

1 Kristina Iliopoulos (SBN 341548)
2 Kristina.Iliopoulos@arnoldporter.com
3 ARNOLD & PORTER KAYE SCHOLER LLP
4 777 South Figueroa Street, Forty-Fourth Floor
5 Los Angeles, CA 90017
6 Telephone: 213-243-4000
7 Facsimile: 213-243-4199

8 Marcus A. Asner (*pro hac vice* forthcoming)
9 Marcus.Asner@arnoldporter.com
10 Tal R. Machnes (*pro hac vice* forthcoming)
11 Tal.Machnes@arnoldporter.com
12 ARNOLD & PORTER KAYE SCHOLER LLP
13 250 W 55th Street
14 New York, NY 10019
15 Telephone: 212-836-8000

16 *Attorneys for Plaintiff Aaron Mendelsohn*

17 *[Additional Counsel On Signature Page]*

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA
20 WESTERN DIVISION

21 AARON MENDELSON,
22 *Plaintiff,*

23 vs.

24 ALVIN BRAGG, in his official capacity as
25 the District Attorney of New York County,
26 New York,

27 *Defendant.*

28 **Case No. 2:24-cv-7420**

COMPLAINT

1. Declaratory Judgment (28 U.S.C. § 2201)

1 Plaintiff Aaron Mendelsohn (“Mr. Mendelsohn”), by and through his
2 undersigned counsel, for his complaint against Alvin Bragg, in his official capacity
3 as the District Attorney of New York County, New York (“Defendant” or “DANY”),
4 alleges as follows:

5 **PREAMBLE**

6 1. This case concerns an ancient Roman bronze statue (the “Bronze
7 Male”) that Mr. Mendelsohn purchased in 2007 from a New York City art gallery.
8 Since shortly after Mr. Mendelsohn became the owner of the statue in 2007, the
9 Bronze Male has resided, without incident, at Mr. Mendelsohn’s home in Santa
10 Monica, California.

11 2. In late December of 2023, DANY informed Mr. Mendelsohn that it is
12 conducting an investigation into antiquities allegedly stolen from Bubon, an ancient
13 city in modern day Turkey, and that its investigation purportedly involves Mr.
14 Mendelsohn’s Bronze Male. Since then, DANY has invoked New York criminal
15 process in an effort to intimidate Mr. Mendelsohn into relinquishing the Bronze
16 Male, without affording Mr. Mendelsohn a legitimate opportunity to fully explore
17 the evidence that DANY claims casts doubt on Mr. Mendelsohn’s ownership or to
18 litigate its true ownership.

19 3. In essence, DANY is leveraging its purported seizure powers under
20 New York criminal law to pursue what typically would be a classic civil replevin
21 action brought in California by the Government of Turkey. By taking this approach,
22 DANY is seeking to deny Mr. Mendelsohn all of the due process rights and legal
23 processes that would be available to him in a civil replevin suit. Moreover, DANY’s
24 threat to invoke New York State criminal process here is fatally flawed because the
25 Bronze Male has not been possessed in New York for at least seventeen years, and
26 thus, DANY has no plausible criminal investigation into a violation of New York
27 law and no legitimate interest in the piece. On the other hand, and based on available
28

1 evidence, Mr. Mendelsohn maintains that he is the rightful owner of the Bronze
2 Male.

3 4. Accordingly, Mr. Mendelsohn files this action for a declaratory
4 judgment that Mr. Mendelsohn is the Bronze Male's rightful owner and to clarify
5 DANY's lack of any cognizable interest in the statue.

6 **THE PARTIES**

7 5. Plaintiff Mr. Mendelsohn is a resident of Santa Monica, California.

8 6. Defendant Alvin Bragg is and was at all times relevant to this
9 Complaint the duly elected District Attorney of the County of New York, whose
10 office is located at 1 Hogan Place, New York, New York 10013. He is named in his
11 official capacity related to the administration of the New York District Attorney's
12 Office.

13 **JURISDICTION AND VENUE**

14 7. This Court has subject matter jurisdiction over this action pursuant to
15 28 U.S.C. § 1332(a)(1) and (2) because the amount in controversy exceeds
16 \$75,000.00, exclusive of interest and costs, and there is complete diversity of
17 citizenship between the parties.

18 8. This Court has personal jurisdiction over Defendant because Defendant
19 has had sufficient minimum contacts in this jurisdiction, *see International Shoe Co.*
20 *v. Washington*, 326 U.S. 310, 316 (1945), including because Defendant has initiated
21 and conducted an investigation concerning the Bronze Male which has remained in
22 this jurisdiction since 2007, has emailed and telephoned Mr. Mendelsohn in this
23 jurisdiction, has attempted to serve process on Mr. Mendelsohn in this jurisdiction,
24 and is asserting a right to seize the Bronze Male in this jurisdiction.

25 9. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b)(2)
26 because (a) the property that is the subject of this action is situated in this District;

1 and (b) a substantial part of the events giving rise to Mr. Mendelsohn's claims
2 occurred in this District.

3 **STATEMENT OF FACTS**

4 **Mr. Mendelsohn Acquired Good Title to the Bronze Male Upon His Purchase of**
5 **the Bronze Male in 2007 from Royal-Athena Galleries**

6 10. Mr. Mendelsohn purchased the Bronze Male on or around May 26,
7 2007 from Royal-Athena Galleries ("Royal-Athena"), located at 153 East 57th
8 Street, New York, New York 10022, after seeing the Bronze Male publicly exhibited
9 at Royal-Athena during a visit to New York. Mr. Mendelsohn understood that the
10 Bronze Male was on consignment at Royal-Athena at the time. At that time and at
11 all times since, Mr. Mendelsohn has resided in Santa Monica, California.

12 11. After purchasing the Bronze Male, Mr. Mendelsohn shipped the piece
13 from New York to California, and it was received in California on or about August
14 6, 2007.

15 12. At the time of Mr. Mendelsohn's purchase of the Bronze Male from
16 Royal-Athena, Jerome M. Eisenberg ("Mr. Eisenberg") served as the Director of
17 Royal-Athena. Mr. Mendelsohn negotiated the purchase price of the Bronze Male
18 with Mr. Eisenberg. Mr. Eisenberg has since passed away.

19 13. Mr. Mendelsohn purchased the Bronze Male from Royal-Athena for a
20 total of approximately \$1.33 million. Due to the substantial purchase price, Mr.
21 Mendelsohn paid an initial deposit to Royal-Athena for the Bronze Male and then
22 subsequently paid monthly installments to Royal-Athena over the course of two
23 years. Mr. Mendelsohn completed those payments in or about November 2009.

24 14. At the time of his purchase, Mr. Mendelsohn's understanding of the
25 origins of the Bronze Male was limited to the information provided to him by Mr.
26 Eisenberg or that otherwise was publicly-available. Those details were
27
28

1 memorialized on an invoice provided to Mr. Mendelsohn upon his purchase of the
2 Bronze Male, *see* Exhibit 1.

3 15. Specifically, the Bronze Male was described on this invoice as a
4 “ROMAN BRONZE MONUMENTAL MALE MEMBER OF THE IMPERIAL
5 FAMILY IN HEROIC POSE. Depicted as a full nude torso with his right arm
6 upraised, partial legs and left arm. Said to be from Bubon, Turkey. Late 2nd – early
7 3rd Century AD. H. 72 in. (183 cm.) . . . Private collection, Boston; acquired in
8 Basel, Switzerland, in 1967.” *Id.*

9 16. Mr. Mendelsohn also received with his purchase of the Bronze Male a
10 document titled, “Guarantee of Authenticity & Attestation of Legal Importation”
11 (“the Attestation”). *See* Exhibit 2. The Attestation stated the following about the
12 Bronze Male:

13 Guaranteed to be genuine and as described and to have been
14 imported into the United States in compliance with all federal
15 regulations and in accordance with all applicable international
16 treaties governing the movement of cultural property.
17 Furthermore, it is herein attested to meet the criteria of the United
18 States Department of State archaeological protection memoranda
19 if applicable.

18 This object has also been cleared with the Art Loss Register in
19 London.

20 17. According to its website, the Art Loss Register “holds the world’s
21 largest private database of lost, stolen and looted art, antiques and collectibles,
22 currently listing more than 700,000 items.” Items are added to the database “on
23 behalf of the victims of looting or theft, insurers, police forces and others.” *See* The
24 Art Loss Register, <https://www.artloss.com/> (last accessed Aug. 30, 2024).

25 18. The evidence available to Mr. Mendelsohn established that his purchase
26 of the Bronze Male complied with all domestic and international laws, rules,
27
28

1 regulations, and treaties governing the movement of cultural property. In particular,
2 as of the date of his purchase, Mr. Mendelsohn understood that the controlling rule
3 governing the movement of cultural property was the 1970 UNESCO Convention
4 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer
5 of Ownership of Cultural Property (the “1970 UNESCO Convention”). Practically,
6 the 1970 UNESCO Convention allows a country to make a claim for any cultural
7 property that was illegally exported out of that country *after* 1970; cultural property
8 located outside of its country of origin *before* 1970 is not subject to the requirements
9 of the 1970 UNESCO Convention. Both the United States and Turkey are
10 signatories to the 1970 UNESCO Convention.

11 19. At the time of Mr. Mendelsohn’s purchase, the exportation of the piece
12 would not have been subject to the requirements of the 1970 UNESCO Convention
13 in any event because, according to the invoice, the Bronze Male was acquired in
14 Basel, Switzerland in 1967, *see* Exhibit 1. Based on this understanding, Mr.
15 Mendelsohn at the time believed the fact that the statue was “[s]aid to be from
16 Bubon”—as stated on the invoice—was a selling point for the piece, such as in an
17 effort to bolster the ancient origins of the statue.

18 20. That said, at the time of his purchase, the geographic and temporal
19 origins of the Bronze Male were not definitively known to Mr. Mendelsohn.
20 Although the invoice Mr. Mendelsohn received from Royal-Athena stated that the
21 Bronze Male was “[s]aid to be from Bubon,” no other historical records or other
22 physical evidence supported that claim. Moreover, the invoice did not contain a
23 guarantee of the origin of the Bronze Male; nor did it provide any definitive
24 provenance information prior to 1967.

25 21. Mr. Mendelsohn also understood, at the time of his purchase and based
26 on representations made by Mr. Eisenberg, that the Bronze Male had been on display
27 at the Royal-Athena for several years before being purchased by Mr. Mendelsohn in
28

1 2007, and also previously had been published as part of a private collection in
2 Boston, Massachusetts. In other words, Royal-Athena’s possession of the Bronze
3 Male was or could have been publicly known to anyone who believed it had superior
4 title to the statue. However, before DANY contacted Mr. Mendelsohn in December
5 2023, the Bronze Male had not been subject to any claim of ownership of which Mr.
6 Mendelsohn was aware.

7 22. After its purchase by Mr. Mendelsohn in 2007, the Bronze Male
8 resided—without incident—in Mr. Mendelsohn’s home in Santa Monica, California,
9 for over seventeen years. Mr. Mendelsohn is now seventy-three years old.

10 23. Prior to being contacted by DANY in December 2023, no one has ever
11 questioned Mr. Mendelsohn about his status as the rightful owner of the Bronze
12 Male. To the best of Mr. Mendelsohn’s knowledge, the Government of Turkey, for
13 example, has never made a claim to the Bronze Male.

14 **Earlier This Year, DANY Improperly Served a Grand Jury Subpoena on**
15 **Mr. Mendelsohn**

16 24. Mr. Mendelsohn was contacted by phone on December 28, 2023, in
17 Santa Monica, California, by an Assistant District Attorney with DANY. The
18 Assistant District Attorney subsequently informed Mr. Mendelsohn via email that
19 DANY had been investigating a number of “stolen and trafficked monumental
20 Roman bronzes,” with the ultimate goal of repatriating the antiquities to Turkey, and
21 believed that Mr. Mendelsohn’s statue may have been a part of that group. The
22 Assistant District Attorney told Mr. Mendelsohn that he would give him time to
23 speak with an attorney, but claimed that DANY’s work was “time sensitive,” and
24 that he sought to set up a meeting with Mr. Mendelsohn to “review the evidence”
25 and “explain the appropriate paths forward.”
26
27
28

1 25. The Assistant District Attorney emailed Mr. Mendelsohn in Santa
2 Monica on January 5, 2024, to inquire whether Mr. Mendelsohn had retained
3 counsel. The Assistant District Attorney noted that, if he did not hear from Mr.
4 Mendelsohn “by the end of next week,” DANY would “be forced to start taking
5 steps forward on [its] case.” During this time, Mr. Mendelsohn was in the process
6 of retaining and consulting with counsel and therefore did not respond to the
7 Assistant District Attorney.

8 26. Finally, on Thursday, January 11, 2024, less than a week after the
9 Assistant District Attorney’s prior email, which gave Mr. Mendelsohn until the “end
10 of next week” to respond, the Assistant District Attorney purported to “serve,” via
11 email, a subpoena *duces tecum* on Mr. Mendelsohn in California, requesting
12 documents and correspondence in Mr. Mendelsohn’s possession related to the
13 Bronze Male.

14 27. Importantly, the subpoena *duces tecum* was a Grand Jury subpoena,
15 signed by DANY, commanding Mr. Mendelsohn, a longtime resident of the State of
16 California and who was in California at the time, to appear before the Grand Jury in
17 the State of New York within one week of his receipt of the subpoena.

18 28. Upon information and belief, DANY signed and “served” this subpoena
19 (improperly via email) on Mr. Mendelsohn in California, knowing that it did not
20 have jurisdiction over Mr. Mendelsohn, knowing that the subpoena was not legally
21 enforceable in the State of California without proper process, *i.e.*, domesticating the
22 subpoena, and knowing that Mr. Mendelsohn was in the process of retaining legal
23 counsel.

24 29. Mr. Mendelsohn did not accept service of DANY’s subpoena. Instead,
25 Mr. Mendelsohn’s newly-retained counsel contacted DANY on his behalf.
26
27
28

1 **DANY Has Presented Insufficient Evidence and Legal Support for Its**
2 **Repatriation Effort of the Bronze Male**

3 30. Since on or around January 11, 2024 to present, Mr. Mendelsohn’s
4 counsel has communicated with DANY regarding DANY’s investigation that
5 purportedly involves Mr. Mendelsohn’s statue, the Bronze Male. Mr. Mendelsohn’s
6 counsel has met with DANY for reverse proffer sessions on two occasions: once on
7 April 16, 2024, and once on August 8, 2024. The parties also met on May 23, 2024
8 to discuss follow-up questions from the first proffer session and DANY’s purported
9 legal basis for its investigation.

10 31. During these meetings, DANY presented information that it claims
11 shows that the Bronze Male was looted and illegally exported from Bubon in the
12 1960s. After carefully considering the evidence presented, Mr. Mendelsohn
13 disagrees. The evidence presented by DANY does not provide a sufficient basis to
14 conclude that the Bronze Male was looted and illegally exported from Bubon in the
15 1960s, let alone that it originated from Bubon in the first place. DANY’s claim of
16 origin rests on inconsistent and incomplete historical records, unreliable testimony
17 from a single witness about an event that happened over fifty years ago, and highly
18 suggestive photo arrays and sequences of various bronze statues shown to that single
19 witness.

20 32. Mr. Mendelsohn himself has spoken with art history experts—
21 including one of the foremost experts in Greek and Roman bronzes—about the
22 Bronze Male and there continues to be no consensus about whether the Bronze Male
23 originated from Bubon, or somewhere else entirely; he has also spoken with a
24 scientific expert who believes that even scientific testing would not yield definitive
25 results regarding the origins of the Bronze Male.

1 33. Despite its flawed and insufficient evidence, DANY is seeking to
2 overstep its authority by invoking New York criminal process in its effort to
3 repatriate the Bronze Male, rather than allowing Turkey (or anyone else claiming
4 superior title) to pursue any claims it may have through a properly-filed action for
5 replevin.

6 34. DANY has asserted that it has authority to seize the Bronze Male under
7 New York Criminal Procedure Law § 690 *et seq.*, which subjects personal property
8 to seizure pursuant to a search warrant if there is reasonable cause to believe that the
9 personal property is stolen or unlawfully possessed. *See* N.Y. Crim. Proc. L.
10 § 690.10(1)-(4). Once the Bronze Male is seized, DANY states that it intends to
11 seek a turnover order pursuant to New York Penal Law § 450.10, which provides
12 that, if stolen property comes into the custody of DANY, it must be delivered to the
13 owner upon satisfactory proof of title.

14 35. A threshold issue in this dispute, however, is that DANY is attempting
15 to assert authority under New York Penal Law over an object in California, in the
16 *absence* of any prosecutable crime or contemplated New York prosecution.
17 Although it is true that DANY has jurisdiction to prosecute alleged criminal
18 possession of stolen property (and conspiracy to do the same) under New York Penal
19 Law, it does *not* have jurisdiction to prosecute alleged criminal possession of stolen
20 property that currently resides in the State of California. The statute of limitations
21 for criminal possession of stolen property under New York Penal Law is five years.
22 The essential conduct of the crime of alleged possession of stolen property is the
23 possession itself, and the Bronze Male has not been in New York for the last
24 seventeen years.

25 36. In these circumstances, DANY, in its conversations with Mr.
26 Mendelsohn's counsel, understandably has never indicated that it plans to bring
27 criminal charges against any individual in connection with this investigation, let
28

1 alone against Mr. Mendelsohn himself. In fact, DANY has referred to Mr.
2 Mendelsohn as an “innocent” and “good faith purchaser” throughout its discussions
3 with Mr. Mendelsohn’s counsel.

4 37. DANY’s reliance on New York Penal Law § 450.10 in the absence of
5 any New York crime or contemplated prosecution essentially is an effort to evade
6 any civil process, such as civil discovery, afforded by the only legal action that
7 would make sense here: a replevin action brought by any country claiming
8 ownership of the piece. Here, it means that Mr. Mendelsohn has no opportunity to
9 test the available evidence or litigate ownership without initiating a costly action
10 such as this one to clear title.

11 38. Indeed, after its most recent proffer session with Mr. Mendelsohn’s
12 counsel on August 8, 2024, DANY gave Mr. Mendelsohn twenty days to sign a
13 stipulation relinquishing his claim of ownership over the Bronze Male, so that
14 DANY could repatriate the statue to Turkey under New York Penal Law § 450.10.

15 39. DANY further has rebuffed Mr. Mendelsohn’s request for additional
16 evidence to support the claim that the Bronze Male was looted improperly from
17 Turkey, including requests to interview DANY’s alleged witness. DANY has also
18 rebuffed suggestions to let Mr. Mendelsohn engage directly with Turkey about any
19 claim to the Bronze Male, and instead insists on resolving any supposed claim using
20 its own criminal authority under New York Penal Law. Moreover, DANY has
21 threatened to obtain and execute a warrant to seize the statue from Mr. Mendelsohn’s
22 residence in Santa Monica.

23 40. Mr. Mendelsohn was faced with a difficult choice: yield to DANY’s
24 asserted authority and relinquish a valued possession that took him years to pay
25 for—with no opportunity for the type of civil discovery or process offered by a
26 replevin action and no opportunity to recoup payment—or initiate the instant action.

1 41. Mr. Mendelsohn chose to file the instant action after the twenty days
2 afforded by DANY elapsed, given the threat that DANY may further leverage its
3 asserted authority over Mr. Mendelsohn to repatriate the antiquity in contravention
4 of proper legal process.

5 42. Mr. Mendelsohn intends to do what is right with respect to the Bronze
6 Male. If the evidence ultimately in fact establishes that the statue was looted and
7 illegally exported from Turkey, and Turkey has a viable claim to superior title, Mr.
8 Mendelsohn wants the statue to return to its country of origin. However, Mr.
9 Mendelsohn maintains that he has good title to the Bronze Male, including pursuant
10 to the 1970 UNESCO Convention, if even applicable. Put simply, Mr. Mendelsohn
11 wants any repatriation to be done by *proper* legal process, under which the available
12 evidence can be examined and tested. As the situation presently stands, there is
13 insufficient evidence to prove that Turkey is indeed the Bronze Male's country of
14 origin, that Turkey has a legitimate and superior claim to the Bronze Male, and/or
15 that anyone other than Mr. Mendelsohn has good title to the Bronze Male.

16 43. Accordingly, Mr. Mendelsohn initiates the instant action, respectfully
17 requesting that this Court award a declaratory judgment that Mr. Mendelsohn is the
18 rightful owner of the Bronze Male and that DANY has no valid claim to the statue.

19 **CAUSES OF ACTION**

20 **COUNT 1**

21 **(Declaratory Judgment)**

22 44. Mr. Mendelsohn repeats and realleges each of the allegations contained
23 in paragraphs 1 through 43 of this Complaint as if fully set forth in this paragraph.

24 45. Mr. Mendelsohn is the rightful owner of the Bronze Male and has a
25 right of possession superior to that of Defendant.

26 46. Defendant does not have good title to or a right to possess the Bronze
27 Male.

1 47. Defendant’s express claim of title to and/or right to possess the Bronze
2 Male creates an actual controversy with Mr. Mendelsohn over the ownership of and
3 right to possess the Bronze Male.

4 48. Mr. Mendelsohn is entitled to a judgment pursuant to 28 U.S.C. § 2201,
5 *et seq.* declaring that all right, title, and interest in and to the Bronze Male is vested
6 in Mr. Mendelsohn, and Defendant has no right, title, or interest in and to the Bronze
7 Male.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Mr. Mendelsohn respectfully requests judgment in his favor
10 and against Defendant as follows:

11 a) Award a declaratory judgment that all right, title, and interest in and to
12 the Bronze Male is vested in Mr. Mendelsohn, and that Defendant has no right, title,
13 or interest in or to the Bronze Male; and

14 b) Award such other relief as the Court deems just and proper.

15
16 Dated: August 30, 2024

17 By: /s/ Kristina Iliopoulos
18 Kristina Iliopoulos (SBN 341548)
19 Kristina.Iliopoulos@arnoldporter.com
20 ARNOLD & PORTER KAYE
21 SCHOLER LLP
22 777 South Figueroa Street, 44th Floor
23 Los Angeles, CA 90017-5844
24 Telephone: 213-243-4000

25 Marcus A. Asner (*pro hac vice*
26 forthcoming)
27 Marcus.Asner@arnoldporter.com
28 Tal R. Machnes (*pro hac vice*
forthcoming)
Tal.Machnes@arnoldporter.com
ARNOLD & PORTER KAYE
SCHOLER LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

250 W 55th Street
New York, NY 10019
Telephone: 212-836-8000

Kerry K. Walsh (*pro hac vice*
forthcoming)
Kerry.Walsh@arnoldporter.com
ARNOLD & PORTER KAYE
SCHOLER LLP
601 Massachusetts Ave., NW
Washington, DC 20001-3743
Telephone: 202-942-6476

Attorneys for Plaintiff Aaron Mendelsohn