

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

THOMAS BENNIGSON, THE NEW YORK INSTITUTE FOR SPECIAL EDUCATION, THE SALVATION ARMY, A NEW YORK CORPORATION, LEGER DES HEILS (SALVATION ARMY NETHERLANDS), JEWISH GUILD FOR THE BLIND, HADASSAH, THE WOMEN’S ZIONIST ORGANIZATION OF AMERICA, INC., SELFHHELP COMMUNITY SERVICES, INC., THE FRESH AIR FUND, THE JEWISH BOARD OF FAMILY AND CHILDREN’S SERVICES, INC., OXFAM AMERICA, VERA PROSKE, ANA CAVATORE, TAMARA PROSKE, FACUNDO PROSKE, FRANCISCO PROSKE, MARÍA PROSKE and MARÍA MERCEDEZ ALBIZU,

Plaintiffs,

- against -

THE SOLOMON R. GUGGENHEIM FOUNDATION,

Defendant.

INDEX NO. \_\_\_\_\_

**COMPLAINT**

Plaintiffs Thomas Bennigson, The New York Institute for Special Education, The Salvation Army, a New York corporation, Leger des Heils (Salvation Army Netherlands), Jewish Guild for the Blind, Hadassah, The Women’s Zionist Organization of America, Inc., Selfhelp Community Services, Inc., The Fresh Air Fund, The Jewish Board of Family and Children’s Services, Inc., Oxfam America, Vera Proske, Ana Cavatore, Tamara Proske, Facundo Proske, Francisco Proske, María Proske and María Mercedes Albizu, by their undersigned attorneys, as and for their Complaint against The Solomon R. Guggenheim Foundation (“Defendant” or the “Guggenheim”) allege as follows:

### NATURE OF THE ACTION

1. This is an action commenced by the heirs of Karl a.k.a. Carl or Carlos Adler (“Karl” or “Adler”) (b. January 1, 1872) to recover a painting by Pablo Picasso entitled *Woman Ironing* (La repasseuse) (1904), oil on canvas, 45  $\frac{3}{4}$  in. x 28  $\frac{3}{4}$  in. (116.2 cm x 73 cm), signed lower right Picasso (the “Painting”), which was acquired by Adler in 1916.

2. Before Adolf Hitler’s rise to power, Karl and his wife, Rosa née Jacobi (“Rosi”) (b. 1878), both German Jews, led a prosperous life in Germany. Karl and Rosi resided in their home in Baden-Baden, Hermann Sielcken-Straße 10, where they lived from June 1912 until June 1938. Adler ran a leading leather manufacturing company, of which he was Chairman of the Board of Directors.

3. In 1933, the establishment of the Nazi regime in Germany shattered their lives. Within days of Hitler’s securing the leadership of Germany, Jews were openly terrorized throughout the country and systematically stripped of their economic and legal rights. In 1937, Nazi persecution, sanctioned by the Nuremberg Laws of 1935, forced Adler to give up his position as Chairman of the Board of Directors of his company, and an “Aryan” corporation seized control. By June 1938, it was clear that remaining in Germany was no longer an option. In fear of their lives, and after the Nazis robbed them of their business, livelihood and financial and other assets, Karl, Rosi and their youngest son fled Germany.

4. Karl and Rosi would have preferred to escape Europe for Argentina, but their hopes for admission into the country were soon dashed. Entry to Argentina was increasingly difficult and costly for Jews in the Adlers’ situation. Meanwhile, the Adlers needed large amounts of cash just to obtain short-term visas during their exile in Europe. Unable to work, on the run, and not knowing what the future would hold for them, the Adlers had to liquidate what they could to

quickly raise as much cash as possible. Thus, within a few short months of their escape from Germany, in October 1938, Adler was forced to sell the Painting for well below its actual value. Adler would not have disposed of the Painting at the time and price that he did, but for the Nazi persecution to which he and his family had been, and would continue to be, subjected.

5. In April 1940 – nearly two years after their escape from Germany – the Adlers were finally granted permission to enter Argentina. Karl and Rosi stayed there for the remainder of their lives.

6. The Painting is currently in the wrongful possession of the Guggenheim.

### **THE PARTIES**

7. Plaintiffs are the heirs of Adler.

8. Thomas Bennigson is a citizen of the United States who resides in Oakland, California.

9. The New York Institute for Special Education is a New York not-for-profit corporation located in Bronx, New York.

10. The Salvation Army is a New York not-for-profit corporation located in West Nyack, New York.

11. Leger des Heils (Salvation Army) is a Dutch not-for-profit corporation located in Almere, the Netherlands.

12. Jewish Guild for the Blind is a New York not-for-profit corporation located in New York, New York.

13. Hadassah, the Women's Zionist Organization of America, Inc. is a New York not-for-profit corporation located in New York, New York.

14. Selfhelp Community Services, Inc. is a New York not-for-profit corporation

located in New York, New York.

15. The Fresh Air Fund is a New York not-for-profit corporation located in New York, New York.

16. The Jewish Board of Family and Children’s Services, Inc. is a New York not-for-profit corporation located in New York, New York.

17. Oxfam America is a Massachusetts not-for-profit corporation located in Boston, Massachusetts.

18. Vera Proske is a citizen of Argentina who resides in Buenos Aires, Argentina.

19. Ana Cavatore is a citizen of the United States who resides in Houston, Texas.

20. Tamara Proske is a citizen of Argentina who resides in Buenos Aires, Argentina.

21. Facundo Proske is a citizen of Argentina who resides in Buenos Aires, Argentina.

22. Francisco Proske is a citizen of Argentina who resides in Buenos Aires, Argentina.

23. María Proske is a citizen of Argentina who resides in Buenos Aires, Argentina.

24. María Mercedes Albizu is a citizen of Argentina who resides in Buenos Aires, Argentina.

25. Upon information and belief, Defendant is a New York not-for-profit corporation operating as a public museum located in New York, New York.

**JURISDICTION AND VENUE**

26. Jurisdiction in this action is based on New York’s Civil Practice Law and Rules (“CPLR”) § 301.

27. Venue for this action is proper in the County of New York pursuant to CPLR §§ 508 and 509.

### FACTUAL ALLEGATIONS

28. Until the start of the Nazi period, Karl and Rosi, both German Jews, lived together in Baden-Baden, Germany. In 1887, Adler joined his family's company, Adler & Oppenheimer A.G. ("A&O"). A&O was established in 1872 by Karl's grandfather, Isaak Adler ("Isaak"), and Isaak's brother-in-law, Ferdinand Oppenheimer. In 1900, A&O was converted into a public limited liability company and Adler was appointed a member of the Management Board.

29. A&O became the leading leather manufacturer in Germany and the largest in Europe. Prior to the company's Aryanization, members of the Adler and Oppenheimer families owned approximately eighty-six percent of the capital stock of A&O. Adler was one of its major shareholders.

30. In 1916, Karl purchased the Painting from Heinrich Thannhauser, an owner of the prestigious Thannhauser Galerie in Munich, which dealt in modern works including works by Pablo Picasso. Heinrich Thannhauser and his son, Justin K. Thannhauser ("Thannhauser"), who later joined the gallery, were both Jewish, and cultivated a Jewish clientele. In 1928, the Painting was published as an illustration for an article in *Deutsche Kunst und Dekoration*.

31. On November 14, 1919, A&O formed a holding company, *Amsterdamsche Ledermaatschappij, N.V.* ("Almij"), which eventually held the Adler and Oppenheimer family shares in A&O. In 1920, the headquarters of the German operations of A&O was moved to Berlin and its Board of Directors was located in Berlin. The primary executives of the company were Adler and his cousin, Julius Oppenheimer, who jointly ran the company.

32. In or around 1932, following the 1929 stock exchange crash and the countless number of bankruptcies in Austria and Germany in 1931, Adler began to explore the possibility of selling the Painting, which at that time was located outside of Germany. Adler sought to test the

market for the Painting by offering it for a price of not less than US \$14,000; however, Adler did not sell the Painting at that time.

33. On January 30, 1933, Adolf Hitler came to power. Within days, racist laws directed against Jews were formulated, enacted and enforced, beginning with the exclusion of Jews from the civil service, and the social and business life of Germany, followed by the divestment of virtually all of their assets. At the same time, the Nazis began an early campaign of terror against German Jews, “encouraging” them to flee Germany, while moving rapidly to ensure they left their assets behind. Jews were subject to random arrests, beatings and constant harassment, ultimately leading to their murder en masse. Concentration camps for that purpose began to be set up across Germany, beginning with Dachau in March 1933.

34. On September 15, 1935, with the enactment of the Nuremberg Laws (“The Laws for the Protection of German Blood and German Honor”), the Nazis consolidated and extended the existing exclusionary measures against Jews. The Nuremberg Laws deprived all German Jews, including Karl and Rosi, of the rights and privileges of German citizenship, ended any normal life or existence for them and relegated them to a marginalized existence, a pivotal step toward their mass extermination.

35. The Nuremberg Laws of 1935 ushered in a process of eventual total dispossession of Jewish-owned wealth, both through what became known as “*Arisierung*,” or Aryanization, as well as through the tax system, first by takeovers by “Aryans” of Jewish-owned businesses and then by forcing Jews to surrender virtually all their assets. The seizure of Jewish-owned assets, facilitated by stripping Jews of their citizenship rights, was an important part of the early phases of Nazi persecution. In this process, Jewish workers and managers were dismissed, and businesses and corporations belonging to Jewish owners were forcibly transferred from those owners to non-

Jewish Germans, who “bought” them – often without the owners having free use of the “sale” proceeds – at prices officially approved and well below market value.

36. Neither Adler nor A&O could escape this process. In or around December 1937, Adler was forced to give up his position on the Board of Directors at A&O. Hermann J. Abs of Deutsche Bank replaced Adler as Chairman of the Board of Directors, effectively taking control of A&O in Germany.

37. By 1938, the Dutch holding company, Almij, owned 89% of A&O. The Adler and Oppenheimer families, having transferred their ownership shares in A&O to Almij, believed they had adequately protected their company interests against the ever-growing grasp of the Nazi regime. But they had underestimated the relentless policy of the Nazis to divest Jews of their assets. By August 1940, Deutsche Bank also acquired control of Almij, as well as its affiliates in France and Luxembourg. The Nazis eventually Aryanized all of the A&O holdings left in the Netherlands, stripping Adler and his family of their wealth in Germany and much of what they held in the Netherlands.

38. In 1931, the German government had instituted a flight tax (or “*Reichsfluchtsteuer*”) to stem capital flight at a time of extreme pressure on the Reichsmark. After the Nazis’ rise to power in 1933, the flight tax became a powerful instrument for stripping Jews of their assets. Thus, between 1933 and 1939, the Nazis’ flight tax revenues grew exponentially, from RM 17.6 million (US \$6,821,760) in 1933/34, when Jewish emigration was merely a trickle, to RM 81.4 million (US \$32,743,150) in 1936/37, to RM 342.6 million (US \$137,348,340) in 1938/39, by which time emigration had turned into a flood.

39. Flight tax assessments were based on wealth tax declarations, which referred to wealth in the previous year, and which were calculated at 25% of the value of the reported assets.

With the one-year valuation delay, the flight tax amount typically would have been considerably higher than 25% of the assets actually owned at the time of emigration, as those who were persecuted by the Nazis suffered dramatic financial losses in the period leading up to their emigration. Consequently, the value of their assets at the time of emigration was considerably smaller than that on which their flight tax was assessed. The payment of the flight tax was necessary to obtain the no-objection certification of the tax authorities, which in turn was necessary to obtain an exit permit. Payment of the flight tax, however, did not in itself give the emigrant any right whatsoever to transfer abroad any of the remaining assets after payment of the tax.

40. When anyone was suspected of planning to flee Germany, the Reich's Exchange Control Office could impose a security payment of the full amount of flight tax that would have been due if leaving on that date. Any targeted person could be so charged. Karl and Rosi were caught in this net, and in December 1936, the Nazis levied a compulsory flight tax security payment against them in the amount of RM 201,263 (US \$81,109). Adler paid the tax on May 30, 1938. At that time, Adler did not have sufficient cash at his disposal, and he was forced to sell securities in order to pay the flight tax.

41. In March 1938, the Nazis annexed Austria (the "*Anschluss*"), achieving a bloodless takeover of the country within days. The Anschluss was accompanied by a wave of antisemitic violence, as well as outright looting and destruction of Jewish property. The perceived need to bring order to the wild Aryanizations in Vienna provided further impetus to the Nazi regimes in Austria and in Germany to hasten the "slow" progress in arrogating all Jewish-owned assets to the Reich. Accordingly, in April 1938, the Nazi regime issued an order by which Jews possessing wealth of more than RM 5,000 (\$2,012) as of April 27, 1938 were required to register all their assets by the end of June 1938. This "Census of Jewish-owned assets" was followed by a series

of decrees by the Nazi government, including the “order regarding the elimination of Jews from the German economy” of November 12, 1938, and the “order regarding the utilization of Jewish assets” of December 3, 1938.

42. Upon information and belief, Adler’s termination as Chairman of A&O and A&O’s takeover in Germany by Deutsche Bank, together with the Anschluss and the events that followed, convinced Adler that the time for him and his family to escape Germany had arrived. Seeking to escape Nazi persecution, the Adlers fled Germany on June 29, 1938. Karl and Rosi sought to obtain a permanent visa for entry to Argentina, but entry into Argentina, or for that matter any South American country, had become increasingly difficult and costly. In the meantime, staying even for short periods in any European country without proof of a final long-term destination had also become difficult and costly. Thus, they were forced into an odyssey back and forth across various European countries, residing first, upon information and belief, in Oisterwijk, the Netherlands, with stops in France, and finally, Switzerland. At the time of their arrival in the Netherlands, Adler was 66 years old and no longer able to engage in professional work in a new language; by the time he could finally embark for Argentina, he was 68 years old.

43. In order for Adler to be able to obtain short-term visas in several European countries while he tried to obtain a permanent visa for Argentina, he needed large amounts of cash or gold. For example, the amounts of security deposits required by Switzerland for all émigrés, without a visa for a long-term destination could, depending on the Canton in Switzerland and the length of stay applied for, easily run to 30,000 Swiss Francs (“CHF”) (\$6,738). The country of final destination would have similar cash requirements for entry, especially when it concerned people too elderly to be able to take on professional work, such as the Adlers.

44. At the same time, in 1938, any transfer of funds out of Germany required official

approval. The conditions on which an emigrating Jew would be permitted to transfer anything at all resulted in a loss of virtually the entire amount of a successful transfer application. These losses were the result of a network of charges, taxes and conversion costs. Upon information and belief, neither Adler nor Rosi transferred any funds from Germany upon their flight to the Netherlands.

45. On October 1, 1938, Hitler began annexing the Sudetenland following the Munich Agreement of September 29-30, 1938. Hitler's expansionary desires and his wish to start a war were palpable. In March 1936, Hitler had remilitarized the Rhineland, sending German troops into the region. On 5 November 1937, he held a meeting with top military and foreign policy leaders (memorialized in the "Hossbach Memorandum"), where Hitler ordered preparations for an impending war. In fear of the growing Nazi threat and knowing that his planned emigration to Argentina would not be easily, and certainly not speedily, accomplished, Adler tried to ensure that he had all the means in hand to achieve their escape from Europe before it was too late. The beginning of World War II in September 1939 made emigration from Nazi Germany exceedingly difficult, and it was formally prohibited by the Nazi regime in October 1941.

46. Thus, in a desperate attempt to raise cash needed to flee Nazi persecution and war-threatened Europe for his chosen home in South America – on October 29, 1938, Adler sold the Painting to Thannhauser, who at that time was residing in Paris, France. This was a common practice of Jewish art collectors fleeing Germany, who frequently sold their art to raise cash once they were outside of Germany. Upon information and belief, Adler accepted a purchase price of CHF 6,887 (approximately US \$1,552). This price was far below market value and less than one ninth of his asking price in 1932.

47. Upon information and belief, Adler's bank accounts in Germany were blocked at this time. The Nazis' use of blocked emigrants accounts (*Sperrkonto*), which gave the appearance

of émigrés being allowed to take assets abroad, was another tool of dispossession by the Nazis. It was very rare for a Jew who had fled Germany to recover any of the funds in the blocked accounts. The creation of these blocked accounts was consistently followed by a seizure of the accounts by the Nazi state.

48. Thannhauser, as a leading art dealer of Picasso, must have known he acquired the Painting for a fire sale price. At the time of the sale, Thannhauser was buying comparable masterpieces from other German Jews who were fleeing from Germany and profiting from their misfortune. Thannhauser was well-aware of the plight of Adler and his family, and that, absent Nazi persecution, Adler would never have sold the Painting when he did at such a price.

49. On December 25, 1938, Thannhauser responded to an inquiry by Dr. Gerrit Willem Ovink, a Dutch professor who had contacted Adler to inquire about the Painting. Thannhauser informed Dr. Ovink that the Painting “went to him,” but admonished Dr. Ovink not to tell anyone that he obtained it from Adler.

50. On November 9-10, 1938, mere days after Adler’s sale of the Painting, the Nazis commenced a series of pogroms against Jews in Germany and German territories, in what is known as *Kristallnacht* (the Night of Broken Glass). During *Kristallnacht*, thousands of Jewish-owned businesses, homes, and schools were plundered and destroyed, at least 91 Jews were murdered, and some 30,000 Jewish men were arrested and sent to concentration camps. Nazi officials claimed that the Jews themselves were the cause of the *Kristallnacht* violence. The Nazis accordingly enacted the so-called atonement tax (*Judenvermögensabgabe* or *Juva*), under the pretense of punishment for the assassination in Paris of a German diplomat, Ernst vom Rath, which the Nazis said had triggered *Kristallnacht*. This tax would force German Jews to pay for the cost of the destruction of property that took place that night, but more importantly, was intended to help

fill the budgetary gaps caused by Germany's exploding military expenditures. The atonement tax imposed a fine of RM 1 billion (US \$403,000,000) on German Jewry and was to be paid in four installments. If the sum total did not reach the RM 1 billion goal, which it did not, a fifth installment would be, and was, levied.

51. The atonement tax applied to all German Jews, including those who had fled Germany's borders. Thus, even after their flight in June 1938, the Adlers were forced to pay an atonement tax in the amount of RM 111,978.95 (US \$45,127.52). The atonement tax, as with the flight tax, had to be paid in cash or in what the authorities considered acceptable securities. Adler paid the tax with funds from his frozen bank accounts in Germany. Any assets that remained after payment of the taxes and payment of any other tax liabilities were eventually seized by the Nazis.

52. Adler and Rosi continued their flight from Europe. Upon information and belief, after several stays in France, they left the Netherlands for Switzerland, where they could stay only temporarily. Each stop required repeated cash deposits in order to receive short-term permission to stay. Finally, on April 2, 1940, the Adlers boarded a ship to Buenos Aires, Argentina from Genoa, Italy, arriving in Argentina on April 20, 1940. At the time of their arrival, Adler was 68 years old, had little or no knowledge of the language and had no possibility of taking on remunerative work.

53. By the time of Karl and Rosi's arrival in Argentina, the Nazis had stripped them of their German citizenship and confiscated the entirety of Adler's German-held assets, including his bank accounts and real estate, in addition to much of what they held in the Netherlands. At the start of their flight, the value of Adler's German held assets, based on his wealth tax assessments, was put at RM 800,000 (US \$322,160), three-quarters of which was in frozen bank accounts. Subsequently, Adler's bank balance was eroded by tax payments, and any funds that remained,

together with Adler's real estate assets, were confiscated by decree dated April 10, 1940.

54. In an affidavit submitted to the Police Administration of Baden-Baden dated July 7, 1950, Adler provided the following description of the confiscation:

“By a resolution of the Reich government dated April 10, 1940, published in the Reichsanzeiger (official Reich gazette) of April 15, 1940, I along with my [later] deceased wife and my youngest son, were declared as having lost German nationality. In further implementation of the robbery action against the Jews, which had already begun in 1938 the Reich Minister of the Interior issued a notification on July 10, 1940, published in the Reichsanzeiger of July 15, 1940 as No. 163, by means of which all my assets were forfeited to the Reich.” (Emphasis added.)

55. By August 1940, Deutsche Bank obtained 75% of the A&O stock, including the Almij shares, and was able to declare the company “Aryan” pursuant to the existing Nazi law. The company name was changed to Norddeutsche Lederwerke AG. Deutsche Bank also acquired Adler's Dutch shares in Almij, and transferred the purchase price into a Dutch blocked account, which was confiscated by the Gestapo in 1940.

56. The Nazis invaded and occupied the Netherlands on May 10, 1940 – mere weeks after the Adlers' arrival in Argentina. Had Karl and Rosi not fled when they did, they would have undoubtedly suffered a much more tragic fate at the hands of the Nazis.

Plaintiffs are the Heirs of Adler's Estate

57. Rosi died on June 28, 1946 in Buenos Aires. The hardships of her flight and years of uncertainty as to whether she would reach safety in time aggravated her already suffering health, and, upon information and belief, led to her early death at the age of 68. She was survived by her husband and their three children, Carlota A. De Landsberg a.k.a. Charlotte Landsberg (“Carlota”), Eric Rudolf Adler (“Eric”) and Juan Jorge Adler a.k.a. Hans Adler (“Juan Jorge”). She did not leave a will.

58. Adler died on October 2, 1957 at the age of 85, while visiting Baden-Baden, Germany from Buenos Aires, never having learned that he could lay claim to the Painting. He was survived by his three children, Carlota, Eric and Juan Jorge. Adler died without a will. A certificate of inheritance was issued by the court in Baden-Baden on January 9, 1958, determining that his intestate heirs were his three children in equal 1/3 shares. Upon information and belief, neither Adler, Carlota, Eric nor Juan Jorge, knew that they had a claim to the Painting, which they mistakenly believed had been lawfully acquired by Thannhauser.

59. Carlota died on October 19, 1994. In a will dated June 16, 1994, Carlota bequeathed her residual estate to Thomas C. Bennigson (“Bennigson”), Carlota’s grandson and a Plaintiff in this action.

60. Eric died on December 15, 1990. In a will dated June 5, 1986 and a codicil dated June 9, 1988, Eric bequeathed his residual estate to charitable organizations, some of which were specified in his will, with the remaining organizations selected by his executor pursuant to his will. His residual heirs who are Plaintiffs in this action, include: The New York Institute for Special Education, The Salvation Army, a New York corporation, Leger des Heils (Salvation Army Netherlands), Jewish Guild for the Blind, Hadassah, The Women’s Zionist Organization of America, Inc., Self-help Community Services, Inc., The Fresh Air Fund, The Jewish Board of Family and Children’s Services, Inc., and Oxfam America. Eric’s remaining residual heir, United Jewish Appeal Federation of Jewish Philanthropies of New York, Inc. (“UJA”), is not a plaintiff in this action as it subsequently assigned this interest to other of Eric’s residual heirs.

61. Juan Jorge died on September 1, 1989 in Buenos Aires, survived by his wife and sole heir, Ana Elisabeth Proske (“Ana”). On January 31, 1997, Ana died, leaving two wills, which were probated in New York and Argentina, respectively.

62. Ana's heirs under her Argentinian will included her sister-in-law, Wanda Vera Vukotich de Proske ("Wanda"), her niece, Ana E. Proske ("Ana E."), and her son, Roberto Germán Proske ("Roberto"). Wanda and Ana E. are Plaintiffs in this case.

63. Roberto died on November 1, 2009, survived by his wife, Maria Mercedes Albizu, as well as their children, Tamara Proske, Facundo Proske, Maria Proske, and Francisco Proske, who are Plaintiffs in this action.

64. Ana's sole residuary heir of her New York will is UJA. UJA and Ana's heirs under her Argentinian will entered into a settlement agreement to resolve any possible future dispute among the New York and Argentinian heirs. UJA subsequently assigned its remaining interest from Ana and its interest from Eric in the estate of Adler to other of Eric's residual heirs.

#### Guggenheim's Acquisition of the Painting

65. Following Thannhauser's purchase of the Painting in October 1938, he loaned the Painting from February until April 1939 to the Stedelijk Museum in Amsterdam. In connection with the loan, the Stedelijk insured the Painting for US \$20,000 – nearly thirteen times its sale price to Thannhauser.

66. In July until August 1939, Thannhauser loaned the Painting to the Museum of Modern Art ("MoMA") in New York. MoMA insured the Painting for US \$25,000. At the time of the loan, Thannhauser asked Alfred Barr, the then-director of MoMA, not to tell anyone how low the insured value was because Thannhauser would not sell the Painting for such a low price. Later that year, Thannhauser emigrated from Paris to New York.

67. In October 1939, Thannhauser had several artworks, including the Painting, shipped from Paris to New York. In the customs declaration, the Painting's valuation, equivalent to the price he paid Adler, was listed at 47,600 French Francs ("FF") (approximately US \$1,385)

– only US \$167 less than the purchase price of the Painting in 1938 from Adler.

68. In or around October 1963, Thannhauser informed the Guggenheim that he would gift the Painting to the museum; the bequest would not take effect until Thannhauser's death.

69. Thannhauser died on December 26, 1976. In 1978, Thannhauser's collection, including the Painting, was gifted to the Guggenheim.

#### Plaintiffs Learn of Their Ownership Interest in the Painting

70. In June 2014, Bennigson learned that his grandmother, Carlota, may have once owned the Painting, and promptly retained the law firm of Rowland & Associates to research the Painting and whether it may have been lost during the Nazi era.

71. After researching the history and provenance of the Painting, Rowland & Associates then located and contacted the remaining Plaintiffs in this action.

72. On January 24, 2017, Rowland & Associates contacted the Guggenheim, on behalf of Plaintiffs, requesting information regarding the Painting and the Guggenheim's acquisition of it. During the period between January 24, 2017 and June 10, 2021, Rowland & Associates exchanged information and correspondence with the Guggenheim. On June 10, 2021, Rowland & Associates, acting on behalf of the Plaintiffs, demanded the return of the Painting.

#### Plaintiffs' Claims are Timely

73. This action is timely under the provisions of the Holocaust Expropriated Art Recovery Act of 2016 ("HEAR Act"). The HEAR Act provides:

(a) IN GENERAL.—Notwithstanding any other provision of Federal or State law or any defense at law relating to the passage of time, and except as otherwise provided in this section, a civil claim or cause of action against a defendant to recover any artwork or other property that was lost during the covered period because of

Nazi persecution may be commenced not later than 6 years after the actual discovery by the claimant or the agent of the claimant of—  
(1) the identity and location of the artwork or other property; and  
(2) a possessory interest of the claimant in the artwork or other property.

\* \* \*

(c) PREEXISTING CLAIMS.—Except as provided in subsection (e), a civil claim or cause of action described in subsection (a) shall be deemed to have been actually discovered on the date of enactment of this Act if—

(1) before the date of enactment of this Act—

(A) a claimant had knowledge of the elements set forth in subsection (a); and

(B) the civil claim or cause of action was barred by a Federal or State statute of limitations; or

(2)(A) before the date of enactment of this Act, a claimant had knowledge of the elements set forth in subsection (a); and

(B) on the date of enactment of this Act, the civil claim or cause of action was not barred by a Federal or State statute of limitations.

74. As defined in the HEAR Act, “covered period” means “the period beginning on January 1, 1933, and ending on December 31, 1945;” “actual discovery” means “having actual knowledge of a fact or circumstance or sufficient information with regard to a relevant fact or circumstance to amount to actual knowledge thereof;” and “Nazi persecution” means “any persecution of a specific group of individuals based on Nazi ideology by the Government of Germany, its allies or agents, members of the Nazi Party, or their agents or associates, during the covered period.”

75. Plaintiffs did not learn the identity of and their possessory interest in the Painting before June 2014. On December 14, 2022, not later than six years after the date of the enactment of the HEAR Act on December 16, 2016, Plaintiffs entered into a standstill agreement with the Guggenheim, tolling any statute of limitations as of December 14, 2022. The standstill agreement terminated on January 20, 2022. The action is therefore timely under Section 5 of the HEAR Act.

76. In the alternative, this action is timely under New York's statute of limitation, if it should apply. Plaintiffs demanded the return of the Painting on June 10, 2021. Defendant has failed and refused to deliver the Painting to Plaintiffs. On December 14, 2022, not later than three years after demand and refusal, Plaintiffs entered into a standstill agreement with the Guggenheim, tolling any statute of limitations as of December 14, 2022. The standstill agreement terminated on January 20, 2022.

77. The Painting remains in the wrongful possession of the Guggenheim.

**FIRST CAUSE OF ACTION**  
**(For Replevin)**

78. Plaintiffs repeat and reallege all of the preceding paragraphs as if set forth fully herein.

79. Plaintiffs are the rightful owners of the Painting and are entitled to recover sole and immediate possession thereof.

80. Defendant never acquired ownership of the Painting but holds it only for the benefit of Adler and his successors in interest, including Plaintiffs.

81. Defendant has unlawfully withheld the Painting from Plaintiffs.

82. Plaintiffs demanded the return of the Painting and Defendant has failed and refused to deliver the Painting to Plaintiffs.

83. The Painting is a unique and irreplaceable art object.

84. Plaintiffs have no adequate remedy at law.

85. By virtue of the foregoing, Plaintiffs are entitled to the immediate return of the Painting.

**SECOND CAUSE OF ACTION**  
**(For Conversion)**

86. Plaintiffs repeat and reallege all of the preceding paragraphs as if set forth fully herein.

87. Plaintiffs are the rightful owners of the Painting and are entitled to recover sole and immediate possession thereof.

88. Defendant never acquired ownership of the Painting but holds it only for the benefit of Adler and his successors in interest, including Plaintiffs.

89. Plaintiffs demanded the return of the Painting and Defendant has failed and refused to deliver the Painting to Plaintiffs.

90. Defendant converted and appropriated the Painting for its own use in complete disregard and derogation of the Plaintiffs' rights, title and interest to the Painting.

91. As a direct result of the aforementioned wrongful actions, Plaintiffs have suffered damages in an amount to be determined at trial, but estimated to be \$100-200 million.

**THIRD CAUSE OF ACTION**  
**(For Unjust Enrichment)**

92. Plaintiffs repeat and reallege all of the preceding paragraphs as if set forth fully herein.

93. Plaintiffs are the rightful owners of the Painting.

94. Defendant accepted the Painting in 1978 as a gift.

95. Defendant possesses the Painting and, therefore, receives a benefit at Plaintiffs' expense so long as the Painting remains with Defendant.

96. Defendant possesses the Painting in complete disregard and derogation of the Plaintiffs' rights, title and interest in and to the Painting.

97. It is inequitable and against good conscience for Defendant to continue to benefit from retention of the Painting without payment.

98. The Painting is a unique and irreplaceable art object.

99. Plaintiffs have no adequate remedy at law.

100. Plaintiffs are entitled to restitution, obligating Defendant to return the Painting or compensate Plaintiffs for Plaintiffs' interest in the Painting in an amount to be determined at trial, but estimated to be \$100-200 million.

**FOURTH CAUSE OF ACTION**  
**(For Declaratory Relief)**

101. Plaintiffs repeat and reallege all of the preceding paragraphs as if set fully herein.

102. Plaintiffs are the rightful owners of the Painting and entitled to sole and immediate possession thereof.

103. Defendant does not have good title to the Painting.

104. Defendant's express claim of title to and or right to possess the Painting creates a justiciable controversy with Plaintiffs over the ownership of the Painting.

105. Plaintiffs are entitled to a judgment declaring that all right, title and interest in and to the Painting is vested in Plaintiffs, and Defendant has no right, title or interest in and to the Painting.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request judgment in their favor and against Defendant as follows:

a. On their First Cause of Action, directing that Defendant immediately deliver the Painting to Plaintiffs;

b. On their Second Cause of Action, awarding Plaintiffs damages for conversion in an amount to be determined at trial, but estimated to be \$100-200 million;

c. On their Third Cause of Action, declaring that Plaintiffs are entitled to restitution, and directing that Defendant return the Painting to Plaintiffs or, in the alternative, that Defendant compensate Plaintiffs' interest in the Painting in an amount to be determined at trial, but estimated to be \$100-200 million

d. On their Fourth Cause of Action, awarding a declaratory judgment that all right, title and interest in and to the Painting is vested in Plaintiffs and that Defendant has no right, title or interest in and to the Painting;

e. Awarding attorneys' fees, costs, and disbursements to the extent permitted by law;

f. Awarding pre- and post-judgment interest as provided by law; and

g. Awarding all such further relief as the Court deems just and proper.

Dated: New York, New York  
January 20, 2023

Respectfully submitted,

KAYE SPIEGLER PLLC

By: /s/ Lawrence M. Kaye

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