

No. 18-1447

IN THE
Supreme Court of the United States

REPUBLIC OF HUNGARY, ET ANO.,
Petitioners,
v.
ROSALIE SIMON, ET AL.,
Respondents.

**On Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit**

JOINT APPENDIX

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**PETITION FOR CERTIORARI FILED MAY 16, 2019
CERTIORARI GRANTED JULY 2, 2020**

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NOTICE

The following documents have been omitted from the printing of this Joint Appendix. They may be found in the Petitioners' Appendix to the 18-1447 Petition for Writ of Certiorari at the following pages:

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Docket No. 17-7146

ROSALIE SIMON, *et al.*,
Plaintiffs-Appellants,

v.

REPUBLIC OF HUNGARY AND
MAGYAR ÁLLAMVASUTAK ZRT,
Defendants-Appellees.

RELEVANT DOCKET ENTRIES

DATE	DOCKET TEXT
10/23/2017	NOTICE OF APPEAL [1700878] seeking review of a decision by the U.S. District Court in 1:10-cv-01770-BAH filed by Magda Kopolovich Bar-or, Vera Deutsch Danos, Zehava (Olga) Friedman, Helen Herman, Rose Miller, Moshe Perel, Yitzhak Pressburger, Ze'ev Tibi Ram, Ella Feuerstein Schlanger, Rosalie Simon, Alexander Speiser, Charlotte Weiss, Helena Weksberg, Asher Yogev, Yosef Yogev, Esther Zelikovitch and Tzvi Zelikovitch. Appeal assigned USCA Case Number: 17-7146. [17-7146] [Entered: 10/23/2017 01:18 PM]

* * *

DATE	DOCKET TEXT
04/20/2018	ORAL ARGUMENT HELD before Judges Millett, Pillard and Katsas. [17-7146] [Entered: 04/20/2018 11:29 AM]
04/20/2018	PER CURIAM ORDER [1727564] filed, on the court's own motion, that the United States Department of Justice is invited to file a brief amicus curiae, expressing the views of the United States on this case, which raises questions of what the parties refer to as "prudential exhaustion" and forum non conveniens in a lawsuit against the Republic of Hungary and one of its instrumentalities. The brief may not exceed 8,000 words, and should be filed by 4:00 p.m. on Friday, May 11, 2018. Before Judges: Millett, Pillard and Katsas. [17-7146] [Entered: 04/20/2018 05:50 PM]
	* * *
06/01/2018	AMICUS BRIEF [1733875] filed by United States [Service Date: 06/01/2018] Length of Brief: 6,006 words. [17-7146]-- [Edited 06/01/2018 by LMF] (Swingle, Sharon) [Entered: 06/01/2018 12:44 PM]
	* * *
12/28/2018	PER CURIAM JUDGMENT [1766129] filed that the judgment of the District Court appealed from in this cause be reversed, the request that the case be reassigned be denied, and the case be remanded for further proceedings, for the reasons in the accompanying opinion.

DATE	DOCKET TEXT
	Before Judges: Millett, Pillard, and Katsas. [17-7146] [Entered: 12/28/2018 10:09 AM]
12/28/2018	OPINION [1766130] filed (Pages: 32) for the Court by Judge Millett, DISSENTING OPINION (Pages: 10) by Judge Katsas, [17-7146] [Entered: 12/28/2018 10:14 AM]
	* * *
03/15/2019	PER CURIAM ORDER [1777806] filed denying appellees' motion to stay mandate [1774245-2] Before Judges: Millett, Pillard and Katsas. [17-7146] [Entered: 03/15/2019 11:27 AM]
03/21/2019	MANDATE ISSUED to Clerk, U.S. District Court. [17-7146] [Entered: 03/21/2019 10:17 AM]
	* * *
07/02/2020	LETTER [1850065] received from the Clerk of the Supreme Court of the United States notifying this court of the following activity in case No. 18-1447: The petition for writ of certiorari was granted limited to Question 1 of the petition on 07/02/2020. [17-7146] [Entered: 07/02/2020 03:59 PM]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

—————
Docket No. 1:10-cv-01770-BAH
—————

ROSALIE SIMON, *et al.*,
Plaintiffs,

v.

REPUBLIC OF HUNGARY, MAGYAR ÁLLAMVASUTAK ZRT.,
AND RAIL CARGO HUNGARIA ZRT.,
Defendants.

—————
RELEVANT DOCKET ENTRIES

DATE	#	DOCKET TEXT
10/20/2010	<u>1</u>	COMPLAINT against MAGYAR ALLAMVASUTAK ZRT., RAIL CARGO HUNGARIA ZRT., REPUBLIC OF HUNGARY (Filing fee \$ 350, receipt number 4616033565) filed by TZVI ZELIKOVITCH, ZE'EV TIBI RAM, HELENA WEKSBERG, YITZHAK PRESSBURGER, ROSALIE SIMON, MAGDA KOPOLOVICH BAR-OR, VERA DEUTSCH DANOS, ELLA FEUERSTEIN SCHLANGER, HELEN HERMAN, ROSE MILLER, ZEHAVA (OLGA) FRIEDMAN, ALEXANDER SPEISER, CHARLOTTE WEISS. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Civil Cover Sheet)(dr) (Entered: 10/21/2010)

DATE	#	DOCKET TEXT
		* * *
03/11/2011	<u>21</u>	AMENDED COMPLAINT against MAGYAR ALLAMVASUTAK ZRT., RAIL CARGO HUNGARIA ZRT., REPUBLIC OF HUNGARY filed by ROSALIE SIMON. (Attachments: # <u>1</u> Exhibit A -- (DATA RELATED TO THE GHETTOIZATION AND DEPORTATION OF HUNGARIAN JEWRY), # <u>2</u> Exhibit B -- (DEPORTATION TRAINS PASSING THROUGH KASSA IN 1944)) (rdj) (Entered: 03/11/2011)
04/08/2011	<u>22</u>	MOTION to Dismiss the First Amended Class Action Complaint by MAGYAR ALLAMVASUTAK ZRT., REPUBLIC OF HUNGARY (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Declaration of Laszlo Nagy, # <u>3</u> Declaration of Meghan A. McCaffrey, # <u>4</u> Exhibit 1, # <u>5</u> Exhibit 2, # <u>6</u> Text of Proposed Order)(Lyle, Michael) (Entered: 04/08/2011)
		* * *
07/15/2011	<u>42</u>	NOTICE of Statement of Interest by UNITED STATES OF AMERICA (Attachments: # <u>1</u> Exhibiits)(znmw,) (Entered: 07/19/2011)
		* * *

DATE	#	DOCKET TEXT
09/23/2011	<u>52</u>	NOTICE Supplemental Statement of Interest by UNITED STATES OF AMERICA (Smith, Jeffrey) (Entered: 09/23/2011) * * *
10/30/2012	<u>70</u>	MOTION to Dismiss the Complaint by RAIL CARGO HUNGARIA ZRT. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Text of Proposed Order, # <u>3</u> Declaration - A. Wessels, # <u>4</u> Exhibit A - F, # <u>5</u> Declaration - A. Czondor, # <u>6</u> Declaration - H. Winkler, # <u>7</u> Exhibit A, # <u>8</u> Exhibit B, # <u>9</u> Exhibit C, # <u>10</u> Exhibit D, # <u>11</u> Exhibit E, # <u>12</u> Exhibit F)(Kanzer, Alan) (Entered: 10/30/2012) * * *
05/09/2014	<u>112</u>	MEMORANDUM OPINION regarding Defendant Hungary and Magyar Allamvasutak Zrt.'s <u>22</u> Motion to Dismiss and Defendant Rail Cargo Hungaria Zrt.'s <u>70</u> Motion to Dismiss. Signed by Judge Beryl A. Howell on May 9, 2014. (lcbah1) (Entered: 05/09/2014)
05/09/2014	<u>113</u>	ORDER GRANTING Defendants Hungary and Magyar Allamvasutak Zrt.'s <u>22</u> Motion to Dismiss and GRANTING Defendant Rail Cargo Hungaria Zrt.'s <u>70</u> Motion to Dismiss. The Clerk is directed to close this case. See Order for further

DATE	#	DOCKET TEXT
		details. Signed by Judge Beryl A. Howell on May 9, 2014. (lcbah1) (Entered: 05/09/2014)
06/03/2014	<u>114</u>	NOTICE OF APPEAL TO DC CIRCUIT COURT as to <u>113</u> Order on Motion to Dismiss,, by MAGDA KOPOLOVICH BAR-OR, VERA DEUTSCH DANOS, ZEHAVA (OLGA) FRIEDMAN, HELEN HERMAN, ROSE MILLER, MOSHE PEREL, YITZHAK PRESSBURGER, ZE'EV TIBI RAM, ELLA FEUERSTEIN SCHLANGER, ROSALIE SIMON, ALEXANDER SPEISER, CHARLOTTE WEISS, HELENA WEKSBERG, TZVI ZELIKOVITCH. Filing fee \$ 505, receipt number 0090-3735533. Fee Status: Fee Paid. Parties have been notified. (Fax, Charles) (Entered: 06/03/2014)
		* * *
04/01/2016	<u>116</u>	MANDATE of USCA (certified copy) ORDERED and ADJUDGED that the judgment of the District Court appealed from in this cause is hereby affirmed in part, reversed in part, and the case is remanded for further proceedings, in accordance with the opinion of the court filed herein this date. as to <u>114</u> Notice of Appeal to DC Circuit Court, filed by MAGDA KOPOLOVICH BAR-OR,

DATE	#	DOCKET TEXT
		ALEXANDER SPEISER, ELLA FEUERSTEIN SCHLANGER, HELENA WEKSBERG, VERA DEUTSCH DANOS, YITZHAK PRESSBURGER, MOSHE PEREL, HELEN HERMAN, ZEHAVA (OLGA) FRIEDMAN, ROSALIE SIMON, CHARLOTTE WEISS, ZE'EV TIBI RAM, ROSE MILLER, TZVI ZELIKOVITCH. USCA Case Number 14-7082. (zrdj) (Entered: 04/04/2016)

* * *

06/13/2016	<u>118</u>	AMENDED COMPLAINT against MAGYAR ALLAMVASUTAK ZRT., REPUBLIC OF HUNGARY with Jury Demand filed by TZVI ZELIKOVITCH, ZE'EV TIBI RAM, HELENA WEKSBERG, YITZHAK PRESSBURGER, ROSALIE SIMON, MAGDA KOPOLOVICH BAR-OR, VERA DEUTSCH DANOS, ELLA FEUERSTEIN SCHLANGER, MOSHE PEREL, HELEN HERMAN, ROSE MILLER, ZEHAVA (OLGA) FRIEDMAN, ALEXANDER SPEISER, CHARLOTTE WEISS, YOSEF YOGEV, ESTHER ZELIKOVITCH, ASHER YOGEV. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Fax, Charles) (Entered: 06/13/2016)
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* * *

DATE	#	DOCKET TEXT
09/02/2016	120	MOTION to Dismiss the Second Amended Class Action Complaint by MAGYAR ALLAMVASUTAK ZRT., REPUBLIC OF HUNGARY (Attachments: # <u>1</u> Memorandum in Support of Motion to Dismiss, # <u>2</u> Text of Proposed Order, # <u>3</u> Declaration of Konrad L. Cailteux, # <u>4</u> Exhibit A to Cailteux Declaration, # <u>5</u> Exhibit B to Cailteux Declaration, # <u>6</u> Exhibit C to Cailteux Declaration, # <u>7</u> Declaration of Laszlo Nanyista, # <u>8</u> Exhibit A to Nanyista Declaration, # <u>9</u> Exhibit B to Nanyista Declaration, # <u>10</u> Exhibit C to Nanyista Declaration, # <u>11</u> Exhibit D to Nanyista Declaration, # <u>12</u> Exhibit E to Nanyista Declaration, # <u>13</u> Exhibit F to Nanyista Declaration, # <u>14</u> Exhibit G to Nanyista Declaration, # <u>15</u> Exhibit H to Nanyista Declaration, # <u>16</u> Exhibit I to Nanyista Declaration, # <u>17</u> Exhibit J to Nanyista Declaration, # <u>18</u> Exhibit K to Nanyista Declaration, # <u>19</u> Exhibit L to Nanyista Declaration, # <u>20</u> Declaration of Janos Botos, # <u>21</u> Declaration of Laszlo Csosz, # <u>22</u> Declaration of Ilona David, # <u>23</u> Declaration of Tamas Kovacs, # <u>24</u> Declaration of Zsuzsanna Miko, # <u>25</u> Declaration of Pal Sonnevend) (Cailteux, Konrad) (Entered: 09/02/2016)

DATE	#	DOCKET TEXT
		* * *
09/30/2017	<u>131</u>	ORDER GRANTING defendants' <u>120</u> Motion to Dismiss. The Clerk of the Court is directed to close this case. See Order for further details. Signed by Chief Judge Beryl A. Howell on September 30, 2017. (lcbah3) (Entered: 09/30/2017)
09/30/2017	<u>132</u>	MEMORANDUM OPINION regarding defendants' <u>120</u> Motion to Dismiss. Signed by Chief Judge Beryl A. Howell on September 30, 2017. (lcbah3) (Entered: 09/30/2017)
10/06/2017	<u>133</u>	NOTICE OF APPEAL TO DC CIRCUIT COURT as to <u>131</u> Order on Motion to Dismiss by MAGDA KOPOLOVICH BAR-OR, VERA DEUTSCH DANOS, ZEHAVA (OLGA) FRIEDMAN, HELEN HERMAN, ROSE MILLER, MOSHE PEREL, YITZHAK PRESSBURGER, ZE'EV TIBI RAM, ELLA FEUERSTEIN SCHLANGER, ROSALIE SIMON, ALEXANDER SPEISER, CHARLOTTE WEISS, HELENA WEKSBERG, ASHER YOGEV, YOSEF YOGEV, ESTHER ZELIKOVITCH, TZVI ZELIKOVITCH. Filing fee \$ 505, receipt number 0090-5149278. Fee Status: Fee Paid. Parties have been notified. (Fax, Charles) (Entered: 10/06/2017)

DATE	#	DOCKET TEXT
		* * *
03/21/2019	<u>135</u>	MANDATE of USCA as to <u>133</u> Notice of Appeal to DC Circuit Court,, filed by MAGDA KOPOLOVICH BAR-OR, ALEXANDER SPEISER, ASHER YOGEV, ELLA FEUERSTEIN SCHLANGER, HELENA WEKSBERG, YITZHAK PRESSBURGER, HELEN HERMAN, ZEHAVA (OLGA) FRIEDMAN, ROSE MILLER, TZVI ZELIKOVITCH, ESTHER ZELIKOVITCH, MOSHE PEREL, VERA DEUTSCH DANOS, CHARLOTTE WEISS, ROSALIE SIMON, YOSEF YOGEV, ZE'EV TIBI RAM ; USCA Case Number 17-7146. (Attachments: # <u>1</u> USCA Judgment)(zrdj) (Entered: 03/22/2019)
		* * *
05/23/2019	<u>138</u>	MOTION to Dismiss the Second Amended Class Action Complaint Because of Their Sovereign Immunity by MAGYAR ALLAMVASUTAK ZRT., REPUBLIC OF HUNGARY (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Exhibit 1 - Declaration of Robert Homolya, # <u>3</u> Exhibit 2 - Declaration of Janos Botos, # <u>4</u> Exhibit 3 - Declaration of Csoz Laszlo, # <u>5</u> Exhibit 4 - Declaration of Tamas Kovacs, # <u>6</u> Exhibit 5 - Declaration of Laszlo Nanyista, # <u>7</u> Exhibit 6 - Declaration of Peter

DATE	#	DOCKET TEXT
		Fodor, # <u>8</u> Text of Proposed Order)(Cailteux, Konrad) (Entered: 05/23/2019)
		* * *
03/11/2020	<u>155</u>	MEMORANDUM OPINION regarding the defendants' <u>138</u> Motion to Dismiss. Signed by Chief Judge Beryl A. Howell on March 11, 2020. (lcbah3) (Entered: 03/11/2020)
03/11/2020	<u>156</u>	ORDER DENYING the defendants' <u>138</u> Motion to Dismiss, and DENYING AS MOOT the plaintiffs' <u>150</u> Motion to Strike. See Order for further details. Signed by Chief Judge Beryl A. Howell on March 11, 2020. (lcbah3) (Entered: 03/11/2020)
		* * *
03/20/2020	<u>157</u>	NOTICE OF APPEAL TO DC CIRCUIT COURT as to <u>156</u> Order on Motion to Dismiss by REPUBLIC OF HUNGARY, MAGYAR ALLAMVASUTAK ZRT.. Filing fee \$ 505, receipt number ADCDC-6939932. Fee Status: Fee Paid. Parties have been notified. (Cailteux, Konrad) (Entered: 03/20/2020)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No.: 1:10-cv-01770-BAH

ROSALIE SIMON, *et al.*

Plaintiffs,

vs.

THE REPUBLIC OF HUNGARY,
MAGYAR ALLAMVASUTAK Zrt. and
RAIL CARGO HUNGARIA Zrt.,

Defendants.

Hon. Beryl A. Howell

DECLARATION OF LÁSZLÓ NAGY

1. My name is László Nagy. I am licensed to practice law in Hungary. I have never been held in contempt or disciplined by any court of law anywhere in the world. I have never been convicted of a crime.
2. I received my state diploma at Eötvös Loránd University. I speak, read and write fluently in both the English and Hungarian languages.
3. I am a partner in the Budapest office of Weil, Gotshal & Manges LLP. I specialize in litigation and arbitration, and have experience in, among other things, international legal disputes.
4. I have reviewed the first amended complaint filed by Rosalie Simon *et al* and make the following declarations regarding the Hungarian judicial

system in support of the motion to dismiss the first amended class action complaint.

5. Unlike the United State's common-law legal system, Hungary has a codified, civil-law system.¹
6. Hungary respects the generally accepted principles of international law and has undertaken to harmonize its laws in accordance with its international obligations.² Hungary is a Member State of the European Union³ and the Council of Europe.⁴
7. The Hungarian Constitution⁵ provides that all persons, including foreign nationals, are equal before the Hungarian courts and are entitled to have their legal disputes settled by an independent and

¹ <http://www.unesco.org/shs/ethics/geo/user/?action=Geo4Country&dp=GEO4&id=5&lng=cn>

² Section 7 of Act XX of 1949 on the Constitution

³ As a precondition to becoming a Member State of the European Union Hungary was obligated to harmonize its legal system with European Union law. E.g., according to Article 6, point I. of the Treaty on European Union: "*The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.*"

⁴ According to Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms: "*Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.*" Also, Article 6 of the Convention guarantees the right to a fair trial by and independent and impartial tribunal established by law.

⁵ The Hungarian Government is currently working on a new Constitution which has not been adopted by the Parliament and has not entered into force as of the date of this declaration.

unbiased court established by law in a fair trial.⁶ The financial independence of Hungarian courts is guaranteed by the Act on the State Budget as well as the Act on Court Structure which ensure a separate budget within the state budget for the operating costs of the courts.⁷ Administration of Hungarian courts is supervised by the National Judicial Council (in Hungarian: *Országos Igazságszolgáltatási Tanács*), which is an independent body.⁸ This supervision does not extend to the decision-making process of the courts.

8. The Hungarian Constitution sets out that judges are independent, bound only by the provisions of law and may not be members of political parties, nor conduct any political activities. Also, no judge may be influenced or given orders with respect to his or her judicial activities⁹, and no judge may perform money-making activities, except for scientific, art, literature, teaching or composing activities, provided that such activities do not jeopardize his or her independence or give the impression of

⁶ Section 57 (5) of Act XX of 1949 on the Constitution

⁷ Section 2/A i) and j) of Act XXXVIII of 1992 on the State Budget and Section 6 of Act LXVI of 1997 on Court Structure

⁸ Members of the National Judicial Council include 9 judges, the Minister of Justice, the Minister of Finance, the Public Prosecutor, the President of the Hungarian Bar Association, a Member of Parliament delegated by the parliamentary committee of justice and a Member of Parliament delegated by the parliamentary committee of financial affairs. The president of the National Judicial Council is the President of the Supreme Court.

⁹ Section 3 of Act LXVI of 1997 on Court Structure

the same and do not prevent the judge from fulfilling his or her official duties.¹⁰

9. Under Hungarian law, any person having legal capacity, including foreign nationals, may initiate a lawsuit before the Hungarian courts. Although the language of the procedure is Hungarian, the court must provide an interpreter and a translator if any of the parties does not speak Hungarian or if the native language of a party is not Hungarian. The costs of the interpreter and translator are advanced and borne by the Hungarian State.¹¹
10. Under Hungarian law, any person having legal capacity, including both the Hungarian State and any state-owned company - such as Magyar Államvasutak Zrt.¹² - may be sued before the Hungarian courts under the same conditions as any other person.
11. Hungarian law does not provide for a class action as provided in the United States.¹³ Nevertheless, cumulative litigation is possible under Hungarian

¹⁰ Section 23 (1) of Act LXV11 of 1997 on the Status and Compensation of Judges

¹¹ Section 6 (3) and Section 78 (4) of Act III of 1952 on Civil Procedure

¹² According to the Hungarian Company Register, Magyar Államvasutak Zrt. is a company 100% owned by the Hungarian State, established in 1993 as the legal successor of the state company (in Hungarian: *állami vállalat*) Magyar Államvasutak.

¹³ The Hungarian Parliament passed a law on February 22, 2010 that was to amend the Hungarian Civil Procedure Act to contain the possibility of a class action similar to the one in the United States. However, before signing the law, the President of the Republic of Hungary sent the law back to Parliament for reconsideration, as it was not sufficiently elaborated. The relevant law has not come into effect at the date of this declaration.

law in the form of a joinder.¹⁴ It is also possible for other plaintiffs, the claims of whom arise from the same legal relationship, to join the lawsuit after it has been initiated, which they may do at any time prior to the adjourning of the last hearing before the decision of first instance.¹⁵

12. Hungarian law does not provide for punitive damages. Under Hungarian law, damage claims can be filed for material or non-pecuniary damages. A person must pay damages if he or she causes damage to another person in breach of the law.¹⁶ Damages mean the depreciation of value in the property of the damaged person, loss of financial advantage, as well as any compensation and costs necessary to eliminate or decrease the material or non-pecuniary losses incurred by the damaged person.¹⁷ Claiming the return of property or money based on unjust enrichment is also possible under Hungarian law.¹⁸
13. The Hungarian Constitution ensures that every person, including a foreign national, is entitled to appeal a court decision that is in breach of his or her rights or contrary to his or her legal interests.¹⁹ Additionally, extraordinary appeal, i.e., appeal

¹⁴ Under Hungarian law, a joinder may be established if - among other things - the claims set out in the lawsuit arise from the same legal relationship or the claims are based on similar legal and factual grounds and the competence of the court can be established with respect to all plaintiffs.

¹⁵ Section 64 (3) of Act III of 1952 on Civil Procedure

¹⁶ Section 339 (1) of Act IV of 1959 on the Civil Code

¹⁷ Section 355 (4) of Act IV of 1959 on the Civil Code

¹⁸ Section 361 of Act IV of 1959 on the Civil Code

¹⁹ Section 57 (5) of Act XX of 1949 on the Constitution

against a final and binding court decision, is also possible before the Supreme Court if the procedure preceding the final and binding decision was passed with certain deficiencies as set out in the Civil Procedure Act²⁰ or the decision itself breaches material legal provisions.²¹

14. Under Hungarian law, Hungarian courts have exclusive jurisdiction over any procedure initiated against the Hungarian State.²² Accordingly, no foreign judgment passed in a procedure initiated against the Hungarian State may be accepted and enforced in Hungary unless the Hungarian State explicitly waived its sovereign immunity,²³ or if an international treaty or custom of reciprocity exists in relation to this with the given foreign state.²⁴ To the best of my knowledge, no such international treaty or custom of reciprocity exists between Hungary and the United States.
15. If a Hungarian court orders the Hungarian State to pay damages, then under Hungarian law the Hungarian State must pay such damages even if the amount of such payment exceeds the state budget planned for this purpose or the state budget for the given year in general.²⁵

²⁰ Section 260 of Act III of 1952 on Civil Procedure

²¹ Section 270 (2) of Act III of 1952 on Civil Procedure

²² Section 62/A c) of Decree Number 13 of 1979 on Private International Law

²³ Section 70 of Decree Number 13 of 1979 on Private International Law

²⁴ Section 205 of Act III of 1994 on Enforcement

²⁵ Section 28 (2) of Act IV of 1959 on the Civil Code

16. As a general rule in Hungary, the litigation costs of the prevailing party must be borne by the losing party.²⁶ Litigation costs are borne by the losing party in proportion to losing the lawsuit. Litigation costs include, e.g., stamp duty, attorney's costs and expenses, the costs of all witnesses and experts, costs of gathering preliminary information, correspondence, etc.
17. Upon initiating a lawsuit, the plaintiff must pay stamp duty of 6% of the value of the litigated amount, but no more than HUF 900,000 (approx. USD 4,775²⁷).²⁸ In the event of more than one plaintiff, the stamp duty shall be paid by the plaintiffs in proportion to their interest in the lawsuit, or, if this cannot be established, then the plaintiffs shall be jointly and severally liable for paying the stamp duty.²⁹ In the event of claims for damages due to loss of life, bodily injury or damage to health, or in the event of claims for material damages, the occurrence of which endangered the life, body or health of a person, the plaintiffs are exempt by law from the advance payment of stamp duty.³⁰ In this case, stamp duty is paid by the person ordered to do so by the court³¹ based on who actually prevailed in the case.

²⁶ Section 78 (1) of Act III of 1952 on Civil Procedure

²⁷ All USD amounts set out in this declaration are calculated based on the official exchange rate published by the Hungarian National Bank on March 25, 2011 (1 USD = HUF 188.45)

²⁸ Section 42 (1) of Act XCIII of 1990 on Stamp Duty

²⁹ Section 38 (2) of Act XCIII of 1990 on Stamp Duty

³⁰ Section 62 (1) b) of Act III of 1952 on Civil Procedure

³¹ Section 59 (1) of Act III of 1952 on Civil Procedure

18. With respect to attorney's costs, such costs are based on the mandate agreement entered into between the party and the attorney. If no fee arrangement exists between the party and the attorney, or upon the party's request, the court will establish the attorney's fees based on Minister of Justice Decree Number 32 of 2003 on Attorney's Costs in Court Procedures. Attorney's costs may be decreased by the court if the court deems that the attorney's costs are disproportionate to the litigated amount or the actual work performed by the attorney.³²
19. Under Hungarian law, the court may order a foreign national plaintiff to deposit so-called litigation-costs security (in Hungarian: *perköltségbiztosíték*) with the court upon the request of the defendant, unless an international treaty or custom of reciprocity in relation to this exists between Hungary and the given foreign state.
20. The Hungarian State entered into bilateral agreements regarding this subject with Australia,³³ Canada,³⁴ and Israel.³⁵ To the best of my knowledge, no such international treaty or custom of reciprocity exists between Hungary and the United States.

³² Section 2 (2) of Minister of Justice Decree Number 32 of 2003 on Attorney's Costs in Court Procedures

³³ Act XIII of 1936 on the implementation of the Hungarian-British Treaty on Civil Legal Aid dated September 25, 1935

³⁴ Act XIII of 1936 on the implementation of the Hungarian-British Treaty on Civil Legal Aid dated September 25, 1935

³⁵ Decree Number 8 of 1966 on the announcement of the Hague Convention on Civil Procedure dated March 1, 1954

21. Litigation-costs security will serve as payment of the litigation costs if the plaintiff loses the lawsuit. If the plaintiff fails to deposit the requested security, then the court will dismiss the lawsuit.³⁶ The amount to be paid (in cash, except if the parties agree otherwise) is determined by the court and may be amended during the procedure. If the security becomes unnecessary during the procedure, then the court will return the security to the plaintiff upon request. The order of the court ordering the payment or return of the litigation-costs security may be appealed; however, the amount of the litigation-costs security set out in the court order may not be appealed.
22. Under Hungarian law, the court may rule that a plaintiff be entirely or partially exempt from the payment of litigation-costs (in Hungarian: *kölségmentesség*) if he or she is not capable of bearing litigation-costs due to his or her financial situation.³⁷ A foreign national plaintiff may be exempt from the payment of litigation-costs if an international treaty or custom of reciprocity exists between Hungary and the given foreign state.³⁸ The Hungarian State entered into bilateral agreements regarding this subject with Australia,³⁹

³⁶ Section 157 c) of Act III of 1952 on Civil Procedure

³⁷ Section 84 of Act III of 1952 on Civil Procedure

³⁸ Section 85 (4) of Act III of 1952 on Civil Procedure

³⁹ Act XIII of 1936 on the implementation of the Hungarian-British Treaty on Civil Legal Aid dated September 25, 1935

Canada,⁴⁰ and Israel.⁴¹ To the best of my knowledge, no such international treaty or custom of reciprocity exists between Hungary and the United States.

23. Since the end of WWII, Hungary has taken and continues to take steps in order to resolve issues related to the compensation of damages suffered by Jewish people during WWII due to deportations and other measures taken against them.
24. In the 1990's, Hungary enacted three laws regarding the compensation of Jewish people for the taking of property and personal injury. The laws set out the scope of persons entitled to compensation, the maximum amount and the calculation method of compensation, as well as the procedural rules.
25. Specifically, Hungary enacted the following laws to address issues of compensating Jewish people in relation to losses suffered during and after WWII:
 - (a) Act XXV of 1991 provided for partial compensation for damages caused unjustly to the property of Hungarian citizens by the state, in order to regulate proprietary relations;
 - (b) Act XXIV of 1992 provided for partial compensation for damages caused unjustly to the property of Hungarian citizens by the state due to the application of laws passed between May 1, 1939 and June 8, 1949, in order to regulate proprietary relations; and

⁴⁰ Act XIII of 1936 on the implementation of the Hungarian-British Treaty on Civil Legal Aid dated September 25, 1935

⁴¹ Decree Number 8 of 1966 on the announcement of the Hague Convention on Civil Procedure dated March 1, 1954

- (c) Act XXXII of 1992 provided for the compensation of persons deprived of their lives and freedom due to political reasons.
26. In 1946, the Hungarian State undertook to transfer to a foundation all Jewish heritage that became the property of the Hungarian State due to the absence of heirs, if the deceased person had died between June 28, 1941 and December 31, 1946 due to an injury or illness caused in the course of his or her persecution because of his or her Jewish religion or origins.⁴²
27. In 1993, the Constitutional Court passed a decision,⁴³ in which it established that Hungary complied with its obligations set out in Article 27 (1) of the Paris Peace Treaty by enacting Act XXIV of 1992. Nevertheless, according to the Constitutional Court, Hungary failed to comply with its obligation set out in Article 27 (2) of the Paris Peace Treaty, because it failed to pass a law or a government decree based on which Act XXV of 1946 would be enforced and thus, Jewish heritage that became property of the Hungarian State due to the absence of heirs would be transferred to a Jewish foundation.
28. In order to comply with Constitutional Court Decision Number 16/19993 (III.12.), in 1997, the Hungarian Government established the Hungarian Jewish Heritage Public Foundation,⁴⁴ and provided it with real property (to the value of HUF

⁴² Act XXV of 1946 on the contempt of the prosecution of Hungarian Jewry and the mitigation of its consequences

⁴³ Constitutional Court Decision Number 16/19993 (III.12.)

⁴⁴ Government Decision number 1035 of 1997 on the establishment of the Hungarian Jewish Heritage Public Foundation

1,271,800,000 — approx. USD 6,748,000) and art (to the value of HUF 12,400,000 — approx. USD 65,800) listed in the articles of association of the foundation, as well as compensation vouchers exchangeable for annuities to the value of HUF 4,000,000,000 (approx. USD 21,000,000) and HUF 30,000,000 (approx. USD 159,000) as operating costs for the year 1997.

29. For the sake of continuous operation, the foundation receives subsidies from the state budget every year (the amount of the subsidy for 2011 is HUF 888,600,000 (approx. USD 4,715,000), according to Act CLXIX of 2010 on the State Budget). According to its deed of foundation, the goal of the Hungarian Jewish Heritage Public Foundation is to assist persons suffering harassment due to their Jewish origins in the Nazi era as well as their heirs, and to assist groups of such people to reorganize their religious, cultural and educational systems, strengthen their Jewish identity and enhance their social situation. Tasks include, among other things, social activities, assisting families, taking care of the elderly, education, cultural activities, enhancing the equal opportunities of disadvantaged groups, etc.
30. In its Government Decision of 2007, Hungary declared that it complied with all of its obligations set out in Section 27 (1) and (2) of the Paris Peace Treaty and closed the deadline to submit claims for compensation for personal injury as of December 31, 2006. The Hungarian Government also established an inter-ministerial committee for the coordination of the settlement of the claims of the Jewish community. Although the inter-ministerial committee was dissolved on February 12, 2011,

but the Hungarian Government has given its commitment towards a broader dialogue with Jewish organizations.⁴⁵

31. Also in 2007, the Hungarian Government and the Hungarian Jewish Heritage Public Foundation entered into a support agreement for five years, according to which the Hungarian Jewish Heritage Public Foundation is to receive a HUF amount equal to USD 21 million, of which a HUF amount equal to USD 12.6 million was paid for the years 2008-2010. According to the agreement, the Hungarian Jewish Heritage Public Foundation will receive the HUF equivalent of USD 4.2 million for 2011 and 2012, respectively. The amounts paid to the Hungarian Jewish Heritage Public Foundation are distributed among Jewish Holocaust survivors, taking into account their individual situation.

On the basis of the above, I conclude that Hungary is an adequate and available alternate forum for deciding the claims presented in the First Amended Complaint.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on the 8th day of April, 2011.

/s/ László Nagy
László Nagy

⁴⁵ Also, as of July 23, 2010, publicly denying, questioning or mitigating the crimes of nationalist and communist regimes, *i.e.*, the denial of the Holocaust, is a crime in Hungary punishable by up to 3 years imprisonment; Section 269/C of Act IV of 1978 on the Criminal Code

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No.: 1:10-cv-01770-BAH

ROSALIE SIMON, *et al.*

Plaintiffs,

vs.

THE REPUBLIC OF HUNGARY,
MAGYAR ÁLLAMVASUTAK Zrt., and
RAIL CARGO HUNGARIA Zrt.,

Defendants.

Hon. Beryl A. Howell

**DECLARATION OF MEGHAN A.
MCCAFFREY IN SUPPORT OF THE
REPUBLIC OF HUNGARY'S AND
MAGYAR ALLAMVASUTAK ZRT.'S
MOTION TO DISMISS THE FIRST
AMENDED CLASS ACTION COMPLAINT**

Pursuant to 28 U.S.C. § 1746, Meghan A. McCaffrey declares as follows:

1. I am an associate at the law firm of Weil, Gotshal & Manges LLP, counsel for Defendants the Republic of Hungary (“Hungary”) and Magyar Államvasutak Zrt. (“MÁV”) in this action. My admission to the bar of the United States District Court for the District of Columbia is currently pending. I submit this declaration in support of Hungary and MÁV’s Motion to Dismiss the First

Amended Class Action Complaint and to place before the Court certain documents.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Treaty of Peace with Hungary, dated at Paris, February 10, 1947.
3. Attached hereto as Exhibit 2 is a true and correct copy of the U.S. – Hungary Agreement Regarding the Settlement of Claims, entered into force March 6, 1973, with accompanying Annexes.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED ON: April 8, 2011

/s/ Meghan A. McCaffrey
Meghan A. McCaffrey, Esq.

DISTRICT OF COLUMBIA) SS:

CITY OF WASHINGTON)

Subscribed and sworn to before me a Notary Public in and for the District of Columbia, on this 8th day of April, 2011.

/s/ Sonia Arriola [NOTARY STAMP]

NOTARY PUBLIC

My commission expires: 10/14/2014

EXHIBIT 1

T.I.A.S. No. 1651, 61 Stat 2065,
1947 WL 26320 (U.S. Treaty)

UNITED STATES OF AMERICA
Hungary

Treaty of peace with Hungary.
Dated at Paris February 10, 1947;

Ratification advised by the Senate of the
United States of America
June 5, 1947;

Ratified by the President of the
United States of America
June 14, 1947;

Ratification of the United States of America
deposited with the Union of
Soviet Socialist Republics at Moscow
September 15, 1947;

Proclaimed by the President of the
United States of America
September 15, 1947;

Entered into force September 15, 1947.

BY THE PRESIDENT OF THE
UNITED STATES OF AMERICA
A PROCLAMATION
TREATY OF PEACE WITH HUNGARY
1947

PART I
FRONTIERS OF HUNGARY

Article 1

PART II

POLITICAL CLAUSES

SECTION I

Article 2

Article 3

Article 4

Article 5

Article 6

SECTION II

Article 7

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PART III

MILITARY AND AIR CLAUSES

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PART IV

WITHDRAWAL OF ALLIED FORCES

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REPARATION AND RESTITUTION

Article 23

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PART VI

ECONOMIC CLAUSES

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Article 32

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PART VII

CLAUSE RELATING TO THE DANUBE

Article 38

PART VIII

FINAL CLAUSES

Article 39

Article 40

Article 41

Article 42

LIST OF ANNEXES

ANNEX I

(See Article 1)

Maps

ANNEX II

(See Article 14)

Definition of Military and Military Air Training

ANNEX III

(See Article 17)

Definition and List of War Material

Category I.

Category II.

Category III.

Category IV.

Category V.

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Category VIII.

ANNEX IV

Special Provisions Relating to Certain

Kinds of Property

A. INDUSTRIAL, LITERARY

AND ARTISTIC PROPERTY

B. INSURANCE

ANNEX V

Contracts, Prescription and Negotiable Instruments

A. CONTRACTS

B. PERIODS OF PRESCRIPTION

C. NEGOTIABLE INSTRUMENTS

D. SPECIAL PROVISIONS

ANNEX VI

Judgments

Note by the Department of State

BY THE PRESIDENT OF THE
UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS the Treaty of Peace with Hungary, dated at Paris February 10, 1947, was signed by the respective Plenipotentiaries of the United States of America, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, Australia, the Byelorussian Soviet Socialist Republic, Canada, Czechoslovakia, India, New Zealand, the Ukrainian Soviet Socialist Republic, the Union of South Africa, the People's Federal Republic of Yugoslavia, and Hungary;

WHEREAS the text of the said Treaty, in the Russian, English, French, and Hungarian languages, as certified by the Foreign Office of the Government of the Union of Soviet Socialist Republics, is word for word as follows:

TREATY OF PEACE WITH HUNGARY

1947

The Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Australia, the Byelorussian Soviet Socialist Republic, Canada, Czechoslovakia, India, New Zealand, the Ukrainian Soviet Socialist Republic, the Union of South Africa, and the People's Federal Republic of Yugoslavia, as the States which are at war with Hungary and actively waged war against the European enemy States with substantial military forces, hereinafter referred to as "the Allied and Associated Powers", of the one part, and Hungary, of the other part;

Whereas Hungary, having become an ally of Hitlerite Germany and having participated on her side in the war against the Union of Soviet Socialist Republics, the United Kingdom, the United States of America and other United Nations, bears her share of responsibility for this war;

Whereas, however, Hungary on December 28, 1944, broke off relations with Germany, declared war on Germany and on January 20, 1945, concluded an Armistice with the Governments of the Union of Soviet Socialist Republics, the United Kingdom and the United States of America, acting on behalf of all the United Nations which were at war with Hungary; and

Whereas the Allied and Associated Powers and Hungary are desirous of concluding a treaty of peace, which, conforming to the principles of justice, will settle questions still outstanding as a result of the events hereinbefore recited and form the basis of friendly relations between them, thereby enabling the Allied and Associated Powers to support Hungary's application to become a member of the United Nations and also to adhere to any Convention concluded under the auspices of the United Nations;

Have therefore agreed to declare the cessation of the state of war and for this purpose to conclude the present Treaty of Peace, and have accordingly appointed the undersigned Plenipotentiaries who, after presentation of their full powers, found in good and due form, have agreed on the following provisions:

PART I**FRONTIERS OF HUNGARY***Article 1*

1. The frontiers of Hungary with Austria and with Yugoslavia shall remain those which existed on January 1, 1938.

2. The decisions of the Vienna Award of August 30, 1940, are declared null and void. The frontier between Hungary and Roumania as it existed on January 1, 1938, is hereby restored.

3. The frontier between Hungary and the Union of Soviet Socialist Republics, from the point common to the frontier of those two States and Roumania to the point common to the frontier of those two States and Czechoslovakia, is fixed along the former frontier between Hungary and Czechoslovakia as it existed on January 1, 1938.

4. (a) The decisions of the Vienna Award of November 2, 1938, are declared null and void.

(b) The frontier between Hungary and Czechoslovakia from the point common to the frontier of those two States and Austria to the point common to those two States and the Union of Soviet Socialist Republics is hereby restored as it existed on January 1, 1938, with the exception of the change resulting from the stipulations of the following sub-paragraph.

(c) Hungary shall cede to Czechoslovakia the villages of Horvathjarfalu, Oroszvar and Dunacsun, together with their cadastral territory as indicated on Map No. IA¹ annexed to the present Treaty.

¹ This is one of two large-scale maps which comprise Annex I as indicated in note (1) on the following page.

Accordingly, the Czechoslovak frontier on this sector shall be fixed as follows: from the point common to the frontiers of Austria, Hungary and Czechoslovakia, as they existed on January 1, 1938, the present Hungarian-Austrian frontier shall become the frontier between Austria and Czechoslovakia as far as a point roughly 500 meters south of hill 134 (3.5 kilometers northwest of the church of Rajka), this point now becoming common to the frontiers of the three named States; thence the new frontier between Czechoslovakia and Hungary shall go eastwards along the northern cadastral boundary of the village of Rajka to the right bank of the Danube at a point approximately 2 kilometers north of hill 128 (3.5 kilometers east of the church of Rajka), where the new frontier will, in the principal channel of navigation of the Danube, join the Czechoslovak-Hungarian frontier as it existed on January 1, 1938; the dam and spillway within the village limits of Rajka will remain on Hungarian territory.

(d) The exact line of the new frontier between Hungary and Czechoslovakia laid down in the preceding sub-paragraph shall be determined on the spot by a boundary Commission composed of the representatives of the two Governments concerned. The Commission shall complete its work within two months from the coming into force of the present Treaty.

(e) In the event of a bilateral agreement not being concluded between Hungary and Czechoslovakia concerning the transfer to Hungary of the population of the ceded area, Czechoslovakia guarantees them full human and civic rights. All the guarantees and prerogatives stipulated in the Czechoslovak-Hungarian Agreement of February 27, 1946, on the exchange of

populations will be applicable to those who voluntarily leave the area ceded to Czechoslovakia.

5. The frontiers described above are shown on Maps I and IA in Annex I² of the present Treaty.

PART II
POLITICAL CLAUSES

SECTION I

Article 2

1. Hungary shall take all measures necessary to secure to all persons under Hungarian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting.

2. Hungary further undertakes that the laws in force in Hungary shall not, either in their content or in their application, discriminate or entail any discrimination between persons of Hungarian nationality on the ground of their race, sex, language or religion, whether in reference to their persons, property, business, professional or financial interests, status, political or civil rights or any other matter.

Article 3

Hungary, which in accordance with the Armistice Agreement has taken measures to set free, irrespec-

² This Annex comprises two separate large-scale maps. The copies of the maps as received with the certified copy of the Treaty, from the Government of the Union of Soviet Socialist Republics, are deposited with the Treaty in the archives of the Department of State where they are available for reference.

tive of citizenship and nationality, all persons held in confinement on account of their activities in favour of, or because of their sympathies with, the United Nations or because of their racial origin, and to repeal discriminatory legislation and restrictions imposed thereunder, shall complete these measures and shall in future not take any measures or enact any laws which would be incompatible with the purposes set forth in this Article.

Article 4

Hungary, which in accordance with the Armistice Agreement has taken measures for dissolving all organisations of a Fascist type on Hungarian territory, whether political, military or para-military, as well as other organisations conducting propaganda, including revisionist propaganda, hostile to the United Nations, shall not permit in future the existence and activities of organisations of that nature which have as their aim denial to the people of their democratic rights.

Article 5

1. Hungary shall enter into negotiations with Czechoslovakia in order to solve the problem of those inhabitants of Magyar ethnic origin, residing in Czechoslovakia, who will not be settled in Hungary in accordance with the provisions of the Agreement of February 27, 1946, on exchange of populations.

2. Should no agreement be reached within a period of six months from the coming into force of the present Treaty, Czechoslovakia shall have the right to bring this question before the Council of Foreign Ministers and to request the assistance of the Council in effecting a final solution.

Article 6

1. Hungary shall take all necessary steps to ensure the apprehension and surrender for trial of:

(a) Persons accused of having committed, ordered or abetted war crimes and crimes against peace or humanity;

(b) Nationals of any Allied or Associated Power accused of having violated their national law by treason or collaboration with the enemy during the war.

2. At the request of the United Nations Government concerned, Hungary shall likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article.

3. Any disagreement concerning the application of the provisions of paragraphs 1 and 2 of this Article shall be referred by any of the Governments concerned to the Heads of the Diplomatic Missions in Budapest of the Soviet Union, the United Kingdom and the United States of America, who will reach agreement with regard to the difficulty.

SECTION II

Article 7

Hungary undertakes to recognise the full force of the Treaties of Peace with Italy, Roumania, Bulgaria and Finland and other agreements or arrangements which have been or will be reached by the Allied and Associated Powers in respect of Austria, Germany and Japan for the restoration of peace.

Article 8

The state of war between Hungary and Roumania shall terminate upon the coming into force both of the present Treaty of Peace and the Treaty of Peace between the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Australia, the Byelorussian Soviet Socialist Republic, Canada, Czechoslovakia, India, New Zealand, the Ukrainian Soviet Socialist Republic and the Union of South Africa, of the one part, and Roumania of the other part.

Article 9

Hungary undertakes to accept any arrangements which have been or may be agreed for the liquidation of the League of Nations and the Permanent Court of International Justice.

Article 10

1. Each Allied or Associated Power will notify Hungary, within a period of six months from the coming into force of the present Treaty, which of its pre-war bilateral treaties with Hungary it desires to keep in force or revive. Any provisions not in conformity with the present Treaty shall, however, be deleted from the above-mentioned treaties.

2. All such treaties so notified shall be registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.

3. All such treaties not so notified shall be regarded as abrogated.

Article 11

1. Hungary shall hand over to Yugoslavia and to Czechoslovakia, within a period of not more than eighteen months from the coming into force of the present Treaty, objects of the following categories constituting the cultural heritage of Yugoslavia and Czechoslovakia which originated in those territories and which, after 1848, came into the possession of the Hungarian State or of Hungarian public institutions as a consequence of Hungarian domination over those territories prior to 1919:

(a) Historical archives which came into being as integral wholes in Yugoslav or Czechoslovak territories;

(b) Libraries, historical documents, antiquities and other cultural objects which belonged to the institutions on Yugoslav or Czechoslovak territories or to historical personalities of the Yugoslav and Czechoslovak peoples;

(c) Original artistic, literary and scientific objects which are the work of Yugoslav or Czechoslovak artists, writers and scientists.

2. Objects acquired by purchase, gift or legacy and original works of Hungarians are excluded from the provisions of paragraph 1.

3. Hungary shall also hand over to Yugoslavia the archives of the Illyrian Deputation, the Illyrian Commission and Illyrian Chancellery, which relate to the 18th century.

4. The Hungarian Government shall, on the coming into force of the present Treaty, give the authorised representatives of Yugoslavia and Czechoslovakia all necessary assistance in finding these objects and

making them available for examination. Thereafter, but no later than one year from the coming into force of the present Treaty, the Yugoslav and Czechoslovak Governments shall hand the Hungarian Government a list of the objects claimed under this Article. Should the Hungarian Government, within three months of the receipt of the list, raise objection to the inclusion therein of any objects, and should no agreement be reached between the Governments concerned within a further month, the dispute shall be settled in accordance with the provisions of Article 40 of the present Treaty.

PART III

MILITARY AND AIR CLAUSES

SECTION I

Article 12

The maintenance of land and air armaments and fortifications shall be closely restricted to meeting tasks of an internal character and local defence of frontiers. In accordance with the foregoing, Hungary is authorized to have armed forces consisting of not more than:

(a) A land army, including frontier troops, anti-aircraft and river flotilla personnel, with a total strength of 65,000 personnel;

(b) An air force of 90 aircraft, including reserves, of which not more than 70 may be combat types of aircraft, with a total personnel strength of 5,000. Hungary shall not possess or acquire any aircraft designed primarily as bombers with internal bomb-carrying facilities.

These strengths shall in each case include combat, service and overhead personnel.

Article 13

The personnel of the Hungarian Army and Air Force in excess of the respective strengths permitted under Article 12 shall be disbanded within six months from the coming into force of the present Treaty.

Article 14

Personnel not included in the Hungarian Army or Air Force shall not receive any form of military training or military air training as defined in Annex II.

Article 15

Hungary shall not possess, construct or experiment with any atomic weapon, any self-propelled or guided missiles or apparatus connected with their discharge (other than torpedoes and torpedo launching gear comprising the normal armament of naval vessels permitted by the present Treaty), sea mines or torpedoes of non-contact types actuated by influence mechanisms, torpedoes capable of being manned, submarines or other submersible craft, motor torpedo boats, or specialised types of assault craft.

Article 16

Hungary shall not retain, produce or otherwise acquire, or maintain facilities for the manufacture of, war material in excess of that required for the maintenance of the armed forces permitted under Article 12 of the present Treaty.

Article 17

1. Excess war material of Allied origin shall be placed at the disposal of the Allied or Associated Power concerned according to the instructions given by that Power. Excess Hungarian war material shall be placed at the disposal of the Governments of the Soviet Union, the United Kingdom and the United States of America. Hungary shall renounce all rights to this material.

2. War material of German origin or design in excess of that required for the armed forces permitted under the present Treaty shall be placed at the disposal of the Three Governments. Hungary shall not acquire or manufacture any war material of German origin or design, or employ or train any technicians, including military and civil aviation personnel, who are or have been nationals of Germany.

3. Excess war material mentioned in paragraphs 1 and 2 of this Article shall be handed over or destroyed within one year from the coming into force of the present Treaty.

4. A definition and list of war material for the purposes of the present Treaty are contained in Annex III.

Article 18

Hungary shall co-operate fully with the Allied and Associated Powers with a view to ensuring that Germany may not be able to take steps outside German territory towards rearmament.

Article 19

Hungary shall not acquire or manufacture civil aircraft which are of German or Japanese design or

which embody major assemblies of German or Japanese manufacture or design.

Article 20

Each of the military and air clauses of the present Treaty shall remain in force until modified in whole or in part by agreement between the Allied and Associated Powers and Hungary or, after Hungary becomes a member of the United Nations, by agreement between the Security Council and Hungary.

SECTION II

Article 21

1. Hungarian prisoners of war shall be repatriated as soon as possible, in accordance with arrangements agreed upon by the individual Powers detaining them and Hungary.

2. All costs, including maintenance costs, incurred in moving Hungarian prisoners of war from their respective assembly points, as chosen by the Government of the Allied or Associated Power concerned, to the point of their entry into Hungarian territory, shall be borne by the Hungarian Government.

PART IV

WITHDRAWAL OF ALLIED FORCES

Article 22

1. Upon the coming into force of the present Treaty, all Allied forces shall, within a period of 90 days, be withdrawn from Hungary, subject to the right of the Soviet Union to keep on Hungarian territory such armed forces as it may need for the maintenance of the lines of communication of the Soviet Army with the Soviet zone of occupation in Austria.

2. All unused Hungarian currency and all Hungarian goods in possession of the Allied forces in Hungary, acquired pursuant to Article 11 of the Armistice Agreement, shall be returned to the Hungarian Government within the same period of 90 days.

3. Hungary shall, however, make available such maintenance and facilities as may specifically be required for the maintenance of the lines of communication with the Soviet zone of occupation in Austria, for which due compensation will be made to the Hungarian Government.

PART V

REPARATION AND RESTITUTION

Article 23

1. Losses caused to the Soviet Union, Czechoslovakia and Yugoslavia by military operations and by the occupation by Hungary of the territories of these States shall be made good by Hungary to the Soviet Union, Czechoslovakia and Yugoslavia, but, taking into consideration that Hungary has not only withdrawn from the war against the United Nations, but has also declared war on Germany, the Parties agree that compensation for the above losses will be made by Hungary not in full but only in part, namely in the amount of \$300,000,000 payable over eight years from January 20, 1945, in commodities (machine equipment, river craft, grain and other commodities), the sum to be paid to the Soviet Union to amount to \$200,000,000, and the sum to be paid to Czechoslovakia and Yugoslavia to amount to \$100,000,000.

2. The basis of calculation for the settlement provided in this Article will be the United States dollar

at its gold parity on the day of the signing of the Armistice Agreement, i.e. \$35 for one ounce of gold.

Article 24

1. Hungary accepts the principles of the United Nations Declaration of January 5, 1943, and shall return, in the shortest possible time, property removed from the territory of any of the United Nations.

2. The obligation to make restitution applies to all identifiable property at present in Hungary which was removed by force or duress by any of the Axis Powers from the territory of any of the United Nations, irrespective of any subsequent transactions by which the present holder of any such property has secured possession.

3. If, in particular cases, it is impossible for Hungary to make restitution of objects of artistic, historic or archaeological value, belonging to the cultural heritage of the United Nation from whose territory such objects were removed by force or duress by Hungarian forces, authorities or nationals, Hungary shall transfer to the United Nation concerned objects of the same kind as, and of approximately equivalent value to, the objects removed, in so far as such objects are obtainable in Hungary.

4. The Hungarian Government shall return the property referred to in this Article in good order and, in this connection, shall bear all costs in Hungary relating to labour, materials and transport.

5. The Hungarian Government shall co-operate with the United Nations in, and shall provide at its own expense all necessary facilities for, the search for and restitution of property liable to restitution under this Article.

6. The Hungarian Government shall take the necessary measures to effect the return of property covered by this Article held in any third country by persons subject to Hungarian jurisdiction.

7. Claims for the restitution of property shall be presented to the Hungarian Government by the Government of the country from whose territory the property was removed, it being understood that rolling stock shall be regarded as having been removed from the territory to which it originally belonged. The period during which such claims may be presented shall be six months from the coming into force of the present Treaty.

8. The burden of identifying the property and of proving ownership shall rest on the claimant Government, and the burden of proving that the property was not removed by force or duress shall rest on the Hungarian Government.

Article 25

The annulment of the Vienna Award of November 2, 1938, as provided in Article 1, paragraph 4, of the present Treaty, shall entail the annulment of the agreements, as well as the legal consequences ensuing therefrom, relating to matters of finance and public and private insurance, concluded between or on behalf of the two States concerned or between Czechoslovak and Hungarian juridical persons on the basis of the Vienna Award and in respect of the material handed over in accordance with the Protocol of May 22, 1940. This annulment shall not apply in any way to relations between physical persons. The details of the above-mentioned settlement shall be arranged by bilateral agreements between the Governments concerned,

within a period of six months from the coming into force of the present Treaty.

PART VI
ECONOMIC CLAUSES

Article 26

1. In so far as Hungary has not already done so, Hungary shall restore all legal rights and interests in Hungary of the United Nations and their nationals as they existed on September 1, 1939, and shall return all property in Hungary of the United Nations and their nationals as it now exists.

2. The Hungarian Government undertakes that all property, rights and interests passing under this Article shall be restored free of all encumbrances and charges of any kind to which they may have become subject as a result of the war and without the imposition of any charges by the Hungarian Government in connection with their return. The Hungarian Government shall nullify all measures, including seizures, sequestration or control, taken by it against United Nations property between September 1, 1939, and the coming into force of the present Treaty. In cases where the property has not been returned within six months from the coming into force of the present Treaty, application shall be made to the Hungarian authorities not later than twelve months from the coming into force of the Treaty, except in cases in which the claimant is able to show that he could not file his application within this period.

3. The Hungarian Government shall invalidate transfers involving property, rights and interests of any description belonging to United Nations nationals, where such transfers resulted from force or duress

exerted by Axis Governments or their agencies during the war.

In the case of Czechoslovak nationals, this paragraph shall also include transfers after November 2, 1938, which resulted from force or duress or from measures taken under discriminatory internal legislation by the Hungarian Government or its agencies in Czechoslovak territory annexed by Hungary.

4. (a) The Hungarian Government shall be responsible for the restoration to complete good order of the property returned to United Nations nationals under paragraph 1 of this Article. In cases where property cannot be returned or where, as a result of the war, a United Nations national has suffered a loss by reason of injury or damage to property in Hungary, he shall receive from the Hungarian Government compensation in Hungarian currency to the extent of two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered. In no event shall United Nations nationals receive less favourable treatment with respect to compensation than that accorded to Hungarian nationals.

(b) United Nations nationals who hold, directly or indirectly, ownership interests in corporations or associations which are not United Nations nationals within the meaning of paragraph 9 (a) of this Article, but which have suffered a loss by reason of injury or damage to property in Hungary, shall receive compensation in accordance with sub-paragraph (a) above. This compensation shall be calculated on the basis of the total loss or damage suffered by the corporation or association and shall bear the same proportion to such loss or damage as the beneficial interests of such

nationals in the corporation or association bear to the total capital thereof.

(c) Compensation shall be paid free of any levies, taxes or other charges. It shall be freely usable in Hungary but shall be subject to the foreign exchange control regulations which may be in force in Hungary from time to time.

(d) The Hungarian Government shall accord to United Nations nationals the same treatment in the allocation of materials for the repair or rehabilitation of their property in Hungary and in the allocation of foreign exchange for the importation of such materials as applies to Hungarian nationals.

(e) The Hungarian Government shall grant United Nations nationals an indemnity in Hungarian currency at the same rate as provided in subparagraph (a) above to compensate them for the loss or damage due to special measures applied to their property during the war, and which were not applicable to Hungarian property. This sub-paragraph does not apply to a loss of profit.

5. The provisions of paragraph 4 of this Article shall apply to Hungary in so far as the action which may give rise to a claim for damage to property in Northern Transylvania belonging to the United Nations or their nationals took place during the period when this territory was subject to Hungarian authority.

6. All reasonable expenses incurred in Hungary in establishing claims, including the assessment of loss or damage, shall be borne by the Hungarian Government.

7. United Nations nationals and their property shall be exempted from any exceptional taxes, levies

or imposts imposed on their capital assets in Hungary by the Hungarian Government or any Hungarian authority between the date of the Armistice and the coming into force of the present Treaty for the specific purpose of meeting charges arising out of the war or of meeting the costs of occupying forces or of reparation payable to any of the United Nations. Any sums which have been so paid shall be refunded.

8. The owner of the property concerned and the Hungarian Government may agree upon arrangements in lieu of the provisions of this Article.

9. As used in this Article:

(a) "United Nations nationals" means individuals who are nationals of any of the United Nations, or corporations or associations organised under the laws of any of the United Nations, at the coming into force of the present Treaty, provided that the said individuals, corporations or associations also had this status at the date of the Armistice with Hungary.

The term "United Nations nationals" also includes all individuals, corporations or associations which, under the laws in force in Hungary during the war, have been treated as enemy;

(b) "Owner" means the United Nation, or the United Nations national as defined in sub-paragraph (a) above, entitled to the property in question, and includes a successor of the owner, provided that the successor is also a United Nation, or a United Nations national as defined in sub-paragraph (a). If the successor has purchased the property in its damaged state, the transferor shall retain his rights to compensation under this Article, without prejudice to obligations between the transferor and the purchaser under domestic law;

(c) "Property" means all movable or immovable property, whether tangible or intangible, including industrial, literary and artistic property, as well as all rights or interests of any kind in property.

10. The Hungarian Government recognizes that the Brioni Agreement of August 10, 1942, is null and void. It undertakes to participate with the other signatories of the Rome Agreement of May 29, 1923,³ in any negotiations having the purpose of introducing into its provisions the modifications necessary to ensure the equitable settlement of the annuities which it provides.

Article 27

1. Hungary undertakes that in all cases where the property, legal rights or interests in Hungary of persons under Hungarian jurisdiction have, since September 1, 1939, been the subject of measures of sequestration, confiscation or control on account of the racial origin or religion of such persons, the said property, legal rights and interests shall be restored together with their accessories or, if restoration is impossible, that fair compensation shall be made therefor.

2. All property, rights and interests in Hungary of persons, organisations or communities which, individually or as members of groups, were the object of racial, religious or other Fascist measures of persecution, and remaining heirless or unclaimed for six months after the coming into force of the present Treaty, shall be transferred by the Hungarian Government to organisations in Hungary representative of such persons, organisations or communities. The

³ The correct date of the Rome Agreement is Mar. 29, 1923.

property transferred shall be used by such organisations for purposes of relief and rehabilitation of surviving members of such groups, organisations and communities in Hungary. Such transfer shall be effected within twelve months from the coming into force of the Treaty, and shall include property, rights and interests required to be restored under paragraph 1 of this Article.

Article 28

Hungary recognizes that the Soviet Union is entitled to all German assets in Hungary transferred to the Soviet Union by the Control Council for Germany and undertakes to take all necessary measures to facilitate such transfers.

Article 29

1. Each of the Allied and Associated Powers shall have the right to seize, retain, liquidate or take any other action with respect to all property, rights and interests which at the coming into force of the present Treaty are within its territory and belong to Hungary or to Hungarian nationals, and to apply such property or the proceeds thereof to such purposes as it may desire, within the limits of its claims and those of its nationals against Hungary or Hungarian nationals, including debts, other than claims fully satisfied under other Articles of the present Treaty. All Hungarian property, or the proceeds thereof, in excess of the amount of such claims, shall be returned.

2. The liquidation and disposition of Hungarian property shall be carried out in accordance with the law of the Allied or Associated Power concerned. The Hungarian owner shall have no rights with respect to such property except those which may be given him by that law.

3. The Hungarian Government undertakes to compensate Hungarian nationals whose property is taken under this Article and not returned to them.

4. No obligation is created by this Article on any Allied or Associated Power to return industrial property to the Hungarian Government or Hungarian nationals, or to include such property in determining the amounts which may be retained under paragraph 1 of this Article. The Government of each of the Allied and Associated Powers shall have the right to impose such limitations, conditions and restrictions on rights or interests with respect to industrial property in the territory of that Allied or Associated Power, acquired prior to the coming into force of the present Treaty by the Government or nationals of Hungary, as may be deemed by the Government of the Allied or Associated Power to be necessary in the national interest.

5. The property covered by paragraph 1 of this Article shall be deemed to include Hungarian property which has been subject to control by reason of a state of war existing between Hungary and the Allied or Associated Power having jurisdiction over the property, but shall not include:

(a) Property of the Hungarian Government used for consular or diplomatic purposes;

(b) Property belonging to religious bodies or private charitable institutions and used for religious or charitable purposes;

(c) Property of natural persons who are Hungarian nationals permitted to reside within the territory of the country in which the property is located or to reside elsewhere in United Nations territory, other than Hungarian property which at any time during the war was subjected to measures not generally

applicable to the property of Hungarian nationals resident in the same territory;

(d) Property rights arising since the resumption of trade and financial relations between the Allied and Associated Powers and Hungary, or arising out of transactions between the Government of any Allied or Associated Power and Hungary since January 20, 1945;

(e) Literary and artistic property rights.

Article 30

1. From the coming into force of the present Treaty, property in Germany of Hungary and of Hungarian nationals shall no longer be treated as enemy property and all restrictions based on such treatment shall be removed.

2. Identifiable property of Hungary and of Hungarian nationals removed by force or duress from Hungarian territory to Germany by German forces or authorities after January 20, 1945, shall be eligible for restitution.

3. The restoration and restitution of Hungarian property in Germany shall be effected in accordance with measures which will be determined by the Powers in occupation of Germany.

4. Without prejudice to these and to any other dispositions in favour of Hungary and Hungarian nationals by the Powers occupying Germany, Hungary waives on its own behalf and on behalf of Hungarian nationals all claims against Germany and German nationals outstanding on May 8, 1945, except those arising out of contracts and other obligations entered into, and rights acquired, before September 1, 1939. This waiver shall be deemed to include debts, all inter-governmental claims in respect of arrangements

entered into in the course of the war and all claims for loss or damage arising during the war.

Article 31

1. The existence of the state of war shall not, in itself, be regarded as affecting the obligation to pay pecuniary debts arising out of obligations and contracts which existed, and rights which were acquired, before the existence of the state of war, which became payable prior to the coming into force of the present Treaty, and which are due by the Government or nationals of Hungary to the Government or nationals of one of the Allied and Associated Powers or are due by the Government or nationals of one of the Allied and Associated Powers to the Government or nationals of Hungary.

2. Except as otherwise expressly provided in the present Treaty, nothing therein shall be construed as impairing debtor-creditor relationships arising out of pre-war contracts concluded either by the Government or nationals of Hungary.

Article 32

1. Hungary waives all claims of any description against the Allied and Associated Powers on behalf of the Hungarian Government or Hungarian nationals arising directly out of the war or out of actions taken because of the existence of a state of war in Europe after September 1, 1939, whether or not the Allied or Associated Power was at war with Hungary at the time, including the following:

(a) Claims for losses or damages sustained as a consequence of acts of forces or authorities of Allied or Associated Powers;

(b) Claims arising from the presence, operations or actions of forces or authorities of Allied or Associated Powers in Hungarian territory;

(c) Claims with respect to the decrees or orders of Prize Courts of Allied or Associated Powers, Hungary agreeing to accept as valid and binding all decrees and orders of such Prize Courts on or after September 1, 1939, concerning Hungarian ships or Hungarian goods or the payment of costs;

(d) Claims arising out of the exercise or purported exercise of belligerent rights.

2. The provisions of this Article shall bar, completely and finally, all claims of the nature referred to herein, which will be henceforward extinguished, whoever may be the parties in interest. The Hungarian Government agrees to make equitable compensation in Hungarian currency to persons who furnished supplies or services on requisition to the forces of Allied or Associated Powers in Hungarian territory and in satisfaction of non-combat damage claims against the forces of Allied or Associated Powers arising in Hungarian territory.

3. Hungary likewise waives all claims of the nature covered by paragraph 1 of this Article on behalf of the Hungarian Government or Hungarian nationals against any of the United Nations whose diplomatic relations with Hungary were broken off during the war and which took action in co-operation with the Allied and Associated Powers.

4. The Hungarian Government shall assume full responsibility for all Allied military currency issued in Hungary by the Allied military authorities, including all such currency in circulation at the coming into force of the present Treaty.

5. The waiver of claims by Hungary under paragraph 1 of this Article includes any claims arising out of actions taken by any of the Allied and Associated Powers with respect to Hungarian ships between September 1, 1939, and the coming into force of the present Treaty, as well as any claims and debts arising out of the Conventions on prisoners of war now in force.

Article 33

1. Pending the conclusion of commercial treaties or agreements between individual United Nations and Hungary, the Hungarian Government shall, during a period of eighteen months from the coming into force of the present Treaty, grant the following treatment to each of the United Nations which, in fact, reciprocally grants similar treatment in like matters to Hungary:

(a) In all that concerns duties and charges on importation or exportation, the internal taxation of imported goods and all regulations pertaining thereto, the United Nations shall be granted unconditional most-favoured-nation treatment;

(b) In all other respects, Hungary shall make no arbitrary discrimination against goods originating in or destined for any territory of any of the United Nations as compared with like goods originating in or destined for territory of any other of the United Nations or of any other foreign country;

(c) United Nations nationals, including juridical persons, shall be granted national and most-favoured-nation treatment in all matters pertaining to commerce, industry, shipping and other forms of business activity within Hungary. These provisions shall not apply to commercial aviation;

(d) Hungary shall grant no exclusive or discriminatory right to any country with regard to the operation of commercial aircraft in international traffic, shall afford all the United Nations equality of opportunity in obtaining international commercial aviation rights in Hungarian territory, including the right to land for refueling and repair, and, with regard to the operation of commercial aircraft in international traffic, shall grant on a reciprocal and non-discriminatory basis to all United Nations the right to fly over Hungarian territory without landing. These provisions shall not affect the interests of the national defence of Hungary.

2. The foregoing undertakings by Hungary shall be understood to be subject to the exceptions customarily included in commercial treaties concluded by Hungary before the war, and the provisions with respect to reciprocity granted by each of the United Nations shall be understood to be subject to the exceptions customarily included in the commercial treaties concluded by that State.

Article 34

Hungary shall facilitate as far as possible railway traffic in transit through its territory at reasonable rates and shall negotiate with neighbouring States all reciprocal agreements necessary for this purpose.

Article 35

1. Any disputes which may arise in connection with Articles 24, 25 and 26 and Annexes IV, V and VI of the present Treaty shall be referred to a Conciliation Commission composed of an equal number of representatives of the United Nations Government concerned and of the Hungarian Government. If agreement has not been reached within three months of the

dispute having been referred to the Conciliation Commission, either Government may require the addition of a third member to the Commission, and failing agreement between the two Governments on the selection of this member, the Secretary-General of the United Nations may be requested by either party to make the appointment.

2. The decision of the majority of the members of the Commission shall be the decision of the Commission and shall be accepted by the parties as definitive and binding.

Article 36

Articles 24, 26, 33 and Annex VI of the present Treaty shall apply to the Allied and Associated Powers and France and to those of the United Nations whose diplomatic relations with Hungary have been broken off during the war.

Article 37

The provisions of Annexes IV, V and VI shall, as in the case of the other Annexes, have force and effect as integral parts of the present Treaty.

PART VII

CLAUSE RELATING TO THE DANUBE

Article 38

Navigation on the Danube shall be free and open for the nationals, vessels of commerce, and goods of all States, on a footing of equality in regard to port and navigation charges and conditions for merchant shipping. The foregoing shall not apply to traffic between ports of the same State.

PART VIII
FINAL CLAUSES

Article 39

1. For a period not to exceed eighteen months from the coming into force of the present Treaty, the Heads of the Diplomatic Missions in Budapest of the Soviet Union, the United Kingdom and the United States of America, acting in concert, will represent the Allied and Associated Powers in dealing with the Hungarian Government in all matters concerning the execution and interpretation of the present Treaty.

2. The Three Heads of Mission will give the Hungarian Government such guidance, technical advice and clarification as may be necessary to ensure the rapid and efficient execution of the present Treaty both in letter and in spirit.

3. The Hungarian Government shall afford the said Three Heads of Mission all necessary information and any assistance which they may require in the fulfilment of the tasks devolving on them under the present Treaty.

Article 40

1. Except where another procedure is specifically provided under any Article of the present Treaty, any dispute concerning the interpretation or execution of the Treaty, which is not settled by direct diplomatic negotiations, shall be referred to the Three Heads of Mission acting under Article 39, except that in this case the Heads of Mission will not be restricted by the time limit provided in that Article. Any such dispute not resolved by them within a period of two months shall, unless the parties to the dispute mutually agree upon another means of settlement, be referred at the

request of either party to the dispute to a Commission composed of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. Should the two parties fail to agree within a period of one month upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment.

2. The decision of the majority of the members of the Commission shall be the decision of the Commission, and shall be accepted by the parties as definitive and binding.

Article 41

1. Any member of the United Nations, not a signatory to the present Treaty, which is at war with Hungary, may accede to the Treaty and upon accession shall be deemed to be an Associated Power for the purposes of the Treaty.

2. Instruments of accession shall be deposited with the Government of the Union of Soviet Socialist Republics and shall take effect upon deposit.

Article 42

The present Treaty, of which the Russian and English texts are authentic, shall be ratified by the Allied and Associated Powers. It shall also be ratified by Hungary. It shall come into force immediately upon the deposit of ratifications by the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. The instruments of ratification shall, in the shortest time possible, be deposited with the Government of the Union of Soviet Socialist Republics.

With respect to each Allied or Associated Power whose instrument of ratification is thereafter deposited, the Treaty shall come into force upon the date of deposit. The present Treaty shall be deposited in the archives of the Government of the Union of Soviet Socialist Republics, which shall furnish certified copies to each of the signatory States.

LIST OF ANNEXES

- I. Maps of Hungarian Frontiers
- II. Definition of Military and Military Air Training
- III. Definition and list of war material
- IV. Special provisions relating to certain kinds of property:
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ANNEX I

(See Article 1)

Maps

- I. Hungarian Frontiers
 - IA. Rectification of the Hungarian-Czechoslovak Frontier

ANNEX II

(See Article 14)

Definition of Military and Military Air Training

1. Military training is defined as: the study of and practice in the use of war material specially designed or adapted for army purposes, and training devices relative thereto; the study and carrying out of all drill or movements which teach or practice evolutions performed by fighting forces in battle; and the organised study of tactics, strategy and staff work.

2. Military air training is defined as: the study of and practice in the use of war material specially designed or adapted for air force purposes, and training devices relative thereto; the study and practice of all specialised evolutions, including formation flying, performed by aircraft in the accomplishment of an air force mission; and the organised study of air tactics, strategy and staff work.

ANNEX III

(See Article 17)

Definition and List of War Material

The term “war material” as used in the present Treaty shall include all arms, ammunition and implements specially designed or adapted for use in war as listed below.

The Allied and Associated Powers reserve the right to amend the list periodically by modification or addition in the light of subsequent scientific development.

Category I.

1. Military rifles, carbines, revolvers and pistols; barrels for these weapons and other spare parts not readily adaptable for civilian use.

2. Machine guns, military automatic or autoloading rifles, and machine pistols; barrels for these weapons and other spare parts not readily adaptable for civilian use; machine gun mounts.

3. Guns, howitzers, mortars, cannon special to aircraft; breechless or recoil-less guns and flame-throwers; barrels and other spare parts not readily adaptable for civilian use; carriages and mountings for the foregoing.

4. Rocket projectors; launching and control mechanisms for self-propelling and guided missiles; mountings for same.

5. Self-propelling and guided missiles, projectiles, rockets, fixed ammunition and cartridges, filled or unfilled, for the arms listed in subparagraphs 1-4 above and fuses, tubes or contrivances to explode or operate them. Fuses required for civilian use are not included.

6. Grenades, bombs, torpedoes, mines, depth charges and incendiary materials or charges, filled or unfilled; all means for exploding or operating them. Fuses required for civilian use are not included.

7. Bayonets.

Category II.

1. Armoured fighting vehicles; armoured trains, not technically convertible to civilian use.

2. Mechanical and self-propelled carriages for any of the weapons listed in Category I; special type

military chassis or bodies other than those enumerated in sub-paragraph 1 above.

3. Armour plate, greater than three inches in thickness, used for protective purposes in warfare.

Category III.

1. Aiming and computing devices, including predictors and plotting apparatus, for fire control; direction of fire instruments; gun sights; bomb sights; fuse setters; equipment for the calibration of guns and fire control instruments.

2. Assault bridging, assault boats and storm boats.

3. Deceptive warfare, dazzle and decoy devices.

4. Personal war equipment of a specialised nature not readily adaptable to civilian use.

Category IV.

1. Warships of all kinds, including converted vessels and craft designed or intended for their attendance or support, which cannot be technically recon-verted to civilian use, as well as weapons, armour, ammunition, aircraft and all other equipment, material, machines and installations not used in peace time on ships other than warships.

2. Landing craft and amphibious vehicles or equipment of any kind; assault boats or devices of any type as well as catapults or other apparatus for launching or throwing aircraft, rockets, propelled weapons or any other missile, instrument or device whether manned or unmanned, guided or uncontrolled.

3. Submersible or semi-submersible ships, craft, weapons, devices or apparatus of any kind, including

specially designed harbour defence booms, except as required by salvage, rescue or other civilian uses, as well as all equipment, accessories, spare parts, experimental or training aids, instruments or installations as may be specially designed for the construction, testing, maintenance or housing of the same.

Category V.

1. Aircraft, assembled or unassembled, both heavier and lighter than air, which are designed or adapted for aerial combat by the use of machine guns, rocket projectors or artillery or for the carrying and dropping of bombs, or which are equipped with, or which by reason of their design or construction are prepared for, any of the appliances referred to in sub-paragraph 2 below.

2. Aerial gun mounts and frames, bomb racks, torpedo carriers and bomb release or torpedo release mechanisms; gun turrets and blisters.

3. Equipment specially designed for and used solely by airborne troops.

4. Catapults or launching apparatus for ship-borne, land- or sea-based aircraft; apparatus for launching aircraft weapons.

5. Barrage balloons.

Category VI.

Asphyxiating, lethal, toxic or incapacitating substances intended for war purposes, or manufactured in excess of civilian requirements.

Category VII.

Propellants, explosives, pyrotechnics or liquefied gases destined for the propulsion, explosion, charging

or filling of, or for use in connection with, the war material in the present categories, not capable of civilian use or manufactured in excess of civilian requirements.

Category VIII.

Factory and tool equipment specially designed for the production and maintenance of the material enumerated above and not technically convertible to civilian use.

ANNEX IV

Special Provisions Relating to
Certain Kinds of Property

**A. INDUSTRIAL, LITERARY
AND ARTISTIC PROPERTY**

1. (a) A period of one year from the coming into force of the present Treaty shall be accorded to the Allied and Associated Powers and their nationals without extension fees or other penalty of any sort in order to enable them to accomplish all necessary acts for the obtaining or preserving in Hungary of rights in industrial, literary and artistic property which were not capable of accomplishment owing to the existence of a state of war.

(b) Allied and Associated Powers or their nationals who had duly applied in the territory of any Allied or Associated Power for a patent or registration of a utility model not earlier than twelve months before the outbreak of the war with Hungary or during the war, or for the registration of an industrial design or model or trade mark not earlier than six months before the outbreak of the war with Hungary or during the war, shall be entitled within twelve months after the coming into force of the present Treaty to apply for

corresponding rights in Hungary, with a right of priority based upon the previous filing of the application in the territory of that Allied or Associated Power.

(c) Each of the Allied and Associated Powers and its nationals shall be accorded a period of one year from the coming into force of the present Treaty during which they may institute proceedings in Hungary against those natural or juridical persons who are alleged illegally to have infringed their rights in industrial, literary or artistic property between the date of the outbreak of the war and the coming into force of the Treaty.

2. A period from the outbreak of the war until a date eighteen months after the coming into force of the present Treaty shall be excluded in determining the time within which a patent must be worked or a design or trade mark used.

3. The period from the outbreak of the war until the coming into force of the present Treaty shall be excluded from the normal term of rights in industrial, literary and artistic property which were in force in Hungary at the outbreak of the war or which are recognized or established under part A of this Annex and belong to any of the Allied and Associated Powers or their nationals. Consequently, the normal duration of such rights shall be deemed to be automatically extended in Hungary for a further term corresponding to the period so excluded.

4. The foregoing provisions concerning the rights in Hungary of the Allied and Associated Powers and their nationals shall apply equally to the rights in the territories of the Allied and Associated Powers of Hungary and its nationals. Nothing, however, in these provisions shall entitle Hungary or its nationals to

more favourable treatment in the territory of any of the Allied and Associated Powers than is accorded by such Power in like cases to other United Nations or their nationals, nor shall Hungary be thereby required to accord to any of the Allied and Associated Powers or its nationals more favourable treatment than Hungary or its nationals receive in the territory of such Power in regard to the matters dealt with in the foregoing provisions.

5. Third parties in the territories of any of the Allied and Associated Powers or Hungary who, before the coming into force of the present Treaty, had bona fide acquired industrial, literary or artistic property rights conflicting with rights restored under part A of this Annex or with rights obtained with the priority provided thereunder, or had bona fide manufactured, published, reproduced, used or sold the subject matter of such rights, shall be permitted, without any liability for infringement, to continue to exercise such rights and to continue or to resume such manufacture, publication, reproduction, use or sale which had been bona fide acquired or commenced. In Hungary, such permission shall take the form of a non-exclusive license granted on terms and conditions to be mutually agreed by the parties thereto or, in default of agreement, to be fixed by the Conciliation Commission established under Article 35 of the present Treaty. In the territories of each of the Allied and Associated Powers, however, bona fide third parties shall receive such protection as is accorded under similar circumstances to bona fide third parties whose rights are in conflict with those of the nationals of other Allied and Associated Powers.

6. Nothing in part A of this Annex shall be construed to entitle Hungary or its nationals to any

patent or utility model rights in the territory of any of the Allied and Associated Powers with respect to inventions, relating to any article listed by name in Annex III of the present Treaty, made, or upon which applications were filed, by Hungary, or any of its nationals, in Hungary or in the territory of any other of the Axis Powers, or in any territory occupied by the Axis forces, during the time when such territory was under the control of the forces or authorities of the Axis Powers.

7. Hungary shall likewise extend the benefits of the foregoing provisions of this Annex to France, and to other United Nations which are not Allied or Associated Powers, whose diplomatic relations with Hungary have been broken off during the war and which undertake to extend to Hungary the benefits accorded to Hungary under the said provisions.

8. Nothing in part A of this Annex shall be understood to conflict with Articles 26, 29 and 31 of the present Treaty.

B. INSURANCE

1. No obstacles, other than any applicable to insurers generally, shall be placed in the way of the resumption by insurers who are United Nations nationals of their former portfolios of business.

2. Should an insurer, who is a national of any of the United Nations, wish to resume his professional activities in Hungary, and should the value of the guarantee deposits or reserves required to be held as a condition of carrying on business in Hungary be found to have decreased as a result of the loss or depreciation of the securities which constituted such deposits or reserves, the Hungarian Government undertakes to accept, for a period of eighteen months,

such securities as still remain as fulfilling any legal requirements in respect of deposits and reserves.

ANNEX V

Contracts, Prescription and Negotiable Instruments

A. CONTRACTS

1. Any contract which required for its execution intercourse between any of the parties thereto having become enemies as defined in part D of this Annex, shall, subject to the exceptions set out in paragraphs 2 and 3 below, be deemed to have been dissolved as from the time when any of the parties thereto became enemies. Such dissolution, however, is without prejudice to the provisions of Article 31 of the present Treaty, nor shall it relieve any party to the contract from the obligation to repay amounts received as advances or as payments on account and in respect of which such party has not rendered performance in return.

2. Notwithstanding the provisions of paragraph 1 above, there shall be excepted from dissolution and, without prejudice to the rights contained in Article 29 of the present Treaty, there shall remain in force such parts of any contract as are severable and did not require for their execution intercourse between any of the parties thereto, having become enemies as defined in part D of this Annex. Where the provisions of any contract are not so severable, the contract shall be deemed to have been dissolved in its entirety. The foregoing shall be subject to the application of domestic laws, orders or regulations made by any of the Allied and Associated Powers having jurisdiction over the contract or over any of the parties thereto and shall be subject to the terms of the contract.

3. Nothing in part A of this Annex shall be deemed to invalidate transactions lawfully carried out in accordance with a contract between enemies if they have been carried out with the authorization of the Government of one of the Allied and Associated Powers.

4. Notwithstanding the foregoing provisions, contracts of insurance and re-insurance shall be subject to separate agreements between the Government of the Allied or Associated Power concerned and the Government of Hungary.

B. PERIODS OF PRESCRIPTION

1. All periods of prescription or limitation of right of action or of the right to take conservatory measures in respect of relations affecting persons or property, involving United Nations nationals and Hungarian nationals who, by reason of the state of war, were unable to take judicial action or to comply with the formalities necessary to safeguard their rights, irrespective of whether these periods commenced before or after the out-break of war, shall be regarded as having been suspended, for the duration of the war, in Hungarian territory on the one hand, and on the other hand in the territory of those United Nations which grant to Hungary, on a reciprocal basis, the benefit of the provisions of this paragraph. These periods shall begin to run again on the coming into force of the present Treaty. The provisions of this paragraph shall be applicable in regard to the periods fixed for the presentation of interest or dividend coupons or for the presentation for payment of securities drawn for repayment or repayable on any other ground.

2. Where, on account of failure to perform any act or to comply with any formality during the war,

measures of execution have been taken in Hungarian territory to the prejudice of a national of one of the United Nations, the Hungarian Government shall restore the rights which have been detrimentally affected. If such restoration is impossible or would be inequitable, the Hungarian Government shall provide that the United Nations national shall be afforded such relief as may be just and equitable in the circumstances.

C. NEGOTIABLE INSTRUMENTS

1. As between enemies, no negotiable instrument made before the war shall be deemed to have become invalid by reason only of failure within the required time to present the instrument for acceptance or payment, or to give notice of nonacceptance or non-payment to drawers or endorsers, or to protest the instrument, nor by reason of failure to complete any formality during the war.

2. Where the period within which a negotiable instrument should have been presented for acceptance or for payment, or within which notice of non-acceptance or non-payment should have been given to the drawer or endorser, or within which the instrument should have been protested, has elapsed during the war, and the party who should have presented or protested the instrument or have given notice of non-acceptance or non-payment has failed to do so during the war, a period of not less than three months from the coming into force of the present Treaty shall be allowed within which presentation, notice of non-acceptance or non-payment, or protest may be made.

3. If a person has, either before or during the war, incurred obligations under a negotiable instrument in

consequence of an undertaking given to him by a person who has subsequently become an enemy, the latter shall remain liable to indemnify the former in respect of these obligations, notwithstanding the outbreak of war.

D. SPECIAL PROVISIONS

1. For the purposes of this Annex, natural or juridical persons shall be regarded as enemies from the date when trading between them shall have become unlawful under laws, orders or regulations to which such persons or the contracts were subject.

2. Having regard to the legal system of the United States of America, the provisions of this Annex shall not apply as between the United States of America and Hungary.

ANNEX VI

Judgments

The Hungarian Government shall take the necessary measures to enable nationals of any of the United Nations at any time within one year from the coming into force of the present Treaty to submit to the appropriate Hungarian authorities for review any judgment given by a Hungarian court between April 10, 1941, and the coming into force of the present Treaty in any proceeding in which the United Nations national was unable to make adequate presentation of his case either as plaintiff or defendant. The Hungarian Government shall provide that, where the United Nations national has suffered injury by reason of any such judgment, he shall be restored in the position in which he was before the judgment was given or shall be afforded such relief as may be just and equitable in the circumstances. The term "United

Nations nationals” includes corporations or associations organised or constituted under the laws of any of the United Nations.

In faith whereof the undersigned Plenipotentiaries have signed the present Treaty and have affixed thereto their seals.⁴

Done in the city of Paris in the Russian, English, French and Hungarian languages this tenth day of February, One Thousand Nine Hundred Forty-Seven.

FOR THE UNION OF SOVIET
SOCIALIST REPUBLICS:

(Signature)

[SEAL]

(Signature)

[SEAL]

FOR THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND:

(Signature)

(Signature)

[SEAL]

FOR THE UNITED STATES OF AMERICA:

(Signature)

[SEAL]

(Signature)

[SEAL]

FOR AUSTRALIA:

(Signature)

[SEAL]

⁴ For romanization of the facsimile signatures, see p. 2228.

FOR THE BYELORUSSIAN SOVIET SOCIALIST
REPUBLIC:

(Signature)

[SEAL]

FOR CANADA:

(Signature)

[SEAL]

FOR CZECHOSLOVAKIA:

(Signature)

[SEAL]

(Signature)

[SEAL]

FOR INDIA:

(Signature)

[SEAL]

FOR NEW ZEALAND:

(Signature)

[SEAL]

FOR THE UKRAINIAN SOVIET SOCIALIST
REPUBLIC:

(Signature)

[SEAL]

FOR THE UNION OF SOUTH AFRICA:

(Signature)

[SEAL]

FOR THE PEOPLE'S FEDERAL
REPUBLIC OF YUGOSLAVIA:

(Signature)

[SEAL]

(Signature)

[SEAL]

(Signature)

[SEAL]

FOR HUNGARY:

(Signature)

[SEAL]

WHEREAS the Senate of the United States of America by their resolution of June 5, 1947, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the said Treaty;

WHEREAS the said Treaty was duly ratified by the President of the United States of America on June 14, 1947, in pursuance of the aforesaid advice and consent of the Senate;

WHEREAS it is provided in Article 42 of the said Treaty that the Treaty shall come into force immediately upon the deposit with the Government of the Union of Soviet Socialist Republics of ratifications by the United States of America, by the Union of Soviet Socialist Republics, and by the United Kingdom of Great Britain and Northern Ireland;

WHEREAS instruments of ratification were deposited with the Government of the Union of Soviet Socialist Republics on September 15, 1947 by the United States of America, by the Union of Soviet Socialist Republics, and by the United Kingdom of Great Britain and Northern Ireland;

AND WHEREAS an instrument of ratification was also deposited with the Government of the Union of Soviet Socialist Republics on September 15, 1947 by Hungary;

NOW, THEREFORE, be it known that I, Harry S. Truman, President of the United States of America, do hereby proclaim and make public the said Treaty of Peace with Hungary to the end that the same and every article and clause thereof shall be observed and

fulfilled with good faith, on and after September 15, 1947, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof, and do hereby further proclaim that the state of war between the United States of America and Hungary terminated on September 15, 1947.

IN TESTIMONY WHEREOF, I have caused the Seal of the United States of America to be hereunto affixed.

DONE at the city of Washington this fifteenth day of September in the year of our Lord one thousand nine hundred forty-seven and of the Independence of the United States of America the one hundred seventy-second.

HARRY S TRUMAN

[SEAL]

By the President:

ROBERT A LOVETT

Acting Secretary of State

Note by the Department of State

The following is a romanization of the facsimile signatures:

FOR THE UNION OF SOVIET
SOCIALIST REPUBLICS:

V. MOLOTOV.

A BOGOMOLOV.

FOR THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND:

ERNEST BEVIN

DUFF COOPER

FOR THE UNITED STATES OF AMERICA:
JAMES F BYRNES
JEFFERSON CAFFERY

FOR AUSTRALIA:
JOHN. A. BEASLEY

FOR THE BYELORUSSIAN SOVIET
SOCIALIST REPUBLIC:
K KISSELEV

FOR CANADA:
GEORGE P. VANIER

FOR CZECHOSLOVAKIA:
JAN MASARYK
V. CLEMENTIS

FOR INDIA:
S. E. RUNGANADHAN.

FOR NEW ZEALAND:
W. J. JORDAN

FOR THE UKRAINIAN SOVIET
SOCIALIST REPUBLIC:
I. SENIN

FOR THE UNION OF SOUTH AFRICA:
W. G. PARMINTER.

FOR THE PEOPLE'S FEDERAL
REPUBLIC OF YUGOSLAVIA:
STANOJE S SIMI
RODOLJUB C OLAKOVI
DR PAVLE GREGORI

FOR HUNGARY:
JÁNOS GYONGYOSSI

The certification on page 2226 reads, in translation, as follows:

The Ministry of Foreign Affairs of the Union of Soviet Socialist Republics certifies by the seal affixed hereto that the present document is a true copy of the Treaty of Peace with Hungary signed at Paris on February 10, 1947, in the Russian, English, French and Hungarian languages in a single copy, the original of which is preserved in the archives of the Government of the Union of Soviet Socialist Republics.

By order of the Minister, Member of the Collegium and Chief of the Treaty-Law Division of the Ministry of Foreign Affairs of the U.S.S.R.

February 26, 1947.

S. GOLUNSKI.
[SEAL]

T.I.A.S. No. 1651, 61 Stat 2065, 1947 WL 26320
(U.S. Treaty)

82

EXHIBIT 2

No. 13350

UNITED STATES OF AMERICA

and

HUNGARY

**Agreement regarding the settlement
of claims (with annexes).**

Signed at Washington on 6 March 1973

Authentic texts: English and Hungarian.

*Registered by the United States of America on
30 May 1974.*

ÉTATS-UNIS D'AMÉRIQUE

et

HONGRIE

**Accord relatif au règlement
des créances (avec annexes).**

Signé à Washington le 6 mars 1973

Textes authentiques: anglais et hongrois.

*Enregistré par les États-Unis d'Amérique
le 30 mai 1974.*

**AGREEMENT¹ BETWEEN THE
GOVERNMENT OF THE UNITED STATES
OF AMERICA AND THE GOVERNMENT OF
THE HUNGARIAN PEOPLE'S REPUBLIC
REGARDING THE SETTLEMENT OF CLAIMS**

¹ Came into force on 6 March 1973 by signature, in accordance with article 9.

The Government of the United States of America and the Government of the Hungarian People's Republic, being desirous of effecting a settlement of all outstanding claims and advancing economic relations between the two Governments, have agreed upon the following articles:

Article I. (1) The Government of the Hungarian People's Republic agrees to pay, and the Government of the United States agrees to accept, the lump sum of \$18,900,000 (eighteen million nine hundred thousand dollars) in United States currency in full and final settlement and in discharge of all claims of the Government and nationals of the United States against the Government and nationals of the Hungarian People's Republic which are described in this Agreement.

(2) Such payment shall be made by the Government of the Hungarian People's Republic as provided in article 4 of this Agreement.

Article 2. The claims which are referred to in article 1, and which are being settled and discharged by this Agreement, are claims of nationals and the Government of the United States for:

- (1) property, rights and interests affected by Hungarian measures of nationalization, compulsory liquidation, expropriation, or other taking on or before the date of this Agreement, excepting real property owned by the Government of the United States;
- (2) obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to September 1, 1939, and which became payable prior to September 15, 1947;

- (3) obligations of the Hungarian People's Republic under articles 26 and 27 of the Treaty of Peace between the United States and Hungary dated February 10, 1947,² and
- (4) losses referred to in the note of December 10, 1952, of the Government of the United States to the Government of the Hungarian People's Republic.

Article 3. For the Purposes of this Agreement:

(1) The term "national of the United States" means (a) a natural person who is a citizen of the United States, or who owes permanent allegiance to the United States, and (b) a corporation or other legal entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity. It does not include aliens.

(2) The term "national of the Hungarian People's Republic" means (a) a natural person possessing Hungarian citizenship, and (b) a juridical person incorporated or constituted under Hungarian law.

Article 4. (1) Subject to the provisions of paragraph (2) of this article, the Government of the Hungarian People's Republic shall pay the lump sum referred to in article 1, paragraph (1), in twenty equal annual installments of \$945,000 (nine hundred and forty-five thousand dollars) in United States currency to the Secretary of State of the United States of America, each installment to be paid on the tenth day of June, commencing on the tenth day of June 1973.

² United Nations, *Treaty Series*, vol. 41, p. 135.

(2) With respect to paragraph (1) of this article, if six percent of the dollar proceeds of the imports into the United States from Hungary, based on the f.o.b. value, in the twelve months ending on December 31 preceding the date of payment, shall exceed \$945,000 (nine hundred and forty-five thousand dollars), the Government of the Hungarian People's Republic shall additionally pay the excess amount to the Secretary of State of the United States of America, which shall be credited towards the last payment or payments, as the case may be, in acceleration of the payment of the scheduled annual installments.

(3) The Government of the United States of America and of the Hungarian People's Republic agree that for the purpose of this Agreement, the f.o.b. value in dollar imports into the United States from Hungary shall be taken from the official publications of the United States Department of Commerce (that is, *FT 990, U.S. Foreign Trade, Highlights of Exports and Imports*, or its successor publications). The Government of the United States of America undertakes to inform the Government of the Hungarian People's Republic of that value on or before March 31 of each year.

Article 5. The distribution of the lump sum referred to in paragraph (1) of article 1 of this Agreement falls within the exclusive competence of the Government of the United States in accordance with its legislation, without any responsibility arising therefrom for the Government of the Hungarian People's Republic.

Article 6. (1) The Government of the United States declares that full payment of the lump sum referred to in article 1 shall discharge the Government of the Hungarian People's Republic and Hungarian nationals from their obligations to the Government of the United States and its nationals in respect of all claims

referred to in article 2 of this Agreement. Upon their discharge, the Government of the United States will consider as finally settled all claims for which compensation is provided under article 1, whether or not they have been brought to the attention of the Government of the Hungarian People's Republic.

(2) The Government of the Hungarian People's Republic declares that the lump sum referred to in article 1 has been arrived at by taking into account the following claims of the Hungarian People's Republic against the Government of the United States:

- (i) all liabilities in Hungary of the Government of the United States and its nationals in respect of property, rights and interests to which the settlement under article 1 relates;
- (ii) all claims of the Government of the Hungarian People's Republic in respect of vested Hungarian assets in the United States in the amount of US \$3,318,614 (three million three hundred eighteen thousand and six hundred fourteen dollars).
- (iii) Hungarian property lost as a result of World War II.

(3) After the entry into force of this Agreement, neither Government will present to the other on its behalf or on behalf of any person included in the definition of United States or Hungarian nationals any claims which have been referred to in this Agreement and neither Government will support such claims. In the event that such claims are presented directly by nationals of one country to the Government of the other, such Government will refer them to the Government of the national concerned.

Article 7. The documents evidencing the discharge of obligations described in article 6, paragraph (I), including any available documents of title, will be transmitted through diplomatic channels to the Government of the Hungarian People's Republic in due course. Should the Government of the Hungarian People's Republic require information regarding certain settled claims after the entry into force of this Agreement, the Government of the United States will supply the requested information in its possession.

Article 8. Within thirty days after the entry into force of this Agreement the Government of the United States will release its blocking controls over all Hungarian accounts in the United States.

Article 9. The present Agreement and the attached exchanges of letters shall enter into force on the date of signature.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement, and affixed thereto their seals.

DONE at Washington, in duplicate, in the English and Hungarian languages, both versions being equally authentic, this sixth day of March, 1973.

For the Government of the United States of America:

[Signed]

WILLIAM P. ROGERS
Secretary of State

For the Government of the Hungarian
People's Republic:

[Signed]

PÉTER VÁLYI
Deputy Prime Minister

ANNEX A

March 6, 1973

Dear Mr. Secretary:

With respect to expropriation claims by nationals of the United States which arose subsequent to August 9, 1955, and which are settled and discharged by virtue of article 2 (1) of the claims settlement agreement between our two countries concluded today, the Government of the Hungarian People's Republic wishes to convey its understanding to the Government of the United States of America that this settlement in no way constitutes a precedent for the Government of the Hungarian People's Republic for similar claims arising after the date of this Agreement.

Sincerely,

[Signed]

PÉTER VALYI

Deputy Prime Minister

His Excellency William P. Rogers
Secretary of State of the United States of America
Washington, D.C.

March 6, 1973

Dear Mr. Deputy Prime Minister:

In reply to your letter of today's date, the Government of the United States of America wishes to confirm the understanding of the Government of the Hungarian People's Republic that with respect to expropriation claims by nationals of the United States which arose subsequent to August 9, 1955, and which are settled and discharged by virtue of article 2 (1) of the claims settlement agreement between our two countries concluded today, this settlement in no way constitutes a precedent for the Government of the Hungarian People's Republic for similar claims arising after the date of this Agreement.

Sincerely,

[Signed]

WILLIAM P. ROGERS
Secretary of State

His Excellency Peter Vályi
Deputy Prime Minister of the
Hungarian People's Republic

ANNEX B

March 6, 1973

Dear Mr. Secretary:

With reference to article 2, paragraph 3, of the Agreement regarding claims of today's date I wish to inform you that all the obligations of the Government of the Hungarian People's Republic set out in article 27 of the Treaty of Peace with Hungary signed in Paris on February 10, 1947, have already been fulfilled.

Sincerely,

[Signed]

PÉTER VÁLYI

Deputy Prime Minister

His Excellency William P. Rogers
Secretary of State of the United States of America
Washington, D.C.

March 6, 1973

Dear Mr. Deputy Prime Minister:

In response to your letter of today's date concerning article 2, paragraph 3, of the Agreement regarding claims of today's date, the Government of the United States of America has taken note of the statement of the Government of the Hungarian People's Republic on article 27 of the Treaty of Peace with Hungary.

Sincerely,

[Signed]

WILLIAM P. ROGERS

Secretary of State

His Excellency Péter Vályi
Deputy Prime Minister of the
Hungarian People's Republic

ANNEX C

March 6, 1973

Dear Mr. Secretary:

With reference to article 6, paragraph (2) (iii), of the Agreement regarding claims of today's date, the Government of the Hungarian People's Republic states that this provision is confined to the settlement of claims by the Hungarian People's Republic against the United States and in no way prejudices claims of the Government of the Hungarian People's Republic based on international law practice against those countries in which such property was used.

Sincerely,

[Signed]

PÉTER VÁLYI

Deputy Prime Minister

His Excellency William P. Rogers
Secretary of State of the United States of America
Washington, D.C.

March 6, 1973

Dear Mr. Deputy Prime Minister:

The Government of the United States of America has taken note of and has no objection to, the statement of the Government of the Hungarian People's Republic regarding article 6, paragraph (2) (iii), in its letter of today's date.

Sincerely,

[Signed]

WILLIAM P. ROGERS

Secretary of State

His Excellency Péter Vályi
Deputy Prime Minister of the
Hungarian People's Republic

ANNEX D

March 6, 1973

Dear Mr. Deputy Prime Minister:

With reference to the Agreement regarding claims signed on this date, the Government of the United States of America wishes to state its understanding that the Government of the United States will not espouse claims of United States nationals which have arisen prior to the date of the Agreement based upon debts owed by enterprises nationalized by the Government of the Hungarian People's Republic. This understanding, however, does not exclude the possibility of such claimants presenting their claims to appropriate authorities in Hungary.

Sincerely,

*[Signed]*WILLIAM P. ROGERS
Secretary of StateHis Excellency Péter Vályi
Deputy Prime Minister of the
Hungarian People's Republic

March 6, 1973

Dear Mr. Secretary:

In reply to your letter of today's date, the Government of the Hungarian People's Republic confirms the understandings stated therein concerning debts owed by nationalized enterprises.

Sincerely,

*[Signed]*PÉTER VÁLYI
Deputy Prime MinisterHis Excellency William P. Rogers
Secretary of State of the United States of America
Washington, D.C.

ANNEX E

March, 6, 1973

Dear Mr. Secretary:

In connection with the interest expressed by the Government of the United States of America in the settlement of outstanding dollar bonds issued by predecessor Hungarian governments, municipalities and Hungarian financial institutions, the Government of the Hungarian People's Republic confirms its intention to settle the problem of this bonded indebtedness by direct talks with American bondholders or their representatives.

Sincerely,

[Signed]

PÉTER VÁLYI

Deputy Prime Minister

His Excellency William P. Rogers
Secretary of State of the United States of America
Washington, D.C.

March 6, 1973

Dear Mr. Deputy Prime Minister:

In reply to your letter of today's date, the Government of the United States of America notes and accepts the declaration of the Government of the Hungarian People's Republic that it intends to settle the problem of dollar bonded indebtedness by direct talks with American bondholders or their representatives.

Sincerely,

[Signed]

WILLIAM P. ROGERS

Secretary of State

His Excellency Péter Vályi
Deputy Prime Minister of the
Hungarian People's Republic

ANNEX F

March 6, 1973

Dear Mr. Deputy Prime Minister:

With reference to the Agreement regarding claims of today's date, the Government of the United States, taking note of the favorable conditions which exist for the development of trade and economic relations between the United States of America and the Hungarian People's Republic, agrees to seek authority from the Congress of the United States of America to accord most-favored-nation treatment to products originating in the Hungarian People's Republic.

If such authority is received from the Congress of the United States, the extension of most-favored-nation treatment by the Government of the United States of America to products originating in the Hungarian People's Republic and the extension of most-favored-nation treatment by the Government of the Hungarian People's Republic to products originating in the United States of America will be the subject of separate negotiations at which time the two Governments will settle to their satisfaction outstanding economic and commercial issues, including business facilitation, which affect trade between the two countries and relations between nationals of the two countries.

Sincerely,

*[Signed]*WILLIAM P. ROGERS
Secretary of StateHis Excellency Péter Vályi
Deputy Prime Minister of the
Hungarian People's Republic

March 6, 1973

Dear Mr. Secretary:

In response to your letter of today's date, the Government of the Hungarian People's Republic agrees that favorable conditions exist for the development of trade and economic relations between the United States of America and the Hungarian People's Republic and states its willingness to enter into negotiations leading toward the mutual extension of most-favored-nation treatment by both countries to products originating in the territory of the other as soon as the Government of the United States of America has received authority from the Congress of the United States of America to accord such treatment. In these negotiations the two Governments will settle to their satisfaction outstanding economic and commercial issues, including business facilitation, which affect trade between the two countries and relations between nationals of the two countries.

If it is not possible for the two Governments to extend reciprocally most-favored-nation treatment on mutually agreeable terms within a reasonable amount of time, the Government of the Hungarian People's Republic reserves the right to consult with a view toward considering the continuation of payments provided for by article 4 of the Agreement regarding claims of today's date.

Sincerely,

[Signed]

PÉTER VÁLYI

Deputy Prime Minister

His Excellency William P. Rogers
Secretary of State of the United States of America
Washington, D.C.

NEGOTIATING RECORD REGARDING
THE 1951 AERIAL INCIDENT

With reference to article 2, paragraph 4, of the Agreement regarding claims of today's date, the Government of the United States of America will earmark, out of the amount of the lump sum paid, \$125,000 for the settlement of the 1951 aerial incident.

NEGOTIATING RECORD REGARDING
CLAIMS OF UNITED STATES
CORPORATIONS AND ENTITIES

With reference to article 3 of the Agreement regarding claims of today's date, the Government of the United States will neither present nor support any claim described in this Agreement of a corporation or other legal entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, even if natural persons who are nationals of the United States own, directly or indirectly, 50 or less than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Case No. 1:10-cv-01770-BAH

ROSALIE SIMON, *et al.*,
Individually, for themselves and
for all others similarly situated,
Plaintiffs,

v.

THE REPUBLIC OF HUNGARY, *et al.*,
Defendants.

**DECLARATION OF
YAFFA (SARI/SHEINDEL) PROPPER DASCAL**

YAFFA (SARI/SHEINDEL) PROPPER DASCAL, under penalties of perjury and in accordance with 28 U.S.C. § 1746, declares as follows:

1. I am over eighteen years old and I am competent to make this Declaration.
2. I am a citizen of the State of Israel and reside at nursing home located at 20 Chibat Zion Street, Third Floor, Room 303, Ramat Gan, Israel.
3. I have notified the attorneys for the Plaintiffs in the above-captioned action that I am prepared to join this lawsuit either as a named plaintiff or as a member of the plaintiff class in the event the Court decides to certify this suit as a class action under Rule 23 of the Federal Rules of Civil Procedure.
4. I am fluent in the Hebrew, Yiddish and Hungarian languages. I am not able to understand or

read English. This Declaration was translated into Hebrew for me by Advocate Marc Zell so that I could understand its contents.

5. I was born in Dolha, Dovhe (Ilosva Region), Ruthenia, Czechoslovakia on 11 June 1929. My maiden name was Sari/Sheindel Propper.

6. I am the daughter of Tzvi Mordechai (Hermann) Propper (born Kovacsret/ Kushnitztza, Austria-Hungary, 1899) and Esther (Etel) Hershkovitz Propper (born Dolha, Austria-Hungary, 1902).

7. I am the sister of Chaya (Helena) (b. 1926, Dolha); Moshe (Moritz) (b. 1927, Dolha), Rivka Propper (b. 1933, Dolha), and Avraham Chaim Propper (b. 1939, Dolha).

8. My father owned and operated a general store in Dolha/Dovhe. When the Hungarians took over our town in 1939 they forced my father to close the store. He was forced to work at a bakery in nearby Kovacsret/Kushnitztza. He could barely support us.

9. In April 1944, we were expelled from our home and sent to the ghetto in Beregszasz by gendarmes acting on behalf of the Hungarian government.

10. We were not a wealthy family, but we had valuable possessions which my parents had saved for over the years. The gendarmes confiscated most of our family's possessions, which included valuable items of judaica, jewelry, furniture and furnishings as well as other personal belongings worth then well over U.S. \$2,000.00. These items were taken from us by the Hungarian government and never returned to us. Nor were we ever compensated for their taking.

11. We were imprisoned in the Beregszasz ghetto for about six weeks. Then on about May 15, 1944 we were driven without notice out of the ghetto by

Hungarian gendarmes and marched to the local railroad station that was owned and operated by the Hungarian State Railways (MÁV). I was almost 15 years at the time and remember seeing the MÁV insignia on the trains and around the train station. We were allowed to take only a few bundles with some clothing and some food items. I remember that my mother hid some jewelry items that she had managed to conceal from the Hungarian gendarmes when we were driven into the ghetto.

12. When we arrived at the MÁV train station, we were forced to leave some of our belongings at the station because the cattle car in which we were forced to ride had absolutely no room to hold anything other than people. My estimation is that there were between 80 — 90 people crammed into the MÁV cattle car.

13. The train ride was horrible. I will never forget it. There was no air. There was hardly any water and only a bucket in which we were allowed to take care of our natural needs. That soon filled up. The stench in the car was unbearable. There was no room to sit. We could not sit. We sat on our mother for lack of space. I remember one of the MÁV workers trying to sell water to people in the car for money. But my parents had nothing left with which to purchase the water.

14. We rode on the MÁV train for about three days before we reached our destination which turned out to be Birkenau in Auschwitz.

15. When we arrived in Auschwitz, we were forced out the car onto a platform where German SS guards were waiting for us. I remember seeing the SS Doctor, Josef Mengele, making the selections who would live and who would be sent to the gas. My father Tzvi Mordechai (Hermann) and my mother Esther (Etel)

together with my 11-year sister Rivka and my five-year old brother, Avraham Chaim, were sent immediately to the gas chambers together with my four grandparents, Leah Berkovich, Yaakov Berkovich (my father's parents); Michsho and Pesya Herschkovitz (my mother's parents). I never saw them again.

16. I was the oldest child at home. My sister was in Ungvar and Moritz my brother was living in Budapest for lack of food and money.

17. When I disembarked from the train I saw a mountain of shoes and ran to the pile to get a pair of shoes. I was saved when I joined some older children from our village. We were sent to the barracks after our hair was cut off. I was told to lie about my age lest I be deemed too young to live.

18. I remained in Auschwitz for two months approximately. I was taken by the Germans to Gelsenkirchen near Essen in Germany. I worked in a building removing stones and cement until September 1944. We were taken to a place Sommerda in central Germany where we worked 12-hours a day seven days continuously in an ammunitions factory. We were bombed constantly by Allied airforce. In March 1945 were sent on a death march to Czechoslovakia. I barely survived the snows and cold weather. Many of us on the march died. When the war ended in May 1945 I found myself in the Sudetenland where I was liberated by Soviet troops.

19. After the war I returned to our home in Ruthenia, but it was impossible to live there. In December 1945 my sister Chaya and I returned to Germany where I lived in a displaced persons camp until May 1948 when the State of Israel was declared

and we were able to emigrate to the Jewish State. I have lived here ever since.

20. In the 1960s and 1970s I attempted repeatedly to apply for compensation from the Hungarian government. I was assisted in this effort by the Association of Hungarian Emigres in Tel Aviv. They submitted various forms on my behalf to the Hungarian authorities and in each instance they reported to me that the Hungarian government refused to pay my claims. I applied for myself and for my parents and grandparents as well as for my gassed brother and sister. I was denied at every turn. Sometimes the excuse was that they lost my forms. At other times the excuse was that I had filled out the wrong form. In short, I never received one florint from the Hungarians either for my own suffering or that of my family.

21. One occurrence is particularly appalling and I will never forget it. When I applied for compensation from the Hungarian government for the deportation of my father, Tzvi Mordechai, who was called Hermann in Hungarian, my application was declined on the grounds that my Israeli identity card showed my father's name as Tzvi Mordechai, while he was registered as Hermann in Hungary. Everyone knows that the Hungarian equivalent of Tzvi is Hermann. Despite this the Hungarian government consistently refused to recognize this simple fact and denied my claim. It is an absolute outrage. I even traveled to Budapest to pursue my claims with the government office supposedly in charge of reparations, but they treated me as if I were a piece of garbage and chased me out of their offices in the early 1990s.

22. No compensation was ever paid to me or to those siblings who survived the war (now all dead) on

account of what was done to my family (my parents, my grandparents, and my younger sister and brother).

23. It is impossible for me now to travel to Hungary to pursue my claims for two reasons. First, at my age, 82, and in my physical condition (I suffer from diabetes and have already had one leg amputated as a result) I am in no position to travel to Hungary. Second, and more importantly, even if I were in a position to travel to Hungary, the mere thought of appearing in a courtroom of the very people who murdered almost my entire family and refused to compensate me for the horrible losses that my family and I incurred financially, psychologically and physically, is beyond my capacity to bear. This is not an idle thought, because I did make an effort to travel to Hungary in the 1990s to file my claims there and I was humiliated and abused by the Hungarian officials with whom I met. It is inconceivable that I would return to that place again (even if I could) and subject myself to the abuse and degradation that was shown me when I was last there. G-d forbid!

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true and correct.

Executed on May 2, 2011
Holocaust Memorial Day

/s/ Yaffa (Sheindel) Propper Dascal
Yaffa (Sheindel) Propper Dascal

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Case No. 1:10-cv-01770-BAH

ROSALIE SIMON, *et al.*,
Individually, for themselves and
for all others similarly situated,
Plaintiffs,

v.

THE REPUBLIC OF HUNGARY, *et al.*,
Defendants.

DECLARATION OF
MENACHEM (TIVADAR) BECK

MENACHEM (TIVADAR) BECK, under penalties of perjury and in accordance with 28 U.S.C. § 1746, declares as follows:

1. I am over eighteen years old and I am competent to make this Declaration.
2. I am a citizen of the State of Israel as well as a citizen of the Republic of Hungary and reside at 15 Kaddish Luz Street, Apartment 11, Ramat Sharett, Jerusalem 96920 in Israel.
3. I have notified the attorneys for the Plaintiffs in the above-captioned action that I am prepared to join this lawsuit either as a named plaintiff or as a member of the plaintiff class in the event the Court decides to certify this suit as a class action under Rule 23 of the Federal Rules of Civil Procedure.

4. I am fluent in the Hebrew and Hungarian languages. I am not able to understand or read English. This Declaration was translated into Hebrew for me by Advocate Marc Zell so that I could understand its contents.

5. I was born in Kecel in the Bács-Kiskun District, Hungary on 21 August 1938. This area is within what is known as Trianon Hungary and remains within the borders of the Republic of Hungary today.

6. I am the son of Márton Beck (b. Kiskunmajsa, Austria-Hungary, 5 October 1900) and Anna Vető (born Kecel, Austria-Hungary, 1906).

7. I am the brother of László (b. 1929, Kiskunhalas, Hungary).

8. Both my father and mother were Austro-Hungarian citizens and citizens of Hungary after the dissolution of the Austro-Hungarian Empire after World War I.

9. My father was a wine merchant and also dealt with agricultural commodities and made a good living. We were not wealthy by Hungarian standards, but we had a very comfortable existence. Before the deportation and my father's arrest (see Paragraph 10 below) we lived in a lovely rented home at II. Rákoczy Ferenc with servants. Our home was filled with valuable tapestries, crystalware, jewelry, silverware, judaica items, fine furniture, sets of dishes and tableware for dairy and meat as well as for Passover observance. I remember my father had an impressive and valuable gold pocket watch. My mother had a fine collection of jewelry including pearl necklaces, gold bracelets, diamond rings, and the like). My father and mother both owned valuable fur and fur-lined coats. In my estimation our household possessions were worth

more than \$5,000 United States Dollars in 1940s value.

10. In the fall of 1941 the Hungarian government arrested my father and incarcerated him in an internment camp quite some distance from Kecel. I believe (but am not sure) that the camp was located in a place called Garany. There was no legal basis for my father's arrest other than the fact that he was a Jew. My father was imprisoned in the camp for several months and then released. Following his release, our family left Kecel and took up residence in the nearby town of Kalocsa in 1942. In 1943 we moved to Budapest and after a sojourn there for just over a year, we returned to our home in Kecel. Despite our absence, we continue renting the home on Rákoczy Ferenc Street mentioned above.

11. Some time at the end of 1943 or in the beginning of 1944 but in any case before the Germans came to Hungary in March 1944, the Hungarian government took my father away to serve as a slave labor in one of the infamous Hungarian labor brigades. The reason given by the Hungarians for "conscripting" my father was the utterly false accusation that he had made a statement to the effect that when the Russians arrived, they would pave the road leading to the train station in Kecel with the skulls of Christians. As I said this was a lie, as my father told us repeatedly. Similar charges were made against other Jewish men when they were taken away to the labor brigades.

12. On March 19, 1944 the Germans arrived in Hungary. I was in the third grade and I remember being sent home from the Hungarian State Jewish school and never allowed to return.

13. Within a few days the Hungarian authorities through the local gendarmerie forced us from our home into a “Jewish” home owned by my grandmother. For the time our valuables remained in our rental home, except that we were forced by agents of the Hungarian government (gendarmes and customs agents). All my families jewelry (except my mother’s wedding ring), gold cigarette case, his pocket watch and my mother’s gold watch, my mother’ earrings, and other items (like my bicycle and the family radio) were seized by the Hungarian authorities. They were never returned to us and we were never compensated for these items. These items alone were worth in 1940s dollars over \$2,000 in my estimation.

14. We were then told to wear the yellow Star of David and move into the Jewish Ghetto in Kecel where we remained for a relatively short time.

15. Thanks to efforts of my uncles who lived in the Budapest we were able to flee to Budapest before the deportation to Auschwitz.

16. In Budapest we were forced to live in a Jewish house marked by a large Star of David and thence to the Ghetto.

17. In September 1944 my father escaped from the labor brigade and brought us some food and clothing. He was arrested shortly thereafter, taken back to the labor brigade and we never saw him again.

18. On 10 December 1944 a group of Hungarian Arrow Cross officials and arrested my mother along with other Jewish women her age. She was then deported to the concentration camp in Bergen-Belsen where she was marched on foot in one of the infamous death marches — a journey of more than 800 kilo-

meters. I later learned that my mother died in Bergen Belsen before the end of the war.

19. In late December 1944, the Hungarian Arrow Cross authorities then in control of the Hungarian government captured my brother, Laszlo, and murdered him along with other Jews in cold blood on the streets of Budapest. He had done absolutely nothing other than being a Jew. My brother was legally on the street at the time, having gone out to buy food for me.

20. I survived the war and lived with my mother's younger sister until 1956 when I emigrated to Israel after the collapse of the Hungarian revolt against the communist regime of that year.

21. Some time in the 1980s I learned that the Hungarian government was offering to pay compensation for survivors of the Holocaust in the amount of 30,000 Hfl. (then about U.S.\$300!) for a parent who had been killed during the Holocaust and 15,000 Hfl. (then about U.S.\$150.00) for a murdered sibling. I was so outraged at the nominal amounts offered, that I actually wrote a letter to the Prime Minister of Hungary in protest. I received a response in which a Hungarian treasury official admitted that the sums were paltry, but claimed that there was no alternative. When I received this letter, I decided that it was an insult even to request compensation under such circumstances.

22. Several years later after the fall of the communist regime in the 1990s, the compensation ceiling was increased to about U.S.\$2,000 for murdered family members and reopened the application period. Even though these sums were also ridiculously low, I nevertheless filed a claim for my parents' and brother's death. The Hungarians paid the minimal

compensation for my mother and brother (a total of \$3000 for the two of them together). However, they denied the claim for my father on the grounds that Jews who had been taken to the slave labor brigades were military conscripts and therefore not entitled to compensation. This claim was utterly outrageous and as a result I decided to engage Hungarian attorney and file a lawsuit.

23. I hired the services of a Hungarian attorney from Budapest and she filed a suit in my name against the Hungarian government in a court of special jurisdiction known in Hungarian as Központi Igazságügyi Hivatal. The proceeding lasted a considerable time and my claim was denied. I then appealed to a court known as a Fovarosi Itelotabla. The appellate court also denied my claim on the grounds that my father, a slave laborer, was in reality a military conscript not entitled to compensation. For the life me, I never understood how they could make such a claim given the circumstances under which my father was taken away from us by the Hungarian authorities. They claimed further that because I could not prove how my father had died while in the Hungarian slave laborer and I could not prove that he had been killed by the slave labor or deportation, I was not entitled to any compensation. Thus, I could not support my claim that my father was killed by the Hungarian authorities for “political” or racial reasons.

24. Only a few weeks ago, I learned what really happened to my father from records released by the Red Cross taken from the German Nazi archives. In fact my father had been deported to the Dachau death camp by the Hungarian authorities some time in 1944 or 1945 and my was killed in Dachau on 18 February 1945. The Hungarian authorities knew very well the

fate of my father at time I filed my claims on account of his death. They deliberately concealed this information from me, forced me to file the lawsuit and allowed the court to deny my claims when the court knew or should have known full well that my father was deported by the Hungarians and murdered subsequently by the Germans.

25. My experience proves incontrovertibly that it is nearly impossible to expect justice for a Jewish Holocaust claim from the courts and judicial authorities of Hungary, even after the fall of the communist regime and under current law, my own attorney wrote after my appeal as denied in a letter dated 3 March 2010 that the legal proceedings in Hungary were based on the theory that the Hungarian authorities were not active participants in the Hungarian Jewish Holocaust and the murder of the 600,000 Jewish victims of the Hungarian Holocaust were the sole responsibility of the Germans and not the Hungarians. [Exhibit "A".]

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true and correct.

Executed on May 4, 2011

/s/ Menachem (Tivadar) Beck

Menachem (Tivadar) Beck

Urbanne dr. Csato Julianna
ügyvéd

Telefon:	Iroda: Budapest XVI., Linda
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Budapest, 2010. 03. 03.
Ügyszám: 08060

T.
Beck Menachem
Jerusalem, P.O.B. 9437
Israel 91093

Tisztelt Uram!

Szíves tájékoztatására mellékelten megküldöm a Fővárosi Ítéltábla ítéletét, annely - mint az várható volt - a fellebbezést elutasította, és 10.000.-Ft perköltség megfizetésére kötelezte Önt. Ez az összeg a mai árfolyamon kb 50,- USD-nak felel meg.

Az indokolás az volt, hogy bár feltehető, hogy édesapja a Holocaust áldozatává vált, de ez a feltételezés nem ad alapot a személyi kárpótlás megállapítására.

Sajnálom, hogy nem sikerült eredményt elérni az ügyben, látnia kell, hogy a mai magyarországi bíraskodási gyakorlat igyekszik azt az álláspontot követni, hogy a magyar hatóságok tevőlegesen nem vettek részt a Holocaustban, a hatszázezer magyar zsidó megöléséért kizárólag a németek a felelősök.

Munkadíjam az ügyben 10.000,- Ft.

Kérem, hogy mindösszesen 100 USD-t legyen szíves ennek megfelelően eljuttatni hozzám.

Ezt elküldheti magáncsekken, vagy Western Unionnal, vagy USD pénznemben átutalással az alábbi számlámra.

Name of my bank: Országos Takarékpénztár és Kereskedelmi Bank Rt.
Address: H-1161 Budapest XVI., Jókai u. 1/b., Hungary
Swift code: OTPVHUIB
Account owner's name: Urbánné dr. Csató Julianna
Account nr.: 11775166-03901010
IBAN code in
electronical form: HU21117751660390101000000000
IBAN code in
printed form: HU21 1177 5166 0390 1010 0000 0000

Kérem, hogy a teljes banki költséget vállalja. Ha Euroban utal, az alábbi számlaszámra kérem az utalást:

Account nr. 111775166 03901883
IBAN code in
electronical form: HU21117751660390188300000000
IBAN code in
printed form: HU21 1177 5166 0390 1883 0000 0000

Tisztelettel: URBÁNNÉ DR. CSATÓ JULIANNA
ügyvéd
H-1165 Budapest, Linda tér B.
Hungary

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Case No. 1:10-cv-01770-BAH

ROSALIE SIMON, *et al.*,
Individually, for themselves and
for all others similarly situated,
Plaintiffs,

v.

THE REPUBLIC OF HUNGARY, *et al.*,
Defendants.

DECLARATION OF
TZVI (HERMANN) ZELIKOVITCH

TZVI (HERMAN) ZELIKOVITCH, under penalties of perjury and in accordance with 28 U.S.C. § 1746, declares as follows:

1. I am over eighteen years old and I am competent to make this Declaration.
2. I am a citizen of the State of Israel and reside at Moshav Nordiyya in Israel.
3. I am a named plaintiff in the above-captioned case.
4. I am fluent in the Hebrew and Yiddish languages and to some extent in spoken Hungarian. I am not able to understand or read English. This Declaration was translated into Hebrew for me by Advocate Marc Zell so that I could understand its contents.

5. I was born in Uglya, Ruthenia, Czechoslovakia on 14 January 1928.

6. I am the son of Asher Zelig Zelikovitch (b. Uglya, Austria-Hungary, 1895) and Esther Rachel Fuchs (born Osandorfalva/Shandrev/Sandrovo, Austria-Hungary, 1900).

7. I am the brother of Yaakov (b. 1922, Uglya, Czechoslovakia); Leah (b. 1926, Uglya); Penina (b. 1932, Uglya); Sarah Rivka (b. 1933, Uglya); Ezra (b. 1935, Uglya) and Etta (b. 1940, Uglya).

8. Both my father and mother were Austro-Hungarian citizens. My father even served in the Austro-Hungarian army in World War I.

9. My father was the town blacksmith in Uglya and made a good living. We lived in a comfortable home near the Uglya creek and lead a solid middle class lifestyle with a well-appointed home, valuables, furnishings, furniture, jewelry and valuable Jewish ritual objects.

10. In the summer of 1941, following the German and Hungarian invasion of the former Soviet Union, the Hungarian government through its local gendarmerie expelled the entire Jewish population of Uglya, including my family and me.

11. Our home was taken over by the gendarmes along with most of our non-portable possessions. These were worth thousands of United States dollars at the time and today would have been worth a small fortune. My father and mother carried with them and with us older children what little we could bear physically including cash and jewelry in the hopes that they would provide a source of sustenance for us wherever we were being sent.

12. We were sent by MÁV train first to the MÁV station in Tecso/Tecevo and then to the border crossing at Jasina/Korosmezo. At the Korosmezo border crossing we were placed on trucks owned and operated by MÁV and driven to a location in the German-occupied Ukraine not far from Kamenetz-Podolsk.

13. The property confiscated by the Hungarian gendarmes and MÁV was never returned to us nor did we ever receive any compensation therefor.

14. Both at the Tecso/Tecevo train station and later at the Korosmezo station, I recall MÁV railroad workers taking possession of our personal belongings.

15. When we finally reached the village of Orynyn/Oranien just outside of Kamenetz-Podolsk, the MÁV people turned us over to the Germans. It was late August, 1941.

16. On August 26, 1941, a German SS squad (I later learned that this was part of SS Lieutenant-General Franz Jaeckeln's Einsatzgruppe "D"), arrived to take control over our group which had been left alone on a road besides a cornfield. At first I was fascinated by the spit and polish of the German soldiers, the sheen of their uniforms and the sight of their weapons. My entrancement was short-lived, however, because within minutes, a truck filled with more SS soldiers arrived and unloaded several machine guns which they proceeded to assemble opposite our group on the country road. There some 60 — 70 soldiers and several hundred Jews. I stood in the rear of the group with some of my teenage friends from Uglya.

17. Suddenly, I heard the firing of the machine guns and saw my family friends being mowed down in front of me. Instinctively, I lurched into the cornfield behind me and ran toward a stand of trees some

several hundred minutes in the distance. I did not dare look back as the sound of the machine guns continued unabated. I ran for what seemed like hours with two older friends at my side. We did not stop to rest until we reached the woods where we collapsed from exhaustion. I later learned that my entire family had been murdered in cold blood in the massacre at Orynyn/Oranien: both my parents and my six siblings including my baby sister only one year old.

18. In the days, weeks and months that followed, my two friends and I wandered on foot through German occupied Poland, seeking refuge in the Jewish communities that still existed along the way. In many instances we survived off the land. Our lives were at risk at every minute. By some miracle we managed to traverse some 1,500 kilometers returning to our home village of Uglya nearly two years later. There were virtually no Jews left. My home had been taken over by local Christians. All our belongings had long been confiscated by the Hungarian gendarmes and MÁV workers. I was all alone in a sea of madness. I decided that staying in Uglya was impossible, since I would be readily spotted and turned over to the Hungarian authorities only to be deported on the spot or murdered.

19. I made my way to Budapest, the capital, where I heard that Jews were still able to survive, albeit meagerly.

20. I remained in Budapest until the Spring of 1944, when I was arrested by Hungarian state police who turned me over to MÁV, which confiscated my remaining possessions, threw me into a sweltering cattle car and transported me to Auschwitz-Birkenau. I was 16 years old.

21. After arriving at Birkenau, Mengele selected me to live on as a slave laborer. I worked for months in the factories at Monowitz and remember the allied bombers flying overhead and bombing the industrial complex at Monowitz. Later I was removed to Buchenwald concentration camp, where I nearly died of typhus. I later recovered but somehow at the end of the war I ended up in the Theresienstadt concentration camp in what is now the Czech Republic. I was gravely ill and lost consciousness. It was only through the healing of a Russian-Jewish physician serving in the Red Army that I managed to survive.

22. After I regained my health, I joined the Aliyah Bet movement where I assisted hundreds of Jewish Holocaust survivors to make their way clandestinely to the Land of Israel (illegally). Eventually my own turn came to travel to the Land of Israel, then still under British rule. As our ship approached Haifa, we were apprehended by the British navy and I was taken to Cyprus where I was placed in yet another concentration camp until the State of Israel was established. The British freed me in 1949 and I made my way to Israel where I became one of the founders of Moshav Nordiyya where I still reside.

23. I have never been compensated for my injuries or suffering. Nor, as the sole surviving member of my family, was I ever compensated for the thousands of dollars or our family proper that was confiscated by Hungary and MÁV.

24. I have made numerous inquiries into the possibility of receiving compensation from the Hungarian government for all that the Hungarians did to me and my family first in 1941 and then again in 1944, but to no avail.

25. I am now 83 and my health is failing. A trip to Hungary at this stage in my life is just out of the question from a physical standpoint. But in addition to the physical stress that traveling to Budapest would entail — more than I could readily endure — the emotional trauma of subjecting myself for a third time to the system and the culture that murdered my family and hundreds of thousands of Jews is far more than I could bear emotionally. I could not do it. My memories of that time and place are still with me, as are my memories of my family and friends who were killed there.

26. Still there is little that can intimidate me. How could I ever agree to place myself before a court in Hungary to ask their consent to indemnify me for all that I endured at their hands. In many ways the Hungarians were far worse than the Germans when it came to killing Jews. The Germans did what they did because of some twisted ideological theory called Nazism. The Hungarians participated in the destruction of our people out of an almost satanic desire to be rid of us — a kind of *Schadenfreude*. To insist that we the victims of the Hungarian Holocaust must seek dispensation from the courts of the very nation that perpetrated this monstrous crime against us would be asking too much of me or of any other Jew who survived the Holocaust — and I went through it not once but *twice*.

27. It was for this reason that I was elated to hear that this law suit was being filed — not in Hungary, but in the United States of America. I was among the first to add my name to the list of plaintiffs to bring this action, because I knew that it was only in the courts of the United States of America that we, the survivors of the Hungarian Holocaust, had any chance

of having justice done for the first time since the War. I pray that this Court will allow us to have our day in court — in the names of my father, Asher Zelig (46), my mother Esther (41), my brothers, Yaakov (19) and Ezra (6), and my sisters, Leah (15), Penina (9), Sara Rivka (8), and Etta (1).

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true and correct.

Executed on May 2, 2011
Holocaust Memorial Day

/s/ Tzvi (Hermann) Zelikovitch
Tzvi (Hermann) Zelikovitch

The Ambassador Austrian Embassy
Washington

I provide this statement on behalf of the Republic of Austria for the consideration of the United States District Court in the lawsuit brought by Rosalie Simon, et al. against several defendants including Rail Cargo Hungaria (“RCH”), pending in the U.S. District Court for the District of Columbia under the case number 10-1770 (the “Litigation”).

It is the strongly held position of the Republic of Austria that the Litigation against RCH should be dismissed because the United States and Austria entered into executive agreements in 2000 and 2001 that created funds and other measures for Holocaust victims in exchange for all-embracing and enduring legal peace on behalf of Austria and Austrian companies.

RCH, which is incorporated in Hungary and headquartered in Budapest, Hungary, is an Austrian company as defined in the executive agreements between the United States and Austria because it is an almost 100% subsidiary of Rail Cargo Austria AG (“RCA”), which is incorporated in Austria and headquartered in Vienna, Austria. RCH should therefore not be subject to Holocaust-related litigation in United States courts.

The executive agreements were designed to afford compensation to a broad spectrum of Holocaust victims and provided for a relaxed standard of proof to permit Holocaust victims to receive payments even if the documentation of their losses would not meet the rigorous standards normally required in litigation or if their claims would be dismissed as untimely if filed in a court. The General Settlement Fund established by the 2001 agreement was capitalized with 210 Million USD, plus interest. Since then, 96% of this capital has been distributed to approximately 19,000 beneficiaries and the process is still continuing. In addition, the arbitration process foreseen under the 2001 agreement has returned property valued in excess of 40 Million Euros.

In negotiating and entering into these executive agreements, it was (and still is) Austria's understanding that these executive agreements created the exclusive remedy and forum for the resolution of all claims that have been or may be asserted against Austria and/or Austrian companies involving or related to the National Socialist era or World War II.

It also was (and still is) Austria's understanding that before any funds were to be distributed pursuant to the executive agreements, all such pending cases would first have to be dismissed by the United States courts. It also was (and still is) Austria's understanding that all such future cases would be dismissed from United States courts at the earliest possible stage of the litigation.

Finally, it was (and still is) Austria's understanding that the definition of Austrian company covers Austrian companies like RCA and RCH as defined in the executive agreements.

Austria and Austrian companies pledged the money to create the Austrian funds on the condition that they would be guaranteed legal peace. The provision of legal peace by and in the United States was a precondition for Austria to enter into the above-mentioned executive agreements. Since their entry into force, Austria has fully implemented its commitments under these agreements. This fact has also been formally acknowledged by the United States Department of State.

The United States government has adhered to these executive agreements by filing statements with its courts that led to the dismissal of pending Holocaust and World War II litigation against Austria and Austrian companies (e.g., *Whiteman v. Federal Republic of Austria*). Austria trusts that the United States will also continue to adhere to these executive agreements by dismissing the pending Litigation against RCH, an Austrian Company.

Washington, June 22, 2011

/s/ Christian Prosl

Christian Prosl

Ambassador of Austria to the United States

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Case No. 1:10-cv-01770-BAH

**ROSALIE SIMON
207 North Gladstone Avenue
Margate City, New Jersey 08402-1705,**

**HELEN HERMAN
3560 Bathurst Street, Room 535RF
Toronto, Ontario M6A 2E1
Canada,**

**CHARLOTTE WEISS
1106 Laurel Oak Road, Apartment 342
Voorhees, New Jersey 08043,**

**HELENA WEKSBERG
12 Rean Drive, Apartment 805
Toronto, Ontario M2K 3C6
Canada,**

**ROSE MILLER
5 Stone Hollow Court
Baltimore, Maryland 21208,**

**ESTHER ZELIKOVITCH
Moshav Nordiyya
42954 Israel,
In Her Capacity As Heir At Law To
TZVI ZELIKOVITCH, Deceased,**

**ASHER YOGEV
56 Etzion Street
Ranaana 4356328
Israel,**

**In His Capacity As Heir At Law To
TZVI ZELIKOVITCH, Deceased,**

**YOSEF YOGEV
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**In His Capacity As Heir At Law To
TZVI ZELIKOVITCH, Deceased,**

**MAGDA KOPOLOVICH BAR-OR
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**ZEHAVA (OLGA) FRIEDMAN
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**YITZHAK PRESSBURGER
124 Yahalom Street, Apartment 9
Gilo, Jerusalem 93908
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**ALEXANDER SPEISER
55 Komemiyut Street
Tel Aviv 69011
Israel,**

**ZE'EV TIBI RAM
Kibbutz Afikim 15148
Israel,**

**VERA DEUTSCH DANOS
24 Huntingtower Road
Melbourne, Victoria
Australia,**

124

ELLA FEUERSTEIN SCHLANGER
1868 Shore Drive South, Apartment 410
South Pasadena, Florida 33707

and

MOSHE PEREL
6 Rupin Street
Rishon Letzion 75256
Israel,

Individually, for themselves and
for all others similarly situated,

Plaintiffs,

v.

HUNGARY
Sándor Palace
H-1014
Budapest, Szent György tér 1
Hungary

and

MAGYAR ÁLLAMVASUTAK Zrt.
(MÁV Zrt.)
1062 Budapest, Andrásy tit 73-75
Hungary,

Defendants.

SECOND AMENDED
CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED AS TO
ALL CLAIMS THAT ARE TRIABLE BY JURY

SECOND AMENDED
CLASS ACTION COMPLAINT

Plaintiffs Rosalie Simon, Helen Herman, Charlotte Weiss, Helena Weksberg, Rose Miller, Esther Zelikovitch as Heir at Law to Tzvi Zelikovitch, Asher Yogev as Heir at Law to Tzvi Zelikovitch, Yosef Yogev as Heir at Law to Tzvi Zelikovitch,¹ Magda Kopolovich Bar-Or, Zehava (Olga) Friedman, Yitzhak Pressburger, Alexander Speiser, Ze'ev Tibi Ram, Vera Deutsch Danos, Ella Feuerstein Schlanger and Moshel Perel (“Plaintiffs”), by their counsel of record, for their Second Amended Complaint (“Complaint”) filed pursuant to Rule 15(a)(2), Fed.R.Civ.P., and the Minute Scheduling Order entered by the Court in this action on April 13, 2016, plead as follows:

INTRODUCTION

1. In a century strewn with international upheaval, cataclysmic violence and untold bloodshed, the Holocaust — the Nazis’ premeditated murder of six million innocent Jewish men, women, and children during World War II — dwells in a dreadful dimension of its own. Nowhere was the Holocaust executed with such speed and ferocity as it was in Hungary, where in 1944 over a half a million souls were dispatched to their deaths within a period of less than three months.

¹ Tzvi Zelikovitch was a Named Plaintiff in the original action. He died during its pendency, in late 2012. His three children, Esther Zelikovitch, Asher Yogev and Yosef Yogev, are his sole Heirs at Law, and under Israeli law have succeeded to his rights, interests and entitlements. They are substituted herein as plaintiffs in their capacities as Mr. Zelikovitch’s sole Heirs at Law. For ease of reference, however, in the text below, when used in discussing the experiences of Holocaust survivors, the term “Plaintiffs” should be read to embrace Mr. Zelikovitch and not his heirs at law.

This class action complaint is brought by and on behalf of Holocaust survivors, former residents of geographic areas of what is today or what once was, during the period of time relevant to this Complaint, part of Hungary or subject to its control. Plaintiffs bring suit on their own behalf and on behalf of all Hungarian Holocaust survivors and the immediate families of Hungarian Holocaust victims.

2. Suit is brought against two defendants directly complicit in the Hungarian Holocaust: Hungary, and the Hungarian National Railway (Magyar Államvasutak Zrt. or MÁV Zrt) (hereinafter “Defendant MÁV” or “MÁV”) (collectively, “Defendants”).

3. Defendants orchestrated, collaborated and participated in the confiscation of the personal possessions of their Hungarian Jewish victims, including Plaintiffs, and their transportation by train to the killing fields and death camps of Nazi Germany-occupied Poland and the Ukraine, where the Jews were tortured and the vast majority died. Most, but not all, of the Hungarian atrocities occurred near the end of the war in 1944, when the Nazis and Hungary, knowing that they had lost, raced to complete their eradication of the Jews before the Axis surrendered.

4. In the lexicon of horrors that was World War II, Winston Churchill called Hungary’s eager complicity in the gratuitous slaughter of its Jewish population “probably the greatest and most horrible crime ever committed in the history of the world.” Unlike many other sovereign and private perpetrators in the Holocaust, however, Defendants Hungary and MÁV have never been brought before the bar of justice, nor have they made recompense for their wanton thievery, collaboration in murder and willful and grotesque

violations of international law. This suit seeks to remedy these injustices.

PARTIES

The Named Plaintiffs

5. Named Plaintiff Rosalie Simon (“Rosalie”) is a citizen of New Jersey domiciled at 207 North Gladstone Avenue, Margate City, New Jersey 08402-1705.

6. Named Plaintiff Helen Herman (“Helen”) is a citizen of Canada, residing at 3560 Bathurst Street, Room 535RF, Toronto, Ontario M6A 2E1, Canada.

7. Named Plaintiff Charlotte Weiss (“Charlotte”) is a citizen of New Jersey, residing at 1106 Laurel Oak Road, Apartment 342, Voorhees, New Jersey 08043.

8. Named Plaintiff Helena Weksberg (“Helena”) is a citizen of Canada, residing at 12 Rean Drive, Apartment 805, Toronto, Ontario M2K 3C6, Canada.

9. Named Plaintiff Rose Miller (“Rose”) is a citizen of Maryland, residing at 5 Stone Hollow Court, Baltimore, Maryland 21208.

10. Rosalie, Helen, Charlotte, Helena and Rose are sisters; their maiden name was “Lebovics.” They are referred to collectively hereinafter as “the Lebovics sisters.” They were raised in Tarackoz in Hungarian-annexed Ruthenia.

11. In the late spring of 1944, the Lebovics sisters, their brother and their parents were deported by train, *via* Defendant MÁV, to the ghetto in Mateszalka, and then to Auschwitz.

12. Some of their possessions were confiscated by officials of the Hungarian government in Teresva, and some were taken by Defendant MÁV as the Lebovics

family boarded the train for Auschwitz. Their mother and brother perished there, but the Lebovics sisters, though forced to endure slave labor at Auschwitz, nonetheless survived. Later the Germans moved them to a slave labor camp in Germany. In the spring of 1945 they were again moved by their captors — to the Austrian Tyrol — and left to die or be murdered by the S.S. Again the Lebovic sisters survived, however, and were rescued by the liberating American army.

13. On information and belief, after being confiscated by Defendants Hungary and/or MÁV, the Lebovics sisters' property and possessions were liquidated, at least in part to pay Defendant MÁV for the cost of transporting the family from their home in Teresva and later from the ghetto in Mateszalka to Auschwitz. The Lebovics sisters have never been compensated by either of the Defendants for their property losses and those of their family.

14. Plaintiffs Esther Zelikovitch, Asher Yogev and Yosef Yogev are the three children of Tzvi Zelikovitch ("Tzvi") — a Named Plaintiff who died after commencement of this litigation — and are his sole Heirs at Law. They are all citizens of Israel, residing, respectively, in Moshav Nordiyya, Ranaana and Tel Aviv. Under Israeli law they have succeeded to Tzvi's rights, interests, and entitlements. They are substituted herein as Plaintiffs in their capacities as Mr. Zelikovitch's sole Heirs at Law.

15. The third of seven children, Tzvi was born in 1928 and raised by his parents, both Hungarian citizens, in Uglya in Carpatorus, part of Hungarian-annexed Ruthenia (which was in the Kingdom of Austria-Hungary until formation of the Czechoslovak Republic after World War I). Tzvi's father was a prosperous blacksmith, and the Zelikovitch home,

located on the stream at the center of Uglya, was well-appointed with furniture, valuables and other possessions.

16. In the summer of 1941, following the German invasion of the former Soviet Union in collaboration with the armed forces of the Defendant Republic of Hungary, the entire Jewish population of Uglya, including 13-year old Tzvi and his family, were deported by train, *via* Defendant MÁV, to an area near Kamenetz Podolsk, across the border in Nazi Germany-occupied Ukraine, where they were handed over to the Germans.

17. Some of the possessions of Tzvi and his family were confiscated by officials of the Hungarian government, and some were taken by MÁV personnel at the train station in Tecevo. Other possessions of Tzvi and his family were taken by MÁV at the station in Jatzin, before the family's deportation into German-occupied Ukraine. These possessions were never returned, and neither Tzvi nor his heirs ever received compensation for them.

18. On August 26, 1941, while still in the region of Kamenetz Podolsk, the group was led by their captors to an empty field outside of town, where approximately 60-70 German soldiers armed with machine guns began wantonly shooting at the group. Some of the German soldiers took photographs. Tzvi and two teenage friends were able to flee the massacre, but the rest, including Tzvi's parents, his six brothers and sisters, were murdered in cold blood.

19. After wandering on foot for approximately two years and covering nearly 1,000 miles, Tzvi and his friends returned to Uglya. Their homes and property had been confiscated and the Jewish community was

wiped out. Tzvi fled to the Hungarian capital of Budapest, where he was able to survive, avoiding capture until the spring of 1944.

20. In the spring of 1944, Tzvi was captured by Hungarian state police, who handed him over to Defendant MÁV, which confiscated his remaining possessions and transported him to Auschwitz by cattle car owned and operated by MÁV. Upon his arrival he was selected by the infamous Dr. Josef Mengele to be a slave laborer. Tzvi worked as a slave laborer at Auschwitz and later at several other camps, and was eventually deposited at the Theresienstadt concentration camp in Czechoslovakia (now the Czech Republic) where he was left to die. He survived, however, and at the end of the war was liberated from the camp by the Soviet Army.

21. Thereafter, Tzvi received medical treatment from a Jewish-Russian physician in the service of the Soviet Army. After his recovery, he assisted other displaced Jews in emigrating (illegally) to Palestine. He eventually embarked on the same perilous journey, but was arrested by the British mandatory authorities and imprisoned in a concentration camp on Cyprus. After the State of Israel was proclaimed in 1948, Tzvi was able to emigrate. He served in the Israel Defense Forces and became a founding member of Moshav Nordiyya east of Netanya, where he lived until his death in late 2012. Neither he nor his Heirs at Law were ever compensated for his stolen property.

22. Named Plaintiff Magda Kopolovich Bar-Or (“Magda”) was born in 1928 in Korosmezo (Jasina), in Hungarian-annexed Ruthenia (formerly Austria-Hungary, then Czechoslovakia and now Ukraine). Her father had a lumber business in Korosmezo. Their

house was filled with fine furniture, Judaica and other valuable property.

23. In the spring of 1944, one week after Passover, Hungarian police threw Magda and her family out of their home, leaving them in the town cemetery under heavy guard. The police later removed Magda and her family to the *Krona* theater in Korosmezo to await further Hungarian government directives. While at the theater, Magda's parents bribed a Hungarian policeman to allow the family to keep a large wooden package containing the family's valuables, including jewelry, gold and silver items, diamonds, bedding, clothing, Judaica and other items, which Magda's parents believed might be used for further bribes, allowing them to survive further tribulations.

24. This package, then valued at more than \$1,000 U.S., was placed on a MÁV train that took Magda and her family to the Mateszalka Ghetto in Hungary. The package was confiscated en route, however, by Defendant MÁV in collusion with Hungarian government officials. Magda and her family never saw it again, and were never compensated for its value.

25. The family remained in Mateszalka Ghetto for approximately one month before being taken forcibly by Hungarian police onto a MÁV cattle car with approximately 80 other Jews, bound for Auschwitz. On arrival there, Magda and her family were taken to the selection before Dr. Mengele. Magda's mother and grandmother were gassed immediately.

26. Magda and her younger sister, Nelly, however, were sent to a quarantine facility and from there to slave labor camps. They were eventually sent to the Geislingen slave labor camp, and from there to the Wurtembergische Metallfabrik AG in Germany. Magda

and her sister worked there as slave laborers until the American forces approached, whereupon they were removed to the Dachau concentration camp near Munich, where they were finally liberated by American troops.

27. After the liberation, Magda and her sister, the only survivors in her family, returned to Hungary, where they learned that their home and all of their property had been confiscated. Ultimately, they entered Palestine illegally, were arrested by the British mandatory forces, imprisoned on Cyprus and finally allowed to enter the newly created State of Israel after its founding in 1948. Magda became an Israeli citizen, married and raised her own family, and now lives in Haifa, Israel. She has never been compensated for her loss of property.

28. Named Plaintiff Zehava (Olga) Friedman (“Zehava”) is a citizen and resident of Israel. She was born in Satoraljaujhely, Hungary, on May 31, 1932, one of eleven siblings. Zehava’s paternal grandfather was a successful wine merchant. She and her family lived in her grandfather’s large home in Satoraljaujhely, on a large lot with outbuildings, some of which were occupied by tenants. Zehava’s brothers attended a yeshiva (Talmudic academy) and served in the Hungarian army. Her father and her brothers spent much of the year in Budapest conducting business, while Zehava, her sisters and mother remained at home in Satoraljaujhely.

29. The family had a good deal of valuable personal property, including jewelry, silver items, candlesticks, a Chanukah menorah and a celebrated wine collection.

30. Following the German invasion of Hungary in March 1944, Zehava’s father and her brother Adolph

returned to Satoraljaujhely from Budapest. When notice arrived from the Hungarian government authorities that the Jews of Satoraljaujhely must move into the Ghetto, the family transferred title to their home to a Gentile couple, excepting that a single room, in which Adolph hid many of the family's valuables, remained in the control and possession of the Friedman family. In exchange, the Gentile couple transferred to the Friedmans a one-bedroom apartment in the Ghetto.

31. The family was taken from its home by Hungarian police acting in their capacity as official representatives of Defendant Hungary. Under color of their authority, the police seized most of the valuables that the family members were carrying with them. The family was able, however, to secrete some valuables on their persons and take them to the Ghetto, for future use as bribes to ameliorate their condition.

32. When the Ghetto was reduced in size, the family had to move into an attic room. In early June, 1944 they were forcibly taken from there by Hungarian police and herded on foot into the MÁV train station in Satoraljaujhely. Zehava and her siblings took knapsacks filled with clothes and valuables that had escaped the attention of the Hungarian gendarmes. Her parents carried expensive suitcases.

33. At the station they were told by MÁV officials that they could not bring their personal belongings on the train. The suitcases and other items were left behind at the train station in the control and possession of Defendant MÁV, and were never returned to Zehava and her family, nor was any compensation paid for the loss of these possessions. Likewise, compensation was never paid for the family's property previously seized by the Hungarian police.

34. The family was taken to Auschwitz by train, in a cattle car with approximately 80 other people. It was hot; there was little air, no water and no toilet facilities. Zehava's father tried to put on his prayer shawl and phylacteries in order to pray, but could not do so because there was no space.

35. The family arrived at Auschwitz on June 6, 1944. Upon disembarking, the prisoners were ordered by the German SS troops to form four rows. Dr. Mengele was awaiting them on the platform. Zehava's mother, Fanny, stood with her younger sister, Edith, while Zehava and her twin sister, Eva, stood together. Mengele asked Fanny whether Zehava and Eva were twins, and when she said "yes," the two sisters, who were 12 years old, were pulled off to the side. They and their other siblings watched as their father, now wearing his prayer shawl and phylacteries, and their mother and sister Edith were taken to their deaths in the gas chambers.

36. Zehava and Eva slept in the camp washroom that night. The next day they were given showers and numbers were tattooed on their arms. Zehava's number was A7202; Eva's was A7203. They were then taken to the hut where twins were kept, where they remained until transferred to the Gypsy camp in October 1944. In December 1944, they were told that Auschwitz would be evacuated and the surviving prisoners force-marched elsewhere (this became known as the infamous Death March).

37. In the cold and snow, they walked for what seemed like an eternity. Eva wanted to sit, but the others told Zehava that whoever sat down would never get up, and so she kept Eva on her feet. Eventually they made it to the Ravensbruck concentration camp, and from there to the Bergen Belsen concentration

camp, where they were liberated by the British in April 1945.

38. By then, Zehava was too weak to stand. A British soldier carried her to a hospital where she recovered. In June 1945, Zehava and her sister were taken by Count Bernadotte to Sweden via Lübeck, Germany. They remained there for two years and from there were able to reach Palestine, which later became Israel, where Zehava has lived ever since.

39. Named Plaintiff Yitzhak Pressburger (“Yitzhak”) is a citizen of Israel residing in Jerusalem. He was born in Prague in 1933, the son of Jenő Pressburger, a trader in agricultural products. The family lived in Bratislava until 1934, when they moved to Prague. When the Germans occupied Prague in 1939, the family went into hiding. Eventually they moved back to Slovakia and thence to Budapest, Hungary, where they remained until 1945. Jenő Pressburger continued to work as an agricultural products merchant, primarily in the Hungarian annexed regions of Slovakia. Their last address in Budapest was Budapest, VI. Eotvos Str. 38.

40. In the spring of 1944, after the German invasion, Jenő Pressburger delivered five wagons of dried prunes — worth a considerable sum at the time — for shipment from Újvidek/Novi Sad in Hungarian-annexed Slovakia to Budapest. The MÁV stationmaster and his staff-members confiscated all of Pressburger’s goods at the Újvidek railway station and forcibly expelled him. The loss of this valuable cargo impoverished the family. They went into hiding until the end of the war. MÁV never returned the goods or compensated the Pressburger family for them.

41. Named Plaintiff Alexander Speiser (“Alex”) is a citizen of Israel living in Tel Aviv. He was born on October 12, 1928, in Ersekujvar, Czechoslovakia, the son of Aladar and Ethel Markstein Speiser. Aladar Speiser was a merchant who produced and sold dairy and other agricultural products. Alex had three brothers, Frigyes, Miki and Arpi. In addition, the family adopted Lenke, Alex’s first cousin, when her parents died. The family lived in Ersekujvar until 1930, when they moved to Cesky Tesin, Czechoslovakia. They lived there until 1938, when the country was dismembered. In 1938 the family returned to Ersekujvar, which was annexed by Hungary, and where the family remained until 1944.

42. The Hungarian authorities prohibited Aladar Speiser from working, and forced him to sell his dairy business to a Hungarian. Despite these setbacks, however, the family remained affluent, with a beautiful home and many possessions, some of great value. They owned an automobile and had a telephone and electricity at a time when this was unusual in that region. Aladar put his money in Hungarian banks and invested in jewelry, particularly diamonds and gold. One item in particular was a two carat blue-white diamond ring that his father purchased for his mother.

43. In approximately May 1944, the family was forced to leave its home and move into the Ersekujvar Ghetto. They buried some valuables and took others with them. The family was assembled in the city marketplace together with the other Jews of the town and marched for two hours by Hungarian police, in their capacity as officials of Defendant Hungary, to a brick factory outside of town, in a place called Teglajyar. There they were placed in the open brick factory, fenced in like animals for approximately three

weeks and continuously guarded by the Hungarian police.

44. On June 14, 1944, the family was transported to Auschwitz by Defendant MÁV. The brick factory had a MÁV siding that was controlled and operated by MÁV. MÁV officials were present when Alex and his family along with the other Jews of Ersekujvar were loaded into the cattle cars. The train came right up to the factory. The Jews were surrounded by Hungarian police. The Jews' property was confiscated by Defendant MÁV; Alex saw MÁV officials carrying away the Jews' possessions, including those of his own family. One of the MÁV officials took the blue-white diamond ring. MÁV never returned the ring or any of the other possessions, nor did MÁV compensate Alex or his family therefor.

45. Eighty or ninety Jews were crammed into the cattle car. Alex, then 15, was with his father and mother. His other siblings had been sent by the Hungarian government to forced labor camps, while the adopted daughter remained in Budapest. She was later captured by the Hungarian police, deported to Auschwitz on a MÁV train (on information and belief) and gassed.

46. The journey to Auschwitz lasted three days, during which time the doors to the cattle car remained sealed. There were no toilet facilities, and conditions were bestial.

47. MÁV selected a leader for each car. Alex's father, Aladar, was chosen to be leader of their car. He screamed for some water for the Jews. The train stopped. As it did, Aladar was holding on to the slats in the car, his fingers protruding. MÁV officials came and beat his fingers, breaking them.

48. When they arrived at Auschwitz-Birkenau on June 17, 1944, Dr. Mengele conducted the selection, immediately sending Alex's mother Ethel to her death in the gas chambers. Alex was tattooed with prisoner number 79658. He spent several weeks at Birkenau and although he was twice condemned to death, managed to survive both times. Father and son were eventually sent to a slave labor camp at Dachau-Allach in the suburbs of Munich, Germany, arriving there on July 11, 1944. They remained there for the duration of the war, and were liberated by American troops on May 1, 1945. Alex has never been compensated for his injuries.

49. Named Plaintiff Ze-ev Tibi Ram (f/k/a Tibor Herman) ("Tibi"), is a citizen and resident of Israel. He was born on December 3, 1930, in Munkács, Hungary, to Bernat and Iren Herman. Tibi also had an older brother, Miklos, who was born in February 1925. Bernat worked for a firm as a clothing merchant. Nominally Jewish, the Herman family was fully assimilated; Tibi studied in Hungarian public schools for eight years.

50. Bernat was a Hungarian patriot who fought in the rebellion against Czech rule during the Czechoslovakia occupation. Thus the family was exempt from racial laws that were imposed when Hungary annexed the area in 1938, including the requirements to wear the Jewish star and live in the Ghetto. This changed when Germany invaded in 1944.

51. In mid-April 1944, four SS officers came to the Hermans' home and asked why the family was not in the Ghetto with the rest of the Jews. The SS officers read the exemption papers and then ordered the family to move into the Ghetto immediately.

52. Tibi and his family, however, were not taken to the Ghetto. Rather, a truck took them to a brick factory outside of Munkács, which served as a collection point for deportation of the Jews by train. There were several Hungarian police and MÁV employees at the brick factory, but no Germans. The Hungarians told the Jews that they were being relocated to work, and, that same day, Tibi and his family were loaded onto the trains.

53. Each member of the family took a suitcase. Tibi packed an extra pair of shoes, underwear, and his bar mitzvah watch (an Omega). His mother, Iren, packed her jewelry, which included gold, rings, necklaces, diamonds, and earrings, as well as some sausages. Bernat packed his gold watch and chain.

54. Tibi, who was thirteen years old and had never been on a train, was elated when he saw the trains because he thought the family was going on a trip. (While he had heard rumors of the 1941 deportations, he was not aware of the facts and did not understand the reality of what was occurring).

55. The family was told by MÁV employees to leave their suitcases. Tibi watched as a MÁV official took a pair of shoes from his father's suitcase as well as his mother's suitcase, which contained all of the valuable jewelry that she was not wearing. No compensation was ever paid for the family's property taken in this fashion.

56. The officials pushed Tibi and his family into a crowded cattle car. Tibi found a place where there was a small hole in the freight car so he could look out. He noticed that the train passed through Kassa.

57. The conditions in the cattle car were wretched. There was no water and the people in the car were

packed in so tight that it seemed as if there was no air. One bucket served as the bathroom. It was extremely hot, and Tibi was incredibly thirsty throughout the trip, even though the train stopped once for water and Tibi was given some by his parents. Those in the car begged bystanders at train stations for a little water, even offering jewels in return. Several people died during the train trip due to the conditions in the cattle cars. After several days, the train arrived at Auschwitz.

58. Upon arrival, the survivors were ordered to leave any remaining belongings in the cattle cars, get out of the cars and line up on the platform. When asked by the new arrivals where they were going, prisoners already at the camp pointed to a tall chimney to the right and said, "In a moment, that's where you'll be." Tibi did not understand what they meant. He saw a boy about his age inside the camp, who was dressed in a prisoner's uniform and was herding a flock of sheep. Tibi wanted to be a farmer, and he grew excited at the thought of getting a uniform and being given a job in agriculture.

59. The men and women were separated and Tibi walked with his father and brother toward the camp. They had to pass a tall SS man standing near the entrance gate, who, Tibi later learned, was Mengele. Tibi's father and brother were both tall and strong and passed by with no problem. Mengele stopped Tibi, however, and asked, "How old are you?" Tibi, not realizing that his answer would save his life, lied and said that he was fourteen. He continued to walk straight into the camp.

60. In the camp, they were shaved, given uniforms, and assigned bunks in the barracks. After about one week at Auschwitz-Birkenau, they were again packed

on extremely crowded cattle cars with no food or water. After several days on the train, they arrived at a station and detrained. They walked several kilometers to a place called Fuerstenstein, Wuestegiersdorf, Schlesien (Silesia). It was another camp where there were about 300-400 inmates. The barracks consisted of small igloos made from thick cardboard.

61. Tibi and his father and brother remained there for approximately nine months. While there, they were forced to do manual labor — road-building and excavation — to help transform a local castle into a command post for Hitler. The work stopped when the Americans and English began bombing the area. In winter 1944-1945, Tibi and his father and brother were marched toward Bergen Belsen; the final part of the journey was made by train. By then they were “Muselmann,” the name given to those devoid of personal hygiene and suffering from a combination of starvation and exhaustion that manifested itself in an apathetic listlessness regarding their own fate, as well as unresponsiveness to their surroundings. (See Israel Gutman, *Encyclopedia of the Holocaust*, New York: Macmillan 1990, vol. 3. p. 677 (Hebrew edition)).

62. Tibi saw his mother at Bergen Belsen, but she disappeared and was never seen thereafter.

63. Around April 15, 1945, Tibi and the remainder of his family were liberated by the British: His father had died in his arms a few days earlier. Tibi also lost an aunt, uncle and cousins at Bergen Belsen.

64. Tibi and his brother, Miklos, were taken to a hospital. There Miklos died of malnutrition and other complications caused by his brutal maltreatment at Bergen Belsen. Tibi remained in the British hospital for several months. That summer, he was then taken

by ship to Sweden. After two years in Sweden, Tibi returned to Hungary. He later migrated to Israel, where he lives now.

65. Named Plaintiff Vera Deutsch Danos (“Vera”) is a citizen of Australia, residing in Melbourne. She was born in Verpelet, Hungary in 1926, the daughter of Ferenc Deutsch, a wealthy wine merchant. They lived in Verpelet, a town of about 5,000 people, until Vera was 10, when they moved to Miskolc, which had a population of 75,000 people. Of the 15,000 Jews who lived there before the war, only 900 survived.

66. In 1943 Defendant Hungary confiscated Vera’s father’s wine business, but the family’s lifestyle changed little. After the Germans arrived in March 1944, however, Defendant Hungary, through the police, deported a number of Miskolc’s prominent Jews to Auschwitz on MÁV trains, Vera’s uncle among them.

67. In May 1944, the Hungarian police, acting in their official capacity, appeared at Vera’s house. The family was forced to line up while Hungarian government officials demanded that they surrender all of their jewelry and valuables. The family was marched to the Ghetto, about a half an hour’s walk.

68. All of the Jewish population remaining in Miskolc — approximately 15,000 less those who had already been transported — was held at the Jewish school in the Ghetto, where some of them, including Vera’s father, were selected to work in forced labor camps. The Jews imprisoned at the school were given little food and water. After a few days, they were marched to a brick factory, about an hour’s walk, during which time they endured beatings and cursing by the Hungarian police.

69. They remained there for about a week, fully exposed to the elements. Then a MÁV train arrived at the brick factory station and MÁV officials forced the Jews into cattle cars. MÁV officials told them to leave their personal belongings, which included clothes and valuables. The MÁV officials took these, including valuable personal property of Vera and her family, and never returned or paid compensation for it.

70. The Jews were taken in three trainloads. Although they had been told they were going to Germany to help in the war effort, in fact, they were destined for Auschwitz. The trip took several days. There were some 70 people in each cattle car, and conditions were unbearable.

71. Two of Vera's brothers died at Auschwitz. Vera was kept there for three to four weeks, and then moved to Ravensbruck concentration camp and ultimately to Berlin where she was put to work as a slave laborer in an airplane parts factory.

72. In May 1945, Vera was liberated and returned to Hungary. There she learned that her father had survived the Mathausen concentration camp in Austria but had died from typhus shortly after liberation. Her mother, her sister and one brother, however, had survived. Vera eventually emigrated to Australia, where she lives now.

73. Named Plaintiff Ella Feuerstein Schlanger ("Ella") is a citizen of Florida domiciled at 1868 Shore Drive South, Apartment 410, South Pasadena, Florida 33707. She was born in 1930 to a Hungarian family resident in Benedike, Czechoslovakia, approximately 10 km from Munkács. Her parents, Mono Feuerstein and Gisella Salomon, had a large estate of several

thousand acres where they grew tobacco and owned a distillery.

74. In April 1944, Hungarian police removed the Feuerstein family to a brick factory in Munkács, where they were kept for 4-6 weeks. The family was able to take some clothing, bed clothes, personal items and some jewelry with them.

75. At the brick factory, they and the other Jewish prisoners were forced to live on the floor, without food. They were beaten by the Hungarian police guards. Eventually they were led to MÁV cattle cars covered with barbed wire, where the Feuersteins and the other Jewish prisoners were forced onto the train by MÁV personnel, who took their personal items and jewelry from them. The Feuersteins lost, among other items, an engagement ring, a diamond, a seal coat and valuable watches.

76. The conditions on the train were subhuman. Approximately 80 Jewish prisoners were forced into each cattle car. There was only room to stand. There were no toilet facilities. There was no food or water in the cattle car. The trip to their destination — Auschwitz-Birkenau — took two or three days, during which time the train stopped several times for water. Three people in the Feuersteins' cattle car died during the transit.

77. When they arrived at the camp, they were greeted by kapos (who themselves were prisoners) yelling "Heraus!" — "Get out!" Guards in the watchtower were singing "Aber jetzt gehts du alle kaput," loosely translated as "But now you are all going to your end." The selection was being supervised by Dr. Mengele. A kapo asked Ella how old she was, and having been told in advance to say "16" (not her real

age, which was 13), she responded accordingly. Dr. Mengele instructed Ella to go in one direction, and told her mother to go in a different direction. Ella chased after her mother but was followed by Dr. Mengele, who told her that she would see her mother the next day. Ella's mother, in fact, was taken to the gas chamber, and Ella never saw her again. Ella's father was gassed at Auschwitz two months later. Ella's brother, Tibor, was shot by the Germans at Auschwitz in early 1945.

78. Ella worked at Auschwitz next to the crematorium, where she sorted prisoners' belongings taken from the transports, including bedding and shoes. Ella was able to survive the periodic selections for gassing that occurred at the camp. In October 1944, she was removed to Gross-Rosen camp, then Mathausen camp, and then Bergen Belsen camp. She also spent time as an inmate in two other camps, and performed slave labor in a munitions factory.

79. During this period, Ella contracted typhus. She lost her vision, and had to eat grass to survive. Ella had diarrhea for three months. She was infested with lice, and her skin erupted in boils. She could not sit down. Ella was finally liberated by the British, and returned to her home, only to find that no one was left. Ella stayed briefly in Benedike with a shoemaker, and was then taken to Prague where she was reunited with an uncle who had survived. They obtained papers to emigrate to the United States, where Ella married, raised two children and became a registered nurse, and where she now lives.

80. Ella received "compensation" from Hungary, in the amount of \$5,000, for the loss of her father (\$2,000), her mother (\$2,000) and her brother (\$1,000). She has never been compensated, however, for the loss of the family's personal property, including the

valuable jewelry and watches that were taken by MÁV upon embarkation for Auschwitz.

81. Named Plaintiff Moshe Perel (“Moshe”) is a citizen of Israel, residing in Rishon Letzion. He was born in Ersekujvar (during the relevant time period an annexed part of Hungary, and today part of Slovakia) on February 7, 1927, to Yakov and Epel Perel. His father Yakov was a scribe who transcribed Torah scrolls and other religious writings. In 1944 Moshe and his family were forcibly removed from their home in Ersekujvar to the Jewish ghetto in that city. The family members were forcibly transported from the ghetto by MÁV train on the eve of Passover in 1944, and were then separated. The transport was orchestrated by MÁV and the Hungarian police, who took Moshe’s watch and the family’s valuables and luggage upon embarkation.

82. The women in Moshe’s family, including his mother and two sisters, were sent to Auschwitz, where his mother was murdered. Moshe was taken by train to a locale near Linz, Austria, and then by foot and train to Mauthausen Concentration Camp. His father, two sisters and two of three brothers survived the war, as did he. After the war, Moshe and one of his sisters, Sarah, emigrated to Israel, where he settled and raised a family, which now includes a great-granddaughter.

The Defendants

83. Defendant Hungary is a sovereign state as defined in the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.* (“FSIA”), at Section 1603(a). During World War II, Hungary actively collaborated with Nazi Germany, as a formal ally, in its plan to eradicate European Jewry. Hungary facilitated the

destruction of the vast majority of its own Jewish population at the hands of Germany. Hungarian officials stripped Jews, including named plaintiffs herein, of their valuable possessions when they were transferred into the Jewish ghettos and as they boarded MÁV trains taking them to slave labor camps, concentration camps and extermination camps. Hungary has never returned these goods, nor has Hungary ever compensated its Jewish victims for them. Hungary knew, when it forced its Jewish population onto the Defendant MÁV's cattle cars, that the Jews were being sent to their doom.

84. Defendant Magyar Államvasutak Zrt. (MÁV), the Hungarian national railway, is an agency or instrumentality of Hungary, as defined in FSIA, at Section 1603(b). MÁV was established in 1868, and has operated continuously since then. Its principal place of business is at 1062 Budapest, Andrásy út 73-75, Hungary. During World War II, MÁV voluntarily collaborated with Nazi Germany, using its railway lines and freight cars to deport Hungarian Jews from the breadth of Hungary into the Ukraine and Poland to meet their fate at the hands of the Nazis. In addition, MÁV made its tracks, infrastructure and rolling stock available to the Nazis for transportation of other European Jewish communities — including the ancient Greek Jewish community of Salonika — to Poland, where they were annihilated. Throughout, MÁV knew that the Jews were being transported to slave labor camps and, in most instances, to their deaths. At the points of embarkation, MÁV confiscated and kept personal property of the Jews who were about to be deported. MÁV mistreated the Jewish deportees who were on its trains during their deportation, causing grievous injury and death to many of them en route.

85. In or around 2008, MÁV privatized, spun off and sold its rail cargo division, which had direct responsibility for the transports during World War II, but MÁV retains liability for the actions of its former division as alleged herein.

JURISDICTION AND VENUE

86. The subject matter jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1330, 1331, 1332, 1605 and 2201(a). The amount in controversy exceeds Five Million (\$5,000,000.00) Dollars exclusive of interest and costs.

87. This Court has personal jurisdiction under 28 U.S.C. §§ 1330(b) and 1605(a), and Fed.R.Civ.P. 4(k)(2).

88. Venue lies in this district pursuant to 28 U.S.C. §§ 1391 (d) and (f)(4).

Defendants are not immune from suit pursuant to 28 U.S.C. 1605(a)(3)

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

90. Alternatively, under 28 U.S.C. § 1605(a)(3) of the FSIA, a foreign state shall not be immune from suit in any case “in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a

commercial activity carried on in the United States by the foreign state[.]”

91. This action concerns rights in property, including but not limited to cash, jewelry, heirlooms, art, valuable collectibles, gold and silver, taken by Defendants from their rightful owners, the Named Plaintiffs and the putative class members whom they seek to represent, in violation of international law.

92. The takings at issue in this matter were part of a program of genocide and themselves were acts of genocide, committed in violation of international law.

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

94. The takings at issue in this matter were war crimes and crimes against humanity, committed in violation of international law.

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

96. The seizure of Plaintiffs’ property violated customary international and treaty law actionable in this Court as federal common law and the law of

nations as evidenced by various sources including but not limited to:

(a) The International Covenant on Civil and Political Rights, adopted December 19, 1966, S. Exec. Doc. E, 95-2 (1978), 999 U.N.T.S. 171 (entered into force March 23, 1976) (ratified by the United States, June 8, 1992);

(b) Article 8, Rome Statute of the International Criminal Court, United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, July 17, 1998, U.N. Doc. A/CONF. 193/9, reprinted in 37 I.L.M. 999 (1998), signed but not ratified by the United States (not yet in force);

(c) The Charter of the International Military Tribunal, Nuremberg, of August 8, 1945, confirmed by G.A. Res. 3, U. N. Doc. A/50 (1946) and G.A. Res. 95, U.N. Doc. A/236 (1946);

(d) The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, G.A. Res. 2391 (XXIII), Annex, 23 U.N. GAOR, Supp.; No. 18, at 40, U.N. Doc. A/7218 (1968); and

(e) Principles of International Co-operation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity, G.A. Res. 3074, U.N. GAOR, 28th Sess., Supp. No. 30A, U.N. Doc. A/9039/ Add. 1 (1973).

97. Defendants own and/or operate property that they stole from Hungarian Jewish deportees during the Holocaust, or property exchanged for such stolen property. Defendants liquidated stolen property,

mixed the resulting funds with their general revenues, and devoted the proceeds to funding various governmental and commercial operations.

98. The stolen property or property exchanged for such stolen property is owned and operated by Hungary and MÁV and/or other agencies and instrumentalities of Hungary that are engaged in commercial activity in the United States. Some of the stolen property, or property exchanged for such property, is present in the United States in connection with commercial activity carried on in the United States by Hungary.

99. MÁV acted as an agent for Hungary in executing the unlawful takings at issue here. MÁV's activities in World War II were in all material respects directed by Hungary. MÁV engages in an ongoing course of commercial activity in the United States. Specifically, and without limitation, MÁV, directly and/or through the Eurail Group and its affiliates, engages in commercial operations within the United States, including maintenance of an agency for selling tickets, booking reservations, and conducting similar business in the United States.

100. As MÁV acted as an agent, and at the direction, of Hungary with respect to the claims alleged herein, and because MÁV is an agency or instrumentality of Hungary, Hungary is liable for MÁV's activities.

101. Further, property exchanged for the property that Defendants stole from Hungarian Jews, including Plaintiffs, is, or has been, present in the United States (e.g., fees and payments, offices, furniture, furnishings, bank accounts, artwork, stock and bond certificates, securities held in "street name" and airplanes)

in connection with commercial activities carried on in the United States by Hungary, including but not limited to:

(a) The promotion of Hungarian businesses through trading houses, such as the Hungarian National Trading House (MNKH) Cls. located in New York;

(b) The promotion and advertising of artwork belonging to museums owned by Hungary, such as the Hungarian National Gallery and the Museum of Fine Arts in Budapest, through loans of such artwork to museums in the United States, including the National Gallery of Art in Washington, D.C.;

(c) The solicitation in the United States of American tourists through Malév Zrt., the national airline of Hungary and a member of the Oneworld® alliance;

(d) Commercial activities and tourism promotion events held at the Hungarian Embassy in Washington, D.C., and at Hungarian Consulate General offices throughout the United States;

(e) The promotion of American tourism to Hungary through the United States offices of the Hungarian National Tourist Office and Hungarian Tourism Ltd.;

(f) The promotion of American investment in Hungarian business through the United States offices of the Hungarian Investment Promotion Agency (HIPA);

(g) The acquisition by Hungary of military equipment, including but not limited to airplanes,

munitions, electronics and armaments from United States companies and suppliers;

(h) The use of United States capital and debt markets for investment and to solicit and obtain financing through issuance, since January 2010, of more than \$13 Billion of U.S. dollar debt securities, including (without limiting the generality of the foregoing): (i) Hungary's establishment in the United States of banking and investment banking accounts for the issuance of such securities and the periodic payment of principal and interest thereon, (ii) Hungary's appointment of one or more agents in the United States relating thereto, (iii) Hungary's consent to the jurisdiction of designated United States courts for the adjudication of any disputes related thereto, and (iv) Hungary's irrevocable waiver, to the fullest extent permitted by law, of any immunity from jurisdiction to which it might otherwise be entitled in any action which may be instituted by the holder of any such debt security; and

(i) The acceptance by Hungary of federal grants, aid and loans from the United States.

FACTS

102. The Holocaust consisted of the systematic, bureaucratic, state-sponsored persecution and murder of approximately six million Jews, two-thirds of the pre-World War II European Jewish population. It began in 1933 when the Nazi Party rose to power in Germany, and ended in 1945 with Germany's defeat by the Allied powers. Almost ten percent of the Jewish victims of the Holocaust were Hungarian — over 550,000 men, women and children.

103. The Nazis called their plan to exterminate the Jewish population of Europe “the Final Solution,” by which they meant the organized, bureaucratized and premeditated murder of the Jews, achieved by first isolating them, then expropriating the Jews’ property, then ghettoizing them, then deporting them to the camps, and finally, murdering the Jews and in many instances cremating their bodies.

104. Defendants Hungary and MÁV were willful collaborators and participants in the Final Solution, including isolation and ghettoization of Hungarian Jewry and the systematic plundering of their wealth and possessions, from which Defendants benefited beginning as early as 1941 with the expulsion of the bulk of Hungarian Jewry from the Carpathian region, and from which Defendants continue to benefit to this day.

The First Deportations and Murder of Hungarian Jews: 1941

105. Although the German army did not occupy Hungary until March 1944, its Jewish inhabitants were not spared the depredations of the Holocaust before then. In 1941, over 100,000 Jews who were citizens of Hungary and had been legally residing there before World War II were summarily and wrongfully stripped of their citizenship and residence rights and declared by Defendant Hungary to be stateless aliens. In addition, many refugees fled to Hungary on the heels of the German annexation of Austria, the dismemberment of Czechoslovakia and the German occupation of Poland. During July and August 1941, Hungarian authorities rounded up native Hungarian Jews, including those who could and those who could not prove their citizenship, and transported approximately 18,000 of them by

Defendant MÁV trains to the Polish border. Jewish refugees residing in Hungary were also forcibly removed to internment camps established by Defendant Hungary in violation of international law.

106. Tzvi Zelikovitch, his parents and siblings were among those transported. Tzvi's parents were citizens of Hungary; his father, Zelig Zelikovitch, had fought for Hungary in World War I. The Zelikovitches' possessions, and the possessions of others in the transports, were confiscated by MÁV in the train-boarding process. At the Ukrainian border, the Jews were removed from the MÁV trains and loaded onto MÁV-owned and operated trucks and other vehicles that were then taken by Defendant MÁV and delivered to the Hungarian military administration occupying the southwest sector of the former Ukrainian Soviet Socialist Republic. The Hungarian military police then released the deportees knowing that they would fall into the hands of the German S.S. Einsatzgruppen that were operating in that sector. The Einsatzgruppen seized the Jewish deportees and took them to the vicinity of Kamenets-Podolsk, where, on August 27-28, 1941, S.S. troops machine-gunned approximately 16,000 to death. Tzvi survived this massacre by escaping into the woods. His parents and his siblings were murdered.

107. A total of approximately 60,000 Hungarian Jews were slaughtered before the German occupation in 1944 as a consequence of the active participation of Defendants Hungary and MÁV. The death toll included many Hungarian Jews who were wrongfully conscripted into Hungarian slave labor battalions, a number of which were used to construct MÁV railway lines and associated infrastructure.

**Hungarian Jewry Following the German
Occupation in March 1944**

108. Well before the German occupation of Hungary in March 1944, Defendant Hungary expelled Hungarian Jews from all public employment, academic and professional positions, to name but a few of the discriminatory, debilitating and humiliating constraints imposed on the Jews of Hungary at that time. Following the German occupation, the Hungarian government imposed even greater restrictions on the Jews. Jews were not allowed to travel, were forbidden from wearing military uniforms and school uniforms, were prohibited from using public baths and swimming pools, and were barred from public restaurants and cafes. By government decree, all books by Jews or Christians of Jewish background were removed from schools and libraries.

109. On April 5, 1944, Hungary passed a law requiring every Jew over six years old to wear a yellow six-pointed star on the left chest of the outer garment. Anyone caught violating the law was immediately arrested.

Ghettoization of Hungarian Jewry

110. Pursuant to governmental Decree No. 6163/1944, the ghettoization of the Hungarian Jews began in Carpatho-Russia, Transylvania and the northeastern part of the country on April 12, 1944, during Passover. Ghettoization quickly spread to all parts of the country. All Jews, regardless of age or sex, were forced into ghettos from which they were forbidden to leave. All expenses associated with ghettoization were taxed on the Jews, including the Plaintiffs herein. The monies thus confiscated were remitted to

Defendant Hungary's national treasury and commingled with general governmental revenues.

111. During the ghettoization phase of the Hungarian Final Solution, Hungarian officials, notably employees of the Hungarian Customs Services and other public officials including gendarmes and school teachers, went from one Jewish home to the next making detailed inventories of the property in the homes from which the Jews had just been expelled. The property was then checked by agents of Defendant Hungary against declarations that each Jewish family had been forced to prepare prior to the deportations. Next, the property was expropriated by Defendant Hungary and converted to cash through sales and other means. The proceeds were transferred to the Hungarian government treasury and co-mingled with other Hungarian government revenues.

Deportation of Hungarian Jewry

112. The final stages of the Final Solution were now under way for the Jews of Hungary. Their incarceration in the ghettos lasted only a few weeks, as most of the Jews were quickly deported, *via* Defendant MÁV, to the death camps for liquidation. Named Plaintiffs Rosalie Simon, Helen Herman, Charlotte Weiss, Helena Weksberg, Rose Miller, Magda Kopolovich Bar-Or, Zehava Friedman, Alexander Speiser, Ze'ev Tibi Ram, Vera Deutsch Danos and Ella Feuerstein Schlanger, and members of their families including their parents and siblings, were among those transported by Defendant MÁV to Auschwitz. Named Plaintiff Moshe Perel was among those transported by Defendants MÁV to Mathausen. The possessions of all of the Named Plaintiffs, and those of their families, were taken from them by MÁV as they boarded the trains for embarkation. The property of Named

Plaintiff Yitzhak Pressburger's family was likewise stolen by MÁV, never to be returned. Defendant MÁV sold, liquidated or otherwise converted some or all of the property stolen from Plaintiff deportees to cash, and commingled those funds with other revenues. Defendant MÁV's funds and operations are in part derived from the funds it realized from liquidating the possessions MÁV stole from Plaintiffs.

113. The Jews did not resist the deportations. Incarceration in the ghettos had demoralized them, as the shocking conditions of their bare existence — removed from their homes and surroundings, stripped of protective clothing, exposed to the elements, deprived of sanitary facilities, undernourished and diseased — were unbearable. They lacked the strength and spirit to offer resistance, and they clung to the fantasy that removal to another locale would improve their conditions.

114. The first deportation occurred on April 29, 1944, when 1,800 Jews were transported from Kistarcsa. The second deportation occurred the following day, with 2,000 Jews leaving Bacstopolya.

115. At a conference in Vienna on May 4-6, 1944, attended by representatives of the Hungarian gendarmerie, the *Sicherheitspolizei*, and the German, Slovak and Hungarian railroad systems including Defendant MÁV, the schedule of deportations and the route plan were finalized, pursuant to the Final Solution. Systematic deportations of Hungarian Jewry via Defendant MÁV began on May 15, 1944.

116. The plan for deportations, and the deportations themselves, are evidenced by thousands of MÁV documents, including cargo manifests, bills of lading, invoices, inter-agency memoranda and the like,

contemporaneously issued, that specified the details of each shipment of deportees, denoted by the letter "D." These documents further enumerated the cost for each MÁV deportation shipment, the identity of the parties to the carriage contract, and other administrative and commercial data. These documents, together with thousands of other relevant documents have been kept and maintained by Defendants Hungary and MÁV. Defendants, in an effort to conceal and obscure their involvement in the destruction of Hungarian Jewry during World War II, have consistently refused to permit victims of the Holocaust, historians, other interested persons and the public at large to have access to this trove of documents.

117. The deportation schedule called for four trains daily carrying approximately 3,000 to 3,500 Jews per trainload. The Jews were crammed 70 to 90 per freight car, with the average freight car used in Hungary at the time measuring 26.8 feet long by 7.2 feet wide. MÁV refused to provide the deportees with adequate water, food or sanitary facilities for the three-day transit to Auschwitz. Each freight car was provided, at most, with two buckets: one with water and one for excrement. At that, MÁV charged the victims exorbitantly for the cost of the meager supply of water, which many of the victims could not pay. These extortionate charges were also commingled with MÁV's legitimate revenues. Many ill and elderly Jews died en route to Auschwitz, mostly from suffocation.

118. A Hungarian journalist described the entrainment and deportation of the Jews of Munkács as follows:

On May 22, the ghetto of the city of Munkács was also emptied and most of Munkács 12,000 Jews were driven on the route from

the ghetto to the brickyard by guards using whips, machine-guns, and rifle-butts. There they were compelled to lay down their baggage and undress - men, women, and children alike. Stark naked, they were then ordered to move back a few steps, and women, who were called in specially, together with the Gestapo men, policemen, and gendarmes went through their baggage and clothing, even opening stitches to discover whether the Jews had hidden anything. Those who did not undress or step back fast enough were beaten. Most of the people were bleeding and stood silently, naked, and numbed. The searches, however, were all the more loud. The clothes were then returned, the personal documents were torn, and everybody became a non-person. They were then driven by night sticks and rifle butts to get dressed. Here, 90 persons were crowded into a freight car: *obviously there were too few cars and too many Jews!* The cars were then chained and padlocked. Each got a bucket full of water and an empty one for excrements. The train, however, was left standing in the station during the hot May day and was allowed to leave only the following day. By that time many became mad and even more died, since the Jewish hospital patients were also included. The doors were not opened the day of the departure. The corpses were removed three days later at Csap, where also the mad were clubbed or shot.²

² Randolph L. Braham, *The Politics of Genocide: The Holocaust in Hungary*, Vol. 1 at 671-72 (emphasis in original)

119. Samu Stern, the head of the Budapest Central Jewish Council during the Holocaust, described “[t]he agony of the Jews assembled for deportation after weeks of dehumanizing treatment in the ghettos and entrainment centers”³ as follows:

[Searching for the valuables of the Jews] no brutality, no method of torture was spared to make them confess. Wives were beaten under the eyes of their husbands, and when this was of no avail, children were tormented in front of their parents. The favorite methods of the Hungarian gendarmes to make these unfortunates speak up one way or another were tying up the victims, beatings with rubber truncheons, the use of electric devices, blows with sticks upon the soles of the feet and the palms of the hands, boxing the ears, puncturing under the nails, and kicking. When the detectives were through with their job, the SS men of Wisliceny and Zöldi’s special unit put in an appearance. They surrounded the ghetto with loaded machine-guns in hand, watching with the eyes of lynxes until the trains rolled in. Hereupon they drove the unfortunate people with whips and rifle-butts to the station. At the beginning this was done in the early hours, for they were anxious to avoid sensation; later on, when the pace had to be accelerated, they did not care anymore, chasing their victims across the towns in broad daylight. At this sight kindhearted

(Columbia University Press rev. ed. 1994) (hereinafter “GENOCIDE”) (quoting Jenő Lévai, *Fekete könyv*, pp. 142-43).

³ *Id.* at 672.

Christians could often not help bursting into tears, but they had to hide them lest some gendarme might notice their pity and assault them with rifle-butts and foul language. We heard about an instance when a good natured peasant woman tried to hand over edibles to the poor creatures crammed into freight cars. A gendarme caught her in the act and pushed that kind woman into the car which then, carefully sealed, went on with an additional victim.

One car had to hold- depending upon the number of deportees and cars- 60 to 80 persons. . . . In the burning heat of summer, sealed in cattle wagons with two buckets per car, they started their journey via Kassa to Auschwitz, the terminal.⁴

120. In less than two months, between May 15 and July 9, 1944, over 430,000 Hungarian Jews were deported, mostly to Auschwitz, in 147 trains.⁵ See TABLE 19.1: DATA RELATED TO THE GHETTOIZATION AND DEPORTATION OF HUNGARIAN JEWRY BY OPERATIONAL ZONES AND GENDARMERIE DISTRICTS, attached hereto as **EXHIBIT A**.⁶ See also APPENDIX SIX: DEPORTATION TRAINS PASSING THROUGH KASSA IN 1944: DATES, ORIGIN OF TRANSPORTS AND NUMBER OF DEPORTEES, attached hereto as **EXHIBIT B**.⁷

⁴ *Id.* (quoting Samu Stern, "A Race With Time": A Statement 19-20, HUNGARIAN-JEWISH STUDIES, VOLUME 3 (Randolph L. Braham ed. 1973) (1966)).

⁵ *Id.* at 673; *After the German Occupation*.

⁶ GENOCIDE, VOLUME 1, at 674.

⁷ GENOCIDE, VOLUME 2, at 1403-05.

Extermination of Hungarian Jewry

121. The German authorities at Auschwitz and other death camps, in an effort to conceal the fate of those transported there, forged postcards ostensibly written by the deportees for delivery to their remaining families in Hungary. These postcards were delivered by agents, representatives and employees of Defendants Hungary and MÁV.

122. Those who appeared fit for labor upon arrival were tattooed with a number on their left forearm and were allowed for the moment to live, with the intention of working them to death. Approximately 10 percent of the almost 433,000 Hungarian Jews deported to Auschwitz from May 15 to July 9, 1944, were selected as fit for labor. All others, with the exception of those chosen for human medical experiments such as twin children, were sent to the gas chambers. Named Plaintiffs Rosalie Simon, Helen Herman, Charlotte Weiss, Helena Weksberg, Rose Miller, Magda Kopolovich Bar-Or, Zehava (Olga) Friedman, Alex Speiser, Ze'ev Tibi Ram, Vera Deutsch Danos and Ella Feuerstein Schlanger survived the initial selection at Auschwitz, but they all saw members of their families, including grandparents, parents and siblings, marched away to the gas chambers for liquidation.

123. The daily arrival of 12,000 to 14,000 Jews from Hungary had been anticipated, and huge open pits were dug around the gas chambers to burn the corpses that the crematoria could not handle. At the height of the deportations from Hungary, nine such pits were used in addition to the crematoria.⁸

⁸ GENOCIDE, VOLUME 2, at 780.

124. A channel was dug in the bottom of the open pits so that the fat secreted from the burning bodies could be “harvested” for use as fuel in the cremation.

Halting the Deportations

125. On July 7, 1944, Miklos Horthy (“Horthy”), the Hungarian Regent, ordered a halt to the deportations.

126. Despite Horthy’s order on July 7, the deportation of Jews from the communities surrounding Budapest was completed on July 8, 1944. 1,450 inmates from the Kistarcsa internment camp were deported on July 19, 1944, and close to 1,500 inmates of the Sárvár internment camp were deported on July 24, 1944.

127. By the end of July 1944, the only Jewish community left in Hungary was that of Budapest.

The Arrow Cross/Nyilas Party Reign of Terror

128. In October 1944, Horthy, in a coup d’etat, was replaced as the Hungarian Regent by Ferenc Szálasi, the fanatical leader of the fascist and radically anti-Semitic Arrow Cross Party, also known as the *Nyilas* party. Under this new Hungarian government, the anti-Jewish drive resumed and violent attacks were carried out on the remaining Jews living in Budapest until liberation.

129. Hundreds of Jews in Budapest, both men and women, were violently murdered by the Arrow Cross regime, and many others died from the brutal conditions of the forced labor to which the Arrow Cross subjected them. In November 1944, the Arrow Cross ordered all remaining Jews in Budapest into a ghetto. On December 2, 1944, the transfer of the nearly 70,000 Jews of Budapest into the ghetto - covering an area of only 0.1 square miles- was completed. Starting on

November 8, 1944, under Hungarian guard, several thousand Jews from Budapest were marched on foot to Hegyeshalom and the Austrian border. Many were shot along the way.

130. The Soviets liberated the surviving Jews in Budapest on January 16-18, 1945. The Jews who were marched to the Austrian border were not liberated until April 4, 1945, when Hungary was freed of all Nazi-*Nyilas* troops. The several thousand Jews who were taken along with the withdrawing German forces were not liberated until May 9, 1945, when the war ended.

Hungarian Jewry Losses During World War II

131. In 1941, there were approximately 825,000 Jews in Hungary, including 100,000 converts. The overall loss of Hungarian Jewry during the Second World War, excluding those who fled abroad, was 564,507.

132. During the German occupation, over 500,000 Hungarian Jews died from maltreatment or were murdered. The overwhelming majority of these were among the close to 440,000 Jews who were deported to Auschwitz between May 15 and July 8, 1944.

133. Without the mass transportation provided by the Defendant MÁV, the scale of the Final Solution in Hungary would never have been possible. The efficiency with which Defendants Hungary and MÁV were able to collect and deport nearly half a million human beings in little more than one month at the height of hostilities, transporting them over a single rail line to the border and beyond, is without parallel in the annals of war. The “death trains” helped concentrate Jews in ghettos, transport them to forced labor or concentration camps, and, for most of the

unfortunate Hungarian Jewry during World War II, transport them to the death camps. Defendants expropriated as much personal property as they could from the helpless Jewish victims, draining the wealth and assets of Hungarian Jewry.

134. At the time that Defendant MÁV was engaged in the deportation of Hungarian Jewry as set forth above, MÁV knew that its acts, and those of its agents and employees, violated international law. In a telegram dated June 30, 1944, sent at the height of the Hungarian deportations, Moshe Shertok, then Secretary of the Political Department of the Jewish Agency wrote to David Ben-Gurion, Chairman of the Executive Committee of the Jewish Agency, reporting on a meeting with British Foreign Undersecretary Hall and Dr. Chaim Weizmann, President of the World Zionist Organization. According to the telegram, at the meeting Shertok and Weizmann urged that MÁV railway employees be warned that they would be considered war criminals for their role in the deportation and destruction of Hungarian Jewry. British intelligence in fact passed along this warning to Defendants Hungary and MÁV.

The Post-Liberation Period

135. After the war, the liberated Hungarian Jews were preoccupied with basic day-to-day survival. Many of them suffered from concentration camp-induced mental and physical disabilities, and thousands would continue to die from them.

136. The Hungarian government was aware of the anti-Semitism that still prevailed in the country, and “[i]t feared that a massive restitution program at a time when the country was itself in ruin, the population impoverished, and the Soviet forces adamant on

having their demands met, would only endanger a new wave of anti-Semitism.”⁹

137. Nevertheless,

[s]hortly after the signing of the armistice agreement, the Jewish communal leaders submitted to the party leaders and to the government their demands in support of the deportees and for a swift and generous restitution and indemnification program. They argued that these were not designed to provide a privileged position for the Jews, but merely to compensate the survivors and enable them- the most persecuted segment of Hungarian society- to reestablish themselves.¹⁰

138. The government did implement an array of legislative enactments and remedial statutes.¹¹ However, the Jews saw no tangible results with respect to restitution and indemnification:

For one thing, the government never regulated the Hungarian state’s responsibility for indemnifying the Jews for losses suffered during the Horthy and *Nyilas* eras. . . .

The survivors encountered a series of other difficulties. The new owners were reluctant to yield their recently acquired properties; litigation was producing long delays; resistance by political leaders and parties with conflicting short and long-range interests were causing conflicts; the Communists acquired

⁹ *Id.* at 1307.

¹⁰ *Id.*

¹¹ *Id.* at 1308.

power and began to transform Hungary into a People's Democracy. All of this militated against the expectations of the Jews for restitution and compensation. Following the drive against the Smallholder and other anti-Communist parties in the spring of 1947 and the subsequent elections in August, the new Communist-dominated coalition government became even more adamant in its position, despite its international obligations. The Paris Peace Treaty of February 10, 1947, for example, incorporated a number of provisions relating to the restoration of confiscated property. Paragraph 1 of Article 27 stipulated:

Hungary undertakes that in all cases where the property, legal rights or interests in Hungary of persons under Hungarian jurisdiction have, since September 1, 1939, been the subject of measures of sequestration, confiscation or control on account of the racial origin or religion of such persons, the said property, legal rights and interests shall be restored together with their accessories or, if restoration is impossible, fair compensation shall be made thereof.

These provisions, like the many other related ones in the armistice agreement and peace treaty, proved merely declaratory. They embodied desiderata and principles rather than strict, legally binding orders; they were not self-executing (they needed appropriate municipal legislation and enforcement to prevail); and they did not provide for sanction

in case of non-compliance, other than the implied possible litigation before an international tribunal.¹²

139. Moreover, the Jewish demands following liberation in 1945 caused a neo-anti-Semitic reaction in Hungary.

The frictions caused by the conflicting interests of the feuding parties, at a time of great economic hardship, led to many anti-Semitic outbursts. The anti-Jewish manifestations had a shattering effect both on the survivors, who were still suffering from the trauma of their experiences and losses, and on those many decent Hungarians who believed that the building of a harmonious democratic order based on justice and equality was possible.¹³

140. Furthermore,

The problem of neo-anti-Semitism became intertwined with the complex and troublesome issue of responsibility for the tragedy of Hungarian Jewry. Postwar social critics, including some of the literary figures who showed considerable understanding toward the wartime plight of the Jews, tried to exculpate the Hungarian nation as a whole from moral and historical responsibility for what happened to the Jews. Ignoring and distorting historical reality, they endeavored to place the blame almost exclusively upon the Germans. . . . Some of the writers tried to

¹² *Id.* at 1308-09.

¹³ *Id.* at 1312.

mitigate Hungary's responsibility by arguing that the Hungarian Christians also had suffered during the war, and that the people at large could not be made responsible for the actions of the *Nyilas*. It is hard to understand this attempt to equate the plight of a people in the course of hostilities with the sufferings of a helpless minority that had for decades been subjected to systematic discrimination by a state that elevated anti-Semitism to official policy and at the end cooperated in the Final Solution.¹⁴

The Communist Era

141. With the Communist party in power in Hungary, "the issue of compensation and restitution was squashed under the impact of the campaign against Zionism and cosmopolitanism that was waged in Hungary as viciously as elsewhere in the former Soviet bloc."¹⁵

142. In the 1950's, the Commission for the Administration of Abandoned Properties became the Jewish Restoration Fund. However, the funds were rarely used for their intended purpose and they were frequently raided by the Communists for financing their own political projects.

The Post-Communist Era

143. On April 7, 1992, two years after the downfall of the Communist regime, the Hungarian Parliament adopted a law providing compensation for material losses incurred between May 1, 1939 and June 8, 1949.

¹⁴ *Id.* at 1347.

¹⁵ *Id.* at 1309.

This was followed by the adoption of another law on May 12, 1992, providing compensation for those who, for political reasons, were illegally deprived of their lives or liberty between March 11, 1939 and October 23, 1989. The remedies provided by these statutes, however, were paltry and wholly inadequate.

**The Thwarting of Plaintiffs' Ability
to Bring These Claims**

144. Plaintiffs are the survivors of families that were subjected to human rights violations, including torture, slave labor and extermination. The personal property of Plaintiffs and their families, including jewelry, household furnishings and family heirlooms made of diamonds, gold, silver, pearls and other precious metals and jewels, as well as artwork, moveable property, bank accounts, intangible property and businesses was stolen, seized, converted and transferred by Defendants in violation of law and Plaintiffs' human rights.

145. Plaintiffs have been unable to secure the return their personal property, as described above, from Defendants.

146. Since the end of World War II, Plaintiffs' personal property, as described above, has never been accounted for by Defendants, and has never been returned by them to Plaintiffs or their families.

147. Throughout the period 1939-1945, Defendant Hungary, including its ministries, departments and agencies, among them the Ministry of the Interior and the Hungarian Secret Services, together with Defendant MAV, created and maintained documentation, in addition to the documentation alleged at Paragraphs 111 and 116 above, evidencing and relating to the acts and events described hereinabove,

including the isolation, ghettoization, enslavement, plundering and deportation to the death camps of Hungarian Jewry. These documents have been stored and archived in original, facsimile and digital form by Defendants. Defendants have refused survivors and others access to this trove that forms an important part of the legacy of Hungarian Jewry. Such refusal constitutes a continuing offense and violation of Plaintiffs' fundamental rights as human beings and as Jews.

148. Further, upon information and belief formed on the basis of public news reports, Defendant Hungary intends to destroy all or part of this historical documentation.

149. The claims of Plaintiffs herein cannot be fully and fairly resolved absent declaratory and/or injunctive relief preserving and disclosing the archives and other documentation relating to the subject matter of this Complaint to interested parties including Plaintiffs herein.

150. The Jewish victims of the Hungarian Holocaust seek only what is due them, and what they can rightfully claim in this litigation — compensation and restitution for the property stolen from them as they were herded to the slaughter, and a final accounting based on the contents of the Hungarian archives that have yet to be released.

CLASS ACTION ALLEGATIONS

151. The allegations of paragraphs 1-150 are incorporated in this paragraph as though fully set forth herein.

152. Plaintiffs, in accordance with Fed.R.Civ.P. 23(a) and 23(b)(1), (b)(2) and (b)(3), bring this action

on behalf of themselves and the members of the Class defined below.

153. The Class consists of (a) all surviving Jewish victims of the Holocaust, whether presently American citizens or aliens, who, at any time between September 1, 1939 and May 8, 1945, were residents of geographic areas of what is today or what was, at any time relevant to this Complaint, part of, or controlled by, Hungary, and who, at any time during that period, were stripped of personal property by either of the Defendants, and (b) the heirs (whether American citizens or aliens) and open estates (wherever located) of the deceased Jewish victims of the Holocaust, whether presently American citizens or aliens, who, at any time between September 1, 1939 and May 8, 1945, were residents of geographic areas of what is today or what was, at any time relevant to this Complaint, part of, or controlled by, Hungary, and who, at any time during that period, were stripped of personal property by either of the Defendants.

154. The Class is so numerous that joinder of all members is impracticable. *See* F.R.Civ.P. 23(a)(1). In all, the Defendants forcibly transported over 430,000 Hungarian Jews to Auschwitz, and tens of thousands more to Mauthausen and other locations, to be murdered. The Class consists of over 5,000 survivors, and countless heirs and estates, throughout the world, centered chiefly in Israel, the United States and Canada. Plaintiffs and their counsel have thus far identified in excess of 300 survivors, including their contact information, and continue to locate more survivors through word of mouth and various data bases.

155. There are questions of law and fact common to the Class. *See* F.R.Civ.P. 23(a)(2). These common questions include, but are not limited to:

A. Whether Defendants are amenable to suit in this Court, entailing proof that the pertinent exceptions to sovereign immunity set forth in the FSIA apply to Defendants in the context of this case, that this Court has personal jurisdiction in this case, and that venue is properly laid in this Court;

B. Whether limitations, laches, or any other defense bars an action by any member of the Class based on the claims alleged herein.

C. Whether Defendants actively collaborated to confiscate the property and possessions of the Hungarian Jewry as alleged herein;

D. Whether Defendants, as a matter of course, confiscated the property and possessions of the Hungarian Jews contemporaneous with their deportation, and failed to return that stolen property to its rightful owners or provide adequate compensation therefor;

E. Whether the claims alleged herein can be stated against Defendants by this Class based on the facts alleged in this complaint; and

F. Whether Plaintiffs and the Class are entitled to declaratory and corresponding injunctive relief as prayed hereinbelow.

156. The claims of Plaintiffs, which arise out of Defendant Hungary's efforts to exterminate its Jewish population during World War II with the active collaboration of Defendant MÁV, are typical of the claims of the Class members. Likewise, Defendants' defenses to Plaintiffs' claims — both the myriad of

legal defenses that can be anticipated, together with the factual defenses — are typical of the defenses to the Class claims. *See* F.R.Civ.P. 23(a)(3).

157. Plaintiffs will fairly and adequately represent and protect the interests of the Class. *See* Fed.R.Civ.P. 23(a)(4). Plaintiffs are articulate and knowledgeable about their claims, and fully able to describe them. There are no conflicts of interest between the Named Plaintiffs, either *inter se* or with respect to the interests of the Class members. Plaintiffs, like the Class members, have suffered financial loss as a result of the acts and omissions of the Defendants. Plaintiffs have sufficient financial resources to litigate this case and further the interests of the Class without compromising them.

158. Counsel for the Named Plaintiffs are well-suited to represent their interests and the interests of the Class at large. Counsel include Charles S. Fax, Esq. (Rifkin Weiner Livingston, LLC, Bethesda, Maryland), Paul G. Gaston, Esq. (Law Offices of Paul G. Gaston, Washington, D.C.), David H. Weinstein, Esq. (Weinstein Kitchenoff & Asher LLC, Philadelphia, Pennsylvania), and L. Marc Zell, Esq., Zell & Co., Jerusalem, Israel). The combined experience and areas of professional concentration of these attorneys are well-suited to representation of the interests of the Class. All of these lawyers practice complex civil litigation and are experienced in class action litigation.

159. Class certification is appropriate pursuant to Fed.R.Civ.P. 23(b)(1). Prosecuting separate actions would create a risk of adjudications with respect to individual Class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or

would substantially impair or impede their ability to protect their interests.

160. Class certification is appropriate pursuant to Fed.R.Civ.P. 23(b)(2). With respect to the documents described in Paragraphs 111, 116 and 147 above, Defendants have acted and refused to act on grounds that apply generally to the Class, so that declaratory and corresponding final injunctive relief is appropriate respecting the class as a whole.

161. Class certification is also appropriate under Fed.R.Civ.P. 23(b)(3). The questions of law or fact common to the members of the Class, described above, predominate over any questions affecting only individual members.

162. Due to the individual amount at issue as to each Class member, as well as the cost and difficulty in litigating each case separately, the Class members have insufficient interest in individually controlling the prosecution of separate actions. *See* Fed.R.Civ.P. 23(b)(3)(A).

163. This Court is an appropriate forum for the litigation of the Class claims.

164. Any difficulties that might be incurred in the management of this class action are insubstantial. *See* Fed.R.Civ.P. 23(b)(3)(D). Plaintiffs have already begun the task of identifying Class members, whose names appear on various schedules, registries and documents accessible to Plaintiffs.

THIS SUIT IS TIMELY FILED

165. No limitations period should be imposed on the prosecution of this action, due to the heinous and unprecedented quality of the wrongdoing giving rise to this action, and for the same reasons that no limita-

tions period is imposed on criminal prosecutions for the violations of international law, war crimes and crimes against humanity alleged herein. *See, e.g.*, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, G.A. Res. 2391 (XXIII), Annex, 23 U.N. GAOR, Supp.; No. 18, at 40, U.N. Doc. A/7218 (1968).

166. Alternatively, the Complaint is timely filed under the continuing wrong doctrine. Under this doctrine the limitations period does not begin to run until the last wrongful act occurs. Here, Defendants' ongoing failure to return Plaintiffs' assets to them or compensate them for the same, coupled with Defendants' repeated denials of facts and concealment of information relating thereto, which, had disclosure been made, would have enabled Plaintiffs to bring suit much earlier, constitute deliberate, continuous and ongoing violations of international and domestic law. These violations continue to this day.

167. Likewise, Defendants' failure and refusal to allow the Hungarian Jewish victims and others access to the official documentation maintained by Defendants evidencing their depredations, as alleged hereinabove at Paragraph 147, coupled with information obtained during the course of this litigation that Defendants intended to destroy this documentation and archival evidence of their wrongdoing, constitutes a continuing wrong that is actionable.

168. Alternatively, any statute of limitations is equitably tolled. Plaintiffs were kept ignorant of vital information necessary to pursue their claims without any fault or lack of due diligence on their part. Defendants continually thwarted any attempts to recover assets, as well as facts and information relating thereto. The deceptive and unscrupulous

deprivation of both assets and of information substantiating Plaintiffs' rights to these assets entitles them to the benefit of equitable tolling.

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

170. Alternatively, the facts alleged above give rise to an estoppel. Defendants have continuously denied their participation in the unlawful conduct alleged herein. Further, they have actively concealed information concerning Plaintiffs' assets — information in the defendants' exclusive control. Plaintiffs have thus been prevented from obtaining access to vital information necessary to bring their claims. Defendants are thus estopped to rely on any statutes of limitations or the doctrine of laches as a defense to the claims herein.

171. Defendants are estopped to raise limitations or laches as a defense for the further reason that they actively lulled Plaintiffs into allowing any otherwise applicable statute(s) of limitations to expire. Defendants did this through a series of legislative enactments and remedial statutes beginning with the Treaty of Paris in 1947 through laws adopted in the 1990's that

held out the false promise of providing Plaintiffs with adequate compensation.

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

COUNTS

Count I

(Conversion)

173. The allegations in Paragraphs 1-172 are incorporated by reference as though fully stated herein.

174. Plaintiffs owned and had the right to possess personal property that was taken from them by Defendants, as described hereinabove, and never returned to them.

175. Defendants' actions were intentional and contrary to international law.

176. Defendants deprived Plaintiffs of such property, and the possession and use thereof.

177. Defendants' unlawful actions caused severe injury and damages to Plaintiffs.

Count II

(Unjust Enrichment)

178. The allegations in Paragraphs 1-172 are incorporated by reference as though fully stated herein.

179. Plaintiffs were deprived of their personal property by Defendants contrary to international law and without consideration, compensation or legal cause.

180. Defendants were enriched thereby.

181. It would be inequitable and unconscionable for Defendants to continue to enjoy the benefits of possession and use of Plaintiffs' personal property without compensating them therefor.

Count III

(Breach of Fiduciary and Special Duties
Imposed on Common Carriers)

182. The allegations in Paragraphs 1-172 are incorporated by reference as though fully stated herein.

183. Defendant MÁV, as a common carrier, owed a fiduciary duty — a special duty of care — to Plaintiffs, its passengers during the deportations described hereinabove. That special duty included the highest degree of vigilance, care and precaution for the safety and security of its passengers, embracing all of those risks to which passengers are exposed during the boarding, embarkation and transportation at the hands, and under the control, of the common carrier, including theft.

184. Defendant MÁV breached that duty by confiscating Plaintiffs' possessions before and during their deportations.

185. Defendant MÁV's breach of duty caused Plaintiffs to suffer severe injury and damages.

Count IV
(Recklessness)

186. The allegations in Paragraphs 1-172 are incorporated by reference as though fully stated herein.

187. Defendants were reckless in their care of Plaintiffs and their families during the deportation process, causing and resulting in the confiscation of Plaintiffs' property. Defendants' recklessness caused damage or loss to Plaintiffs and their families.

Count V
(Negligence)

188. The allegations in Paragraphs 1-172 are incorporated by reference as though fully stated herein.

189. Defendants failed to use ordinary or reasonable care in order to avoid injury to Plaintiffs and their families during the deportation process, resulting in the confiscation of Plaintiffs' property. Defendants' negligence caused damage or loss to Plaintiffs.

Count VI
(Civil Conspiracy with Nazi Germany
to Commit Tortious Acts)

190. The allegations in Paragraphs 1-187 and 197-199 are incorporated by reference as though fully stated herein.

191. As early as October 1942, German Schutzstaffel ("SS") senior officers, including SS Hauptsturmführer Dieter Wisliceny and SS Reichsführer Heinrich Himmler ("Himmler"), on behalf of the Nazi government of Germany, began conspiring and collaborating with Defendants on a plan to address the "Jewish

Question” in Hungary. That plan came to fruition following Nazi Germany’s occupation of Hungary on March 19, 1944. Miklos Horthy, Regent of Hungary, authorized Hungary’s Prime Minister, Döme Sztójay, to enter into an agreement with Nazi Germany respecting “resettlement” of Hungarian Jewry, including provision of Jewish slave labor to serve the Nazi war machine and implementation of the “Final Solution,” *viz.*, the mass murder and eradication of Hungarian Jewry. Sztójay did so on behalf of Hungary.

192. The Nazi government, through the Reich Main Security Office (“RSHA”), under the direction of Himmler as head of the SS, with the full connivance and cooperation of Hungary and MÁV, placed SS Obersturmbannführer Adolf Eichmann in charge of the forced deportation of the Hungarian Jews, including Plaintiffs, from their homes, and their compelled transport by MÁV to concentration camps — the vast majority to Auschwitz — as well as slave labor camps throughout Nazi-occupied Europe.

193. Eichmann, acting with speed and efficiency, undertook his new assignment immediately following the March 19, 1944, occupation by Germany. His sense of achievement and satisfaction in performing his assigned tasks may be measured by the comment he made near the end of the war that he would leap laughing into the grave because the feeling that he had five million people on his conscience would be for him a source of extraordinary satisfaction.

194. Germany, on the one hand, and Hungary and MÁV, on the other, also conspired to, and did, steal Hungarian Jews’ property, as described hereinabove, incident to, and during, the Jews’ forced removal from their homes, incarceration in ghettos and deportation to the camps. Plaintiffs were victimized, and suffered

injury caused, by this conspiracy between Nazi Germany, on the one hand, and Defendants, on the other — a conspiracy tortiously to deprive Plaintiffs of their rights, act recklessly towards them, aid and abet each other's criminal misconduct, steal and convert Plaintiffs' property, and unjustly enrich themselves at Plaintiffs' expense.

195. Each Defendant took active steps to further Defendants' conspiracy with Nazi Germany, including the unlawful acts described hereinabove and incorporated by reference in this Count.

196. Defendants' conspiracy with Nazi Germany caused grievous injury to Plaintiffs.

Count VII

(Aiding and Abetting)

197. The allegations in Paragraphs 1-187 are incorporated by reference as though fully stated herein.

198. Each Defendant independently engaged in tortious conduct as set forth hereinabove, consisting of the conversion of Plaintiffs' personal property. Each Defendant substantially assisted and encouraged the other Defendant in their unlawful activities towards Plaintiffs, as alleged hereinabove. Each Defendant had actual knowledge of the wrongful conduct of the other Defendant, and well understood the role of both in their unlawful misconduct toward Plaintiffs.

199. Plaintiffs suffered severe damages caused by Defendants' unlawful conduct as alleged hereinabove.

Count VIII
(Restitution)

200. The allegations in Paragraphs 1-172 are incorporated by reference as though fully stated herein.

201. Plaintiffs' personal property was taken as alleged hereinabove, denying them the use and enjoyment thereof. Defendants have wrongfully used and profited from that property. Compensation in damages is inadequate, as the property taken cannot be replaced, and the harm inflicted cannot be undone by mere compensation.

202. As a result of Defendants' wrongful acts, Plaintiffs have been damaged, and are entitled to the equitable remedy of restitution.

Count IX
(Accounting)

203. The allegations in Paragraphs 1-172 are incorporated by reference as though fully stated herein.

204. Defendants have never accounted for or paid the value of Plaintiffs' property or the profits which Defendants have derived from that property since the end of World War II.

205. As a result of their property having been forcibly taken from them, against their will and without just payment by Defendants, Plaintiffs have been unable to use or invest those assets.

206. As a result of Defendants' wrongful acts, Plaintiffs have been damaged and demand an accounting of their stolen property, and the profits earned thereby by Defendants.

Count X

(Declaratory Judgment and Injunctive Relief)

207. The allegations in Paragraphs 1-172 are incorporated by reference as though fully stated herein.

208. As alleged hereinabove at Paragraphs 11, 116 and 147, Defendants have maintained in their archives, in hard-copy, facsimile and digital form, documents that are both instruments that were employed in the unlawful acts and events described hereinabove relating to the isolation, ghettoization, enslavement and plundering of Hungarian Jewry and their deportation to the German death camps, as well as evidence of such acts and events, including inventories of stolen property. Jewish victims and others have been consistently denied access to these records which are vital to the proof of this case.

209. News reports have indicated that Defendants intended to destroy the records.

210. Plaintiffs and Class members have a right to inspect and copy such records, particularly as they relate to such individuals and their relatives.

211. Accordingly, there exists an actual controversy, within this Court's jurisdiction, that entitles Plaintiffs and the Class members to a declaration of their rights regarding their access to the subject documentation.

212. Plaintiffs and the Class members have suffered and absent appropriate equitable relief, will continue to suffer irreparable injury by being denied access to Defendants' referenced records. The irreparable injury will continue to occur both until trial of this matter and thereafter.

213. Remedies available at law, such as monetary damages, are inadequate to compensate for this injury.

214. Injunctive relief would not substantially harm Defendants or other interested parties, so that, consider the balance of hardships between Plaintiffs and Class members, on the one hand, and Defendants, on the other, an equitable remedy is warranted.

215. The public interest would be furthered by injunctive relief commanding that Plaintiffs, Class members, historians and other scholars have appropriate access to the aforementioned documents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

1. Certify this action as a class action pursuant to Fed.R.Civ.P. 23, designate the Named Plaintiffs as the Class representatives, and counsel for Plaintiffs as Class counsel;

2. Order that Defendants render an accounting to Plaintiffs and Class members as sought hereinabove

3. Award Plaintiffs and Class members compensatory damages, and/or compensation for unjust enrichment, and/or restitution, in an amount as to each Plaintiff to be proven at trial, for the Defendants' unlawful conduct, including the theft of the Plaintiffs' and Class members' personal property, as alleged hereinabove;

4. Award Plaintiffs and the Class members punitive damages;

5. Enter a declaratory judgment declaring that the Plaintiffs and Class members are entitled to inspect

and copy the documents described hereinabove at Paragraphs 111, 116 and 147.

6. Enter a permanent injunction enjoining Defendants from tampering with, sequestering or destroying such documents, and ordering Defendants to produce them for inspection and copying by the Plaintiffs and Class members or their representatives upon reasonable notice;

7. Award Plaintiffs the costs of this action, including attorneys' fees and all reasonable expenses; and

8. Grant such other and further relief as shall be deemed just and proper by the Court.

/s/Charles S. Fax

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Dated: June 13, 2016

TABLE 19.1
DATA RELATED TO THE GHETTOIZATION AND DEPORTATION OF
HUNGARIAN JEWRY BY OPERATIONAL ZONES AND GENDARMERIE DISTRICTS

Operational Zone	Gendarmerie District	Area of Hungary	Number of Ghettos or Concentration Centers	Date of Ghettoization or Concentration	Date of Deportation	Number of Trains	Deportation Figures	
							Ferenczy's	Veesenmayer's ^a
I	VIII. (Kassa)	Carpatho-Ruthenia	16	Apr. 16-	May 15-June 7	92	288,333	289,357
II	IX. (Kolozsvár) X. (Marosvásárhely)	Northern Transylvania	11	May 3-				
III	II. (Székesfehérvár) VII. (Miskolc)	Northern Hungary ^c	6 5	June 5-10	June 11-16	23	23,725 28,104	50,805
IV	V. (Szeged) VI. (Debrecen)	Southeastern Hungary ^d	4 3	June 16-20	June 25-28	14	21,489 19,016	41,499
V	III. (Szombathely)	Western and Southwestern Hungary	5	June 30-July 3	July 4-6	10	17,667	55,741
	IV. (Pécs)		3				11,889	
VI	I. (Budapest)	(Suburbs)	2	June 30-July 3	July 6-8	8	24,128	
Total			55			147	434,351	437,402

SOURCE: Ferenczy Reports May 3-July 9, 1944.

^aRLB, Docs. 174, 182, 193.

^bIn his report of June 8, 1944, Ferenczy lists the number of those deported from Gendarmerie Districts VIII, IX, and X as 275,415. His later reports, however, brought the figure closer to that of Veesenmayer.

^cNorth of Budapest from Kassa to the frontier of the Third Reich.

^dEast of the Danube, not including Budapest.

^eWest of the Danube, not including Budapest.

674 DEPORTATION

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APPENDIX SIX

Deportation Trains Passing Through Kassa in 1944:
Dates, Origin of Transports, and Number of Deportees

May 14	Nyíregyháza	3,200
May 14	Munkács	3,169
May 16	Kassa	3,055
May 16	Beregszász	3,818
May 16	Máramarossziget	3,007
May 16	Munkács	3,629
May 16	Kassa	3,629
May 17	Kassa	3,352
May 17	Ungvár	3,455
May 17	Ökörmező	3,052
May 17	Munkács	3,306
May 18	Máramarossziget	3,248
May 18	Beregszász	3,569
May 18	Sátoraljaújhely	3,439
May 18	Munkács	3,025
May 19	Felsővisó	3,032
May 19	Máteszalka	3,299
May 19	Szatmárnémeti	3,006
May 19	Munkács	3,222
May 20	Máramarossziget	3,104
May 20	Nagyszöllős	3,458
May 20	Munkács	3,026
May 21	Feksővisó	3,013

May 21	Nyíregyháza	3,274
May 21	Sátoraljaújhely	3,290
May 21	Munkács	2,861
May 22	Máramarossziget	3,490
May 22	Ungvár	3,335
May 22	Szatmárnémeti	3,300
May 22	Mátészalka	3,299
May 23	Felsővisó	3,023
May 23	Nyíregyháza	3,272
May 23	Munkács	3,269
May 23	Nagyvárad	3,110
May 24	Beregszász	2,602
May 24	Kassa	3,172
May 24	Huszt	3,328
May 24	Munkács	3,080
May 25	Ungvár	3,334
May 25	Nagyvárad	3,148
May 25	Kolozsvár	3,130
May 25	Aknaszlatina	3,317
May 25	Felsővisó	3,006
May 26	Huszt	3,249
May 26	Szatmárnémeti	3,336
May 27	Sátoraljaújhely	3,325
May 27	Nagyszöllős	3,415
May 27	Nyíregyháza	2,708

May 27	Ungvár	2,988
May 27	Marosvásárhely	3,183
May 28	Técső	2,208
May 28	Dés	3,150
May 28	Nagyvárad	3,227
May 29	Beregszász	860
May 29	Mátészalka	3,299
May 29	Kolozsvár	3,417
May 29	Szatmárnémeti	3,306
May 29	Nagyvárad	3,166
May 30	Kisvárd	3,475
May 30	Marosvásárhely	3,203
May 30	Nagyvárad	3,187
May 30	Szatmárnémeti	3,300
May 31	Ungvár	3,056
May 31	Kolozsvár	3,270
May 31	Nagybánya	3,073
May 31	Szilágysomlyó	3,106
June 1	Mátészalka	3,299
June 1	Kisvárd	3,421
June 1	Nagyvárad	3,059
June 1	Szatmárnémeti	2,615
June 2	Huszt	2,396
June 2	Beszterce	3,106
June 2	Kolozsvár	3,100

June 3	Nagyszöllős	2,967
June 3	Kassa	2,499
June 3	Nagyvárad	2,972
June 3	Szilágysomlyó	3,161
June 4	Szászrégen	3,149
June 4	Sátoraljaújhely	2,567
June 5	Nagyvárad	2,527
June 5	Mátészalka	3,100
June 5	Nyíregyháza	2,253
June 5	Nagybánya	2,844
June 6	Huszt	1,852
June 6	Dés	3,160
June 6	Beszterce	2,875
June 6	Szilágysomlyó	1,584
June 8	Dés	1,364
June 8	Kolozsvár	1,784
June 8	Marosvásárhely	1,163
June 9	Kolozsvár	1,447
June 11	Maklár	2,794
June 12	Diósgyőr	2,675
June 12	Balassagyarmat	2,810
June 12	Diósgyőr	2,941
June 12	Érsekújvár	2,899
June 12	Diósgyőr	3,051
June 13	Hatvan	2,961

June 13	Komárom	2,790
June 13	Salgótarján	2,310
June 14	Miskolc-Diósgyőr	3,968
June 14	Balassagyarmat	1,867
June 15	Léva	2,678
June 15	Miskolc	2,829
June 15	Érsekújvár	1,980
June 16	Győr	2,985
June 16	Komárom	2,673
June 16	Dunaszerdahely	2,969
June 25	Debrecen	2,286
June 26	Szeged	3,199
June 27	Debrecen	3,842
June 27	Kecskemét	2,642
June 27	Nagyvárad	2,819
June 27	Békéscsaba	3,118
June 28	Bácsalmás	2,737
June 29	Kecskemét	2,790
June 29	Szolnok	2,038
June 29	Debrecen	3,026
July 5	Sárvár	3,105
July 5	Szombathely	3,103
July 6	Kaposvár	3,050
July 6	Pécs	3,100
July 6	Kaposvár	2,066

July 7	Sopron	3,077
July 7	Pápa	2,793
July 7	Paks	1,072
July 7	Monor	3,549
July 7	Óbuda	3,151
July 7	Sárvár	2,204
July 8	Pécs	2,523
July 8	Óbuda	2,997
July 9	Monor	3,065
July 9	Óbuda	3,072
July 9	Budakalász	3,072
July 9	Monor	3,079
July 9	Békásmegyer	1,924
July 20	Rákoscsaba	1,230

These data were collected by the Railway Command of Kassa. A copy of the list was made available by Mikulas (Miklós) Gaskó, a lawyer who lived in Kassa. See his "Halálvonatok" (Death Trains) in *Menóra*, Toronto, June 1, 1984, pp. 4, 12. The figures relating to the number of trains and deportees and the deportation dates do not always coincide with those given in other sources.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No.: 1:10-cv-01770-BAH

ROSALIE SIMON, *et al.*,
Plaintiffs,

vs.

HUNGARY AND MAGYAR ÁLLAMVASUTAK ZRT.
(MÁV ZRT.),
Defendants.

Hon. Beryl A. Howell

DECLARATION OF JÁNOS BOTOS PhD

I, János Botos declare:

1. I am a citizen and resident of Hungary. I am a retired academic researcher. I make this declaration in support of Hungary's and MÁV's motion to dismiss the Plaintiffs' June 13, 2016 Second Amended Complaint. The statements made in this declaration are based upon my own personal knowledge or otherwise based upon historical facts and my review of the relevant records.

2. Over the course of the past 25 years, I worked as the academic secretary of the Holocaust Documentation Center and Memorial Collection Public Foundation (2006-2009), the director of the Budapest Holocaust Institute (2009-2011), the deputy director of the Holocaust Documentation Center and Memorial Collection Public

Foundation (2011-2014). Between 1991 and 1992, I led two research teams in order to discover the fate of Hungarian Jewish properties on behalf of the National Bank of Hungary. In the positions described above and at the mandate of the Hungarian government aimed at establishing the fate of the “derelict Jewish properties” (2011-2016), I was conducting searches and reviewed the national archives in an attempt to trace the property and proceeds of the property taken from Hungarian nationals during World War II.

3. In the course of the research I concluded that there is no data in the documents relating to the operation of MÁV during World War II according to which MÁV, as a business organization, or the employees of MÁV, the members of this organization, either following instructions or voluntarily, participated in taking the property of the deportees or in assaulting the deportees.

4. Based upon my professional experience and the extensive searches, it is my opinion that it is impossible for one to trace the current location or to identify who now has possession of the property identified in Plaintiffs’ Second Amended Complaint as items allegedly having been taken during World War II by Hungarian state officials and MÁV employees or the proceeds thereof.

5. Given my years of experience in searching Hungary’s archives, I responsibly represent that no records or documentary evidence exists that would connect any property taken from the Plaintiffs during World War II to any property of or funding from Hungary present in the United States.

6. I am also not aware of any records or documentary evidence that would link the properties of the

named Plaintiffs, including Rosalie Simon, Helen Herman, Charlotte Weiss, Helena Weksberg, Rose Miller, Esther Zelikovitch, Asher Yogev, Yosef Yogev, Magda Kopolovich Bar-Or, Zehava (Olga) Friedman, Yitzhak Pressburger, Alexander Speiser, Ze'ev Tibi Ram, Vera Deutsch Danos, Ella Feuerstein Schlanger, and Moshe Perel, to any property of or funding from Hungary present in the United States.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on this 29 day of 08, 2016 in Budapest, Hungary

/s/ Botos János

János Botos Dr. (Budapest, February 4, 1947)

I started my university studies in 1966 at the Eötvös Lóránd University of Budapest majoring in philosophy and history, and I completed my studies in 1971. In 1974 I received a doctorate in history. Since 2013, I have been working as an associate professor of the Országos Rabbiképző-Zsidó Egyetem (in English: National Jewish Theological Seminary of the University of Jews). I have been conducting historical researches concerning the 19th – 20th century Hungarian history since 1971. From the 1980s my research focused and focuses on economic history, more specifically on the history of financial affairs and the history of the Holocaust in Hungary. I worked as an independent leader at the Kereskedelmi és Hitelbank (in English: Commercial and Credit Bank) between 1992 and 1999, as a researcher of the Pénzügykutató Zrt. (in English: Finance Research Zrt.) between 1999 and 2004, as the scientific secretary of the Holocaust Documentation Center and Memorial Collection Public Foundation between 2006 and 2009, as the director of the Budapest Holocaust Institute between 2009 and 2011 and as the deputy director of the Holocaust Documentation Center and Memorial Collection Public Foundation between 2011-2014. Between 1991 and 1992, I led two research teams in order to discover the fate of Hungarian Jewish properties on behalf of the National Bank of Hungary. I participated in the work of the Hungarian Auschwitz Foundation - Holocaust Documentation Center between 1991 and 2002, the Holocaust Documentation Center and Memorial Collection Public Foundation (which is the legal successor of the previous institution) between 2002 and 2005, the National Association of Forced Laborers between 2009 and 2011 and since 2014 I participate in the work of the National Association of the People Persecuted by Nazism.

Important publications focusing on the subject of the Holocaust:

Vöröskeresztes embermentők. A Wesselényi utcai szükségkórház és a gettókórházak helytállása [in English: Red Cross rescuers. The resistance of the hospital of Wesselényi Street and the ghetto hospitals] 1944-1945. Budapest. 1992.

Dokumentumok a zsidóság üldöztetésének történetéhez. Iratok a Pest-Pilis-Solt-Kiskun Megyei Levéltárból. [in English: Documents concerning the history of Jewish persecution. Documents from the Regional Archives of Pest-Pilis-Solt-Kiskun.] Budapest. 1994. ISBN 963-85434-8-5

„Inter arma caritas.” Human rescuer activity with the assistance of the International Committee of the Red Cross (summer of 1944 — the beginning of 1945). In: Magyarország 1944. vol. 2. Üldöztetés-embermentés. Budapest. 1994. p. 185-211. ISBN 963-18-5739-9

The organization and the operational possibilities of the Red Cross human rescue. On the rescue activities in Budapest. In: Helytállás. Embermentő orvosok és egészségügyiek 1944-1945. (In Hungarian and in English) Budapest. 1996., 1999. p. 7-18. and 152-154.

The rehabilitation of people with Jewish religion or decent December 1944 – 1947. In: Visszatérés-újrakezdés. Budapest. 2007. p. 64-72. ISBN 978-963-06-1913-4

The Hungarian network of Raoul Wallenberg. In: Üldöztetés-embermentés-újrakezdés. Budapest. 2007. p. 8-46. ISBN 978-963-06-2421-3

The fate of surviving Hungarian intellectuals – life and memory after 1945. In: Üldöztetés-embermentés-újrakezdés. Budapest. 2007. p. 121-142. ISBN 978-963-06-2421-3

The memory of Raoul Wallenberg. Bibliographies. (As member of the community of authors.) Budapest. 2007. ISBN 978-963-86490-7-2

The dilemmas of doctors with Jewish religion or decent during the years of World War II. In: *Álörvosi kísérletek, eutanázia központok a náci Németországban.* Holocaust Documentation Center and Memorial Collection Public Foundation. Budapest. 2007. ISBN 978-963-06-2599-9

The fate of the property of Hungarian Jews in the German Empire following the Anschluss. In: *Az Anschluss és következményei – 70 év távlatából.* Sopron. 2008. p. 30-40. ISBN 978-963-87628-3-2

Ungarische Künstler and Wissenschaftler nach 1945. In: *Der Geist ist frei. Band 2.* Wien. 2008. p. 163-164. and 333-334. ISBN 978-3-902605-01-6

The memory of Hanna Szenes. The Trial and the aftermath. In: *Magyar Zsidó Szemle. Új folyam. 6-7. szám.* 2009-2010. p. 113-120. ISSN 1786-3716

„Mint cseppben a tenger...” Holokauszt és a hozzá vezető út Pestszenterzsébeten. [in English: “As a drop in the ocean. . .” The Holocaust and the road leading to it in Pestszenterzsébet.] Holocaust Documentation Center and Memorial Collection Public Foundation. Budapest. 2011. ISBN 978-963-87628-4-9

The compensation process for Hungarian Jews for damages suffered during World War II. (As member of the community of authors. In Hungarian and in English.) Holocaust Documentation Center and Memorial Collection Public Foundation. Budapest. 2011. ISBN 978-615-5132-04-9

Hungarians known from the closer environment and direct relationships of Wallenberg. In: *Szita Szabolcs:*

Raoul Wallenberggel Moszkváig. Budapest. 2011. p. 204-208. ISBN 978-963-7913-41-9

Ez a kifosztás lesz a végső!? Az 1938-1945 között elkobzott magyar zsidó vagyonok értéke. [in English: Will this be the final plunder!? The value of the Hungarian Jewish property confiscated between 1938 and 1945.] Máriabesnyő. 2011. ISBN 978-963-9857-83-4

Hungarians known to have been close to Wallenberg, in immediate contact with him. In: Szabolcs Szita: The Power of Humanity. Raoul Wallenberg and his Aides in Budapest. Budapest. 2012. p. 169-172. ISBN 978-963-13-6085-1

What did the Hungarian public know of the Endlösung? In: Nyitott/Zárt társadalom. Politikai és kulturális orientáció 1914-1949. Budapest. 2013. p. 296-310. ISBN 978-963-338-358-2

Data and facts from the history of “aryanisation”. The plunder of the Jews in “Ostmark”. In: Anschluss '75. Mécses az osztrák menekültekért. Budapest. 2013. ISBN 978-615-5132-01-8

Christians and Zionists for the rescue of the persecuted Jewish children. In: Fórum Társadalomtudományi Szemle. Somorja. 2013. 3. p. 61-68. ISSN 1335-4361

The destruction of the human rights and the human dignity of people with Jewish religion or decent during the Holocaust (1933-1945). In: Acta Humana. Budapest. 2014. 1. p. 117-135. ISSN 0866-6628

The loss of property of the Jews in Hungary 1944-1947. In: Rubicon. 2014. 11. p. 36-39. ISSN 0865-6347

A magyarországi zsidóság vagyonának sorsa 1938-1949. [in English: The fate of the property of the Jews in Hungary 1938-1949.] Budapest. 2015. ISBN 978-615-5465-58-1

The economic destruction of the Hungarian Jews. In: Mozikok. Előadások a magyar holokauszt 70. évfordulóján. Debrecen. 2015. p. 55-81. ISBN 978-963-473-825-1

Important publications concerning economic history:

Az államosítás és a szakszervezetek. [in English: The nationalization and trade unions. Budapest.] 1988. ISBN 963-322-716-X

A Pesti Magyar Kereskedelmi Bank története. [in English: The history of the Hungarian Commercial Bank of Pest.] Budapest. 1991. ISBN 963-7840-58-3

Az Általános Értékforgalmi Bank Rt. és jogelődei története (1922-1992). [in English: The history of the Általános Értékforgalmi Bank Rt. and its predecessors (1922-1992).] (in Hungarian and English) Budapest. 1993. ISBN 963-02-9552-0

A Bizományi Kereskedőház és Záloghitel Rt. és jogelődei története (1773-1993). [in English: The history of the Bizományi Kereskedőház es Záloghitel Rt. and its predecessors (1773-1993).] Budapest. 1993. ISBN 963-02-9552-0

A magyarországi pénzügyintézetek együttműködésének formái és keretei. [in English: The forms and frameworks of cooperation of Hungarian financial institutions.] Budapest. 1994. ISBN 963-222-769-7

Révai New Encyclopaedia vol. I-XVIII. (As member of the community of authors, in Hungarian and English.) Szekszárd. 1996-2006. ISBN 963-9015-17-2

The world of banks and money. In: Magyarország a XX. században. vol. II. Szekszárd. 1997. p. 655-670. ISBN 963-9015-09-1

Reformkori és 1848-as kísérlet földhitelintézet létrehozására. [in English: Attempts to create a land credit institution in the age of reforms and in 1848.] Budapest. 1998. ISBN 963-03-6252-X

Harmincad utca 6. [in English: Harmincad street 6.] (As member of the community of authors.) British Embassy. Budapest. 1998., 2000., 2003. ISBN 963-03-7477-3

Boldog békeidők. Hétköznapok az 1896-1914. közötti Magyarországon. [in English: Joyful times of peace. Daily life in Hungary between 1896 and 1914.] (Together with Róbert Vértes) Budapest. 1999., 2002. ISBN 963-85943-9-X

The independent central bank 1924-1948. In: A Magyar Nemzeti Bank története vol. II. Budapest. 1999. ISBN 963-85657-1-3

A bankpalota. [in English: The bank palace.] (In Hungarian and in English.) Budapest. 2002.

A magyarországi jelzálog-hitelezés másfél évszázada. [in English: The half-century of mortgage lending in Hungary.] Budapest. 2002. ISBN 963-9422-70-3

The journey of the central bank from one regime change to another 1948-1989. In: A Magyar Nemzeti Bank története vol. III. Budapest. 2004. ISBN 963-9570-04-4

A korona, pengő és forint inflációja (1900-2006). [in English: The inflation of the crown, the pengő and the forint (1900-2006).] Budapest. 2006. ISBN 978-963-9736-11-5

The journey of the first Hungarian bank from establishment to its nationalization. In: Pénzügypolitikai stratégiák a XXI. század elején. Budapest. 2007. p. 503-513. ISBN 978-963-05-8452-4

Banki értékpapírok Magyarországon. [in English: Bank securities in Hungary.] Budapest. 2008. ISBN 978-963-9736-62-2

Party-political decisions concerning the operation of the Hungarian banking system, the connection between party politics and central bank activities 1948-1989. In: Válságos idők tegnap és ma. Pénz, gazdaság, politika a 19-21. században. Pécs. 2009. p. 81-95. ISBN 978-963-9893-18-4

The history of OTP Bank. In: Hat évtized reklámvilága 1949-2009. (In Hungarian and in English.) Budapest. 2009. p. 19-21.,67-69., 123-125.,165-167., 203-205., 237. ISBN 978-963-87473-6-5

The participation of the Hungarian National Bank in the financing of the Hungarian economy before and after World War II. In: A Magyar Nemzeti Bank szerepe a magyar gazdaságban – változó történelmi korszakokban. Budapest. 2013. p. 42-56. ISBN 978-963-89769-0-1

The inflation of currency during and after World War I. 1914-1924. In: Múltunk. 2015. 1. p. 70-138. ISSN 0864-960-X

The destruction of the pengő, the birth of the forint 1938-1946. In: Múltunk, 2016. 1. p. 160-206. ISSN 0864-960X

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No.: 1:10-cv-01770-BAH

ROSALIE SIMON, *et al.*,

Plaintiffs,

vs.

HUNGARY AND MAGYAR ÁLLAMVASUTAK ZRT.
(MÁV ZRT.),

Defendants.

Hon. Beryl A. Howell

DECLARATION OF ZSUZSANNA MIKÓ DR.

1. My name is Zsuzsanna Mikó Dr. I am a citizen and resident of Hungary. I am the General Director of the National Archives of Hungary. I make this declaration in support of Hungary's and MÁV's motion to dismiss the Plaintiffs' Second Amended Complaint. The statements made in this declaration are based upon my own personal knowledge or otherwise based upon historical facts and my review of the relevant records.

2. The National Archives of Hungary was established in 1756 and its professional operation is governed by the Act LXVI of 1995 on public documents, public archives, and the protection of private archives.

3. The 21 member institutions of the National Archives of Hungary have a substantial amount of documentation in their possession dating back to the

past, including the year 1944, the time period of the Hungarian Holocaust.

4. The vast majority of the documentation from the time period relevant to the events alleged in the Second Amended Complaint is in hard-copy and is primarily in the Hungarian language. Thus, to the extent any documents relevant to the events that form the basis of the present litigation exist in the archives, they would likely be in hard-copy in the Hungarian language.

5. The National Archives of Hungary is preserving this documentation and intends to continue to preserve this documentation. The National Archives of Hungary has no intention of destroying these records or making them inaccessible in any way. This documentation is accessible and searchable upon request.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on this 31 day of August 2016 in Budapest, Hungary

/s/ Zsuzsanna Mikó
Zsuzsanna Mikó Dr.
General Director

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Case No.: 1:10-cv-01770-BAH

ROSALIE SIMON, *et al.*,

Plaintiffs,

vs.

HUNGARY AND MAGYAR ÁLLAMVASUTAK ZRT.
(MÁV ZRT.),

Defendants.

**Declaration of Expert Pál Sonnevend PhD
(Heidelberg, Germany), LLM**

1. I, Pál Sonnevend PhD (Heidelberg, Germany), LLM, Head of Department of International Law and Vice-Dean for International Relations, ELTE Law School Budapest, make this declaration in support of the motion of by Hungary and MÁV Magyar Államvasutak Zrt. (MÁV) to dismiss the Second Amended Class Action Complaint, dated June 13, 2016 and to describe certain aspects of the Hungarian legal system and sources of law. Unless otherwise noted, I make this declaration on the basis of my personal knowledge. To the extent I offer expert opinions, they are based upon my expertise in the area of Hungarian and International Law.

2. In preparing this declaration, I have reviewed the Second Amended Class Action Complaint, dated June 13, 2016 (the “SACAC” or “Amended Complaint”). In addition, I make reference below to the following sources of Hungarian law: (1) The Basic Law of

Hungary; (2) Act CLXI of 2011 on the organization and administration of the courts (“Bszrt”); (3) Act CLI of 2011 on the Constitutional Court („Constitutional Court Act”) (4) Act V of 2013 on the Civil Code (“Civil Code” or “Ptk”); (5) Act IV of 1959 on the Civil Code (“old Ptk”) (6) Act III of 1952 on the Civil Procedure (“Act on Civil Procedure” or “Pp”), (7) Act XXV of 1991 on settling property relations through partial reimbursement of damages in property unjustly caused by the state („First Compensation Act”), (8) Act XXIV of 1992 on settling property relations through partial reimbursement of damages in property unjustly caused by the state through the application of laws adopted between 1 May 1939 and 8 June 1949 (“Second Compensation Act”), each as amended.

3. My credentials and professions achievements are as follows:

Head of Department of International law, Vice-Dean for International Relations, Eötvös Lóránd University Faculty of Legal and Political Science

Former adviser of the Constitutional Court

Former director of the Directorate of Constitutional and Legal Affairs of the Office of the President of the Republic of Hungary

Former lecturer, University of California Overseas Program Budapest

Selected Publications:

Books, commentaries:

Eigentumsschutz und Sozialversicherung (2007, Berlin/Heidelberg/New York, Springer Verlag)

Az Alkotmány 2/A. és 32/A. §-ainak kommentálása (Csuhány Péterrel), in: Jakab András (Szerk.), Az

Alkotmány kommentárja (2010, Budapest, Századvég Kiadó)

Az Alkotmány 9., 10., 11., 12. és 13. §-ainak kommentálása (Salát Orsolyával) in: Jakab András (Szerk.), Az Alkotmány kommentárja (2010, Budapest, Századvég Kiadó)

Csehi Zoltán, Schanda Balázs, Sonnevend Pál (eds.), Viva Vox Iuris Civilis: Tanulmányok Sólyom László tiszteletére 70. születésnapja alkalmából (2012, Budapest.: Szent István Társulat)

Armin von Bogdandy, Pál Sonnevend (eds.) Constitutional Crisis in the European Constitutional Area: Theory, Law and Politics in Hungary and Romania (2015, Oxford: Hart Publishing)

Articles:

Verjährung und völkerrechtliche Verbrechen in der Rechtsprechung des ungarischen Verfassungsgerichts, in: Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 57/1 (1997), 195-228

International Human Rights Standards and the Constitutional Jurisprudence of Transition States in Central and Eastern Europe, in: 2002 Proceedings of 96th Annual Meeting of The American Society of International Law, (2002, Washinton D.C.), 397-399

Die offene Staatlichkeit in Ungarn, in: Armin von Bogdandy - Peter M. Huber - Pedro Cruz Villalón (Hrsg), Ius Publicum Europaeum, (2007, Heidelberg, F. C. Müller Verlag), 379-402

Preparing the European Union for the Future - Necessary Revisions of Primary Law after the Non-Ratification of the Treaty establishing a Constitution for Europe, National Report of Hungary

in: Koeck – Karollus (ed.), *Preparing the European Union for the Future - Necessary Revisions of Primary Law after the Non-Ratification of the Treaty establishing a Constitution for Europe*, FIDE XXIII Congress Linz 2008 (2008, Wien, Nomos/Facultas.wuv) 207-212

Report on Hungary in: Giuseppe Martinico and Oreste Pollicino (eds.), *The National Judicial Treatment of the ECHR and EU Laws. A Comparative Constitutional Perspective*. (2010, Groningen, Europa Law Publishing) 251-269

National Media Policy within the Framework of European Union Law – The Case of Hungary, in: Thomas Giegerich, Oskar Josef Gstrein, Sebastian Zeitzmann (eds.) *The EU Between ‘an Ever Closer Union’ and Inalienable Policy Domains of Member States* (2014, Baden-Baden: Nomos) 412-441.

Eigentumsgarantie, in: Christoph Grabenwarter [et al.] (eds.) *Enzyklopädie des Europarechts*, Band 2, *Europäischer Grundrechtsschutz* (2014, Baden-Baden: Nomos) 527-551

The role of international law in preserving constitutional values in Hungary: the case of Hungarian fundamental law and international law, in: Zoltán Szente, Fanni Mandák, Zsuzsanna Fejes (eds.), *Challenges and Pitfalls in the Recent Hungarian Constitutional Development: Discussing the New Fundamental Law of Hungary* (2015, Paris: Éditions L’Harmattan) 241-257

I. Hungary is a Democratic State under the Rule of Law

4. With the change of regime in 1989, Hungary was transformed into a modern pluralistic democratic state, guaranteeing human and civil rights, and creating an institutional structure that ensures separation of powers among the judicial, legislative, and executive branches of government.¹ The Constitution adopted in 1949 was amended in 1989 to reflect the transition into democracy under the rule of law and it laid down the groundwork for the current Hungarian legal system. The new constitution named Basic Law entered into force on January 1, 2012. It preserved the basic institutions and provisions of the former constitution, as the majority of its normative content is borrowed directly from the Constitution it replaced.²

5. The Basic Law brought no changes in the form of government as Hungary remains a unitary state, a republic and a parliamentary democracy.³ The Basic Law's provisions have not affected the fundamentals of state organizational structure, and the main functions and legal status of state bodies have not been

¹ For a detailed analysis see Sólyom-Georg Brenner, *Constitutional Judiciary in a New Democracy, The Hungarian Constitutional Court* (2000, Michigan University Press). See also Cathrine Dupré, *Importing the Law in Post Communist Transitions, The Hungarian Constitutional Court and the Right to Human Dignity* (Hart Publishing 2003). Péter Paczolay (ed.) *Twenty Years of the Hungarian Constitutional Court* (2009, Alkotmánybíróság).

² Pál Sonnevend, András Jakab, Lóránt Csink, *The Constitution as an Instrument of Everyday Party Politics: The Basic Law of Hungary*, in Armin von Bogdandy, Pál Sonnevend (ed.), *Constitutional Crisis in the European Constitutional Area*, Hart Publishing, Oxford and Portland 2015, 65-70.

³ Article B, Articles 1-7, 16, Basic Law.

changed in essence compared to those under the Constitution. Concerns raised about the obstacles Basic Law sets for future governments by giving the power of approval to the newly established Budget Council and by the scope of the so-called cardinal Acts requiring a two-thirds majority do not affect the legal status of courts and Plaintiffs' right to have a fair trial in Hungary.⁴

6. Significantly, Article C (I) in the first chapter of the Basic Law explicitly states that "the functioning of the Hungarian State shall be based on the principle of separation of powers." In contrast, the Constitution did not contain such an express provision (rather, it was inferred by the Constitutional Court by interpretation from the principle of the rule of law).⁵ This principle of separation of powers also applies consistently to specific provisions of the Basic Law on state organization.

7. The Basic Law includes guarantees and safeguards for the protection of the democratic system, the rule of law, the independence of the courts and individual rights.

8. Most importantly, Article B (1) of the Basic Law declares that Hungary is an independent, democratic state under the rule of law. This principle must be borne in mind with regard to the whole constitutional order and in the interpretation of the specific

⁴ See Pál Sonnevend, András Jakab, Lóránt Csink, *The Constitution as an Instrument of Everyday Party Politics: The Basic Law of Hungary*, in Armin von Bogdandy, Pál Sonnevend (ed.), *Constitutional Crisis in the European Constitutional Area*, Hart Publishing, Oxford and Portland 2015, 76-79.

⁵ Decision 38/1993. (VI, 11.) AB, ABH 1993, 256, 261.

guarantees of the Basic Law. At the same time, it is also a source of important specific legal guarantees.⁶

9. With respect to fundamental rights, Article I of Basic Law declares that these shall be respected as inviolable and inalienable and that protecting these rights are primary obligations of the State.⁷ Specific fundamental rights are listed in the second part of the Basic Law (Freedom and Responsibility). The shared catalogue of the fundamental rights contains inter alia, the inherent right to life and human dignity;⁸ the right to freedom and personal security;⁹ the guarantee of legal capacity for every natural person and equality before law;¹⁰ entitlement to a fair and public hearing by an independent and impartial court established by statute;¹¹ right to legal remedies against the decisions of courts, public administrative bodies or authorities¹² and the prohibition of discrimination.¹³ The right to property is also included in this part of the Basic Law. According to Article XIII: “(1) Everyone shall have the

⁶ Article B (1) of Basic Law has exactly the same text as Article 2 (1) of the former constitution. For a commentary of Article 2 (1) of the Constitution see: László Sólyom, *Az alkotmánybíráskodás kezdetei Magyarországon* (Budapest, Osiris, 2001) 686 et seq.; Gyórfi Tamás – Jakab András – Salát Orsolya – Sulyok Gábor – Kovács Mónika – Tilk Péter: 2. § [Alkotmányos alapelvek, ellenállási jog] in: Jakab András (szerk.): *Az Alkotmány kommentárja* (Budapest, Századvég, 2009) 127 et seq.

⁷ Article I (1) of Basic Law contains the language of Article 8 of the 1989 Constitution only with minor changes.

⁸ Article II, Basic Law.

⁹ Article IV (1), Basic Law.

¹⁰ Article XV (1), Basic Law.

¹¹ Article XXVIII (1), Basic Law.

¹² Article XXVIII (7), Basic Law.

¹³ Article XV (2), Basic Law.

right to property and inheritance. Property shall entail social responsibility. (2) Property may only be expropriated exceptionally, in the public interest and in the cases and ways provided for by an Act, subject to full, unconditional and immediate compensation.”¹⁴ Several provisions of the Basic Law expand the scope of rights as they were expressed in the Constitution by codifying prior interpretations of Hungary’s Constitutional Court or implementing fundamental rights to answer the challenges of the 21st century (e.g. setting forth rights of people with disabilities, protection of consumers, prohibition of trafficking in human beings and employment of children). Although later amendments introduced specific exceptions to different fundamental rights and lowered the level of protection, these provisions (e.g. concerning the establishment of churches, possibility of a sentence of life without parole, concept of family) are not relevant in case of Plaintiffs. The catalogue of fundamental rights and a limitation clause in general correspond with European standards.¹⁵

10. It is important to note that the provisions of the Basic Law listed above are applicable regardless of nationality, thus, they are not specific to Hungarian citizens but entitle and protect all natural persons – including the U.S. and foreign plaintiffs in this action. This is reinforced by Article XV (1) of Basic Law which

¹⁴ For an overview on the right to property in Hungary see Pál Sonnevend, *Eigentumsschutz und Sozialversicherung* (Springer Verlag, Berlin_Heidelberg-New York, 2008), 153 et seq.

¹⁵ See Pál Sonnevend, András Jakab, Lóránt Csink, *The Constitution as an Instrument of Everyday Party Politics: The Basic Law of Hungary*, in Armin von Bogdandy, Pál Sonnevend (ed.), *Constitutional Crisis in the European Constitutional Area*, Hart Publishing, Oxford and Portland 2015, 80-88.

expresses that “[e]veryone shall be equal before the law”. In addition, Article XV (2) provides that “Hungary shall guarantee the fundamental rights to everyone without any discrimination, in particular on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.”.

11. The Basic Law as the foundation of the Hungarian legal system is a directly binding source of law,¹⁶ enforced by a separate Constitutional Court. The Constitutional Court is not part of the ordinary court system and has the task of ensuring respect for the Basic Law by reviewing the constitutionality of laws and their application by the ordinary courts.¹⁷

12. The Constitutional Court has fifteen members elected by Parliament.¹⁸ The Parliament elects also the president of the Court from among its members. According to Article 24 (8) of the Basic Law, members of the Constitutional Court may not be members of a political party and may not engage in any political activities.

13. The competences of the Constitutional Court include, inter alia, the examination of the constitutionality of laws passed by Parliament, as well as other acts of state administration. The Constitutional Court also has the power to rule on constitutional complaints lodged by claimants against judgments for the violation of rights guaranteed by the Basic Law.¹⁹

¹⁶ Article R (1)-(2) Basic Law

¹⁷ For the competences of the Constitutional Court see Article 24 (2) Basic Law and Sections 23-38 Constitutional Court Act.

¹⁸ Article 24 (8) Basic Law.

¹⁹ Article 24 (2) Basic Law.

14. There are several different procedures designed to ensure that unconstitutional laws are not applied. First, ordinary courts are obliged to suspend a pending case and ask for a constitutional review if they note a constitutional concern in relation to a law they have to apply in the case.²⁰ Litigants themselves can also request the court to seek such a review. Should the Constitutional Court rule that the law is unconstitutional, the law is automatically inapplicable in the case at bar.²¹

15. Second, after the final judgment has been rendered in a case, a party can submit a constitutional complaint to the Constitutional Court claiming that a law applied in the case is unconstitutional.²² Again, a finding of the unconstitutionality may result in the inapplicability of the law in question. This is a ground for reopening of the trial procedure before the ordinary courts.²³

16. Third, a constitutional complaint against a law can also be submitted to the Constitutional Court without a previous judicial procedure in case constitutional rights of the complainant were violated directly, as a result of the application or the effect of unconstitutional legal provisions. The Constitutional Court

²⁰ Section 25 Constitutional Court Act.

²¹ Section 45 (2) Constitutional Court Act.

²² Section 26 (1) Constitutional Court Act.

²³ For civil law cases Section 262/A and 360-363, Pp. Section 416 (1) e) and f), Act XIX of 1998 on the Code of Criminal Procedure provides for revision and not reopening of the procedure, but the result is very similar (i.e. the case is newly decided without the application of the unconstitutional law).

has the power to annul such unconstitutional legal provisions.²⁴

17. These competences of the Constitutional Court concerning specific cases are completed by *ex ante* and *ex post* abstract reviews of legal provisions and also comprise the possibility to review legal acts' conformity with the international obligations. These procedures can be initiated by different actors of the State, *inter alia* by the Commissioner for the Fundamental Rights.²⁵

18. Beyond these procedures designed to eliminate unconstitutional laws from the legal system, the Basic Law and the Constitutional Court Act provide for the possibility of challenging judicial decisions that violate constitutional rights without the underlying law being per se unconstitutional. Under Section 27 of the Constitutional Court Act a constitutional complaint may be submitted against the final judgment if litigants consider that the application of a relevant law by the court was unconstitutional. If the Constitutional Court declares the judicial decision to be contrary to the Basic Law, it shall annul such decision.²⁶

19. While the Fourth Amendment of the Basic Law adopted in 2013 reassert Parliament's view that the legislature is the sole constitution making authority, the Constitutional Court has remained an active body interpreting and safeguarding the Basic law and Hungary's constitutional order and still provides

²⁴ Section 26 (2) and 41 Constitutional Court Act.

²⁵ Sections 23, 24 and 32 Constitutional Court Act.

²⁶ Sections 27 and 43 Constitutional Court Act.

protection against possible violations of fundamental rights.²⁷

20. More specifically, the 1989 Constitution and the case law of the Constitutional Court relating thereto still inform the interpretation of similarly worded provisions of the Basic Law with respect to several constitutional principles and rights. Already in 2012 the Constitutional Court declared that the interpretation of the 1989 Constitution in its previous case-law is relevant while applying the Basic Law.²⁸ In its Decision 12/2012. (V. I.) AB, the Constitutional Court declared that it will continue to use and refer to all of its decisions made under the 1989 Constitution, provided that the relevant provisions of the Basic Law are essentially the same as those in the previous Constitution.

21. Article 19 of the Fourth Amendment to the Basic Law introduced a new fifth item into the final and miscellaneous provisions of the Basic Law, declaring that '[d]ecisions of the Constitutional Court delivered prior to the Basic Law entering into force shall be repealed. This provision shall be without prejudice to the legal effects of such decisions'. This seemed to disrupt the continuity between the interpretation of the Constitution and the Basic Law. Yet the Constitutional Court interpreted the relevant new provision of the Basic Law in its Decision 13/2013 (VI.17) AB

²⁷ Pál Sonnevend, András Jakab, Lóránt Csink, *The Constitution as an Instrument of Everyday Party Politics: The Basic Law of Hungary*, in Armin von Bogdandy, Pál Sonnevend (ed.), *Constitutional Crisis in the European Constitutional Area*, Hart Publishing, Oxford and Portland 2015, 88 et seq.

²⁸ Decision 22/2012 (V.1.) AB, 10, paras 15–16.

rather restrictively.²⁹ The Decision stated that the Constitutional Court is entitled to use the dicta of its decisions taken prior to the entry into force of the Basic Law, if the language and the context of the interpreted provision of the Basic Law is essentially the same as that of the 1989 Constitution, and the rules of interpretation of the Basic Law (article R(3)) as well as the facts of the case allow for the same interpretation.³⁰ Decision 13/2013 (VI.17) AB also stated that the Court will decide on a case-by-case basis whether or not to follow its previous case law.³¹ To date, the Court has tended to follow its previous case law with respect to such important rights and principles as the right to property³² and the rule of law.³³

II. Hungary's International Agreements Ensure Respect for Fundamental Rights and the Rule of Law, Including Fair Trial Guarantees

A. International obligations undertaken by Hungary

22. Hungary joined the United Nations in 1955,³⁴ ratified the International Covenant on Civil and Political Rights in 1974, and acceded to the First Optional Protocol to the Covenant allowing individuals to complain

²⁹ Decision 13/2013 (VI.17) AB.

³⁰ Decision 13/2013 (VI.17) AB, para 32.

³¹ Decision 13/2013 (VI.17) AB, para 34.

³² Decision 26/2013 (X. 4) AB, para 160.; Decision 20/2014. (VII. 3.) AB para 154.

³³ Decision 3062/2012 (VII, 26) AB, paras 604, 619; Decision 34/2014. (XI. 24.) AB para. 51.

³⁴ See Resolution 995 (X) of the General Assembly.

to the Human Rights Committee about violations of the Covenant in 1988.

23. As early as 1952, Hungary also joined the United Nations Convention on the Prevention and Punishment of the Crime of Genocide of 1948 (the “Genocide Convention”). In 1967, Hungary also ratified the International Convention on the Elimination of All Forms of Racial Discrimination, the implementation of which is supervised by the Committee on the Elimination of Racial Discrimination.

24. In 1990, Hungary joined the Council of Europe, an international organization guarding human rights, rule of law and democratic development in Europe since its creation in 1949. As Article 3 of the Charter of the Council of Europe provides: “Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms.” As a member of the Council of Europe, Hungary ratified the European Convention on Human Rights (the “Convention” or “ECHR”), as well as all of its additional protocols³⁵ including Protocol No. 11 which grants direct access for individuals to the European Court of Human Rights in Strasbourg.

25. Amongst the substantive guarantees of the Convention are the rights to a fair trial,³⁶ the protection of property³⁷ and a general prohibition of discrimination.³⁸ Article 6 Paragraph 1 provides that

³⁵ Except Protocol 16 which has been ratified by only a small number of member states and is accordingly not yet in force.

³⁶ Article 6 ECHR.

³⁷ Article I of Protocol 1 ECHR.

³⁸ Article I of Protocol 12 ECHR.

“[i]n the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”³⁹ Article I of Protocol I to the Convention also declares clearly the right to a peaceful enjoyment of possessions. Article I Paragraph 1 Protocol No. 12 declares in general terms that “[t]he enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” Further, according to Paragraph 2 of the same Article “[n]o one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.”

26. Since May 1, 2004, Hungary is also Member State of the European Union. Though the EU does not, primarily, regulate human rights issues, it ensures that its member states respect human rights. Article 2 of the Treaty on the EU (“TEU”) declares with binding force that the Union “is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

³⁹ For a commentary see Jacobs and White, *The European Convention on Human Rights*, 4th. ed. (2006), 158 et seq.

27. Further, the Charter of Fundamental Rights of the EU provides specific and extensive guarantees.⁴⁰ The Charter contains traditional freedoms, procedural guarantees and political rights, as well as some social rights provisions, divided into six substantive Titles. According to Article 6 of the Treaty on the EU the Charter has the same legal value as the founding treaties of the EU. Although the provisions of this Charter are primarily addressed according to its Article 51 to the institutions, bodies, offices and agencies of the EU, Member States are also bound by them if they are implementing EU law. According to the case law of the Court of Justice of the EU (“CJEU”), this provision is to be interpreted broadly to cover all situations where member state action “falls within the scope of European Union law”.⁴¹

B. International enforcement mechanisms applicable to Hungary

28. The most effective review mechanism in human rights matters is provided for by the European Court of Human Rights (“ECTHR”). Member States of the Convention, including Hungary, can turn to the ECTHR against another Member State allegedly violating human rights. More important is, however, that natural and legal persons and even other organizations and interest groups can bring a claim before the court if they were a victim of a domestic decision or action which infringed their human rights under the Convention. The applicants in general must exhaust all domestic remedies before submitting an application to the

⁴⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:EN:PDF>.

⁴¹ C 617/10 Åkerberg Fransson. Judgment of 26 February 2013, para 18.

ECHR, but the Court is ready to make exceptions to this general rule.⁴² Thus, an international venue is also available for the Plaintiffs to pursue their alleged claims.

29. Within the European Union, there are also different enforcement mechanisms relating to human rights. As a general guarantee, Article 7 of the Treaty on the European Union (TEU) contains a multifaceted mechanism to ensure that the values referred to in Article 2 TEU are not breached by the Member States. Should the European Council determine that a serious and persistent breach by a Member State of the values referred to in Article 2 TEU occurred, the Council of Ministers may suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council.

30. In addition to that, the European Commission introduced a rule of law mechanism in March 2014 with a view to prevent, through a dialogue with the Member State concerned, that an emerging systemic threat to the rule of law escalates further into a situation where the Commission would need to make use of its power of issuing a proposal to trigger the mechanisms of Article 7 TEU.

31. Further, there are different procedures through which the CJEU may review the application of the Charter of Fundamental Rights of the EU. Both the Commission and another member state may initiate an infringement procedure before the CJEU according to Articles 258-259 of the Treaty on the Functioning of

⁴² ECHR *Selmouni v. France*, Application no. 25803/94, Judgment of 28 July 1999, paras 76-77.

the EU (“TFEU”), should a member state fail to fulfill its obligations under the founding treaties. Since respect for the rights of the Charter within the framework of Article 51 of the Charter is also an obligation under the founding treaties pursuant to Article 6 TEU, it can also become a subject matter of an infringement procedure. In addition, Article 267 TFEU provides that courts of the member states may request a preliminary ruling from the CJEU on the interpretation of the founding treaties. This also includes questions of human rights protection and can ultimately lead to the CJEU ruling on the protection of fundamental rights by the member states.⁴³

C. The Hungarian Legal System Favors International Law⁴⁴

32. Under the 1989 Constitution, the status of international law was governed by Article 7 (1) of the Constitution and the rules pertaining to its application. Article 7 (1) stipulated that “[t]he legal system of the Republic of Hungary accepts the generally recognized rules of international law, and shall ensure the harmony between domestic law and the obligations assumed under international law.” This has been consistently interpreted by the Constitutional Court

⁴³ See inter alia Case 222/84 *Johnston v. Chief Constable of the RUC* [1986] ECR 1651; Case C-260/89 *Elliniki Radiophonia Tileorassi AE (ERT) v. Dimonitiki Etairia Pliroforissis and Sotirios Kouvelas* [1991] ECR 1-2925; Cases C_465/00 and 139/01 *Rechnungshof v. Österreichischer Rundfunk* [2003] ECR I-12489.

⁴⁴ Pál Sonnevend, *The role of international law in preserving constitutional values in Hungary: the case of Hungarian fundamental law and international law* In: Zoltán Sente, Fanni Mandák, Zsuzsanna Fejes (szerk.) *Challenges and Pitfalls in the Recent Hungarian Constitutional Development: Discussing the New Fundamental Law of Hungary* (2015) 241 et. seq.

as establishing a clear dualist relationship between international law and domestic law. Customary international law was deemed to be transformed in its entirety into the Hungarian Legal order by Article 7 (1) of the Constitution,⁴⁵ whereas international treaties only became part of the Hungarian legal order if they were included in a statute of Parliament or other piece of national legislation.⁴⁶ The adoption of international treaties has been governed by Act L of 2005.⁴⁷

33. In spite of this strict dualist approach the Hungarian legal order has been rather friendly towards international treaties once they are duly promulgated by domestic legislation. This friendly approach followed from the Constitutional Court Act that in effect provided supremacy to international treaties promulgated by statute⁴⁸ over conflicting national legislation. Therefore international treaties had to conform to the Constitution, but in most cases took precedence over national legislation.⁴⁹

⁴⁵ 53/1993.(X. 13.) AB, ABH 1993, 323, 327.

⁴⁶ 7/2005. (III. 31.)AB, ABH 2005, 83, 88.

⁴⁷ The binding force of international treaties can be accepted either by the President of the Republic or the Foreign Minister. This, however, presupposes an authorization by Parliament or the Government, respectively. The authorization is given in an Act of Parliament or a Government decree, which also promulgate the international treaty into the national legal order.

⁴⁸ Section 7 (3) of Act Nr. L. of 2005 defines international treaties that require promulgation by statute of Parliament, and a closer look reveals that there remains hardly any room for promulgation by Government decree.

⁴⁹ *Molnár Tamás*, 7. § [nemzetközi jog és belső jog; jogalkotási törvény], in: András Jakab (ed.), *Az Alkotmány kommentárja*, 2009, 375 et seq. See also Molnár Tamás: *A nemzetközi jogi eredetű normák beépülése a magyar jogrendszerbe*, Budapest; Pécs: Dialóg

34. The Basic Law seems to be even more friendly towards international law than the previous Constitution. Whereas Article 7 of the Constitution only required harmony between international obligations and the Hungarian legal order,⁵⁰ the new Article Q seems to grant expressly precedence for international law over conflicting Hungarian laws, as Article Q (2) provides that “Hungary shall ensure harmony between international law and Hungarian law in order to fulfill its obligations under international law.” The express language of Article Q (2) will now make it clear for both ordinary courts and the Constitutional Court that precedence of international treaties over conflicting national statutes is a constitutional rule. This precedence also applies to the Convention, which was promulgated in the Hungarian legal order by Act Nr. XXXI. of 1993. Thus the Convention can be invoked by individuals in the Hungarian Courts and takes precedence over conflicting Hungarian legislation. What is more, ordinary courts are also bound to interpret relevant Hungarian laws in conformity with international treaties to the extent possible.⁵¹

35. Procedurally, the Constitutional Court Act further extended the possibility of reviewing domestic statutes on the basis of international treaties. Section

Campus Kiadó - Dóm Kiadó, 2013 and Sulyok Gábor: A nemzetközi együttműködés alaptörvényi szabályozása, in: Szoboszlai-Kiss Katalin, Deli Gergely (szerk): Tanulmányok a 70 éves Bihari Mihály tiszteletére, Győr: Universitas-Győr Nonprofit Kft., 2013. pp. 464-489.

⁵⁰ For the language of Article 7 of the Constitution see above, II.

⁵¹ Such a harmonious interpretation is a constitutional mandate repeatedly confirmed by the Constitutional Court 53/1993. (X. 13.) AB, ABH 1993, 323, 327; 4/1997. (1. 22.) AB, ABU 1997, 41, 51.

32 (2) Constitutional Court Act provides that “judges shall suspend judicial proceedings and initiate Constitutional Court proceedings if, in the course of the adjudication of a specific case, they are bound to apply a legal regulation that they perceive to be contrary to an international treaty.”

36. As a result, ordinary courts are not only bound to apply the applicable Hungarian laws and interpret them in conformity with international treaties. Should a harmonious interpretation not be possible because of the express language of the Hungarian law in question, courts are under an obligation to call upon the Constitutional Court and ask for a review of the Hungarian piece of legislation on the basis of international treaties, including the Convention. Should the Constitutional Court find that the Hungarian law is in conflict with the Convention or another international treaty promulgated by an Act of Parliament, it will declare such law null and void.⁵²

37. A special reference shall also be made to the status of international *ius cogens*. According to a decision of the Constitutional Court from 1993,⁵³ “a national law cannot be applied against an express, contrary and *cogens* norm of international law.”⁵⁴ The Court went as far in this Decision as to give precedence to *ius cogens* norms of international law (rules relating to war crimes and crimes against humanity) over the Constitution. The scholarly interpretation of this decision is clear: in the Hungarian legal order *ius*

⁵² Section 42 (1) Constitutional Court Act.

⁵³ 53/1993. (X. 13) AB, ABH 1993, 323.

⁵⁴ 53/1993. (X. 13.) AB, ABH 1993, 323, 372.

cogens norms of international law take precedence even over the constitution.⁵⁵

38. The Constitutional Court confirmed this interpretation in later decisions, indicating that even provisions of the constitution may be unlawful if they violate international *ius cogens*. In its Decision 61/2011. (VII. 13.) AB the Court held that “norms, principles and fundamental values of *ius cogens* together form a standard which all subsequent constitutional amendments and the Constitution must comply with.”⁵⁶ This was further elaborated under the Basic Law in Decision 45/2012 (X 11.29) AB, where the Court not only reiterated its findings on the role of international *ius cogens* as a standard of review of the constitutional amendments, but also claimed the power to carry out a substantive review of norms formally incorporated into the Basic Law on the basis of, *inter alia*, international *ius cogens*.⁵⁷ The role of international *ius*

⁵⁵ See Pál Sonnevend, *Verjährung und völkerrechtliche Verbrechen in der Rechtsprechung des ungarischen Verfassungsgerichts*, in: *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 57/1 (1997), 195 et seq.

⁵⁶ Decision 61/2011. (VII.13.) AB, ABH 2011, 321.

⁵⁷ Decision 45/2012 (X11.29) AB para 118. The Court held the following: “Constitutional legality has substantive criteria besides the procedural, formal, public law ones. [These are] [t]he constitutional requirements of the democratic state under the rule of law, constitutional values and principles acknowledged by democratic communities under the rule of law and enshrined in international agreements, as well the so-called *ius cogens*, which partly overlaps with these. Under certain circumstances the Constitutional Court is empowered to review whether the substantive constitutional requirements, guarantees and values of a democratic state under the rule of law are consistently respected and included in the constitution.”

cogens is especially relevant because the crime of genocide is part of international *ius cogens*.⁵⁸

III. Hungary has a Stable and Independent Judiciary

39. The Basic Law establishes and guarantees an independent judicial system in Hungary as it incorporates all guarantees of judicial independence and autonomy stipulated in the prior Constitution. It explicitly refers to the separation of powers and the independence of the judges.⁵⁹ The explicit right to a fair trial before an impartial and independent court, besides being an enforceable fundamental right under the Basic Law, further protects the judiciary as an institution.⁶⁰

40. In relation to the organization and independence of the judiciary, Article 25-27 of the Basic Law provide for: (i) the tasks of the judiciary, with the special role of the Curia (Supreme Court);⁶¹ (ii) the organization of the regular civil court system and the administration of courts;⁶² (iii) the independence of judiciary, the appointment procedure and the irremovability of judges (to insulate them from political and

⁵⁸ Cf. International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Furundzija*, Judgment of 10 December 1998, Pans 141 and 147; ECHR *Jorgié v. Germany* Application no. 74613/01, Judgment of 12 July 2007 para. 68; ECHR *Stichting Mothers of Srebrenica and Others v. The Netherlands*, Application no. 65542/12, Decision of 11 June 2013 para. 157. See also William A. Schabas, *Genocide in: Max-Planck-Encyclopedia of International Law*, www.opil.ouplaw.com/home/EPIL.

⁵⁹ Article C) (1) and 26 (1), Basic Law.

⁶⁰ XXVIII (1) Basic Law.

⁶¹ Article 25 (1)-(3) Basic Law.

⁶² Article 25 (4)-(6) Basic Law.

other pressures);⁶³ (iv) the composition of different court panels.⁶⁴

41. Article 25 (1)-(2) of the Basic Law provides that the Hungarian courts shall administer justice and decide on criminal matters, civil disputes and on other matters. As a special guarantee for the review of the legality of acts of public administration, Article 25 (2) b) provides that the courts shall supervise the legality of the decisions of public administration.⁶⁵

42. According to Article 25 (4) of the Basic Law the organization of the judiciary shall have multiple levels. Section 16 Bszt creates a four-tiered system involving: (i) district courts (in major cities); (ii) regional courts (19 county courts and the Municipal Court of Budapest); (iii) regional courts of appeal; and (iv) the Curia (Supreme Court). The broad authority, jurisdiction and competence of these courts include the types of claims asserted by Plaintiffs here.

43. The bulk of the first instance jurisdiction is handled by the first level or district courts.⁶⁶ In all, there are 111 district courts, ensuring easy access to legal remedies on a local level.

44. Appeals from local court decisions are submitted to the 20 second level regional courts (Törvényszék) seated in the 19 counties and in Budapest. Regional courts mainly exercise appellate jurisdiction but they

⁶³ Article 26 Basic Law.

⁶⁴ Article 27 Basic Law.

⁶⁵ In the jurisprudence of the Constitutional Court this provision is even directly applicable in the absence of special rules on the judicial review of acts of the public administration. See 32/1990. (XII. 22.) AB, ABH 1992. 145, 147.

⁶⁶ Section 18 Bszt.

also have original jurisdiction in certain cases provided for by law.⁶⁷ For example, in civil law cases Section 23 Pp grants original jurisdiction to regional courts in cases involving a value of HUF 30 million (approx. USD 105,000) or more. This is to ensure that claims involving higher amounts are adjudged by more experienced justices.

45. The third layer of the court system consists of the five regional courts of appeal (Ítéltábla) which act as appellate courts of the regional courts.⁶⁸

46. The Curia's main function is to ensure the uniform application of law, and to examine applications for the review of final judgments as an extraordinary remedy.⁶⁹

47. As discussed above, Hungary also has a separate Constitutional Court that is not part of the ordinary, judicial system.

48. The Hungarian judiciary is by virtue of Article 26 (1) of the Basic Law independent from the legislative and executive branches, and offers all litigants a fair and public hearing by impartial and professional judges.

49. The administration of the courts is performed by the President of the National Judicial Office⁷⁰ under the supervision of the National Judicial Council.⁷¹ Other bodies of judicial self-government shall also

⁶⁷ Section 21 Bszt.

⁶⁸ Section 22 Bszt.

⁶⁹ Section 24 Bszt. See also *infra*.

⁷⁰ See Sections 65 and 76, Bszt.

⁷¹ For the most important functions of the National Judicial Council see Sections 88 (1) and 103, Bszt.

participate in the administration of the courts.⁷² The President of the National Judicial Office shall be elected by the Parliament with the two-third majority of the MPs present from among the judges for nine years on the proposal of the President of the Republic. The National Judicial Council consists of the President of the Curia and 14 judges elected by judges.⁷³

50. In Hungary judges are appointed and dismissed by the President of the Republic on proposal by the President of the National Judicial Office.⁷⁴ There is no record of the President of the Republic refusing a proposal of the administration body of the judiciary on either the appointment or the dismissal of a judge. This is due to the fact the President of the Republic only considers whether the proposals of the administration body of the judiciary are in conformity with relevant laws, and does not pursue any sort of policy in this matter. Recruitment to the judiciary consists of several stages to ensure the selection of capable, qualified judges.⁷⁵ Strict conflict of interest rules also

⁷² Article 25 (5), Basic Law.

⁷³ Article 25 (6), Basic Law. Section 88 (3)-(4), Bszt.

⁷⁴ Article 9 (3) k), Basic Law. Section 3 and 18, Act CLXII of 2011 on the legal status and remuneration of judges

⁷⁵ Candidates to judgeship must be Hungarian citizens with a right to vote, they must have a clean criminal record, a university degree in law and they have to pass the professional exam. University graduates generally work for three years as trainees and then for one year as court secretaries. After the professional, physical and psychiatric exams have been passed, upon the ranking of the application by the panel of judges at the relevant court and upon proposal by the President of the National Judicial Office the President of the Republic appoints a judge for a three-year probationary period. Following an assessment of the judge's performance at the end of the probationary period, a re-appointment for an indefinite period may take place. Judges may

apply: besides being prevented from pursuing any political activity or from being a member of any political party, judges are not allowed to be involved in business activities or to become members of an arbitration court. Further, in order to ensure the accountability and impartiality of judges, and prevent corruption in public life, judges shall make disclosure declarations regarding their assets to the National Judicial Office.

51. As a further guarantee of the independence and impartiality of the judiciary, a system of predefined distribution or allocation cases is in place for the courts.

52. The changes in the constitutional system of Hungary did not affect the guarantees of independence of judiciary, fair trial, the procedural and substantive fairness, the chance to be heard.

53. Admittedly, there have been specific concerns relating to the judiciary partly also raised by European institutions. These issues were, however, solved as a consequence of the procedures of European institutions and the Hungarian legislator's reaction thereto.⁷⁶ Thus they did not affect Plaintiffs right or ability to seek fair and impartial legal redress in Hungary.

carry on their judicial activities until the general retirement age. To check the maintenance of professional knowledge of judges all throughout their career, their judicial performance is evaluated once in every 8 years.

⁷⁶ Pál Sonnevend, András Jakab, Lóránt Csink, *The Constitution as an Instrument of Everyday Party Politics: The Basic Law of Hungary*, in Armin von Bogdandy, Pál Sonnevend (ed.), *Constitutional Crisis in the European Constitutional Area*, Hart Publishing, Oxford and Portland 2015, 98-107.

IV. Procedural and Substantive Safeguards afforded to litigants

A. Fairness in the civil procedure

54. The Hungarian legal system provides for a substantive fairness and an opportunity to be heard by the abovementioned independent courts as well as easy access to courts for all. This means that no one (whether U.S. or other foreign citizen) would be penalized by virtue of their nationality or status as foreign plaintiffs.

55. According to Section 2:1 Ptk “[e]very human being shall have legal capacity: she or he may have rights and obligations. Statements limiting legal capacity shall be null and void.” Further, under Hungarian law, any person having legal capacity may initiate a lawsuit before the Hungarian courts, as Section 48 Pp provides that any person who is able to acquire rights and bear obligations under the rules of civil law has the capacity to be a party in civil proceedings. This applies to foreign nationals as well in the absence of any limitations to Section 48 Pp. Section 6 of Pp also provides that although the language of the civil procedure is Hungarian, no one can be at disadvantage because of not speaking Hungarian. This means that the court shall enlist an interpreter if it is necessary.

56. From Section 48 Pp it also follows that both Hungary and MAV are amenable to process and fall under the jurisdiction of Hungarian Courts, since both Hungary as a state and MAV have legal capacity and thus can acquire rights and can bear obligations under civil law. As regards the Hungarian state, Section 3:405 Ptk provides that “[t]he State shall participate

in civil relations as a legal person.”⁷⁷ Ptk also provides that 141 legal persons shall have legal capacity; they shall be entitled to have rights and obligations. The legal capacity of legal persons shall cover all rights and obligations that do not inherently pertain solely to individual human beings.”⁷⁸ In turn, MAV is a company limited by shares, which is a legal person under Sections 3:88 (1) and 3:89 (1) Ptk. Consequently, both the Hungarian state and MAV are legal persons and as such can acquire rights and bear obligations in the sense of Section 48 Pp, making them amenable to process.

57. Pp does not allow for class actions comparable to Rule 23 of the Federal Rules of Civil Procedure of the US. Nevertheless, Sections 51-53 Pp specifically allow for the joinder of parties. Under Section 51 Pp, two or more plaintiffs may file a lawsuit together, if, inter alia, the claims under litigation involve the same cause of action and legal basis, and the same court has jurisdiction with respect to all defendants. Other plaintiffs can also join the lawsuit after it has been initiated, provided their claim arises from the same legal relationship.⁷⁹

58. Procedural and evidentiary provisions of Pp are designed to ensure fully the right to a fair trial. Plaintiffs and defendants enjoy the same procedural rights. Court hearings are open to the public, counsels are afforded the opportunity to present written briefs and oral arguments, transcripts are taken, and witnesses are presented and subjected to examination.

⁷⁷ Section 3:405 Ptk.

⁷⁸ Section 3:1 Ptk.

⁷⁹ Section 64 (3) Pp.

59. With few exceptions (e.g. first instance labor court procedures where the three member panel consists of one professional judge and two non-professional members), professional judges hear and decide all cases. In important matters or cases above a certain monetary value, a judicial panel is created comprised of three professional judges, and at the level of the Curia it comprises three or five judges.

60. The presiding judge has extensive obligations to inform parties who participate in litigation without a legal representative about their rights and obligation during the civil procedure, including specific procedural rights, rules of evidencing and the burden of proof, legal consequences of actions and omissions etc. This also provides a guarantee for the parties unable or not willing to pay for legal services.

61. As regards evidence, the Hungarian legal civil procedure provides for expansive rules.⁸⁰ Although there is a list of the most important and common means of submitting evidence in Section 166 (1) Pp (e.g. witnesses, documents, inspection of a venue etc.), this is not an exhaustive or exclusive list, and a court may receive whatever evidence it deems appropriate and necessary in order to establish the facts of the case and reach a decision on the basis of material justice.⁸¹ The court ultimately decides what evidence to receive and whether particular submitted (or requested) evidence is appropriate or necessary for the adjudication of the case. As a procedural safeguard and guarantee, under Section 221 (1) Pp. a court's judgment must

⁸⁰ See Chapter X Pp.

⁸¹ § 166, Nagykomentár a Polgári Perrendtartáshoz.

contain the reasons for accepting or rejecting particular means of evidence.

62. Hungarian law allows courts and parties to obtain access to necessary facts. As a general rule under Section 164 (1) Pp, facts must be supported by evidence by the party who is relying on such facts. Under Section 190 (2) Pp, however, the court may order that a party who is in possession of a document which is relevant for the case present it to the court, especially if such document contains information about a relevant legal relationship or previous negotiations or it was issued in the interest of that particular party. The parties may also request that the court summon witnesses whose knowledge is relevant to the case or are in the possession of a document on which one of the parties would like to rely on as an evidence.

B. Remedies against decisions of the courts

63. Pp offers two sorts of remedies for those dissatisfied by a decision of a court: (i) appeal⁸² as the ordinary remedy and (ii) extraordinary remedies (such as the reopening of a case after the final and binding judgment,⁸³ and review by the Curia⁸⁴).

64. The Hungarian legal system also has a special type of appeal called direct appeal: if a decision has been rendered by a regional court as the court of original jurisdiction, a party claiming a violation of a

⁸² See Chapter XII. Pp.

⁸³ See Chapter XIII. Pp.

⁸⁴ See Chapter XIV. Pp.

substantive legal rule may petition to have the appeal adjudged directly by the Curia.⁸⁵

65. The reopening of a case after the final and binding judgment is an extraordinary remedy available *inter alia* if the court did not consider a fact relevant in the case. The remedy of reopening a case also allows a court to address situations where there has been an extremely grave legal deficiency or error. A motion for the reopening of the case can be submitted to the court of first instance of the case. Should that court grant the remedy, the case is retried according to the motion, and ordinary remedies become available again.⁸⁶

66. The institution of review by the Curia constitutes an extraordinary remedy which may be resorted to against final judgments, where the request is founded on the violation of a legal provision influencing the decision.⁸⁷ A motion for review may be submitted after exhausting ordinary remedies in connection with: (i) a judgment or non-appealable (final and binding) court order made on the merits of the case; and (ii) other specific conclusive court orders, including an order rejecting the claim without the issue of a summons, or a judgment of non-prosequitur passed for the same reasons.⁸⁸ New evidence cannot be submitted in this review procedure,⁸⁹ but the Curia can otherwise determine the case *de novo*. In the alternative, if the facts of the case are not clear, the Curia can order the

⁸⁵ Section 235 (3), Pp. The amount contested in the appeal must exceed HUF 500,000 (approx. USD 1,800).

⁸⁶ Section 266, 269, Pp.

⁸⁷ Section 270, Pp.

⁸⁸ Exceptions to the possibility of review are listed in Section 271, Pp.

⁸⁹ Section 275 (1), Pp.

retrial of the case by the first or second instance court.⁹⁰

67. As is evident from the forgoing, any appeal is decided by a court that is higher than the court that adopted the disputed opinion. This means that the district courts' decision may be appealed before the regional courts, and the first instance decisions of the regional court may be appealed before the regional court of appeal. At the highest instance, the Curia can decide on applications for review.

C. The obligation to exhaust the available remedies under international and Hungarian law

68. The obligation to exhaust the available remedies is relevant in several contexts. Traditionally, under international law claims against a state before an international forum can only be raised if the available and effective domestic remedies have been exhausted.⁹¹ This is reflected in Article 35 (1) of the Convention, according to which applications to the European Court of Human Rights are only admissible after all domestic remedies have been exhausted.

69. Besides this international law context, a similar obligation arises in the constitutional complaint procedures before the Hungarian Constitutional Court. Under Sections 26 (1) and 27 Constitutional Court Act, a constitutional complaint may only be submitted if the applicant exhausted all remedies available to him. Under both Sections, this obligation only applies to

⁹⁰ Section 275 (4), Pp.

⁹¹ James R Crawford, Thomas D Grant, Local Remedies, Exhaustion of in: Max Planck Encyclopedia of Public International Law, <http://opil.ouplaw.com/home/EPIL>.

ordinary remedies, an application for review by the Curia is not a precondition of a constitutional complaint. If however, the ordinary remedies of the Applicant were not dealt with on the merits for failure to abide by the relevant procedural rules, the constitutional complaint is inadmissible.⁹²

70. Finally, the obligation to exhaust available remedies is prevalent also in the context of civil law remedies. More specifically, under Section 271 (1) a) review by the Curia is not admissible if appeal against the first instance judgment was possible and none of the parties appealed. Further, if only one of the parties appealed against the first instance judgment, and the court of second instance confirmed the first instance judgment, an application for review can only be submitted by such party who appealed. These rules are the expression of the general consideration also relevant in Hungarian civil procedure that extraordinary remedies shall not be granted to those who did not seek the available ordinary remedies.⁹³

V. Costs of Civil Litigation are fair in Hungary

71. The filing fees in Hungary are not excessive. The procedural fees of a civil lawsuit in general cost 6% of the litigation value with a maximum 900,000 HUF (approx. 3,200 USD) and financially handicapped parties may be granted a full or partial exemption from these. The parties usually bear further costs during the procedure associated with legal services and other relevant costs like travel costs, interpreters fee etc., which successful litigants generally may claim

⁹² Botond Bitskey et al, in: Botond Bitskey – Bernát Török, *Az Alkományjogi Panasz Kézikönyve*, 136 et seq., 204 et seq.

⁹³ § 271, *Nagykommentár a Polgári Perrendtartáshoz*.

from the losing side. Unless the winning party requests the court to do otherwise, the court is obliged to decide on the allocation of procedural costs relating to the lawsuit, which include all costs mentioned above.

72. During legal proceedings, each party may need to advance the costs associated with presenting their own evidence to the court, but the court ultimately decides as part of its final decision who bears what procedural and evidentiary costs. It is important to note that the court also has the right to determine the amount of procedural costs claimed and documented by the parties and may decide that certain cost elements were not properly supported.

73. The court's oversight of cost compensation especially, and usually, concerns the legal costs of the parties, where the courts tend to reduce unusually high amounts of attorney fees regardless of the agreement of the winning party and its legal representative. The court usually reduces the legal costs of a party if it deems that it is not proportionate to the case value or the effectively performed legal work. Minister of Justice Decree 32/2003 (VIII. 22.) determines a guideline on how to establish attorney fees which are generally followed by the courts (the case value determines the acceptable attorney fee with a minimum amount of low-value cases and no upper limit).

74. Contingency fee arrangements are not unusual in Hungarian practices and the courts generally consider it as part of the legal costs of a party. Thus, if the contingency fee falls within the scope of the acceptable attorney fees according to the above Minister of Justice Decree or the court considers the legal work performed in a high value and complex case as reasonable, then it may include it partially or entirely in its decision on costs.

75. Persons with financial inability to entertain a lawsuit are entitled to financial support pursuant to Section 87 of the Pp and Act LXXX of 2003 on legal assistance which includes the payment for legal services received under the latter Act by the state.

76. There is one important provision in Pp referring specifically to foreign plaintiffs relating to the so-called deposit for costs. Section 89 of Pp provides that upon the request of the defendant, the foreign plaintiff shall have to secure the costs of the procedure, i.e. depositing a certain amount of money determined by the court. This amount is calculated by the court according to Section 90 (1) of Pp on the basis of the estimated costs of the procedure and the amount of the claim, the costs including procedural fees and other costs relating to the procedure (counsel etc.). There are, however, exceptions to the obligation to secure the costs. These include the following: (i) it is provided otherwise by an international treaty or by a practice of reciprocity; (ii) the plaintiff is entitled to full exemption of costs. Whether or not a practice of reciprocity exists, shall be decided by a declaration of the Minister responsible for Justice Affairs. The amount to be deposited is insubstantial in comparison to the legal fees and expenses of litigating in the United States.

77. Nationals of Member States of the European Union and nationals of countries outside the European Union who are legally resident in a Member State of the European Union shall be eligible for exemption from payment of legal expenses under the terms applicable to Hungarian nationals; lodging of a security for costs shall not be compulsory. In such cases the exemption from payment of legal expenses may also extend to the costs of travelling to the proceedings, if

the party's presence is mandatory under Section 85 (5) Pp.

78. According to Section 85 (4) of Pp, exemption from payment of legal costs may be extended to foreign nationals either on the basis of an international treaty or on the basis of reciprocity. Whether such reciprocity exists shall be decided by a declaration of the Minister responsible for Justice Affairs.

VI. Available remedies under Hungarian law

A. Compensation for damages related to the Holocaust

79. Hungary has made, and continues to make, it a priority to resolve disputes respecting Holocaust era compensation, including Hungary's obligations under the 1947 Treaty of Peace.

80. Near the end of World War II and just before the liberation of Hungary, the so-called Interim Government of Hungary revoked all anti-Semitic laws⁹⁴ and enacted Act XXV of 1946 on the Condemnation of the Persecution of Hungarian Jewry and the Mitigation of its Consequences. Act XXV of 1946 ordered the creation of a fund (the National Jewish Restitution Fund or "NJRF") to provide for Jewish reparations. Details relating to the NJRF were regulated by a government decree.⁹⁵

81. However, the subsequent Communist take-over of Hungary and the new socio-economic order that it ushered in, and the extreme hyper-inflation in the years that followed (resulting in the forint replacing

⁹⁴ Decree 200/1945 (III.17) ME on the revocation of anti-Semitic acts.

⁹⁵ Decree 3200/1947.

the pengő as the unit of currency) thereafter, minimized focus on private property concerns – including compensation to private citizens for any prior expropriations of private property.

82. Following the fall of the communist regime in 1989, two property loss compensation laws were passed by Parliament in 1991 and 1992, the First Compensation Act and the Second Compensation Act. The Second Compensation Act covered the period between 1939 and 1949 (i.e., Holocaust era claims).⁹⁶ Given Hungary's political and historical realities during the Communist-era (when private property was not a civic or legal priority), this was Hungary's first chance to address property expropriations claims – including those that had specifically targeted Jews during the Holocaust.

83. According to recent statistics,⁹⁷ 78913 applications for compensation have been submitted on the basis of the Second Compensation Act, out of which only 17075 have remained unsuccessful. The total amount of compensation granted in compensation vouchers under the Second Compensation Act was approximately HMF 11 billion (approx. USD 38 million).

⁹⁶ The First Compensation Act broadly addressed compensation to citizens for property loss and damages caused by the Hungarian government and its agencies, and set the framework for both Holocaust and Communist era compensation. The Second Compensation Act was a parallel effort to provide compensation for property loss and damages caused by the Hungarian government and its agencies under color of law between May 1, 1939 and June 8, 1949. The Second Compensation Act addressed the compensation of Jews for Holocaust era property claims.

⁹⁷ <http://igazsagugyihivatal.gov.hu/download/0/a8/71000/K%0%A1rp%C3%B3tl%C3%A1si%20statisztik%C3%A1k%201990-2015.pdf>.

84. Act XXXII of 1992 separately addressed compensation to Hungarian citizens for deprivation of life or liberty during the Holocaust and Communist eras (as distinct from the other laws generally addressing compensation for the loss of property and the damage resulting therefrom) (Compensation for Loss of Life or Liberty Act). Later Act XXIX of 1997 amended the Compensation for Loss of Life or Liberty Act and extended the possibility of compensation for the relatives of those who died as a result of deportation, forced labor or politically motivated arbitrary acts. Recent statistics show that compensation provided in compensation voucher under the Compensation for Loss of Life or Liberty Act amounted to approximately HUF 51 billion (approx. USD 178 million).

85. In the meantime, by its Decision 16/1993 the Constitutional Court found that Hungary had not done enough during the Communist-era to implement Act XXV of 1946 (including the full funding of the NJRF with repatriated, but unidentified, assets) or comply with its obligations under the 1947 Treaty Article.⁹⁸

86. Largely as a result of Constitutional Court Decision 16/1993, Act X of 1997 was passed⁹⁹ that ultimately provided for replacing the NJRF with the Hungarian Jewish Heritage Fund (“the Fund”). Under Section 1 (1) of Act X of 1997 the Fund was provided with compensation vouchers with a face value of HUF

⁹⁸ 16/1993. (III. 12.) AB, ABH 1993, 143 et seq.

⁹⁹ Act X of 1997 on the Enforcement of Article 27 (2) of Act XVIII of 1947 on the Paris Peace Treaty, implemented by Government Decree 1035/1997 (IV.10.) on the Establishment of the Hungarian Jewish Heritage Public Foundation.

4 billion (approx USD 14 million), and it also carries on the assets assigned to the NJRF.

87. Under Section 3 (1) of Act X of 1997 the Fund shall provide a monthly benefit for victims of the Holocaust. The amount of the benefit shall be adjusted yearly in the Act on the annual state budget. The Fund continues to operate and support members of the Jewish community who were persecuted during World War II. According to its report of 2015 the Fund possessed approximately HUF 2,4 billion (approx. USD 8,5 million).¹⁰⁰

88. It is to be noted that claims for compensation under the different laws have been decided upon by an administrative body specifically set up for this purpose (first the Országos Kárrendezési és Kárpótlási Hivatal, later the Központi Kárrendezési Iroda), and the decisions of these bodies have been subject to judicial review.

89. In 2012 the Minister of the Prime Minister's Office was appointed by the Government to prepare and coordinate the tasks in order to resolve outstanding Holocaust reparation claims.¹⁰¹

90. Finally, Government Decree No. 449/2013 (XI. 28.) has created a new opportunity to reclaim cultural assets held in public collections.¹⁰² Under the Decree, any natural or legal person can submit such a claim to the Hungarian National Asset Management Inc. (HNAM) by attaching the evidence that renders probable his or her ownership rights. HNAM is under

¹⁰⁰ <http://mazosok.hu/dokumentumok>.

¹⁰¹ Government Resolution 1698/2012. (XI. 29.).

¹⁰² Government Decree 449/2013. (XI. 28.) on the Order of Restitution of Cultural Assets Held in Public Collections Whose Ownership Status is Disputed.

an obligation to contact within 3 days the public collection which is obliged to submit all relevant documents proving the ownership of the state within 30 days. Most importantly, Government Decree No. 449/2013 shifts the burden of proof on HNAM. This is because Section 4 (1) of the Decree provides that HNAM shall find out whether it can be proved beyond any doubt that ownership rights of the state were established in a lawful procedure and whether such ownership rights still exist, or the public collection is retaining the objects in question under a different title. Under Section 4 (2) and Section 5 (1)-(2) of the Decree, should HNAM find that no lawful ownership of the state had been established, or the establishment of state ownership cannot be proved beyond any doubt, it shall within 30 days declare the lack of state ownership and decide that the public collection shall hand over the object to those who claimed to be the lawful owners. Any decisions of HNAM under Government Decree No. 449/2013 do not prejudice in any way further any litigation between the claimant and the state.

B. Hungarian law recognizes and provides damages for claims such as those in the Amended Complaint

91. The civil law of Hungary is primarily governed by Ptk, which contains the general principles of civil law and sets the framework for the material part of the civil law relationships. These rules are applicable to legal and natural persons and their personal rights, rules relating to ownership and possession, contracts in general and in particular, breach of contract, damages etc. The Ptk also applies to all civil law relations regardless of the nationality of the parties concerned and, thus, it is applicable for the civil law relationships

of US and other foreign citizens in line with the principles of the conflict of laws. Prior to the entry into force of Ptk on 15 March 2014, old Ptk, was applicable.

92. I am of the view that although Hungarian law may not denominate its claims identically to U.S. causes of action, the Plaintiffs in this case could assert claims in the Hungarian courts to seek redress for the injuries sustained.

93. More specifically, I believe that the Plaintiffs could assert several claims in the Hungarian courts depending on the circumstances, such as a property claim (*rei vindication*) (Section 5:36, Ptk; Section 115(1) old Ptk), unjust enrichment (Sections 6:579-6:582 Ptk; Sections 361-364 old Ptk) extra-contractual damages (Section 6:519, Ptk; Section 339 old Ptk), contractual damages (Section 6:142, Ptk; Section 318 (1) old Ptk), claim of the depositor for the asset deposited (Section 6:364 (6), Ptk; Section 466 (4) old Ptk), and/or may even make specific contractual claims.

94. The Hungarian legal system and Ptk specifically do not provide for the possibility of awarding punitive damages. However, damages claims can be filed for both material and non-pecuniary damages. As regards material damages, Section 6:522 (1) Ptk provides that the wrongdoer shall compensate the aggrieved party for all his losses in full. Full compensation includes under Section 6:522 (2) Ptk any depreciation in value of the property of the aggrieved party, any pecuniary advantage lost and the costs necessary for the mitigation or elimination of the financial losses sustained by the aggrieved party.¹⁰³

¹⁰³ Cf. Section 355 (4) old Ptk.

95. To the extent that the Plaintiffs can assert cognizable claims under international law – which is a substantive question to which I am not offering any opinion in this Expert Declaration –, the Hungarian legal system is receptive to adjudicating such claims as well. As I stated above, international treaties promulgated by an Act of Parliament are directly enforceable before the Hungarian courts and take precedence over conflicting national legislation. The same applies to claims that may arise under customary international law.

96. While all of these claims may be the subject of certain defenses, including but not limited to substantive defenses based upon Hungarian compensation laws, and I am in no way opining on the merits of Plaintiff's claim, I see no reason why the Hungarian courts would not fairly, promptly and justly adjudicate those claims.

VII. Enforceability of Judgments

97. Final judicial decisions are readily enforceable in Hungary.¹⁰⁴

98. Final and binding decisions are enforceable through a variety of channels, depending on the nature of the award, e.g. a pecuniary claim may be collected from the wages¹⁰⁵ and different available monies of the debtor (bank accounts or cash deposits),¹⁰⁶ movable

¹⁰⁴ See Act LIII of 1994 on the enforcement of judicial decisions.

¹⁰⁵ Chapter IV Act LIII of 1994 on the enforcement of judicial decisions.

¹⁰⁶ Chapter V Act LIII of 1994 on the enforcement of judicial decisions

properties of the debtor may be seized¹⁰⁷ and also the immovable property owned by a debtor may be subjected to enforcement.¹⁰⁸

99. Where a judgment debtor does not have cash proceeds to pay an award, the award can be enforced by selling the assets of the debtor usually in a public auction. The costs of any enforcement efforts are advanced by the claimant but ultimately borne by the debtor.

100. The state as a debtor enjoys in general no immunity or privilege in the course of the enforcement of civil law judgments.¹⁰⁹ Specifically, pecuniary claims are enforceable irrespective of the budget of the respective state institution or the state, as Section 3:406 Ptk provides that “the State and legal persons being part of general government shall remain liable for their obligations arising out of or in connection with civil relations even in the absence of budgetary appropriations.”

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT

Executed this 30 day of August 2016 in Budapest, Hungary

/s/ Pás Sonnevend

Pás Sonnevend PhD (Heidelberg, Germany), LLM

¹⁰⁷ Chapter VI Act LIII of 1994 on the enforcement of judicial decisions

¹⁰⁸ Chapter VII Act LIII of 1994 on the enforcement of judicial decisions

¹⁰⁹ Naturally, certain immovable properties and shares in companies are by law in the exclusive ownership of the state and thus cannot be subjected enforcement. See Act CXCVI of 2011 on the national assets.

Curriculum Vitae**Pál Sonnevend PhD (Heidelberg), LL.M****Born:** Budapest, 16 November 1971**Education and training:**

- 2016 Habilitation at the Faculty of Law, ELTE University (Budapest)
- 2005 PhD at Ruprecht-Karls Universität, Heidelberg, summa cum laude
- 2002 Bar Examination at the Budapest Bar
- 1997 LL.M., Ruprecht-Karls Universität, Heidelberg, Gesamtnote „sehr gut“
- 1990-1995 Law degree at the Faculty of Law, ELTE University (Budapest), Summa cum Laude

Work experience:

- 2016 – present: Head of Department of International Law, Faculty of Law, ELTE University (Budapest)
- 2010 – present: Vice-Dean for International Relations, Faculty of Law, ELTE University (Budapest)
- 2006 – present: Associate professor, Faculty of Law, ELTE University (Budapest)
- 2013 – present:: Conciliator, OSCE Court of Conciliation and Arbitration, Geneva
- 2013 – present: Agent of Hungary before the International Court of Justice in the Cabchikovo-Nagymaros Case between Hungary and Slovakia

- 2013 – present: Partner of KMBK Attorneys at Law, Budapest
- 2012 – 2013: Of counsel, KNP LAW Nagy Koppány Varga and Partners
- 2003 – 2009: Lecturer, University of California Overseas Programme Budapest
- 2000-2010: Advisor for constitutional affairs, Head of Legal Division at the Office of the President of the Republic of Hungary
- 1997-2000: Legal advisor at the President of the Hungarian Constitutional Court

Selected publications:

Pál Sonnevend The International Agreements in the Hungarian Business Law (2016) In: Sándor István (ed.) Business Law in Hungary. 774 p.

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VÖLKERRECHT 57:(1) pp. 195-228.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Case No. 1:10-cv-01770-BAH

**ROSALIE SIMON, *et al.*, Individually, for
themselves and for all others similarly situated,**

Plaintiffs,

v.

HUNGARY, *et al.*,

Defendants.

**SECOND DECLARATION OF
ANDRÁS I. HANÁK**

ANDRÁS I. HANÁK, under penalties of perjury and in accordance with 28 U.S.C. § 1746, declares as follows:

I. Introduction

1. I am over eighteen years old and I am competent to make this Declaration.

2. I am a citizen of the United States and Hungary, and a practicing attorney living in Budapest, Hungary, with my law practice, representing Hungarian and international clients, based in Hungary and other members of the European Union.

3. In 1975 I received my Juris Doctor degree, *summa cum laude*, from Eötvös Loránd University School of Law in Budapest, Hungary. In 1982 I received my LL.M. from Columbia University School of Law in New York, New York. In 1987 I received a

second J.D. degree, from the University of Pennsylvania School of Law in Philadelphia, Pennsylvania. I was admitted to the Bar of the Commonwealth of Pennsylvania in 1987 (not currently active) and to the Hungarian Bar (Budapest Bar Association) in 1996. I am not a member of the putative Plaintiff Class.

4. Between 1987 and 1990 I practiced law as an associate attorney in the Washington, D.C., office of the law firm Stroock & Stroock & Lavan (based in New York, New York). Between 1990 and 1991 I was as associate attorney in Stroock & Stroock & Lavan's Budapest, Hungary, office. Between 1991 and 1996 I was the Managing Lawyer and a local partner in the Budapest office of Squire, Sanders & Dempsey, LLP (based in Cleveland, Ohio). Between 1996 and 2002 I was the Managing Lawyer and a local partner in the Budapest office of Dewey Ballantine LLP (New York). Since 2002 I have served as principal attorney in the Andras Hanák Law Office in Budapest, and as Senior Advisor to Euro-Phoenix Financial Advisors, Ltd., also in Budapest. Further, between 1991 and 2008 I served as Adjunct Professor of Law at Eötvös Loránd University School of Law and at Central European University, both in Budapest. I hold the title "Honorary Professor" at Eötvös Loránd University School of Law, a designation of distinction in the Hungarian academic community.

5. My main areas of substantive concentration are corporate law and domestic and international commercial transactions and disputes; mergers and acquisitions; finance; and anti-trust law. In the Hungarian legal system, complex commercial and corporate disputes can be subject to either litigation or arbitration, and in both cases the Hungarian general rules of civil procedure are used. I frequently act as counsel to one

or another party in such legal proceedings. In Hungary, anti-trust disputes are subject to regulatory proceedings culminating in judicial appeals, in which I also frequently act as counsel to one or another party. My legal work in Hungary, coupled with my engagement in international U.S.-related corporate transactions and litigation, necessitates my familiarity with both Hungarian and U.S. substantive law and Hungarian civil procedure, and it is based on that experience that I make this Declaration. A more detailed curriculum vitae is attached here as Exhibit 1.

6. I am fully bilingual in English and Hungarian, and I have been practicing and teaching law, and rendering translations of legal documents from Hungarian to English and from English to Hungarian, for almost 30 years. The translations that I attach to this Declaration as Exhibits 2-6 (See Paragraph 40, *infra*), are my own, and are based on my proficiency in both languages.

7. Except to the extent otherwise stated below, I incorporate by reference the statements in Paragraphs 7-33 of my Declaration dated May 3, 2011 in this case (ECF 242) (“First Hanak Declaration”).

8. All of the opinions and conclusions that I state below are given to a reasonable degree of legal certainty based upon my knowledge and experience.

II. Democracy and the Rule of Law

9. I have reviewed the Second Amended Class Action Complaint in this case, together with the Motion to Dismiss and related papers filed by Defendants Hungary (“Hungary”) and Magyar Államvasutak Zrt. (“MÁV”), with particular emphasis on the Declaration of Pál Sonnevend (“Sonnevend Decl.”).

(a) Part I of the Sonnevend Decl. deals with Hungary as a democratic state governed under the rule of law. The Sonnevend Decl. readily concedes that certain laws and actions of the Hungarian state have been subject to valid criticisms by international bodies for shortcomings on constitutional grounds (e.g., the church laws, the retirement age of judges and transfer of venue)¹, but dismisses such criticism by saying that these issues have no direct impact on the rights of Plaintiffs. Sonnevend Decl. at ¶ 9. This view ignores the reality that serious shortcomings in one area of democratic life are red flags that similar shortcomings likely impact on other areas. The protection of fundamental rights and respect for rule of law must be a seamless effort; any serious relaxation in one area invites other serious deficits in the democratic fabric.

(b) Further, when discussing the alleged independence of judges, the Sonnevend Decl. fails to disclose specific actions and facts that are critical to better understanding the constitutional system and its workings in Hungary. The fact that in 2012 Chief Justice Baka was removed from his position by legislative fiat through a new Act of Parliament, which by replacing the existing Supreme Court created a “new” judicial body now called the Curia (Kúria), shows how easy it is to remove any judge through “reorganization” of the judiciary. Chief Justice Baka was removed because

¹ The European Commission for Democracy through Law, known as the Venice Commission, has expressed numerous concerns about the failings of the Hungarian constitutional order. *See* Opinion 720/2113 (Opinion on the Fourth Amendment to the Fundamental Law) (June 17, 2013) (hereinafter “Opinion of the Venice Commission”), at pp. 8-10 (Recognition of Churches), p. 17 (Transfer of Cases), pp. 17-23 (authority of the Constitutional Court). *See* Exhibit 7 hereto.

he objected to the curtailment of the powers of the Constitutional Court and other reorganization of the judiciary. The European Court of Human Rights later held that Chief Justice Baka's removal violated the European Human Rights Convention.² His removal sent the calculated and very clear message to Hungarian judges and lawyers that by clever reorganization even a Chief Justice can be removed before the end of his or her term. The message was a thinly veiled threat and warning that no one in the judiciary is immune from removal on grounds unrelated to any misconduct. Such replacements are unprecedented in democratic regimes where the rule of law prevails.

(c) In addition, the composition of the Hungarian Constitutional Court, a separate judicial body adjudicating disputes involving the constitutionality of laws and judicial decisions, has changed since 2011 as a result of an appointment system which effectively prevents opposition party candidates from consideration for appointment. While this system, superficially, may appear similar to the U.S. system where the President nominates federal judges, the balance of appointments prior to 2011 was an effective method for preventing a one-party Court. This balance has been overturned and as a result the Constitutional Court no longer performs its role as a check on the legislative and executive branches. Simultaneously with these changes in 2011, the Constitutional Court has been stripped of its power to review laws and actions that affect public finances, including budget-

² On June 23, 2016, the Grand Chamber of the European Court of Human Rights held that Hungary violated the right of access to a court and the freedom of expression of Andras Baka, the former Chief Justice of the Hungarian Supreme Court. Application no. 20261/2012.

related expenditures.³ This restriction may become relevant to this litigation if Hungary needs to resort to its budget in order to comply with any final and enforceable judgments or binding settlement.

(d) Finally, the Preamble of the Basic Law, which serves as the constitution, emphatically refers to the “lost” sovereignty of Hungary from the period of the German “occupation” of the country on March 19, 1944 to May 2, 1990.⁴ While this concept is part of a “solemn” preamble of the Basic Law, thus not part of its operative provisions, it may be used, if necessary, in constitutional interpretation. The Basic Law itself states that it is to be construed in accordance with the fundamental concepts set out in the preamble. This concept of limited sovereignty is already present in public discourse in Hungary,⁵ and it may easily find its way into legal doctrine applicable in specific lawsuits to support propositions that the Hungarian State had lost its sovereignty during the period of the Hungarian Holocaust or that MÁV was under the control of the German Army or other authorities during that time.

10. In summary, there are wide cracks behind the façade of the rule of law in Hungary. Judges who

³ Opinion of the Venice Commission p. 26 – 27, Exh. 7 hereto.

⁴ “We consider that our sovereignty lost on March 19, 1944 had been restored on the day of the first free elections on May, 1990.” Basic Law of Hungary Preamble (“Solemn Avowal”).

⁵ This may be demonstrated by an obituary written by Prime Minister Viktor Urban in which he said that a deceased history professor, as a child, “witnessed the forfeit of Hungary’s sovereignty with the Nazi occupation of 1944.” *Hungarian Review*, Vol. VII, no. 5 September 2016, p 7. The historic fact is that while German military forces took over certain functions in Hungary, the country remained an ally of Nazi Germany until the end of World War II.

express legitimate and professional dissent may be removed or demoted. The Constitutional Court's powers have been curtailed and its composition no longer guarantees that it will act as an effective check on the actions of the other branches of Government. The new Basic Law offers new doctrines for disclaiming the sovereignty of the Hungarian State during the critical months of the Hungarian Holocaust. In view of the fact that the Hungarian State is one of the Defendants in this case, the cumulative effect of all these failings is very unsettling and undermines any assurance that the Plaintiffs here would receive a fair hearing in Hungary.

III. Available remedies Under Hungarian law

11. Part VI of the Sonnevend Decl. sets out a panoply of supposedly available remedies afforded by Hungarian courts for the wrongs inflicted upon Plaintiffs during the Hungarian Holocaust in 1944. For the reasons set forth below, these supposed remedies, as far as the individual Plaintiffs (and the putative Class Members) may be concerned, are largely illusory. Full or reasonably substantial recovery of damages as the only meaningful remedy for Plaintiffs is simply unavailable in Hungary as a result of the substantive law of the country. In view of specific Hungarian legislation pertaining to compensation of past wrongs and the combination of said legislation with well settled judicial precedents, it is my view, to a reasonable degree of legal certainty, that there are no meaningful remedies for Plaintiffs to redress their property based claims.

12. Paragraphs 82-83 of the Sonnevend Decl. refer to the First Compensation Act and the Second Compensation Act (collectively "Compensation Acts") that cover the period between 1939 and 1949. Both relate

to wrongs committed by earlier regimes resulting in takings of, or other losses to, property. The Sonnevend Decl. then sets out statistics of the moneys disbursed to almost 61,838 claimants in the total amount of US\$38,000,000. *Id.* at 1183. This means an average of US\$615 per successful claimant. This paltry result highlights one of the three shortcomings of the Hungarian compensation regime when we apply it to Plaintiffs.

13. First and foremost, all compensation offered to the beneficiaries of the Compensation Acts (including Holocaust victims) for loss, deprivation, forceful taking and expropriation of property was capped by a very low, symbolic amount. This is confirmed by the above average of US\$615 per successful claimant. There was a sliding scale of percentage for any compensation paid out under the Compensation Acts so that:

- (a) for each item with a value above HUF 500,000 (US\$1,725) only 10% of the actual value was recoverable (which is a steep discount), and
- (b) no one was entitled to receive, in the aggregate, for all of his or her property based claims, more than HUF 5,000,000 (US\$17,250). In other words if a Plaintiff owned a crown jewel worth more than a million dollars, the maximum recovery amount, paid out in coupons (see below), was US\$17,250.

14. Second, all claims under the Compensation Acts are time-barred now and have been so for a long time. To the best of my knowledge the last deadline for filing any claims was between February 15 and March 16, 1994.

15. Third, the method of compensation was not cash or cash equivalent, but rather the distribution of so

called “compensation coupons” whose liquidity varied from time to time.

16. Fourth, this severely restricted compensation, which is time-barred because of the short filing requirements of the Compensation Acts, was the exclusive remedy for all property related claims.

17. And if this was not fatal to parties seeking meaningful, if not full, compensation (and note that “full compensation” was the standard approved in the Paris Peace Treaty),⁶ legal challenges, including those disputing the constitutionality of the very limited amount of compensation, were rejected by the Hungarian Constitutional Court in 1993.

18. In 1992, Jewish claimants challenged the constitutionality of the Compensation Acts, specifically the Second Compensation Act, on a number of grounds, including the “symbolic” compensation of Holocaust victims as violation of the Peace Treaty of Paris. Remarkably, Paragraph 85 of the Sonnevend Decl. refers to Decision 16/1993 (III.12.) of the Constitutional Court⁷ (“Decision 16/1993”) when it considers the launching of the Hungarian Jewish Heritage Fund as the result of one of the findings of the Constitutional Court (stating as dicta that the collective compensation scheme of the Hungarian Government was in violation of the Peace Treaty of Paris). At the same time, the Sonnevend Decl. fails to mention a much

⁶ Article 27(1) of the Paris Peace Treaty.

⁷ 16/1993 (III.12) AB. An official translation prepared by Hungarian scholars is attached hereto as **Exhibit 8**. Since I only have an unnumbered PDF document, I have manually numbered it. *See also* pp. 19-20, *infra*, where I discuss the import of this decision as it relates to evidence of expropriation and comingling with the Hungarian Royal Treasury.

more important holding of Decision 16/1993. This relates to the Constitutional Court's ruling regarding the challenges that the compensation regime for individuals harmed during the Holocaust were either unconstitutional or constituted a violation of international law. Both claims had been dismissed on the merits by the highest court of the country. And this was not a mere dictum; it was a very clear and unequivocal holding.

19. In its holding, the Constitutional Court emphasized that all of the property-based claims were lawfully "novated" by the legislature in the Compensation Acts in 1991 and 1992, and that the implementation of the novation doctrine, with the severe limitations on the amount of payments, was upheld by the Constitutional Court as constitutional. The corollary doctrine of reduced compensation has also been upheld by the Court. The Court stated the steeply reduced compensation regime was fully justified as constitutional since it was commensurate with the financial capacity of Hungary "en route" from a command economy to market economy in 1991 and 1992. Further, the Constitutional Court also held that the symbolic compensation was not only constitutionally valid legislation, but that it was not a violation of the Paris Peace Treaty. *See* Exh. 7 hereto.

20. When Professor Sonnevend turns to cognizable claims under international law, he merely states that the Hungarian legal system is receptive to adjudicating such claims. *Id.* at ¶ 95. He further notes that when an international treaty promulgated by an Act of Parliament conflicts with conflicting national legislation, international law takes precedence. This may seemingly offer to Plaintiffs a very difficult path to file a complaint in Hungary arguing that their

alleged property deprivations were committed in connection with genocide, which may overcome the time-barred nature of the claim as such time bar applies to any claim in Hungary. But as the Sonnevend Decl. notes in Paragraph 96, “these claims may be the subject of certain [substantive] defences, including but not limited to (substantive) defences based upon Hungarian compensation laws,” and not surprisingly, the Sonnevend Decl. specifically withholds expressing any views on the merits of such claims.

21. My opinion is that the Compensation Acts as upheld and interpreted by Decision 16/1993 of the Constitutional Court foreclosed any avenues for Plaintiffs to obtain meaningful, let alone full, compensation in Hungary. The highest court of Hungary held that the Compensation Acts were constitutional under the Hungarian Constitution and that they were also in full compliance with international law (as embodied in the Paris Peace Treaty). In my view this holding constitutes, with a reasonable degree of legal certainty, a clear *res judicata* serving as claim preclusion for Plaintiffs to assert and prosecute any claims in Hungary under Hungarian law for their property-based losses.

22. Thus, for the Plaintiffs of this case (and the potential class members) meaningful remedies are simply not available. Accordingly, it would be futile for Plaintiffs to exhaust remedies in Hungarian proceedings in order to obtain redress.

IV. Procedure and *Forum non Conveniens*

23. As I have incorporated in this Declaration the statements in my previous declaration as they relate to procedure and *forum non conveniens*, I limit my review and analysis here to issues where Hungarian law and practice have changed since 2011, in particu-

lar, the enactment of a new Civil Code effective March 15, 2014.

24. First, I should mention what has not changed. Class actions are still unrecognized by the Hungarian legal system. Since 2011 there have been a number of situations where aggrieved consumers and borrowers of loans denominated in foreign currencies clearly suffered from the lack of a class action type vehicle. For this reason, the adoption by the legislature of a class action vehicle came back on the legislative agenda. A proposal for a new civil procedure act is currently being discussed in Hungary, which might introduce a simple, opt-in version of class actions. The proposed bill in its current text would keep many of the characteristics of the joinder. All parties must opt-in into a class, and each plaintiff must sign an agreement with counsel and then produce his or her own evidence. Even this restricted form of class action is a controversial legislative proposal. As a result, at present only the joinder of claims is possible in Hungary on a discrete basis⁸ – comparable to the joinder of claims by multiple named parties under American civil procedure. That is vastly different, however, from a class action as allowed by Fed.R.Civ.P. 23.

25. Accordingly, when the Sonnevend Decl. implies that the joinder is a possible alternative of a modern class action vehicle, *id.* at ¶ 57, it is wrong. The manifold difficulties that multiple Hungarian plaintiffs face in the straightjacket of joinder rules demonstrate that joinder is not an effective alternative. As a result, there is simply no mechanism in Hungarian law for a body of private persons living in various countries around the world to be given actual or constructive

⁸ Act III. of 1952 on Rules of Civil Procedure, §§ 51 - 53.

notice of a suit, and be embraced by the tribunal's judgment through a class certification process, without having entered their formal appearances as named parties. That is, any person who wished to participate in a lawsuit and be bound by the judgment of the Hungarian tribunal would have to appear as a party, hire a lawyer, come to Hungary and appear in person in Hungary if he or she wished to give testimony, and pay all of the substantial fees and costs associated with such participation. Therefore, this class action could not be brought in Hungary, and unless each person among the multitude of Hungarian Holocaust survivors embraced by the class participated personally in the lawsuit, the totality of these claims could never be litigated in Hungary.

26. In that regard, the recent litigation experience of Iren Gittel Kellner in the Budapest court is instructive. *Kellner Irén Gillel v. MÁV*, 70.P.20.744/2016. Ms. Kellner is a survivor of the Hungarian Holocaust who lives in the United States. She brought suit against MÁV in the local court in Budapest seeking reparations for her property stolen by MAV during the Holocaust. I observed the courtroom proceedings. Ms. Kellner's claims were dismissed after an hour-long hearing for lack of evidence (her own affidavit was disallowed as evidence). It was striking to me, as an attorney versed in both Hungarian and U.S. litigation, to see in the Kellner Litigation how the non-availability of a class action reduced the options of a plaintiff as such options relate to the identification of evidence coming from other similarly situated parties.

27. Further, the absence of powerful pre-trial discovery rights under Hungarian civil procedure makes it very difficult for any plaintiff to obtain evidence when it is in the possession or under control of defendants.

In the Kellner Litigation, when the court asked plaintiff's counsel what proof other than plaintiff's affidavit could be offered as evidence for plaintiff's losses, MÁV acknowledged that there may be some documents not yet discovered at specific MÁV premises. Since Hungarian rules of civil procedure do not require MÁV to conduct a reasonable search and disclose its findings, the random search by an individual plaintiff at his or her own cost is a heavy burden. This would not be the same in a proceeding in which plaintiffs could employ stronger discovery rights now unavailable in Hungarian civil procedures.

28. The Court should not assess the differences between the two regimes of civil procedures as isolated instances only, where Plaintiffs may simply not enjoy the same or similar benefits of the civil procedure system in Hungary as they would before a U.S. federal court. There is much more going on here. It is, in fact, the combined effect of the critical differences of the two systems that cumulatively produce a devastating result for Plaintiffs to effectively enforce any claims for their losses of property 70 years ago. The cumulative effect of the old style joinder provisions, which is no substitute for a class action, and the non-availability of powerful discovery rights, turn an otherwise uphill battle into a mission impossible in situations where multiple plaintiffs need to enforce claims where the evidence is controlled by defendants. This situation is not the one where Plaintiffs may simply not enjoy the same or similar benefits of the civil procedure in Hungary as they would before a U.S. federal court, but rather, what we see here is that the combined effect of (i) the lack of any class action vehicle (and very rigid joinder provisions); (ii) the unavailability of meaningful and effective discovery rights; and (iii) the losing party

pays all costs, makes the enforcement of similar claims illusory in Hungary.

29. On a small scale the Kellner Litigation amply demonstrates the cumulative effect of the above. With rigid joinder provisions no similarly situated Holocaust victim would join as a plaintiff. Without meaningful discovery rights, a defendant like MÁV may sit back with no duty to produce documents and other evidence within its control. And, with the losing-party-pays rule, no plaintiff would want to engage in protracted litigation, hire experts, and conduct discovery when in the end there is a material risk of liability for the defendants' expenses.

30. The First Hanak Declaration stated that civil damages are much more restrictive under Hungarian law than under American jurisprudence. This principle has been maintained by the new Civil Code. There is no entitlement to punitive damages under Hungarian law. Further, in terms of available remedies under Hungarian law, there is no right to a declaratory judgment to compel disclosure or inspection of documents, much less a right to an injunction enjoining the Defendants from destroying documents⁹.

V. Response to the Nanyista Declaration

31. Dr. Nanyista is a lawyer associated with by Weil Gothsal Manges, which represents the Defendants. His Declaration simply states that he has consulted certain reference sources and found that those specific sources say certain things, which he claims supports Defendants' position on certain matters. He does not

⁹ The injunction type remedies under Section 156 of the Civil Procedure Act are more restricted in their reach, scope and effect than the declaratory relief and injunction remedies under the Federal Rules of Civil Procedure.

claim to have exhausted all relevant sources of information or to have sought out all such relevant sources of information. He is not an independent expert and Defendants make no attempt to qualify him as such.

34. With respect to the important issue of how Hungary conducted its bond offerings in international markets, including the United States, Mr. Nanyista refers to a source that identifies and authorizes a Hungarian State Agency, “AKK Zrt.” to “arrange” Hungary’s debt offerings and “manage” its debt. Mr. Nanyista is apparently trying to support the view that somehow Hungary the sovereign state is absent or totally removed from the process. But the sources say no such thing. In fact, it is clear that AKK Zrt. would be considered an arm, agent or subdivision of the Hungarian government. Exhibit I, on which he relies, clearly shows that all of the shares of that entity were owned by the Hungarian Minister of Finance, who may exert sole control and dominion over it.

35. Mr. Nanyista also ignores relevant material with respect to the Hungarian Investment and Trade Agency evident on the face of Exhibit J. In arguing that the Agency has some of the elements of an independent instrumentality, he ignores the fact that it is described as the “central office under the control of the minister in charge of external economy.” He also ignores the fact that the decree on which he relies to argue that the Agency did not exist prior to January 1, 2011, expressly recognizes the existence of a predecessor organization: “When any law issued prior to the entry into force of this decree refers to ITD Hungary Nonprofit Közhazsnú Zártkörűen Működő Részvénytársaság it shall henceforth be understood as a reference to the

Hungarian Investment and Trade Agency.” Nanyista Decl., Exhibit J at 3.

VI. Response to the Ilona David Declaration

36. In line with the above, the separateness of MÁV and the independence of MÁV-START Zrt. (the public passenger rail service provider) need to be assessed in the light of the actual governance mechanism. MÁV is a wholly-owned subsidiary of the Hungarian State and, in turn, MÁV-START Zrt. is a wholly-owned subsidiary of MÁV. The State as the parent may lawfully govern and instruct MÁV by way of written resolutions and MÁV as the parent may lawfully govern and instruct MÁV-START Zrt. by way of written resolutions. Whenever MÁV or MÁV-START Zrt. needs to make a statement as to ultimate or beneficial ownership (such as declarations in connection with the regulations combatting money laundering) both companies must declare that their ultimate owner is the Hungarian State.

VII. Response to the Declarations of the Researcher/Archivists

37. The three declarations submitted by archivists and researchers attempting to support the idea that no historical documents exist to evidence Plaintiffs’ claims suffer from serious infirmities.

38. First they refer only records in the National Hungarian Archives (Magyar Országos Levéltár). They say nothing about documents and records relating to property stolen from Hungarian Jews that are known to exist elsewhere, such as in Israel (Yad Vashem) and in Washington DC (The Holocaust Memorial Museum).

39. Second, they are not conclusive or exhaustive even as to records in Hungary. All three Declarants

are silent as to the records known to exist within MÁV's own archives, which are separate and apart from the National Hungarian Archives referenced in the declarations. These declarations may fly in the face of MÁV's defense in the Kellner case where MÁV specifically stated that she failed to attempt to discover records to support her claim when such records, with respect to events that occurred to her, are available in researchable form in archives.¹⁰ Furthermore all three Declarants are silent as to records, manifests and documents available in Hungary in respect to the takings by Hungarian law enforcement authorities and other Hungarian state officials like the Hungarian Gendarmerie (csendőrség). I understand from scholarly works and from Hungarian scholars that there is an abundance of records of these confiscations in Hungarian archives.

40. Copies of the same documents and other documents may be found in the U.S. Holocaust Memorial Museum in Washington, D.C. These records may also show that property taken from the Jewish victims of the Hungarian Holocaust had been transferred to, and accounted by, Hungarian state agencies and instrumentalities. In that regard, I am aware that Plaintiffs are filing exemplary documents in this case, obtained from the United States Holocaust Memorial Museum, containing records of governmental expropriation of Hungarian Jewish Property. Plaintiffs' counsel has sent me a set of those documents, and I have reviewed them. By way of illustration, I have translated five of these documents – each of them constituting an official governmental receipt of expropriated Jewish property

¹⁰ Judgment of Fővárosi Törvényszék in 70.P.20.744/2016, page 2, attached hereto in Hungarian with my English translation as **Exhibit 9**.

listing the property, in some cases its then-present value, the name of the Jewish owner, and signed by the governmental official and countersigned by the Jewish owner and two witnesses. These exhibits are attached hereto as **Exhibits 2-6**.

41. Finally, all three declarations turn a blind eye to the simple proposition that Plaintiffs have asserted here, and which the United States Court of Appeals for the District of Columbia Circuit, in the prior appeal of this case, accepted for purposes of demonstrating the requisite commercial nexus: Plaintiffs need show only that the property stolen from the Jews or property exchanged for that property—the “proceeds” thereof—can be traced back to the confiscations. Plaintiffs under this test do not need to conduct a forensic investigation in order to demonstrate the requisite commercial “nexus”.

42. Other evidence adduced by Plaintiffs and submitted with their opposition to the motion to dismiss, especially the text “The Holocaust in Hungary – Evolution of a Genocide,” co-authored by László Csósz, one of Defendants’ experts, shows that the Ministry of Finance, through intermediaries, was in control of the scheme of processing, distribution and disposition of the property expropriated from the Jewish victims. The nature of these properties was that some (like cash) were fungible assets, others were perishable or degradable properties, while others had been sold and exchanged for cash consideration. Either way, it was the Hungarian Treasury that benefitted from the entire scheme in 1944 and the years thereafter.

43. Further, I understand from other Hungarian researchers – and as shown by Plaintiffs’ other submissions in support of their opposition papers – it is well documented that there are records of confiscation, processing and distribution of Jewish property in

Hungary in 1944 and that there are manifests, computation sheets, reports and certificates about valuables taken from deportees from certain regions of Hungary (the Trans-Carpathian region, Bereg County and the vicinity of Budapest. These documents show that properties taken from Jewish deportees by Hungarian law enforcement authorities had been collected under the control of, and shipments had been received by, regional Financial Directorates (pénzügyi igazgatóságok), which were units within the overall system of the Hungarian Treasury managed by the Ministry of Finance. Among other state-owned financial institutions, as shown by Plaintiffs' submissions, the state-owned Postal Savings Bank (Magyar Postatakarékpénztár) participated in the distribution of valuables and State controlling agencies such as Számvevőség were involved in overseeing this process.

44. Finally, the significance of Decision 16/1993, attached hereto as **Exhibit 8**, cannot be overstated when considering the evidence of governmental theft of Hungarian Jewish property and comingling with the general fund in the Hungarian Royal Treasury.

45. Pages 1 - 4 of the translation of Exhibit 8 summarize the background and operative part of the Decision, which begins on page 5 with "In The Name of the republic of Hungary."¹¹

46. The holdings of the decision are stated on page 5. In Point (2) the Court holds that the Compensation

¹¹ The following language on Page 2 of the Opinion is instructive on the matter of theft and comingling of funds: "Nevertheless, Jewish assets returned from abroad and those without heirs or beneficiaries ultimately ended up in the possession of the State in the National Bank under the authority of the Ministry of Finance in what amounted to a de facto nationalisation."

Acts are not in conflict with any international treaty (primarily the Paris Peace Treaty of 1947); and in Point (3) the Court holds that the Compensation Acts are not in violation of the (then) Constitution. These holdings are addressed in Paragraphs 16 and 17 of my First Declaration where I express my opinion that the Compensations Act upheld as constitutional legislation prevent Plaintiffs from pursuing substantial compensation in Hungary.

47. Other findings of Decision 16/1993 pertain to the jurisdictional issue at hand. The statements on Page 9 are summaries by the Court of the general scheme as legislated and implemented by Hungarian law enforcement and financial institutions.

- “The Hungarian Royal Supreme Comptroller ordered that all the gold, silver and platinum jewelry and other valuables taken from the Jewish population be located and collected. A government committee was formed for this purpose. During the summer of 1944, the agents of this commission placed all of the Jewish citizens’ property (valuables, works of art, precious metals, furs, carpets, clothing) into the storage rooms of various finance institutes.”
- “During July and August, in light of the military situation, the committee transferred the valuables from the threatened storage areas to the Central institute of the Hungarian Royal Postal Savings Bank.”

48. Similarly, on Page 17 the Court found that “As a result, upon their recovery from abroad these valuables were placed in the possession of the Hungarian National Bank as the deposit by the Ministry of Finance with the right of disposal vested primarily in

that Ministry. And on Page 18 we find the statement: “By the processing (melting down and sale) of the gold, silver and other valuables, the implementation of the uniform inventory system in 1951 and the political decisions in 1948-49, the State came to treat these valuables as its own property.”

49. Based on the foregoing, findings of the Constitutional Court serve as evidence that the confiscated Jewish property (or the proceeds thereof) was transferred to the possession of Hungary, which treated such property as its own.

Further Declarant saith naught.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 28, 2016 in Budapest, Hungary

/s/ András I. Hanák

András I. Hanák

EXHIBIT 9

**TO SECOND DECLARATION OF
ANDRÁS HANÁK**

**Fővárosi Törvényszék
70.P.20.744/2016/9.**

A Fővárosi Törvényszék

a dr. Fekete István László ügyvéd (1027 Budapest, Kacska u. 12.) által képviselt

Kellner Gittel Irén (New York, Brooklyn 47th Str. 1620 USA) felperesnek

a Siegler Ügyvédi Iroda/Weil, Gotshal and Manges (1054 Budapest, Szabadság tér 7.), a dr. Naniysta László Ügyvédi Iroda (1054 Budapest, Szabadság tér 7.), a Zádori Ügyvédi Iroda (1046 Budapest, Damjanich u. 7.), a Kodela Ügyvédi Iroda (1137 Budapest, Szent István krt. 16. IV/26.) és a Benyócs Ügyvédi Iroda (1054 Budapest, Szabadság tér 7.) által képviselt

MÁV Magyar Államvasutak Zrt. (1087 Budapest, Könyves Kálmán krt. 54-60.) alperes ellen

személyiségi jogi jogsértés miatt indított perében meghozta a következő

ÍTÉLETET:

A bíróság a felperes keresetét elutasítja.

Kötelezi a felperest, 15 napon belül fizessen meg az alperes részére 437.828 (négy százharminchétezer-nyolcszázhuszonnyolc) forint perköltséget.

Az ítélet ellen a kézhezvételtől számított 15 napon belül fellebbezésnek van helye, melyet a Fővárosi Ítéltáblának címezve, a Fővárosi Törvényszéken lehet 3 példányban írásban előterjeszteni,

A bíróság tájékoztatja a feleket, hogy a fellebbezési határidőbe az ítélkezési szünet időtartama beleszámít.

Fellebbezés esetén a Fővárosi Ítéltábla előtt a fellebbező fél számára a jogi képviselőt kötelező.

A fellebbezési határidő lejárt előtt a peres felek kérhetik, hogy a fellebbezést a másodfokú bíróság tárgyaláson kívül bírálja el.

Ha a fellebbezés csak a perköltség nagyságára vagy viselésére, a kamatfizetési kötelezettségre, a kamat mértékére, teljesítési határidőre vagy az állam által előlegezett költség viselésére vonatkozik, illetőleg ha a fellebbezés csak az ítélet indokolása ellen irányul, akkor azt a másodfokú bíróság tárgyaláson kívül is elbíráhatja, kivéve, ha a fellebbező a fellebbezésében, vagy a másik fél a másodfokú bíróság felhívására tárgyalás tartását kéri.

INDOKOLÁS

A felperes keresetében előadta, hogy 1944-ben a felperest az alperes jogelődje, a Magyar Királyi Államvasutak által működtetett vonattal szállították akarata ellenére Mezőkovácsházáról Békéscsabára. Az alperes jogelődjének alkalmazottai azt állították, hogy a szerelvény a felperest és családját biztonságuk érdekében ingyenesen biztos helyre szállítja. A felperes jelentősebb mennyiségű ruhát, valutát, készpénzt, ékszert és egyéb értéktárgyat, továbbá a vólegényétől kapott gyémántgyűrűt is magával vitte. Az alperes jogelődjének alkalmazottai a békéscsabai állomáson a felperest és családját négy napig fogva tartották, majd 1944. június 26-án az alperes jogelődje által üzemeltetett szerelvényre szállították, amely 1944. június 29-én Auschwitzba érkezett. Három napon keresztül embertelen és elviselhetetlen körülmények között utaztak, víz, mosdó nem állt rendelkezésre, mindössze

egyszer, néhány percre engedték csak le őket a vonatról, amely alkalommal a felperes és családja csomagjait és értéktárgyait az alperesi jogelőd alkalmazottai erőszakkal elvették.

A felperes előadta, hogy az alperes jogelőde ezzel a felperes személyes szabadságát korlátozta, testi épségét és becsületét megsértette. A felperes kérte, hogy ezért a bíróság kötelezze az alperest arra, hogy az MTI-hez eljuttatott nyilatkozatában ismerje el a népirtásban való közreműködését és kérjen bocsánatot a felperestől. Kérte továbbá, hogy a bíróság kötelezze az alperest a Polgári Törvénykönyvről szóló 1959. évi IV. törvény (rég. Ptk.) 348. §-a alapján 80.000 USD vagyoni kártérítés, illetve a rég. Ptk. 84. § (1) bekezdés e) pontja alapján 5.000.000 Ft nem vagyoni kártérítés megfizetésére.

A felperes előadta, hogy a Polgári Törvénykönyv hatályba lépéséről és végrehajtásáról szóló 1960. évi 11. törvényerejű rendelet (Ptké.) 75. § (1) bekezdése alapján a felperes és az alperes közötti jogviszonyra a rég. Ptk.-nak a hatályba lépésekor irányadó szabályait kell alkalmazni. Ugyanakkor a felperes kérte, hogy a bíróság a nem vagyoni kártérítési igény kapcsán ne a rég. Ptk. hatálybalépéskori időállapotát, hanem azon későbbi időállapotát alkalmazza, amely már a nem vagyoni kártérítés jogintézményét tartalmazta. Előadta, hogy az Amerikai Egyesült Államokban hasonló tényállás alapján csoportos keresetet indítottak az alperessel szemben. Az Egyesült Államok Legfelsőbb Bírósága végül is arra tekintettel döntött úgy, hogy az ügy elbírálására nincs hatásköre, mert az Egyesült Államok eljárását megelőzően meg kell vizsgálni, hogy az érintettek Magyarországon részesülnek-e megfelelő kárpótlásban. Miután az alperes azzal érvelt az Egyesült Államokban folyamatban volt perben, hogy a magyar

jog alkalmas a felpereséhez hasonló kereseti igények elbírálására, ezért indokolatlan, hogy a nem vagyoni kártérítés szabályait az alperes ellen folyamatban lévő perben a bíróság ne alkalmazza.

Az alperes érdemi ellenkérelmében a kereset elutasítását kérte. Bár a felperes által megjelölt tragikus történelmi esemény bekövetkezését elismerte, vitatta a felperes által a keresete alapjául előadott konkrét tényeket, azt is vitatta, hogy a felperes sérelmére elkövetett cselekményekben az alperesi alkalmazottak részt vettek volna. Előadta, hogy a jelen perben a régi Ptk. 339. § (1) bekezdése alapján a felperesnek kell bizonyítania a keresetében előadott károkozó, illetve személyiségi jogot sértő magatartások felperes hátrányára történt elkövetésének megtörténtét, azt, hogy ezen cselekményeket az alperes munkavállalói követték el, azt, hogy a vagyoni és nem vagyoni kár bekövetkezett és annak mértékét, illetőleg a kár és a magatartás közötti okozati összefüggést. Az alperes kiemelte, hogy a felperes a bizonyítást meg sem kísérelte, holott a felperessel történt eseményekkel kapcsolatban kutatható levéltári anyagok rendelkezésre állhatnak. Emellett az alperes kiemelte, hogy a régi Ptk. 355. §-a, amely a new vagyoni kár fogalmát bevezette, a régi Ptk. eredetileg kihirdetett szövegében nem szerepelt. Tekintettel arra, hogy a Ptké. rendelkezése alapján a régi Ptk. hatálybalépése előtti jogviszonyokra a régi Ptk.-t kell alkalmazni, ebből értelemszerűen az következik, hogy a hatálybalépéskori szövegváltozat alkalmazandó. Csak 1978. március 1-jén lépett hatályba a nem vagyoni kártérítésre vonatkozó szabályozás, és a Polgári Törvénykönyv módosításáról és egységes szövegéről szóló 1977. évi IV: törvény (Ptk. Novella) hatálybalépéséről és végrehajtásáról szóló 1978. évi 2. törvényerejű rendelet (Ptké.II.) egyértelműen rögzíti, hogy a

nem vagyoni károkért való felelősségi szabályok csak a Ptk. Novella hatálybalépését, azaz 1978. március 1-jét követően történt károkozó cselekményekre alkalmazandók.

A felperes keresete nem megalapozott.

A felperes a kereseti igényét az alperes jogelődjének alkalmazottai által vele szemben tanúsított jogsértő magatartásra alapította, amelyre 1944. évben került sor. A Ptk. 75. § (1) bekezdése szerint a régi Ptk. rendelkezéseit – ha ez a törvényerejű rendelet másként nem rendelkezik – a hatálybalépése előtt keletkezett jogviszonyokból eredő, és jogerős határozattal még el nem bírált jogokra és kötelezettségekre alkalmazni kell. Ebből a bíróság álláspontja szerint is az következik, hogy a hatálybalépés, azaz 1960. május 1. napját megelőzően keletkezett jogviszonyok kapcsán – mint amilyen a jelen perbeli – a régi Ptk.-nak a hatálybalépéskor hatályos állapotát kell alkalmazni.

A régi Ptk. 339. § (1) bekezdésének megfelelően, aki másnak jogellenesen kárt okoz, köteles azt megtéríteni. Mentésül a felelősség alól, ha bizonyítja, hogy úgy járt el, ahogy az az adott helyzetben általában elvárható. A 348. § (1) bekezdése szerint ha alkalmazott munkakő ében vagy hatáskörében harmadik személynek kárt okoz, jogszabály eltérő rendelkezése hiányában a károsulttal szemben a munkáltató felelős.

Tekintettel arra, hogy a felperes a vagyoni kárigényét arra alapította, hogy az alperes jogelődjének alkalmazottai meghatározott értéktárgyakat tulajdonítottak el tőle jogtalanul, ezért a Polgári perrendtartásról szóló 1952. évi III. törvény (Pp.) 164. § (1) bekezdése alapján a jelen perben a felperesnek kellett bizonyítania, hogy az alperes jogelődjének

alkalmazottai a sérelmére pontosan milyen cselekményeket követtek el, és pontosan mely és milyen értékű vagyontárgyakat tulajdonítottak el tőle. Ezen tények bizonyítottsága hiányában a kártérítési igény a magyar jogszabályok alapján nem megítélhető. Ebben a körben a felperes a saját közjegyzői okiratba foglalt nyilatkozatán kívül semmilyen bizonyítékot nem terjesztett elő. Tekintettel arra, hogy a Pp. szerint a fél nyilatkozata önmagában nem bizonyíték – annak közokirati, teljes bizonyító erejű magánokirati, vagy bármilyen formájától függetlenül –, ezért az alperes által vitatott tények, azaz valamennyi perbeli tény tekintetében a felperes előadása nem elegendő. Erre tekintettel azt kell megállapítani, hogy a felperes a kárigénye ténybeli alapját nem bizonyította.

A felperes arra tekintettel kérte az alperes elégtételadására kötelezését, hogy az alperes alkalmazottai a felperest arra kényszerítették, hogy vonatra szálljon, ott embertelen körülmények között fogva tartották, ezért a felperes keresetben írt személyiségi jogait megsértették. A régi Ptk. 84. § (1) bekezdés c) pontja és a Pp. 164. § (1) bekezdése alapján az elégtételadási igény kapcsán is a felperes kötelezettsége lett volna bizonyítani az alperesi jogelőd alkalmazottainak személyiségi jogot sértő magatartását, ugyanakkor a felperes a fentiek szerint ebben a körben sem terjesztett elő bizonyítékot.

A személyi jogi jogsértésre alapított nem vagyoni kárigény a fentiek szerint szintén bizonyítatlan. Ezen felül a bíróság kiemeli, hogy helytálló az alperes jogi érvelése abban a körben, hogy a régi Ptk. az 1960. május 1-jén hatályba lépett szövege a nem vagyoni kártérítés jogintézményét nem tartalmazta. A Ptké.II. 14. §-a szerint az 1977. évi IV. törvénnyel hatályba

léptetett nem vagyoni kártérítésre vonatkozó felelősségi szabályokat csak akkor lehetett alkalmazni, ha a károkozó magatartás a törvény hatálybalépése után történt. Így ezt megelőző károkozó magatartással felmerült nem vagyoni kártérítési igény nem érvényesíthető (EBH.2002.694.).

A bíróság megjegyzi, hogy a felperes kétségtelenül nehéz bizonyítási helyzetben volt jelen perben az időmúlásra tekintettel. Ugyanakkor a felperes a jelen pert akár évtizedekkel korábban is megindíthatta volna, amikor a bizonyításra még több esély lett volna. A felperes saját döntése volt, hogy csak az események után olyan idővel indítja meg a pert, amikor nemcsak az okirati; hanem a tanúbizonyítás is nyilvánvaló nehézségekbe ütközik. Másrészt a felperes meg sem kísérelte, hogy felkutassa, hogy vele kapcsolatban levéltárban okirati bizonyítékok rendelkezésre állnak-e.

Minderre tekintettel a bíróság a felperes keresetét elutasította.

A felperes pervesztes lett, ezért a Pp. 78. § (1) bekezdése alapján köteles megfizetni az alperes részére a 32/2003. (VIII.22.) IM rendelet 3. § (2) bekezdése a) és b) pontja alapján meghatározott tigyvédi munkadíjat. A jelen per tárgyának értéke 27.808.000 Ft volt, miután a vagyoni kárigény a keresetlevél benyújtásakor irányadó középárfolyamon 22.208.000 Ft-nak felelt meg, ezen felül a felperes 5.000.000 Ft nem vagyoni kártérítési igényt, továbbá meg nem határozható pertárgyértékű elégtételadási igényt is előterjesztett, amely kapcsán a per tárgyának értékét 600 000 Ft-ban kellett figyelembe venni. Erre való tekintettel a fentiek alapján 1.313.485 Ft ügyvédi munkadíj járt volna az alpereseknek. A bíróság az IM rendelet 3. § (i) bekezdésében foglalt le tetőségnél

fogva ezt az összeg 1/3-ára mérsékelte, tekintettel arra, hogy az ügy egyszerű ténybeli jogi megítélésű volt és az első tárgyaláson érdemben befejeződött. A felperes a keresetleveléhez az illetéket leróta.

Az ítélet elleni fellebbezési jogot a Pp.233.§ (1) bekezdése biztosítja.

Budapest, 2016. augusztus 26.

dr. Szabó Csilla s.k.
bíró

A kiadmány hitelül

/s/ [Illegible] _____

TRANSLATION OF THE JUDGMENT THE
DISTRICT COURT OF BUDAPEST
70.P.20.744/2016/9

District Court of Budapest (Fővárosi Törvényszék)
70.P.20.744/2016/9

The District Court of Budapest

JUDGMENT

in a lawsuit related to the personality rights of

Plaintiff Irén Kellner Gittel (1620 47th Street, Brooklyn New York, USA), represented by attorney Dr. István Fekete (1027 Budapest, Kacsá u. 12.)

against **Defendant MÁV Magyar Államvasutak Zrt.** (1087 Budapest, Könyves Kálmán krt. 45-60), represented by Siegler Law Office/Weil Gothsal and Manges (1054 Budapest, Szabadság tér 7.), Law Office of dr. László Nyanyista (1054 Budapest, Szabadság tér 7.), Zádori Law Office (1046 Budapest, Damjanich u. 7.), Kodela Law Office (1137 Budapest, Szent István krt. 16. IV/26), and Benyőcs Law Office (1054 Budapest, Szabadság tér 7.)

The Court dismisses Plaintiffs complaint.

Plaintiff shall pay to Defendant, within 15 days, HUF 437,828 litigation costs.

Appeal against this Judgment may be filed within 15 days from the receipt thereof to the Circuit Court of Budapest, to be delivered to this Court in three copies.

The Parties are advised that the summer adjudication recess shall be counted into the deadline of the appeal.

For any appellant before the Circuit Court of Budapest legal representation by counsel shall be required.

Before the expiry of the deadline for appeal the Parties may request the adjudication of the appeal without a hearing.

If the appeal relates to the obligations of payment of the legal costs, its amount, or any costs assumed by the State, the payment of interest, and deadlines for compliance or is against the Reasoning of the Judgment only, save for a specific request by appellant or the other party, appellate court may rule on said issues without a hearing.

REASONING

In her complaint Plaintiff stated that in 1944 she had been transported, against her will, by a train operated by Defendant' predecessor (Hungarian Royal Railroad) from Mezőkovácsháza to Békéscsaba. Employees of Defendant' predecessor told her that in order to secure their safety she and her family would be transported to a safe place. Plaintiff carried on and with her cloths, cash, foreign currency, jewelry and other valuable chattels, and a diamond ring she received from her fiancé. Employees of Defendant' predecessor held the family for three days at Békéscsaba station, then on June 26, 1944 they all were boarded on a train operated by Defendant' predecessor, which arrived to Auschwitz on June 29, 1944. For three days they travelled in inhuman and unbearable conditions, they had no water or washroom. They only stopped once when they were let out of the train for a few minutes when the suitcases and valuables of Plaintiff and her family had been forcibly taken by employees of Defendant' predecessor.

Plaintiff claimed that Defendant' predecessor restrained her freedom, caused bodily harm and insult to reputation. Plaintiff therefore moved the Court to

order Defendant to acknowledge and apologize in a statement to be sent for publication to news agency MTI, which would state that Defendant participated in genocide. Plaintiff also moved the Court to order Defendant to pay monetary compensation equal to US\$80,000 under Section 348 of the old Civil Code and pay non-pecuniary compensation equal to HUE 5,000,000 under Section 84(1)(e) of the old Civil Code.

Plaintiff explained that under Section 75 of Law 11 of 1960, which implemented the old Civil Code, for the relationship between her and Defendant those provisions of the old Civil Code are applicable that became effective upon the promulgation of the Civil Code. At the same time, Plaintiff asked the Court to apply to her non-pecuniary damages claim that version and provisions of the Civil Code, which adopted non-pecuniary damages. She further stated she is a member of a class action brought in the United States against Defendant alleging similar facts and circumstances. The Supreme Court of the United States ultimately held that US courts have no jurisdiction over the case because prior to any action in the United States a plaintiff needs to explore whether claimants of this case would receive fair and adequate compensation in Hungary. Defendant argued in the action in the United States that Hungarian law does accommodate the adjudication of similar claims, therefore the application of the non-pecuniary damages rules in this case is not without legal basis.

In its defense Defendant moved the Court to dismiss the complaint. While Defendant acknowledged the occurrence of the tragic historic events, it denied that the specific facts alleged by Plaintiff had been committed by the employees of Defendant. Defendant argued that in this case, under Section 339(1) of the old Civil

Code, it is Plaintiff who bears the burden of producing evidence that the tortious acts, the causing of bodily harm and insult to reputation had been committed by Defendant's employees and further Plaintiff must prove the causal link between the action and damages suffered and the quantum of damages. Defendant pointed out that Plaintiff did not even attempt to produce evidence although researchable archival documents are available with respect to the events occurred to Plaintiff. In addition, Defendant pointed out that Section 355 of the old Civil Code introducing the award of non-pecuniary damages was not part of the text of the Civil Code as first promulgated. In view of the fact that Law 11 renders the application of the old Civil Code for events prior to the effective date thereof, the text in effect at the time of promulgation shall be applicable. The regulation of non-pecuniary damages became effective from March 1, 1978 with the adoption of the modification of the Civil Code, and the implementing law of this modification (Law 2 of 1978) specifically provides that the non-pecuniary provisions shall be applicable to events and tortious acts that occurred after March 1, 1978.

Plaintiffs action is unfounded.

Plaintiff alleged unlawful actions by the employees of Defendant's predecessor in 1944. Under Section 75(1) of the law implementing the Civil Code, the old Civil Code provisions must be applied to events prior to the effective date and in cases not yet adjudicated by a final and enforceable judgment. From this the Court concludes that for actions prior to May 1, 1960 (as the effective date of the old Civil Code) those provisions of the Civil Code need to be applied, which existed on the effective date of entry.

Under Section 339(1) of the old Civil Code any person who unlawfully causes harm to another person shall pay damages to the injured person. A defendant may excuse himself/herself of liability if it is shown that he or she acted reasonably under the circumstances. Under Section 348(1) of the old Civil Code if an employee, acting within his/her scope of employment and job responsibilities, causes damages to a person, unless other laws otherwise specify, the employer shall be liable vis-a-vis the injured party.

In view of the fact that Plaintiffs claim was based on the unlawful taking of her possessions by the employees of Defendant's predecessor, under Section 164(1) of Act III of 1953 (the Civil Procedure Act) Plaintiff had the burden in this action to prove the specific nature of the actions of the employees of Defendant's predecessor, including the types of valuables taken and their value. In the absence of proper proof of these facts Hungarian law does not allow compensation. In this regard, Plaintiff failed to offer any evidence other than her affidavit made before a notary public. Under the Civil Procedure Act a declaration of a party to the proceeding, notwithstanding its form as notarized or other formal document, does not constitute admissible evidence to prove the facts alleged by Plaintiff and disputed by Defendant. For this reason the Court must find that Plaintiff failed to prove the facts supporting her claim.

Plaintiff requested the apology by Defendant by alleging forcing her to board the train where she was kept under inhuman conditions, thereby violating her personality rights. In line with Section 84(1)(c) of the old Civil Code and Section 164(1) of the Civil Procedure Act this cause of action, too, needs to be supported by evidence by Plaintiff other than her affidavit to the

effect that employees of Defendant's predecessor committed the alleged acts. Plaintiff failed to offer evidence in this regard, too.

The claim for non-pecuniary damages for violation of Plaintiffs personality rights was not supported by evidence. The Court also notes that Defendant's argument is correct in another respect namely that the old Civil Code effective on May 1, 1960 did not incorporate the concept of non-pecuniary damages adopted by Act IV of 1977, and therefore non-pecuniary damages may only be awarded if the tortious acts occurred after the effective date of Act IV of 1977. On account of prior unlawful conduct non-pecuniary damages are not enforceable (precedent EBH.2002.694.).

The Court notes that as a result of the passage of time Plaintiff was in a difficult position in respect of offering evidence. Plaintiff, however, was in a position to bring this lawsuit decades ago when she would have had a better chance to obtain evidence. It was Plaintiffs decision to commence this legal action well after the occurrence of events when both the production of documentary evidence and witness testimonies became very difficult. In addition, Plaintiff did not even attempt to find and research whether archival documents pertaining to her are available.

For these reasons Plaintiffs claim has been dismissed.

As Plaintiff was the loser party she must pay to Defendant, under Section 78 of the Civil Procedure Act and Section 3(2) (a) and (b) of Decree 32/2003 (VIII.22.) IM, the fees of Defendant's attorneys. The value of the claim was HUF 27,808,000 (as the monetary claim in US\$ was equal to HUF 22,208,000), plus HUF 5,000,000 non-pecuniary claim, and HUF 600,000 was

the estimated value of the apology claim. Based on this a fee of HUF 1,313,485 would be payable, which under Section 3(6) of the Decree could be reduced by the Court on the basis of the relative simplicity of the case which ended on the first day of the hearing. Plaintiff already paid stamp duties as required.

Appeal against this Judgment is based on Section 223(1) of the Civil Procedure Act.

Budapest, August 26, 2016

dr. Csilla Szabó
judge

certified version by [seal and signature]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No.: 1 :10-cv-01770-BAH

ROSALIE SIMON, *et al.*,
Plaintiffs,

vs.

HUNGARY AND MAGYAR ÁLLAMVASUTAK ZRT.
(MÁV ZRT.),
Defendants.

Hon. Beryl A. Howell

**REPLY DECLARATION OF LÁSZLÓ NANYISTA
IN FURTHER SUPPORT OF HUNGARY'S AND
MAGYAR ÁLLAMVASUTAK ZRT.'S MOTION TO
DISMISS THE SECOND AMENDED CLASS
ACTION COMPLAINT**

I, László Nanyista, declare as follows:

1. I am counsel to the law firm of Weil, Gotshal & Manges LLP, counsel for Defendants the Republic of Hungary ("Hungary") and MÁV Magyar Államvasutak Zártkörűen Működő Részvénytársaság ("MÁV") in this action. I submit this declaration in further support of Hungary's and MÁV's Motion to Dismiss the Second Amended Class Action Complaint ("Complaint"). Unless otherwise indicated, I make this declaration of my own personal knowledge.

2. Attached as Exhibit “A” is a true and correct copy of a Hungarian news article released by MTI entitled “Fourteen paintings returned to the Sigray heirs”, available at <http://www.kultura.hu/kepzo/tizenegyfe-stmeny>, and an English translation of the same.

3. Attached as Exhibit “B” is a true and correct copy of an article authored by Charles S. Fax, counsel to Plaintiffs in this litigation, entitled “A Tale of Discovery under the Hague Convention: Was the Expense Worth It?” American Bar Association: Litigation News (Fall 2013, Vol. 39, No. 1).

4. I have reviewed the court record in the lawsuit related to Plaintiff Iren Gittel Kellner against MÁV pending in the Metropolitan Court of Budapest under case no. 70.P.20.744/2016. The court record in that case shows that Plaintiff was served on October 7, 2016 with the court’s decision, attached to the Second Declaration of András I. Hanák as Exhibit 9, submitted with Plaintiffs’ Opposition papers (D.E. 122-1). The court record also shows that the Plaintiff did not appeal such decision within the 15-day deadline open for appeal.

5. In addition, the court record in Plaintiff Iren Gittel Kellner’s case shows that Plaintiff did not make any motions asking the Metropolitan Court of Budapest to collect or hear evidence to support her claims.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on this 1st day of Dec. 2016 in Budapest, Hungary

/s/ László Nanyista
László Nanyista

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 10-1770 (BAH)

ROSALIE SIMON, *et al.*, *Individually, for themselves
and for all others similarly situated,*

Plaintiffs,

v.

REPUBLIC OF HUNGARY, *et al.*,

Defendants.

ORDER

Upon consideration of Defendants Republic of Hungary (“Hungary”) and Magyar Államvasutak Zrt.’s (“MÁV”) Motion to Dismiss, ECF No. 120, the related legal memoranda in support and in opposition, the exhibits and declarations attached thereto, and the entire record herein, for the reasons set forth in the accompanying Memorandum Opinion, it is hereby

ORDERED that, for the reasons stated in the accompanying Memorandum Opinion, the Motion to Dismiss is GRANTED; and it is further

ORDERED that the Second Amended Complaint, ECF No. 118, is DISMISSED WITHOUT PREJUDICE; and it is further

ORDERED that the Clerk of the Court close this case.

SO ORDERED

This is a final and appealable Order.

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DATED: September 30, 2017

/s/ Beryl A. Howell
BERYL A. HOWELL
Chief Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Case No. 1:10-cv-01770-BAH

**ROSALIE SIMON, *et al.*, Individually, for
themselves and for all others similarly situated,
*Plaintiffs,***

v.

**THE REPUBLIC OF HUNGARY, *et ano.*,
*Defendants.***

NOTICE OF APPEAL

Notice is hereby given that Plaintiffs, Rosalie Simon, Helen Herman, Charlotte Weiss, Helena Weksberg, Rose Miller, Magda Kopolovich Bar-Or, Zehava (Olga) Friedman, Yitzhak Pressburger, Alexander Speiser, Ze'ev Tibi Ram, Vera Deutsch Danos, Ella Feuerstein Schlanger, Moshe Perel, and the Estate of Tzvi Zelikovitch,¹ individually, for themselves and for all others similarly situated, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the Final Order entered in this action on September 30, 2017 (ECF No. 131), granting the Motion to Dismiss the Second Amended Complaint filed by Defendants Republic of Hungary and Magyar Államvasutak Zrt.

¹ Plaintiff Tzvi Zelikovitch passed away during the pendency of this litigation, and his estate succeeds to his interest and participation in this suit.

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/s/ Charles S. Fax

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Dated: October 6, 2017