

12 MAG 2634

Approved:

MARTIN S. BELL
Assistant United States Attorney

Before: HONORABLE FRANK MAAS
United States Magistrate Judge
Southern District of New York

- - - - - X

SEALED COMPLAINT

UNITED STATES OF AMERICA :

v. : Violations of
: 18 U.S.C. §§ 371, 545, 2315

ERIC PROKOPI, :

COUNTY OF OFFENSE:
: NEW YORK

Defendant.

- - - - - X

SOUTHERN DISTRICT OF NEW YORK, ss.:

DANIEL BRAZIER, being duly sworn, deposes and says that he is a Special Agent with the United States Department of Homeland Security, Homeland Security Investigations ("HSI"), and charges as follows:

COUNT ONE

1. From in or about April 2010, through and including in or about August 2012, in the Southern District of New York and elsewhere, ERIC PROKOPI, the defendant, and others known and unknown, knowingly and willfully did combine, conspire, confederate, and agree, together and with each other, to commit offenses against the United States, to wit, violations of Title 18, United States Code, Sections 545, 1001 and 2315.

2. It was a part and an object of the conspiracy that ERIC PROKOPI, the defendant, and others known and unknown, would and did knowingly and willfully, and with intent to defraud the United States, smuggle, and clandestinely introduce and attempt to smuggle and attempt to clandestinely introduce into the United States merchandise which should have been invoiced, and make out and pass, and attempt to pass, through the customhouse, a forged and fraudulent invoice, and other document and paper; and would and did fraudulently and knowingly

import and bring into the United States, merchandise contrary to law, and would and did receive, conceal, buy, sell, and facilitate in any manner the transportation, concealment, and sale of such merchandise after importation, knowing the same to have been imported and brought into the United States contrary to law.

3. It was further a part and an object of the conspiracy that ERIC PROKOPI, the defendant, and others known and unknown, in a matter within the jurisdiction of the executive, legislative, and judicial branch of the Government of the United States, would and did knowingly and willfully falsify, conceal, and cover up by any trick, scheme, and device a material fact, and make a materially false, fictitious, and fraudulent statement and representation, and make and use a false writing and document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry.

4. It was further a part and an object of the conspiracy and ERIC PROKOPI, the defendant, and others known and unknown, would and did knowingly and willfully receive, possess, conceal, store, barter, sell, and dispose of goods, wares, and merchandise, securities, and money of the value of \$5,000 and more, which had crossed a State and United States boundary after being stolen, unlawfully converted, and taken, knowing the same to have been stolen, unlawfully converted, and taken.

Overt Acts

5. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On numerous occasions between March 2012 and June 2012, the defendant, sent price lists to vendors regarding the potential sale of a stolen *Tyrannosaurus bataar* skeleton in his possession.

b. In or around April 2010, PROKOPI directed another individual to make misstatements on customs forms ultimately submitted to United States Customs and Border Protection concerning the transport of a *Microraptor* fossil.

c. In or around December of 2011, PROKOPI attempted to sell the fossilized remains of an *Oviraptor*

Mongoliensis to another individual.

(Title 18, United States Code, Section 371.)

COUNT TWO

6. Between January 2012 and May 2012, in the Southern District of New York and elsewhere, ERIC PROKOPI, the defendant, knowingly and willfully, and with intent to defraud the United States, smuggled, and clandestinely introduced and attempted to smuggle and attempted to clandestinely introduce into the United States merchandise which should have been invoiced, and made out and passed, and attempted to pass, through the customhouse, a forged and fraudulent invoice, and other document and paper; and fraudulently and knowingly imported and brought into the United States, merchandise contrary to law, and received, concealed, bought, sold, and facilitated in any manner the transportation, concealment, and sale of such merchandise after importation, knowing the same to have been imported and brought into the United States contrary to law, to wit, PROKOPI caused the mislabeling of customs forms relating to the fossilized remains of a *Tyrannosaurus bataar* skeleton, allowing the skeleton to enter into the United States.

(Title 18, United States Code, Section 545.)

COUNT THREE

7. Between January 2012 and May 2012, in the Southern District of New York and elsewhere, ERIC PROKOPI, the defendant, knowingly and willfully received, possessed, concealed, stored, bartered, sold, and disposed of goods, wares, and merchandise, securities, and money of the value of \$5,000 and more, which had crossed a State and United States boundary after being stolen, unlawfully converted, and taken, knowing the same to have been stolen, unlawfully converted, and taken, to wit, PROKOPI sold a *Tyrannosaurus bataar* skeleton to a buyer in Manhattan, knowing the same to have been stolen from Mongolia.

(Title 18, United States Code, Section 2315.)

The bases for deponent's knowledge and the foregoing charges are, in part, as follows:

8. I am a Special Agent with the Department of Homeland Security, Homeland Security Investigations ("HSI"). I have received specialized training and possess experience in the

enforcement of federal laws concerning rare natural and culturally important artifacts. I have participated in numerous federal investigations, either as a case agent/officer or in various support roles, including investigations involving the unlawful transport, possession, and sale of natural and culturally important artifacts. Because this Complaint is being submitted for the limited purpose of establishing probable cause, it does not include all of the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

THE DEFENDANT

9. Based on the information provided herein, I respectfully submit that there is probable cause to believe that ERIC PROKOPI, the defendant, has engaged in a scheme to unlawfully import the fossilized remains of numerous dinosaurs into the United States. PROKOPI owns a business in Florida called "Everything Earth" and has also owned a business known as "Florida Fossils." Among other things, PROKOPI has bought and sold whole and partial dinosaur skeletons.

10. I have reviewed the website of ERIC PROKOPI, the defendant, and his business, www.everything-earth.com, at various points during the investigation. On the website, PROKOPI has described himself as a "commercial paleontologist."

11. I have reviewed numerous customs forms dating back to 2007 in which ERIC PROKOPI, the defendant, accepts shipments on behalf of his business, earlier named "Florida Fossils" and currently named "Everything Earth." Most recently, including from 2010 to the present, Everything Earth has listed a specific address (the "Address") in Florida as its headquarters.

12. Based on the information provided herein, between 2010 and 2012, ERIC PROKOPI, the defendant, procured dinosaur fossils in Mongolia and unlawfully transported them to the United States, in violation of Mongolian law and with the knowledge that they were stolen. He then sold or attempted to sell them to other individuals. PROKOPI also bought dinosaur fossils from individuals in other countries and, in importing the fossils, caused misrepresentations to be made to United States Customs. Among the dinosaurs unlawfully procured, transported, sold and/or negotiated by PROKOPI were:

a. A *Tyrannosaurus bataar* skeleton stolen from Mongolia and sold at auction in Manhattan in or around May 2012 for \$1,052,500.

b. A *Saurolophus angustirostris* skeleton stolen from Mongolia and sold to the I.M. Chait auctionhouse in or around May 2012 for approximately \$75,000.

c. A *Microraptor* skeleton purchased from an individual in China and unlawfully brought into the United States by PROKOPI in 2010.

d. *Gallimimus* and *Oviraptor* whole or partial skeletons as well as *Tyrannosaurus bataar* parts.

BACKGROUND

A. The Dinosaurs

13. Over the course of this investigation, I have reviewed several articles about dinosaurs, including several published in scientific journals. I have also attended training regarding the protection of cultural heritage and preventing illicit trafficking staged by the Department of Homeland Security in conjunction with the Smithsonian Institute and the Department of State Cultural Heritage Center. From this training, and from my review of these articles, I have learned the following:

a. *Tyrannosaurus bataar* ("Bataar"), also known as "Tarbosaurus," is a dinosaur native to Mongolia that lived during the late Cretaceous period, approximately 70 million years ago. Bataar fossils were first discovered in 1946, during a joint Soviet-Mongolian expedition to the Gobi Desert in the Ömnögovi Province of Mongolia.

b. Since the Soviet-Mongolian Gobi Desert expeditions in the 1940s there have been several additional expeditions, all of which have recovered Bataar fossils from the Gobi Desert.

c. Entire Bataar fossils have only been recovered from a small area in the Gobi Desert known as the Nemegt Basin or Nemegt Formation located in Mongolia. Only small fractional pieces of Bataar fossils have been located in neighboring countries.

d. Due to the specific soil composition of the Nemegt Formation, Bataar fossils uncovered from that Formation have a particularized coloring.

e. *Microraptor* is a genus of small, lightly built, flying dinosaurs that also lived during the Cretaceous period.

f. *Oviraptor mongoliensis* (the "Oviraptor"), also known as *Rinchenia mongoliensis*, is a species of dinosaur that also lived during the late Cretaceous period. Its species name derives from its remains having been found only in Mongolia.

g. *Saurolophus angustirostris* (the "Hadro") is a species of dinosaur from the family Hadrosauridae. The Hadro lived during the late Cretaceous period, approximately 68 million years ago. Like the Bataar, Hadro fossils have only been found in the Nemegt region of Mongolia.

B. Mongolian Law

14. I have reviewed a declaration (the "Mongolian Law Declaration") by the Legal Advisor to the President of Mongolia ("Legal Advisor-1"). From my review of this declaration, I have learned the following:

a. Legal Advisor-1 received his law degree from Mongolian State University, in Ulaanbataar, Mongolia, in 1998, and an LL.M. degree from Harvard Law School in 2008.

b. In preparing for the Declaration, Legal Advisor-1 consulted with several Mongolian officials, including a Minister for Culture, Sports and Tourism; a Minister of Justice; the President of the Mongolian Paleontological Center; a Senior Inspector of Cultural Inspections and General Authority of Professional Inspection; a Senior Customs Official, Mongolian Customs General Authority, Center of Emergent Control and Diagnostics; and an Investigator with the National Investigation Department.

c. In preparing for the Declaration, Legal Advisor-1 researched Mongolian law related to the topic of fossil removal from Mongolian soil, including the Mongolian Constitution of 1924; Mongolian Rules to Protect Antiquities (1924); Mongolian Criminal Law (1926); Mongolian Rules

Concerning Smuggling (1929); People's Republic of Mongolia Constitution of 1940; Mongolian Criminal Law (1986); Mongolian Constitution of 1992; Mongolian Law on Protection of Cultural Heritage; Mongolian Criminal Code Article 175, Smuggling Goods; Law of Mongolia on Business Licenses; Mongolian Ministry of Education, Culture and Science, Annex 1 to Decree No. 222, The Regulation on Conducting Archeological and Paleontological Exploration, Excavation and Research Works in the Territory of Mongolia; Mongolian Supreme Court Interpretation Decree No. 24, 2003; and UNESCO Convention for Protection of World Cultural and Natural Heritage.

d. Since as early as 1924, the Government of Mongolia has prohibited the personal or non-state ownership of items of cultural significance, such as dinosaur remains.

e. Article Three, Section One of the People's Republic of Mongolia Constitution of 1924, specifically states

[b]ecause/since all lands and resources within their subsoil, forests, water and the natural resources within them, as well as the culture and characteristics of Mongolia which have been in possession of the people since ancient times do meet the customs of the present state and its people, all assets and resources mentioned above shall be under the possession of the people, thus making private property of them prohibited.

f. In 1940, the Mongolian government enacted the 1940 People's Republic of Mongolia Constitution. Article 5 of the 1940 People's Republic of Mongolia Constitution restated the same principle contained within Article 3, Section 1 of the 1924 People's Republic of Mongolia Constitution, that being "all lands and resources within them and their subsoil . . . and the resources within them . . . are the property of the state, in other words, the asset of the people."

g. Article 10 of the 1960 People's Republic of Mongolia Constitution, once again restated the same principles contained within Article 3, Section 1 of the 1924 Constitution and Article 5 of the 1940 Constitution, namely, that "all lands and resources within them and their subsoil . . . and the resources within them . . . are the property of the state, in other words, the asset of the people."

h. More recently, in 1992, the Mongolian Government enacted the current Constitution of Mongolia which provides, in Article 7, that "Historical, cultural, scientific and intellectual heritages of the Mongolian People shall be under State protection."

i. Since at least 1924, Mongolian law has characterized dinosaur fossils as property of the Government of Mongolia.

j. Article One of the 1924 Mongolian Rules to Protect the Antiquities states that "all antique items and relics of the past found within the territory of Mongolia shall be owned by Mongolia." "Antiques and relics" are further defined in Article Two, Section Five of the 1924 Mongolian Rules to Protect the Antiquities as "[p]aleonthological items such as remnants of ancient plants and animals as well as archeological findings that ought to be preserved in museums."

k. Article 9 of the 1924 Mongolian Rules to Protect the Antiquities further provides "one-of-the-kind rare items are prohibited to be transported abroad." A violation of Article 9 is punishable by a criminal penalty pursuant to Article 11 of 1924 Mongolian Rules to Protect the Antiquities.

l. Pursuant to Article 3.1.8 of the Mongolian Law on Cultural Heritage, fossils and animal imprints are defined as "historical and cultural valuable objects."

m. Article 13.1 of the 2001 Mongolian Law on Cultural Heritage specifically provides that "[t]he territory and land bowels where historically, culturally and scientifically significant objects exist shall be under state protection and any such findings shall be a state property."

n. Article 13.2 of the Law on Cultural Heritage provides that any discoveries of culturally and scientifically significant objects must be registered with the local and national governments of Mongolia within one year of their discovery.

o. Article 16.3 of the Law on Cultural Heritage provides that "[i]t is prohibited to transfer the ownership rights of the exclusively valuable historical and cultural valuable object to foreign citizen or stateless person through selling, presenting and inheriting.

p. Article 20.4 of the Law on Cultural Heritage mandates that in situations where "historical and cultural[ly] valuable objects are illegally sent abroad [outside of Mongolia] or the object allowed to . . . cross[] the national [Mongolian] border" the Government of Mongolia must take all steps necessary to ensure the return of the object to Mongolia.

q. Mongolian law has further protected the Mongolian Government's ownership interest in dinosaur fossils since as early as 1924 by criminalizing the illegal smuggling of such objects out of Mongolia.

r. In 1926, Chapter 15, Article 114 of the Criminal Law of the People's Republic of Mongolia was enacted, providing that "[v]iolators of rules to guard and protect antiquities and relics preserved since ancient times and/or representing them, shall be sentenced up to one year in jail."

s. Furthermore, in 1929, the Mongolian Government enacted two laws which provided specific penalties for violations of restrictions on state owned property. More specifically, Chapter 2, Article 63 of the Criminal Law of the People's Republic of Mongolia provides "[t]hieving, embezzling, and misappropriating in any other forms of state and public property shall be sentenced up to seven years in prison." Additionally, Chapter 14, Article 118 of the Criminal Law of the People's Republic of Mongolia provides that "[v]iolators of rules to guard and protect antiquities preserved since ancient times . . . shall be sentenced to pay up to 600 tugrugs."

t. In 1986, the Government of Mongolia again enacted criminal laws that established penalties for the illegal export of dinosaur fossils. Specifically, Article 172.2 of the Criminal Code of Mongolia provided that "illegal transportation of . . . rare ancient animals, plants, valuable items of the museum, historically and archeologically significant items, through the Mongolian border shall be penalized by confiscation of the items, and imprisonment of up to five years in prison or be fined the amount between 100,000 tugrugs and 500,000 tugrugs."

u. In 2008, the Mongolia Government amended Article 175 of the Criminal Code of Mongolia to provide that:

illegal transportation through the state
border restricted goods, rare animals, . . .
minerals and natural elements shall be

punishable by either confiscation of property or a fine equal to 51 to 150 times the amount of minimum salary or 251 to 500 hours of forced labor or incarceration for a term of 3 to 6 months.

v. Article 175.2 of the 2002 Criminal Code of the Law of Mongolia, which specifies the criminal penalty imposed for violations of the anti-smuggling laws, provides that:

in case historical or cultural valuable objects, museum exhibits, unique, rare and valuable findings of ancient animals and plants, archeological and paleontological findings and artifacts are smuggled through the national border, the assets shall be seized and the [persons] shall be imposed a fine . . . or imprisoned for two to five years.

w. The Mongolian Supreme Court issued an interpretation decree, number 24,2003, stating that the smuggling of any properties listed in the Law on Cultural Heritage shall be a crime regardless of the number, size and monetary value of the item.

x. The Mongolian laws against the smuggling or export of dinosaur fossils have been enforced. Specifically, Legal Advisor-1 has found the following examples of enforcement in Mongolian Official Records:

i. On February 17-18, 2003, the Execution Agency of Mongolia seized fossils of a dinosaur's head, seven separated fossils of a giant dinosaur's head, and 27 small dinosaur fossils.

ii. On June 7, 2003, the General Authority of Investigation seized one Gallilimus skeleton, two pieces of a Saurolophus head, four dinosaur eggs found in the Gobi Desert, and the inside of one dinosaur's egg.

iii. In 2004, the government seized eight Gobipteryx egg fossils.

iv. On June 21, 2005, the government seized two pieces of the upper jaw of a Gadozavrid, five pieces of a

Tarbosaurus jaw, and one piece of a Protoceratops, via a Mongolian district court action.

v. In 2005 or 2006, the government seized two mammoths' cuspid fossils and one dinosaur egg.

vi. As recently as July 13, 2012, the Darkhan-Uul Province Police Department seized one mammoth's incomplete cuspid.

y. Based in part on the above, Legal Advisor-1 opined within the Mongolian Law Declaration that Mongolian law dating back nearly nine decades establishes that fossils discovered or excavated in Mongolia are the property of Mongolia and there has been no legal mechanism to export them since that time, absent an official decree from the Mongolian government.

PROKOPI'S UNLAWFUL SALE OF A TYRANNOSAURUS BATAAR

15. Based on the information provided herein, I respectfully submit that there is probable cause to believe that ERIC PROKOPI, the defendant, brought a stolen *Tyrannosaurus bataar* skeleton into the United States, causing false statements to be submitted to United States Customs in the process, and sold it in Manhattan.

16. I have reviewed materials, including an online posting and a catalog, published in advance of the "Heritage Auction," an auction staged by Texas based Heritage Auctions, Inc. ("Heritage"). From my review of these materials, I have learned the following:

a. Page 92 of the Heritage Auctions May 20, 2012 Natural History Auction Catalog listed, as lot 49315, one *Tyrannosaurus bataar* skeleton (the "Display Piece") valued at between \$950,000 and \$1,500,000. The Display Piece was described in the catalog as follows:

SUPERB TYRANNOSAURUS SKELETON
T.bataar . . . ruled the food chain of the
ancient floodplains that are today's Gobi
Desert . . . This is an incredible, complete
skeleton, painstakingly excavated and
prepared . . . The body is 75% complete and
the skull 80% . . . Measuring 24 feet in
length and standing 8 feet high, it is a

stupendous; museum-quality specimen of one of the most emblematic dinosaurs ever to have stalked this Earth.

17. From my review of Heritage materials published after the auction, and a video of the auction, I have learned that the Display Piece was sold in Manhattan for \$1,052,500 on or about May 20, 2012, contingent upon the outcome of any court proceedings brought on behalf of the Government of Mongolia.

18. I have read the written opinions of several paleontological experts who specialize in Bataars who examined the Display Piece on June 5, 2012 at the request of President Elbegdorj. From my review of these opinions, I have learned the following:

a. All of the paleontologists agree that Bataars are native to Mongolia and all concluded that the Display Piece almost certainly came from the Nemegt Basin in Mongolia.

b. Specifically, one expert ("Paleontologist-1") concluded that the Display Piece "was collected from Mongolia, probably in the Nemegt Basin." Another expert ("Paleontologist-2") concluded that "Tarbosaurus bataar skeletons have only ever been recovered from the Nemegt basin and adjacent regions in Mongolia, which . . . indicates that . . . [the Display Piece] was collected in Mongolia." Moreover, a third expert ("Paleontologist-3") indicated that "[t]he general appearance of the . . . [Display Piece] and the color of the bones indicate to us that this is the skull and skeleton of a *Tarbosaurus bataar* (also known as *Tyrannosaurus bataar*) from the Nemegt Formation of Mongolia."

c. Paleontologist-3 stated that the Display Piece "was unearthed [between] the period 1995-2005 from the Western Gobi Desert in Mongolia."

19. I have reviewed a customs summons (the "Summons") issued by HSI and served upon Heritage on or about May 22, 2012. The customs summons requested:

Any and all records relating to Lot 49315m "SUPERB TYRANNOSAURUS SKELETON", offered during the 2012 May 20 Natural History & Fine Minerals Signature Auction - New York #6068. To include customs entry, detailed

provenance, name of the owner, seller, consignor, shipper, importer, exporter, all international and domestic shipping records, name and location of purchaser.

(Emphasis added.)

20. I have reviewed materials (the "Bataar Documentation") sent by counsel for Heritage to HSI in response to the Summons. From my review of these materials, I have learned the following:

a. The Bataar Documentation included:

- i. a one-page U.S. Department of Homeland Security ("DHS"), Bureau of Customs and Border Protection ("CBP"), Entry/Immediate Delivery form (the "CBP Entry Form");
- ii. a one-page DHS, CBP, Customs Bond Form;
- iii. a one-page commercial invoice from Chris Moore Fossils to Eric Prokopi ("Commercial Invoice");
- iv. a one-page UPS Air Waybill; and
- v. a two-page UPS Supply Chain Solutions Invoice.

b. According to the CBP Entry Form, the Display Piece was imported from Great Britain to Gainesville, Florida on or about March 27, 2010. Florida Fossils is listed on the Customs Entry Form as the ultimate consignee. At the time, Florida Fossils was owned by ERIC PROKOPI, the defendant.

c. The CBP Entry Form lists the value of the contents within it as \$15,000.

d. The commercial invoice lists the contents as containing, "2 large rough (unprepared) fossil reptile heads;" "6 boxes of broken fossil bones;" "3 rough (unprepared) fossil reptiles;" "1 fossil lizard;" "3 rough (unprepared) fossil reptiles;" and "1 fossil reptile skull."

21. On or about June 18, 2012, the United States Attorney's Office for the Southern District of New York filed a forfeiture complaint for the Display Piece. Subsequently, counsel for ERIC PROKOPI, the defendant, in the forfeiture

action provided documents pertaining to the Display Piece to the United States Attorney's Office. From my review of these documents, I have learned the following:

a. The documents attached to the letter include copies of the importation paperwork for two other shipments of goods into the United States, dated March 22, 2007 and August 29, 2007.

b. The importation paperwork for the March 22, 2007 shipment lists the items being imported as "fossil specimens" with a declared value of \$12,000. On the CBP Entry Form for this shipment, the Country of Origin is listed as Japan.

c. In the documents provided by PROKOPI's counsel, the UPS Air Waybill for the March 22, 2007 shipment, states that the Country of Origin for the shipment is Mongolia. However, included in the importation paperwork is an "Additional Information" form which states that on March 29, 2007 UPS obtained information from PROKOPI that the country of origin for the March 22, 2007 shipment is Japan.

d. The importation paperwork for the August 29, 2007 shipment listed the items being imported as "fossils" with a declared value of \$42,000. On the CBP Entry Form for this shipment, the Country of Origin is listed as Japan.

22. I have reviewed CBP records pertaining to the March 22, 2007 and August 29, 2007 shipments. From my review of these documents, I have learned the following:

a. According to CBP records for the March 22, 2007 shipment, the country of origin on the Commercial Invoice submitted to CBP was changed from Mongolia to Japan. The Commercial Invoice has a handwritten notation stating that the new country information is correct "per Eric Prokopi."

23. I have read an article published on the website "Live Science" dated June 22, 2012. From my review of the article, I have learned the following:

a. ERIC PROKOPI, the defendant, is quoted as stating that he prepared the Display Piece for auction at considerable expense.

b. The article states that the website

www.facebook.com contains a post, dated June 3, 2012, for a charity auction to support a Florida school. It describes a donation from PROKOPI and his wife and business partner as an "80 million year-old *Tyrannosaurus* rib section found in Omnogov, Mongolia."

24. On or about September 5, 2012, I obtained a search warrant for the contents of an AOL Account ERIC PROKOPI, the defendant, has used to conduct his business. Several of the e-mails concerned *Tyrannosaurus bataar*. From my review of these e-mails, I have learned the following:

a. On January 20, 2012, ERIC PROKOPI, the defendant, e-mailed a known regular participant in the fossil trade ("Trader-1"). PROKOPI informed Trader-1 that the "Container arrived today" and that everything is "ok," and that the "Tarbo skeleton prep will be finished, but no way I can get the mounting done."

b. On January 28, 2012, PROKOPI e-mailed Trader-1 a copy of a picture of dinosaur bones laid out on a floor. I have seen the Display Piece in person during this investigation. The bones in the picture appear to me to be identical to those in the Display Piece.

c. On April 15, 2012, PROKOPI e-mailed another individual ("Individual-1") five pictures of what appear to me clearly to be dinosaur bones in the ground and atop plastic bags. Among those dinosaur bones is a skull that appears to be a *Tyrannosaurus* skull. "Here is the info on the tarbos," the e-mail said. The e-mail went on to list a pricing schedule for the "small one" and the "large one," with the price for the "small one" ranging from \$600,000 "as-is" to \$700,000 prepped and mounted and the price for the large one ranging from \$1.3 million as-is with a "prepped skull" to \$1.45 million "prepped and mounted." PROKOPI also wrote, "Here are photos of the small one in situ."

d. On March 21, 2012, PROKOPI e-mailed another individual ("Individual-2") pictures of dinosaur bones, stating, "Here are photos of the Mongol fossils."

e. On April 19, 2012, PROKOPI e-mailed an individual ("Individual-3") stating, "I did not hear from [third-party] about the tarbos. Don't worry, if you bring me a customer I will give you a commission." Within the same e-mail thread, Individual-3 informed PROKOPI that a museum might be

willing to purchase "the juvenile and the big one." The subject line of the e-mail thread is "tarbosaurus."

f. On May 24, 2012, PROKOPI e-mailed an individual who works for Heritage ("Individual-4"), stating, among other things, that

Although I am sure that everything with this specimen is legal as far back as I can tell, I do know just about all of the people involved in the business of central asian fossils, and could offer ideas and help to make permanent changes that would nearly eliminate the black market and benefit all sides. If the mongolian president is indeed only interested in getting to the bottom of the sources, and wants to look good for his people, I think I can help him do that if he is willing to cooperate and compromise. If he only wants to take the skeleton and try to put an end to the black market, he will have a fight and will only drive the black market deeper underground.

25. I have spoken to an Assistant United States Attorney with the United States Attorney's Office for the Southern District of New York, who in turn has spoken to a representative of government officials in Mongolia. From this conversation, I have learned that Mongolian officials have located and interviewed a Mongolian citizen ("Witness-1"). Witness-1 stated that in or around 2009, he accompanied ERIC PROKOPI, the defendant, to an excavation site, and witnessed PROKOPI taking physically taking bones out of the ground. During the interview, Witness-1 stated that he took pictures of PROKOPI in Mongolia.

26. I have viewed the pictures taken by Witness-1. I have also seen pictures of ERIC PROKOPI, the defendant, including pictures posted on his website. In Witness-1's pictures, an individual who appears to be PROKOPI is standing with others in what appears to be the desert. In one picture, he is holding a clipboard and looking at the ground.

PROKOPI'S UNLAWFUL SALE OF A SAUROLOPHUS ANGUSTIROSTRIS
("HADRO")

27. Based on the information provided herein, I respectfully submit that there is probable cause to believe that ERIC PROKOPI, the defendant, brought a stolen *Saurolophus angustirostris* (the "Hadro") skeleton into the United States and sold it to an auction house.

28. I have reviewed a listing on the I.M. Chait auction website, www.chait.com, for a *Saurolophus angustirostris* (the "Hadro"). The listing reads:

SUPERB CRESTED HADROSAUR SKELETON
Saurolophus angustirostris
Late Cretaceous
Central Asia
. . . the Asian species represented here was
the largest known at nearly 40 feet long,
making it as large as a modern bus.

29. On or about July 3, 2012, at the request of the Government, a paleontological expert with the American Museum of Natural History ("Paleontologist-4") viewed the listing for the Hadro skeleton on the Chait Gallery website, www.chait.com. I have read Paleontologist-4's written opinion concerning what he saw. Paleontologist-4 concluded that the Hadro skeleton is "a very well preserved skeleton of *Saurolophus angustirostris*." Paleontologist-4 also stated that the Hadro "is only known from the Late Cretaceous (about 68 million years ago) Nemegt Formation of southern Mongolia."

30. I have reviewed several e-mails between ERIC PROKOPI, the defendant, and others concerning the Hadro. From my review of these e-mails, I have learned the following:

a. An April 4, 2012 e-mail from PROKOPI to an individual affiliated with the Chait Gallery (the "Auctioneer") describes a Hadro. The description includes skull and head-to-tail measurements, and mentions "nemegt formation, Mongolia."

b. Another e-mail from PROKOPI to the Auctioneer, dated April 24, 2012, lists shipping details for a dinosaur sent to the Auctioneer via UPS. Among other details, PROKOPI states that the tail pieces are mounted to a steel plate, and that he (PROKOPI) has "put printed instructions in the crate."

c. Another e-mail from PROKOPI to the Auctioneer, dated February 11, 2012, lists terms of an agreement in which PROKOPI sold 50 percent ownership of a Hadrosaur skeleton to the Auctioneer for \$50,000.

d. On or about May 30, 2012, after the Hadro failed to sell at a May 6, 2012 sale, Chait Gallery purchased the remaining fifty percent interest in the Hadro from PROKOPI for approximately \$25,000.

PROKOPI'S UNLAWFUL TRANSPORT OF A *MICRORAPTOR*

31. Based on the information provided herein, I respectfully submit that there is probable cause to believe that ERIC PROKOPI, the defendant, conspired to bring a *Microraptor* fossil from China into the country, and in doing so, directed an individual to make misrepresentations to CBP.

32. I have reviewed documents concerning a dinosaur fossil administratively forfeited by the Department of Homeland Security ("DHS") by 2010. From my review of these documents, I have learned the following:

a. On or about May 21, 2010, ERIC PROKOPI, the defendant, attempted to import a *Microraptor* skeleton into the United States from China. UPS served as the customs broker for that shipment. The records contain a UPS tracking number.

b. The *Microraptor* was seized on or about that day by DHS, and administrative forfeiture proceedings were commenced by DHS. PROKOPI was notified of these proceedings.

c. The *Microraptor* was initially described as "sample of craft rock" on the relevant invoice, but subsequently a pen and ink change (the "Pen and Ink Change") was made to the description on said invoice so that it read that the fossil was a "fossil replica."

d. According to UPS records, the Pen and Ink Change was made on April 21, 2010 because "Eric Prokopi called and said contents were a replica fossil mounted in rock with a value of \$100.00 USD."

e. After the *Microraptor* was seized, PROKOPI wrote a letter to DHS. In the letter, PROKOPI complained that he had "\$1,000 invested in this item." He also claimed that the

individual who had sent over the shipment did not speak English well, and that there had been a mix-up.

33. From my review of the e-mails of ERIC PROKOPI, the defendant, I have learned the following:

a. PROKOPI exchanged e-mails with an individual ("Individual-5") concerning a shipment in April 2010. On April 19, 2010, Individual-5 e-mailed PROKOPI complaining that he had received \$9,988 instead of \$10,000 and asking whether his commission had been lost. Individual-5 also sent PROKOPI a UPS tracking number. That tracking number matches the tracking number in DHS's records of the *Microraptor* shipment.

b. On April 21, 2010, PROKOPI e-mailed Individual-5, stating that he had received a message from UPS saying that the customer needed to provide an accurate description and value. PROKOPI wrote, "What did you write on the shipment? I need to know what to tell them." Individual-5 stated that he had written that he was sending a "sample of craft rock" and that had listed \$30 as the value.

c. On April 26, 2010, Individual-5 e-mailed PROKOPI and stated that he had spoken to UPS, which had asked for more detail with respect to the shipment's name and detail. Individual-5 wrote, "Call and say 'replica, made by rocks, used for study, \$200 for value' or something else, if better."

d. On April 29, 2010, Individual-5 and PROKOPI both wrote that they were concerned that the shipment had been held up. "I am worried that they will take the item because you declared the value much too low," PROKOPI wrote. "There is no reason to do that, because there is no tax on fossils."

e. Individual-5 later asked, "Do you want me to hold the other 8 ones for you?"

f. Individual-5 later wrote, "I will send this to you. So please tell me how much I can declare the value."

g. PROKOPI responded that Individual-5 should state, "Geological specimen for collection. Value \$1000."

h. Individual-5 later wrote, within the same e-mail thread, "Selling fossils like this is not allowed in China."

PROKOPI'S UNLAWFUL DEALINGS IN OTHER FOSSILIZED
DINOSAURS AND DINOSAUR PARTS

34. Based on the information provided herein, I respectfully submit that there is probable cause to believe that ERIC PROKOPI, the defendant, conspired to bring other stolen Mongolian dinosaur fossils into the country, including other *Tyrannosaurus bataar* parts, a *Gallimimus* fossil, and at least one *Oviraptor*.

35. From my review of the e-mails of ERIC PROKOPI, the defendant, I have learned the following:

a. On July 28, 2010, PROKOPI e-mailed Trader-1, saying, "Ok, send one as soon as you can so we can get this going (this is in reference to a check for the container). Let me know when to expect it. I asked about the position of the gallimimus. . . but he says they were found a few meters apart but they don't really remember the position. I guess you can just make up a drawing. The locality was near Bugin Tsav." I am aware that that Bugin Tsav is a region of the Gobi Desert in Mongolia. I have also learned, elsewhere over the course of this investigation, that *Gallimimus* is a type of dinosaur found in the Gobi Desert.

b. At another point on July 28, 2010, PROKOPI e-mailed Trader-1, saying, "They didn't ask for a specific amount, just told me the more I can send the more they can buy from the diggers. He said they are finding gallimimus skeletons, a couple of tarbo skulls, and a lot of the usual protos, oviraptors, etc."

c. On June 13, 2012, PROKOPI sent an e-mail advertising a new Hadro for sale, noting that the new dinosaur was bigger than the one he sold through the Chait Gallery.

d. At numerous points in the e-mails I reviewed, PROKOPI referred to an individual in Mongolia ("Mongolian Individual-1") as "the Mongol" or "the Mongolian." PROKOPI also engaged in several e-mail exchanges with Mongolian Individual-1 concerning dinosaur fossils.

e. For example, on January 24, 2011, PROKOPI e-mailed what appeared to be an inventory list to Mongolian Individual-1. Among the items listed were "Box 11: Tarbo side feet, head parts" and "Box 12: Hadro tail, back, rib."

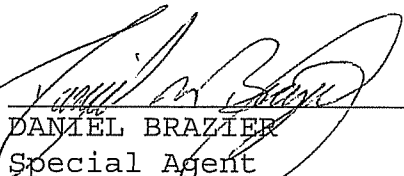
f. On or about December 19, 2011, ERIC PROKOPI, the defendant, and Individual-4 reached an agreement concerning the sale of a "raptor," for which Individual-4 would split a commission with Heritage.

g. On December 12, 2011, PROKOPI described the raptor as an "*Oviraptor Mongoliensis*," with a skull at least 95 percent complete, and with an overall skeleton at least 88 percent complete.

PROKOPI AND MONGOLIA

36. I have spoken to an Assistant United States Attorney with the United States Attorney's Office for the Southern District of New York, who in turn has spoken to a representative of government officials in Mongolia. From this conversation, I have learned that government officials in Mongolia have confirmed that ERIC PROKOPI, the defendant, was never granted permission to remove the remains of a Bataar or any other dinosaur from Mongolia. From that same source, I have learned that that according to Mongolian travel records, PROKOPI traveled to Mongolia in 2008, 2009, 2011 and most recently in 2012, after the Government initiated a forfeiture action against the Display Piece.

WHEREFORE, deponent prays that a warrant be issued for the arrest of ERIC PROKOPI, the defendant, and that he be arrested and imprisoned, or bailed, as the case may be.



DANIEL BRAZIER
Special Agent
United States Department of
Homeland Security
Homeland Security Investigations

Sworn to before me this
October 5, 2012



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

OCT 05 2012

FRANK MAAS
United States Magistrate Judge
Southern District of New York