

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

<p>HOLOCAUST VICTIMS OF BANK THEFT, individually and on behalf of all others similarly situated;</p> <p style="text-align:right">Plaintiff,</p> <p style="text-align:center">v.</p> <p>MAGYAR NEMZETI BANK, ERSTE GROUP BANK, MKB BAYERISCHE LANDESBANK, OTP BANK, and CREDIT ANSTALT BANK, foreign business entities doing business in the United States,</p> <p style="text-align:right">Defendants.</p>	<p>No.: 10 CV 01884</p> <p>The Honorable Samuel Der-Yeghiayan</p> <p>FIRST AMENDED CLASS ACTION COMPLAINT</p> <p>JURY DEMANDED AS TO PRIVATE BANKS</p>
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CORRECTED FIRST AMENDED COMPLAINT OF PLAINTIFFS¹

INTRODUCTION

1. The Jews of Hungary were the victims of an organized and well-executed plan of wealth expropriation, the consequences of which continue to this day. Through a series of anti-semitic decrees and orders, the Hungarian Jews, the “lifeblood” of Hungarian economic life, found their assets frozen and stolen as part of an ultimate Hungarian plan to expel the Jews – a plan which was later amended by the Nazis to include extermination in the gas chambers of Auschwitz and

¹ This First Amended Complaint has been related to Civil Action **1:10-cv-00868**, Victims of the Hungarian Holocaust v. Hungarian State Railways (MAV), currently pending before this Court.

other concentration camps. The present case covers the actions of Hungarian and Austrian banks in extending, and expanding the scope of the Holocaust of 1944.

2. The banks of Hungary played a critical role in this expropriation scheme, which was itself a critical component of the genocidal attack on the Hungarian Jewish population. Wealth expropriation would not have been effective had the banks not frozen the assets of their Jewish customers and precluded the withdrawal of funds that could have financed an effort to escape the ever-increasing Hungarian repression. Yet the banks of Hungary willingly and proactively participated in the expropriation efforts.

3. This lawsuit seeks a small measure of economic justice for many of the victims of the Hungarian banks who supported and profited from the heinous and illegal actions of the Hungarian government. Specifically, Jewish money deposited in Hungarian financial institutions was frozen as a result of government decree in 1944, and the overwhelming majority of those “frozen” funds have never been returned to the owners or their heirs. To this day, Defendant banks continue to enjoy the benefits of these misappropriated assets. They have never been required to provide an accounting of their Jewish World War II era holdings, nor have they been required to attempt to reconstitute the funds. This lawsuit seeks, for the first and possibly last time, to require these financial institutions to perform such an accounting and to make restitution.

4. Thus, Plaintiffs here, who were victims of bank theft in Greater Hungary in 1944, or their heirs or next of kin, bring the present action both individually and on behalf of all other persons similarly situated, for an accounting and to recover cash, records, art, jewelry, bank deposits, securities, and all other businesses, titles to real estate, and personal assets wrongfully taken and withheld from them and their families by the defendant banks during the Holocaust of Greater

Hungary, principally in 1944, and which spoliated assets continue to be wrongfully withheld, unaccounted for and unreturned.

PARTIES

A. The Plaintiffs

Who Are Citizens of Foreign Countries

5. Plaintiff **Erno Kalman Abelesz** was born in April 1933 in Kapuvar, and is presently a citizen of the United Kingdom and a resident of London. He is heir to his grandfather, Hermann Abelesz, and his father, David Abelesz, who founded a highly successful wholesale grocery business in Budapest. Their company maintained its account (number 2336) in the Penzintezeti Kozpont in Budapest, which was later absorbed and merged into Erste Group Bank. His father was conscripted to forced labor and survived. After the war, when the plaintiff's since deceased brother Benjamin went to Budapest to recover the bank account of the family's company, he found that there was nothing in it. No explanation was given to him by bank officials for the missing assets.

6. Plaintiff **Judit Unger** nee' Rona was born in October 1949 in Timisoara, Hungary and is presently an Israeli citizen. She is heir to her grandfather Odon Rona who was a successful attorney in Budapest. In April 1944, his office was closed and confiscated, together with his bank accounts, which were in the Magyar Orszagos Kozponti Takarekpenztar Bank, Budapest, which was later absorbed and merged into Erste Group Bank. The plaintiff possesses documentation concerning the family's jewelry remitted to said bank on 26 April 1944. In addition, her grandmother had remitted stock certificates to the bank.

7. Plaintiff **Ron Sarel** is an Israeli citizen and is heir to his grandmother, Anna Goldschmidt, born Mairovitz, wife of Dr Leopold Goldschmidt, who lived in Arad, now in Romania but during

WWII was part of Hungary. She had a large personal fortune including cash, securities, gold, jewels, and other valuables in accounts and safe deposit boxes at the Angol-Magyar Bank, which was later absorbed and merged into Erste Group Bank in Budapest.

8. Plaintiff **Gad Bar Levav** was born Gutfreund in October 1928 in Apc, and is an Israeli citizen. He is heir to his father, Dezso Gutfreund, who was an international cattle dealer and had a chain of butcher shops. His commercial and personal bank accounts were held at the Heves Megyei Takarekpenztar in Hatvan, Hungary, which was later absorbed and merged into OTP. Plaintiff has supporting 1944 bank documentation for deposited bank funds and stocks. The plaintiff's father was murdered during the Hungarian Holocaust.

9. Plaintiff **Malka Bensoussan** nee' Hirschler was born in Budapest in 1933 and is an Israeli citizen. Her father, Alexander (Sandor) Hirschler was a bank manager in Budapest in the Credit Anstalt Wiener Bank where he had an account. He was deported to a forced labor battalion in 1944 and died in Germany in March 1945. The bank informed the plaintiff postwar that all account records had been destroyed, and no account assets have ever been returned to her or anyone in her family.

10. Plaintiff **Aviva Krammer** was born in Budapest in January 1933 and is an Israeli citizen. She is heir to her father, Geza Rapoch-Rapaport, who was legal advisor to and had his business and personal accounts at the Credit Anstalt Wiener Bank in Budapest, now known as Unicredit Bank. He was drafted to the Hungarian army in 1941, and then deported to Auschwitz in July 1944 and did not return.

11. Plaintiff **Judith Berkovits** nee' Acs was born in July 1937 in Budapest, and is now an Israeli citizen. Her father, Istvan Acs, was a textile engineer and had a partnership with her grandfather, Bela Acs, in a wholesale textile business, behind the Budapest Opera House. Their bank

accounts were in the Pesti Magyar Kereskedelmi Bank in Budapest, which was later absorbed and merged into MKB Bayerische Landesbank. The plaintiff is heir to her father and grandfather.

12. Plaintiff **Gabriel Erem** was born Gabor Eichler in April 1950 in Debrecen, and is a Canadian citizen. He is heir to the assets of his father, Kalman Eichler, who had farm related businesses in Aranyosapati, Hungary, where his paternal grandparents owned substantial real estate and farmland. His maternal grandparents owned a meat-processing facility in Nyirtass. The family's accounts, both professional and private savings, were held by the Diener Bank, which was later absorbed and merged into Erste Group Bank, and by the Kisvardai Takarekpenztar Bank, which was later absorbed and merged into OTP in Kisvarda, Hungary. His father's entire family was murdered in Auschwitz. The plaintiff's efforts to obtain reimbursement from those two banks have been unavailing.

13. Plaintiff **Robert Fischer-Dagan** was born in September 1926 in Budapest, and is an Israeli citizen. He is heir to his parents Emeric and Serafina Fischer, born Birnbaum, who had several businesses in Gyor, a restaurant and a newspaper and printing shop. They had accounts in the Pesti Magyar Kereskedelmi Bank, Gyor, which was later absorbed and merged into MKB Bayerische Landesbank.

14. Plaintiff **Shoshana Gertler** was born Zsuzsanna Szego in Sajoszentpeter in October 1928 and is an Israeli citizen. She is heir to her father Bernat Szego who was the bank director and had an account in the Sajoszentpeteri Takarekpenztar Bank, Sajoszentpeter, which was later absorbed and merged into the OTP Bank. He was deported to Mauthausen.

15. Plaintiff **Moshe (Miklos) Helischauer** was born in June 1932 in Budapest and is an Israeli citizen. He is heir to his father Andor Helischauer who was a manager of the Angol-Magyar Bank head office in Budapest, where he had an account and which was later absorbed and

merged into Erste Group Bank. His father was deported as a forced laborer and died on the Austrian border in October 1944.

16. Plaintiff **Meira Muller** was born in March 1950 in Tel Aviv and is an Israeli citizen. She is heir to her paternal grandfather Armin Muller who owned a large textile store in Sarospatak, Hungary, as well as vineyards. He had accounts in three banks: the Pesti Magyar Kereskedelmi Bank in Budapest, which was later absorbed and merged into the MKB Bayerische Landesbank; the Sarospataki Takarekpenztar Bank in Sarospatak, which was later absorbed and merged into the OTP Bank; and the Postatakarékpenztar in Sarospatak, which was later absorbed and merged into the OTP Bank. Plaintiff has extensive bank documentation.

17. Plaintiff **Yitzchak Peled** was born Laszlo Pollacsek in September 1935 in Budapest and is an Israeli citizen. He is heir to his father, Jenő Pollacsek, who was the bank director and had accounts in the Magyar-Olasz Bank Rt in Budapest, which was later absorbed and merged into Erste Group Bank.

18. Plaintiff **Zsuzsanna Snir** was born Kallai in July 1948 in Budapest and is an Israeli citizen. She is heir to her grandfather, Hugo Fabriczki, who founded a textile factory and a wholesale textile business in Budapest, in 19124, the WE-FA company. The company had a very large account in the Angol-Magyar Bank in Budapest, which was later absorbed and merged into Erste Group Bank. It was confiscated in May 1944. Mr Fabriczki was arrested by the Gestapo in November 1944, interrogated to reveal any other assets, tortured and murdered.

19. Plaintiff **Istvan Somogyi** was born in September 1937 in Budapest, and is a UK citizen. He is heir to his father Laszlo Somogyi, who had a wholesale import-export and production textile business and had accounts in the Pesti Magyar Kereskedelmi Bank in Budapest, which was later absorbed and merged into the MKB Bayerische Landesbank, and in the Postatakarékpenztar in

Budapest, which was later absorbed and merged into OTP Bank. His father was murdered in the Ukraine where he was conscripted in 1941 for forced labor. Plaintiff is also heir to his maternal grandparents, Jenő and Ilona Reich born Neiger, whose bank accounts and mortgaged home in Budapest were expropriated by the Magyar Nemzeti Bank.

20. Plaintiff **Judith Westwood** was born Rosenfeld in Budapest in February 1943. Her uncle, Zsigmond Zollschan, lived in Sopron, Hungary, and her mother, Ilona Rosenfeld born Zollschan, owned a large paint business in Budapest. Her uncle's and mother's commercial and personal accounts, and their shares in the Magyar Bank és Kereskedelmi Rt, which was later absorbed and merged into defendant Erste Group Bank in Sopron, Hungary, were frozen and blocked in May 1944 and have been "lost".

Plaintiffs Who are Citizens of the United States.

21. Among named plaintiffs with United States nationality, Plaintiff **Iren Gati** was born Schwarz in February 1923 in Mateszalka and is a US citizen, resident of Deerfield, Illinois. She is heir to her father Salamon Schwarz who owned a leather store in Mateszalka and had an account in the Mateszalkai Takarekpenztar which ultimately became the property of OTP Bank.

22. Plaintiff **Steve Bass** was born in Koszeg in September 1923 and is a US citizen, resident in Pennsylvania. He is heir to his father Rezső Rudolph Bass, who was the Director of the First Hungarian Felt Fabrikant. He had an account in the Szombathelyi Takarekpenztar in Koszeg, to which he also remitted gold valuables, stocks, bonds and jewelry on 28 April 1944, following Decree 1600/1944, as attested by a receipt postwar when the bank informed his father they no longer had the assets. The bank ultimately became the property of OTP Bank.

23. Plaintiff Dr. **Paul (Chaim Shlomo) Fischer** was born in Peterrevo in May 1936 and is a resident of Brooklyn, New York. His father Matyas Fischer, who did not survive the Holocaust,

owned and had accounts, as well as foreign currency, gold and diamonds, in a safe box whose contents were in the Magyar Nemzeti Bank in Budapest in December 1944. Paul founded the Peterrevo Hitelbank and directed and managed it until his deportation. He had accounts in this bank as well as in the Ujvideki Hitelbank aka Novosadka Stedionca. He also had a mortgage property account in the Ujvideki Hitelbank in Peterrevo. Ujvidek is now Novi Sad and Peterrevo is now Petrovo Selo, the banks in these towns having been absorbed and merged into Erste Group Bank.

24. Plaintiff **Alex (Alexander) Dorian** was born in Nagyszeben, Romania, in April 1935. He is a resident of New York. His mother, Teresa Rabinovic, who possessed considerable property in Nagyszeben, had an account in the Pesti Magyar Kereskedelmi Bank in Nagyvarad, formerly in Greater Hungary, now Oradea Mare in Romania. This bank was later absorbed and merged into MKB Bayerische Landesbank.

25. Plaintiff **Emmanuel Stern** was born in 1919 in Maramarossziget, and is a US citizen, resident in Miami, Florida. He survived in the forced labor battalions. He is heir to his father Bezalel Stern, who owned extensive forestry and a wood business in Maramarossziget, using MAV freight to export to Austria. He had an account in the Nationalbank in Maramarossziget. This bank was later absorbed into Penzintezeti Kozpont and merged into Erste Austria.

26. Plaintiff **Ani Brieger** was born in Nyiregyhaza in August 1953, and is a US citizen, resident in New York. She is heir to her paternal grandfather, Adolf Brieger, who had a large hardware store and lumberyard called Brieger Vaskereskedes in Nyiregyhaza, and had an account in the Nyiregyhazai Takarekpenztar in Nyiregyhaza, which was later absorbed and merged into OTP. She is also heir to her maternal grandfather, Miksa (Mordechai) Deutsch, who had a large match factory called Deutsch Gyufa Nagykereskedes in Aulich St 4-6, Pest, and had an account in the

Angol Magyar Bank in the 5th district of Budapest. The business and banking were remitted to Imre Kallai, “strohman”, (“aladar” in Hungarian) or “front man”, who refused to return the business and accounts to their rightful owners after the war. This bank ultimately became the property of Erste Austria.

27. Plaintiff **Gizella Barabas** was born Frischman in 1926 in Kemece. She is a US citizen, resident in Florida. She is heir to her father who was a lawyer and had a bank account in Kemece where her family owned a large vineyard. She is also heir to her uncle Jenő Roth who had an account in the Magyar Bank es Kereskedelmi Rt in Nyiregyhaza. This bank was later absorbed and merged into Erste Austria.

28. Plaintiff **Ronald Barabas** was born in April 1932 in New York and is a US citizen. He is heir to his father Francis Barabas (also known as Ferenc/Herman Klein-Barabas) who had a large company with an account in the Magyar Bank es Kereskedelmi Rt in Nyiregyhaza. This bank was later merged and absorbed into Erste Austria.

29. Plaintiff **Mary Wexler**, daughter of the late Leslie (Laszlo) Keller, was born in Budapest in November 1958, and is a resident of Delray Beach, Florida. Her grandfather, Ferenc Keller, and grandmother, Olga Deutsch, had a large wholesale grocery import business named “Deutsch es Keller” and a coffee business named “Victoria Café”. Her grandparents were deported to Auschwitz in 1944 and did not return. The businesses had their accounts in the Pesti Elso Takarekpenztar in Szekesfehervar, which was later absorbed and merged into OTP.

30. Plaintiff **Alexander Shalom Steve Schwimmer** was born in Ungvar in July 1928 and is a resident of Boynton Beach, Florida. He is heir to his parents Aron and Szeren Schwimmer born Lefkovits who had a restaurant and a shoe shop in Ungvar (Konyok Str 11) and had accounts in

the Ung Megyei Takarekpenztar, Ungvar, which was later absorbed and merged into Erste Group Bank. His parents were murdered in Auschwitz.

31. Plaintiff **Alex Sandor Varnai** was born in March 1920 in Jaszbereny. He is a US citizen, resident in Florida. He is heir to his mother, Miksa Weiss, who ran a small business in Jaszladany, and had an account in the Magyar Nemzeti Bank branch in Szolnok. This bank remains the Magyar Nemzeti Bank.

32. Plaintiff **Ernest Stein** was born in June 1923 in Budapest and is a US citizen, resident of Miami, Florida. He is heir to his father who owned a knitting factory in Budapest and had an account in the Magyar Nemzeti Bank in Budapest. This bank has kept its identity through the years under discussion here.

B. Defendant Banks.

1. **Defendant Magyar Nemzeti Bank**

33. Defendant **Magyar Nemzeti Bank** (hereinafter “MAG”) is the national bank of Hungary. It is an instrumentality of the Hungarian government. MAG has served as the banking instrumentality of all Hungarian governments and their successors from pre-1940 to today. It either kept all looted property, jewelry and other valuables for which it issued receipts for the Jews, or operated on that property in fractional reserve banking transactions, or exchanged it for other property or other rights in property with any other bank in Hungary or with the Hungarian government. It is regulated by Hungarian laws 1924/V, 1948/XXXII and 1991/LX. MAG has possession of substantial assets of the plaintiffs as heretofore alleged.

34. Defendant MAG has substantial contacts with the United States as the principal banking arm of the Hungarian government. It not only places and clears substantial sums of funds with U.S.

financial institutions, but it also supports and finances hundreds of millions of dollars of direct investment into the United States.

2. Defendant Credit Anstalt

35. Defendant **Credit Anstalt** is an Austrian bank, now a subsidiary of UniCredit Bank, that did extensive business in Hungary up through 1944. In 1947 (Law 1947/XXX) Creditanstalt had been nationalized as Creditanstalt-Bankverein Magyarországi Fiótelepe. Credit Anstalt Bank has possession of substantial assets of the plaintiffs as heretofore alleged.

36. Defendant Credit Anstalt Bank conducts business in the United States through its 3 separate branches located in the United States: (1) UniCredit Bank AG (“Hypovereinsbank”) Branch, located on 150 East 42nd Street, New York, NY 10017; (2) UniCredit SpA New York Branch, located on 150 East 42nd Street, 29th Floor, New York, NY 10017, specializing in corporate lending, trade finance, and treasury products; and (3) Pioneer Funds Distributor Inc., 701 Brickell Avenue, Suite 3260, Miami, FL 33131.

37. Upon information and belief, Defendant Credit Anstalt Bank entered into a business relationship with MasterCard Worldwide located at 2000 Purchase Street, Purchase, NY 10577.

38. Agreements between foreign financial institutions and Mastercard typically contain a clause requiring the foreign bank to consent U.S. jurisdiction.

3. Defendant OTP Bank

39. Defendant **OTP Bank** is the largest financial institution in Eastern Europe with its headquarters in Budapest, Hungary.

40. Országos Takarékpénztár (OTP) was founded by Decree 1850 on March 1st 1949. The newly formed OTP took possession of both the nationalized Magyar Királyi Postatakarékpénztár (Royal Postal Savings Bank) and the business activities of the Nemzeti Savings Department. In

1949, OTP was also the beneficiary of a merger of some parts of the Pesti Hazai Elso Takarekpenztar (First Pest Savings Bank), Leszamitolo Bank (Clearing Bank) and several small sized rural and provincial banks. By Decree 1870 of March 1st 1949, clients and all business activities of Postatakarekpenztar (Savings Banks) were transferred to OTP. It is therefore the inheritor of all Savings Banks doing business in Trianon Hungary in 1944. OTP Bank has possession of substantial assets of the plaintiffs as heretofore alleged.

41. OTP Bank regularly conducts business in the United States including *inter alia*:

a. There are 4,884 OTP Bank accounts held in the names of 2,218 customers who are either U.S. citizens or have provided OTP Bank with U.S. mailing address, 18 of which have Illinois addresses.

b. Based on the currency exchange rates as of December 8, 2010, the aggregate amount of deposits being held in these accounts is approximately \$52,303,866.12 for the year 2010, \$80,441,220.33 for the year 2009, \$88,910,708.30 for the year 2008, and \$93,331,710.36 for the year 2007.²

2010	2009	2008	2007
\$52,303,866.12	\$80,441,220.33	\$88,910,708.30	\$93,331,710.36

² These aggregate deposit amounts in U.S. dollars are converted from various currencies being held in these OTP bank accounts. In 2010, these accounts held 35,326,476.41 in U.S. Dollars, 105.42 in Canadian Dollars, 442,745.06 in Swiss Francs, 5,807,697.25 in Euros, 122,312.24 in British Pounds, 1,805,030,653.31 in Hungarian Forints, and 52,332.16 in Sweden Kronor. In 2009, these accounts held 49,784,512.03 in U.S. Dollars, 10.56 in Canadian Dollars, 545,660.33 in Swiss Francs, 8,830,138.36 in Euros, 244,651.00 in British Pounds, 3,764,435,903.55 in Hungarian Forints, and 192,590.52 in Sweden Kronor. In 2008, these accounts held 60,951,349.43 in U.S. Dollars, 25.92 in Canadian Dollars, 508,744.17 in Swiss Francs, 7,151,303.69 in Euros, 206,664.17 in British Pounds, 3,685,101,800.38 in Hungarian Forints, and 251,123.04 in Sweden Kronor. In 2007, these accounts held 70,908,873.30 in U.S. Dollars, 3,064.13 in Canadian Dollars, 593,971.38 in Swiss Francs, 5,093,415.86 in Euros, 223,517.37 in British Pounds, 3,061,662,195.77 in Hungarian Forints, and 590,914.79 in Sweden Kronor.

c. Defendant OTP Bank signed an Independent Operator Agreement with American Express Bank, Ltd. in 2004, which was renewed in 2010 with a term of five (5) years. The Agreement has a New York choice of law requirement, and OTP Bank submitted to the jurisdiction of the New York courts.

d. As of August 30, 2010, the total number of American Express credit cards issued by OTP Bank that are active and in good standing are 161,996.

e. In addition to its relationship with American Express, OTP Bank has entered into ongoing contractual relationships with numerous other businesses located in the United States: (1) Agreement with Bloomberg, L.P., 731 Lexington Ave., New York, NY 10022, dated March 12, 2009; (2) Software License Agreement with Tibco Software, Inc., 3307 Hillview Ave., Palo Alto, CA 94304, dated February 11, 2005; (3) General License Agreement with SWReg, Inc., 9625 W. 76th St., Eden Prairie, MN 55344, dated June 23, 2009; (4) License Agreement with Super Derivatives Inc., 7 Times Square, New York, NY 10036, dated January 12, 2009; (5) MasterCard Electronic License agreement with MasterCard International Inc., 2000 Purchase Street, Purchase, NY 10577, dated December 12, 2003; and (6) Cirrus License Agreement with Cirrus System, Inc., One Westbrook Corporate Center, Suite 700, Westchester, IL 60154, dated March 17, 1994.

f. Defendant OTP Bank has established SWIFT³ RMA (Relationship Management Application) relationships with the following banks in the United States: Brown Brothers Harriman & Co., Merrill Lynch & Co., Inc., PNC Bank, N.A., and U.S. Century Bank.

³ “SWIFT” is the Society for Worldwide Interbank Financial Telecommunication, which provides a proprietary communications platform, and products and services to exchange standardized financial messages to banking organizations, securities institutions, and corporate customers.

Importantly, OTP Banks' relationship with Merrill Lynch & Co., Inc. was established at the request of OTP Bank.

g. Defendant OTP Bank provides an account for Harris Trust & Savings Bank located at 111 West Monroe St., Chicago, IL 60603.⁴

h. Defendant OTP Bank awarded 8 contracts to United States companies for work performed on behalf of OTP Bank. The aggregate value of these 8 contracts is approximately \$6,818,363.00.

i. For the past 4 years, Defendant OTP Bank has made numerous business trips to various cities in the United States, including Chicago, New York, San Francisco, Washington, D.C., Boston, Houston, and Las Vegas. On these business trips, OTP Bank participated in various conferences, including, but not limited to, AMEX 2007 GNS Commercial & Premium Card Products Forum, Bank of New York Seminar, Deutsche Bank Conference, BEA World 2007 Conference, Lehman Brothers Conference, Oracle OpenWorld Conference, UBS Conference, EMC World 2008, JavaOne Conference, Barclays Conference, and Hewlett-Packard referencialatogatas.

j. Defendant OTP Bank runs advertisements twice a year in Global Finance, a publication headquartered in the United States. Additionally, OTP Bank has run advertisements in The Banker and Euronomy, which partially targets United States audience.

k. Many officers of OTP Bank are members of banking and financial associations located in the United States, including the Association of Certified Anti-Money Laundering

⁴ A subpoena has been served on Harris Trust & Savings Bank requesting documents pertaining to its relationship with Defendant OTP Bank. Plaintiffs hereby reserve their right to amend and/or supplement this paragraph upon completion of their review of Harris Trust & Savings Bank's documents.

Specialists (ACAMS), the Corporate Executive Board, the Institute of International Finance, and the Information Systems Audit and Control Association (ISACA).

4. Defendant Erste Group Bank

42. Defendant **Erste Group Bank** is a banking and financial services institution with its headquarters located in Vienna, Austria. Erste Bank is the owner of many of the assets at issue in this complaint through a series of mergers and acquisitions

43. All banking activity in the annexed territories of Greater Hungary were governed by the Penzintezeti Kozpont (Central corporation of banking companies). PK was regulated by Hungarian laws 1916/XIV, 1920/XXXVII and 1926/XIII. In 1947, all banks subject to these decrees (including Magyar Orszagos Kozponti Takarekpenztar, Magyar Altalanos Hitlebank, and Angol-Magyar Bank Rt.⁵) were forced to merge into Penzintezeti Kozpont (PK) by Hungarian law 1947/XXX. Erste Group Bank has possession of substantial assets of the Plaintiffs, as herein alleged.

a. In 1993, PK was transferred to PK Bank Ltd., sole ownership of APV Rt. (Hungarian Privatization and State Holding Company). In 1998, PK Bank merged with Polgari Bank Rt and became Polgari Keresekedelmi Rt. Also in 1998, the Hungarian state owned Mezőbank was renamed Erste. In 1999, PK Bank was sold to Postabank es Takarekpenztar Rt. , and then to APV Rt. In 2003, Postabank es Takarekpenztar was sold to Erste Bank der Oesterreichischen Sparkassen AG (Erste Bank Rt). Hence many of the spoliated funds remaining in Hungary in 1944 were ultimately absorbed through acquisition by successor bank Erste Bank.

⁵ The Angol-Magyar Bank was originally founded in 1890 as Magyar Kereskedelmi Rt. In 1910 the name was changed to Magyar Bank es Keresekedelmi Rt. In 1920, the owners became partly British and the name changed to Angol-Magyar Bank Rt. In 1940, British shares were bought up by the Hungarians, so the name was again Magyar Bank es Keresekedelmi Rt. In 1945, the name was changed again back to Angol-Magyar Bank Rt.

44. Defendant Erste Group Bank conducts business in the United States through its New York Branch, located at 280 Park Avenue, West Building, 32nd Floor, New York, NY.

45. Erste Group Bank's New York Branch conducts business in the United States in two primary areas: (1) Group Corporate and Investment Banking ("GCIB"); and (2) Group Capital Markets ("GCM").

- a. Products offered under GCIB include cash loans, loan credit default swaps, collateralized loan obligations, and equity fund investments.
- b. Products offered under GCM include liability products (e.g., deposits, CDs and commercial paper), asset products (e.g., bonds collateralized with residential mortgages and corporate and personal loans, and repurchase agreements and interbank placements), and off-balance sheet products (e.g., interest rate and foreign exchange swaps).

5. **Defendant MKB Bayerische Landesbank**

46. Defendant **MKB Bayerische Landesbank** is a banking and financial services institution with its principal place of business in Budapest, Hungary.

47. The predecessor to MKB was Pesti Magyar Kereskedelmi Bank, Budapest, which was under the control of Pezintezeti Kozpont in 1948, and then owned prior to privatization by the Hungarian State Holding Company (APV Rt.) It became Magyar Kulkereskedelmi Bank (MKB, also known as the Hungarian Foreign Trade Bank) in 1950. It was privatized in 1994 and is now wholly owned by successor bank Bayerische Landesbank, Munich. MKB Bayerische Landesbank has possession of substantial assets of the plaintiffs as heretofore alleged.

48. Defendant MKB Bayerische Landesbank conducts business in the United States through its New York Branch located at 560 Lexington Avenue, 22nd Floor, New York, NY.⁶

a. Defendant MKB Bayerische Landesbank maintains correspondent accounts with United States banks or United States broker-dealers in securities that receive deposits from, make payments or other disbursements on behalf of MKB Bayerische Landesbank, and/or handle other financial transactions related to MKB Bayerische Landesbank. Pursuant to §§ 5318(j) and (k) of Title 31 of the United States Code, Defendant MKB Bayerische Landesbank voluntarily submitted a “Certification Regarding Correspondent Accounts” on May 10, 2010, authorizing its New York Branch to accept service of legal process from the Secretary of the Treasury of the Attorney General of the United States.

b. Defendant MKB Bayerische Landesbank entered into a business relationship with MasterCard Worldwide located at 2000 Purchase Street, Purchase, NY 10577.

c. Upon information and belief, Defendant MKB Bayerische Landesbank has made substantial investments in the United States sub-prime mortgage market, suffering large financial losses.

49. Upon information and belief, Defendant MKB Bayerische Landesbank has been a subject of investigation by the Federal Bureau of Investigation, with which it fully cooperated.

50. In summary, among the many Hungarian banks doing business in 1944 which were later absorbed directly or indirectly or in whole or in part by the defendant successor banks (Erste, OTP, MKB, and MAG and Credit Anstalt continuing their businesses) are: Altalanos

Takarekpenztar Janoshalma, Angol-Magyar Bank, Bekescsabai Takarekpenztar, Bekesmegyei

⁶ Plaintiffs are currently waiting for Defendant MKB Bayerische Landesbank’s answers in response to the jurisdictional interrogatories served upon them on December 3, 2010. Plaintiffs hereby reserve their right to amend and/or supplement this paragraph upon completion of their review of MKB’s answers to jurisdictional interrogatories.

Kereskedelmi Bank Rt., Credit Anstalt Wiener Bank, Csornai Takarekpenztar, Diener Bank, Elso Takarekpenztar Debrecen, Elso Vagsellyei Takarekpenztar, Erste Bank, Austria, Fehergyarmati Takarekpenztar, Felvideki Kereskedelmi Bank, Hajdunanasi Takarekpenztar, Haromszeki Takarekpenztar, Heves Megyei Takarekpenztar, Ipares Tereskedelmi Bank, Jaszkeruleti Nepbank es Takarekpenztar, Kecskemeti Magyar Kereskedelmi Bank, Kisvardai Takarekpenztar, Magyar Altalanos Hitelbank, Magyar Bank es Kereskedelmi Bank Rt, MKB Bayerische Landesbank, Magyar Kiralyi Postatakarokpenztar, Magyar Leszamoto es Penzvalto Bank, Magyar Nemzeti Bank (“MAG”), Magyar-Olasz Bank Rt, Magyar Orszagos Kozponti Takarekpenztar, Mateszalkai Takarekpenztar, Mezokovacsghaza Takarekpenztar, Nagybenyi Hitelbank, Nagymegyeri Takarekpenztar, Nyiregyhazi Hitelbank, Nyiregyhazi Takarekpenztar, Orszagos Takarekpenztar (OTP Bank), Papai Hitelbank, Pecsegyhazmegyei Takarekpenztar, Penzintezeti Kozpont, Penzvalto es Kereskedelmi Bank, Pesti Elso Takarekpenztar, Pesti Hazai Elso Takarekpenztar Egyesulet, Pesti Magyar Kereskedelmi Bank, Peterrevei Hitelbank (“Creditna Bank”), Postabank Takarekpenztar, Postatakarokpenztar, Sajoszentpeteri Takarekpenztar, Sarospataki Takarekpenztar, Szabolcsi Agrar Takarekpenztar, Szatmarnemeti Kereskedelmi Bank, Szatmarnemeti Takarekpenztar, Szekszardi Nepbank, Szentesi Takarekpenztar, Szolnoki Hitelbank, Szombathelyi, Takarekpenztar, Szombathelyi Varmegyei, Takarekpenztar, Tiszafuredi Takarekpenztar, Ujvideki Hitelbank, Ung Megyei Takarekpenztar, Vaci Takarekpenztar, Vagsellye Hitelintezet, and Vasarosnamenyi Takarekpenztar.

51. In the alternative, whether or not the defendant banks are legally chartered under Hungarian or Austrian law as limited liability companies (or “corporations”), customary international law looks only to the question whether a group of people (who may have called themselves a “bank”) have, in voluntary association with each other, committed a tort in violation of international law.

Thus, Defendant banks have been and at all time were voluntary associations of persons acting together under the rubric of the term “bank” with their membership evidenced by individual contracts specifying their powers and obligations within the association.

JURISDICTION AND VENUE

I. “Takings” Jurisdiction

52. This court has personal and subject-matter jurisdiction over **MAG** (Magyar Nemzeti Bank), which is the national bank of Hungary and is an instrumentality of the Hungarian government, from the Foreign Sovereign Immunities Act of 1976 (the “FSIA”), 28 USC § 1330(a); 28 USC §§ 1602-1611.

53. MAG does not qualify for the immunities imbedded within FSIA, thus bringing it within the ambit of FSIA’s subject-matter jurisdiction through §1605(a)(3) of that Act which eviscerates claims of sovereign immunity “in any case—**(3)** in which rights in property [1] taken [2] in violation of international law [3] are in issue and that property or any property exchanged for such property [4] is . . . owned or operated [5] by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States [6].” (brackets added).

a. **Rights in Property [1] taken [2]**. Subject matter jurisdiction is established over MAV because it took rights in Jewish property that are the subject of this lawsuit including bank checks, checking accounts, savings accounts, warehouse receipts, commercial paper of all types, land contracts, mortgages, registration records, letters of provenance, licenses, stocks, bonds, insurance policies, and any other indicia of ownership, as found in safe-deposit boxes. Defendant MAG took this personal property from the plaintiffs’ safe deposit boxes including

cash, jewelry, heirlooms, valuable collectibles, deeds, foreign securities, stock certificates, bearer bonds, gold, silver, and paintings.

b. **In violation of international law [3]**. Subject matter jurisdiction also exists because MAV's takings of personal property were in violation of international law. The legislative history of the F.S.I.A. explicitly states that "The term 'taken in violation of international law' would include the nationalization or expropriation of property without payment of the prompt adequate and effective compensation required by international law." [P.L. 94-583](#), FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976, H.R. Rep. 94-1487, 94TH Cong., 2ND Sess. 1976. All property and rights in property taken by MAG were without payment and MAG has not made prompt, let alone effective, compensation to the victims of its takings.

c. **Property or any property exchanged for such property [4] owned or operated by a foreign instrumentality [5]**: A further requisite for subject matter jurisdiction exists because MAG owns the property and/or the property is has exchanged for such property that is at issue in this lawsuit. The property MAV owns or owned nad has exchanged for property it owns, includes checking and savings accounts, letters of credit, investment accounts, and all other intangibles, plus tangible valuables that they stored in the banks' safe deposit boxes, including bank checks, warehouse receipts, commercial paper of all types, land contracts, mortgages, registration records, letters of provenance, licenses, stocks, bonds, insurance policies, other indicia of ownership, cash, jewelry, heirlooms, valuable collectibles, deeds, foreign securities, stock certificates, bearer bonds, gold, silver, and paintings. Customers received detailed inventories from MAG personnel for all items stored therein. When the Jews were shipped off to the death camps, MAG employees had already opened or then opened the safe deposit boxes, stripped them of their contents, and exchanged the contents for other rights in

property that MAG retained. The property and rights in property taken by MAG and not exchanged for other rights in property are presently owned by MAG and are used as part of its fractional reserves in loan operations, a continuous source of profits to the bank.

d. **Is engaged in a commercial activity in the United States [6].** MAG conducts business activities in the United States as detailed above. Further, personal jurisdiction over MAG is established by § 1330(b) of F.S.I.A., which provides:

Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

28 U.S.C.S. § 1608. The Act makes the statutory prerequisite for personal jurisdiction over foreign governments and their agencies and instrumentalities a two-step process: subject matter jurisdiction plus proper service of process equals personal jurisdiction. Subject matter jurisdiction exists as established above, and proper service was made and has not been contested.

54. The above facts establish subject matter jurisdiction over the four other defendants in this case who are private banks and thus have no claim of sovereign immunity. Because their actions as detailed herein violated international law in the same way that MAG violated it—by taking, looting, and confiscating the property and assets of their customers, subject matter jurisdiction exists.

55. Subject matter jurisdiction also exists here because FSIA denies immunity to any foreign state which has waived its immunity either explicitly or by implication.” 28 U.S.C. sec. 1605 (a)

(1). Article 7 of the present-day Hungarian Constitution presents such a waiver:

(1) The legal system of the Republic of Hungary accepts the universally recognized rules and regulations of international law, and harmonizes the internal laws and statutes of the country with the obligations assumed under international law.

Hungary signed and ratified the Genocide Convention in 1952. Forty-six years later, the Constitutional Court of Hungary held definitively that Hungary had failed to make fair compensation to the victims of genocide. Hungarian Constitutional Court, *Dec. 21 of 1990 (X.4) AB (MK 1990/98)*, *Dec. 16 of 1991 (IV.20) AB (MK 1991/42)*, *Dec/28 of 1991 (VI.3) AB (MK 1991/59)*. These Acts and rulings impliedly waive any claim of sovereign immunity.

56. Subject-matter jurisdiction exists over all five defendant banks from the Alien Tort Statute (“ATS”), 28 U.S.C. § 1350:

The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.⁷

57. The actions of all five defendant banks and their predecessors were against the law of nations. Section 6(b) of the Nuremberg Convention specifically condemns as a violation of the law of nations the systematic expropriation of the property and assets of a targeted ethnic group, and the banks were not only complicit in such an expropriation campaign – as the holder of the property, their participation was essential to the expropriation campaign’s success. The mere act of expropriation of Jewish property under the circumstances of Hungary in 1944 establishes sufficient ATS subject matter jurisdiction.

58. Further deepening the condemnability of the banks’ and their predecessors’ actions is the predictable role their actions played in the execution of the extermination of the Hungarian Jewish population. Expropriation was part and parcel of the plan of genocide as detailed above.

59. When the banks took Jewish assets and property, they impoverished the victims and thus deprived them of the means to reconstitute financially their lives as well as their former

⁷ Since customary international law governs the application of the ATS, it is important to point out that customary international law provides for civil remedies for violations of international law. In *The Factory at Chorzow*, 1928 P.C.I.J. Ser. A, No. 17. the world court held that private litigants can claim “indemnity” for violations by states of the rules of international law.

communities. The banks therefore were complicit in the Nazi genocide against the Hungarian Jews by extending the scope of the Holocaust beyond the murdered victims to their dependents and next-of-kin.

60. The continued retention of these assets without restitution by the present day banks is itself a perpetuation of the act of genocide as the Hungarian Jewish community is being denied the means to fully reconstitute itself to this day. In stonewalling former Jewish customers and their heirs who wanted to retrieve the property of their next-of-kin who perished in the Holocaust, the defendants knew and reasonably should have known that they were in fact extending and perpetuating the Nazi genocide against Hungarian citizens by making it financially impossible for the victims to rebuild and reconstitute their lives. This specific intent to perpetuate the Nazi genocide is repeated every time a successor bank employee or original bank employee turns down or misleads a person who makes inquiries concerning the bank accounts and assets of his or her next of kin who was killed in the Holocaust.

61. The applicability of the ATS to acts of genocide has been explicitly recognized by the Supreme Court because it is a norm of an international character accepted by the civilized world

62. The norm of international character condemning genocide well predates World War II. The word “genocide” has been continuously and contemporaneously applied to events that occurred prior to World War Two, such as the genocide of the Hereros in Southwest Africa in 1905, the genocide of the Armenians in Turkey in 1915, and the genocide of the Ukrainian farmers in the Soviet Union in 1933. The term genocide and its meaning was well-established as a universal violation of international law long before World War II.

63. Furthermore, putting aside the semantic question of whether the word genocide has been in use prior to World War II, the Nuremberg Judgment was explicit in finding that Crimes Against

Humanity were synonymous with the later definition of genocide. In finding the Nuremberg defendants guilty of crimes against humanity for their roles in the extermination of the Jews during World War II, the entire predicate of the Nuremberg Tribunal was that the crime of genocide was committed prior to 1945:

The rules of land warfare expressed in the [Hague] convention undoubtedly represented an advance over existing international law at the time of their adoption. But the convention expressly stated that it was an attempt "to revise the general laws and customs of war," which it thus recognized to be then existing, but by 1939 these rules laid down in the convention were recognized by all civilized nations, and were regarded as being declaratory of the laws and customs of war which are referred to in Article 6 (b) of the Charter. ... [F]rom the beginning of the war in 1939 war crimes were committed on a vast scale, which were also crimes against humanity; and insofar as the inhumane acts charged in the indictment, and committed after the beginning of the war, did not constitute war crimes, they were all committed in execution of, or in connection with, the aggressive war, and therefore constituted crimes against humanity.

Nuremberg Decision, 6 F.R.D. 69, 190 (1947).

64. Nuremberg was reiterated in Article II of the *Convention on the Prevention and Punishment of the Crime of Genocide*, 78 U.N.T.S. 277 (9 December 1948). The complete article reads:

Article II. . . . [G]enocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

This language parrots many of the findings of Nuremberg and establishes the long-standing specificity of the definition of genocide.

III. Supplemental Jurisdiction

65. This Court has Supplemental Jurisdiction over the state law claims plead herein pursuant to 28 U.S.C. § 1367 because this Court has original jurisdiction over the F.S.I.A. and A.T.C.A. claims plead herein, and the state law claims are so related to the F.S.I.A. and A.T.C.A. claims that they form part of the same case or controversy.

IV. Jurisdiction under Federal Common Law Incorporates International Law

66. This Court also possesses federal-question jurisdiction under 28 U.S.C. § 1331, because Plaintiffs' claims involve substantial international law and federal questions, and because Plaintiffs' claims arise under customary international law, enforceable in this Court as federal common law.

67. In the present case, plaintiffs have clearly pled events which if proven violate the following charters and conventions of international law that forbid looting, conversion, and continued withholding of assets that prevent the next of kin of victims of genocide from reconstituting their communities:

a. Principles of International Law Recognized in the Charter of the Nuremberg Tribunal, G.A.Res. 95(I), UN GAOR, 1st Sess., at 188, UN Doc. A/236 (1947);

b. Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277 (1948);

c. Universal Declaration of Human Rights, U.N. G.A.Res. 217 (III 1948);

d. International Covenant on Civil & Political Rights, 999 U.N.T.S. 171 (December 16, 1966);

e. International Declaration Concerning the Laws and Customs of War, adopted by the Conference of Brussels, Aug. 1\27, 1874, reprinted in, (1907) 1 Am.Jur.Int.L. Supp. 96;

f. Convention Concerning the Laws and Customs of War on Land (1907), TS 403

BEVANS: 1 Bevans 247 (“Hague Convention”);

g. Protocol No. 1 to the European Convention on Human Rights and Fundamental Freedoms (Mar. 20, 1952, 213 U.N.T.S. 262, E.T.S.9).

VENUE

68. Venue lies in the Northern District of Illinois against all five bank defendants because one or more Plaintiffs reside within this judicial district and because defendant banks all have contacts and continuing business relationships in this judicial district.

69. Additionally, venue is appropriate as to the four private banks pursuant to 28 U.S.C. 1391(d), “An alien may be sued in any district.”

70. Venue lies in the Northern District of Illinois against MAG pursuant to 28 U.S.C. 1391(f)(3), which reads, in relevant part:

A civil action against a foreign state as defined in 1603(a) of this title may be brought...in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of the title.

FACTS

71. This lawsuit concerns the expropriation of Jewish assets by the five bank defendants and their predecessors within the area generally accepted by historians as “Greater Hungary” which includes, in addition to Trianon Hungary as established by the Treaty of Trianon of June 4, 1920, all former parts of Hungary returned for the duration as follows:

a) Subcarpathian Ruthenia (Ung, Bereg and Ugocsa and a portion of Maramaros

counties), at that time part of Czechoslovakia until the first Vienna Dictate of November 1938, followed by the Hungarian advance into the Ukraine via the Carpathians in mid-March 1939;

b) Northern Transylvania, returned to Hungary by the Second Vienna Dictate of 30 August 1940;

c) Vojvodina (Bacska), part of the Serbo-Croatian Kingdom. When Yugoslavia was dismantled, Bacska was returned to Hungary in April 1941.

A. The Climate for Anti-Semitic Acts of Expropriation and Genocide Existed Within Hungary.

72. Within Greater Hungary, Jews had an influence on the economy that was disproportionate to their share of population. Although the census of 1930 for the Trianon, and later in 1941 for Greater Hungary, established a Jewish population comprising approximately 10% of the country, Jews they owned 20% to 25% of the assets in the Trianon prior to the Holocaust; and on the eve of the Hungarian Holocaust in 1944, according to Randolph Braham, author of the definitive history of the Hungarian Holocaust, Jewish assets in Trianon Hungary had a market value of between 7 and 9 billion gold Pengos;⁸ This amount is to be doubled as the number of Jews is doubled to encompass Greater Hungary. At the time, 5 Pengos were convertible into one U.S. dollar.

73. The prevalence of Jewish influence on the Hungarian economy began engendering substantial hostility on the part of the non-Jewish population as the post World War I treaties took their economic toll on Hungary, pushing large numbers of soldiers into the workforce and capping Hungary's industrial capacity.

⁸ Braham, R, *The Politics of Genocide: The Holocaust in Hungary*, New York, Columbia University Press, 1994, citing Jenő Levai, *The Black Book of the Martyrdom of Hungarian Jewry*, Zurich, Central European Press, 1948, first published in Hungarian in 1946.

74. The backlash against Jewish economic influence took several forms, one of which was in the series of blatantly anti-semitic decrees seeking to limit the extent Jewish economic influence and property ownership. Long before World War II broke out, the Hungarian population was being conditioned through rampant public anti-semitism to take the steps that culminated in the Hungarian phase of the Final Solution.

75. Jewish bank deposited assets were a particularly tempting target for this boiling anti-semitism because, based on the nature of their business or profession, Jews in Greater Hungary were at least as likely to use banking facilities as were non-Jews. In the professions as of the 1930 census for the Trianon, and again in the census in 1941 including the annexed areas, Jews made up 49% of the practicing attorneys; 55% of the physicians; 30% of the engineers; 60% of bank officials; and 46% of salespersons. Jews owned 49% of metallurgical works; 42% of machine manufacturing; 73% of clothes manufacturing; 65% of the spinning and weaving industry and in the annexed areas, were especially active, in addition, in forestry and other associated professions, as well as agriculture and the cattle industries. In total, Jews earned one-quarter of the national income of Greater Hungary-- well in excess of their population percentage.

76. Among middle and upper-class Hungarian Jews, the largest proportion of their individual assets consisted of equity ownership in real estate: industrial, agricultural, residential, and wooded lands. Certificates of title to these properties were typically kept either in safe-deposit boxes or, if loans, land contracts, or mortgage-equivalents were taken with the property as collateral, in the custody of the lender bank.

77. The expropriation of Jewish property was long tied explicitly to the goal of depopulating Hungary of its Jewish population. Bosnyak's 1941 bestselling book "Szembe Judeaval" (Face to

Face With Judea) concluded with the observation that “[w]hile procedural rules and restrictions might make co-existence temporarily tolerable, they cannot solve the Jewish question. There is only one solution: to have Jews removed from Hungary.” The notion of the ghettoization of the Hungarian Jews along the lines of Warsaw was publicly floated as early as 1941 by senior members of the rightist Arrow Cross party.

78. There can be no disputing that bank management was well-informed of the intent and purpose behind the decrees restricting Jewish property. The Hungarian Minister of Finance from 1938 to 1945, Lajos Schneller, repeatedly stated that he was going to make a detailed plan for the “liquidation of Jewish capital” as a necessary precursor step to the “departure” of the Jews from Hungary. That plan, as promised, was put in place in 1944.

B. The Execution of Acts of Expropriation and the Furtherance of Genocide by the Defendant Banks and Their Predecessors.

79. Several decrees or directives were established in 1944, including the creation of a special account, number 157.880 in the Magyar Kiralyi Postatakarépenztar (Royal Postal Savings Bank) in order to centralize and coordinate the funds from all the frozen and spoliated accounts. This is proof that all the banks in Hungary in 1944, both large and small, were conclusively presumed by Hungarian law to know and be able to distinguish Jewish rights in property from those of non-Jewish citizens.⁹

80. Even earlier, Jewish property was specified and mandated to be administered by “aladar” (“front men” or “straw men”). Banks were then aware that concerning business accounts, they were not acting with but against their Jewish customers, with officially appointed “aladar” authorized to conduct all business and banking activities. The banks’ role in the spoliation of

⁹ Plaintiffs have no way of knowing prior to discovery whether defendant Hungarian banks retained the assets of some Jewish customers instead of turning those assets over to the state because the names on the accounts did not sound like Jewish names.

Jewish commerce dates back to as far as 1939, became obligatory in 1942, and then by 1944, a series of decrees extended to personal and private accounts and safe-boxes in all banks, as well as to all assets obligatorily surrendered to the Takarekpenztar (Savings Banks) and Nemzeti Bank. In the annexed territories, as of 1940, with the first annexation, and until the last annexation, the same laws came into effect.

81. The first deportation took place on April 29, 1944, from the Kistarcsa Hungarian internment camp, with Jews packed in boxcars and cattle cars. Following a successful conclusion of this first trial run, on May 14 trains emanating concurrently from Munkacs (Transcarpathia) and Nyiregyhaza (Trianon) crossed the Hungarian border at Kassa towards Auschwitz. On April 28, 1944, the round-ups of Jews of Greater Hungary began; they were removed from smaller villages and towns and concentrated into ghettos in the larger cities. By May 1944, all Jews outside of Budapest (including Uj Pest etc.) had been forced to abandon their original residences and places of business, and were relocated to ghettos, factories, or even open fields and camps. The residences, shops, and business offices of the Jews were taken over by non-Jewish Hungarians. The deportations from the counties were stopped in the first week of July 1944. The Jews of Budapest were obliged to move to “Yellow Star houses/flats”. Following the takeover of the Arrow Cross on October 15, 1944, young men and women were drafted to forced labor units and sent to fortification lines around Budapest. In the last week of October the ghetto of Budapest was established. From the last week of November 1944, the deportation of Jews started from Budapest proper, by foot, in the “death marches” toward Austria. About fifty thousand Jews were deported by this action, until the Russian offensive in January 1945.

C. The Post World War II Failure to Restitute.

82. Typically, after the end of World War II, when Jewish survivors or their heirs returned to their family homes, they found strangers living there. The original certificates of title were not to be found.

83. At the end of the war in May 1945, a number of survivors of the Holocaust and heirs of victims went to banks to retrieve assets that had been kept in safe deposit boxes. But when the boxes were opened they proved to be empty.

84. The defendant banks and/or their predecessors not only breached their fiduciary duty to their Jewish depositors but assisted and abetted in stripping the entire community of the Jews of Greater Hungary of its assets including those not specifically placed in vaults and accounts, and as well by their collaboration in the implementation of the decrees from 1939 through April 1944 by serving as intermediaries between the Jews and the Hungarian regime seeking to steal from the Jews of all their assets in private possession. On March 20, 1944, all Hungarian banks, without notice, sealed the safe deposit boxes that had been leased to Jews, and later on April 16, the maximum withdrawal was limited to 1000 Pengos per person per month. The banks first sealed the safe deposit boxes, and later when the banks were closed to the public, looted the contents.

85. Less than 2% of the Hungarian victims' assets and rights in property have been restituted since World War Two. Virtually all of the individual claimants who have attempted to recover their money and valuables were informed that these assets no longer existed, and were given no further explanation. The claimants were also unable to view records of their accounts, which had been destroyed.

86. The value of Greater Hungarian Jewish assets wrongfully taken by the defendant banks and their predecessors and not returned has been estimated by many independent observers at \$2 billion in American 1944 dollars.

87. During the period 1945 to 1989 a communist government took control over Hungary and nationalized the ownership of the banks by canceling the old privately-held shares of stock in the banks. For many banks and their customers, however, it was business as usual; the only difference was who owned the shares, a fact invisible to the customers. Many smaller banks were gradually absorbed and merged into large banks. In 1989, the post-Communist government unexpectedly re-privatized the banks.

88. Changes in ownership of banks does not legally affect title to custodial accounts. Moreover, expropriation of private property without paying fair compensation by governments is itself a violation of international law and cannot affect the status of the Jewish assets in question.

Virtually every country in the world upholds the rights of checking, saving, and safe-deposit box owners to their property irrespective of the changes in name or ownership of the banks in which they transact their business. The law is clear that the private property of the Jews of Greater Hungary continues to belong to them no matter how many hands it has passed through.

89. The defendant banks and/or their predecessors collectively have continuously been the custodians of the wealth stolen by them from Jewish families or entrusted to them up to 1944. To the present day the banks' withholding of these funds lessened the Jews' ability to re-establish themselves in business and in many cases, in daily life. The result is the deliberate infliction upon the victims a poverty that has brought about and sustains the physical destruction and diaspora of their group in whole or in part.

90. The defendant banks' predecessors systematically looted and expropriated Hungarian Jews financial assets and the defendant banks and their predecessors have withheld information regarding these assets from victims and their descendants. The lynchpin of the initial expropriation was *Regulation M.E. 1600 of 1944 of the Hungarian Royal Ministry* issued on April 14, 1944 requiring the registration of Jewish property and prohibiting the transfer of Jewish assets. The co-conspirators include all banks that came into possession of Jewish assets at any time from World War II to date. It is not necessary for a bank to have dealt directly with Jewish customers in order to have been a co-conspirator in respect of Jewish assets.

91. On April 1, 1944, and days following, the Hungarians issued a series of decrees that were tacked up on Jewish residences. Jews were ordered not to leave their homes. They were ordered to take their personal property and valuables to the nearest Takarekpenztar or to the Hungarian National Bank. Upon receipt, bank officials meticulously prepared descriptions of each item of property and gave a stamped copy back to the depositor. Thus the population was lulled into believing that they could reclaim their property at a future date—most likely when the war was over. The bank officials of course “lost” their copies. Accordingly to this day, very few of the looted victims have any record of the assets and property that was confiscated.

92. Given the conspiracy of obstructionism of the defendant banks, it has proven impossible for the plaintiffs to discover and ascertain the dollar amount of the Jewish bank accounts, safe deposit valuables, and foreclosed property taken by each separate bank. Each and every bank that has denied they have such assets has acted in bad faith. In some cases where plaintiffs still had a safe deposit box key, the boxes were opened and shown to be empty. The bank clerks and bank officials said they had no explanation for this. But even though the plaintiffs have been blocked from being able to discover the precise liability of each bank, the plaintiffs' total net worth stolen

from them by the banks is an accurate figure, namely, \$2,000,000,000 in U.S. 1944 currency. Although individual claims against individual banks cannot be exactly determined without discovery of the bank records, the aggregate plaintiffs' claims against the aggregate defendant banks is the consensus figure among historians who have studied the matter. Because the banks engaged in their wanton and reckless conduct in concert with one another, and because they were stealing blood money, each bank should be held jointly and severally liable for the entire amount of the victims' loss, placing the burden on each bank to prove that its damages should be capped at a lesser amount.

93. The present day actions of the defendant banks constitute a continuation of the genocidal plan devised and implemented by the Nazis and their Hungarian co-conspirators, both in the government and in the banking industry. By continuing to withhold from the rightful owners billions of dollars of assets illegally expropriated by their 1944 predecessors in interest, defendant banks continue a crucial element of the genocidal plan against the Hungarian Jewish community.

94. It is settled international law that it is an act of genocide to deliberately inflict upon a group conditions of life calculated to bring about its physical destruction in whole or in part, solely because of the group's identified race, ethnicity, religion or nationality. A critical aspect of the genocidal plan against the Hungarian Jews was the illegal expropriation of the group's financial assets, successfully carried out by the defendant banks' predecessors in interest. This part of the plan was intended to assist in the destruction of the group's ability to exist within Hungary. The plan demanded that even if some Jews should escape the Nazi death camps, they would return to a home impoverished, with no financial means of survival.

D. The Failure of Post World War II Institutions to Facilitate Restitution.

95. Ironically, while the Nazi killing machine at Auschwitz was ultimately stopped by the Allied advance, the aspect of the plan which constituted a genocidal financial attack against the Hungarian Jewish community continues to this day. By refusing to return the Jewish assets in its possession, which were illegally expropriated by their predecessors, the present day defendant banks are continuing the Nazi's genocidal plan, in part. As stated above, it was a critical part of the Nazi/Hungarian government plan that any Jewish survivors be prevented from reestablishing a home in Europe/Hungary. If the Jewish survivors had no financial means to reestablish their lives, the plan would succeed.

96. To date, defendant banks retain billions of dollars of ill-gotten gains from Jewish victims of the Holocaust. Until this money is returned to the rightful owners or heirs of the rightful owners, an element of the Holocaust will continue indefinitely.

97. Following the end of WWII, Hungary, along with other Eastern European countries that had been Hitler's allies, sought to return to the good graces of the world community by participating in the negotiations that resulted in the Treaty of Paris of September 15, 1947. In the case of Hungary, the Treaty of Paris was followed later by the 1973 Claims Settlement Agreement between the United States and Hungary, 24 U.S.T. 522, T.I.A.S. 7569.

98. The Treaty of Paris, following a long post-war conference, resulted in the payment of war reparations by the Axis powers and their allies to the Western Allies. Among these reparations, Hungary paid the United States \$300,000,000.

99. Hungary also undertook, in Article 27, to make "fair compensation" to persons whose property and rights in property were the subject of "sequestration, confiscation, or control on account of the racial origin or religion of such persons."¹⁰

¹⁰ Article 27. 1. Hungary undertakes that in all cases where the property, legal rights, or interests in Hungary of persons under Hungarian jurisdiction have since 1 September 1939, been the subject of measures of sequestration, confiscation or control on account of the racial origin or religion of such persons, the said property, legal rights and interests shall be restored

100. Hungary did absolutely nothing to fulfill its Treaty of Paris obligations. Forty-six years later, when many of the persons who should have been compensated had died, the Hungarian Constitutional Court, on March 12, 1993, held definitively that the state had failed to discharge its obligations under the Treaty of Paris.

101. Since the 1993 decision, Hungary has taken some half-hearted measures, including legislative, administrative, and judicial announcements, that have abjectly failed to meet any reasonable interpretation of “reasonable compensation.” For example, Hungary has done nothing to repair Act XXV (1946), still in effect in 1993, which only provided compensation to heirs and beneficiaries of the looted property as the legal successors of persons who died “from wounds, injuries, or deterioration of health arising from persecution” (§ 2). Everyone, including the Constitutional Court, recognized that this Act excluded persons who were gassed to death at Auschwitz.

102. Even after being excoriated by its own Constitutional Court, Hungary has failed to compensate victims. For example, in a series of decisions¹¹, the Constitutional Court has held that compensation for individual proprietary harms may be measured proportionate to the State’s capacity to carry the burden, and not necessarily according to the value of the takings. In this connection, the Constitutional Court mistranslates the term “fair compensation” in the Treaty of Paris as “appropriate compensation,” which the Court then defines as “partial compensation measured according to the country’s ability to pay” – a far cry from fair compensation based on the value of the taken property.

together with their accessories or, if restoration is impossible, that fair compensation shall be made therefor.

¹¹ Hungarian Constitutional Court, Dec. 21 of 1990 (X.4) AB (MK 1990/98), Dec. 16 of 1991 (IV.20) AB (MK 1991/42). Dec/28 of 1991 (VI.3) AB (MK 1991/59).

103. The 1973 Claims Settlement Agreement between the United States and Hungary also had a limited application, applying only to any victim who became a naturalized American citizen after World War Two and before 1973. This Agreement of course excluded persons killed in the Nazi death camps. Nevertheless if there should be any plaintiffs in the present action who received any compensation under the 1973 Claims Settlement Agreement, the full value of that compensation in present-day dollars will be deducted from any recovery herein.

Because of the defendant banks' ongoing policy of concealing the involvement of their respective predecessors' in this crime, plaintiffs are unable at this time to plead with greater specificity the precise actions of each predecessor bank in the genocidal plan. However, the general and instrumental role of the Hungarian banks in the Hungarian Holocaust is a well-known aspect of the historical record, and in fact mirrors the involvement of the banks in other Nazi-aligned countries in Europe during the time period in question. Also, plaintiffs contend that discovery will allow for a greater determination of each predecessors' role in the Holocaust, and the resultant liability of the present defendant banks for their continuing role in the genocidal plan. Each of the defendant banks herein knows or should know that by continuing to retain the plaintiffs' assets as heretofore alleged, such bank is continuing and maintaining the genocidal expropriation perpetrated by its 1944 predecessor in interest.

PLAINTIFFS' CLAIMS ARE NOT TIME-BARRED

104. This complaint is timely filed under the continuing wrong and fraudulent concealment doctrines. Under the continuing wrong doctrine, the limitations period does not begin to run until the last wrongful act occurs. Here, the defendants' ongoing failure to return the plaintiffs' assets to them or compensate them for the same, constitute deliberate, continuous and ongoing violations of international and domestic law. These violations continue to this day.

105. Alternatively, any statute of limitations is equitably tolled. The plaintiffs were kept ignorant of vital information necessary to pursue their claims without any fault or lack of due diligence on

their part. The defendants thwarted attempts to recover assets, as well as facts and information relating thereto. The deceptive and unscrupulous deprivation of both assets and of information substantiating plaintiffs' rights to these assets entitles them to the benefit of equitable tolling.

106. Further, the Holocaust, World War II, and the subsequent diaspora of the survivors of the Hungarian Jewish community constitute extraordinary circumstances in and of themselves sufficient to invoke the doctrine of equitable tolling and to preclude the operation of laches. The Named Plaintiffs and the Class they seek to represent suffered and continue to suffer debilitating trauma resulting from the mental and physical injuries caused by the foregoing, disabling and deterring them from pursuing litigation against these defendants. Moreover, for most of the period between the end of World War II and the present, there was no apparent forum in which plaintiffs could bring their claims and safely, and fairly, have them adjudicated.

107. Finally, the defendants are estopped to raise any defense of laches due to their own manifestly unclean hands as alleged hereinabove. The elements of laches cannot be met for the further reason that the defendants have benefitted—rather than suffered injury—by virtue of any failure on the part of the plaintiffs to bring this suit sooner.

CLASS ACTION ALLEGATIONS

108. *Class Definition.* Plaintiffs bring this action individually and on behalf of the following class of similarly situated persons (the “Class”), including subclasses, of which Plaintiffs are a member:

(b)(2) Injunctive Relief Class:

All persons of Jewish descent, and heirs and assigns of such persons, who had deposited funds or assets into Defendants banks and/or their predecessors prior to 1945 and have been unable to access or withdraw those funds or assets.

(b)(3) Class:

All persons of Jewish descent, and heirs and assigns of such persons, who had deposited funds or assets into Defendants banks and/or their predecessors prior to 1945 and have been unable to access or withdraw those funds or assets. Excluded from the Class(es) are Defendants' officers and directors and any member of their immediate families. Plaintiffs hereby reserve their right to amend the above class definition based on discovery and the proofs at trial.

109. *Numerosity.* The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are at least thousands of persons in the Class.

110. *Commonality.* There are questions of law or fact common to the Class including, *inter alia*, the following:

- a. Whether Defendants banks expropriated Jewish property in compliance with Hungarian government decrees;
- b. Whether Defendant banks participated in a scheme to expropriate the assets of the Jews of Hungary in violation of international law;
- c. Whether Defendant banks participated in or aided and abetted a scheme to depopulate and/or expel Hungary's Jews in violation of international law;
- d. Whether Defendant banks participated in genocide in violation of international law;
- e. Whether Defendant banks aided and abetted genocide in violation of international law;
- f. Whether Defendant banks committed acts of looting in violation of international law;

g. Whether Defendant banks continue to perpetuate genocide by their continued retention of the funds and assets by denying the Jewish community of Hungary the means to adequately and more fully reconstitute itself;

h. Whether Defendant banks affirmatively misrepresented to the Plaintiffs, other Class members and the general public their actions during the WWII period and their continued retention of the assets of Plaintiffs and other Class members;

i. Whether Defendant banks failed to provide an accounting and restitution to the Plaintiff and other Class members since World War II; and

j. Whether Plaintiff and Class have been damaged by Defendant banks' conduct.

111. *Typicality*. The claims or defenses of Plaintiffs are typical of the claims of the Class, alleged herein. Plaintiffs all suffered tremendous hardship as a result of Defendant banks' numerous violations of international law and Defendant banks' attempts to cover up its complicity for the last sixty years.

112. *Adequacy*. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained undersigned counsel who are competent and experienced in the prosecution of complex class action litigation and particularly complex class action litigation involving the complex issues of international law at issue. The interests of the Plaintiffs are aligned with, and not antagonistic to, those of the Class.

113. *Fed. R. Civ. P. 23(b)(2) Requirements*. The prerequisites to maintaining a class action for injunctive and equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) exist as Defendant banks has acted or refused to act on grounds generally applicable to the Class thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole. The prosecution of

separate actions by members of the Class would create a risk of establishing incompatible standards of conduct for Defendant banks. For example, one court might decide that the challenged actions are illegal and enjoin them, while another court might decide that those same actions are illegal but refuse to enjoin them. Individual actions may, as a practical matter, be dispositive of the interest of the Class, who would not be parties to those actions.

114. Defendant banks' actions are generally applicable to the Class as a whole, and Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole.

115. *Fed. R. Civ. P. 23(b)(3) Requirements.* This case satisfies the prerequisites of Fed. R. Civ. P. 23(b)(3). The common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of the controversy.

116. The likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially in view of the relatively modest amount of monetary, injunctive and equitable relief at issue for each individual Class member.

117. This action will be prosecuted in a fashion to ensure the Court's able management of this case as a class action on behalf of the Class.

CAUSES OF ACTION

COUNT I (Genocide)

118. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein.

119. Genocide is condemned by every legal system in the world as acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

120. The predecessors in interest of defendant banks willfully and knowingly participated in the aspect of the Nazi genocidal plan requiring the financial destruction and devastation of the Hungarian Jewish community. In furtherance of this plan, they illegally looted and expropriated the funds of Jewish bank customers which, combined with the deportation and murder of the Jews themselves, constituted participation in genocide and a violation of international law.

121. By withholding looted funds from the lawful next-of-kin of the victims, defendant banks have continuously inflicted upon the Jews impoverished conditions of life calculated to bring about their physical destruction in whole or in part. Regardless of the overall success of this plan, and of the ability of the Jewish community to ultimately reconstitute itself in Hungary, the continued withholding of funds continues an aspect of the genocide to this day.

122. By keeping the funds that should have been turned over to the next of kin, the defendant banks have enriched themselves to an unconscionable level to be determined at trial. This money, with interest, should be restituted in full to the plaintiffs and other Class members.

COUNT II

(Aiding and Abetting Genocide)

123. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 49 above as if fully set forth herein.

124. The conduct of defendant banks' predecessors in interest, as well as the continued conduct of the defendant banks themselves, provided practical and material assistance to the Nazis and their Hungarian allies, with full knowledge, understanding and shared purpose of the genocidal

plan targeted at the Jewish population. This assistance had a substantial effect on the perpetration of the crime. Specifically, the act of looting Jewish assets in furtherance of the goal of destroying the Hungarian Jewish community, combined with the defendant banks' continued refusal to return these funds to the Jewish victims, aided and abetted the genocidal plan, which demanded both the physical and financial destruction of Jewish communities in Europe.

**COUNT III
(Bailment)**

125. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs 1 through 49 above as if fully set forth herein.

126. Bailment is a state cause of action subsumed herein through federal supplemental jurisdiction

127. Rights in property taken by defendant banks variously include bank checks, warehouse receipts, commercial paper of all types, land contracts, mortgages, registration records, letters of provenance, licenses, stocks, bonds, insurance policies, and any other indicia of ownership.

128. Defendant banks acting in concert took personal property from the plaintiffs including cash, jewelry, heirlooms, valuable collectibles, deeds, foreign securities, stock certificates, bearer bonds, gold, silver, and paintings.

129. As a result of such violations, Plaintiffs and other Class members are entitled to the return of the Looted Assets, and damages in an amount to be determined at trial.

**COUNT IV
(Conversion)**

130. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 49 above as if fully set forth herein.

131. Unlawful conversion is a state cause of action subsumed herein through federal supplemental jurisdiction.

132. The banks' wrongful assumption, retention and exercise of the rights of ownership over the looted Assets were inconsistent with Plaintiffs' rights, were and are without justification and constitute a conversion.

133. Defendant banks acting in concert knowingly extended and perpetuated the Nazi genocide against Hungarian Jewry by unlawfully taking the victims' money and other rights in property, leaving the Jewish community impoverished and without any financial hope of reviving its pre-war communality.

134. By their seizure, the defendant banks injured all Class members by depriving them of their property, its use and enjoyment, and any interest and profit which could have been earned thereon.

135. As a result of such conversion, Plaintiffs and other Class members are entitled to the return of the Looted Assets, and damages in an amount to be determined at trial.

COUNT V
(Constructive Trust)

136. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 49 above as if fully set forth herein.

137. Constructive trust is a state cause of action subsumed herein through federal supplemental jurisdiction.

138. Defendants' employees, by virtue of their position as handlers and facilitators of public currency and assets, are constructive trustees of the public assets in their possession.

139. By violating their fiduciary obligations, the defendants' employees are continually liable in equity for the rights in property that they have unlawfully taken. As to their torts, the statute of limitations is equitably tolled.

140. As a result of such violation of fiduciary duty, Plaintiffs and other Class members are entitled to return of the Looted Assets, and damages in an amount to be determined at trial.

**COUNT VI
(Accounting)**

141. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 49 above as if fully set forth herein.

142. Defendant banks have failed to return and account for the Plaintiffs' assets as set forth above, and they have failed to make available records pertaining to the current location or status of the looted assets or property exchanged for the looted assets.

143. An accounting is necessary to determine the rights of the Plaintiffs, since Defendants are in the best position to provide the relevant information regarding Plaintiffs' looted assets, especially since many of the relevant records once held by the Plaintiff class members were destroyed, stolen, or otherwise lost during the Holocaust.

144. At all relevant times, Plaintiffs had and continue to have legal and equitable interests in the looted assets and have at no time been lawfully deprived of such interest in any manner that conforms with the minimal requirements of due process of law.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that the Court:

A. Certify this case as a Class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B. Award to the plaintiff class in its entirety compensatory damages in the amount of \$2,000,000,000 plus interest compounded annually since 1944;

C. In addition, and separately and distinctly, award punitive damages in an amount later to be specified.

D. Hold the defendant banks jointly and severally liable for the total of compensatory and punitive damages specified in paragraphs (B) and (C);

E. Grant such other relief as the Court deems just and proper.

January 14, 2010

Respectfully submitted,

/s/ _____
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