

TABLE OF CONTENTS

I. Introductory Statement..... 1

II. Parties..... 4

A. Plaintiff 4

B. Defendants 5

1. The Kingdom of the Netherlands..... 5

2. The Ministry of Education, Culture & Science of the Netherlands..... 5

3. The Cultural Heritage Agency of the Netherlands 6

4. The Museum Defendants 6

III. Jurisdiction & Venue 9

IV. Factual Background 15

A. Firma D. Katz..... 15

B. Artworks at Issue 16

C. Hilter, Goering, and Their Art Buyers 17

1. Adolf Hitler and his Führermuseum Project..... 17

2. Dr. Hans Posse 18

3. Hermann Goering..... 19

4. Walter A. Hofer 20

5. Alois Miedl 20

D. The Nazi Invasion of the Netherlands 22

E. Firma D. Katz Sells and Trades the Artworks under Duress to Nazis and
Nazi Agents..... 23

F. The Katz Brothers Escape..... 30

G. After World War II 31

H.	Restitution Attempts for Individually-Owned Paintings	33
I.	Plaintiff Bruce Berg and the Katz Heirs’ Applications to the Dutch Restitution Committee	35
J.	The Dutch Restitution Committee’s Decision	36
V.	Factual Allegations	41
A.	Firma D. Katz Sold the Artworks Under Duress	41
B.	The Transactions at Issue Constitute a Taking of Property in Violation of International Law	44
C.	The Denial of the Katz Heirs’ Claim by the RC with Regard to the Artworks at Issue Constitutes a Second Taking of Property in Violation of International Law	46
VI.	Causes of Action	52
	Count 1 – Declaratory Judgment	52
	Count 2 – Conversion	52
	Count 3 – Unjust Enrichment	53
	Count 4 – Constructive Trust.....	54
VII.	Jury Trial.....	55
VIII.	Prayer for Relief.....	55

1. Plaintiff, Bruce Berg, as an heir to Benjamin Katz, a partner in Firma D. Katz, by and through his undersigned counsel E. Paul Gibson P.C. and Berg & Androphy alleges as follows:

I. INTRODUCTORY STATEMENT

2. This is a civil action brought by Plaintiff, as heir to Benjamin Katz, a partner in the now-defunct Dutch art gallery partnership Firma D. Katz, for the restitution of a unique collection of 143 paintings and other artworks (“the Artworks”) currently in the wrongful possession of Defendants, the Kingdom of the Netherlands, the Ministry of Education, Culture, and Science of the Netherlands, the Cultural Heritage Agency of the Netherlands, and a number of Dutch museums, both public and private.

3. Firma D. Katz was a Dutch partnership headquartered in Dieren, the Netherlands with two partners: brothers Benjamin Katz and Nathan Katz (“the Katz brothers”). Firma D. Katz owned and operated three art galleries, and specialized in the sale of paintings by Dutch “Old Masters.” The Katz brothers, as well as their family, were Jewish.

4. The German army invaded the Netherlands on May 10, 1940. Dutch forces surrendered several days later, and Nazi Germany began its occupation of the Netherlands.

5. Not too long afterwards, representatives of Nazi Germany began to meet with the Katz brothers, seeking to purchase paintings and antiques. Chief among these representatives were Alois Miedl (“Miedl”), Hans Posse (“Posse”), and Walter A. Hofer (“Hofer”). On one occasion, Hermann Goering (“Goering”) himself bought directly from Firma D. Katz after a terrifying in-person visit.

6. Goering, Miedl, Posse, and Hofer were known representatives of Nazi Germany. They exerted pressure or took advantage of their status as representatives of the Nazi regime in order to acquire art—especially when negotiating with Jewish dealers in the Netherlands. At the same time, they took pains to preserve a façade of legitimacy and “arms’ length” transactions.

7. The Katz brothers had heard of Nazi Germany’s systematic persecution of Jews before the Nazi invasion of the Netherlands, and were understandably fearful once the occupation began. Furthermore, Miedl and others applied pressure to the Katz brothers when negotiating sales.

8. Under duress, Firma D. Katz had no choice but to sell the Artworks to Nazi agents. The Katz brothers feared deportation to concentration camps, reprisal, or wholesale seizure of their trading stock if they did not acquiesce and sell the Artworks.

9. Even when Firma D. Katz was paid for the sales of the Artworks at issue under duress, prices were often below market value. The Katz brothers set aside some of the money from these forced sales to assist in their and their families’ eventual escape from the occupied Netherlands.

10. As time went on, Hans Posse used the Katz brothers to acquire art, granting them exemptions from anti-Semitic laws (such as those which forbade Jews from driving). The exemptions were not for the brothers’ benefit, but instead allowed them to more easily transact business and acquire art at Posse’s behest for Adolf Hitler’s planned art museum in Linz, Austria (known as “the Führermuseum”). The threat that the exemptions from anti-Semitic laws could be revoked at any moment—possibly resulting in the deportation of the Katz brothers and their families to concentration camps—created additional duress for the Katz brothers to cooperate with Nazi agents.

11. Following World War II, the U.S. military returned the Artworks to the Netherlands for restitution to their original owners. The Artworks thereafter became part of the Netherlands Kunstbezit collection (“NK collection”), which is owned by Defendant the Ministry of Education, Culture & Science of the Netherlands (“The Ministry”).

12. The Katz brothers made early attempts at restitution of Firma D. Katz’s paintings in the 1940s and 1950s—excluding most of the Artworks. The brothers achieved limited success, recovering some paintings. Even after all they had suffered, the Katz brothers were forced to pay an amount equivalent to over \$1.5 million as part of the restitution process, pursuant to Dutch restitution policy at the time.

13. The Dutch government ceased accepting restitution claims in the 1950s, pursuant to a deadline that it set unilaterally. For the remainder of their lives, the Katz brothers were unable to request restitution of the Artworks at issue.

14. Defendant The Ministry and Defendant The Kingdom of the Netherlands began accepting restitution claims in 2001 through the newly-established Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (“RC”).

15. In the 2010s, the Katz brothers’ heirs, including Plaintiff Bruce Berg, submitted two claims for over 180 artworks owned by Firma D. Katz—including the Artworks at issue.

16. The Ministry followed the RC’s recommendation and denied both claims, restituting only one claimed painting on January 24, 2013. The Ministry also denied a request for reconsideration of the Katz heirs’ main restitution claim.

17. The RC’s recommendations to The Ministry were based on a number of internal policies—the Ekkart Recommendations—which have no foundation in law. Chief among these

policies is the notion that art galleries—including those owned by Jews—have a goal of selling art, so that “the majority of the transactions, even [by] the Jewish art dealers[,] in principle constituted ordinary sales.” Ex. 2, RC 1.90B Recommendation, at 20.

18. No Jewish citizen or resident of a Nazi-occupied country could possibly have entered into an arms’ length transaction with agents of Nazi Germany. Firma D. Katz’s sales of the Artworks at issue were made under duress and are void under Dutch and United States law.

19. Knowing of the circumstances under which they came into possession of the Artworks, Defendants know that the Artworks are not rightfully theirs. Yet, faced with proof of Firma D. Katz ownership and sale under duress, Defendants refused to retribute the Artworks to Plaintiff and the Katz brothers’ heirs. The RC’s denial of the two claims of Plaintiff and the Katz brothers’ heirs constitute a second taking in violation of international law, following the original sales under duress.

20. Defendants have never owned the Artworks, and have seen evidence that Firma D. Katz owned the Artworks at the time of their sale under duress. To allow Defendants to retain the Artworks—and to profit from their display, in many cases—is unconscionable, violates agreed principles of World War II art restitution, and goes against the weight of both evidence and history.

II. PARTIES

A. Plaintiff

21. Bruce Berg (“Berg” or “Plaintiff”) is an individual, a citizen of the United States, and a resident of Charleston, South Carolina. He is a grandson of Benjamin Katz, a partner in Firma D. Katz. Berg is the great-nephew of Nathan Katz, also a partner in Firma D. Katz. By virtue of his direct descent from Benjamin Katz, Berg is an heir to Benjamin Katz and to the joint

partnership Firma D. Katz. Berg brings these claims on behalf of himself and as an heir to Benjamin Katz, a partner in Firma D. Katz.

22. Plaintiff intends to distribute the proceeds of this action to the Katz heirs, pursuant to the terms of an agreement entered into between the Katz heirs who participated in the previous application to the RC.

B. Defendants

1. The Kingdom of the Netherlands

23. The Kingdom of the Netherlands (“The Netherlands”) is a sovereign nation comprised of twelve provinces and three island territories, established in 1815.

2. The Ministry of Education, Culture & Science of the Netherlands

24. The Ministry of Education, Culture & Science of the Netherlands (“The Ministry”), known in Dutch as “Ministerie van Onderwijs, Cultuur en Wetenschap,” is a government agency of the Netherlands. Its principal office is located at Rijnstraat 50, 2515 XP The Hague, the Netherlands.

25. The Ministry is the owner of the Netherlands Kunstbezit collection (“NK collection”), consisting of artworks and other objects returned to the Netherlands from Germany and other Nazi territories following World War II.

26. The Artworks at issue are a part of the NK collection, and The Ministry wrongfully asserts ownership over them.

27. The Ministry established the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (“Restitution Committee” or “RC”) in 2001. The RC operates independently and issues binding opinions to The Ministry

regarding applications for restitution of looted art held by the Dutch government, including the NK collection.

3. The Cultural Heritage Agency of the Netherlands

28. The Cultural Heritage Agency of the Netherlands (“The Agency”) is an instrumentality of the Netherlands. The Agency is the custodian of the NK collection, which includes the Artworks. The NK collection, including the Artworks, are stored by The Agency or are loaned out for display in museums or in Dutch government buildings.

29. The Agency’s principal office is located at Smallepad 5, 3811 MG Amersfoort, the Netherlands.

4. The Museum Defendants

30. Museum Het Rembrandthuis, a/k/a the Rembrandt House Museum, is a private art museum located at Jodenbreestraat 4, 1011 NK, Amsterdam, the Netherlands. Upon information and belief, several of the Artworks at issue are currently displayed or located at the Rembrandt House Museum, namely NK1620, NK1642, NK1647, NK1648, and NK2716.

31. Museum Boijmans van Beuningen is a private art museum located at Museumpark 18-20, 3015 CX, Rotterdam, the Netherlands. One of the Artworks at issue is currently located at Museum Boijmans van Beuningen: NK2429.

32. The Frans Hals Museum is a private art museum located in Haarlem, the Netherlands. Its principal location is at Groot Heiligland 62, 2011 ES Haarlem, the Netherlands. Two of the Artworks at issue are currently displayed or located at The Frans Hals Museum: NK2580 and NK2589.

33. The Centraal Museum is a municipal museum located at Agnietenstraat 1, 3512 XA, Utrecht, the Netherlands. Several of the Artworks at issue are currently displayed or located at the Centraal Museum, namely NK1550, NK1638, NK2714, NK2722, and NK2826.

34. Museum Catharijneconvent is a private museum of religious art located at Lange Nieuwstraat 38, 3512 PH, Utrecht, the Netherlands. Several of the Artworks at issue are currently displayed or located at Museum Catharijneconvent, including NK1720, NK1909, NK1967, and NK2621. Upon information and belief, NK2574 is also located or displayed at Museum Catharijneconvent.

35. The Rijksmuseum is a national museum of the Netherlands located at Museumstraat 1, 1071 XX, Amsterdam, the Netherlands. Several of the Artworks at issue are currently displayed or located at the Rijksmuseum, namely NK2261, NK2276, NK2426, NK2359, and NK2777.

36. The Rijksmuseum Twenthe is a Dutch national museum located at Lasondersingel 129, 7514 BP, Enschede, the Netherlands. Two of the Artworks at issue, NK1590 and NK2465, are part of the collection of the Rijksmuseum Twenthe.

37. The Dordrechts Museum is a private art museum located at Museumstraat 40, 3311 XP, Dordrecht, the Netherlands. Upon information and belief, several of the Artworks at issue are currently displayed or located at the Dordrechts Museum, namely NK1582, NK1595, NK1695, NK1701, NK2403, NK2445, NK2560, and NK2878.

38. Museum de Lakenhal is a municipal museum located at Oude Singel 32, 2312 RA, Leiden, the Netherlands. Three of the Artworks at issue, NK2467, NK2613, and NK2616, are currently located or displayed at the Museum de Lakenhal.

39. Museum Gouda is a municipal museum located at Oosthaven 9 & Achter de Kerk 14, 2801 JX, Gouda, the Netherlands. Upon information and belief, two of the Artworks at issue, NK2479 and NK2499, are currently located or displayed at the Museum Gouda.

40. Museum Voor Religieuze Kunst is a private museum of religious art located at Veghelsedijk 25, 5401 PB, Uden, the Netherlands. One of the Artworks at issue, NK2824, is currently located or displayed at the Musuem Voor Religieuze Kunst.

41. The Bonnefantenmuseum is a provincial art museum located at Avenue Ceramique 250, 6221 KX, Maastricht, the Netherlands. Upon information and belief, several of the Artworks at issue, namely NK1416, NK1598, NK1910, NK2601, NK2629, and NK2855 are currently located or displayed at the Bonnefantenmuseum.

42. Het Noordbrabants Museum is a private museum located at Verwersstraat 41, 5211 HT, 'S-Hertogenbosch, the Netherlands. Upon information and belief, several of the Artworks at issue, namely NK1662 and NK3103, are currently located or displayed at Het Noordbrabants Museum.

43. The Limburgs Museum is a private museum located at Keulsepoort 5, 5911 BX, Venlo, the Netherlands. One of the Artworks at issue, NK1750, is currently located or displayed at the Limburgs Museum.

44. Paleis Het Loo is a national museum located at Koninklijk Park 1, 7315 JA, Apeldoorn, the Netherlands. Upon information and belief, one of the Artworks at issue, NK1809, is currently located or displayed at the Paleis Het Loo.

45. Museum Ons' Lieve Heer op Solder is a private museum located at Oudezijds Voorburgwal 38, 1012 GD, Amsterdam, the Netherlands. Upon information and belief, several of

the Artworks at issue, namely NK1907, NK2634, and NK2657, are currently located or displayed at the Museum Ons' Lieve Heer op Solder.

46. Stichting Bijbels Museum is a private museum located at Herengracht 366, 1016 CH, Amsterdam, the Netherlands. Upon information and belief, one of the Artworks at issue, NK2383, is currently located or displayed at Stichting Bijbels Museum.

47. Museum Rotterdam is a private museum located in Rotterdam, the Netherlands. Its principal location is at Rodezand 26, 3011 AN, Rotterdam, the Netherlands. Upon information and belief, one of the Artworks at issue, NK2654, is currently located or displayed at Museum Rotterdam.

48. Museum Het Prinsenhof is a municipal art museum located at Sint Agathaplein 1, 2611 HR, Delft, the Netherlands. One of the Artworks at issue, NK2427, is currently located or displayed at the Museum Het Prinsenhof.

49. Historisch Centrum Het Markiezenhof is a museum and historical city palace located at Steenbergsestraat 8, 4611 TE, Bergen op Zoom, the Netherlands. Upon information and belief, one of the Artworks at issue, NK3388, is located or displayed at the Historisch Centrum Het Markiezenhof.

50. The Museums described above hereinafter shall be collectively referred to as the "Museum Defendants."

III. JURISDICTION & VENUE

51. This Court has diversity jurisdiction over Defendants who are not foreign states or agencies or instrumentalities of foreign states, namely Defendants Museum Het Rembrandthuis, Museum Boijmans van Beuningen, the Frans Hals Museum, Museum Catharijneconvent, Dordrechts Museum, Museum Voor Religieuze Kunst, Het Noordbrabants Museum, Limburgs

Museum, Museum Ons' Lieve Heer op Solder, Stichting Bijbels Museum, and Museum Rotterdam.

52. This Court has subject matter jurisdiction over Defendants who are foreign states or agencies or instrumentalities of foreign states pursuant to 28 U.S.C. § 1330, the Foreign Sovereign Immunities Act (“FISA”), 28 U.S.C. §§ 1605–07, and 28 U.S.C. § 1332. This includes: Defendants The Kingdom of the Netherlands; The Ministry of Education, Culture & Science of the Netherlands; The Cultural Heritage Agency of the Netherlands; Centraal Museum; Rijksmuseum; Rijksmuseum Twenthe; Museum de Lakenhal; Museum Gouda; Bonnefantenmuseum; Paleis Het Loo; Museum Het Prinsenhof; and Historisch Centrum Het Markiezenhof (collectively, “Foreign State Defendants”)

53. The Foreign State Defendants, which are foreign states, foreign state agencies, or foreign state instrumentalities, as defined by 28 U.S.C. § 1603, are not immune from suit under the “expropriation exception” of 28 U.S.C. § 1605(a)(3), as explained further herein.

54. This action concerns rights in property taken in violation of international law, within the meaning of 28 U.S.C. § 1605(a)(3). That taking included, but is not limited to, the following acts:

- a) The Artworks were traded or sold under duress by Firma D. Katz to Nazi agents and officials for no public purpose other than to benefit Hermann Goering, Adolf Hitler, the Nazi regime, or Nazi agents.
- b) These takings were discriminatory because Firma D. Katz was a Jewish business. Its only partners—Nathan and Benjamin Katz—were Jews, and therefore belonged to a persecuted group.

- c) The Artworks were wrongfully appropriated because they were traded or sold under duress created both by the Nazi invasion of Holland generally and also by specific pressure from Nazi agents and officials.
- d) Defendants came into possession of the Artworks following World War II, when they were returned to the Netherlands for restitution to the original owners. Defendants The Netherlands and The Ministry wrongfully assert ownership over the Artworks. Defendants have perpetuated the original wrongful taking of the Artworks by failing to return the Artworks to Plaintiff or compensate Plaintiff for the value of the Artworks. Firma D. Katz was never fully compensated for every single one of the Artworks sold or traded, and would never have sold or traded those Artworks were Benjamin and Nathan Katz not under duress. Without compensation to Plaintiff, the taking is not valid.
- e) Defendants have further perpetuated the original discriminatory taking of the Artworks from Firma D. Katz, and maintained wrongful possession thereof, by denying the Katz heirs and Plaintiff's restitution requests in 2017.
- f) Since 1945, it has been the policy of the United States of America to undo forced transfers of property to Nazi agents and "to restitute identifiable property to the victims of Nazi persecution wrongfully deprived of such property." *Bernstein v. N.V. Nederlandsche-Amerikaansche, Stoomvaart-Maatschappij*, 201 F.2d 375, 376 (2d Cir. 1954) (citation omitted). Accordingly, United States policy also mandates relieving U.S. courts "from any restraint upon their jurisdiction to pass upon the validity of the acts of Nazi officials." *Id.*

55. The Foreign State Defendants engaged in commercial activity within the United States within the meaning of 28 U.S.C. § 1605(a)(3) with regard to the Artworks, which Defendants wrongfully possess and which Defendant The Ministry wrongfully asserts ownership of. This commercial activity includes, but is not limited to, the following:

- a) The Foreign State Defendants engage in regular exhibitions within the United States by loaning or authorizing loans of objects to museums within the United States from the NK collection, including some of the Artworks. Defendants have loaned art to the Metropolitan Museum of Art in New York City, the Grand Rapids Art Museum, and the Cleveland Museum of Art, for example. *See, e.g.*, Ex. 3, Photographs of NK2393, at 3-4; Ex. 4, Documentation of Prior Exhibitions of the Artworks in the United States.
- b) Defendants The Netherlands, The Ministry, The Agency, Rijksmuseum, and Museum de Lakenhal license and provide images of the Artworks to the general public in the United States in general and in the District of South Carolina. This includes, but is not limited to, licensing relationships with Getty Images in Seattle, Washington in the United States.
- c) Defendants Paleis Het Loo, Rijksmuseum, Rijksmuseum Twenthe, Historisch Centrum Het Markiezenhof, Museum de Lakenhal, Museum Gouda, and Museum Het Prinsenhof solicit subscriptions to their newsletters that reach the District of South Carolina and other parts of the United States.
- d) Defendants Paleis Het Loo, Centraal Museum, Rijksmuseum, Historisch Centrum Het Markiezenhof, Bonnefantenmuseum, and Museum Het Prinsenhof promote sales of and sell museum tickets to patrons in the United States, including patrons

in the District of South Carolina. Defendant The Netherlands also promotes sales of and sells tickets to the Museum Defendants' museums to patrons in the United States, including patrons in the District of South Carolina, via tourism websites. *See, e.g.*, Netherlands Board of Tourism & Conventions, *Centraal Museum Utrecht* (promoting Defendant Centraal Museum and providing link to purchase tickets).¹

- e) Defendants Museum Gouda and Museum Het Prinsenhof promote sales of “Museumkaart” or “Museum Card”—a card which gives the holder free admission to Museum Gouda, Museum Het Prinsenhof, and many other museums in the Netherlands—to patrons in the United States, including patrons in the District of South Carolina.
- f) Defendant Rijksmuseum sells products to customers within the United States and the District of South Carolina through an online shop.
- g) Defendant Rijksmuseum publishes and sells books about its collections and exhibitions, such as *Kwab: Ornament as Art in the Age of Rembrandt* to customers within the United States, including customers in the District of South Carolina.
- h) Defendants Paleis Het Loo, Centraal Museum, Rijksmuseum Twenthe, and Museum Het Prinsenhof publish books which are sold to customers within the United States, including customers in the District of South Carolina.

¹ <https://www.holland.com/global/tourism/destinations/utrecht/museums/centraal-museum-utrecht.htm>

- i) Defendants Centraal Museum and Rijksmuseum solicit paid membership in their support organizations, such as “Friends of the Centraal Museum”, from patrons in the United States, including patrons in the District of South Carolina.
- j) Defendant Museum de Lakenhal specifically solicits paid membership from Americans, including residents of the District of South Carolina, in a special support organization called the American Friends of Museum de Lakenhal.
- k) Defendants Paleis Het Loo, Centraal Museum, Rijksmuseum, and Museum de Lakenhal solicit donations and bequests from patrons in the United States, including patrons in the District of South Carolina, via their websites.
- l) Defendant Rijksmuseum solicits sponsorship and participation in its “Rijksclub” corporate membership program from United States companies and businesses, including those located in the District of South Carolina.

56. Defendant The Netherlands engages in a broad range of commercial activity in the United States, such as by promoting Dutch companies and industries commercially, and by soliciting tourism to the Netherlands and its museums, including the Museum Defendants. *See, e.g.,* Netherlands Board of Tourism & Conventions, *Museums* (promoting tourism to Dutch Museums, including many of the Museum Defendants).² Per Dutch government data, 8,061 jobs in South Carolina are supported by trade and investment between the Netherlands and the United States.³

² <https://www.holland.com/global/tourism/discover-holland/arts-culture/museums.htm>

³ *See* The Netherlands, *South Carolina*, NLintheUSA.com, <http://nlintheusa.com/state/south-carolina/>

57. Venue is proper in the District of South Carolina pursuant to 28 U.S.C. § 1391(f) because Defendants do business within the District of South Carolina.

IV. FACTUAL BACKGROUND

A. Firma D. Katz

58. Firma D. Katz, a Dutch art gallery, was founded in 1887 in Dieren, the Netherlands by David Katz.

59. In February of 1930, David Katz's sons Benjamin Katz ("Benjamin") and Nathan Katz ("Nathan") took over Firma D. Katz as joint partners, and registered the business as a joint partnership with the Dutch government.

60. Firma D. Katz traded both in art and antiques. Its chief specialty was paintings by Dutch "Old Masters" like Rembrandt, Ferdinand Bol, and Adriaen van Ostade.

61. Nathan mostly handled paintings and Benjamin mostly handled antiques. Nathan was largely the negotiator and worked in the galleries making sales to customers. Benjamin was more of an organizer, and handled the financials of Firma D. Katz. The brothers' different personalities and areas of expertise allowed them to work well together, and Firma D. Katz became known as a respected dealer of Dutch "Old Master" paintings.

62. Firma D. Katz was one of the most famous art dealerships in the Netherlands in the 1930s. In fact, in 1937, Nathan Katz was named a "Companion of the Order of Orange-Nassau" by the Dutch royal family for his work as an art dealer.

63. Firma D. Katz did not sell art on consignment. Firma D. Katz first purchased any paintings that it later offered for sale—including the Artworks at issue. And, until 1941, Firma D. Katz did not act as "intermediary" for any artwork sales. As World War II progressed, the Katz

brothers depleted the trading stock of Firma D. Katz's paintings and found it necessary to conduct some "intermediary" sales under duress.

64. Although the Katz brothers kept some Firma D. Katz paintings and antiques in their homes for decoration or furnishings, these items were the property of Firma D. Katz and not the brothers' individual property.

65. Firma D. Katz operated in the cities of Dieren, Arnhem, and The Hague. The Arnhem branch was closed in 1940.

66. Anti-Jewish laws enacted after the Nazi occupation of Holland required the Katz brothers to liquidate Firma D. Katz in February 1941. The liquidation was finalized on June 1, 1943. Firma D. Katz continued operations after that period with "Aryan" owners as N.V. Schilderijen en Antiquiteitenhandel v/h Firma D. Katz.

B. Artworks at Issue

67. The Artworks are held in storage or displayed at Dutch museums and government properties around the world. Some may currently be displayed at foreign museums, on loan from Defendants.

68. There is clear evidence that Firma D. Katz owned the Artworks at the time of their sale under duress to Nazis and Nazi-affiliated buyers. This evidence includes Firma D. Katz's prewar exhibition catalogs, invoices from Firma D. Katz to Nazi buyers, prewar sales records, photographs of the Katz gallery before the war, documentation compiled by the German government during and after the war, Dutch government documentation such as SNK cards and reports from the Origins Unknown Agency, provenance reference books compiled by historians, documents from dealers who sold to Firma D. Katz, labels found on the back of the paintings, and prior decisions and reports of the RC.

69. The Artworks are cataloged in Exhibit 1, which includes the Artworks' NK numbers, Dutch and English title(s), attributed artist(s), current location, approximate date of sale under duress to Nazi buyers, and whether they were subsequently sold or sent to other German buyers or to Nazi government bodies.

70. The Artworks' value likely exceeds tens of millions of dollars.

C. Hitler, Goering, and Their Art Buyers

1. Adolf Hitler and his Führermuseum Project

71. Adolf Hitler ("Hitler"), leader of the Third Reich, planned to build a massive art museum in his hometown of Linz, Austria. Hitler deployed and utilized many agents and art dealers, including Dr. Hans Posse, Dr. Erhard Goepel, Heinrich Hoffmann, and Frau Maria Almas Dietrich, to acquire—in many cases, illegally—artworks for the planned "Führermuseum" from across Europe. The future Führermuseum collection contained many artworks acquired by forced sale or looting.⁴

72. Per U.S. Government records, Hitler "took extraordinary precautions to clothe all Linz [Führermuseum] transactions in the appearance of legality." Ex. 5, U.S. Gov't Linz Report Excerpts, at 1. However, this did not stop Hitler from decreeing that the Führermuseum project receive first pick on any art looted by Nazi forces.

73. Art acquired for the Führermuseum was often funneled through successive transactions in order to disguise its illegal origin.

⁴ The Führermuseum was never built. The art amassed by the Sonderauftrag Linz for the Führermuseum was discovered by Allied troops at the end of World War II, and each artwork was conditionally returned to its country of origin for restitution to its original owners.

2. Dr. Hans Posse

74. Dr. Hans Posse (“Posse”) was a German art dealer and owner of the Gemäldegalerie art museum in Dresden, Germany. Hitler assigned Posse to acquire artworks for the future Führermuseum in 1939. The project was referred to as “Sonderauftrag Linz” and was declared a “criminal organization” by the U.S. Government following World War II. Ex. 5, U.S. Gov’t Linz Report Excerpts, at 3.

75. As the head of the Sonderauftrag Linz, Posse was regarded as the most important of all German buyers by other art dealers, who generally avoided getting in his way.

76. Posse became ill with cancer in early 1942 and increasingly relied on Dr. Erhard Goepel to handle Führermuseum acquisitions in the Netherlands. Posse died on December 8, 1942. Posse’s position remained unfilled until March 22, 1943, when Hitler appointed Professor Hermann Voss as his successor.

3. Hermann Goering

77. Hermann Goering (“Goering”)—also spelled “Göring”—was appointed Chancellor of Germany in 1933. He took on many other positions of power within the Nazi German government and military throughout the 1930s and ‘40s, including “Reichsmarshal”—the highest rank in the German army. Goering is often regarded as the second most powerful person in Nazi Germany, after Hitler.

78. Goering’s passion for acquiring art, legally or not, was rivaled only by Hitler’s. Goering’s collection, at its largest, contained over 1000 paintings and hundreds of sculptures, many of which he displayed in his residences and at his hunting lodge, Carinhall. The Netherlands were the second-largest source of acquisitions for Goering’s collection.

79. Goering did not engage in wholesale or undisguised looting. Like many Nazis involved in art acquisition, he found ways to give forced or illegal art transactions the appearance of legitimacy, such as by payment or contract.

80. In fact, in his interviews at Nuremberg after the war, Goering used this very defense in response to accusations of looting, claiming: “none of my so-called looting was illegal... *I always paid for them* or they were delivered through the Hermann Göring Division.”⁵

81. Goering also cloaked his art purchases in a veil of secrecy. Only his personal secretary was allowed to type any letters dealing with financial matters, such as art purchases.

82. Goering used his position as Reichsmarshal as an advantage in art acquisitions in occupied countries. When art dealers would not lower prices, Goering had others—like Erich Gritzbach—exert pressure on them.

83. Goering himself also made veiled threats, as in one case, where he wrote to a dealer in Belgium that if he would not agree to sell to Goering through Miedl, then Goering would withdraw his offer “and then things would go their normal way without my being able to do anything to impede it.” Ex. 6, Letter from Goering to Renders with U.S. Government Translation (Mar. 17, 1941), at 1.

84. Goering used several agents and associates to acquire art for him, including his “right hand man” and chief of cabinet Erich Gritzbach, Walter A. Hofer (“Hofer”), and General Friedrich Christiansen.

⁵ Quoted in Robert M. Edsel, *The Monuments Men: Allied Heroes, Nazi Thieves, and the Greatest Treasure Hunt in History* (2009) 5 (emphasis added).

4. Walter A. Hofer

85. Goering charged Hofer with acquiring art for Carinhall. Hofer also acted as Goering's art advisor.

86. Goering first sent Hofer to the Netherlands to acquire art on May 20 1940—only five days after the surrender of the Netherlands to Nazi forces. Goering wanted Hofer to find the best artworks for him before other dealers purchased them first.

87. Hofer was responsible for devising the methods by which Goering amassed his art collection during the war. Hofer even promised protection to persecuted people, such as Jews, in exchange for artwork for himself or for Goering.

5. Alois Miedl

88. Alois Miedl ("Miedl") was a German banker who moved to the Netherlands from Germany in the early 1930s and became an art dealer. Miedl purchased art as agent for both Hermann Goering (beginning in 1937) and for Hitler's Führermuseum (beginning in 1940). Miedl often funneled the sales through his own art gallery, Schantung Handels Art Gallery.

89. Miedl was close friends with Goering, who helped finance his art purchasing activities.

90. Miedl also dealt under the trade name of "J. Goudstikker N.V.," which he illegally acquired on September 14, 1940 after a forced sale and numerous suspect transactions with former employers of Jewish art dealer Jacques Goudstikker, who had died while fleeing the Netherlands by ship in May of 1940. The sale was forced by Goering. After the war, the Dutch government considered the Goudstikker collection to have been looted by the Germans. *See* Ex. 7, U.S. Government Letter Regarding Miedl (Mar. 6, 1945), at 1.

91. Miedl sold the artwork he acquired that Hitler or Goering did not want to Dutch and German Nazis or to other German art dealers, many of whom appear on the U.S. Government's 1946 Art Looting Investigation Unit "red flag" names list.⁶ Miedl also kept several such artworks for himself after they failed to collect the prices he sought at auction.

92. Historians have noted that Goering's control of Miedl came from the fact that Goering protected Miedl's wife—who came from a Jewish family. Because of his wife's background, Miedl was not entirely unsympathetic to the Jewish plight, and even assisted some Jews in hiding from the Nazis.

93. However, in business, Miedl was a notorious profiteer. In the art world, Miedl was representative of the Nazi government and of Goering, and used his position to his advantage. Miedl took advantage of the fear created by the Nazi invasion of the Netherlands, urging Jews to sell their art collections to him before they were confiscated. Miedl only came to negotiate art deals when sellers were so afraid that they would not turn down his offers. Miedl had no need to exert threats himself; all knew that Miedl was a Nazi representative, and what the consequences might be if they refused to sell to him.

94. Although Miedl disliked Hofer, the two often worked together when Miedl sold paintings to Goering. Hofer also sometimes lent money to Miedl for purchasing art.

95. Miedl was also friends with Hitler's photographer and unofficial art advisor, prominent Nazi politician Heinrich Hoffmann ("Hoffmann"). Miedl often sold paintings to Hitler for the Führermuseum through Hoffmann, as agent for Hitler. Miedl also bought some art for Hoffmann personally, at Hoffmann's direction.

⁶ Available at <https://www.lootedart.com/MVI3RM469661>

96. When acquiring art in the Netherlands, Miedl took pains to give the transactions an appearance of legality. Transactions were carried out through banks.

D. The Nazi Invasion of the Netherlands

97. German forces invaded the Netherlands on May 10, 1940, without a formal declaration of war.

98. The Netherlands officially surrendered on May 15, 1940, following the bombing of Rotterdam.

99. Nathan Katz's son David has stated, regarding this period, that "life quickly became difficult for Dutch Jews." Ex. 8, Statement of David Katz (June 27, 2010), at 5. Per David, Nathan "was very concerned, he was very worried" due to "the war and all that was going on in Germany[.]" Ex. 9, Interview of David Katz (Oct. 12, 2011), at 3. For a time, Nathan and David slept in a different location every night after learning that Jewish men were being pursued and harassed by the Dutch National Socialist Party ("NSB") and German police.

100. Although not enacted immediately, the Nazi occupiers of Holland gradually began to phase in the same kinds of anti-Semitic laws and policies that had already wreaked havoc on Jewish communities in Germany. This culminated in the widespread deportation of Dutch Jews to concentration and death camps. However, anti-Jewish measures on a local level began as early as May of 1940 in some areas, often due to pressure from the NSB.

E. Firma D. Katz Sells and Trades the Artworks under Duress to Nazis and Nazi Agents

101. In the 1930s, the Katz brothers learned of Kristallnacht, the Nuremberg laws,⁷ and the wholesale persecution of Jews in Germany and countries occupied by the Third Reich through their art dealer contacts in other countries—including other Jews. The invasion and occupation of Holland by the Third Reich created an immense fear in the minds of the Katz brothers, who had heard what the Nazis were capable of.

102. Shortly after the invasion of the Netherlands, Nazi agents and officials began to visit Firma D. Katz and negotiate sales of paintings under duress, including the Artworks at issue. Under duress, the Katz brothers had no choice but to agree to the sales. Per Nathan's son David, Nathan was unhappy about having to sell to Nazi agents, "but he did not have any other choice but to sell." Ex. 9, Interview of David Katz (Oct. 12, 2011), at 7. David has also noted that when Nathan was hesitant to sell, he was warned by the German art dealers to think of his family and be wise.

103. The Katz brothers feared that they or their families would be deported to concentration camps if they did not comply with the requests of Nazi buyers. The Katz brothers also feared that Firma D. Katz's art would be confiscated anyway later if they did not sell immediately.

⁷ The Nuremberg laws, enacted on September 15, 1935, deprived German Jews of their citizenship, forbade marriage and sexual relations between Jews and German citizens, and prohibited Jews from employing German female servants under the age of forty-five. Later supplements to the Nuremberg laws forbade Jews from practicing medicine and voting in elections. Anti-Semitic laws and regulations only increased over the years, gradually stripping Jews of their human rights and ability to make a living.

104. Additionally, the Katz brothers later used the sale or exchange of art to gain leverage in negotiations to save family members from deportation to concentration camps or the application of anti-Jewish laws.

105. Although the Katz brothers usually received some payment for the Artworks sold under duress, it was generally below market value. The Katz brothers set aside some of the money that they made to plan their escape, and that of their family members, from the occupied Netherlands.

106. Furthermore, later Nazi restrictions on Jews forced many transactions to be funneled through “Liro Bank”,⁸ a front organization used by the Nazis to seize Jewish money and assets. Although the Katz brothers were exempted for a time from the use of Liro Bank, on January 1, 1943, the Katz brothers were required to forfeit 25% of their joint capital—over 100,000 guilders.⁹

107. The Artworks are referred to below by their NK numbers. NK numbers may be cross-referenced with the Artworks’ titles, attributed artist(s), and sale information in Exhibit 1.

108. Upon information and belief, on or around May 14, 1940—after the bombing of Rotterdam, when Dutch surrender was pending—Firma D. Katz sold NK2426 to an agent of Alois Miedl, who at that time was already known to be working for the Nazis, buying artwork destined

⁸ Lippmann, Rosenthal, & Co. was the official name of Liro Bank. It was a Dutch Jewish bank seized during the Nazi occupation. By August of 1941, Jews and Jewish businesses in the Netherlands were forced to register all financial holdings and deposit them in Liro Bank. The Bank was simply a front—the Nazis used money and assets deposited in Liro Bank to finance the deportation of Dutch Jews to concentration and death camps.

⁹ 100,000 guilders had the same purchasing power in 1943 as €636,479.21 in the year 2016. See calculator at <http://www.iisg.nl/hpw/calculate2.php>. €636,479.21 is equivalent to over 700,000 U.S. dollars. See historical Euro-dollar exchange rates at <https://www.statista.com/statistics/412794/euro-to-u-s-dollar-annual-average-exchange-rate/>

for Adolf Hitler's planned Führermuseum. NK2426 was transferred or sold to Nazi General Friedrich Christiansen on August 30, 1940, and was transferred through Miedl again to Goering himself on March 19, 1941.

109. In July of 1940, Benjamin Katz was arrested and interrogated about Firma D. Katz's art collection by German intelligence officers. Statements taken after the war suggest that this arrest was connected to the extortion of artwork sales.

110. Benjamin and Nathan first met Miedl in June or July of 1940.

111. Firma D. Katz sold a group of paintings to Miedl under duress in July of 1940, including NK2467, NK2574, NK2634, NK2544, and NK2601. These Artworks were largely transferred to the Reich Chancellery in Germany after their forced sale, showing that they were purchased for Hitler or the Nazi regime.

112. Regarding Firma D. Katz's dealings with Miedl, Nathan's son David has stated:

I recall assisting my father at appointments with Mr. Miedl, who I understood was very important and close to high German officials. Mr. Miedl was always polite about personal matters, but when discussing business, he spoke in a stern, authoritative, and forceful way so we knew we had no choice but to agree to his terms. Because of his position and influence, and our knowledge that our lives were in danger, we could not refuse him.

Ex. 8, Statement of David Katz (June 27, 2010), at 5.

113. Firma D. Katz provided Hans Posse with a quote for a group of twenty-five paintings in late June of 1940, and sold seventeen of those to him in July under duress, including some of the Artworks. Firma D. Katz began selling Artworks to Walter A. Hofer under duress in July of 1940 as well. The Katz brothers, as well-connected art dealers, were aware that Hofer and Posse represented Hitler & Goering. Artworks sold to Hofer and Posse were often transferred to Hitler, Goering, or the Linz Führermuseum depository soon after their sale under duress.

114. Between July and August of 1940, Miedl convinced the Katz brothers to sell the majority of Firma D. Katz's trading stock of paintings, including many of the Artworks. The brothers agreed to the sale under duress, fearing that their business would be liquidated or that the paintings might be looted by Nazis anyway if they did not sell immediately. Between August 2 and September 6, 1940, Firma D. Katz sold Miedl over one hundred paintings under duress—including the majority of the Artworks at issue—depleting a large portion of its trading stock.

115. The Katz brothers requested 2.5 million guilders for these paintings initially, but Miedl negotiated the price down to 1,822,500 guilders.¹⁰ Benjamin Katz stated in 1949 that were it not for the occupation, Firma D. Katz would never have sold as large a quantity of paintings as they did in this single transaction with Miedl. Miedl was also considered an outsider, as he was fairly new to the art trade, and not the kind of dealer who the prestigious Firma D. Katz would have typically sold to. In short, this sale under duress was far removed from Firma D. Katz's ordinary course of business.

116. After Miedl purchased these Artworks, most of them were transferred to the Reich Chancellery and Adolf Hitler, destined for the future Führermuseum. Miedl kept or attempted to auction the Artworks that Hitler or Goering did not want. Miedl also sold some of these Artworks to other Nazi officials or to German buyers appearing on the U.S. Government's Art Looting Intelligence Unit "Red Flag Names List,"¹¹ such as Adolf Weinmüller.

¹⁰ 2.5 million guilders had the same purchasing power in 1940 as €20,131,066.04 in 2016. *See* calculator found at <http://www.iisg.nl/hpw/calculate.php>. This is equivalent to over 22 million U.S. dollars. 1,822,500 guilders had the same purchasing power in 1940 as €14,675,547.14 in 2016, which is equivalent to over 16 million U.S. dollars. *Id.*

¹¹ The full list is available at <https://www.lootedart.com/MVI3RM469661>, and sets out those associated with selling, buying, or assisting in transactions related to looted art.

117. On September 17, 1940, Firma D. Katz sold NK2650 under duress to Erich Gritzbach, known “right hand man” to Hermann Goering. Gritzbach transferred the painting to Goering after purchasing it.

118. Around September 27, 1940, Reichsmarshall Goering personally visited Firma D. Katz’s gallery in The Hague to view important paintings. Goering visited in civilian dress but was accompanied by armed guards, who stood both inside and outside the gallery. David Katz, Nathan’s son, was sent upstairs initially and overheard Goering and Nathan discussing the quality of the paintings. David was eventually called down to assist his father—who was understandably nervous—but was not allowed to speak. Nathan showed Goering a group of important paintings that he had selected at Goering’s request.

119. Per David Katz, Firma D. Katz was later paid for the paintings Goering selected that were sold to Goering under duress, but the payment was likely not market value. David said of this transaction that there was no choice in the matter because the “highest German” was in front of them.

120. Between September 27 and December 31, 1940, Firma D. Katz sold NK2716 under duress to Hermann Goering through his agent Walter Hofer.

121. Posse bought over twenty more Artworks for the Führermuseum from Firma D. Katz between September and December of 1940. Posse continued to sporadically purchase Artworks for the Führermuseum from Firma D. Katz until the end of 1941.

122. Miedl made additional purchases of Artworks from Firma D. Katz sporadically from December of 1940 through April of 1942. None of these group purchases were nearly as large as the August 1940 transactions, as Firma D. Katz had little trading stock left to sell.

123. On February 10, 1941, Firma D. Katz sold NK2722 under duress to Adolf Hitler (for the Führermuseum) through either Hans Posse or Dr. Erhard Goepel. Dr. Goepel was the designated Dutch buyer for Hilter's Führermuseum, and negotiated forced sales in other countries as well.

124. Firma D. Katz was forced to liquidate as a result of "Aryanization" policies in February of 1941. Firma D. Katz continued operations after that period with "Aryan" owners as N.V. Schilderijen en Antiquiteitenhandel v/h Firma D. Katz. Despite the takeover, the Katz brothers continued buying and selling art under duress on an unpaid basis to Nazis and their agents, working through the "Aryanized" Firma D. Katz.¹² The Katz brothers' share of the proceeds of these sales under duress was sent to a blocked bank account.

125. In February and March of 1941, Firma D. Katz traded a group of the Artworks with Hermann Goering for a Hobbema landscape painting. The transaction took place under duress.

126. In February of 1942, Nathan Katz and his immediate family moved to Switzerland, but only after Nazi officials arranged the proper visas, and with an expectation that Nathan would continue to supply paintings. Posse agreed to the move because it became increasingly difficult for Posse and his agents to exempt Nathan and Benjamin from the application of anti-Semitic laws and policies.

127. Although Nathan was permitted to take some money and possessions with him, he was forced to leave behind significant assets and money in Holland. And, Posse required Benjamin

¹² The Dutch RC has noted that it is no longer possible to reconstruct the actual legal and financial relationship between Firma D. Katz and N.V. Schilderijen en Antiquiteitenhandel v/h Firma D. Katz, and deemed that Benjamin and Nathan "should be regarded as the economic shareholders in both companies. Ex. 2, RC Recommendation on RC 1.90B (Dec. 17, 2012), at 16.

to remain in the Netherlands and work for Posse. This helped to ensure that Nathan would supply art to the Nazis under duress.

128. Nathan's family's trip to Switzerland was harrowing; they had to wait on a train platform in Nazi Germany for over three hours, with SS officers present. Per David Katz's recollection of this event:

what happened to us before we came to Switzerland was truly awful. I would not wish it [on] anybody. . . . And when we were there on this platform with all these young boys from the SS, I will never forget this experience. Our lives were at stake, that was very clear and we had to stand on this platform for so many hours.

Ex. 9, Interview of David Katz (Oct. 12, 2011), at 13.

129. Nathan was forced to continue acquiring art for the Nazis in a limited capacity, knowing that much of his family was still in Holland at the mercy of the occupation government.

130. Benjamin Katz remained in the Netherlands and was forced to acquire and sell paintings, at Hans Posse's direction, for the Führermuseum on an unpaid basis.

131. Switzerland, although a neutral country, was hostile to Nathan Katz and his family. Nathan was prohibited from working or making any money. Nathan and his family were also prohibited from traveling. Swiss art dealers viewed Nathan as stealing their business, and accused him of working illegally, although the Swiss Foreign Police found no evidence to support these allegations. David Katz believes that Nathan Katz's depositing money in Swiss banks saved the family from deportation by Swiss authorities.

132. David Katz recalls of Nathan's family's life in Switzerland: "[W]e were only being tolerated [and] it was assumed that we would continue, that we were just passing through. The Swiss always threatened us it was very, very difficult. . . . [W]e were like prisoners." Ex. 9, Interview of David Katz (Oct. 12, 2011), at 17.

133. The liquidation of Firma D. Katz concluded and the company was dissolved on June 1, 1943.

F. The Katz Brothers Escape

134. Benjamin and most of the Katz family fled the Netherlands for Spain on October 20, 1942, after Nathan obtained entry visas in Switzerland. The entry visas were completely dependent on the benevolence of Hans Posse, which was contingent on Nathan acquiring art for Posse.

135. From Spain, the Katz family scattered across the globe. Benjamin Katz's family traveled to Jamaica, where they took up residence in the Gibraltar refugee camp. Benjamin's daughter Vogeltje "Vogue" Katz-Berg—mother of Plaintiff Bruce Berg—subsequently immigrated to the United States.

136. Nathan remained in Switzerland, and offered support to stateless refugees.

137. Several Katz family members remained in the Netherlands. By the end of 1943, they were taken to Westerbork concentration camp, on the orders of a group of high-level SS intelligence officers.

138. Nathan continued to negotiate with Nazi officials for the release of these family members by offering paintings. In fact, Nathan successfully negotiated the release of the Katz brothers' mother from Westerbork concentration camp in 1944 by offering a famous Rembrandt painting, which was used as a birthday present for Hitler.

139. However, the remaining family members at Westerbork were later taken to Bergen-Belsen concentration camp. They ended up in the "lost transport" train when the camp was evacuated as the Soviet army approached. Benjamin and Nathan's sister Sibilla "Bettes" Katz-Lackrooij died while on the "lost transport" in April of 1945. Despite Nathan and Benjamin's

efforts to trade paintings in exchange for the release of family members, over sixty other Katz family members ultimately perished in Nazi death camps.

G. After World War II

140. Benjamin Katz returned to the Netherlands after its liberation in May of 1945. He took over the “Aryanized” Firma D. Katz on October 3, 1946, immediately following the resignation of the then-current owners.

141. The Artworks were gradually returned to the Kingdom of the Netherlands following the end of World War II, after they were identified and cataloged by U.S. military agencies and those working with them. The Artworks became part of the “NK collection” owned by Defendant The Ministry of Education, Culture & Science of the Netherlands (“The Ministry”).

142. The Dutch government took possession of the Firma D. Katz “blue book” in June of 1945, and subsequently lost it. The “blue book” is the only contemporary list showing which paintings were owned and sold by Firma D. Katz during the 1930s and ‘40s. It was seized by Piller—a Dutch government representative—during a visit to Firma D. Katz in June of 1945. Piller used the blue book to record painting sales made prior to and during the war. The blue book included names of painters, dates of sale, and the names of purchasers.

143. Without the blue book, claims for restitution were—and still are—made much more difficult. The Katz brothers were, in many cases, simply unable to request specific paintings from the Dutch government without full sale records. And, the information now available through organizations like the Origins Unknown Agency was not accessible to the Katz brothers at that time.

144. Nevertheless, Benjamin and Nathan Katz made some attempts at restitution in the late 1940s and 1950s through their lawyer, C. de Kempnaer, Jr. These requests largely did not

concern the Artworks at issue. In fact, the Restitution Committee has noted that there was no judicial ruling, settlement, or waiver with regard to any of the Artworks now claimed. Ex. 2, RC 1.90B Recommendation, at 17.

145. The foundation for the artistic property of the Netherlands (“SNK”), headed by Dr. A.B. de Vries (“de Vries”), ultimately restituted over twenty-five paintings to the Katz brothers by 1947. The Katz brothers donated three of the restituted paintings to Dutch state museums.

146. The Katz brothers were required to pay the Netherlands 289,000 guilders¹³ for the paintings, pursuant to a government policy at the time that required restitution claimants to pay for paintings that were sold to Nazis—regardless of duress, and even if the claimant did not receive the purchase price.

147. Shockingly, Benjamin and Firma D. Katz were investigated by The Netherlands—the government possessing their art—for collaboration with the Nazis beginning in late 1947. Although Benjamin was never prosecuted, the investigation took its toll on his mental state. When the public prosecutor recommended against prosecuting Benjamin, he noted that Benjamin had become such a “wreck” that interrogation was barely possible. Ex. 2, RC 1.90B Recommendation, at 15.

148. Allegations of collaboration by the Katz brothers were simply allegations—and are countered by testimonials and later awards by the Dutch government.

149. For example, Dr. A.B. de Vries of the SNK vouched for Nathan in a letter dated October 25, 1946:

¹³ 289,000 guilders in 1947 is equivalent to over €1.3 million (over \$1.5 million) in today’s currency, per the calculator located at <http://www.iisg.nl/hpw/calculate2.php>

Mr. Nathan Katz, art dealer at Dieren, did not render himself guilty of any unpermissible activities during the occupation. Although I know[] that Mr. Nathan Katz dealt with the enemy, I admit *that he was obliged to do so*, being a Jew in a particular[ly] difficult situation. Strong pressure was born[e] upon Mr. Nathan Katz and his family; they finally could save their lives only by selling an important stock of their pictures to the German officials who were in charge of the forming of collections for German party-leaders. . . . Therefore I should like to stress that from our point of view Mr. N. Katz is not to be blamed for his activities during the German occupation.

Ex. 10, Letter from De Vries to United States Consulate (Oct. 25, 1946), at 1.

150. Further, in 1946, the Queen of the Netherlands awarded Nathan Katz a Medal of Appreciation for his support of refugees in Switzerland.

151. For the remainder of their lives, the Katz brothers were unable to request restitution of the Artworks. Neither they nor their families possessed the information needed to determine the identity and location of the Artworks. The Netherlands also stopped accepting restitution claims in the 1950s.

152. In 1948, Nathan Katz opened his own art gallery in Switzerland, “Katz Galerie.” Nathan continued to reside in Switzerland until he died intestate in Yverdon, Switzerland on August 29, 1949.

153. Benjamin Katz died in Dieren, the Netherlands on January 19, 1962. Firma D. Katz was liquidated in 1974.

H. Restitution Attempts for Individually-Owned Paintings

154. Restitution attempts were made impossible for decades, as The Netherlands stopped accepting restitution claims in the 1950s.

155. Following the establishment of the Washington Principles on Nazi Confiscated Art in 1998 (“Washington Principles”),¹⁴ The Dutch government began developing a new restitution process. As part of this process, The Netherlands and The Ministry established the Origins Unknown Agency (“Origins Unknown”), also known as Bureau Herkomst Gezocht or BHG. From 1998 until 2004, Origins Unknown, led by Professor Rudi Ekkart, investigated the provenance of every artwork in the NK collection, including all but two of the Artworks.¹⁵ The Ekkart Committee—part of Origins Unknown—also devised a set of principles and recommendations in 2001 for the newly-established Restitution Committee (“RC”). These are referred to as the “Ekkart Recommendations” and were updated further in 2003 and 2004. The RC, to this day, relies on the Ekkart Recommendations when making restitution decisions.

156. Sybilla Katz-Goldstein (“Goldstein”), daughter of Nathan Katz, submitted a claim to the RC for one of the Artworks—NK1789, *River Landscape with Ferry* by S.J. van Ruysdael—on December 1, 2004. Goldstein alleged that the painting was owned by Nathan Katz individually—not by Firma D. Katz, and claimed the painting as an heir of Nathan. This claim was assigned the claim number RC 1.21.

157. On March 29, 2007, Goldstein submitted restitution claim RC 1.90 to the RC. This claim sought paintings, including some of the Artworks, which it alleged belonged to Nathan Katz individually—not to Firma D. Katz. The applicants later reversed their position and claimed that a daughter of Benjamin Katz was also an applicant, but did not officially include her. The Ministry consolidated claim RC 1.21 with claim RC 1.90.

¹⁴ Available at <https://www.state.gov/p/eur/rt/hlcst/270431.htm>

¹⁵ Those two, NK3752 and NK3753, were not returned to the Netherlands until 2012.

158. The RC split some paintings from RC 1.90 (including some of the Artworks) into a separate claim (RC 1.90B), and renumbered the remaining claim as RC 1.90A on August 18, 2008. The RC recommended rejection of claim RC 1.90A on July 1, 2009, and The Ministry accepted the RC's recommendation to reject the claim. None of the Artworks at issue were part of rejected claim RC 1.90A.

I. Plaintiff Bruce Berg and the Katz Heirs' Applications to the Dutch Restitution Committee

159. Goldstein alleged that the paintings claimed under claim RC 1.90B (including some of the Artworks) were the individual property of Nathan Katz. However, Goldstein reversed this position in October of 2008 and claimed that she and her attorneys were acting on behalf of both Benjamin and Nathan Katz. The RC instructed Goldstein that the heirs of Benjamin Katz could submit a separate claim. A Dutch grandson of Benjamin Katz contacted the RC on December 14, 2009, and requested to be included as an applicant for claim RC 1.90B.

160. A group of heirs of both Benjamin and Nathan ("the Katz heirs")—led by Goldstein, Goldstein's daughter Lauren Gladstone, Plaintiff Bruce Berg, and a Dutch grandson of Benjamin Katz—subsequently convened and retained counsel in January of 2010, taking over claim RC 1.90B together. On January 22, 2010, the Katz heirs' new attorney informed the RC that the Katz heirs no longer alleged that the claimed paintings were the private property of Nathan Katz.

161. The Katz heirs and their new attorney submitted supplemental materials and new requests for restitution of 189 paintings, including most of the Artworks, throughout 2010 and 2011. These new submissions fell under claim number RC 1.90B. This constitutes the first claim for paintings belonging to Firma D. Katz rather than Nathan Katz individually.

162. In April of 2011, the Katz heirs and their attorney learned that a museum located in the former East Germany planned to return several paintings to the Netherlands, where they became part of the NK collection. The Katz heirs and their attorney at the time learned of the planned return in April of 2011, and learned that some of these artworks had Firma D. Katz provenance. They inquired with the RC and German government about these paintings in a letter dated April 29, 2011, and were provided with additional documentation. Later, on March 4, 2012, the Katz heirs and their attorney were notified by the Dutch government that the paintings had been returned to the Netherlands. The heirs applied for restitution of those paintings shortly afterwards on May 8, 2012, and the claim was assigned the number RC 1.132B. This claim included two of the Artworks at issue: NK3752 and NK3753.¹⁶

163. The Katz heirs pointed out in their application that a German government agency, the Bundesamt für Zentrale Dienste und Offene Vermögensfragen, noted in a report that NK3752 and NK3753 were forcibly sold by Katz to Miedl in August of 1940, which constitutes a loss due to persecution under German law.

J. The Dutch Restitution Committee's Decisions

164. The RC recommended rejection of claim RC 1.90B on December 17, 2012 with regard to 188 of the 189 claimed paintings—including most of the Artworks. *See Ex. 2, RC 1.90B Recommendation.* The Ministry accepted the RC's recommendation on January 24, 2013, finalizing the rejection. One of the 189 claimed paintings, NK 1668, was restituted to the Katz heirs pursuant to the RC's recommendation.

¹⁶ NK3752: *Pedicure* by Jan Steen (circle of). NK3753: *Coastal Landscape* by Pieter van der Croos.

165. The RC’s recommendation is riddled with arbitrary conclusions and illogical findings.

166. For example, the RC found that Firma D. Katz had periodically acted as “middleman” for sales of art, and that this fact cast doubt on whether Firma D. Katz actually owned any art that it sold. In so finding, the RC ignored evidence of prewar Firma D. Katz ownership of many of the artworks claimed, and the lack of any indication of a “middleman” sale or a sale on consignment, with regard to most of the claimed art. The RC also ignored the testimony of Nathan Katz’s son that Firma D. Katz never sold on consignment. Furthermore, the RC contradicted its own statement that Firma D. Katz sold the majority of *its own* trading stock to Alois Miedl—a transaction that encompassed many of the claimed artworks.

167. The most problematic element of the RC’s decision is its reliance on the 2003 Ekkart Committee’s Recommendations for the Art Trade to require a particularized showing of specific duress. Per this policy, “the art trade’s objective is to sell the trading stock so that the majority of the transactions, even [by] the Jewish art dealers[,] in principle constituted ordinary sales.” Ex. 2, RC 1.90B Recommendation, at 20. The RC used this principle to demand specific proof of the involuntary nature of each sale, disregarding overwhelming evidence of general duress facing Dutch Jews during the Nazi occupation of the Netherlands.

168. Following the denial of claim RC 1.90B, the Katz heirs submitted a renewed request for reconsideration, which was assigned the new claim number RC 4.168. Because the Katz heirs planned to submit exhaustive supplemental documentation for claim RC 4.168 which could be helpful for claim RC 1.132B, they requested that consideration of RC 1.132B be deferred temporarily.

169. The Katz heirs submitted extensive follow-up documentation, including a lengthy provenance and history report by provenance expert and historian Lynn Nicholas,¹⁷ and a report covering duress on Dutch Jews during the Nazi occupation by historian Dr. Willi Korte. The Katz heirs also supplemented their documentation of the artworks' provenance to further prove that Firma D. Katz owned the artworks claimed at the time of their forced sale to Nazis. As the Katz brothers were before them, the Katz heirs were hampered in their provenance research by the Dutch government's loss of the Firma D. Katz "blue book."

170. The RC recommended rejection of claim RC 4.168 on November 15, 2017. The Ministry accepted the recommendation and finalized the denial of RC 4.168 on December 20, 2017.

171. Although the Katz heirs provided exhaustive new documentation and reports to the RC on both duress and ownership, the RC failed to give the new information proper attention. Instead, the RC stated that it was previously aware of the existence of many of the documents submitted, and used this fact to support its refusal to reconsider the Katz heirs' claim. With regard to what it deemed "new facts", the RC only asked whether those lead to a different conclusion than in RC 1.90B—and summarily found that they did not. And, again, the RC refused to consider evidence of the dire situation facing Dutch Jews in general as evidence of duress on Firma D. Katz.

172. Overall, the RC's approach in evaluating RC 4.168 was exceedingly narrow in scope. The RC even noted that it saw no need to conduct further research or prepare an investigatory report. Ex. 11, Recommendation on RC 4.168, at 2.

¹⁷ Author of *The Rape of Europa*, a definitive volume about Nazi art looting in occupied countries during World War II.

173. The RC recommended rejection of claim RC 1.132B on December 18, 2017. The RC admitted that “it is known that NK3752 and NK3753 were sold to Goudstikker-Miedl by or through the [Firma D.] Katz gallery in August 1940, after which they ultimately came into the possession of Emil Kummerlé.” Ex. 12, Recommendation on RC 1.132B, at 4. The RC used the 2003 Ekkart Committee recommendations and its denial of the majority of claim RC 1.90B to hold that the sale of NK3752 and NK3753 was not involuntary. *See* Ex. 12, Recommendation on RC 1.132B, at 4–5. And, again, the RC found that evidence of the Dutch Jews’ general situation, presented by the Katz heirs’ experts, did not show that the transaction was made under duress. *See* Ex. 12, Recommendation on RC 1.132B, at 5. The Ministry subsequently followed the RC’s recommendation, finalizing the denial of RC 1.132B on January 25, 2018.

174. The Katz heirs’ provenance expert, Lynn Nicholas (“Nicholas”), wrote a letter decrying the RC’s decision on claims RC 4.168 and RC 1.132B, which was sent to the RC on May 3, 2018. *See* Ex. 13, letter from Nicholas to RC (May 3, 2018). Nicholas noted that the RC relied on the Ekkart Recommendation which recognizes that some transactions by Jewish art dealers constituted ordinary sales while ignoring another Recommendation: that ““threatening *general circumstances* with regard to Jewish art dealers *must be* taken into account.”” Ex. 13, letter from Nicholas to RC, at 2 (emphasis added). Nicholas found no indication that the RC took “the general historical context . . . into consideration at all.” Ex. 13, letter from Nicholas to RC, at 3. After all, “[t]he Katz firm did not exist in its own vacuum apart from the general situation of the Jews of Europe which was well known to the well-traveled Katzes[.]” *Id.* Most importantly, Nicholas stated:

The Committee never asks itself what the consequences would have been for the Katz family had the brothers, when approached by Miedl and Posse, refused to sell them what they wanted. The answer is simple: the stocks [of art] would have

eventually been confiscated outright and members of the Katz family deprived of their livelihoods and deported. I do not know of any dealer, Jewish or otherwise, who refused to sell to Hitler or Goering when directly approached by their agents. . . . Should Nathan Katz, fully aware of the fate of his colleagues in Germany, Austria and France, have refused to sell to Nazi agents in the summer of 1940? Such an expectation is beyond human possibility.

Ex. 13, letter from Nicholas to RC, at 5.

175. The Katz heirs' attorney at the time was also troubled by the RC's denial of RC 1.132B and RC 4.168. In fact, he wrote to the RC on May 3, 2018 that "the restrictive criteria applied by the [RC] and accepted by [The Ministry] allow so little room for consideration of a valid claim that they amount to an abdication of the responsibilities the Kingdom of the Netherlands took on in accepting the Washington Principles and subsequent international agreements." Ex. 14, E-mail from Thomas Kline to RC (May 3, 2018), at 1. The Katz heirs requested reconsideration of RC 1.132 and RC 4.168 again, alongside negotiations.

176. On July 30, 2018, Ingrid van Engelshoven, on behalf of The Ministry, responded to the effect that that the RC's decisions were final, stating: "I see no reason to set aside the Dutch policy and to commission a team especially for this case to consider the evidence again. It is also not in accordance with Dutch policy to negotiate with the heirs." Ex. 15, Letter from Ministry to Katz Heirs (July 30, 2018), at 1.

177. After receipt of this letter, Plaintiff exhausted the Katz heirs' pursuit of restitution from the RC under the RC's own sham restitution processes. Plaintiff was left with no choice but to pursue this action in a United States court, and retained his current counsel as a result.

V. FACTUAL ALLEGATIONS

A. Firma D. Katz Sold the Artworks under Duress.

178. As explained previously, Firma D. Katz sold and traded the Artworks at issue under duress, often for below market value.

179. Before the Nazi invasion and occupation of the Netherlands, the Katz brothers were well aware of the systematic persecution of Jews in Germany and countries occupied by the Third Reich, having learned of these events through their international art world contacts and others. There is no question that the invasion and occupation of Holland by the Third Reich created an immense fear in the minds of the Katz brothers, who had heard what the Nazis were capable of. As Nathan Katz's son David has stated:

Conditions for Jews in Nazi Germany beginning in 1933 increasingly caused a lot of concern with my family, since we were Jewish. . . . [W]e received reports from across the border that things were getting very bad for the Jewish population in Germany and later, in other countries as the Nazis expanded their power.

Ex. 8, Statement of David Katz (June 27, 2010), at 3.

180. Shortly after the invasion of the Netherlands, Nazi-affiliated buyers and Nazi officials began to visit Firma D. Katz and negotiate forced sales of paintings, including the Artworks at issue. Under duress, the Katz brothers had no choice but to agree to the sales.

181. The Katz brothers feared that they or their families would be deported to concentration camps if they did not comply with the requests of Nazi buyers. The Katz brothers also feared that Firma D. Katz's art would be confiscated anyway later if they did not sell immediately.

182. Per David Katz, Nathan was unhappy about having to sell to Nazi agents, "but he did not have any other choice but to sell." Ex. 9, Interview of David Katz (Oct. 12, 2011), at 7.

David has also noted that when Nathan was hesitant to sell, he was warned by the German art dealers to think of his family and be wise.

183. Benjamin Katz himself stated after World War II that were it not for the Nazi occupation and threat of deportation to concentration camps, Firma D. Katz would never have considered doing business with a buyer like Miedl with whom they did not have an established relationship previously. Benjamin noted as well that the Katz brothers were convinced that they had “little option but to sell to the Germans what they wanted.” Ex. 2, RC 1.90B Recommendation, at 6.

184. The Katz brothers and members of their families received certain temporary exemptions from anti-Semitic Nazi laws, including wearing a yellow star, due to the intervention of Posse and his associates. The exemptions were not for the benefit of the Katz brothers. Exemptions were put in place because the laws made it difficult for the Katz brothers to transact business or even move around the Netherlands—for example, Jews were prohibited from driving. Thus, the exemptions were intended to make Firma D. Katz’s art business easier, so that the Katz brothers could continue, under duress, to funnel valuable artworks to the Nazis. The threat of revocation of these exemptions, however, was ever-present. Indeed, by 1942, it was difficult for Posse and others to justify continuing these exemptions to the Nazi occupation government. It was due to this issue, in large part, that Posse arranged for Nathan and his family to move to Switzerland. Benjamin, who remained in Holland, however, continued working for Posse under duress, including the duress created by Posse’s tenuous exemptions.

185. Similarly, although the Katz brothers were exempted for a time from the use of Liro Bank, on January 1, 1943, the Katz brothers were required to forfeit 25% of their joint capital—over 100,000 guilders.

186. The duress facing the Katz brothers was witnessed by Nathan Katz's son David—still alive and residing in Switzerland—who has spoken and written about this duress multiple times, including in submissions to the RC:

- Nathan Katz “had to do business with [Nazi agents]; the pistol was to his nose[.]”¹⁸ “It was a terrible atmosphere for Jews from the start, and it only got worse.”¹⁹ Nazi pressure on Nathan began immediately after the invasion of Holland.²⁰
- “[B]ecause of the war and all that was going on in Germany [Nathan] was very concerned, he was very worried. It changed him completely. He was not the same man anymore and later had all kind of problems also with the Germans about selling, not selling etc.” Ex. 9, Interview of David Katz (Oct. 12, 2011), at 3.
- “So, in the beginning of course it was just the beginning, but in the end we were Jewish. The danger was always there you were on the street you never knew where you would be safe. Then there was a big problem with the Dutch Nationalist Social Party (NSB) especially the young members, they were very bad. My father [Nathan] was assaulted . . . by these young Dutch fascists. . . . Our house was attac[k]ed the windows were smashed, things were written on our porch . . . and this was the work of these WA, these young NSB’ers.” Ex. 9, Interview of David Katz (Oct. 12, 2011), at 9.
- The Katz brothers “had to buy paintings in those days. That was in their own interest because only if they could provide paintings were they any use to the Germans.” Ex. 9, Interview of David Katz (Oct. 12, 2011), at 12.

187. In support of the Katz brothers’ application for restitution of art in the late 1940s, Dr. J.G. van Gelder, an art historian, spoke of the duress facing the brothers:

I was forced to conclude that there was nothing you could do about a situation of force majeure and that the paintings had to be sold under duress if the lives of the Katz family were not to be endangered. Initially, Dr. Posse, Dr. Voss with his representative Dr. E. Göpel and officials from his office were in charge. It was only under considerable duress that a number of works of art were sold. The fear that members of the family would be deported played a major part in this. This was never a voluntary sale, especially not since the sale of goods was never matched by the purchase of goods. With hindsight it can be concluded that Mr. Katz’s tactics were right.

¹⁸ Quoted in Dinah Spritzer, *Doing ‘Business’ with the Nazis*, Jerusalem Post (Oct. 14, 2007), <https://www.jpost.com/arts-and-culture/arts/doing-business-with-the-nazis>

¹⁹ Quoted in *id.*

²⁰ *Id.*

Ex. 2, Recommendation on RC 1.90B, at 13–14.

188. Even the RC itself has noted in previous decisions that sales to Miedl and Goering were involuntary. In claim RC 1.15, the RC noted:

it cannot be ruled out and so it must be assumed . . . that sales to [Miedl], as a friend of Goering's, were involuntary. . . . It is well known that even in an early phase of the occupation, Miedl pressured Jewish art owners in an attempt to sway them to sell to Goering via him. . . . The transaction in which Miedl purchased the Goudstikker gallery should be labelled as involuntary . . . even if the sale were to have occurred at a normal purchase price.²¹

189. Evidence and history clearly shows that the sales and trades at issue occurred under duress.

B. The Transactions at Issue Constitute a Taking of Property in Violation of International Law

190. Any sale of property by a Jew in any country occupied by Nazi Germany should carry a presumption of duress and yield entitlement to restitution. This accords with postwar United States expectations of a presumption of duress for any transfer of property between a persecuted class from September 15, 1935 to May 8, 1945. *See* Presidential Advisory Commission on Holocaust Assets in the U.S., Findings: Implementation of Restitution Policy in Europe.²² Austrian restitution policy, for example, also presumes duress. *See* Rob Houck, *Austrian Art Restitution* (2010) 7.²³

²¹ http://www.restitutiecommissie.nl/en/recommendations/recommendation_115.html

²² *Available at* https://govinfo.library.unt.edu/pcha/PlunderRestitution.html/html/Findings_RestitutionEur.html

²³ *Available at* <http://www.commartrecovery.org/docs/AustrianArtRestitutionNYConference.pdf>

191. The reason for this presumption is that no Jewish citizen or resident of a Nazi-occupied country could possibly have entered into an arms' length transaction with Nazi Germany or its agents.

192. Firma D. Katz's sales and trades of the Artworks at issue were made under duress and are therefore void. It is unthinkable that the Katz brothers, as Jews in a Nazi-occupied country, could make an arms' length transaction with the Nazi regime, its leaders, or its agents like Miedl, Hofer, and Posse, especially given the Katz brothers' knowledge of the systematic persecution of Jews that had occurred in Germany.

193. Furthermore, the law of the Netherlands provides that all legal transactions caused by the Nazi occupation of the Netherlands are void. *See Annemarie Marck & Eelke Muller, National Panels Advising on Nazi-looted Art in Austria, France, the United Kingdom, the Netherlands and Germany – A Brief Overview*, in *Fair & Just Solutions?* 41, 72 (Evelien Campfens ed., 2015).²⁴ This law was enacted preemptively by the Dutch government in exile. *Id.*

194. Firma D. Katz's sales and trades of the Artworks to Nazis and their agents, made under duress, did not convey good title because the transactions are void.

195. Defendants received the Artworks at issue following World War II, knowing that they were wrongfully acquired by the Nazis and their agents. Defendants know that the Artworks at issue do not belong to Defendants, and originally came from Firma D. Katz. Defendants have wrongfully retained items which were taken in violation of international law.

²⁴ Available at https://www.restitutiecommissie.nl/sites/default/files/Fair_and_Just_Solutions-web-compressed.pdf

C. The Denial of the Katz Heirs' Claim by the RC with Regard to the Artworks at Issue Constitutes a Second Taking of Property in Violation of International Law

196. Pursuant to the Washington Principles and Terezin Declaration, as well as United States and international law, Firma D. Katz's sales and trades of the Artworks at issue were not arms' length transactions and constitute transfers of property under duress. These transfers did not pass legitimate title to the German recipients of the Artworks. Nor do Defendants hold any legitimate title to the Artworks.

197. The Netherlands' restitution system was unavailable from the 1950s until 2001, when the RC was established. For decades, no one could claim restitution.

198. The Washington Conference Principles on Nazi-Confiscated Art ("Washington Principles") were agreed to at the Washington Conference on Holocaust Era Assets on December 3, 1998, and mandate as follows:

1. Art that had been confiscated by the Nazis and not subsequently restituted should be identified.
2. Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Council on Archives.
3. Resources and personnel should be made available to facilitate the identification of all art that had been confiscated by the Nazis and not subsequently restituted.
4. In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, *consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era.*
5. Every effort should be made to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted in order to locate its pre-War owners or their heirs.
6. Efforts should be made to establish a central registry of such information.
7. Pre-War owners and their heirs should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted.
8. *If the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case.*

9. If the pre-War owners of art that is found to have been confiscated by the Nazis, or their heirs, can not be identified, steps should be taken expeditiously to achieve a just and fair solution.

10. Commissions or other bodies established to identify art that was confiscated by the Nazis and to assist in addressing ownership issues should have a balanced membership.

11. Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.²⁵

(emphasis added).

199. The Terezin Declaration of June 30, 2009,²⁶ agreed to at the Prague Holocaust Era Assets Conference in the Czech Republic, expanded upon the Washington Principles, in relevant part, as follows:

Nazi-Confiscated and Looted Art

Recognizing that art and cultural property of victims of the Holocaust (Shoah) and other victims of Nazi persecution was confiscated, sequestered and spoliated, by the Nazis, the Fascists and their collaborators through various means including theft, coercion and confiscation, and on grounds of relinquishment as well as forced sales and sales under duress, during the Holocaust era between 1933-45 and as an immediate consequence, and Recalling the Washington Conference Principles . . .

1. We reaffirm our support of the Washington Conference Principles on Nazi-Confiscated Art and we encourage all parties including public and private institutions and individuals to apply them as well,

2. In particular, recognizing that restitution cannot be accomplished without knowledge of potentially looted art and cultural property, we stress the importance for all stakeholders to continue and support intensified systematic provenance research, with due regard to legislation, in both public and private archives, and where relevant to make the results of this research, including ongoing updates, available via the internet, with due regard to privacy rules and regulations. Where it has not already been done, we also recommend the establishment of mechanisms to assist claimants and others in their efforts,

3. Keeping in mind the Washington Conference Principles on Nazi-Confiscated Art, and considering the experience acquired since the Washington Conference, *we urge all stakeholders to ensure that their legal systems or alternative processes,*

²⁵ Sourced from the U.S. State Department's website, <https://www.state.gov/p/eur/rt/hlcst/270431.htm>

²⁶ Available on the State Department's website at <https://www.state.gov/p/eur/rls/or/126162.htm>

*while taking into account the different legal traditions, facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims and all the relevant documents submitted by all parties. Governments should consider all relevant issues when applying various legal provisions that may impede the restitution of art and cultural property, in order to achieve just and fair solutions, as well as alternative dispute resolution, where appropriate under law.*²⁷

(emphasis added).

200. Defendant The Netherlands participated in the creation of both the Washington Principles and the Terezin Declaration.

201. Although The Netherlands' restitution system allegedly adheres to the Washington Principles and Terezin Declaration, the RC's decisions are often problematic—hardly the “just and fair solution” envisaged by the two conferences. The difficulties encountered by the Katz heirs with regard to their two claims, explained previously, exemplify the RC's problematic decisionmaking process.

202. Defendants have known, since their receipt of the Artworks following World War II, where the Artworks came from. A statement in a 2007 article in *Time* magazine exemplifies the knowledge of Defendants. In that article, a representative of Defendant Frans Hals Museum bluntly stated, in response to an inquiry regarding artworks sought under claim RC 1.90, “We've always realized we don't own them.”²⁸

203. “SNK cards” were prepared by the SNK—the foundation for the artistic property of the Netherlands—for each piece in the NK collection following its receipt by The Ministry after

²⁷ Sourced from the U.S. State Department's website, <https://www.state.gov/p/eur/rls/or/126162.htm>

²⁸ Lauren Comiteau, “Nazi World Art Claim Made”, *Time* (Oct. 1, 2007), available at <http://content.time.com/time/printout/0,8816,1666989,00.html>

World War II. The preparers were knowledgeable about the Dutch art market and its prominent dealers, and used this knowledge to record the provenance of each work. SNK cards are not entirely accurate at all times, but provide a good near-contemporary source of each Artwork's original owner which should be relied upon unless proven incorrect.

204. Many of the Artworks' SNK cards clearly note "Katz, Dieren" as owner, which is proof that The Ministry knew of the Artworks' presumed owner for decades. *E.g.*, Ex. 16, NK1729 SNK card photo, at 1.

205. Even when the SNK cards and other documentation were not entirely accurate, Defendants knew that most returned artworks with provenance including Hitler, Goering, Katz or the Miedl/Goudstikker collection were wrongfully acquired from their original owners.

206. In any event, by 2004, Origins Unknown had completed cataloging the provenance of every artwork in the NK collection—including all but two of the Artworks—and found "conclusive" provenance for many. *See, e.g.*, Origins Unknown Report on NK1508 "Beach Scene at Scheveningen" (finding that "the provenance data are conclusive" with regard to the artwork's ownership by Firma D. Katz from May 7, 1938 until its sale under duress to Miedl on August 2, 1940).²⁹ Because Origins Unknown was established by order of Defendants The Ministry and The Netherlands, a finding by Origins Unknown that a provenance is conclusive with regard to Firma D. Katz's ownership of an artwork at the time of its sale to Miedl or other Nazi agents under duress is equivalent to knowledge and admission by Defendants of that artwork's Katz provenance.

²⁹ Available at <http://www.herkomstgezocht.nl/en/nk-collection/beach-scene-scheveningen>

207. Similarly, the German government has established Internet databases of works formerly located in the Führermuseum depository and Hermann Goering collections, which indicate Katz ownership of several of the Artworks at issue.

208. Furthermore, in 2018, Dutch museums undertook a comprehensive evaluation of their artworks to locate those which may have been looted or sold under duress to Nazis. *See* Nina Siegal, *In a Netherlands Museum Director, the Nazis Found an Ally*, New York Times (Nov. 11, 2018), p. C1.³⁰ After such exhaustive efforts, the Museum Defendants should know that the Artworks in their possession were sold under duress.

209. Firma D. Katz ownership is also supported by the Dutch government's own documentation, including that compiled by Origins Unknown. With regard to provenances which are not clear per Origins Unknown, Defendants nevertheless had knowledge that Firma D. Katz's heirs are the true owners of the Artworks after the Katz heirs submitted such documentation to the RC.

210. The Dutch government, furthermore, lost a crucial record of Firma D. Katz's sales during the period at issue—the Katz “blue book.” For the RC to demand the high degree of proof it did with regard to the Artworks is inequitable, in light of the loss of the “blue book.”

211. Defendants also knew of the situation facing Dutch Jews at the time of the Nazi occupation of the Netherlands, **and the resulting duress that affected all art transactions** between Firma D. Katz and Miedl, Goering, and other Nazi-affiliated buyers. For example, the RC's decision on claim RC 4.168 states:

³⁰ Available at <https://www.nytimes.com/2018/11/11/arts/design/in-a-netherlands-museum-director-the-nazis-found-an-ally.html>

According to [Lynn Nicholas] it emerges from the documents . . . that the Katz brothers had to have been aware of the increasing severity of the anti-Jewish measures and their implications. The Committee *can concur with this* but points out that at the time the earlier recommendation [for claim RC 1.90B] was adopted *it was already known that the Katz brothers had been worried even before the German invasion* about the possible implications of anti-Jewish measures.

Ex. 11, RC 4.168 Recommendation, at 6 (emphasis added). Further, prior RC decisions in other matters, such as RC 1.110, admit that “any sales by Jewish private owners in the Netherlands from 10 May 1940 onwards are to be considered involuntary unless expressly proven otherwise”,³¹ a principle which should not be restricted solely to private owners.

212. Duress on Dutch Jews during the Nazi occupation of Holland is also well-documented by historians, and was furthermore specifically explained in the Katz heirs’ submissions to the RC, including in reports by expert historians Dr. Willi Korte and Lynn Nicholas.

213. Knowing both of the duress facing Firma D. Katz and the indisputable facts of Firma D. Katz ownership of the Artworks at issue, Defendants have known for years—and in some cases, decades—that their possession of the Artworks is wrongful. Yet, knowing this, the RC ignored history and denied Plaintiff and the Katz heirs’ restitution claims. The simple fact is that the Artworks never belonged to Defendants in the first place, and Defendants have knowingly retained the Artworks wrongfully, in contravention of international law, using the RC’s inequitable restitution process as a “shield.”

³¹ Available at

http://www.restitutiecommissie.nl/en/recommendations/recommendation_1110.html

VI. CAUSES OF ACTION

Count 1—Declaratory Judgment

214. Plaintiff repeats and realleges all preceding paragraphs as if fully set forth herein.

215. At the time of the commencement of this action and at all times hereinafter mentioned, Plaintiff, as an heir to a partner in Firma D. Katz, was and is the owner of, and is entitled to the immediate possession of the Artworks.

216. This case involves an actual controversy over title of the Artworks between Plaintiff and Defendants.

217. Defendants have wrongfully retained the Artworks and refused to provide restitution to Plaintiff and the Katz heirs.

218. Plaintiff is entitled to a declaratory judgment decreeing that he, as heir to Benjamin Katz, a partner in Firma D. Katz, is the owner of the Artworks, and directing Defendants to return the Artworks to Plaintiff.

219. Plaintiff is further entitled to a declaratory judgment decreeing that his right, title, and ownership in the Artworks is superior to any held by Defendants.

Count 2—Conversion

220. Plaintiff repeats and realleges all preceding paragraphs as if fully set forth herein.

221. The Artworks are the rightful property of Plaintiff, as heir to Benjamin Katz, partner in Firma D. Katz.

222. Defendants exercise unlawful control and dominion over Plaintiff's property, the Artworks.

223. Plaintiff lawfully demanded the return of the Artworks from Defendants The Kingdom of the Netherlands, The Cultural Heritage Agency of the Netherlands, and The Ministry of Education, Culture & Science of the Netherlands.

224. Defendants The Kingdom of the Netherlands, The Cultural Heritage Agency of the Netherlands, and The Ministry of Education, Culture & Science of the Netherlands wrongfully refused to return the Artworks to Plaintiff.

225. Defendants' wrongful retention of the Artworks caused Plaintiff to expend monies and attorney's fees in pursuing the restitution of the Artworks. By refusing to return the Artworks, Defendants have converted the Artworks. Defendants wrongfully interfered with Plaintiff's rightful possession and caused damages in the amount of the fair market value of the Artworks.

226. Plaintiff has been damaged by Defendants' conversion in an amount to be determined at trial, but in any event not less than the value of the Artworks, which is at least tens of millions of dollars.

Count 3—Unjust Enrichment

227. Plaintiff repeats and realleges all preceding paragraphs as if fully set forth herein.

228. Defendants have wrongfully possessed the Artworks for decades.

229. Defendants have used many of the Artworks in commerce, including in the United States, and have profited from their display.

230. Defendants' use of the Artworks in this manner has unjustly enriched Defendants.

231. Defendants will also be unjustly enriched further if permitted to retain the Artworks or any benefits accruing therefrom.

232. It would be inequitable, under the circumstances described herein, for Defendants to retain the benefits of the Artworks without paying the value thereof to Plaintiff.

233. Defendants should disgorge to Plaintiff the amounts by which they have been unjustly enriched, in an amount to be determined at trial, together with prejudgment interest.

Count 4—Constructive Trust

234. Plaintiff repeats and realleges all preceding paragraphs as if fully set forth herein.

235. Plaintiff requests a constructive trust in the alternative, should Plaintiff have no adequate remedy at law.

236. Defendants took the Artworks into their custody under a circumstance that would render it equitable for Defendants to return the Artworks to their rightful owner upon due demand by Plaintiff and the Katz heirs.

237. It is just and equitable that the Court impose a constructive trust to attach to the Artworks from the time they came into Defendants' possession.

238. Defendants took possession of the Artworks—unique chattels—under circumstances in which they knew or had reason to know that the Artworks had been sold or traded under duress by Firma D. Katz to agents and representatives of Nazi Germany, and that those transactions were void.

239. Defendants furthermore retained the Artworks following Plaintiff and the Katz heirs' applications for restitution, knowing that the Artworks had been sold or traded under duress by Firma D. Katz to agents and representatives of Nazi Germany, and also knowing that the heirs of the partners in Firma D. Katz—including Plaintiff—were the rightful owners of the Artworks.

240. Permitting Defendants to retain the Artworks—property of Plaintiff, as heir to a partner in Firma D. Katz—is unfair and unjust, and in light of the totality of the circumstances warrants imposing a constructive trust under equitable principles of South Carolina law.

241. Plaintiff requests that the Court issue an order impressing a constructive trust upon Defendants, as holders of the Artworks, and their agents, past and present, and ordering that all Artworks be returned to Plaintiff, as heir to a partner in Firma D. Katz, and that any income, commissions, or other benefits that Defendants gained from the Artworks be disgorged and paid to Plaintiff.

VII. JURY TRIAL

242. Plaintiff demands a parallel jury trial with regard to all Defendants for whom jury trial is not barred under 28 U.S.C. § 1330(a). This includes Defendants Museum Het Rembrandthuis, Museum Boijmans van Beuningen, the Frans Hals Museum, Museum Catharijneconvent, Dordrechts Museum, Museum Voor Religieuze Kunst, Het Noordbrabants Museum, Limburgs Museum, Museum Ons' Lieve Heer op Solder, Stichting Bijbels Museum, and Museum Rotterdam.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- A) Enter judgment on all counts in favor of Plaintiff;
- B) Order Defendants to return the Artworks to Plaintiff forthwith;
- C) Order Defendants to pay Plaintiff an amount that the Court deems just for all Artworks not returned to Plaintiff;
- D) Order Defendants to disgorge any profits, commissions, or other benefits gained by Defendants from the Artworks;
- E) In the alternative, issue an order impressing a constructive trust upon Defendants with regard to the Artworks;
- F) Order Defendants to pay punitive damages in an amount that the Court deems just;

- G) Order Defendants to pay Plaintiff's reasonable attorney's fees; and
- H) Enter such other and further relief as is just and proper under the circumstances.

November 19, 2018

Respectfully submitted,

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