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9 THE J. PAUL GETTY MUSEUM AND THE J. PAUL  
GETTY TRUST

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES

13 THE WESTERN PRELACY OF THE  
14 ARMENIAN APOSTOLIC CHURCH OF  
AMERICA,

15 Plaintiff,

16 vs.

17 THE J. PAUL GETTY MUSEUM, THE J.  
18 PAUL GETTY TRUST, and DOES 1  
THROUGH 100, INCLUSIVE,

19 Defendants.  
20

CASE NO. BC 438824

HON. ABRAHAM KHAN

**DEFENDANTS THE J. PAUL GETTY  
MUSEUM AND THE J. PAUL GETTY  
TRUST'S ANSWER TO THE  
UNVERIFIED SECOND AMENDED  
COMPLAINT**

DATE: December 5, 2011

DEPT.: 51

ACTION FILED: June 1, 2010

1 Defendants the J. Paul Getty Museum and the J. Paul Getty Trust (collectively “the  
2 Getty”) hereby answer the unverified Second Amended Complaint of Plaintiff The Western  
3 Prelacy of the Armenian Apostolic Church of America (the “Western Prelacy”).

4 **GENERAL DENIAL**

5 1. Pursuant to Section 431.30(d) of the Code of Civil Procedure, the Getty generally  
6 denies each and every material allegation and each cause of action alleged against the Getty as set  
7 forth in the unverified Second Amended Complaint (“SAC”) filed herein. The Getty further  
8 denies that the Western Prelacy or its assignor, the Catholicosate of the Great House of Cilicia  
9 (the “Catholicosate”) (collectively “Plaintiff”) individually or collectively have sustained any  
10 damages whatsoever as a result of the Getty’s actions, and the Getty denies that Plaintiff is  
11 entitled to any legal or equitable relief of any kind on any ground whatsoever.

12 **ANSWER**

13 2. Neither the Western Prelacy nor the Catholicosate holds title to the Canon Tables  
14 of the Zeyt’un Gospel. On information and belief, sometime between its creation in the  
15 Thirteenth Century and the Nineteenth Century, the entire Gospel, including the Canon Tables,  
16 had become the property of a private party, possibly members of the Sourenian-Pasilosian family.  
17 At no point thereafter did the Western Prelacy or the Catholicosate acquire or hold title or a right  
18 of possession to the Canon Tables.

19 3. On information and belief, sometime prior to the early 1920s, by devise, gift, or  
20 voluntary exchange, the Gospel became the property of Melkon Atamian. Like many Armenians  
21 during this period, Melkon Atamian left Turkey. Atamian, however, could not bring the entire  
22 Gospel with him. Atamian therefore removed the Gospel’s Canon Tables, took the Canon Tables  
23 to the United States, and entrusted the remainder of the Gospel to an American missionary by the  
24 name of Lyman. Melkon Atamian and members of his family emigrated to the United States in  
25 1923 and settled in Massachusetts.

26 4. On information and belief, and based on Plaintiff’s discovery responses, by 1936,  
27 the remainder of the Gospel was located in either Aleppo, Syria or Antelias, Lebanon. In 1936 or  
28 earlier, the Gospel was examined and catalogued by Artavazd Surmeyan, a representative of the

1 Catholicosate and the Archbishop of Aleppo. At this time, the Gospel was in Surmeyan's  
2 possession or in the possession of another representative of the Catholicosate.

3 5. On information and belief, sometime between 1923 and 1943, ownership of the  
4 Canon Tables passed to Melkon Atamian's son, Nazareth, by inheritance.

5 6. On information and belief, in 1943 or earlier, Garegin Hovsepien learned that  
6 Nazareth Atamian was in possession of the Canon Tables. In 1943, Hovsepien was the Primate  
7 of the Armenian Church in North America. Hovsepien personally inspected the Canon Tables,  
8 had them photographed, and published photographs and descriptions of the Canon Tables in an  
9 article entitled "Catholicos Constantine I as Great Sponsor of Armenian Miniature Art" [in  
10 Armenian]. Hovsepien's article identified Nazareth Atamian of Watertown, Massachusetts as the  
11 person in possession of the Canon Tables.

12 8. On information and belief, Hovsepien was elected Catholicos of Cilicia in 1943  
13 and assumed the name Karekin I. Karekin did not raise a claim to the Canon Tables at this or any  
14 other time. The Catholicosate did not raise a claim to the Canon Tables at this or any time until  
15 the instant dispute arose.

16 9. On information and belief, and based on the Plaintiff's discovery responses, at  
17 some time between 1936 and 1952, the remainder of the Gospel was relocated to Istanbul, where  
18 it was in the possession of the Armenian Patriarchate of Istanbul. The Armenian Patriarchate of  
19 Istanbul and the Catholicosate are component parts of the broader One Holy Armenian Apostolic  
20 Orthodox Church (the "Armenian Church").

21 10. On information and belief, in 1952, Sirarpie Der Nersessian, a preeminent scholar  
22 of Armenian art and the niece of a high official of the Armenian Church, published an article  
23 about the Zeyt'un Gospel in the journal *Shoghakat*. *Shoghakat* is a publication of the Armenian  
24 Patriarchate of Istanbul. Dr. Der Nersessian's article stated that Nazareth Atamian was in  
25 possession of several canon tables that very likely were the Canon Tables of the Zeyt'un Gospel.  
26 Dr. Der Nersessian's article did not suggest that Atamian's possession was wrongful, and neither  
27 the Catholicosate nor any other part of the Armenian Church raised a claim to the Canon Tables  
28 at this or any time until the instant dispute arose.

1           11.     On information and belief, and based on Plaintiff's discovery responses, in 1967,  
2 the Patriarch of Istanbul transferred the Gospel to the Catholicosate of All Armenians (also called  
3 the Catholicos of Etchmiadzin), the "Mother See" of the Armenian Church.

4           12.     On information and belief, and based on Plaintiff's discovery responses and  
5 statements by representatives of the Matenadaran, at some point between 1969 and the early  
6 1980s, the Catholicos of All Armenians transferred the Gospel to the Matenadaran, Armenia's  
7 national manuscript archive.

8           13.     On information and belief, in approximately 1980, Gil Atamian, Nazareth  
9 Atamian's nephew, acquired the Canon Tables upon the death of his uncle.

10          14.     On information and belief, in the early 1990s and prior to 1994, Gil Atamian  
11 discussed with a priest at St. James Armenian Church in Watertown, Massachusetts the  
12 possibility of donating the Canon Tables to the Armenian Church. Gil Atamian entrusted the  
13 Canon Tables to the priest, who discussed the donation with his superiors. The priest reported to  
14 Mr. Atamian that the Church would accept the donation only if the Canon Tables could be kept in  
15 New York. Mr. Atamian wanted to donate the Canon Tables only if they could be kept at the St.  
16 James Church, and so the priest returned the Canon Tables to Mr. Atamian. The priest put Mr.  
17 Atamian in contact with individuals involved with an upcoming exhibition at the Pierpont  
18 Morgan Library (now called the Morgan Library & Museum) in New York and the Walters Art  
19 Gallery (now called the Walters Art Museum) in Baltimore. Neither the Catholicosate nor any  
20 other part of the Armenian Church asserted a claim to the Canon Tables at this or any time until  
21 the instant dispute arose.

22          15.     In 1994, Gil Atamian loaned the Canon Tables to an exhibition at the Walters Art  
23 Gallery and the Pierpont Morgan Library. The Armenian Church participated in the exhibition  
24 and loaned parts of its own art collection for the display. On information and belief, neither the  
25 Catholicosate nor any other part of the Armenian Church asserted a claim to the Canon Tables at  
26 this or any time until the instant dispute arose.

27          16.     In 1994, the Getty purchased the Canon Tables from Gil Atamian for value. The  
28 Getty conducted a reasonable investigation into the provenance of the Canon Tables. That

1 investigation revealed no evidence that the Plaintiff and/or the Armenian Church had any claim to  
2 the Canon Tables. Indeed, the investigation demonstrated that the whereabouts and ownership of  
3 the Canon Tables had been publicly acknowledged for decades -- including in decades old  
4 publications by the Armenian Church, by officials of the Catholicosate, and by the world's  
5 leading scholar of Armenian illuminated texts -- but that the Armenian Church had lodged no  
6 claim. In good faith and in reliance on the Church's and the Catholicosate's actions and  
7 inactions, the Getty determined that the Atamian family held good title. Since the acquisition, the  
8 Canon Tables have been exhibited to the public free of charge at the Getty, one of the most  
9 visited art museums in the world. The Getty's ownership of the Canon Tables has also been  
10 publicized in numerous publications, at a major exhibition at another museum, and on the world  
11 wide web. This publication and exhibition history constituted reasonable notice to the Plaintiff  
12 (and the world) of the Getty's possession and claim of ownership. Since the acquisition, the  
13 Getty's possession of the Canon Tables has been actual, open, hostile, continuous, and notorious,  
14 and under claim of right and/or title. No taxes have been assessed on the Canon Tables.

15 17. On information and belief, and based on news reports, the officials at the  
16 Matenadaran determined that the Getty was in possession of the Canon Tables by the mid-1990s.  
17 (*See* Mariana Grigoryan, "Armenia: Church Sues Getty Museum to 'Reclaim' Armenian Cultural  
18 Heritage," Eurasianet.org (June 15, 2010), *available at* <http://www.eurasianet.org/node/61307>.)  
19 The Matenadaran discovered no later than the 1980s that the Canon Tables were missing from the  
20 Gospel. (*See id.*) The Matenadaran did not inform the Getty or otherwise publicize that it or any  
21 other party had a claim to the Canon Tables at this or any other time.

## 22 **DEFENSES**

23 18. The Getty alleges the following defenses, without conceding or admitting the  
24 validity of any of Plaintiff's claims. By alleging these defenses, the Getty is in no way agreeing  
25 or conceding that it has any additional burden of proof or burden of persuasion on any of these  
26 issues.

### 27 **FIRST DEFENSE**

#### 28 **(Superior Claim to Possession)**

1           19.     The Plaintiff's claims against the Getty are barred in whole or in part because the  
2     Getty has a superior claim to possession of the Canon Tables. The Getty incorporates the  
3     allegations of Paragraphs 2-17, inclusive. The Getty acquired valid legal title from its  
4     predecessors in interest when it purchased the Canon Tables in 1994.

5                                 **SECOND DEFENSE**  
6                                 **(Statute of Limitations)**

7           20.     The Plaintiff's claims against the Getty are barred in whole or in part by applicable  
8     statutes of limitation.

9           21.     The Getty incorporates the allegations of Paragraphs 2-17, inclusive. The Getty  
10    has just begun discovery. Based upon information ascertained to date, the Getty alleges as  
11    follows: Upon information and belief, the Plaintiff actually discovered its claim to the Canon  
12    Tables as well as the identity and whereabouts of the Canon Tables as long as seventy years --  
13    and certainly more than six years -- before Plaintiff filed this lawsuit in June of 2010. The  
14    Plaintiff's own knowledge alone establishes that any potentially applicable statute of limitations  
15    has expired. However, the Plaintiff is also charged with knowledge possessed by the broader  
16    Armenian Church, of which it is a part. Plaintiff's claims are barred under any potentially  
17    applicable statute of limitations.

18                                 **THIRD DEFENSE**  
19                                 **(Laches)**

20          22.     In the alternative, some or all of Plaintiff's claims against the Getty are barred in  
21    whole or in part by the doctrine of laches.

22          23.     The Getty incorporates the allegations of Paragraphs 2-17, inclusive. The Getty  
23    has just begun discovery. Based upon information ascertained to date, the Getty alleges as  
24    follows: Upon information and belief, Plaintiff and/or the Armenian Church knew or could have  
25    learned the facts underlying the claims for relief set forth in the SAC long ago but unreasonably  
26    delayed asserting such claims. The Getty had no knowledge or notice that Plaintiff and/or the  
27    Armenian Church would assert claims for relief when it acquired the Canon Tables. Upon  
28    information and belief, the Getty has suffered prejudice because of Plaintiff's and/or the

1 Armenian Church's delay in asserting its claims for relief: First, as a result of this delay, the  
2 Getty changed its position by acquiring the Canon Tables and by investing resources in their  
3 maintenance, restoration, and care. Second, on information and belief, the delay prevented or  
4 made it more difficult for the Getty to find witnesses and documents or other evidence relevant to  
5 the instant claims. In addition, on information and belief, the Plaintiff and/or the Armenian  
6 Church has acquiesced in the Getty's and/or the Atamian family's possession of the Canon  
7 Tables.

#### 8 **FOURTH DEFENSE**

##### 9 **(Adverse Possession or Prescription)**

10 24. The Plaintiff's claims against the Getty are barred in whole or in part because the  
11 Getty and/or its predecessors obtained legal title to the Canon Tables by adverse possession  
12 and/or prescription.

13 25. The Getty incorporates the allegations of Paragraphs 2-17, inclusive. The Getty  
14 has just begun discovery. In addition, based upon information ascertained to date, the Getty  
15 alleges as follows: Upon information and belief, Nazareth Atamian and his successor or  
16 successors had actual, open, notorious, exclusive, continuous, and adverse possession of the  
17 Canon Tables beginning no later than 1943 and lasting more than twenty years thereafter. The  
18 Getty succeeded to the Atamians' valid title when it acquired the Canon Tables. In addition, the  
19 Getty had actual, open, hostile, continuous, and notorious possession of the Canon Tables under  
20 color of right and/or title beginning in 1994. Such possession constituted reasonable notice to the  
21 Plaintiff and/or the Armenian Church. No taxes have been assessed on the Canon Tables. In  
22 addition, and on information and belief, by 1994, the Catholicosate and/or the Armenian Church  
23 actually suspected that the Canon Tables had been removed from the Zeyt'un Gospels and knew  
24 or could have discovered through the exercise of diligence that the Getty was in possession of the  
25 Canon Tables.

#### 26 **FIFTH DEFENSE**

##### 27 **(Due Process)**

28 26. The Plaintiff's claims against the Getty are barred in whole or in part by the due

1 process clauses of the United States Constitution and the Constitution of the State of California.

2 27. The Getty incorporates by reference the allegations set forth in Paragraphs 2-17  
3 and 24-25, inclusive. Through the expiry of prior statutes of limitations against the Getty and/or  
4 its predecessors in interest, the Getty acquired legal title to the Canon Tables. Under the due  
5 process clauses of the United States and California constitutions, the Getty may not be divested of  
6 such title by retroactive application of Section 338(c)(3) of the Code of Civil Procedure or any  
7 other newly enacted statute of limitations.

8 **SIXTH DEFENSE**

9 **(Takings)**

10 28. The Plaintiff's claims against the Getty are barred in whole or in part by the  
11 takings clauses of the United States Constitution and the Constitution of the State of California.

12 29. The Getty incorporates the allegations set forth in Paragraphs 2-17 and 24-25,  
13 inclusive. Through the expiry of prior statutes of limitations against the Getty and/or its  
14 predecessors in interest, the Getty acquired legal title to the Canon Tables. Under the takings  
15 clauses of the United States and California constitutions, the Getty may not be divested of such  
16 title by application of Section 338(c)(3) of the Code of Civil Procedure or any other newly  
17 enacted statute of limitations.

18 **SEVENTH DEFENSE**

19 **(Free Speech)**

20 30. The Plaintiff's claims against the Getty are barred in whole or in part by the  
21 guarantees of freedom of expression contained in the United States Constitution and the  
22 Constitution of the State of California.

23 31. On its face and as applied to this case, Section 338(c)(3) of the Code of Civil  
24 Procedure is unconstitutional. That provision singles out for disfavored treatment entities like the  
25 Getty that engage in protected expression, and does so without adequate justification.

26 **EIGHTH DEFENSE**

27 **(Estoppel or Waiver)**

28 32. The Plaintiff's claims against the Getty are barred in whole or in part by the



1 doctrine of estoppel.

2 33. The Getty incorporates the allegations of Paragraphs 2-17, inclusive. The Getty  
3 has just begun discovery. Based upon information ascertained to date, the Getty alleges as  
4 follows: On information and belief, the Catholicosate and/or the Armenian Church knew of the  
5 facts underlying its claims for relief, but elected not to assert them. In addition, the Catholicosate  
6 has entrusted the Gospel to other subdivisions of the Armenian Church and permitted such  
7 subdivisions to dispose of the Gospel. The Getty relied to its detriment on the Plaintiff's and/or  
8 the Armenian Church's actions and inactions when the Getty acquired, maintained, restored, and  
9 cared for the Canon Tables. In addition, and upon information and belief, the Getty has suffered  
10 injury or prejudice because of Plaintiff's delay, including but not limited to being prevented from  
11 or caused greater difficulty in finding witnesses and documents or other evidence relevant to  
12 Plaintiff's claims. The Plaintiff is estopped from asserting claims to the Canon Tables and/or  
13 from asserting that the Plaintiff is independent and separate from the broader Armenian Church in  
14 this litigation.

15 **NINTH DEFENSE**

16 **(Offset)**

17 34. The Plaintiff's claims for damages are barred in whole or in part because the Getty  
18 has made investments in the acquisition, care, protection, study, and display of the Canon Tables  
19 which may have increased the value of the Canon Tables and/or conferred other benefits on  
20 Plaintiff. Plaintiff's claims for damages must be reduced by the value of such investments.

21 **TENTH DEFENSE**

22 **(Lack of Knowledge)**

23 35. The Plaintiff's claims are barred in whole or in part because the Getty did not  
24 know, and with the exercise of reasonable care could not have known, of the Plaintiff's purported  
25 claim to the Canon Tables.

26 **ELEVENTH DEFENSE**

27 **(Good Faith)**

28 36. The Plaintiff's claims are barred in whole or in part because any and all acts

1 alleged to have been committed by the Getty, or any of its agents or employees, were committed  
2 in the exercise of good faith and were reasonable, justified and privileged under the  
3 circumstances.

4 **TWELFTH DEFENSE**

5 **(Bona Fide Purchaser for Value)**

6 37. The Plaintiff's claims are barred in whole or in part because the Getty and/or  
7 members of the Atamian family acquired the Canon Tables in good faith for value given.

8 **THIRTEENTH DEFENSE**

9 **(Sham Pleading Doctrine)**

10 38. The Plaintiff's claims are barred in whole or in part by the sham pleading doctrine.  
11 Plaintiff's original complaint alleged that the Catholicosate discovered that the Canon Tables had  
12 been removed from the Zeyt'un Gospel in the late 1940s and that the Catholicosate thereafter  
13 made efforts to locate the Canon Tables. Plaintiff has not offered adequate explanation for  
14 abandoning those allegations.

15 **FOURTEENTH DEFENSE**

16 **(Civil Code Section 761.020)**

17 38. The Plaintiff's Complaint does not comply with Civil Code section 761.020,  
18 which requires that the complaint be verified.

19 **FIFTEENTH DEFENSE**

20 **(Reservation of Other Defenses)**

21 39. The Getty may have additional defenses that are unknown at this time or for which  
22 the factual basis has not yet been discovered. The Getty reserves the right to amend and/or  
23 supplement this Answer and assert such additional defenses after they have been ascertained.

1 DATED: December 5, 2011

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THE J. PAUL GETTY MUSEUM AND THE  
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