

No. 23-867

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IN THE  
**Supreme Court of the United States**

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REPUBLIC OF HUNGARY, *et al.*,  
*Petitioners,*

*v.*

ROSALIE SIMON, *et al.*,  
*Respondents.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**JOINT APPENDIX**

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PETITION FOR CERTIORARI FILED FEBRUARY 7, 2024  
CERTIORARI GRANTED JUNE 24, 2024

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**TABLE OF CONTENTS**

	<i>Page</i>
SECOND AMENDED CLASS ACTION COMPLAINT WITH EXHIBITS IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, FILED JUNE 13, 2016.....	1
<p>The following decision(s), opinion(s) and order(s) have been omitted in printing this Joint Appendix because they appear in the appendix of the Petition for a Writ of Certiorari on the following pages:</p>	
Opinion in the United States Court of Appeals for the District of Columbia Circuit, August 8, 2023.....	App. 1
Order in the United States District Court for the District of Columbia, December 30, 2021.....	App. 91
Memorandum Opinion in the United States District Court for the District of Columbia, December 30, 2021 .....	App. 93
Order Denying Petition for Panel Rehearing in the United States Court of Appeals for the District of Columbia Circuit, October 12, 2023 .....	App. 193
Order Denying Petition for Rehearing En Banc in the United States Court of Appeals for the District of Columbia Circuit, October 12, 2023 .....	App. 195

**APPENDIX — SECOND AMENDED CLASS  
ACTION COMPLAINT IN THE UNITED STATES  
DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA, FILED JUNE 13, 2016**

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

**SECOND AMENDED CLASS ACTION COMPLAINT**

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

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Individually, for themselves and for all others  
similarly situated,

*PLAINTIFFS,*

v.

HUNGARY  
Sándor Palace  
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Budapest, Szent György tér 1  
Hungary

and

MAGYAR ÁLLAMVASUTAK Zrt.  
(MÁV Zrt.)  
1062 Budapest, Andrássy út 73-75  
Hungary,

*DEFENDANTS.*

## **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,<sup>1</sup> 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. 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,

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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.

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 Wurttembergische 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 station-master 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, Andrássy 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 it 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.<sup>2</sup>

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”<sup>3</sup> 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

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2. Randolph L. Braham, *The Politics of Genocide: The Holocaust in Hungary*, Vol. 1 at 671-72 (emphasis in original) (Columbia University Press rev. ed. 1994) (hereinafter “GENOCIDE”) (quoting Jenő Lévai, *Fekete könyv*, pp. 142-43).

3. *Id.* at 672.

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 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.<sup>4</sup>

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.<sup>5</sup> 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**.<sup>6</sup> See also APPENDIX SIX: DEPORTATION TRAINS PASSING THROUGH KASSA IN 1944: DATES, ORIGIN OF TRANSPORTS AND NUMBER OF DEPORTEES, attached hereto as **EXHIBIT B**.<sup>7</sup>

### 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,

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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.



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.<sup>8</sup>

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.

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8. GENOCIDE, VOLUME 2, at 780.

### **Halting the Deportations**

125. On July 7, 1944, Miklós 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.”<sup>9</sup>

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.<sup>10</sup>

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9. *Id.* at 1307.

10. *Id.*

138. The government did implement an array of legislative enactments and remedial statutes.<sup>11</sup> 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 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:

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11. *Id.* at 1308.

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.<sup>12</sup>

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

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12. *Id.* at 1308-09.

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.<sup>13</sup>

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 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

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13. *Id.* at 1312.



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.<sup>14</sup>

### **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.”<sup>15</sup>

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. This was followed by the adoption of another law on May 12, 1992, providing compensation for those who, for political

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14. *Id.* at 1347.

15. *Id.* at 1309.

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

MÁV, 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 limitations 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. Miklós 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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TABLE 19.1  
DATA RELATED TO THE GHETTOIZATION AND DEPORTATION OF HUNGARIAN JEWRY BY OPERATIONAL ZONES  
AND GENDARMERIE DISTRICTS

<i>Operational Zone</i>	<i>Gendarmerie District</i>	<i>Area of Hungary</i>	<i>Number of Ghettos or Concentration Centers</i>	<i>Date of Ghettoization or Concentration</i>	<i>Date of Deportation</i>	<i>Number of Trains</i>	<i>Deportation Figures</i>	
							<i>Ferenczy's</i>	<i>Veesenmayer's<sup>a</sup></i>
I	VIII. (Kassa)	Carpatho- Ruthenia	16	Apr. 16–	} May 15– June 7	92	288,333	289,357
II	IX. (Kolozsvar)	Northern Transylvania	11	May 3–			[275,415] <sup>b</sup>	
	X. (Marosvásárhely)						23,725	50,805
III	II. (Székesfehérvár)	Northern Hungary <sup>c</sup>	6	June 5–10	June 11–16	23	28,104	
	VII. (Miskolc)		5				21,489	41,499
IV	V. (Szeged)	Southeastern Hungary <sup>d</sup>	4	June 16–20	June 25–28	14	19,016	
	VI. (Debrecen)		3				17,667	
V	III. (Szombathely)	Western and South- western Hungary	5	June 30– July 3	July 4–6	10	11,889	} 55,741
	IV. (Pécs)						24,128	
VI	I. (Budapest)	(Suburbs)	2	June 30– July 3	July 6–8	8		
	Total		55			147	434,351	437,402

SOURCE: Ferenczy Reports May 3–July 9, 1944.

a *RLB*, Docs. 174, 182, 193.

b In 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.

c North of Budapest from Kassa to the frontier of the Third Reich.

d East of the Danube, not including Budapest.

e West of the Danube, not including Budapest.

**DEPORTATION TRAINS PASSING  
THROUGH KASSA IN 1944: DATES, ORIGIN OF  
TRANSPORTS, AND NUMBER OF DEPORTEES**

May 14	Nyíregyháza	3,200	May 22	Máramarossziget	3,490
May 14	Munkács	3,169	May 22	Ungvár	3,335
May 16	Kassa	3,055	May 22	Szatmárnémeti	3,300
May 16	Beregszász	3,818	May 22	Mátészalka	3,299
May 16	Máramarossziget	3,007	May 23	Felsővisó	3,023
May 16	Munkács	3,629	May 23	Nyíregyháza	3,272
May 16	Kassa	3,629	May 23	Munkács	3,269
May 17	Kassa	3,352	May 23	Nagyvárad	3,110
May 17	Ungvár	3,455	May 24	Beregszász	2,602
May 17	Ökörmező	3,052	May 24	Kassa	3,172
May 17	Munkács	3,306	May 24	Huszt	3,328
May 18	Máramarossziget	3,248	May 24	Munkács	3,080
May 18	Beregszász	3,569	May 25	Ungvár	3,334
May 18	Sátoraljaújhely	3,439	May 25	Nagyvárad	3,148
May 18	Munkács	3,025	May 25	Kolozsvár	3,130
May 19	Felsővisó	3,032	May 25	Aknaszlatina	3,317

May 19	Mátészalka	3,299	May 25	Felsővisó	3,006
May 19	Szatmárnémeti	3,006	May 26	Huszt	3,249
May 19	Munkács	3,222	May 26	Szatmárnémeti	3,336
May 20	Mármarossziget	3,104	May 27	Sátoraljaújhely	3,325
May 20	Nagyszőlős	3,458	May 27	Nagyszőlős	3,415
May 20	Munkács	3,026	May 27	Nyíregyháza	2,708
May 21	Felsővisó	3,013	May 7	Úngvár	2,988
May 21	Nyíregyháza	3,274	May 27	Marosvásárhely	3,183
May 21	Sátoraljaújhely	3,290	May 28	Técső	2,208
May 21	Munkács	2,861	May 28	Dés	3,150
May 28	Nagyvárad	3,227	June 8	Marosvásárhely	1,163
May 29	Beregszász	860	June 9	Kolozsvár	1,447
May 29	Mátészalka	3,299	June 11	Maklár	2,794
May 29	Kolozsvár	3,417	June 12	Diósgyőr	2,675
May 29	Szatmárnémeti	3,306	June 12	Balassagyarmat	2,810
May 29	Nagyvárad	3,166	June 12	Diósgyőr	2,941



May 30	Kisvárdra	3,475	June 12	Érsekújvár	2,899
May 30	Marosvásárhely	3,203	June 12	Diósgyőr	3,051
May 30	Nagyvárad	3,187	June 13	Hatvan	2,961
May 30	Szatmárnémeti	3,300	June 13	Komárom	2,790
May 31	Ungvár	3,056	June 13	Salgótarján	2,310
May 31	Kolozsvár	3,270	June 14	Miskolc- Diósgyőr	3,968
May 31	Nagybánya	3,073	June 14	Balassagyarmat	1,867
May 31	Szilágysomlyó	3,106	June 15	Léva	2,678
June 1	Mátészalka	3,299	June 15	Miskolc	2,829
June 1	Kisvárdra	3,421	June 15	Érsekújvár	1,980
June 1	Nagyvárad	3,059	June 16	Győr	2,985
June 1	Szatmárnémeti	2,615	June 16	Komárom	2,673
June 2	Huszt	2,396	June 16	Dunaszerdahely	2,969
June 2	Beszterce	3,106	June 25	Debrecen	2,286
June 2	Kolozsvár	3,100	June 26	Szeged	3,199

June 3	Nagyyszőlős	2,967	June 27	Debrecen	3,842
June 3	Kassa	2,499	June 27	Kecskemét	2,642
June 3	Nagyvárad	2,972	June 27	Nagyvárad	2,819
June 3	Szilágyssomlyó	3,161	June 27	Békéscsaba	3,118
June 4	Szászrégen	3,149	June 28	Bácsalmás	2,737
June 4	Sátoraljaújhely	2,567	June 29	Kecskemét	2,790
June 5	Nagyvárad	2,527	June 29	Szolnok	2,038
June 5	Mátészalka	3,100	June 29	Debrecen	3,026
June 5	Nyíregyháza	2,253	July 5	Sárvár	3,105
June 5	Nagybánya	2,844	July 5	Szombathely	3,103
June 6	Huszt	1,852	July 6	Kaposvár	3,050
June 6	Dés	3,160	July 6	Pécs	3,100
June 6	Beszterce	2,875	July 6	Kaposvár	2,066
June 6	Szilágyssomlyó	1,584	July 7	Sopron	3,077
June 8	Dés	1,364	July 7	Pápa	2,793
June 8	Kolozsvár	1,784	July 7	Paks	1,072

July 7	Monor	3,549	July 9	Óbuda	3,072
July 7	Óbuda	3,151	July 9	Budakalász	3,072
July 7	Sárvár	2,204	July 9	Monor	3,079
July 8	Pécs	2,523	July 9	Békásmegyér	1,924
July 8	Óbuda	2,997	July 20	Rákosszaba	1,230
July 9	Monor	3,065			

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.