

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

)	
)	
JULIUS H. SCHOEPS, BRITT-MARIE)	
ENHOERNING, and FLORENCE VON)	
KESSELSTATT,)	Civ. Action No.
)	
Plaintiffs,)	
)	JURY TRIAL DEMANDED
v.)	
)	
SOMPO HOLDINGS, INC., SOMPO)	
INTERNATIONAL HOLDINGS LTD.,)	
SOMPO FINE ART FOUNDATION, and)	
SOMPO MUSEUM OF ART,)	
)	
)	
Defendants.)	
)	
)	

COMPLAINT FOR RESTITUTION AND UNJUST ENRICHMENT

Now come Plaintiffs Julius H. Schoeps (hereinafter “Schoeps”), Britt-Marie Enhoerning (hereinafter “Enhoerning”), and Florence von Kesselstatt (hereinafter “Kesselstatt”) (together, “Plaintiffs”), by their attorneys, K&L Gates LLP, for their Complaint against Defendants Sompo Holdings, Inc. (hereinafter “Sompo Holdings”), Sompo International Holdings Ltd. (hereinafter “Sompo International”), Sompo Fine Art Foundation, and Sompo Museum of Art (together “Defendants”), and herein allege upon knowledge as to their own acts, and upon information and belief as to the acts of others:

I. INTRODUCTION AND OVERVIEW

Nature of the Action and Summary of Claims

1. By this action the heirs of the late Berlin Jewish banker and prominent Nazi victim Paul von Mendelssohn-Bartholdy (hereinafter “Mendelssohn-Bartholdy” or “Paul”) seek to recover the iconic painting *Sunflowers* (hereinafter the “Painting”) by the legendary artist Vincent van Gogh. Mendelssohn-Bartholdy relinquished the Painting in Berlin in 1934 as one of many grave consequences of the racially exclusionary Nazi policies and concomitant coercion calculated to evict Jews from the economy and society of Germany. These policies violated – paradigmatically – the modern international law of human rights and led ultimately to genocide. Sompo Holding’s corporate predecessor – the Yasuda Fire and Marine Insurance Company (hereinafter “Yasuda”) – acquired *Sunflowers* at auction in 1987 in reckless disregard of the Painting’s provenance (ownership history), including Mendelssohn-Bartholdy’s forced sale of the Painting in Nazi Germany in 1934. In 2000, Yasuda related that it was “deeply concerned” that *Sunflowers* was a casualty of Nazi policies. Yet despite its extensive resources and art world expertise, Yasuda continued to evade investigating the background of the Painting for fear of confirming the truth about its Nazi history. Instead – and since then – Defendants have commercially exploited as a corporate emblem what they long have all but **known** was a Nazi-tainted artwork. (This Complaint uses the terms “know,” “knowledge” and their derivatives to mean, alternatively, knowledge in fact or reckless indifference sufficient to supply constructive notice under relevant Illinois and U.S. law.)

2. This action also seeks to reclaim damages for the unjust enrichment that Defendants wrongfully have reaped from capitalizing upon *Sunflowers* for many years while both **knowing** (either in fact or by reckless indifference) that the Painting is a casualty of Nazi policies and **falsely misrepresenting** that it is not.

3. A U.S. District Court judge already has validated the basis for the Heirs' claims to recover *Sunflowers*, including that Mendelssohn-Bartholdy forfeited the Painting as a consequence of Nazi policies and coercion. In *Schoeps v. Museum of Modern Art*, 594 F.Supp.2d 461, 466 (S.D.N.Y. 2009), U.S. District Judge Jed S. Rakoff, U.S.D.J., affirmed the *bona fides* of the Heirs' claim to recover two other artworks that Mendelssohn-Bartholdy surrendered as a consequence of Nazi persecution by denying the defendant museums' motion for summary judgment in that case. The court declared that evidence confirmed Mendelssohn-Bartholdy would not have transferred any of his paintings but for Nazi policies and coercion:

Claimants have adduced competent evidence that Paul never intended to transfer *any of his paintings* and that he was forced to transfer them only because of threats and economic pressures by the Nazi government. Summary judgment is therefore not appropriate.

(Emphasis supplied.) A copy of this opinion is attached as **Exhibit 1**.

4. When Christie's auction house in London offered *Sunflowers* for sale in March 1987, Yasuda resolved to buy the Painting regardless of its price because *Sunflowers* presented Yasuda with a singular and non-recurring opportunity to burnish its corporate image with the unique luster of both the iconic Painting and its gifted artist. So committed, Yasuda recklessly – if not purposefully – ignored the provenance of *Sunflowers* that Christie's published, which related that the famous Jewish Berlin banker and prominent Nazi victim Paul von Mendelssohn-Bartholdy sold the Painting in Berlin in 1934 – at a time when notorious Nazi policies were targeting and dispossessing elite Jewish bankers and businessmen like Mendelssohn-Bartholdy and wreaking havoc upon Germany's Jewish population. Driven to buying *Sunflowers* *regardless* of cost, Yasuda paid a record hammer price of nearly \$40 million dollars for the Painting. But Yasuda immediately confided to a Christie's official that based upon the unprecedented international media attention and

fanfare attending the auction, Yasuda realized in public relations value an amount four times greater, or approximately \$160 million dollars.

5. In 2000, Yasuda confided to the Art Institute of Chicago (AIC) and the van Gogh Museum in Amsterdam that it was “deeply concerned” that the Painting was a casualty of Nazi policies, and that it knew little more about the Painting than what the Christies’ auction provenance revealed. (**Exhibit 2.**) But despite extensive resources and art world expertise, Yasuda continued to shirk investigating the Painting for fear of that it would confirm that systematic Nazi policies and concomitant coercion in paradigmatic violation of the international law of human rights compelled Mendelssohn-Bartholdy to surrender *Sunflowers* in 1934 Berlin. Instead – upon information and belief – AIC, with Yasuda’s knowledge and express approval, filed with the U.S. Department of State a false report *concealing* the Painting’s Nazi taint. This deception enabled Yasuda to import the Painting into the U.S. so that Yasuda could commercially exploit it at a major van Gogh exhibition that AIC was hosting in Chicago without fear that U.S. law enforcement authorities would seize the Painting as Nazi contraband.

6. Yasuda and its corporate successor Sampo Holdings since have capitalized upon the Painting to a maximum extent, with Sampo Holdings consciously making its corporate identity coextensive and synonymous with *Sunflowers*. (*See Exhibit 3.*) Sampo Holdings wrongfully has employed the Painting to reap billions of dollars of unjust enrichment through a sophisticated branding strategy based upon psychological archetypes. But by knowingly and fraudulently exploiting a Nazi-tainted painting in the U.S. for commercial gain, Sampo Holdings has violated multiple U.S. domestic and foreign policies. These policies include seeking to resolve claims for Nazi- era artworks openly, honestly, fairly, and with access to all relevant documents and evidence, and without litigation if possible, as well as policies protecting the U.S. insurance market from

commercial fraud and against unfair competition and unfair or deceptive acts or practices in or affecting commerce, as provided by 15 U.S.C. § 45. Moreover, the extensive misconduct of Sompo Holdings and Sompo International concerning the Painting also violates federal criminal proscriptions such as mail fraud (18 U.S.C. § 1341) and wire fraud (18 U.S.C. § 1343), as – upon information and belief – those companies employ both the U.S. mails and wires to operate in the U.S. and to further their fraudulent scheme concerning the Painting.

7. As a casualty of Nazi policies the Painting is impressed with a discrete federal identity and constitutes exclusively federal subject matter, in that it implicates U.S. foreign policy and the related ability to address war-related crimes. The Supreme Court has made clear that when the subject matter of an equitable claim – such as the claims of the Heirs to recover the Painting and for unjust enrichment – affects federal interests, courts assessing equitable relief consider relevant federal policies as well as how the conduct of the parties affects the public interest. *See, e.g. Precision Manufacturing Mfg. Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806, 815 (1945). In sustaining or denying equitable claims under these circumstances, courts protect the public interest. *Ibid* Accordingly, the equitable claims of the Heirs to recover the Painting and for unjust enrichment make relevant Sompo Holding’s extensive wrongdoing in commercially and fraudulently exploiting the Painting in Illinois – and deceiving prospective Illinois insurance consumers that the Painting bears no Nazi taint or otherwise is a casualty of international human rights violations – and throughout the U.S. This misconduct impairs multiple key federal and Illinois policies as well as the public interest.

8. By expressly identifying its corporate image with *Sunflowers* so that the two have become – as Sompo Holdings exudes – “synonymous” in the minds of its many stakeholders and

members of the public, Sompo Holdings has invited special scrutiny into the Nazi-era background of the Painting and how Sompo Holdings has mishandled *Sunflowers* from inception.

9. Finally, Sompo Holdings has made a mockery of its vaunted public commitments to behaving ethically, honestly, and transparently and to corporate social responsibility and protecting international human rights as a basis for inviting the reliance and trust of its stakeholders, prospective customers, and the public.

German Inheritance Law

10. Paul von Mendelssohn-Bartholdy was married to Elsa von Mendelssohn-Bartholdy (hereinafter “Elsa”) from 1927 to his death on May 10, 1935. At the time of his death, Mendelssohn-Bartholdy had four living sisters: Kathe Wach; Charlotte Hallin; Enole von Schwerin; and Marie Busch.

11. On February 8, 1935 – about three months before his death – Mendelssohn-Bartholdy and his non-Jewish wife, Elsa, executed a Contract of Inheritance (hereinafter the “COI”), which under German law is an alternative to a will. Under this contract, Paul gave Elsa a life estate in his property, with a reversionary interest to his four sisters or their heirs. In other words, at the time of Elsa’s death, Paul’s four sisters (or their heirs) would become the residuary owners of Paul’s property and all rights related thereto.

12. Under German law, rights vest immediately upon the death of the decedent. Accordingly, an heir takes the place of the decedent immediately upon death. If there is more than one heir, then a “community of heirs” takes the place of the decedent jointly and severally. The heir or “community of heirs” assumes the decedent’s obligations and takes over his or her assets. Under German law – unlike U.S. law – there is no legal “estate,” and no “administrator” or “executor” is appointed by statute since rights vest immediately upon the decedent’s death.

13. Paul died on May 10, 1935. Elsa's rights to a "life estate" vested immediately at the time of Paul's death. Elsa died in 1986. Since all four of Paul's sisters predeceased Elsa, the heirs of Paul's four sisters immediately became the owners of the residuary rights to Paul's estate.

14. Elsa left a will providing that her inheritors were her daughter, Florence von Kesselstatt (hereinafter "Florence" or "Florence von Kesselstatt"), and her niece Edelgard von Lavergne-Peguilhen (hereinafter "Edelgard"). Edelgard died in 2014 and bequeathed her estate to Florence and her brother, Hans-Victor von Peguilhen.

15. This action is brought on behalf of all of the living heirs through descent and relevant law of Paul von Mendelssohn-Bartholdy's four sisters (hereinafter "Mendelssohn heirs") and all of Elsa's legal living heirs (hereinafter "Elsa's heirs") (together, the "Heirs") through descent and relevant law, as described immediately below.

II. THE PARTIES

16. Plaintiff Professor Julius H. Schoeps is a citizen of Germany residing in Berlin, Germany. He is the director of the Moses Mendelssohn Center for European-Jewish Studies at the University of Potsdam in Potsdam, Germany. Schoeps is a professor *emeritus* and one of the founders of the University of Potsdam. Schoeps is Mendelssohn-Bartholdy's great-nephew and is one of the Mendelssohn heirs. As such, Schoeps is duly qualified under Illinois law to bring this action to demand restitution of the Painting to the Mendelssohn heirs, and as such is their agent and representative in this proceeding. All of the Mendelssohn heirs have agreed to plaintiff Schoeps acting as their agent and representative in this matter.

17. Plaintiff Britt Marie Enhoerning is a U.S. citizen and resident of New York State as well as a citizen and resident of Sweden. She is Mendelssohn-Bartholdy's grand-niece and is one of the Mendelssohn heirs. Plaintiff Enhoerning is duly qualified under Illinois law to bring

this action to demand restitution of the Painting to the Mendelssohn heirs, and as such is their agent and representative in this proceeding. All of the Mendelssohn heirs have agreed to plaintiff Enhoerning acting as their agent and representative in this matter.

18. Plaintiff Florence von Kesselstatt is an individual residing in Munich, Germany. She is Elsa's daughter. She and Hans-Victor von Lavergne are Elsa's heirs. Plaintiff Kesselstatt is duly qualified under Illinois law to bring this action to demand restitution of the Painting to Elsa's heirs, and as such is their agent and representative in this proceeding. Hans-Victor von Lavergne has agreed that plaintiff Kesselstatt may act as the agent and representative for Elsa's heirs in this matter.

19. Plaintiff Kesselstatt is a party to this action due to a historical ambiguity resulting from Nazi persecution that may – under a possible contingency – give her legal rights to reclaim the Painting. The Contract of Inheritance related that Mendelssohn-Bartholdy had given his “paintings” to Elsa at their wedding in 1927. Upon information and belief, however, Mendelssohn-Bartholdy did not give his art collection or the Painting to Elsa when they married in 1927. Rather, Mendelssohn-Bartholdy so declared in the Contract of Inheritance to protect his art collection from Nazi predation by conveying the impression that his wife Elsa – an “Aryan” – had owned his art collection since before the Nazis took power. Moreover, even if this recital created an *inter vivos* gift of Mendelssohn-Bartholdy's art collection to Elsa as of February 8, 1935, Mendelssohn-Bartholdy did not intend to transfer to her any artworks – like the Painting – that he had already sold or had consigned in his name as of the date of the Contract of Inheritance. Therefore, recoverable artworks like the Painting that Mendelssohn-Bartholdy lost in the Nazi period would have become “choses in action” in the life estate comprising Mendelssohn-Bartholdy's property, and to which Elsa succeeded after Mendelssohn-Bartholdy

died in May 1935. These choses in action – reflecting the right to recover artworks that Mendelssohn-Bartholdy forfeited during the Nazi-era – then became part of Mendelssohn-Bartholdy's residual estate to which the heirs of Mendelssohn-Bartholdy's sisters succeeded when Elsa died in 1986.

20. In the alternative, if Mendelssohn-Bartholdy's Contract of Inheritance effectively transferred his art collection to Elsa as of 1927 or as of February 8, 1935 (the date of the contract), then the owners of the artworks could be Elsa's heirs.

21. The Mendelssohn heirs and Elsa's heirs are aware of their competing ownership claims to *Sunflowers*, but have decided to pursue this action jointly. To this end, they have waived any and all conflicts of interest among them to recover artworks lost as a result of Nazi persecution, as was noted and approved in *Schoeps v. Museum of Modern Art*, 594 F. Supp. 2d 461, 463 n. 1 (S.D.N.Y. 2009) (in a case similar to this matter brought by the Mendelssohn heirs and Elsa's heirs, the court found that “Claimants have entered into a side-agreement waiving any conflicts and agreeing to divide any recovery.”)

22. Defendant Sompo Holdings is the parent company of multiple subsidiary companies that operate primarily in the insurance industry, both in Japan and internationally. These include defendant Sompo International, as well as Sompo Japan, Sompo Himawari Life, Sompo Japan DC Securities, Sompo Risk Management, Fresh House, Sompo Health Support, My Insurance, Saison Insurance, Sompo Asset Management, Prime Assistance, Sompo Care, and Sompo Warranty, Inc.

23. Sompo Holdings was established on April 1, 2010, and is the lineal successor to the Yasuda Fire and Marine Insurance Company (Yasuda), which was founded in 1888. “Sompo has an extensive global footprint with nearly 80,000 employees in 228 cities in 30 countries and

its core business encompasses one of the largest property and casualty insurance groups in the Japanese domestic market.” (See Sompo International website, “About Us,” available at <https://www.sompo-intl.com/about-us/>.)

24. Sompo Holdings’ declared objective is to create a global “Theme Park” for wellness by cultivating a “new level of trust” internationally. (See Sompo Holdings website, “Brand Story,” available at <https://www.sompo-hd.com/en/company/brand/>.)

25. Sompo Holdings professes a close allegiance with the nation of Japan and seeks to connect the world’s people with a “New Level of Trust.” Sompo Holdings declares that its unique brand mark, “Global Ring,” symbolizes the Sompo Group, and “serves as a core element of its brand communication.” (See Sompo Holdings website, “The Golden Ring,” available at <https://www.sompo-hd.com/en/company/brand/>.) Sompo Holdings further maintains that “the red sphere symbolizes perfect harmony, while simultaneously representing *our nation of Japan.*” *Id.* (Emphasis supplied.) It additionally relates that “[t]he overlaid platinum ring is a leader guiding towards our future, representing Sompo Group’s future in connecting with people of the world to create a *‘new level of trust.’*” *Id.* (Emphasis supplied.)

26. Kengo Sakurada is the CEO of Sompo Holdings, and is foremost responsible for protecting Sompo’s discrete brand. Mr. Sakurada is a prominent international business leader, and proactive in the World Economic Forum. Since 2019, Mr. Sakurada has been the Chair of the Japan Association of Corporate Executives (Keizai Doyukai), and is the author of the recent book *Corporate Bushido: The Code to Redefine Business for a Sustainable Future*. This book proposes to “recalibrate” international capitalism based upon the ancient warrior code of Japan.

27. In 1962, Yasuda established Yasuda America in New York primarily to service its Japanese clients in the U.S., and by 1999 Yasuda America had offices in several major U.S. cities - New York, Louisville, Los Angeles, Atlanta, and Nashville.

28. In 1986, Yasuda established Yasuda Asset Management in Japan, a firm specializing in asset and risk management, and later expanded its commercial asset and risk management services.

29. Defendant Sompo International is a Bermuda corporation and is a wholly-owned subsidiary of Sompo Holdings with its principal place of business located at Suite 784 48 Par-la-ville Road, Hamilton, HM 11, Bermuda. Sompo International has an office at 303 West Madison, Suite 1800, Chicago, Illinois 60606. Sompo International is a global specialty provider of property and casualty insurance and reinsurance, and was established in March 2017 as the result of the acquisition of Endurance Specialty Holdings Ltd. by Sompo Holdings. *See* Sompo International website, “About Us,” available at <https://www.sompo-intl.com/about-us/>. Sompo International is the corporate vehicle by which Sompo operates in the U.S. and internationally. The website of Sompo International states that:

Sompo’s commercial property, casualty and specialty insurance and reinsurance business outside of Japan has been unified under Sompo International’s Commercial P&C platform. Sompo International’s Retail platform, outside of Japan, continues to grow as a part of our on-going transformation in 2020. *Id.*

30. Defendant Sompo International operates in North America, Europe, and Asia in the following countries or territories: Bermuda, Germany, Italy, Luxembourg, Mexico, Luxembourg, Singapore, Spain, United Kingdom and the United States. Sompo International website, available at <https://www.sompo-intl.com/locastions/>. As discussed, *infra*, eight of these countries or territories – Bermuda, Germany, Italy, Luxembourg, Spain, Switzerland , United

Kingdom and the United States – are signatories to, and stakeholders in, the Terezin Declaration of 2009 (the “Terezin Declaration” or “Declaration”). The Declaration commits each stakeholder government – to the extent practicable – to employ its discrete legal system in a manner that facilitates the restitution of Nazi-era artworks such as the Painting, and to consider any laws or legal principles that might obstruct this goal.

31. Sompo International targets the lucrative U.S. insurance market in particular, and currently has offices in many U.S. cities including Chicago, New York, Los Angeles, San Francisco, Seattle, Atlanta, Nashville, St. Louis, Dallas, Charlotte, and Louisville. As noted, in 2001, Sompo brought the Painting to Chicago to commercially exploit in a prestigious van Gogh exhibition between September 2001 and January 2002 sponsored by the AIC after approving a false report that AIC filed with the United States Department of State concealing the Painting’s Nazi taint. The Defendants’ misconduct in conjunction with AIC in this regard violated in Illinois both the National Stolen Property Act, 18 U.S. C. § 2314 (proscribing transporting stolen or converted property worth \$5000 or more in international or interstate commerce), as well as 18 U.S.C. § 1001 (prohibiting filing a false report with a federal agency concerning subject matter within its jurisdiction). Moreover, the display of the Painting in Chicago afforded the Defendants special notoriety as well as public relations and commercial benefits in Illinois, which the Defendants continue to augment by employing their websites in Illinois as vehicles for promoting their fraudulent marketing scheme.

32. Sompo Holdings not only operates internationally – including in Illinois – through Sompo International, but Sompo Holdings and Sompo International operate in effect as one entity. In fact, Sompo International has admitted that it adheres to the concept of an encompassing “One Sompo,” as discussed *infra*.

33. Sampo International boasts on its website that the full financial power of Sampo Holdings supports its insureds: “*Sampo International is backed by the financial strength of Sampo Holdings, Inc., which holds more than \$100 billion in total assets.*” See Exhibit 4. (Emphasis supplied.)

34. Sampo Holdings and Sampo International have reciprocal website links, so that the two entities are intertwined in multiple ways. (Sampo International provides a link to Sampo Holdings at, for example, <https://www.sampo-intl.com/about-us/>; an example of Sampo Holdings link to Sampo International is at https://www.sampo-hd.com/en/group/group_list/#09.)

35. In addition, Sampo Holdings and Sampo International share interlocking officers, in that many of the top-level officials at Sampo International also have important positions at Sampo. For example: (1) James Shea is the CEO and Executive Chairman of the Board of Directors of Sampo International; he also is the "Chief Executive Officer of Overseas Insurance and Reinsurance Business" of Sampo Holdings; (2) Mikio Okumura is Non-Executive Director, Sampo International; he also is Group Chief Operating Officer, President and Representative Executive Officer, of Sampo Holdings, Inc.; (3) Yuji Kawauchi is a “Non-Executive Director of Sampo International”; Kawauchi also is listed as “Executive Vice President, General Manager, Global Business Planning Department” for Sampo Holdings; (4) Kausuyuki Tajiri is the Chief Executive Officer of Retail Insurance & Chairman of Retail Executive Committee for Sampo International; Tajiri also is an Executive Vice-President for Sampo Holdings.

36. Sampo Holdings and Sampo International operate, in effect, as one company. In fact, in July 2022, Sampo International opened an office in Tokyo. Kenneth Reilly was appointed to lead that office. See <https://www.sampo-intl.com/media-center/sampo-international-announces-the-establishment-of-its-tokyo-office-ken-reilly-to-join-as-head-of-the->

office/. Reilly has positions at both Sampo Holdings (Executive Vice President, General Manager, Global Business Department) and Sampo International (Executive Vice President, Head of the new Sampo International Tokyo office, effective July 1, 2022). In fact, Sampo International relates that Reilly will report to “both Mikio Okumura, Chief Operating Officer, Sampo Holdings and James Shea, Chairman and CEO, Sampo International.” As noted above – and like Mr. Reilly – both Mr. Okumura and Mr. Shea also hold important positions at both Sampo Holdings and Sampo International.

37. In an April 8, 2022 Press Release, Sampo International CEO James Shea – who also is Chief Executive Officer of the Overseas Insurance and Reinsurance Business of Sampo Holdings – stated: “Establishing our new Sampo International office in Tokyo is a big step forward towards increasing collaboration and education amongst the employees of Sampo International and the Sampo Insurance companies in Japan Ken [Reilly] and his team will focus on building ‘One Sampo’” (Emphasis supplied.)

38. On Monday October 31, 2022 Sampo Holdings sponsored a full-page paid advertisement in the **Wall Street Journal** (Page A18) with the caption “**Accelerating Growth in a Time of Great Change**” featuring a quotation from Mr. Mikio Okumura, Group COO/Director/President and Representative Executive Officer for Sampo Holdings, Inc., declaring that “[w]e aim to become the most unique insurance group in the world.” The advertisement asserts that Sampo Holdings has had special success in its overseas markets, which presumably include the U.S: “[g]rowth in our overseas insurance and reinsurance business has been particularly remarkable.” Importantly, the advertisement is for Sampo Holdings in the United States, with the intent to direct consumers to the Sampo Holdings website. On this website, in less than one minute a prospective Illinois insurance consumer or investor

investigating Sompo Holdings as a prospect for buying insurance or investing would find at the top of the first page a striking image of Van Gogh's *Sunflowers* with the accompanying notation "*True Feeling and an Enriched Heart for People and Society Through Art and Culture*" (emphasis supplied), and conveying necessarily that the Painting fosters these sentiments.

(Exhibit 5).

39. The Sompo Holdings website informs prospective Illinois insurance consumers that Sompo Holdings operates internationally through Sompo International. Accordingly, Sompo Holdings directs Illinois insurance consumers to Sompo International – and its U.S. offices including its Chicago, Illinois office – to enable them to do business with Sompo Holdings and acquire insurance.

40. In light of the foregoing, it is clear that Sompo Holdings operates internationally through Sompo International, and that the two corporations have a unity of purpose, intertwined personnel, and act in concert on many levels as "One Sompo."

41. Defendant Sompo Fine Art Foundation (the "Foundation") operates the defendant Sompo Museum of Art in Tokyo, Japan. Upon information and belief, Sompo Holdings exercises dominion and exclusive control over the Foundation. Upon information and belief, the Foundation collaborates with Sompo Holdings and Sompo International in commercially exploiting the Painting.

42. Defendant Sompo Museum of Art (the "Museum") is located in Tokyo, Japan. Upon information and belief, Sompo Holdings exercises dominion and exclusive control over the Sompo Museum of Art. The Museum is operated by the Foundation. Upon information and belief, the Museum collaborates with Sompo Holdings and Sompo International in commercially exploiting the Painting.

Sompo Holdings Professes Risk Management and Due Diligence Expertise

43. Sompo Holdings boasts an assiduous enterprise risk management (ERM) protocol. Sompo Holdings declares that its Enterprise Risk Management policies seek to enhance corporate value by carefully calibrating relevant risk: “[o]ur ERM framework is a management approach that aims to maximize corporate value by maintaining strong financial soundness while balancing capital, risk, and return.” Sompo Holdings website, “Enterprise Risk Management,” available at <https://www.sompo-hd.com/en/company/risk/>.

44. Sompo Holdings denotes further that its ERM strategy “consists of Risk Appetite” principles, and that Sompo Holdings has adopted a moderate approach to risk management. Sompo Holdings relates that through its ERM principles it hopes to achieve an adjusted consolidated return on investment (ROE) of at least 10% by fiscal year 2023. *Id.*

45. Through Sompo Risk Management, Sompo Holdings offers a broad range of commercial risk management and due diligence services to other businesses. Services include Risk Management, Due Diligence, Quantitative Risk Evaluation, Corporate Social Responsibility and Crisis Management.

Sompo Holdings Proclaims an Overarching Commitment to Human Rights and to Human Rights Due Diligence

46. Sompo Holdings professes to be committed to protecting human rights: “[w]e will respect the basic human rights of all stakeholders.” Sompo Holdings website, “Human Rights.” Sompo Holdings website, available at <https://www.sompo-japan.co.jp/english/csr/humanrights/>.

47. Moreover, Sompo Holdings punctuates that respect for human rights represents an essential cornerstone of business in the 21st century:

Respect of Human Rights

In the 21st century, often referred to as the “century of human rights,” it is of vital importance to actively raise awareness of human rights at every opportunity in order to create a society in which civil liberties are universally respected. The Sompo Holdings Group advocates respect for human rights in the Groups CSR vision and provides CSR training (including human rights) to all of its employees. *Id.*

Sompo website, available at https://www.sompo-hd.com/~media/hd/en/files/csr/communications/pdf/2013/e_report2013_8.pdf.

48. Sompo Holdings further maintains that “[i]n the core business, Sompo Holdings Group develops and offers products and services that are instrumental in safeguarding human rights.” *Id.*

49. Sompo Holdings declared that in 2019 it amended its human rights policy to include human rights due diligence: “[i]n June 2019 we amended the policy to clearly commit our human rights expectations/demands for all suppliers and business partners and **human rights due diligence**.” (Emphasis supplied.) Sompo Holdings website, “Respect for Human Dignity and Rights” available at <https://www.sompo-hd.com/en/csr/action/employee/content4/>.

50. Sompo Holdings asserts that it has established a *Human Rights Risk Identification and Mitigation* protocol, as well as *Human Rights Risk Identification and Evaluation* procedures. Sompo Holdings relates further that “[w]e identify potential impacts and risks related to human rights for all businesses ...and business processes through the entire value chain.” *Id.* Sompo Holdings claims that in identifying human rights risks it employs standard international guidelines.

51. Sompo Holdings also reports that in fiscal year 2021, it investigated potential human rights issues affecting its business activities: “[i]n FY 2021 we carried out a risk evaluation on human rights” based upon the two axes “Human rights impact (severity, number affected, and likelihood of remediation)” and “Connection to company.” *Id.*

52. Sompo Holdings also states that it has established the “Human Rights Promotion Headquarters.” *Id.*

Sompo Holdings Claims to Be Committed to Corporate Social Responsibility (CSR) in Multiple Discrete Areas

53. Sompo Holdings declares that it is committed to “Corporate Social Responsibility” in several areas, including the Environment, Social Contribution, Art & Culture, Diversity & Inclusion and Human Rights. Sompo Holdings proclaims an intention “To Become a CSR Leading Company,” and has established a “Group CSR promotion framework” to help it achieve this goal. Sompo Holdings website, “Group Corporate Social Responsibility,” formerly available at <https://www.sompo-japan.co.jp/english/csr/management/>.

54. Sompo Holdings says further that it “take(s) a leading role in a wide variety of international and domestic issues.” Sompo Holdings website, “Declarations to Society and Participation in CSR Initiatives,” available at <https://www.sompo-hd.com/en/csr/engagements/declaration/>.

Sompo International Purports to Place “Promise. Trust. Protect” at the Center of All that It Does and to Operate With the Highest Ethical Standards

55. Sompo International explains that it is the corporate vehicle by which Sompo Holdings’ “commercial property, casualty and specialty insurance and reinsurance business outside of Japan” have been unified. Sompo International website, “About Us” available at <https://www.sompo-intl.com/about-us/>. Sompo International was established in March 2017 as a result of Sompo Holdings acquisition of Endurance Specialty Holdings Ltd.

56. Under its name “Sompo International” on its website, Sompo International includes the notation “**Promise. Trust. Protect. At the center of everything that we do.**” (Emphasis in original.) Sompo International website, available at <https://www.sompo-intl.com/>.

57. Sampo International proclaims that its brand is founded upon ethics and integrity, as well as a promise in this regard. Its brand statement relates:

OUR BRAND

In Today's World, What Do We Stand For?

Ethics and integrity are the foundation of delivering our commitment to you. We believe that core values drive success, and when relationships are held in the highest regard, there is nothing that cannot be accomplished.

At Sampo International, our ring is more than a logo, it is a symbol of our *promise*. (Emphasis supplied.) Sampo International website, "Our Brand," available at <https://www.sampo-intl.com/media-center/our-brand/>.

In 2020, Sampo Holdings Opened a New Museum in Tokyo that Prominently Connected through *Architecture* Its Corporate Identity and Discrete Brand with *Sunflowers* and van Gogh

58. In 2020, Sampo Holdings completed a new six story museum adjacent to its skyscraper office building in downtown Tokyo to underscore its public identity as congruent with *Sunflowers* and fine art and to display *Sunflowers* more prominently. That the Museum is nearly adjacent to Sampo Holdings' office building *reinforces through architecture* Sampo Holdings' close association with *Sunflowers* and to the fine arts.

59. The Defendant Sampo Art Foundation operates the Sampo Museum of Art and promotes Sampo Holdings' association with art in Japan. The Foundation purports to collect and preserve paintings, sculptures, and other artworks, and makes them available to the general public. The seminal predecessor of the Foundation – the Yasuda Fire & Marine Insurance Art Foundation – was established in June 1976.

Sampo Holdings Invokes Social Media Extensively to Promote *Sunflowers* and to Convey Its Corporate Message

60. Sampo Holdings and its subsidiaries employ social media and the internet extensively to celebrate *Sunflowers* and to promote Sampo Holdings' discrete brand. Sampo

Holdings’ subsidiaries have an extensive presence on **Facebook, Instagram, Twitter, YouTube** as well as other internet “open” sources.

III. JURISDICTION & VENUE

The Illinois Long-Arm Statute Enables the Heirs to Assert Personal Jurisdiction Over the Defendants on Several Distinct Bases

61. The Illinois long arm statute – Ill. Comp. Stat. 5/2-209 (2016) – enables the Heirs to assert personal jurisdiction over both Somp Holdings and Somp International on several discrete grounds. This provision prescribes, *inter alia*, personal jurisdiction over a foreign defendant that transacts business in Illinois, commits a tort in Illinois, does business in Illinois and – alternatively and more expansively – upon any basis that the Due Process Clause of the Illinois and U.S. Constitutions permit.

Section 5/2-209 (2016) states, in pertinent part, as follows:

5/2-209. Acts submitting to jurisdiction- Process

Section 2 -209. Act submitting to jurisdiction--Process

- (a) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the **acts** herein enumerated, thereby submits such person...to the **jurisdiction** of the courts of this State as to any cause of action arising from the doing of any such **acts**:
- (1) The transaction of any business within this State;
 - (2) The commission of a tortious **act** within this State;
- ...
- (b) *A court may also exercise **jurisdiction** on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States. (Emphasis supplied)*

The Heirs Can Assert Personal Jurisdiction Over Somp Holdings and Somp International Under Section 209(c), which Permits Jurisdiction to the Maximum Extent that the U.S. and Illinois Constitutions Permit

62. The United States Supreme Court long has prescribed – and amplified understanding concerning – what the Due Process Clause requires for asserting personal

jurisdiction over a particular defendant in a given context. As the Court explained recently in *Ford Motor Company v. Montana Eighth Judicial District*, 141 S.Ct. 1017, 1021 (2021), “specific jurisdiction” – or obtaining jurisdiction over a defendants based upon their contacts with a particular forum in a specific instance rather than their permanent presence in the forum State – depends upon certain contacts that “often go by the name of ‘purposeful availment.’” *J. McIntyre Machinery Ltd. v. Nicastro*, 471 U.S. 462, 474 (1985). The Due Process clause contemplates that a defendant purposefully avail itself of the privilege of conducting activities within the forum State, and thereby invoke the benefits and protections of its laws. When a defendant does so, it submits to the judicial power of a state as to matters that connect it with the defendant’s activities in that state. The Court has emphasized – most importantly – that defendants must *reasonably foresee* that their conduct within a particular state may subject them to the jurisdiction of its courts. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471 (1985).

63. Corporations can effectuate the contacts with a forum State required for the exercise of personal jurisdiction through agents or subsidiaries. *Daimler v. Mercedes Benz*, 571 U.S. 117, 135 (2014). Consistent with the Due Process Clause, the activities of a corporate subsidiary properly can supply the basis for specific jurisdiction over the parent when the subsidiary is merely the corporate vehicle by which the parent conducts business in the forum State. *Central States, Southeast and Southwest Areas Pension Fund v. Reimer Express World Corporation*, 230 F.3d 934, 940 (7th Cir. 2000). Moreover, Illinois courts also have stressed the unfairness that otherwise would result were foreign companies allowed merely to create subsidiaries to conduct their business abroad and thereby to immunize themselves from liability in forum states. *See FAIP North America, Inc. v. Sistema S.R.L.* 20005 WL 3436398 (N.D. Ill. 2005) at 4 (citation omitted), underscoring the inequity that would ensue were a foreign

companies allowed to “reap the benefits and advantage of doing business while directly insulating themselves from lawsuits by using separate subsidiaries and distribution networks to implement their business activity.”

64. The minimum contacts that the Due Process Clause requires for asserting personal jurisdiction in a particular instance “focuses on ‘the relationship among the defendant, the forum, and the litigation.’” *See, e.g., Calder v. Jones* 465 U.S. 783, 788 (1983). (Citations omitted.)

65. Because the Due Process Clause focuses upon the *defendant’s* voluntary contacts and activities in a forum state, it does not require that a plaintiff initiate contacts with the forum state. *Keeton v. Hustler Magazine*, 465 U.S. 770, 779 (1984). Nor does the Due Process Clause require that a plaintiff suffer injury in the forum State. *Walden v. Fiore* 71 U.S. 277, 289 (2014). Nor does Due Process require that the activities of the defendant in the forum State that establish jurisdiction cause the plaintiff’s injury. *Ford Motor Company v. Montana Eighth Judicial District*, 141 S.Ct. 1017, 2016 (2021). The focus of Due Process is upon the activities of the defendant in the form.

66. In *Rogers v. Hobart* 996 F.3d 812 (7th Cir. 2021), the Seventh Circuit stated the Due Process requirements for asserting specific jurisdiction as follows:

In sum, specific jurisdiction requires that (1) the defendant has purposefully directed his activities at the forum state or purposefully availed himself of the privilege of conducting business in the state; (2) the alleged injury arises out of or relates to the defendant’s forum-related activities; and (3) the exercise of personal jurisdiction must comport with traditional notions of fair play and substantial justice.

The Heirs more than satisfy each of these requirements for asserting personal jurisdiction over Defendants regarding their claims to recover *Sunflowers* and for unjust enrichment.

Sompo Holdings and Sompo International Have Purposefully Directed Their Marketing Activities at Illinois and Purposefully Availed Themselves of the Privilege of Conducting Business in Illinois

67. Sompo Holdings and Sompo International both have purposefully directed their marketing activities at Illinois and availed themselves of the privilege of doing business in Illinois in several ways that are independently sufficient for establishing specific jurisdiction over them concerning the Heirs' claims to recover *Sunflowers* and for unjust enrichment.

68. First, in 2001 the corporate predecessor of Sompo Holdings and Sompo International, Yasuda – and for the purpose of commercially exploiting the Illinois and U.S. insurance markets and availing themselves of the privilege of conducting business in Illinois – brought *Sunflowers* to Chicago to display at a prominent international Van Gogh exhibition (Exhibition) that the AIC was sponsoring. Yasuda was then aware that *Sunflowers* was most likely a casualty of Nazi policies, and related to AIC that it was “deeply concerned” with this possibility. Despite extensive resources and art world expertise, Yasuda failed to investigate this likelihood. Moreover, past experience with U.S. art exhibitions had made Yasuda aware that U.S. law enforcement authorities might seize *Sunflowers* as Nazi contraband if Yasuda brought the Painting into the U.S. To obviate this possibility, AIC – with the knowledge and approval of Yasuda – filed a false report with the United States Department of State (the “State Department”) to conceal the Painting’s Nazi taint and to mislead the State Department into issuing a certificate of non-judicial seizure (the “Certificate”) that would enable Yasuda to display *Sunflowers* at the Exhibition without fear that it would be seized. Once Yasuda received the Certificate it brought the Painting to Chicago to commercially exploit. By so doing, however, Yasuda violated § 2314 of the National Stolen Property Act of 1934, 18 U.S.C. §§ 2311, *et seq.*, which proscribes transporting in interstate or foreign commerce property worth \$5,000 or more while knowing such property to be stolen, converted or taken by fraud. And by filing a false report with the

State Department Yasuda and AIC also violated 18 U.S.C. § 1001, which proscribes making a false report to a federal agency in a matter within the jurisdiction of such agency.

69. Once Yasuda received the certificate it brought the Painting to Chicago and displayed it at the Exhibition from on or about September 22, 2001 until January 13, 2002, thereby burnishing its corporate image with the notoriety and luster of *Sunflowers* and encouraging prospective Illinois and U.S. insurance consumers to identify Yasuda with the Painting.

70. Sompo Holdings and Sompo International have known about Yasuda's misconduct concerning the Painting. Upon information and belief – and according to the AIC – Sompo Holdings has a copy of the false report that Yasuda and AIC filed with the State Department to conceal the Nazi taint to the Painting and to mislead it into issuing the Certificate. Sompo Holdings and Sompo International have *ratified* Yasuda's wrongdoing by accepting the commercial and public relation benefits that Yasuda generated from displaying *Sunflowers* in Chicago. Sompo Holdings and Sompo International have continued to define their corporate identities as “synonymous” with the Painting while employing the Painting proactively to solicit prospective Illinois and U.S. insurance consumers.

71. By ratifying Yasuda's wrongdoing in Illinois concerning the Painting and continuing to conduct business in Illinois while employing the Painting for its commercial advantage, Sompo Holdings and Sompo International reasonably should expect that rightful owners of the Painting may hold them accountable in Illinois on judicial claims seeking to recover the Painting and for unjust enrichment.

72. Second, Sompo Holdings has cultivated the necessary contacts to establish purposeful availment by acknowledging that Sompo International is a mere vehicle through

which it conducts business in the U.S. and internationally. Illinois courts assert personal jurisdiction over parent corporations when their subsidiaries function as their mere corporate mechanisms for conducting the business of their parents. Sompo Holdings acknowledges that Sompo International is the corporate vehicle by which it conducts business outside of Japan:

Sompo's commercial property, casualty and specialty insurance and reinsurance business outside of Japan has been unified under Sompo International's Commercial P&C platform. Sompo International's Retail platform, outside of Japan, continues to grow as a part of our on-going transformation in 2020.

73. Third – and dispositively – Sompo Holdings has caused its wholly owned subsidiary, Sompo International, that expressly conducts the business of Sompo Holdings in the U.S., to represent that it is backed by the full financial weight of Sompo Holdings' 100 billion dollar of net assets. (*See Exhibit 4.*) Sompo International represents on its website that:

STRENGTH and SCALE

Sompo International is backed by the financial strength of Sompo Holdings, which holds more than 100 billion in total assets. With locations in key markets throughout the world including the UK, Europe, U.S. Bermuda and Asia Pacific, Sompo International's vision is to become a global top 10 insurance group.

Sompo International website, "Experienced Talent," available at <https://www.sompo-intl.com/careers/experienced-talent/>.

74. Below this notation Sompo International provides a report of its financial ratings as well as link to the website of Sompo Holdings with the notation to "Visit Sompo Holdings." These representations assure prospective Illinois insurance consumers that Sompo International is backed by the full financial resources of Sompo Holdings and confirm correspondingly that by this express commitment Sompo Holdings has directly entered the Illinois insurance market.

75. In this manner Sompo Holdings proactively employs its wholly owned subsidiary and corporate vehicle for conducting business in the U.S., Sompo International, to recruit business in the U.S. by inviting prospective Illinois insurance consumers to *rely* upon the financial resources and strength of Sompo Holdings and its corresponding capability to pay claims if necessary. This message also invites prospective Illinois insurance consumers to investigate Sompo Holdings to better understand and appreciate its discrete corporate identity and financial resources as the entity ultimately responsible for satisfying the insurance claims of Sompo International. Through this message alone, Sompo Holdings has directed its marketing activities at the Illinois insurance market and purposefully availed itself of the opportunity to solicit business in Illinois by inviting Illinois insurance consumers entertaining decisions to purchase insurance to rely upon its discrete corporate identity and resources.

76. Moreover, a prospective insurance consumer in Illinois considering the possibility of buying insurance from Sompo International necessarily – and in the exercise of reasonable care and due diligence – would consult Sompo Holdings’ website as invited to investigate the identity, character, corporate ethos, and financial strength of the company that ultimately stands behind a potential insurance contract with Sompo International. Sompo International’s representations and invitation for prospective clients to visit Sompo Holdings website all but ensure that any reasonably careful prospective Illinois insurance buyer would do so.

77. In addition, Sompo Holdings’ website employs *Sunflowers* strategically to fulfill two commercial objectives which are essential predicates to eliciting a decision to purchase a good or service. The first objective is to create a positive first impression of the company to encourage prospective consumers to entertain a further dialogue. The second essential objective is to engender in the minds and hearts of prospective clientele feelings of warmth, trust and

goodwill toward the company. Extensive marketing literature advises that companies must foster both impressions to maximize the likelihood that a prospective buyer will become a consumer or client.

78. Sampo Holdings employs *Sunflowers* prominently on its website to achieve both objectives. The *Sunflowers* image inherently exudes warmth and *positive feelings* and the message that Sampo Holdings includes with this image reinforces these sentiments: “True Feelings and an Enriched Heart for People and Society through Arts and Culture.”

79. The website of Sampo Holdings offers additional materials calculated to amplify and reinforce the positive first impression that it creates with *Sunflowers* and the accompanying statement. These include assuring prospective consumers that Sampo Holdings is committed to corporate social responsibility, protecting international human rights, and representing that a group-wide human rights investigation in 2021 confirmed that the activities of neither Sampo Holdings nor any of its subsidiaries were affected or afflicted with current or past violations of the international law of human rights. *These representations are false and fraudulent and purposefully calculated to deceive prospective Illinois insurance consumers.*

80. Third, the “Sampo One” corporate initiative expressly states that the Sampo companies are striving to become “one company” internationally, and to have its stakeholders, prospective consumers, and the general public view and rely upon them as such. Toward this objective Sampo Holdings and Sampo International have interlocking directorates and corporate officials. So rather than stressing that Sampo Holdings and Sampo International are separate corporate entities pursuing discrete agendas, Sampo Holdings *proactively encourages consumer expectations and reliance* that the companies operate as a single business entity.

81. Fourth, Sampo Holdings solicits business in Illinois and throughout the U.S. directly and in its capacity as Sampo Holdings, and refers Illinois and other prospective U.S. insurance consumers to its website where it informs them that its wholly owned subsidiary, Sampo International, is the corporate vehicle by which Sampo Holdings conducts its insurance business outside of Japan. In the October 31, 2022 edition of the *Wall Street Journal* at page A19, Sampo Holdings sponsored a full-page advertisement with the caption “**Accelerating Growth in a Time of Great Change**” and quoting Mr. Mikio Okumura, Group COO/Director/President and Representative Executive Officer Sampo Holdings, Inc., as stating that “[w]e aim to become the most unique insurance group in the world.” The advertisement relates that the Sampo group currently has achieved record profits, and that Sampo Holdings views the profitability of its overseas operations necessarily conducted by Sampo International as an integral and vital part of the group’s collective performance. The ad features a prominent and specially blocked quotation emphasizing his point: “Growth in *our* overseas insurance and reinsurance business has been particularly remarkable.” (Emphasis supplied.) Sampo International’s presence in 17 major U.S. cities no doubt accounts for a material portion of this success.

82. At the bottom of the page the ad provides a website address for Sampo Holdings. Once interested persons – including prospective Illinois insurance consumers – access the website of Sampo Holdings they encounter *Sunflowers* and the same narrative and materials that prospective clientele of Sampo International experience, as discussed above.

83. Fifth, Sampo Holdings employs the Painting to direct its marketing activities toward Illinois and to purposefully access the Illinois and U.S. insurance markets through a popular, sophisticated, and effective marketing strategy based upon “psychological archetypes,”

discussed comprehensively, *infra*, and known as “archetypal branding.” According to Margret Mark and Carol S. Pearson, who authored the seminal book on this subject, *The Hero and the Outlaw* (2001), archetypes represent personas, characters, forms, and feelings as well as other content of a collective nature that reside in the subconscious of every human being. The authors attribute the origin of archetypes to the psychological theorist Carl Jung. Mark and Pearson maintain that they have identified the 12 most popular archetypal identities commonly used in commercial branding and marketing, which include the *Artist/Creator*, the *Caregiver*, the *Hero*, the *Outlaw*, the *Sage*, the *Ruler*, and the *Jester*, among others. The authors assert that many leading companies employ archetypal branding strategies to gain powerful and enduring psychological traction with consumers by borrowing these archetypes from the collective subconscious and transferring them psychologically to commercial products or services. Mark and Pearson maintain that archetypal branding accounts for the success of some leading international companies over many decades.

84. Sompo Holdings borrows or “leverages” from *Sunflowers* both the *Artist/Creator* and *Caregiver* archetypes to create a confluent identity that putatively exercises the creative and visionary talents of a gifted artist for the betterment of mankind. In this regard Sompo Holdings’ corporate slogan “***Bringing Continuous Innovation for the Future of Well Being***” closely parallels GE’s catchphrase “***We bring good things to life,***” which branding authority Kent Werthime relates exemplifies the confluent Artist/Creator- Caregiver archetypal identity. Kent Werthime, *Building Brands & Believers: How to Connect with Consumers Using Archetypes* (2002) at 204. The similarity of the two slogans leaves little doubt but that both emanate from the same confluent archetypal identity.

85. Finally, U.S. foreign policy – and the foreign policies of *eight of the ten* countries where Somp International operates and generates profits – make it reasonable, fair and foreseeable that the Defendants could be held judicially accountable in Illinois for their tortious commercial exploitation of *Sunflowers*. The Somp International website asserts that it operates in ten countries or territories, including the United States, Bermuda, Great Britain, Germany, Italy, Luxembourg, Spain, and Switzerland. Each of these countries also is a stakeholder in the Terezin Declaration of 2009 (Terezin Declaration or Declaration). The Declaration commits each party to ensuring that its discrete legal system facilitates the restitution of Nazi-era artworks, and applies relevant laws to address any issues that might impede or obstruct the return of these materials:

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 , 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 the 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.*** (Emphasis supplied.)

As noted, the Justice for Uncompensated Survivors (JUST) Act of 2017 (Just Act), Public Law No 115-171, 132 Stat. 1289 (2017), underscores the importance of the Terezin Declaration (Declaration) to U.S. foreign policy. The Just Act requires the United States Department of State within 18 months of when the Just Act was enacted to report to Congress upon the progress of all Declaration signatory countries in implementing the Declaration's goals and objectives. Just Act section 2(b). On March 20, 2020 the Office of the Special Envoy for Holocaust Issues Bureau of European and Eurasian Affairs of Department of State submitted to Congress The JUST Act

Report (Report) responding to this this directive, and relating the progress of 46 Terezin Declaration stakeholder countries in complying with Declaration's prescriptions for the restitution of Nazi- era artworks.

86. Somp International and the other Defendants generate profits in eight Declaration stakeholder countries by employing the Painting integrally as a corporate emblem to induce trust and reliance while concealing the Painting's Nazi taint, and misrepresenting that the Painting is not affected with human rights violations under international law. Accordingly, the Defendants' commercial misconduct with the Painting violates core foreign policy objectives and international human rights values of each of these eight Declaration stakeholders. And each Declaration stakeholder, including the U.S., has expressly *agreed* with other stakeholders to implement the Declaration and to help achieve its policies and objectives. That the Defendants' misconduct with the Painting also impairs the domestic and foreign policies of *seven* other Declaration stakeholder countries concerning Nazi-era artworks amplifies the responsibility of the U.S. to apply the Declaration to the Heirs' claim.

87. As applied to the U.S. in this discrete context, the Declaration necessarily contemplates that the Federal Judiciary – as an integral component of the U.S. Government – will help facilitate the return of Nazi-era artworks like *Sunflowers* to the maximum extent that the U.S. legal system permits. These considerations – along with Somp's brazen, boastful and fraudulent commercial exploitation of the Painting in the U.S. and in seven other countries that have signed the Declaration and adopted its policies – make it fair, just and reasonably foreseeable that the Defendants be held judicially accountable in this Court for their extensive and pervasive malfeasance with the Painting.

88. The Court also has jurisdiction over the Museum and the Foundation on several discrete bases:

- (a) First – and at all times relevant hereto – Sompo Holdings has exercised exclusive dominion and control over the Museum and the Foundation that makes them for all equitable purposes complicit in the wrongful conduct of Sompo Holdings and Sompo International and in the wrongful possession and commercial exploitation of the Painting as “One Sompo.” As related, *supra*, Defendants promote an international corporate identity that all of the Sompo entities are united in identity, function, and purpose internationally as “One Sompo.” Accordingly – and in regards to the ownership, public display, and commercial exploitation of *Sunflowers* in Illinois and the U.S. as well as internationally, the Defendants have had a unity of interest and ownership that causes the separate identities of these entities to no longer exist. Sompo Holdings employs the Museum and Foundation integrally on its website to help induce prospective Illinois insurance consumers to purchase insurance from Sompo Holdings and Sompo International and so the Foundation and Museum are actively participating directly in the Illinois insurance market and in the fraudulent scheme of Sompo Holdings to defraud the Illinois insurance market.
- (b) Second, under these circumstances, collectively considered, to adhere to the fiction of a separate corporate existence for the Foundation and Museum would sanction fraud, promote injustice, and perpetrate inequity were Sompo Holdings permitted wrongfully to retain and commercially exploit *Sunflowers* in violation of the superior ownership and possessory rights of the Heirs. Accordingly – and

under these discrete circumstances – personal jurisdiction over the Foundation and Museum can be asserted consistent with Due Process and under the doctrine of alter ego.

- (c) Third – and in the alternative – the Foundation and Museum have colluded and conspired with Somp Holdings and Somp International and have acted in concert with Somp Holdings and Somp International to wrongly detain the Painting in violation of the superior ownership and possessory rights of the Heirs and to commercially exploit the Painting in Illinois, throughout the U.S., and internationally. Accordingly – and under these discrete circumstances – jurisdiction over the Foundation and Museum can be asserted under the civil conspiracy doctrine.
- (d) Fourth, the Foundation and Museum also are subject to the jurisdiction of this Court under the equitable Illinois principle that precludes corporations from establishing related entities to conduct business in Illinois, and thereby to exonerate or immunize themselves from obligations or liabilities that their subsidiaries incur in Illinois. This principle necessarily also prohibits a corporation such as Somp Holdings from using assets or property in Illinois to commit wrongs and to escape or evade liability for such wrongs merely by vesting technical legal ownership of such assets or property in controlled foreign affiliates. This principle submits both the Museum and Foundation to the jurisdiction of the Court.
- (e) Finally, the equitable doctrine of estoppel precludes the Foundation and Museum from challenging the jurisdiction of the Court concerning the Heirs' claims. Both

the Foundation and Museum have acted in concert with Sompo International to commercially exploit the Painting for their collective financial and public relations benefit as “One Sompo,” and have authorized and enabled Sompo Holdings to commercially exploit the Painting in Illinois, throughout the U.S. and internationally. Having proactively participated in this wrongdoing, authorized, enabled and benefitted from the commercial misconduct of Sompo Holdings in Illinois concerning the Painting, the Museum and Foundation are equitably estopped from denying that they are subject to the jurisdiction of this Court to answer for the wrongs that Sompo Holdings, Sompo International and “Sompo One” thereby have committed.

The Injuries of the Heirs Arise Out Of and Relate To Illinois-Related Activities of the Defendants

89. The Heirs claims to recover *Sunflowers* and for unjust enrichment arise from and relate to the Illinois related activities of Sompo Holdings and Sompo International, as the Due Process Clause requires. To arise out of or relate to the contacts of defendant with Illinois, the injury of a plaintiff need not arise completely from activity within Illinois, but only rather that some of the events upon which the cause of action is based have been performed by the defendant or its agents in Illinois. If a defendant conducts a commercial activity in Illinois and the cause of action is related to that activity, personal jurisdiction will attach if the cause of action is substantially connected with the defendant’s conduct with Illinois rather than merely incidental to it.

90. The Heirs’ claims to recover the Painting and for unjust enrichment satisfy these criteria. The Heirs’ claims for conversion and for the recovery of the Painting arises from Sompo Holdings’ exercise of dominion, control, and use of the Painting in Illinois in connection with its

commercial activities. As discussed comprehensively, both Sompo Holdings and Sompo International are exercising dominion and control over the Painting and otherwise employ it in Illinois through the internet to identify themselves with the Painting and to attempt to persuade prospective Illinois insurance consumers to buy insurance from Sompo. The Heirs' claim for unjust enrichment satisfies the Due Process standard and Sompo Holdings and Sompo International are reaping unjust enrichment in Illinois by commercially exploiting *Sunflowers* in Illinois, and the judicial claims of the Heirs seek to recover such unjust enrichment.

The Exercise of Personal Jurisdiction Over Defendants Comports with Traditional Notions of Fair Play and Substantial Justice

91. Once a plaintiff has established that the defendant cultivated sufficient “minimum contacts” with the forum State to satisfy the Due Process Clause, “these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with ‘fair play and substantial justice’” or other considerations would render jurisdiction unreasonable. *Burger King v. Rudzewicz*, 471 U.S. 462, 471 (1985). These factors include the burden on the defendant, the interest of the forum State in adjudicating the particular controversy, the interest of the plaintiff in obtaining convenient and effective relief, the interest of the interstate judicial system in resolving the controversy efficiently, and the “shared interest of the several States in furthering fundamental substantive policies.” *Ibid.* Each of these considerations supports the claims of the Heirs to recover *Sunflowers* and for unjust enrichment. Illinois has an especially compelling governmental interest in having this dispute adjudicated because Sompo Holdings' malfeasance with *Sunflowers* defrauds insurance consumers in Illinois. Moreover – and as related above – in 2000 Sompo Holdings' corporate predecessor Yasuda brought *Sunflowers* into Illinois under fraudulent pretenses to commercially exploit the Painting at a van Gogh exhibition sponsored by the AIC, and Sompo Holdings and Sompo

International have ratified this wrongdoing by accepting the commercial benefits that accrued to Yasuda and its corporate successors from it. The Heirs have a compelling interest in securing a remedy for Sompo Holdings' extensive malfeasance and wrongful retention and commercial exploitation of the Painting. Moreover, defendants such as Sompo Holdings who proactively cultivate contacts with a forum State must make an extraordinary showing of prejudice to defeat jurisdiction. *Burger King v. Rudzewicz*, 471 U.S. 462, 476 (1985) (Citations omitted). Sompo Holdings can make no such showing.

The Heirs Can Assert Personal Jurisdiction Over Defendants Under Section 209(a)(2), Which Prescribes Jurisdiction for the Commission of a Tortious Act within Illinois

92. Sompo Holdings and Sompo International also are subject to jurisdiction in Illinois based upon “(t)he commission of a tortious act within this State as prescribed by Section 209(a)(2). This provision coincides with the requirements of Section 209(c) prescribing that Illinois courts can exercise jurisdiction over any claim within the limits of the Due Process clauses of the Illinois and U.S. Constitution. Section 209(a)(2) enables courts to assert jurisdiction to determine whether an act or omission committed by a defendant, either in person or through an agent, gives rise to tort liability. *Nelson v. Miller*, 11 Ill.2d 378, 393-94, 143 N.E.2d 673, 681 (1957).

93. Sompo Holdings wrongfully and tortiously has exercised dominion and control over *Sunflowers* in Illinois, in derogation and violation of the superior ownership and possessory rights of the Heirs.

94. Sompo Holdings also has wrongfully reaped unjust enrichment from commercially exploiting *Sunflowers* in Illinois in derogation and violation of the superior ownership and possessory rights of the Heirs.

95. In addition, Sompco Holdings has breached an affirmative legal duty in Illinois that Illinois law imposes by failing to assist the Heirs to recover *Sunflowers*, which Sompco Holdings long has known was a casualty of Nazi policies, and which is the lawful and rightful property of the Heirs.

96. Sompco Holdings also has breached in Illinois a related duty to refrain from commercially exploiting *Sunflowers* once it knew or had reason to know that the Painting was a casualty of Nazi policies and the was the rightful and lawful property of the Heirs.

97. For these reasons and for those discussed, *supra*, Section 209(a)(2) enables the Heirs to assert jurisdiction over Sompco Holdings and Sompco International for these claims.

The Heirs Can Assert Personal Jurisdiction Over Defendants Under Section 209(a)(1), Which Prescribes Jurisdiction for the Transaction of Any Business in Illinois

98. The Heirs additionally can assert jurisdiction over Defendants based upon section 5/2-209(a)(1) which prescribes jurisdiction over any person regarding “the transaction of any business within this State.” Illinois courts have confirmed that jurisdiction on this basis is satisfied if the defendant transacts business in Illinois, the injury arises out of or relates to such transaction, and the claim is sufficiently connected to the transaction or “lies in its wake”. *Kalata v. Healy*, 312 Ill App.3d 761, 728 N.E. 2d, 648, 653 (Ill. App. 2000), observing that “[t]he focus of our inquiry ... is upon the defendant’s activities within this state and whether those activities are sufficient to subject it to the *in personam* jurisdiction of the Illinois courts.’ ... A plaintiff’s claim must be one that lies in the wake of commercial activities by which the defendant submitted to the jurisdiction of Illinois courts.”

99. As discussed comprehensively in the preceding section confirming that the Heirs properly can assert jurisdiction under section 5/2-209(b) prescribing jurisdiction to the maximum

extent that the U.S. Constitution permits, the Heirs claims to recover the Painting and for unjust enrichment arise out of and relate to the commercial wrongdoing of Defendants in bringing the Painting to Illinois and displaying it at the van Gogh exhibition in 2001. As discussed, Defendants wrongdoing violated multiple federal criminal statutes and impaired key Illinois and U.S. public interests. Moreover – and as discussed *supra* – since 2001 the Defendants since have commercially exploited the Painting in a fraudulent manner in Illinois, and on a consistent and systematic basis through their internet websites.

100. Accordingly, section 209(a)(2) enables the Heirs to obtain personal jurisdiction over the Defendants for transacting business in Illinois.

This Court Has Subject Matter Jurisdiction over the Claims Asserted in this Action

101. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 based upon the decisions of the Supreme Court in *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S.308 (2005) and *Gunn v. Minton*, 568 U.S. 251 (2013). Based upon these decisions, federal jurisdiction will lie over state law claims if a federal issue is: (1) necessarily raised; (2) actually disputed; (3) substantial, and; (4) capable of being resolved in federal court without disrupting relevant federalism concerns as envisioned by Congress. Each of these factors supports federal jurisdiction in this proceeding as the Heir's claims affect uniquely federal foreign policies that are actually disputed and are substantial and that a federal court can resolve without inappropriately impairing federalism.

102. The claims of the Heirs to recover *Sunflowers* and for unjust enrichment as well as their other claims satisfy these criteria on two distinct bases. First, because the Heir's claims to recover the Painting and for unjust enrichment are equitable, relevant federal policies necessarily must inform them. The Supreme Court has made clear that when equitable claims

implicate federal policies, these policies necessarily will determine both whether equitable relief will be granted, as well as the character and extent of such relief. The Court has instructed both that “[t]here is inherent in the Courts of Equity a jurisdiction . . . to give effect to the policy of the legislature,” and that when federal law is at issue and the public interest involved a federal court’s “equitable powers assume an even broader and more flexible character than when only a private controversy is at stake” *Mitchell v. Robert De Mario Jewelry, Inc.*, 361 U.S. 288, 291 (1960). Courts of equity may, and frequently do, go much further to give relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.” *Kansas v. Nebraska*, 135 S. Ct. 1042, 1053 (2015).

103. That courts necessarily consider federal law and policy in granting equitable relief when a controversy implicates federal interests assures that the Heirs satisfy the *Grable* factors for asserting federal question jurisdiction over their claims against Sompo Holdings. First, the Heirs’ claims necessarily raise federal issues because the Heirs seek the recovery of a Nazi-confiscated artwork, which both courts and Congress have confirmed implicates uniquely federal interests. *See Von Saher v. Norton Simon Museum of Art*, 592 F.3d 954 (9th Cir. 2010); HEAR Act, Findings, §2(7); *Holtzman as Trustees of Elizabeth McManus Holtzman Irrevocable Tr. v. Philadelphia Museum of Art*, No. 22-CV-0122-JMY, 2022 WL 2651851, at *4 (E.D. Pa. July 7, 2022).

104. Second, the relevant federal issues necessarily are substantial and significant. In 2016, the U.S. enacted the Holocaust Expropriated Art Recovery Act of 2016 (the “HEAR Act”), Pub.L. 114-308, 22 U.S.C. § 1621 (2016), suspending otherwise applicable statutes of limitations for claims to recover Nazi-tainted artworks until December 15, 2022. The HEAR has underscored the importance of enabling Holocaust victims and their heirs to recover Nazi-

confiscated artworks, and that this issue implicates signal and exclusive federal foreign policy concerns.

105. Finally, adjudicating the Heirs' claim will not disturb the balance of state-federal responsibilities that Congress has established. As discussed, the restitution of Nazi- era artworks is a federal concern, and the few such claims brought will not threaten to overwhelm the federal courts.

106. Moreover, that the Heirs are asserting their claims under the HEAR Act supplies a second, independent basis for federal question jurisdiction based upon the *Grable* doctrine. *See Holtzman v. Philadelphia Museum of Art* No. 22-CV-0122-JMY, 2022 WL 2651851, at *3 (E.D. Pa. July 7, 2022), asserting federal question jurisdiction under the *Grable* doctrine over a claim to recover a Nazi era painting based *solely* upon how a claim brought under the HEAR Act satisfied the prescribed criteria. The court ruled that the HEAR Act fulfilled all four criteria that *Grable* prescribed for asserting federal question jurisdiction over a state law claim. *Id.* at 8.

Venue Is Proper in this District

107. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) in that a substantial part of the events giving rise to the claim of the Heirs occurred in the Northern District of Illinois. Sompo Holdings has an extensive commercial presence in Illinois with its wholly owned subsidiary Sompo International conducting the business of Sompo Holdings through offices located in this district, including Chicago. In addition, Sompo Holdings through its website and the website of Sompo International solicits business in Illinois by employing the Painting in the manner related and alleged above. Sompo Holdings represents that the Painting has become “synonymous” with its corporate identity, and invokes the Painting prominently on its website to invite trust and reliance from its stakeholders, prospective clientele, and the public. But in capitalizing upon the Painting in

this manner, Sompo Holdings affirmatively conceals that the Painting was a casualty of Nazi policies, and misrepresents that it is not tainted with any violations of the international law of human rights. Moreover, Sompo Holdings' corporate predecessor Yasuda brought the Painting into the Northern District of Illinois to commercially exploit it after colluding with the AIC to mislead the U.S. Department of State into issuing a certificate of non-judicial seizure to ensure that no U.S. law enforcement authority could seize the Painting as Nazi contraband. By accepting the commercial benefits of this exhibition while knowing about the underlying fraud that Yasuda committed, Sompo Holdings has ratified Yasuda's wrongdoing.

108. Alternatively, venue is proper in this district under 28 U.S.C. 1391 (b)(3) in that the all Defendants are subject to personal jurisdiction in this district regarding the Heir's action.

109. Finally, this is the most convenient forum for this dispute.

110. As noted, in 2016, the U.S. enacted the HEAR Act, suspending otherwise applicable statutes of limitations for claims to recover Nazi-tainted artworks until December 15, 2022. Accordingly, this action is timely under the HEAR Act.

IV. STATEMENT OF FACTS COMMON TO ALL ALLEGATIONS

Overview and Summary

111. Paul von Mendelssohn-Bartholdy (hereafter "Mendelssohn-Bartholdy" or "Paul") was descended from a famous German Jewish family and was of purely Jewish extraction. He was a co-owner and director of the international bank of Mendelssohn & Co., which was one of the five largest German private banks. In addition, Mendelssohn-Bartholdy was on the board of the prominent Berlin Stock Exchange. He was married to an "Aryan" woman more than 20 years his junior, and collected what the Nazis termed "degenerate" modern art. Together, these attributes framed Mendelssohn-Bartholdy as a paradigmatic exemplar of what the Nazi party long had denounced about Jews, and made him an early and conspicuous target for Nazi antagonism.

Purposeful and unrelenting Nazi policies to exclude Jews from the economy of Germany – and especially to eradicate Jewish banks – crippled Mendelssohn-Bartholdy financially and forced him in or around 1934 to consign *Sunflowers* to Parisian art dealer Paul Rosenberg in a paradigmatic forced transfer.

112. Mendelssohn-Bartholdy released *Sunflowers* into a depressed market saturated with many similar modern artworks that intensifying Nazi persecution had wrested from other suffering Jewish collectors. Mendelssohn-Bartholdy's loss of *Sunflowers* occurred well along a course that Nazi authorities purposefully engineered to marginalize Jews, deprive them of their property, and exclude them from the economy of Germany which led ultimately to massive genocide.

The Nazi Goal to Exclude Jews from the Economy of Germany

113. In 1920, Adolf Hitler announced the program of the National Socialist German Workers party (NSDAP) – from which the abbreviation “Nazi” derived – to rehabilitate Germany with its “Twenty-Five Points” or “Twenty-Five thesis.” Points 4 through 8 and 24 targeted Jews as the root cause of Germany's many misfortunes, and decreed that Germany must remove Jews from public life, revoke their citizenship, and if necessary, expel them from the country.

114. In 1924, Hitler wrote his notorious autobiography *Mein Kampf* explicating his rabid, racially propelled anti-Semitism. Historians have regarded *Mein Kampf* as a “blueprint” for the Nazi agenda against Jews. Hitler blamed Jews for undermining the economic, political and cultural life of Germany. Hitler warned that Jews active in banking and in the stock exchange – such as Mendelssohn-Bartholdy – posed an especially insidious threat to Germany.

115. Accordingly, then, for Adolf Hitler, wrote historian Saul Friedlander in *Nazi Germany and the Jews* (1997), p. 102, “the struggle against the Jews was the immutable and obsessional core of his understanding of history, politics and political action.” And as historian

Karl A. Schleunes observed in *The Twisted Road to Auschwitz-Nazi Policy Toward German Jews 1933-1939* 5 (1970), Hitler's speeches and *Mein Kampf* foreshadowed a desolate future for Jews in Germany if the Nazi party ever obtained the political means to implement its transparent agenda: "[i]t is often noted that anyone who listened seriously to Hitler or read *Mein Kampf* carefully might have expected something approaching a Final Solution."

Nazi Policies Against Jews Based Upon Race and Not Religion

116. Nazi antagonism towards Jews was premised upon their perception of Jews as a distinct race seeking to dominate the German people and to control the German economy. As Hitler had insisted in *Mein Kampf*, "the Jews are members of a *people* and not a *religion*." (Emphasis in original) Hitler, *supra*, p. 306.

Special Nazi Antipathy for "High-Finance Jews" Like Mendelssohn-Bartholdy

117. As a prominent Berlin banker of Jewish descent and Board Member of the Berlin Stock Exchange, Mendelssohn-Bartholdy attracted instant Nazi attention and antipathy. From the early-1920s, the Nazis proclaimed that "high finance Jews," and particularly "Jewish bankers" and "Stock Exchange Jews," were enslaving non-Jews in Germany and throughout the world. In a speech in 1923, Hitler stated that a "few dozen" Jewish bankers – which without question included Mendelssohn-Bartholdy as co-owner and co-manager of Mendelssohn & Co., one of the five largest private banks in Germany – controlled German destiny: "We in Germany have come to this: that sixty million people sees its destiny to lie at the will of a few dozen Jewish bankers." (Adolf Hitler speech in Munich, April 13, 1923.)

118. In this same speech, Hitler declared that the Jews active in the stock exchanges – such as Mendelssohn-Bartholdy in the Berlin Stock Exchange – had been responsible for Germany's defeat in World War I, and now controlled the world through the World Stock Exchange.

Prominent Banker and Stock Exchange Director Mendelssohn-Bartholdy as Early Nazi Target

119. As early as 1920, Nazi propaganda and publications began targeting Mendelssohn-Bartholdy. These publications included Julius Streicher, *Deutscher Sozialist*, (June 4, 1920), and an anti-Semitic “Encyclopedia” entitled *Sigilla Veri*. As a worldly and sophisticated banker and art collector, Mendelssohn-Bartholdy would have been aware of these publications.

January 30, 1933 – Persecution of Jews Becomes Official State Policy

120. On January 30, 1933, Adolf Hitler became Chancellor of Germany, and the Nazi era began. The Nazis exalted their determination to exclude Jews from the German economy and expel them from Germany.

121. The Nazis commenced their multi-pronged campaign against Jews immediately after taking power, and pursued it inexorably. Within months after Hitler became Chancellor, the Nazi government promulgated more than 400 discriminatory laws and decrees against its Jewish citizens. Private industries and businesses – seeking to curry favor with the new regime – adopted Nazi exclusionary policies. Nazi leaders continued to denounce Jews with increasing vehemence. And violence against Jews throughout Germany exploded during the early months of the Nazi regime, as gangs of the Nazi-affiliated S.A. thugs randomly assaulted and terrorized Jews

122. Within months after Hitler became Chancellor, Goebbels had cleared the Berlin city administration of all contracts with Jewish businesses, attorneys and physicians.

123. An Emergency Decree of February 28, 1933 deputized the S.A. – over 1.5 million Nazi Storm troopers – as official agents of the Nazi government and also suspended the writ of habeas corpus. Now the S.A. could arrest Jews arbitrarily, without having to justify the detention to a judge.

124. Only three days later – on March 3, 1933 – the Reichstag divested itself of its legislative functions by passing the Enabling Act, which gave full legislative and executive powers to the Chancellor, Adolf Hitler. The Enabling Act allowed the Nazi government to rule by decree for the next four years. According to historian Schleunes, this legislation provided “the Nazis with a cloak of legality with which to cover their official actions.” Schleunes, *supra*, p. 96. The Enabling Act then established the legal basis for later discriminatory legislation against Jews. As historian Friedlander commented, “[t]he rapidity of change was stunning.” Friedlander, *supra* p. 17.

125. Violence against Jews escalated throughout Germany in 1933. On April 1, 1933, the Nazis orchestrated the infamous boycott of Jewish businesses. Initially, Nazi authorities intended that the April 1, 1933 boycott would continue until the Jews had been eliminated from the German economy, but abandoned this goal in favor of expunging Jews more judiciously to mitigate stress on the precarious German economy.

126. On April 7, 1933, the Nazis government introduced the infamous “Law for the Restoration of the Civil Service” (the “Civil Service Law”) which prescribed that only “Aryans” could hold civil service positions. This legislation designated a “Jew” as anyone being one quarter (1/4) Jewish. It dismissed or forced into retirement virtually all Jews working for the German government. Many private companies – anxious to accommodate the new government and to mirror official Nazi policy – began firing Jews from their positions in the private sector.

127. In the wake of the Civil Service Law, local governments and municipalities began excluding Jewish firms from public contracts.

128. Nazi laws and decrees continued to exclude Jews from an ever-widening range of economic activities. On April 22, 1933, non-Aryans were subjected to the “Decree Regarding Physicians Services with National Health Service.” The “Law Against Overcrowding of German

Schools” was announced on April 25, 1933. In May 1933, Germany revoked the licenses of non-Aryans as tax consultants, judges, professors, instructors and lecturers in universities and colleges.

129. On September 29, 1933, a “Hereditary Farm Law” precluded Jews from owning farmland or engaging in agriculture. And Jews soon were barred from belonging to the Journalist Association or from being newspaper editors.

130. The Nazi campaign against Jews struck with especial force in Berlin – where Mendelssohn-Bartholdy resided and the Mendelssohn & Co. bank was situated. Jews there suffered not only the anti-Jewish campaign of the Reich government, but also the independent, aggressively anti-Jewish policies of the Berlin city administration.

131. Nazi exclusionary policies soon struck Jewish banks. Some cities and districts refused to do business with such banks in the first several months after Hitler’s rise to power, which resulted in these banks losing the municipal bond business – a crucial source of revenue for the survival of many banks in Germany. Further, Jewish private bankers observed with trepidation how the major corporate banks, Deutsche Bank AG, Dresdner Bank AG, and Commerzbank AG, hastily dismissed all but a few Jewish directors and board members in order to impress Nazi authorities. Indeed, throughout Germany “Aryanization” was rampant and permeated all businesses and industries.

132. Nazi authorities monitored in detail their progress in eliminating Jews from the economy of Germany. In the mass distribution pamphlet entitled *Why the Aryan Law? A Contribution to the Jewish Question*, the Nazis analyzed the contemporaneous impact of the “racial laws,” and compiled statistics confirming that during 1933 and early 1934, the number of Jews in each profession had declined. The report states that the Nazi “racial legislation has reduced the influence of Jewry in all professions.” The report underscored that the elimination of the Jews from

the professions and economy was an ongoing project: “[O]ne cannot ignore the fact that we have not yet fully eliminated the influence of the Jewish foreign body in German national life.” (*See Warum Arierparagraph? Ein Beitrag zur Judenfrage*, by Dr. E. H. Schulz and Dr. R. Frercks (Berlin: Verlag Neues Volk, 1934.)

Nazi Pressure Against Mendelssohn-Bartholdy Escalates Throughout 1933

133. Mendelssohn-Bartholdy was an immediate target and casualty of Nazi policies.

134. In 1933, Nazi hate literature continued to identify Mendelssohn-Bartholdy specifically and the Mendelssohn family generally. These include *The International Relationships of Jewish High Finance* (Heinrich Pudor, *Die Internationalen verwandschaftlichen Beziehungen der juedischen Hochfinanz*, Leipzig 1933-1937); *Handbook of the Jewish Question* (Theodor Fritsch, (*Handbuch der Judenfrage*, 3rd Edition, Leipzig: Hammer Verlag, 1933), p. 294; and “*Jews, Look at You*” (Johann von Leers, *Juden sehen dich an*, Berlin: NS.-Druck und Verlag, 1933), p. 82-84.

135. On March 20, 1933, newly deputized Nazi Storm troopers marched into the Berlin Stock Exchange – where Mendelssohn- Bartholdy sat on the board of directors – and began physically threatening and assaulting members. Mendelssohn-Bartholdy likely suffered personal threats and physical intimidation during this incident.

136. In or around the summer or fall of 1933, fear of potentially imminent physical assault drove Mendelssohn-Bartholdy from his conspicuous mansion residence at Alsenstrasse into a small rental garden house in a more secluded, wooded area of Berlin called *Schlosspark Bellvue*. Mendelssohn-Bartholdy had spent years designing and building his palatial mansion residence at Alsenstrasse with the help of famed architect Bruno Paul. Mendelssohn-Bartholdy had lived at Alsenstrasse since 1918, and it had become the center of his gracious social world, as well as the primary venue for displaying his modern art collection. The decision of Mendelssohn-Bartholdy to

abandon Alsenstrasse so precipitously after the Nazis came to power reveals how imperiled and precarious he viewed his future in Berlin. Mendelssohn-Bartholdy had good reason to fear for his safety at this point: Storm Troopers randomly attacked people that they perceived as Jewish on the street, and might well invade his residence.

137. Mendelssohn-Bartholdy's forced departure from Alsenstrasse registered a concrete and quantifiable economic injury that resulted directly from Nazi policies. By denying Mendelssohn-Bartholdy the reasonable use and enjoyment of his primary residence, the Nazi authorities effectively expropriated this residence from him at this time. In addition, Mendelssohn-Bartholdy was forced to pay rent at his alternative residence *Schlosspark Bellvue*.

138. On or before November 17, 1933 – and as an additional precaution – Mendelssohn-Bartholdy also moved the Danish consulate from Alsenstrasse to the buildings which housed the Mendelssohn & Co. bank. Mendelssohn-Bartholdy held the prestigious position of Danish Consul, and had located the consulate in his spacious residence until November 1933.

139. Perhaps most ominously for Mendelssohn-Bartholdy, however, in late 1933 the Nazis began speaking openly of terminating all Jewish owned banks. The Nazis publicly expressed the view that Jews were incompatible with the appropriate ethos for banking. The Nazi campaign against "Jewish bankers" was panoramic, and extended to Jews who worked for privately owned banks that were not Jewish-owned.

140. Strategic Nazi-orchestrated boycotts and public relations campaigns against Jewish banks throughout 1933 had registered their effect by the end of that year. Nazi policies had reduced the net earnings of Mendelssohn & Co. from RM 2.3 million in 1932 to only RM 1.3 million in 1933. Correspondingly, Mendelssohn-Bartholdy's income from Mendelssohn & Co. decreased from RM 436,357 in 1932 to RM 239,009 in 1933 – or a loss of about *forty five percent (45%)*

from the previous year. This decline – coupled with an intensifying Nazi commitment to eradicate Jewish-owned banks – intimated that Mendelssohn-Bartholdy’s earning would plummet even further in 1934. Having been evicted from Alsenstrasse and his primary forum for displaying his paintings – and with his personal income diminishing at an alarming rate with little hope ever of rebounding to his traditional earning level – towards the end of 1933, Mendelssohn-Bartholdy began dismantling his private art collection by consigning three paintings by the artist Georges Braque to Flechtheim galleries.

The Nazis Government Legislates to “Reorganize” the German Economy to Exclude Jews as Mendelssohn-Bartholdy Forfeits Invaluable Leadership Positions in Industries Essential to the Survival of Mendelssohn & Co.

141. On February 27, 1934, the Nazi government implemented the “Statute on the Preparation of the Organic Constitution of the German Economy” (hereafter the “Statute” or “reorganization laws”) which brought associations of business leaders in all industries – including banking, insurance, and securities – within the broader national scheme to reorganize the German economy and exclude Jews from it. The Statute formalized *de facto* Nazi policies that the Nazi party had pursued throughout 1933, and hastened the exclusion of Jews like Mendelssohn-Bartholdy from leadership positions in German business and industry.

Nazi Policies Deprive Mendelssohn-Bartholdy of Membership on the Board of the Reich Insurance Corporation

142. The Statute and its underlying policy injured Mendelssohn-Bartholdy immediately. In February 1934, Mendelssohn-Bartholdy stopped attending Board meetings and lost his position as a member of the Board of the Reich Insurance Corporation. This loss devastated Mendelssohn-Bartholdy, since the Reich Insurance Corporation was a government-related insurance corporation that handled important tasks such as unemployment insurance, pension insurance, and investing corporate funds.

Nazi Policies Strip Mendelssohn-Bartholdy of His Powerful Position on the Berlin Stock Exchange

143. The Statute and Nazi policies effectively divested Mendelssohn-Bartholdy of his position as a member of the powerful and prominent Berlin Stock Exchange, as Nazi reorganization laws deprived the Board of which Mendelssohn-Bartholdy was a member of further power.

Mendelssohn-Bartholdy's Well-Founded Fear in Early 1934 that the Nazi Government Would "Aryanize" and Destroy Mendelssohn & Co. Imminently

144. In early 1934, the Nazi government began taking special aim at Jewish-owned banks and Jewish bankers. In 1934, Reichsbank president and Hitler's Ministry of the Economy, Hjalmar Schact, began insisting that all German bank boards dismiss their Jewish directors. Also in early 1934, several prominent national Aryan banking leaders declared that Jewish banks and Jewish bankers would have no future in the newly reorganized banking industry.

145. On March 2, 1934, a representative of Mendelssohn & Co. visited a Nazi official at the Office of the State Commissioner for Banking to determine whether Jewish-owned banks would be allowed to exist in the re-organized Germany economy. The Mendelssohn & Co. representative suggested that if the Nazi government intended to eradicate Jewish-owned banks summarily, the interests both of the government and the targeted banks would best be served by providing the banks with sufficient notice to allow them to dismantle their operations in an orderly fashion. The Nazi official eventually responded that the Jewish-owned banks like Mendelssohn & Co. would not be eliminated at that time, but that the Nazi government would no longer allow Jews in leadership positions in banking associations. As one commentator observed, "[t]hat this declaration of intent was only a temporary decision was already presumably clear at his time both to [the Nazi official] and to the representative of [Mendelssohn & Co.]" Ingo Köhler, *Die "Arisierung" der Privatbanken im Dritten Reich (The "Aryanization*

of Private Banks in the Third Reich) (2005), p. 83. Indeed, the internal Nazi government memos relating to the meeting also reflect this understanding.

Nazi Policies Caused Mendelssohn-Bartholdy to Lose his Position on the Board of the Central Union of German Banking and Bankers

146. Consistent with the Statute and the statements of the Bank Commissioner noted above, in the Spring of 1934 Mendelssohn-Bartholdy lost his powerful position at the influential Central Union of German Banking and Bankers (the “Central Union”) – along with all of the other Jewish board members – when the Nazis “re-organized” the banking union and incorporated this body into an umbrella Nazi organization. The exclusion of Mendelssohn-Bartholdy from leadership positions in the banking, insurance, and securities industries coincided with the Nazi removal of Jews from managerial positions in all segments of the economy.

147. The loss of positions of leadership and influence in the banking, securities and finance industries of elite Jewish bankers like Mendelssohn-Bartholdy undermined the basis of their success and prosperity. As historian Martin Dean explained, much Jewish prosperity in Germany was “based upon intangibles, such as education, expectations, motivation, professional standing, and experience, as much as it was on the ownership of capital. *The effects of Nazi economic discrimination devastated these key foundations*” (Emphasis supplied.) Dean, *supra*, p. 49.

Nazi Authorities Deprive Mendelssohn & Co. of Its Interest in Akzeptbank

148. In March 1934, the Reich began the “Aryanization” of Akzeptbank, a bank in which Mendelssohn & Co. had invested heavily. This venture had been set up under the supervision of the Deutsche Golddiskontbank and Reichsbank in order to give failing banks the opportunity to take additional bills on discount, and Mendelssohn & Co. had invested heavily in this enterprise. Nazi

authorities compelled Mendelssohn & Co. and all other Jewish owned banks and members of the supervisory board to resign.

149. In July 1934, Mendelssohn & Co. objected strenuously to the “re-organization” of Akzeptbank, but to no avail. Mendelssohn & Co. received only the nominal value of its participation and a small amount of compensation. Mendelssohn & Co protested and denounced this action as "a contravention of justice and all mercantile practice."

150. As a 22% owner of Mendelssohn & Co., the Aryanization of Akzeptbank wrongfully denied Mendelssohn-Bartholdy of an invaluable financial opportunity.

Nazi-inspired Boycotts Force Mendelssohn & Co. to “Aryanize” the German Goods Trust Company and Compel Mendelssohn-Bartholdy to Resign from Its Board

151. The German Goods Trust Company (the “GGTC”) was a joint subsidiary of Mendelssohn & Co. and M.M. Warburg & Co. In 1934, the Nazis orchestrated a boycott of this business because it was Jewish-owned. The boycott precluded the continued operation of this firm as a Jewish-owned enterprise. In September 1934, the owners decided to “Aryanize” the business to save it. Mendelssohn-Bartholdy and Fritz Warburg resigned from the company's supervisory board, although they had been members since 1920. Mendelssohn & Co. and M.M. Warburg transferred ownership of the GGTC to “Aryans,” and the boycott ended.

152. After the war, a former senior employee of the Warburg Bank who had participated in "Aryanization" negotiations on behalf of Warburg remembered that the sale of the company had taken place solely due to the anti-Semitic boycott and the impossibility of continuing the GGTC as a Jewish-owned company.

153. As a 22% owner of Mendelssohn & Co., the “friendly Aryanization” of the GGTC effectively confiscated the equity interest of Mendelssohn-Bartholdy in a profitable going concern business.

Nazi Policies Destroy the Financial Future of Mendelssohn & Co. and Thereby Effectively Rob Mendelssohn-Bartholdy of His 22% Equity Interest

154. Beginning in 1933 and throughout 1934, the Nazi government pursued in several ways its policy to exclude Jewish banks incrementally from the German economy. In the first months of the Nazi regime some cities and districts refused to do business with Jewish banks, and foreclosed them from the municipal bond business – a crucial source of revenue for many banks in Germany. As the Nazi campaign intensified, more cities and districts boycotted Jewish-owned banks. Moreover, in response to Nazi policies and pressure, Aryan clients of Jewish banks – both individual and corporate – did less and less business with them. In addition, the mounting emigration of the Jewish clientele of Jewish-owned banks further eroded their sources of business. As historian Avraham Barkai explained, “the dwindling deposits both by ‘Aryan’ customers – and with mounting emigration and deepening pauperization of Jews – undermined the basis of the continued survival of Jewish banks.” Avraham Barkai, *From Boycott to Annihilation – The Economic Struggle of German Jews 1933-1938* (1989), p. 76. Furthermore, foreign business clients – aware that even the largest private Jewish banks such as Mendelssohn & Co. had no long-term future in Nazi Germany – began transferring their accounts to more secure Aryan bank alternatives.

155. The Nazi government – through the Economic and Statistical Department of the Reichsbank (the “Department”) – monitored methodically the success of its policies and the corresponding financial decline of Jewish banks. A 1936 Department Report for the period “from the end of 1932 until the end of June 1935” verifies these trends. The Report related, among other things, that the incremental losses that Jewish banks sustained during this period frequently corresponded with the gains of Aryan banks. This Report also stated that over the first two and one-half years of the Nazi era – almost precisely the time that Mendelssohn-

Bartholdy struggled in Nazi Germany – “the average balance sheet totals” of the five largest Jewish-owned banks (which specifically included Mendelssohn & Co.) declined by a dramatic ***thirty six percent (36%)***. The Report noted that “[t]he average balance sheet total of the non-Aryan firms decreased in all groups, while that of the Aryan ones increased.” (Emphasis original.) The Report stated further that among the largest 5 Jewish-owned banks (including specifically Mendelssohn & Co.), the erosion of foreign business accounted for most of their losses: “for the 5 largest firms...its decline is based mostly on the shrinkage of the foreign monies.” The Report also noted a “decline in the credit capacity of the majority of the non-Aryan firms,” which “pointed to a migration of customers from non-Aryans to Aryan firms.” The Report observed also that Aryan banks were far outstripping their Jewish-owned competitors in cash deposits: “paper [money] funds for the Aryan firms in all size categories increased far more when compared to the non-Aryan ones.”

156. By late 1934, Nazi persecution and policies had all but negated the future of Mendelssohn & Co. as a viable going concern business entity in Nazi Germany. Correspondingly, these policies had obliterated the value of Mendelssohn-Bartholdy’s 22% equity interest in the Bank, and the future income that he reasonably could expect to earn from it.

157. In 1931, two years before the Nazis took power, Mendelssohn & Co. had earned RM 2,804,000. In 1932 – the year before the Nazis took power – Mendelssohn & Co. had earned about the same, that is, RM 2,305,000. But in 1934, intensifying Nazi policies to eliminate Jewish-owned banks had reduced its earnings to only RM 514,000 – ***a decline in profits of approximately seventy eight percent (78%) in only two years***. And the personal income that Mendelssohn-Bartholdy earned from his 22 % equity interest in Mendelssohn& Co. dropped even more precipitously. In 1931 and 1932 Mendelssohn-Bartholdy had earned income

respectively of RM 430,270 and RM 436, 357. But in 1934 his income was only RM 59, 374 – or *less than fourteen percent (14%)* of what it had been based upon an average of his income in 1931 and 1932.

158. By late 1934, the aggressive Nazi policies to eradicate Jewish banks and bankers from the economy of Germany had dramatically diminished the fair value of Mendelssohn-Bartholdy's 22% equity interest in Mendelssohn & Co. In essence, by denying Mendelssohn & Co. a future as a going concern business entity, Nazi policies correspondingly deprived Mendelssohn-Bartholdy of the present value of the income that he reasonably could expect to earn from his equity interest in this enterprise over a potentially unlimited number of years going forward. By sabotaging his primary asset – his equity interest in Mendelssohn & Co. – Nazi policies starkly redefined Mendelssohn-Bartholdy's financial portfolio and *compelled* him to seek liquidity from alternative sources.

Nazi Confiscatory Policies Against Mendelssohn-Bartholdy Accelerate After Hitler Murders His Political Opponents, Consolidates Power, and Becomes Absolute Dictator of Germany

159. Since assuming power in January 1933, the SA – a powerful grass roots paramilitary faction within the Nazi Party with a distinctive ethos – had advocated an agenda that did not cohere with Hitler's. On the night of June 30, 1934, Hitler ordered the SA leadership imprisoned or murdered, thereby extinguishing any possible internal party threat to his leadership. The killings, however, extended beyond the SA leadership and included the recent former Chancellor of Germany, Kurt von Schleicher. The U.S. consul in Berlin placed the number of deaths at 284, and at least 5 Jews had been murdered for no ostensible reason. The incident came to be known as the “Night of the Long Knives”.

160. Hitler's cabinet promptly enacted a law that legally justified all of the killings as actions taken in “emergency defense of the state.”

161. The significance of this incident was not lost upon sophisticated observers like Mendelssohn-Bartholdy. For rather than reflecting merely an internal settling of political scores, this event instead revealed the Nazi Party as criminal thugs devoid of any moral conscience. The killings sent chills through the Jewish community in Germany, for it made apparent that the Nazi Party – which long had proclaimed Jews as national enemies and had sworn to expel them from the Germany economy – would commit mass murder to accomplish its objectives.

162. On August 2, 1934 the President of Germany, Paul von Hindenberg, died. According to historians Matthaus and Roseman, Hindenberg’s death “removed from the political scene the last figure with enough prestige to rival the Nazi leader.” But rather than appoint a new President, Hitler instead consolidated the two offices and assumed the title of “Führer,” or undisputed leader of Germany. The German army immediately swore an oath of *personal* loyalty to Adolf Hitler as their supreme commander. With the death of Hindenberg, Hitler and the Nazi Party now had completed their consolidation of power.

A Popular Nazi Publication Threatens the Mendelssohn Family

163. In September 1934, a lead article in a Nazi monthly founded by Nazi Party ideologist Alfred Rosenberg, called “*Der Weltkampf*,” attempted to legitimize the murder of former Reich Chancellor von Schleicher during the “Night of the Long Knives” in June 1934 based upon his association with the Mendelssohn family. The article declared that von Schleicher was a traitor to Germany who deserved to die because he had been a “tool of the Jews” and “visited the house of the Jewish banker Franz von Mendelssohn nearly every evening.” Franz von Mendelssohn was the co-director of Mendelssohn & Co. with Mendelssohn-Bartholdy. Accordingly, this article – which justified the murder of von Schleicher merely because he had socialized with the Jewish Mendelssohn family – cast the Mendelssohn family as presumed mortal enemies of Germany and

reasonably intimidated threats against the Mendelssohn family, Mendelssohn & Co., and Mendelssohn-Bartholdy in particular.

The Nazi Government Makes German Tax Laws an Official Instrument to Dispossess Jews

164. In October 1934 the Nazi Government enacted a law prescribing that henceforth the federal tax laws of Germany were to be interpreted “in accordance with National Socialist ideology,” that is, against the interests of Jewish taxpayers. This enactment formally acknowledged the tax laws of the Nazi government as a mechanism for displacing Jews from the economy of Germany and for confiscating their property.

Nazi Authorities Coerce Mendelssohn Bartholdy to “Donate” Land at Boernicke

165. In the fall of 1934, the Nazi Kulturstelle (Cultural Office) began pressuring Mendelssohn-Bartholdy to give up some of his land at his country estate, Boernicke, to the Nazi government.

166. At approximately this same time, Mendelssohn-Bartholdy took out a RM 900,000 loan on Boernicke with a four and one half percent (4 1/2%) interest rate. Concurrently, he filed a Grundschild (encumbrance) on this land to protect it from Nazi predation. Mendelssohn-Bartholdy also took out a similar Grundschild on Alsenstrasse in the amount of RM 600,000. These encumbrances made it more difficult for the Nazis to seize either property.

167. On or about November 30, 1934, only about one month after Mendelssohn-Bartholdy had encumbered these properties, he assigned the two “Grundschulden” to Mendelssohn & Co. Mendelssohn-Bartholdy thereby clearly intended to protect his real estate from confiscation. Mendelssohn & Co. then negotiated with the Nazi authorities to allow the Kulturstelle to acquire discrete parcels of Boernicke over the next months.

To Protect His Residual Assets from Escalating Nazi Encroachment, Mendelssohn-Bartholdy Formulates a Defensive Strategy that Compels Him to Begin Consigning and Liquidating Substantial Portions of His Private Art Collection

168. Mendelssohn-Bartholdy's consignment of his art collection late in 1934 Nazi Germany must be seen in the broader context of a necessary and integrally related defensive strategy that he devised to safeguard his residual assets from intensifying Nazi predation and to enhance his physical safety. Nazi exclusionary policies already had inflicted massive economic and financial damage upon Mendelssohn-Bartholdy by all but negating the value of his primary asset – his 22% equity interest in the historically successful Mendelssohn & Co. By the Fall of 1934, Mendelssohn-Bartholdy could reasonably expect little future income from this source. Mendelssohn-Bartholdy knew that the future of Mendelssohn & Co. was bleak, and that Nazi authorities were tolerating the continued operation of all Jewish-owned banks only as a short-term expedient. So now, in an attempt to protect his residual assets and estate from a similar fate, Mendelssohn-Bartholdy was forced to formulate an integrated defensive plan (the "Plan") to safeguard his two primary remaining assets, Alsenstrasse and Boernicke, and to place as much of his remaining estate as possible into the hands of his "Aryan" wife Elsa. The Plan, however, would exacerbate his already severe negative cash flow, and would require him to begin dismantling *en masse* his prized private art collection in order to supply the liquidity necessary to meet amplified periodic expenses. The Plan included the following specific objectives:

169. Protecting Boernicke: As noted above, the Nazi Kultursturm began pressuring Mendelssohn-Bartholdy to give up land at Boernicke in the early fall of 1934. Mendelssohn-Bartholdy's defensive strategy was to place a "grundschild," or encumbrance on Boernicke, borrow money against the value of the property to encumber it further, and then assign the encumbrance to Mendelssohn & Co. Mendelssohn & Co. then negotiated with the Kultursturm and eventually ceded land to it. Thus, in order to protect Boernicke, Mendelssohn-Bartholdy had borrowed RM 900,000

against its value, and had incurred an annual mortgage expense of RM 40,500 (RM 900,000 x 4 ½%), as well as ceded acreage to the Nazi authorities.

170. Protecting Alsenstrasse: Because he reasonably feared that Nazi thugs might assault him at Alsenstrasse since it was so close to the Reichstag in central Berlin, Mendelssohn-Bartholdy had vacated this mansion in 1933 and rented a smaller and more secluded home at *Schlosspark Bellvue*. So when Mendelssohn-Bartholdy realized that the Nazis were pressuring him to cede acreage at Boernicke in 1934, he placed a similar encumbrance on Alsenstrasse. Mendelssohn-Bartholdy no doubt believed that Alsenstrasse was especially vulnerable to Nazi predation, since it was now largely vacant and in close proximity to the Reichstag. Clearly, the Nazis would find this property inviting. Thus, in seeking to preserve Alsenstrasse, like Boernicke, Mendelssohn-Bartholdy incurred additional expenses because to retain it he had to defray essential carrying costs, including heating, repairs and maintenance, and to retain a skeletal staff at the premises. In addition he had to pay rent at his alternative residence, *Schlosspark Bellvue*.

171. Preserving the residual commercial viability of Mendelssohn & Co: Mendelssohn-Bartholdy declined to seek a judicial order to have his annual alimony expense of RM 120,000 to his first wife reduced on the ground of changed financial circumstances because, in order to do so, he would have had to reveal publicly his precipitous financial decline. Mendelssohn-Bartholdy and his partners concluded that the public disclosure of his diminished personal finances would undermine the public image of Mendelssohn & Co. Accordingly, Mendelssohn-Bartholdy forfeited an opportunity to have the financial burden of a RM 120,000 annual alimony expense reduced in an attempt to preserve Mendelssohn & Co. as a viable going concern bank, and to salvage whatever negligible future income that he might hope to realize from it.

172. Putatively transferring his private art collection to his “Aryan” wife Elsa.

Mendelssohn-Bartholdy maintained (fictively) in the February 8, 1935 Contract of Inheritance that he had conveyed his “paintings” to Elsa as a “wedding gift” in 1927. By crediting Elsa with ownership of the art collection since their wedding, Mendelssohn-Bartholdy sought to protect his collection from Nazi predation, since he could now profess that an “Aryan” had owned it since before the Nazis took power. In maintaining that he had given his art collection to Elsa as a wedding gift, Mendelssohn-Bartholdy also positioned himself to argue that the value of his collection should be excluded from the contemporaneous inheritance tax, which the Nazi government had recently legitimized as an official instrument to dispossess Jews. For the same reasons, Mendelssohn-Bartholdy’s sisters accepted this fictive “wedding gift” in the Boernicke Protocol entered shortly after Mendelssohn-Bartholdy’s death in May 1935. In fact, there was no “wedding gift” in 1927. Mendelssohn-Bartholdy as well as every dealer with whom he dealt referred exclusively to Mendelssohn-Bartholdy as the owner of the artworks up until the time of his death in May 1935.

173. Transferring value from Boernicke – which was subject to imminent Nazi predation – to property that his “Aryan” wife Elsa owned exclusively: Consistent with his goal of transferring his property and estate to his “Aryan” wife Elsa to protect it from Nazi predation, in October 1934 Mendelssohn-Bartholdy purchased a farm house in Bavaria for 96,000 goldmark that he placed exclusively in her name. The purchase required Mendelssohn-Bartholdy to assume an existing mortgage on the property in the amount of RM 17,000, and to incur an additional mortgage of RM 22,000. These mortgages further diminished the attractiveness of the farmhouse as a target for Nazi predation. Mendelssohn-Bartholdy almost certainly acquired this property with the help of

Mendelssohn & Co., and likely as part of an integrated financial plan that included the attending loan of RM 900,000 on the mortgage of Boernicke.

174. The purchase of the farm house permitted Mendelssohn-Bartholdy to transfer to Elsa more of his residual net worth and estate – just as he had attempted to convey his art collection to her by maintaining that it was a 1927 “wedding gift.” The farm house additionally afforded Mendelssohn-Bartholdy a sanctuary remote from downtown Berlin where he would be a less conspicuous target for perpetual Nazi surveillance and possible physical assault. However, the two mortgages that he assumed on the purchase of the farm house increased his already prohibitive negative periodic cash flow.

175. While Mendelssohn-Bartholdy’s defensive strategy improved his personal safety – and made his property and estate less susceptible to Nazi seizure – the Plan also substantially amplified his negative cash flow. The RM 900,000 mortgage at 4 ½% on Boernicke entailed an additional annual expense of RM 40,500. And the two mortgages on the farmhouse added an annual expense of RM 1,755. With his alimony obligation of RM 120,000, Mendelssohn-Bartholdy now confronted total annual costs exceeding RM 160,000 – which created a more than a RM 100,000 deficit when measured against his comparatively meager and greatly diminished income in 1934 of only RM 59,374. Mendelssohn-Bartholdy’s RM 100,000 shortfall does not even take into account that he had the following additional costs and expenses: real estate taxes on the three discrete properties (Boernicke, Alsenstrasse and the Bavarian farm house); expenses such as repairs and maintenance on these properties; salaries for his support staff; rent for his actual residence at *Schlosspark Bellvue*; and essential miscellaneous living expenses including food, clothing, and medical expenses, etc.

176. Nazi exclusionary policies had devastated Mendelssohn-Bartholdy financially. By October 1934, the Nazi government – pursuant to its official policies to persecute and economically marginalize Jews such as Mendelssohn-Bartholdy – had purposefully created a colossal financial crisis for Mendelssohn-Bartholdy that compelled him to begin liquidating his modern art collection to survive financially.

Mendelssohn-Bartholdy Is Forced to Consign or Liquidate Wholesale His Modern Art Collection to Implement the Plan to Protect His Residual Assets

177. In or around October 1934, Mendelssohn-Bartholdy consigned six van Gogh paintings, including *Sunflowers*, and a Renoir with Parisian art dealer Paul Rosenberg of Galerie Rosenberg. The decision of Mendelssohn-Bartholdy to begin liquidating his modern art collection was momentous on a personal level. It signaled his intention to dismantle one of the great private art collections of Europe to try to preserve his residual estate from Nazi predation, and to forsake a passion that both had given him much personal fulfillment and had enhanced his social and cultural status. Indeed, Mendelssohn-Bartholdy had invested much of his adult life – from the early 1900s until 1933 – building one of the great private art collections in Europe. Moreover, these artworks comprised a substantial portion of his net worth. (Mendelssohn-Bartholdy’s estate, not including his artworks, was finalized at RM 847,201; according to Elsa, Mendelssohn-Bartholdy’s residual paintings were worth RM 424,900 shortly after his death).

178. Mendelssohn-Bartholdy *had never sold or attempted to sell any significant artwork* until the Nazis came to power in 1933. Then, in a period of less than 1.5 years during Nazi rule, that is – between September 1933 and February 1934 – Mendelssohn-Bartholdy *consigned 16 of his most valuable paintings*, including *Sunflowers*. These artworks represented integral elements of an incomparable private art collection that he had spent more than 25 years developing.

179. Mendelssohn-Bartholdy consigned the following sixteen artworks from September 1933 to February 1934:

- 1) ***Vincent van Gogh, Sunflowers (1889)***
- 2) Vincent van Gogh, *The Town Hall at Auvers* (1890)
- 3) Vincent van Gogh, *Young Man with Cornflower* (1890)
- 4) Vincent van Gogh, *Trunk of an Old Yew Tree* (1888)
- 5) Vincent van Gogh, *St. Paul's Hospital (Hospital at St. Remy)* (1889)
- 6) Vincent van Gogh, *The Public Park* (1888)
- 7) Vincent van Gogh, *Self-Portrait* (later challenged as a fake van Gogh)
- 8) Pierre-Auguste Renoir, *Les Pecheuses de moules a Berneval* (1896)
- 9) Pablo Picasso, *Madame Soler* (1903)
- 10) Pablo Picasso, *Le Moulin de la Galette* (1900)
- 11) Pablo Picasso, *Boy Leading a Horse* (1905)
- 12) Pablo Picasso, *Blue Head of a Woman* (1903)
- 13) Pablo Picasso, *The Absinthe Drinker (Angel Fernandez de Soto)* (1903)
- 14) Georges Braque, *The Harbor* (1909)
- 15) Georges Braque, *Guitar Study* (1913)
- 16) Georges Braque, *The Lemon* (1920)

180. Two additional considerations corroborate that Mendelssohn-Bartholdy relinquished *Sunflowers* under duress and in an attempt to preserve his residual estate from Nazi predation. First, that Mendelssohn-Bartholdy consigned 13 of these paintings *in the seven month period* between July 1934 and February 1935 (all but the 3 Braque paintings) confirms his acute economic distress at this time, and that Nazi policies had crippled him financially and forced him to begin liquidating his collection.

181. Second, the collective value of the 16 paintings that Mendelssohn Bartholdy had consigned when he died in May 1935 approximates the amplified annual negative cash flow that Mendelssohn-Bartholdy incurred in implementing the Plan. As noted, Mendelssohn-Bartholdy's residual art collection after he died – which comprised about 48 artworks – was appraised at RM 424,900. On a *pro rata* basis, 16 of these works would have a collective value of RM 141,633 – an amount that parallels the total annual shortfall that Mendelssohn-Bartholdy assumed in implementing the Plan. Accordingly, the surrounding circumstances strongly intimate that

Mendelssohn-Bartholdy – an experienced and sophisticated banker and financial expert – was liquidating his art collection judiciously (and forcibly), and to anticipate future cash flow demands. In May of 1935, he was reserving the other approximate 48 artworks that comprised his residual collection to meet future financial exigencies. Had Mendelssohn-Bartholdy survived another two years, these artworks all but certainly also would have been casualties of the Nazi policy to expunge Jews from the German economy and to confiscate their property.

182. Mendelssohn-Bartholdy released *Sunflowers* and fifteen other masterpieces into a depressed art market that was glutted with paintings that other persecuted Jewish art collectors contemporaneously were being compelled to relinquish. Indeed, it was common that methodically persecuted Jewish art collectors who had begun to suffer sudden severe economic hardship began liquidating their collections. Notorious “Jew auctions” of such artworks had become common in Berlin and other cities by this time.

183. Sometime before Mendelssohn-Bartholdy died on May 10-11, 1935, Rosenberg bought the paintings from Mendelssohn Bartholdy in a prototypical “forced sale.”

The Nazi Campaign to Deprive Jews of Property Propels Forward as Jews Forfeit Citizenship Rights and the Nazi Government Officially Confiscates All Remaining Jewish Property

184. On September 15, 1935 the Nazi government promulgated a set of three laws that facilitated their campaign to marginalize Germany’s Jews, confiscate their property, and expel them from the German economy. These laws –collectively known as the “Nuremberg Laws” – deprived Jews of their citizenship as German nationals and also made illegal marriages between Jews and German citizens.

185. By the end of 1936 Nazi policies and corresponding pressure had crippled the Jewish population of Germany.

186. In 1938, the Nazis completed their long-declared mission of excluding Jews from the economy of Germany. In February, new tax regulations denied Jews many previous benefits. In April, Jews were required to declare property valued at over RM 5,000 – an administrative prelude to the formal confiscation of all residual owned Jewish property which occurred later that year. In July, Jews were banished from the few occupations that they at least formally had been allowed to pursue. In September, the Reichsbank reduced to only four percent (4%) the amount that it would pay in foreign currency from blocked accounts to emigrating Jews. This measure effectively required Jews who wanted to flee Nazi Germany to forfeit nearly all of their property. By late 1938, according to historian Martin Dean, much Jewish wealth between 1933 and 1938 had been “simply wiped out by the effects of boycotts, forced sales, and confiscations.”

187. On November 12, 1938, the Nazi government officially confiscated all remaining Jewish property with the First Ordinance on the Exclusion of Jews from German Economic Life (the “Ordinance”). The Ordinance precluded Jews from most remaining employment options, ordered the dismissal of employees without right to pensions or compensation, and triggered the formal confiscation of residual Jewish-owned property.

188. Late in 1938 the Nazi government also forced Mendelssohn & Co. to transfer its assets and liabilities to Deutsche Bank. The shareholders of Mendelssohn & Co. received no compensation or remuneration for this transfer. Jewish members of the board of directors of Mendelssohn & Co. resigned on December 5, 1938 – as did Paul’s widow Elsa – and all Jewish employees were fired. Mendelssohn & Co. retained a few residual assets then liquidated on December 1, 1939. “The majority of the estimated 345 Jewish private banks in existence at the end of 1935” had been liquidated by the beginning of 1939. Gerald Feldman & Wolfgang

Seibel, *Networks of Nazi Persecution- Bureaucracy, Business and the Organization of the Holocaust* (2005), p. 52.

189. In the summer of 1941, the Nazi government developed plans of the ‘final solution’ – the genocide of the Jewish people. Adolf Eichmann – whom Hitler had placed in charge of this program – estimated that by the end of the War the Nazis had murdered 6,000,000 Jews, of which 4,000,000 were killed in concentration camps.

190. In 1944, Nazi authorities deported Mendelssohn-Bartholdy’s sister, Katarina to a concentration camp. Government documents confirm that Katarina was sent there because she was a Jew.

191. Banking historian Harold Dean relates that historians and political scientists have come to appreciate that the “seizure of property acts as an important catalyst in the accelerating downward spiral across /the threshold to genocide.” Dean, *supra*, p. 15. Accordingly the Nazi policies during the years 1933-1938 seeking to deprive Jews of property – and that caused Mendelssohn-Bartholdy to forfeit *Sunflowers* – marked a signal milestone well along the pathway to mass murder.

Both Persons Who Subsequently Paid Value for *Sunflowers* Were Aware that Nazi Policies and Coercion Compelled Mendelssohn-Bartholdy to Relinquish the Painting

192. Both individuals who paid value for *Sunflowers* after Mendelssohn-Bartholdy transferred it Rosenberg Galerie – art dealer Paul Rosenberg and wealthy and prolific British-American art collector Lady Edith Dunn Stone Chester Beatty (“Beatty”) – were aware that Nazi persecution forced Mendelssohn-Bartholdy to surrender the Painting.

193. For many reasons Paul Rosenberg was aware that Nazi policies and persecution compelled Mendelssohn-Bartholdy to sacrifice *Sunflowers*.

194. First, Rosenberg himself was Jewish, and operating out of Paris he necessarily must have been aware that the Nazi Party in neighboring Germany was openly persecuting Jews with a declared objective of excluding them from the economy and society of Germany. The Nazi Party had announced this policy in 1920 when it was formed, and was implementing its long-declared objectives with ruthless efficiency since coming to power in January 1933.

195. Second, as an art dealer located in Paris, Rosenberg could not help but observe the unprecedented volumes of artworks of exceptional quality that were appearing on the international market and emanating from Germany, which should have informed him that Nazi exclusionary policies against Jews accounted for this influx.

196. Third, Rosenberg's professional relationship as an art dealer with Mendelssohn-Bartholdy going back to 1913 should have alerted Rosenberg that Mendelssohn-Bartholdy's sudden consignment of *Sunflowers* along with *six other van Gogh paintings* as well as a Renoir painting signaled that Mendelssohn Bartholdy was suffering extreme financial distress. Upon information and belief, Mendelssohn-Bartholdy uniformly had purchased artworks from Rosenberg. The abrupt transition from consistently buying artworks to selling eight invaluable paintings in tandem unquestionably should have alerted Rosenberg about Mendelssohn-Bartholdy's dire circumstances.

197. Fourth, the world attention that contemporaneously was being focused upon Nazi Germany's persecution of Jews also reasonably informed Rosenberg that Mendelssohn-Bartholdy was selling *Sunflowers* and the other van Gogh paintings under duress. James McDonald, United Nations' High Commissioner for Refugees (High Commissioner), brought the attention of the world to this issue during his tenure from October 1933- December 1935. And

McDonald's international notoriety as High Commissioner necessarily gave this subject a high profile in the international community.

198. Fifth, that Paris was a magnet for Jews fleeing Nazi persecution in neighboring Germany during the years 1933 and 1934 would have alerted Rosenberg to the political circumstances in Germany that were causing these migrations.

199. Finally, the Letter of Resignation of James McDonald as High Commissioner in December 1935 punctuated that Nazi policies were inducing an imminent international humanitarian crisis, and already had compelled 80,000 victims of Nazi persecution to emigrate. And while McDonald submitted the Letter after Mendelssohn-Bartholdy sold the Painting to Rosenberg, the Letter recounted conditions that were prevailing when Mendelssohn-Bartholdy relinquished the Painting.

200. Rosenberg's client Beatty also was reasonably aware that Nazi policies and concomitant coercion compelled Mendelssohn-Bartholdy to transfer the Painting to Rosenberg.

201. First, Beatty was the wife of the prominent industrialist Arthur Chester Beatty and an experienced, worldly and sophisticated international art collector who travelled frequently from her residence in London to Europe to buy art. Accordingly, she was exposed perpetually to media stories about the policies of the Nazi government to exclude Jews from the German economy.

202. Second, the contemporaneous British media and press covered the Nazi campaign against Jews extensively, and so reasonably informed Beatty that persecuted Jews were selling massive quantities of art under Nazi-induced duress, and that these materials were appearing on the international market.

203. Third, the contemporaneous British media also reported upon the challenges that the burgeoning influx of immigrants fleeing Nazi persecution posed for England and English society. These conditions fostered a prominent political debate about how best to respond to the challenge. Accordingly, the magnitude of the refugee problem and the prominence of the political dialogue about how best to redress this issue reasonably should have informed Beatty about contemporaneous conditions in Nazi Germany that deprived Mendelssohn-Bartholdy of the Painting.

204. Moreover, Rosenthal most likely informed Beatty about Mendelssohn-Bartholdy immediate past ownership of *Sunflowers* for two independent reasons. First, Mendelssohn-Bartholdy was highly esteemed, and his past ownership of the Painting added prestige and luster to its provenance. In addition, Mendelssohn-Bartholdy's ownership of the Painting for more than the past 20 years would have assured Beatty that *Sunflowers* was not a fraudulent fabrication, or connected with a contemporaneous scandal that sent German art dealer Otto Wacker to prison for 19 months for fraudulently creating paintings that he misattributed to van Gogh.

After the War the U.S. and the Allies Presume that any Transfer of Property by a Jew in Germany after January 30, 1933 was an "Act of Confiscation" by the Nazi Government, Entitling the Claimant to Recover the Property

205. The remedial principles that the U.S. and Allied governments promulgated to return to rightful owners property items such as the Painting that were surrendered as a consequence of Nazi persecution emphasized the encompassing and pervasive character of coercion that Nazi authorities contrived to dispossess Mendelssohn-Bartholdy of *Sunflowers*. After World War II, the U.S. and Allied governments (the "Allies") recognized that purported sales and other conveyances of property by Jews in Germany after Hitler took power in 1933 – such as Mendelssohn-Bartholdy's forced transfer of *Sunflowers* – occurred in a purposefully and extraordinarily coercive environment

and so were presumptively invalid. The U.S. and Allied governments accordingly fashioned appropriate principles of restitution to redress the wrongful pressure inherent in these conveyances.

206. The Allies laid the cornerstone for the post-War restitution policy in Europe on January 5, 1943 with the *Inter-Allied Declaration Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control*, 8 State Dep't Bull. 211 (1943), known also as the *Declaration of London* (the "Declaration"). The Declaration underscored that the Nazi government had employed both subtle and flagrant forms of coercion to deprive Jews in Germany and elsewhere of their property and cautioned "all concerned" that the Allied governments reserved the right "to declare invalid any transfers of, or dealing with, property rights and interest of any description whatsoever in Nazi occupied countries," regardless whether such transfers appeared volitional.

207. The principles of the London Declaration became the foundation of post-War allied restitution policy for property wrongfully taken as a result of Nazi persecution, such as *Sunflowers*.

208. U.S. policy in this regard became crystallized in 1947 with Military Government Law No. 59 (MGL No. 59), 12 Fed. Reg. 7983 (November 29, 1947). MGL No. 59 announced as its purpose "to effect to the largest extent possible the speedy restitution of identifiable property ...to persons who were wrongfully deprived of such property within the period from January 30, 1933 to May 8, 1945 for reasons of race, religion, nationality, ideology or political opposition to National Socialism." § 3.75(a)(1).

209. MGL achieved its objectives for restitution through the recurring, operative terms "confiscated property" and "act of confiscation," which the statute defined broadly. § 376(a). Moreover, MGL NO. 59 established a *presumption* that any sale or transfer of personal property that a Jewish resident of Germany made after Hitler became Chancellor of Germany on January 30,

1933 – such as Mendelssohn-Bartholdy’s transfer of *Sunflowers* to Rosenberg – was an “act of confiscation.” See § 375(b) entitled *Article 3: presumption of confiscation*.

210. MGL No. 59 became the model for similar post-War legislation, including the Berlin Restitution Law enacted in 1949. Like MGL No. 59, the Berlin Restitution Law established a presumption that any sale or other transfer of personal property that a Jew in Germany made after Hitler became Chancellor on January 30, 1933 was an “unjust deprivation” (See Article 3, No. 1, “Presumption of Unjust Deprivation.”)

211. Accordingly – and based upon the purposefully coercive environment that Nazi authorities strategically engineered to deprive persecuted Jews of their personal property during the years 1933-1945 and in which Mendelssohn-Bartholdy surrendered *Sunflowers* – the “presumption of unjust deprivation” (also called the “presumption of confiscation”) for any transfer of property by a Jew in Nazi Germany has remained a polestar of restitution schemes and law in all those states particularly affected by Nazi art plundering and aggression, including Germany, Austria, the United Kingdom, France and Holland.

Beginning in 1998 the U.S. and Other Countries Affected by Nazi Art Disposessions Encourage the Restitution of Confiscated Materials

212. Beginning in 1998 – and amid much public fanfare – the U.S. as well as many other nations affected by wrongful Nazi art disposessions commenced an international campaign to encourage Holocaust victims and their heirs to come forward with claims for the restitution of Nazi-confiscated artworks like *Sunflowers*. Through repeated international as well as national declarations and pronouncements over the past 24 years, the U.S. has reasserted foundational policies that claims for the restitution of Nazi-era artworks like the Painting should be resolved honestly, fairly, with reference to all available documents and evidence and without litigation, if possible.

213. The international commitment of the U. S in this regard began on December 3, 1998 at a meeting in Washington D.C. of some 44 governments affected by Nazi art looting entitled *The Washington Conference on Holocaust Era Assets* (the “*Washington Conference*”). The *Washington Conference* concluded by promulgating the *Washington Conference Principles on Nazi-Confiscated Art* (the “*Washington Principles*”) which set forth ten prescriptions by which claims to recover Nazi-era artworks would be encouraged and resolved. While the *Washington Principles* were “non-binding” in that they had no independent legal effect, they expressly: (1) encouraged Holocaust victims and their heirs to come forward with claims for the recovery of Nazi-confiscated artworks; (2) declared “that steps should be taken expeditiously to achieve a ***just and fair solution***” to such claims (emphasis supplied); and; (3) encouraged the signatory nations to “develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.” The *Washington Principles* became the foundation for the renewed international initiative to return Nazi-confiscated artworks such as *Sunflowers* to rightful owners.

214. In 1998, Congress enacted the Holocaust Victims Redress Act (the “Redress Act”) Public Law. No 105-158), 112 Stat. 15, which further declared U.S. policy favoring the return to rightful owners of Holocaust era artworks such as *Sunflowers*. The Redress Act expressed the sense of Congress that “all governments should undertake good faith efforts to facilitate the return of private and public property, such as works of art, to the rightful owners in cases where assets were confiscated from the claimant during the period of Nazi rule and there is reasonable proof that the claimant is the rightful owner.”

215. On June 30, 2009 – and following the conclusion of *The Holocaust Assets Conference* in Prague and Terezin – the U.S. and 45 other governments issued the *Terezin*

Declaration (the “*Declaration*”). The *Declaration* reaffirmed the commitment of the parties to the *Washington Principles*, to ensure that their respective legal systems or alternative processes resolved claims to recover Nazi-confiscated artworks fairly and on their merits: “we urge all stakeholders to ensure that their legal systems or alternative processes, 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 of the relevant documents submitted by the parties.”

216. As noted above, in 2016 the U.S. enacted the HEAR Act, suspending otherwise applicable statutes of limitations for claims to recover Nazi-tainted artworks. The HEAR Act prescribes that a Holocaust victim or heir may commence a judicial action to recover any artwork or other property that was lost “because of” Nazi persecution during the “covered period” of January 1, 1933 through December 31, 1945 (HEAR § 4(3), 5(a)), and affords claimants a six-year limitation period commencing when the claimants or their agents actually discover the identity, location and their interest in the lost artwork. The HEAR Act reaffirmed long-standing U.S. policies seeking to identify Nazi-tainted artworks and to return these materials to rightful owners. The stated purposes of the HEAR Act are to ensure that laws governing claims for the recovery of “Nazi-confiscated” artworks further United States policies as set forth in the *Washington Principles*, the *Redress Act*, and the *Terezin Declaration*, and that otherwise applicable statutes of limitations do not bar claims for the recovery of Nazi-confiscated artworks and other misappropriated property, so that such claims are resolved justly and fairly. Pub.L. 114-308, 130 Stat. 1526, § 3.

217. In 2018, Congress enacted the *Justice for Uncompensated Survivors Today* (JUST) Act of 2017 (the “*Just Act*”), Public Law No 115-171 (05/09/2018). The *Just Act*

requires the U.S. Department of State to report to Congress concerning the progress countries affected by Nazi property confiscations and seizures have made in returning materials to rightful owners, and so underscores the importance to U.S. foreign policy of the restitution of Nazi era artworks. The Just Act also tacitly reaffirms established U.S. policy in this area.

Exuberant with the Prospect of Commercially Exploiting the Iconic van Gogh *Sunflowers* Painting, Sompō Holdings' Corporate Predecessor Yasuda Acquired *Sunflowers* at Christie's Auction in London in 1987 in Reckless Disregard of the It's Glaringly Suspicious Nazi-Era Provenance

218. A *Los Angeles Times* article dated April 10, 1987 entitled *What's Behind that 40-Million Bouquet?* by Sam Jameson relates that Sompō Holdings' corporate predecessor – The Yasuda Fire and Marine Insurance Company (Yasuda) – bought *Sunflowers* at Christie's auction house in London for an unprecedented price of nearly \$40 million to avail itself of a unique opportunity that would never recur and that would give it a painting with iconic status in Japan. (A copy of this article is attached as **Exhibit 6**.)

219. “To the Yasuda Fire & Marine Insurance Co., the auction of Vincent van Gogh's painting ‘*Sunflowers*’ was ‘a never-again’ opportunity. That's why the company paid a record \$39.85 million for it, a spokesman said here Thursday.” A Yasuda representative stated that “[e]very Japanese in the country, even school children, knows the painting.” The article reported that “students in both elementary and junior high school study it in their art classes as one of the world's great art works.” Accordingly, “[r]ealizing the meaning of *Sunflowers* to the Japanese public at large, Yasuda determined to buy it when it heard the painting would be on the market,” the spokesperson said.

220. British art journalist Martin Bailey reports in *The Sunflowers Are Mine - The Story of Van Gogh's Masterpiece* (2013), that the Yasuda CEO responsible for the purchase of *Sunflowers* in 1987 – Yasuo Goto – acknowledged to Christie's specialist James Roundell that in

buying *Sunflowers* amid such intense international publicity and press coverage Yasuda would have been required to spend “L 100 million, or *four times the price of the painting*” in advertising to receive equivalent notoriety. (Emphasis supplied.)

221. Resolved to acquiring *Sunflowers* at any price, Yasuda ignored the provenance of this painting that Christie’s published for the auction, which identified elite Jewish German banker, premier private art collector, and prominent Nazi victim Paul von Mendelssohn-Bartholdy as owning *Sunflowers* in Berlin as late as 1934. This provenance related:

Paul von Mendelssohn-Bartholdy, Berlin, by 1910, probably bought from Galerie Druet
Galerie Paul Rosenberg, Paris, (from whom bought by Edith Beatty in 1934)

222. This information all but confirmed that Mendelsohn-Bartholdy had owned *Sunflowers* in Berlin when the Nazi era began in early 1933, and consigned the Painting to the Galerie Paul Rosenberg in 1934 because of Nazi predation. Yasuda’s failure to investigate this likelihood was reckless if not purposeful, as by 1987 Yasuda was a sophisticated corporate art collector – having established a corporate museum in 1976 and having acquired two Renoir paintings in the international art market in 1986. So by 1987 Yasuda was aware – or reasonably should have been aware – that stolen art and Nazi- era contraband appear frequently on the international art market and that collectors must take affirmative precautions against acquiring such materials. Accordingly, Mendelssohn-Bartholdy’s ownership of *Sunflowers* in Berlin as late as 1934 was a “red flag” that demanded further inquiry. But Yasuda’s resolve to acquire the *Sunflowers* at *any price* – and concomitant aspirations for commercially exploiting it – foreclosed any such investigation.

In 1999 Yasuda Chairman *Emeritus* Yasuo Goto Celebrates that *Sunflowers* Has Benefitted Yasuda Immensely and Altered It's Corporate "Destiny"

223. On June 23, 1999 the by now "Chairman *Emeritus*" of Yasuda Yasuo Goto – who conceived acquiring *Sunflowers* in 1987 – gave a speech at the van Gogh Museum in Amsterdam commemorating the completion of a new wing which Yasuda had helped fund with an approximately \$30 million contribution in 1990, and declaring that *Sunflowers* had changed Yasuda's corporate destiny. (A copy of this speech is appended as **Exhibit 7**.)

224. This speech underscores a close identity between *Sunflowers* and van Gogh, and how through *Sunflowers* Yasuda had become integral to the international van Gogh cultural community, and a proactive partner with the van Gogh museum. Mr. Goto expressly equated *Sunflowers* with van Gogh, and tacitly equated Yasuda with both *Sunflowers* and van Gogh. Mr. Goto affirmed that Yasuda had received both "tangible and intangible benefits" from *Sunflowers*.

225. Mr. Goto accentuated the close relationship and amity that van Gogh enjoyed with Japan, and van Gogh's intrigue with Japanese artistic technique that inspired *Sunflowers*. Mr. Goto noted that *Sunflowers* is adored by many Japanese. He observed that "As a result of the ties commenced through *Sunflowers*, I feel that it was the destiny of Yasuda" as well as other Japanese contributors to "cooperate in the construction of the new exhibition wing of the Van Gogh Museum."

226. Mr. Goto underscored "the *destiny* associated with *Sunflowers*" (emphasis supplied), as *Sunflowers* enhanced Yasuda's credibility and provided a springboard for opportunities in other spheres of corporate social responsibility which inevitably would enhance Yasuda's corporate image.

In 2001, Yasuda Confides to the Art Institute of Chicago that It Is “Deeply Concerned” that *Sunflowers* Was a Casualty of Nazi Policies But Continues to Evade Investigating the Painting’s Problematic Provenance

227. In 2000, the Art Institute of Chicago (AIC) invited Yasuda to display *Sunflowers* at an international exhibition in Chicago offering – correspondingly – a chance to capitalize upon the Painting by aligning its corporate identity with *Sunflowers* throughout the U.S., where it already had offices in several major cities.

228. On April 26, 2001, Yasuda representative Masura Igarashi – who noted that he was writing on behalf of the Yasuda Company and the Yasuda Museum – stated that Yasuda was honored to collaborate in the “van Gogh and Gauguin: Studio of the South exhibition” in Chicago and Amsterdam by exhibiting *Sunflowers*, but cautioned that “***Nazis [sic] confiscation problem may arise in American and in Holland.*** We would like to include the clear terms in the loan agreement to protect our paintings against this problem.” (Emphasis supplied; see April 26, 2001 email, attached as **Exhibit 8.**)

229. On May 8, 2001, Yasuda representative Masaru Igarashi sent the AIC and Van Gogh Museum another email relating that several years earlier, Yasuda had helped MoMA organize an exhibition of Egon Schiele artworks in New York and Tokyo. Igarashi expressed awareness that at the New York exhibition the Manhattan District Attorney had confiscated the painting *Portrait of Wally* as Nazi contraband. Igarashi was concerned that *Sunflowers* similarly might be a casualty of Nazi policies and might suffer a similar fate. Igarashi confessed that “[w]e are ***deeply concerned*** about our [sic] Goh’ and [sic] Gauguin’ provenance. We think our two works have nothing to do with Nazi-looted art, but are not 100% sure.” (Emphasis supplied; **Exhibit 2.**)

230. On May 9, 2001, Igarashi wrote another email to AIC and the Van Gogh Museum admitting that Yasuda had not investigated the provenance of the Painting since acquiring it in 1987, and knew nothing more about it than what Christie's had published for the sale. (A copy of this email is attached as **Exhibit 9**.) Upon information and belief, AIC – with Yasuda's knowledge – filed a false report with the U.S. Department of State (State Department) concealing the Nazi taint of *Sunflowers*. This report induced the State Department to issue a formal certificate assuring Yasuda that law enforcement authorities would not seize *Sunflowers* were Yasuda to bring the Painting to the U.S. for the exhibition. Only after receiving this certificate did Yasuda permit *Sunflowers* to be displayed at the exhibition. Although a putative public trustee, the AIC has refused to share with the Heirs a copy of this report.

231. Yasuda registered no concern with what all but certainly were the superior legal and moral rights of the Heirs in the Painting, or with investigating the background of the Painting further to address this possibility. Rather, Yasuda's sole express concern was that U.S. law enforcement authorities might seize the Painting as Nazi contraband. But AIC, upon information and belief, with the knowledge and approval of Yasuda, averted this potential by concealing the Painting's Nazi past so that the State Department would exempt the Painting from potential seizure if brought into the U.S. Yasuda then commercially exploited the Painting at the van Gogh exhibition in Chicago, burnishing its corporate image with the Painting throughout the U.S. where Yasuda had offices in several major cities, including New York, Los Angeles, Louisville and Nashville. Yasuda's collusion with AIC to conceal that *Sunflowers* was a casualty of Nazi policies violated the National Stolen Property Act of 1934, 18 U.S.C. § 2314 (1934), proscribing transmitting or transferring in interstate or foreign commerce any goods of the value of \$5000 or more "knowing the same to have been converted, stolen or taken by fraud."

232. Finally, there can be no doubt that Sompo Holdings is responsible for the foregoing, since the August 27, 2001 Loan Agreement by which *Sunflowers* was lent to AIC for the exhibition (attached as **Exhibit 10**) makes clear that Yasuda will be changing its name to Sompo Japan Inc. “as of April 1, 2002,” during the course of the loan, and that “the loans will automatically be transferred to the company under the new name.”

In 2017 Sompo Holdings Proclaims that Many Customers View *Sunflowers* and Sompo Holdings as the Same

233. On July 18, 2017, Sompo Holdings issued a statement “Celebrating 30 Years of Van Gogh’s *Sunflowers*.” Sompo Holdings exclaimed that *Sunflowers* had been on display at its museum for 30 years, and observed: “*To many customers, Sompo Japan Nipponkoa has become synonymous with Sunflowers.*” (**Exhibit 3**; emphasis supplied.)

Notwithstanding Long Awareness that *Sunflowers* Is Nazi-Tainted, Yasuda and Sompo Holdings Have Capitalized Upon the Painting with a Sophisticated Branding Strategy Based Upon Psychological Archetypes

234. Even though Sompo Holdings long has known that *Sunflowers* is a casualty of Nazi policies – and that Mendelssohn-Bartholdy forfeited the Painting as a consequence of Nazi wrongs that violate paradigmatically the modern international law of human rights – Sompo Holdings nonetheless has proactively conjoined its corporate identity with the Painting to such an extent that Sompo Holdings now proclaims that its customers view *Sunflowers* as “synonymous” with Sompo Holdings. Sompo Holdings thereby has made its discrete brand coterminous with *Sunflowers*. And while branding authorities do not define the term “brand” uniformly, in the final analysis – and in the words of one branding authority – a brand is “nothing less than everything anyone thinks of when they see your logo or hear your name.” David D’Alessandro, *Brand Warfare: 19 Rules for Building a Killer Brand* (2002) at page 164. By this metric Sompo Holdings has purposefully made its corporate brand coextensive with *Sunflowers*. Another branding expert counsels that “sound

brands are the single most valuable assets a company can possess.” John Gerzema and Edward Lebar, *The Brand Bubble: The Looming Crisis in Brand Value and How to Avoid It* (2008) at 13.

235. Moreover – and through an astute and well-established psychological marketing strategy known as “archetypal branding” – Sompco Holdings has borrowed or “leveraged” discrete characteristics and qualities commonly associated with *Sunflowers* and its iconic, creative artist Vincent van Gogh and invested these traits in Sompco Holdings. As branding authority and professor Kevin Lane Keller explains, “by making a connection between the brand and another entity, consumers may form a mental association from the brand to this other entity, and consequently, to any and all associations, judgments, feelings and the like to the entity.” Kevin Lane Keller, *Strategic Brand Management* (4th Ed. 2013), at 233. While “cognitive consistency” – what is true for the entity must be true for the brand – represents one psychological mechanism that explains this phenomena, another theory that accounts for this inference and which is backed with quantitative proof is the concept of psychological “archetypes.”

236. Branding literature defines “archetypes” as representing psychological characters or prototypes that are embedded deeply in the collective human subconscious and evoke intense emotional responses. Branding authorities attribute the origin of the archetypes to the psychological theorist Carl Jung. Margaret Mark and Carol S. Pearson, the authors of the seminal *The Hero and The Outlaw: Building Extraordinary Brands Through the Power of Archetypes* (2001) (Mark and Pearson), maintain that they identified the dozen most commonly employed prototypical archetypes in branding and commercial activity. These include the *Creator* and *Caregiver*, as well as the *Hero*, *Outlaw*, *Magician*, *Sage*, *Explorer*, *Jester*, *Lover*, and *Ruler*. According to Mark and Pearson, the paradigmatic *Creator* archetype expresses uniqueness, innovates, and transforms abstractions into realities while constantly staking out new positions. The *Creator*

also offers a means of responding to the chaos and lack of control in the world, and to find and create meaning in life. According to *Mark and Pearson*, a common *Creator* brand strategy is not merely to appear to be a work of art but rather “to embody one.” *Mark and Pearson* at 240. At the highest level the *Creator* seeks “to create structures that influence culture and society.” *Id.* at 230.

237. The *Caregiver* archetype that Sompo Holdings also borrows or leverages from the warm and soothing *Sunflowers* is based upon altruism, and seeks to motivate, reassure and protect society. The strengths of the *Caregiver* include altruism, compassion, patience and empathy. According to *Mark & Pearson*, at the highest level the *Caregiver* archetype exudes “altruism, concern for the larger world.” *Mark & Pearson* at 215.

238. Archetypal branding strategist counsel that **combining** two or more archetypes enriches how brands resonate with consumers and creates a more nuanced and realistic brand identity. Branding consultant and expert Kent Wertime instructs that combining the *Artist-Creator* and *Caregiver/Mother* archetypes is **especially effective**. He observes that General Electric has merged these archetypes to project an image of the company not merely as a creator, but also as developing products that “help and nurture people’s well-being.” Kent Wertime, *Building Brands & Believers: How to Connect with Consumers Using Archetypes* (2002), at 204. “Consumers respond to this subconscious mix of Creator-Mother archetype, which is crystallized perfectly in the line **“We Bring Good Things to Life.”** *Id.* Moreover, “the style of GE’s advertising reflects the mix of the two archetypes. The communication imparts a feeling of motherly warmth and care while it highlights the inventiveness of the company.” *Id.*

239. Sompo Holdings also has combined the *Artist-Creator* and *Caregiver* archetypes to develop similar corporate slogans that also pair creative vision with securing safety, stability

and social welfare: ***“Bringing Continuous Innovation for the Future of Well Being”*** and ***“[t]oday Sompo’s Group vision consists of new value creation and a theme park for security, health and well-being.”*** These slogans parallel General Electric’s catchphrase so closely as to all but confirm that Sompo Holdings’ mottos derive from the same confluence of the *Artist-Creator* and *Caregiver* archetypes.

240. Archetypes benefit brands in multiple ways. First – and perhaps foremost – by invoking the deep subconscious, archetypes connect immediately with stakeholders: “[t]he instant connection that archetypes create enables commercial images to quickly connect with consumers,” (Wertime, *supra* at 67), on a subconscious and persuasive level about which they are unaware. *Id.* at 201. Connecting with consumers, of course, is a prerequisite for commercial success, and archetypes accomplish this essential objective.

241. Second, because archetypes forge an immediate and profound connection with consumers and stakeholders, they enable commercial images to break through the ever burgeoning “clutter” of the current image-based economy.

242. Third, because archetypes are timeless – they inhere as permanent constructs in the collective human subconscious – they enable brands to create an indelible resonance that will not dissipate with passing commercial trends.

243. Finally, because archetypes are universal to all humanity, they endow brands with global appeal. “The universality of archetypes is what allows for universally appealing messages that can cross cultures” and facilitates transnational communication. *See* Wertime, *supra*, at 63.

244. Sompo Holdings infuses its discrete corporate identity with the *Creator* and *Caregiver* archetypes that it has borrowed or “leveraged” from *Sunflowers*. Consonant with this

hybrid and nuanced archetypal identity, Sompo Holdings portrays itself consistently in its marketing as exercising uniquely creative faculties for the betterment of humanity.

245. Sompo Holdings' confluent *Artist/Creator – Caregiver* archetype also provides it with a unified, cohesive corporate identity that enables it to discharge many essential brand functions efficiently. Branding authorities stress that successful brands must express a consistent image around which the many necessary brand functions can align and cohere. The *Artist/Creator- Caregiver* archetype enables Sompo Holdings to perform efficiently many necessary brand roles including the following:

- a. helping Sompo Holdings create positive associations for the brand in the minds of consumers and stakeholders;
- b. enabling Sompo Holdings to invoke the rich potential of art to forge emotional attachments and to differentiate its brand identity;
- c. injecting Sompo Holdings' brand with content and meaning borrowed from the paradigmatically creative van Gogh;
- d. performing an umbrella function for Sompo Holdings by integrating, cohering, and aligning all of its corporate functions;
- e. evoking consumer and stakeholder emotion;
- f. enabling Sompo Holdings to appear *authentic* and to promise consumers a better life;
- g. allowing Sompo Holdings to offer consumers a “short-cut” for buying decisions;
- h. helping Sompo Holdings both to develop and sustain a positive brand image which is essential to attract and retain valuable employees;

- i. enhancing Sampo Holdings' brand value in a market where brands play an increasingly pivotal role;
- j. attracting perpetual publicity to Sampo Holdings, the value of which vastly exceeds advertising.

246. Sampo Holdings CEO Kengo Sakurada – in discharging the office of CEO – has adhered to the corporate script that the *Artist/Creator-Caregiver* archetype demands with his new book *Bushido Capitalism: The Code to Redefine Business for a Sustainable Future*. This book purports to employ the seven virtues of the ancient Japanese warrior code *Bushido* to “recalibrate” international capitalism to make it more responsive to the needs of international stakeholders. But without borrowing from the ethos, mythology and legend of the quintessentially creative, artistic genius van Gogh, Mr. Sakurada plausibly could not purport to accomplish such an ambitious objective.

247. The archetypes that Sampo Holdings has derived from *Sunflowers* both to **create** its corporate identity and persona and to **differentiate** itself from its competitors has helped Sampo Holdings – within the past 5 years – to earn net profits of approximately \$7 billion, to increase its brand value from approximately \$385 million to \$605, and to reap unjust enrichment in an amount not less than \$700 million, or ten percent (10%) of its net profits. The Heirs seek to recover Sampo Holdings' unjust enrichment for the past 5 years because the relevant Illinois statute of limitations – IL ST CH 735 5/13-205 – prescribes this period of recovery.

248. Because Sampo Holdings is a “conscious wrongdoer” within the meaning of the applicable law as it acquired *Sunflowers* and has commercially exploited it in reckless disregard of the fact that the Painting was a casualty of Nazi policies, and in derogation of the superior ownership and possessory interests of the Heirs, the law allows the Heirs to recover the

consequential gains that Sompo Holdings has realized from misappropriating and commercially exploiting the Painting. The law defines “conscious wrongdoer” as one who is enriched by misconduct and who either acts with knowledge of the underlying wrong, or despite a *known risk* that the conduct in question violates another’s rights. Sompo Holdings is a “conscious wrongdoer” because it bought *Sunflowers* in reckless disregard of the high probability that Nazi policies deprived Mendelssohn Bartholdy of the Painting, and that the Heirs therefore were its rightful owners. Sompo Holdings also is a “conscious wrongdoer” because after expressing its “deep concern” that *Sunflowers* was afflicted with a Nazi taint, it continued to neglect to research the Painting’s suspicious provenance, and instead commercially exploited it, employing a sophisticated archetypal branding strategy to “leverage” the attributes of *Sunflowers* and van Gogh and to transfer and invest these qualities in Sompo Holdings.

249. Sompo Holdings additionally is a “conscious wrongdoer” because Sompo Holdings consistently has maintained that it is committed to international human rights, follows a human rights due diligence investigative protocol, and that in 2021 it surveyed its corporate operations extensively to ensure that none of its assets or activities exploit human rights violations. Knowingly commercially exploiting a Nazi-tainted painting and proactively concealing this misconduct makes Sompo Holdings – at a minimum – a “conscious wrongdoer.”

250. Moreover – and because quantifying unjust enrichment in this context is notoriously speculative – the law requires only that the Heirs establish a *reasonable basis* for computing Sompo Holdings’ wrongful gains. The law additionally allocates to Sompo Holdings both the burden of disproving the amount of unjust enrichment that the Heirs demand, as well as the residual risk that Sompo Holdings’ unlawful profits cannot be computed with certainty.

251. Because these leveraged traits – the warmth and reassurance of *Sunflowers* and the visionary, creative genius of van Gogh – *define* Somp Holdings’ core identity and brand, they necessarily play a commensurate role in enabling Somp Holdings to generate profits and net income. There can be no doubt, then, that *Sunflowers* has contributed immensely to Somp Holdings’ earnings, and Somp Holdings so has admitted.

252. Many reported judicial decisions confirm that courts consistently have awarded far greater than ten percent (10%) of a company’s net profits when that company realized far less benefit from converted or misappropriated property than Somp Holdings has reaped from misappropriating and exploiting *Sunflowers*.

253. Moreover, the signal role that the archetypes described above have played both in defining Somp Holdings’ unique brand and enabling it to discharge multiple brand functions preclude any possibility that Somp Holdings can demonstrate that these archetypes have contributed *less* than ten percent (10%) to its net earnings.

Because Somp Holdings’ Commercial Exploitation of What it Knows to Be a Nazi-Tainted Painting Sabotages Signal Federal Policies and Impairs the Public Interest in Many Ways the Federal Unclean Hands Doctrine Precludes Somp Holdings From Equitable Relief.

254. The Supreme Court has reaffirmed that whenever the misconduct of a party impairs a federal interest, the federal equitable doctrine of Unclean Hands precludes such party from invoking equitable relief. The Court also has made clear that artworks lost as a consequence of Nazi policies and coercion – such as *Sunflowers* – implicate uniquely federal (rather than state) interests and affect the foreign policy of the U.S. Because the Heirs’ claim to recover *Sunflowers* invokes uniquely federal interests, the federal equitable doctrine of Unclean Hands governs Somp Holdings’ misconduct concerning the Painting.

255. By commercially exploiting Sunflowers while **knowing** that the Painting is a casualty of Nazi policies and **affirmatively misrepresenting** that the Painting bears no human rights stigma, Somp Holdings has violated multiple signal U.S. public policies and impaired the public interest in several ways. Moreover, the central, paramount roles that *Sunflowers* plays both in informing Somp Holdings' corporate identity as well as in its archetypal branding strategy amplify the magnitude of Somp Holdings' wrongdoing and exacerbate the injury to public policies and interests that taint it with Unclean Hands.

256. First, Somp Holdings' wrongful commercial exploitation of *Sunflowers*:

- a. undermines signal U.S. foreign policies prescribing how claims to recover Nazi era artworks such as *Sunflowers* properly should be handled. As related, these policies seek initially to identify Nazi- era artworks and to resolve claims for these materials openly, honestly, transparently, fairly, with access to all relevant documents and other evidence, and without litigation, if possible. Somp Holdings' refusal to entertain the Heirs' claim repudiates these policies;
- b. perpetrates massive commercial fraud upon the entire U.S. and international insurance market;
- c. violates the federal law of unfair competition and unfair or deceptive acts or practices in or affecting commerce, as proscribed by 15 U.S.C. § 45;
- d. violates the federal statutes proscribing mail fraud, 18 U.S.C. § 1341. This provision prohibits generally using the U.S. mail to obtain money "by means of false or fraudulent pretenses, representations, or promises." Upon information and belief, Somp Holdings' uses the mail to for its

integral utilization of *Sunflowers* in its U.S. and international marketing – both overtly as well as covertly through its archetypal branding strategy – while affirmatively misrepresenting that the Painting is not afflicted with any violations of the international law of human rights violates this proscription;

- e. violates the federal statute proscribing wire fraud, 18 U.S.C. § 1343. This provision prohibits generally using the U.S. wires to obtain money “by means of false or fraudulent pretenses, representations, or promises.” Sompo Holdings’ integral use of *Sunflowers* in its U.S. and international marketing – both overtly on its website as well as covertly through its archetypal branding strategy – while affirmatively misrepresenting that the Painting is not tainted with any violations of the international law of human rights, breaches this proscription.¹

Sompo Holdings’ Fraudulent and Willful Misconduct Concerning the Painting Entitles the Heirs to an Award of Punitive Damages

257. At all times relevant hereto, the law of Illinois has permitted plaintiffs to recover punitive damages whenever the tortious conduct of a defendant “evinces a high degree of moral culpability” as whenever the “tort is committed with fraud, actual malice...or when the defendants acts willfully, or with such gross negligence as to indicate a wanton disregard of the rights of others.” *Slovinski v. Elliot*, 927 N.E.2d 1221, 1224-1225 (Ill. 2010). Moreover, to determine whether punitive damages are appropriate the trier of fact properly may consider the

¹ Even where Plaintiffs do not seek to bring a claim for mail fraud, wire fraud, or similar, such misconduct reflects Defendants’ state of mind and the gravity of the misconduct in addition to the wrongdoing as directed to Plaintiffs, and urges the equitable relief sought here.

character of the defendant's act, the nature and extent of the harm to the plaintiff that defendant caused, as well as the wealth of the defendant.

258. The Heirs are entitled to an award of punitive damages against Somp Holdings because Somp Holdings – with extreme recklessness bordering upon affirmative knowledge – misappropriated *Sunflowers* in derogation of the superior ownership and possessory rights of the Heirs. Somp Holdings since has commercially exploited the Painting while **knowing** that it is casualty of Nazi policies. Moreover, Somp Holdings has capitalized upon the Painting while **affirmatively misrepresenting** that the Painting is not affected with human rights violations or bears any human rights stigma. These misrepresentations – which are **essential** to the capability of Somp Holdings to exploit *Sunflowers* commercially – are both fraudulent and morally unconscionable. Somp Holdings' misconduct regarding *Sunflowers* therefore satisfies the legal standard that Illinois courts have established for awarding punitive damages. In addition, by fraudulently exploiting *Sunflowers* in this manner Somp Holdings and its predecessor have wrongfully reaped many billions of dollars of unjust enrichment while flouting signal U.S. policies seeking to identify Nazi tainted artworks and resolve claims for these materials fairly and on their merits.

259. Based upon these considerations and Somp Holdings' great wealth, the Heirs are entitled to an award of punitive damages in the amount of seven hundred and fifty million dollars (\$750 Million), representing three times the current fair value of *Sunflowers*.

CLAIMS FOR RELIEF

COUNT ONE (Replevin)

260. Plaintiffs reassert and reallege each and every preceding averment in this Complaint from paragraphs 1-259 as if fully set forth herein.

261. At all times relevant hereto, 735 ILSC 5/19-101 (1982) has permitted the owner or person rightfully entitled to the possession of a unique chattel to bring an action in replevin to recover such chattel once the person in wrongful possession of it refuses the demand of the rightful owner or person entitled to possession to return it.

262. *Sunflowers* is unique, and as a casualty of Nazi policies is impressed with a discrete federal and U.S. foreign policy identity. The Heirs are the rightful owners of *Sunflowers* and so are entitled to its immediate possession, and Defendants have refused their demand to return it.

263. *Sunflowers* is unique and as a casualty of Nazi policies is impressed with a discrete U.S. foreign policy identity.

264. Defendants' detention of the Painting is wrongful for the reasons alleged herein.

265. Before this action was commenced, that is, on or about October 12, 2022, the Heirs, through their attorneys, demanded that Defendants return the Painting. Defendants, through their agents, refused their demand on or about November 21, 2022.

266. 735 ILSC 5/19-101 (1982) permits the Heirs to bring an action in replevin to recover the Painting.

COUNT TWO (Conversion)

267. Plaintiffs reassert and reallege each and every preceding averment in this Complaint from paragraph 1-259 as if fully set forth herein.

268. At all times relevant hereto, the Illinois law of conversion has prohibited any person from wrongfully detaining property that belongs to another or in which another person has a superior legal possessory interest and a right of immediate possession. When the possessor of such property refuses the demand of a person with a superior possessory interest in such

property to return it, the law makes the wrongful possessor of such property liable to the other for conversion.

269. At all times relevant hereto, and for the reasons stated herein, the Heirs have been the rightful owners of *Sunflowers*, have had a legal possessory interest in the Painting that is superior to Defendants', and have been entitled to the immediate possession of the Painting.

270. *Sunflowers* is unique, and as a casualty of Nazi policies is impressed with a discrete U.S. foreign policy identity.

271. Before this action was commenced, the Heirs, through their attorneys, demanded that Defendants return the Painting. Defendants, however, have refused this demand.

272. Defendants have wrongfully detained and withheld the Painting in violation of the Heirs' superior legal interest and immediate possessory rights. Defendants' wrongful conversion of the Painting has caused Plaintiffs damages in an amount exceeding two hundred and fifty million dollars (\$250 million).

**COUNT THREE
(Trover)**

273. Plaintiffs reassert and reallege each and every preceding averment in this Complaint from paragraph 1-259 as if fully set forth herein.

274. At all times relevant hereto, Illinois law has allowed the rightful and lawful owner of converted property to recover from the defendant a monetary award in an amount reflecting the full and fair value of such property if the owner cannot obtain the return of the property.

275. *Sunflowers* is unique, and as a casualty of Nazi policies is impressed with a discrete U.S. foreign policy identity.

276. In the event that the Heirs are not able to obtain the return of *Sunflowers* from Defendants, Plaintiffs are entitled to a monetary award in an amount reflecting the full and fair value of the Painting and not less than two hundred and fifty million dollars (\$250 million).

COUNT FOUR
(Unjust Enrichment Seeking to Recover *Sunflowers*)

277. Plaintiffs reassert and reallege each and every preceding averment in this Complaint from paragraph 1-259 as if fully set forth herein.

278. At all times relevant to this proceeding, the equitable remedy of constructive trust has permitted the rightful and lawful owners of property in the wrongful possession of others to recover such property to prevent such others from being unjustly enriched by receiving and holding property that lawfully belongs to another, and which in good conscience they cannot retain. At all times relevant to this proceeding, the law has required persons in possession of such property to return it to the rightful owner.

279. Inherently wrongful Nazi policies and concomitant coercion and duress that violated the modern international law of human rights and inflicted massive economic and financial losses upon Mendelssohn-Bartholdy were the exclusive reasons that he transferred *Sunflowers* to art dealer Rosenberg in 1934. Rosenberg and all subsequent possessors of *Sunflowers* – including Somp Holdings and its corporate predecessor Yasuda, as well as all Defendants – have known that wrongful Nazi duress compelled Mendelssohn-Bartholdy to surrender the Painting and so were not *bona fide* or “good faith purchasers for value” of the Painting within the meaning of the applicable law

280. *Sunflowers* is unique, and as a casualty of Nazi policies is impressed with a discrete federal and U.S. foreign policy identity.

281. The Heirs have asked Defendants to return the Painting and Defendants have refused their demand.

282. The Plaintiffs are entitled to recover the Painting by imposing a constructive trust upon it.

COUNT FIVE
(Unjust Enrichment Seeking to Recover Monies that Defendants Wrongfully have Reaped from Commercially Exploiting *Sunflowers*)

283. Plaintiffs reassert and reallege each and every preceding averment in this Complaint from paragraph 1-259 as if fully set forth herein.

284. At all times relevant hereto, applicable Illinois and federal law have permitted owners of property that “conscious wrongdoers” have wrongfully misappropriated or converted to recover the unjust enrichment that they have reaped from using or commercially exploiting the converted property. The law regards a “conscious wrongdoer” as anyone who either knows that the subject property was taken from a third person under duress, or who is recklessly indifferent to this possibility.

285. At all times relevant hereto, the law has recognized the difficulty inherent in apportioning gains realized from exploiting converted property when defendants commingle that property with other property or assets to generate revenues. For this reason the law requires plaintiffs in this context to propose a theory of recovery that merely *reasonably approximates* the gain that the wrongdoer reaped from using or exploiting the converted property, and then shifts the burden to the defendant to rebut or disprove this measure of recovery.

286. *Sunflowers* is unique, and as a casualty of Nazi policies is impressed with a discrete federal and U.S. foreign policy identity.

287. Defendants are “conscious wrongdoers” within the meaning of the applicable law because they acquired *Sunflowers* in reckless disregard of the fact that the Painting was a casualty of Nazi policies, and have commercially exploited the Painting for many years while knowing this fact. The Heirs have demonstrated that by purposefully making *Sunflowers* coextensive with its corporate identity and further exploiting the Painting with a sophisticated and effective branding strategy based upon psychological archetypes, Defendants have reaped more than seven billion dollars (\$7 billion) in profits over the past five years, and increased the market value of their discrete brand by more than two hundred and thirty million dollars (\$230 million). Plaintiffs are entitled to an award in an amount reflecting not less than ten percent (10%) of these sums.

COUNT SIX
(Breach of Duty to Assist the Heirs in Recovering *Sunflowers*)

288. Plaintiffs reassert and reallege each and every preceding averment in this Complaint from paragraph 1-259 as if fully set forth herein.

289. At all times relevant hereto, the law of Illinois has imposed a duty upon tortfeasors such as Defendants who convert or unlawfully possess the property of others both to assist their victims and rightful owners to recover their property, and to refrain from commercially benefitting or exploiting such property. As stated in comment c to Section 322 of the Restatement (Second) of Torts (1965), “[t]he initial injury creates a duty of aid and the breach of the duty is an independent tort.”

290. By acquiring *Sunflowers* in reckless disregard of the superior possessory and ownership rights of the Heirs and commercially exploiting the Painting in knowing derogation of their superior rights, Sompo Holdings and its corporate predecessor Yasuda breached this duty.

291. Plaintiffs are entitled to recover damages from Defendants resulting from this breach of duty in an amount exceeding two hundred and fifty million dollars (\$250 million) and an order that Defendants return the Painting.

COUNT SEVEN
(Breach of Duty to Refrain From Commercially Exploiting *Sunflowers*)

292. Plaintiffs reassert and reallege each and every preceding averment in this Complaint from paragraph 1-259 as if fully set forth herein.

293. At all times relevant hereto, the law of Illinois has imposed a duty upon persons who are in wrongful possession of the property of others to refrain from commercially exploiting or benefitting from such property.

294. Sompo Holdings, its corporate predecessor Yasuda, and all Defendants herein breached this duty by capitalizing upon *Sunflowers* after knowing that the Painting was a casualty of Nazi policies, making *Sunflowers* an integral element of their discrete corporate identities, and employing a sophisticated branding strategy based upon psychological archetypes to derive commercial and public relations value from the Painting.

295. Plaintiffs are entitled to recover appropriate damages from Defendants for their breach of this duty.

PRAYER FOR RELIEF

a) an order declaring that the Heirs are the sole lawful and rightful owners of *Sunflowers* in accordance with both applicable U.S. and Illinois law and that Plaintiffs are entitled to the immediate and exclusive possession of the Painting, and declaring further that Defendants' possession of the Painting is wrongful and inequitable and results in unjust enrichment to Defendants;

- b) an order imposing a constructive trust upon the Painting for the benefit of the Plaintiffs, and to prevent the unjust enrichment of Defendants, in accordance with applicable Illinois and U.S. law, and requiring that Defendants return the Painting to Plaintiffs, or – if the Plaintiffs cannot have Painting returned to them – a constructive trust upon monies equivalent in amount to the current fair value of *Sunflowers*;
- c) an injunction compelling Defendants to return *Sunflowers* to the Plaintiffs at a time and location within the Northern District of Illinois to be agreed upon, and in the event possession thereof cannot be given to Plaintiffs, that Plaintiff have judgment against Defendants for the sum of not less than two hundred and fifty million (US) dollars (\$250 million), reflecting the current fair value of the Painting with interest thereon;
- d) an injunction prohibiting Defendants from continuing to use *Sunflowers* in any manner to represent or promote their business or businesses and from commercially exploiting *Sunflowers*;
- e) an order imposing a constructive trust upon the unjust enrichment that Defendants wrongfully have reaped from commercially exploiting *Sunflowers* over the past five years and in an amount not less than \$690 million;
- f) an order requiring the restitution of monies based upon the unjust enrichment that Defendants have received in earning monies from the public display of the *Sunflowers* since November 21, 2022, when Defendants refused the demand of the Heirs to return the Painting, until the date of the final judgment in this proceeding;
- g) an order imposing a constructive trust on the amount by which over the past five years Defendants have increased their brand value based upon commercially exploiting the Painting in an amount not less than twenty-four million dollars (\$24 million);

- h) an order declaring that Defendants' fraudulent misconduct regarding the Painting, and their failure to alert the Heirs that the Painting was a casualty of Nazi policies and that the Heirs were entitled to the exclusive possession and ownership, breached Defendants' legal obligation to aid the Heirs as Defendants' tort victims, in violation of applicable Illinois law;
- i) an award of damages in an appropriate amount on the claim of the Plaintiffs that Defendants failed to aid them in identifying and returning *Sunflowers* as Defendants' tort victims;
- j) an order declaring that the fraudulent misconduct of Defendants' regarding the Painting and their commercial exploitation of *Sunflowers* while knowing that the Painting was a casualty of Nazi policies breached Defendants' legal obligation to refrain from commercially exploiting the Painting;
- k) an award of not less than seven hundred and fifty million dollars (\$750) million on Plaintiffs' claim for punitive damages, reflecting three times the current fair value of *Sunflowers*;
- l) an order declaring that both the Illinois and federal equitable doctrines of Unclean Hands precludes Defendants from asserting any equitable defenses to the Plaintiffs' claims in this proceeding to recover the Painting, for unjust enrichment, and for punitive damages;
- m) an order declaring that the doctrine of comity – which requires consummate good faith – precludes the Court from recognizing any Japanese judgment that awards Defendants title to the Painting based upon the doctrine of prescription;
- n) an injunction precluding Defendants from filing an action in Japan seeking to assert title to *Sunflowers* based upon the Japanese law of prescription;

- o) pre-judgment and post-judgment interest on any award;
- p) an award of the Plaintiffs' attorneys' fees, costs, expenses and interest; and
- q) such further and other relief as the Court may deem appropriate and just.

Dated: December 13, 2022

Respectfully submitted,

PLAINTIFFS JULIUS H. SCHOEPS,
BRITT-MARIE ENHOERNING, and
FLORENCE VON KESSELSTATT

By: /s/ John W. Rotunno
One of their attorneys

John W. Rotunno
Desirée F. Moore
Matthew A. Alvis
K&L GATES LLP
70 West Madison Street
Suite 3300
Chicago, Illinois 60602
Telephone: (312) 372-1121
Facsimile: (312) 827-8000
E-mail: john.rotunno@klgates.com
desiree.moore@klgates.com
matthew.alvis@klgates.com

John J. Byrne, Jr. (*pro hac vice* forthcoming)
Thomas J. Hamilton (*pro hac vice* forthcoming)
BYRNE, GOLDENBERG & HAMILTON, PLLC
1025 Connecticut Avenue, N.W.
Suite 1012
Washington, D.C. 20036
Telephone: (202) 857-9775
Facsimile: (202) 857-9779
E-mail: jjb@bghpllc.com
tj.ham@cox.net