by 1989 and was aware by 1992.

### **3. Turkey Inexcusably Delayed Bringing Its Claim.**

“Laches would limit the troubling possibility... that owners, knowing the relevant facts, could wait idly for decades, or even centuries, before any legal obligation arose to pursue their claims.” Comment, Sydney M. Drum, *DeWeerth v. Baldinger: Making New York a Haven for Stolen Art?*,

64 N.Y.U. L. Rev. 909, 942 (1989) (cited in *Greek Orthodox Patriarchate*, 1999 U.S. Dist. LEXIS 13257, at \*31-32). Turkey indeed “wait[ed] idly for decades” to assert a claim.

The wealth of knowledge that Turkey acquired about the Stargazer’s Anatolian origin and presence in the Guennol Collection in New York gave it a duty to make a claim or at least inquire. The court in *Bakalar* explained that a potential claimant is obligated to act reasonably in response to the information it possesses as well as information it reasonably should know. 819 F. Supp. 2d at 304 (“[t]he scope of knowledge inquiry also informs the scope of required diligence”).

Turkey’s actions must be judged by the standards applicable over the past 50 years. “It is the reasonableness of plaintiff’s response to the theft that is... [to be judged by the] practice prevalent among museums in the 1960’s concerning the measures to take in recovering stolen art.” *Lubell*, 153 A.D.2d at 150. Turkey has cited no case in which an unexplained delay of more than 25 years, coupled with prejudice, has effectively countered a laches defense. Delays of this order of magnitude are typically found to be inexcusable when accompanied by prejudice. *Zuckerman*, 928 F.3d at 193 (delay from 1952 to 2010 while witnesses died); *DeWeerth v. Baldinger*, 836 F.2d 103, 112 (2d Cir. 1987) (owner of artwork insufficiently diligent after making theft report, hiring an attorney and art professor to aid in search, then giving up and doing nothing for 24 years); *Bakalar*, 819 F. Supp. 2d at 305 (artwork alleged to have been stolen by the Nazis; family made virtually no effort “to locate or claim title” to stolen property until 1998); *Sanchez v. Trustees of the University of Pa.*, 04 Civ. 1253, 2005 U.S. Dist. LEXIS 636, at \*8 (S.D.N.Y. Jan. 13, 2005) (Rakoff, J.) (“Plaintiffs have offered no evidence that their grandfather, from whom the collection was allegedly stolen, undertook any search or made any effort whatever to recover the Collection.”); *Wertheimer v. Cirker’s Hayes Storage Warehouse, Inc.*, 300 A.D.2d 117, 118, 752 N.Y.S.2d 295, 297 (N.Y. App. Div. 2002) (owner reported theft at the time in 1947, but he and

family did not follow up for 50 years even though artwork was publicly offered for sale in New York where owner lived); *Greek Orthodox Patriarchate*, 1999 U.S. Dist. LEXIS 13257, at \*31 (“[I]f the Patriarchate was able to retain counsel with impressive speed to bring this action the night before the Christie’s auction, it could have retained counsel to search for the Palimpsest, or at least make some inquiries, at some point during the previous seventy years.”).

Turkey cannot justify failing to make an inquiry by falsely asserting that the articles were “private publications” (Tr. 1177:25 (Plaintiff’s counsel)) or by complaining that references after the Idol left the Guennol Collection were “out-of-date and misleading.” Dkt #334 ¶82; Tr. 367:24-368:2 (Brodie). Brodie, offered as Turkey’s diligence expert, could not identify a single step that Turkey took to inquire about or claim the Stargazer before March 2017 and disclaimed any knowledge of Turkey’s diligence:

Q. Did Turkey ever make any inquiry to learn information about The Guennol Collection?

A. I don’t know. I don’t know what Turkey did.

Q. So you don’t know about any research effort that they undertook to learn about what the Guennol Collection was?

A. No, I’m not associated with the Turkish authorities, with the Turkish Ministry of Culture, so they wouldn’t tell me anyway.

Q. Well, you did review much of the record in this case, didn’t you?

A. Yes.

Q. And in that material that you reviewed, did you see any indication whatsoever that Turkey made any effort to learn anything about The Guennol Collection?

A. Not as I recall.

Tr. 368:6-20 (Brodie). Without a supporting opinion from Brodie, Turkey cannot establish that its diligence was reasonable and comported with generally accepted standards.

Nevertheless, Turkey asks the Court to forgive decades of unjustified inaction, claiming it should be forgiven for not finding the Idol because it was an undocumented object. Dkt #468 at 31, 54; Tr. 1120:13-18 (Plaintiff’s counsel). The Idol was not inventoried, but this fact is not determinative for an object that is the best of its kind and has been widely known and published

for 50 years, most significantly by the Turkish Ministry of Culture itself. *See Zuckerman*, 928 F.3d at 194 (noting that the painting was a “masterwork” by Picasso, “not an obscure piece of art”).

Turkey never publicized the loss of the Stargazer or took any action to find it, inquire about it, or claim the figurine. Although Brodie advances numerous explanations for the delay, all Turkey had to do between 1968 and 1993, or between 1999 and 2007, was to see the Stargazer on display in the Met’s Ancient Near Eastern galleries in the Anatolian case, with a label identifying it as Anatolian. DTX 57, 58, 102, 103, 151. While Plaintiff dismisses the prominence of the Met as a feature of the “Manhattan bubble” (Tr. 401:1-4 (Brodie)), it is a world-class museum and one of the most logical places to look for Anatolian antiquities, just as it was for the Lydian Hoard and the Weary Herakles. *See Zuckerman*, 928 F.3d at 194 (Met is “a major public institution”); Tr. at 475:24-25 (Merrin) (“one of the greatest museums in the world”).

Even when Turkey learned in or about 1992 that the Stargazer was in New York, it made no claim or inquiry. It did not hire a researcher, art historian, or other consultant to learn more about the well-documented Idol in the Guennol Collection. It did not advertise the discovery within its own ranks, let alone publicly. *See Greek Orthodox Patriarchate*, 1999 U.S. Dist. LEXIS 13257, at \*30 (religious order could have hired someone to make inquiries). It did not report the loss to U.S. law enforcement or contact any international organization or database. Nor did it make an inquiry with the Met. *See Zuckerman*, 928 F.3d at 194 (delay was unreasonable where painting was a “masterwork” on display at the Met – “a major public institution” which the claimants could have contacted, and which since at least 1967 listed the original owner’s name in the provenance).

Against this mountain of evidence of inaction, Turkey can only say that it did not know it had a claim to the Stargazer until it saw the provenance published in Christie’s catalog in 2017. Dkt #84 at 12. This echoes the unsuccessful argument made by the claimant in *Bakalar*, who argued:

[The family members] were unaware of any claim against [the possessor] Bakalar and did not know of the Drawing's whereabouts until 2005. These arguments, however, construe the laches inquiry too narrowly. To have "knowledge" of their claim, Defendants need not have been aware of a claim against Bakalar specifically; it is enough that they knew of—or should have known of—the circumstances giving rise to the claim, even if the current possessor could not be ascertained.

819 F. Supp. 2d at 304 (citation omitted). Turkey similarly claims that it cannot pursue every stolen object, but the Stargazer is not just any object; "Kiliya-type idols are extremely rare and, with respect to the Idol, because of its size and condition, this particular example is virtually unique." PTX 283 ¶6. Surely Plaintiff, like the *Zuckerman* heirs, would be charged with an obligation to pursue the best of a remarkable class which was extensively published and exhibited.

Turkey did make one small attempt to gain information about Anatolian objects that might be subject to a claim. During its Lydian Hoard case against the Met from 1987 to 1993 (Stip. No. 26) (while the Stargazer was on display there (DTX 54, 55)), Turkey requested that the Met produce documents related to antiquities "classified as 6<sup>th</sup> and/or 5<sup>th</sup> century B.C. and Lydian, Phrygian, Anatolian, Achaemenian, East Greek, and/or Persian in origin," as well as documents concerning "any antiquities from Klejman in and between 1960 and 1980[.]" DTX 134 Nos. 4, 10. The Met objected and *Turkey did not move to compel or otherwise follow up on these requests*. Dkt #18 at 16:22-17:20; DTX 44 No. 8; DTX 134. This episode, which Plaintiff brought to the Court's attention at a hearing on April 28, 2017, demonstrates that Turkey suspected that the Met might hold unprovenanced or even looted objects from Anatolia, but did *not* pursue that lead. Dkt #18 at 17:6-11 ("In [the Lydian Hoard] case we submitted interrogatories where we asked for every object in the museum that came from Turkey."); *id.* at 20:8-12 ("But when the Republic of Turkey is notified or finds out about, in any other way, the fact that its cultural patrimony is being sold or attempted to be sold on the market, it does what it has to do to try to -- to prevent its patrimony from going to the marketplace."). This concession undercuts Plaintiff's argument that it needed a

detailed provenance or definitive evidence of theft before it could make a claim or inquiry. Dkt #468 at 56. Turkey cannot justify its failure to make other efforts or publicize the Stargazer or other Kiliya-type idols after it knew or should have known of the circumstances of its claim. *See Bakalar*, 809 F. Supp. 2d at 304 (claimant had knowledge of its claim when it learned of “the circumstances giving rise to the claim, even if the current possessor could not be ascertained.”).

Moreover, Turkey hired legal counsel with speed and had them request a temporary restraining order the evening before Christie’s auction, but never asked them or anyone else to investigate the oft-published and long-exhibited Guennol Stargazer. *See Patriarchate*, U.S. Dist. LEXIS 13257, at \*31 (“Yet if the Patriarchate was able to retain counsel with impressive speed to bring this action the night before the Christie’s auction, it could have retained counsel to search for the Palimpsest, or at least make some inquiries, at some point during the previous seventy years.”).

Based on this evidence, the Court finds that Turkey unreasonably delayed making its claim. Inquiry or claim should have been made soon after it should have known of its claim in 1989, or after it actually knew of its claim in 1992. As the New York Court of Appeals has declared, “the true owner, having discovered the location of its lost property, cannot unreasonably delay making demand upon the person in possession of that property (*see, e.g., Heide v. Glidden Buick Corp.*, 188 Misc. 198).” *Solomon R. Guggenheim Found. v. Lubell*, 77 N.Y.2d 311, 319, 569 N.E.2d 426, 430, 567 N.Y.S.2d 623, 627 (N.Y. 1991). *See also Sanchez*, 2005 U.S. Dist. LEXIS 636, at \*5-6 (claim barred by laches even though possessor of allegedly stolen artifacts was unknown by plaintiff until shortly before lawsuit was filed).

The facts in this case are very different from those in *Sotheby’s, Inc. v. Shene*, 04 Civ. 10067, 2009 U.S. Dist. LEXIS 23596, at \*12 (S.D.N.Y. 2009) (Griesa, J.), cited by Plaintiff (Dkt #468 at 58), where the Court excused claimant Baden-Wurttemberg for failing to pursue a book that



disappeared during World War II, reasonably believing it had been destroyed. Here, Turkey learned or should have learned over the decades that the Stargazer existed, was Anatolian, and was in the Guennol Collection in New York. Nor does this case bear any resemblance to *Vineberg v. Bissonnette*, 529 F. Supp. 2d 300, 309 (D.R.I. 2007) (Dkt #468 at 58), where wartime destruction of a gallery's records hindered the claimant's diligence in searching for its lost paintings. Likewise, in *In re Flamenbaum*, 22 N.Y.3d 962, 965, 965 1 N.E.3d 782, 784 (N.Y. 2013) (Dkt #468 at 58), a laches defense was rejected because greater diligence by the theft victim (as in *Shene*) would have been unlikely to locate the stolen property. Here, information was freely available to Turkey that an extraordinary object made in Anatolia was published numerous times beginning in 1964, was exhibited at the Met, and could be found in the Guennol Collection in New York. The facts presented here are more like those in *Matter of Peters*, 34 A.D.3d at 37-38, 821 N.Y.S.2d at 68 (lack of timely demand by claimant legitimated current possessor's acquisition).

Turkey asks this Court to disregard the lengthy history of its inaction in the face of massive amounts of public information about the Stargazer and its whereabouts. Having been "not diligent at all" (*Greek Orthodox Patriarchate*, 1999 U.S. Dist. LEXIS at \*30), Turkey asks too much.

#### **4. Steinhardt and Christie's Were Severely Prejudiced by Turkey's Delay.**

As the New York Appellate Division recently reiterated, "Laches is an equitable bar, based on a lengthy neglect or omission to assert a right and the resulting prejudice to an adverse party." *Reif v. Nagy*, 175 A.D.3d 107, 130, 106 N.Y.S.3d 5, 22 (N.Y. App. Div. 2019) (citation omitted). "A defendant has been prejudiced by a delay when the assertion of a claim available some time ago would be inequitable in light of the delay in bringing that claim." *Conopco Inc. v. Campbell Soup Co.*, 95 F.3d 187, 192 (2d Cir. 1996). "Relevant factors in assessing prejudice include the decreased ability of the defendants to vindicate themselves, on account of the death of witnesses

or fading memories and stale evidence, as well as the prejudice that may result from a change in the defendant's position." *Merchant v. Lymon*, 828 F. Supp. 1048, 1063 (S.D.N.Y. 1993) (Buchwald, J.). Turkey's lengthy delay unquestionably caused prejudice to Steinhardt, who changed position by purchasing the Stargazer in 1993 in the absence of any claim or expression of interest by Turkey and must now defend against Plaintiff's belated claim with the significant disadvantages of missing and deceased witnesses, dimmed memories, and lost documents. *See Peters*, 34 A.D.3d at 38, 821 N.Y.S.2d at 68 ("the very default by the [claimants] in timely asserting their possessory rights provided legitimacy to [the buyer's] acquisition").

The prejudice to Steinhardt is comparable to that suffered by the Met in *Zuckerman* and by Bakalar in his case. In *Zuckerman*, the Second Circuit found prejudice to the Met flowing from delay by the plaintiff which led to "'deceased witness[es], faded memories, ... and hearsay testimony of questionable value,' as well as the likely disappearance of documentary evidence." 928 F.3d at 194 (quoting *Lubell*, 153 A.D.2d at 149). All witnesses to the sale of the painting at issue in *Zuckerman* had died; here, deceased witnesses include the Martins who acquired the Stargazer, Klejman who sold it to them, and Hoving. Stip. Nos. 5, 16-20. There is no Klejman archive and his documents are no longer extant. Tr. 773:24-774:2 (Bernheimer). Sam Merrin, a proprietor of the gallery that sold the Stargazer to Steinhardt in 1993, has little recollection of the transaction. Tr. 473:11-22, 474:16-21 (Merrin). Turkey presented no witnesses with direct knowledge of the Stargazer's history; Boz, Turkey's only fact witness, has been at the Directorate a short time and most of her testimony was based on a book about repatriation. Tr. 103:11-117:17 (Boz). Met witnesses who would have recalled the 1966 loan are departed or deceased, or cannot be identified due to the passage of time and loss of records. DTX 47, 159, 160. While Steinhardt

testified about his 1993 purchase in general terms, his memory of the details is dimmed by the passage of several decades and his advanced age. DTX 201BB ¶¶9, 11, 14.

By the same token, numerous witnesses from the Directorate have died, cannot be identified, or have become unavailable because of their alleged involvement in the July 2016 coup d'état and Turkey's resulting purge of its civil service. DTX 10A (Bozkurtlar) at 30:11-31:19; DTX 17A (Talaakar) at 42:23-43:19; DTX 19A (Zoroğlu) at 26:2-27:3, 69:10-74:16; DTX 175A. Süslü, the Director General of the Directorate from 2010 to 2013, is unavailable to explain to the Court why Plaintiff took a much more aggressive approach to pursuing international repatriations under the 1906 Decree during his tenure, which came long after Steinhardt's purchase, in some cases acting on claims Plaintiff had knowledge of for decades. DTX 201D ¶70.

The lost records and testimony could have established any of a variety of ways by which the Martins could have come into lawful possession of the Idol. DTX 201C ¶¶32-42. Klejman's or Alastair Martin's testimony could have shown that Klejman purchased the Stargazer from a collector who had owned it before 1906. Klejman's lost records could have shown that the Stargazer was allowed to leave the boundaries of modern-day Turkey while the 1906 Decree was in effect through one of the many exceptions made to it by the government, or that it was found in another country. *Cf. Reif*, 175 A.D.3d at 130-31, 106 N.Y.S.3d at 22-23 (holding that the death of a witness whom defendants argued had valid title to the works did not prejudice defendants because her testimony "could not have shown she had good title to the Artworks and her testimony would not have been probative"); *Flamenbaum*, 22 N.Y.3d at 966, 978 N.Y.S.2d at 710, 1 N.E.3d at 784 (loss of witness testimony was not prejudicial since there was "no scenario" in which the decedent could have acquired title to museum property). In *Bakalar*, the death of one key witness who (not unlike Klejman and the Martins) was at the center of the contested transaction, was of

“the greatest significance” in causing prejudice. 819 F. Supp. 2d at 306. *Accord Zuckerman*, 928 F.3d at 194 (“No witnesses remain who could testify on behalf of the Met that the Sale was voluntary, or indeed on behalf of the Plaintiff that the Painting was sold ‘involuntar[ily]’”).

Turkey claims that even though Steinhardt is a good faith purchaser, his lack of diligence caused his prejudice because he ignored red flags and was driven by a high tolerance for risk and a deep appreciation of an object’s aesthetics. Dkt #468 at 58-61. This argument is foreclosed by the Court’s finding that Steinhardt acquired the Stargazer in good faith. The court in *Bakalar* explained, in language of particular resonance to the current matter:

Defendants argue that because Bakalar did not inquire into the provenance of the Drawing when he purchased it and failed to investigate its provenance for over forty years, any prejudice to Bakalar was due to his own conduct, rather than the Defendants’ delay. However, this Court previously found that Bakalar purchased the Drawing in good faith, and there is no reason to disturb that finding. Moreover, Bakalar, as an ordinary non-merchant purchaser of art, had no obligation to investigate the provenance of the Drawing, and this Court will not saddle him with a greater duty than the law requires.

*Bakalar*, 819 F. Supp. 2d at 306. *See also Overton v. Art Fin. Partners LLC*, 166 F. Supp. 3d 388, 401 (S.D.N.Y. 2016) (duty to inquire into red flags applies only to merchant-purchasers). As in *Bakalar*, Steinhardt is a good faith possessor who did not have any reason to suspect that a broader inquiry than he made was required. Dkt #417 at 4. *Bakalar* is controlling authority and Plaintiff provides no grounds for ignoring it: Steinhardt cannot be blamed for the prejudice he suffered due to Turkey’s lack of diligence over the course of five decades.

Plaintiff argues forcefully that because of the Lydian Hoard case and his relationship with the Met, Steinhardt knew about Turkey’s patrimony laws in 1993. At least in part because of Plaintiff’s delay in bringing this case, the evidence is inconclusive concerning what Steinhardt knew in 1993. In a deposition in an unrelated case in 1996, three years after his purchase of the Stargazer, Steinhardt testified to a general understanding of Turkey’s patrimony laws. PTX 305. He has now

forgotten what he knew back then, which the Court takes as a natural diminution of memory, not an effort to avoid the facts. *See, e.g.*, DTX 201BB ¶9.

It is the law of the case that Steinhardt is a good faith purchaser; that finding leaves no room for the argument that he had information telling him he should have inquired further than he did. To the extent Plaintiff's argument must be considered, it is rejected. Steinhardt was highly diligent under 1993 standards. Steinhardt, a novice collector at that time, asked questions of the dealer and received materials from him, including a report by noted expert Prudence Harper. Tr. 614:1-12, 621:11-21 (Steinhardt); Tr. 493:7-9 (Merrin). He met with Harper and other experts at the Met and consulted with other people he knew. Tr. 614:1-25 (Steinhardt). He reviewed literature on Kiliya-type idols (Tr. 663:12-664:14, 666:14-25 (Steinhardt)), making an effort to become "at least superficially knowledgeable about this type of figure" (Tr. 606:22-25 (Steinhardt)) and trying "to learn everything [he] could." Tr. 612:24-613:2 (Steinhardt). He remembers "reading sections of art books that were focused on Kiliya idols" and seeing their descriptions and pictures in an effort to glean "whatever other information [he] could gather from books that had at least part of their effort devoted to the history of Kiliya idols." Tr. 613:16-25 (Steinhardt). In particular, he remembers reading an article by P.O. Harper about the Stargazer, two versions of which appear in his object file for the Stargazer. Tr. 621:11-14 (Steinhardt); DTX 183.

Steinhardt also sought out as many knowledgeable, disinterested people as he could find who might have information about the Stargazer or Kiliya-type idols. He approached curators likely to have information – including, to the best of his recollection, Prudence Harper, Carlos Picon, and Joan Mertens. Tr. 614:9-12 (Steinhardt); DTX 201BB ¶16. Indeed, Steinhardt "think[s] [he] spoke to a number of people at the Metropolitan Museum to try to get their understanding of this one in relation to others" (Tr. 614:1-8 (Steinhardt)), as he "had the highest regard for their expertise and

ethics.” DTX 201BB ¶15. Steinhardt’s conversations with Harper, who was herself very cautious about antiquities and concerned about provenance. Tr. 931:3-25 (Anderson).

Plaintiff also faults Steinhardt for failing to contact Alastair Martin in 1993 (Dkt #468 ¶39), but Steinhardt had only “a vague recollection of having met [Martin] once.” Tr. 604:6-8, 648:3-10 (Steinhardt). Also, since Steinhardt purchased the figurine through Merrin Gallery, it would have been unusual for him to go around Merrin to the seller for information. Tr. 660:9-24 (Steinhardt).

Steinhardt’s interviewing the dealer and obtaining the dealer’s documentation, coupled with his awareness of 25 years of unimpeded public exhibition at the Met and past ownership by the Guennol Collection, as well as consulting with Met experts, and reviewing the literature, judged by the standards of 1993 for a beginning collector, is impressive compared to Turkey’s 50 years of inaction and 25 years of actual knowledge that the Stargazer could be found in New York; Turkey is, after all, an experienced claimant. *See Lubell*, 153 A.D.2d at 151 (“the question is... whether plaintiff’s failure to take such [diligence] measures was unreasonable, and regarded as such in the trade in the 1960’s”); DTX 201D ¶¶64-66. During those many years, while Turkey’s Anti-Smuggling Unit did absolutely nothing to recover or even inquire about the Stargazer until it appeared at Christie’s auction, Turkey’s delay plainly caused undue prejudice to Defendants.

##### **5. Neither the Martins’ Nor Christie’s Diligence is Relevant to this Case.**

Turkey asks the Court to infer that the Martins should have known that Klejman had a reputation as a “dealer-smuggler” and therefore was untrustworthy as the seller of the Stargazer. Dkt #468 ¶26. While not explicit, Plaintiff’s theory appears to be that Steinhardt should be held to account for his predecessors’ alleged lack of diligence.

The Court gives minimal weight to evidence of Klejman’s reputation (Dkt #468 ¶¶25-28), which is hearsay and lacks foundation (*see* Fed. R. Evid. 404). In any event, the evidence shows

that Klejman's reputation was only tarnished well after his sale to the Martins and Steinhardt's purchase of the Idol in 1993. PTX 66 (Hoving memoirs published in 2009); PTX 264; DTX 201D ¶38. Moreover, New York case law provides no support for Plaintiff's attempt to connect the diligence of Steinhardt and the Martins. The only cases in which prior owners' diligence is considered is where the claimants' predecessors were family – that is, where the claimant's restitution demand is based on the same facts and circumstances as their ancestors'. *See, e.g., Bakalar*, 500 Fed. Appx. at 8 (court imputed knowledge of “potential intestate rights” to heirs); *Wertheimer*, 752 N.Y.S.2d at 297 (noting plaintiff's grandfather's lack of diligence). By contrast, Steinhardt had an arms' length relationship to the Martins. Plaintiff's effort to impugn Steinhardt's diligence by reference to that of the Martins' is merely another way for Plaintiff to avoid its concession, and the Court's finding, that Steinhardt is a good faith purchaser.

Turkey's failure to bring a claim prior to 2017 prejudiced Defendants because of “deceased witness[es], faded memories, lost documents, hearsay testimony of questionable value, and the ‘injustice’ of having ‘to defend under these circumstances.’” *Lubell*, 153 A.D.2d at 149, 550 N.Y.S.2d at 621. Defendants changed position by purchasing the Stargazer in 1993 (Steinhardt) and accepting it on consignment in 2017 and preparing for sale (Christie's). Indeed, because Steinhardt acquired the Stargazer decades ago and its provenance in the U.S. goes back to at least 1961, relevant witnesses are dead, galleries are gone, and documents are missing; it is virtually impossible for Steinhardt to trace the ownership chain back further than 1961. Accordingly, the Court rules in Defendants' favor on their laches defense.

## VI. CONCLUSION

For the reasons set forth above, the Court holds that (1) the 1906 Ottoman Decree cannot be enforced by this Court; (2) Plaintiff did not meet its initial burden to show ownership of the

Stargazer, thus entitling Defendant Steinhardt to a declaratory judgment in his favor, and (3) even if the Decree were an enforceable patrimony law *and* Plaintiff met its ownership burden, Defendants are entitled to judgment in their favor on their laches defense. The Clerk of this Court is directed to enter judgment in Defendants' favor and close the case.

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that the foregoing Defendants Christie's and Steinhardt's [Proposed] Post-Trial Findings of Fact and Conclusions of Law was served upon on the following via the Court's ECF system on May 31, 2021:

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