

1 ROBERT E. KOHN, SBN 200373
2 Email: rkohn@kohnlawgroup.com
3 KOHN LAW GROUP, INC.
4 100 Wilshire Blvd., Suite 700
5 Santa Monica, CA 90401
6 Phone: (310) 917-1011
7 Fax: (310) 917-1001

8 Counsel for Plaintiffs
9 JUDITH SILVER; DEBORAH SILVER;
10 KOFI M. LEE; SEKAI K. LEE; MARY LEE;
11 WALTER E. HENRICKSON; DANIEL
12 HENRICKSON; DORIT MARCKS; and
13 ILAN MARCKS

14
15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **OAKLAND DIVISION**
18

19 JUDITH SILVER; DEBORAH
20 SILVER; KOFI M. LEE; SEKAI K.
21 LEE; MARY LEE; WALTER E.
22 HENRICKSON; DANIEL
23 HENRICKSON; DORIT MARCKS;
24 and ILAN MARCKS,

25 Plaintiffs,

26 vs.

27 BASIL AND ELISE GOULANDRIS
28 FOUNDATION, a Greece non-profit
organization of unknown form; THE
METROPOLITAN MUSEUM OF
ART, a New York corporation; and
DOES 1-100, inclusive,

Defendants.

CASE NO.:

**COMPLAINT FOR RESTITUTION,
INJUNCTIVE RELIEF, DAMAGES,
AND PUNITIVE DAMAGES, FOR:**

1. **RECOVERY OF PERSONAL
PROPERTY;**
2. **RESTITUTION OF UNJUST
ENRICHMENT; AND**
3. **CONVERSION;**

AND

DEMAND FOR JURY TRIAL

JURISDICTION

1
2 1. The Court has jurisdiction over this action pursuant to 28 U.S.C. §
3 1332, the diversity statute. Plaintiffs are the heirs of Hedwig Stern, a Jew whose
4 valuable van Gogh painting (the “Painting”), was confiscated by the Third Reich
5 when she was forced to flee from Munich, Bavaria in Germany to Berkeley,
6 California in the United States with her husband and their children to escape Nazi
7 persecution. Jurisdiction of this Court arises under § 1332(a)(1)-(3), because:

- 8 a. The Plaintiffs (the “Stern Heirs”) are citizens of California,
9 Washington, and Israel (officially, the State of Israel);
10 b. The Defendants are citizens of New York and Greece (officially,
11 the Hellenic Republic); and
12 c. The Painting is worth more than \$75,000.

13 The Stern Heirs seek to recover the Painting from Defendant the Basil and Elise
14 Goulandris Foundation (the “B&E Foundation”), a Greek non-profit organization.
15 The Stern Heirs also seek restitution of the money that Defendant The
16 Metropolitan Museum of Art (“The Met,” which is a New York corporation)
17 derived when the Met secretly sold the Painting in 1972, for the purpose of
18 avoiding restituting the Painting to Hedwig Stern. According to later reports of
19 investigative journalists, The Met purportedly sold the Painting (for more than
20 \$75,000, but the actual price remains private), in a secret transaction (or series of
21 transactions) that allowed a Greek shipping tycoon named Basil Goulandris and his
22 wife Elise Goulandris to obtain it, and to hide it for decades. In addition to other
23 relief, or in the alternative, the Stern Heirs also seek damages for conversion of the
24 Painting; the amount of those damages is the value of the Painting, which exceeds
25 \$75,000. The Stern Heirs also seek punitive or exemplary damages.

DIVISIONAL ASSIGNMENT

2 2. Hedwig Stern and her family immigrated to Berkeley, California,
3 where they arrived on or about January 7, 1937. Venue in this District is proper
4 under 28 U.S.C. § 1391(b)(3).

PARTIES

7 3. The Plaintiffs are the surviving heirs of Hedwig Stern, who had lost
8 her German citizenship pursuant to the Nuremburg Laws of September 15, 1935.
9 On or about October 8, 1943, she became a citizen of the United States and of
10 California, where she resided until her death in 1987:

- 11 a. Judith Silver is a citizen of California and resident of Oakland,
12 California;
- 13 b. Deborah Silver is a citizen of California and a resident of Los
14 Angeles, California;
- 15 c. Kofi M. Lee is a citizen of California and a resident of Los
16 Angeles, California;
- 17 d. Sekai K. Lee is a citizen of California and a resident of Los
18 Angeles, California;
- 19 e. Mary Lee is a citizen of California and a resident of Los Angeles,
20 California;
- 21 f. Walter E. Henrickson is a citizen of Washington and a resident of
22 Seattle, Washington;
- 23 g. Daniel Henrickson is a citizen of California and a resident of Los
24 Angeles, California;
- 25 h. Dorit Marcks is a citizen of Israel and a resident of Arad, Israel;
26 and
- 27 i. Ilan Marcks is a citizen of Israel and a resident of Haluza, Israel.

1 <https://www.state.gov/prague-holocaust-era-assets-conference-terezin->
2 [declaration/](https://www.state.gov/prague-holocaust-era-assets-conference-terezin-)].

3 8. When Hedwig Stern escaped Germany at the end of December 1936,
4 the Gestapo barred her from exporting the Painting and other artworks. At some
5 time thereafter, her former attorney Kurt Mosbacher was ordered to be appointed
6 as “trustee” (or “*Treuhaender*”) for Hedwig Stern and her husband Fritz Stern.
7 The Nazis appointed “trustees” to liquidate Jewish-owned property, by selling it
8 for the benefit of the Nazi Reich. In or about April 1938, Kurt Mosbacher
9 arranged for the Thannhauser Gallery to sell the Painting, together with a painting
10 by Renoir that she also owned, to a German collector named Theodor Werner. (At
11 the time, the Thannhauser Gallery was under the control of Paul Roemer, who had
12 “Aryanized” the gallery from its former owner – the Jew named Justin
13 Thannhauser.) Theodor Werner paid the combined price of 55,000 Reichsmarks
14 for the two works. Kurt Mosbacher then transferred the 55,000 Reichsmarks into a
15 “blocked” account under the names of Fritz and Hedwig Stern. In or about
16 January 1939, the Gestapo officially confiscated all the property of Fritz and
17 Hedwig Stern, including that account.

18 9. Hedwig Stern never received any compensation for the looted
19 Painting or the 55,000 Reichsmarks. Seventeen years later, in 1955, Theodor
20 Werner eventually restituted another of her looted artworks (a Courbet) by giving
21 it back to Hedwig Stern. He did not give her back the Renoir, nor did he give back
22 the Painting by van Gogh. Instead, on information and belief, the Painting by van
23 Gogh was transported to Paris in or about January 1948. From there, Justin
24 Thannhauser reportedly transported it to New York, where he purported to sell it to
25 Vincent Astor sometime later in 1948. (Vincent Astor was a Harvard College
26 dropout who had inherited a fortune from his father, John Jacob Astor IV,
27 reportedly the richest passenger who died on the *Titanic*.) Justin Thannhauser had
28 known Hedwig Stern personally, and he knew that she had escaped Germany at the

1 end of 1936. He also personally knew Theodor Werner, before the “trustee” sale
2 of the Painting by Kurt Mosbacher to Theodor Werner in or about April 1938.

3 10. Theodor Werner never disclosed Justin Thannhauser’s role in
4 transporting the Painting to New York and selling it (purportedly) to Vincent Astor
5 in 1948. After World War II, Hedwig Stern pursued official claims in Germany to
6 recover the Painting or to obtain reparations for its taking – starting in 1948, and
7 continuing through 1955 – but with no success. Among other things, she also met
8 with Lane Faison of the U.S. Army Monuments, Fine Arts and Archives Division
9 in Munich in early April 1951. Lane Faison was the Director of the Munich
10 Central Collecting Point for the recovery of Nazi-looted art. Hedwig Stern also
11 told Lane Faison (in writing) that the Painting had been looted.

12 11. The Met bought the Painting in or about January 1956 from Vincent
13 Astor. For reasons explained in the Preliminary Research Report (attached hereto
14 as Exhibit A), the Stern Heirs are informed and believe that The Met’s then-Chief
15 Curator Theodore Rousseau knew or consciously disregarded that the Painting had
16 been looted from Hedwig Stern by the Nazis, Fascists and their collaborators, and
17 as an immediate consequence. He knew this, or consciously disregarded it, when
18 Theodore Rousseau approved The Met selling the painting in a secret transaction
19 that occurred in or about May 1972 – which he did, for two closely-related
20 purposes: (a) the purpose of not restituting the Painting to Hedwig Stern in
21 California, and (b) the purpose also of concealing that Theodore Rousseau had
22 known or consciously disregarded for years that the Painting was Nazi-looted art,
23 starting back when he had approved The Met’s acquisition of the Painting in or
24 about January 1956, and thereafter. The Met’s other purported explanations for the
25 secret sale in May 1972 – explanations that it offered only after the sale became
26 publicly known through investigative journalism of *The New York Times* – were
27 false and pretextual (and in some instances, contradictory).

28

1 12. Theodore Rousseau was a wartime colleague of Lane Faison, and they
2 remained friends until Rousseau’s death in 1973. In fact, Theodore Rousseau was
3 one of the world’s foremost experts on Nazi art looting. He and other members of
4 The Met’s staff, including museum director James Rorimer, had been high-ranking
5 “Monuments Officers” in the U.S. Army with Lane Faison. Himself, Theodore
6 Rousseau had also served in the Office of Strategic Services (the “OSS,” which
7 later became the Central Intelligence Agency), where he had authored (among
8 others) a report for the Art Looting Intelligence Unit of the OSS entitled
9 *Consolidated Interrogation Report No. 2: The Goering Collection. US Office of*
10 *Strategic Services Art Looting Intelligence Unit (ALIU) Reports 1945-1946.*
11 Washington, DC: OSS ALIU, (15 September 1945).

12 13. In short, Chief Curator Rousseau and his colleagues at The Met had
13 the best possible knowledge and the skills to conduct provenance research on the
14 Painting. And in 1956, when The Met acquired the Painting, no new catalogue
15 raisonnée or other provenance had been published about the Painting since before
16 the start of World War II. After the start of World War II, the first new catalogue
17 raisonnée was not published until 1967. Notably, The Met itself was the publisher
18 of this new catalogue in 1967 – which means (at least) that Theodore Rousseau
19 certainly was aware of it. Yet, this new catalogue’s description of the Painting’s
20 provenance entirely omitted Hedwig Stern’s prior claims for reparation and
21 restitution. But it did prominently disclose the “red flag” fact that the Painting had
22 been in Germany from 1912 to 1948. To a Monuments Man such as Theodore
23 Rousseau, this fact would certainly have made him aware the Painting was
24 probably looted by the Nazis during their Reich. This is so, because the Painting
25 was one of the highly prominent Post-Impressionist works that the Nazis had
26 notoriously condemned as “degenerate.” And all that was true, even assuming that
27 Lane Faison never mentioned Hedwig Stern’s claims regarding the Painting to his
28 life-long friend and war-time colleague, Theodore Rousseau. But (on information

1 and belief), Lane Faison did mention those claims to Theodore Rousseau;
2 alternatively (on information and belief) Theodore Rousseau knew of those claims,
3 even if Lane Faison never mentioned them.

4 14. The existence or likelihood of those claims by Hedwig Stern
5 eventually became Theodore Rousseau's true motivation for The Met to secretly
6 sell the Painting, in or about May 1972. He died of cancer on or about December
7 31, 1973. The Met currently maintains records in its archives that concern his
8 tenure there, which spanned the entire time from before the Met obtained the
9 Painting (in or about January 1956) until after it purported to sell the Painting (in
10 or about May 1972). However, The Met has prevented public access to some of
11 these records until 2073, or in other words, until 100 years after his death. The
12 Stern Heirs first learned of the 100-year restriction of the Theodore Rousseau
13 records in 2022. The precise nature of the restricted records remains unknown to
14 them.

15 15. The Stern Heirs do not know when or by what transaction(s) in or
16 after May 1972 the B&E Foundation claims to have become entitled to hold and
17 display the Painting, nor even whether the B&E Foundation claims (or would
18 claim) to be the owner of the Painting. However, according to the current website
19 of the B&E Foundation ([https://goulandris.gr/en/artwork/vincent-van-gogh-olive-](https://goulandris.gr/en/artwork/vincent-van-gogh-olive-picking)
20 *picking*), it seems the B&E Foundation allowed the Painting to be shown at the
21 Van Gogh Museum in Amsterdam, Holland for an exhibition there entitled *Van*
22 *Gogh and the Olive Groves*, from March 11, 2022 to June 12, 2022. At some time
23 after June 12, 2022, the B&E Foundation again took the Painting into its
24 possession, and since that time, the B&E Foundation has again displayed the
25 Painting in its Athens museum.

26 16. This photograph of the Painting was shot on or about December 10,
27 2022 in the museum of the B&E Foundation in Athens:
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



17. The conduct of the Defendants, as alleged herein, was wanton, fraudulent and malicious, and done consciously in disregard of the rights of Hedwig Stern and her heirs, thereby warranting the imposition of exemplary or punitive damages.

FIRST CLAIM FOR RELIEF

**(Recovery of Personal Property, against the B&E Foundation and
DOES 1-100, inclusive)**

18. Plaintiffs incorporate herein by reference the averments of the preceding paragraphs as though fully set forth herein.

1 in 1972. A copy of the bill of sale showing the amount of those proceeds was
2 shown to *The New York Times*, but the amount of the sale had been blacked-out.

3
4 **THIRD CLAIM FOR RELIEF**
5 **(Conversion, against All Defendants)**

6 24. Plaintiffs incorporate herein by reference the averments of the
7 preceding paragraphs as though fully set forth herein. As the surviving heirs of
8 Hedwig Stern, the Plaintiffs are entitled to damages, in an amount equal to actual
9 value of the Painting.

10 25. The Met converted the Painting when The Met purported to sell the
11 Painting in or about May 1972.

12 26. The B&E Foundation converted the Painting when it received
13 possession of the Painting (back from the Van Gogh Museum) sometime after June
14 12, 2022, and subsequently displayed the Painting at the museum of the B&E
15 Foundation.

16
17 **PRAYER FOR RELIEF**

18 Plaintiffs respectfully pray for judgment in its favor and against Defendants,
19 as follows:

20 1. On the First Claim for Relief, for preliminary and/or permanent
21 injunctive relief commanding the Basil & Elise Goulandris Foundation and DOES
22 1-100 (inclusive), as well as their officers, employees, agents and all others acting
23 for or in concert with them, to deliver the Painting into the Plaintiffs' sole
24 possession, and prohibiting the Basil & Elise Goulandris Foundation and DOES 1-
25 100 inclusive from delivering or allowing the Painting to enter into the possession
26 of any other persons or parties.

27 2. On the Second Claim for Relief, for restitution to Plaintiffs by The
28 Metropolitan Museum of Art and by DOES 1-100 inclusive, of the amount of

1 money that they received or derived (directly or indirectly) from The Met
2 purporting to sell the Painting in or about May 1972.

3 3. On the Third Claim for Relief, for damages against all Defendants, in
4 an amount to be proven but not less than the fair market value of the Painting.

5 4. For punitive or exemplary damages against all Defendants, inclusive.

6 5. For all other relief allowed by law or in equity, including interest.

7 6. For costs as provided by law.

8
9 Respectfully submitted,

10 Dated: December 15, 2022

KOHN LAW GROUP, INC.

11 By: /s/ Robert E. Kohn

Robert E. Kohn

12 Counsel for Plaintiffs JUDITH SILVER;
13 DEBORAH SILVER; KOFI M. LEE; SEKAI K.
14 LEE; MARY LEE; WALTER E. HENRICKSON;
DANIEL HENRICKSON; DORIT MARCKS; and
15 ILAN MARCKS

16
17
18
19 **DEMAND FOR TRIAL BY JURY**

20 Plaintiffs respectfully demand trial by jury in this action of all issues so
21 triable. *See* Fed. R. Civ. P. 38(c).

22
23 Respectfully submitted,

24 Dated: December 15, 2022

KOHN LAW GROUP, INC.

25 By: /s/ Robert E. Kohn

Robert E. Kohn

26 Counsel for Plaintiffs JUDITH SILVER;
27 DEBORAH SILVER; KOFI M. LEE; SEKAI K.
28 LEE; MARY LEE; WALTER E. HENRICKSON;
DANIEL HENRICKSON; DORIT MARCKS; and
ILAN MARCKS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28