

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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DAVID L. de CSEPEL))
4702 Fulton Avenue, Apt. 209))
Sherman Oaks, California 91423;))
ANGELA MARIA HERZOG))
via F.Cambiano 82))
00186 Rome, Italy;)	Civil No.
JULIA ALICE HERZOG))
via F.Cambiano 82))
00186 Rome, Italy;))
))
Plaintiffs,))
vs.))
REPUBLIC OF HUNGARY, a foreign state;))
THE HUNGARIAN NATIONAL))
GALLERY))
Buda Palace, Buildings A, B, C, D,))
Szent György tér 2,))
1014 Budapest, Hungary;))
THE MUSEUM OF FINE ARTS))
Dózsa György út 41,))
1146 Budapest Pf. 463,))
H-1396 Budapest 62, Hungary;))
THE MUSEUM OF APPLIED ARTS))
Üllői út 33-37,))
1091 Budapest, Hungary; and))
THE BUDAPEST UNIVERSITY OF))
TECHNOLOGY AND ECONOMICS))
Múgyetem rkp. 3-9,))
H-1111 Budapest, Hungary;))
Defendants.))
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COMPLAINT

Plaintiffs David L. de Csepel, Angela Maria Herzog and Julia Alice Herzog (together, "Plaintiffs"), by their attorneys, hereby allege as follows:

I. INTRODUCTION

1. This action seeks the recovery of valuable artworks belonging to the family of Baron Mór Lipót Herzog, a well-known Jewish Hungarian collector of art, who had amassed a magnificent collection of more than two thousand paintings, sculptures and other artworks (the "Herzog Collection") prior to his death in 1934. The Herzog Collection included masterworks by El Greco, Francisco de Zurbarán, and Lucas Cranach the Elder, among others. Plaintiffs are members of the Herzog family and heirs to the Herzog Collection (the "Herzog Heirs"). The artworks comprising the Herzog Collection were among the valuable art and other objects deliberately looted and seized by Hungary, a war-time ally of Nazi Germany, as part of a brutal campaign of genocide directed at Hungarian Jews during World War II ("WWII") that ultimately resulted in the deaths of more than half a million Hungarian Jews.

2. Today, at least forty works of art from the Herzog Collection are known to be in the wrongful possession of the Museum of Fine Arts (Szépművészeti Múzeum), Budapest, the Hungarian National Gallery, and the Museum of Applied Arts, Budapest (together, the "Museums") as well as the Budapest University of Technology and Economics (the "University"), each an agency or instrumentality of the Republic of Hungary. The Museums derive significant revenue from these valuable works, which are among the most prominent pieces in their collections. The Museums and the University (or other Hungarian state-owned agencies and instrumentalities) may also hold other works from the Herzog Collection.

3. The Hungarian government, the Museums and the University have sought to hide behind fascist and Communist-era laws and acts and a subsequent Cold War agreement with the U.S. in an attempt to justify their continued possession of, and failure to retribute, most of the Herzog Collection to the Herzog Heirs. However, Hungary, the Museums and the University

would never have obtained possession of the Herzog Collection had it not been for the deliberately orchestrated, malicious campaign of genocide perpetrated by Hungary during WWII. Moreover, as Hungary itself recognized for decades, none of the laws, acts or the post-war agreement relied on by Hungary ever voided the Herzog Heirs' ownership rights to the Herzog Collection. Because Hungary, the Museums and the University never acquired more than a custodial interest in the works they have so desperately sought to retain, there is simply no excuse for their failure to return the Herzog Collection in the face of a clear demand by the Herzog Heirs.

4. Hungary and the Museums have actively sought to promote Hungarian culture and tourism in the United States, including through a year-long festival of Hungarian art and culture conducted at venues throughout the United States, including in this District, in 2009. Conspicuously absent from these festivities were the tainted works of art from the Herzog Collection over which Defendants maintain their wrongful possession.

5. Hungary and its state-owned Museums and University have unlawfully profited from the fruits of Hungary's illegal acts of genocide for more than sixty years. The Herzog Heirs are entitled to full and complete accounting and restitution of all of the pieces of the Herzog Collection that are currently in the possession of Hungary, the Museums and the University, as well as to any additional pieces from the Herzog Collection that may subsequently be returned to Hungary from Russia, or elsewhere.

II. THE PARTIES

6. Plaintiff DAVID L. DE CSEPEL is a United States citizen who resides in Los Angeles, California. DAVID L. DE CSEPEL is a grandson of the late Erzsébet Weiss de Csepel, the daughter of Baron Mór Lipót Herzog, and, together with Plaintiffs ANGELA MARIA

HERZOG and JULIA ALICE HERZOG, has authority to represent all of the Herzog Heirs in this action.

7. Plaintiff ANGELA MARIA HERZOG is an Italian citizen who resides in Rome, Italy. ANGELA MARIA HERZOG is a daughter of András Herzog, the son of Baron Mór Lipót Herzog, and, together with Plaintiffs DAVID L. DE CSEPEL and JULIA ALICE HERZOG, has authority to represent all of the Herzog Heirs in this action.

8. Plaintiff JULIA ALICE HERZOG is an Italian citizen who resides in Rome, Italy. JULIA ALICE HERZOG is a daughter of András Herzog, the son of Baron Mór Lipót Herzog and, together with Plaintiffs DAVID L. DE CSEPEL and ANGELA MARIA HERZOG, has authority to represent all of the Herzog Heirs in this action.

9. Defendant REPUBLIC OF HUNGARY is a foreign state as defined in 28 U.S.C. § 1603(a).

10. Defendant MUSEUM OF FINE ARTS, BUDAPEST (the “Museum of Fine Arts”) is an art museum located in Budapest, Hungary, with an address at Dózsa György út 41, 1146 Budapest Pf. 463, H-1396 Budapest 62. Upon information and belief, the Museum of Fine Arts opened in 1906, and originally featured international works of art (including all periods of European art) as well as Hungarian art. When the Hungarian National Gallery was established in 1957, the collections were gradually divided and the Hungarian art was transferred to the Hungarian National Gallery.

11. Defendant HUNGARIAN NATIONAL GALLERY (the “Hungarian National Gallery”) is an art museum located in Budapest, Hungary with an address at Buda Palace, Buildings A, B, C, D, Szent György tér 2, 1014 Budapest, Hungary. Upon information and belief, the Hungarian National Gallery was established in 1957 for the collection and display of

Hungarian art alone and received a number of works by Hungarian artists, including pieces of the Herzog Collection, from the Museum of Fine Arts.

12. Defendant MUSEUM OF APPLIED ARTS, BUDAPEST (the “Museum of Applied Arts”) is an art museum located in Budapest, Hungary, with an address at Üllői út 33-37, 1091 Budapest, Hungary. Upon information and belief, the Museum of Applied Arts was established in 1872 for the collection and display of applied art.

13. Defendant BUDAPEST UNIVERSITY OF TECHNOLOGY AND ECONOMICS (the “Budapest Technological University”) is a university located in Budapest, Hungary, with an address at Műegyetem rkp. 3-9, H-1111 Budapest, Hungary.

14. Upon information and belief, at all relevant times, the Museums and the University were agencies or instrumentalities of the Republic of Hungary, as defined in 28 U.S.C. § 1603(b), owned and operated by the Republic of Hungary (or, during the Communist era, the People’s Republic of Hungary).

III. THE ARTWORKS AT ISSUE

15. Upon information and belief, at least forty pieces of art from the Herzog Collection are currently in the possession of the Museums and the University, each an agency or instrumentality of the Republic of Hungary.

16. Upon information and belief, at least the following artworks from the Herzog Collection belonging to Plaintiffs are currently in the possession, custody or control of Defendant Museum of Fine Arts:

- (i) BARTHEL BRUYN THE ELDER, Portrait of Petrus von Clapis, half-length, in a blue coat with fur collar, tempera on panel, arched on the top, 37 x 26 cm, together with its original frame 41 x 32.5 cm (SzM. 50.754).

- (ii) ALONSO CANO, Portrait of Don Balthasar Carlos (1629-1646), Standing full-length, in a Landscape, oil on canvas, 144 x 109 cm (SzM. 51.2828).
- (iii) CAMILLE COROT, Portrait of a Woman (Lady with a Marguerite (Daisy)), oil on canvas, 78 x 57.7 cm (SzM. 501 B).
- (iv) GUSTAVE COURBET, Le Château de Blonay (neige), (The Chateau of Blonay (snow)), oil on canvas, 50 x 60 cm (SzM. 534 B).
- (v) GUSTAVE COURBET, The Spring (Artist and Model), oil on canvas, 65.5 x 81.5 cm (SzM. 458 B).
- (vi) LUCAS CRANACH THE ELDER, The Annunciation to Saint Joachim, oil on panel, 61 x 51 cm (SzM. 62.3).
- (vii) DOMENIKOS THEOTOKOPOULOS, EL GRECO, Saint Andrew, oil on canvas, 70 x 53.5 cm (SzM. 51.800).
- (viii) DOMENIKOS THEOTOKOPOULOS, EL GRECO, The Espolio, also known as El Expolio, The Disrobing of Christ, oil on canvas, 127 x 161 cm (SzM. 50.747).
- (ix) DOMENIKOS THEOTOKOPOULOS, EL GRECO, The Agony in the Garden, also known as Christ on the Mount of Olives, oil on canvas, 170x 112.5 cm (SzM. 51.2827).
- (x) PSEUDO PIER FRANCESCO FIORENTINO, The Madonna and Child, with the Infant Saint John, Saint Catherine and Angels, oil on panel, transferred to canvas, 100 x 61 cm (SzM. 50.752).
- (xi) DOMENIKOS THEOTOKOPOULOS, EL GRECO, The Holy Family with Saint Anne, oil on canvas, 138 x 103.5 cm (SzM. 50.755).

- (xii) POLIDORO DA LANCIANO, Christ and the Woman Taken in Adultery, oil on canvas, 163 x 205.5 c.m (SzM. 51.808).
- (xiii) JOHN OPIE, Portrait of a Lady, half-length, in a White Bonnet, oil on canvas, 73.4 x 63 cm (SzM. 63.15).
- (xiv) EUGENIO LUCAS PADILLA (EUGENIO VELÁZQUEZ), The Revolution (8 May 1808), oil on canvas, 59.5 x 79 cm (SzM. 480 B).
- (xv) GIOVANNI PEDRINI, called GIAMPIETRO, Christ Carrying the Cross, oil on panel, 62 x 49 cm (SzM. 58.2).
- (xvi) BERNARDINO LICINIO DA PORDENONE, Portrait of a Lady, half-length, in a Black Robe, Holding a Book, oil on panel, 82 x 72 cm (SzM. 51.802).
- (xvii) AUGUSTIN THEODULE RIBOT, Still Life with a Chicken, a Bottle of Wine, Asparagus, Artichoke, Tomatoes and other Vegetables, on a Table, oil on canvas, 60 x 74 cm (SzM. 457 B).
- (xviii) GIOVANNI SANTI, The Dead Christ with Two Angels, also known as Christ the Dolorous, Christ with a Fly, oil on canvas, 66.5 x 54.5 cm (SzM. 51.799).
- (xix) SIR ANTHONY VAN DYCK, Portrait of Margaret of Lothringen, oil on canvas, 117 x 87 cm (SzM. 50.750).
- (xx) ALVISE VIVARINI or GIOVANNI BATTISTA DA UDINE, Madonna and Child with Saint John the Baptist and a male Saint, oil on wood panel, 83 x 74 cm (SzM. 50.748).
- (xxi) FRANCISCO DE ZURBARÁN, Saint Andrew, oil on canvas, 146.7 x 61 cm (SzM. 50.749).

- (xxii) A Painted Stucco Bust Representing Prudence, After JACOPO DELLA QUERCIA, painted stucco, 79.5 or 43.5 cm (SzM. Unknown).
- (xxiii) A Terracotta Group of The Virgin and Child, Italian, 15th century, terracotta, 70 cm high (SzM. Unknown).
- (xxiv) Figure of Saint Agnes, the SCHWARZWALD SCULPTOR, German, circa 1430, painted limewood sculpture, 82 cm high (SzM. L. 4044).
- (xxv) Figure of St. Catherine of Alexandria, German, early 16th century, unpainted limewood sculpture, inscribed *Herzog 9* on the reverse, 124 cm high (SzM. 67.4).
- (xxvi) Figure of Saint Barbara, German, early 16th century, unpainted limewood sculpture, inscribed *Herzog 9* on the reverse, 123 cm high (SzM. L. 4046).
- (xxvii) The Virgin of The Annunciation, Austrian, circa 1400, limestone, 90 cm high (SzM. Unknown).
- (xxviii) A Carved Bust of a Prophet, South German, probably Workshop of Erasmus Grasser, circa 1500, 57.5 cm high (SzM. Unknown).
- (xxvix) The Virgin and Child, Florentine, circa 1540, relief, unknown material, 64 x 39 cm (SzM. Unknown).
- (xxx) The Nativity, Anonymous, 14th century, inscribed *Herzog 6* on the reverse, marble relief, 41 x 24 cm (SzM. Unknown).
- (xxxix) A Greek Marble Hero Relief, showing the Deceased at a Funerary Banquet, Greek 4th century B.C., Votive (ex voto) bas relief marble, 36.9 x .5.4 cm (SzM. 50.960).
- (xxxii) One Hundred and Seventy-Seven Items of Ancient Gold Jewels and Coins, including rings, pendants, buckles, small etui, needles and other fragments (SzM. Unknown).

(xxxiii) Four Ancient Egyptian Sculptures, Statues And Steles (SzM. Unknown).

(xxxiv) JÓZSEF BORSOS, Girls with Garlands of Flowers (The Three Graces), oil on canvas, 168 x 138 cm (SzM. 75.257).

(xxxv) Four ancient silver coins (SzM. Unknown)

(xxxvi) Seventy-Eight Pieces: Ancient Cameos, Intaglios, Other Carved Stones and Semi-Precious Stones (SzM. Unknown).

17. Upon information and belief, at least the following artworks from the Herzog Collection belonging to Plaintiffs are currently in the possession, custody or control of Defendant Hungarian National Gallery:

- (i) JÓZSEF BORSOS, Portrait of the Architect Mátyás Zitterbarth, oil on canvas, 134 x 113.5 c.m. (50.517).
- (ii) KÁROLY BROCKY, Bacchanale, oil on canvas, 46 x 46 cm (50.515).
- (iii) MIHÁLY MUNKÁCSY, “La Visite” (The Afternoon Visit), oil on canvas, 85.5 x 114 cm.
- (iv) MIHÁLY MUNKÁCSY, In the Studio, oil on wood panel, a sketch, 49.7 x 60.8 cm.
- (v) LAJOS DEÁK ÉBNER, Fair in Szolnok City, oil on canvas, 51.5 x 101.5 cm.

18. Upon information and belief, the following artworks from the Herzog Collection belonging to Plaintiffs are currently in the possession, custody or control of Defendant Museum of Applied Arts:

- (i) “Meuron à Paris” Musical Clock, 18th century (furniture department)
- (ii) SEBASTIANUS HANN Jewelry Bowl (54.1637)

19. Upon information and belief, the following artworks from the Herzog Collection belonging to Plaintiffs are currently in the possession, custody or control of Defendant Budapest Technological University:

(i) KÁROLY FERENCZY, Landscape with a Fenced Enclosure (Houses in Fernezely with Sheepfold) 1912, oil on canvas, 95 x 115 cm

20. Upon information and belief, the value of the artworks from the Herzog Collection presently in the unlawful possession of the Museum of Fine Arts, the Hungarian National Gallery, the Museum of Applied Arts and the Budapest Technological University exceeds \$100 million.

IV. JURISDICTION & VENUE

21. This Court possesses subject matter and personal jurisdiction over the Republic of Hungary, the Museums and the University pursuant to 28 U.S.C. § 1330 because these are claims as to which no defendant is entitled to immunity under 28 U.S.C. § 1605-1607 (the Foreign Sovereign Immunities Act (“FSIA”)). Process will be served on Defendants pursuant to 28 U.S.C. § 1608.

22. Venue is proper in this District under 28 U.S.C. § 1391(f)(3) and (f)(4).

A. Defendants Are Not Immune From Suit Pursuant to 28 U.S.C. § 1605(a)(3)

23. Under 28 U.S.C. §§ 1603(a) and 1605(a)(3), a foreign state (including an agency or instrumentality thereof) shall not be immune from suit in any case “in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is ... owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States.”

24. Acts of genocide violate international law.

25. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide (which both Hungary and the U.S. have ratified) confirmed that “genocide, whether committed in time of peace or in time of war, is a crime under international law.” Under international law, genocide includes the taking of property from a persecuted group.

26. War crimes and crimes against humanity violate international law.

27. Under the Nuremberg Charter, “war crimes” were defined to include “plunder of public or private property.” Likewise, “crimes against humanity” were defined to include “persecutions on political, racial or religious grounds in the execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”

28. Hungary and representatives from one or more of the Museums directed and actively engaged in the genocide that was perpetuated against the Hungarian Jews, including the Herzog family and its property, and specifically the Herzog Collection.

29. This action concerns rights in property – specifically, hundreds of artworks (the Herzog Collection) – that were wrongfully taken from the Herzog Heirs in violation of international law by the Hungarian government and its Nazi collaborators with the aid and support of the Museums. This seizure of art owned by Jews, including the Herzog Collection, constituted an act or acts of genocide against the Hungarian Jews in general and the Herzog Heirs in particular. It also constituted a war crime and crime against humanity.

30. The seizure of the Herzog Collection violated customary international and treaty law actionable in this Court as federal common law and the law of nations as evidenced by various sources including but not limited to: the 1815 Convention of Paris, the Hague Convention of 1907 (which Hungary has ratified), the Declaration of London concerning Forced

Transfers of Property in Enemy-Controlled Territory, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, and the Nuremberg Charter. The seizure of the Herzog Collection also violated international law because it was discriminatory and without just compensation.

31. Pursuant to the 1947 Treaty of Peace between Hungary and the Allies (the “1947 Peace Treaty”), Hungary received only a custodial interest in art that had been looted during the war and subsequently returned to Hungary by the Allies, including the Herzog Collection. Ownership rights to the Herzog Collection remained at all times with the Herzog Heirs.

32. Upon information and belief, the Museums are each engaged in commercial activity in and with the United States and have specifically used the artwork from the Herzog Collection for commercial activities directed at U.S. citizens, including citizens of the District of Columbia. Among other things:

(a) The Museums have each loaned artworks to museums located in the United States, including to the museums located within the District of Columbia, and have received reciprocal benefits thereby.

(b) The Museums each encourage U.S. tourism and are visited by thousands of U.S. citizens each year, including citizens of the District of Columbia, and accept fees from these visitors. Admission tickets can be purchased through the internet from the United States using <http://www.jegymester.hu> (a Hungarian equivalent of Ticketmaster.com), which accepts payment by U.S. credit card for these purchases.

(c) The artwork that is the subject of this action is among the main attractions of the Museums. For example, the Museum of Fine Arts has published several museum guidebooks prominently featuring paintings from the Herzog Collection. One guidebook, *The*

Museum of Fine Arts Budapest, Szilvia Bodnár (ed.), 3rd revised edition (2006) is published in English and features the following artworks at issue in this action: El Greco's "The Agony in the Garden" (cover and ill. 98); Francisco de Zurbarán's "Saint Andrew" (ill. 102). Another guidebook, *Régi spanyol festmények* (Spanish Old Masters), Nyerges Éva (ed.) (1996), contains illustrations of the following paintings also at issue in this action: Alonso Cano's "Portrait of Don Balthasar Carlos" (cover and p. 88); El Greco's "El Expolio" (p. 57), "Saint Andrew" (p. 59), and "The Agony in the Garden" (p. 62). These guidebooks as well as other items featuring artwork from the Herzog Collection are sold to visitors from the U.S. at the museum gift shop, which accepts payment by U.S. credit card for the purchases. Upon information and belief, the Hungarian National Gallery and the Museum of Applied Arts likewise publish guidebooks that are sold to visitors from the U.S. at the museum gift shop, which accepts payment by U.S. credit card for the purchases.

(d) The Museums have profited from the Herzog Collection in the United States, by authoring, promoting, and distributing books and other publications exploiting the paintings. For example, a book entitled *Treasures of Venice: Paintings from the Museum of Fine Arts, Budapest*, George Keyes, István Barkóczi, Jane Satkowski (eds.), Harry N. Abrams clothbound edition (1995), featuring Polidoro da Lanciano's "Christ and the Woman Taken in Adultery," was published by a U.S. publisher to accompany an exhibition organized by the Museum of Fine Arts that traveled to three U.S. cities, and is available for sale in the United States through <http://www.amazon.com> and other retailers, who accept payment by U.S. credit card for such purchases.

(e) The Museums accept orders for printed reproductions of paintings in the Museums' collections directly from residents of the United States, and ships those prints directly to the United States.

(f) The Museums engage in and receive the benefit of tourist advertising in the United States conducted by the Hungarian National Tourist Office, a marketing organization fully owned and controlled by the Republic of Hungary which has an office in New York, New York. The Hungarian National Tourist Office maintains a website in English, accessible from the United States (<http://www.hungary.com>) which includes, *inter alia*, information concerning exhibits at the Museums and downloadable brochures, at least one of which promotes works comprising part of the Herzog Collection, describing the permanent collection of Spanish Masters at the Museum of Fine Arts including works by El Greco as "second only to the Prado in Madrid" and promoting the works of Munkácsy and others available at the Hungarian National Gallery.

33. Upon information and belief, the University is also engaged in commercial activity in and with the United States. Among other things:

(a) The University participates in student exchange programs with universities located in the United States, including in the District of Columbia; and

(b) The University participates in the Fulbright Program sponsored by the U.S. Department of State's Bureau of Educational and Cultural Affairs, including by accepting students from the District of Columbia.

34. The Republic of Hungary is also engaged in commercial activities in and with the United States, and in the District of Columbia in particular. Among other things:

(a) The Republic of Hungary maintains an Embassy in the District of Columbia, as well as consulates in New York and Los Angeles, each of which are involved in and host events serving to promote Hungarian cultural and business interests in the United States.

(b) The Hungarian National Tourist Office, an organization owned and controlled by the Republic of Hungary with an office in New York, New York, conducts advertising campaigns promoting tourism to Hungary throughout the United States, including in the District of Columbia. As described above, the website of the Hungarian National Tourist Office expressly promotes tourism by referring to the works of art (including works belonging to the Herzog Collection) that hang in the Museums. Upon information and belief, Hungary receives millions of dollars in revenue each year from U.S. tourists.

(c) Upon information and belief, the Hungarian Ministry of Education and Culture conducted a large festival of Hungarian music, art, film, food, and literature entitled “Extremely Hungary” that took place at venues in the District of Columbia and New York throughout 2009, including the National Gallery of Art.

B. Alternatively, Defendants Are Not Immune From Suit Pursuant to 28 U.S.C. § 1605(a)(2)

35. Under 28 U.S.C. §§ 1603(a) and 1605(a)(2), a foreign state (including an agency or instrumentality thereof) shall not be immune from suit in any case “in which the action is based upon ... an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States.”

36. In the years immediately following WWII, the Museums and the University, acting at Hungary’s direction, became custodians of artworks that had either been looted during the war and stored by Hungary, or that were returned to Hungary from abroad. Hungary, the

Museums and the University knew at all relevant times that the Herzog Heirs owned the Herzog Collection and that certain of the Herzog Heirs resided in the United States. Hungary, the Museums and the University arranged with representatives of the Herzog Heirs to retain possession of most of the Herzog Collection, including the art belonging to the U.S. Herzog Heirs, so that the works could continue to be displayed in Hungary. The post-war relationship between Hungary, the Museums, the University and the Herzog Heirs with respect to the Herzog Collection was in essence a bailment, whereby Defendants retained possession of the art and displayed it for financial gain in the Museums and the University. Defendants' continued possession of the Herzog Collection and failure to reconstitute the Herzog Collection following demand by the U.S. Herzog Heirs caused a direct effect in the United States.

37. Hungary and the Museums are engaged in commercial activity and receive thousands of dollars in revenues each year from U.S. visitors to the Museums and from the sale of books and publications featuring images of the artworks from the Herzog Collection. Hungary and the Museums intentionally direct these publications containing images from the Herzog Collection into the United States, and use the Herzog Collection to promote tourism. The University is also engaged in commercial activity, including by accepting students from the United States.

V. BACKGROUND FACTS

A. The Herzog Family and Collection

38. Baron Mór Lipót Herzog (1869-1934) was a passionate Jewish art collector in pre-war Hungary. Over his lifetime, he assembled the Herzog Collection, one of Europe's great private collections of art, and the largest in Hungary. The collection, which was kept in the family home on Andrassy út (Budapest's Champs-Élysées), featured Old Masters mixed with

Renaissance furniture, tapestries, sculptures, and decorative arts, altogether approximately 2,500 pieces at its peak. The paintings included works by El Greco, Lucas Cranach the Elder, van Dyck, Gustave Courbet, Velázquez, and the Hungarian painter Mihály Munkácsy as well as more modern art by Corot, Gustave Courbet, and by Impressionists such as Renoir and Monet.

39. After Baron Herzog died in 1934, the collection remained intact with his wife, the Baroness, until her death in 1940. After her death, the collection was inherited by and divided among their three children, Erzsébet (Elizabeth), István (Steven) and András (Andrew).

40. In 1920, Erzsébet Herzog married Alfonz Weiss de Csepel, the son of Baron Manfréd Weiss de Csepel, then Hungary's leading industrialist, whose conglomerate included the Manfréd Weiss Works, the largest machine factory in Hungary, with its main plant on the island of Csepel, just outside Budapest. The factory started out by producing canned foods, agricultural machinery and other metal products and then branched out into munitions during World War I ("WWI"), employing some 100,000 workers. The heirs of Erzsébet Herzog have assigned all of their right, title and interest in and to the Herzog Collection to Plaintiff de Csepel.

41. András Herzog married, and in 1939 was divorced from, Maria Izabella Parravicini. Hungary sent András Herzog into forced labor in 1942 and he died on the Eastern Front in 1943. His share of the Herzog Collection fell to his two daughters, Plaintiffs Angela Maria and Julia Alice Herzog, who fled Hungary following their father's deportation and death.

42. Hungary attempted to send István Herzog to the infamous Auschwitz death camp. He escaped after his former sister-in-law's husband, Count István Bethlen Jr. (who was not Jewish), arranged for him to be put in a safe house under the protection of the Spanish Embassy. He died in 1966, leaving his estate to his two sons, Stephan and Péter Herzog, and his second wife, Mária Bertalanffy. Mária Bertalanffy in turn left her interest to the male children of

Erzsébet Herzog, Gabriel de Csepel and John de Csepel. Stephan Herzog, Péter Herzog and the heirs of Mária Bertalanffy have assigned all of their right, title, and interest in and to the Herzog Collection to Plaintiff de Csepel.

B. Hungary Voluntarily Allies With Nazi Germany

43. Hungary was on the losing side of WWI. After the war, a short-lived socialist-communist coalition came to power, followed by a conservative-nationalist coalition, which imposed authoritarian rule and undid most of the democratic reforms promulgated in Hungary immediately after WWI. In 1920, punitive peace terms were forced upon Hungary, resulting in the loss of 66 percent of Hungary's prewar territory. During the 1930s, Hungary increasingly fell under the influence of Germany. At the same time, Hungarian Jews were blamed for the country's military failures, as well as for its socioeconomic imbalances because Jews at the time were disproportionately concentrated in the professions and other high-earning sectors of the economy. Nationalists and fascists saw opportunities for upward mobility and economic redistribution by restricting the role of Jews in the economic and cultural life of Hungary.

44. Beginning in May 1938, the Hungarian government enacted a series of anti-Semitic laws designed to exclude Jews from meaningful roles in Hungarian society. The first two anti-Semitic laws focused primarily on restricting the economic situation of the Jews, including by forcing the reduction of the proportion of Jews in professional positions and in financial, commercial and industrial enterprises employing more than ten persons.

45. In 1939, the Hungarian government established a forced-labor service requirement for young men of arms-bearing age. By 1941, Jews were excluded from the armed forces and were compelled to perform labor service.

46. On November 20, 1940, Hungary became the first country to adhere to the Tripartite Pact signed by Germany, Italy and Japan on September 27, 1940, and joined the Axis Powers.

47. The third major Hungarian anti-Semitic law, passed in 1941, was modeled on Germany's Nuremberg Laws and, among other things, prohibited sexual relations between Jews and non-Jews. The law defined as a Jew any person who had at least two grandparents born as Jews, and anyone who was a member of the Jewish denomination regardless of ancestry.

48. When Nazi Germany invaded the Soviet Union in June 1941, as an Axis ally, Hungary also declared war on the Soviet Union and sent an army to fight alongside the Germans.

49. During 1941 and 1942, thousands of Jews were deported by the Hungarian government to territories under German control where they were mistreated and massacred. In January 1942, Hungarian military and gendarme units murdered hundreds of Jews in the territories that were attached to Hungary in the previous year.

50. At the same time, Hungary continued to send able-bodied Jewish men into forced labor, deploying them on war-related construction work under the command of Hungarian military officers without adequate shelter, food or medical care. By March 1944, at least 27,000 Hungarian Jewish forced laborers – including András Herzog – had perished under these brutal conditions.

51. As the tide of war turned against Germany, the already dire situation for the Hungarian Jews became even worse. In March 1944, Adolf Hitler sent German troops into Hungary to ensure Hungary's loyalty and to assist the Hungarian government in resisting the advancing Russian army.

52. The Hungarian government worked hand-in-hand with the infamous SS commander Adolf Eichmann in organizing large-scale deportations of Hungarian Jews to German death camps. The Hungarian gendarmerie rounded up the Jews and forced them onto the deportation trains, most of which were bound for Auschwitz. Between mid-May and mid-July 1944, Hungarian authorities deported over 430,000 Jews, comprising more than fifty percent of the entire Hungarian Jewish population. By the time the Russians had overrun Hungary in early 1945, more than 500,000 of Hungary's prewar population of 825,000 Jews were dead.

C. The Looting Of The Herzog Collection

53. The looting of Jewish property, including cultural property, was an integral part of the Holocaust, as established at the Nuremberg trials of the major German war criminals.

54. The Hungarian government, including the Hungarian state police, authorized, fully supported and carried out a program of wholesale plunder of Jewish property, stripping anyone "of Jewish origin" of their assets.

55. In April 1944, pursuant to Decree 1600/1944, Jews (and non-Jews in possession of Jewish valuables) were required to register all of their property and valuables with a value in excess of 10,000 pengő. Based on the registrations, safe deposit boxes rented by Jews were sealed, and the Hungarian government inventoried the contents of safes and confiscated cash, jewelry, and other valuables belonging to Jews.

56. The Hungarian government was particularly concerned with the retention of artistic treasures belonging to Jews. In May 1944, the Hungarian government issued an additional Decree 1830/1944 ("On the Recording and Safeguarding of Impounded Art Objects of Jews") which established a so-called Commission for the Recording and Safeguarding of

Impounded Art Objects of Jews (the “Commission for Art Objects”), and required Hungarian Jews promptly to register all art objects in their possession, including paintings, statues, carvings, folk art, and decorative art objects (such as carpets, furniture, glass, ceramic or porcelain objects, etc.) archeological and prehistoric finds, as well as mineral collections, or book and archive valuables. These art treasures were sequestered and collected centrally by the Commission for Art Objects, which was headed by Dénes Csánky, who was then the director of the Museum of Fine Arts and a member of the Hungarian National Museum Council.

57. Pursuant to further decrees issued by the Hungarian government (Decree 6163/1944 VII. res. BM and Decree 1610/1944 ME), Hungarian Jews were forcibly removed from their homes and their assets seized.

58. In 1943, the Herzog family attempted to save their art works from damage and confiscation by hiding the bulk of it in the cellar of one of the family’s factories at Budafok. Upon information and belief, Dénes Csánky, in his capacity as director of the Museum of Fine Arts, assisted the family in packing and hiding the artworks.

59. Despite their efforts to prevent the looting of the art, the Hungarian government and their Nazis collaborators discovered the hiding place. Upon information and belief, Dénes Csánky was present at the opening of the chests containing the artworks and inventoried the treasures as they emerged. An unsigned article published in the May 23, 1944 issue of the anti-Semitic, pro-Nazi newspaper “Magyarság” quoted Csánky as saying that “[t]he Mór Herzog collection contains treasures the artistic value of which exceeds that of any similar collection in the country. The former banker obtained these Goya, Greco and other pictures from his fellow-Jew Marcell Nemes, and after his death his immediate relatives inherited them. If the state now

takes over these treasures, the Museum of Fine Arts will become a collection ranking just behind Madrid.”

60. Upon information and belief, the artworks seized at Budafok were taken directly to Adolf Eichmann’s headquarters at the Majestic Hotel in Budapest for his inspection. Eichmann selected many of the best pieces of the Herzog Collection, first displaying his “trophies” at Svábhegy, near his Gestapo headquarters, and then shipped them off to Germany. The remainder was handed over by the Hungarian government to the Museum of Fine Arts for safekeeping.

61. Upon information and belief, other pieces of the Herzog Collection were seized by the Hungarian government from the homes, safe deposit vaults, and other properties of the Herzog family. Upon information and belief, the Hungarian government sent some of these works abroad to Germany or elsewhere while others remained in Hungary, including in the custody of the Museum of Fine Arts.

62. Upon information and belief, in late 1944, with the Red Army quickly approaching Budapest, portions of the Herzog Collection were evacuated by the Hungarian government to the territory of the Third Reich.

D. The Post-War Fate of the Herzog Collection

63. Fearing for their lives, and stripped of their property and livelihoods, the Herzog family was forced to flee Hungary or face extermination. In May 1944, Erzsébet Weiss de Csepel (née Herzog) and her children, together with other members of the Herzog and Weiss de Csepel families, fled Hungary. Erzsébet and her children successfully reached Portugal in June 1944 and eventually made it to the United States in 1946, where they were later reunited with her

husband Alfonz Weiss de Csepel, who was held for a period of time as a hostage by the Third Reich. Erzsébet became a U.S. citizen on June 23, 1952.

64. The family of the deceased András Herzog, including Plaintiffs Julia Alice Herzog and Maria Angela Herzog, escaped to Argentina and eventually settled in Italy. Some members of the family of István Herzog remained in Hungary, while others escaped and settled in Switzerland.

65. Those members of the Herzog family who returned to Hungary immediately following WWII found their homes destroyed and their possessions gone. Most remained only briefly in Hungary, returning abroad to begin new lives.

66. Upon information and belief, following the defeat of Germany in May 1945, some of the works from the Herzog Collection were seized by the Red Army in German territory and shipped to Russia, where they vanished along with trainloads of valuables stripped from Hungary's eradicated Jewish population.

67. Upon information and belief, other works belonging to the Herzog Collection were recovered by the Western Allied forces after the war and shipped back to Hungary by train in the late 1940s. The role of Hungary with respect to those artworks was solely that of temporary custodian, or trustee. Upon information and belief, the Hungarian government placed many of the artworks with the Museum of Fine Arts for safekeeping.

68. Upon information and belief, still other works belonging to the Herzog Collection remained in Hungary for the duration of the war, including in the custody of the Museums.

69. The 1947 Peace Treaty among Hungary and the Allies confirmed that Hungary was to act solely as a custodian or trustee of looted or heirless property under no circumstances could Hungary itself possess any right, title or interest in that property.

70. While the Hungarian government purported to return some pieces of the Herzog Collection to representatives of the Herzog Heirs in the years immediately following WWII, those “returns” were largely on paper or short-lived, and the vast majority of the Herzog Collection remained in the possession of Hungary, the Museums and the University.

71. While recognizing the ownership rights of the Herzog Heirs to the Herzog Collection, Hungary, the Museums and the University largely avoided turning over physical possession of most of the Herzog Collection during the post-war years, including by seeking to extract substantial fees to cover the cost of recovering the artwork from the countries to which it had been dispersed during the war and denying export permits to the Herzog Heirs living abroad, including in the United States.

72. While some pieces of the Herzog Collection were physically returned to representatives of the Herzog Heirs, Hungarian governmental officials repeatedly harassed and threatened those representatives, including by bringing false smuggling allegations, until they agreed to allow the artworks to be “returned” to the Museums or the University for safekeeping.

73. Ultimately, the Herzog Heirs, had no choice but to agree to allow most of the works belonging to the Herzog Collection to remain in the physical possession of the Museums and the University, particularly the Museum of Fine Arts, as custodians so that they could be retained and displayed in Hungary as the Museums and the Hungarian government so desperately desired. In 1948, the Museum of Fine Arts exhibited certain pieces of the Herzog Collection with labels expressly acknowledging that they were “on deposit.”

74. During negotiations of a 1973 treaty with the United States, the Hungarian representative expressly confirmed that art (including the Herzog Collection) had never been nationalized by Hungary.

**E. The Herzog Heirs' Demand For Possession
Of The Herzog Collection And Defendants' Refusal**

75. Beginning in the late 1940s and until a wave of reform swept the East Bloc countries, including Hungary, in the fall of 1989, resulting in the collapse of Communism in those countries, little information could be obtained about the state of the Herzog Collection and other properties that had been looted during WWII and subsequently deposited with the Museums and the University. For this reason, and because the family had fled Hungary to avoid extermination, the Herzog Heirs were unaware of what had become of their property.

76. Even if the Herzog Heirs had been able to learn of the fate of their property, during the Communist era, a Holocaust survivor living in the United States or elsewhere who wanted to make a claim in Hungary to recover possession of property held by a custodian in Hungary could not expect a fair hearing from a dictatorship that had no independent judiciary and which recognized only extremely limited individual property rights.

77. With the opening of Hungary to the West in 1989, the Herzog Heirs started making inquiries and learned that many pieces of the Herzog Collection were being openly exhibited, hanging on the walls of the Hungarian National Gallery and the Museum of Fine Arts. The tags under the paintings identified them as "From the Herzog Collection."

78. Erzsébet Weiss de Csepel, then 89 years old, attempted negotiations with the Hungarian government to retrieve the art that belonged to her. She obtained only six paintings and a wood sculpture before her death in 1992 – all of them works attributed to little known artists. The identifiable masterworks remained in the Museum of Fine Arts and the Hungarian National Gallery.

79. Martha Nierenberg, the daughter of Erzsébet Weiss de Csepel, continued her mother's efforts to recover portions of the Herzog Collection, ultimately pursuing legal

proceedings in Hungary to recover her portion of the Herzog Collection. Other Herzog Heirs also participated in that proceeding. The Budapest Municipal Court initially recognized and acknowledged the Herzog Heirs' ownership rights in the paintings at issue, but in January 2008, as a result of proceedings that were not conducted in accordance with internationally recognized standards of due process or in accordance with international law, an appellate court reversed the lower court's decision ordering restitution and rejected the demand.

80. As the ultimate act of hypocrisy, while denying restitution to the Herzog Heirs, the Republic of Hungary has continued to actively pursue its own claims to Nazi-looted art and art "liberated" by the Soviets.

81. In 1992, Hungary established the Hungarian Committee for the Restitution of Cultural Property with a mandate to recover looted art in the former Soviet Union. The Committee sponsored the research and 1998 publication of a book, *Sacco di Budapest*, detailing cultural valuables believed to have been taken out of Hungary during WWII. That book includes works of art from the Herzog Collection.

82. The Hungarian government brought an action against the Montreal Museum of Fine Arts in Canada in 1998 and in 1999 recovered a painting by Giorgio Vasari, *The Wedding Feast at Cana*, which was looted from Hungary during the Holocaust and which had formed part of the collection of Defendant Museum of Fine Arts since the nineteenth century.

83. At the 1998 Washington Conference on Holocaust-Era Assets, where forty-four nations came together for the first time to discuss the persistent and problematic legacy of Nazi-looted art, the Hungarian delegation admitted that Hungary "took part in World War II as an ally of Germany" and that from March 1944 to April 1945 "[p]ersecution of Jews proliferated and the confiscation of Jewish property took place." (Washington Conference on Holocaust-Era Assets

(November 30-December 3, 1998) Proceedings 271 (Delegation Statement of Hungary) (J.D. Bindenagel ed., U.S. Gov't 1999). The Hungarian delegation further stated:

The Hungarian Government is fully committed to the restitution or compensation of Holocaust victims concerning cultural assets. For managing this complex task -- which includes scholarly research, political decision-making, bill drafting and negotiations ... [and] contacts with Holocaust survivors, etc. -- a state commissioner will be designated.

84. In the twelve years since the Washington Conference, however, Hungary never designated a commissioner for such purpose, and has not taken any other action to restitute cultural assets that remain in the wrongful possession of its Museums, including the Herzog Collection.

VI. THIS ACTION IS TIMELY

85. The looting of the Herzog Collection constituted acts of genocide and other violations of international law, for which no statute of limitations period applies.

86. The non-applicability of a statute of limitations to Plaintiffs' claims is confirmed by the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 754 U.N.T.S. 73 (November 26, 1968), to which Hungary is a signatory. By signing the Convention, Hungary voluntarily and intentionally waived any reliance on statutes of limitation regarding the Herzog Collection and is otherwise estopped from asserting any statute of limitation defense under Hungarian or other law.

87. Hungary, the Museums and the University never obtained ownership rights to the Herzog Collection, including those portions that were returned from abroad, following WWII.

Instead, the Museums' and the University's continued possession of the Herzog Collection constituted a bailment, for which the statute of limitations has not run.

88. Knowing that their behavior violated international law, and knowing that they did not have, and could not possess, good title to the looted Herzog Collection, and instead held the property merely as bailees, at no time since the end of WWII have Defendants made any reasonable attempt to restitute the Herzog Collection. Instead, Defendants hid behind the Iron Curtain, took advantage of the Herzog Heirs' inability to demand the return of their property, and profited from their unlawful possession of the Herzog Collection. Defendants' knowing conduct estops them from interposing any time bar defense to these claims.

89. In addition, no statute of limitations has begun to run on the causes of action asserted herein because Defendants' misconduct is continuing; Defendants have not made any reasonable attempt to restitute the Herzog Collection, to disgorge their illicit profits, or to otherwise compensate the Herzog Heirs. Defendants have continued to reap profits as a result of their unlawful actions and are therefore estopped from interposing any type of time bar defense to these claims.

90. To the extent that any statute of limitations period could be construed as applying to Plaintiffs' claims, this action is brought within the time limits of that statute of limitations, or any such statute has been equitably tolled.

91. Any statute of limitations applicable to Plaintiffs' claims was tolled during the pendency of WWII.

92. Any statute of limitations applicable to Plaintiffs' claims was also equitably tolled following WWII because Defendants' wrongful conduct, and extraordinary circumstances outside of Plaintiffs' control, prevented Plaintiffs from timely asserting a claim.

93. During the Communist era, the Herzog Heirs lacked access to records and information that could have enabled them to learn the fate of the Herzog Collection. Even if the Herzog Heirs had been able to obtain such information, the Herzog Heirs could not have obtained relief against Defendants in Hungary because there was no independent judiciary, Hungary did not recognize individual property rights, and because the Herzog Heirs feared reprisals against family members who had remained in Hungary.

94. The Herzog Heirs promptly commenced negotiations with the Hungarian government for the return of portions of the Herzog Collection following the collapse of Communism in 1989, and, in connection, commenced a lawsuit in Hungary. For years, Hungary actively misled the Herzog Heirs into believing that it accepted their ownership rights to the Herzog Collection, was giving the claims serious consideration, and repeatedly advised them that it would reach a favorable decision, at which time they could decide if any further action would be required. In reliance thereon, the Herzog Heirs refrained from filing a suit to recover possession of the Herzog Collection in the United States. It was only in January 2008 that Hungary issued its final decision that it would not honor its obligation to return the Herzog Collection to the Herzog Heirs. The 2008 decision of the Hungarian court made clear that any further demand by the Herzog Heirs for restitution of any portion of the Herzog Collection would be futile.

95. No Hungarian statute of limitations bars Plaintiffs' claims.

VII. CLAIMS

FIRST CLAIM FOR RELIEF

(BAILMENT)

96. Plaintiffs incorporate paragraphs 1 through 95 of the Complaint as if fully set forth herein.

97. When Hungary, the Museums and the University accepted possession of the Herzog Collection, they did so with the express knowledge that the Herzog Collection belonged to the Herzog Heirs.

98. Defendants at no time had more than a custodial interest in the Herzog Collection pursuant to applicable laws and post-war treaties, which required Hungary to safeguard the property for the benefit of its rightful owners.

99. Hungary nominally “returned” portions of the Herzog Collection that had been looted during WWII to the Herzog Heirs and their representatives. However, the Herzog Heirs and their representatives had no choice but to re-deliver possession, or to consent to Defendants’ retention of possession of those portions of the Herzog Collection.

100. Defendants’ possession or re-possession of any portion of the Herzog Collection following WWII constituted an express or implied-in-fact bailment contract for the benefit of the Plaintiffs.

101. Under the bailment contract, Hungary, the Museums and the University owed the Herzog Heirs a duty of care to protect the property and to return it to them. Defendants at all times understood that the Herzog Collection remained Plaintiffs’ property and that Plaintiffs retained the right to demand its return.

102. Defendants have received substantial financial benefits from their possession of the Herzog Collection that far exceed any costs they have expended in storing the Herzog Collection.

103. Plaintiffs presently own and have a right to possession of the Herzog Collection.

104. Plaintiffs demanded the return of portions of Herzog Collection and Defendants breached their duties by rejecting that demand in 2008. Any further demand would be futile.

105. Plaintiffs have been damaged by Defendants' breach of their bailment obligations and refusal to return their property and are entitled to restitution, or payment of their interest in the Herzog Collection, which interest is valued in excess of \$100 million and will be subject to proof at trial.

SECOND CLAIM FOR RELIEF

(CONVERSION)

106. Plaintiffs incorporate paragraphs 1 through 105 of the Complaint as if fully set forth herein.

107. By refusing to return the Herzog Collection to the Herzog Heirs in 2008 pursuant to the bailment relationship among the parties, Defendants knowingly converted the Herzog Collection.

108. To the extent that Defendants purported to convert or otherwise knowingly exercised ownership rights over the Herzog Collection that were inconsistent with the terms of the bailment relationship prior to 2008, Defendants fraudulently concealed any such conversion from Plaintiffs.

109. At no point did Plaintiffs or their predecessors consent to Defendants' exercise of ownership rights over the Herzog Collection.

110. Plaintiffs have been damaged by the conversion of their property and are entitled to restitution, or payment of their interest in the Herzog Collection, which interest is valued in excess of \$100 million and will be subject to proof at trial.

THIRD CLAIM FOR RELIEF

(CONSTRUCTIVE TRUST)

111. Plaintiffs incorporate paragraphs 1 through 110 of the Complaint as if fully set forth herein.

112. Defendants wrongfully obtained the Herzog Collection through violations of international law, duress and deceit. Defendants have continued to wrongfully detain the Herzog Collection despite the Herzog Heirs' demand for its return.

113. As a result, the Herzog Heirs are entitled to the imposition of a constructive trust on the works of art from the Herzog Collection that are currently in the possession of Defendants, obligating Defendants to return the works or to compensate them for their interest in the works, which interest is valued in excess of \$100 million and will be subject to proof at trial. In addition, the Herzog Heirs are entitled to an accounting of the works of art subject to the constructive trust.

FOURTH CLAIM FOR RELIEF

(ACCOUNTING)

114. Plaintiffs incorporate paragraphs 1 through 113 of the Complaint as if fully set forth herein.

115. Defendants have never accounted for the pieces of the Herzog Collection, which they have had in their possession for the last sixty years.

116. As a result of the bailment relationship created among the parties, Defendants had a fiduciary duty to return the Herzog Collection to the Herzog Heirs upon demand. Defendants have failed to fulfill that duty.

117. Only Defendants know the whereabouts of all of the pieces of the Herzog Collection that are currently within their possession, custody or control.

118. Plaintiffs have no adequate remedy at law.

119. The Herzog Heirs are entitled to an accounting of all works from the Herzog Collection that are currently in Defendants' possession, custody or control, or which may later come to be in their possession, custody or control, and all monies earned by Defendants therefrom.

FIFTH CLAIM FOR RELIEF

(DECLARATORY RELIEF)

120. Plaintiffs incorporate paragraphs 1 through 119 of the Complaint as if fully set forth herein.

121. An actual case or controversy has arisen between Plaintiffs and Defendants concerning the right to ownership and possession of the Herzog Collection.

122. Defendants have wrongfully detained the Herzog Collection and have refused to provide restitution to the Herzog Heirs.

123. Defendants contend that they are not required to restate the Herzog Collection to the Herzog Heirs because they acquired lawful ownership of the Herzog Collection by nationalization, adverse possession, statute of limitations, or agreement. Plaintiffs contend that Defendants never have obtained good title to any portion of the Herzog Collection because the original seizure of the artworks violated international law and the subsequent relationship among

Plaintiffs and Defendants was that of a bailment. Plaintiffs further contend that none of the laws or the agreement relied on by Defendants provided them with good title to the Herzog Collection. Thus, the issues in this case are ripe for declaratory relief.

124. Plaintiffs are entitled to a declaratory judgment declaring them to be the owners of the Herzog Collection and directing Defendants to return to them any works from the Herzog Collection that are now, or which may later come to be, in their possession, or to compensate them for their interest in the works, which interest is valued in excess of \$100 million and will be subject to proof at trial.

SIXTH CLAIM FOR RELIEF

(RESTITUTION BASED ON UNJUST ENRICHMENT)

125. Plaintiffs incorporate paragraphs 1 through 124 of the Complaint as if fully set forth herein.

126. As described above, Defendants have been unjustly and unlawfully enriched at the expense of the Herzog Heirs. Defendants obtained the Herzog Collection through violations of international law, duress and deceit, and have wrongfully withheld the artworks from the Herzog Heirs.

127. Plaintiffs have no adequate remedy at law.

128. As a result of Defendants' unjust enrichment, Plaintiffs are entitled to restitution of the Herzog Collection, or compensation for their interest in the Herzog Collection, which interest is valued in excess of \$100 million and will be subject to proof at trial.

V. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

A. On their First Claim for Relief: for an order directing Defendants to return to Plaintiffs the pieces of the Herzog Collection that are now, or come to be, in Defendants' possession, custody or control, or for compensation therefor in an amount to be proven at trial, but estimated in excess of \$100 million;

B. On their Second Claim for Relief: for an order directing Defendants to return to Plaintiffs the pieces of the Herzog Collection that are now, or come to be, in Defendants' possession, custody or control, or for compensation therefor in an amount to be proven at trial, but estimated in excess of \$100 million;

C. On their Third Claim for Relief: for an order declaring that Defendants hold as constructive trustees, for and on behalf of Plaintiffs, the pieces of the Herzog Collection that are now, or come to be, in their possession, custody or control, and directing Defendants to account to Plaintiffs for those works now in their possession, and to deliver to Plaintiffs possession of the works or compensation therefor in an amount to be proven at trial, but estimated in excess of \$100 million;

D. On their Fourth Claim for Relief: for an order directing Defendants to account to Plaintiffs for those works from the Herzog Collection that are now, or come to be, in their possession, custody or control, and for any monies earned by Defendants thereby, and to deliver to Plaintiffs possession of the works or compensation therefor in an amount to be proven at trial, but estimated in excess of \$100 million;

E. On their Fifth Claim for Relief: for an order declaring that Plaintiffs are the owners of the pieces of the Herzog Collection that are now, or come to be, in Defendants'

possession, custody or control, and directing Defendants to deliver to Plaintiffs possession of the works or compensation therefor in an amount to be proven at trial, but estimated in excess of \$100 million;

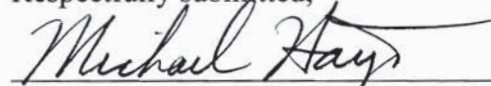
E. On their Sixth Claim for Relief: for an order directing Defendants to return to Plaintiffs the pieces of the Herzog Collection that are now, or come to be, in their possession, custody or control or for compensation therefor in an amount to be proven at trial, but estimated in excess of \$100 million; and

F. For an order directing Defendants to disgorge any profits earned by Defendants from their unlawful possession of the Herzog Collection;

G. For pre- and post-judgment interest on any award; and

H. Awarding Plaintiffs such other and further relief as this Court deems just and proper.

Respectfully submitted,



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