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December 21, 2016

**By ECF Filing System**

Hon. Colleen Kollar-Kotelly  
United States District Court for the District of Columbia  
333 Constitution Avenue N.W.  
Washington D.C. 20001

Re: *Philipp et al. v. Federal Republic of Germany, et al.*, 15-cv-00266-CKK (D.D.C.)

Dear Judge Kollar-Kotelly:

We represent the plaintiffs Jed Leiber, Alan Philipp, and Gerald Stiebel ("Plaintiffs") in the above-referenced case. We write to alert the Court promptly to the passage of the Holocaust Expropriated Art Recovery Act of 2016, H.R. 6130, Pub L. No. 114-308 (the "HEAR Act"), which President Obama signed into law on December 16, 2016 (the text of which is attached). Relevant to the present case, the HEAR Act moots certain arguments in defendants the Federal Republic of Germany's ("Germany's") and the Stiftung Preussischer Kulturbesitz's ("SPK's," together with Germany, "Defendants'") pending Motion to Dismiss (Dkt. No. 18), specifically: (1) Defendants' assertion of the statute of limitations; and (2) Defendants' argument that Plaintiffs' claims conflict with United States policy.

**Federal Law Now Controls the Statute of Limitations on Plaintiffs' Timely Claims**

Defendants have argued that Plaintiffs' claims are time-barred by D.C. Code § 12-301(2) on the face of the First Amended Complaint. But Defendants' reliance on D.C. Code § 12-301(2) is now moot.<sup>1</sup>

The HEAR Act expressly preempts all state statutes of limitations with respect to claims for Nazi-looted art like those in this case. The HEAR Act provides:

SEC. 5. Statute of limitations.

a) In general.—Notwithstanding any other provision of Federal or State law or any defense at law relating to the passage of time, and except as otherwise provided in this section, a civil claim or cause of action against a defendant to recover any artwork or other property that was lost during the covered period because of Nazi persecution may be commenced not later than 6 years after the actual discovery by the claimant or the agent of the claimant of—

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<sup>1</sup> Defendants' argument also fails for the reasons set forth in the Plaintiffs' Opposition to the Defendants' Motion to Dismiss (Dkt. No. 19), principally, (a) Germany has promised not to assert statutes of limitations, promises that Germany made to join the international community in coming to terms with the effects of Nazi art looting; (b) Defendants' overt inducement to claimants generally, and to Plaintiffs specifically, constitute "lulling" that would compel tolling the statute of limitations; and (c) information central to the claims—and attached to the First Amended Complaint—was unavailable from discovery despite reasonable diligence.

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- (1) the identity and location of the artwork or other property; and
- (2) a possessory interest of the claimant in the artwork or other property.

For preexisting claims such as Plaintiffs', the statute deems this "date of discovery" to be the effective date of the statute, *i.e.*, no sooner than December 16, 2016. Specifically:

(c) Preexisting claims.—Except as provided in subsection (e), a civil claim or cause of action described in subsection (a) shall be deemed to have been actually discovered on the date of enactment of this Act if—

(1) before the date of enactment of this Act—

(A) a claimant had knowledge of the elements set forth in subsection (a); and

(B) the civil claim or cause of action was barred by a Federal or State statute of limitations; or

(2) (A) before the date of enactment of this Act, a claimant had knowledge of the elements set forth in subsection (a); and

(B) on the date of enactment of this Act, the civil claim or cause of action was not barred by a Federal or State statute of limitations.

Further, the HEAR Act states:

(d) Applicability.—Subsection (a) shall apply to any civil claim or cause of action that is—(1) pending in any court on the date of enactment of this Act, including any civil claim or cause of action that is pending on appeal or for which the time to file an appeal has not expired.

Put simply, D.C. Code § 12-301(2) no longer has any effect on Plaintiffs' claims. All claims of which a plaintiff had knowledge at the time the HEAR Act was enacted, whether time-barred or not, are timely if brought within six years of the statute's passage. Further, since the Plaintiffs' claims are already pending, by definition they are timely. It is therefore unnecessary to determine whether the Plaintiffs' claims were timely under D.C. Code § 12-301(2) (though they are) because they are timely under now-controlling federal law, the HEAR Act.

### **The HEAR Act Confirms that Plaintiffs' Claims Are Consistent with U.S. Policy**

Germany and the SPK argued in their Motion to Dismiss that Plaintiffs' claims conflict with the foreign policy of the United States, and are preempted.<sup>2</sup> As with Defendants' timeliness argument, this defense too is now moot. The HEAR Act states unequivocally:

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<sup>2</sup> This argument was also wrong on its face when made; the United States has been at the vanguard of restitution of art looted by the Nazis since before the Allies defeated Germany, starting with the "Inter-Allied Declaration against Acts of Dispossession committed in Territories under Enemy Occupation and Control," better known since as the London Declaration of January 5, 1943. This act stated the Allies' intention:

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SEC. 2. Findings.

[]

(8) While litigation may be used to resolve claims to recover Nazi-confiscated art, it is the sense of Congress that the private resolution of claims by parties involved, on the merits and through the use of alternative dispute resolution such as mediation panels established for this purpose with the aid of experts in provenance research and history, will yield just and fair resolutions in a more efficient and predictable manner.

While encouraging alternative dispute resolution, the law is unambiguous that litigation is an option available to claimants. Any argument to the contrary can no longer be maintained. Indeed, the legislative record for the HEAR Act quotes the footnoted passage from *Von Saher* below as evidence of the need to make this statement of policy unequivocal to rebut arguments like these Defendants'.

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to declare invalid any transfers of, or dealings with, property, rights and interests of any description whatsoever which are, or have been, situated in the territories which have come under the occupation or control, direct or indirect of the Governments with which they are at war, or which belong, or have belonged to persons (including juridical persons) resident in such territories, This warning applies whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected.

The London Declaration was followed by Press Release No. 296 on April 27, 1949, entitled "Jurisdiction of United States Courts Re Suits for Identifiable Property Involved in Nazi Forced Transfers," which stated, *inter alia*:

As a matter of general interest, the Department publishes herewith a copy of a letter of April 13, 1949 from Jack B. Tate, Acting Legal Advisor, Department of State, to the Attorneys for the plaintiff in Civil Action No. 31-555 in the United States District Court for the Southern District of New York.

The letter repeats this Government's opposition to forcible acts of dispossession of a discriminatory and confiscatory nature practiced by the Germans on the countries or peoples subject to their controls; states that it is this Government's policy to undo the forced transfers and restitute identifiable property to the victims of Nazi persecution wrongfully deprived of such property; and sets forth that the policy of the Executive, with respect to claims asserted in the United States for restitution of such property, is to relieve American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity of the acts of Nazi officials.

Germany and the SPK nonetheless argued that allowing Plaintiffs' claims to proceed would somehow conflict with this policy such that they should be dismissed. As discussed in Plaintiffs' Opposition, Defendants' argument has already been squarely rejected by courts. In allowing the claims of Marei von Saher to proceed in 2014, the Ninth Circuit noted:

Von Saher is just the sort of heir that the Washington Principles and Terezin Declaration encouraged to come forward to make claims, again, because the Cranachs were never subject to internal restitution proceedings. . . . Perhaps most importantly, this litigation may provide Von Saher an opportunity to achieve a just and fair outcome to rectify the consequences of the forced transaction with Göring during the war, even if such a result is no longer capable of being expeditiously obtained.

*Von Saher v. Norton Simon Museum of Art at Pasadena*, 754 F.3d 712, 723 (9th Cir. 2014).

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For the foregoing reasons, Defendants' arguments to dismiss Plaintiffs' claims (a) as untimely; or (b) in conflict with U.S. policy, are no longer applicable. Accordingly, Plaintiffs respectfully submit that Defendants' Motion to Dismiss should be denied for this and the other reasons previously stated by Plaintiffs.

Respectfully submitted,



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Attachment

cc: Counsel of Record (by ECF filing system where registered or by first class mail)

H. R. 6130

One Hundred Fourteenth Congress  
of the  
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday,  
the fourth day of January, two thousand and sixteen*

An Act

To provide the victims of Holocaust-era persecution and their heirs a fair opportunity to recover works of art confiscated or misappropriated by the Nazis.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Holocaust Expropriated Art Recovery Act of 2016".

**SEC. 2. FINDINGS.**

Congress finds the following:

(1) It is estimated that the Nazis confiscated or otherwise misappropriated hundreds of thousands of works of art and other property throughout Europe as part of their genocidal campaign against the Jewish people and other persecuted groups. This has been described as the "greatest displacement of art in human history".

(2) Following World War II, the United States and its allies attempted to return the stolen artworks to their countries of origin. Despite these efforts, many works of art were never reunited with their owners. Some of the art has since been discovered in the United States.

(3) In 1998, the United States convened a conference with 43 other nations in Washington, DC, known as the Washington Conference, which produced Principles on Nazi-Confiscated Art. One of these principles is that "steps should be taken expeditiously to achieve a just and fair solution" to claims involving such art that has not been restituted if the owners or their heirs can be identified.

(4) The same year, Congress enacted the Holocaust Victims Redress Act (Public Law 105-158, 112 Stat. 15), which expressed the sense of Congress that "all governments should undertake good faith efforts to facilitate the return of private and public property, such as works of art, to the rightful owners in cases where assets were confiscated from the claimant during the period of Nazi rule and there is reasonable proof that the claimant is the rightful owner."

(5) In 2009, the United States participated in a Holocaust Era Assets Conference in Prague, Czech Republic, with 45 other nations. At the conclusion of this conference, the participating nations issued the Terezin Declaration, which reaffirmed the 1998 Washington Conference Principles on Nazi-Confiscated Art and urged all participants "to ensure that their legal systems or alternative processes, while taking into account the

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different legal traditions, facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims and all the relevant documents submitted by all parties." The Declaration also urged participants to "consider all relevant issues when applying various legal provisions that may impede the restitution of art and cultural property, in order to achieve just and fair solutions, as well as alternative dispute resolution, where appropriate under law."

(6) Victims of Nazi persecution and their heirs have taken legal action in the United States to recover Nazi-confiscated art. These lawsuits face significant procedural obstacles partly due to State statutes of limitations, which typically bar claims within some limited number of years from either the date of the loss or the date that the claim should have been discovered. In some cases, this means that the claims expired before World War II even ended. (See, e.g., *Detroit Institute of Arts v. Ullin*, No. 06–10333, 2007 WL 1016996 (E.D. Mich. Mar. 31, 2007).) The unique and horrific circumstances of World War II and the Holocaust make statutes of limitations especially burdensome to the victims and their heirs. Those seeking recovery of Nazi-confiscated art must painstakingly piece together their cases from a fragmentary historical record ravaged by persecution, war, and genocide. This costly process often cannot be done within the time constraints imposed by existing law.

(7) Federal legislation is needed because the only court that has considered the question held that the Constitution prohibits States from making exceptions to their statutes of limitations to accommodate claims involving the recovery of Nazi-confiscated art. In *Von Saher v. Norton Simon Museum of Art*, 592 F.3d 954 (9th Cir. 2009), the United States Court of Appeals for the Ninth Circuit invalidated a California law that extended the State statute of limitations for claims seeking recovery of Holocaust-era artwork. The Court held that the law was an unconstitutional infringement of the Federal Government's exclusive authority over foreign affairs, which includes the resolution of war-related disputes. In light of this precedent, the enactment of a Federal law is necessary to ensure that claims to Nazi-confiscated art are adjudicated in accordance with United States policy as expressed in the Washington Conference Principles on Nazi-Confiscated Art, the Holocaust Victims Redress Act, and the Terezin Declaration.

(8) While litigation may be used to resolve claims to recover Nazi-confiscated art, it is the sense of Congress that the private resolution of claims by parties involved, on the merits and through the use of alternative dispute resolution such as mediation panels established for this purpose with the aid of experts in provenance research and history, will yield just and fair resolutions in a more efficient and predictable manner.

**SEC. 3. PURPOSES.**

The purposes of this Act are the following:

(1) To ensure that laws governing claims to Nazi-confiscated art and other property further United States policy as set forth in the Washington Conference Principles on Nazi-

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Confiscated Art, the Holocaust Victims Redress Act, and the Terezin Declaration.

(2) To ensure that claims to artwork and other property stolen or misappropriated by the Nazis are not unfairly barred by statutes of limitations but are resolved in a just and fair manner.

**SEC. 4. DEFINITIONS.**

In this Act:

(1) **ACTUAL DISCOVERY.**—The term “actual discovery” means knowledge.

(2) **ARTWORK OR OTHER PROPERTY.**—The term “artwork or other property” means—

(A) pictures, paintings, and drawings;

(B) statuary art and sculpture;

(C) engravings, prints, lithographs, and works of graphic art;

(D) applied art and original artistic assemblages and montages;

(E) books, archives, musical objects and manuscripts (including musical manuscripts and sheets), and sound, photographic, and cinematographic archives and mediums; and

(F) sacred and ceremonial objects and Judaica.

(3) **COVERED PERIOD.**—The term “covered period” means the period beginning on January 1, 1933, and ending on December 31, 1945.

(4) **KNOWLEDGE.**—The term “knowledge” means having actual knowledge of a fact or circumstance or sufficient information with regard to a relevant fact or circumstance to amount to actual knowledge thereof.

(5) **NAZI PERSECUTION.**—The term “Nazi persecution” means any persecution of a specific group of individuals based on Nazi ideology by the Government of Germany, its allies or agents, members of the Nazi Party, or their agents or associates, during the covered period.

**SEC. 5. STATUTE OF LIMITATIONS.**

(a) **IN GENERAL.**—Notwithstanding any other provision of Federal or State law or any defense at law relating to the passage of time, and except as otherwise provided in this section, a civil claim or cause of action against a defendant to recover any artwork or other property that was lost during the covered period because of Nazi persecution may be commenced not later than 6 years after the actual discovery by the claimant or the agent of the claimant of—

(1) the identity and location of the artwork or other property; and

(2) a possessory interest of the claimant in the artwork or other property.

(b) **POSSIBLE MISIDENTIFICATION.**—For purposes of subsection (a)(1), in a case in which the artwork or other property is one of a group of substantially similar multiple artworks or other property, actual discovery of the identity and location of the artwork or other property shall be deemed to occur on the date on which there are facts sufficient to form a substantial basis to believe that the artwork or other property is the artwork or other property that was lost.

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(c) **PREEXISTING CLAIMS.**—Except as provided in subsection (e), a civil claim or cause of action described in subsection (a) shall be deemed to have been actually discovered on the date of enactment of this Act if—

(1) before the date of enactment of this Act—

(A) a claimant had knowledge of the elements set forth in subsection (a); and

(B) the civil claim or cause of action was barred by a Federal or State statute of limitations; or

(2)(A) before the date of enactment of this Act, a claimant had knowledge of the elements set forth in subsection (a); and

(B) on the date of enactment of this Act, the civil claim or cause of action was not barred by a Federal or State statute of limitations.

(d) **APPLICABILITY.**—Subsection (a) shall apply to any civil claim or cause of action that is—

(1) pending in any court on the date of enactment of this Act, including any civil claim or cause of action that is pending on appeal or for which the time to file an appeal has not expired; or

(2) filed during the period beginning on the date of enactment of this Act and ending on December 31, 2026.

(e) **EXCEPTION.**—Subsection (a) shall not apply to any civil claim or cause of action barred on the day before the date of enactment of this Act by a Federal or State statute of limitations if—

(1) the claimant or a predecessor-in-interest of the claimant had knowledge of the elements set forth in subsection (a) on or after January 1, 1999; and

(2) not less than 6 years have passed from the date such claimant or predecessor-in-interest acquired such knowledge and during which time the civil claim or cause of action was not barred by a Federal or State statute of limitations.

(f) **RULE OF CONSTRUCTION.**—Nothing in this Act shall be construed to create a civil claim or cause of action under Federal or State law.

(g) **SUNSET.**—This Act shall cease to have effect on January 1, 2027, except that this Act shall continue to apply to any civil claim or cause of action described in subsection (a) that is pending on January 1, 2027. Any civil claim or cause of action commenced on or after that date to recover artwork or other property described in this Act shall be subject to any applicable Federal or State



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statute of limitations or any other Federal or State defense at law relating to the passage of time.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*

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### H.R.6130 - Holocaust Expropriated Art Recovery Act of 2016

114th Congress (2015-2016) | Get alerts

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**Sponsor:** Rep. Goodlatte, Bob [R-VA-6] (Introduced 09/22/2016)  
**Committees:** House - Judiciary  
**Latest Action:** 12/16/2016 Became Public Law No: 114-308. (All Actions)

**Tracker:**

Introduced Passed House Passed Senate To President **Became Law**

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#### Actions Overview H.R.6130 — 114th Congress (2015-2016)

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Date	Actions Overview
12/16/2016	Became Public Law No: 114-308.
12/16/2016	Signed by President.
12/15/2016	Presented to President.
12/10/2016	Passed/agreed to in Senate: Passed Senate without amendment by Voice Vote.(consideration: CR S7128-7131)
12/07/2016	Passed/agreed to in House: On motion to suspend the rules and pass the bill Agreed to by voice vote.(text: CR H7330-7331)
09/22/2016	Introduced in House