

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LAUREL ZUCKERMAN, AS ANCILLARY
ADMINISTRATRIX OF THE ESTATE OF
ALICE LEFFMANN,

Plaintiff,

vs.

THE METROPOLITAN MUSEUM OF ART,

Defendant.
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AMENDED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, Laurel Zuckerman, as Ancillary Administratrix of the estate of Alice Leffmann, through her undersigned counsel, Herrick, Feinstein LLP, for her Complaint against Defendant, alleges as follows:

NATURE OF THE ACTION

1. This is an action by Laurel Zuckerman, the Ancillary Administratrix of the estate of Alice Leffmann (the sole heir of Paul Friedrich Leffmann) (the “Leffmann estate”), to recover from New York’s Metropolitan Museum of Art (the “Museum”) a monumental work by Pablo Picasso entitled “The Actor,” 1904-1905, oil on canvas, 77 1/4 x 45 3/8 in., signed lower right Picasso (the “Painting”), which was owned by Paul Friedrich Leffmann (“Leffmann” or “Paul”), a German Jew, from approximately 1912 until 1938.

2. In 1937, Paul, who until the advent of the Nazi regime had been a prosperous industrialist and investor, and his wife, Alice, were forced to flee Germany in fear for their lives, after losing their business, livelihood, home and most of their possessions due to Nazi persecution. The feasible escape route at the time was Italy, but any hope of finding a safe haven

from the Nazis in Italy was soon dashed. Shortly after their arrival, Mussolini and his Fascist regime increasingly adopted and implemented the Nazi pattern of rampant anti-Semitic policies and outright physical persecution of Jews, especially of immigrants from Austria and Germany. By 1938, it was clear that remaining in Italy was no longer an option, and, desperate to flee, the Leffmanns were forced to sell their remaining possession of substantial value, The Actor, at a price well below its actual value. They left Italy a few months after the sale, in October 1938, only days after the racist laws expelling foreign Jews from Italy were enacted.

3. The Leffmanns would not have disposed of this seminal work at that time, but for the Nazi and Fascist persecution to which they had been, and without doubt would continue to be, subjected.

THE PARTIES

4. Laurel Zuckerman, the great-grandniece of Paul and Alice Leffmann, received Ancillary Letters of Administration CTA for the estate of Alice Leffmann from the Surrogate's Court of the State of New York, New York County, on October 18, 2010. Pursuant to 28 U.S.C. § 1332(c)(2), since Alice Leffmann was a Swiss domiciliary, the Ancillary Administratrix is deemed to be a citizen of Switzerland as well.

5. Defendant, the Metropolitan Museum of Art, is a New York not-for-profit corporation operating as a public museum located in New York County, New York.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between Plaintiff and Defendant, and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(a), (b) and (c), because Defendant is a New York not-for-profit corporation located in New York County and the Painting that is the subject matter of this dispute is located in this judicial district.

8. The Court has jurisdiction to grant the relief requested pursuant to 28 U.S.C. §§ 2201(a) and 2202.

STATEMENT OF FACTS

9. In 1912, Leffmann purchased the Painting, which, until he was forced by the circumstances in Fascist Italy to sell it under duress in 1938, was one of his most valuable acquisitions. From 1912 until at least 1929, Leffmann exhibited the Painting at a variety of exhibitions in Germany, at which he was identified as the owner of the Painting. The Painting was also featured in newspaper articles, magazines and monographs during this time.

10. During this time and up to the start of the Nazi period, Paul and Alice, German Jews, led a wonderful life together in Cologne, Germany. They had sizeable assets, including Atlantic Gummiwerk, a rubber manufacturing company that was one of the leading concerns of its kind in Europe, which Paul co-owned with Herbert Steinberg; real estate investment properties in Cologne (Hohenzollernring 74 and Friesenwall 77); and their home located at Haydnstrasse 13, Köln-Lindenthal. The Leffmanns' home included a collection of Chinese and Japanese artifacts and other artworks, including the masterwork by Pablo Picasso that is the subject of this action.

11. Beginning in 1933, the world the Leffmanns knew in Germany began to shatter. Adolf Hitler came to power and the racist laws directed against Jews quickly began to be enacted and enforced, leading to the adoption of the Nuremberg Laws ("The Laws for the Protection of German Blood and German Honor") on September 15, 1935. The Nuremberg laws deprived all German Jews, including Paul and Alice, of the rights and privileges of German citizenship,

ended any normal life or existence for Jews in Germany and relegated all Jews to a marginalized existence, a first step toward their mass extermination.

12. The Nuremberg Laws formalized a process of exclusion of Jews from Germany's economic and social life. It ushered in a process of eventual total dispossession through what became known as "Aryanization" or "*Arisierung*," first by takeovers by "Aryans" of Jewish-owned businesses and then by forcing Jews to surrender virtually all of their assets. In this process, all Jewish workers and managers were dismissed, and businesses and corporations belonging to Jewish owners were forcibly transferred from those owners to non-Jewish Germans, who "bought" them at prices officially fixed and well below market value. As a result, the number of Jewish-owned businesses in Germany was reduced by approximately two-thirds from April 1933 to April 1938. By that time, the Nazi regime moved to the final phase of dispossession, first requiring Jews to register all their domestic and foreign assets and then moving to possess themselves of all such assets.

13. On September 16, 1935, the Leffmanns were forced to sell their home to an Aryan German corporation, Rheinsiche Braunkohlensyndikats GmbH Köln; on December 19, 1935, Paul and his Jewish partner, Herbert Steinberg, were forced to transfer ownership of Atlantic Gummiwerk to Aloys Weyers (their non-Jewish minority business partner); and on July 27, 1936, Paul was forced to sell all of his real estate investments to Feuerversicherungsgesellschaft Rheinland AG, yet another Aryan German corporation. In return, Paul had no choice but to accept only nominal compensation. These were, indeed, not real sales at all, but essentially thefts by Nazi designees of substantially everything the Leffmanns ever owned, except for The Actor, which was, at the time, ever so fortuitously for them, located in neutral Switzerland.

14. Some time prior to their departure from Germany, Paul and Alice had arranged for The Actor to be held in Switzerland by a non-Jewish German acquaintance named Professor Heribert Reiners. Reiners kept The Actor in his family home in Fribourg, where it remained for its entire stay in Switzerland. For this reason only, The Actor was saved from Nazi confiscation or worse.

15. The Leffmanns' world was falling apart piece by piece. Having lost their home, their business and their investment properties, and witnessing the rise to power of the Nazi regime, its adoption of radical racist policies, and the accompanying increase in physical violence against Jews, it became clear that the persecution of Jews in Germany was growing at an alarming rate. Paul and Alice, like so many other German Jews, found themselves faced with the threat of growing violence, the risk of imprisonment and possibly deportation and death. Thus, to avoid the loss of the property they had left -- not to mention their lives -- they began planning their flight from Germany, liquidating their remaining assets in Germany to enable them to survive and escape. Their lives were changed forever as they abruptly lost their wealth and identity and became fugitives.

16. The Leffmanns finally were able to flee Germany in the spring of 1937. By 1937, when the Leffmanns' migration began, the Nazi regime had already put in place its ever tightening network of taxes, charges, and foreign exchange regulations designed to arrogate most, and subsequently all, Jewish-owned assets to itself. Emigrants were only able to leave with a tiny fraction of their assets. The Leffmanns, upon their escape from the Reich, consequently left having been dispossessed of most of what they once owned.

17. The groundwork for, as Reichsmarschall Hermann Göring put it, "getting rid of the Jews, but keeping their assets," had been laid as early as 1934 with a change in the tax law that

declared that the law be interpreted according to the National-Socialist ideology. This meant that Jews and other persecutees lost all legal recourse against discriminatory tax treatment and legislation. Subsequently, tax instruments became increasingly important in the set of quasi-legal instruments used to strip Jews of their assets. Among these, the flight tax (“*Reichsfluchtsteuer*”) was prominent. But even before this, the wave of emigration following Hitler’s accession to power had led to a tightening of the flight tax regulations not only by lowering its threshold, but even more important, by authorizing the tax offices to require security deposits as they saw fit. This became one of the more important instruments in the dispossession of emigrants and would-be emigrants, and was used, *inter alia*, to put Jews, especially wealthy ones, under surveillance by the foreign exchange authorities (the “*Devisenstelle*”).

18. By the end of 1936 (i.e., shortly before the Leffmanns’ emigration), the increasingly precarious foreign exchange position of the Reich caused a further tightening of foreign exchange regulations, which imposed the death penalty on attempts to undercut these regulations and codified the *Devisenstelle*’s authority to block assets of persons found to be evading or intending to evade the regulations. Thus, even suspicion of the intention to emigrate led the authorities with ever increasing frequency to require a suspect to put his assets in a blocked emigrant’s account, which he could dispose of only with the approval of the *Devisenstelle*. Any legal transfers abroad could be made only from such blocked accounts via the *Deutsche Golddiskontbank*, the government bank through which foreign exchange transactions were made (the “*DeGo*”), at increasingly large discounts. In 1937 the discount charged by the *DeGo* exceeded 80%. This, then, was the environment in which the Leffmanns prepared for their flight from the Reich.

19. Another measure by which the Reich seized assets from fleeing Jews was the flight tax. Flight tax assessments were based on wealth tax declarations, which referred to wealth in the previous year and which were calculated at 25% of the value of the reported assets. Payment of the flight tax did not give the emigrant any right whatsoever to transfer abroad any of the remaining assets after payment of the tax. In fact, the flight tax amount typically would have been considerably higher than 25% of the assets actually owned at the time of emigration, as those who were persecuted by the Nazis -- as were the Leffmanns -- suffered dramatic financial losses in the period leading up to their emigration, so that their assets at the time of emigration would have been considerably smaller than those on which their flight tax was assessed. The payment of the flight tax was necessary to obtain the no-objection certification of the tax authorities, which in turn was necessary to obtain an exit permit. In the case of the Leffmanns, the flight tax was thus calculated at 25% of the assets they reported on their 1937 tax form, which would have included their total assets held in 1936. The Leffmanns paid this flight tax in the amount of 120,000 to 125,000 RM in cash.

20. While they would have preferred neutral Switzerland over Italy, where the Fascists were already in power and closer relations with Nazi Germany had begun to develop, at the time, a long-term stay in Switzerland would have been virtually impossible. Italy, as opposed to Switzerland, was one of the few European countries still allowing the immigration of German Jews, so that is where they went, hoping that Italy, with its significant Jewish population, would be a safe haven from the Nazi onslaught.

21. In light of the ever-tightening regulations governing the transfer of assets, emigrants sought alternative means of moving their funds abroad. One major avenue involved creating a triangular agreement whereby individuals who owned property outside the Reich and were in

need of RM would agree to exchange the currency for property, which they would then immediately liquidate upon arrival in the new country. This is exactly the type of transaction the Leffmanns took part in when, in December 1936, they purchased a house and factory in Italy for an inflated price of RM 180,000 from the heirs of Eugenio Usenbenz from Stuttgart and pre-agreed to sell the property back to a designated Italian purchaser for lire, at a considerable loss, upon their arrival in Italy a few months later.

22. In April 1937, the Leffmanns crossed the border into Italy, going first to Milan and then to Florence, where many other German Jewish refugees ended up, and where their newly acquired house and factory were located. Their hope, shared by other Jews emigrating from Austria and Germany to Italy, was that life there could go on in some form of normalcy, which it could not in Cologne.

23. Shortly after their arrival in Italy, as pre-agreed, the Leffmanns sold their newly-acquired properties to an Italian businessman named Gerolamo Valli, who was a business partner of the family from Stuttgart from whom they had originally purchased the house and factory. They sold the properties at a considerable loss -- for 456,500 Lira (or about 61,622 RM) -- and rented a home in Florence at Via Terme 29 and later at Via di San Vito 10.

24. But the Leffmanns' time in Italy was short-lived. It soon became clear that the nightmare from which they had fled was about to engulf them there as well. But moving on meant yet again losing a significant part of their remaining financial assets. The Leffmanns had already lost two-thirds of their initial RM investment in transfer costs, and they now stood to lose much of their remaining cash proceeds as the tight Italian foreign exchange restrictions forced them to seek conversion in "unofficial" ways. Paul was in his late sixties when they arrived in

Italy; Alice was six years his junior. They were living as refugees, unable to work in Italy, their prior lives destroyed by Nazi persecution, and on the run.

The Growing Influence of Nazi Germany on Mussolini and Italy

25. In April 1936, Italy and Germany had secretly adopted the Italo-German Police Agreement, which provided for the exchange of information, documents, evidence and identification materials by the police with regard to all emigrants characterized as “subversives,” which by definition included German Jews residing in Italy. Pursuant to this agreement, the Gestapo could compel the Italian police to interrogate, arrest and expel any German Jewish refugee.

26. By the fall of 1936 and into 1937, things had grown even bleaker for Jews. On November 1, 1936, Mussolini publicly announced the ratification of the Rome-Berlin Axis. By March 1937, Italian bookshops had begun to exhibit and openly sell the notorious book, The Protocols of the Elders of Zion, along with other anti-Semitic writings. During the summer and fall of 1937, the head of the Italian Police, Arturo Bocchini, and Mussolini accepted a proposal from the notorious SS General Reinhard Heydrich, the chief of the Security Service of the Reichsführer (the SS) and the German Secret State Police (the Gestapo), to assign a member of the German police to police headquarters in the ten largest Italian cities, including Florence, where the Leffmanns resided. This facilitated the Nazi efforts to check on “subversives,” that is, Jewish individuals.

27. By the fall of 1937, anti-Semitism in Italy, including in the highest levels of the Ministry of the Interior, dashed any illusions about a longer stay in Italy for the Leffmanns. That fall, Germany and Italy began to prepare for Hitler’s visit to Italy. In October, the Ministry of the Interior created lists of all German refugees residing in Italy’s various provinces. The lists were

intended to draw clear distinctions between “those who supported the Nazi regime” and “anti-Nazi refugees” or Jews. This was the first time that the Italian Government had explicitly associated all German Jews with anti-Nazi Germans. This marked a turning point in the 1936 Italo-German Police Agreement, with the Gestapo requesting these lists so that it could monitor “subversives” in anticipation of Hitler’s visit. From the beginning of January 1938 until Hitler’s visit in May, the Gestapo received a total of 599 lists from the police throughout Italy’s provinces.

Leffmann’s Sale of the Painting

28. As the situation grew increasingly desperate for Jews living in Italy, it became clear that it would only be a matter of time before the Fascist regime’s treatment of Jews would mimic that of Hitler’s Nazis. Paul and Alice had to make plans to leave, and this would require money. Switzerland was where they wanted to go to escape the horrors of Nazism and Fascism and find a truly safe haven. But, as was well known at the time, passage into Switzerland, permanent or temporary, did not come easily or cheaply. Given the urgency of their situation, Paul began to explore the possibility of selling his masterpiece, *The Actor*, with dealers in Paris. The events following the Austrian *Anschluss* and Hitler’s visit to Italy in May 1938 confirmed the correctness of his actions -- i.e., that they would have had no choice but to turn whatever assets they still controlled into cash.

29. Meanwhile, conditions for Jews in Italy only grew worse. On February 17, 1938, every newspaper in Italy published a Government announcement (“Diplomatic Notice Number 18,” issued on February 16), which stated that “[t]he Fascist Government reserves to itself the right to keep under close observation the activity of Jews newly arrived in our country.”

30. In March 1938, SS General Heydrich traveled to Rome to meet with the head of the Italian Police, Bocchini, in order to plan for Hitler's visit. Nazi police officials were posted at 13 Police Headquarters in border towns, ports and large cities to conduct interrogations and house searches. These officials, dressed in Nazi uniforms, arrived on April 10-11, 1938. Meanwhile, on March 18, 1938, the Italian Ministry of the Interior informed prefects in border provinces that "ex-Austrian Jewish subjects" should be denied entry into Italy.

31. Also in March 1938, the Italian Minister of Foreign Affairs informed the U.S. Ambassador to Italy that Italy would not be participating in the international initiative to "facilitate" the emigration of "political refugees" from Austria and Germany. Italian newspapers made clear that "political refugees" was a synonym for Jews.

32. In April 1938, in the face of the growing Nazi persecution spreading across Europe and into Italy, Paul escalated his efforts to liquidate The Actor.

33. In September of 1936, after he had been forced by the Nazis to part with nearly everything he owned, Leffmann had rejected an offer from the notorious art dealer, C.M. de Hauke of Jacques Seligmann & Co. (whom the U.S. State Department later identified as a trafficker in Nazi-looted art) to sell The Actor. Nearly two years later, on April 12, 1938, Leffmann, in an even more desperate state, reached out to de Hauke asking him if he would be interested in purchasing the Painting.

34. Just days after writing to de Hauke, the situation in Italy grew even worse. From April 24-26, General Heydrich, SS Reichsführer Heinrich Himmler (whom Hitler later entrusted with the planning and implementation of the "Final Solution") and SS General Josef "Sepp" Dietrich, the commander of Hitler's Leibstandarte (Hitler's personal army), went to Rome to complete preparations for Hitler's visit. For three weeks in April and May 1938 there were over

120 Gestapo and SS officers in Italy -- primarily in Florence, Rome and Naples. The Gestapo officials and Italian police continued investigations and surveillance of “suspicious persons” until the end of Hitler’s visit, arresting at least 80 people in Florence. The arrests were carried out by the Italian police. Many German Jewish residents fled in anticipation, and as a result, of these arrests.

35. On May 3, Adolf Hitler arrived in Italy for his official state visit. It was a momentous occasion for Mussolini, and the Italian people turned out in the tens of thousands to greet the German leader. From May 3 through May 9, 1938, Hitler traveled to Rome, Naples and Florence. This was no typical state visit. Mussolini, anxious to strengthen the Axis alliance, made sure that Italy spared no expense in putting on its grandest show for Hitler. The streets of these Italian cities were covered in thousands of Nazi swastika flags, which flew alongside Italy’s tricolor; flowerbeds were decorated in the shape of swastikas and photographs of Mussolini and Hitler were made into postcards and displayed in shop windows. Parades and military displays in honor of Hitler, attended by thousands of Italians, young and old, took place in every city he visited. In Florence, the last city visited by Hitler on May 9th, city officials made an official postmark that commemorated Hitler’s visit. Mail sent during that time was stamped “1938 Il Führer a Firenze” and decorated with swastikas.

36. Hitler’s visit made clear that the situation in Italy for Jews was tense and the fear palpable. For Leffmann, the time to flee Italy was quickly approaching, so he continued to try to sell the Painting through de Hauke. Trying to raise as much cash as possible for the flight and whatever the future would bring, Leffmann responded to a letter from de Hauke, telling him that he had already rejected an offer obtained through another Paris dealer (presumably Käte Perls)

for U.S. \$12,000 (net of commission). It is clear from the letter that Leffmann was desperately trying to improve his leverage to maximize the amount of hard currency he could raise.

37. Violence was increasing and the persecution of Jews was on the rise. All foreign Jews in Italy risked arrest, and had good reason to fear possible deportation and death. Paul and Alice were in fear of their liberty and their lives. There was no time left. So just days after telling de Hauke that he had rejected Mrs. Perls' low offer, in late June 1938, Leffmann sold the Painting at the very price he told Perls and de Hauke he would not consider. He finally accepted Käte Perls' offer of U.S. \$13,200 (U.S. \$12,000 after a standard 10% selling commission), who was acting on behalf of her ex-husband, Hugo Perls, also an art dealer, and art dealer Paul Rosenberg, with whom Perls was buying the Painting.

38. On July 26, 1938, Frank Perls, Käte's son, who was also a dealer, wrote to automobile titan Walter P. Chrysler Jr., asking if he would be interested in purchasing The Actor. Obviously aware of the "sensitivity" of his overture, having just acquired a Picasso masterpiece from a German Jew on the run from Nazi Germany living in Fascist Italy for a low price that reflected the seller's desperate circumstances and the extraordinary prevailing conditions, he described the work as having been purchased by Mrs. Perls from "an Italian collector" -- an outright lie.

39. In July 1938, the Leffmanns, as German Jews, submitted their "Directory of Jewish Assets" forms detailing all of their assets, which the Reich required all Jews (even those living abroad) to complete. The penalties for failing to comply with this requirement included "fines, incarceration, prison, seizure of assets."

40. Meanwhile, the plight of the Jews in Italy deteriorated even further. In August 1938, enrollment of foreign Jews in Italian schools was prohibited. A Jewish census, in which the

Leffmanns were forced to participate, was conducted in preparation for the Italian racial laws, which were soon to follow. A legal definition of what constituted a “Jew” was considered, and discriminatory legislation was drafted. The Italian government increased surveillance of Jews because of the fear that Jews would transfer their assets out of Italy or emigrate and take their assets with them. A series of anti-Semitic publications were released, among them the infamous “*Manifesto degli scienziati razzisti*” (“Manifesto of the Racial Scientists”), which attempted to provide a scientific justification for the coming racial laws, and the venomous magazine, “*La difesa della razza*” (“The Defense of the Race”). In addition, a number of regional newspapers published lists of many of the names of Jewish families residing in Florence.

41. On September 7, 1938, the first anti-Semitic racial laws were introduced in Italy, including “Royal Enforceable Decree Number 1381,” which was approved by the Council of Ministers on September 1st and was published in daily newspapers on September 2nd. It was signed by the King on September 7th and was published in the “*Gazzetta Ufficiale*” on September 12th. With this Enforceable Decree, all “alien Jews” were forbidden from residing in Italy. All Jews who arrived in Italy after January 1, 1919 had to leave Italy within six months (i.e., by March 12, 1939) or face forcible expulsion. Bank accounts opened in Italy by foreign Jews were immediately blocked. At that point in 1938, Italy’s anti-Jewish measures had become extremely draconian, and in some instances had become even harsher than the corresponding measures enacted in Germany.

42. The Leffmanns had no choice but to prepare for immediate departure. Paul had sold The Actor not a moment too soon. Switzerland was the obvious destination. But Switzerland, which already had strict border controls, became even more difficult to enter beginning in 1938. In fact, it was about the worst time to try to enter Switzerland. Switzerland, following the

incorporation of Austria into the Reich, imposed visa requirements on holders of Austrian passports on March 28, 1938, and in April began negotiations with the Germans regarding the introduction of the notorious “J” stamp. On August 18-19, 1938 the Swiss decided to reject all refugees without a visa; on October 4, 1938, with an agreement reached on the adoption of the “J” stamp, they imposed visa requirements on German “non-Aryans.” Receiving asylum was virtually impossible, and German and Austrian Jews could only enter Switzerland with a temporary residence permit which, given the strict controls, and asset requirements imposed by the Swiss government, was not easy to obtain.

43. Sometime before September 10, 1938, however, the Leffmanns managed to obtain a *Toleranzbewilligung* (a tolerance or temporary residence visa) from Switzerland, valid from September 10, 1938 to September 10, 1941. In October 1938, just days after the enactment of the racial laws expelling them from Italy, the Leffmanns fled yet again, this time to Switzerland, where they were allowed to stay only temporarily.

44. By the time the Leffmanns arrived in Switzerland, the *Anschluss* and other persecutory events had triggered a rising wave of flight from the Reich. Consequently, Swiss authorities required emigrants to pay substantial sums through a complex system of taxes and “deposits” (of which the emigrant had no expectation of recovery).

45. In October 1938, all German Jews were required to obtain a new passport issued by the German government stamped with the letter “J” for Jude, which definitively identified them as being Jewish. As German citizens who required a passport to continue their flight, the Leffmanns had no choice but to comply.

46. The Leffmanns temporarily resided in Bern, Switzerland, but, unable to stay, prepared to flee yet again, this time to Brazil. In addition to bribes that were typically required to

obtain necessary documentation, Brazil would only provide visas for Jews who could transfer more than 400 contos (USD \$20,000) to the Banco do Brasil. On May 7, 1941, the Leffmanns, still on the run, immigrated to Rio de Janeiro, Brazil, where they lived for the next six years. But even in Brazil, they could not escape the effects of the ongoing war. All German residents living there, including the Leffmanns, were forced to pay a levy imposed by the Brazilian government of 20,000 Swiss Francs (or about U.S. \$4,641).

47. Given the various payments required by Switzerland, as well as those that the Leffmanns would need to enter Brazil, the Leffmanns depended on the \$12,000 (or approximately SF 52,440 in 1938) they received from the sale of The Actor, as it constituted the majority of the Leffmanns' available resources in June 1938. Had the Leffmanns not fled for Brazil when they did, they would have likely suffered a much more tragic fate at the hands of the Nazis regime and its allies.

48. The Leffmanns were not able to return to Europe until after the War had ended. In 1947 they settled in Zurich, Switzerland.

49. Paul Leffmann died on May 4, 1956 in Zurich, Switzerland at the age of 86. He left his entire estate to his wife, Alice Brandenstein Leffmann.

50. Alice Leffmann died on June 25, 1966 in Zurich, Switzerland at the age of 88. She left her entire estate to 12 heirs (all relatives or friends).

The Ancillary Estate of Alice Leffmann

51. In or about August 26, 2010, Nicholas John Day, the Executor named in the will of Alice Anna Berta Brandenstein, a legatee named in the will of Alice Leffmann, submitted a Petition for Ancillary Probate for the estate of Alice Leffmann in the Surrogate's Court of the State of New York, New York County authorizing Laurel Zuckerman to receive Ancillary

Letters of Administration CTA of the estate. On October 18, 2010, Laurel Zuckerman received Ancillary Letters of Administration CTA and was named Ancillary Administratrix by the Surrogate's Court of the State of New York, New York County.

The Museum's Acquisition and Possession of the Painting

52. The immediate history of the Painting after it was purchased by Perls and Rosenberg in June of 1938 is unclear, but it is known that after the purchase, the Painting was loaned by art dealer Paul Rosenberg to the Museum of Modern Art ("MoMA") in New York in 1939. In the paperwork documenting the loan, Rosenberg requested that MoMA insure the Painting for \$18,000 (a difference of \$6,000 or a 50% increase over what had been paid to Leffmann less than a year earlier).

53. Sometime prior to October 28, 1940, the Painting was consigned for sale by Rosenberg to the well-known M. Knoedler & Co. Gallery in New York, New York. On November 14, 1941, M. Knoedler & Co. sold the Painting to Thelma Chrysler Foy for \$22,500 (a difference of U.S. \$9,300 or a 70% increase from the price paid to Leffmann).

54. Thelma Chrysler Foy donated the Painting to the Museum in 1952, where it remains today. The Museum accepted this donation.

55. As a matter of law and public policy, good title to the Painting never passed from Leffmann to Perls and Rosenberg, and thus neither Perls, Rosenberg nor Foy could convey good title to the Painting. Therefore, the Museum never acquired good title to the Painting, and it remains the property of the Leffmann estate.

56. The Museum, given its resources, relationships, expertise, and status as a museum that holds its collection in the public trust, should have discovered, through due diligence,

Leffmann's ownership up and until 1938, and the circumstances under which he was compelled to dispose of the Painting because of Nazi and Fascist persecution.

57. Nonetheless, the Museum's published provenance for the Painting was manifestly erroneous when it first appeared in the Museum's catalogue of French Paintings in 1967. Instead of saying that Leffmann owned the Painting from 1912 until 1938, it read as follows: "P. Leffmann, Cologne (in 1912); a German private collection (until 1938) . . .", thus indicating that Leffmann no longer owned the Painting in the years leading up to its sale in 1938.

58. This remained the official Museum provenance for the Painting for the next 45 years, including when it was included on the Museum's website as part of the "Provenance Research Project," which is a section of the website that includes all artworks in the Museum's collection that have an incomplete Nazi-era provenance.

59. From 1967 to 2010, the provenance listing was changed numerous times. It continued to state, however, that the Painting was part of a German private collection, and not that it was owned by Leffmann continuously from 1912 until 1938.

60. In connection with a major exhibition of the Museum's Picasso holdings in 2010 entitled, "Picasso in the Metropolitan Museum of Art", the provenance was changed yet again. The forward to the exhibition catalogue by the Museum's director, Thomas P. Campbell, states that "[m]ore than a dozen members of our curatorial and conservation staff devoted the last year to an intensive study of the Museum's works by Picasso. . . Thanks to these extensive studies, for example, we have been able to confirm the authorship of one painting and to better establish the early ownership and exhibition history of many other works." Picasso in the Metropolitan Museum of Art, The Metropolitan Museum of Art, New York, 2010, p. vii.

61. Despite purportedly careful examination, as of 2010, the provenance of the Painting continued to erroneously list the “private collection” subsequent to the Leffmann listing.

62. All of these versions of the Painting’s provenance were incorrect. Paul owned the Painting from 1912 until its “sale” under duress to Perls in June 1938. The Museum’s asserted explanation for the forty-five years of erroneous provenance only underscores its improper conduct when it first acquired the Painting. The Museum asserts that the genesis of the original provenance entry in 1967 was that, some fifteen years after acquiring the Painting, the Museum’s curators finally asked Perls where he had obtained the Painting and that his answer was that he had bought it in 1938 from a “German professor” in Solothurn, Switzerland who had been “thrown out by Nazis.” (Perls allegedly could not remember the name of the German collector when asked in the 1960’s.) Therefore, at least at the time of the cataloguing, red flags should have been raised for the Museum. It should have tried to correct its error by then investigating the acquisition of the Painting, especially because Perls already said that he could not remember the name of the German collector and, more pointedly, that the seller had been “thrown out” of Germany by the Nazis. But obviously no investigation was conducted in 1967, and the provenance published in 1967, and for many years thereafter, was erroneous.

63. In October 2011, only after extensive correspondence with Plaintiff, the Museum revised its provenance yet again. The revised provenance omitted the reference to the mysterious private German collector who had purportedly owned The Actor from 1913-1938 and finally acknowledged Leffmann’s ownership through 1938 and his transfer of it during the Nazi era.

64. The Museum’s conduct ignored directives and warnings issued by the U.S. Government. The Museum had specifically been warned about accepting or buying art misappropriated during the Nazi era. As early as 1945, the American Commission for the

Protection and Salvage of Artistic and Historic Monuments in War Areas (also known as the “Roberts Commission”) issued a circular, addressed “to museums, art and antique dealers and auction houses,” which emphasized the importance of bringing “specific examples of looting of works of art or cultural material [] to light as soon as possible,” and which encouraged museums and others to inform the Roberts Commission of objects of “special artistic importance” that had “obscure or suspicious” provenances. The Commission also issued the following statement: “[i]t is, of course, obvious that no clear title can be passed on objects that have been looted from public or private collections abroad.” In or about 1947, the Department of State sent American museums, as well as universities, libraries, art dealers and book sellers, another bulletin, in which it highlighted the responsibility of museums and other American institutions to exercise “continued vigilance” in identifying cultural objects with provenances tainted by World War II. The directive underscored the need for museums to notify the Secretary of State of any objects identified as lacking a clear title. In 1950, the College Art Association of America reprinted the directive in *College Art Journal*, and in 1951, the American Federation of Arts reprinted the directive again in *Magazine of Art*.

65. The Museum’s conduct was also inconsistent with the principles espoused by the American Alliance of Museums (“AAM”), by which the Museum is accredited, and the Association of Art Museum Directors (“AAMD”), to which the Museum is a member — principles closely correlated to the landmark *Washington Conference Principles on Nazi-Appropriated Art*. For example, recognizing that a museum’s mission is to serve the public and that its responsibility to practice ethical stewardship is paramount, AAM’s “Standards Regarding Unlawful Appropriation of Objects During the Nazi Era” dictates that museums: (i) identify all objects in their collections that were created before 1946 and acquired by the museum after 1932,

that underwent a change of ownership between 1932 and 1946, and that were or might reasonably be thought to have been in continental Europe during those dates; (ii) make currently available object and provenance (history of ownership) information on those objects accessible; and (iii) give priority to continuing research as resources allow.

Plaintiff Demands the Return of the Painting and the Museum Refuses

66. On September 8, 2010, Plaintiff's attorneys, Herrick, Feinstein LLP, wrote to the General Counsel of the Museum, demanding the return of the Painting, but the Museum failed and refused to deliver the Painting to Plaintiff. The Painting remains in the possession of the Defendant through the filing of this Complaint.

67. On February 7, 2011, the parties entered into a standstill agreement tolling any statute of limitations as of February 7, 2011. Such agreement was thereafter amended several times to terminate on September 30, 2016. The final amendment of the standstill agreement terminated on September 30, 2016. The action is therefore timely.

FIRST CLAIM

(For Replevin)

68. Plaintiff repeats and realleges each of the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

69. The Leffmann estate is the rightful owner of the Painting, and Plaintiff, as Ancillary Administratrix of the Leffmann estate, is thus entitled to recover sole possession of the Painting.

70. The Painting is a unique and irreplaceable work of art.

71. Plaintiff demanded the return of the Painting. Defendant failed and refused to deliver the Painting to Plaintiff.

72. Plaintiff is entitled to the immediate return of the Painting.

SECOND CLAIM

(For Conversion)

73. Plaintiff repeats and realleges each of the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

74. The Leffmann estate is the rightful owner of the Painting, and Plaintiff, as Ancillary Administratrix of the Leffmann estate, is thus entitled to recover sole possession of the Painting.

75. Plaintiff demanded the return of the Painting. Defendant failed and refused to deliver the Painting to Plaintiff.

76. In refusing to return the Painting when demanded, Defendant converted and appropriated the Painting for its own use in complete disregard and derogation of the Leffmann estate's rights, title and interest to the Painting.

77. As a result of Defendant's wrongful conduct, the Leffmann estate has suffered damages, and Plaintiff is entitled to an award, in an amount to be determined at trial, but estimated to be in excess of \$100 million.

THIRD CLAIM

(For Declaratory Judgment)

78. Plaintiff repeats and realleges each of the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

79. The Leffmann estate is the rightful owner of the Painting, and Plaintiff, as Ancillary Administratrix of the Leffmann estate, is thus entitled to the immediate possession of the Painting.

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

81. Plaintiff demanded the return of the Painting. Defendant failed and refused to deliver the Painting to Plaintiff.

82. Plaintiff is entitled to a judgment declaring that the Leffmann estate is the sole owner of the Painting.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a) On the First Claim, directing that Defendant immediately deliver the Painting to Plaintiff;
- b) On the Second Claim, in the alternative, awarding Plaintiff damages in an amount to be proven at trial, but estimated to be in excess of \$100 million;
- c) On the Third Claim, declaring that the Leffmann estate is the rightful owner of the Painting and that Plaintiff, as Ancillary Administratrix of the Leffmann estate, is entitled to immediate possession of the Painting;
- d) Awarding Plaintiff fees and costs pursuant to Fed. R. Civ. P. 54(d); and
- e) Awarding any such other and further relief as the Court deems just and proper.

Dated: New York, New York
November 2, 2016

Respectfully submitted,

HERRICK, FEINSTEIN LLP

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