To be Argued by:
MARSHALL R. KING

APL-2020-00090

New York County Clerk's Index No. 650026/13

Court of Appeals

State of New York

ESTATE OF MARGARET KAINER, and the following individuals as heirs of MARGARET KAINER: KURT BECK a/k/a Curt Beck as Executor of the Estate of ANN BECK, JANET CORDEN as Executor of the ESTATE of GERALD CORDEN, MARTIN CORDEN as Executor of the Estate of GERALD CORDEN, SIMON CORDEN as Executor of the Estate of GERALD CORDEN, WARNER MAX CORDEN, FIRELEI MAGALI CORTES GRUENBERG, MATILDE LABBE GRUENBERG, HERNAN LABBE GRUENBERG, PETER LITTMAN, HERNAN RENATO CORTES RAMOS and EQUITY TRUSTEES LIMITED as Executor of the Estate of ELLI ALTER,

Plaintiffs-Appellants,

– against –

UBS AG, a Swiss corporation, UBS GLOBAL ASSET MANAGEMENT (AMERICAS), NORBERT STIFTUNG f/k/a Norbert Levy Stiftung, a purported Swiss foundation, and EDGAR KIRCHER,

Defendants-Respondents,

– and –

CHRISTIE'S INC. and JOHN DOES 1-X, including a possessor of a painting entitled *Danseuses* by Edgar Degas, c. 1896,

Defendants.

DEFENDANTS-RESPONDENTS' BRIEF IN RESPONSE TO BRIEF OF *AMICI CURIAE* RAOUL WALLENBERG CENTRE FOR HUMAN RIGHTS, *ET AL.*

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Date Completed: February 25, 2021

CORPORATE DISCLOSURE STATEMENT

Pursuant to 22 N.Y.C.R.R. § 500.1(f), Defendants-Respondents state the following:

The parent company of UBS AG is UBS Group AG, a publicly traded corporation.

UBS AG further states that as of December 31, 2019, it has the following significant or otherwise material direct or indirect subsidiaries:

- UBS Americas Holdings LLC
- UBS Asset Management AG
- UBS Americas Inc.
- UBS Bank USA
- UBS Europe SE
- UBS Financial Services Inc.
- UBS Securities LLC
- UBS Switzerland AG
- UBS Asset Management (Hong Kong) Limited
- UBS Asset Management (Japan) Ltd
- UBS Asset Management Life Ltd
- UBS Asset Management Switzerland AG
- UBS Business Solutions US LLC
- UBS Credit Corp.
- UBS (France) S.A.
- UBS Fund Advisor, L.L.C.
- UBS Fund Management (Luxembourg) S.A.
- UBS Fund Management (Switzerland) AG
- UBS (Monaco) S.A.
- UBS Realty Investors LLC
- UBS Securities (Thailand) Ltd
- UBS Securities Australia Ltd
- UBS Securities Japan Co., Ltd.
- UBS Securities Pte. Ltd.

UBS Global Asset Management (Americas), Inc., now known as UBS Asset Management (Americas), Inc., is a subsidiary of UBS Americas Inc., which is itself a subsidiary of UBS AG.

Norbert Stiftung is a foundation, not a corporation or other business entity. It has no parents, subsidiaries, or affiliates.

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PRELIMINARY STATEMENT

On this appeal, this Court will consider whether the Motion Court, as affirmed by the Appellate Division, acted within its discretion in applying this Court's settled *forum non conveniens* precedents to the facts found below. As Defendants-Respondents made clear in their merits brief, this case is tailor-made for the *forum non conveniens* doctrine. Plaintiffs claim that Defendants-Respondents conspired over the course of four decades in France, Germany, and Switzerland to act in derogation of Plaintiffs' purported rights as heirs, culminating with the allegedly wrongful renunciation of rights to a Degas painting (the "Painting"), which was subsequently sold at auction in New York. The lower courts properly dismissed Plaintiffs' claims against Defendants-Respondents (and stayed claims against Defendant Christie's, Inc., which is not a party to this appeal) on the ground of *forum non conveniens*, recognizing that those claims will be governed by foreign law and have no substantial nexus with New York, that witnesses and documents are primarily located abroad, and that Plaintiffs themselves had already commenced related litigation in Switzerland.

Now, two human rights organizations and a group of Holocaust scholars (together, "*Amici*") have filed an amicus brief, urging this Court to reverse the lower courts' well-reasoned decisions based solely on the federal Holocaust Expropriated Art Recovery ("HEAR") Act of 2016, Pub. L. No. 114-308, 130 Stat. 1524 (codified

as amended at 22 U.S.C. § 1621 (2016)), which created a uniform, six-year statute of limitations period for certain claims seeking the return of Nazi-expropriated artwork. *Amici*'s arguments are misplaced for at least two reasons.

First, *Amici* overstate both the purpose and the effect of the HEAR Act. According to *Amici*, the HEAR Act expresses a broad and sweeping policy judgment that *all* plaintiffs who assert legal claims involving art allegedly seized during the Holocaust must receive a trial on the merits in a United States courtroom. But the text and legislative history of the statute confirm that Congress enacted the HEAR Act to address one specific procedural obstacle: *time-based* defenses, which imposed a unique burden on claimants seeking the return of Nazi-looted artwork. The HEAR Act does not modify, or even mention, any other defense—procedural or substantive—potentially available under state law. Contrary to *Amici*'s arguments, then, the HEAR Act does not displace the *forum non conveniens* doctrine or "mandate" that New York courts retain jurisdiction over a case with no substantial connection to New York.

Second, the HEAR Act does not even apply to Plaintiffs' claims in this case. By its plain terms, the HEAR Act applies only to claims seeking "to recover" stolen property. HEAR Act § 5(a). To that end, the Act provides that the statute of limitations does not begin to run until "actual discovery" by the claimant of, among other things, "the identity and location of the artwork." *Id.* In this action, however,

Plaintiffs do not seek from the named Defendants the return of the Painting—which no named Defendant is alleged to possess, and the location of which is allegedly unknown to Plaintiffs—but monetary damages for Defendants-Respondents' allegedly tortious conduct in connection with the administration of the Kainer estate. Congress affirmatively considered, but intentionally declined, to extend the statute to the kinds of money damages claims Plaintiffs advance against Defendants-Respondents here, and *Amici* fail to explain how a federal law that is inapplicable to the claims asserted in this case somehow requires reversal of the lower courts' discretionary application of the *forum non conveniens* doctrine to affirmed factual findings. It cannot.

At bottom, *Amici* ask this Court to preclude categorically the application of the *forum non conveniens* doctrine whenever a plaintiff asserts claims that have some relationship to Nazi-seized art. That position is wholly untethered to the HEAR Act or any sound federal or New York State policy. Indeed, even Plaintiffs do not endorse such an extraordinary rule, which gives no weight at all to the important policy considerations that motivate the *forum non conveniens* doctrine: "justice, fairness[,] and convenience." *Islamic Republic of Iran v. Pahlavi*, 62 N.Y.2d 474, 479 (1984); *accord Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 432 (2007). Nothing in *Amici*'s brief provides any reason for this Court to depart from its settled *forum non conveniens* law, or the lower courts' discretionary

application thereof. For the reasons set forth in Defendants-Respondents' merits brief, this Court should affirm the First Department's order.[1]

ARGUMENT

I. The HEAR Act Does Not Preclude Application Of The *Forum Non Conveniens* Doctrine

Amici claim that the HEAR Act establishes a "general principle favoring decisions on the merits" and therefore "mandate[s] review of *all claims* for restitution of Nazi-looted art by this State's courts." *Amici* Br. at 19 (emphasis added; capitalization altered). In other words, *Amici* claim that the HEAR Act abrogates, *sub silentio*, the ability of New York (or any other) courts to dismiss any case involving Holocaust-era artwork on *forum non conveniens* grounds. Indeed, *Amici*'s position is not even limited to *forum non conveniens* and could very well preempt a slew of other "procedural" doctrines that have long been applied by New

[1] Defendants-Respondents will address *Amici*'s contentions regarding the HEAR Act and *forum non conveniens*, but they will not respond to *Amici*'s other assertions that are irrelevant to this appeal. Defendants-Respondents also ask this Court to reject *Amici*'s request that the Court draw adverse inferences about the "moral character and reliability" of Defendant-Respondent UBS AG, based on hearsay "published accounts" regarding the activities of "Swiss banks during World War II." *Amici* Br. at 25-26. To do as *Amici* urge would impair this Court's well-deserved reputation as an "independent, unbiased adjudicator in the resolution of disputes," which is "an essential element of due process of law, guaranteed by the Federal and State Constitutions." *Gen. Motors Corp.-Delco Prods. Div. v. Rosa*, 82 N.Y.2d 183, 188 (1993).

York courts, such as requirements for personal and subject matter jurisdiction, or preclusive doctrines including res judicata and collateral estoppel.

The HEAR Act is an unusual federal statute of limitations temporarily preempting state statutes of limitation governing state law claims for the recovery of certain personal property. Contrary to *Amici*'s contentions, courts construe such federal laws *narrowly*, disfavoring preemption claims such as those *Amici* advance here. As the U.S. Supreme Court has made clear, courts must "assum[e] that the historic police powers of the States [are] not to be superseded . . . unless that was the *clear and manifest* purpose of Congress"—an "assumption" that "applies with particular force when Congress has legislated in a field traditionally occupied by the States." *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008) (first alteration in original) (emphasis added) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). State law procedural defenses and doctrines regulating access to state courts are unquestionably one such field. *See Zuckerman v. Metro. Museum of Art*, 928 F.3d 186, 197 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 1269 (2020).

Here, both the HEAR Act's text and its legislative history make clear that Congress did not intend to cast aside numerous state statutory and common law defenses, as *Amici* claim. Rather, the *only* procedural "obstacle" that Congress chose to address in the HEAR Act is the statute of limitations—which is not relevant to this appeal. The HEAR Act says nothing about any other doctrine like *forum non*

conveniens, nor does it adopt any broad rule—let alone a "clear and manifest congressional purpose," *see Altria Grp.*, 555 U.S. at 77—to require state courts to hear and decide on the merits all cases involving Holocaust-era artwork.

Nowhere in the HEAR Act's text does the statute suggest that Congress intended to displace every procedural "obstacle" in a case that touches upon Holocaust-era art theft. Quite the contrary. Throughout the statute, a unanimous Congress made clear that the Act was designed to ensure "that claims to artwork and other property stolen or misappropriated by the Nazis are not unfairly barred by *statutes of limitations*." HEAR Act § 3(2) (emphasis added). The HEAR Act therefore created a temporary window for Holocaust survivors and their heirs to assert certain claims without the burden of time bars. Section 5(a) of the Act—the "focus of the legislation," S. Rep. No. 114-394, at 9 (2016)—provides as follows:

> 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.

HEAR Act § 5(a) (emphasis added). The HEAR Act also resuscitated some—but not all—claims that were previously dismissed because of a state statute of limitations. *See id.* § 5(a), (c); *id.* § 5(e) (barring the application of the new limitations period in instances where the claimant acquired the requisite knowledge but failed to bring claims within a defined period).[2] The HEAR Act does not modify, or even mention, any other procedural defense or doctrine besides the statute of limitations. *See Zuckerman*, 928 F.3d at 197.

The legislative history of the HEAR Act similarly confirms that Congress specifically intended to address *time-based* defenses, not every procedural obstacle that could potentially bar litigation in United States courts of a claim involving Holocaust-era artwork. At the June 7, 2016 Senate Subcommittee Hearing on the bill that would become the HEAR Act, the bill's co-sponsors explained that the

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[2] That the HEAR Act contains this explicit "exception," *id.* § 5(e), further belies *Amici*'s argument that the Act guarantees a trial on the merits to all plaintiffs who assert claims involving Holocaust-era artwork. As the accompanying Senate Judiciary Committee Report explained, the exception balances "United States policy to facilitate the return of artwork" against "the importance of quieting title in property generally" and "the importance that claimants assert their rights in a timely fashion." S. Rep. No. 114-394, at 10. Moreover, the HEAR Act contains an express sunset provision: The Act will "cease to have effect" on January 1, 2027, after which claims to recover artwork "shall be subject to any applicable Federal or State statute of limitations or any other Federal or State defense at law relating to the passage of time." HEAR Act § 5(g).

legislation was intended to alleviate problems associated with state statutes of limitations. Senator Ted Cruz, for example, explained that the proposed legislation would "ease the burden on [Jewish] families" seeking to recover lost artwork "by temporarily preempting *state time-based litigation defenses*."[3] Senator Richard Blumenthal similarly stated that the "HEAR Act [wa]s needed" to prevent "statutes of limitations" from barring otherwise valid claims, which in some cases "expired before World War II even ended."[4]

When the corresponding bill was introduced in the House of Representatives, legislators also explained that the bill aimed to alleviate the burden caused by state statutes of limitations. Representative Robert Goodlatte, a co-sponsor of the HEAR Act and then-Chair of the House Judiciary Committee, explained on the floor of the House that "*State statutes of limitations* can be an unfair impediment to [Holocaust]

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[3] *The Holocaust Expropriated Art Recovery Act—Reuniting Victims with Their Lost Heritage: Hearing on S. 2763 Before the Subcomm. on the Constitution and Subcomm. on Oversight, Agency Action, Fed. Rights and Fed. Courts of the S. Comm. on the Judiciary*, C-SPAN, at 00:12:35 – 00:12:50 (June 7, 2016), https://www.c-span.org/video/?410737-1/actress-helen-mirren-testifies-recovery-artconfiscated-holocaust.

[4] *Id.* at 00:17:40 – 00:18:10. Senator Chuck Grassley explained that the "bipartisan legislation seeks to remove *some of the time-based defenses* that unfairly bar the rightful owners from reclaiming their family's artwork." Prepared Statement by Senator Chuck Grassley of Iowa (Sept. 15, 2016) (emphasis added), https://www.grassley.senate.gov/news/news-releases/grassley-statement-executive-business-meeting-24.

victims and their heirs and contrary to the stated policy of the United States." 162 Cong. Rec. H7331 (daily ed. Dec. 7, 2016) (emphasis added). Representative Jerrold Nadler of New York, the other co-sponsor, added that applicable state statutes of limitations "generally require[d] a claimant to bring a case within a limited number of years from when the loss occurred or should have been discovered." *Id.* at H7332. He further explained that many claimants had been "unable to pursue their claims in court *because of restrictive statutes of limitations in the States*" and that the bill would therefore "set a uniform 6-year Federal statute of limitations for the claims of Nazi-confiscated art." *Id.* (emphasis added).

In December 2016, the Senate Committee on the Judiciary submitted a report recommending passage of the HEAR Act and reiterating the legislators' focus on issues posed by state statutes of limitations. *See* S. Rep. No. 114-394. In a section titled "Background and Purpose of the [HEAR] Act of 2016," the Senate Judiciary Committee's Report observed that each state "has different rules governing the operation of their statutes of limitations, with varying periods and different triggering circumstances." *Id.* at 5. Moreover, "[a]s a practical matter, many statutes of limitations operate[d] to bar modern claimants seeking restitution of art lost in the Holocaust." *Id.*; *see id.* at 8 (noting that "time-based defenses" are "especially burdensome" for plaintiffs seeking to recover Holocaust-era artwork). The Report explained that, to remedy these problems, the HEAR Act would create a uniform,

national limitations period for covered claims. *See id.* at 9 (explaining that "the special circumstances created by Nazi persecution" required the temporary waiver of "defenses at law *related to the passage of time*" (emphasis added)); *see also* Jason Barnes, Note, *Holocaust Expropriated Art Recovery (HEAR) Act of 2016: A Federal Reform to State Statutes of Limitations for Art Restitution Claims*, 56 Colum. J. Transnat'l L. 593, 610 (2018) ("Congress responded to the problem of the application of state statutes of limitations to claims for restitution of art during the Nazi era by passing the [HEAR Act].").

In arguing to the contrary, *Amici* rely largely on "[t]wo brief samples of testimony" by witnesses (not legislators) at the June 7, 2016 Senate Subcommittee Hearing, *Amici* Br. at 20-21—hardly enough to show a "clear and manifest [congressional] purpose" to sweep away various longstanding state law doctrines and defenses, *see Altria Grp.*, 555 U.S. at 77. Moreover, *Amici* cite to portions of the testimony that they believe support their broad view of the HEAR Act's purpose, *Amici* Br. at 21, ignoring testimony, including from one of the same witnesses, that confirms the HEAR Act means what its text says. The very witness *Amici* cite himself conceded that "[t]he bill provides that existing legal claims should not be denied simply *because of the passage of time*." *The Holocaust Expropriated Art Recovery Act—Reuniting Victims with Their Lost Heritage: Hearing on S. 2763 Before the Subcomm. on the Constitution and Subcomm. on Oversight, Agency*

Action, Fed. Rights and Fed. Courts of the S. Comm. on the Judiciary, 114th Cong. 3 (2016) (statement of Ambassador Ronald S. Lauder, Chairman of the Council, World Jewish Restitution Organization) (emphasis added). Even if *Amici*'s citations supported their view (and they do not), statements from third parties who testified before the Senate Judiciary Subcommittee are hardly authoritative indicators of congressional intent. In fact, despite hearing testimony about the general "procedural obstacles" that claimants might face when seeking to recover Nazi-looted artwork, the *only* thing Congress did in the HEAR Act was modify the statute of limitations that applies to those claims. *See Rapanos v. United States*, 547 U.S. 715, 752 (2006) (explaining that courts cannot ignore "the textual limitations upon a law's scope" to give effect to a purportedly broad purpose because "no law pursues its purpose at all costs").

In sum, both the text and the legislative history of the HEAR Act clearly confirm that the Act addresses one—and only one—specific procedural obstacle: state statutes of limitations that, in many cases, would have barred claims years before they could realistically have been asserted.[5] The HEAR Act does not make

[5] *See* Simon J. Frankel, *The HEAR Act and Laches After Three Years*, 45 N.C. J. Int'l L. 441, 455-56 (2020) ("In many cases, [the HEAR Act] will make timely a claim that would otherwise have been time-barred under state law. But the Act does no more. . . . Once the timeliness of a claim under an otherwise applicable statute of limitations is determined, the work of the HEAR Act is done."); Simon J. Frankel & Sari Sharoni, *Navigating the Ambiguities and Uncertainties of the Holocaust Expropriated Art Recovery Act of 2016*, 42 Colum. J.L. & Arts 157,

claims involving Holocaust-era artwork immune from dismissal on other grounds, nor does it somehow eliminate a state court's discretion to regulate access to the court on the basis of *forum non conveniens* when the balance of factors weighs strongly in favor of dismissal. If *Amici* were correct in arguing to the contrary, New York courts would be obligated to try on the merits every single case involving artwork that was allegedly looted by the Nazis—regardless of whether the dispute and the parties have any connection to New York or whether the convenience of the parties and burdens on the New York courts favor litigation elsewhere. That extraordinary result finds no support in the HEAR Act's text, legislative history, any relevant case law, or common sense.

II. The HEAR Act Does Not Apply To Plaintiffs' Claims In This Case

Amici's arguments also hinge on the premise that the HEAR Act would actually apply to Plaintiffs' claims if they were litigated in New York instead of Switzerland. *See Amici* Br. at 8 (arguing that the HEAR Act "is unavailable to litigants outside the United States where statutes of limitations can present insurmountable barriers"); *id.* at 25 (arguing that "Swiss Courts," unlike New York courts, will "probably" not apply the HEAR Act to Plaintiffs' claims). That premise is wrong.

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186 (2019) ("[T]he [HEAR Act] was intended to further U.S. policy by enacting a nationwide limitations period for bringing covered claims. There is no suggestion in the text or legislative history that Congress intended to do more.").

As its title suggests, the HEAR Act addresses "Art *Recovery*"—in other words, claims "to *recover* works of art confiscated or misappropriated by the Nazis." Pub. L. No. 114-308, 130 Stat. 1524 (emphasis added). The stated purpose of the HEAR Act is to alleviate the burden of state statutes of limitations for "[t]hose seeking *recovery* of Nazi-confiscated art." HEAR Act § 2(6) (emphasis added); *see also* S. Rep. No. 114-394, at 10 (explaining that the HEAR Act "is animated by" a policy "to facilitate *the return of artwork* and other cultural property lost in the Holocaust" (emphasis added)). Consistent with this purpose, the HEAR Act provides a uniform federal limitations period that applies to 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." HEAR Act § 5(a) (emphasis added).

Contemporaneous statements by the HEAR Act's co-sponsors confirm that the Act was meant to allow Holocaust victims and their heirs to seek the return of covered artworks. For example, Representative Nadler explained that the newly introduced bill would "help facilitate the *return* of Nazi-confiscated artwork to its rightful owners or heirs" by establishing a six-year federal statute of limitations for those claims. *See* Press Release, Goodlatte and Nadler Introduce Legislation to Help Recover Art Confiscated During the Holocaust (Sept. 22, 2016) (emphasis added), https://nadler.house.gov/news/documentsingle.aspx?DocumentID=391608. And

Representative Goodlatte explained that the bill would aid claimants who were "still trying to *recover* some of their most prized possessions." *Id.* (emphasis added).

The HEAR Act's legislative history also shows that Congress specifically excluded claims for monetary damages from the reach of the statute. The original Senate bill provided for a new limitations period to cover "a civil claim or cause of action against a defendant to recover any artwork or other cultural property unlawfully lost because of [Nazi] persecution . . . or *for damages for the taking or detaining of any artwork* or other cultural property unlawfully lost because of [Nazi] persecution." HEAR Act S. 2763, 114th Cong. § 5(a) (as reported by S. Comm. on the Judiciary, Sept. 29, 2016) (emphasis added). The Senate Judiciary Committee ultimately adopted an amended bill that deleted the reference to "damages for the taking or detaining of any artwork." HEAR Act S. 2763, 114th Cong. § 5(a). This modification clearly evinces Congress's intent to limit the HEAR Act solely to claims seeking to "recover" artwork and to exclude claims seeking damages for the taking or detaining of such artwork. *See Majewski v. Broadalbin-Perth Cent. Sch. Dist.*, 91 N.Y.2d 577, 587 (1998) (explaining that "court[s] may examine changes made in proposed legislation to determine [legislative] intent"); *see also Zuckerman*, 928 F.3d at 197.

As Defendants-Respondents explained in their merits brief, *see* Def.-Resp. Br. at 42-44, Plaintiffs' claims in this case are not covered by the HEAR Act because

they do not seek to recover the Painting from the named Defendants in this case, and no named Defendant is alleged to possess the Painting. Rather, Plaintiffs seek damages for tortious conduct allegedly committed by Defendants in connection with the administration of the Kainer estate—the very kinds of claims Congress considered but ultimately chose to exclude from the HEAR Act. *See id.* at 42-43. *Amici* tacitly admit as much. *See Amici* Br. at 8 (explaining that the HEAR Act applies to "claim[s] for *restitution* of Nazi-looted art" (emphasis added)); *id.* at 27 (arguing that this case affords the Court "an opportunity to clarify New York rules in *restitution* cases" (emphasis added)). But *Amici* fail to grapple with the Act's inapplicability to the claims actually asserted in this case.

Even though the HEAR Act does not apply on its own terms, *Amici* also argue that this case must be heard in the New York courts because Swiss courts will "probably" apply the Swiss statute of limitations to Plaintiffs' claims. *Amici* Br. at 25. *Amici* conspicuously cite nothing in the record to support that contention—indeed, Plaintiffs failed to present any evidence to the Motion Court about what the applicable Swiss limitations period might be, let alone that the Swiss courts would "probably" apply it, or how it compares to the limitations period to be applied in New York. To the extent *Amici* argue that Switzerland is an inadequate forum because a Swiss tribunal would apply a different and shorter statute of limitations, *Amici* have established neither that the HEAR Act would apply to Plaintiffs' claims

if they were litigated in New York, nor that the applicable statute of limitations would bar Plaintiffs' claims if they were litigated in Switzerland. Nor would establishing either of those facts be sufficient to justify reversing the Appellate Division's affirmance of the Motion Court's factual findings and its exercise of discretion in dismissing this case on *forum non conveniens* grounds based on a balancing of all relevant factors.

* * *

In dismissing this case on *forum non conveniens* grounds, the lower courts did not display "[i]ndifference or lack of care about problems associated with Nazi-looted art." *Amici* Br. at 5. To the contrary, they considered Plaintiffs' arguments about the HEAR Act, analyzed the proper *forum non conveniens* factors, applied settled precedent of this Court, and determined in their sound discretion that Plaintiffs' claims for monetary damages against Defendants-Respondents should be litigated in another forum. The HEAR Act does not counsel in favor of, let alone require, a different result.

CONCLUSION

For the foregoing reasons, the HEAR Act has no effect on this case and furnishes no ground for reversal, *Amici*'s arguments to the contrary notwithstanding. The decision of the Appellate Division should be affirmed in full.

Dated: New York, New York
February 25, 2021

Respectfully submitted,

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NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.1(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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