

Rakos, George Rasko, Georg Moshe Schwarz, Estate of George Sebok, Agnes V. Somjen, Jonas K. Stern, Irene Tibor, Agnes Vadasz and Zoltan S. Weiss, for themselves and on behalf of the Plaintiffs and the Settlement Class, through Class Counsel, and Defendant United States of America. The foregoing are referred to collectively herein as the “Parties.”

Subject to Court approval as required by Federal Rule of Civil Procedure (“FRCP”) 23, the Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Settlement Agreement (the “Agreement”) and upon entry by the Court of a Final Order and Judgment and resolution of all appeals thereof, the Action shall be settled and compromised upon the terms and conditions contained herein.

WHEREAS, Plaintiffs filed the Action against Defendant asserting claims in the original Complaint and the First Amended Complaints (the “Complaints”), seeking damages and injunctive and other relief in regard to Defendant’s receipt, handling and disposition of property contained on the so-called Hungarian Gold Train (“Gold Train” or “Gold Train Property”);

WHEREAS, Plaintiffs have vigorously prosecuted the action since its filing in 2001, including, without limitation, reviewing the claims of Plaintiffs and hundreds of putative class members, successfully defending the Complaint against Defendant’s first motion to dismiss, conducting extensive research, investigation and discovery in the United States and abroad preparatory to filing the Complaint and the First Amended Complaint, retaining and consulting with experts regarding various relevant factual and legal subject areas, maintaining a website regarding the Action, preparing for and attending numerous depositions of certain Plaintiffs and other witnesses, briefing their opposition to Defendant’s second motion to dismiss and moving for class certification;

WHEREAS, Defendant has denied and continues to deny Plaintiffs’ claims in the Action

as alleged in the Complaints, has denied any wrongdoing or liability as to Plaintiffs and the Settlement Class, has successfully moved to dismiss Plaintiffs' claims pursuant to the Takings Clause and Plaintiffs' international law claims to the extent that they seek monetary relief, and has raised numerous legal and factual defenses, including that Plaintiffs' claims are barred by the applicable statute of limitations, that Plaintiffs' claims are foreclosed by two international agreements, that Plaintiffs' surviving causes of action fail to state a claim on which relief may be granted, that the United States' handling and disposition of the Gold Train Property for the benefit of refugees was proper and lawful, and that the United States was unable to identify the original owners of the property due to the actions of the fascist Hungarian government taken prior to the United States taking custody over the property from Hungarian soldiers;

WHEREAS, the Parties have conducted an examination and investigation of the facts and law relating to the matters set forth in the Complaints, including extensive archival research in the United States, Hungary, Israel and elsewhere, and consultation with leading historical experts on the history of the Gold Train, and have exchanged substantial pretrial discovery regarding the claims asserted in the Complaints;

WHEREAS, the Parties have engaged in extensive, arms-length negotiation, facilitated by a distinguished Court-approved mediator, Fred F. Fielding, Esquire, over a period of more than six months;

WHEREAS, after the Court's order of October 5, 2004, Jewish organizations became intensely involved in the negotiations leading to the Settlement;

WHEREAS, based upon extensive analysis of the facts and the law applicable to the Complaints, and taking into account the extensive burdens and expenses of litigation, including

the substantial risks and uncertainties associated with the pending motions to dismiss and for class certification and protracted trials and appeals, the advanced age and infirm health of many Plaintiffs and Settlement Class members, as well as the fair, cost-effective and assured method of resolving the claims of Plaintiffs and the Settlement Class, Class Counsel have concluded that this Agreement provides substantial benefits to the Settlement Class and is fair, reasonable, adequate and in the best interests of Plaintiffs and the Settlement Class;

WHEREAS, Defendant has similarly concluded that this Agreement is desirable to avoid the time, risk and expense of defending the Action, and to resolve finally and completely the pending and potential claims of Plaintiffs and the Settlement Class;

WHEREAS, Defendant intends by this Agreement to resolve any and all of Plaintiffs' claims and claims of members of the Settlement Class against Defendant for or relating in any way to damages or other relief in connection with Defendant's handling and disposition of the Gold Train Property;

WHEREAS, the Parties acknowledge that certain Plaintiffs and Class Representatives have contributed substantial amounts of time, energy, resources and advice to the maintenance and resolution of the Action;

WHEREAS, the Parties agree that all members of the Settlement Class, other than Plaintiffs, shall have the right to request to be excluded from the Settlement Class as provided in this Agreement; and

WHEREAS, the Claims Conference has agreed to submit itself to the continuing jurisdiction of the Court for the limited purpose of oversight of it in its capacity as Notice Provider and Administrator for the implementation of the Plan of Distribution, and will submit a

filing to that effect simultaneously herewith;

NOW THEREFORE, the Parties stipulate and agree that any and all Settled Claims against Defendant regarding Defendant's receipt, handling and disposition of the Gold Train Property shall be finally settled and resolved on the terms and conditions set forth in this Agreement, subject to the Court's approval of this Agreement as a good faith, fair, reasonable and adequate settlement under Rule 23, FRCP.

I. DEFINITIONS

As used in this Agreement (and the exhibits thereto) in addition to any definitions elsewhere in this Agreement, the following terms shall have the meanings set forth below:

Action means the case of *Rosner et al. v. United States of America*, Civil Action No. 01-1859-SEITZ (S.D.Fla.).

Administrative Costs means overhead costs of the social welfare implementing agencies for their total activities (*e.g.*, rent, electricity, etc.) including the cost of compliance with the audit and reporting requirements.

Agreement means this Settlement Agreement, including all exhibits thereto.

Cash Payment means Defendant's payment of \$25.5 million to the Settlement Fund, as adjusted pursuant to Paragraph XI.B.

Claims Conference means the Conference on Jewish Material Claims Against Germany, Inc.

Class Counsel means Jonathan W. Cuneo, Michael A. Waldman and David W. Stanley of Cuneo Waldman & Gilbert, LLP; Steve W. Berman and R. Brent Walton of Hagens Berman Sobol Shapiro LLP; and Samuel J. Dubbin, P.A, and Jeffrey L. Kravetz, P.A., of Dubbin &

Kravetz, LLP.

Class Notice means the form of Court-approved Class Notice of this Agreement that is directed to the Settlement Class.

Class Representatives means Irving Rosner, Edith Klein Amster, Veronika Baum, Elisabeth Bleier, Peter Drexler, Paul Gottlieb, Judith Karmi, Ethel Klein, David Mermelstein, Irene Mermelstein, Tamás May, Edith More, John J. Rakos, George Rasko, Georg Moshe Schwarz, Estate of George Sebok, Agnes V. Somjen, Jonas K. Stern, Irene Tibor, Agnes Vadasz and Zoltan S. Weiss.

Court means the United States District Court for the Southern District of Florida in Miami.

Date of Release means the date on which the Final Order and Judgment granting final approval of this Settlement is entered.

Defendant means the United States of America, including all its constituent departments, agencies and the like, and all present and former officers, employees and agents.

Defendant's Counsel means Associate Attorney General Robert D. McCallum, Jr., Assistant Attorney General Peter D. Keisler, Principal Deputy Assistant Attorney General Daniel Meron, Vincent M. Garvey, and Jeffrey M. Smith of the Department of Justice, and their successors in office.

Eligible Hungarian Nazi Victim means a member of the Settlement Class born before May 8, 1945, who lived within the 1944 borders of Hungary some time between 1939 and 1945 and who meets criteria of need.

Escrow Agent means the financial institution, chosen by Class Counsel, which shall act

as the escrow agent for the Settlement and Special Funds.

Fairness Hearing means the hearing to be conducted by the Court in connection with the determination of the fairness, adequacy and reasonableness of the Agreement in accordance with Rule 23, FRCP.

Final Order and Judgment means the Order to be entered by the Court, approving this Agreement without material alterations, as fair, adequate and reasonable in accordance with Rule 23, FRCP, confirming the certification of the Settlement Class, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement.

Gold Train means the train of approximately 24 freight cars that contained looted personal property from Hungary which was taken into custody by Defendant on or about May 11, 1945, in or near Werfen, Austria and later moved to Salzburg, Austria.

Gold Train Property means personal property that was contained on the Gold Train at the time the United States took custody of the train and which had previously been taken, seized, confiscated, or stolen by the Hungarian government and/or its officers, employees, or agents, pursuant to Decree 1600 of 1944, Decree 8306 of 1944, or any similar law, policy, or practice.

Heir means a Person who is a member of the Settlement Class by virtue of the fact that he or she is a legal heir of a Person who lived in Hungary between 1939 and 1945, and whose personal property was taken, seized, confiscated, or stolen by the Hungarian government and/or its officers, employees, or agents pursuant to Decree 1600 of 1944, Decree 8306 of 1944, or any similar law, policy, or practice, whether or not such Person survived after 1945.

Hungary means the territory governed by the Hungarian government at any time between

1939 and 1945, including those areas annexed from Czechoslovakia, Rumania and Yugoslavia.

Notice Date means the date upon which Class Notice is first disseminated to the Settlement Class.

Notice Plan means the plan for effectuating Class Notice, designed and administered by the Claims Conference, which is attached hereto as Exhibit A.

Notice Provider means the Claims Conference, which shall, under the supervision of Class Counsel and Defendant's Counsel, manage and direct the giving of Class Notice.

Objection Deadline means the date by which a comment regarding, or objection to, the Agreement must be postmarked, as set forth in the Class Notice.

Opt-Out Deadline means the date by which a Request for Exclusion must be postmarked, as set forth in the Class Notice.

Opt-Out Period means the period for filing a Request for Exclusion ending on the Opt-Out Deadline.

Person means any individual, corporation, estate, trust, partnership, limited liability company or their legal entity and its/their respective successors, assigns or estates.

Plaintiffs means Irving Rosner, Edith Klein Amster, Francisc Basch, Veronika Baum, Alice Besseney, Elisabeth Bleier, Erwin Deutsch, Dr. Joseph Devenyi, Peter Drexler, Baruch Epstein, Magda Feig, Michael Fried, Paul Gottlieb, Judith Karmi, Ethel Klein, Mildred Klein, Tamás May, David Mermelstein, Irene Mermelstein, Edith More, John J. Rakos, George Rasko, Ana Rosner, Georg Moshe Schwarz, Estate of George Sebok, Dr. Laszlo Sokoly, Edith Reiner, Agnes V. Somjen, Olga Steiner, Jonas K. Stern, Irene Tibor, Andrew Tibor, Agnes Vadasz, and Zoltan S. Weiss.

Plan of Distribution means the plan for allocating and distributing the Special Fund, attached hereto as Exhibit B.

Preliminary Approval means the Court's issuance of an order conditionally certifying the Settlement Class and preliminarily approving this Agreement and the Exhibits attached hereto.

Qualified Settlement Account means the account established under Paragraph V of this Agreement in accordance with Section 468B of the Internal Revenue Code, as amended.

Recipient Institution means the institution selected to handle the archival collection in accordance with Paragraph VI.

Releasing Party means (1) Plaintiffs; and (2) each member of the Settlement Class, and any Person claiming by or through any such Person, provided that any such Person does not validly request to be excluded from the Settlement Class.

Request for Exclusion means the written communication submitted to the Notice Provider under Paragraph X of this Agreement, postmarked by the Opt-Out Deadline, stating that a member of the Settlement Class, other than a Plaintiff, wants to be excluded from the Settlement Class. The Request for Exclusion must comply with the requirements set forth in the Class Notice and be personally signed by the Person requesting exclusion. Plaintiffs, as well as any Class member who does not request exclusion, shall be bound by the terms of this Settlement.

Settled Claim means any claim, liability, right, demand, suit, matter, obligation, damage, loss or cost, action or cause of action, of every kind and description that the Releasing Party has or may have, including assigned claims whether asserted or unasserted, latent or patent, that has been, could reasonably have been or in the future might reasonably be asserted either in the

Action or any other action or proceeding in this Court or any other court or forum, regardless of legal theory, and regardless of the type or amount of relief or damages claimed, against Defendant arising from Defendant's handling and disposition of the Gold Train Property.

Without limiting the generality of the foregoing, Settled Claim shall include, with regard to the foregoing subject matter:

1. Any claim for breach of any federal constitutional provision, statute or treaty, international law or custom, case law, common law, or other law;
2. Any claim for breach of any duty imposed by law, contract, or other law;
3. Any claim for penalties, punitive damages, exemplary damages, or any claim for damages based upon any multiplication or enhancement of compensatory damages associated with 1. or 2. above.

Settlement Class means all Persons who have claimed or at any time could claim any interest in the Gold Train Property, including without limitation, all Persons whose personal property was taken, seized, confiscated, or stolen by the Hungarian government and/or its officers, employees, or agents pursuant to Decree 1600 of 1944, Decree 8306 of 1944, or any similar law, policy, or practice, and all heirs, estates, assigns, and survivors of such Persons. Excluded from the Settlement Class are all Persons, other than Plaintiffs, who properly execute and timely file a Request for Exclusion with the Notice Provider under Paragraph X of this Agreement.

Settlement Fund means the "common fund," deposited in an interest-bearing escrow account established and held by the Escrow Agent determined by Class Counsel in accordance with Paragraph V of this Agreement, and into which the Cash Payment made pursuant to

Paragraph V of this Agreement is made and all interest thereon is paid. The Settlement Fund shall be under the continuing jurisdiction of the Court and all expenditures from the Settlement Fund are subject to the Court's prior approval.

Special Fund means the Settlement Fund as adjusted by any deduction of the amount awarded or to be awarded by the Court: (1) for attorneys' fees, costs and expenses pursuant to Paragraph XIV; (2) incentive payments to named Plaintiffs, if any; and (3) the amount awarded to the Recipient Institution for the archival collection pursuant to Paragraph VI. The Special Fund includes any interest earned by the Settlement Fund and the Special Fund. The Special Fund shall be under the continuing jurisdiction of the Court and all expenditures from the Special Fund are subject to the Court's prior approval.

Victim of Nazi Persecution means a member of the Settlement Class who lived in Hungary sometime between 1939 and May 8, 1945.

II. FOR SETTLEMENT PURPOSES ONLY

A. This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement or its exhibits, nor any action taken hereunder, nor any statement, either legal or factual, made about or in connection with the proposed settlement, shall constitute, be construed as, or be offered or received in evidence as an admission of any claim or point of law or any fact by any Party or any member of the proposed Settlement Class. This Agreement, whether or not consummated, and any proceedings taken pursuant to this Agreement, or any statement, either legal or factual, made in connection with or about this Agreement, are not and shall not in any event be, except as mutually agreed, referred to for any other reason by any of the Parties in this Action, or in any other civil or administrative

proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement.

B. This Agreement is without prejudice to the rights of Defendant to (i) oppose class certification in this Action should the Agreement not be approved or implemented for any reason, (ii) oppose certification in any other proposed or certified class action, or (iii) use the certification of the class to oppose certification of any other proposed class arising out of the claims asserted herein.

III. REQUIRED EVENTS AND COOPERATION BY THE PARTIES

A. Promptly after execution of this Agreement, Class Counsel shall submit this Agreement to the Court for its Preliminary Approval and shall move the Court for one or more orders which by their terms shall:

1. Appoint one or more Class Representatives;
2. Appoint Class Counsel;
3. Preliminarily and conditionally certify the Settlement Class under Rule 23, FRCP, for settlement purposes only, and preliminarily approve this Agreement for purposes of approving Class Notice and directing notice to the Settlement Class;
4. Determine or approve the form of Class Notice;
5. Appoint the Claims Conference as Notice Provider;
6. Direct notice to the Settlement Class and direct the United States to advance and pay the costs of notice to the Notice Provider as set forth in the Notice Plan; and
7. Schedule the Fairness Hearing, the purposes of which shall be (a) to review comments or objections regarding the Agreement, (b) to consider its fairness,

reasonableness and adequacy under Rule 23, FRCP, (c) to consider the application for an award of attorneys' fees and reimbursement of expenses and costs, (d) to consider any application for incentive payments to the named Plaintiffs, and (e) to consider whether the Court shall issue a Final Order and Judgment approving the Settlement, granting, *inter alia*, the applications for fees, expenses and costs and incentive awards, and dismissing the Action with prejudice, except with respect to the relief provided by the Final Order and Judgment.

B. The Parties shall cooperate, assist and undertake all reasonable actions in order to accomplish these required events on the schedule set by the Court.

IV. CERTIFICATION OF CLASS

The Parties agree that, for settlement purposes only, a class consisting of all members of the Settlement Class may permissibly be certified, with certain Plaintiffs as the Class Representatives and with Plaintiffs' counsel as Class Counsel for the Settlement Class.

V. SETTLEMENT FUND; SPECIAL FUND

A. Class Counsel shall contract with a bank to establish an escrow account, into which Defendant shall deposit the Cash Payment of \$25.5 million within 30 days of final approval of the Agreement, including resolution of all appeals of the Final Order and Judgment. The Escrow Agent shall invest the escrowed funds in instruments backed by the full faith and credit of the United States Government, or any agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates. Such fund initially shall constitute the Settlement Fund.

B. The Special Fund shall consist of all funds not necessary for disbursement (1) of the attorneys' fees, costs and expenses awarded by the Court pursuant to Paragraph XIV, (2)

incentive fees awarded by the Court, if any, pursuant to Paragraph XVIII, and (3) the \$500,000 for archival work pursuant to Paragraph VI. It is the intent of the Parties that funds be made available to the Special Fund as soon as practicable after receipt. The Special Fund shall be invested in the same manner as the Settlement Fund. The Special Fund shall be used to implement the Plan of Distribution, as approved by the Court, pursuant to Paragraph VI. Administrative costs and expenses of implementation of the Plan of Distribution (including costs of the Claims Conference and the Administrative Costs of social welfare implementing agencies, but excluding costs of Class Notice, except to the extent provided in subparagraph C of this paragraph) shall be paid solely from the interest on the Settlement Fund and the Special Fund, and shall not exceed \$1 million. In addition, bank charges, the costs of the Escrow Agent, and the cost of any Court-ordered special audit pursuant to Paragraph VIII.C. hereof and Paragraph V of the Plan of Distribution, shall be paid solely from the interest on the Settlement Fund and the Special Fund, except that the cost of a Court-ordered special audit may be paid from the principal of the Special Fund if the interest is insufficient.

C. The Settlement Fund and the Special Fund shall be maintained solely by the Escrow Agent, subject to and under the continuing jurisdiction and supervision of the Court. No disbursements shall be made from either the Settlement Fund or the Special Fund except upon order of the Court, which shall have the authority to order the payment of any additional, necessary notice costs, beyond the maximum \$1 million to be paid by Defendant in accordance with Paragraph XIII of the Notice Plan, from the interest generated thereon.

VI. DISBURSEMENT OF FUNDS FROM SETTLEMENT FUND AND SPECIAL FUND

A. The sum of \$500,000 shall be paid from the Settlement Fund to a Recipient Institution, for use in identifying, acquiring, microfilming, cataloguing and making available an archival collection, for scholarly research and educational purposes, as well as acquiring artifacts, for the use and benefit of the Settlement Class, relating to the history of the Hungarian Gold Train and the looting of the Hungarian Jewish community during World War II.

A panel of experts consisting of Randolph Braham, Mark Talisman and Ronald Zweig shall select the Recipient Institution. They shall act by majority vote. The panel shall select the Recipient Institution within 30 days of final approval of the Agreement, including resolution of all appeals of the Final Order and Judgment, taking due account of the following criteria:

1. The extent to which the Recipient Institution is already engaged in similar archival and acquisition efforts and has its own funds to augment the \$500,000 distributed on behalf of the Settlement Class;
2. The extent that the Recipient Institution is financially stable and likely to be able to house the collection and make it available to scholars from around the world over the foreseeable future;
3. The reputation of the Recipient Institution for thorough and objective research; and
4. To the extent the panel deems it advisable, the extent to which the Recipient Institution is willing to report periodically to the panel on the progress of its work.

As a condition of receiving these funds, the Recipient Institution shall commit to making the collection available upon reasonable request by scholars and students for research, and members of the Settlement Class. The Recipient Institution shall further commit, once the

collection is complete, to allow other institutions to obtain a copy of the collection, to the extent feasible, for the actual and reasonable costs of such duplication.

If the panel of experts is unable to find any entity that meets all of these requirements and criteria, it may select an entity that, in its judgment, best satisfies these criteria and requirements. The panel's decision shall not be reviewable except by motion of Class Counsel or the United States, and in no event shall any member of the panel be liable for damages for any action or inaction taken pursuant to this Paragraph VI.A.

The obligation of Defendant under this subparagraph shall be limited to the funding of the Settlement Fund, and this subparagraph shall create no other duties or obligations other than the provision of such funds.

B. Separately from the payment from the Settlement Fund of (i) the amount described in the previous subparagraph, (ii) the payment of Court-ordered attorneys' fees, costs and expenses, as provided in Paragraph XIV, and (iii) the payment of Court-ordered incentive awards, if any, pursuant to Paragraph XVIII, the Special Fund shall be distributed in accordance with the Plan of Distribution, attached hereto as Exhibit B, and the final distribution plan approved by the Court.

VII. NON-CASH COMPONENT OF SETTLEMENT

In addition to the Cash Payment, the Parties agree to the following non-monetary relief:

A. Within ten days of entry of the Final Order and Judgment, Defendant shall issue a statement of acknowledgment about the events regarding the Gold Train Property. The content of the statement shall be in the sole discretion of Defendant and it is the intent of the Parties that the statement shall not be subject to review in this or any other court.

B. Defendant represents that, to the best of its knowledge, all World War II-era documents relating to the Gold Train have been declassified. If any such documents that have not been declassified are brought to Defendant's attention, it will review such documents to determine if classification is still warranted.

VIII. ADMINISTRATION OF PLAN OF DISTRIBUTION

A. The Claims Conference shall implement and administer the Plan of Distribution, attached hereto as Exhibit B, and the final distribution plan approved by the Court.

B. The Claims Conference shall submit a report annually to the Court summarizing its work as Administrator and describing implementation of the Plan of Distribution (including administrative costs thereof). Copies of such report shall be provided to Class Counsel and the Defendant.

C. The Court shall have the right to audit the work of the Claims Conference pursuant to Paragraph V.B. of this Agreement and Paragraph V. of the Plan of Distribution. Class Counsel and Defendant, or either of them, shall have the right, at their own expense, independently to review the documents supporting the performance of the Claims Conference.

D. Class Counsel may apply to the Court for replacement of the Claims Conference as Administrator for good cause at any time and shall provide Defendant and the Claims Conference with copies of any such application. The Claims Conference may respond to any such application.

E. The Claims Conference, subject to the Plan of Distribution, shall be entitled to service of all pleadings, notice of all proceedings and an opportunity to be heard (through pleadings and/or oral argument) either directly or through counsel, on issues pertaining to

implementation of the Settlement.

IX. NOTICE TO THE SETTLEMENT CLASS

Upon Preliminary Approval and as the Court may direct, the Claims Conference as Notice Provider (under the supervision of Class Counsel and the Defendant) shall cause Class Notice to be provided to putative members of the Settlement Class. Class Notice shall be effectuated pursuant to the Notice Plan, submitted herewith as Exhibit A (including attachments). The costs of providing Class Notice shall be borne directly by Defendant, and not deducted from the Settlement Fund or Special Fund, except to the extent provided by Paragraph V hereof. The United States Government shall pay in advance the Claims Conference's direct, out-of-pocket costs of implementing the Notice Plan, subject to the budgetary limits set forth in the Notice Plan.

X. OPT-OUT RIGHTS

A. Putative members of the Settlement Class, other than Plaintiffs, may opt out of the Settlement Class at any time before the end of the Opt-Out Period. In order to exercise their opt-out rights, a member of the Settlement Class must complete and return a Request for Exclusion to the Notice Provider in the form prescribed by this Agreement and the Class Notice, and postmarked by the Opt-Out Deadline. All Persons who fall within the definition of the Settlement Class will be deemed Settlement Class members for all purposes, except those who file a Request for Exclusion in accordance with this Agreement and the Class Notice. Any member of the Settlement Class who elects to file a Request for Exclusion shall not (i) be bound by any orders or judgments entered in this Action; (ii) be entitled to receive benefits or relief under, or to be affected by this Agreement; (iii) gain any rights by virtue of this Agreement; or

(iv) be entitled to object to any aspect of this Agreement, provided however that no Plaintiff may file a Request for Exclusion.

B. Any Person who submits a Request for Exclusion shall personally sign the Request for Exclusion and affirm that he/she believes that he/she, or someone through whom he/she claims, had property seized, confiscated, or stolen by the Hungarian government and/or its officers, employees, or agents pursuant to Decree 1600 of 1944, Decree 8306 of 1944, or other similar Hungarian law, policy or practice. In order to be valid, any Person who submits a Request for Exclusion shall indicate clearly whether he/she is a Victim of Nazi Persecution or an heir of a Victim of Nazi Persecution or both.

C. The Claims Conference, as Notice Provider, shall provide Class Counsel and Defendant's Counsel with copies of all completed Requests for Exclusion and any comments on or objections to the Settlement on a rolling basis every fourteen (14) days if practicable, and shall complete this process by providing all copies of all such Requests for Exclusion and comments/objections within thirty (30) days after the Opt-Out Deadline.

XI. DEFENDANT'S RIGHT OF WITHDRAWAL

A. The Parties agree that if either 100 Victims of Nazi Persecution or 5,000 Heirs opt out of the Settlement Class pursuant to Paragraph X of the Agreement, Defendant shall have the right to withdraw from this Agreement. For purposes of this Paragraph, a Person who is both a Victim of Nazi Persecution and an Heir shall be deemed to be a Victim of Nazi Persecution. Defendant shall exercise such withdrawal right, if at all, no later than 5:00 pm Eastern time on September 12, 2005. In the event Defendant exercises its withdrawal right, Defendant shall promptly notify Class Counsel, and cause the Notice Provider to post this information on the

Settlement website. If Defendant elects to withdraw from this Agreement pursuant to this paragraph, then this Agreement shall terminate in all respects, except that Paragraph II shall remain binding and operative, and the Parties will then be restored to their respective positions prior to their entry into this Settlement.

B. Notwithstanding the requirements of Paragraph V. A., the Parties agree that, in the event that more than 100 Victims of Nazi Persecution (“Victim Opt-Outs”) submit Requests for Exclusion pursuant to Paragraph X, and the Defendant does not exercise its right under Paragraph XI.A. to withdraw from this Agreement, then (1) the United States shall have the right to reduce the Cash Payment by an amount equal to the product of (a) \$400 and (b) the number of Victim Opt-Outs; and (2) the amount that would otherwise be distributed to the country of residence of the Victim Opt-Outs will be reduced in an amount equal to the product of (a) the total amount by which the Cash Payment is reduced pursuant to this Paragraph, and (b) the number of Victim Opt-Outs who reside in that country, divided by (c) the total number of Victim Opt-Outs.

XII. EXCLUSIVE REMEDY; DISMISSAL OF ACTION; JURISDICTION OF COURT

A. This Agreement shall be the sole and exclusive remedy for any and all Settled Claims of all members of the Settlement Class against Defendant. Defendant shall not be subject to liability or expense of any kind to any member of the Settlement Class with respect to any Settled Claim except for breach of this Agreement, except any member of the proposed Settlement Class who has timely filed a Request for Exclusion pursuant to Paragraph X shall retain whatever rights such Person may have had against Defendant.

B. The Parties agree that the Court shall retain exclusive and continuing jurisdiction

of the Action, Parties, Class Counsel and members of the Settlement Class to interpret and enforce the terms, conditions, and obligations under this Agreement. The Court shall likewise retain exclusive and continuing jurisdiction of the Claims Conference with respect to its role as Notice Provider and Administrator of the Plan of Distribution.

XIII. RELEASES

Upon entry of the Final Order and Judgment, and resolution of all appeals thereof, each Releasing Party shall be deemed to and does hereby release and forever discharge Defendant of and from any and all Settled Claims, to the fullest extent permitted by law.

XIV. ATTORNEYS' FEES, EXPENSES AND COSTS

Class Counsel shall file a fee petition in accordance with applicable law to be paid from the Settlement Fund by June 17, 2005. A summary of the fee petition shall be posted on the Settlement website. Such petition shall seek a payment to include all fees, costs and expenses incurred by Class Counsel in the prosecution of the Action not to exceed \$3.85 million. Consistent with Rule 23, FRCP, this petition shall be subject to Court review and approval.

XV. TAX STATUS OF SETTLEMENT FUND; SPECIAL FUND

A. The Settlement Fund and Special Fund created under this Agreement shall be established and maintained as a Qualified Settlement Account in accordance with Section 468B of the Internal Revenue Code, as amended (the "Code"), and the Treasury Regulations promulgated thereunder. The Parties agree to negotiate in good faith, subject to Court approval, any changes to the Agreement necessary to obtain IRS approval of the Settlement Fund and Special Fund as a Qualified Settlement Account.

B. The Escrow Agent is appointed to be the "administrator" of the Settlement Fund

and Special Fund within the meaning of Treasury Regulation Section 1.468B-2(k)(3). As such, the Escrow Agent will comply with the duties and obligations applicable to the administrator under the Treasury Regulations promulgated under Code Section 468B, including, but not limited to, the following: (i) obtaining a tax identification number for the Settlement Fund and Special Fund; (ii) preparing and timely filing, or causing to be prepared and timely filed, all tax returns the Settlement Fund and Special Fund is required to file under federal or state law; (iii) paying from the Settlement Fund and Special Fund all taxes, including penalties, interest and additions to tax, that are imposed upon the Settlement Fund and Special Fund by federal or state law; (iv) complying with applicable federal or state information reporting or withholding requirements; and (v) filing, or causing to be filed, tax elections available to the Settlement Fund and Special Fund, including a request for a prompt assessment of tax under Code Section 6501(d) if and when the Escrow Agent deems it appropriate to do so. If at any time it is determined that the Settlement Fund and Special Fund do not qualify as a Qualified Settlement fund under Code Section 468B, the Escrow Agent shall promptly seek refunds of all taxes paid by the Settlement Fund and Special Fund. The Escrow Agent shall pay to the Settlement Fund and Special Fund all such refunds received, together with interest actually received from all taxing authorities.

C. Defendant, as “transferor” to the Settlement Fund within the meaning of Treasury Regulations Section 1.468B-1(d)(1), shall provide and file the statements required by Treasury Regulations Section 1-468-1(e).

D. The expenses associated with the preparation and filing of tax returns and the payment of taxes with respect to the Settlement Fund and Special Fund will be paid by the

Escrow Agent from the Special Fund.

XVI. SETTLEMENT APPROVAL ORDER

This Agreement is subject to and conditioned upon the issuance by the Court of the Final Order and Judgment granting final approval of the Agreement in accordance with law, and providing the below-specified relief, which relief shall be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and obligations hereunder.

Such Final Order and Judgment shall:

- A. Confirm the certification for settlement purposes only of the Settlement Class;
- B. Dismiss the Action, and stay or dismiss all other actions upon the Settled Claims of all members of the Settlement Class, without cost, now existing or hereafter brought against Defendant in state, federal and territorial courts, except to the extent of the relief provided in this Settlement Agreement;
- C. Bar and enjoin all members of the Settlement Class from asserting against Defendant any and all Settled Claims which the member had, has, or may have in the future;
- D. Release Defendant from the Settled Claims which any members of the Settlement Class have, had, or may have in the future, against Defendant;
- E. Determine that this Agreement is entered into in good faith, is reasonable, fair and adequate, and in the best interest of the Settlement Class; and
- F. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, as well as members of the Settlement Class, to administer, supervise, construe and enforce this Agreement in accordance with its terms for the mutual benefit of the Parties and members of the Settlement Class.

XVII. REPRESENTATIONS AND WARRANTIES

Defendant's Counsel represents and warrants (i) that it has all requisite power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby; (ii) that the execution, delivery and performance of this Agreement and the consummation of the actions contemplated herein have been duly authorized by all necessary governmental action on the part of Defendant; and (iii) that this Agreement has been duly and validly executed and delivered by Defendant and constitutes its legal, valid and binding obligation.

XVIII. MISCELLANEOUS PROVISIONS

A. In recognition of their efforts on behalf of the Settlement Class, Plaintiffs may petition the Court for modest incentive awards, not to exceed either \$5,000 apiece or \$150,000 in total, to be paid from the Settlement Fund. Such awards, if any, shall be paid by the Escrow Agent from the Settlement Fund within ten (10) days after the Cash Payment is deposited into the Settlement Fund.

B. This Agreement, including all exhibits hereto, shall, except for an agreement to dismiss with prejudice a Freedom of Information Act case styled *Mermelstein v. Department of the Army, et al.*, Civil Action No. 03-2641 (RBW)(D.D.C.), constitute the entire agreement among the undersigned with regard to the subject of this Agreement and shall supersede any and all prior agreements executed between the undersigned. This Agreement may not be changed, modified or amended except in writing signed by all the undersigned, subject to Court approval. The Parties agree to work together in good faith to execute any documents that are necessary to effectuate the purposes of this Agreement.

C. Class Counsel shall have a continuing duty to the Class after entry of the Final Order and Judgment and shall have the right at any time to bring to the attention of the Court by motion any concerns with the continued implementation of the Settlement.

D. This Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed as an original, but all of which together shall constitute one and the same instrument.

E. Any notice, instruction, application for Court approval or application for Court orders sought in connection with this Agreement or any other document to be given by any Party to any other Party shall be in writing and delivered personally, by facsimile, or sent by first class mail, postage prepaid, if to Defendant to the attention of Defendant's Counsel, Class Counsel and/or to other recipients as the Court may direct.

F. The Court may postpone deadlines set forth in the Settlement Agreement, the Plan of Distribution and its Preliminary Approval Order upon motion, for good cause shown.

XIX. TERMINATION OF THIS AGREEMENT

If the Final Order and Judgment is not entered, or is reversed on appeal and the reversal becomes final, or in the event of Defendant's termination pursuant to Paragraph XI of this Agreement, this Agreement shall be terminated. The Parties agree that, in the event of termination, no funds advanced by Defendant and actually spent for costs of Class Notice shall be refunded. Upon termination, this Agreement shall have no further force or effect and the undersigned and all Parties shall be restored to their respective positions as immediately prior to

the date of the execution of this Agreement, except that the provisions of Paragraph II shall survive the termination of this Agreement.

XX. AUTHORITY TO SIGN

Any individual signing this Agreement on behalf of any Party represents and warrants that he or she has full authority to do so. This Agreement may be signed in counterparts. Facsimile signatures shall be considered valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on their behalf by their duly authorized counsel of record, all as of the day set forth below.

DATED: April 7, 2005, 2005

CUNEO WALDMAN & GILBERT, LLP

By: Jonathan W. Cuneo
JONATHAN W. CUNEO

DATED: _____, 2005

DUBBIN & KRAVETZ, LLP

By: _____
SAMUEL J. DUBBIN

DATED: _____, 2005

HAGENS BERMAN SOBOL SHAPIRO LLP

By: _____
STEVE W. BERMAN

**ATTORNEYS FOR PLAINTIFFS AND
PUTATIVE CLASS**

the date of the execution of this Agreement, except that the provisions of Paragraph II shall survive the termination of this Agreement.

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DATED: _____, 2005

CUNEO WALDMAN & GILBERT, LLP

By: _____
JONATHAN W. CUNEO

DATED: April 7, 2005

DUBBIN & KRAVETZ, LLP

By: Samuel J. Dubbin, P.A.
SAMUEL J. DUBBIN

DATED: _____, 2005

HAGENS BERMAN SOBOL SHAPIRO LLP

By: _____
STEVE W. BERMAN

**ATTORNEYS FOR PLAINTIFFS AND
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DATED: _____, 2005

CUNEO WALDMAN & GILBERT, LLP

By: _____
JONATHAN W. CUNEO

DATED: _____, 2005

DUBBIN & KRAVETZ, LLP

By: _____
SAMUEL J. DUBBIN

DATED: APRIL 7, 2005

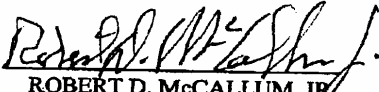
HAGENS BERMAN SOBOL SHAPIRO LLP

By: _____
STEVE W. BERMAN

**ATTORNEYS FOR PLAINTIFFS AND
PUTATIVE CLASS**

DATED: April 7, 2005

THE UNITED STATES OF AMERICA

By: 
ROBERT D. McCALLUM, JR.
Associate Attorney General

ATTORNEY FOR DEFENDANT