

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 01-1859-CIV
SEITZ

IRVING ROSNER; EDITH KLEIN AMSTER;)
FRANCISC BASCH; VERONIKA BAUM;)
ALICE BESSENYEY; ELIZABETH BLEIER;)
ERWIN DEUTSCH; DR. JOSEPH A.)
DEVENYI; PETER DREXLER; BARACH)
EPSTEIN; MAGDA FEIG; MICHAEL FRIED;)
PAUL GOTTLIEB; JUDITH KARMI; ETHEL)
KLEIN; MILDRED KLEIN; TAMÁS MAY;)
DAVID and IRENE MERMELSTEIN; EDITH)
MORE; JOHN J. RAKOS; GEORGE RASKO;)
ANA ROSNER; ESTATE OF GEORGE)
SEBOK; DR. LASZLO SOKOLY and EDITH)
REINER; AGNES V. SOMJEN; OLGA)
STEINER; JONAS K. STERN; IRENE and)
ANDREW TIBOR; AGNES VADASZ; and)
ZOLTAN S. WEISS, on behalf of themselves)
and all others similarly situated,)

Plaintiffs,)

v.)

UNITED STATES OF AMERICA,)

Defendant.)

FIRST AMENDED COMPLAINT - CLASS ACTION

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The following allegations are made by plaintiffs upon information and belief after a review of tens of thousand of official documents from the United States National Archives, Clinton Presidential Library, Hungarian archives and Israeli depositories, documents in the possession of Holocaust survivors and historians, and in consultation with expert historians on the subject of the Hungarian Gold Train including members of the research staff of the Presidential Advisory Commission on Holocaust Assets in the United States as well as individuals and historians in Hungary.

I. NATURE OF THE ACTION

1. Plaintiffs bring this action against the United States of America (“United States”) as a class action pursuant to Rule 23(a) and 23(b)(2) and 23(b)(3) on behalf of themselves and all others similarly situated, regardless of current citizenship, whose property (or the property of their family members) was confiscated by the Nazi government during Word War II, loaded on the Gold Train, and placed in the custody of the United States military by Hungarian officials for its protection and eventual return to Hungary and/or rightful owners, but was never returned to either. Each plaintiff and class member limits his or her claim to \$10,000 compensatory damages.

2. Plaintiffs are Hungarian Jews, who were persecuted and imprisoned by the Nazis during World War II, and their heirs — many of whom were citizens of the United States and owners of the property at the time when the events described below occurred. They are suing for the loss of their stolen property, which the United States Army accepted into its custody after World War II had ended after Hungarian officials asked the U.S. Army to protect the property until it could be returned safely. The United States agreed to this undertaking but never returned the property as promised.

3. Before the Jews of Hungary were sent to the concentration camps, the Nazi puppet government in Hungary forcibly confiscated their money and possessions including valuable, indeed priceless, family heirlooms (referred to herein as “the stolen

Jewish property”). The Nazis had enacted laws that required Jews to deposit their property in banks and other financial institutions. The principal law was Prime Minister’s Decree 1600/1944 (“Decree 1600”). Almost all Hungarian Jews complied with Decree 1600 by packing some of their private property in suitcases, parcels, envelopes, and other containers. They labeled their containers of property and took these containers to a bank or similar institution authorized to accept such Jewish deposits. Upon deposit, the institution would issue a receipt or note, which created the appearance that these deposits were “ordinary” banking transactions whereby the property might later be withdrawn or reclaimed.

4. Those Jews who did not comply, or were suspected of noncompliance, were forced to comply by means of torture. However, the Nazis issued property receipts even to the tortured Jews, such as plaintiff Francisc Basch’s father. These receipts still exist in Hungarian archives, and some of these receipts are still in the possession of Holocaust survivors, some of whom are plaintiffs in this action.¹

5. The Nazis planned to move the stolen Jewish property gathered from throughout Hungary to Budapest. Much of the property was sent there. However, as the Russians advanced through Hungary in the fall and winter of 1944-45, the Fascist government loaded the stolen Jewish property onto a train to spirit the loot safely away. The train left Budapest with 18-22 boxcars of Jewish wealth from all areas of Hungary, and headed west, to a region in Hungary where the Nazis could collect more stolen Jewish property.

6. By the time all of the stolen Jewish property was added to the train, the train had amassed a veritable fortune — in emotional terms, priceless. Packed inside 29 boxcars were valuable family heirlooms of Hungarian Jewry, such as art, gold jewelry, diamonds, coins and currency, silverware, fine china, porcelain and religious items made

¹ See, e.g., ¶¶ 41, 44, 47, 59, 61, 65, 71, 74, 86, 92, 95, 104, 114, 125.

of precious silver and gold, including kiddush cups, esrog and spice boxes, ritual handwashing cups, and Havdoloh holders. Because of the train's contents, it became known as the "Gold Train" or the "Hungarian Loot Train." It is referred to herein as the "Gold Train."

7. The Gold Train left Hungary and entered Austria on March 30, 1945, with the intended final destination of Hallein, Austria. Under the command of László Avar and with only 40 armed guards, the Gold Train survived a precarious 45-day journey avoiding Allied soldiers and bombings, and thwarting several attempted thefts by the Nazi SS, Austrians, other Hungarians and even Avar's direct superior.

8. In May 1945, with the war over and fearing for the safety of the Gold Train and its precious cargo, Avar and his men sought out representatives of the United States Army in western Austria. Avar hoped the United States would agree to protect the train and its contents until the property could be safely returned to Hungary.

9. Avar made contact with the United States Army on or about May 11, 1945, and asked the Army to protect the train, to accept custody over the cargo, and to safeguard the cargo until it could be returned to Hungary. In acceding to the Hungarians' request, duly authorized representatives of the United States Army promised Avar that it would provide the proper protection and safeguard the cargo until it could be returned. ***Indeed, the officers for the U.S. Army, "repeatedly and several times" promised Avar that it was accepting the valuables on the train and agreeing "to give it back to those from whom they were taken."***

10. The United States Army began protecting the Gold Train on or about May 13, 1945. Shortly thereafter, under the security of the 10 members of the U.S. armed forces and about 40 armed Hungarian guards, the train was moved to Salzburg. There, the United States military and Hungarian guards unloaded its contents into the Military Government Warehouse in Salzburg. Once the unloading was completed, which

was on or about July 28, 1945, the United States armed forces accepted custody of the Gold Train and its contents from Avar and his men with the promise to safeguard the property until it could safely be returned. However, the United States failed to abide by its promise to Avar.

12. Subsequently, the Hungarian government as well as representatives of Hungarian Jews requested the return of the Gold Train from the United States. However, the United States deceived both of them. First, the United States falsely informed the Hungarian Jewish representatives that United States would only deal with governments in matters of restitution. And then, when the Jews had their government intercede and negotiate a promise from the United States Secretary of State that the stolen property would be returned, the United States again reneged on its promise to return the Gold Train.

11. Colonel Arthur Marget, Chief of the Finance Division for the United States Allied Command in Austria (“USACA”), after an inspection of the Gold Train, estimated that the value of the stolen Jewish property was between \$50 million to \$120 million (in 1945 dollars).

12. Although the United States apparently now regards this property as “captured enemy property,” the United States knew from the beginning that the contents of the train were items of valuable household property that had been looted by the Nazis from the Hungarian Jews. Indeed, Captain John Back, the commander of the United States forces who guarded the train and helped unload the contents into the warehouse, on or before July 17, 1945, had already “*establishe[d] that the property was taken from Jewish people by order of the last Hungarian Nazi Government.*”

13. Ample further evidence exists indicating that the United States was fully aware that the private property belonged to Hungarian Jews. For one, László Avar, the train commander, informed the United States of this fact when he first requested the

Army's protection and again when questioned by Captain Back. The Army also found numerous Hungarian documents on the Gold Train, many of which listed the identities of the owners of the stolen Jewish property. Captain Back explained "during the examination of an old steel box, after removing a lot of old rags and envelopes, a lot of papers, in Hungarian were found. They apparently are lists of names of people from whom some of the items on the train were taken." Additionally, many of the items on the train were in their original locked containers, suitcases, envelopes, and packages that bore the names and addresses of the Hungarian owners. Captain Back summarized these facts in his initial report as follows:

During inventory and interrogation of Dr. Avar Laszlo it was determined that the train contained items which had been taken mostly from Jewish people and from banks in Hungary. The items were taken by order of the last Hungarian "Nazi" Government. . . .

During inventory a large amount of papers were discovered which appear to prove the fact that these things were taken from Jews and banks. These papers are at the warehouse and Lt. Colonel Heller, Property Control Office was told about them.

14. The United States, however, ignored what Captain Back established and what the United States promised to Avar and the Hungarians. Instead of protecting and safeguarding the property on the Gold Train and returning the property as promised, as described below, the United States appropriated the stolen Jewish property without paying compensation to the owners.

15. The duties of the United States were clear under its own laws and stated policy, and international law. The United States had assumed custody over what it knew to be the private property of Hungarian Jews, stolen by order of the Nazis, and taken from Hungary. By taking the property into custody, and by the promises made to Avar, the United States assumed a duty to keep that property safe. Further, under the Rules of Land Warfare, the Hague Regulations, Military Government Decree No. 3, and other

Executive regulations governing “Property Control,” the United States had a duty to return the property to the rightful owners when they asked for it and not conceal from them or their representatives information about the property. Instead of complying with these laws, over many years, the United States failed to return the property, evaded and even lied to the Hungarian officials and the representatives of Hungarian Jewry, and used the stolen Jewish property for the benefit and pleasure of senior military personnel and the government’s own treasury. The United States’ treatment of this property is sharply at variance with the law and the United States’ stated restitution policies. It is also at odds with the historic justice that the United States has demanded from other nations. This long pattern of evasion continued for decades, and has only now begun to unravel.

16. The United States’ conduct was unlawful in two key, distinct respects. First, *the United States failed to safeguard the property* — conduct ranging from condoning widespread misuse of the property by military officers, to allowing outright theft or looting, to mishandling of property so that it could no longer be identified. Second, *the United States refused to return the property either to Hungary or its rightful owners* — a pattern of conduct ranging from falsely claiming it could not identify the individuals or even the country to whom the property belonged, and when it did dispose of the property, selling the property to generate funds that would directly benefit the U.S. Treasury by helping to pay for the resettlement of refugees and otherwise alleviating military expenditures in occupied Austria. All this occurred while the representatives of Hungary’s Jews and the Hungarian government sought return of the property for the rightful owners.

17. The evidence proves the United States shockingly mishandled the property that it had a responsibility to protect. The United States’ envoy to Hungary cabled just weeks after the train was entrusted to the U.S., there is “an implied responsibility to safeguard [these properties] until such time as ultimate disposal is made.” It knew it had

a duty to preserve the property. As General Tate noted in 1946, “***There is evidence this property belongs to Hungarian Jews. It will not be used. Must be carefully protected.***”

18. Despite such recognized obligations to safeguard the stolen Jewish property, the United States knowingly permitted widespread looting of the property committed by members of the United States armed forces in violation of the Hague Regulations and the Rules of Land Warfare. A U.S. diplomatic memorandum warned in July 1946, “I have been informed that a certain amount of looting from warehouse has already taken place and do not see how further dissipation of property can be prevented under present conditions. Fact that no inventory exists makes almost impossible for control officers to know whether looting taking place.” Colonel Arthur Marget, head of the Finance Division for the United States Allied Command in Austria (“USACA”) explained in 1947 that “***it was a well known fact to him that many officers and among them top level people***” ***had looted property from the Gold Train. Indeed, he explained that these top level people had taken home “very valuable things not only from the ‘goldtrain’ but [they] had looted other property in Austria.***” No action was taken by Army officers to recover the property from known looters. One USACA Fine Arts officer, Eve Tucker, explained in a letter at the time: “The position of the Fine Arts Officer in USFA was eliminated in July 1946 and from then until October 1947 the negligence of this explosive situation ***was hardly short of being criminal.*** (These are strong words, I know, but hear me out). There was no control then on what American officers sent home and there is very little now.”

19. Moreover, the United States knowingly permitted top-ranking military officials of the USACA to requisition for their personal use and the use of Army billets in Salzburg, Linz, Wels, and Vienna, thousands of items of stolen Jewish property, including precious rugs, paintings, family china, silverware sets, high-quality linens and glassware. Though this violated regulations governing the proper care given to items in

“Property Control,” senior officers were not shy about making such demands. For example, General Harry J. Collins had officially instructed Lt. Col. Heller, the Property Control Officer responsible for the Gold Train property: “The General desires that all of the above listed items be of the very best quality and workmanship available in the Land of Salzburg. He specifically told me to say that he intended to hold you responsible for securing these items.” (When Lt. Col. Heller resisted repeated such requests, noting that “All of this property was drawn from the so called Hungarian ‘Werfen Train,’” he was swiftly redeployed.) The military then permitted many of these items to return home to America with members of the armed forces.

20. Having failed to safeguard the property, the United States then refused to return it to its rightful owners. The United States did this after repeatedly promising that the property would be returned to Hungary, and thus to the Jews from whom it was stolen. To justify this reversal, it was forced to make a variety of arguments, each of them false and readily disprovable. In the end, to benefit the U.S. Treasury, the property that was not looted or given away was auctioned off so that the proceeds could be used to relieve some of the burden on the government to pay for resettlement of refugees.

21. To add insult to injury, the United States has concealed its wrongful conduct from plaintiffs and the class. The United States falsely maintained then, and maintains today, (i) that there was no stolen Jewish property on the Gold Train; (ii) that the property did not come from Hungary, and (iii) that none of the true owners of the stolen Jewish property on the Gold Train could be identified.

22. The United States has claimed, for example, that it did not know there was stolen Jewish property on the Gold Train. This is patently untrue.

INFORMATION REDACTED/UNDER SEAL²

² All documents filed under seal are done so in accordance with the Presidential Records Act, 44 U.S.C. §§ 2201-2207.

23. Indeed, as to whether stolen Jewish property was on the Gold Train, there is the poignant fact that the Gold Train carried literally 3 tons of menorahs and other Jewish religious or ritual objects such as silver kiddush cups like the one that was miraculously recovered by plaintiff Elizabeth Bleier's father, former Budapest Rabbi Jonathan Steif, in New York in 1950. Furthermore, this kiddush cup is typical of the private, stolen Jewish property that the United States falsely characterizes as captured enemy property.

24. At times, the United States has also claimed it could not be sure the property came from Hungary. This is equally, and absurdly, false. The United States had no doubt about the country of origin when the United States accepted custody over the Gold Train and its cargo from Hungarian officers. In fact, the United States' 30(b)(6) representative in this litigation admitted that Hungary was the country of origin of the Gold Train and that this fact was known in 1945 by the United States. Thus, the Army now concedes this point. Indeed,

INFORMATION REDACTED/UNDER SEAL

Under the applicable United States' restitution policy in 1946, this fact alone required restitution of the Gold Train to Hungary.

25. The United States has also claimed that none of the true owners of the stolen Jewish property on the Gold Train could be identified. This, too, is false – and there is myriad evidence to the contrary. Holocaust Commission member and senior Clinton Administration official for Holocaust restitution matters Stuart Eizenstat has said of the works of art on the Gold Train, including Rembrants and Durers, “about half have

significant markings indicating ownership and some identification.” And, the representatives of the Hungarian Jews reminded the U.S. authorities in 1947 that “all property of Hungarian Jews was labeled with name and address of the owners forced to deposit their valuables with Hungarian banks.” In fact, when the government allowed a couple of individuals – all Gentiles – to enter the Salzburg Warehouse and search for their property from the Gold Train, they readily found some of their property and reclaimed it.

26. The reason that the United States falsely asserted that the stolen Hungarian Jewish property was unknown as to national origin or as to any individual owner, was to relieve the economic burden that Jewish refugees were imposing on the U.S. Treasury. Under Article 8 of the Final Act of the Paris Conference on Reparation, much of the stolen Jewish property was treated as “non-monetary gold” found in Germany. As such, through the implementation of the Five-Power Agreement in June 1946, it was to be given to the Inter-Governmental Committee on Refugees (“IGCR”) and liquidated, with 90% of these proceeds to go directly to the rehabilitation and resettlement of Jews in America and Palestine, which at the time, was a drain on U.S. resources. The United States saw the Gold Train as a quick and lucrative source of funds for the resettlement of Jews that could replace the U.S. Treasury, or at the very least minimize the government’s contribution.

27. The United States benefited in myriad other ways by appropriating the stolen Jewish property: including selling the loot through the Army Exchange Service at the PX’s, directly reaping the benefits of the financial proceeds of these sales; and giving stolen Hungarian Jewish property to Austrian Catholic churches, displaced persons (including Jews), and the Austrian State and revitalized Austrian communities, all of which helped alleviate the financial strain that the United States was incurring in the reconstruction of Austria.

28. Today, the ultimate disposition of most of the stolen Jewish property that was on the Gold Train is unknown, but this much is clear: ***none of it was returned to the Jewish owners or their heirs by the United States.*** It is highly instructive to compare this record to similar incidents in the wake of World War II. For example, at around the same time Avar asked the U.S. to safeguard the Gold Train, Hungarian officials also sought and received U.S. protection for a second “gold train” — this train carrying gold reserves of the Hungarian National Bank and other properties. Just as it did to Avar, the U.S. Army agreed to protect that train’s contents. There is one significant difference between the two trains. The United States returned the property on the second train (the “Hungarian National Bank train”) to Hungary. However, it refused to return the property on the Gold Train. In addition, France had received some of the property from the Gold Train, property transported by Avar’s superior in a convoy of vehicles that was seized by France. In accordance with applicable restitution policy, France restituted the Gold Train property it seized to Hungary.

29. Regrettably, to this day, the United States has made no attempt to identify the rightful Jewish owners of the stolen property or even create a detailed inventory of exactly what Jewish property the United States accepted custody of in July 1945. While the United States was misusing, losing or misappropriating the property, it was unabashedly lying to the Hungarian Jews themselves. When representatives of Hungarian Jewry tried to view the Jewish property, and offered to help identify it and to help locate and return the property to its rightful Jewish owners, the United States refused. In fact, the United States went so far as to inform the Hungarian Jewish representatives that they should not even ask or claim the property because there was no legal basis for their request. On this matter, the United States’ representatives informed the Hungarian Jews that the United States would only deal with the Hungarian government, and not any individual owner or the Hungarian Jewish succor organizations.

Meanwhile, the United States was dealing with other Jewish organizations, seeking to have these organizations use the proceeds from the property to alleviate the financial burdens of the United States Treasury.

30. In accordance with and reliance on the United States' representations, the Hungarian Jews turned to the post-war government of Hungary under Prime Minister Nagy, and in particular Miklós Nyárádi, the Minister of Finance, to reclaim the stolen Jewish property for the benefit of its true owners, heirs, and their succor organizations. The Hungarian Jews were successful in obtaining Hungarian legislation that declared the forced transfers under the Nazi puppet government of Hungary void, as well as legislation providing for the return of the stolen Jewish property. In turn, Hungary was able to obtain a promise from the United States Secretary of State to return all displaced Jewish property. However, even though Hungary eventually obtained an express promise from the Secretary of State to return the stolen Jewish property, even though restitution of the Gold Train property to Hungary was required under United States laws and policies, and even though László Avar had turned over the Gold Train to the United States Army for protection and its eventual return, the United States reneged on its obligations and promises.

31. As a result of the United States' malfeasance, actions and omissions, plaintiffs and the putative class members had to struggle to rebuild their lives from nothing. Indeed, their assets and family heritage were lost to them, seemingly forever. The United States obscured the truth from them for decades.

32. Decades after World War II, Congress created the Presidential Commission on Holocaust Assets in the United States ("Holocaust Commission"). Based upon review of formerly classified documents and newly declassified documents as well as its investigations into documents retained all over the world, the Holocaust Commission concluded that the United States' treatment of the stolen Jewish property

that was on the Gold Train was “*an example of an egregious failure of the United States to follow its own policy regarding restitution of Holocaust victims’ property after World War II.*”

33. The Holocaust Commission found that the United States’ appropriation of the stolen Jewish property took place “at the highest levels” and identified by name five generals who “took valuables from the gold train to furnish their residences and offices.” In short, the Holocaust Commission’s investigation into a part of our nation’s previously concealed history revealed and confirmed the facts set out in this Complaint.

34. In the course of this litigation, plaintiffs have unearthed additional documentation that provides further evidence of wrongdoing committed by the United States. Newly discovered documents confirm that the United States was aware that top ranking military members were systematically looting the Gold Train and were deliberately mishandling the Gold Train property. Plaintiffs, for example, have found documents from Israeli archives which explain that

The local American Military Authorities are doing everything to obstruct that work [inventorying the Gold Train], especially in view of the fact that with the beginning of this work they have lost a source for easily acquiring riches. It is known that top-ranking officers of the American Army have pocketed very valuable items.

35. Plaintiffs only recently discovered the fate of their property and the United States’ role in its loss. To date, all of the facts are still not known and the Army is still concealing the truth. The facts and events surrounding plaintiffs’ claims have been classified and hidden from the public for decades. Based on the review of documents and consultations with staff members of the Holocaust Commission, plaintiffs believe that many more documents regarding the events pertaining to the Gold Train and the facts described below remain classified today.

36. Plaintiffs have come to the Court to help obtain the truth, including an accounting and auditing of the contents of the Gold Train which the United States accepted custody over years ago and concealed from the world. Moreover, plaintiffs hereby ask the Court to require the United States to search its Army posts and other military installations for property that was on the Gold Train, just as other governments are searching for looted Jewish property in their military clubs and barracks.

37. The truth as plaintiffs know it today also requires that the United States pay for what it took from the Hungarian Jews. The United States rightly regards its role in the liberation of Europe as a shining moment in our history. And while the post-war conduct of American troops occupying Austria was generally commendable, even heroic, what the United States did with this stolen Jewish property in Austria was morally abhorrent and legally wrong, resulting for all practical purposes in a second theft of Holocaust victims' property. The conduct of the United States in appropriating the private property of victims of the Holocaust without compensation violated basic principles of bailment contracts, prohibitions against the taking or appropriation of private property without compensation and well-established rules and principles of international law that prohibit confiscation of civilian property as well as Army regulations prohibiting such conduct, and was in breach of governmental restitution policy in effect at the time.

38. Because of these basic legal principles, the United States has recently required the rest of the world, including the Swiss Banks, to open their records and retribute Jewish property stolen by the Nazis in the Holocaust or pay compensation where restitution is impossible. In so doing, then Deputy Treasury Secretary Eizenstat explained to the Helsinki Commission in 1999:

The basic principle that wrongly expropriated property should be restituted (or compensation paid) applies to them all [countries in Europe] and their implementation of this principle is a measure of the extent to which they have

successfully adopted democratic institutions, the rule of law with respect to property rights and market economy practices.

Certainly, one can expect no less of the United States than that which it demands of others under the rule of law. It is now time for the United States to recognize the basic principle that compensation should be paid for the property it wrongfully appropriated from the Hungarian Jews.

THE PARTIES

A. The Named Plaintiffs

1. Edith Klein Amster

39. Edith Klein Amster was born on January 11, 1932 in Norwalk, Connecticut, after her parents (Béla Klein and Irene Taussig Klein) had moved to the United States from Sárbogárd, Hungary (Fejér County). Though Ms. Amster's grandparents were middle class, land-owning Hungarian Jews, her parents desired to make their own fortune in America and moved to America before World War II. They were fortunate, as the remaining members of the family, including Ms. Amster's grandparents were deported to Auschwitz and never returned.

40. Upon the death of the family, by the laws of Hungary, all family property immediately belonged to Ms. Amster's parents who, in 1944, were legal residents and citizens of the United States.

41. The formerly Hungarian property that belonged to Béla Klein and Irene Taussig Klein included numerous items of gold and silver jewelry, hand-woven rugs, ordinary household property, fine linens, and china. Before Ms. Amster's family died in Auschwitz, and under Prime Minister's Decree 1600 (which is explained in detail below), the Nazis forcibly confiscated family heirlooms in April 1944. Under this decree, the officials would give the Jews a receipt for the property. Ms. Amster still has in her possession records that document part of the property seizure under Decree 1600.

According to the translation of one statement about the seizure, some of the property included:

- 12 damask towels
- 24 white nightgowns
- 12 white lady's panties
- 6 damask sets of bed linen
- 12 damask pillows
- 2 down comforters
- 2 feather comforters
- 4 feather pillows
- 6 six person damask tablecloths with 6 napkins
- 12 person Zsolnay porcelain set
- 6 person Zsolnay dinnerware
- 6 person black coffee set
- 6 person tea set
- 2 x 6 person sandwich sets
- 3 x 6 person glass preserved fruit serving set
- 1 glass dessert set
- 4 x 6 person liqueur sets
- 5 lead crystal vases and platter
- 6 person stainless steel utensil set
- 6 person sterling silver dessert set
- 6 person spoon set in ornamental box
- 54 pieces of porcelain figurines
- 4 pieces of silver candelabra
- Full set of enameled kitchen ware
- 2 person deckbed

The value of the above is 18,550 forints and one gold watch with chain in the value of 2,000 forints.

All these were seized by force in April of 1944.

42. According to Hungarian documents and consultations with Hungarian experts on the history of the Gold Train, Jewish assets seized under Decree 1600 throughout Hungary including Sárbogárd were on the Gold Train when the United States accepted custody over the train and its contents. Ms. Amster's parents' property was thus on the Gold Train when the United States accepted custody over it. The United States

never returned the property to her or her ancestors, and never paid for its appropriation of private property.

2. Francisc Basch

43. Francisc Basch resides in Montreal, Canada. He was born November 20, 1921 in Viseul de Sus, Romania. Mr. Basch immigrated to Canada and became a Canadian citizen in 1983. In 1944, he along with his parents and brother lived in Felsővisó, Hungary. His family owned two shops that sold general items. In April 1944, collaborationist Hungarian authorities sequestered the stores and transported Mr. Basch's family to the Ghetto of Felsővisó. Mr. Basch was not among them as he had been transported to a Hungarian internment camp 4 years before. Over the next several days, his father was detained and tortured in order to extract information regarding hidden valuables in the stores. Under torture, Mr. Basch's father would tell his family where to look for a valuable and turn it over in order to placate the "Jewish Property Commission". In return, the family received a "note" documenting the "transaction" each day, and each day the "note" was signed by a representative of the Jewish Commission, the Gendarmes and another "reliable person." In relevant part, a translation of some of the "notes" is as follows:

NOTE

Regarding the goods of value which had been taken for safekeeping by the local commission designed to act in the city of Felsővisó, from the named Wife of Basch Jenó, domiciled in Horthy Miklos str. Nr. 22 and from the persons living with him in the same household, in the year 1944, month of April, day 18, with the occasion of transporting them to the gathering camp (translator's note: ghetto).

2 pieces silver candle holders, 1 piece soup spoon, 3 pieces cups, 1 piece silver Agrivatch men's pocket watch, 1 piece Jiffy Kodak camera without box, 1 pc Saun men's wrist watch, in bad shape, 1 pc lady's wrist watch in good shape, which belongs to Mr. Pollak shoemaker, in change of 30

Pengo, 1 pc men's wedding ring silver ring silver, 1 pc lady's wedding ring 14 karat gold, 2 pc old silver 5 Pengo.

Note: The men's pocket watch is in excellent shape.

The commission, after taking the above shown goods, locked the house and the store of the above owner, or in the absence of a lock, nailed the doors, placed an official seal – and the keys have been put in an envelope with the owner's name and correct address, and sealed the envelope.

NOTE

Regarding the goods of value which had been taken for safekeeping by the local commission designed to act in the city of Felsővisó, from the named Wife of Basch Jenó, domiciled in Horthy Miklos str. Nr. 22 and from the persons living with him in the same household, in the year 1944, month of April, day 24, with the occasion of transporting them to the gathering camp (translator's note: ghetto).

One piece silver cigarette box
One piece silver bracelet
One piece silver pendant
One piece silver pocket watch
One piece silver pencil holder
One piece wrist watch
One piece silver earring
Five pieces broken gold teeth

The commission, after taking the above shown goods, locked the house and the store of the above owner, or in the absence of a lock, nailed the doors, placed an official seal – and the keys have been put in an envelope with the owner's name and correct address, and sealed the envelope.

44. After being liberated from Auschwitz in 1945, Mr. Basch, along with his father, recovered four of the "notes" from the Ghetto basement, and later authenticated the signatures. Based on Hungarian documents and in consultation with Hungarian history experts, plaintiff Basch has come to understand that his property, and other property confiscated under Decree 1600 from the Jews taken to the Ghetto of Felsővisó, was on the Gold Train when the United States accepted custody.

3. Veronika Baum

45. Veronika Baum resides in New York, New York. She was born on July 25, 1931 in Budapest, Hungary. Ms. Baum immigrated to the United States in 1956 and has been a citizen since 1962. Her father sold dental products, and as such was licensed to handle precious metals in the form of 250,000 teeth, dental instruments, and expensive machinery such as x-ray machines. The family's apartment was decorated and furnished luxuriously: Persian rugs, antique furniture, famous paintings, silver, statues, etc. They had a set of 12 Herendi serving dishes, including a set of 12 antique silverware, porcelain and fine china items. There was always a selection of 250,000 teeth, some in gold and some in platinum in her father's possession.

46. Under the terms of Decree 1600, Ms. Baum's father, Jenő Klein, was forced to relinquish the family's personal property including gold to the Magyar Bank in Budapest in 1944. The Magyar Bank, in accordance with practice and regulations in Hungary, issued a receipt for the property relinquished. Ms. Baum still has in her possession a Decree 1600 receipt that itemizes the gold items confiscated.

BELVÁROSI TAKARÉKPÉNZTÁR
RÉSZVÉNYTÁRSASÁG
MUSSOLINI TÉRI FIÓK

According to Section 5 of Order 1600/1944 of the Prime Minister, I surrender my valuables listed in the following record into sealed safe custody at this reputable Institution.

I acknowledge that this reputable Institution does not guarantee the quality, the condition, the objective exactness of the description, nor the indicated valuation of the valuables.

I authorize this reputable Institution to hand over for safekeeping, according to need, the valuables listed below to the Pénzintézeti Központ or another financial institution within the authority of the Pénzintézeti Központ, without them having any further responsibility attached to it.

Respectfully,

90 gram 22 carat gold Mrs. Jenő Klein by

12 gram	20 carat gold	authorization of Jenő Klein
50 gram	18 carat gold	Budapest 7, Dohány u. 90.
40 gram	18 carat gold	1st floor.
35 gram	16 carat gold	
1 piece	ring	
1 piece	ring with a stone	
1 piece	chain	
1 pair	earrings	

47. In 1944, soon after giving up his family’s possessions and business, plaintiff’s father was sent to Bergen-Belsen where he perished. In October of 1944 her mother was deported to Ravensbruck. Ms. Baum and her brothers were taken to the Ghetto. They returned to the family’s home and business in late 1945 to find everything gone.

48. According to Hungarian documents and consultations with Hungarian experts on the history of the Gold Train, the property confiscated from Hungarian Jewry and deposited in the banks in Budapest in accordance with Decree 1600 was on the Gold Train when the United States Army accepted custody over the train and its contents. Thus, Ms. Baum’s property was on the Gold Train and unlawfully appropriated by the United States without compensation.

4. Alice Besseney

49. Alice Besseney resides in Ontario, Canada. She was born in Sopron, Hungary in 1924. Her parents, Izidot Braun and Hermina Schwartz, were middle-class Jews, and they lived in Kőszeg, Hungary (Vas County). In 1944, the family’s personal property, which included 15 “Napoleon” gold coins, gold and silver jewelry, including a collection of cigarette cases, various bracelets, and necklaces and rings was confiscated by the Nazis and taken to the Financial Directorate of Szombathely (“Szombathely FD”). She and her family were deported by the Nazis but survived the Holocaust.

50. According to Hungarian documents and consultations with Hungarian experts on the history of the Gold Train, the Jewish assets seized under Decree 1600

throughout the Szombathely FD were on the Gold Train when the United States accepted custody. Thus, Ms. Besseney's property was on the Gold Train and unlawfully appropriated by the United States without compensation.

5. Elizabeth Bleier

51. Elizabeth Bleier was born in 1919, and lived Budapest in 1944, where her father had been a rabbi for 22 years. She has been a resident of New York since 1954, and has lived in the United States since 1947.

52. Under Decree 1600, in 1944 her family was forced to turn their family property over to the bank. This property included valuable religious ceremonial items, expensive silverware, gold and diamond jewelry, and luxurious carpets. Upon surviving the Hungarian deportations, the family moved to America without anything.

Miraculously, in 1950, Ms. Bleier's father retrieved one of the religious items, a silver kiddush cup, from the United World Galleries in New York after providing proof of ownership. A newspaper photo that depicts the return of this cup is included below.

53. According to Hungarian documents and consultations with Hungarian experts on the history of the Gold Train, that kiddush cup, which was taken into custody in Budapest under the terms of Decree 1600, was on the Gold Train when the United States acquired custody. Indeed, the Jewish property confiscated and deposited in the banks in Budapest in accordance with Decree 1600 was on the Gold Train when the United States Army accepted custody over the train and its contents. Ms. Bleier's property was on the Gold Train and unlawfully appropriated by the United States without compensation.

6. Erwin Deutsch

54. Erwin Deutsch was born in 1922 in Budapest, and currently resides in Brooklyn, New York. He became a United States citizen in 1962. His father, Emil Deutsch, was a prominent Budapest lawyer. His family was well to do, owning many

valuable pieces of property ranging from jewelry to candelabras to pocket watches to famous artwork, including paintings by Fulup László. In 1944, Mr. Deutsch's parents were deported and did not survive the Holocaust. After the war, Mr. Deutsch returned home to find his family's home occupied and their belongings gone.

55. Mr. Deutsch's family was forced to relinquish the family property to authorities in Budapest under the terms of Decree 1600.

56. Mr. Deutsch did not know what happened to his family's property. However, recently documents concerning the Gold Train have come to light. According to the U.S. inventory of artwork found on the Gold Train one of the paintings by Fulup László that was owned by Mr. Deutsch's family was on the Gold Train as well as other artwork. Additionally, some of Mr. Deutsch's family heirlooms are identified in Parke-Bernet auction catalogs of 1948; the auctions that sold Gold Train property.

57. Furthermore, according to Hungarian documents and consultations with Hungarian experts on the history of the Gold Train, the property confiscated from Hungarian Jewry and deposited in the banks in Budapest in accordance with Decree 1600 was on the Gold Train when the United States Army accepted custody over the train and its contents. Thus, Mr. Deutsch's property was on the Gold Train and unlawfully appropriated by the United States without compensation.

7. Dr. Joseph A. Devenyi

58. Dr. Joseph Devenyi resides in North York, Canada. He was born on May 26, 1926 in Budapest, Hungary. From approximately November 28, 1944 to May 4, 1945, Dr. Devenyi was in Nazi concentration camps. However, even before being forced into labor, Dr. Devenyi's family had all of their property confiscated from them under the terms of Decree 1600. Dr. Devenyi's stepfather relinquished the family's personal property including gold and jewelry to the Magyar Bank in Budapest on April 26, 1944. The Magyar Bank, in accordance with practice and regulations in Hungary, issued a

receipt for the property. Dr. Devenyi still has in his possession one of the Decree 1600 receipts that itemized some of the gold items confiscated by the Nazis. In part, it reads:

We acknowledge taking over, according to order 1600/1944 of the Prime Minister, for your safe deposit the following alleged valuables in an envelope sealed by you, in a package:

1 one platinum necklace
1 one gold necklace
1 one gold necklace
1 one cut diamond ring (one stone)
2 two golden brooches
1 one gold bracelet
1 one wristwatch with leather band
5 five rings of two kinds of gold
1 pair of gold cuff links

[Lengthwise handwritten]: Valued at 8,000 (eight thousand) Pengő. I do not wish to insure it).

I acknowledge that this reputable Institution does not guarantee the quality, the condition, the objective exactness of the description, nor the indicated valuation of the valuables.

I authorize this reputable Institution to hand over for safekeeping, according to need, the valuables listed below to the Pénzüntézeteki Központ or another financial institution within the authority of the Pénzüntézeteki Központ, without them having any further responsibility attached to it.

PESTI MAGYAR KERESKEDELMI BANK
Nádor utcai fiók

59. According to Hungarian documents and Hungarian experts on the history of the Gold Train, the property confiscated from Hungarian Jewry and deposited in the banks in Budapest was on the Gold Train when the United States Army accepted custody of the train. Dr. Devenyi's property was on the Gold Train when the United States accepted custody of it and unlawfully appropriated by the United States without compensation.

8. Peter Drexler

60. Peter Drexler resides in Rutherford, New Jersey. He was born on December 27, 1930 in Budapest. Mr. Drexler immigrated to the United States in 1957 and has been a U.S. citizen since 1963. Mr. Drexler's father, Otto Dreschsler, was an assistant editor of Pester Lloyd, a once prominent European newspaper. In March of 1944 the newspaper, similar to the Wall Street Journal, was taken over by the Nazis, soon thereafter Otto Dreschsler was deported. Mr. Drexler along with his mother and sister were forced to the Ghetto.

61. Under the terms of Decree 1600, Mr. Drexler's father was forced to relinquish the family's personal property including gold, silver, paintings, jewelry, gold Napoleon coins, and Persian rugs to the Magyar Bank in Budapest in April 1944. The Magyar Bank, in accordance with practice and regulations in Hungary, issued a receipt for the property. Remarkably, Mr. Drexler still has in his possession one of the Decree 1600 receipts that itemized the items confiscated by the Nazis.

62. The English translation of the document provides, in relevant part:

According to Section 5 of Order 1600/1944 of the Prime Minister, I surrender my valuables listed in the following record into sealed safe custody at this reputable Institution.

I acknowledge that this reputable Institution does not guarantee the quality, the condition, the objective exactness of the description, nor the indicated valuation of the valuables.

I authorize this reputable Institution to hand over for safekeeping, according to need, the valuables listed below to the Pénzintézeteti Központ or another financial institution within the authority of the Pénzintézeteti Központ.

Record of Listing

I testify that the attached metal box contains the following:

3 pair of gold earrings with 0.5 carat cut diamonds	P.	3,000.00
1 Gold pocket watch	P.	900.00
1 Gold watch, Philip Patek	P.	4,000.00
31 Gold Napoleon coins 20 Frank denomination	P.	6,200.00

6 Large silver platters	P.	1,200.00
2 Gold brooches	P.	900.00
1 Full set of place setting for 12 persons (silver)	P.	1,400.00
9 Paintings (by Austrian and Hungarian artists)	P.	5,000.00
3 Sculptures, bronze	P.	800.00
1 Watch chain, gold	P.	500.00
Appraised total value		Pengő 23,900.00

Budapest, April 1944

Respectfully
(signed)
Otto Drechsler
Contributing Editor,
Pester Lloyd
Budapest, District 12
Roskovics utca 5.

63. According to Hungarian documents and Hungarian experts on the history of the Gold Train, the property confiscated from Hungarian Jewry and deposited in the banks in Budapest was on the Gold Train when the United States Army obtained custody over the train. Mr. Drexler's property was on the Gold Train and unlawfully appropriated by the United States without compensation.

9. Baruch Bernhard Epstein

64. Baruch Bernhard Epstein resides in Broward County, Florida, having become a U.S. citizen in 1963. In the 1930s, his father, Benno Epstein, was a Hungarian citizen living in Berlin. Similarly, his grandfather, Menyhért Epstein, had Hungarian citizenship but lived in Germany. In 1939, plaintiff and his parents, as well as his grandfather, were expelled from Germany and moved to Hungary.

65. Plaintiff's grandfather, Menyhért Epstein, owned real and personal property in Germany and Hungary, including a substantial amount of jewelry and cash that he was forced to relinquish to the Debrecen First Savings Bank under Decree 1600. Additionally, his father's property was similarly confiscated. Plaintiff still has in his possession a Decree 1600 receipt, which provides a partial inventory of what was taken. Below is some of the translation.

Minutes

Taken in Debrecen, in the business location of the Debrecen First Savings Bank, Debrecen, at 5 p.m., July 5th, 1944, in connection with taking an inventory of the safe that is effected by Order 1600/1944 of the Prime Minister, as well as other conditions of this Order, based on Order number 1290/1944 of the Royal Hungarian Ministry of Finance.

Subject: Taking inventory of safe Number 36, leased by a Jewish individual, Menyhért Epstein, a resident of Debrecen, Ferenc József ut 29. who is effected by Order 1600/1944 of the Prime Minister.

After opening the safe the following content was ascertained:

98 pieces of 100 Pengős	Pengő	9,800.00
3 man's gold pocket watch	P.	900.00
1 " Swiss Doxa watch	P.	300.00
1 " double-barreled watch	P.	100.00
1 " lady's gold watch	P.	100.00
1 " lady's gold bracelet 125 gr.	P.	1,200.00
7 " man's gold chains 180 gr.	P.	2,800.00
3 " gold wedding bands 10 gr.	P.	150.00
1 " gold signet ring approx. 5 gr.	P.	50.00
1 " lady's designer ring 5 diamonds	P.	300.00
1 " lady's ring with diamonds	P.	500.00
1 " man's ring with diamond	P.	5,000.00

The Committee turned over the valuables to the Debrecen First Savings Bank with the request to place it into sealed safe deposit for Menyhért Epstein, Debrecen, Ferenc József u. 29, that has to be arranged according to Order Number 1600/1944 of the Prime Minister.

66. According to Hungarian documents and consultations with Hungarian experts on the history of the Gold Train, the Jewish property confiscated in Debrecen and deposited in the banks there in accordance with Decree 1600 was on the Gold Train when the United States Army obtained custody over the train. Plaintiff's property was unlawfully appropriated by the United States without compensation.

10. Magda Feig

67. Magda Feig was born in Ungvár in 1928 to Lajos and Roszi Lebovitz. She immigrated to the United States in 1949, and received full citizenship in 1955. She currently resides in Brooklyn, New York.

68. In 1944 Mrs. Feig's father, Lajos Lebovitz, was deported to Buchenwald. Ms. Feig, her mother, sisters, and brother were sent to Auschwitz. In 1944, her family's property, including jewelry, rugs, furs, porcelain, silverware and religious items, was forcibly taken under Decree 1600 while the family resided in Ungvár.

69. According to a review of Hungarian documents and in consultations with Hungarian experts, the Jewish property confiscated from Ungvár under Decree 1600 was on the Gold Train when the United States accepted custody. Ms. Feig's property was unlawfully appropriated by the United States without compensation.

11. Michael Fried

70. Michael Fried lives in Forest Hills, New York. Mr. Fried arrived in the United States in 1958, and has been an American citizen since 1964. He was born on May 9, 1923 in Miskolc, Hungary, a town about 100 miles from Budapest. Under the terms of Decree 1600, Mr. Fried's father, Ignác Fried, relinquished the family's personal property including gold and diamonds to the Magyar Bank in Budapest on April 25, 1944. The Magyar Bank, in accordance with practice and regulations in Hungary, issued receipts for the deposited property. Mr. Fried still has in his possession one of the Decree 1600 receipts that itemized the gold and diamond items confiscated by the Nazis.

71. The receipt, like those quoted above, is typical of other Decree 1600 receipts or "notes," and as translated to English states:

With reference to Sections 4 and 5 of Order 1600/1944 of the Prime Minister, the undersigned depository hereby certifies that they had taken over from you (you in plural) the following valuables:

2 pieces of gold bracelets

1 piece of gold bracelet with precious stones
1 piece of gold ring with big cut diamond
3 pieces of gold rings with smaller cut diamonds
1 piece gold ring with cut diamonds and rubies
1 piece diamond ring
2 pieces of gold necklaces with 3 charms/medals
2 pairs of earrings
1 piece of woman's wristwatch
1 pair of gold cuff links

We declare that we do not guarantee the genuineness, the quality, the objective exactness of the description, nor the indicated valuation of the valuables. Our Institution does not accept any responsibility in regard to the values given for insurance for robbery and fire.

We reserve the right that, if need arises, we hand over for safekeeping the valuables listed below to another financial institution within the authority of the Pénzintézeti Központ, without having to accept any further responsibility for them.

The valuables mentioned were placed in your (your in plural) presence into a sealed envelope (package), which was sealed for security's sake with your (your in plural) as well as our Institution's seals. This sealed envelope (package) was placed in sealed safe deposit.

72. According to Hungarian documents and consultations with Hungarian experts on the history of the Gold Train, the property confiscated from Hungarian Jewry and deposited in the banks in Budapest was on the Gold Train when the United States Army accepted custody over the train. Accordingly, Mr. Fried's family property was on the Gold Train and unlawfully appropriated by the United States without compensation.

12. Paul Gottlieb

73. Paul Gottlieb was born on June 29, 1936 in Budapest, Hungary, and resides in Toronto, Canada. Mr. Gottlieb immigrated to Canada in 1957 and has been a Canadian citizen since 1962. Mr. Gottlieb's father was a successful businessman in Budapest. In October 1944 Mr. Gottlieb's family went into hiding with false papers at a family owned home outside of Budapest. Mr. Gottlieb's father was discovered by the Nazis and disappeared forever. Mr. Gottlieb and his mother continued to hide until

released by the Red Army in February 1945. When they returned to their apartment in the city they found everything gone.

74. Under the terms of Decree 1600, Mr. Gottlieb's father, Arnold Gottlieb, relinquished his family's personal property including gold jewelry, diamonds, other valuable gemstone jewelry, Persian carpets, and paintings to the Hungarian Bank and Mercantile Co. in Budapest on April 27, 1944. The bank, in accordance with practice and regulations in Hungary, issued a receipt for the property. Mr. Gottlieb still has in his possession some of the Decree 1600 receipts that itemized the gold and other items confiscated by the Hungarian Nazis.

75. According to Hungarian documents and Hungarian experts on the history of the Gold Train, the property confiscated from Hungarian Jewry and deposited in the banks in Budapest under Decree 1600 was on the Gold Train when the United States Army obtained custody over the train. Mr. Gottlieb's property was on the Gold Train and unlawfully appropriated by the United States without compensation.

13. Judith Karmi

76. Judith Karmi is a naturalized U.S. citizen who resides in Williamsville, New York. She was born in 1924 in Budapest. Her father, Dezso Timar, was a prominent lawyer in Budapest. In the spring of 1944, under Decree 1600, the family relinquished custody of their property to the bank. Ms. Karmi's father had asked his sister-in-law, Mrs. Oscar Beck, to deposit the jewels in the local bank in accordance with the Decree. Mrs. Beck was married to a foreign citizen and was exempt from wearing the yellow Star of David, therefore she was able to walk in the street with more freedom and safety. Mrs. Beck deposited the jewelry in the branch and received a receipt that she gave to her brother-in-law. The receipt for the property was lost with Dr. Timar at Auschwitz.

77. Immediately after the war, Ms. Karmi's friends and family who had helped deposit the family's property gave sworn statements of testimony regarding the items that were taken. Ms. Karmi is still in possession of some of these sworn statements that explain her family's property was deposited in the local banks in accordance with Decree 1600.

78. According to Hungarian documents and experts on the history of the Gold Train, the property confiscated from Hungarian Jewry and deposited in the banks in Budapest was on the Gold Train when the United States Army accepted custody over the train. Ms. Karmi's property was on the Gold Train and unlawfully appropriated by the United States without compensation.

14. Ethel Klein

79. Ethel Klein is a resident of the Aventura area of Miami-Dade County, Florida. She was born in Beregszász, Hungary. She was 17 years old in April of 1944 when the Nazis and Hungarian Army forced the family out of their house, and deported them to Auschwitz. They were not able to take their personal possessions with them. Later, Ethel marched from Auschwitz to Bergen-Belsen, and was one of a small number of Jews who survived the march. After she was liberated from Bergen-Belsen, Ethel returned to her family's home and found everything, including their silver, jewelry, and their father's shoemaking equipment and inventory missing.

80. Plaintiffs, in consultations with Hungarian experts, have discovered that the Jewish wealth confiscated and forcibly seized from Jews in Beregszász in April 1944 under Decree 1600 was transported to Budapest and loaded onto the Gold Train. Thus, Ms. Klein's property was on the Gold Train when the U.S. accepted custody and appropriated by the United States without compensation.

15. Mildred Klein

81. Mildred Klein was born in 1924 in Duquesne, Pennsylvania. Though her parents had lived in the United States since 1914, being made citizens in 1938, many members of Ms. Klein's family remained in Budapest and died in the Holocaust.

82. After Nazi Germany occupied Hungary, in accordance with Decree 1600 Ms. Klein's family relinquished their precious valuables and family heirlooms.

83. Upon the death of the family, by the laws of Hungary, all family property immediately belonged to Ms. Klein's parents who, in 1944, were legal residents and citizens of the United States.

84. According to Hungarian documents and experts on the history of the Gold Train, the Decree 1600 property confiscated from Hungarian Jewry living in Budapest was on the Gold Train when the United States Army obtained custody over the train. Ms. Klein's property was on the Gold Train and taken and/or unlawfully appropriated by the United States without compensation.

16. Tamás May

85. Tamás May was born in Budapest, Hungary and still resides there. His family's property was forcibly confiscated under the terms of Decree 1600 before he and his family were deported. He still has one receipt for property forcibly seized under Decree 1600, which is identified in the Complaint below.

86. According to Hungarian documents and consultations with Hungarian experts on the history of the Gold Train, the property confiscated from Hungarian Jewry and deposited in the banks of Budapest was on the Gold Train when the United States Army accepted custody of the train. Mr. May's property was on the Gold Train and unlawfully appropriated by the United States without compensation.

17. David & Irene Mermelstein

87. David Mermelstein resides in the Kendall area of Miami-Dade County, Florida. He was born in 1929 in Hungary. In 1944, his parents, four brothers, younger sister, grandmother, and aunt, who all lived together, were forced out of their home and into the Jewish Ghetto in Beregszász and deported to Auschwitz. The Nazis then confiscated their property including separate sets of silver candelabras and kiddush cups belonging to his mother, grandmother, and aunt.

88. After the war, Mr. Mermelstein returned home to discover everything gone and no one alive. Other than an aunt and uncle, who were U.S. citizens at the time, he had no other family. He sought out the U.S. controlled displaced persons camp in Landsberg, Germany and lived there until he was able to move to America, which he did in March 1947.

89. Irene Mermelstein resides in the Kendall area of Miami-Dade County, Florida. She was born in Hungary. In Hungary, she lived with her parents, who owned a hardware store that also sold fine porcelain dishes. In April 1944, her home in Munkács was raided, and the officials confiscated much of the family's property. The family was then deported to Auschwitz. Ms. Mermelstein is the only member of her family to survive. She returned to their home after liberation and found the house empty.

90. According to Hungarian documents and consultations with Hungarian experts on the history of the Gold Train, the property confiscated from Hungarian Jewry under Decree 1600 in advance of the deportations from Munkács and Beregszász was taken to Budapest and loaded on the Gold Train. The United States unlawfully appropriated the Mermelstein's property.

18. Edith More

91. Edith More lives in Los Angeles, California. Mrs. More was born in Ács, Hungary (Komárom County) in 1928. Ms. More immigrated to the United States in 1956

and became a United States citizen on April 20, 1962. She is a Holocaust survivor, however her father was deported to Auschwitz.

92. Under Decree 1600, Ms. More's father, Arnold Klein, was forced to relinquish the family's personal property including gold and diamonds to the General Banking and Trust Company Ltd. in Budapest. The bank, in accordance with the business practices of the time and regulations in Hungary, issued a receipt for the property. Ms. More still has in her possession one of the Decree 1600 receipts that itemized some of the items confiscated by the Nazis, including 4 oriental rugs, 3 paintings, and 31 pieces of gold and diamond jewelry, a receipt which Ms. More has managed to retain throughout the Holocaust and to the present.

93. According to Hungarian documents and Hungarian experts on the history of the Gold Train, the property confiscated from Hungarian Jewry under Decree 1600 and deposited in the banks in Budapest was on the Gold Train when the United States Army accepted custody. Ms. More's property was on the Gold Train and unlawfully appropriated by the United States without compensation.

19. John J. Rakos

94. John J. Rakos resides in Parsippany, New Jersey. He was born September 28, 1929 in Hungary. Mr. Rakos immigrated to the United States in 1957, and became an American citizen in 1962. In 1944, he and his family lived in Budapest. Under the terms of Decree 1600, in April 1944 they were forced to surrender their valuables to the bank in Budapest. The bank, in accordance with practice and regulations in Hungary, issued receipts for the property. Mr. Rakos still possesses a copy of one Decree 1600 receipt. An English translation of that receipt is excerpted in relevant part:

According to Section 5 of Order 1600/1944 of the Prime Minister, I surrender my valuables listed in the following record into sealed safe custody at this reputable Institution.

I acknowledge that this reputable Institution does not guarantee the quality, the condition, the objective exactness of the description, nor the indicated valuation of the valuables.

I authorize this reputable Institution to hand over for safekeeping, according to need, the valuables listed below to the Pénzintézeti Központ [“PK”] or another financial institution within the authority of the Pénzintézeti Központ.

List:

I certify that the content of the two (2) boxes deposited in the sealed safe deposit is as follows:

2 pair gold earrings	Pengő 900.-
2 gold pocket watches	500.-
1 gold medal with gold chain	120.-
1 gold signet ring	120.-
1 gold ring with stone	150.-
1 gold pocket watch chain	400.-
2 pure gold platters	1,800.-
1 gold broche	450.-
22 pieces of 20 Franks gold coins	1,200.-
24 settings of antique sterling silver tableware	2,400.-
1 silver cup	450.-
	<hr/>
Total assessed value	8,490.-

95. According to Hungarian documents and experts on the history of the Gold Train, the property confiscated from Hungarian Jewry and deposited in the banks in Budapest was on the Gold Train when the U.S. Army accepted custody over the train. Mr. Rakos’ property was on the Gold Train and unlawfully appropriated by the United States without compensation.

20. George Rasko

96. Mr. George Rasko resides in Fair Lawn, New Jersey. He was born August 10, 1939 in Szeged, Hungary. Mr. Rasko’s grandfather, Vilmos Javer, was an art dealer there before WWII. When the laws restricting Jews doing business were passed in

Hungary, pursuant to these laws, he and his wife deposited some of their art collection in a local pawnshop owned by the government. Additionally, Mr. Rasko's father, upon enactment of Decree 1600, deposited some of the family's property in the local financial institution before the entire family was deported to the Jewish Ghetto and later to the "Slave Labor" camps. Throughout their time in Nazi "Slave Labor" camps, the family managed to keep track of some of the receipts.

97. Some of Mr. Rasko's family paintings match the paintings that the United States identifies.

98. According to Hungarian documents and experts on the history of the Gold Train, the Jewish property from Szeged that was deposited in the banks in accordance with Decree 1600 was on the Gold Train when the United States Army obtained custody. Mr. Rasko's property was on the Gold Train and unlawfully appropriated by the United States without compensation.

21. Ana Rosner

99. Ana Rosner resides in the Aventura area of Miami-Dade County, Florida. She was born Ana Gelbman on February 16, 1924, in the town of Beregszász. She lived with her parents Joseph and Rose Gelbman. On the day after the Jewish Passover holiday in April 1944, the Nazis and Hungarian police forced her family out of the house, and marched them to a Ghetto in Beregszász with the other Jewish residents from the town. They were given no time to pack and were forced to leave all their belongings in the house. They left valuable silverware, silver service, candlesticks, and other items of personal importance to their family, such as her brother's expensive musical instruments. The Gelbman family was soon deported to Auschwitz. Ana's parents perished at Auschwitz. Ana was forced to march, with the surviving camp inmates to Bergen-Belsen. After being liberated, Ana returned to Hungary, to see who, if anyone in her family survived. The house was empty.

100. Plaintiffs, in consultations with Hungarian experts have discovered that the Jewish wealth confiscated and forcibly seized from Jews taken to the Ghetto in Beregszász was transported to Budapest and loaded onto the Gold Train. Ms. Rosner's property was on the Gold Train and unlawfully appropriated by the United States without compensation.

22. Irving Rosner

101. Plaintiff Irving Rosner resides in the Aventura area of Miami-Dade County, Florida. He was born on October 10, 1922, in the town of Beregújfalú. During a police raid in April 1944, the Hungarians broke through the floor in his parents' house in Beregújfalú and confiscated his family's property in accordance with Decree 1600 including family jewelry, silver, and his father's shoe manufacturing equipment. Later, in April 1944, Mr. Rosner and his parents were deported to Auschwitz. After being liberated, Mr. Rosner returned to Hungary, and found his relatives had all died, and his house had been turned into stables.

102. According to Hungarian documents and consultations with Hungarian experts on the history of the Gold Train, the property confiscated from Hungarian Jewry under Decree 1600 in advance of the deportations from Beregújfalú was taken to Budapest and loaded on the Gold Train. The United States unlawfully appropriated Mr. Rosner's property without compensation.

23. Estate of George Sebok

103. George Sebok resided in Palm Beach, Florida. He was born on January 20, 1921 in Budapest, Hungary and died a few weeks ago. Mr. Sebok immigrated to the United States in 1960 and has been a United States citizen since June 1965. Under the terms of Decree 1600, Mr. Sebok's father, Landor Sebok, was forced to relinquish the family's personal property including gold and gold jewelry and watches, oil and aquarelle paintings, Persian rugs, silverware, and Bonds issued by the Banca Ungaro-Italiana to the

Magyar Bank in Budapest on or about April 24, 1944. The bank, in accordance with practice and regulations in Hungary, issued a receipt for the property. Many members of Mr. Sebok's family were killed at Auschwitz.

104. Mr. Sebok still has in his possession one of the Decree 1600 receipts that itemized the gold and other items confiscated by the Hungarian Nazis and a PK Bank document for the 3 Bonds issued January 27, 1943. According to Hungarian documents and consultations with Hungarian experts on the history of the Gold Train, Mr. Sebok's family's property was on the Gold Train when the United States Army obtained custody. The United States never returned the property or paid for its appropriation.

24. Dr. Laszlo Sokoly & Ms. Edith Reiner

105. Dr. Laszlo Sokoly was born in Hungary in 1926. In April 1944, when he was a young man, the Nazis forced him into the Jewish Ghetto in Szécsény. Later he was assigned to camp number 107/310 in Kiskunlachaza, Hungary and then transferred to a Forced Labor camp from May to November 1944. His parents and 28 other family members were deported to Auschwitz in 1944 and never returned. In November 1944, he survived the death march.

106. His home had been used as a headquarters for the Nazis. On December 7, 1944, Nazi gendarmerie confiscated the contents of his home near Szécsény, Hungary, which is located in North Hungary (Nógrád County). They removed all furniture from the home including many paintings, a Persian coat, five diamond rings including one with a flawless stone, two gold watches, two gold bracelets, a gold necklace, five Persian rugs including a Naim, silver service for 18, fine china and many other valuable home furnishings. The paintings included five by Janos Viski, four by Iványi Greenwald and a portrait of a family member by renowned Hungarian artist Gyula Benczur. According to the inventory of artwork found on the Gold Train, a few paintings stolen from Dr.

Sokoly's family were on the Gold Train. Dr. Sokoly's ancestors built the family home in 1796. Today, the house is an art museum, donated to the local town by Dr. Sokoly.

107. In 1956, having survived the Holocaust, Dr. Sokoly left Hungary and came to the United States seeking freedom. He is a naturalized citizen, and currently resides in Maryland.

108. Edith Reiner was born in Hungary in 1925. She is the sister of plaintiff Dr. Laszlo Sokoly. She now lives in Budapest. In 1944, she was deported to Auschwitz.

109. Because some of Dr. Sokoly's and Ms. Reiner's family's paintings were on the Gold Train, and after a review of Hungarian documents and in consultation with Hungarian experts on the history of the Gold Train, plaintiffs have ascertained that the property confiscated from the Jews near Szécsény under Decree 1600 was on the Gold Train when the United States accepted custody of it. Plaintiffs' property was on the Gold Train and unlawfully appropriated by the United States without compensation.

25. Agnes V. Somjen

110. Agnes V. Somjen was born Agnes Kellner in Budapest, Hungary, in 1931 to a middle-class Jewish family. She currently resides in Dover, New Jersey and has one sister still alive who resides in Cedar Grove, New Jersey. Ms. Somjen moved to the United States in 1956 and became a United States citizen in 1962.

111. Under the terms of Decree 1600 her family was forced to relinquish their personal possessions including gold rings, chains, a brooch, and a pair of diamond earrings set in gold, gold and diamonds, to the Magyar Bank in Budapest in April of 1944. Ms. Somjen still has in her possession one of the Decree 1600 receipts that itemized some of the gold and diamonds confiscated by the Hungarian Nazis.

112. According to Hungarian documents and Hungarian experts on the history of the Gold Train, the property confiscated from Hungarian Jewry and deposited in the banks in Budapest was on the Gold Train when the United States Army obtained custody.

Ms. Somjen's property was on the Gold Train and unlawfully appropriated by the United States without compensation.

26. Olga Steiner

113. Olga Steiner resides in Bayside, New York. Ms. Steiner was born in Szatmárnémeti in 1918. In 1944, she lived in Nagyvárad, Hungary. She immigrated to the United States in 1961 and became a citizen in 1968. Ms. Steiner is the sole heir to her uncle Géza Holló's estate. He was a wealthy Hungarian Jew who perished at the hands of the Nazis in the Holocaust. Ms. Steiner has in her possession a document confirming that her uncle's personal property was confiscated pursuant to Decree 1600. In particular, the document explains:

The late Géza Holló, previously a resident of Szatmárnémeti, deposited his valuables at the Szatmárnémeti Kereskedelmi Bank rt. in the year 1944, per Order 1600/1944 of the Government, as follows:

1 pair gold earrings with 4 pieces of genuine cut diamonds
1 piece gold ring with stone
1 piece gold earring with 2 pieces of genuine stones (cut diamond)
1 gold signet ring
1 gold lady's broche
2 pieces of genuine emerald.

The Szatmárnémeti Kereskedelmi Bank was a subsidiary of the Pesti Magyar Kereskedelmi Bank [PMKB] and the deposit of the late Géza Holló was later transported to the latter financial institution.

114. According to Hungarian documents and Hungarian experts on the history of the Gold Train, the property confiscated from Hungarian Jewry and deposited in the PMKB in accordance with Decree 1600 was on the Gold Train when the United States Army obtained custody. Ms. Steiner's property was on the Gold Train and unlawfully appropriated by the United States without compensation.

27. Jonas K. Stern

115. Jonas K. Stern was born on June 13, 1944 in New York City, though he now is a resident of Oakland, California. His great uncle, Alfred Knopfler, was a wealthy tradesman in the city of Győr, being the proprietor of a jewelry store and the guardian of the antique porcelain collection left in his custody by Mr. Stern's grandparents. Mr. Knopfler's store sold men and women's jewelry, clocks, silverware, and other valuable items.

116. In accordance with Decree 1600, Alfred Knopfler turned over his property, along with his parents' porcelain collection, to the local officials. This property, along with all Jewish property confiscated in Győr, including the Győr Museum works of art, was taken to and loaded onto the Gold Train. Shortly after the property was confiscated, Alfred, who was unmarried and without children, died at Auschwitz. Upon his death in 1944, all title to the family property passed to Mr. Stern's grandparents, who were at the time legal residents of the United States.

117. Mr. Stern's grandparents, immigrated to the United States in 1939 from Győr, and are listed on a passenger manifest dated June 5, 1939 from Hungary to the United States. Mr. Stern is one of two living heirs to his grandparents' and Alfred Knopfler's Estate. His property was unlawfully appropriated by the United States without compensation.

28. Irene & Andrew Tibor

118. Andrew Tibor resides in Aventura, Miami-Dade County, Florida. He was born in the year 1918 in the town of Debrecen. He was taken away to a forced labor camp in Hungary in 1940, but returned to Budapest in 1943, where he married plaintiff Irene Ecker. Irene Tibor and their baby were later forced out of their Budapest apartment and went to live with her mother. Ultimately, Irene and her mother were forced out of their Budapest apartment, and their possessions were deposited in the local bank under

Decree 1600. Among those possessions were unique silver candlesticks, a silver menorah, a silver jewelry box, and Irene's sewing machine. Irene Tibor's mother died at Auschwitz.

119. According to Hungarian documents and Hungarian experts on the history of the Gold Train, the property confiscated from Hungarian Jewry and deposited in banks in Budapest was on the Gold Train when the United States Army obtained custody. The Tibor's property was on the Gold Train and unlawfully appropriated by the United States without compensation.

29. Agnes Vadasz

120. Ms. Vadasz resides in Toronto, Canada. She was born on February 21, 1923 and lived in Budapest, Hungary in 1944. Her family was very wealthy, with 30-40 paintings by famous artists such as Oscar Glatz, and others. Her family also had more than 40 Persian hand-woven rugs, given to them from two families, the Vas family and her mother's family, the Mellingers. Her family's household also included vast amounts of silverware and jewelry from her grandmother and mother.

121. In accordance with Decree 1600, the family's personal property was seized, and several receipts were issued. Ms. Vadasz's father had the family's documents, including insurance documents and the family's property receipts, with him when he was deported on December 29, 1944. Her mother and grandmother were also deported. All of her immediate family died in the Holocaust.

122. Plaintiffs' counsel has recently discovered that some of her family's paintings are identified in the inventory of Hungarian paintings from the Gold Train. For example, painting numbers 345, 558, 732, and 788 match descriptions of some of her family's paintings. Accordingly, Ms. Vadasz's property was on the Gold Train when the United States accepted custody.

123. According to Hungarian documents and Hungarian experts on the history of the Gold Train, the property confiscated from Hungarian Jewry and deposited in banks in Budapest was on the Gold Train when the United States Army obtained custody. Ms. Vadasz's property was on the Gold Train and unlawfully appropriated by the United States without compensation.

30. Zoltan S. Weiss

124. Zoltan S. Weiss was born in Szabolcsbáka, Hungary in 1915, and has lived in America since 1949. He is a U.S. citizen and resident of New York.

125. In April 1944, pursuant to Decree 1600, the Hungarian authorities entered his family's house in Nyíregyháza, Hungary to take inventory of their possessions the day before deporting Mr. Weiss and his family. The property was confiscated on or about April 22, 1944, and receipts were issued to the family. Mr. Weiss managed to retain the documents from the inventory, describing with great detail the oriental rugs, paintings, jewelry, and silverware.

126. According to Hungarian documents and Hungarian experts on the history of the Gold Train, Jewish property confiscated from Hungarian Jewry in Nyíregyháza in accordance with Decree 1600 was on the Gold Train when the United States Army obtained custody.

127. Furthermore, according to the inventory of artwork that the United States found on the Gold Train and by comparing that inventory with paintings identified on the documents in Mr. Weiss' possession, several paintings owned by Mr. Weiss's family were on the Gold Train. For example, a painting by Kezdi Kovacs of a forest setting identified as painting number 77 on the inventory list of paintings; a painting by Edvi Illes, of a calf's head, identified as painting number 827; and a painting by Deak Ebner, of a peasant woman on a field path, identified as painting number 54. Additionally, other

paintings also match, including a painting by Belavari identified as painting number 832 and a painting by Friedlander, identified as painting number 909.

128. Mr. Weiss' property was on the Gold Train and unlawfully appropriated by the United States without compensation.

129. None of the plaintiffs assert a claim for compensatory damages in excess of \$10,000.

130. None of the plaintiffs knew what happened to their property after it was forcibly confiscated until the recent Holocaust Commission report was made public in 1999, and even then the Commission's report did not come to the attention of many plaintiffs and class members.

131. Plaintiffs specifically reserve the right to amend the Complaint to add additional plaintiffs as warranted. There are more than two thousand putative class members in plaintiffs' counsel's database, and counsel continues to investigate their claims, as well as the property lost because the United States accepted custody over the Gold Train with a promise to safeguard the stolen Jewish property and return it to Hungary but failed to do so.

B. Defendant

132. The United States of America is the government of the United States as defined in the Constitution of the United States. At all times relevant to this complaint, the United States Military was an instrumentality of the United States, subject to its direction, control and subject to the laws that govern the United States, including restraints imposed by the United States Constitution, domestic law, international law and legal conventions based on human rights and decency.

II. JURISDICTION

133. This court has subject matter jurisdiction over this action under 28 U.S.C. § 1346 (District Court jurisdiction); 28 U.S.C. § 1350 (Alien Tort Statute); 28 U.S.C.

§ 1331 (Federal Question); 28 U.S.C. § 1346(a)(2) (Little Tucker Act); and 5 U.S.C. § 702 (Administrative Procedure Act (“APA”), for non-monetary claims).

134. The Court has personal jurisdiction over all parties in that plaintiffs are United States citizens or otherwise consent to jurisdiction, and the defendant is the United States government.

135. Venue is proper in this Court under 28 U.S.C. § 1391.

136. The United States has waived sovereign immunity under the Fifth Amendment of the Constitution, and the Tucker Act, 28 U.S.C. § 1491, as plaintiffs bring their claims for monetary damages pursuant to the United States Constitution, an Act of Congress (28 U.S.C. § 1350), Executive regulations (i.e., the Rules of Land Warfare and Army regulations) and upon express and/or implied contracts with the United States for bailment as well as a promise to return Hungarian Jews’ property to Hungary. Further, the United States has waived sovereign immunity under the APA for plaintiffs’ non-monetary claims including an audit and an accounting of the stolen Jewish property still in United States custody.

137. Conventional and customary international law applicable to this case and enforceable in this Court as federal common law is evidenced by a variety of sources, including but not limited to: The Convention Concerning the Laws and Customs of War on Land (1907) (The Hague Convention, also referenced herein as “Hague Regulations”) The Peace Treaty, and former and present United States military regulations and policies, as well as well-established rules of general customary international law and *jus cogens* principles respecting private property.

III. STATEMENT OF FACTS

A. **During World War II, Nazi Germany Confiscated the Property of Hungarian Jews as Part of Its Systematic Campaign to Exterminate All Jews**

1. **Hungarian Jewry had a rich cultural, religious, and economic tradition in Hungary**

138. By the 1930s the Jewish community of Hungary was central to Hungarian life – and there was a deep cultural tradition among Hungarian Jewish families that went back hundreds of years. Jews constituted a considerable part of Hungary’s commercial and professional middle class. However, with the spread of Nazi power and influence in the 1930s, the Horthy regime in Hungary adopted anti-Semitic policies, both as a means of bartering with Hitler and staving the control of the Nazi party inside Hungary.

139. Even though Hungary was growing closer to the Third Reich, after hearing reports of Nazi slaughter of so-called “stateless” Jews that Hungary had deported to Germany from Hungary’s Carpatho-Ruthenia region in the summer of 1941, under Horthy, Hungary refused to follow orders from Berlin to deport, starve, and exterminate Jews, and talk of the Nazis’ “Final Solution” disappeared from the agenda of the Hungarian government. With the exception of these early deportations, and although an Axis power and Nazi ally, Hungary refused to adopt any further policy of violence toward Jews, ceased deportations, refused to create Jewish Ghettos and did not require Jews to wear the stigmatizing yellow badges. According to official U.S. documents of 1944, there was no “indication that these trappings of the New Order would have been introduced by the Hungarian Government of its own free will.”

140. Indeed, by early 1944, Hungary became a place of relative refuge for Jews from neighboring Axis lands, one that the Nazi press labeled a “Jewish paradise.” Hungary was no paradise as Jews, although spared deportation and execution, were nevertheless deprived of all economic livelihood and without political rights.

141. In the late stages of World War II, and although the government of Hungary collaborated with Nazi Germany and sent troops to fight alongside the Nazi Army in the Soviet Union, its enthusiasm for the war began to wane after the Eastern Front collapsed and the Red Army neared. The Nazi government, displeased with the lack of progress made by Hungary's government in deporting Jews and seeking to exploit Hungary's economic and military resources, implemented a major occupation of Hungary and targeted Hungarian Jews for liquidation as part of its "Final Solution."

142. On the eve of Nazi occupation, there were approximately 725,000 Jews living in Hungary which included numerous "Christians" who had been declared Jews by Hungarian law.

143. On March 19, 1944, Hitler's troops invaded Hungary, occupied the country, and established a puppet government under the new Sztójay Cabinet. It was then that the planned extermination and elimination of the Hungarian Jews began in earnest.

144. The Nazi-installed regime in Hungary immediately set about to do Hitler's bidding. This new policy was met with dismaying support from the broader Hungarian population. And while the anti-Jewish measures introduced by the Sztójay Cabinet were largely repetitious of the Nazis' anti-Semitic legislation, in Nazi Germany the economic and physical liquidation of the Jews were spread out over years while, in Hungary, the systematic destruction of Hungarian Jewry was accomplished in weeks.

145. Despite the fact that the Nazi cause was assuredly lost, Hitler picked the notorious Adolf Eichmann to oversee the cleansing of Hungary of its Jews and their property. The "Final Solution to the Jewish problem in Hungary" was to be Eichmann's crowning achievement in Europe. Unlike prior efforts in Poland and elsewhere, where Eichmann would direct the deportations from his office in Berlin, Eichmann went to Budapest to orchestrate the liquidation in person. As Eichmann later explained: "Now

after years of working behind a desk, I came out into the raw reality of the field, . . . I wanted to act like a ‘master.’ By shipping the Jews off in a lightning operation, I wanted to set an example for future campaigns elsewhere.” Eichmann even had the so-called “modern installations” of Auschwitz-Birkenau remodeled in the spring of 1944 in anticipation of the Hungarian Jews’ arrival.

2. The dispossession of property from Hungarian Jewry

146. Throughout the 1930s there was a mounting dispossession of Jews in Hungary, who were increasingly excluded from economic and professional life. The complete elimination of Jews from economic life was decreed in a series of new laws that began after occupation and the puppet cabinet through Sztójay came to power. Through Sztójay, Eichmann published his first anti-Jewish legislative measures on March 30, 1944. By April 5, Jews were ordered to wear the Jewish badge, a yellow Star of David four inches in size, and forbidden to use any means of motorized transportation without written permission from authorities. (The restrictions on movement were intended to keep the Jews close to Allied bombing targets and prevent Jews from joining the evacuation that Hungary was planning given the proximity of the Red Army.) On April 6, Jews were effectively prohibited from gainful employment, and all Jews in management positions in the industrial, government and commercial sectors were eliminated effective April 26.

147. Additionally, in early April, the Nazi-puppet Sztójay issued decrees requiring Hungarian Jews to deposit all their valuable property (including wedding rings) into certain financial depositories. Jews were forced to register their assets with the authorities and the contents of their safe-deposit boxes were frozen. Through these decrees, the Nazis confiscated all Jewish personal and real property, including but not limited to Jewish gold, jewelry, silver, currency, securities, diamonds, watches, carpets, furs, china, and paintings.

148. Between March 30 and August 29, 1944, the Hungarian government enacted more than 100 decrees aimed at dispossessing Jews of everything. The principal decree, Prime Minister's Decree No. 1600/1944 ("Decree 1600"), was issued on April 14, 1944, and demanded the "registration and seizure of Jewish property." In particular, each Jew was required to register all valuable property — real estate, factories, businesses, stocks and other securities, bank accounts, art treasures, artifacts, heirlooms, jewelry, etc.

149. Upon the issuance of Decree 1600, the Hungarian Jews relinquished at least some of their property to Hungarian officials, banks, and other government installations. As for the property that was on the Gold Train, typically, Hungarian Jews would carefully pack household property in suitcases, envelopes, strong boxes, or other containers; close and secure the container or seal it in the case of envelopes; place some form of identification on the exterior of the packed container; and deposit the container at the bank or institution authorized to accept Jewish property under the decrees. Upon deposit, the Jewish owner was issued a receipt.

150. For example, plaintiff Tamás May's father, László May, was issued the following receipt for some of his property seized under Decree 1600:

<p>MAGYAR BANK és KERESKEDELMI RÉSZVÉNYTÁRSASÁG</p> <p>ALAPÍTOTT 1896 ÉVBEN</p> <p>SÜRGŐNYCIM: COLONIALE TELEFON: *127-540, *110-000 HELYKÖZTI TELEFONSZÁM: 127-341, 110-001</p>	<p>BUDAPEST, 1944. Április 27. V. Vilmos császár-út 32.</p> <p>Magyarországos</p> <p>Ma y László urnak,</p> <p>Budapest. VII. Wesselényi utca 9. IV. 3.</p>
<p>Hivatkozással az 1600/1944. M. E. sz. rendelet 4. és 5. §-ra, alulírott pénztár ezennel igazolja, hogy Ön(ök)től (Ön(ök)től) a következő értékeket átvette:</p> <ul style="list-style-type: none"> 1/1 db. fényképmédaillon 1/1 db. arany karkötő, széles 1/1 db. arany férfi karóra, Omega 2/2 db. arany karlác, kövel 1/1 db. arany karlác 6 db. kövel 2/2 db. arany férfi pecsétgyűrű monogrammal 1/1 db. arany férfi pecsétgyűrű kövel és monogrammal 1/1 db. női aranygyűrű korálal 1/1 db. arany nyakkendőtü kővekkal 1/1 db. arany nyaklánc 2/2 db. arany karlác 1/1 db. fehéraranygyűrű briliánsal 1/1 db. arany ceruza 1/1 db. arany mellű 3 gyönggyel <p>Kijelentjük, hogy a körülírt értékek valóságáért, minőségéért, a körülírás tárgyi helyességéért, valamint a netalán feltüntetett értékekért szavatosságot nem vállalunk. Betörés és tűz elleni biztosítás céljaira szolgáltatott értékekadatok tekintetében sem terheli Intézetünket szavatosság.</p> <p>Fenntartjuk magunknak a jogot, hogy szükség esetén fenti értékeket más, a Pénztárcéi Központ kötelékébe tartozó pénztárcék megőrzésére átadhassuk, anélkül, hogy ebből folyólag bennünket szavatosság terhelje.</p> <p>A szóbanforgó értéktárgyakat az Ön (Önök) jelenlétében zárt borítékba (csomagba) helyeztük el, melyet biztonság szempontjából úgy az Ön (Önök), mint Intézetünk pecsétjével láttunk el. Ezen zárt borítékot (csomagot) zárt letétbe helyeztük el.</p>	
<p>A zárt letétre vonatkozó Üzleti határozományok egy példányát átvettem és azt magamra (magunkra) nézve kötelezőnek ismerem el:</p> <p><i>Magyarbank</i></p>	<p>Kiváló tisztelettel</p> <p>MAGYAR BANK ÉS KERESKEDELMI RÉSZVÉNYTÁRSASÁG</p> <p>ÉRTÉKPAPIR-PENZTÁR</p> <p><i>[Signature]</i></p>

151. In accordance with the Nazi design, the seizure and registration of Jewish property required a government overseer. To accomplish this enormous task, the Government Commissioner's Office to Handle the Material and Financial Affairs of the Jews ("Jewish Property Commission") was created and led by Albert Turvölgyi. The Jewish Property Commission was charged (a) to find out whether the Jews have complied with Decree 1600; (b) to search and find unregistered Jewish property; and (c) to manage the guarding, handling and eventual utilization of former Jewish property.

152. The Jewish Property Commission's office was as thorough as it was brutal in its efforts to ensure compliance. Throughout April and May, while the Nazis were moving the Jews to Ghettos across Hungary (which were staging areas for deportation), Jews were subjected to brutal interrogation and regular torture by the Gendarmerie and Police until the officials were satisfied that they had confiscated all of the Jewish assets.

And, again upon confiscation, even after torture, Jews were handed a receipt or note or some document confirming the seizure of the property. For example, plaintiff Francisc Basch's father was given his receipts after he was tortured, which included documenting that his "five pieces [of his] broken gold teeth" were also seized.

153. From the spring of 1944, led by Adolf Eichmann, the Hungarian officials processed the Jewish property seized under Decree 1600 with lightening speed, detail and precision. Upon the Jewish surrender of their property, the plan was to take the property to a financial institution of the Financial Directorates ("FD") in Hungary for where it would be inventoried, collected and transported to Budapest to the Jewish Property Commission.

154. In 1944, there were 41 FD's throughout Hungary, including Balassagyarmat, Beregszász, Beszterce, Budapest, Budapestvidéki, Csíkszereda, Debrecen, Dés, Eger, Érsekújvár, Esztergom, Győr, Gyula, Kaposvár, Kassa, Kecskemét, Kolozsvár, Komárom, Makó, Máramarossziget, Marosvásárhely, Miskolc, Nagyvárad, Nyíregyháza, Pécsi, Rimaszombat, Sátoraljaújhely, Sepsiszentgyörgy, Sopron, Szatmárnémeti, Szeged, Székelyudvarhely, Székesfehérvár, Szekszárd, Szombathely, Szolnok, Ungvár, Veszprém, Zalaegerszeg, Zilah, and Zombor. One FD covered roughly a county (a "vármegye"), and its authority extended to the cities and towns of the given county.

155. Just like the local institution where the Jewish property was originally deposited, the FD's also retained the records of the Jewish transactions and itemizations of all Jewish property seized.

156. Once all of the Jewish property was collected and registered and properly accounted for and documented, the property, still in its original packing, was consolidated in a central location within each FD for an eventual planned transport to

Budapest. The Nazi plan also included the transfer of Jewish currency, jewelry, and securities registered at the Pénzügyi Központ (“PK”).

157. From a review of Hungarian documents, plaintiffs have ascertained that stolen Jewish property forcibly confiscated from Jews in Barcs; Báticasék; Békéscsaba; Beszterce; Budapest; Csíkszereda; Csorna; Curgó; Dabas; Debrecen; Des; Devecser; Dombóvár; Eger; Esztergom; Fertőboz; Gyöngyös; Győr; Heves County; Kaposvár; Kassa; Keszthely; Kolozsvár; Kunszentmiklós; Marcal; Mohács; Monor; Mosonmagyaróvár; Nagykanizsa; Nagylózs; Nagyvárád; Nyíregyháza; Orosház; Ózd; Pápa; Pécsi, Pécs; Putnok; Sopron; Sopronkohida; Sopronkövesd; Szatmárnémeti; Szentgotthárd; Szigetvár; Szombathely; Tab; Tamás; Újpest; Vas County; Veszprém; Ungvár; Zalaegerszeg; Zalaszentgrót; Zilah; and Zirc was loaded onto the Gold Train.

158. Plaintiffs further allege that Jewish property from other cities, towns, and areas within Hungary was loaded onto the Gold Train.

159. On November 3, 1944, by Decree No. 3840/1944, the Prime Minister declared the property transfer complete: “All property of the Jews becomes, as being the property of the nation, the property of the Hungarian State.”

160. Under the Declaration of London (1943), and later the Peace Treaty with Hungary, this forced seizure — just like all Nazi forced seizures — was voided and declared unlawful by the United States of America and all United Nations. The forced transfers were also voided and declared unlawful by Hungary after the war.

161. The result of all this is that the specific way the Hungarian Jews were murdered and dispossessed produced a surprisingly detailed documentary record of specifically what property was stolen from individual Jews. That evidence exists, kept in relative secrecy under Hungarian privacy laws, in the Hungarian government’s archives.

162. After taking all of the Jewish wealth, and following the concentration of Jews in various camps and Ghettos, the Nazis set the stage for the Jews' deportation and extermination.

163. According to United States' intelligence reports in 1944, by the time that the Hungarian Jews were assembled in camps and Ghettos and ready for deportation, the Polish Jews had been brutally exterminated; the Jews of Germany, Austria, Czechoslovakia, Greece, and Yugoslavia, had been murdered; and most of the Jewish population of Holland, Belgium, and France had been sent to the "death camps" of Eastern Europe. It was now time for the Reich to focus its attentions on the physical annihilation of the Hungarian Jewry.

164. With Adolf Eichmann at the helm, the Nazis' deportation and liquidation of Hungarian Jews was unprecedented, even for the Holocaust. Again, Eichmann "wanted to set an example for future campaigns elsewhere." Eichmann's efforts were very efficient. From May 15 to July 9, 1944, a staggering 437,402 Hungarian Jews were transported to Auschwitz-Birkenau. And in total, throughout the Hungarian Holocaust, the Nazis murdered approximately 550,000 Hungarian Jews, over two-thirds of the Jewish population of Hungary.

3. The United States reacts: President Roosevelt pledges U.S. will support, maintain, and protect Hungarian Jews

165. With the Nazi occupation of Hungary, the world knew the fate of the Hungarian Jews. The occupation, dispossession, deportation and liquidation of the Hungarian Jews was more publicized than the brutal exterminations that came before. A wave of indignation swept the world. Neutral and various allied countries, the Pope, the International Red Cross, all sought to intercede to spare the remaining Hungarian Jews, but to no avail.

166. In response to the Nazi occupation of Hungary, and as Adolf Eichmann began the deportation program in Hungary, President Roosevelt made known the United States' indignation and outrage at the Nazis' "Final Solution to the Jewish Problem in Hungary." In his Statement on Opening Frontiers to War Victims and Justice for War Crimes, March 24, 1944, the President explained:

In one of the blackest crimes of all history — begun by the Nazis in the day of peace and multiplied by them a hundred times in time of war — the wholesale systematic murder of the Jews of Europe goes unabated every hour. As a result of the events of the last few days hundreds of thousands of Jews who while living under persecution have at least found a haven from death in Hungary and the Balkans, are now threatened with annihilation as Hitler's forces descend more heavily upon these lands. That these innocent people, who have already survived a decade of Hitler's fury, should perish on the very eve of triumph over the barbarianism which their persecution symbolizes, would be a major tragedy.

In the meantime, and until the victory that is now assured is won, the United States will persevere in its efforts to rescue victims of brutality of the Nazis and the Japs. Insofar as the necessity of military operations permit, this Government will use all means at its command to aid the escape of all intended victims of the Nazi and Jap executioner—regardless of race or religion or color. We call upon the free peoples of Europe and Asia temporarily to open their frontiers to all victims of oppression. We shall find havens of refuge for them, we shall find the means for their maintenance and support until the tyrant is driven from their homelands and they may return.

In the name of justice and humanity let all freedom-loving people rally to this righteous undertaking.

167. At the time, the U.S. government's principal method of protecting the Jewish victims of the Holocaust was the War Refugee Board, created just weeks before. By Executive Order, President Roosevelt created the War Refugee Board, which consisted of the Secretary of State, the Secretary of the Treasury and the Secretary of War to take action for the immediate rescue from the Nazis of as many as possible of the persecuted minorities of Europe — racial, religious or political — all civilian victims of

enemy savagery. The Executive Order declared that ***“it is the policy of this Government to take all measures within its power to rescue the victims of enemy oppression who are in imminent danger of death and otherwise to afford such victims all possible relief and assistance consistent with the successful prosecution of the war.”*** The duties included rescuing, transporting, and providing maintenance and relief to the Jews; assisting in rehabilitation and resettlement of the Jews; and establishing havens of refuge.

168. The Refugee Board reported directly to the President. And, President Roosevelt expressly made available all existing facilities of State, Treasury and War Departments to be employed to aid all “Axis victims to the fullest extent possible.”

169. On June 12, 1944, in a Message to Congress, President Roosevelt reaffirmed the United States’ pledge to rescue, care for, rehabilitate and resettle the victims of Nazi persecution.

Congress has repeatedly manifested its deep concern with the pitiful plight of the persecuted minorities in Europe whose lives are each day being offered in sacrifice on the altar of Nazi tyranny....

As the hour of the final defeat of the Hitlerite forces draws closer, the fury of their insane desire to wipe out the Jewish race in Europe continues undiminished. . . . Knowing that they have lost the war, the Nazis are determined to complete their program of mass extermination. This program is but one manifestation of Hitler’s aim to salvage from military defeat victory for Nazi principles — the very principles which this war must destroy unless we shall have fought in vain.

This Government has not only made clear its abhorrence of this inhuman and barbarous activity of the Nazis, but, in cooperation with other Governments, has endeavored to alleviate the condition of the persecuted peoples. In January of this year I determined that this Government should intensify its efforts to combat the Nazi terror. Accordingly, I established the War Refugee Board, composed of the Secretaries of State, Treasury, and War. This Board was charged with the responsibility of taking all action consistent with the successful prosecution of the war to rescue the victims of enemy oppression in imminent danger of death and to afford such victims all other possible relief and assistance. It was entrusted with the solemn duty

of this Government's humanitarian policy into prompt action, thus manifesting once again in a concrete way that our kind of world and not Hitler's will prevail. Its purpose is directly and closely related to our whole war effort. . . .

Notwithstanding this Government's unremitting efforts, which are continuing, the numbers actually rescued from the jaws of death have been small compared with the numbers still facing extinction in German territory. This is due principally to the fact that our enemies, despite all our appeals and our willingness to find havens of refuge for the oppressed peoples, persist in their fiendish extermination campaign and actively prevent the intended victims from escaping to safety.

In the face of this attitude of our enemies we must not fail to take full advantage of any opportunity, however limited, for the rescue of Hitler's victims. We are confronted with a most urgent situation.

B. The Stolen Jewish Property Is Loaded onto the Gold Train

170. In late 1944, with the Soviet Army advancing in Hungary and the war assuredly lost, the Nazi government of Hungary gathered the Jewish property from the Hungarian FD's for transport to Hallein, Austria, to safeguard and protect the valuable property from confiscation by the advancing Red Army. The Nazis loaded all of the seized Jewish property that had made it to Budapest onto a train. This train is known as and referred to as the "Gold Train" or "Hungarian Loot Train" or "Werfen Train" in official U.S. documents.

171. According to Finance Guard Commissioner, Sándor Ercse, the property on the Gold Train consisted of stolen Jewish property that had been transferred to Budapest from the FD warehouses and other government institutions, as well as other state-owned facilities that housed Jewish assets and accounts, which had been confiscated pursuant to Decree 1600 from throughout Hungary.

172. The train left Budapest on October 14, 1944 and originally consisted of 18-22 boxcars of stolen Jewish property. Heading westward from Budapest through farmlands, vineyards, and orchards, the train set out on a precarious journey with one

objective: to protect the property. In the end, over the next several months and over numerous miles, the Gold Train made its way from Hungary and into Austria, but the train never made it to Hallein, the intended destination.

173. The Gold Train arrived in Zirc, Hungary on October 16, 1944. Here, the Jewish valuables (i.e., gold, currency, jewels, diamonds) were offloaded and taken to the Óbánya Castle of Count Tattenbach.

174. Following on the heels of the train from Budapest, additional property forcibly taken from Jews throughout Hungary and stored in government banks and other installations was brought to Óbánya Castle and added to the train's cargo.

175. In November of 1944, after the Nazi Arrowcross Party officially came to power, Dr. Árpád Toldy became the head of the Ministry of Interior ("MOI") Department XI and the head of the Commissioner's Office to Handle the Material and Financial Affairs of the Jews. Toldy, a former Prefect of Székesfehérvár, was also appointed the commander of the Gold Train. In this capacity, he arrived at Óbánya and ordered what is referred to in documents as "valuables" be sorted into the following categories: Ar. ("gold"); Ar. o. ("gold watches"); Ar. eksz. ("jewels"); Br. ("diamonds"); and Ar. p. ("coins"), and currency. He only ordered that the "valuables" be sorted. The other stolen Jewish property on the Gold Train (e.g., fine china, religious artifacts, art, porcelain, cameras, dentistry equipment and supplies, etc.), which was also valuable, was not sorted at all. Instead, these items remained in the original containers in which they were packed by Jews; containers that bore the owners' identity. That is, these "non-valuable" items of stolen Jewish property remained intact in the original boxes, envelopes, suitcases, crates and containers that the Jewish families had originally packed them in with the family's name and addresses affixed.

176. The sorting of some of the stolen Jewish property lasted until December 7, 1944. Toldy then ordered that the consignment of “valuables” be reloaded and transported with the remaining stolen Jewish property toward Hungary’s western border.

177. On December 13, 1944, the train left Zirc. It arrived in Brennbergbánya — a western border settlement — three days later, where it remained ahead of the advancing Russians. In Brennbergbánya, Toldy added even more stolen Jewish property to the train. For example, boxcars and trucks transporting valuables and other Jewish property arrived from Zirc, Sopron, and Nagylózs and were added to the consignment on the Gold Train. The train grew longer and longer by the day.

178. In Brennbergbánya, Toldy also placed the stolen Jewish “valuables” in small containers, fir-made miners’ cases, and sealed their lids shut with screws. Then, the case number and its general contents were painted on the lids. Altogether 105 cases and 2 iron strong boxes were filled with so-called Jewish “valuables.” The Gold Train contained the following “valuables”:

Category of “Valuables”	Number of pine cases	Weight (per case)	Contents of Cases
Ar. (“gold”)	41	45 kg.	Gold objects, bracelets, cigarette cases, necklaces
Ar. o. (“watches”)	35	45 kg.	Gold watches
Ar. eksz. (“jewels”)	18	35 kg.	Gold jewels with precious gems
Br. (“diamonds”)	8	38 kg.	Jewels with diamonds, gems, pearls
Ar. p. (“coins”)	3	100 kg.	Gold bars and gold coins
Iron boxes	2	4 kg.	Assorted diamonds

179. In March, with the Red Army advancing toward Brennbergbánya, Gábor Vajna, the Arrowcross Minister of Interior, ordered Toldy to set off immediately with the stolen Jewish property. However, Toldy lacked a locomotive at the time. Finally, after searching for a locomotive, on March 28, 1945, Toldy entered into an agreement with Nazi Germany for a locomotive and transportation of “valuables constituting the property of the Hungarian Government” to ensure that after the war the contents of the train would be returned to Hungary.

180. At the same time, the stolen Jewish property from the Szombathely FD caught up with the train. But, because of the close proximity of the Red Army, the Jewish “valuables” from Szombathely were not sorted. Thus, all of the Jewish “valuables” from Szombathely joined the train unsorted, and all Jewish property seized in the Szombathely FD traveled on the Gold Train intact as originally packed.

181. The Gold Train left Brennbergbánya and continued its journey toward Hallein. Before pulling out, on March 29, 1945, Toldy divided all of the foreign currency available to him equally between him and his four subordinates (László Avar, Ernő Kiss, Bela Zolnay, and Sándor Ercse) totaling \$74,675 US; 87,280 CHF; 117 Pounds and additional, smaller denominations of other currency. Of the 107 cases of “valuables,” 54 were off-loaded from the Gold Train onto trucks and other vehicles under Toldy’s command, while 53 cases of valuables continued on the Gold Train, now under the command of László Avar.

182. On March 30, 1945, the locomotive arrived accompanied by Vilmos Hellenbronth, Staff Colonel Count Markovits, and First Lieutenant Csillagi (sometimes spelled Csillaghy) of the Hungarian military. With the Red Army now just a few kilometers away, the Gold Train departed with 46 railcars carrying 53 cases with valuables, 35 identified as “Ar. o.” and 18 identified as “Ar. eksz.,” and the one unsorted boxcar of valuables from Szombathely, plus the other stolen Jewish property from

throughout Hungary. Accompanying the train were about 40 armed guards and approximately 100 more civilian Hungarians.

183. The train crossed into Austria and arrived in Wiener Neustadt on March 30, 1945. Toldy now left the train, departing in a separate convoy of vehicles that carried 54 cases of the so-called “valuables.”

184. The Gold Train, however, continued toward Hallein under the command of László Avar and reached Wilhemsburg on April 1, 1945. Here, Austrian officials held the train up, and unbeknownst to Avar, detached the locomotive, thus leaving the train without an engine. By the time the Austrian officials gave Avar permission to move the train along, he had no locomotive to power it. So, Avar bribed Austrian officials with rum and 500 inexpensive watches to obtain an engine and finally left Wilhelmsburg, arriving in St. Polten on April 6, 1945. Here, the Nazi SS attempted to disarm the Hungarian guards and capture the train, but with the aid of Austrian officials, the Hungarians stood their ground and protected the train without losing any of the stolen Jewish property. The Gold Train continued on, reaching Amstetten on the 7th, Salzburg on the 8th and stopping in Hopfgarten the same day. Here, on Toldy’s request, the train was held up.

185. While in Hopfgarten, on April 10, 1945, Toldy sent Avar an order commanding him to remove everyone from the train and to leave the train unprotected. Avar disobeyed. Over the course of events Avar had become convinced that Toldy simply wished to steal the Jewish valuables for his own personal gain.

186. On April 22, 1945, Hungarian Ensign Gyula Galambos arrived in Hopfgarten driving a truck from Toldy’s convoy of Gold Train “valuables.” Galambos had fallen behind the other part of Toldy’s convoy and expected to find him in Hopfgarten with Avar. The next day, Avar loaded onto the Gold Train the cases of

Jewish “valuables” from Galambos’ truck and increased the final consignment of “valuables” on the Gold Train to 61 cases.

187. Over the next several days, Avar and his men were able to fend off SS soldiers, Toldy and other fellow countrymen, avoid bombings and skirmishes with Allied soldiers, and succeeded in protecting the stolen Jewish property from theft by moving the train and hiding wherever possible.

C. The Hungarians Seek Out the United States Army to Give Custody of the Gold Train for Protection, and the U.S. Accepts

188. After the war ended on May 9, 1945, and because of the precious cargo and the precarious situation, Avar sought out the Americans to turn the train and its contents over to the United States armed forces for protection until it could be safely returned to Hungary.

189. Avar and the Gold Train were now in Bockstein and had been there since May 5, 1945. Avar attempted to make contact with the Red Cross and the Swiss consulate, and through them, the U.S. Army. In the first days, his efforts seemed in vain. However, on May 11, 1945, one of Avar’s men, Dr. Tibor Touttenoui, succeeded in making contact with a Major in the Army in the Kaiserhof Hotel in Badgastein. Around noon, the same day, a United States Army detail arrived, spoke to Avar and inspected two railcars (numbers 174137 and 136632) and confirmed that the train was transporting a veritable treasure.

190. Avar requested that the Americans take custody of the Gold Train to protect the train and its contents until it could be returned to Hungary safely. In acceding to Avar’s request, the United States agreed. On May 16, 1945, 1st Lieutenant Joseph A. Mercer, 3rd Infantry Division, documented Avar’s request and effort to seek out the Americans. His report, “Hungarian Train Bearing Civilians,” explains:

In the beginning, the gold was in one car, the silver in another, etc, but as there was danger of the train being

bombed, the valuables were distributed throughout the train. ***Several attempts were made by Nazi agents to loot the train but in all but one instance, the Hungarians were successful in guarding their cargo.*** In the one instance the Nazis took approximately 500 chrome cased watches. . . . The train finally arrived in Buchstein [sic] where the trainmaster contacted the Swiss consulate who told them to contact our troops in Badgastein. . . .

The Hungarians desire to turn over the entire train to the American authorities.

191. On or about May 16, 1945, in Werfen, Austria, "A" Company of the 3d Infantry Division, 15th Regiment, commanded by Lieutenant Mercer, began to assist the Hungarian guards in protecting the Gold Train. According to U.S. documents, Avar and the Hungarians guarding the train had done a splendid job of protecting the train on its journey, noting that apart from minor cases of theft and blackmail, no one succeeded in forcing open the boxcar doors and looting the property. And, at this time, the Gold Train was guarded by 10 members of the U.S. armed forces and 42 armed Hungarian guards.

192. Because of the widespread destruction of the railway system, the train remained in Werfen until July 18 or 19, 1945, when the Army towed it the last thirty miles of its journey. The train left the rail siding in Werfen under the tight security of both the 101st Airborne and armed Hungarian guards, bound for the Stuberkaserne army barracks located on 51 Klessheimer Allee in the Marglan suburb of Salzburg. Once in Salzburg, a round-the-clock guard detail was assigned to protect it. The cars containing gold and diamonds were posted with double security, and the complete area was declared off-limits to unauthorized personnel.



The Gold Train



The Gold Train



The Gold Train

193. According to the early U.S. records documenting the U.S. accepting custody of the Gold Train, it contained 29 boxcars of stolen Jewish property, most of which were sealed or padlocked. Based upon the U.S. documents, plaintiffs have identified the boxcars as follows with a general description of the contents:

1.	94150	sealed	silver, rugs
2.	1132599	sealed	silver
3.	127260	sealed	silver
4.	130064	unknown	silver
5.	207557	unknown	silver
6.	1027391	unknown	museum pieces
7.	128062	padlock no seal	porcelain
8.	174137	padlock & sealed	gold/silver
9.	55438	sealed	silver/gold
10.	136632	sealed	rugs
11.	129711	sealed	gold/silver, rugs
12.	144000	sealed	silver
13.	134715	sealed	silver
14.	69142	sealed	silver
15.	191307	sealed	silver
16.	6533	sealed & padlock	gold/silver
17.	7303	sealed	gold

18.	91482	sealed & padlock	furs
19.	123559	sealed & padlock	silver, rugs
20.	113513	sealed	silver, porcelain
21.	268738	unknown	silver
22.	700216	unknown	silver
23.	75395	unknown	gold, rugs
24.	130324	unknown	gold, rugs
25.	95182	unknown	rugs
26.	125158	unknown	gold, rugs
27.	24014	unknown	gold, various
28.	3777	unknown	gold, diamonds
29.	78155	unknown	gold, rugs

On May 21, 1945, Major F.D. Gallagher, a USACA Property Control Officer, documented the car numbers and general contents of those cars that contained valuable property.

194. Once in Salzburg, on or about July 23, 1945, the U.S. Army and Hungarian guard detail off-loaded the 29 boxcars of stolen Jewish property from the Gold Train onto the ground floor of the Salzburg Military Government Warehouse (the warehouse is also referred to in official documents as “MG Warehouse” or the “Property Control Warehouse”). It took four days for two U.S. Army trucks to move the stolen Jewish property from the train to the ground floor of a former Wehrmacht warehouse, one hundred yards away. On or about July 28, 1945, after off-loading, the Gold Train and its contents were under the sole custody of the United States, and being held in custody to protect and safeguard the property until it could be returned to Hungary safely.

195. Upon his return to Hungary, on August 2, 1945, Avar reported that ***Colonel Amsworth and Captain Back “repeatedly and several times” explained that the United States was not taking the valuables, but agreeing “to give it back to those from whom they were taken.”***

196. Based on discussions with the Hungarian officials during the transfer of custody, the United States knew that this property belonged to individual Jewish victims of the Nazi Holocaust, and that Avar had protected these assets from looting and theft.

According to the United States, the property on the Gold Train remained wholly intact from the 10 attempts at theft during its journey to Werfen save for one instance where Avar had to give up approximately 500 inexpensive chrome-cased watches.

197. Throughout July and into August, the Gold Train was guarded and protected by Captain John F. Back, an officer of the esteemed Target Force. Captain Back was a G-2 executive officer, then assigned to Supreme Headquarters, Allied Expeditionary Forces (“SHAEF”). He was there primarily because of metals and ingredients discovered nearby and Target Force was, at the time, scouring Europe for metals, synthetics, rocket designs, and top German scientists, but at the same time, the United States wanted him to investigate the contents of this Hungarian train to discover what was on the train.

198. According to Captain Back’s “Report on the ‘Werfen Train,’” the off-loading, though time consuming, was a success and without incident. His report also described generally the contents of the Gold Train:

The train consisted of various items of valuables, to the greatest part of rugs (4900) and cases of silver (approx. 650). There is an attached copy of a contract between the Royal Hungarian Government and the German Government which classifies the goods as belonging to the Hungarian State.

During inventory and interrogation of Dr. Avar Laszlo it was determined that the train contained items which had been taken mostly from Jewish people and from banks in Hungary. The items were taken by order of the last Hungarian “Nazi” Government. . . .

During inventory a large amount of papers were discovered which appear to prove the fact that these things were taken from Jews and banks. These papers are at the warehouse and Lt. Colonel Heller, Property Control Office was told about them.

Captain Back also explained that “during the examination of an old steel box, after removing a lot of old rags and envelopes, a lot of papers, in Hungarian were found. ***They***

apparently are lists of names of people from whom some of the items on the train were taken.” These papers, which were “held in safe custody” for “Lt. Col. Heller” and the “Military Government,” proved that at least some of the property on the Gold Train was identifiable as to actual owner, and in fact, “[t]hese papers were left separated . . . because of their possible future use in determining ownership of some of the items.” However, for some unknown reason, these papers, although held in safe custody on February 19, 1946, and referred to again in a November 1947 memorandum, evidently have disappeared or at least were never used by the United States in making decisions about the disposition of property from the Gold Train or ownership of the items.

199. Additionally, during offloading, Captain Back culled out seven parcels, numbered V1 through V7, which were sealed with sealing wax and containing identifying marks of the owners. Parcel V1 contained more than \$45,000 in currency, diamonds, and gold jewelry. Parcels V2-V6 contained jewelry, gold, diamonds, and V7 contained diamonds. Like the papers that documented the true owners of the stolen Jewish property, later the United States also ignored the identification of ownership placed on these parcels.

200. Additionally, Captain Back apparently created an inventory of the contents of the Gold Train. And, according to U.S. documents this inventory was given to Lt. Col. Heller. However, like the papers that documented the true owners of the stolen Jewish property, this inventory evidently no longer exists and plaintiffs are uncertain as to what became of it, if it was in fact ever created. Indeed, Lt. Col. Heller documents that no detailed inventory was ever created and the other Property Control Officers who came after Lt. Col. Heller was redeployed document the same.

201. Based on discussions between the United States Army and Avar and others accompanying the Gold Train, as well as the documents recovered on the Gold Train and inscriptions on cases of property, the U.S. knew the following: *(i) that it now*

accepted custody of and was in control of stolen Jewish property that belonged to Hungarian Jews; (ii) that the property had been forcibly taken by the Nazis and removed from Hungary, and (iii) that included with the stolen property were papers identifying ownership of some, if not all, of the property. Indeed, according to the documents most contemporaneous to the United States accepting custody of the Gold Train, Captain John Back “establishe[d] that the property was taken from Jewish people by order of the last Hungarian Nazi Government.”

202. Once off-loaded, the stolen Jewish property was now in the official custody of Lt. Col. Homer K. Heller, Property Control officer for the MG Warehouse. The fate of stolen Jewish property was now squarely in the hands of the Americans.

203. According to U.S. documents, the transfer of custody to “Property Control” officially occurred on August 29, 1945, and shortly thereafter Lt. Col. Heller entered a general description of the property into the Property Registrar.

204. The following is a table of the cases of valuables and other miscellaneous valuables that were on the train when the United States accepted custody of the train:

Category of “Valuable”	Number of pine cases	Weight (per case)	Exterior Case Identifier
Ar. (“gold”)	10	45 kg.	Ar. Nos. 1, 4, 6, 7, 9, 22-24, 31, and 39
Ar. o. (“watches”)	32	45 kg.	Ar. o. Nos. 1-24, 27, 29-35
Ar. eksz. (“jewels”)	18	35 kg.	Ar. eksz. Nos. 10-27
Ar. p. (“coins”)	1	100 kg.	Ar. p. No. 3 ³
Currency	1 Suitcase		Well over \$45,000

205. Additionally, the Gold Train contained, over 1,250 paintings (with 100 of these painting belonging to the museum in Győr), approximately 5,000 precious hand-woven Persian and Oriental rugs, 1,560 cases of silverware, 1 case of silver ingots, 2 bags

³ The U.S. Army created an inventory of “Ar p No. 3.”

of gold dust, bags of diamonds, and other valuables, along with alarm clocks, watches, dentistry supplies, cameras, bolts of cloth, underwear, topcoats, photo albums, typewriters, chinaware, stamp collections and coin collections, and sundry other items of household property.

206. From official U.S. documents, plaintiffs have determined that the Gold Train had a substantial amount of currency and silver bars or ingots stolen from Hungarian Jews. In fact, the United States created an inventory of some of the currency and silver that was on the Gold Train and accepted into custody by the United States. Given that the inventory was taken well-after the events of looting described below occurred, plaintiffs are not and cannot be certain that this inventory reflects all of the currency and silver accepted into custody by the United States.

207. The United States also compiled an inventory of 1100-1200 of the paintings that were on the Gold Train. Again, because the United States created an inventory of the art well-after the events of looting described below occurred, plaintiffs are not and cannot be certain that this inventory reflects all of the art from the Gold Train accepted into custody by the United States.

208. Based on plaintiffs' analysis of formerly classified U.S. documents and documents in the Hungarian archives and in consultations with Hungarian historians, plaintiffs have ascertained that when the United States accepted custody for the Gold Train cargo and acceded to Avar's request to safeguard that property until it could be returned to Hungary or its true owners, the Gold Train contained stolen Jewish property from the following cities and/or regions: Barcs, Bátaszék, Békéscsaba, Beregszász, Budapest, Csíkszereda, Csorna, Curgó, Dabas, Debrecen, Dés, Devecser, Dombóvár, Eger, Esztergom, Gyöngyös, Győr, Heves County, Kaposvár, Kassa, Keszthely, Kolozsvár, Kunszentmiklós, Marcal, Mohács, Monor, Mosonmagyaróvár, Munkács, Nagykanizsa, Nagylózs, Nagyvárad, Nyíregyháza, Orosház, Ózd, Pápa, Pécs, Putnok,

Sopron, Sopronkőhida; Szatmárnémeti, Szentgotthárd, Szigetvár, Szombathely, Southern Hungary, Tab, the “Transdanubian” region, Tamási, Újpest, Ungvár, Vas County, Veszprém, Zalaegerszeg, Zalaszentgrót, Zilah, and Zirc. This list of cities and regions is incomplete as stolen Jewish property from all over Hungary was on the Gold Train when the United States accepted custody.

209. Today, the Hungarian archives still retain copies of receipts documenting the Jewish property seized as well as the financial transactions involving the confiscated Jewish property. Therefore, it is theoretically possible to reconstruct and ascertain the losses to each plaintiff and class member, as well as their losses under the “Rule of General Average” (which is the legal principle that the United States negotiated to govern restitution and reparations under the Paris Agreement) for the Gold Train property actually obtained by the United States. However, because of Hungarian privacy laws, not all of the records are publicly available at this time.

210. The story of the Gold Train was summarized in a poignantly written report by the Central Board of Jews in Hungary to the State Department in 1947:

In April 1944, after the invasion of Hungary by the Germans, the Fascist Government of Hungary of those days issued a discriminatory decree against the Jewish population obliging them to deposit their gems, their golden jewels ornamented with gems, and generally all their valuables made of gold with the Authorities. This provision went so far as to oblige Jewish individuals to deliver their wedding rings.

Accordingly the jewels and other valuables of 800,000 Hungarian Jews were seized by the Fascist Government....

[T]he Nazi government of Szalasi had these valuables laden on a train consisting of 44 cars and had them abducted westward under military escort. This railway train was seized in May 1945 by the United States troops of occupation. This was the so-called “Gold Train.” The wagons contained other valuables, too, besides the jewels, e.g., oriental carpets, silver, furs, etc. ... [T]he Hungarian military escort handed over the train pushed into the railway tunnel near Boeckstein intact apart from minor cases of theft and blackmail and without its doors having

been forced open, to the American troops of occupation at the railway station of Werfen.

211. The Central Board of Jews also referred to various reports available to the United States on the Gold Train and its contents explaining:

There is a report available on the jewels and golden valuables ordered by Commander Arpad Toldy to be laden on two lorries and carried to the French zone, where they were seized by the French troops.

According to these reports the following valuables were taken under control by the United States Military Authorities:

10 cases with marking indicating contents of gold.
Average weight of cases 45 kg.

1 case containing gold coins. Average weight 100 kg.

18 cases marked as containing gold jewels. Average weight 35 kg.

32 cases containing golden watches, weight varying from 30 to 60 kg.

The following amounts of foreign currencies were handed over in a closed trunk: \$44,600, Swiss Francs 52,360, L 84, Palestinian L 10, Canadian Dollars 66, Swedish Kronen 5, Reichsmark 15, Pengo 260,484. This trunk contained a sealed package, containing brilliants.

1560 cases containing silver with different weights.

1 case of silver bricks.

About 100 artistic pictures

About 3000 knotted Persian and Oriental carpets and some home-manufactured carpets sporadically, among them.

I cannot tell exactly the number of the cases. According to the reports received from the officials, there were also clothes, fur-coats, made of noble furs, stamp-collections, collections of laces, cameras, gramophons [sic], silver-jewels, porcelains, pocket and wrist watches (about 8-10,000) laden into the wagons. The contents of two wagons [e.g., Szombathely] were not assorted, they contained every sort of valuables mixed.

212. As for Toldy and the convoy of vehicles under his command that carried the other portion of stolen Jewish “valuables” that were originally on the Gold Train, the French seized this property in the French zone of Austria. Unlike the United States, however, the French restituted to Hungary the portion of Gold Train property it seized. On October 30, 1946, France admitted that the property was of Hungarian origin and later restituted the property to Hungary. Furthermore, in addition to knowing the national origin of the stolen Jewish property, France found that over 200 “valuables” in its portion of Gold Train property were identifiable even as to their individual owner, even though Toldy had mixed the property together, as many of the valuables were still in their original envelopes and bore other markings of identification that had been placed there by the true Jewish owner. Similarly, many of the “valuables” on the Gold Train that the United States accepted custody of also identified the true Jewish owner.

D. Establishment of Government in Occupied Austria

1. Organization of U.S. Forces in Austria

213. With VE-day on May 9, 1945, Austria had no functioning government. The United States, effectively, was the government in the sector it controlled. Thus, after the war, the United States immediately moved to transition from a tactical military and warring army to a civilian, governmental authority during the reconstruction of Austria. The United States and its Allies, including the U.S.S.R., had officially declared during World War II that Austria was the first victim of Nazi aggression. In November 1943, the Allies jointly explained (in the Moscow Declaration) that Austria would be regarded as a “liberated” nation rather than a “conquered” one, such as Germany, and thus the “Anschluss” under which Hitler annexed Austria was declared null and void. Consequently, the Allies agreed to rebuild Austria after the war.

214. The transition to civilian authority was further complicated because after the war, nations and people were demanding justice and an undoing of the systematic

looting the Nazis had done. As explained in the Final Holocaust Commission Report, all of this caused the focus of the military to change fundamentally:

Having won the war, the United States Army in Germany changed its objectives drastically in May 1945 to focus on bettering the lives of civilians under its care. It had to marshal personnel and equipment to revitalize national civilian infrastructures in both liberated and occupied countries. Accordingly, army units shifted their mission from combat to control and governance. Troops maintained law and order, disarmed and demilitarized a population they feared might be belligerent, and organized the United States military government in Germany and Austria. These concerns all competed with the task of securing and organizing looted assets in preparation for their restitution. . . .

215. In anticipation of victory and this fundamental change in purpose, early in 1944 the European Advisory Commission (“EAC”), composed of the United States, British, French and Soviet delegates, began considering agreements for the occupation of Germany and German-dominated countries and the reconstruction of Germany and Austria. The plan called for a four-power occupation. Each power was to have its own zone and was to share in the occupation of Vienna.

216. On July 4, 1945, the EAC signed an agreement on the control of Allied occupation of Austria. On July 9, 1945, the EAC divided Austria into four zones of occupation and governed by the Allied Control Council (“ACC”). The United States, the British, the French, and the Soviet Union each controlled one section of Austria, and Vienna, although it was surrounded by the Soviet Zone, was also divided into five sectors, one for each of the “Big Four,” plus an international sector in the center of the city with each nation taking a monthly turn at commanding the policing forces.

217. However, because of the fundamental change from a warring army to one of Military Government and civilian authority, and because of the changes in the occupied territory with each Allied nation having control over a section, the United States needed to establish a new armed force as SHAEF would no longer suffice. SHAEF,

which was established on February 13, 1944, was an integrated U.S.-British organization responsible to the Combined Chiefs of Staff. With the British and the U.S. and others now having independent control over portions of Austria, and sometimes having opposing goals, SHAEF was disbanded on July 14, 1945, after the ACC was established, and the ACC assumed its duties. To replace SHAEF, the United States created the United States Forces Austria (“USFA”) as a separate command on July 5, 1945.

218. On July 5, 1945, the Headquarters, 15th Army Group, was officially redesignated as Headquarters, United States Forces in Austria (“USFA”). General Mark Clark was announced as its Commanding General (“CG”) and was also appointed as United States High Commissioner on the Allied Commission for Austria (“ACA”). The USFA was established as a semi-independent command, responsible to the Commanding General, United States Forces European Theater (“USFET”), for tactical, logistical and military matters but reported directly to the Joint Chiefs of Staff (“JCS”) on all civil affairs (*i.e.*, those actions taken by the Military Government of Austria – USACA). Thus, General Clark wore two hats simultaneously: one military, the other civilian, which exercised its authority through the Military Government of Austria.

219. The single position of Commanding General USFA and United States High Commissioner for Austria was also held in succession by Lt. Gen. Geoffrey Keyes (May 17, 1947 - Sept. 19, 1950). On October 12, 1950, President Truman, through Executive Order 10171, officially transferred all power and authority over the occupation of Austria to the Department of State.

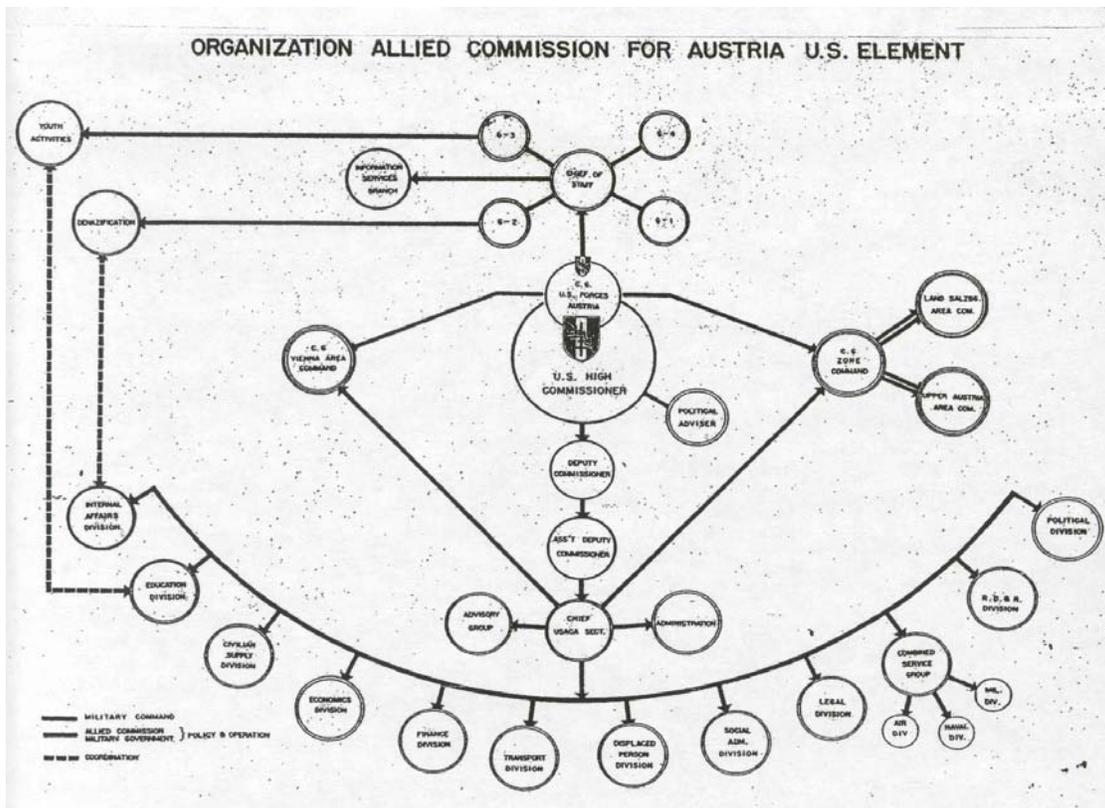
2. United States authority in Austria as it relates to property

220. The United States was the sovereign in the sector of Austria that it controlled. Under the Potsdam Agreement (August 2, 1945), the mission of USFA was to “provide a security force capable of supporting the High Commissioner for Austria in his endeavor to re-establish a free, independent, and democratic Austria, with a sound

economy capable of insuring an adequate standard of living.” General Mark Clark was designated by the JCS, in WARX 23672, as the High Commissioner and the United States member of the ACA, and reported to the JCS, which in turn reported to the Secretary of State and the President.

221. On August 1, 1945, the United States High Commissioner received the basic directive regarding the occupation of Austria from the JCS (JCS 1369/6). Likewise, after the first basic directive, General Clark continued to receive directives from the JCS and the Secretary of State in Washington D.C. on how to govern Austria.

222. As shown on the organization chart below, on the one side of General Clark’s responsibilities was the common military and tactical organization while on the other side, there was the civilian government.



The organization of the civilian government (i.e., also known as “Allied Commission for Austria United States Element” or USACA section USFA) fell under the authority of the

United States High Commissioner of Austria, and was not part of the tactical military units, which were under “CG USFA.”

223. The Reparations, Deliveries and Restitution (“RD&R”) Division under USACA was further organized into five branches. The five branches were: (a) Administrative; (b) Property Control; (c) Reparations and Restitution; (d) Monuments and Fine Arts; and (e) Archives.

224. The Chief of the RD&R Division was a member of the ACA Committee on Property Control, Reparation and Restitution matters and responsible for, among other things: (i) securing and controlling all non-Austrian properties in Austria; (ii) maintaining a record of the status of all properties taken under control in U.S. occupied Austria; (iii) implementing of all U.S. Directives and quadripartite agreements concerning restitution, reparations, or replacements in-kind of property under control; (iv) providing adequate staff supervision for all property under control; (v) classifying property under control as either (a) subject to restitution or (b) needed for the restoration of the Austrian economy or military in the restoration of Austria or (c) used against war reparations accounts; and (vi) effecting the transfer of property to owner nations in accordance with United States Directives. During most of the relevant time period of the acquisition and control of the Gold Train, the Chief of the RD&R Division was Colonel Theodore S. Paul. Additionally, Colonel Ernest Owen and James A. Garrison, a civilian, held this position.

225. The Property Control Branch was responsible for, among other things: (i) implementing all quadripartite agreements and United States Directives pertaining to property control; (ii) securing and protecting all properties subject to reparation or restitution; (iii) maintaining an accurate inventory of all property under control; (iv) maintaining accurate records concerning the security, use and administration of all properties under control; and (v) assisting the Chief of RD&R Division in the

performance of his duties. The Chief of the Property Control Branch was Major John T. Kontz and assisted by 1st Lt. Walker Treece. Additionally, the MG Warehouse in Salzburg, under the command of Lt. Col. Heller, was part of this branch of the military government in Austria.

226. The Monuments and Fine Arts Branch was responsible for, among other things: (i) supervising the de-nazification of the administration of local museums; (ii) locating displaced art objects and secure the art for protection; (iii) classifying art as to country of origin; (iv) developing a plan for the return of art to country of origin; (v) assembling and preparing for delivery art to owner nation through Restitution Branch; and (vi) assisting the Chief of RD&R Division in the performance of his duties. During the relevant time period of the acquisition and control of the Gold Train, the Fine Arts officer involved was Evelyn Tucker.

3. “Property Control,” the Salzburg Warehouse, and the applicable regulations for the handling of property in the custody of the Military Government

227. The Salzburg Military Government Warehouse and Property Control Office was under the United States’ civilian authority in Austria (i.e., USACA section USFA). Lt. Col. Homer K. Heller assumed the duties of Property Control Officer on May 21, 1945. All property taken into custody under Property Control was required to be kept in strict compliance with “Decree No. 3” of the Military Government of Austria and the procedures in the SHAEF Provisional Handbook for Military Government in Austria (“Provisional Handbook”), as well as the Property Control Manual for Military Government (Austria), Task Force Element (“Property Control Manual”), which were disseminated to all USACA personnel.

228. According to the Provisional Handbook, “Property Control” is a term of art with specific meaning to “denote the custodianship or possession of property which Military Government may assume over specified categories of property (“Military

Government Decree No. 3.’).” Specifically excluded from Property Control is any property available for use by the armed forces under requisition, seizure or confiscation.

The “Provisional Handbook” was very specific about this, emphasizing:

“Property Control” does NOT include the use or operation of properties by the Army or Navy, e.g., . . . the use of a house by the Army for office or billeting purposes, the use of property by Military Government for offices.

Thus, the United States’ rules and regulations forbid the Army from billeting or using for its offices or homes any property under the custody of “Property Control.”

229. Furthermore, Decree No. 3 of the Military Government of Austria, specifically provided, in relevant part:

Article III

Responsibilities for Property

4. All custodians, curators, officials or other persons having possession, custody or control or property enumerated in Articles I or II hereof are required:
 - a. (1) ***To hold the same, subject to the directions of the Military Government and, pending such direction, not to transfer, deliver or otherwise dispose of the same;***
 - (2) ***To preserve, maintain and safeguard, and not cause to permit any action which will impair the value or utility of such property;***
 - (3) ***To maintain accurate records and accounts with respect thereto and the income thereof....***
5. ***No person shall do, cause or permit to be done any act of commission or omission which results in damage to or concealment of any of the properties covered by this decree.***

230. Thus, the custodial requirements over the Gold Train were to hold it in custody, keep accurate records, preserve all property so that its value was not deteriorated, safeguard it, and refuse to conceal or damage the property. In essence, the

duty of the United States was to keep the property secure and undamaged until it was reclaimed and returned (i.e., a bailment).

231. To assist the Property Control officer in execution of his duties, the Provisional Handbook and Property Control Manual outlined the duties, which included, among other things: (i) appointing a custodian over the property; (ii) preparing and keeping basic records of all property taken into custody, which was reflected initially by filling out “Form MG/APC2”; (iii) preparing and keeping all records of property transactions, which are reflected by filling out specific forms (e.g., “Form MG/APC3” and/or “Form MG/APC4”); (iv) establishing the appropriate serial number file for each property taken into control whereby all transactions, correspondence, and information pertaining to the property were to be kept; (v) creating a detailed inventory of all valuable properties in custody (e.g., art, jewels, gold, currency, etc.); and (vi) placing all valuable movable property in a bank or other secure and reliable place. Additionally, all records of Property Control were required to be kept by the Property Control Officer, typically in triplicate with one copy sent to the Chief of the Property Control Branch, who was responsible for maintaining a complete set of all Property Control records.

232. The United States also created a specific file system to help keep track of property under its custody in “Property Control.” Under this system, the serial number assigned to the property taken into custody of Property Control had a specific meaning, with the first number indicating the category of property. For example, a category “1” was used to designate properties of the United Nations and their nationals; “3” meant property of the Nazi party; while a “4” meant property of an ex-enemy government other than Nazi Germany; and “6” designated looted property from countries or persons outside Austria. When property belonged to more than one category, the Property Control officer was to assign the lowest applicable number. For example, if the property came from a

Nazi who was a citizen of a United Nations, it was assigned a 1 instead of 3, though it was still both categories of property.

233. The serial number assigned by Lt. Col. Heller to the Gold Train and its cargo was “S 4.8007 Sa,” and reflects that the property belonged to a former enemy government other than the Nazis (No. 4) even though it was also looted property from countries and persons outside Austria (No. 6).

234. The Provisional Handbook and Property Control Manual supplemented the legal responsibilities of the Basic Field Manual (i.e., “Rules of Land Warfare”) that govern property and are legally binding on all United States military forces as an Executive regulation. These regulations included:

TREATMENT OF ENEMY PROPERTY

313. Destruction and seizure of. It is especially forbidden ... to destroy or seize the enemy’s property, unless such destruction or seizure ***be imperatively demanded by the necessities of war*** (Hague Regulations, art. 23, par. (g)).

314. General rule as to war right to seize and destroy property. The rule is that in war a belligerent may destroy or seize all property of whatever nature, public or private, hostile or neutral, unless such property is specifically protected by some definitive law of war, ***provided such destruction or seizure is imperatively demanded by the necessities of war.***

PUBLIC PROPERTY

318. Property of municipalities, etc. The property of municipalities, that of institutions dedicated to religion, charity, and education, the arts and sciences, even when State property, shall be treated as private property.

All seizures of, destruction, or willful damage done to institutions of this character, historic monuments, works of art, science, is forbidden and should be made the subject of legal proceedings. (Hague Regulations, art. 58).

319. Authorized treatment. The property included in the foregoing rule may be utilized in case of necessity for quartering the troops, the sick and wounded, horses, stores, etc., and generally as prescribed for private property. Such

property must, however, be secured against all avoidable injury, even when located in fortified places which are subject to seizure or bombardment.

320. Movable property. An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and generally, all movable property belonging to the State ***which may be used for military operations***. (Hague Regulations, art. 53, par. 1)

321. The classes of movable property. All movable property belonging to the State ***directly susceptible of military use*** may be taken possession of as booty and utilized for the benefit of the invader's government. ***Other movable property, not directly susceptible of military use, must be respected and cannot be appropriated.***

PRIVATE PROPERTY

323. Must be respected. ***Private property ... must be respected.*** (Hague Regulations, art. 46, par. 1)

326. Confiscation. ***Private property cannot be confiscated.*** (Hague Regulations, art. 46, par. 2)

328. Private gain by officers and soldiers prohibited. Neither officers nor soldiers are allowed to make use of their position or power in the hostile country for private gain, not even for commercial transactions otherwise legitimate.

329. Pillage. Pillage is formally forbidden. (Hague Regulations, art. 47).

330. Seizure and devastation of private property. Private property can be seized ***only by way of military necessity*** for the support or other benefit of the army or of the occupant. .

. .

331. Private property susceptible of direct military use. All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, ***but must be restored and compensation fixed when peace is declared.*** (Hague Regulations, art. 53, par. 2)

345. Liability of offending belligerent. A belligerent party which violated the provisions of said regulations (Hague Regulations) shall, if the case demands, ***be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.*** (Hague Regulations, art. 3).

235. According to the foregoing rules, the Army was forbidden to “seize or destroy” property belonging to “the enemy” or a former enemy unless such destruction or seizure was “imperatively demanded by the necessities of war” or “susceptible of military use.” All other property, even property originating from a former enemy nation, could legally be seized by the United States only if susceptible of military use or required by military necessity, and then only if paid for.

236. As shown below, the United States used such items as china, silver, crystal, linens, carpets, and art from the Gold Train, which were obviously not required by the necessities of war or susceptible of military use, in violation of U.S. law. Furthermore, in its handling of the Gold Train, United States Property Control violated nearly every duty that was imposed on the branch.

4. The stolen Jewish Property on the Gold Train was not “captured enemy property”

237. In a recent deposition by its Rule 30(b)(6) designated representative, the United States asserted that it considers the stolen Jewish property, the household heirlooms and personal valuables including artwork, wedding rings, silverware, china, rugs, and jewels that were on the Gold Train when the United States accepted custody, to be “captured enemy property.” It hardly needs restating, but the United States is plainly wrong. ***The Hungarian Jews were victims of the Holocaust and never the enemies of America.*** President Roosevelt made this point clear when he explained that the United States had assumed special responsibilities for them and all victims of the Holocaust.

238. “Captured enemy property” is property that is useful in war or is taken or seized on the ground of military necessity for the purpose of depriving the enemy of its

use or of turning it to the captor's advantage. And, in the context of this case, the President further limited "war booty" or "captured enemy property" to include only that property that belonged to enemies armed forces and specifically excluded all household property.

239. The Gold Train was not "captured" at all; it and its contents, which the United States knew belonged to victims of the Holocaust, were accepted by the United States for safekeeping pending its return by the U.S. at the Hungarians' (Avar's) request. Moreover, Hungary was not "at war" with the United States at the time the Gold Train was accepted into custody, and hence Hungary was no longer an "enemy."

240. Another indicator that the Gold train was not captured enemy property was that Property Control did not have custody over "captured enemy property" as that term was known and used. Indeed, there was an entirely different Army protocol concerning the control, requisition, and use of captured enemy property. As the Chief of the RD&R Division, Colonel Theodore Paul, stated in December 1945 when the United States attempted to sell the items from the Gold Train that were stored in the MG Warehouse as allegedly being "captured enemy property," that there was no authority for such a sale because the property was stolen Jewish household property and was not useable or necessary for a military purpose. As General Tate explained:

There is evidence this property belongs to Hungarian Jews. It will not be used. Must be carefully protected.

Because the property was stolen Jewish household property that, as looted personal or private property, was not useable or necessary for a military purpose, the United States could never obtain good title. In fact, no property found on the Gold Train was useful for waging war.

241. Indeed, all U.S. military forces were reminded after the end of the war by President Truman as communicated by his representative Ambassador Edwin Pauley, and

later by General Keyes on or about August 15, 1945, that in accordance with the Army's Basic Field Manual, no household property, such as that property that was found on the Gold Train, including silverware, china, or other property of the category found in private households was ever considered captured enemy property. Thus, in August 1946, Captain Mackenzie explained that the Gold Train "*properties could not be requisitioned since that would make them property of the United States Army,*" which implicitly recognized that they were not. If the Gold Train had been captured enemy property it would have been, by definition, "property of the United States Army" upon capture.

242. Moreover, many of the people who had property on the Gold Train were United States citizens at the time the United States accepted custody of the train. United States citizens were not U.S. enemies and their private property was not enemy property. And those that were not United States citizens all had substantial connections to the United States and were the alien friends of the United States as the United States Army helped liberate them from the oppression of the Nazis. Many voluntarily sought refuge in the United States-run displaced person camps, others moved to the United States and have since become naturalized citizens; and others had family in the United States who helped them survive in the desperate aftermath of the war. Again, the Hungarian Jews were not the enemies of America.

E. The United States Improperly Handled, Failed to Safeguard, and Unlawfully Disposed of Gold Train Property

243. Not only did the United States breach the promise made to Avar when he turned over the Gold Train to the Army for safekeeping, the United States also failed to comply with the duties and regulations governing the handling of property held in Property Control and violated the applicable Army regulations and the Rules of Land Warfare as described above and detailed more extensively below.

1. The United States failed to inventory and keep adequate records of the property

244. Lt. Col. Heller appointed himself the custodian over the Gold Train.

However, he never inventoried the contents of the Gold Train or created even a separate inventory of the valuables or art that were part of the train's cargo, despite the fact that Decree No. 3., Provisional Handbook, Property Control Manual, and Military Government Instruction No. 88 "Inventory of Movable Property (subject to reparations or restitution) to Determine Ownership" all required such an inventory.

245. Additionally, Lt. Col. Heller failed to transfer to the banks upon asserting custody the valuables that were on the train even though his office had a small deposit box in the Bank of Oberdonau and Salzburg for such items, and had an arrangement for storage of foreign currency under a custody receipt in the Reichbank and the City Post Office. Instead, he assumed custody of the Gold Train and its contents in the original crates and packages that they came in because they bore the markings of the Jews who were the true owners of the stolen property. As was explained by Captain Mackenzie in 1946 when he was custodian of the Gold Train, the property was kept

in the original containers because it was felt if they were removed the means of identification would be lost. A great deal of material the ownership of which has never been determined is in there.... Most of the valuable material is nailed into boxes. Some of the most valuable material is still in the original suitcases and baskets and trunks in which they were found.

246. Furthermore, Lt. Col. Heller, and the other Property Control Officers who later became the custodian of the Gold Train, failed to keep adequate records or a proper accounting of the stolen Jewish property. As explained in greater detail below, Generals and other Army officers insisted on taking and using the stolen Jewish property, however there are apparently none of the required forms filled out which would have documented the property transactions and confirmed receipt of the property. Moreover, the fact that

Lt. Col. Heller allowed such requisitions at all was not a permissible use of property under “Property Control,” instead requisitions should have been requested through Purchasing and/or Supplies or some other branch of the military.

247. The initial task for the Property Control Branch and the RD&R Division was to decide what to do with the assets and property once taken into custody and collected. Meanwhile, countries and people that were ravaged by Nazi Germany sought the return of the property that was looted from them. The Jews, including plaintiffs here, whose lives were in upheaval, and who desperately needed their property, were in no position to know about the location of their stolen property. However, even when Jews or Jewish succor organizations requested information about their stolen property, the United States concealed the truth, denied them access, disregarded claims, and misinformed Jews that they had no legal claim or basis for one, or that their property was not in the United States’ possession. As explained in detail below, the Hungarian Jews were consistently thwarted in their attempts to recover their property and obtain truthful information about their property from the United States, which was in direct violation of Decree No. 3. Indeed, the United States concealed the truth from Hungarian Jews, informing them that their property was not identifiable as to national origin, as well as unidentifiable as to any individual, when, in truth, the stolen Jewish property was identifiable as to both.

2. United States officers requisitioned Gold Train property improperly, used it improperly, and failed to return the property to the MG Warehouse

248. From the very beginning, senior United States military officers illegally requisitioned property from the MG Warehouse in Salzburg for use in their offices, quarters, and homes. Available memorandum receipts issued for the Gold Train property — which was the procedure (albeit an improper one) that Lt. Col. Heller employed to

document the transfers — reveal that a substantial portion of the property requisitioned was never returned.

249. News of the Gold Train and its treasures spread throughout the armed forces. Even before Lt. Col. Heller had officially taken custody of the Gold Train, on July 13, 1945, Major General Harry J. Collins, Commander of the 42nd (“Rainbow”) Division had requested and received stolen Jewish property for his use, including “different objects made of onyx, 5 rugs and 8 paintings.”

250. Subsequently, General Collins made several additional requisitions for the use of Gold Train property from Lt. Col. Heller. For example, on August 28, 1945, General Collins made the following demand of Lt. Col. Heller:

1. The Commanding General directs that you give first priority to obtaining without delay the following listed household furnishing:

- a) Chinaware (all types necessary for formal banquet and other meals), Sufficient for 45 people.
- b) Silverware (Same qualifications as above and to include serving forks and spoons). Sufficient for 45 people.
- c) Glassware (To include water glasses, highball glasses, cocktail glasses, wine and champagne glasses, and liquer glasses). Sufficient for a formal banquet involving several kinds of wine for 90 people.
- d) Thirty (30) sets of table linens, each set to consist of one table cloth and 12 napkins.
- e) Sixty (60) sheets, sixty (60) pillow cases, and sixty (60) large bath towels.

2. The General desires that all of the above listed items be of the very best quality and workmanship available in the Land of Salzburg. He specifically told me to say that he intended to hold you responsible for securing these items.

Lt. Col. Heller responded to this request by furnishing General Collins with items from the Gold Train.

251. General Collins' requests to use Gold Train property did not stop. He requested candlesticks and rugs for his home and railroad car, additional artwork for the same, and other valuables throughout Lt. Col. Heller's stay in Austria. Typically, Lt. Col. Heller documented that he was "ordered" by General Collins to provide him with such household goods. On one occasion on or about February 6, 1946, however, Lt. Col. Heller disobeyed General Collins' request. General Collins' responded swiftly and sternly in an informal memorandum to Lt. Col. Heller that explained he was "very displeased with the treatment accorded his aides by you today" and that he expects and requires Lt. Col. Heller "to give every assistance to his aides in providing furnishings etc. for him."

252. After General Collins' rebuke, Lt. Col. Heller acquiesced and wrote a memo explaining what he had be doing over the last several months. The memo explained that General Collins had "issued household furnishings of superior quality and workmanship to various General Officers for use in their villas." These requisitions orders, at his best count from memory, comprised 22 shipments of property totaling "a substantial sum of money . . . All of this property was drawn from the so called Hungarian 'Werfen Train.'" Less than two weeks after writing this memo, Lt. Col. Heller was redeployed and sent home. He would not interfere in the unlawful acquisition of Jewish property again.

253. General Collins further let it be known that he was interested in providing proper quarters and household furnishings for families of the military and expected demands to be made upon property in the Property Control Warehouse.

254. He suggested that high-quality solid silverware be acquired by the chest and not be separated. Inscribed inside the tops of several chests of silverware were the

names of the owners, such as “Viktor Mayer.” Additionally, silverware was released for use of the officers of the Artillery Staff of the 42nd Division, which had taken possession of the von Trapp estate in Salzburg, which included a chest “bearing name of Gergely Henrik.” This chest was not returned to his widow, Jolán Gergely, despite this fact. In addition, General Ladue received a silver set for ten, marked by the name and address of “Dr. Otto Arodi, Tokai No 19”; and Brigadier General Morrill Ross dined with a silver set marked by the monogram “Emma.”

255. General Collins was not the only military official who used Gold Train property. To the contrary, General Collins’ requisition of stolen Jewish property created a precedent for United States military officers to requisition thousands of items from the Property Control Warehouse for use in households, offices, and clubs. In short, several General Officers and others took advantage of the Gold Train property for personal use. According to the 1999 Draft Progress Report of the Presidential Advisory Commission on Holocaust Assets on the “mystery” of the Gold Train, “General Laude [sic] received china, silverware and linen for his Salzburg home; General Hume received eighteen rugs, a table and silverware, cape linen and glassware; General Holland received nine rugs, one silver set and twelve silver plates to decorate his Vienna apartment; and Brigadier General Linden received ten rugs for his quarters on the Von Trapp estate.”

256. Based on plaintiffs’ review of available documents, several thousand objects of stolen Jewish property from the Gold Train were requisitioned by United States armed forces in Salzburg, Linz, Wels, and Vienna. Much of this property was never returned.

257. A 1947 investigation by the Property Control Branch revealed that many of the items “on loan” from the Gold Train were still accountable, but that receipts (e.g., MG/APC3 or MG/APC4) had not been issued; that Property Control Officers had failed to follow the proper procedure regarding property in custody of Property Control; and

that no procedure had been established to effect the return of the items. This is not surprising as Property Control was not the place to requisition items; Property Control, by definition, had custody over items that were not to be used by the armed forces.

258. In contrast to the practice at Property Control in Salzburg, which was evidently completely subordinated to the demands of General Collins and the 42nd Rainbow Division, the Foreign Exchange Depository (“FED”) — the MG Warehouse’s counterpart in Germany — took its responsibility as custodian of property more seriously. Providing able security and compiling a complete inventory of everything that the Army secured there was one of its chief priorities, though the FED also suffered from security problems. And, unlike Salzburg Property Control, when requisition requests came to the FED, the Property Control officer would explain that no one in the Army could exercise decision-making authority over the disposition of these assets, and advised the officers correctly, explaining: ***“you are advised that the FED is merely the custodian of the property in question and has no power over its disposition and release.”***

259. The documentation further reveals that the United States Army repeatedly ignored the pleas of the Property Control Officers in Salzburg for additional staffing and support in order to inventory the items as required by army regulations and safeguard the Gold Train property from additional theft and looting. And whenever the Property Control Officers started to resist the local Generals or their requisition requests, the Property Control Officer was redeployed home.

260. For instance when Lt. Col. Heller resisted General Collins’ order to provide chinaware, silverware, glassware, and linens of the “very best quality and workmanship in the land of Salzburg” without delay, and simultaneously sent a letter to all United States officers requesting that they report the whereabouts of the Gold Train property loaned to them and reminding all USFA forces that ***“all of this property was***

drawn from the Hungarian Werfen Train,” he was redeployed. Major C. R. Agnew replaced him.

261. Additionally, Evelyn Tucker, the only USACA Fine Arts Officer in Austria competent to handle fine arts, was sent home when she complained about inadequate staffing and detailed the improper handling of property in Austria:

As you probably know OMGUS (Office of MG for Germany) has a well equipped Fine Arts Staff. I regret to say that USFA has not had such foresight, though I think it could be easily proved that more loot was found in the US Zone of Austria than in Germany.

The differences of opinion on this are mainly caused by the fact that we here have taken directives from Washington literally (I am of course only concerned with fine arts), which specified that fine arts removed from Austria after the Anschluss would be returned.

The position of the Fine Arts Officer in USFA was eliminated in July 1946 and from then until October 1947 the negligence of this explosive situation was hardly short of being criminal. (These are strong words, I know, but hear me out). There was no control then on what American officers sent home and there is very little now. I did what I could from my office position in Vienna to control the situation (though of course I could do nothing on what was sent to the States).

Before you decide that I'm just a frustrated woman (and I frankly admit that I am) let me say ***there is French looted fine arts in the General's villa in Salzburg, Dutch fine arts in the General's villa in Linz, a French looted painting in the Officers Club in Salzburg – all definitely identified and included on claims but I have not been allowed to reveal that I have found them; A Lt. Col. Returned to the States recently from Salzburg taking with him 26 oriental Hungarian rugs – McKee (my chief) refused to let me write the Provost Marshall of his Army Post to investigate.*** I was only allowed to write the officer a nice letter of inquiry. The Salzburg Gold Coin Collection was looted while in the possession of the Military Detachment of Hallein, Austria; several truckloads of fine arts were brought to Vienna by General Clark (for his quarters here) from Castle Klessheim in Salzburg; seven paintings were stolen from Lauffen Mine, including a Rubens and a van Dyke, while under protection of US personnel; seven valuable engravings four of them by Durer, were stolen from Alt-Aussee saltmine while under

protection of US personnel. Most of these have had no investigation – but all is carefully documented by the Austrian Govt.

It is not by chance that McKee is eliminating this job.... It is this particular job which he (and others) wants eliminated. HE returns to the States in June to attend school and he is going to be very sure there is no Fine Arts Investigator here, who knows anything about the work, after he leaves. It has been said to me in the past two weeks “but, Eve, USFA won’t have to worry about anyone saying it has done something wrong after you have gone because nobody knows anything about it but you therefore nobody will know that a mistake has been made”.

262. Additionally, on March 8, 1946, General Collins explained to Major Agnew while he was the Property Control Officer in Salzburg, that he wished to provide proper housing and supplies to the American families and that the property should come from the Property Control Warehouse (i.e., the Gold Train). Major Agnew then contacted Major Kontz, Chief of the Property Division Branch, informing him that the request “will place heavy demands” on the Gold Train property. Furthermore, Major Agnew knew that the practice of issuing property from Property Control based on memorandum receipt (which was Lt. Col. Heller’s practice) was not in conformity with “S.A.E. instructions governing the procurement of supplies by U.S. Forces.”

263. In response, the Chief of the Property Control Division reminded Major Agnew that under WARX 99226 restitution of this property was to be made to Hungary. Thus, “on the basis of this directive, *it becomes necessary to preserve and safe-guard for restitution purposes*” the property of Hungary. The Chief of the Property Control Division specifically emphasized, “*the property of the Werfen train . . . is subject to this directive.*” And, according to the United States, only if the property was “required for the *essential needs of the Occupation forces . . . which can not be met elsewhere*” could it even be requisitioned and then only “in accordance with standard SAE instructions.”

264. Thus, Major Agnew refused the requisitioning of any Gold Train property absent going through a Purchasing and Contract Officer and use of the proper authorization forms to ensure “accountability” for the property. Major Agnew communicated this rejection to Colonel Hyde and Captain Mackenzie on or about March 19, 1946.

265. On April 1, 1946, after spending about a month being the custodian of the Gold Train, Major Agnew was redeployed to America and replaced by Captain Howard A. Mackenzie. Captain Mackenzie, realizing that no inventory had ever been made of the Gold Train property, and understanding that many of the valuables were now in the possession of Generals and other United States personnel based on his review of Lt. Colonel Heller’s letters, immediately ordered that all Gold Train valuables be identified and an accurate report of their whereabouts obtained because there was “considerable doubt as the present location” of the Gold train property on “loan.” However, the three soldiers he assigned to the task of following up on the whereabouts of the Gold Train property were almost immediately thereafter redeployed home, and the Army failed to appoint anyone else to follow through on a detailed inventory of the Gold Train property.

266. Captain Mackenzie also catalogued numerous systematic failures in controlling the stolen Jewish property on the Gold Train, including the failure to comply with the Property Control Manual and Decree No. 3. Eventually, this state of affairs forced the Property Control Section to press for the transfer of accountability for loaned items to another section of USACA.

267. Nevertheless, despite not being able to determine the location of the Gold Train property on “loan,” by June 1946, the matter had come to the attention of the Commanding Generals. By this time, in early May, General Collins deemed it a “military necessity” to receive items from the Gold Train rather than working through the Purchasing and Construction Office. However, the Property Control Branch knew that

the Gold Train was subject to restitution to Hungary. Indeed, the RD&R Division Chief had objected to any further use of the Gold Train. General Collins pushed the matter higher up to the United States High Commission's office. There, the other Generals, those in charge of the Military Government, disagreed with Collins. As General Tate wrote, consistent with United States policy and law:

There is evidence this property belongs to Hungarian Jews. It will not be used. Must be carefully protected.

General McMahon concurred explaining, "I recommend that we do not touch."

268. On June 8, 1946, Major Kontz, Chief of the Property Control Branch, let the Commanding Officers know that the Chief of Staff, USFA, had ordered that "***the properties from the Werfen Train are not to be released for the use of family billets or for any other purpose and that the materials shall be carefully protected.***" Major Kontz also ordered that all properties previously requested to be documented per Captain Mackenzie's request must be requisitioned through Purchasing and Construction Office, which was the only recognized manner of using property in Property Control and ensuring financial accountability to the owners. Thus, despite the "alleged military necessity," because the property came from Property Control, and was known to be property of Hungarian Jews, it had to be protected and could not be used.

269. Nevertheless, in the preceding year a substantial quantity of the plaintiffs' personal possessions had been improperly taken by the United States for use by military personnel in their offices and/or billets in violation of the laws and regulations.

3. Warehouse security was shockingly lax and permitted military personnel to loot Gold Train property

270. Because of lax security, U.S. military personnel also engaged in looting of Gold Train property from the MG warehouse in Austria. Security problems persisted in the Property Control Warehouse in Salzburg from the outset, and concern over the warehouse's lax security practices soon extended beyond the Army.

271. In fact, Arthur Schoenfeld, Chief U.S. Envoy to Hungary, informed the Secretary of State in January 1946 that the United States was having difficulties guarding the Military Government warehouse in Salzburg and that “United States forces are probably unprepared to provide [proper] protection” to the Hungarian Jews’ property at the MG Warehouse.

272. Moreover, as early as May 1946, if not earlier, the Army was aware of its inadequate security as a May 1946 report explains:

Repeated checks of the guards at the Military Government Warehouse by the Property Control Officer showed that they have not been properly instructed as to their duties and that the Warehouse could be entered without observation by anyone in possession of a key.

273. In July 1946, the United States State Department was again informed that the Gold Train property “*[was] not and probably [could] not be adequately guarded.*”

The strongly worded State Department memo went further, explaining:

Strongly recommend that unless property can be promptly placed in well-guarded bank vaults it be transferred to Frankfurt. *I have been informed that a certain amount of looting from warehouse has already taken place and do not see how further dissipation of property can be prevented under present conditions. Fact that no inventory exists makes almost impossible for control officers to know whether looting taking place.*

The looting was rendered easy by the lack of an inventory. Even after Property Control knew of the ongoing looting of the Gold Train property, and the potential for more, it failed to create even a rudimentary inventory of the Gold Train property to document what property it still had.

274. From August 1945 until the preparation of the joint inventory with representatives of the IGCR in summer of 1947, the only people supposedly with access to the MG Warehouse were members of the military. According to article 46 of the Hague Regulations and the Laws of War, as well as sections 323, 326, 329, and 345 of

the Basic Field Manual, looting and pillage are expressly forbidden. Moreover, under such laws and regulations, the United States is responsible for all looting that occurs by the armed forces.

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276. Furthermore, according to Israeli documents, representatives of the international refugee organizations that were selected by the United States to obtain the Hungarians' property for disposition through auction (including Abba Schwartz) who inspected the property at the warehouse were informed by United States personnel that at least eighteen burglaries were committed since the Gold Train was taken into custody. One member of the team actually witnessed "strong boxes being broken open and robbed of their contents."

277. Additionally, on or about September 16, 1947, a Jewish Agency for Palestine representative, Gideon Raphael, spoke to Colonel Arthur Marget, Chief of the Finance and Economics Division, USACA section USFA, about the problem of members of the armed forces looting the Jewish property from the Gold Train stored in the MG Warehouse. Colonel Marget explained that "*it was a well known fact to him that many officers and among them top level people*" *looted the property and had taken home very valuable things not only from the 'goldtrain' but [they] had looted other property in Austria.*" By way of one example, Colonel Marget explained that "a very important general who recently left Austria" had taken home with him "a whole train load" of property.

278. Gideon Raphael discussed the problem of what to do about the looting and Colonel Marget's response with Abba Schwartz and they decided to do nothing. They

reasoned that doing so might jeopardize the U.S. decision to release the property to the PCIRO.

The local American Military Authorities are doing everything to obstruct that work [inventorying the Gold Train], especially in view of the fact that with the beginning of this work they have lost a source for easily acquiring riches. It is known that top-ranking officers of the American Army have pocketed very valuable items. At the present stage it would not seem advisable to institute proceedings, as the military authorities are only looking for a pretext to stop the work altogether

279. Because of the lack of an original inventory and the continued refusal to create one, there was no way to estimate the value of the Jewish property stolen by the United States Army. However, Colonel Marget did not dispute that a “considerable part” of the Gold Train property had been looted by military personnel. Indeed, the lack of an inventory made it a simple process for the top-ranking officers and other military personnel in Austria to obtain property from the Gold Train. And, this was done through both official requisitioning as well as common theft.

4. Stolen Jewish property is sold at Army PX’s

280. Property from the Gold Train was also sold through the Army Exchange Service (“AES”). In fact, just four months after the first report of the Gold Train treasure, requests came from military officers to sell the some of the property to soldiers in the AES in Austria. On November 6, 1945, Major M.S. Rosenberg, the Chief of the Office of the Army Exchange Service in Austria, wrote to the Property Control Officer and the Legal Advisor of USACA to request “that the merchandise now held in Salzburg in the custody of the Property Control Officer, USACA, from the WERFEN train be made available for purchase by the Army Exchange Service.” To clarify the request, the AES specified “such merchandise is believed to consist of watches, alarm clocks, cameras, jewelry, etc., which would normally be sold through the PX’s.” And, the AES added that it would make payment for these items based “on agreed prices.”

281. The USACA Legal Division did not object to the idea, as it opined that the Gold Train matched the general definition of goods to be issued to the AES where such property “is . . . either captured enemy property, or property of perishable nature, or both” and thus concluded that “the [property from the train] may therefore, in the opinion of this Division, be disposed of accordingly.” Indeed, the Division confirmed this opinion just five days later when, on November 19, 1945, the Chief of the Legal Division again emphasized that “the property which is the subject of the request by the Army Exchange Office is, as disclosed by our file, either captured enemy property, or property of a perishable nature, or both.”

282. But the RD&R Division, which was the USACA division with authority over this determination, rejected it. The Chief of the RD&R Division, Colonel Paul, challenged the conclusion of the Legal Division on the grounds that the “goods apparently are not perishable and it is believed there may be claims from original Hungarian owners for identifiable private property.” He further informed United States officials that the property was taken into custody under “Decree No. 3. . . . *as property of Hungary or its nationals*” and thus was not subject for use by the armed forces. Moreover, Colonel Paul warned Colonel Deutsch via telephone that if he were to ask him “too many questions as the authority for sale he might have to give an opinion that there was no authority for such sale.”

283. Blocked from selling the Hungarian Jews’ property, the United States tried again. One year after the planned sale of Gold Train property was disapproved, virtually the same plan was approved. On November 18, 1946, Captain Mackenzie, the Property Control Officer in Salzburg, recommended that the Property Control Branch sell “the Werfen Train rugs and furs which are located in the Property Control Warehouse.” Captain Mackenzie defended his recommendation based on an opinion of Austrian expert in fine rugs and furs Karl Schwartz who explained that “the property will lose a great part

of its value if it is not disposed of within the next two or three months.” Because it represented an asset of several thousand dollars, the Property Control Officer in Salzburg wanted it to “be immediately disposed of.” Of course, the failure of Property Control to properly care for and protect the rugs and furs was a direct violation of Decree No. 3.

284. On November 29, 1946, James A. Garrison, a civilian and now the Chief of RD&R Division, concurred with the recommendation to go forward with the sales:

It is recommended by the Property Control Officer, Land Salzburg, and also by this Division that in order to realize the maximum value of the property that steps be taken at once to dispose of this property either on the Austrian open market, or by sale through the Army Exchange Service for dollar credits.

285. The AES enthusiastically replied to this letter on December 22, 1946:

The Army Exchange Service is very much interested in the confiscated Hungarian property stored in Salzburg, which was inspected by this office It was requested, from Army Exchange Service (AES) Headquarters Frankfurt, that permission to dispose of the property be obtained as soon as possible.

Subsequently, after the United States had decided to release the remaining valuable Jewish property to the IGCR/PCIRO, the sales of these goods were made.

286. And, while the rugs, furs and clothing, originally belonging to Hungarian Jews, were sold in the PX, the Hungarian Jews’ other clothes were distributed more freely. On March 5, 1946, Major Agnew, the Property Control Officer, outlined the distinction between treatment of the better goods and the more regular goods:

At present this office has stored at the Military Government Warehouse various items of clothing and linens, such as pants, coats, dresses, scarves, gloves, shoes, table linen, napkins, etc. . . . Major Flaherty 42nd Division Chaplain has submitted to this office a request for all the clothing. He plans to distribute this clothing to needy DP-s. . . . It is recommended that the men’s and women’s clothing be turned over to Major Flaherty, 42nd Division Chaplain for distribution to DP-s and that linens and finer quality clothes be retained in custody.

The clothing of lower quality and other items of so-called “ordinary” value were thus given away.

287. Other stolen Jewish property from the Gold Train was released to Catholic churches even without having any eligibility for the stolen Jewish property, other properties were given to Austria, and yet others came back to America.

288. In fact, the United States documented a sizable consignment of Gold Train property at the Quartermaster Depot in Virginia in 1956, which the United States gave to Austria, despite noting that some of the property found in Virginia apparently identified individual owners.

289. Based on finding Gold Train property still in the United States’ possession in 1956, and absent a complete accounting and inventory of all Gold Train property, there is every reason to believe that additional stolen Jewish property remains in the United States’ possession. At the very least, there is every reason for the Court to order the United States, just as the British have done, to search its bases and military installations and inquire as to whether the United States still has any stolen Jewish property in its possession.

5. The Gold Train paintings were given to Austria

290. The Gold Train also contained approximately 1200-1300 original paintings that sat uninventoried and unexamined in the MG Warehouse for over two years. The paintings were clearly part of the cultural heritage of Hungary and, therefore, under established United States’ policy, as well as post-war agreements, should have been returned to Hungary. In early 1949, a large number of the paintings were transferred to the government of Austria but still under United States custody. Although it appears that Austria returned the paintings to Hungary in the 1960s, such an event does not obviate the injury caused by the United States in not restituting the artwork immediately as required by U.S. law.

291. It was not until October 1947 that Evelyn Tucker, the Fine Arts Officer in Austria for the USACA, learned of the existence of paintings from the Gold Train and stored in the Military Government Warehouse in Salzburg. On October 23, Tucker wrote in her monthly report that she:

Was informed in Salzburg that there are approximately 200 paintings from the Werfen Train loot which have been set aside and are presently stored in a small room in the upstairs of the MG Warehouse in Salzburg. *I understand (from the men in Salzburg handling this property) that they have no instructions whatsoever concerning these paintings, and they seem to doubt that they will have.*

292. Unlike other works of art found in Austria by United States troops, these paintings were not processed properly by the MFA&A Branch. Instead, they remained in Salzburg, their existence relatively unknown by the proper USACA officials, and being used by top level military members throughout Austria.

293. Upon hearing about the Gold Train paintings, in early November 1947, Evelyn Tucker visited Salzburg to inspect the paintings and, upon her return to Vienna, she reported that “the final count was 1,181 – and not 200 as originally thought.” She also reported that “all of these paintings appear to be of Hungarian origin.”

294. Evidently, Property Control believed that none of the paintings was of significant value and treated them accordingly. Evelyn Tucker however believed otherwise:

The idea that these paintings were worthless is fallacious – how this idea could have grown and been given any credence is unknown inasmuch as no inventory appears to exist and very few people seemed to know of their existence.... By the time I left Salzburg we had inventoried about 300 paintings. While I do not profess to be an art expert, my opinion, for what it is worth, is that as a whole the paintings are not by the best artists though many of them are very good.

295. More recently, Stuart Eizenstat explained that “*Of the 1,181 works of art [on the Gold Train], some of which are very valuable – Durers and Rembrandts – about half have significant markings indicating ownership and some identification.*”

296. On January 5, 1949, the 1,181 paintings in the Military Government warehouse were transferred to the Federal Government of Austria pursuant to a receipt signed by the Chief of Property Control and Restitution Branch of the Headquarters of Zone Command Austria and by Joseph Reith, a minister of the Austrian Government, though still under United States control.

297. A January 1951 State Department document entitled: “Disposition of Art Objects and Scientific Works under USFA Control,” reviewed the transfer, and noted the clear violation of the very first restitution order, which was issued by President Truman, and explained:

It is believed that these works had been in the possession of middle-class Hungarians, many (but not all) of whom were dead. Some of the survivors continued to live in Hungary, while others had emigrated ... In view of their origin and by virtue of the identity of most of the artists of the oil paintings insofar as they are known from signatures, the objects should undoubtedly be considered Hungarian art. ***This would place them into the category of properties, which are part of the cultural heritage of a nation and would ordinarily be returned to that nation.***

298. Later, in March 1952, in a document entitled “Hungarian Cultural Property in United States Custody,” the State Department’s Ardelia Hall proposed that the paintings from the Gold Train “be held indefinitely for eventual return to the rightful owners and that this fact should be broadcast to Hungary.” Hall also stated that she had been informed by the MFA&A Officer in Austria, Evelyn Tucker, that:

the names of the individual owners and addresses in Hungary were attached to the paintings. Should I find evidence of ownership of these 1176 paintings when I go to Salzburg, I would suggest that the detailed list of the objects and owners, painting by painting should be

broadcast to Hungary with the statement that the property is held under trusteeship for eventual return to the owners.

299. What was discovered is that several owners were identified on the paintings. Of the inventory of 1,100 – 1,200 paintings that the United States documents as being on the Gold Train, plaintiffs have discovered that some of their family's paintings were on the train, including plaintiff Zoltan Weiss' calf's head painting by Edvi Illes — identified as painting number 827 on the Gold Train inventory. Additionally, according to the Holocaust Commission there were

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The exact number of paintings that identified their Hungarian Jewish owner is unknown, however, it is known that all paintings were of Hungarian origin.

300. The United States military in Austria, however, was not concerned with returning this looted art. Instead, the military was set on acquiring art for its own use. As Evelyn Tucker explained in a lengthy memo sent to Ardelia Hall, evidently sent just before her position was eliminated due to the fact that Miss Tucker was causing too many problems for the officers in the USFA even though she was just doing her job. Some of the excerpts are set out below:

As you probably know OMGUS (Office of MG for Germany) has a well equipped Fine Arts Staff. I regret to say that USFA has not had such foresight, though I think it could be easily proved that more loot was found in the US Zone of Austria than in Germany.

The differences of opinion on this are mainly caused by the fact that we here have taken directives from Washington literally (I am of course only concerned with fine arts), which specified that fine arts removed from Austria after the Anschluss would be returned.

The position of the Fine Arts Officer in USFA was eliminated in July 1946 and from then until October 1947 the negligence of this explosive situation was hardly short of being criminal. (These are strong words, I know, but hear me out). There was no control then on what American officers sent home and there is very little now.

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It is not by chance that McKee is eliminating this job.... It is this particular job which he (and others) wants eliminated. HE returns to the States in June to attend school and he is going to be very sure there is no Fine Arts Investigator here, who knows anything about the work, after he leaves. It has been said to me in the past two weeks "but, Eve, USFA won't have to worry about anyone saying it has done something wrong after you have gone because nobody knows anything about it but you therefore nobody will know that a mistake has been made".

301. Throughout this period, the United States displayed an astonishing indifference to its responsibility over the stolen Jewish property and its duty to the Jews from whom it was stolen, both in its promise to Avar and its obligations under the law including Decree No. 3 and the Rules of Land Warfare, and on whose behalf it was being held. The most elemental processes for safeguarding the property were ignored. High level officials were allowed to misuse the property, and those who challenged them were

ignored or reassigned. As a result of these acts and omissions, the United States reduced the value of the plaintiffs' private property. Then, as is explained below, instead of returning the property to its known and rightful owners, the United States — through convoluted legal redefinitions — instead sold it off to ease the burden imposed on its own Treasury by the need to resettle refugees in the wake of war. To justify this unlawful act, the United States has claimed the owners of the property were unknown — either by nationality or individually. That is false, as the documents and testimony of the United States and its officials now concedes.

F. United States' Restitution Policy, which Applied to Hungary, was to Return Property to the Country of Origin

302. There were several sources of law governing United States' restitution policy, all of which were consistent in imposing on the United States the obligation to safeguard Gold Train property and return it to its country of origin or original owners. However, the United States failed to follow its laws by failing to retribute the property to Hungary in spite of these laws and in spite of the request for the property's return by the Hungarian Government and the Hungarian Jewish community.

303. The United States' express and clearly stated policy on restitution was explained and summarized in late 1948 by Lt. General Geoffrey Keyes, then the United States High Commissioner of Austria.

Since the end of the war the United States Forces in Austria have carried on a program of restitution of looted property found in the American Zone of Austria to the Governments of the rightful owners. During this time every effort has been made to locate, identify, and return all such property in the Zone.

Thus, United States' policy was to locate property identified as being looted or forcibly taken from a country by the Nazis and return the property to that country.

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304. The United States' restitution policy was predicated on international law and basic and fundamental principles of property rights. Before the end of the war, eighteen of the Allied Nations convened in London and announced an "Inter-Allied Declaration Against Acts of Dispossession Committed in Territories under Enemy Occupation or Control." The London Declaration occurred on January 5, 1943 and was, according to the United States, "a formal reiteration of the historical, moral, and legal principle *that neither the person who steals property nor the one who may later come into its possession ever receives good title.*" This has long been the law in the United States and is applicable to the United States Army.

305. The London Declaration went further than refusing to sanction looting during times of war though, it expressed a reservation of rights if not an outright obligation that the Allies could and did cancel any property transaction that occurred in occupied countries by nations with which they were at war be it a lawful transaction or not. This declaration formed the basis of the United States' restitution policy.

306. Additionally, in November of 1943, the United States created an "Interdivisional Committee on Reparation, Restitution, and Property Rights" to formulate U.S policy on these matters. The first principle agreed to was that with regard to reparations and restitution, the policy must be "formulated in such a way as to interfere as little as possible with the major economic objectives" of the United States. The second principle agreed to was that restitution occurs only to governments; restitution would not be made to individuals.

307. Indeed, in April 1944, the United States had made clear its conviction that occupation officials should bear only the initial responsibility for effecting restitution for property looted from occupied countries:

The question of restoration to individual owners is a matter for these [foreign] governments to handle in whatever way they see fit. The original owners may have received part payment for property taken from them under duress and the governments in question may wish to make adjustments for this circumstance in returning the property. In some cases it may be impossible to locate the original owners or their heirs and the governments involved will have to decide what should be done with the property or proceeds therefrom.

Thus, once looted assets were delivered to the country of origin, no additional United States involvement was deemed necessary or desirable.

308. Additionally, the Committee acknowledged that the right of and to restitution exists for all classes of property based upon, among other things, the London Declaration and United States laws regarding private property.

309. On June 29, 1944, the Committee presented its final report to the Executive Committee on Economic Foreign Policy (“ECEFP”), with Dean Acheson, Assistant Secretary of State, presiding. On August 4, 1944, the ECEFP approved a slightly modified policy and transmitted it to the Secretaries of War and Navy for issuance. The main differences were (i) restitution is not an absolute right; but that (ii) it can be delayed or denied, depending on the nature of the property sought to be restituted; (iii) only property that was identifiably in existence before Nazi occupation would be restituted; (iv) all looted property should be returned in the condition found to the country of origin, not individuals; (v) all property that the Nazis removed to Germany would be presumed to have been taken under duress and deemed looted property; and (vi) other than for gold, works of art and other treasures, no claims for in-kind replacements would be permitted.

310. The ECEFP was not the only input into U.S. restitution policy. The United States had also created the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas (the “Roberts Commission”). The

Roberts Commission explained that restitution principles should follow the law, which included, among other things (i) “an unlimited obligation” to “restore identifiable looted works of art, books, archives, and other cultural treasures,” regardless of country, be it Allied, Axis or neutral; (ii) “Looted property should be restored to existing governments of the territories where the property had its situs and not to the former owners individually,” which was simply a restatement of “a basic rule of international law”; and added (iii) that all property removed from the country during the period of occupation “shall be presumed to have been transferred under duress and accordingly treated as looted property” to prevent even legal purchasers who were or aided Nazis from ever obtaining legal title.

311. Additionally, Recommendation VI of the Final Act of United Nations Monetary and Financial Conference, adopted at Bretton Woods, N.H., on July 22, 1944 (“Bretton Woods Agreement”), explained binding principles of law agreed to by every participant, which included the obligation:

“To prevent any disposition or transfer” of “looted gold, currency, art objects, securities, other evidences of ownership in financial or business enterprises, and of any other assets looted by the enemy” and to uncover such looted assets within the territory “subject to their jurisdiction.”

312. After the Bretton Woods Agreement, the United States notified the military to ensure the “prevention of looting,” that the principles in Bretton Woods are “the responsibility of all commanders” and that they must ensure that “the seriousness of offenses of this kind is explained to all Allied personnel.” In furtherance of the Bretton Woods principles, the National Stolen Property Act made it a violation of Federal law to bring any looted object into the United States if valued at more than \$5,000.

313. Furthermore, under applicable laws and regulations, stolen Jewish property was declared by the United States as property unjustly taken by others. Indeed,

Resolution XIX adopted by the Inter-American Conference on the Problems of War and Peace at Mexico City, March 7, 1945, specifically defines “‘property unjustly taken from other peoples’ shall mean . . . property the control of which the enemy has obtained by dispossession, looting, violence, fraud, intimidation and other like acts.”

314. Lastly, there were the considerations of all Allied interests and their cooperation in the governance of occupied Austria.

315. The actual mechanism of restitution was set in motion for the United States forces first to the German occupation forces in JCS Directive No. 1067, dated May 10, 1945, which provided:

You will carry out in your Zone [of occupation] such programs of reparations and restitution as are embodied in Allied agreements and you will seek agreement in the [Allied] Control Council on any policies and measures which it may be necessary to apply throughout Germany to ensure the execution of such programs.

Thus, United States policy on restitution was to first look to ACC agreements and follow those agreements. In practice, this was more of a hortatory goal than an actual requirement, as from the beginning, the U.S. restituted on a unilateral basis.

316. Indeed, in July 1945, before there was any ACC agreement concerning restitution, President Truman instructed all United States occupation forces to return all identifiable works of art and cultural property to the country of origin. Belgium was the first recipient.

317. Based on President Truman’s instruction, a standardized procedure for restitution was established. This procedure remained constant and uniform throughout the United States’ restitution program. First, nations were to submit lists of property taken by the Nazis, and provide information about their current location and circumstances of the theft. Then, United States officials reviewed the lists submitted and permitted small missions to enter the United States zone to identify the property looted by

the Nazis and undertake preparations for return of the property, sometimes actually receiving the property on the spot.

318. Late in 1945, the ACC Committee on Reparations, Deliveries and Restitution elaborated and discussed a quadripartite definition of restitution which subsequently was adopted by the Allied Control Council on January 21, 1946. Additionally, the ACC adopted the United States' procedure for obtaining restitution. (CONL/P (46)3 Revise and CORC/P(46)143).

319. As adopted by the Allied Control Council, "restitution" was defined as

The question of restitution of property removed by the Germans from Allied countries must be examined, in all cases, in light of the Declaration of January 5th, 1943.

Restitution will be limited . . . to identifiable goods which existed at the time of occupation of the country concerned and which have been taken by the enemy by force from the territory of the country.

Also falling under measures of restitution are identifiable goods produced during the period of occupation and which have been obtained by force.

All other property removed by the enemy is eligible for restitution to the extent consistent with reparations. However, the United Nations retain the right to receive from Germany compensation for this other property removed as reparations. (See Appendix "A" to CONL/P(46)3 Revise.)

This definition was further refined by Appendix B to CORC/P(46)143, which provided that in case of removal by force, the right to restitution was absolute.

320. The first U.S. restitution directive was issued November 29 or 30, 1945 and is called "The Directive," which is WARX 85695 or SWNCC 204/2. It was intended to be an interim directive — interim until the ACC could adopt a quadripartite agreement. The Directive, which was a unilateral act on the part of the United States in its administration of occupied Austria, provides:

1. This directive, received from the State, War and Navy Departments, is issued to you at Commander in Chief, UNITED STATES Zone of Occupation, AUSTRIA (GERMANY) and UNITED STATES member of the Allied Council, AUSTRIA (GERMANY).

(Items subject to Restitution)

2. Without prejudice to the formulation of a definitive restitution program, the following categories of property shall, as an interim measure, be subject to restitution in accordance with the provisions of this directive.

A. All currencies of the UNITED NATIONS occupied by GERMANY.

B. Works of Art and Cultural Works of either religious, artistic, documentary, scholastic or historic value . . . ***identified as having been looted or acquired in any way through commercial transactions or otherwise by Germans*** from United Nations countries during German occupation.

C. Heavy and power-driven industrial and agricultural machinery and equipment, rolling stock, locomotives, barges and other transportation equipment (other than sea-going vessels) and communication and power equipment identified as having been looted or acquired in any way by Germans from United Nations during German occupation.

D. ***Other goods, valuables (excluding gold, securities, and foreign currencies other than those mentioned in paragraph 2A), materials, equipment, livestock and other property found in storage or otherwise in bulk form and identified as having been looted or acquired in any way by Germans from United Nations during German occupation.***

E. In the case of property mentioned in C and D which was produced during the period of occupation, restitution shall be made ***only if the claimant government submits adequate proof that the property in question was acquired by GERMANY through an act of force.***

(Procedures for Restitution)

3. Your Government will transmit to you from the Governments of the USSR, FRANCE, BELGIUM, LUXEMBOURG, NETHERLANDS, NORWAY, DENMARK, POLAND, CZECHOSLOVAKIA, YUGOSLAVIA and GREECE ***lists of property claimed to have been taken from their countries during the period of***

German invasion or occupation. Such lists will include wherever possible all relevant information which will aid in the identification and location of such property.

4. After examination of these lists, you will indicate to your Government which of these countries should be invited to send missions into your zone for the purpose of (A) substantiating claims for the restitution of property mentioned in paragraph 2A and D, (B) receiving information regarding the location of property which has been the subject of restitution claims by their government, (C) identifying and receiving any such property to be restored or distributed in accordance with the provisions of this directive. . . .

5. You will take steps to deliver all paper currency of UNITED NATIONS countries invaded or occupied by GERMANY, now in your zone, to the Government of the country of issue without the necessity of proof that it was looted or otherwise acquired from that country during the period of German invasion or occupation.

6. You will take steps in your zone to uncover and secure possession of property covered by paragraph 2B, 2C, and 2D, mentioned in lists submitted by claimant governments, and to restore such property to the government of the country from which it was taken.

321. Similarly, the quadripartite agreement reached in CORC/P(46)143 provided that

No nation shall be eligible for restitution unless its territory was occupied in the whole or in part by the German armed forces or the forces of their allies and unless it is a united nation, or shall have been specified by the Allied Control Council.

322. By its very terms, The Directive did not apply to Hungary or other ex-enemy nations. Despite United States' policy on restitution already being known, Hungary had to await a second directive before the United States was to restitute anything to Hungary, an ex-enemy.

323. To permit restitution to Austria and other ex-enemy nations, which was an objective of the United States' policy, on June 26, 1946 the United States' delegate to the ACC introduced a proposal to a more restricted form of restitution to Austria, Finland,

Hungary, Italy, and Romania. However, quadripartite agreement was never reached on the United States' proposal.

324. Despite the lack of quadripartite agreement, even before June 1946, the United States proceeded on a unilateral basis to restitute property to ex-enemy nations. The Secretary of State and the SWNCC all recognized that "it is a general policy of the United States that property looted by the enemy should be restored to its rightful owners." Further, they deemed it "appropriate that this general policy be extended to cover the restitution of property forcibly removed or removed without compensation from Italy, Hungary, Austria, Rumania, and Finland" (i.e., ex-enemy nations). Accordingly, the Secretary of State and the SWNCC again began a unilateral restitution program of ex-enemy property provided that "***except for works of art, property, in order to qualify for restitution, should have been removed through an act of force during the individual periods that these nations were subjected to German military occupation.***"

325. On March 5, 1946, in the form of WARX 99226, The Directive was supplemented to include restitution to Hungary of the following:

- a. ***Works of art and cultural works*** of either Religious, Artistic, Documentary, Scholastic of Historic value including, as well as recognized works of art, such objects as rare musical instruments, books and manuscripts, scientific documents of an historic or cultural nature and all objects usually found in museums, collections, libraries, and historic archives.
- b. Heavy and power-driven industrial and agricultural machinery and equipment, rolling stock, ***locomotives***, barges and other transportation equipment (other than sea-going vessels) and communication and power equipment.
- c. ***Other goods, valuables (excluding gold, securities and foreign currencies), materials, equipment, livestock and other property found in storage or otherwise in bulk form.***

Under the U.S. policy, these properties were to be returned to Hungary provided that Hungary could describe its properties located in the U.S. zone that were removed by Germany by an act of force or without compensation (i.e., identifiable), sometime between January 20, 1945 and May 15, 1945. Furthermore, the U.S. conditioned the return of all property, except artistic, cultural or religious property on the condition that restitution to Hungary of that property would not “jeopardize satisfaction of the minimum requirement” of the Austrian economy. And, the same procedures for restitution set forth in The Directive applied.

326. Thus, as of March 1946, all works of art, cultural property, private property (except for foreign currency, gold and securities) looted by the Nazis from Hungary, during the above timeframe, were ordered to be restituted to Hungary (the country of origin) provided the property was identifiable as having been taken from Hungary (i.e., “identifiable” property) and was taken by force by the Nazis, and provided that the restitution would not jeopardize the minimum economy of Austria.

327. And, in the case of Hungary, Italy, and Romania, the restitution provisions contained in the Peace Treaties with these nations, which were signed on February 10, 1947, supplemented the above instructions. For example, the Peace Treaty with Hungary provided in part 6, Article 20, that “identifiable property of Hungary and all Hungarian nationals removed by force or duress from Hungarian territory . . . shall be eligible for restitution.”

328. Accordingly, based on WARX 99226, an urgent telegram was sent from the Secretary of State to USFA/USACA on March 16, 1946 that ordered the military to comply and invite small missions from the other governments to come into United States occupied Austria to identify property on the claims lists, stating in relevant part:

Following is substance of JCS directive to Commanders
U.S. zones in Germany and Austria reference restitution to .
. . . Hungary . . . which is supplement to outstanding
directive reference restitution to United Nations.

Pending agreement in Control Council on scope of restitution to above-named countries *U.S. zone commanders instructed to undertake interim program of restitution to Governments of these countries* of specified categories of identifiable property acquired by Germany through act of force or removed to Germany or Austria without compensation and removed from . . . *Hungary between January 21, 1945 and May 15, 1945*

Following summarizes categories of property covered by directive (a) whole range of cultural and artistic works, museum collections, libraries, archives, etc. [religious property is included]. Restitution of this category requires only submission of satisfactory proof of identifiability by claimant government irrespective of circumstances of removal; (b) heavy and power-driven industrial and agricultural equipment, communication, power and *transportation equipment*, except seagoing vessels; and (c) *other property (except gold, securities and foreign currencies) found in storage or bulk form*. Restitution of this category need not be made if zone commander considers restitution would jeopardize minimum requirements German or Austrian economy or require additional U.S. assistance to Germany or Austria. . .

Please deliver to Government to which you are accredited memo along following lines:

“Pending agreement on scope of restitution among occupying powers of Germany and Austria the Government of the U.S. has instructed the Commanders-in-Chief of U.S. zones of occupation in Germany and Austria to undertake an interim program of restitution to the Government of (blank) of identifiable property other than gold, securities and currencies removed from (blank) during the period from (blank).

Accordingly government of U.S. invites the (blank) Government to submit to the U.S. Government one or more lists of such property which (blank) Government has reason to believe may be located in U.S. zones of occupation in Germany or Austria. These lists should, so far as possible refer separately to such property believed to be in Germany and Austria. They should further contain as much description of property as possible and as may be required to enable occupying authorities to identify property and should include all available information as to location of property.

Following the receipt of these lists, which may be submitted seriatim and which may indicate properties in the urgency of return, it is intended, where necessary, to invite

(blank) Government to send one a small mission to U.S. zones of occupation in Germany and Austria *for purposes of identifying on much of the lists property as each of the occupying authorities may have been able to discover in his zones.*”

329. On April 22, 1946, in response to an inquiry about the ability to forgo restitution if doing so would impact the minimum economic needs of Austria, the Secretary of State explained that the provision was not an “escape clause,” but instead was limited to only a few properties and “only where the removal of any items would clearly endanger the explicitly defined maximum economy.” Thus, according to the Secretary of State, the restitution program to Hungary was not, at least applied to the Gold Train, conditional; it was mandatory.

330. In sum, according to historical documents, the United States’ restitution policy toward Hungary was as follows:

a. The basis for restitution is the London Declaration, January 5, 1943, which reserved the right to invalidate forced transfers and through the restitution directives the United States did so;

b. Basic United States policy is found in WARX 85965, November 30, 1945, as amended by WARX 99226, March 5, 1946;

c. The following categories of property were required to be restituted to Hungary:

(i) All cultural, religious, and artistic property that were looted by the Nazis;

(ii) heavy equipment and transportation machinery provided that it was acquired by the Nazi during occupation or through an act of force without compensation;

(iii) other property, valuables (excluding gold, securities and foreign currencies), materials, equipment, found in storage or otherwise in bulk form provided

that the property was acquired by the Nazi during occupation or through an act of force without compensation; and

(iv) in the case of other property found in storage or bulk form, restitution was not required if the United States certified that restitution of the property would jeopardize the minimum requirements of Austrian economy, which the Secretary of State emphasized would almost never occur. Subsequently, in WX-91471, dated June 16, 1946, the United States confirmed that restitution of the Gold Train to Hungary would not impact the minimum economic requirements of Austria.

d. Claims for restitution must be submitted by governments (not individuals) to United States representatives. Claims were then transmitted through diplomatic channels to the United States High Commissioner of Austria, who transmitted them to the RD&R Division USACA section USFA.

e. Once a claim was received, the Reparations and Restitution Branch of the RD&R Division forwarded the claim lists to the appropriate Property Control Officer. When sufficient property of claimant nation had been located, claimant nation was invited to send a small mission to identify the property and make arrangements for property return.

331. Under the plain language of the United States restitution directive, the Gold Train and all of its contents (excluding gold, securities and foreign currencies) should have been restituted to Hungary. In fact, United States documents make clear that ***“under [the] directives [the United States] restitutes any property irrespective of ownership and are satisfied that removal was by general direction of ex-enemy puppet government or without compensation, or even removal by owner himself without compensation as in case of Hungarians.”***

G. Hungary's Efforts to Obtain the Return of the Gold Train

332. As identified above and even absent the United States' express promise to Avar and the later promise to Prime Minister Ferenc Nagy to return the property, the United States was required to return the Nazi looted property to Hungary under its own regulations and policies. These urgent requests began just weeks after the train fell under U.S. control. However, when Hungary sought that return, the United States failed to return the property.

1. Hungary's early efforts to obtain the property

333. In August 1945, a Hungarian committee chaired by Bela Andahazy Kasnya — Hungary's High Commissioner for Hungarian Properties Taken Abroad — arrived in Salzburg “requesting official recognition and authority to seek out and inventory Hungarian property in the U.S. Zone.” According to Arthur Schoenfeld, the United States Envoy to Hungary, the United States rejected Hungary's request to go into the warehouse and inventory Hungarian properties. Further, the United States denied it had the authority to return any such property because, as explained to Hungary, the United States could not take “unilateral action in the matter of the disposition of Hungarian properties in the United States occupied areas.”

334. Arthur Schoenfeld, however, reminded the Secretary of State that “*the decision to postpone the disposition of these properties involves an implied responsibility to safeguard them until such time as ultimate disposal is made,*” a responsibility that Schoenfeld also communicated to Hungary's officials. Schoenfeld also informed the Secretary of State that the United States was having difficulties guarding the Military Government warehouse in Salzburg and that “*United States forces are probably unprepared to provide such protection*” to the Hungarian properties.

335. The August 1945 effort to obtain the return of the Gold Train property from the United States was not the first time Hungary had made such an effort. In fact,

on or about June 8, 1945, Hungary requested the return of the Gold Train and expressed “no doubts that United States Army Headquarters have undertaken all necessary steps in order to safeguard the above mentioned valuables representing Hungarian property” and that “the United States Government in accordance with its generosity towards Democratic Hungary will restitute these above named valuables to the Hungarian State.”

336. On or about July 2, 1945, Hungary also sent the ACC an Aide-Memoire calling the Allied Commission’s attention to “the problem of Hungarian property transported abroad on German command by the so called arrow-cross regime,” and requested the return of such looted property. In response to this request, the United States instructed Hungary to prepare a list identifying the property for consideration.

337. The Hungarian government complied and submitted a list of its properties alleged to be in United States Occupied Areas to ACC on or about October 12, 1945.

338. In response to Hungary’s request and list of property, on October 19, 1945, Colonel Paul, Chief of the RD&R Division, registered an objection to “restitution” explaining that the United States instructions regarding the “Hungarian Property in U.S. Zone” were not proper. In sum, Colonel Paul indicated to United States authorities that (i) Hungary is not entitled to restitution “at the present time” because Hungary is not an “Allied nation”; (ii) the question of restitution to Hungary is “a matter for quadripartite discussion, and United States will not act unilaterally;” (iii) the procedure for restitution can only occur via recognized governments and because Hungary has “no government recognized by the United States” there is no authority to act; (iv) a “firm refusal should be made”; and (v) “every effort should be made to discourage further requests of this sort.” Following Colonel Paul’s interpretation of United States policy, Captain W.J. Harrington wrote on behalf of the Commanding General to General William Key on October 25, 1945, emphasizing the same five points. Shortly thereafter General Key communicated the United States’ response to Hungary.

339. Additionally, on January 18, 1946, the United States made an “item by item” assertion of “facts purporting to refute the Hungarian allegations.” The United States justified retention of the Hungarian property based on a distinction between “Captured Enemy Material under the direct control of USFA,” which could be returned unilaterally, and “other property which is under military government authority” which were being held “for maintenance and disposition” under policies of restitution that required quadripartite agreement. Because the Gold Train was the latter, no restitution could yet be made. However, the United States again informed Hungary (albeit falsely) that the property was being protected safely and securely.

2. The early efforts of Hungarian Jews to obtain the return of the stolen Jewish property

340. The Hungarian government was not the only entity attempting to obtain the return of stolen Jewish property. Leaders of the surviving Hungarian Jewish community were also requesting that the United States return the looted property taken on the Gold Train. First, on November 7, 1945, the National Office of Hungarian Israelites, submitted a letter to the ACC requesting the return of the Gold Train. Later, on December 20, 1945, the Temporary Managing Committee of the Central Bureau of Hungarian Jews (“CBHJ”) sent a letter to the United States Legation in Budapest. The CBHJ presented its version of the assets on the Gold Train:

In the country, all valuables in Jewish property - even golden wedding rings - have been collected by official persons before the Jews have been transported to gathering places in order to be deported. The valuables deposited by Jewish persons or by the authorities that have collected them have been loaded up, later in railway-cars and carried away in western direction, and, as the defeat of the German Army became evident, transported to Austria, after having been tithed several times.

The CBHJ further explained that “24 railway cars loaded with gold, jewels, etc. were surrendered to the American troops in Austria.” The CBHJ sought support for its

proposal that they be permitted to send a delegation to inspect the Gold Train property and negotiate the delivery of the Hungarian Jews' property.

341. In making its case for the return of the stolen Jewish property, the CBHJ relied not only on the history of the ownership of the train's assets, which was already known to the United States, and America's legal obligations to return them, but also on the primary policy underpinning the Paris Agreement: to rebuild their homes and existence.

The Jews having been robbed also of everything else they possessed, all clothes, underwear, furniture, etc. it is not only their undoubted right to claim that the objects stored in the railway-cars under American Control, should be rendered to them, but their demand is justified from humane standpoint too. By recovering a part of the valuables lost, many of them could begin to rebuild their homes and their existence.

342. The United States, however, rejected the Jews' proposal. On January 2, 1946, Arthur Schoenfeld informed the State Department of the letter from the CBHJ and reported that in his conversation with the Hungarian Jews, he explained that the matter was one for the Hungarian government and that the Jewish organization could not claim the property, nor could individual Jews. He also informed the Hungarian Jews that they had no legal avenue to obtain the return of their stolen property. According to the United States, if the Hungarian Jews were to get their property back that the Nazis had looted, it would have to be through the Hungarian government. However, Schoenfeld failed to disclose that Hungary could not obtain the property either, as no government of Hungary was evidently yet recognized by the United States.

3. Hungary's continued quest for restitution of the Gold Train

343. With mounting frustration, Hungary continued to press for the return of the stolen property. On or about January 15, 1946, Hungary, through Schoenfeld, sent another request to the ACC to restitute Hungarian property and for permission to send a

delegation to itemize and list the Hungarian goods, which was at this time the procedure being followed for other nations. This request was followed up on February 9, 1946, by a direct request from the Hungarian Prime Minister, Ferenc Nagy, "asking for the restitution of Hungarian goods" taken by the Germans and "Fascist 'Arrowcross' party" and still "present in the United States occupied zones." The Prime Minister begged the United States:

For Your Excellency, who may have observed for some time already the destruction and misery caused by the war, and the privations and suffering following in their wake, I need not stress the fact that the exertions of the Hungarian Government will remain almost fruitless until we do not get back all those goods of primary importance, medical supplies, means of transport, gold, live stock, mechanical installations and other values which were robbed from private persons as well as from public institutions and carried beyond our frontiers. The restitution of these properties would be more urgent even than any help or relief from abroad.

My Government is making superhuman efforts in the interest of the country's revival and rehabilitation. The peasantry and the working classes together with the intelligentsia, who are almost literally in want of their everyday bread, are sacrificing, so to speak, their last strength to ensure the future of the country, but we feel that all our sacrifices are in vain if the Government of the United States does not grant us its help by fulfilling our request.

344. On February 22 and again on February 28, 1946, Ferenc Nagy repeated his request for restitution. In his renewed request the Prime Minister reminded the United States and the ACC that restitution would permit Hungary to make war reparations to the Allied Nations and greatly aid in the economic reconstruction of Hungary. Lastly, the Prime Minister emphasized (yet again), that while the "future fate of this property is not known yet," the United States should "safeguard effectively the Hungarian property which is in Austria and Germany, in order to prevent their being damaged in the future."

345. Furthermore, Hungary, under Nagy, was committed to doing everything in its power to render possible the rehabilitation and financial restitution of Hungarian Jews whom it recognized suffered greatly under fascist persecution. And, thus, it was seeking the return of the Gold Train to aid in the rehabilitation and restitution of the Hungarian Jews.

4. The United States' reaction to Hungary's request: United States promises to return the Gold Train to Hungary to benefit Hungarian Jews

346. Unbeknownst to Hungary, the United States was preparing to reconstitute the Gold Train property to Hungary in accordance with WARX 99226, the United States' restitution policy to ex-enemy nations. On March 11, 1946, the United States prepared a report entitled "Hungarian Displaced Property in Austria." The report explained, in relevant part:

5. A directive authorizing the return, under certain conditions, of Hungarian displaced property was received on March 5, as WARX 99226. In consequence, we can now . . . proceed with restitution. . . .

6. USFA Headquarters has record of some 13,000 items of displaced property distributed at numerous locations in Austria. ***To determine which of these items are of Hungarian (or other satellite) ownership***, and are therefore eligible for restitution as directed by WARX 99226 ***is a task requiring a staff for which no provision has yet been made, and a period of months of investigation thereafter.*** Once Hungarian items have been identified, the lists must be screened by the Economics Division to determine which items are essential to the Austrian economy. Only the remainder is available for return to Hungary.

7. In the light of the foregoing, and in summary, it can be stated that ***the only displaced Hungarian property available for relatively prompt return to that country consists largely of household effects and personal property (probably largely looted Jewish goods) [i.e., the Gold Train]***, together with a limited number of horses and certain key parts for Hungarian factories.

347. The United States knew that there were some 200,000 Jews who had returned to or still lived in Hungary. Thus, the U.S. made inquiries into what Hungary planned to do with the Jewish wealth the Nazis seized that would soon be restituted to Hungary under WARX 99226.

348. On or about March 20, 1946, the United States' intelligence network informed the United States of "Hungary's plans regarding confiscated Jewish wealth." The secret intelligence report, citing source "DCarrick," explained:

A large percentage of the Hungarian assets soon to be returned to Hungary consist of jewelry, objects of arts, paintings, etc. confiscated from Jews by the Sztojay and Szalasi governments.

A recent decree of the Hungarian government sets up an agency, composed of representatives of the two largest Hungarian Jewish organizations to handle the so-called Jewish wealth with the implied understanding that they may use the assets exclusively for the benefit of the remaining Jews.

349. While the United States' investigations and negotiations were proceeding, General Key, the United States Representative of the ACC for Hungary, again stalled Hungary in its claims process, falsely explaining that the "ultimate disposition [of Hungarian property] is subject to governmental decision in consultation with our Allies, including the Soviet Union." Just as before, Hungary was told officially that there could be no unilateral decision-making by the United States concerning the looted Hungarian property. Nevertheless, the United States "invited" Hungary (yet again) to submit more lists of "Hungarian property which are believed to be" in occupied territory. In particular, the United States explained to Hungary that it could submit a claim list for any property that was removed into Austria from January 20, 1945 to May 15, 1945.

350. On March 16, 1946, the United States sent an "urgent" telegram that denied any need to consult with the other Allies and stating that United States Commanders should implement the Directive contained in WARX 99226 immediately

toward Hungary. Moreover, the United States also specifically explained that the *Gold Train property in Salzburg* “*is subject to this directive.*”

351. In addition to submitting more lists and making more claims, Hungary continued its negotiations with the United States for the next two months.

352. The negotiations culminated on June 14, 1946, shortly after the United States denied Hungary a loan, when Prime Minister Nagy met with the Secretary of State and the United States promised to return all looted Hungarian properties to Hungary, including promising to return displaced Jewish property that was removed under duress after January 20, 1945, provided that Hungary was willing to undertake certain measures, namely guarantee that it would return the looted property to its rightful Jewish owners.

353. The United States then issued instructions to American commanders to proceed with restitution to Hungary of looted property “without delay.” In fact on June 15, 1946, this directive was approved, and WARX 91471 was issued on June 15, 1946, which explained that restitution of looted property to Hungary, including the Gold Train, would not “significantly affect minimum allowed economies of Germany and Austria.”

354. In light of the ordered restitution to Hungary, on June 17, 1946, USFA “urgently” requested the War Department to forward instructions to USFA to “authorize the entry of small Hungarian missions into their respective zones in Austria and Germany for the purpose of identifying looted Hungarian property.” USFA also requested that the United States Commanders be instructed to “authorize the shipment of such property to Hungary promptly upon its satisfactory identification by the Hungarian representatives.”

355. Upon the Secretary of State’s instruction that the Hungarian missions be invited to proceed without delay, the USFA issued the following order:

Extend invitation soonest to Hungarian Government to send restitution Mission of not to exceed four persons, to Headquarters USFA, Vienna for purpose identifying and expediting shipment property looted by Germans.

Established procedure is for U.S. agencies to locate property after submission of restitution lists by government concerned. . . .

Properties of Hungarian National Bank and various Hungarian Railroad properties available for immediate restitution upon identification.

356. Furthermore, shortly after the United States reached an agreement with Hungary, in June 1946, the United States Secretary of State issued a press statement that it has proposed to restitute property to Hungary, Italy, and Austria that was forcibly removed and taken by Nazi Germany. Indeed, the State Department announced specifically that the U.S. had reached an agreement with Hungary to return to Hungary all Hungarian property forcibly removed by Nazi Germany.

357. On or about June 27, 1946, Hungary complied with the United States' demands, and promised to return to all rightful owners any property that was looted by the Nazis and thus secure the return of the Jewish property found on the Gold Train. This message was delivered to the United States by Miklós Nyárádi, the Hungarian Minister of Finance, in a visit to Austria where he discussed the property on the Gold Train with Colonel Ernest T. Owen, who was then Chief of RD&R, USACA, and who discussed with Nyárádi the contents of the Gold Train and showed him some kind of inventory of the train. During this visit, Nyárádi informed the United States of the large number of Jews remaining in Hungary (about 200,000) and that the Hungarian government, in cooperation with Jewish organizations, had formed the Jewish Rehabilitation Agency, and Nyárádi expressly agreed to turn over the assets of the Gold Train to the Jewish rehabilitation agency in Hungary.

358. And, in early July 1946, Nyárádi visited Berlin to provide the American authorities with the same information and assurances.

359. Indeed, in official U.S. documents — which the United States later ordered the recipients to destroy — the United States expressly acknowledged that the

Hungarian government had adopted legal measures “to restore to the Jews both the status and property of which they were deprived during Hungarian fascist regimes.” The United States further acknowledged that Hungary had complied with the terms of the agreement reached with the Secretary of State, explaining “[i]n some cases *these measures have gone even farther than restoration to include some element of recompense*. These measures are all in conformity with the public statements of Hungarian leaders and the announced principles of the Hungarian Republic.” Thus, Hungary had taken the necessary steps and was preparing for what it believed to be the imminent return of the looted Gold Train property, and to which it was entitled.

360. Hungary, under Prime Minister Ferenc Nagy, had already returned Jewish property to its original owner or their heirs when items had been restituted to Hungary. For example, Hungary received a number of artifacts and property on December 22, 1946, and these properties were returned to their original (Jewish and non-Jewish) owners early in 1947.

361. The United States did begin to reconstitute the property as promised, but then stopped. The United States restituted the contents of another train, a second gold train, containing principally the gold reserves of the Hungarian National Bank but also considerable personal property.

362. The second gold train transported property of the government of Hungary and Hungarian Jews. The most valuable cargo of the second gold train was the Hungarian gold reserves. The second gold train, like the Gold Train, was turned over to United States custody for safekeeping. The transfer of custody occurred at Spital am Pyhrn on or about May 6, 1945, when, just as Avar had done with the Gold Train, the Hungarian officials contacted the United States Army and requested that it be taken into custody for protection. Shortly thereafter, the United States assumed custody of the loot from the second gold train and transferred the property under “Shipment No. 20” to the

FED in occupied Germany and held under the control of OMGUS. The cache of gold bullion amounted to more than \$32,000,000.

363. The United States restitution of the gold reserves occurred in August 1946, and the other property from this train, including 5 boxes of envelopes with currency, gold, and jewelry “bearing identification names or numbers,” and other Jewish valuables including some belonging to Manfred Weiss, were returned later. The stated reason that the United States restituted the remaining property from the second gold train was, (i) the property was uncovered at Spital am Pyhrn “as a result of request from Hungarians that it be taken into custody for protection;” and (ii) the property taken from Hungary and received from Hungarian officials is the same property that Hungary was requesting to be returned (*i.e.*, it was identifiable).

364. Even though there was no difference between the Gold Train and the second gold train in terms of the transfer of custody of the property to the United States Army, or the circumstances under which the U.S. accepted custody, or the national origin of the property, or the fact that both contained property of Hungarian Jews, the United States kept the stolen Jewish property from the Gold Train for its own public purposes, namely to alleviate the economic burdens being imposed on the United States Treasury by caring for and resettling Jewish refugees and its general military obligations in Austria, including covering up the looting that had occurred. All in all, the United States underestimated the humanitarian catastrophe and corresponding need that the Nazis caused in Europe, and was not prepared in Europe or at home to sustain the effort over the long run. The United States wanted to off-load this responsibility to others, and quickly.

H. The United States Reneges on its Promise to Hungary

365. The United States sought to justify its decision not to restitute the stolen Jewish property through a deliberate misinterpretation of international treaties.

366. The problem for the United States was largely twofold: (i) that the United States was incurring financial obligations to care for and resettle displaced Jews but there was no money in the IGCR resettlement fund nor any indication that funds would be forthcoming other than from the American Treasury; and (ii) caring for displaced Jews was far from universally popular within the armed forces and the State Department.

367. The two international agreements that the United States would use as a pretext to appropriate the stolen Jewish property were the Paris Agreement and the Five Power Agreement.

1. Paris Agreement and Five-Power Agreement

368. At the Potsdam Conference of July and August 1945, when the Allied leaders made their first postwar attempt to determine the fate of a defeated Germany, they directed the ACC to manage all foreign-owned German assets, many of which were in Switzerland. In November 1945, the Council formally confirmed its control of all external German assets in order to ensure they would not be claimed by the neutrals as payment for German war debts. The sole exception was gold, which the Allies recognized had been plundered by the Germans from conquered countries.

369. Therefore, in December 1945, representatives of 18 countries met in Paris to discuss how to allocate and distribute war reparations of Germany. The United States favored pooling the monetary gold found in Germany as well as the gold that had been transferred abroad by the Nazis, and the nations suffering losses would receive portions from this gold pot to cover their losses. The Tripartite Gold Commission (“TGC”) was created to carry out this task under the Final Act of the Paris Reparation Conference.

370. However, the claims submitted to the TGC exceeded its accounts. Thus, the TGC negotiated the application of the ancient maritime law, “Rule of General Average,” which applies to all property losses in common disasters, to the reparations and restitution under the Paris Agreement. Briefly stated, the Rule of General Average

means that if both A and B have cargo on a vessel and A's cargo is jettisoned from the ship seemingly lost in a storm to save the ship, B must share in the property losses when B's cargo arrives safely in port by giving some to A.

371. The United States also knew in 1944 that the Nazis were smelting gold from Jewish Holocaust victims and adding that gold to the Nazi reserves. Nevertheless, the United States decided to place all monetary gold in the gold pot, even though some of the gold was stained with Jewish blood.

372. In total, the Allies placed 337 tons of looted Nazi gold in the pool for return to its owners. The countries from whom the gold was taken got back about 65 percent of their looted gold from the TGC. The individual victims got none.

373. At the same time, the United States, in conjunction with four other nations, agreed to provide some relief to the Jewish victims by turning over ***“non-monetary gold” found in Germany*** to the Inter-Governmental Committee on Refugees (“IGCR”).

374. Following discussions in December at the Paris Conference, the plan for the Five-Power Agreement was forged based on the following recommendations regarding the “Allocation of a Reparation Share to Non-Repatriable Victims of German Action” (i.e., Holocaust Survivors). In relevant part, the Paris Agreement provided that

The non-monetary gold found in Germany shall be placed at the disposal of the Inter-Governmental Committee on Refugees as soon as a plan has been worked out as provided above.

375. This agreement laid the basis for the creation of the Preparatory Committee for the International Refugee Organization (“PCIRO”) and the sale of non-monetary gold and other “heirless” property for the benefit of repatriating refugees.

376. According to the Paris Agreement, an agency, known successively as the Inter-Governmental Committee on Refugees (“IGCR”), the Preparatory Commission for

the International Refugee Organization (“PCIRO”), and finally the International Refugee Organization (“IRO”) would receive up to \$25 million for rehabilitation and resettlement of Jews.

377. The Five-Power Agreement of June 14, 1946 executed in implementation of Article 8 allocated “non-monetary gold” with other assets to the ICGR for distribution to “appropriate field organizations,” and by an agreed letter to the Director, allocated 90% of the proceeds from the liquidation of non-monetary gold delivered to the IGCR to only two field organizations: (i) the American Jewish Joint Distribution Committee (“Joint”) and (ii) the Jewish Agency for Palestine (“Jewish Agency”).

378. The fund was intended to be financed by: (a) non-monetary gold found in Germany by the Allies; (b) German assets found in neutral countries; and (c) assets in neutral countries of people who died heirless as a consequence of German persecution. People eligible for the aid included only those citizens of countries “occupied by Germany” during the war who could not be repatriated in the foreseeable future.

379. There was, however, no timetable for funding. And, as the United States knew, there would be no contributions from other countries for some time to come. Indeed, the United States’ position in favor of the proposal was first articulated by Ambassador Edwin Pauley, The U.S. Representative, Allied Commission on Reparations, who explained to Secretary of State James Byrnes that establishing a reparations fund would ease the economic burden being borne by the United States. The concern of the United States, according to General Lucius Clay’s chief advisor, was that caring for, rehabilitating, and resettling displaced persons was becoming a “real headache,” that, if continued, would turn into “into another huge WPA project.”

2. United States explores breaking its promise to Hungary shortly after making it

380. The State Department, on June 21, 1946 and just a few days after promising to Hungary to restitute the stolen Jewish property, instructed one of its personnel, Mr. Mason, to go to Vienna to “investigate the attitude of the Austrian Government and USFA in reference the possibility of the property of the so-called Hungarian gold train being turned over to Jewish Agency [for Palestine]” and directed “that no restitution be made of gold train property,” in the interim.

381. On or about July 3, 1946, Mason reported back. First, he reported that all high-ranking United States military officers were of the opinion that non-monetary gold and other valuables (including the Gold Train) were appropriate for the non-repatriable fund under Article 8 of the Paris Agreement. Mason also reported that Colonel Marget believed that foreign paper currency might be similarly disposed, even though currency was required to go to the country of issue. The opinion was not without objection, however. Colonel Paul had “reservations” about extending Article 8 to property uncovered *in Austria* when the treaty’s term was specific and only applied to property “*found in Germany.*”

382. Mason also reported that United States was not safeguarding the property. He explained, “strong probability [that United States] seizures [in Germany] inextricably intermingled [the non-monetary gold] with others found in Austria, thus emphasizing need to interpret Article 8 as covering non-monetary gold found in Austria.”

383. More specifically, Mason reported that *Gold Train was the property “of Hungarian Jews which was confiscated by order of Nazis,”* again confirming that the United States knew it was stolen property belonging to Hungarian Jews. Additionally, he surveyed the property and explained that the “*property is now located in large warehouse at Salzburg which is not and probably cannot be adequately guarded.*” He

added that “I have been informed that a certain amount of *looting from warehouse has already taken place and do not see how further dissipation of property can be prevented under present conditions. Fact that no inventory exists makes almost impossible for Control officers to know whether looting taking place.* . . . Rugs and fur coats are rapidly deteriorating and prompt disposition thereof is therefore recommended.” He also reported that the total value of the Gold Train property “may be considerably more than those at Frankfurt,” which included all property located at the FED, sometimes referred to as “Fort Knox” by the armed forces.

384. Thus, as of July 1946, no detailed inventory of the Gold Train had occurred, looting of the property had occurred, and the property was not being properly stored or protected by the U.S.

385. Mason also noted that officers had requisitioned property for officer billets and furnished homes for dependents with the train’s contents. He recommended that this be prohibited. At the same time, he suggested that the some of the property might be sold at PX’s by the AES provided that the proceeds were turned over to “non-repatriable fund in dollars,” to comply with Article 8.

386. Mason also explored the idea of liquidating all non-monetary gold with Austrian officials who agreed to make these assets under the laws of Austria “heirless estates” and thus available to the non-repatriable fund. Very little of the property was truly “heirless,” as plaintiffs and class members in this lawsuit can attest.

3. The United States redefines non-monetary gold to alleviate economic burden imposed on U.S. Treasury by displaced Jews

387. As explained above, on June 14, 1946, the United States promised Hungary that it would restitute the Gold Train, along with other properties looted from Hungary by the Nazis, to Hungary. By August, the United States’ restitution program to Hungary, in accordance with U.S. policy and the express promise made to Hungary, had

begun. However, quite suddenly, the United States reversed course and reneged on its agreement with Hungary.

388. As detailed below, the United States decided to renege on the promise made because of the “critical” financial condition of the ICGR resettlement fund and the corresponding economic burdens thereby placed on the United States in caring for and resettling Jewish displaced persons. In order to secure money for the resettlement fund and alleviate the economic burdens that caring for and resettling the Jews of Europe was imposing on the U.S. Treasury, the United States redefined “non-monetary gold” under the Paris Agreement so that the stolen Jewish property on the Gold Train could be released to the IGCR and the proceeds from the liquidation of that property could be used to rehabilitate and resettle the Jews of Europe. In so doing, and by falsely maintaining that the origin of Gold Train property was unidentifiable and that no property on the Gold Train could be identified as belonging to any specific individual, the United States transferred much of the property to the PCIRO.

389. By August of 1946, the Hungarian Jews had again become a “problem” for a government other than Hungary. However, this time, the Jews did not present a problem to the Nazis. Instead, they presented a problem to the United States. In a “confidential” memorandum that referenced the restitution directive that ordered property looted by the Nazis from Hungary returned to Hungary, the State Department explained “The Problem” presented by the Hungarian Jews:

THE PROBLEM

1. To instruct CG, USFA with respect to the disposition of a train load of household goods and valuables looted from Hungarian Jews and now in the possession of U.S. Forces, Austria.

390. The answer to the defined “problem” had already been given, not only under WARX 99226 but also the Secretary of State’s promise to the Prime Minister of

Hungary. However, the real problem was that the United States desired to figure out a way to instruct the Commanding General of USFA how to not return the Gold Train property as previously promised.

391. The reason that the United States had decided to renege on its promise and violate its own policies and laws, as explained by the State Department in the “confidential” memorandum, was that the financial position of the resettlement fund established by the Paris Agreement was “critical” and that the United States needed to find an immediately available and steady source of money for the fund other than the U.S. Treasury.

392. The State Department explained:

FACTS BEARING ON THE PROBLEM

2. The U.S. Forces found in Austria and now hold in the Military Government warehouse in Salzburg a train load of household goods and valuables described by cable from USFA P 9355 (Appendix A). . . .

4. Article 8 of the Final Act of the Paris Conference on Reparations provided that “all the non-monetary gold found by the Allied Armed Forces in Germany” should be “allocated for the rehabilitation and resettlement of non-repatriable victims of German action.” The five-power agreement of June 14, 1946 executed in implementation of Article 8 allocated “non-monetary gold” with other assets to the Intergovernmental Committee on Refugees for distribution to appropriate field organizations, and by an agreed letter to the Director of the IGCR designated as the appropriate field organizations to receive 90% of the proceeds the American Jewish Joint Distribution Committee and the Jewish Agency for Palestine. As originally drafted, it is doubtful whether Article 8 included Hungarian Jews among beneficiaries of the fund. By an interpretation agreed at the five-power conference victims of Nazi action nationals of other members of the Axis are included. This will become effective if no objection is sent by the French Government before September 1, 1946. (Report of the U.S. Representative, Document No. 4.⁴) The Department has prepared a proposed directive to the U.S.

⁴ The French objected to this interpretation and thus it never became an official interpretation of the treaty.

Commanders in Europe with respect to turning over “non-monetary gold” to the IGCR, which is submitted along with this memorandum. *The proposed directive includes “valuable personal property found which represents loot seized or obtained under duress from political, racial or religious victims by the Nazi Government or its satellite governments” found in the European Theater of Operations, but only if such property cannot be restituted to a government under the directives of this government because determination of national origin is impractical.*

393. The above emphasized portion of the “secret” memorandum is the beginning of the United States’ legal sleight of hand to appropriate the Gold Train property for its own use.

394. To solve the problem of financing the resettlement fund by some means other than the U.S. Treasury, the United States chose to impose requirements that made the restitution of *valuable* private property on the Gold Train “impractical,” and thereby utilize valuable stolen Jewish assets to pay for the resettlement and rehabilitation of Jews.

395. Under existing U.S. restitution policy, as explained in WARX 99226, Hungary was entitled to the return of the Gold Train because the United States knew that the property had been looted by the Nazis and taken from Hungary during the applicable time period, and that the Gold Train and its contents, which the United States had accepted custody over and stored in Salzburg, had been properly identified as such. Consequently, the United States needed to change the standards of what constituted restitutable, or identifiable, property.

396. Under existing restitution policy, the question of individual ownership was one for foreign governments.

The question of restoration to individual owners is a matter for these [foreign] governments to handle in whatever way they see fit. The original owners may have received part payment for property taken from them under duress and the governments in question may wish to make adjustments for this circumstance in returning the property. In some cases it may be impossible to locate the original owners or their heirs and the governments involved will have to decide

what should be done with the property or proceeds therefrom.

Indeed, the United States' policy and that of the ACC was that once looted assets were delivered to the country of origin, no additional Allied involvement was necessary or desired.

397. Nevertheless, the United States sought to impose a new requirement on restitution, but one that applied only to Holocaust victims' property, namely one that sought to exclude property removed by Jewish refugees. However, the United States recognized that this initial revision would not fix the "problem" of the Gold Train. Therefore, in addition to knowing the country of origin and in addition to excluding property removed by fleeing refugees, the United States now required that the property must not be "heirless" under the laws of Austria, and that determination of individual ownership of the property must not be "impractical." As explained by the State-War-Navy Coordinating Committee, there was no longer a requirement to restitute property to the country of origin if that property "cannot be restituted to lawful owners under laws in force in place where presently found either because owner has died or ceased to exist without legal successor or because determination of individual ownership is impractical." Thus, whereas before the United States considered the problem of Hungarian Jews' identifiable property was exclusively tied to the country from which the Nazis looted it, now identifiable property also became tied to the laws in place in Austria and whether an individual owner could be determined without imposing an administrative burden.

398. On November 17, 1946, the Joint Chiefs of Staff, and the Secretaries of State, Navy and War Departments issued the following confidential order (reference number WARX 85682) which completed the United States' rejection of the deal it struck with Hungary, although the United States failed to inform Hungary of this fact. In relevant part, WARX 85682 provides:

1. You will make available on demand to duly accredited representative of intergovernmental committed on refugees (IGCR) all valuable property which represents seized or obtained under duress from political, racial, or religious victims of Nazi Government or its satellite governments or nationals thereof which was or may hereafter be found, seized, or confiscated by USFET or by local authorities acting under direction or control of US Forces, subject to following conditions:

a. That property *cannot be restituted* to government pursuant to WARX 85965 November 1945 and WARX 99226 March 1946, as amended and modified by control council action, *because determination of national origin is impractical.*

b. *That property cannot be restituted to lawful owners under laws in force in place where presently found either because lawful owner has died or ceased to exist without legal successor or because determination of individual ownership is impractical. . . .*

4. Expression “valuable personal property” as used in paragraph 1 of this directive shall be interpreted to exclude ordinary items of furniture, clothing, and other personal property of small intrinsic value and to include any such items of uncommon value. *In determination of impracticality of identification* pursuant to paragraph 1, subparagraphs a and b, of this directive *regard shall be had to extent of commingling with other property and difficulty and expense of determination of ownership in comparison with value of property.*

399. Under these heightened standards, which were created specifically to solve the “problem” of the Gold Train, the United States decided to release the remnants of Gold Train property to the IGCR.

400. Furthermore, the United States’ decision to limit the release of Gold Train property to the IGCR exclusively to “valuable private property” was made to reverse prior decisions of the United States and permit the USFA to give so-called “ordinary” items of property found on the Gold Train to displaced persons, local Catholic churches, or sell it through the PX’s. Thus, the State Department decided that “ordinary items” of value, although belonging to Hungarian Jews, did not have to be used to benefit Jews at

all — either insider or outside of Hungary — or in furtherance of the Paris Agreement, but instead could be used for any purpose.

401. The United States knew that releasing the Gold Train property to the IGCR was illegal and in violation of the promise it gave to Hungary. Indeed, the “secret” State Department memorandum explicitly recognized the illegality under the Paris Agreement and the United States’ promise to Hungary to return the Gold Train property.

402. Describing the illegality of releasing the Gold Train property to the IGCR under the Paris Agreement, the State Department explained:

Delivery to the IGCR under Article 8 is inappropriate because the origin of this property is known. Since the property belonged to Hungarian Jews, it can and should be devoted specifically to the rehabilitation of Hungarian Jews rather than to the more general purposes specified pursuant to Article 8 [of the Paris Agreement].

403. Additionally, on August 28, 1946, in a cable responding to the State Department’s proposal, General Clark immediately cautioned that there was no legal basis for the recategorization. He reminded the State Department that the Paris Agreement only applied to property found in Germany, and that it did not apply and had never been deemed to apply to property found in Austria. After all, Austria, under the London Declaration, was a victim of Nazi aggression and not a belligerent. Therefore, General Clark and others thought that there was no legal basis for transferring the Gold Train property to the IGCR. He also reminded the State Department that the Hungarian Jews would not benefit from this action because Hungarian Jews were not included as beneficiaries under the Paris Agreement. In summary, he explained:

[The] non-monetary gold now in Austria *was not repeat not uncovered in Germany but was discovered in Austria.* . . . Hungarian position in this matter according to Nyaradi, Under Secretary Finance and in charge restitution for Hungarian Government, is that at least train property should be returned to Hungary for benefit Hungarian Jews for the following reasons: (1) this property was looted by Nazis from Hungarian Jews of whom some 100,000 still

remain, and (2) terms of Article 8 exclude Jews in Hungary from benefit of this train which was looted from Jews there. . . . In view of possible exclusion of Hungarian Jews from benefits of their property and political situation, feel that operation of reference cable be suspended in Austria . . .

404. The United States agreed with General Clark's legal conclusions. Indeed, in 1947, the State Department confirmed that "the Paris Act apparently provides no legal basis" for the decision to expand the definition of "non-monetary gold" beyond property found in Germany to include Austria. And, in its "confidential" memorandum, the State Department confirmed that its decision to release the Gold train to the IGCR was ***"entirely outside obligation under Paris Reparation Agreement."***

405. Furthermore, the United States admitted that release of the Gold Train property to the IGCR was also a violation of United States' restitution policy and its express promise to Hungary. The State Department's "confidential" memorandum explained:

6. The memorandum delivered to the Hungarian Prime Minister by the Under Secretary of State on June 14, 1946 stated, *inter alia*:

"Instructions are being issued to the American commanders in Germany and Austria to proceed with the restitution to Hungary of identifiable displaced property removed under duress from Hungary subsequent to January 20, 1945. The United States Government will instruct its commanders to expedite the return of such property and to advise without delay, for the information of the Hungarian Government, of their plans for the scheduling of the return of rolling stock and other transportation equipment. The United States Government will also give urgent consideration to the possibility of issuing new directives authorizing the return of similar Hungarian property removed under like conditions between October 15, 1944 and January 20, 1945."

7. ***The [Gold Train] property is subject to restitution to the government of Hungary under SWNCC 204/12 [WARX 99226] and does not appear to come within the exception: "Household goods, valuables, art objects and other personal property owned and removed from a country by refugees who left that country for religious or racial***

reasons and who choose not to return to that country, will not be subject to restitution.” . . .

406. Indeed, just as the United States explained in 2000, **INFORMATION REDACTED/UNDER SEAL.**

407. Lastly, the United States also admitted that releasing the Gold train property to the IGCR “*would be a breach of faith with the Hungarian Government since this government promised in its memorandum of June 14 to return identifiable displaced property removed under duress from Hungary subsequent to October 15, 1945.*”

408. When pressed by military officers and other government officials about the obvious breach of its promise to Hungary, the United States eschewed such concerns and informed those who questioned the decisions that it would be “impolitic” to ask Hungary its opinion or inform Hungary of the action under consideration.

409. Nevertheless, despite admitting that it was considering taking illegal action by releasing the Gold Train property to the IGCR, the United States chose to break the law because of the financial strain that was being imposed on the U.S. Treasury in rehabilitating and resettling Jews. Indeed, in a cable to military officers in Europe, WARX 98112, the State Department explained why the Paris Agreement and “non-monetary gold” needed to undergo this redefinition. While admitting that the action was “[e]ntirely outside obligation under Paris Reparation Agreement” the State Department justified its illegal conduct because “*this program [is] directly related to general responsibilities this Govt connection to financing the resettlement of displaced persons.*”

410. By August 23, 1946, the financial position was becoming critical, and it was expedient to immediately appropriate the Gold Train.

As is well known non repatriable financial position critical and desirable that non monetary gold formula be established and applied without delay.

By “extend[ing] ‘Non Monetary Gold’” in this manner, the State Department, noted that the “general financing burden of US will be decreased.” Indeed, as the State Department later explained when directing the JCS to issue its order:

To the extent assets can be realized from this source, the burden upon the Government of the United States in connection with the financing of rehabilitation and resettlement problems will be diminished.

411. In other words, because of the critical financial position of the resettlement fund and the desperate need of the United States to find a source of money other than the U.S. Treasury, the United States knowingly violated the law and attempted to immunize its conduct by rewriting the law.

412. However expedient and lucrative the liquidation of stolen Jewish property as a source of funds for resettlement and rehabilitation of Jews, and no matter how “critical” the repatriable fund of the IGCR was, the United States’ action is not justified under the law. There is no lawful justification for appropriating private stolen property from the victims of the Holocaust to ease the economic burden of U.S. Treasury. Indeed, one of the most basic and fundamental principles of property, and one that is embodied in the London Declaration, the Rule of Land Warfare, the Hague Regulations, and U.S. law is, according to the United States, ***“that neither the person who steals property nor the one who may later come into its possession ever receives good title.”***

413. Upon issue, Captain Howard Mackenzie, the Property Control Officer and custodian of the Gold Train, was notified that all previous instructions concerning the stolen Hungarian Jewish property were superseded. Through a cable sent on November 16, 1946, from Washington D.C., he was informed that the Gold Train

property in the MG Warehouse, with the exception of Jewish items of cultural or religious significance, would be turned over to the IGCR.

414. Additionally, later on, Captain Mackenzie was commanded to open all original containers and sort the stolen Jewish property into categories according to type of merchandise and value. After the sorting process, the determination of individual property ownership would be, by virtue of the acts of the United States, administratively impractical. As Captain Mackenzie had explained under oath, the boxes and crates of Gold Train property had not been opened yet because “it was felt if they were removed the means of identification would be lost. A great deal of material the ownership of which has never been determined is in there.... Most of the valuable material is nailed into boxes. Some of the most valuable material is still in the original suitcases and baskets and trunks in which they were found.”

415. By mixing up the property and removing indicators of original ownership, the United States rendered it administratively impractical to identify the owner of the property. In so commanding Captain Mackenzie, the United States sought to become blameless and immunize itself from legal liability for transferring the property to the IGCR.

416. Additionally, plaintiffs allege that the United States co-mingled all of the “non-monetary gold” in the MG Warehouse to conceal the fact that top ranking members of the armed forces in Austria had been looting the property since its arrival.

417. The United States, having decided it wanted to use the Gold Train loot for purposes other than to return it to its owners, recognized this was counter to promises made to Hungary and its Jewish community, was flatly at odds with the U.S.’s expressly stated policies, and was without legal support or foundation. So it was forced to redefine the facts, twisting them into unrecognizable shape, to justify this reversal. It also chose to keep the facts secret from those who were most affected — plaintiffs and putative class

members here. Despite any statement to the contrary in the documents or made by the United States today, plaintiffs assert that the United States knew that the property on the Gold Train was of Hungarian origin; that it was taken into custody at the request of Hungarian officials for protection until it could be returned to Hungary; that it contained the property of Hungarian Jews confiscated and looted by the Nazis; that some of the property was also identifiable as to the individual owner as papers with original Jewish owners were uncovered with the Gold Train, and markings of original owners were on the property itself or the original packaging.

I. France, Unlike the United States, Followed the Law

418. On October 5, 1946, while the United States was considering appropriating the stolen Jewish property by redefining “non monetary gold,” AUSPOLAD sent a Cable to SECSTATE PARIS which explained that U.S. intelligence had learned that France was going to reconstitute the portion of the Hungarian Gold Train valuables it seized from Toldy in its section of occupied Austria. Furthermore, despite France’s objection to the United States’ interpretation of the Paris Agreement and plan to release the property to the IGCR, the United States refused to change its position. On December 19, 1946, through Note No. 2035, the United States informed France of its unilateral action with respect to the Gold Train property and requested that the French take similar action toward the stolen Jewish property from the Gold Train it seized. The French, however, did not acquiesce. France, in accordance with restitution laws, returned the Gold Train property in its possession to Hungary because it belonged to Hungarian Jews and was looted by the Nazis from Hungary.

J. The Turnover of Gold Train Property to the IGCR/PCIRO

419. The implementation of the turnover of Gold Train property to the IGCR began on or about January 14, 1947, when Abba Schwartz, the person in charge of handling the transfer for IGCR/PCIRO, began preparatory discussions with USFA

officials in Vienna and Salzburg. According to his report, none of the items from the Gold Train had been individually inventoried or appraised, and the unpacking and comingling of Gold Train property at the MG Warehouse in Salzburg that the United States ordered, in any event, made checking against an original inventory impossible, even had one been created.

420. The United States explained, however, that the joint inventory “must be sufficiently detailed to permit ready identification of the items comprising the inventory” released to the IGCR.

421. The IGCR representatives arrived at the MG Warehouse mid-May 1947. Upon arrival and inspection, Abba Schwartz immediately recognized that vast looting had occurred and that because of the volume and size of the Gold Train property an inventory would be terribly time consuming.

422. Additionally, Moses Leavitt, the Director of the Joint, wrote of this disheartening discovery on May 20, 1947, that upon his “visit to Gold Train in warehouse” he also noticed that “much has been rifled.”

423. Disappointed at the looting that had occurred in Austria under the United States’ stewardship, Abba Schwartz prepared the Director of the PCIRO for the worst, explaining that the “proceeds upon liquidation of the Hungarian Gold train property are not likely to be as substantial as anticipated.” Schwartz directly contrasted his experience in Austria with that of the FED in Germany and explained, “the appraisal of property in Frankfurt has been an orderly and efficient process, whereas in Salzburg no real appraisal or inventory has been made.” Schwartz, however, was in no real position to complain as the PCIRO was in desperate need of money because, despite the Paris Agreement and the Five Power Agreement, no funds had yet been allocated toward the repatriation of Jewish refugees, and the Army was threatening to delay the process more unless Schwartz agreed to not inventory the Gold Train property.

424. Schwartz therefore proposed a more expeditious approach predicated on weights of kinds of goods multiplied by prearranged values. This procedure of doing an “overall inventory and appraisal” would allow silverware to be receipted by the case and appraised at a value based on weight; jewelry, gold, watches, diamonds, furs and rugs could be similarly appraised. This process had the added advantage for the United States of under-appraising the stolen Jewish property (e.g., \$10 per hand-woven rug) as well as never providing an item-by-item inventory for the Gold Train, which the USFA was, by this time, desperate to avoid because of the wholesale looting that had occurred. In light of this, the RD&R personnel assured Abba Schwartz that General Tate, the Deputy Commanding General for USACA section USFA would agree to this modification because of “*the anxiety of USFA to relieve itself of responsibility*” of this property.

425. Furthermore, by June 1947, the whole “*restitution program in the U.S. Zone of Austria [had] collapsed.*” The military estimated that given the current personnel and budget, restitution would be completed “sometime in 1952.” The costs of continuing restitution and the operation of DP centers were going to be enormous; the United States wanted out of Austria quickly.

426. Despite the repeated emphasis on speed and liquidation, the bulk appraisal and packing took until the fall of 1947.

427. Finally, at the end of October 1947, the IGCR, now the PCIRO, was nearing the end of the inventory and transfer, and requested “the rental of three (3) US Military trucks for the purpose of transporting to Frankfurt, Germany, 80 crates of scrap silver (approximate weight 6000 pounds), which has been released to them from the US Military Government Warehouse in Salzburg.”

428. At this time, the U.S. and the PCIRO were nearing the end of a systematic program to ensure that private property, which may have been identifiable, was unidentifiable. Precious stones had been separated from their settings and the precious

metal objects were smelted into ingot form by Degussa for sales to governments.

Property that was identifiable was no longer identifiable to anyone.

429. At the same time, the United States decided that gold, silver and currencies could be released to the PCIRO, thus violating The Directive. And, as far as plaintiffs are aware, the gold bullion, coins, silver, and currency were in fact turned over to the PCIRO.

430. Finally, in November, 15 railroad cars were used to transport the last of the Gold Train property to Bremerhaven for transport to the United States.

431. Of the 91 shipments to the FED, the largest shipment apparently was shipment No. 90, which was logged on December 10, 1947, which was the PCIRO's shipment of the Gold Train property from Salzburg. The FED described the shipment as "a roomful." The property was only in the FED's custody long enough to be loaded onto USAT General Sturgis and shipped to New York. This was the first shipment of "non-monetary gold" to arrive from Europe. Part of the Gold Train thus made it America on December 15, 1947.

432. According to the PCIRO, this shipment contained the following: 334 cases of silver bowls, candlesticks and plates, 198 cases of table silver, 132 cases of rugs, 130 cases of china, 34 cases of watches, clocks, jewels, and cigarettes cases and valuable postage stamps. Additionally, the PCIRO explained that gold and silver bullion obtained was smelted and being prepared for sale, and that the diamonds had been flown over to the United States in November.

1. The auction of stolen Jewish property

433. To liquidate the Hungarian Jews' property, as well as other non-monetary gold, the PCIRO appointed Parke-Bernet Galleries to auction the stolen Jewish property. These auctions occurred in the summer of 1948 and continued into 1949.

434. Ray C. Kramer, appointed in November of 1947 as the Chairman of the Advisory Liquidation Committee for the PCIRO, was responsible for the organization of the auction sales. Mr. Kramer declared that:

the principal problem facing him and his committee was the manner in which the goods will be disposed. It was decided that for miscellaneous items, the auction was the best medium, and that the results of the June sales at Parke-Bernet will be watched with a view to setting the pattern for future sales all over the country.

435. Crates with Jewish property labeled “unidentifiable as to ownership” started to arrive at Staten Island in the middle of December of 1947 with the initial sales to take place at the Parke-Bernet Galleries in New York in June 1948. The New York Times reported: “In the first [auction], June 16 to 18, jewelry and diamonds will be offered, while in the second, June 20 to 25, silver, glass, china, and gold objects will be put up for bids.” The Parke-Bernet staff divided the jewelry into 400 catalogue lots, with three to four pieces in each lot. Items in the jewelry sale included a large miscellaneous collection of unset diamonds along with other precious stones, pearls, gold and jeweled watches, and numerous pieces of Victorian jewelry. A month before the sales, The New York Times wrote that:

neither Mr. Kramer, nor Leslie A. Hyam, the vice-president of Parke-Bernet . . . would venture an estimate on the total value of the war loot. Rough estimates of the total worth of valuables captured by the United States in Austria and Germany approximated \$ 4,000,000. However what part of that property eventually will be brought into the United States, and what the potential market for it will be, is impossible to judge now.

436. The exact content of the boxes shipped from Europe “were unknown until opened” at the warehouse in New York. The New York Times described the scene at the warehouse:

Laid out on tables were dozens of tinted and cut glass goblets and liqueur glasses, decorative porcelain vases, Bohemian cut sapphire blue and ruby glassware, Meissen,

Dresden, Herend, Rosenthal, and Vienna porcelain statuettes and figure groups, eighteenth and nineteenth century Continental pewter flacons and tureens . . . an estimated 22 tons is on hand, marked and unmarked, used and unused, plain and ornate, consisting of every conceivable shape of platter, tureen, tray and dish, and great quantity of candlesticks, vases and dishes, single and sets.

The warehouse also contained nearly 4,000 oriental rugs, as well as cameras, microscopes, tapestries, among countless other valuable items, many of which once belonged to Hungarian Jews.

437. Press reports indicate that the auctions were successful. For example, The New York Times reported that the June 22, 1948 sale exceeded expected revenues by 40 percent and the week's receipts totaled \$152,850.

438. The results were, however, of no benefit to the Hungarian Jews, whose property was responsible for most of the proceeds. According to the PCIRO records documenting the sales, as of June 1951, a total of \$2.96 million was raised by the auctions, and plaintiffs have ascertained that over two-thirds of that came from the stolen Jewish property on the Gold Train. Thus, the Jews of Hungary accounted for almost two-thirds of the revenue received through the sale of non-monetary gold even though they benefited little, if at all, from the proceeds.⁵

2. Disposition of remaining stolen Jewish property

439. Sometime after the initial auctions, in an undated USFA cable (probably issued sometime around July 1948), the United States explained what it intended to do with the remaining property from the Gold Train, stating:

⁵ Plaintiffs, in deference to the Court and sensitive to creating unrealistic or false expectations in members of the surviving Hungarian Jewish community or their heirs as the Court has cautioned, have not yet requested that they attempt to identify their property sold at the auctions. However, unless instructed by the Court otherwise, plaintiffs will provide public access to their database of the Jewish items sold by Parke-Bernet. Individuals will then have the opportunity to browse the property and see if any of their property was sold at one of the auctions. The auction catalogs will be posted at www.hagens-berman.com on November 17, 2003.

3. Final disposition of the following items uncovered in the inventory of the train has not been made:

a. Approximately 1100 paintings found in Werfen train remain under control of this Headquarters. Restitution of these paintings is being turned over to Austrian Government in accordance with WARX 98298.

b. Sixty cases of Jewish religious items were transferred to the Offenbach Depot, Germany, for storage pending final decision in Washington as to disposition, in accordance with WARX 80347 of 25 April 48.

c. Gold bullion and foreign currencies are being held awaiting transfer to PC-IRO, in accordance with WARX 86578 of 19 September 47.

440. Thus, only a portion of what remained in the possession of the United States was auctioned. Stolen Jewish property was also given to Austria in the form of the of Hungarian Jews' art; the currency, gold, and securities, were given to the PCIRO; and Jewish religious artifacts were transferred to Germany where they were deliberately intermingled with other Jewish properties so that they could be transferred to JCR, Inc.

K. The United States Issues a Patently False Explanation of its Decision to Hungary and the Representatives of the Surviving Hungarian Jews

441. On or about February 21, 1947, the CBHJ sent a telegram to the Department of State and to the French explaining:

Undersigned legal representative bodies of the Hungarian Jewry were informed with deep consternation of the fact that the United States Government is planning to transfer the value of so called Golden Train which forms the property of Hungarian Jewry to the Refugee Committee of the UNO [United Nations].

The CBJH requested “emphatically” that the United States place the “valuables abducted with so-called Golden Train” at the disposal of the lawful representative bodies of Hungarian Jewry “who have returned from deportation and the heirs of those, who perished.” This is exactly what the United States policy called for, as did Article 27 of the U.S Peace Treaty with Hungary.

442. In February 1947, the CBJH and the Autonomous Orthodox Israelite Religious Bodies sent another letter to the United States Legation and again appealed for the return of the Gold Train property:

Hungarian Jewry suffered immeasurable losses in human lives and property owing to Fascistic inhumanity. 600,000 Hungarian Jews lost their lives in Nazi concentration camps. The remaining valuables of the 200,000 Hungarian Jews, who survived, are on the 'Train of Gold' and we think that the greatest injustice would befall these people if they could not get back even their remaining few valuables after what they have been through.

443. The United States replied to the Hungarian organizations on March 20, 1947, concealing the fact that a final decision had been made, and instead stating and promising representatives of the Hungarian Jewry that "You may be assured that the subject of the so-called "gold train" will receive careful attention by the competent authorities." In fact, the key decisions had been made though not yet implemented. However, the United States completely ignored the pleas of Hungary and the Hungarian Jewish community. Unbeknownst to the Hungarian Jews, who thought that the United States was considering their requests, the United States had decided the fate of the Gold Train already.

444. Eventually, the United States informed the Hungarians to seek answers elsewhere, but as of May 1947, they did not know that a final decision had been made.

445. On May 19, 1947, however, it appears that the United States communicated its decision to the Jewish organizations in Hungary. The U.S. Hungarian Legation wrote, in a reply to the CBHJ:

With the approval of the United States Government, the Commanding General, U.S. Forces, Austria, determined, that the property should be turned over to the Intergovernmental Committee of Refugees for relief and rehabilitation of non-repatriable victims of German action. This means in practice that ninety percent of proceeds will be disposed of by American Jewish Joint Distribution Committee and the Jewish Agency for Palestine. ***This***

decision was based on the fact that it was impracticable to return individual items to the original owners or heirs and is believed to be in best interest of [the] class who were despoiled.

446. In a July 28, 1947 letter to the State Department, representatives of the Hungarian Jews, attempted to appeal the decision, emphasizing that the Gold Train property that was apparently to be auctioned in New York could be identified and traced to specific owners and heirs and explaining:

A fraction of the deported Jews returned to Hungary - another fraction escaped at home - these lay a legitimate claim to the valuables they or their relatives were robbed of. So, where the possibility of identification exists beyond doubt and is proved, the owner reclaims his valuables rightfully on the basis of the principle of private property.

They again requested permission from American authorities for representatives of Hungarian Jews to visit and examine the stolen Jewish property. The CBHJ also objected to the auction as a violation of the United States' restitution policy.

447. Once again, the United States refused their request. However, the exact date of the rejection is unclear. It must have been sometime after Secretary Marshall cabled the United States Legation in Hungary on May 29, 1947 explaining that

Nyaradi was informed of this decision on visit here [in February] and was told *no disposition to reconsider*. If representatives Central Board inquire, you should inform them accordingly. *You may suggest that so far as their interests are involved they may wish to consult with the above two Jewish organizations* [the American Jewish Joint Distribution Committee and the Jewish Agency for Palestine].

The February notification to Nyárádi was the first and earliest notification to the government of Hungary of the United States' decision to use the stolen Jewish property for its own purposes.

448. However, in a telegram that suggests a difference of opinion between United States' representatives in Budapest and officials in Washington, the United States

Legation questioned the United States' decision. This cable to the Secretary of State was sent on October 23, 1947 from "CHAPIN" challenging the United States' position stating:

Legation, after further reflection, ventures suggestion that our proposal to turn over identifiable Jewish property at Salzburg to IGCR might be inconsistent with our previous liberal policy for restitution of identifiable Hungarian displaced property and with the spirit of Articles 27 and 30 of the Treaty. [Hungary Peace Treaty]

Pending the receipt of further instructions Legation shall defer communication with Central Board of Jews on the subject.

449. On December 2, 1947, after the U.S. shipped the property to the U.S and transferred custody to the PCIRO, the United States finally gave a final, final answer to Hungary. The United States falsely stated that "it is impossible to identify the claimed property with the given description [of Gold Train found at Werfen]. Most of property which could have come into consideration is no longer available for restitution. Unless further information can be given it will be necessary to consider these claims closed."

450. On December 15, 1947, Hungary requested clarification about what "further information" was needed, but no answer was ever received.

451. In July 1948, Secretary of State Marshall responded to the United States Legation in Budapest's objection and explained the alleged basis for the United States' action:

The basis for this action was the decision of this Government to apply to so-called non-monetary gold found in Austria the principles of Article 8 of the Paris Reparation Agreement of December 1945 and of the Five Power Agreement of June 1946 for the implementation of this provision.

The airgram elaborated further:

On May 29, 1948, the Hungarian Restitution Mission in Geneva wrote to the Preparatory Commission of the PCIRO requesting that the property in question be withheld

from disposition and returned to Hungary, indicating in the same time that an official restitution claim therefore had been filed with American authorities in Austria on October 17, 1947, and had not been acted upon. . . . PCIRO replied to the effect that it could not question the determination of unidentifiability which the U.S. military authorities had made concerning the gold train.

452. Marshall's July 1948 cable described the assumptions, although patently false and incorrect based on the facts described above, that informed the United States' decision:

American Forces having examined the portion of the Hungarian train in the American Zone of Austria, the U.S. Commander [General Mark Clark] determined that the contents therefore were unidentifiable as to owners and, in view of the territorial changes in Hungary, as to national origin; restitution to Hungary being therefore not feasible, it was determined, with the approval of this government, that the property in question would be given to the [IGCR]. The basis for this action was the decision of this Government to apply to so-called non-monetary gold found in Austria the principles of Article 8 of the Paris Reparation Agreement of December 1945 and of the Five Power Agreement of June 1946 for the implementation of this provision.

453.

INFORMATION REDACTED/UNDER SEAL

454.

INFORMATION REDACTED/UNDER SEAL

L. The Property on the Gold Train Was Identifiable as to National Origin and, in many Cases, Individual Ownership

455. As can be seen, by defining the Gold Train property as “non-monetary gold” and imposing a heightened standard for identifiability, the result was foreordained. However, contrary to the claims of non-identifiability, the stolen Jewish property was identifiable. Still remaining in the warehouse and unopened were 2,732 boxes, trunks, suitcases, and other containers of stolen Jewish property. Proof of ownership lay in Captain Mackenzie’s testimony as a witness for the prosecution during the court-martial proceedings of enlisted men on September 27, 1946. The testimony follows:

COURT-MARTIAL MEMBERS: Small objects of high value for their size, was there any effort to lock them in boxes or safes to make them secure from people walking through there?

CAPTAIN MACKENZIE: They were kept in the original containers because it was felt if they were removed the means of identification would be lost. A great deal of material the ownership of which has never been determined is in there.... Most of the valuable material is nailed into boxes. Some of the most valuable material is still in the original suitcases and baskets and trunks in which they were found.

456. In fact, there is powerful evidence that many of the items could be identified.

457. For instance, the United States knew in May 1945 when Hungarian officials asked the United States Army to protect and safeguard the Gold Train that the items on the train belonged to Jewish victims of the Holocaust, forcibly taken by order of the Nazis. Indeed, Captain Back’s “interrogation” in July 1945 of László Avar yielded this information.

458. Captain Back’s report also indicated that they found documents in Hungarian that described the ownership of an undetermined amount of the items placed on the train. Furthermore, these papers were brought to the attention of Lieutenant

Colonel Homer Heller, the first Property Control Officer in charge of the Gold Train at the MG Warehouse in Salzburg, Austria.

459. Furthermore, Property Control officers had noted that the Gold Train contained a box with “lists of names of people from whom some of the items on the train were taken.”

460. Moreover, much of the stolen Jewish property on the Gold Train remained sealed in containers that bore the family name of the owners. As the Hungarian Jews reminded the United States authorities in a letter, “*all property of Hungarian Jews was labeled with name and address of the owners forced to deposit their valuables with Hungarian banks.*”

461. And, as Captain Mackenzie testified, Property Control did not open and sort the items, instead leaving them in their original boxes and packages, so that the means of identification were not lost.

462. Even the organization of the boxes and boxcars, which were based on where and when the assets had been collected in Hungary, supplied information about the ownership of the stolen Jewish property.

463. Moreover, many of the items were unique heirlooms or distinctive pieces or contained markings of individual owners.

464. Furthermore, the Hungarians kept records of the items confiscated by the Nazis in accordance with Decree 1600 and issued property receipts to the Hungarian Jewish owners. Some of these receipts and “notes” exist today and are held by plaintiffs and putative class members.

465. The Hungarian Nazi government also catalogued items on the train and the Presidential Commission found that a list of property owners accompanied the treasures into American custody. According to the Presidential Commission’s Research

Director for Gold Assets, a partial Inventory of Gold Train property still exists and he believes much of the extant valuables can be identified.

466. As to the artwork, in an October 15, 1999 National Public Radio interview (“All Things Considered”), Stuart Eizenstat, a Presidential Commission Member and then Deputy Secretary of the Treasury, said: ***“Of the 1,181 works of art [on the Gold Train], some of which are very valuable – Durers and Rembrandts – about half have significant markings indicating ownership and some identification.”***

467. Additionally, three tons of silver Jewish ritual objects taken from the Gold Train were stored at the MG Warehouse for three years without any consideration for its restitution to the Jewish communities of Hungary. Some of the pieces were classified as museum-quality objects, irreplaceable, impossible to replicate, and of unique craftsmanship. The uniqueness of the objects would have made them readily identifiable as to town or community of origin, and/or actual owner. All of these facts indicate that identification of property would have been reasonably easy to accomplish though perhaps time consuming.

468. Indeed, art galleries, shops, and even the PCIRO recognized that at least some of the property on the Gold Train was identifiable even as to individual owners as evidenced by returning property to the rightful owner when the owner was incredibly fortunate enough to come in contact with the property again. For example, plaintiff Elizabeth Bleier’s father, a former Rabbi of Budapest, retrieved a kiddush cup from the World Galleries in New York after the Parke-Bernet sales, which is depicted below.



Hugo Hoffman also obtained \$13,000 from the PCIRO because Parke-Bernet auctioned two of his gold caskets, but only because he was fortunate enough to have the opportunity to present evidence of ownership in New York. Plaintiffs are aware of only two Hungarians — both of them Gentiles and members of the Hungarian military escort that accompanied the Gold Train — who were allowed to inspect the property in the Warehouse. In both instances, they found some of their property and were able to reclaim it. No Hungarian Jew was permitted to review the items from the Gold Train at the MG Warehouse and present evidence of ownership.

469. However, despite these facts, there is no evidence in the available documents to indicate that United States made any effort to proceed with the identification of the true Jewish owners of the stolen Jewish property on the Gold Train.

470. In short, there was simply no legitimate basis for the determination by United States officers that this property was “unidentifiable” or that restitution was “impracticable.” Despite evidence that the property could, in fact, be traced to its owners, the United States made no attempts to do so. The United States did not take action on its own, such as to publish notices in newspapers throughout Europe, the United States and Israel, nor was it willing to work with leaders of the Hungarian Jewish community that sought access to the stolen Jewish property to help identify its contents and assist the United States in returning the property to rightful owners. Instead, the United States refused such offers of assistance and affirmatively informed the Hungarian Jews (albeit falsely) that they had no legal claim to the property.

M. The Holocaust Commission and its Staff Recently Confirmed that the United States Failed to Follow its own Laws and Policies in Handling the Jewish Property on the Gold Train

471. Despite the requirements of international law and the acknowledgment by United States’ officials, including the Secretary of State, that the Hungarian Gold Train contained the personal possessions of individual Hungarian Jews, the United States failed even to attempt to render an accounting or preserve the property intact for its rightful owners.

472. The Advisory Commission on Holocaust Assets called the treatment of the assets of the Gold Train “*an egregious failure of the United States to follow its own policy regarding restitution of Holocaust’s victims’ property after World War II.*”

473. Stuart Eizenstat has explained publicly that many of the stolen Jewish property items could be identified. Moreover, in an Interview with Miami, CBS-4 Reporter, Michelle Gillen (March 7, 2003), Eizenstat explained that the United States is not doing justice to the Hungarian Jews:

Gillen: “You have as you have just said and you were out there raising the bar and having all of these foreign countries to have to do the right thing. Do you think the

U.S. is doing the right thing today in terms of rectifying issues. For example, with the Hungarian Gold Train.”

Eizenstat: “It is a very good question. I think that the one blemish on what was otherwise a great record by the U.S. after the war in collecting assets and trying to get them back to the countries from which they were taken was the Hungarian Gold Train. Where some Generals actually took gold that had been taken from Holocaust victims in Hungary and used it to furnish their apartments. There is a lawsuit now by the Hungarians to get that back and I think that this needs to be negotiated. We need to do justice for the Hungarian Jewish Community and we have not yet done so. So, I think this is the one blemish on an otherwise very, very good record by the U.S. Army.”

474. Indeed, Dr. Jonathan Petropoulos, the John V. Croul Professor of European History at Claremont McKenna College, whose specialty is modern European history and who was the Research Director for Art and Cultural Property for the Presidential Advisory Commission on Holocaust Assets in the United States (“Holocaust Commission”) has asserted in a sworn affidavit, just how egregious and unjustified the United States’ actions were toward the Hungarian Jews.

The Progress Report on Hungarian Gold Train is a true and accurate account of what happened to the Gold Train, which remains an egregious failure of the United States to follow U.S. laws and policies concerning restitution of Holocaust victims’ property. . . . The Progress Report also reflects one of the most comprehensive and in-depth historical analyses of the Gold Train that I have read, and is an example of an excellent piece of history scholarship.

From our investigation, and as explained in greater detail in the Progress Report, the following facts about the Gold Train are known:

The U.S. Army came into possession of the Gold Train in May 1945 near Werfen, Austria.

The train carried gold, jewelry, art, and other family heirlooms and treasures confiscated from Hungarian Jews.

The U.S. Army knew from the beginning that much of the property on the train belonged to Hungarian Jews.

In addition to all of the property on the train being immediately identifiable as to national origin, some of the property was also immediately identifiable as to actual individual owner. For instance, several of the paintings had the names of the owners, and many pieces of silver also had identifying marks of their owners. Additionally, papers with the names of Jewish owners were also confiscated and taken into custody by the Army.

Despite knowing that the property on the Gold Train belonged to victims of the Holocaust, the U.S. Army failed to follow U.S. restitution policy in its handling of this property.

Once the U.S. Army knew that the property was confiscated from the Jews of Hungary, the U.S., under its own policies and laws, was supposed to inventory, secure and protect the assets belonging to the Holocaust victims and return the property to Hungary with an understanding that Hungary would return the property to its rightful owners. Indeed, this was how restitution worked with Germany, Austria, Italy, and any country that was once part of the Axis powers, as well as with all countries that had their borders changed because of World War II, such as Czechoslovakia, Romania, and Hungary.

Almost as soon as the Gold Train was in U.S. custody, Hungary and Hungarian Jews began requesting information about the property, its whereabouts, and its safety, and requesting that the U.S. protect it until it could be returned to Hungary, and return the property to its rightful owners.

However, instead of returning the Gold Train property to Hungary, members of the U.S. military failed to secure and protect the property in accordance with its rules and regulations. For example, the Army did not make a detailed inventory of the entire contents of the Gold Train as was required. Additionally, the military misappropriated some of the property with certain high-ranking officials taking valuable art, silverware, rugs, and other items for their own personal use. The military also sold other Jewish property through the Army Exchange in Salzburg.

Despite continued pleas from Hungarian Jews and the transitional government of Hungary (i.e., the pre-communist government) to secure and return the Gold Train property to Hungary and its rightful owners, much of the Gold Train property that was not stolen, sold or taken by military officials, was eventually taken to New York and auctioned for the benefit of the United Nations refugee organizations.

This Affidavit is attached as Exhibit A.

N. Concealment and Equitable Tolling

475. The Hungarian Jews whose property was on the train have not been in a position to even know the disposition of their property, much less mount a serious campaign to recover their valuables. A full two-thirds of the Hungarian Jews had been brutally murdered by the Nazis or died of malnutrition or abuse in concentration camps. Many survivors were in ill health and had lost the majority of their families. Almost all Jews had lost their livelihood. Thousands died even after the war ended from malnutrition and other diseases. Others emigrated to the United States or Israel with only the shirt on their backs. Their country was in turmoil; their lives all but broken. The plaintiffs and their ancestors were depleted, deprived of the basic necessities of life, and in disarray. The return of their property could have helped them rebuild their lives. Instead, because of the United States' actions, plaintiffs were forced to rebuild their lives from scratch.

476. Plaintiffs and other members of the class have been kept in ignorance of vital information essential to pursue their claims, without any fault or lack of diligence on their part. The United States never provided an accounting of the property, and the United States and the Army have actively concealed their wrongdoing, and continue to conceal their wrongdoing to this day, as many additional documents bearing of the facts described above remain classified while others were destroyed in an effort to keep this dark period of United States' history a secret.

477. However, openness is a requirement of this country and an imperative when it comes to unearthing or tracking the whereabouts of Holocaust victims' assets. As former Secretary of State Madeline Albright stated during the Washington Conference on Holocaust Era Assets:

Our imperative must be openness. Because the sands of time have obscured so much, we must dig to find the truth. This means that researchers must have access to old archives and by that I don't mean partial, sporadic or eventual access — I mean access in full, everywhere. . . . The obligation to seek the truth and act on it is not the burden of some but of all. It is universal, . . . every nation, every business, every organization . . . is obliged to do so. In this arena, none of us are spectators, none are neutral; for better or worse, we are all actors on history's stage.

478. Plaintiffs only discovered the facts presented in the original complaint in October 1999, when the Holocaust Commission released its Report on the Gold Train. The many additional facts presented in this complaint only came to light when the Court permitted access to the Clinton Library, an archive that the public does not yet have access to.

IV. CLASS ACTION ALLEGATIONS

479. Plaintiffs bring this action against the United States as a class action pursuant to Rule 23(a) and 23(b)(2) and 23(b)(3) on behalf of themselves and all others similarly situated, regardless of current citizenship, whose property (or the property of their family members) was confiscated by the Nazi government during World War II, loaded on the Gold Train, and placed in the custody of the United States military by Hungarian officials for its protection and eventual return to Hungary and/or rightful owners, but was never returned to either. Each plaintiff and class member limits his or her claim to \$10,000 compensatory damages.

480. “The Class” proposed consists of the living Hungarian Jews who owned the stolen Jewish property at the time it was forcibly seized by the Nazis, and the heirs and descendants of those Hungarian Jews whose property was confiscated but are now deceased.

481. Because of the Court's existing orders, plaintiffs further propose that the Court create subclasses, one that includes all class members who were United States

citizens or residents on or before December 2, 1947, the date that the United States informed representatives of Hungarian Jewry and Hungary that it was not going to reconstitute the stolen Jewish assets to Hungary as promised and that the United States considered the matter “closed” (subclass (a)), and the other (subclass (b)) to include all other class members.

482. Although the exact size of the class is unknown, plaintiffs believe the class numbers in the thousands. Indeed, plaintiffs’ counsel has created a database of putative class members that numbers in the thousands and includes people living all over the world. The class is, therefore, so numerous that joinder of all members is impracticable.

483. There are numerous questions of law and fact common to the class, including, but not limited to:

- a. Whether the United States accepted custody of the Gold Train promising to safeguard and protect the stolen Jewish property;
- b. Whether the United States seized property belonging to plaintiffs, or plaintiffs ancestors, that had been wrongfully taken from them by the Nazi Hungarian regime during the war and placed on the Gold Train;
- c. Whether the property seized was identifiable as to either individual ownership or national origin;
- d. Whether any of the property was returned to its rightful owner by the United States;
- e. Whether any of the owners were compensated for the loss of their property;
- f. Whether the United States permitted certain of the Gold Train property to be requisitioned by high-ranking United States military officers for their personal use;

- g. Whether the United States sold certain of the Gold Train property in United States military exchange stores;
- h. Whether the United States, through lax security, allowed the Gold Train property to be looted;
- i. Whether the United States permitted Gold Train property to be sold at public auction;
- j. Whether the United States gave paintings from the Gold Train to the government of Austria;
- k. Whether, under principles of international law enumerated in, among other places, the Hague Convention of 1907, and United States Army Regulations, the United States held the Gold Train property as a trustee for the benefit of its rightful owners or their heirs;
- l. Whether the United States breached its duty as trustee of the Gold Train property;
- m. Whether the United States' promise and acceptance of custody of the property constituted an implied-in fact bailment contract under which the United States held the Gold Train property as a bailee;
- n. Whether the United States breached its contract of bailment by failing to return the Gold Train property to Hungary or its rightful owners or their heirs, and by failing to exercise the appropriate standard of care for such property; and
- o. Whether the seizure and disposition of the Gold Train property by the United States, without compensation to its rightful owners or their heirs, constituted a taking without just compensation in violation of the Fifth Amendment to the United States Constitution.

484. Plaintiffs' claims are typical of the claims of the class as a whole.

485. Plaintiffs will fairly and adequately protect the interests of the class. The interests of plaintiffs are coincident with, and not antagonistic to, those of the remainder of the class. Plaintiffs have obtained counsel experienced and qualified to prosecute this action and class actions generally.

486. Prosecution as a class action will eliminate the possibility of repetitious litigation, while also providing redress of claims too small to support the expense of individual, complex litigation that involves experts in foreign languages and from foreign countries as well as experts from the United States.

487. Class treatment is also appropriate because the United States has acted uniformly with respect to all class members.

488. Further, the questions of law and fact common to the members of the class predominate over any questions affecting any individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy between plaintiffs and the United States.

489. Joinder of all class members who are geographically dispersed and number, upon information and belief, in the thousands is impracticable. Furthermore, the expense and burden of individual litigation makes it impractical to redress the wrong done to them on an individual-by-individual claim basis. Upon information and belief, members of the class are not already engaged in litigation concerning this controversy. This is a desirable forum, as it is home to a large number of class members.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION – UNCONSTITUTIONAL TAKING⁶

490. Plaintiffs reallege the preceding paragraphs as if fully set forth herein.

491. As to all of the causes of action set forth below, “plaintiffs” shall include the named plaintiffs, class members, and/or their predecessors in interest.

492. In violation of the Fifth Amendment to the United States Constitution, the United States government took possession of plaintiffs’ private property and used it for public purposes without providing any compensation to plaintiffs. Such public use includes, but is not limited to, the furnishing of military officers’ homes, sale of goods in military exchanges, and funding of refugee relief organizations to reduce the burden on the U.S. Treasury.

493. At all times, the United States was aware that the property in question belonged to plaintiffs.

494. At the time of the taking, some of the plaintiffs were United States citizens or residents of the United States and as owners of the property they are entitled to the protections of the Fifth Amendment.

495. At the time of the taking, some of the plaintiffs were Hungarian Jews by citizenship but were war refugees and displaced persons, with substantial connections to the United States, including connections to the United States because the United States (i) assumed special responsibilities to protect Hungarian Jews in 1944; (ii) fought to liberate

⁶ Plaintiffs recognize that the Court has dismissed this claim with prejudice as to non-U.S. citizens or residents (i.e., subclass b). Nonetheless, plaintiffs reallege this claim for three reasons: (1) to preserve the right to appeal the decision as plaintiffs respectfully believe it to be in error; (2) in light of the recent Court of Claims decision questioning the *Ashkir* decision cited by the Court in its order, *see El-Shifa Pharmaceutical Indus. v. United States of America*, 55 Fed. Cl. 751 (2003); and (3) most importantly, because the facts explain that no taking occurred until the United States refused to return the property to Hungary or the rightful owners. Thus, plaintiffs assert the takings claim on behalf of those plaintiffs and putative class members who were United States citizens or legal residents on or before December 2, 1947, the date that plaintiffs allege the United States informed Hungary that it considered the matter “closed” and its decision final that it was not going to reconstitute to Hungary the property from the Gold Train. Until then, plaintiffs and Hungary were informed by the United States that Hungary was going to get the property back.

Europe and the victims of Nazi aggression, including plaintiffs, and (iii) voluntarily accepted custody of plaintiffs' property for safekeeping and return in a U.S. government facility. As such, they were entitled to the protections of the United States Constitution in their dealings with the United States.

496. Plaintiffs' substantial connections with the United States have increased over time. Today, many of the plaintiffs are United States citizens.

497. The United States took possession of plaintiffs' property while the property was located in Austria. At the time of the taking, the United States was the occupying government of Austria and the de facto sovereign.

498. Neither the United States, Austria, nor Hungary were at war at the time of the taking. The property was seized after hostilities had ceased, after World War II had ended, and was at no time "enemy" property.

499. Plaintiffs were always friendly aliens vis-à-vis the United States.

500. Plaintiffs have suffered damages from the unconstitutional taking of their property. The amount of just compensation will be proven at trial.

SECOND CAUSE OF ACTION – BREACH OF AN IMPLIED-IN FACT CONTRACT OF BAILMENT

501. Plaintiffs reallege the preceding paragraphs as if fully set forth herein.

502. When the United States accepted possession of plaintiffs' property it did so with the express knowledge that the property belonged to plaintiffs.

503. At no time did the United States ever assert to the Hungarians that the United States was the owner of plaintiffs' property, or publicly contend that the property was "captured enemy property."

504. The United States took possession with the express intent of undertaking to return the property to Hungary and promised, and to safeguard the property for the benefit of its rightful owners until its return to Hungary or true owners.

505. As such, the United States entered into an implied-in-fact bailment contract for the benefit of the plaintiffs.

506. The United States' officers that assumed control of the property were at all times acting within the authority vested in them by the United States government.

507. Under the bailment contract, the United States owed plaintiffs a duty of care to protect the property and to return it to them.

508. The United States breached its duty in numerous ways, most notably in allowing plaintiffs' property to be stolen, misappropriated, misused by military officers and billets, and in other ways not returned to Hungary or the plaintiffs.

509. Plaintiffs have suffered losses from defendant's breach of the implied-in-fact bailment contract. The amount of damages will be proven at trial.

**THIRD CAUSE OF ACTION – VIOLATION OF
CONVENTIONAL AND CUSTOMARY INTERNATIONAL LAW**

510. Plaintiffs reallege the preceding paragraphs as if fully set forth herein.

511. It is a well-accepted principle of international law that even in a time of war, governments must respect the lives of persons and private property, and, absent exigent circumstances imperatively demanded by the necessities of an ongoing war, private property must not be confiscated.

512. This principle of international law is evidenced in many sources, including but not limited to, the Hague Convention (IV) on the Laws and Customs of War on Land (1907) and the United States' own applicable military regulations and policies in effect in the 1940s.

513. The Hague Convention is a treaty in force in the United States, entered into force January 26, 1910.

514. Among other prohibitions discussed above, Article 46 of the Hague Regulations forbids the confiscation of private property, Article 47 forbids pillage, and Article 56 forbids any seizure of works of art.

515. Additionally, private property may not be confiscated and must be respected, and that any violation of the Hague Regulations requires payment for damage to or loss of private property after peace is declared, even if used during a war by a belligerent.

516. After the war ended, the United States accepted custody of the property at issue and failed to return it to Hungary, the country of origin, or to the plaintiffs or class members.

517. The United States, through its failure to return plaintiffs' property to them, has confiscated plaintiffs' private property in violation of legally binding customary international law protecting fundamental *jus cogens* rights that are binding on all sovereign nations.

518. Additionally, looting is prohibited by Articles 28 and 47 of the Hague Regulations. Under Article 3, the government of the United States is responsible for all acts of persons forming part of its armed forces, and is liable to pay compensation for articles looted by its military personnel.

519. The United States recognizes the Hague Regulations as binding on its military and enforceable in the courts of the United States against it.

520. The prohibition against looting applies to both public and private property. Article 46 of the Hague Regulations provides that private property cannot be confiscated, which is extended to public property through Article 56.

521. The United States armed forces personnel looted the property on the Gold Train which belonged to plaintiffs.

522. Furthermore, Congress and the Executive specifically endorse claims for restitution brought in the courts of the United States. The United States has “relieve[d] American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity” of restitution claims arising out of forced Nazi seizures.

523. Plaintiffs are thus entitled to compensation for the United States violations of the Hague Regulations. Damages will be proven at trial.

FOURTH CAUSE OF ACTION – ILLEGAL EXACTION

524. Plaintiffs reallege the preceding paragraphs as if fully set forth herein.

525. An illegal exaction claim is stated when the United States receives money, *directly or in effect*, from illegal action, or as courts have explained, whenever the United States had the plaintiffs’ money in its pockets.

526. Under applicable laws and regulations, plaintiffs’ property was stolen property. The United States knowingly used stolen property, or the money made from the sale of stolen property, to alleviate its Treasury obligations.

527. The United States also received money directly, through the sale of stolen property, billeting of military officers and families, and in effect, by reducing the economic burden on the U.S. Treasury.

528. Plaintiffs are thus entitled to payment of all money unlawfully exacted by the United States and paid or used to reduce its economic obligations in post-war Europe, be it paid to the military directly or used for the benefit of displaced persons or other obligations that the United States undertook in the reconstruction of Austria.

529. The amount of damages will be proven at trial.

FIFTH CAUSE OF ACTION – VIOLATIONS OF EXECUTIVE REGULATIONS AND MILITARY GOVERNMENT AUTHORITIES

530. Plaintiffs reallege the preceding paragraphs as if fully set forth herein.

531. The Basic Field Manual and other Manuals applicable to Property Control and the U.S. armed forces in Austria in the 1940s are Executive regulations, which incorporated and supplemented the Hague Regulations.

532. The United States conduct violated a number of these regulations including, but not limited to, the sections of the Army Field Manual identified in the Complaint, Military Government Decree No. 3, the duties established in the Property Control Manual and Provisional Handbook discussed above.

533. Violations of these regulations require compensation paid for the loss of their private property in the same way that the Hague Regulations require the violator to pay compensation.

534. Plaintiffs are thus entitled to compensation and payment from the United States. The amount of damages will be proven at trial.

VI. PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that this Court:

535. Certify this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

536. Adjudge and decree that defendants conduct as described herein, violated the Fifth Amendment of the United States Constitution, the Rules of Land Warfare, Executive regulations, and domestic law regarding the contract of bailment, and established principles of customary international law.

537. Order an accounting of all property accepted into custody from the Gold Train and otherwise disposed of by the United States government as was required under governing military regulations at the time.

538. Order the return of any and all Gold Train property still in the possession of the United States as specific performance under the contract or under the APA, including appropriate interest for the loss of use over the years.

539. Award compensation to be distributed equitably among class members for the value, and interest thereon, of any and all Gold Train property that can no longer be traced.

540. Award compensatory, punitive and statutory damages in amounts to be determined at trial or, where applicable, to the full extent allowed by law.

541. Award pre-judgment interest to plaintiffs to the fullest extent allowed by law.

542. Award plaintiffs the costs of bringing this action, including the payment of reasonable attorneys' fees; and

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

DATED: October 31, 2003.

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