

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, PART 65

IN THE MATTER OF AN APPLICATION FOR A WARRANT
TO SEARCH THE PREMISES LOCATED AT THE
METROPOLITAN MUSEUM OF ART, 1000 5TH AVENUE,
NEW YORK, NEW YORK 10028 (“THE TARGET PREMISES”)

MATTHEW BOGDANOS, an attorney admitted to the practice of law in the State of New York, affirms the following under penalties of perjury:

1. I am a Senior Trial Counsel in the Office of New York County District Attorney Cyrus R. Vance Jr. (“Office”) and submit this Application in support of an order pursuant to N.Y. Penal Law §450.10 (Consol. 2017) and N.Y. Criminal Procedure Law §690.55 (Consol. 2017) authorizing the transfer of a marble archaic bull’s head (“Bull’s Head” (C-17)) seized pursuant to the above-captioned search warrant from the custody of this court to the custody of the lawful owners, the Government of the Lebanese Republic.

2. This Application is based upon numerous interviews of eyewitnesses to the events herein related, documents received pursuant to search warrants and Grand Jury subpoenas, conversations with and documents received from representatives of the Government of the Lebanese Republic, and other evidence I have obtained pursuant to an active criminal investigation.

Background

3. This Office has been investigating the illicit antiquities trade, including the illegal looting, exportation, and sale of ancient art from a dozen nations, and the subsequent illegal importation of these antiquities into and through New York. This investigation has resulted in multiple convictions, seizures of thousands of antiquities totaling more than \$150 million, and the repatriation of recovered antiquities to half-a-dozen countries. Through this investigation, and as set forth in detail below, OFFICE obtained information that the Metropolitan Museum of Art in New York City (the “Met”), was in possession of a

Bull's Head (C-17) that had been stolen during the civil war in the 1980s in Lebanon and illegally imported into the United States as part of an international criminal conspiracy.

4. In February 2017, the Office of the U.S. Attorney for the Eastern District of New York (EDNY) began inquiring into the Bull's Head (C-17). The EDNY determined that the Bull's Head (C-17) was the stolen property of the Lebanese Republic possessed in New York County. In May 2017, the EDNY became aware that this Office was also conducting a larger investigation of criminal conspiracy to which this Bull's Head (C-17) ultimately proved to be relevant. At that point, the EDNY referred the case of the Bull's Head (C-17) to this Office. Based on information developed pursuant to this investigation, the People applied to this Court for the subject warrant on July 6, 2017. See Exhibit 1 (Warrant to Search the Premises Located at the Metropolitan Museum of Art dated July 6, 2017). The Met delivered the Bull's Head (C-17) to this Office on the following day.

5. I immediately notified the Government of the Lebanese Republic, and on July 18, 2017, this Office received a formal demand from Lebanon's Minister of Culture for the repatriation of the Bull's Head (C-17) to the Lebanese Republic as its proper owner. See Exhibit 2 (Letter from Ghattas Khoury, Minister of Culture for the Lebanese Republic dated July 18, 2017). This demand triggered PL §450.10(1), which applies "when property...alleged to have been stolen is in the custody of...a district attorney and a request for its release is made *prior to or during* the criminal proceeding." (Emphasis added). Once triggered, the statute required this Office to notify counsel for the prior possessors, Mr. and Mrs. William and Lynda Beierwaltes (the "Beierwaltes"), of the demand and our intention to release the stolen property. I did so on July 19, 2017. See Exhibit 3 (Letter from Assistant District Attorney Bogdanos dated July 19, 2017). The statute also requires this Office to institute proceedings necessary to return the Bull's Head (C-17) to the Lebanese Republic. Specifically, PL §450.10(2) mandates that "[u]nless extended by a court order..., the property *shall be released*...to the person making such request after satisfactory proof of such person's entitlement to the possession

thereof.” (Emphasis added). Under the penal law, therefore, whenever the People are in possession of stolen property, we *must* release that property to the lawful owner unless otherwise directed by court order.

6. Here, however, the Bull’s Head (C-17) was seized pursuant to a validly issued search warrant. After a warrant has been executed, CPL §690.50(6) requires the People “to return to the court the warrant and property seized in the course of its execution.” This return was made on July 24, 2017. See Exhibit 4 (Inventory of Property Taken Under and Pursuant to Search Warrant dated July 24, 2017). But under PL §450.10(5), the warrant-issuing court—legally in possession of the returned property—is similarly mandated and *must* deliver the demanded property to the owner, “on satisfactory proof of his title.” CPL §690.55 is in accord, further authorizing the warrant-issuing court to determine the property’s ultimate disposition. It is respectfully requested, therefore, that this Court sign an Order authorizing the release of the Bull’s Head (C-17) to representatives designated by the Government of the Lebanese Republic.

The Excavation and Theft

7. On July 8, 1967, the subject Bull’s Head (C-17), dated to approximately 360 B.C. was excavated from the Temple of Eshmun in Sidon, Lebanon, by Maurice Dunand as part of a state-sponsored excavation. Mr. Dunand, a French archaeologist specializing in the ancient Near East who had begun excavating Jubayl/Byblos in 1924 and Eshmun in 1963, served as director of the Mission Archéologique Française in Lebanon.¹ He passed away in France in 1987. At the time of its excavation, the Bull’s Head (C-17) was photographed and given inventory catalogue number E912/8-12 at the time of its excavation by Mr. Dunand.² Compare Exhibit 5 (Temple of Eshmun Excavation

¹The city is referred to in some documents by the ancient name of Byblos and in others by the modern Jubayl. For purposes of consistency, this Application will use both.

² Of the approximately 2,500 total antiquities that had been excavated at Eshmun, only the 600 sculptures (statues and reliefs) appear to have been photographed.

Inventory Catalogue Card No. E 912/8-12 dated July 8, 1967) with Exhibit 6 (Current Photographs of the Subject Bull's Head (C-17)). Altogether, at least four bull's heads were excavated from Eshmun that summer. The one labeled C-14 is a large section of a column with four frontal views of bull heads; the one labeled C-15 is a fragment of a bull's head broken from a column; the one labeled C-16 is a large relief of the front portion of a bull on a pentagonal plate; and the one labeled C-17, a single head from a four-sided column, is the Bull's Head (C-17) at issue here. See Exhibit 7 (Photos and Description of Four Bull's Heads labeled C-14 to C-17).

8. Professor Rolf Stucky, former Head of the Department of Classical Archaeology at the University of Basel in Switzerland, and a colleague of Mr. Dunand, was conducting research at the French Institute in Beirut, approximately 25 miles north of Eshmun, from September 1970 to September 1972. Although Professor Stucky has since retired and resides in Basel, Switzerland, I have interviewed him repeatedly and extensively. See Exhibit 8 (Affidavit of Professor Rolf Stucky dated Sept. 15, 2017). All his statements herein are based on his direct observation. Visiting Mr. Dunand at Eshmun an average of once a month, Professor Stucky examined the Bull's Head (C-17) in Eshmun's on-site excavation warehouse many times in that two-year period. He also saw the Bull's Head (C-17) again in the same on-site excavation warehouse when he returned to Lebanon in 1973 and 1974.³

9. The Bull's Head (C-17) remained in Eshmun's on-site excavation warehouse for twelve years until concerns about the increasingly violent civil war led the Lebanese Director General of Antiquities, Emir Maurice Chehab, to develop plans to move the Eshmun antiquities to a safer

³ In the federal complaint filed by the Beierwaltes against the Lebanese Republic and this Office, counsel claims "upon information and belief" that Mr. "Dunand was a dual citizen of Switzerland and Lebanon, the latter of which employed him and sponsored his excavation at Eshmun, in which Stucky participated." At page 5. Actually, Mr. Dunand was neither a Swiss nor Lebanese citizen; he was a French citizen who enjoyed a special relationship with the country in which he excavated for 50 years under the auspices of the Mission Archéologique Française in Lebanon. Also, Professor Stucky never "participated" in the excavations (although he was a frequent visitor).

location. By the most conservative estimates, the Lebanese Civil War (Al-Ḥarb al-Ahliyyah al-Libnāniyyah) that lasted from 1975 to 1990 resulted in 120,000 deaths and almost one million refugees. Indeed, Sidon (the site of the Eshmun excavations), being approximately 40 miles north of the Israeli border and approximately 25 miles south of Beirut, was near some of the heaviest fighting for much of the war. On December 3, 1979, in a heroic effort to save the antiquities from the depredations of the war, Director General Chehab began to plan for the movement of the Eshmun antiquities to the Jubayl/Byblos Citadel for safekeeping. Emir Chehab—whose efforts earned him the sobriquet “the guardian angel of Lebanon’s cultural heritage”—started working in the archaeological department under the French mandate in 1928. Director General from 1942 until 1982, he passed away in 1994 at the age of 90.

10. Acting swiftly, Director General Chehab directed the Head of the Excavation Department, Dr. Ibrahim Kawkabani, to arrange for the transportation of the Eshmun antiquities to the Jubayl/Byblos Citadel. Although Dr. Kawkabani has since retired and resides in Beirut, Lebanon, I have interviewed him and all his statements herein are based on his direct observation. On December 5, 1979, two days after ordering the removal of the antiquities from Eshmun to Jubayl/Byblos, Dr. Kawkabani tasked Mr. Dunand with supervising preparations for the safe transportation of the Eshmun antiquities. See Exhibit 9 (Letter from Ibrahim Kawkabani, Head of Excavation Department by Proxy dated Dec. 5, 1979).⁴

11. On December 10, 1979, Director General Chehab, Department Head Kawkabani, and Mr. Dunand met to discuss the specifics of the move. See Exhibit 10 (Letter from Ibrahim Kawkabani,

⁴ Article 11 of Lebanon’s Constitution mandates that Arabic is the official national language; but because of Lebanon’s rich cosmopolitan history, many government officials then and now are trilingual (Arabic, French, and English), and many government documents are issued in multiple languages. Where the original documents were issued in Arabic and English, the People will attach both copies. Where the documents were issued in Arabic only, in French only, or in Arabic and French (but not English), the People will include the original documents and a translation prepared by interpreters employed by this Office.

Head of Excavation Department by Proxy dated Dec. 12, 1979). And the following day, on December 11, 1979, Mr. Dunand sent a letter to Dr. Kawkabani requesting the necessary materials, as well as the assistance of seven or eight men to prepare the shipment. See Exhibit 11 (Letter from Maurice Dunand #17 dated Dec. 11, 1979). The next day, December 12, 1979, both Director General Chehab and Dr. Kawkabani wrote letters stressing “the urgency of transferring the archaeological objects.” See Exhibit 12 (Letter from Maurice Chehab, Director General of Antiquities dated Dec. 12, 1979) and Exhibit 10 (Letter from Ibrahim Kawkabani, Head of Excavation Department by Proxy dated Dec. 12, 1979).

12. According to Dr. Kawkabani, shortly after December 12, 1979, the subject Bull’s Head (C-17) and all other Eshmun antiquities—excepting only those that were too heavy to transport—were transported under Mr. Dunand’s supervision from Eshmun approximately 45 minutes north on the coastal highway to Beirut for one night.⁵ The Eshmun antiquities were transported the following day from Beirut another 45 minutes north to the Jubayl/Byblos Citadel in Jubayl/Byblos; specifically, to the underground or basement storage room of the Citadel. Of the four bull’s heads excavated from Eshmun in 1967, only C-14 (column section with four bull’s heads) was too heavy to transport to Jubayl/Byblos. The remaining bull’s heads—C-15 (fragment of bull’s head); C-16 (relief of bull on pentagonal plate); and C-17 (the subject Bull’s Head)—were transported to the Jubayl/Byblos Citadel, where they remained in the large storage room in the basement of the Citadel for safekeeping until the summer of 1981.

⁵ “Le reste—environs six cents sculptures et fragments d’architecture—est entreposé en 1978 (sic) dans une salle au sous-sol du château des Croises de Byblos. Entre 1980 et 1990, tout le matériel – sculptures et fragments d’architecture—est volé à cet endroit.” (“In 1978 (sic), approximately 600 sculptures and fragments were transported to the basement of the Crusader Castle in Byblos. Between 1980 and 1990, everything—the sculptures and the fragments—were stolen from that location.) See Exhibit 13, p. 3 (Rolf A. Stucky, *Le Sanctuaire d’Echmoun à Sidon, National Museum News*, Seventh Issue, Spring 1998).

13. On August 3, 1981, Mr. Saleem Abi Al-Lame'e, the Minister of Tourism's Chief of Staff, received a call from a guard assigned to the Citadel notifying Al-Lame'e that armed members of *al-Kata'ib* (the Phalangist Party) had just removed archaeological objects from the Citadel. See Exhibit 14 (Letter from Saleem Abi Al-Lame'e, Chief of Staff, Ministry of Tourism dated Aug. 4, 1981). Formed in 1936 as a Maronite paramilitary youth organization by Pierre Gemayel, the Phalangist militia was the largest and best organized political paramilitary force in Lebanon during the years of the civil war. Noted for their opposition to the Cairo Agreement (that had legitimized military operations by Palestinian militiamen against Israel) and their violent clashes with Syrian Forces who were occupying large parts of the Lebanese Republic, the Phalangists were in the ascendant until 1982 when party leader and president-elect Bachir Gemayel was assassinated by an explosion in party headquarters in the Achrafieh area of Beirut.

14. The following day (August 4, 1981), the Minister of Tourism ordered Mr. Lame'e to send someone to the Citadel in Jubayl/Byblos to investigate.⁶ Deciding instead to go himself, Mr. Lame'e arrived and was ordered by armed guards to go with them to meet with Mr. Issam Khouri, the local Phalangist Party leader (as Mr. Lame'e noted, "of course, I could not resist [them]"). See Exhibit 14 (Letter from Saleem Abi Al-Lame'e, Chief of Staff, Ministry of Tourism dated Aug. 4, 1981). According to Mr. Al-Lame'e, the Phalangist Party leader told him that the removed objects were safely under guard and would not be returned to the Citadel at that time. Mr. Khouri did extend an invitation to the Minister of Tourism for him to inspect the antiquities to ensure they were safe and accounted for at some point in the future.

15. In response, the Government of the Lebanese Republic requested Mr. Dunand to return to Lebanon to prepare an inventory of what was still there and what was missing. See Exhibit 15

⁶ At that time, the Directorate of Antiquities was under the Ministry of Tourism. It became part of the Ministry of Culture in 1993.

(Letter from Maurice Dunand #59 dated Aug. 13, 1981) and Exhibit 16 (Journal Entry from Maurice Dunand dated Aug. 13, 1981). According to Mr. Dunand's report and journal entry, he arrived in Jubayl/Byblos on August 11, 1981, and began interviewing those guards who had been eyewitnesses to the removal of the antiquities from the basement storage room of the Citadel. He learned that beginning on July 29, 1981, and continuing for four days until August 1, armed Phalangists removed antiquities from the Jubayl/Byblos Citadel. Mr. Dunand reported that when he left the Citadel at approximately noon on August 13, 1981, Department Head Kawkabani was present at the Citadel, but none of the removed Eshmun antiquities had been returned. Mr. Dunand also noted in a post-script that, at the time he left the Citadel, there were no Phalangists at the location, but two (unnamed) local police officers had arrived, and everything seemed calm. See Exhibit 15 (Letter from Maurice Dunand #59 dated Aug. 13, 1981).

16. At approximately 4:00 p.m. on August 13, 1981, police officers Captain Nadeem Risha and Sergeant Hanna Nicole of the Jubayl/Byblos Command (likely the two officers that Mr. Dunand had seen at the Citadel) met with Phalangist Party leaders and brokered an agreement for the Phalangists to return the Eshmun antiquities to the Citadel that same afternoon. See Exhibit 17 (Report by Captain Nadeem Risha, Department of Internal Police dated Aug. 14, 1981).⁷ As reflected in Captain Risha's report, the Phalangists did return many objects and statues on the afternoon of August 13, 1981, while Department Head Kawkabani was still at the Citadel (but after Mr. Dunand had left). According to Captain Risha, another 82 boxes of archaeological material and 16 pottery jars were returned the following day (August 14, 1981), and he immediately made an inventory of the returned items and attached it to his report. The contemporaneous inventory lists 63 statues and pieces of marble and stone, 16 "pottery jars in different sizes," and 82 "closed boxes" that were not inspected.

⁷ The report itself is dated August 13, 1981. As the narrative portion of the report explicitly states, however, it was opened on August 13, and closed on August 14.

Among the larger objects Captain Risha listed in his inventory were three items of relevance here: two cow's heads ("a statue in a shape of cow's head" and "a piece of marble in a shape of cow's head") and one bull's head ("a statue of bull's head").

17. Unfortunately, Captain Risha, who was not a trained archaeologist and did the best he could as a lay person under the circumstances, gave no further description of the three returned cow's/bull's heads. Nor—in the middle of a civil war—were any photographs taken of any of the returned objects: not of the 63 statues and pieces of statues, not of the 16 pottery jars, and not of the 82 sealed boxes (presumably containing the smaller pieces). Based on his current memory in 2017, Dr. Kawkabani believes all the Eshmun antiquities were returned at that time. But he did not conduct an inventory himself, did not prepare any kind of list, and—understandably—did not take any photographs. Indeed, even if he had wanted to prepare an inventory, Dr. Kawkabani was not sufficiently familiar with the Eshmun antiquities to have been able to determine whether all the antiquities were or were not returned. Thus, it is impossible to state with any certainty whether or not the subject Bull's Head (C-17) was among the items returned on August 13 and 14, 1981. Rather, as explained in detail in the following paragraphs, it seems more likely that C-17 was not among the objects returned to the Citadel after the looting of July 29 et seq.

18. After August 14, 1981, all antiquities housed in the Citadel were closely guarded. On September 23, 1981, Mr. Dunand wrote a letter to Director General Chehab, noting that he (Dunand) had just received a letter (now lost) from Mr. Artin Chichmanian, the since-deceased but then-site manager of the Citadel at Jubayl/Byblos. See Exhibit 18 (Letter from Maurice Dunand #64 dated Sept. 23, 1981). According to Mr. Dunand, Mr. Chichminian had written that antiquities had been returned on August 13 and 14 by the Phalangists in the presence of Dr. Kawkabani, but that he (Chichminian) did not know which antiquities had been originally taken in July or which antiquities were subsequently returned in August. Chichminian did know, however, that all returned antiquities

were securely padlocked in the big room in the basement of the Citadel (“la grande salle du chateau”) and guarded every day by five police officers who were always there (“les gendarmes sont toujours là, en permanence, au nombre de 5”). See Exhibit 18 (Letter from Maurice Dunand #64 dated Sept. 23, 1981).

19. On January 4, 1982, Mr. Dunand returned to Lebanon to inspect the returned antiquities. See Exhibit 19 (Letter from Maurice Dunand #87 dated Jan. 7, 1982). He determined that many of the boxes were half or three-quarters empty. He also noted that those returned antiquities he did inspect were largely from sites other than Eshmun. Mr. Dunand did not specifically mention any of the bull’s heads as being missing, nor did he prepare an inventory of what had been returned. He did, however, note that, “[i]t is clear that those who did this work [i.e., returned the antiquities] did it with malice and wanted to give the impression that they were returning many antiquities to Jubayl/Byblos.” Two months later, on March 17, 1982, Director General Chehab confirmed Mr. Dunand’s findings and wrote to the Minister of Tourism that “the delivery of the archaeological pieces was not complete,” and that the boxes contained merely a few pottery pieces and some objects from other excavations. See Exhibit 20 (Letter from Maurice Chehab, Director General of Antiquities dated Mar. 17, 1982).

20. In the fall of 1996, Professor Stucky returned to Lebanon and examined the antiquities in the Citadel. Of the three bull’s heads that had been moved from Eshmun to the Citadel in 1979, Professor Stucky found only one in the Citadel storage facility: C-15 (fragment of bull’s head). It remains in storage at the Jubayl/Byblos Citadel to this day. During this trip, Professor Stucky also saw C-14 (column section with four bull’s heads) that had been transported to the National Museum of Beirut in 1996 by Camille Asmar (Director General of Antiquities from 1992-1999). It is still on exhibit there today. But C-16 (large relief of the front portion of a bull on a pentagonal plate) and C-17 (the subject Bull’s Head) were not in the Citadel when Professor Stucky examined the basement

storage room of the Citadel in 1996. According to Professor Stucky and Anne-Marie Afeiche, current Director of the National Museum of Beirut, C-16 is still missing and C-17, of course, is the subject of this Application.

21. Because the Citadel was continuously secured between the entry of the Phalangists in July 1981 and Professor Stucky's visit in 1996, and because there are no reports of looting, removal, or thefts during that period, the evidence strongly suggests that the subject Bull's Head (C-17) was removed from the Citadel by the Phalangists from July 29 to August 1, 1981, and that it was not returned to the Citadel on August 13 or 14, 1981, when the Phalangists returned other, largely non-Eshmun antiquities. Similarly, it appears that C-16 was taken at the same time as C-17 and not returned either. This becomes even more evident when one examines the language Captain Risha used in his inventory: he described two pieces or fragments in the "shape of a cow's head," but only one "statue of a bull's head" as having been returned.

22. In other words, of the three bull's heads that were removed by the Phalangists (C-15, C-16, and C-17), only one bull's head was identified as having been returned. Because C-15 is still in the Citadel today, it had to be the one bull's head that was returned—it was also, perhaps not coincidentally, the poorest quality of the three. That would explain why C-16 and C-17 were the only two bull's heads that were missing when Professor Stucky inspected the storage area in 1996: neither C-16 nor C-17 had ever been returned to the Citadel after their removal by the Phalangists during July 29-August 1. But what about the two statues in the "shape of a cow's head" that Captain Risha listed as having been returned? According to Professor Stucky, the excavation cards prepared by Mr. Dunand's wife (she wrote all the cards), reveal that—in addition to the four bull's heads labeled C-14 to C-17—there are eight fragments or smaller pieces excavated at Eshmun that could have been identified as steirprotomen (bull's or cow's heads). These other eight were E 106, E 534, E 915, E

916, E 976, E 986, E 1755, and E 1884. Thus, the other two returned cow's head fragments Captain Risha listed could have been any of those eight, with the remaining six being inside the sealed boxes.

23. Although this is the most likely scenario, what matters is not *when* the Bull's Head (C-17) was stolen from the Lebanese Republic—whether in July of 1981 (and later returned in August) or between 1981 and 1996—but that the Bull's Head (C-17) *was* stolen from the Lebanese Republic. This, of course, is clear beyond cavil: not only is the Bull's Head (C-17) that is in the court's custody an exact match with the photograph on the excavation card, but I have shown Professor Stucky a video recording of the subject Bull's Head (C-17) and he confirms it is exactly the Bull's Head (C-17) that was excavated by Mr. Dunand at Eshmun.

24. Equally undeniable is that at an unknown date after the theft, the Bull's Head (C-17) was exported from the Lebanese Republic without its permission—ultimately turning up at the Met. Leila A. Amineddoleh, a member of the New York State Bar and professor of art law at Fordham University School of Law, St. John's University School of Law, and New York University, has conducted extensive research on the illicit trade of antiquities and is well-versed in the cultural property laws of the Lebanese Republic. According to Professor Amineddoleh, the law regulating ownership of antiquities from Lebanon is the Lebanese Antiquities Law No. 166 LR dated November 7, 1933. This statute vests title in the Lebanese Republic to all antiquities found by chance or during archaeological excavations within the borders of Lebanon, and it requires state-approved licenses for the exportation of archaeological objects, as well as a permit for the sale or purchase of antiquities. The law protects all “antiquities,” defined as “any products of human activity, regardless of the civilization to which they belong, predating the year 1700.” (Article 1), and notes that antiquities may be either “immovable or movable.” (Article 2). See Exhibit 21 (Lebanese Antiquities Law No. 166 LR dated Nov. 7, 1933).

25. But according to Mr. Sarkis Khoury, the current Lebanese Director General of Antiquities, the Lebanese Republic never “[i]ssued a state-approved license for the exportation of the Bull's Head

(C-17) out of Lebanon,” and never “[t]ransferred the ownership of the Bull’s Head (C-17) to any third party.” See Exhibit 22 (Affidavit of Sarkis Khoury, Director General of Antiquities dated June 6, 2017). Indeed, on February 6, 1988, the Ministry of Tourism prohibited *all* exportation of archaeological material—a moratorium that exists to this day. See Exhibit 23 (Decree No. 8, Defense from Exporting Antiquities published on Feb. 6, 1988). Thus, the Bull’s Head (C-17) was illegally exported from Lebanon and is, necessarily, stolen property under New York law. And the Lebanese Republic had no idea where it was for decades.

From War-Torn Lebanon to the Met

26. Until, on December 5, 2016, Mr. Thomas Campbell, then-Director and CEO of the Met, notified Mr. Sarkis Khoury, the Director General of Antiquities for the Lebanese Republic that “[i]t has come to my attention that a Hellenistic Head of a Bull on loan to the Metropolitan Museum of Art appears to come from excavations at the Temple of Eshmun in Sidon.” See Exhibit 24 (Letter from Thomas Campbell, Director and CEO of the Met dated Dec. 5, 2016). This was the first time any member of the Government of the Lebanese Republic had any indication of the Bull’s Head’s whereabouts since its theft.

27. In the federal complaint filed by the Beierwaltes against the Lebanese Republic and this Office, counsel claims “upon information and belief” that “[Professor] Stucky had then seen the Bull’s Head [(C-17)] on the international market in Switzerland in the mid- to late 1980s, together with three other pieces from Dunand’s excavation at Eshmun.” At page 8. This is completely inaccurate: as affirmed in the attached Affidavit of Professor Stucky, see Exhibit 8 (Affidavit of Professor Rolf Stucky dated Sept. 15, 2017), Professor Stucky never saw C-17 after he last saw it in the on-site excavation warehouse at Eshmun in 1974. To be more precise, the first time Professor Stucky had any indication whatsoever of the whereabouts of the Bull’s head (C-17) after 1974 was when he was contacted *after* it had been located in the Met in 2016.

28. Some of opposing counsel's confusion may have arisen from an admittedly confusing passage in a March 7, 2017, letter from Minister of Culture Ghattas Khoury to the Honorable Elizabeth H. Richard, U.S. Ambassador to Lebanon, in which the Minister claimed that "the DGA did not receive any information pertaining to the whereabouts of the Bull's Head (C-17), until a book was published by Mr. Rolf Stucky in 2005 identifying the Bull's Head (C-17) among stolen items he had come across at an antiquities market in Switzerland in 1991." See Exhibit 25 (Letter from Dr. Ghattas Khoury, Minister of Culture to Ambassador dated Mar. 7, 2017). According to the author of the original draft of the letter (Anne-Marie Afeiche, Director of the National Museum of Beirut, who is not a native English speaker), the letter did not mean to suggest Professor Stucky had seen the Bull's Head (C-17) in 1991—he had not, and she knew he had not. Rather, containing a misplaced dangling modifier, the sentence was actually intended to convey two separate statements.⁸ Ms. Afeiche meant to convey that 1) the Bull's Head (C-17) was published in Stucky's Book in 2005 along with other stolen Eshmun objects, and 2) Stucky had identified stolen Eshmun antiquities in the antiquities market in Switzerland in 1991. But none of those antiquities Professor Stucky saw in 1991 was the Bull's Head (C-17).

29. Professor Stucky has, however, seen other stolen Eshmun antiquities on the international market. Indeed, nine Eshmun antiquities (but not the Bull's Head (C-17)) have been seen by Professor Stucky and others on the international market since the civil war ended in 1990. In the first case (in 1991), Professor Stucky found four stolen Eshmun statues on the international market in Switzerland. The statues consisted of three male torsos and one male head—again, none of the four was the subject Bull's Head (C-17). See Exhibit 26 (Lebanese Republic's Report of "Repatriation of Eshmun Archaeological Sculptures" dated Aug. 2017). Professor Stucky found the four statue fragments in a

⁸ The sentence is redolent of Strunk and White's classic misplaced modifier, "I saw the trailer peeking through the window." And, just as Strunk and White's trailer was not peeking through the window, Professor Stucky did not see the Bull's Head (C-17) in 1991.

catalogue for an April 11, 1991, auction by the Numismatic & Ancient Art Gallery in Zurich and immediately notified Lebanese authorities who, in turn, contacted the Swiss federal police. See Exhibit 27 (Numismatic and Ancient Art Gallery Auction Catalogue, pages 86-87, dated April 11, 1991). Swiss police seized all four statues and the possessor commendably and voluntarily returned the stolen statues to Lebanon.

30. In the second case, arising from two notifications in 1995 and 1996, Professor Stucky saw two other stolen Eshmun statues in another catalogue. This time it was a male torso and a sarcophagus fragment. Both the torso and the sarcophagus fragment had been published (as plates 33 and 63, respectively) in Professor Stucky's 1993 book *Die Skulpturen aus dem Eshmun-Heiligtum bei Sidon*. Nonetheless, both were offered for sale by Sotheby's London in its December 8, 1994, auction #LN4723 as Lots 288 and 133, respectively. Lebanon's Ambassador to the United Kingdom demanded their return, and Sotheby's ultimately returned both: the stolen marble torso in November of 1995 and the stolen sarcophagus fragment in July of 1998.

31. There have been three more cases in which stolen Eshmun antiquities have been located and returned since then. In 2000, the Dorotheum Auction House in Vienna voluntarily returned a marble male torso after it had been identified as having come from Eshmun. In 2006, the Jean-David Cahn Auction House in Basel voluntarily returned a marble male head. In that case, Cahn—who was a former student of Professor Stucky—notified his former professor as soon as he thought he recognized the statue from Professor Stucky's book. And earlier this year, the Galerie Günter Puhze in Freiberg, Germany, voluntarily returned yet another male torso. These returns make it abundantly clear that the Lebanese Republic appropriately and aggressively seeks to recover its cultural heritage as soon as it is presented with any information about the location of its looted treasures.

32. The actions of the Lebanese Republic in this case are similarly conscientious and appropriate. After all, until they were notified in December of 2016 that the Bull's Head (C-17) was

at the Met, neither the Lebanese Republic nor Professor Stucky had any idea of the whereabouts of the subject Bull's Head (C-17) after its theft in 1981. There was, therefore, nothing they could have done to have recovered the Bull's Head prior to that time. Nor is this surprising where, as here, much of the journey of the looted Bull's Head (C-17) is shrouded in mystery and secrecy. Indeed, its location for at least half of the last 35 years is still unknown. The Lebanese Republic certainly had access to its own official correspondence and police reports. But, given the well-organized nature of the clandestine movement of looted antiquities, the Lebanese Republic's resources and legal authorities were simply insufficient to expose so many strata of criminality.

33. After all, this criminal investigation has had access to all that material as well as material derived from Grand Jury subpoenas, judicially authorized search warrants, witness interviews, and innumerable hours spent sifting through shipping documents, email correspondences, and customs documents received through those processes. Nonetheless, even this investigation—with access to so much more material and with so much more legal authority in this country than the Lebanese Republic—has been unable to illuminate those well-appointed shadows where money changes hands and legitimate, but all-too-inconvenient, questions of the provenance and ownership history of the object are frequently considered *outré* and ever so *gauche*.

34. Indeed, because so many shadows remain, and because the farther back we go, the darker and more impenetrable are those shadows, it is best to trace the possession of the Bull's Head (C-17) backwards from its place of seizure from the Met on July 6, 2017, until we get to complete darkness. Records obtained from the Met indicate that it acquired the Bull's Head (C-17) in October 2010 on loan from Mr. and Mrs. Michael and Judy Steinhardt through Phoenix Ancient Art Gallery in New York City. More specifically, on October 5, 2010, Matthew Noiseux, Assistant Administrator for the Met's Greek & Roman Art Department and Alexander Gherardi, Phoenix Ancient Art's Exclusive

Agent, began corresponding via email about the subject Bull's Head (C-17). See Exhibit 28 (Email Correspondence between the Met and Phoenix Ancient Art beginning Oct. 5, 2010).

35. In that exchange, Mr. Noiseux requested details about a potential loan to the Met: the Bull's Head (C-17). On the following day (October 6, 2010), Phoenix Ancient Art's Mr. Gherardi emailed a two-page single-spaced academic treatment, describing the Bull's Head (C-17) as "a magnificent block of marble that scientific analysis has revealed to be from the great Attic quarries of Mount Pentelicon" and dated to "ca. 480-460." See Exhibit 29 (Phoenix Ancient Art Description of "Head of a Bull"). The marble for the Bull's Head (C-17) does appear to have come from Mount Pentelicon (a mountain range in Attica between Athens and marathon). See Exhibit 30 (Geological Report of the Bull's Head (C-17)). Such movement of raw materials among trading peoples (which the Phoenicians of Lebanon and the Greeks of Athens certainly were) was common in antiquity.

36. The description provided by Mr. Gherardi, however, placed the Bull's Head (C-17)'s creation a century earlier than its correct 360 B.C., and the document is silent on origin or provenance, except for a single line of six words: "Ex-American private collection, collected in 1980's-1990's." When Mr. Noiseux replied an hour and a half later the same day (October 6, 2010), he noted the Met's need "to show a history of ownership, and for loans it is ten years" and asked for "the name of the private collection from the 1990's." But only, he stressed, "if it [the name] was available." Mr. Gherardi replied less than an hour later the same day: "[t]he bull was acquired from Robin Symes in to the Beierwaltes Private Collection in 1996. Then consigned to Phoenix Ancient Art and sold to Mr. Steinhardt on August 10, 2010." Mr. Gherardi attached no documentation corroborating this email statement—and Mr. Noiseux did not request any. There is also no documented explanation of how (or why) Mr. Gherardi's first offered provenance of "Ex-American private collection, collected in 1980's-1990's," (emphasis added) emailed at 11:12 a.m. on October 6, 2010, became "from [*British*] Robin Symes in to the Beierwaltes Private Collection in 1996" just two hours and twenty-six minutes

later.⁹ There were no additional requests about the Bull's Head (C-17) by Mr. Noiseux. See Exhibit 28 (Email Correspondence between the Met and Phoenix Ancient Art beginning Oct. 5, 2010).

37. On the following day (October 7, 2010), Mr. Noiseux prepared an "Incoming Expect" form, noting that the Bull's Head (C-17) was "owned by the Steinhardts but will be coming from Phoenix Ancient Art." See Exhibit 31 (The Met, Incoming Expect dated Oct. 7, 2010). Five days after that (October 12, 2010), Mr. Noiseux prepared another document, "Departmental Loan Agreement," quoting Mr. Gherardi's provenance of October 6, 2010: "Acquired from Robin Symes into the Beierwaltes Private Collection in 1996. Then consigned to Phoenix Ancient Art and sold to Mr. Steinhardt on August 10, 2010." See Exhibit 32 (The Met, Department Loan Agreement dated Oct. 12, 2010). Three days later, on October 15, 2010, the Met picked up the Bull's Head (C-17) from Phoenix Ancient Art at 47 East 66th Street. See Exhibit 33 (Request for Vehicle and Driver dated Oct. 15, 2010).

38. Pursuant to this investigation, both the Met and Phoenix Ancient Art received subpoenas for all emails, correspondence, and documents concerning the Bull's Head (C-17). But neither Phoenix Ancient Art nor the Met has produced any additional emails between Mr. Noiseux (or any staff member of the Met) and Mr. Gherardi (or any member of Phoenix Ancient Art) besides the ones already cited. Because both parties appear to have fully complied with the Grand Jury investigation in all other respects, and there is no good-faith basis upon which to posit that either party has withheld information, the only conclusion to be drawn is that no additional emails or written correspondence exist. The inescapable conclusion, therefore, is that the Met accepted the Bull's Head based on an email representation that Robin Symes had sold it to the Beierwaltes in 1996.

⁹ As set out in detail, *infra*, Robin Symes is a much-publicized (and convicted) London-based antiquities dealer.

39. On October 20, 2010, five days after the Met picked up the Bull's Head, Ms. Joan R. Mertens, Curator of the Met's Greek and Roman Art Department, prepared an internal document entitled, "Report of Incoming Departmental Loan Intended for Display in the Galleries." That document contained two new names in the section on ownership history. Robin Symes was no longer the first named owner of the Bull's Head (C-17). Now, the ownership history read, "George Lotfi Collection (Beirut and Paris)/With Frieda Tchacos in Zurich (Nefer Gallery) in the 1980's/Subsequently with Robin Symes." See Exhibit 34 (The Met, Report of Incoming Departmental Loan Intended for Display in the Galleries dated Oct. 20, 2010). Because Mr. Noiseux's reports of October 12, 2010, listed only two names for the Bull's Head's ownership history, and Ms. Mertens's report of October 20, 2010, listed four names, the Met must have received the information in that week-long period. To date, however, the Met has been unable to produce any documentation, emails, texts, interdepartmental memoranda, correspondence, or writing of any kind either corroborating or explaining how these two names came to be added. Again, because the Met has thoroughly cooperated with this investigation in all other respects, it must be concluded, first, that the Met never received any documentation corroborating the pre-Robin Symes ownership history and, second, that there is no written communication from or to the Met explaining how, when, and from whom this information was received.¹⁰

40. Indeed, apart from the report prepared by Ms. Mertens and the statement made by Mr. Steinhardt, this investigation has never uncovered a single photograph, piece of paper, or statement from any other source indicating that the Bull's Head (C-17) was ever in the possession of Mr. Lotfi

¹⁰ Temporarily entering the realm of conjecture, one possible source for one name might have been Michael Steinhardt. As the person who loaned the Bull's Head (C-17) to the Met, he was the logical person for Ms. Mertens to have contacted with any prior ownership questions. Moreover, on June 1, 2017, when Special Agent John Paul Labbat of the Department of Homeland Security served a Grand Jury subpoena on Mr. Steinhardt for records in this case, Mr. Steinhardt stated how taken he had been with the Bull's Head (C-17) when he first saw it in Frieda Tchacos's nephew's New York City apartment many years earlier. Mr. Steinhardt made no mention, however, of George Lotfi.

or Ms. Tchacos. Nor is there any trace anywhere that the Bull's Head (C-17) moved, was transported, or crossed an international border in the possession of either of those two (Lotfi and Tchacos). There is no customs declaration form, no shipping document, no air waybill, no tracking form, no insurance form, no invoice, no bill of sale, no photograph, and no mention in any contemporaneous correspondence or email. No proof of any kind of the possession and repeated transportation across oceans and international borders of a two-millennia-old statue valued at more than one million dollars by either of the names listed by the Met on October 20, 2017.

41. Continuing the backward trace, Mr. Steinhardt loaned the Bull's Head (C-17) to the Met on October 15, 2010. But how and when did he acquire it? During the service of the Grand Jury subpoena on Mr. Steinhardt on June 1, 2017, he also told Special Agent Labbat that he had regretted not purchasing the Bull's Head (C-17) when he claims he first saw it with Ms. Tchacos in New York. Mr. Steinhardt added that he believed Ms. Tchacos had subsequently transported the Bull's Head (C-17) overseas and lamented that he had lost his chance at ever possessing it. He was thrilled, therefore, when he saw it years later, and was not, he exclaimed to Special Agent Labbat, going to miss the opportunity again. That opportunity arose when he appears to have seen the Bull's Head (C-17) in a catalogue prepared in 2008 by Phoenix Ancient Arts Gallery in Geneva. Phoenix Ancient Arts had prepared the catalogue in advance of showing the Bull's Head (C-17) at an art and antiquities fair, the 24th Biennale des Antiquaires at the Grand Palais in Paris. See Exhibit 35 (Phoenix Ancient Art 2008 Crystal II Catalogue). That year's Biennale ran from September 11 to September 21, 2008. Hicham Aboutaam, the owner of Phoenix Ancient Art Gallery, had a stand at that Biennale, with antiquities for sale that he valued at €33 million (roughly \$50 million at 2008's average exchange rate of €1 to \$1.50).¹¹ See Exhibit 36 (Phoenix Ancient Art 24th Biennale Invoice (Facture Pro Forma) dated Sept.

¹¹ See, e.g., <http://www.x-rates.com/average/?from=USD&to=EUR&amount=1&year=2008>, last accessed on August 31, 2017.

1, 2008) listing the total value of all his objects for sale. Among the many valuable pieces he had for sale at the Biennale was the Bull's Head (C-17) (“Animal archaïque en marbre représentant une tête de taureau”) that he was offering for €880,000 (roughly \$1.3 million at the 2008 rate).

42. But how and when did Mr. Aboutaam get possession of the Bull's Head (C-17)? In late 2005, Mr. Aboutaam and his brother (Ali Aboutaam) were first contacted by the Beierwaltes who were looking to sell their collection of antiquities valued at more than \$95 million. See Exhibit 37 (List of Beierwaltes Collection Consigned to Phoenix Ancient Art dated April 8, 2006) and Exhibit 38 (Exclusive Dealer Agreement between the Beierwaltes and Phoenix Ancient Art dated June 1, 2006). In early 2006, the Aboutaams then visited the Beierwaltes residence in Loveland, Colorado, to begin preparing an appraisal of the Beierwaltes collection with the possibility of ultimately acting as their agents in any future sales. Among the items listed in the Aboutaams' appraisal was the subject Bull's Head (C-17). Labeled #186, it was in the Beierwaltes's “Dining Room” when the Aboutaams visited. As negotiations continued, the Aboutaams visited the Beierwaltes on several occasions—seeing the Bull's Head (C-17) each time. Meanwhile, the Beierwaltes also hired Harmer Johnson to conduct an independent appraisal of the collection—doubtless to compare it to the appraisal by the Aboutaams. It appears to have been a wise financial decision: Mr. Johnson appraised the Bull's Head (C-17) at \$1.2 million, see Exhibit 39 (Harmer Johnson Appraisal dated Apr. 19, 2006), but the Aboutaams appraised it at \$1.5 million. See Exhibit 38 (Exclusive Dealer Agreement between the Beierwaltes and Phoenix Ancient Art dated June 1, 2006). Mr. Johnson conducted his appraisal, examining the antiquities on February 27 and 28, 2006, at the Beierwaltes residence in Loveland, Colorado, and on March 8 and 14, 2006, in New York City. He completed his report on April 19, 2006.

43. The Aboutaams visited the Beierwaltes in Loveland again on May 26 and June 1, 2006, when they finally entered into a formal agreement for Phoenix Ancient Art to become the exclusive

dealer for the Beierwaltes collection. See Exhibit 38 (Exclusive Dealer Agreement between the Beierwaltes and Phoenix Ancient Art dated Jun. 1, 2006). In that agreement, Mr. Aboutaam agreed to use his “best efforts to cause the sales of items [from the Beierwaltes collection] for a “minimum sales target” of \$66 million over the next 2 ½ years. Inability to meet the target had consequences: if the Aboutaams failed to meet the minimum sales target for any period (generally \$16 million in each six-month period), then the Beierwaltes would have the right to terminate the agreement. The Beierwaltes were obviously serious about turning their cultural treasures into hard cash.

44. With these marching orders, the Aboutaams prepared to showcase the collection. On August 1, 2006, the Bull’s Head (C-17) and ten other items with a declared value of more than \$2.2 million were shipped from the Beierwaltes in Colorado to Phoenix Ancient Art in Geneva, Switzerland. As is always the case when antiquities cross international borders—unless, of course, they travel clandestinely—there is ample documentation for the journey.

45. On July 31, 2006, Lynda Beierwaltes prepared a Shipper’s Export Declaration (SED) Letter of Instruction to ship the Bull’s Head (C-17) out of the United States. See Exhibit 40 (SED Shipper’s Letter of Instruction dated July 31, 2006). The SED was a Commerce Department form required by law (Chapter 9, Title 13, United States Code) and regulation (Title 15, Code of Federal Regulations, Part 30) for all U.S. exports with commodities valued at \$2,500 or higher (since replaced with the Electronic Export Information form). On August 1, 2006, there were no fewer than four more forms documenting the movement of the Bull’s Head (C-17) from the Beierwaltes in Colorado to the Aboutaams in Geneva: See Exhibit 41 (FedEx Air Waybill dated Aug. 1, 2006); See Exhibit 42 (Packing List dated Aug. 1, 2006); See Exhibit 43 (Proforma Invoice dated Aug. 1, 2006); and See Exhibit 44 (rptShipment Tracking Form dated Aug. 1, 2006). On the receiving end in Geneva, Mr. Aboutaam properly declared the storage of the Bull’s Head (C-17) as cultural property on August 8,

2006, through Art-Franc S.A.—a transport, packing, and storage company founded in 1987. See Exhibit 45 (Declaration for the Storage of Cultural Objects dated Aug. 8, 2006).

46. Commendably, in June 2008, Phoenix Ancient Art requested that the Art Loss Register (ALR) conduct a background search on the Bull's Head (C-17). Established in London in 1991 as a commercial company earning fees from insurers and theft victims, the ALR purports to have the world's largest private database of lost and stolen art, antiques, and collectables. By using the ALR's services, sellers and potential buyers may determine whether a specific object has been reported to the ALR as having been stolen.

47. Although such an ALR search is a legitimate starting point for any provenance research, it is insufficient, standing alone, to determine the true origin or ownership history of an antiquity. After all, its limitations are substantial. First, and as set out on the front page of any ALR-produced certificate, “[t]he database does not contain information on illegally exported artefacts unless they have been reported to us as stolen.” See Exhibit 46 (Art Loss Register Certificate for the Bull's Head (C-17) dated June 18, 2008). Thus, for example, the ALR database could never contain the results of illegal or clandestine excavations. Second, again as set out in the ALR certificate (and as obvious as the first limitation), “[n]ot every loss or theft is reported to us [ALR].” After all, many museums, private owners, and countries do not know of the ALR's existence. And even when they do, they lack the technology and resources to avail themselves of the ALR's services. Third, the database is not searchable by any facial-recognition type of software. The searchers, therefore, are reliant on the quality of the photograph and description provided by the customer for the search. But in many cases, the owner of the stolen object (especially for objects excavated years earlier) does not have a photograph of the object.

48. In this case, Phoenix Ancient Art requested a search for a “Greek (Attic)” head of a bull, dated to the “second quarter of the 5th century B.C., ca. 480-460.” See Exhibit 46, pp. 2-3 (Art Loss

Register Certificate for the Bull's Head (C-17) dated June 18, 2008), for the description provided by Phoenix Ancient Art to the ALR for the search. Thus, the ALR was never asked to search for this Bull's Head (C-17): a 4th century B.C., ca 360, bull's head stolen from Lebanon. Indeed, even if the true details of the subject Bull's Head (C-17) had been revealed to the ALR, they would have issued a certificate anyway, because they didn't have the Bull's Head (C-17) in their database of stolen antiquities. That is because when Mr. Dunand left Lebanon during the Civil War, he prudently took all his archives with him for safekeeping (rather than leave them in the war-ravaged country). Those archives, containing more than 45,000 individual and unique records of excavations and many thousands of equally unique photographs of excavated objects from his 50 years of excavation in Lebanon, contained the only photograph of the Bull's Head (C-17). When Mr. Dunand died in 1987, he left those archives to the University of Geneva. They were not returned by the University to the Lebanese Republic until 2010.

49. Thus, and is clear from the above, there was nothing the Lebanese Republic could ever have done to report the theft of the Bull's Head (C-17) to the ALR. It couldn't have reported the theft when the Bull's Head (C-17) was stolen in 1981, because the ALR did not exist for another ten years. And the Lebanese Republic couldn't have reported the theft of the Bull's Head (C-17) to the ALR in the two decades after the ALR's inception, because the Lebanese Republic did not have the necessary records (documents and photographs) until 2010. By then, it was too late: the Bull's Head was already on its way to the Met. Even then, of course, it would not have mattered: the Met never requested its own ALR search.

50. Unbeknownst to the Lebanese Republic, however, an unsuccessful attempt to enter the Bull's Head (C-17) into the ALR database was made on their behalf. On July 11, 2000, the ALR's Mr. Magnus Mitchell wrote to Professor Stucky, who had never heard of the ALR before. Again, it did not even exist until 1991. In his letter, Mr. Mitchell explained that the ALR had been contacted by

David Cahn after Mr. Cahn had learned of the looted Eshmun marble torso that had been seized from the Dorotheum Auction House in Vienna earlier in 2000. See Exhibit 47 (ALR Letter to Professor Stucky dated July 11, 2000). As a former student of Professor Stucky's (the same Jean-David Cahn who discovered and repatriated another stolen Eshmun antiquity as detailed previously), Mr. Cahn had in his possession—and sent to the ALR—a copy of Professor Stucky's 1993 book that included some of sculptures and reliefs excavated in Lebanon. Professor Stucky's 1993 book did not include any of the bull's heads—those were ultimately covered in his second book published in 2005.

51. In the July 11 letter, Mr. Mitchell asked if Professor Stucky could provide the remaining “original archival material (i.e., photographs)” that were to be included in the second book (the book that ultimately contained a photograph of the Bull's Head (C-17)). A week later (July 18, 2000), Mr. Mitchell wrote Professor Stucky again, informing him that the ALR had entered all the pieces from the 1993 book (except plate 64) and again requesting that Professor Stucky send ALR photographs and text from the second-as-yet-unpublished book. See Exhibit 48 (ALR Letter to Professor Stucky dated July 18, 2000).

52. On September 6, 2000, Professor Stucky sent the requested material concerning the second book to the ALR via DHL. See Exhibit 49 (DHL Shipment Airwaybill dated Sept. 6, 2000). The package Professor Stucky sent to the ALR included two CDs. The first CD contained the text for each of the pieces (including the subject Bull's Head (C-17)), listing description, dimensions, find spot, etc. The second CD contained photographs of each Eshmun antiquity (again, including the subject Bull's Head (C-17)). Exhibit 7 (Photos and Description of Four Bull's Heads Labeled C-14 to C-17) to this motion contains the actual (combined) text and photographs for the four bull's heads, C-14 to C-17. The CDs contained the exact text and photographs for C-14 and C-17 as in Exhibit 7, as well as text and photographs of all the objects from Professor Stucky's 2005 book. Nonetheless, the ALR appears not to have entered those photographs and descriptions into its database.

53. As best as can be pieced together after 17 years by James Ratcliffe, the current ALR Director of Recoveries and General Counsel, it appears that, although “Prof. Stucky sent us a further package for which he still has the DHL Shipment Airwaybill,” ALR never entered that material into their database. See Exhibit 50 (James Ratcliffe Email to Special Agent Labbat dated Mar. 6, 2017). Noting that he had no first-hand information, Mr. Ratcliffe could only assume the package never reached ALR—through no fault of Professor Stucky whose record-keeping Mr. Ratcliffe commended. See Exhibit 51 (James Ratcliffe Email to Special Agent Labbat dated Mar. 7, 2017). Indeed, given Mr. Mitchell’s conscientiousness in writing Professor Stucky twice to request additional records, Mr. Ratcliffe’s supposition that the package never reached ALR seems a reasonable one. But the ultimately ineffectual actions of otherwise sincere and well-meaning people—here Jean-David Cahn, Professor Stucky, and the ALR’s Magnus Mitchell—amply highlight the dangers of relying on an ALR search and nothing more for provenance research.

54. Despite Professor Stucky’s efforts, therefore, when Phoenix Ancient Art made its request in 2008, the ALR issued a certificate for the Bull’s Head (C-17). Mr. Aboutaam then arranged to have the Bull’s Head (C-17) displayed at the 2008 Biennale as addressed above. At the end of the first day of the show (September 11, 2008), Mr. Aboutaam reported back to the Beierwaltes that his stand was one of the best at the show and that Steinhardt was interested in the Bull’s Head (C-17). See Exhibit 52 (Email Correspondence between Aboutaam and Beierwaltes beginning Sept. 11, 2008). Mr. Steinhardt did not attend the Biennale, but was expressing his interest after having seen the Bull’s Head (C-17) in the catalogue the Aboutaams had prepared for the show. At the end of the Biennale, with no other serious offers, Mr. Aboutaam shipped the Bull’s Head (C-17) back to Geneva. See Exhibit 53 (Geneva Airport, Customs Declaration dated Sept. 23, 2008).

55. On January 24, 2017, Mr. William Pearlstein, counsel for the Beierwaltes, wrote a letter to Sarkis El-Khoury, the Lebanese Republic’s Director General of Antiquities. See Exhibit 54 (Pearlstein

letter to Sarkis Khoury dated Jan. 24, 2017). In that letter, Mr. Pearlstein opined that the unnamed “Swiss Dealer could have acquired good title to the Bull’s Head under Swiss law, and subsequent purchasers, including the UK Dealer, the Prior Owner and the Current Owners, would have taken good title. We believe that a US court would agree with that analysis.” Filling in the blanks created by Mr. Pearlstein’s refusal to use any names, it seems he was claiming that the Aboutaams (Swiss Dealer) could have acquired good title under Swiss law, and that subsequently Robin Symes (UK Dealer), Mr. Steinhardt (Prior Owner), and the Beierwaltes (Current Owners) would have taken good title. Putting aside that the UK Dealer (Robin Symes) had the Bull’s Head (C-17) before the Aboutaams—and, therefore, was not a “subsequent purchaser”—this legal analysis would enable World War II-looted art, for example, to be “cleansed” or “laundered” (thereby giving its possessors good title) by virtue of its time in Switzerland. More to the point, though, this “cleansing” argument ignores the transit system in place: the Bull’s Head (C-17) never touched Swiss soil. According to Hicham Aboutaam, and as is standard procedure with shipments to the Freeports, and hence part of the sine qua non of their existence, the Bull’s Head went directly from the Geneva airport in a Swiss-customs-padlocked truck to the Geneva Freeport. And it left the Freeport the same way.¹²

56. Meanwhile, negotiations between Mr. Aboutaam and Mr. Steinhardt appear to have continued over the better part of the next two years, with the delay being at Mr. Steinhardt’s request: “Steinhardt still wants it but asks for more time before shipping it (due to the general financial situation).” See Exhibit 55 (Email Correspondence between Aboutaam and Beierwaltes dated Nov. 3, 2008). This situation appears to have been, in Mr. Steinhardt words, that he was “broke.” See Exhibit 56 (Email Correspondence between Aboutaam and Beierwaltes dated Oct. 23, 2008).

¹² Simply because the Bull’s Head (C-17) “passed through” Switzerland does not render Swiss law applicable. See Bakalar v. Vavra, 619 F.3d 136, 144 (2nd Cir. 2010).

57. After the Bull's Head's (C-17) arrival in Geneva after the Biennale in 2008, the next time it appears in any documents is September 24, 2009, when Mr. Aboutaam shipped the Bull's Head (C-17) from the Geneva Freeport to his gallery at 47 East 66th Street, in New York City. Again, because the Bull's Head (C-17) crossed international borders—and because Mr. Aboutaam was shipping an antiquity in a non-clandestine manner—there is ample documentation for the journey. On September 24 and 25, 2009, there were no fewer than four forms documenting the movement of the Bull's Head (C-17) from Geneva to New York. See Exhibit 57 (Electrum, Commercial Invoice dated Sept. 24, 2009); See Exhibit 58 (Arts-Franc SA Packing List dated Sept. 24, 2009); See Exhibit 59 (Avis D-Expedition (Shipping Advice) dated Sept. 25, 2009); and See Exhibit 60 (Phoenix Ancient Art, Export Air Waybill dated Sept. 25, 2009).

58. Once the Bull's Head (C-17) arrived in New York, Mr. Aboutaam kept it in his 66th Street gallery waiting for Mr. Steinhardt to examine it—which Mr. Steinhardt did on October 12, 2009, in Mr. Aboutaam's gallery. Finally, on August 10, 2010, Mr. Aboutaam completed the sale of the Bull's Head (C-17) to Mr. Steinhardt for \$700,000. See Exhibit 61 (Phoenix Ancient Art Invoice # 081010-1 dated Aug. 10, 2010). Mr. Steinhardt also purchased three other pieces from Mr. Aboutaam for a total sale of \$1.6 million, and traded in four other pieces for \$400,000. See Exhibit 62 (Michael Steinhardt, Inventory Pro-Forma dated Nov. 9, 2010) for a complete list of the transactions. As we have already seen, Mr. Steinhardt never took actual possession of the Bull's Head (C-17). Intending to display it in his 5th Avenue apartment after renovations were completed, he authorized Mr. Aboutaam to arrange for its delivery directly from Phoenix Ancient Art to the Met on October 15, 2010.

59. Thus, we have now traced the Bull's Head (C-17) backwards to late 2005 when Mr. Aboutaam first saw the Bull's Head (C-17) in Loveland, Colorado. But where was it before then?

More importantly for our purposes, how and when did the Beierwaltes acquire it? Here, the shadows lengthen and deepen to an impenetrable opacity.

60. Beginning in 2006, the Aboutaams—knowing that legitimate provenance increases market value—began asking the Beierwaltes for *any* documentation to establish prior ownership history: the bill of sale, importation and exportation documents, shipping and insurance documents, anything. For example, on September 13, 2008, during the Biennale, Mr. Aboutaam emailed the Beierwaltes about the Bull’s Head (C-17), noting that “it would be great (and more important) if we can locate any importation document from London(?) to the US. Basically any other document that shows ‘when’ it was in the US, other than [sic] the bill of sale would be helpful.” See Exhibit 52 (Email Correspondence between Aboutaam and Beierwaltes beginning Sept. 11, 2008). In other words, even Mr. Aboutaam had difficulty accepting that there were no other documents memorializing the repeated movements of the Bull’s Head (C-17) in and out of the United States. He appears to have had so much difficulty that he repeated his request for *any* documents twice, first requesting “any importation document from London” and then requesting “any other document that shows” when the Bull’s Head (C-17) arrived in the U.S. Mr. Aboutaam’s request for “any importation document from London(?)” is clearly a reference to the London-based dealer Robin Symes. But it is Mr. Aboutaam’s use of “(?)” when asking about London that revealed his own skepticism about the provenance being provided by the Beierwaltes. Similarly, (and startlingly) revealing was Mr. Aboutaam’s use of quotation marks around the word “when,” as if, at the very least, he feared that the Beierwaltes’s version of “when” might be suspect—or at least problematic. The response from Mr. Beierwaltes was not helpful or reassuring: “the BOS [bill of sale] to us is the only documentation we have. She [Mrs. Beierwaltes] wishes we had more.” See Exhibit 52 (Email Correspondence between Aboutaam and Beierwaltes beginning Sept. 11, 2008).

61. Despite these requests by Mr. Aboutaam for any documentation other than the bill of sale, the only document the Beierwaltes ever gave the Aboutaams was a single-page piece of paper purporting to be an invoice from Robin Symes dated November 27, 1996. See Exhibit 63 (Robin Symes Limited, Invoice for Sale of a Rare Marble Bull Head dated Nov. 27, 1996). That document certifies the Bull's Head (C-17) "to be genuine and of the age described above [circa 480 B.C.]," and valued at \$1.2 million, but does contain not a single word about provenance or prior ownership history. In other words, the Beierwaltes were assured by Symes that the Bull's Head (C-17) was an *authentic* antiquity and that it was a *valuable* antiquity. But there was not a whisper—not even the faintest hint of a whisper—about whether it was a *lawful* antiquity. Indeed, the lawfulness of the Bull's Head (C-17) does not appear to have been part of any documented conversation between the Beierwaltes and Symes. It appears not to have mattered to either of them. After all, the Beierwaltes have not produced any paperwork whatsoever documenting their attempt to determine, or even their interest in determining, the lawfulness of the Bull's Head (C-17). Yet they have saved (and produced) a document certifying the authenticity and monetary value of the Bull's Head (C-17). To put it another way, they inquired into what mattered to them: the cost.

62. The Beierwaltes provided this "invoice" to Mr. Aboutaam on October 5, 2010. See Exhibit 64 (Email Correspondence between Aboutaam and Beierwaltes dated Oct. 5, 2010). That is it: one piece of paper that first appeared on October 5, 2010, like Athena full-grown from the brow of Zeus. Putting aside the authenticity of the document, how did the Bull's Head (C-17) get to the United States? It had to cross an ocean and several borders. Indeed, if the Met's Joan Mertens is accurate when she listed four prior owners in the Met's Report of Incoming Departmental Loan Intended for Display in the Galleries, see Exhibit 34 (The Met, Report of Incoming Departmental Loan Intended for Display in the Galleries dated Oct. 20, 2010), then the Bull's Head (C-17) had to

cross an ocean at least three times: from George Lotfi in Lebanon to Frieda Tchacos in New York (one) to Robin Symes in London (two) to the Beierwaltes in Colorado (three).

63. How did this million-dollar statue travel so many times legally without any paperwork whatsoever? When did it make each trip? Who shipped it each time? To whom was it shipped each time? Was the shipment ever insured? By whom? If the cabal of prior owners and shippers had nothing to hide, why did no one until Hicham Aboutaam ever declare this statue in interstate commerce as is required by the laws of Lebanon, the United States, Switzerland, and the United Kingdom (and almost every other nation on the planet)? The Beierwaltes never produced for Mr. Aboutaam (despite his requests) any other documentation: no U.S. Customs Declaration, no FedEx Air Waybill; no Packing List, no insurance form, and no freight form of any kind from any shipment or border crossing. Nothing.

64. Despite a lengthy investigation, this Office has fared little better than the Aboutaams in getting pre-2004 ownership information out of the Beierwaltes. During the course of this investigation, the Beierwaltes were properly served on May 26, 2017, with a validly issued Grand Jury subpoena demanding “all shipping information (domestic and international); all import and export documents, stamps, invoices, payments and applications; all consignment agreements, sales records, payments, and supporting documentation; all appraisal documentation, notes, and reports; all provenance research, to include requests for such information and replies thereto; and all correspondence related to these items in any medium (emails, faxes, texts, letters, recorded conversations).” See Exhibit 65 (Grand Jury Subpoena Duces Tecum to the Beierwaltes dated May 26, 2017).

65. In response, the Beierwaltes provided two documents. The first was the same single-page Symes invoice that they provided to the Aboutaams, see Exhibit 63 (Robin Symes Limited, Invoice for Sale of a Rare Marble Bull Head dated Nov. 27, 1996), indicating that the Bull’s Head (C-17) had

been shipped from (or at least the sale had been made at) Symes's gallery at 3 Onnond Yard, Duke of York Street, London. The second document was also a single page, this one indicating that the Bull's Head (C-17) had been appraised by Christie's on September 13, 2004. See Exhibit 66 (Christie's Appraisal for \$150,000 dated Sept. 13, 2004). Independently, the investigation revealed that in 2004, G. Max Bernheimer, Head of Christie's Ancient Art & Antiquities Department, was contacted by the Beierwaltes regarding their antiquities collection. Mr. Bernheimer then traveled to the Beierwaltes residence in Loveland, Colorado, to conduct an appraisal of the Beierwaltes collection. See Exhibit 67 (Christie's Appraisal for \$51,550,000 dated Sept. 13, 2004). The subject Bull's Head (C-17) was labeled #13.¹³ Christie's never accepted the Bull's Head (C-17) or any of the objects in the appraisal for auction.

66. Other than these two pieces of paper, the Beierwaltes offered no other documentation of their pre-2004 ownership. And, in their statements to Mr. Aboutaam and their response to the Grand Jury subpoena, they averred that none existed. None, that is, unless one counts the article published in *House & Garden's* 1998 June issue in which the Beierwaltes chronicled their heroic struggle to decorate around "layers and layers" of a "truly grand" collection of antiquities, and boasted of a "bull's head sculpture" that adorned their dining room. See Exhibit 68, pp. 130, 133. (*House & Garden* special issue dated June of 1998). But this self-aggrandizing article had unintended consequences: Dr. Christos Tsirogiannis, a forensic archaeologist specializing in identifying illicit antiquities and their trafficking networks, identified many looted antiquities in the Beierwaltes collection by matching the photographs in the article to photographs of looted antiquities contained in "archives" that had been seized from the galleries, offices, and warehouses of convicted antiquities traffickers around the world. See Exhibit 69 (Christos Tsirogiannis, Mapping the Supply: Usual Suspects and Identified Antiquities

¹³Although the Aboutaams appraised the Bull's Head (C-17) at \$1.5 million (see Exhibit 37) and Mr. Johnson appraised it at \$1.2 million (see Exhibit 39), Mr. Bernheimer appraised the same piece at \$150,000. See Exhibit 67.

in 'Reputable' Auction Houses in 2013, 25 *Cuadernos de Prehistoria y Arqueología de la Universidad de Granada* 107, 135 (2016)).

67. Those archives have dramatically improved law enforcement's knowledge of the global epidemic that is antiquities trafficking and have led to hundreds of repatriations around the world, including more than a dozen by this Office in this and other investigations. According to Warrant Officer Angelo Ragusa, who has been with the Rome Office of the Archaeological Section of the Carabinieri Tutela Patrimonio Culturale (TPC) since 1995, the Carabinieri have made several notable seizures in the last two decades. Created in 1969 to combat the theft and looting of Italian antiquities, the TPC oversees all cultural property investigations in Italy, coordinates with international and foreign law-enforcement agencies, and has a robust partnership with this Office. In September 1995, Italian and Swiss authorities raided convicted antiquities dealer Giacomo Medici's offices and warehouse in Geneva, Switzerland, and recovered 3,800 looted antiquities. This much-publicized raid, and the investigation that led to it, uncovered a highly successful and lucrative criminal architecture whose modus operandi was to use gangs of tombaroli (tomb robbers) to loot carefully chosen and insufficiently guarded archaeological sites throughout Italy and Greece. The looted objects were then cleaned, restored, and laundered by creating false provenance and arranging for established dealers, including Symes and Robert E. Hecht, to sell the antiquities to major museums and private collectors.¹⁴ The raid also resulted in the recovery of what is commonly called the "Medici Archives." This consisted of notebooks, folders, and binders containing 35,000 pages of documents, as well as more than 4,000 photographs ranging from Polaroid photographs taken at the site of the looting with the

¹⁴For a useful historical summary, see, e.g., Peter Watson, The fall of Robin Symes, *Culture Without Context. The Newsletter of the Illicit Antiquities Research Centre*, Issue 15, Autumn 2004. By 2005, the Getty Museum in California had come under fire for accepting stolen antiquities, as journalists around the world began uncovering Symes's connection as one of Medici's favored dealers. Jason Felch & Ralph Frammolino, Getty Had Signs It Was Acquiring Possibly Looted Art, Documents Show, Los Angeles Times (Sept. 25, 2005) <http://articles.latimes.com/2005/sep/25/local/me-getty25>.

dirt still on the artifact to professional-quality photographs taken after the piece had been restored and even of the same object in a museum gallery.

68. Then, in May 2002, Italian and Swiss authorities raided the gallery and warehouses of yet another convicted antiquities dealer, Gianfranco Becchina, in Basel, Switzerland, and recovered 5,200 looted antiquities. They also recovered what is commonly called the “Becchina Archives.” This consisted of notebooks, folders, and binders containing 13,000 pages of documents, as well as more than 8,500 photographs ranging, again, from Polaroid photographs taken at the site of the looting with the dirt still on the artifact to professional-quality photographs taken after the piece had been restored.

69. Four years later, in 2006, Greek authorities raided Robin Symes’s estate on the island on Schinoussa, Greece, recovering thousands of documents and photographs like those in the Medici and Becchina Archives. It was to these three archives (Medici, Becchina, and Symes) that Dr. Tsirogiannis matched several objects in the Beierwaltes collection. Finally, and according to the Carabinieri’s Warrant Officer Ragusa, the long-standing investigation into Symes by Swiss and Italian authorities has more recently led to their raid in January 2016 of Symes’s warehouse in Geneva, Switzerland. This raid recovered approximately 17,000 looted Greek, Roman, and Etruscan artifacts worth hundreds of millions of dollars.¹⁵

70. To return to the Beierwaltes’ lack of pre-2004 documentation for the Bull’s Head (C-17)—*House & Garden* puff-piece notwithstanding—the absence is particularly troubling. This is because, as the Beierwaltes affirmed under penalty of perjury in their 2014 bankruptcy disclosure statement, their “primary business for much of their adult lives has been the acquisition, management and sale of an extremely extensive and valuable body of art works...[in]...a category of art known as antiquities.” See Exhibit 70, p. 4 (The Beierwaltes’ Disclosure Statement for Plan of Reorganization dated Apr. 7,

¹⁵The 78-year-old Symes remains at large in the U.K. while the Italian investigation continues.

2014).¹⁶ This extensive, self-professed expertise and experience in antiquities trafficking incontrovertibly qualifies the Beierwaltes *by their own sworn admission* as “person(s) in the business of buying, selling or otherwise dealing in property” under PL 165.55. Under that statute, such persons are “presumed to know that such property was stolen if [they] obtained it without having ascertained by reasonable inquiry that the person from whom he obtained it had a legal right to possess it.” PL 165.55.¹⁷

71. Thus, the question of whether the Beierwaltes were, as they claim, “good-faith purchasers” in 1996 turns, under the controlling provisions of PL 165.55, on whether they “ascertained by reasonable inquiry that [Robin Symes] had a legal right to possess” the Bull’s Head (C-17). But the absence of any documentation other than a single invoice of pre-2004 ownership (besides defying credulity) leads to the inescapable conclusion that the Beierwaltes never engaged in *any* inquiry, let alone a reasonable one, to determine whether Symes legally owned the Bull’s Head (C-17). As far as the Beierwaltes have indicated, when they acquired the Bull’s Head (C-17) into their vast collection, the ownership history of the Bull’s Head (C-17) *began* with Robin Symes—as already seen, a disgraced London-based antiquities dealer implicated in illegal antiquities trafficking for decades. He was sentenced to two years’ imprisonment in January 2005 for two counts of contempt for perjuring himself in court in trying to conceal the extent and value of his antiquities collection by, for example, testifying that he had antiquities stored in only four locations when it was proven that his massive collection had been stored in 29 locations in London, New York, and Switzerland. Much of the

¹⁶ The trafficking of the Bull’s Head does not appear to have been the Beierwaltes’ only foray into shady dealing. In 2009, after they received a \$900,000 incentive package from the city of Loveland (Colorado) to create local jobs, the Beierwaltes appear to have sold off all the assets of their company, vNet. They then filed for bankruptcy, repaying less than 2/3’s of the original \$900,000 and leaving the City of Loveland holding the bag. See Exhibit 68 (The Beierwaltes’ Disclosure Statement for Plan of Reorganization dated April 7, 2014).

¹⁷The application of this presumption to the Beierwaltes (and the criminal consequences they potentially face as result) will be addressed more fully in the legal argument section of this Application.

material, as previously noted, had been looted from archaeological sites in Italy and Greece by tombaroli affiliated with Giacomo Medici—who, as a result of the 1995 raid, was himself also convicted in 2005 of receiving stolen goods, illegally exporting goods, and conspiring to traffic thousands of illegal artifacts over decades (and sentenced to ten years in prison and a €10 million fine).¹⁸

72. Although the Beierwaltes may attempt to argue ignorance of the decades-long criminal activities that led to these convictions that occurred after the Beierwaltes purchased the Bull's Head (C-17) from Symes in 1996, the facts belie any such attempt. First, the raid on Medici's warehouses took place in 1995. Second, the nature of the relationship between Symes and the Beierwaltes is telling. This was no casual business relationship, but a long-standing, almost exclusive agency. Consider the source(s) of the Beierwaltes collection. Of the 115 antiquities listed by Mr. Bernheimer in his 2004 appraisal of that collection, the 16 ivories—some valued at more than \$1 million—have no stated provenance or ownership history whatsoever. Putting aside the obvious and disturbing issues on those ivories, we turn to the remaining 99 antiquities that do have a listed ownership history. Of those 99, Robin Symes appears as the source/prior owner on 97 of them. See Exhibit 67 (Christie's Appraisal for \$51,550,000 dated Sept. 13, 2004). Symes was not just their main supplier, he was to all intents and purposes their only supplier: the direct, the essential, and clearly much-used link in a supply chain that started with the tombaroli and ended with the Beierwaltes. And, third, even without Symes' sordid track record, the Beierwaltes should have known that the Bull's Head's provenance was insufficient. As addressed more fully in the "Stolen Property" section, *infra*, in 1972, the United States was among 130 nations to ratify the 1970 UNESCO Convention to restrict the illicit trade in cultural property. For our purposes, its greatest achievement was to establish 1970 as the baseline year for the

¹⁸ It is worth noting that it was immediately after Symes' January 2005 sentencing that the Beierwaltes contacted the Aboutaams.

requirement of documented ownership history, providing dealers, auction houses, collectors, and museums with notice that all post-1970 transfers must be properly recorded and that all post-1970 buyers should seek evidence of pre-1970 provenance before purchasing an object.

73. Thus, the Bull's Head's provenance, with Symes being the only document-supported prior owner and the complete absence of any other pre-2004 documentation, becomes even more deficient when analyzed in its proper historical context (post-1970) and under PL §165.55's requirement of reasonable inquiry. No longer may those who deal in antiquities—whether they are dealers, collectors, museums, or auction houses—turn a blind eye to the rampant looting of the world's cultural heritage. In New York, at least, they are legally required to engage in a reasonable inquiry into the true ownership history and provenance of antiquities. And failure to do so has criminal consequences if it is later determined—as it was here—that the antiquity that they purchased had been stolen. But, here, the evidence is that the Beierwaltes asked only two questions: *Is it real?* And *How much is it?* There is no record of any third question such as, for example, *Is it legal?* Or, even, *How/When/Where did Robin Symes get it?*

74. This stunning lack of documentation prior to 2004 was also troubling for ethical reasons. In the federal complaint filed by the Beierwaltes, their attorneys made two claims as officers of the court concerning proof the Beierwaltes had in their possession. First, at page 4, they claimed that “Based on Plaintiffs’ written notes of their communications with the Art Dealer #1 at or about the time of purchase, Art Dealer #1 purchased the Bull’s Head [(C-17)] from an art dealer in Switzerland (‘Art Dealer #2’) sometime after Art Dealer #2 acquired the Bull’s Head [(C-17)] during the mid- to late- 1980s.” See Exhibit 71 (Lynda and William Beierwaltes v Directorate General of Antiquities of the Lebanese Republic and the District Attorney of New York County, Amended Complaint for Declaratory Judgment dated July 11, 2017). Yet, the Beierwaltes provided no such material to the Grand Jury.

75. Thus, I notified Mr. Lederman that either their federal complaint contained a false statement (doubtful in the extreme given Mr. Lederman's reputation for integrity) or the Beierwaltes were in violation of a validly issued and served Grand Jury subpoena. Although it should not have been necessary, a second Grand Jury subpoena was issued and served, specifically demanding of the Beierwaltes the production of any "written notes of communications with Art Dealer #1 referenced in paragraph 14 of the Amended Complaint for Declaratory Judgement filed under Case No. 17-CV-4755 (KPF) on July 11, 2017." See Exhibit 72 (Grand Jury Subpoena Duces Tecum to the Beierwaltes dated July 24, 2017).

76. The following day, the Beierwaltes produced these "written notes of communications with Art Dealer #1." It turns out that these "written notes of communications" consisted of four words and one number: "Swiss Gallery Early – Mid 80's." See Exhibit 73 (Beierwaltes' Undated Written Notes of Communications). Upon these four undated, unsourced anonymous words (and one number) created at some unknown date prior to July 25, 2017, the Beierwaltes filed a lawsuit in federal court claiming ownership of the Bull's Head (C-17): "[b]ased on Plaintiffs' written notes of their communications with the Art Dealer #1 at or about the time of purchase, Art Dealer #1 purchased the Bull's Head from an art dealer in Switzerland ("Art Dealer #2") sometime after Art Dealer #2 acquired the Bull's Head during the mid- to late- 1980s." See Exhibit 71 (Lynda and William Beierwaltes v Directorate General of Antiquities of the Lebanese Republic and the District Attorney of New York County, Amended Complaint for Declaratory Judgment, July 11, 2017) at p 4. If "Art Dealer #1 is Symes, who is Art Dealer #2? Who wrote those four words? When did he or she write those four words? How many "communications" did it take to produce these four words? Were those the only four words uttered during those unknown number of communications involving an unknown number of people at an unknown time(s) in an unknown location(s)? Where these communications in person? On the telephone? Via email? Who was present for these

communications? Was it the same people for each of those unknown number of communications? Why did he or she write those four words and none others? Did the same person write all four words? More questions without answers.

77. In the same federal complaint, again at page 4, counsel claimed that, “[b]ased on Plaintiffs’ further recollection and contemporaneous photographs, the Bull’s Head [(C-17)] was imported into the United States sometime between September 19 and October 10, 1996, at which time Plaintiffs took physical possession of the Bull’s Head [(C-17)]. Yet, the Beierwaltes produced no such photographs in response to two separate Grand Jury subpoenas that specifically demanded the production of “ANY AND ALL UNREDACTED documents, photographs, and financial records related to the purchase, possession, and movement” of the Bull’s Head (C-17). See Exhibit 65 (Grand Jury Subpoena Duces Tecum to the Beierwaltes dated May 26, 2017) and Exhibit 72 (Grand Jury Subpoena Duces Tecum to the Beierwaltes dated July 24, 2017) (uppercase in original). The subpoena could not have been more clear in its demand for, among other things, “photographs.” Thus, on August 23, 2017, I once again notified Mr. Lederman of what appeared to be his clients’ blatant contempt for the judicial process.¹⁹

78. The very next day, the Beierwaltes produced four photographs purporting to be taken in 1996 of the Bull’s Head (C-17) and its shipping crate at some unknown location. See Exhibit 74 (Four Photographs of Shipping Crate and Bull’s Head (Unknown Date)). It certainly appears to be a shipping crate and the subject Bull’s Head (C-17)—and there is no reason to doubt the authenticity of the photographs. But their production raises more questions than answers. Why were they not produced months earlier in response to two Grand Jury subpoenas? Why were they not given to Mr.

¹⁹ Perhaps this lack of production should not have come as a surprise. After all, in Phillips et al v. Beierwaltes et al (2003), a United States magistrate judge found the Beierwaltes had failed to comply with discovery in an estate action in the U.K. involving antiquities, and issued an Order compelling them to do so. See Exhibit 75 (Civil Docket for the Beierwaltes Case No. 1:03-mc-00103 in Colorado during 2003).

Aboutaam in 2008 when he repeatedly asked, almost begged, for more information about anything that “shows ‘when’ it was in the U.S., other than the bill of sale would be helpful”? See Exhibit 52, p. 2, (Email Correspondence between Aboutaam and Beierwaltes beginning Sept. 11, 2008). Instead of providing Mr. Aboutaam with the photographs as some proof of “when” it was in the United States, Mr. Beierwaltes responded in that same email that “[s]he [Mrs. Beierwaltes] wishes we had more.”

79. In other words, in 2008 and motivated by a desire to sell the Bull’s Head at a profit, they had nothing other than the bill of sale. By their own admission to their agent, they did not have any photographs. Yet, nine years later, on August 24, 2017, the Beierwaltes produced these photographs and here argue that it is proof of “when” the Bull’s Head was in the U.S. What has changed? Why are they now proof, when they were not considered proof in 2008 when they told Mr. Aboutaam they had no proof other than the bill of sale? Why were they not provided to Mr. Steinhardt to facilitate a sale that took years to complete? Why were they not given to the Met to assist their provenance research? Putting aside the troubling nature of their sudden appearance (in 24 hours) after years of requests, the photographs have no probative value in asserting ownership: all they prove is that some unknown person at some unknown date in some unknown location took four photographs of a Bull’s Head (C-17) that had been stolen previously from the Lebanese Republic.

80. There is more. In connection with these photographs, the Beierwaltes also provided a scan of an envelope from a film-developing company called Western Camera in Loveland, Colorado, purporting to be the envelope that contained the photographs and negatives. See Exhibit 76 (Western Camera Envelope and Negatives dated Oct. 10, 1996). Disturbingly, the alleged date of the development of these negatives (“10/10/96”) is written on the envelope in two different colors of ink. The “10/10” is in blue, but the “96” is in red ink. If it really was developed in 1996, why did the person use two colors of ink? Although the photographs appear to be authentic, the dating is certainly

suspect. Nor can the date of the photographs be corroborated by the now out-of-business Western Camera.

81. More to the point, and setting aside the obvious specter of manufactured evidence, the production of this twenty-year-old envelope raises a far more telling question: why would the Beierwaltes save the envelope from 1996 that had contained 24 photographs, but did not save a single pre-2004 shipping, customs, insurance, freight, etc., document concerning a million-dollar statue? Not because they don't save paperwork—they obviously do, as evidenced by their having saved a worthless, meaningless twenty-year-old photograph envelope they could never possibly have known they might ever need. And they saved a piece of paper with the handwritten four words “Swiss Gallery Early – Mid 80's.” No, if such ownership documents prior to 2004 had ever existed, the Beierwaltes would have saved them. The inescapable conclusion, of course, is that no such shipping, customs, insurance, freight, etc. documents ever existed, and all the Beierwaltes ever had was a single document maybe from Robin Symes, maybe prepared “in London(?),” and maybe written in 1996.

82. Although the photographs do not prove when the Bull's Head (C-17) was illegally brought into the United States, they do offer a glimpse into the labyrinthine journey the Bull's Head (C-17) followed once it was here. That is because the letters and numbers stenciled on the side of the crate depicted in one of the photographs in Exhibit 76, (Western Camera Envelope and Negatives dated Oct. 10, 1996), tell a story of the wholesale, repeated, and clandestine movement of antiquities from all over the world. In the upper left-hand corner of the crate is stenciled “REF – CH – 20036.” The “CH” stands for Charles Happel, Inc., a New-York-based customhouse brokerage firm for more than 50 years. It was also the preferred customhouse for Robin Symes in the United States. In the lower left-hand corner of the crate is a Transcon International, Inc. shipping label addressed to William Beierwaltes in Loveland, Colorado. In fact, Robin Symes also had an account with Transcon for shipping and storage at its Bronx warehouse. Charles Happel, Inc., no longer has any records from

the 1990s, but Transcon International does. See Exhibit 77 (Transcon International Invoices dated Oct. 24, 1994, to Apr. 30, 2001). As the Transcon invoices make clear, the Bull's Head (C-17) was carried under reference number CH – 200036 (the number stenciled on the crate is a typographical error, missing one “0”).

83. These Transcon invoices illustrate the well-organized and clandestine movement of antiquities in the world of illicit antiquities trafficking—a world that the Lebanese Republic's resources and legal authorities were understandably (and through no fault of their own) insufficient to expose. Consider the following labyrinthine movement of antiquities, including the Bull's Head, by Symes. Transcon invoice 17352 of Exhibit 77 (Transcon International Invoices dated Oct. 24, 1994, to Apr. 30, 2001) shows that on January 26, 1996, Transcon received the Bull's Head and assigned it reference number CH – 200036 under Mr. Symes's account. Four months later, on May 18, 1996, the Bull's Head (C-17) was delivered to Mr. Symes's penthouse at the Four Seasons' Hotel on 57th Street—with Mr. Symes paying extra for a Saturday delivery. Six days later, Transcon picked the Bull's Head (C-17) up from a Peter Nesgos (how did he get it?) and then returned it to Mr. Symes's storage facility at the Transcon warehouse in the Bronx. The Bull's Head appears to have remained at Mr. Symes's Bronx storage facility until October 4, 1996, when it may have been moved with a group of antiquities that had been stored along with the Bull's Head (C-17)—the invoice does not specify.

84. This group of antiquities was divided up and sent to two separate recipients. The first recipient was Mrs. Judy Steinhardt (the wife of Michael Steinhardt who bought the Bull's Head (C-17) in 2010). The second recipient was Mr. Symes at the Four Seasons. See Invoice 18361 of Exhibit 77 (Transcon International Invoices dated Oct. 24, 1994, to Apr. 30, 2001). It is unclear whether any of those deliveries included the Bull's Head. Three days later, on October 7, 1996, Transcon's Bronx warehouse charged Mr. Symes for the “sorting of items from Colorado.”²⁰ On that same date, the

²⁰ There is no listing of the sender from Colorado; but in the invoices, “Colorado” is always the Beierwaltes.

Transcon warehouse charged Mr. Symes for the building of two cases. They also charged Mr. Symes \$595 for an overnight “airfreight to Loveland, Colorado.” While Transcon’s invoices do not list what Mr. Symes overnighted to the Beierwaltes, it is reasonable to conclude that the Bull’s Head was included in this overnight shipment. One of the cases for which Mr. Symes was charged on October 7, 1996, was built with 36” x 36” x 23” dimensions. These dimensions are identical to the dimensions stenciled on the side of the crate shown in one of the four photograph provided by the Beierwaltes. See Exhibit 74 (Four Photographs of Shipping Crate and Bull’s Head (Unknown Date)).

85. On October 16, 1996, one week after receiving the October 7 shipment from Colorado, Transcon delivered four more items to Mr. Symes’s Bronx storage unit: two objects that had been picked up from Mr. Steinhardt and two “marble heads” from Frederick Schultz. Formerly the president of the National Association of Dealers in Ancient, Oriental and Primitive Art, Schultz was convicted in federal court in 2002 of conspiracy to receive antiquities stolen from the Egyptian government. He served 33 months in federal prison for his international conspiracy to smuggle antiquities out of Egypt by disguising them as cheap souvenirs, and preparing false provenances. At sentencing, Judge Jed S. Rakoff called Schultz “an ordinary thief in every conventional sense of that word.”²¹ All four items received from Steinhardt and Schultz on October 7, 1996, were listed under the Bull’s Head account. Finally, just over one month later, on November 26, 1996, Transcon charged Mr. Symes for packaging an “akroterion with base into existing case.” That case was “prepare[d] & mark[ed] for Loveland, Colorado.”²²

²¹ See United States v. Schultz, 178 F. Supp. 2d 445, (S.D.N.Y. 2002), *aff’d*, United States v. Schultz, 333 F.3d 393 (2d Cir. 2003). New York Times: Celestine Bohlen, Antiquities Dealer Is Sentenced To Prison, N.Y. Times (June 12, 2002), <http://www.nytimes.com/2002/06/12/arts/antiquities-dealer-is-sentenced-to-prison.html>.

²² An akroterion is an architectural ornament placed at the top of the pediment of a building—it is not a bull’s head.

86. With items moving so frequently, and with such a glaring lack of documentation in the underground world of illicit antiquities trafficking, it is no wonder governments struggle, despite their best efforts, to track-down these stolen pieces. Yet, in their amended complaint, the Beierwaltes claim that the Lebanese Republic's DGA always placed a serial number on excavations—a number this Bull's Head (C-17) is missing. See Exhibit 71, ¶29 (Lynda and William Beierwaltes v Directorate General of Antiquities of the Lebanese Republic and the District Attorney of New York County, Amended Complaint for Declaratory Judgment, July 11, 2017). While true, none of the stolen Eshmun objects that have been recovered over the years had serial numbers when recovered and repatriated. Like vehicle identification numbers (VIN's) on automobiles, such markings are usually erased by the thieves as quickly as possible to avoid detection by law enforcement. To suggest that the Beierwaltes can claim "good title" to stolen property merely because the thieves knew enough to erase the serial number is to create a playbook for a better antiquities-trafficking criminal enterprise.

87. Ultimately, it is an incontrovertible fact that, despite a months-long, multi-national investigation into the theft and trafficking of the Bull's Head (C-17), there is not a single piece of paper known to exist on or about the Bull's Head (C-17) between its disappearance from the basement storage room of the Byblos/Jubayl Citadel on August 14, 1981, and its brief appearance in the Transcon invoices in the summer of 1996. Nothing. It is also incontrovertible that, despite multiple subpoenas, the Beierwaltes have not produced anything—apart from some questionable photographs and a one-page document from November 27, 1996, and its four handwritten words—of or about the Bull's Head (C-17) between August 14, 1981, and 2004 when the Head of Christie's Ancient Art & Antiquities Department, G. Max Bernheimer, saw the Bull's Head (C-17) in Loveland, Colorado. To put it another way, between 1981 and 2004, there is a single piece of paper documenting the Bull's Head (C-17)'s very existence and a couple pages documenting its movement from penthouse to penthouse in New York City in 1996. Compare that stunning paucity of documentation with the

estimable quantity and quality of documents prepared and photographs taken by both the Aboutaams and the Met when the Bull's Head passed in or out of their possession. Between Mr. Bernheimer's visit in 2004 and the Bull's Head's (C-17) delivery to the Met in 2010, every movement of the Bull's Head was well and thoroughly recorded through literally dozens of emails, photographs, catalogue entries, and shipping, customs, and billing records. We can trace every movement with precision.

88. Prior to that time period, however, twenty-four years (1981-2004) of movement across international borders of a million-dollar statue generated four handwritten words, a couple storage invoices, and one piece of paper from the infamous Robin Symes. A neon sign flashing "stolen" would have been more subtle and less insidious.

The Met's Discovery of a Stolen Antiquity

89. In April 2014, Mr. Carlos A. Picon, the Curator in Charge of the Met's Greek and Roman Department, noticed that the Bull's Head (C-17) on loan from Mr. Steinhardt appeared to be the same bull's head appearing in Professor Stucky's 2005 publication on Eshmun's antiquities. Admirably, Mr. Picon notified the Met staff and had the Bull's Head (C-17) removed from display on April 24, 2014. See Exhibit 78 (Met Internal Emails dated Apr. 24, 2014). On the same date, the Met staff prepared its "Outgoing Expect" form—the form it prepares when an item on loan is to be returned to its owner. See Exhibit 79 (Met Outgoing Expect Form dated Apr. 24, 2014). But an annotation on the form, dated June 26, indicated the return to Mr. Steinhardt was "on hold indefinitely." There was no written explanation as to why. Mr. Picon also notified Mr. Aboutaam (but not the Lebanese Republic) of the potential problem. Mr. Aboutaam, in turn, notified both Mr. Steinhardt and the Beierwaltes.

90. Clearly recognizing the problem, the three parties (Steinhardt, Aboutaam, and the Beierwaltes) agreed to unwind the original sale, with "ownership" of the Bull's Head (C-17) going back to the Beierwaltes from Mr. Steinhardt. Thus, on April 16, 2015, the Beierwaltes reacquired the Bull's Head (C-17) for \$560,000 (the original \$700,000 minus the 20 percent commission for the

Aboutaams). See Exhibit 80 (Beierwaltes Invoice to Phoenix Ancient Art dated Apr. 16, 2015). On April 24, 2015, Mr. Steinhardt received a piece of equal value (\$700,000) from Mr. Aboutaam. See Exhibit 81 (Phoenix Ancient Art Invoice to Steinhardt dated Apr. 24, 2015). As with the Met, though, none of those three ever notified the Lebanese Republic or Professor Stucky.

91. Almost two years later, in 2016, in an effort “to facilitate the resolution of the status” of the subject Bull’s Head (C-17), Sharon H. Cott, Senior Vice President and Secretary and General Counsel for the Met, wrote Mr. Steinhardt. See Exhibit 82 (Met Letter to Steinhardt dated Mar. 3, 2016). Obviously unaware that the Bull’s Head had been sold back to the Beierwaltes, Ms. Cott wrote Mr. Steinhardt, informing him that the Met “would propose sending the enclosed letter to the Lebanese Director General for Antiquities, Sarkis Khoury. Please let me know if this is acceptable.” Attached to that letter to Mr. Steinhardt was a draft of the letter the Met proposed sending to the Lebanese Republic. See Exhibit 83 (Met Draft Letter to Sarkis Khoury dated Mar. 1, 2016). Mr. Steinhardt appears to have forwarded the letter to the Beierwaltes. Once they were made aware of the Met’s proposal to notify the Lebanese Republic, it is clear that notifying the owner of the stolen Bull’s Head (C-17) was not acceptable to the Beierwaltes.

92. On July 6, 2016, Mr. Pearlstein emailed Ms. Cott to inform her that he had “been retained by the Beierwaltes in connection with the Bull’s Head [(C-17)] identified in Stucky’s article publishing the excavations of the Temple of Eshmun in Sidon, Lebanon.” See Exhibit 84 (Email Correspondence between Pearlstein and Cott dated July 6, 2016). Mr. Pearlstein’s reaction to Ms. Cott’s offer to facilitate a resolution was unambiguous: “we respectfully request that the Museum (i) refrain from contacting the Directorate or any other agency or authority of Lebanon *or otherwise, governmental or non-governmental* about the [Bull’s Head (C-17)]” (emphasis added). See Exhibit 85 (Pearlstein Letter to Cott dated Oct. 18, 2016).

93. In other words, not only did Mr. Pearlstein request that the Met not notify the true owner of the Bull's Head (C-17) (the Lebanese Republic), but he also requested they not notify any governmental (i.e., law-enforcement) agencies, even though in the very same letter, Mr. Pearlstein admitted the Bull's Head (C-17) was likely stolen: "the notes to the photograph of the [Bull's Head (C-17)] in the [Stucky] Article suggest that the [Bull's Head (C-17)] was catalogued among Dunand's excavation finds by 1967" and "we have assumed that the [Bull's Head (C-17)] was (i) excavated by Dunand sometime between 1963 and 1967." At page 2. Putting aside the questions of 1) what Mr. Pearlstein and the Beierwaltes were trying to hide from the Lebanese Republic and 2) the propriety of requesting that the Met "refrain from contacting" governmental authorities (such as this Office) in a criminal matter involving stolen property, it is difficult to understand the refusal to accept the Met's offer to facilitate a resolution. The Met declined the request to the extent of notifying the Lebanese Republic.

94. On December 5, 2016, more than two and a half years after Mr. Picon identified the Bull's Head (C-17) from Professor Stucky's book and removed it from the Met's galleries, Thomas Campbell (at the time, Director and CEO of the Met), finally notified Mr. Sarkis Khoury, the Lebanese Director General of Antiquities, that the Bull's Head (C-17) "on loan to the Metropolitan Museum of Art appear[ed] to have come from [the] excavations at the Temple of Eshmun in Sidon." See Exhibit 24 (Letter from Thomas Campbell, Director and CEO of the Met dated Dec. 5, 2016). In response, Director General Khoury sent a letter to the Met on January 10, 2017, asserting ownership of the subject Bull's Head (C-17) and demanding its repatriation to the Lebanese Republic. See Exhibit 86. (Sarkis Khoury Letter to the Met dated Jan. 10, 2017). Director General Khoury stressed that "[t]he Ministry of Culture/Directorate General of Antiquities wishe[d] to proceed to the repatriation of [the Bull's Head (C-17)]." This demand was repeated to the Met on February 6 and was sent to the Beierwaltes on March 6, 2017. See Exhibit 87 (Sarkis Khoury Letter to the Met dated Feb. 6, 2017)

and Exhibit 88 (Sarkis Khoury Letter to Pearlstein dated Mar. 6, 2017). On March 7, 2017, Dr. Ghattas Khoury, the Lebanese Minister of Culture, sent the (previously discussed) letter to U.S. Ambassador Elizabeth Richards, requesting assistance from the United States in returning the subject Bull's Head (C-17) to the Lebanese Republic. See Exhibit 25 (Letter from Dr. Ghattas Khoury, Minister of Culture to Ambassador dated Mar. 7, 2017).

95. To return to where this Office's involvement began, that is how, in February of 2017, the Office of the U.S. Attorney for the Eastern District of New York (EDNY) began inquiring into the Bull's Head (C-17)—before referring the case to this Office as part of our larger existing investigation. On May 26, 2017, I met with counsel for the Beierwaltes and notified them that this Office's preliminary investigation revealed, in my view, overwhelming evidence that the Bull's Head (C-17) was stolen property in New York County. Stressing that there were still investigative steps to be taken to be absolutely sure, I informed them that it appeared likely that I would eventually be ethically bound to apply for a judicially authorized warrant to seize the Bull's Head (C-17). As the investigation progressed over the next four weeks, but before I applied for the warrant, counsel filed their first Complaint (later amended) for Declaratory Judgment in the Southern District of New York. See Exhibit 89 (Lynda and William Beierwaltes v Directorate General of Antiquities of the Lebanese Republic, Complaint for Declaratory Judgment dated June 22, 2017).

96. When counsel filed that motion with the Honorable Katherine Polk Failla, the judge (in the presence of counsel) called me on the telephone from chambers asking this Office to consider the existence of the federal Complaint in determining how best to proceed and whether to seek a warrant. On June 29, 2017, I notified Judge Failla and counsel that this Office had determined we were legally required to seize “the Bull's Head [(C-17)] in the same manner as we would any other stolen property under New York law pursuant to a judicially authorized warrant.” See Exhibit 90 (Bogdanos Letter to Judge Failla dated June 29, 2017). Initially, and at Judge Failla's suggestion during the initial

telephone call the judge had made, I had agreed to consider not repatriating the Bull's Head (C-17) to the Lebanese Republic until the federal case was resolved. But as I noted in my letter, I would notify Court and counsel "[s]hould that change for any reason."

97. As set forth in the Background section above, the "change" was the formal demand letter I received from the Lebanese Republic on July 18, 2017. See Exhibit 2 (Letter from Ghattas Khoury, Minister of Culture of the Lebanese Republic dated July 18, 2017). I immediately notified Judge Failla and counsel that I had received such a demand, one that automatically "triggers Penal Law §450.10, which requires the return of the Bull's Head to the Republic of Lebanon 'unless extended by a court order.'" See Exhibit 3 (Letter from Assistant District Attorney Bogdanos dated July 19, 2017). Thereafter, and to ensure the Beierwaltes received a fair opportunity to be heard prior to the release of the Bull's Head (C-17) to the Lebanese Republic, I requested of Your Honor an in-camera conference for the People and Mr. Lederman. During that conference, both sides agreed to submit motions pursuant to CPL §690.55's requirement of judicial authorization from the warrant-issuing judge prior to releasing the Bull's Head (C-17).

Legal Argument

98. Turning now to the legal issues raised by these facts, the People will first address three precursory procedural issues. First, is the legislative framework through which the Bull's Head (C-17) is repatriated to the Lebanese Republic ("Return of Property under New York Law"). Second, is the use of a New York State Court applying New York law in effecting the repatriation of stolen property located in New York County ("Choice of Law and Forum"). And, third, is the timeliness of this prosecution ("Statute of Limitations for Criminal Possession of Stolen Property"). These issues easily resolved, the People will then turn to the single substantive question at bar: whether the Bull's Head (C-17) is stolen property under New York law ("Stolen Property").

Return of Property under New York Law

99. Under PL §450.10(5), the warrant-issuing court *must* deliver the demanded property to the owner, “on satisfactory proof of his title.” CPL §690.55(1) similarly authorizes the warrant-issuing court to determine the property’s ultimate disposition. Simpson v. St. John, 93 N.Y. 363, 366 (1883) (property seized pursuant to a court order “cannot be taken away until that custody is ended by...an order of the magistrate permitting its surrender to the owner”). See also In re Matter of Documents Seized Pursuant to Search Warrant, 124 Misc. 2d 897, 899 (Sup. Ct. N.Y. County 1984). N.Y. County Law §935 also mandates the return of seized property to its rightful owner: “[a]ll property delivered into the custody and held and kept by the district attorney of the county of New York, for use as evidence or otherwise, in any criminal investigation, action, appeal, or other proceeding, shall be returned by him to its rightful owner upon proper demand therefor.”

100. Nor is New York’s Arts and Cultural Affairs Law (ACA) §12.03 a bar to the release of the Bull’s Head (C-17) to its rightful owner. Enacted “to insulate nonresident lenders from seizures via legal process and, concomitantly, to protect State cultural institutions that depend upon the free flow of art for the benefit of the people of the State of New York,” the ACA’s prohibition on the “seizure” of works is limited to those “on exhibition...by a nonresident exhibitor.” People v. Museum of Modern Art (In re Grand Jury Subpoena Duces Tecum), 93 N.Y.2d 729, 735-36 (1999) (granting the museum’s motion to quash the Grand Jury subpoena duces tecum for two paintings suspected to have been Nazi-looted art on exhibition from the nonresident Leopold Foundation in Vienna). The seizure here was of a Bull’s Head (C-17) owned by long-time New York City resident Michael Steinhardt, who lives at 1158 Fifth Avenue, in New York County, and “intended for display in the [Met’s] galleries.” See Exhibit 34 (The Met, Report of Incoming Departmental Loan Intended for Display in the Galleries dated Oct. 20, 2010). The Bull’s Head (C-17) was not, therefore, “enroute to

or from, or while on exhibition or deposited by a nonresident exhibitor at any exhibition.” ACA §12.03.

101. ACA §12.03 is inapplicable here for two additional reasons. First, in Museum of Modern Art, the Court was concerned that the paintings were being seized pursuant to an investigative subpoena issued to determine “whether the paintings were stolen by Nazi agents or collaborators and, if so, whether the stolen property was then possessed in New York County in violation of Penal Law §165.54.” 93 N.Y.2d at 734. In other words, the seizure was *prior* to any judicial determination that the paintings were stolen property. But, here, the seizure was pursuant to a search warrant issued *after* the People had proved to the Court’s satisfaction that Bull’s Head (C-17) was stolen property. Second, in Museum of Modern Art, the Court noted that the museum (as the designee of the lender) simply had no standing to avail itself of any procedural mechanism wherein a Court made “an ownership determination.” 93 N.Y.2d at 741. Here, however, the Beierwaltes are a party to the very procedural mechanisms (PL §450.10(5) and CPL §690.55(1)) expressly created by the legislature to ensure both sides have an opportunity to be heard before the Court makes “an ownership determination.”²³

Choice of Law and Forum

102. Choice of law analysis in New York is unambiguous: the “law of the jurisdiction having the greatest interest in the litigation will be applied.” Istim, Inc. v. Chemical Bank, 78 N.Y.2d 342, 347 (1991) (quoting Schultz v. Boy Scouts, 65 N.Y.2d 189, 197 (1985) (quoting Miller v. Miller, 22 N.Y.2d 12, 15-16 (1968))). See also, Bakalar v. Vavra, 619 F.3d 136, 143-44 (2010), *aff’d*, 500 F. Appx. 6 (2d Cir. 2012). In Bakalar, a 1917 drawing by Egon Schiele had been stolen from cabaret performer Fritz Grunbaum (who owned it before he was murdered by the Nazis in 1941). It was then sold to

²³ It is difficult to understand the Beierwaltes’s argument (paragraph 89 of their federal complaint) that this Office is misusing the “laws applicable to search and seizure as a means to circumvent the civil forfeiture statutes under New York State law.” This is not, and never has been, a civil forfeiture case. This is a criminal investigation into the illegal trafficking of antiquities in and through New York.

an art gallery in Switzerland, where it stayed for five months until it was shipped to New York and again sold. The court held that New York law applied: “simply because the Drawing passed through” Switzerland did not render Swiss law applicable. 619 F.3d at 144. Similarly, in Kunstsammlungen Zu Weimar v. Elicofon, 536 F. Supp. 829 (E.D.N.Y. 1981), the Weimar museum sought to recover paintings discovered in New York that had been stolen from Germany during the Allied occupation. The location of the theft was irrelevant in choosing whether to apply New York law: “that the theft...did not occur in New York is of no relevance...New York courts do not concern themselves with the question of where the theft took place, but simply whether one took place.” 536 F. Supp. at 846. See also PL §165.60: “[i]n any prosecution for criminal possession of stolen property, it is no defense that...[t]he larceny of the property did not occur in this state.” Nor was the location of the museum seeking to recover the paintings relevant: “the residence of the true owner is not significant for the New York policy is not to protect resident owners, but to protect owners generally as a means to preserve the integrity of transactions and prevent the state from becoming a marketplace for stolen goods.” Elicofon at 846. Thus, given New York’s over-arching interest in preserving the integrity of its art and antiquities transactions and in not becoming a marketplace for plunder, it is New York law—and not Lebanese or Swiss law—that ought to be applied here.

103. Moreover, the issue ought to be resolved in State Court. First, every question that needs to be addressed in determining the rightful owner of the Bull’s Head (C-17) is a state question under state law: “property” and “stolen property” are defined in PL §155.00(1) and “owner” is defined in PL §155.00(5). Second, “[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.” 28 U.S.C.S. §2283 (Stay of State court proceedings). “[T]his may not be done except under extraordinary circumstances where the danger of irreparable loss is both great and immediate.” Younger v. Harris, 401 U.S. 37, 45 (1971) (quoting

Fenner v. Boykin, 271 U.S. 240, 243-44 (1926)). In Younger, the Supreme Court implemented this rule when it denied the defendant's request to enjoin California from pursuing state charges against the defendant, holding that he faced no danger of great and immediate irreparable loss—only the ordinary injury (conviction and imprisonment) incidental to a criminal proceeding. Like the defendant in Younger, the Beierwaltes face no danger of great and immediate irreparable loss, only the ordinary injury incidental to New York criminal proceedings pursuant to PL §450.10(5) and CL §935: loss of the *stolen* Bull's Head by way of repatriation to its true owner, the Lebanese Republic.

Statute of Limitations for Criminal Possession of Stolen Property

104. Any prosecution for criminal possession of stolen property in the first degree under PL §165.54 “must be commenced within five years after the commission thereof.” CPL §30.10(2)(b). Criminal possession of stolen property is, of course, a continuing crime—continuing, in this case, until the Bull's Head (C-17) was seized pursuant to the warrant on July 7, 2017. And, “the Statute of Limitations of a continuous crime is governed by the termination and not the starting date of the offense.” People v. Eastern Ambulance Service, Inc., 106 A.D.2d 867, 868 (4th Dept 1984); see also People v. DeBeer, 35 A.D.3d 1275 (4th Dept 2006). Thus, the five-year statute of limitations as applied to the Bull's Head (C-17) did not begin to run until July 7, 2017. It does not expire until July 6, 2022.

105. Turning to the application of the statute to any prior possessors who might face criminal charges, CPL §30.10(4)(a) provides that “[i]n calculating the time limitation applicable to commencement of a criminal action...[a]ny period following the commission of the offense during which...the defendant was continuously outside this state” shall not be included in calculating the statute of limitations—up to a maximum of five years beyond the initial five. For purposes of this section, non-residency triggers the presumption that a defendant was continuously outside of the state. People v. Yanez, 128 Misc.2d 716, 722 (Sup. Ct., N.Y. County 1985) (citing Childs v. Brandon, 60

N.Y.2d 927, 929 (1983) for the application of the presumption under the similar tolling provision of CPLR §207). On August 10, 2010, the Beierwaltes sold the Bull's Head (C-17) to Mr. Steinhardt, thereby terminating their first possession of the stolen property. They reacquired it on April 16, 2015, thereby resetting the statute of limitations as it would apply to them in a criminal proceeding. But even using the date of the first possession (August 9, 2010), any charge of criminal possession of stolen property in the first degree as to them would be well within the statute of limitations. Because the Beierwaltes reside out-of-state, the five-year statute of limitations for PL §165.54 (ordinarily expiring on August 9, 2010) would be extended for any criminal charges as to them for an additional five years until August 9, 2020.

106. Despite the clarity of the application of the statute of limitations to both the Bull's Head (C-17) and to the Beierwaltes as possible criminal defendants, they assert in their amended complaint the applicable statute of limitations in this criminal setting is six years and that this six-year period commenced upon the Lebanese Republic's discovery of the theft. See Exhibit 71, ¶ 73 (Lynda and William Beierwaltes v Directorate General of Antiquities of the Lebanese Republic and the District Attorney of New York County, Amended Complaint for Declaratory Judgment, July 11, 2017). Not surprisingly, they cite no supporting criminal case law for this novel argument. Even assuming *arguendo* that a) such a six-year time period were applicable, and b) it commenced upon the Lebanese Republic's discovery of the theft, this Application would still not be time-barred. The Lebanese Republic learned of the location of the stolen Bull's Head (C-17) on receipt of the Met's letter of December 5, 2016. They would have, therefore, until December 4, 2022, to bring any action for the Bull's Head (C-17). The Beierwaltes also argue that the statute of limitations for the relevant laws in the Lebanese Republic have tolled. This argument would, perhaps, be more interesting if this proceeding were being held in the Lebanese Republic for a stolen item that had been criminally

possessed in the Lebanese Republic and then seized in the Lebanese Republic by a law-enforcement agency of the Lebanese Republic. But that is not this case.

107. The Beierwaltes also assert that the civil-law doctrine of laches should somehow apply in this criminal matter. See Exhibit 71, ¶¶ 84-85 (Lynda and William Beierwaltes v Directorate General of Antiquities of the Lebanese Republic and the District Attorney of New York County, Amended Complaint for Declaratory Judgment, July 11, 2017). The Beierwaltes primarily base their claim on their mistaken belief that Professor Stucky saw the Bull's Head (C-17) on the Swiss market in the mid-to-late 1980s. As has been proven already—and need not be repeated here—that is demonstrably inaccurate. Undeterred, the Beierwaltes in their federal complaint double down on this argument by claiming that even if the Lebanese Republic did not know where the Bull's Head (C-17) was, they “should have become aware” of the Bull's Head (C-17)'s location by its inclusion in the limited-edition catalogue, Crystal 2, privately printed by the Aboutaams in advance of the 2008 Biennale. It is difficult to see this argument as anything other than a modified version of the classic “blame-the-victim” defense usually relied on as a last resort by seasoned defense attorneys in the halls of 100 Centre Street. The Beierwaltes, it would seem, expect the victims of theft to purchase, and then scour, every catalogue of every auction, exhibit, and fair in the world ever year to determine whether any of the objects in that catalogue might have been stolen from them. Putting aside the impossibility of that Herculean task, it is ironic that the same Beierwaltes who could not be bothered to ask of Robin Symes a single question about how he purchased the Bull's Head (C-17) now demand that the Lebanese Republic hire and train a small army to research the world's art market on a daily basis.

108. Doubtless recognizing the impossibility of that task, the courts have been clear that, even if this were a civil case, the test is not whether the Lebanese Republic *should* have known of the Bull's Head (C-17)'s location but whether the Lebanese Republic *was* aware of its location. Thus, laches is applied only “where it is clear that a plaintiff unreasonably delayed in initiating an action.” Robins

Island Preservation Fund, Inc. v. Southold Dev. Corp., 959 F.2d 409, 423 (2d Cir. 1992). In such cases, “the doctrine of laches...safeguards the interests of a good faith purchaser of lost or stolen art...by weighing...the owner’s diligence in pursuing his claim.” Greek Orthodox Patriarchate v. Christie’s, Inc., 1999 U.S. Dist. LEXIS 13257, 24 (S.D.N.Y. 1999). To prevail under laches, a civil defendant must show: (1) the plaintiff was aware of the defendant’s claim; (2) the plaintiff inexcusably delayed in taking action; and, (3) the defendant was prejudiced as a result. Bakalar at 8. But “if the applicable legal statute of limitations has not expired, there is rarely an occasion to invoke the doctrine of laches.” Ikelionwu v. United States, 150 F.3d 233, 238 (2d Cir. 1998). Again, it has been proven that, until notified by the Met in December 2016, they were not aware of the Bull’s Head (C-17)’s location. Even in a civil case, therefore, the doctrine would not apply.

Stolen Property

109. The most well-known and legally important international convention dealing with cultural property is the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO Convention). 10 Int’l Legal Materials 289, 823 U.N.T.S. 231. Aiming to restrict the illicit trade in cultural property and ratified by the United States (in 1972) and 130 other countries, the UNESCO Convention requires States Parties to take preventative measures against the looting of cultural property and to disallow the importation of property whose exportation from another State Party was illegal. Although the UNESCO Convention had no self-implementing or policing power, it did represent a watershed. By establishing 1970 as the baseline year for the requirement of documented ownership history, it provided dealers, auction houses, collectors, and museums with notice that all post-1970 transfers must be properly recorded and that all post-1970 buyers should seek evidence of pre-1970 provenance before purchasing an object. The convention also functioned as a de-facto grandfather clause for cultural property owned before 1970 (except, of course, for objects, such as the Bull’s Head (C-17)

that were stolen from a collection). Thus, a documented pre-1970 provenance is often used by collectors to indicate due diligence (the equivalent, for our purposes, of “reasonable inquiry”).²⁴

110. Before addressing the Bull’s Head (C-17) as stolen property under the penal law, it is necessary to address briefly the treatment of illegally imported archeological material under federal law. Under the National Stolen Property Act (NSPA), it is a criminal offense to transport or receive in interstate or foreign commerce any goods knowing they are stolen or to receive such goods knowing they are stolen. 18 U.S.C.A. §§2314-15; see also United States v. McClain, 545 F.2d 988 (5th Cir. 1977); United States v. Hollinshead, 495 F.2d 1154 (9th Cir. 1974); United States v. Schultz, 333 F.3d 393 (2d Cir. 2003). In McClain, the Fifth Circuit considered whether a cultural object exported in violation of a foreign country’s customs laws could be considered “stolen” under the NSPA. Noting that it is not a violation of law simply to import an item that has been illegally exported from another country, the Court held that where there has been “a declaration of national ownership” prior to the illegal exportation, however, the exported object is covered under the NSPA. The McClain court was precise: “a declaration of national ownership suffices to render an illegally exported item stolen.” McClain at 1001 n. 28. In Schultz, the Second Circuit expanded McClain, holding that a defendant may not evade liability under the NSPA by arguing he did not know the foreign law that made the exportation illegal. In Schultz, an antiquities dealer was charged with violating the NSPA by smuggling antiquities out of Egypt in contravention of Egypt’s law designating all antiquities discovered after 1983 as property of the state. “The *only* knowledge requirement in the NSPA is knowledge that the goods were ‘stolen.’” Schultz at 411. Thus, the United States honors foreign patrimony laws of ownership under McClain and Schultz.

²⁴In 1983, the U.S. implemented articles 7(b) and 9 of the UNESCO Convention with the Convention on Cultural Property Implementation Act, making it unlawful to import “archaeological” material into the United States without the permission of the country of origin and providing for the seizure and forfeiture of any such material. 19 U.S.C. §§2601-13.

111. Turning now to New York law, “[a] person is guilty of criminal possession of stolen property...when he knowingly possesses stolen property.” PL §165.40 et seq. For any property to be “stolen,” it must have been “wrongfully take[n], obtain[ed], or with[e]ld from an owner thereof.” PL §155.00(5). And, an “owner” of property is “any person who has a right to possession thereof superior to that of the taker, obtainer or withholder.” PL §155.00(5). Thus, under the McClain/Schultz doctrine, an antiquity that is illegally exported from another country constitutes “stolen property” under New York law if there was a national patrimony law effective prior to the date of the exportation. In short, and putting aside value and the intent to benefit (which is presumed), in any prosecution for criminal possession of stolen property where the property is an antiquity looted from another country, the People must prove the following: 1) the property was exported from the country of origin after the date the applicable patrimony law was effective; 2) the defendant possessed the property in New York County; and 3) the defendant knew the property was stolen.

112. Applying the law to the facts at hand, it is clear beyond cavil that the \$1.2 million Bull’s Head (C-17) is “stolen property” under PL §165.54. In 1933, the Lebanese Republic instituted Lebanese Antiquities Law Number 166 which vests title in the Lebanese Republic to all antiquities found by chance or during archaeological excavations within the borders of the Lebanese Republic from that date forward. See Exhibit 21 (Lebanese Antiquities Law No. 166 LR dated Nov. 7, 1933). Because the Bull’s Head (C-17) was not even excavated until 1967, it had to have been exported *after* the patrimony law of 1933 was in effect. Because the Lebanese Republic never “[i]ssued a state-approved license for the exportation of the Bull’s Head (C-17) out of Lebanon,” see Exhibit 22 (Affidavit of Sarkis Khoury, Director General of Antiquities, dated June 6, 2017), it had to have been exported illegally. Because “a declaration of national ownership suffices to render an illegally exported item stolen,” McClain at 1001 n. 28, the Bull’s Head (C-17) is stolen property under New York law.

Finally, because the Bull's Head (C-17) is valued at more than \$1 million, its knowing possession in New York County constitutes criminal possession of stolen property in the first degree.

113. Again, in their federal motion, the Beierwaltes make some questionable claims in this regard. First, in paragraph 69, they argue that the Lebanese Republic's Antiquities Law is not enforceable because it was not translated into English and not publicly accessible at the time of the Bull's Head's theft. Under Schultz, however, it is irrelevant whether the Beierwaltes (or Symes or even the original thieves) knew the law existed—let alone whether it was translated to their language of choice. Would the Beierwaltes have each country translate its laws into all 7,000 languages currently recognized by most linguists? Or just the top 100? 50? 10? Regardless, ignorance of the law is not a defense in New York. PL §15.20. Second, in paragraph 48, they appear to argue that the Lebanese Republic cannot recover the Bull's Head (C-17) because the theft pre-dated the 1970 UNESCO Convention. As previously discussed, the date of theft, like the location of theft, is not an element of the crime of criminal possession of stolen property under New York law. Moreover, the UNESCO Convention itself stated that it did not immunize pre-1970 thefts from already existing collections.

“Presumed To Know That Such Property Was Stolen”

114. But of all the troubling aspects in this case—of which there are many—the most disturbing, perhaps, is the complete failure of the Beierwaltes to inquire as to the ownership history of the Bull's Head (C-17) prior to Robin Symes. As addressed previously, PL §165.55(2) provides that a person in the business of buying, selling or otherwise dealing in property is presumed to know that property was stolen if he did not ascertain by reasonable inquiry that the person from whom he obtained it had a legal right to possess it. The Oxford English Dictionary defines “dealing” quite broadly: “[t]rading, trafficking; buying and selling.” (Online ed. 2017). Not surprisingly, the presumption has been applied across a broad spectrum of businesses. See, e.g., People v. Ornstein, 91 A.D. 2d 788, 788 (3d Dep't 1982) (silver and other antiques) (reversed because jury was not

instructed presumption was rebuttable). Again, the Beierwaltes, in their 2014 bankruptcy disclosure statement, triggered the presumption by claiming their “primary business for much of their adult lives has been the *acquisition, management and sale* of an extremely extensive and valuable body of art works.” See Exhibit 70, p. 4 (The Beierwaltes’ Disclosure Statement for Plan of Reorganization dated April 7, 2014) (emphasis added).

115. Thus, this statutory presumption, along with the 1970 UNESCO Convention’s mandates and Robin Symes’s legal peccadillos all independently mandated reasonable inquiry into the Bull’s Head (C-17). Yet, the Beierwaltes ignored them all in their acquisitional lust. And their failure (refusal?) to ask the tough (or any?) questions enabled them to purchase war-time plunder without self-reproach. But, now, their chickens have come home to roost. The obvious, but all-too-often ignored, risks attendant to never asking about ownership history is that the buyer may one day have that purchase seized and confiscated as stolen property. Here, the absence of the required inquiry, not only subjects the Beierwaltes to potential prosecution for criminal possession of stolen property, but it also defeats any claim that they were good-faith purchasers of the Bull’s Head (C-17). Indeed, in their September 12, 2008, email to Phoenix Art, they acknowledged that the Bull’s Head’s provenance was sorely lacking: “Lynda also comments the BOS [Bill of Sale] to us is the only documentation we have. *She wishes we had more (we didn’t even keep the freight documents).*” See Exhibit 52 (Email Correspondence between Aboutaam and Beierwaltes beginning Sept. 11, 2008) (emphasis added). Even were the Beierwaltes to attempt to fit themselves into some obscure, back-corner definition of a good-faith purchaser, New York law prevents a purchaser *of any kind* from acquiring good title from a thief. Elicofon at 833. And there is no doubt that the Bull’s Head was stolen from the Lebanese Republic. Moreover, “[i]n a title action under New York law, a good faith purchaser of an artwork has the burden of proving that the work was not stolen,” Bakalar, 500 Fed. App. 6, 8 (2d Cir. 2012) at 1. Here, that burden is unattainable.

116. Nor can the Beierwaltes, at this stage, claim they did engage in reasonable inquiry of Robin Symes. While PL §165.55 does not define “reasonable inquiry,” and no New York courts have addressed it in the context of cultural heritage, they have done so in other contexts. In People v. Grossfeld, 216 A.D.2d 319 (2d Dep’t 1995), the court held that a business owner failed to make a reasonable inquiry under PL §165.55(2): acquiring the goods under suspicious circumstances (traveling to a diner in New Jersey to deliver the check to a “mysterious seller”) and *failing to turn over business records during the criminal investigation*. That reluctance to produce records echoes this case. In People v. Agnello, 178 A.D.2d 414 (2d Dep’t 1991), an auto parts business failed to make a reasonable inquiry under PL §165.55(2) because they made no inquiry as to the ownership of the parts purchased and prepared “*no internal documentation of the purchase.*” Agnello at 416. Again, the lack of documentation is redolent of this case.

117. Federal cases arising under the NSPA also offer guidance, revealing an analysis of “due diligence” that closely mirrors New York’s “reasonable inquiry” analysis. These federal cases illustrate that catastrophic events such as a civil war or reports of wide-spread looting in the relevant country will heighten the court’s scrutiny. Thus, in Autocephalus Greek-Orthodox Church of Cyprus v. Goldberg, the court awarded stolen Byzantine mosaics to Cyprus, stressing that anyone buying art work, especially from war- or strife-torn countries of origin “can (and probably should) take steps such as a formal [International Foundation for Art Research] search; a documented authenticity check by disinterested experts; a full background search of the seller and his claim of title; insurance protection and a contingency sales contract; and the like.” 717 F. Supp. 1374 (S.D. Ind. 1989), *aff’d*, 917 F.2d 278, 294 (7th Cir. 1990). It hardly needs repeating that the Beierwaltes, of course, did *none* of these things. Not one. In United States v. 10th Century Cambodian Sandstone Sculpture, the court was disturbed that Sotheby’s, an antiquities auction house claiming to have “unparalleled experience in the field of Indian and Southeast Asian Art,” allowed the sale of a Cambodian statue to go forward

even though it had come from an area of widely publicized looting and the statue showed signs of possible looting. 2013 U.S. Dist. LEXIS 45903, 7 (S.D.N.Y. Mar. 28, 2013).

118. Under any reading of the law as applied to the facts, then, the Beierwaltes failed in their duty to make a “reasonable inquiry” concerning the Bull’s Head (C-17). They have similarly failed to show that they were, in fact, good-faith purchasers of the Bull’s Head C-17). The reasons therefor fill these 60+ pages, but I conclude with the most salient and incontrovertible facts. First, the Bull’s Head (C-17) was excavated in 1967 and stolen in 1981 during a brutal civil war in the Lebanese Republic. This was almost 50 years after their patrimony laws were enacted vesting ownership of all discovered antiquities in the Lebanese Republic. Second, the next time the Bull’s Head (C-17) surfaced was in the hands of Robin Symes in New York in early 1996 when he had it delivered to a Transcon warehouse in the Bronx that he used for storage and domestic transport. As subsequent investigations in Italy, Switzerland, and the United Kingdom have determined, it was during this period (the 1980s and 1990s) that Symes was an essential participant in a global antiquities trafficking network. This black-market supply chain started with the tombaroli at the supply end, passed through the laundering hands of Giacomo Medici, Gianfranco Becchina, Robert Hecht, and Robin Symes as middle men, and terminated at the demand end of auction houses, museums, and private collectors—like the Beierwaltes. Third, the Symes-Beierwaltes cabal was responsible for 98% of the vast Beierwaltes Collection that was valued at almost \$100 million in 2006.²⁵ The acquisition of the collection appears to have coincided perfectly with the heyday of the Medici, Becchina, and Symes antiquities trafficking empire. Fourth, there is a staggering lack of any documentation produced by the Beierwaltes between the years 1981 and 2004—except for a single-page invoice allegedly prepared by Robin Symes. Fifth, there is a complete absence of any documented evidence whatsoever that the Beierwaltes, despite their

²⁵ 97 of the 99 antiquities in the Beierwaltes Collection that had any stated ownership history listed Symes. See Exhibit 67 (Christie’s Appraisal for \$51,550,000 dated Sept. 13, 2004).

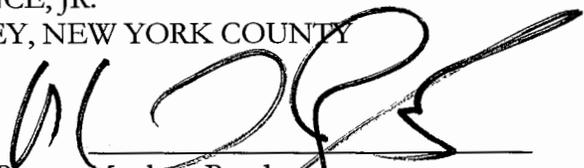
years of experience (“for much of their adult lives”) in buying and selling antiquities, made *any* inquiry of Robin Symes into the provenance of the Bull’s Head (C-17) before they bought it from him in 1996. Sixth, the Beierwaltes time and again proved reluctant to provide materials pursuant to legal process—despite multiple subpoenas and repeated requests. There is also no evidence whatsoever as to how Robin Symes acquired the Bull’s Head (C-17) or whether he “had a legal right to possess it.” Seventh, and finally, the Lebanese Republic has demonstrated admirable efforts to protect and to recover its pillaged cultural heritage.

WHEREFORE, pursuant to CPL §690.55, which authorizes a court to relinquish control of seized property, it is respectfully requested that the Court grant the District Attorney’s Application for an order permitting this Office to turn over the subject Bull’s Head (C-17) to representatives designated by the Government of the Lebanese Republic.

No previous Application has been made to the court for the relief requested herein.

Dated: September 22, 2017
New York, New York

HON. CYRUS R. VANCE, JR.
DISTRICT ATTORNEY, NEW YORK COUNTY


By: Matthew Bogdanos
Assistant District Attorney
New York County District Attorney’s Office
One Hogan Place
New York, N.Y. 10013
212-335-9323

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, PART 65

IN THE MATTER OF AN APPLICATION FOR A
WARRANT TO SEARCH THE PREMISES LOCATED AT
THE METROPOLITAN MUSEUM OF ART, 1000 5TH
AVENUE, NEW YORK, NEW YORK 10028 (“THE TARGET
PREMISES”)

TURNOVER ORDER

Upon the Application of Assistant District Attorney Matthew Bogdanos dated September 22, 2017,

WHEREAS the New York County District Attorney has shown the following statue to have been stolen; to wit, an item described as an archaic marble Head of a Bull from the Temple of Eshmun (“Bull’s Head” (C-17)), dated to approximately 360 B.C.

WHEREAS the New York County District Attorney has shown the proper notice to have been given pursuant to Penal Law 450.10 of the intention to release stolen property, and

WHEREAS all parties having been given an opportunity to be heard, and

WHEREAS proof having been received that the subject Bull’s Head (C-17) was stolen from, and should be returned to, the Government of the Lebanese Republic, it is hereby

ORDERED, in accordance with CPL 690.55, that the New York County District Attorney be authorized to transfer custody to designated representatives of the Government of the Lebanese Republic.

Dated: _____

J.S.C.