

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

HOLOCAUST VICTIMS)
OF BANK THEFT,)
))
))
Plaintiffs,) Case No.: 10 CV ____
))
v.) CLASS ACTION
) COMPLAINT
MAGYAR NEMZETI BANK,)
ERSTE GROUP BANK,)
MKB BAYERISCHE LANDESBANK,)
OTP BANK, and)
CREDIT ANSTALT BANK,) JURY DEMANDED
) RE: PRIVATE BANKS
Defendants.)
))

COMPLAINT

This Complaint is related and connected to Civil Action **1:10-cv-00868**,
The Victims of the Hungarian Holocaust v. The Hungarian State Railways
(MAV). This action is currently pending in the United States District Court,
Northern District of Illinois, Eastern Division, before the Honorable Judge
Samuel Der-Yeghiayan.

Holocaust victims of bank theft in Greater Hungary in 1944, or their heirs, bring this action both individually and on behalf of all other persons similarly situated for an accounting and to recover cash, records, art, jewelry, bank deposits, securities, and all other businesses, titles to real estate, and personal assets wrongfully taken and withheld from them and their families by the defendant banks during the Holocaust of Greater Hungary, principally in 1944, and which spoliated assets continue to be wrongfully withheld, unaccounted for and unreturned, and hereby allege on information and belief as follows:

Statement of Facts

1. Plaintiffs seek recovery of spoliated assets and other equitable and legal relief, including a full accounting, disclosure, disgorgement and restitution by the defendant banks named herein for their participation in and aiding and abetting of the genocidal destruction of Jewish communities by unlawful taking and retention of assets of the civilian Jewish population of Greater Hungary.
2. As generally accepted in the history of the period, we refer herein to Greater Hungary and the Jews of Greater Hungary to include those areas and populations, in addition to Trianon Hungary as established by the Treaty of Trianon of June 4, 1920, all former parts of Hungary returned for the duration as follows:
 - a) Subcarpathian Ruthenia (Ung, Bereg and Ugocea and a portion of Maramaros counties), at that time part of Czechoslovakia until the first

Vienna Dictate of November 1938 , followed by the Hungarian advance in to the Ukraine via the Carpathians in mid -March 1939;

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

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

3. Although Hungarian Jews constituted only 10% of the population of Greater Hungary, according to the census of 1930 for the Trianon, and later in 1941 for Greater Hungary, the census in Greater Hungary:

a) they owned 20% to 25% of the assets in that area prior to the Holocaust;

b) on the eve of the Holocaust in 1944, according to the Randolph Braham, author of the definitive history of the Hungarian Holocaust, Jewish assets in Trianon Hungary had market value between 7 and 9 billion gold Pengos;

c) this amount is to be doubled as the number of Jews is doubled to encompass all of Hungary. At the time, 5 Pengos were convertible into one U.S. dollar.

4. Based on the nature of their business or profession, Jews in Greater Hungary were at least as likely to use banking facilities as were non-Jews. In the professions as of the 1930 census for the Trianon , and again in the census in 1941 including the annexed areas, Jews made up 49% of the practicing attorneys; 55% of the physicians; 30% of the engineers; 60% of bank officials; and 46% of salespersons. Jews owned 49% of metallurgical works; 42% of machine manufacturing; 73% of

clothes manufacturing; 65% of the spinning and weaving industry and in the annexed areas, were especially active, in addition, in forestry and other associated professions, as well as agriculture and the cattle industries. In total, Jews earned one-quarter of the national income of Greater Hungary.

5. Yet Jews made up only 5% of the population of Greater Hungary.

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

7. As of April 5, 1944 Jews were ordered to wear the yellow star. On April 7, 1944 all travel was forbidden to Jews. The first deportation took place on April 29, 1944 from the Kistarcsa Hungarian internment, with Jews packed in boxcars and cattle cars. Following a successful conclusion of this first trial, on May 14 trains emanating concurrently from Munkacs (Transcarpathia) and Nyiregyhaza (Trianon) crossed the Hungarian border at Kassa towards Auschwitz. On April 28, 1944 the round-ups of Jews of Greater Hungary began; they were removed from smaller villages and towns and concentrated in ghettos in the larger cities. By May 1944, all Jews had left their original residences and places of business, and

were relocated to ghettos, factories, or even open fields and camps. The residences, shops, and business offices of the Jews were occupied by non-Jewish Hungarians according to the wishes of the mayors and local committees established throughout Greater Hungary for this express purpose.

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

9. At the end of the war in May, 1945, a number of survivors of the Holocaust and heirs of victims went to banks to retrieve assets that had been kept in safe-deposit boxes. In every case, the boxes when opened proved to be empty. Even those who had entrusted their funds to Catholic Church banks found the safe deposit boxes empty. The bank employees said they had no information as to what happened to the contents of the boxes.

10. For example, Plaintiff Erszebet Grosz, heir to a highly successful wholesale grocery business in Budapest with commercial ties to Switzerland, was deported to Auschwitz. She survived the Holocaust. After the war, her brother Benjamin went to Budapest to recover the bank accounts of the family's grocery business. He found that there was nothing left. No explanation was given to him by bank officials regarding the missing assets.

11. Plaintiff Eva Rona's father, Odon Rona, who had been a successful attorney in Budapest, deposited the family's jewelry to the Magyar Orszagos Kozponti Takarekpenztar Bank, Budapest, which became through succession defendant Erste Austria. The plaintiff possesses documentation of the jewelry remitted to the bank. All efforts to retrieve the stolen property have been unavailing.

12. Plaintiff Yehudit Sarel's parents had a large personal fortune including cash, securities, gold, jewels, and other valuables in accounts and safe deposit boxes at the Angol-Magyar Bank, which became Erste Austria, in Budapest. These assets are missing and are unaccounted for.

13. The defendant banks and/or their predecessors not only breached their fiduciary duty to their Jewish depositors but assisted and abetted in stripping the entire community of the Jews of Greater Hungary of its assets including those not specifically placed in vaults and accounts, but as well by their collaboration in the implementation of the decrees of April 1944 by serving as intermediaries between the Jews and the Hungarian regime seeking to steal from the Jews of all their assets in private possession as well as in bank accounts or vaults. On March 20, 1944, all Hungarian banks, without notice, sealed the safe deposit boxes that had been leased to Jews and on that same day, Jewish bank account withdrawals were limited to 1000 Pengos (about \$200) per person per day and later on April 16, the maximum withdrawal was limited to 1000 Pengos per person per month, The

banks followed the instructions in the Hungarian government decrees. They first sealed the safe deposit boxes, and later aided and abetted in looting the contents.

14. Under a new Hungarian law, a special account was created in the Postatakarokpenztar of the defendant Magyar Nemzeti Bank in order to centralize and coordinate the funds from all the frozen and spoliated accounts. This is further proof, if proof were needed, that all the banks in Hungary in 1944, both large and small, were conclusively presumed by the law of Hungary to know and be able to distinguish Jewish rights in property from those of non-Jewish citizens.

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

16. The value of Greater Hungarian Jewish assets wrongfully taken by the defendant banks and their predecessors and not returned is estimated at \$2 billion in American 1944 dollars.

17. During the period 1945 to 1989 a communist government took control over Hungary and nationalized the ownership of the banks by canceling the old privately-held shares of stock in the banks. For many banks, however, it was business as usual; the only difference was who owned the shares. Many smaller

banks were gradually merged into large banks. In 1989, the government unexpectedly re-privatized the banks.

18. Changes in ownership of banks does not legally affect title to custodial accounts. Moreover, expropriation of private property without paying fair compensation by governments is itself a violation of international law and cannot affect the status of the Jewish assets in question. The law is clear that the private property of the Jews of Greater Hungary continues to belong to them no matter how many hands it has passed through.

19. The defendant banks and/or their predecessors collectively have continuously been and continue to be the custodians of the wealth stolen by them from Jewish families or entrusted to them in 1944.

20. The defendant banks engaged in a nation-wide conspiracy to deprive Jewish customers of their financial assets and to withhold information regarding these assets from descendants of customers. The co-conspirators include all banks that came into possession of Jewish assets at any time from World War II to date. It is not necessary for a bank to have dealt with Jewish customers in order to have been a co-conspirator in respect of Jewish assets.

21. German and Hungarian officials knew that the best way to confiscate all Jewish property was to dissuade Jews from hiding or burying their valuables. On April 1, 1944, and days following, Eichmann issued a series of decrees that were

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

22. Given the concerted obstructionism of the defendant banks, it has proven impossible for the plaintiffs to discover and ascertain the dollar amount of the Jewish bank accounts, safe deposit valuables, and foreclosed property taken by each separate bank. Each and every bank that has denied they have such assets has acted in bad faith. In some cases where plaintiffs still had a safe deposit box key, the boxes were opened and shown to be empty. The bank clerks and bank officials said they had no explanation for this. But even though the plaintiffs have been blocked from being able to discover the precise liability of each bank, the plaintiffs’ total net worth stolen from them by the banks is \$2,000,000,000 in U.S. 1944 currency. Although individual claims against individual banks cannot be exactly determined without discovery of the bank records , the aggregate plaintiffs’

claims against the aggregate defendant banks is clear and a matter of historical record.

Jurisdiction and Venue

23. The list of plaintiffs class representatives is given in Paragraph 29. As to all plaintiffs, this Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, because the plaintiffs' claims involve treaties to which the United States is party, international law, and federal questions generally. In particular, jurisdiction is based upon:

a) Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277 (1948); entered into force for the United States Feb. 23, 1989;

b) Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907, entered into force for the United States, 36 Stat. 2277 (1911) (Article 46: "Private property cannot be confiscated");

c) International Covenant on Civil and Political Rights, 993 U.N.T.S. 171 (December 16, 1976), entered into force for the United States June 8, 1992;

d) Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, entered into force for the United States Feb. 2, 1956,

24. As to plaintiffs who are aliens, this Court has additional jurisdiction pursuant to the **Alien Tort Claims Act**, 28 U.S.C. § 1350. These plaintiffs are claiming their right under that Act to obtain redress in federal court for serious injuries wherever committed in violation of the law of nations.

25. Defendant Magyar Nemzeti Bank (hereinafter “MAG”) is the national bank of Hungary. It is a wholly-owned subsidiary of the Hungarian government and thus is an instrumentality of a foreign sovereign under the **Foreign Sovereign Immunities Act**. Jurisdiction over MAG is based upon 28 U.S.C. § 1605(a) which provides that

A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States . . . in any case . . . (3) 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 a commercial activity in the United States . . .

Defendant MAG looted the plaintiffs’ rights in property in violation of the international-law prohibition against aiding and abetting genocide. It kept the Jewish property or any property in exchange for such property. Under 28 U.S.C. 1605(a) just quoted, there is no statutory requirement that the property itself must be present in the United States. All that is required is that defendant MAG is engaged in commercial activity in the United States, which is satisfied by the fact that MAG engages in ordinary and electronic banking transactions throughout the United States.

26. Defendant MAG has served as the banking instrumentality of all Hungarian governments and their successors from pre-1940 to today. It either kept all looted property or operated on that property in fractional reserve banking transactions, or

exchanged it for other property or other rights in property with any other bank in Hungary or with the Hungarian government.

27. The principal defendants that remain in existence since 1944 are MAG and Credit Anstalt. The additional defendants are successor banks to banks that were in business in 1944: Erste Group Bank, OTP Bank, and MKB Bayerische Landesbank. Pending further research, plaintiffs reserve the right to add other banks as defendants to this case. The plaintiffs have identified other banks specifically connected to the Hungarian Holocaust of 1944; the list is given in Paragraph 58, below.

28. Venue is appropriate pursuant to 28 U.S.C. § 1391. The defendant banks are all aliens. Aliens may be sued in any district. 28 U.S.C. § 1391(d). Venue in a Hungarian court would be a waste of time considering the stonewalling by the defendant banks with the cooperation of the Hungarian government as described in preceding paragraphs. Hungarian courts are not an available alternative. They have proven to be uniformly hostile to cases involving Holocaust reparations. They have dismissed every such case that was filed in Hungarian courts over the past several decades. To remit the present case to any Hungarian court would deprive the plaintiffs of due process of law by causing delay and eventual frustration of their legitimate claims. Many plaintiffs are very old and any delay would deprive them of any relief. Moreover, plaintiffs were impoverished by the

defendants, and in most cases do not have the money to pay to lawyers to reclaim the value of their stolen assets. Hungarian law does not permit class actions. Yet the class-action remedy is the only feasible alternative for plaintiffs who have been individually impoverished by the deceitful acts, delaying tactics, and denials of the defendant banks.

The Parties

29. Plaintiffs are the entire class of victims or their heirs of property looting by the defendant banks in connection with the Hungarian Holocaust of 1944. Some representative plaintiffs are listed in the paragraphs immediately following. All plaintiffs who have joined this lawsuit so far are listed in this paragraph. Plaintiffs specifically reserve the right to amend the Complaint to add additional plaintiffs resulting from continuing research into the Holocaust in Greater Hungary. The plaintiffs named herein make claims on their own behalf and on behalf of all persons of whom they are direct heirs whose assets were stolen by the defendant banks in 1944.

Category A: Lead Plaintiffs (American Plaintiffs)

30. Plaintiff **Dr. Paul (Chaim Shlomo) Fischer** was born in Peterreve in May 1936 and is a resident of Brooklyn, New York. His father Matyas Fischer, who did not survive the Holocaust, owned and had accounts as well as foreign currency, gold and diamonds, in a safe box whose contents were in the Magyar Nemzeti Bank in Budapest in December 1944. He also had a mortgage property account in the Ujvideki Hitelbank in Ujvidek, as well as account deposits in order to open the Peterrevei Hitelbank in Peterreve (now Petrovo Selo), these latter banks becoming Erste Group Bank.

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

32. Plaintiff **Dr. Edie (Elefant) Eger** was born in Kosice in September 1927 and is a resident of La Jolla, California. Her father Lajos Elefant, who was a reputed dress designer, with a large exclusive business, had an account in the Felvideki Kereskedelmi Bank in Kassa/Kosice, formerly in Greater Hungary, now in Slovakia. The plaintiff and her family were deported to Auschwitz , her parents did not return. The bank became Erste Group Bank.

33. Plaintiff **Erno Friedman** was born in November 1925 in Nyiregyhaza and is a resident of New York. He is heir to his parents Zsigmond and Rosa Friedman, to his brothers Shamai and Soma who had a textile business, and to his brother Yosef who had a bakery business. They all had accounts in the Nyiregyhaza branch of the Magyar Nemzeti Bank

34. Plaintiff **Paula Friedman** was born Rosenberg in April 1931 in Nyiregyhaza and is a resident of New York. She is heir to her parents, Nandor and Sabina Rosenberg, born Ciff, who had accounts in the Nyiregyhaza branch of the Magyar Nemzeti Bank.

35. **David Ganti**, who had been named as plaintiff while this action was being prepared, has passed away. His father, Nachman Gancz, who was a wealthy businessman and had large agricultural domains, had an account in the Maramarosmegyei Kereskedelmi RT. Bank in Maramarosziget, formerly in Greater Hungary, now in Romania. This has become Erste Group Bank.

36. **Andrew Gergely-Jungreis**, who had been named as plaintiff while this action was being prepared, has passed away. His father Isidor Gergely-Jungreis had an account in the Altalanos Takarekpenztar in Janoshalma, now known as OTP.

37. Plaintiff **Leslie (Laszlo) Keller** was born in Szekesfehervar, Hungary, in August 1921, and is a resident of Delray Beach, Florida. His father, Ferenc Keller,

and mother, Olga Deutsch, had a large wholesale grocery import business named “Deutsch es Keller” and a coffee business named “Victoria Café”. His parents were deported to Auschwitz in 1944 and did not return. The businesses had their accounts in a savings bank in Szekesfehervar, now known as OTP. The plaintiff has never been compensated for these accounts.

38. Plaintiff **Alexander Shalom Steven Schwimmer** was born in Ungvar in July 1928 and is a resident of Boynton Beach, Florida. He is heir to his parents Aron and Szeren Schwimmer born Lefkovits who had a restaurant and a shoe shop in Ungvar (Konyok Str. 11) and had accounts in the Ung Megyei Takarekpenztar, Ungvar, which became Erste Group Bank. His parents were murdered in Auschwitz.

39. Plaintiff **Ernest Stein** was born in June 1923 in Budapest and is a resident of Miami, Florida. He is heir to his father who owned a knitting factory in Budapest and had an account in the Magyar Nemzeti Bank in Budapest.

Category B Lead Plaintiffs (Alien Plaintiffs)

40. Plaintiff **Gad Bar Levav** was born Gutfreund in October 1928 in Apc, and is an Israeli citizen. He is heir to his father, Dezso Gutfreund, who was an international cattle dealer and had a chain of butcher shops. His commercial and personal bank accounts were at the Heves Megyei Takarekpenztar in Hatvan,

Hungary, which became OTP. Plaintiff has supporting 1944 bank documentation. The plaintiff's father was murdered during the Hungarian Holocaust.

41. Plaintiff **Malka Bensoussan** was born Hirschler in Budapest in 1933 and is an Israeli citizen. Her father, Alexander (Sandor) Hirschler was a bank manager in Budapest in the Credit Anstalt Wiener Bank where he had an account. He was deported to a forced labor battalion in 1944 and died in Germany in March 1945. The bank informed the plaintiff postwar that all account records had been destroyed.

42. Plaintiff **Judith Berkovits** was born Acs in July 1937 in Budapest, and is an Israeli citizen. Her father, Istvan Acs, was a textile engineer and had a partnership with her grandfather, Bela Acs, in a wholesale textile business, behind the Budapest Opera House. Their bank accounts were in the Pesti Magyar Kereskedelmi Bank in Budapest, which became MKB Bayerische Landesbank. The plaintiff is heir to her father and grandfather.

43. Plaintiff **Gabriel Erem** was born Gabor Eichler in April 1950 in Debrecen, and is a Canadian citizen. He is heir to the assets of his father, Kalman Eichler, who had farm related businesses in Aranyosapati, Hungary, where his paternal grandparents owned substantial real estate and farmland, and his maternal grandparents owned a meat-processing facility in Nyirtass. The family's accounts, both professional and private savings, were held by the Diener Bank, which

became Erste Group Bank, and by the Kisvardai Takarekpenztar Bank, now known as OTP, in Kisvarda, Hungary. His father's entire family was murdered in Auschwitz. The plaintiff's efforts to obtain reimbursement from those two banks have been unavailing.

44. Plaintiff **Robert Fischer-Dagan** was born in September 1926 in Budapest, and is an Israeli citizen. He is heir to his parents Emeric and Serafina Fischer, born Birnbaum, who had several businesses in Gyor, a grill restaurant (Grill Karoy) and a newspaper and printing shop (Jery Hirelap). They had accounts in the Pesti Magyar Kereskedelmi Bank, Gyor, which became MKB Bayerische Landesbank.

45. Plaintiff **Shoshana Gertler** was born Zsuzsanna Szego in Sajoszentpeter in October 1928 and is an Israeli citizen. She is heir to her father Bernat Szego who was the bank director and had an account in the Sajoszentpeteri Takarekpenztar Bank, Sajoszentpeter, now known as the OTP Bank. He was deported to Mauthausen. The plaintiff is also suing for her father's loss of employment and attendant rights.

46. Plaintiff **Erszebet Grosz**, born Abelesz in 1923 in Kapuvar, is a UK citizen. She is heir to her grandfather, Hermann Abelesz, and her father, David Abelesz, who founded a highly successful wholesale grocery business in Budapest, with commercial ties to Switzerland. Their company maintained its accounts in the Penzintezeti Kozpont in Budapest, which became Erste Group Bank. She was

deported to Auschwitz and survived. After the war, when the plaintiff's since deceased brother Benjamin, went to Budapest to recover the bank accounts of his grandfather's and father's company, he found that there was nothing left. No explanation was given to him for the missing assets by bank officials.

47. Plaintiff **Moshe (Miklos) Helischauer** was born in June 1932 in Budapest and is an Israeli citizen. He is heir to his father Andor Helischauer who was a manager of the Angol-Magyar Bank head office in Budapest, where he had an account and which became Erste Group Bank. His father was deported as a forced laborer and died on the Austrian border in October 1944.

48. Plaintiff **Meira Muller** was born in March 1950 in Tel Aviv, and is an Israeli citizen. She is heir to her paternal grandfather Armin Muller who owned a large textile retail store in Szarospatak, Hungary, as well as vineyards. She had accounts in three banks: the Pesti Magyar Kereskedelmi Bank in Budapest, which became the MKB Bayerische Landesbank; the Szarospataki Takarekpenztar Bank in Szarospatak, now known as the OTP Bank; the Postatakarekpenztar in Szarospatak, now known as the OTP Bank.

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

50. Plaintiff **Yehudit Ungar's** grandfather Odon Rona was a successful attorney in Budapest. In April 1944, his office was closed and confiscated, together with his bank accounts, which were in the Magyar Orszagos Kozponti Takarekpenztar Bank, Budapest, which later became Erste Group Bank. The plaintiff possesses documentation concerning the family's jewelry remitted to said bank on 26 April 19 1944. In addition, her grandmother had remitted stock certificates to the bank

51. Plaintiff **Ron Sarel** is heir to his grandmother, Anna Goldschmidt, born Mairovitz, wife of Dr Leopold Goldschmidt, who lived in Arad, now in Romania. She had a large personal fortune including cash, securities, gold, jewels, and other valuables in accounts and safe deposit boxes at the Angol-Magyar Bank, which became Erste Group Bank in Budapest.

52. Plaintiff **Zsuzsanna Snir** was born Kallai in July 1948 in Budapest and is an Israeli citizen. She is heir to her grandfather, Hugo Fabriczki, who founded a textile factory and wholesale textile business in Budapest, in 1914, the WE-FA company (Weisz es Fabriczki). The company had a very large account in the Angol-Magyar Bank in Budapest, which became Erste Group Bank. It was confiscated in May 1944. Mr Fabriczki was arrested by the Gestapo in November 1944, interrogated to reveal any other assets, tortured, and murdered.

53. Plaintiff **Istvan Somogyi** was born in September 1937 in Budapest, and is a UK citizen. He is heir to his father Laszlo Somogyi, who had a wholesale import

and export and production textile business and had accounts in the Pesti Magyar Kereskedelmi Bank in Budapest, which became the MKB Bayerische Landesbank, and in the Postatakarékpénztár in Budapest, now known as the OTP Bank. His father was killed as a forced laborer deported in the Ukraine in 1943. He is also heir to his maternal grandparents, Jenő and Ilona Reich born Neiger, whose bank accounts and mortgaged home in Budapest were expropriated by the Magyar Nemzeti Bank.

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

Defendant Bank As Government Instrumentality

55. Defendant MAG is the government-owned national bank of Hungary. It received many of the spoliated assets directly from Hungarian Jews, and indirectly from many of the smaller banks that were functioning in 1944 but were then absorbed or reconstituted on order of the Communist Government that took over Hungary in 1945. Defendant MAG played an important role in the

restructuring of 1945, and then again in 1981 it played a central role in reconstituting numerous successor banks (see list in para. 58).

Principal Private Banks

56. The banks that have played a major role in receiving, processing, and exchanging spoliated Jewish assets in violation of their custodial duty and in furtherance of the genocidal destruction of the Jewish communities in Hungary are Erste Group Bank, MKB Bayerische Landesbank, OTP Bank, and Credit Anstalt.

57. From 1944 to the present day there have been numerous acquisitions, mergers, and consolidations among Hungarian banks. Nevertheless, all the named defendants or their predecessors were doing business in Hungary in 1944 and as such, aided and abetted in the identification, designation, and expropriation of Jewish bank accounts, stocks, properties mortgaged to said banks, contents of vaults, jewelry, works of art, gold, stock certificates and bonds, By serving as the economic arm of the Hungarian Holocaust, the banks aided and abetted the political arm that actually ordered and physically carried out the vast deportations of Hungarian Jews to Auschwitz

58. The banks that held Jewish bank accounts or leased safe deposit boxes to Jewish customers in 1944 or their predecessors or successors include but are not necessarily limited to the following: Altalanos Takarekpenzta Janoshalma,

Angol-Magyar Bank, Bekescsabai Takarekpenztar, Bekesmegyei Kereskedelmi Bank Rt., Credit Anstalt Wiener Bank, Csornai Takarekpenztar, Diener Bank, Elso Takarekpenztar Debrecen, Elso Vagsellyei Takarekpenztar, Erste Bank Austria, Fehergyarmati Takarekpenztar, Felvideki Kereskedelmi Bank, Hajdunanasi Takarekpenztar, Haromszeki Takarekpenztar, Heves Megyei Takarekpenztar, Ipar es Kereskedelmi Bank, Jaszkeruleti Nepbank es Takarekpenztar, Kecskemeti Magyar Kereskedelmi Bank, Kisvardai Takarekpenztar, Magyar Altalanos Hitelbank, Magyar Bank es Kereskedelmi Bank Rt, MKB Bayerische Landesbank, Magyar Kiralyi Postatakarokpenztar, Magyar Leszamoto es Penzvalto Bank, Magyar Nemzeti Bank (“MAG”), Magyar-Olasz Bank Rt, Magyar Orszagos Kozponti Takarekpenztar, Mateszalkai Takarekpenztar, Mezokovacs-haza Takarekpenztar, Nagybenyi Hitelbank, Nagymegyeri Takarekpenztar, Nyiregyhazi Hitelbank, Nyiregyhazi Takarekpenztar, Orszagos Takarekpenztar (OTP Bank), Papai Hitelbank, Pecsegyhazmegyei Takarekpenztar, Penzintezeti Kozpont, Penzvalto es Kereskedelmi Bank, Pesti Elso Takarekpenztar, Pesti Hazai Elso Takarekpenztar Egyesulet, Pesti Magyar Kereskedelmi Bank, Peterrevei Hitelbank (“Creditna Bank”), Postabank Takarekpenztar, Postatakarokpenztar, Sajoszentpeteri Takarekpenztar, Sarospataki Takarekpenztar, Szabolcsi Agrar Takarekpenztar, Szatmarnemeti Kereskedelmi Bank, Szatmarnemeti Takarekpenztar, Szekszardi

Nepbank, Szentesi Takarekpenztar, Szolnoki Hitelbank, Szombathelyi Takarekpenztar, Szombathelyi Varmegyei, Takarekpenztar, Tiszafuredi Takarekpenztar, Ujvideki Hitelbank, Ung Megyei Takarekpenztar, Vaci Takarekpenztar, Vagsellye Hitelintezet, Vasarosnamenyi Takarekpenztar.

59. Plaintiffs specifically reserve the right to add to the defendants in this case any of the banks named in the preceding paragraph 58 or any of their successor banks.

Class Action Allegations

60. This action is brought and may properly be maintained as a class action pursuant to Fed. R. Civ. P. Rule 23(a):

- a) The class is at least 600,000 persons, which is so numerous that joinder of all members is impracticable;
- b) There are questions of law and fact common to the class;
- c) the claims or defenses of the representative parties are typical of the claims or defenses of the class, including violations of customary international law and the right to own private property, and
- d) the representative parties will fairly and adequately protect the interests of the class.

61. In addition:

- a) the defendant banks opposing the class have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final

injunctive relief or corresponding declaratory relief with respect to the class as a whole;

b) questions of law or fact common to the members of the class predominate over any questions affecting only individual members;

c) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

62. Other interests include::

a) the interest of the members of the class in individually controlling the prosecution of separate actions;

b) the desirability of concentrating the litigation of the claims in the particular forum;

c) the difficulties likely to be encountered in the management of a class action.

63. The Class of Plaintiffs includes all members of Greater Hungarian Jewry whose assets were taken by the defendant banks during or immediately following or in connection with the Hungarian Holocaust of March-October 1944.

64. Among the questions of law and fact common to the class are whether:

a) Defendant banks looted the plaintiffs' assets in connection with mass deportations of plaintiffs to Auschwitz and continuing until the end of 1944;

b) Defendant banks or their predecessors were aware or should have been aware that plaintiffs and class members were taken from their homes and deported against their will out of Greater Hungary;

c) Defendant banks or their predecessors were aware or should have been aware that the plaintiffs would not be returning from Auschwitz to reclaim the property they had entrusted to the banks, and hence the banks

had a duty of custodianship over the property to be held in trust for the rightful heirs;

d) Defendant banks or their predecessors willfully seized and converted to their own use the plaintiffs' assets, including commercial and personal bank accounts, titles to real estate, and the contents of safe deposit boxes;

e) Defendant banks or their predecessors engaged in activities in conjunction with various Hungarian governmental proclamations to encourage Jews to deposit all their valuables in safe deposit boxes;

f) Defendant banks violated the right of private property guaranteed by Hungarian law and customary international law;

g) Defendant banks or their predecessors acted to deny the plaintiffs' inquiries and claims, to deny falsely that they or their predecessors had taken any of the plaintiffs' assets, to stonewall every initiative begun by individual plaintiffs to recover their own property, and to send persons with inquiries to one official after another, to one bureaucrat after another, and back to the original bank.

65. Plaintiffs are committed to the vigorous prosecution of their claims and have retained competent counsel experienced in complex litigation, class action litigation, international law, and litigation related to wrongful conduct during World War II.

Causes of Action

Count 1: Participation in Genocide By Looting

66. Plaintiffs repeat and incorporate each and every allegation set forth in paragraphs 1 through 59 above as if fully set forth herein.

67. Under 18 U.S.C. § 1091, genocide is defined in pertinent part as:

Whoever, whether in time of peace or in time of war and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such . . . (4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part.

68. Defendant banks in 1944 engaged in a conspiracy to complete the genocide the Nazis had begun by looting the assets and selling the properties the plaintiffs had entrusted to them for safekeeping under custodial duty, thus ensuring the physical destruction of Jewish communities in whole or in part by making it impossible for survivors and heirs of the Holocaust ever to return to their homes and businesses in Greater Hungary.

69. Defendant banks and their successors have continued the genocidal destruction of the Jewish group down through the present day by:

- a) unlawfully refusing to return the looted assets to the plaintiffs;
- b) lying to the plaintiffs that they had not taken the assets;
- c) intentionally and wrongfully concealing books and records of the custodial assets;
- d) enriching themselves with the derivative profits of such assets;
- e) investing and otherwise profiting from the looted assets on a continuing basis;
- f) denying that they knew the amounts or existence of the looted assets.
- g) failing to provide an accounting of their custodial accounts to the plaintiffs;

h) failing to retribute the value of the assets to the plaintiffs.

70. Defendant banks should be assessed jointly and severally for the entire amount of the assets and rights in property stolen and looted from Jews in Greater Hungary as alleged in paragraphs 66 through 69 above. This joint and several liability is just and equitable because there is no more heinous crime than genocide. The guilt of any bank participating in, or aiding and abetting, genocide, should not be measured by the amount of Jewish assets it looted but rather by the fact that it looted any Jewish assets.

71. In aggravation of defendant banks' conduct regarding Jewish assets is the practice of numerous inter-bank transfers and assignments, mergers, consolidations, acquisitions, changes and modifications of ownership, and other complex financial arrangements, all of which have been guarded as if they are official secrets. For the present-day banks that have either survived since 1944 or are the successors of banks serving the Hungarian market in 1944, their policy has been the opposite of transparent. Thus it is important that each bank named as defendant should be liable jointly and severally for the entire value of the assets and rights in property not just taken from their Jewish customers but from all Jewish victims of the Holocaust of 1944.

Count 2: Aiding and Abetting Genocide By Looting

72. Plaintiffs repeat and incorporate each and every allegation set forth in paragraphs 66 through 71 above as if fully set forth herein.

73. By their actions, defendant banks and their successor banks have aided and abetted the genocide of 1944.

Count 3: Unjust Enrichment in Violation of International Law

74. Plaintiffs repeat and incorporate each and every allegation set forth in paragraphs 66 through 69 above as if fully set forth herein.

75. Unjust enrichment is a violation of general principles of international law which are part of customary international law. See Art. 38, Statute of the International Court of Justice, a treaty to which the United States is part. International law applies to Group A Plaintiffs by virtue of its incorporation into federal common law. It applies to Group B Plaintiffs directly through the Alien Tort Claims Act.

76. Defendants have been unjustly enriched to the detriment of the plaintiffs as a result of their wrongful confiscation of plaintiffs' bank accounts, titles to real estate, mortgage and land contract equity, and contents of safe deposit boxes,

77. Defendants have been unjustly enriched to the detriment of the plaintiffs by hiding and concealing the plaintiffs' assets and falsely denying that they had taken those assets.

78. If the trier-of-fact finds that the defendant banks unjustly enriched themselves at the expense of the plaintiffs but did not do so in furtherance of the aims of the perpetrators of the Hungarian genocide, then the court may decide that each individual bank should not be held liable for the entire Jewish loss. At the same time, equity demands that the defendants must be disgorged of their stolen assets so that complete restitution can be made to the plaintiffs. Therefore damages should be allocated and apportioned among the defendants in a manner that is fair and just. Two possible theories of apportionment are as follows.

(a) The Rule of General Average

79. One principle of proportionality is that each defendant bank be held liable for the ratio of its own net asset value in the Hungarian market over the aggregate net asset value of all the defendant banks. The Rule of General Average owes its origin to admiralty law but was recently used to positive effect in a financial reparations case arising at the end of the Second World War. Maritime law provides that when cargo must be thrown overboard to save the ship, losses are not borne solely by the owner-shipper of the particular jettisoned cargo but rather are apportioned among all the owner-shippers. They all benefited from the sacrifice of one shipper's cargo. In the present case all Hungarian banks, whether or not they were active in confiscating Jewish property, benefited by the general rise of prosperity of Hungarian banks. For example, if shares of banks that reported a

sharp rise in unsourced earnings were bid up by the stock market, the shares of other banks would undoubtedly rise in financial sympathy of the shares of the windfall banks: “A rising stock market lifts all boats.” Since all banks in the market benefited from investor treatment of the banks in the aggregate, a principle such as the Rule of General Average should be considered.

80. International legal precedent for the application of the Rule of General Average is its application by the United States in negotiations leading up to the Treaty of Paris of 1946. Unmarked gold found in Germany after World War II was simply requisitioned by the United States Army and offered to be paid out to the Allied Powers in proportion to the losses they had suffered during the war. See *Paris Agreement on Reparations from Germany*, T.I.A.S. No. 1655, entered into force in the United States Jan. 24, 1946, 61 Stat. 3157.

81. The equitable Rule of General Average should be applied to all the defendants. They would each be charged with a share of the entire amount of stolen Jewish assets based upon their comparative net worth of their Hungarian banking assets.

(b) Market Share Liability

82. As an alternative to applying the Rule of General Average, the court may wish to consider applying the tort rule of Market Share Liability as enunciated in

the leading case of *Sindell v. Abbott Laboratories*, 26 Cal. 3d 588, 607 P.2d 924 (1980).

83. Although the two theories are different in origin and in minor particulars, they are the same in their most important aspect: that restitution for a tort should not be blocked by a failure of identification. If among a named group of defendants the net probability of their being responsible for the tort is 1.0, and if they were engaged in a common enterprise in which it is likely that each of them bore some probability of being responsible, then the courts will not let them off scot free but rather will apportion the plaintiff's damages to each defendant according to their probability of being responsible.

84. Both the Rule of General Average and the principle of Market Share Liability are equitable principles that constitute part of the law of the forum and are therefore directly applicable to the present case. In addition, they are applicable to the present case because they are part of international customary law as incorporated in federal common law. Equitable principles are part of international law because they constitute "general principles of law recognized by civilized nations" as well as coming within the "ex aequo at bono" rule. Statute of the International Court of Justice, Art. 38, §§ 1©, 2 (1945), U.S.T.S. 993, 59 Stat. 1031.

WHEREFORE, Plaintiffs ask this Court to:

- A. Award to the plaintiff class in its entirety compensatory damages in the amount of \$2,000,000,000 plus interest compounded annually since 1944. In addition, and separately and distinctly, award punitive damages in an amount later to be specified.
- B. Hold the defendant banks jointly and severally liable for the total of compensatory and punitive damages specified in paragraph (A); or in the alternative,
- C. Hold the defendant banks in the aggregate liable for unjust enrichment under either the General Average theory or the Market Share theory for the full amount of compensatory damages in the sum of \$2,000,000,000 plus interest compounded annually since 1944.
- D. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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CIVIL COVER SHEET

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) PLAINTIFFS

DEFENDANTS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	1	1	Incorporated or Principal Place of Business In This State	4	4
Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (excl. vet.) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Inj.	PERSONAL INJURY 362 Personal Injury— Med. Malpractice 365 Personal Injury — Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC 881 630 Liquor Laws 640 R.R. & Truck 650 Airline Regs. 660 Occupational Safety/Health 690 Other	400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce/ICC Rates/etc. 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Satellite TV 810 Selective Service 850 Security/Commodity/Exch. 875 Customer Challenge 12 USC 3410 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes 890 Other Statutory Actions
REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	CIVIL RIGHTS 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 ADA—Employment 446 ADA—Other 440 Other Civil Rights	PRISONER PETITIONS 510 Motions to Vacate Sentence Habeas Corpus: 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Condition	LABOR 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	PROPERTY RIGHTS 820 Copyrights 830 Patent 840 Trademark SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

VII. PREVIOUS BANKRUPTCY MATTERS (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter perviously adjudicated by a judge of this Court. Use a separate attachment if necessary)

VIII. REQUESTED IN COMPLAINT:	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: Yes No
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IX. This case is not a refile of a previously dismissed action.
is a refile of case number _____, previously dismissed by Judge _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____